

Sayı: 21704200-TİM.OAİB.11.ARG3.2023/347-8502
Konu: AB Önlemlerin Etkisiz Kılınması Soruşturması

Ankara, 24/08/2023

Sayın Üyemiz,

T.C. Ticaret Bakanlığı İthalat Genel Müdürlüğü'nden alınan yazı ile, Avrupa Komisyonu Ticaret Genel Müdürlüğü tarafından Endonezya menşeli soğuk haddelenmiş paslanmaz yassı çelik (7219.31.00, 7219.32.10, 7219.32.90, 7219.33.10, 7219.33.90, 7219.34.10, 7219.34.90, 7219.35.10, 7219.35.90, 7219.90.20, 7219.90.80, 7220.20.21, 7220.20.29, 7220.20.41, 7220.20.49, 7220.20.81, 7220.20.89, 7220.90.20, 7220.90.80 gümrük tarife pozisyonu altında yer alan) ithalatında uygulanan anti-damping ve telafi edici vergi önlemlerinin, bu ürünlerin Tayvan ve Vietnam'ın yanı sıra ülkemizden sevk edilmesi suretiyle, muhtemel etkisiz kılınması ile ilgili olarak, 14 Ağustos 2023 tarihinde Avrupa Birliği (AB) Resmi Gazetesi'nde yayımlanan açılış bildirimleri ile önlemlerin etkisiz kılınması soruşturmalarının açıldığı bilgisi ve dikkat edilmesi gereken belli başlı hususlar tarafınıza iletilmişti.

Bu defa Komisyon tarafından soruşturmaların başlatılmasına ilişkin gönderilen Nota ekinde yer alan şikayetlerin gizli olmayan versiyonları ve ekleri tarafımıza iletilmiş olup; mezkur belgeler ekte yer almaktadır.

Bilgilerinizi rica ederim.

Musa DEMİR
Genel Sekreter

Ekler:

- 1) SSCR_AD_circumvention_body
- 2) SSCR_AD_circumvention_annexes
- 3) SSCR_AS_circumvention_body
- 4) SSCR_AS_circumvention_annexes

Ayrıntılı bilgi için: Halilcan Yılmaz - Uzman Yrd.

Orta Anadolu İhracatçı Birlikleri Genel Sekreterliği

Ceyhan Atuf Kansu Cad. No: 120

06520 BALGAT ANKARA

Tel : (312) 447 27 40 Faks : (312) 446 96 05 - 447 01 80

e-posta : info@oaib.org.tr / www.oaib.org.tr

Musa Demir tarafından 5070
sayılı kanun gereğince güvenli
elektronik imza ile
imzalanmıştır.

TİM TÜRKİYE





LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Acciai Speciali Terni S.p.A.
- Address: V.le B. Brin 218, 05100 Terni (IT)
- Address for Communications: info@acciaiterni.it
- Tel: +39 0744 4901
- Fax: +39 0744 490752

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Terni, 22-06-2023

Vice-President

Mario Carlo Arvedi Caldonazzo

Annex I - Confidential



LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Acerinox Europa SAU
- Address: Avda. Acerinox Europa, s/n Poligono Industrial Palmones, 11379, Los Barrios Cadiz, Spain
- Address for Communications: Calle Santiago de Compostela 100, 28035 Madrid, Spain
- Tel: Confidential
- Fax: Confidential
- E-Mail: Confidential

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Madrid, 21st June 2023



Luis Gimenez Valledor
Secretary General Acerinox SA

Annex I - Contact person: Confidential

LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Aperam Stainless Euroe
- Address: 6, rue André Campra 93210 La Plaine Saint- Denis France
- Address for Communications: 6, rue André Campra 93210 La Plaine Saint- Denis France, email : stainless@aperam.com
- Tel: +33 1 71920652
- Fax: +33 1 71920798

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Paris, July 23rd 2023



Nicolas Changeur

CEO Aperam Services and Solutions & CMO Europe

Annex I - Contact person: Confidential



LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone) of the company supporting the application

- **Name:** Outokumpu Oyj
- **Address:** Salmisaarenranta 11, 00180 Helsinki, Finland
- **Address for Communications:** Confidential
- **Tel:** Confidential

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Pia Aaltonen-Forsell

Signed in Helsinki, 21 June

Pia Aaltonen-Forsell – Chief Financial Officer

Annex I - Contact person: Confidential

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2
NOVA TRADING S.A.									
THE METAL CENTRE									
Norder Band AG									
ThyssenKrupp Schulte (BSM) GmbH									
BTH Import Stal									
Damstahl a/s									
Roba Metals bv									
ThyssenKrupp materials nv									
Sadel									
TAD INOX BV									
IMS Belgium									
ALACER MAS SA									
ACINESGON SA									
NICHELCROM ACCIAI INOX S.P.A.									
EUROACCIAI S.p.A									
GAVINOX S.R.L.									
MANNI INOX S.P.A.									
SIDERMARIOTTI S.R.L.									
Lemvigh-Muller A/S									
TKM GmbH									
ThyssenKrupp Schulte (BSM) GmbH									
Carl Spaeter GmbH									
Damstahl GmbH									
Kreuer Edelstahl GmbH									
HW-INOX GmbH									
Hernandez Stainless GmbH									
Norder Band AG									
ELG Haniel GmbH									
Chrom Stahl- und Metallhandel GmbH									
EuroStahl Handels GmbH & Co. KG									
H. Butting GmbH & Co. KG									
THE METAL CENTRE									
Marcegaglia									
Ita Inox SPA									
Oikr Acciai Inossidabili S.p.A.									
S.I.P.I. Spa									
Acciai Vender S.P.A.									
C.P.C. Inox S.P.A.									
LSI Lamiere Speciali Inox S.P.A.									
Ferlat Acciai S.P.A.									
Padana Tubi e Profilati Acciaio Inox									
Commit Metalli S.R.L.									
Ravani Acciai S.P.A.									
NICHELCROM ACCIAI INOX S.P.A.									
Inox PA S.p.A.									
Arinox									
Sogemet									
Duferco									
Gavinox									
Tresoldi Metalli Srl									
Sidermariotti S.R.L.									
Ecor SPA									
Century Steel									
Hyosung BNG									
MCB Group									
Amari Metals									
Nova Trading SA									
Otelinox									
Irestal Group Bergara									
Alacer Mas SL									
Acinesgon									
Alinox S.A.									
Tibnor AB									

Company	Street	Zip code	Town	Country	Tel	Fax	E fax	Contact Name	E-mail	E-mail 2
STALATUBE OY										
TKM GmbH										
Carl Spaeter GmbH										
Damstahl GmbH										
Kreuer Edelstahl GmbH										
HW-INOX GmbH										
Hernandez Stainless GmbH										
Norder Band AG										
ELG Haniel GmbH										
Chrom Stahl- und Metallhandel GmbH										
EuroStahl Handels GmbH & Co. KG										
H. Butting GmbH & Co. KG										
Klöckner & Co Deutschland GmbH Zweigniederlassung Osnabrueck										
VERTRIEBSGESELLSCHAFT MAIKRANZ GMBH & CO.KG										
Eberspächer ETSW AB										
Marcegaglia										
Itla Inox SPA										
Oiki Acciai Inossidabili S.p.A.										
S.I.P.I. Spa										
Acciai Vender S.P.A.										
C.P.C. Inox S.P.A.										
LSI Lamiere Speciali Inox S.P.A.										
Ferlat Acciai S.P.A.										
Padana Tubi e Profilati Acciaio Inox										
Commit Metalli S.R.L.										
Ravani Acciai S.P.A.										
MCB Group										
Amari Metals										
Nova Trading SA										
Otelinox										
Irestal Group Bergara										
Alacer Mas SL										
Acinesgon										
Alinox S.A.										
Tibnor AB										
Blanco GmbH & Co KG										
Replasa										
Samsung Electronics Poland Manufacturing sp. z o. o.										
Padana Tubi E Profilati Acciaio SPA										
Arinox S.p.A.										
Siderinox S.p.A.										
Itla Inox S.p.A.										
A.D. Tubi Inossidabili S.p.A.										

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
Eurofer	172 Avenue d	1000	Brussels	Belgium						https://www.eurofer.eu/

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
PT IMR ARC STEEL PtT. BINTANG ASIA USAHA PT OBSIDIAN STAINLESS STEEL PT INDONESIA TSINGSHAN STAINLESS STEEL PT INDONESIA TSINGSHAN STEEL PT E-UNITED FERRO INDONESIA (partly owned by Yusco) PT DEXIN STEEL (partly owned by Hanwa) PT INDONESIA GUANG CHING NIKEL AND STAINLESS STEEL INDUSTRY PT INDONESIA RUIPU NICKELA ND CHROME ALLOY PT SULAWESI MINING INVESTMENT INDONESIA PT EKASA YAD RESOURCES PT HANWA INDONESIA IMR METALLURGICA L RESOURCES AG PT BINTANGDELEP AN; MINERAL INDONESIA ETERNAL TSINGHAN GROUP LIMITED PT VIRTUE DRAGON NICKEL										

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

IISIA (Indonesian Iron and Steel Industry Association)

<https://www.iisia.or.id/>

City	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
RP.										https://www.yieh.com/en/Contact
G										https://www.walsin.com/walsin/home
g										http://www.tangeng.com.tw/eindex.a
g										https://www.tungmung.com.tw/index
ng										https://en.ylss.com.tw/
										https://www.chiafar.com/en/
										www.csssc.com.tw

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

TSIIA (Taiwan Steel & Iron Industries Association)

<https://www.tsiia.org.tw/>

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

Yongjin
POSCO
Hoa Binh

<https://www.poscovietaam.com/vn/main/getMain.do>
www.inoxhoabinh.vn

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

Vietnam Steel Association

<http://vsa.com.vn>

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
Assan TST/POSCO										https://poscoassan.com.tr/
Trinox										https://www.trinoxmetal.com/

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

sh

ncers
ciatio

<https://celik.org.tr/en/iletisim/>

Methodology for the assessment of "indirect imports"

This note explains how EUROFER has assessed the volume of indirect imports of SSCR from Indonesia in the EU. These imports are referred to as "indirect" because they result from the processing, in a country other than Indonesia or the EU, of SSCR inputs into SSCR before export to the EU.

Through a detailed assessment of official statistics and market intelligence, EUROFER is able to provide an estimate of the indirect imports. That assessment reveals a systemic and wide-ranging evasion of the duties on imports of SSCR from Indonesia because of the existence of a double flow: import of stainless steel semi-products from Indonesia to a third country and imports of SSCR from that third country into the EU.

1. PRELIMINARY REMARKS

Stainless steel slab and SSHR: slabs are semi-finished steel products. They are the output of the first stage of the production process of flat steel. The inputs necessary for the production of steel are melted in a furnace and then poured via a casting machine into solid rectangular shaped thick steel products called slabs. Slabs already contain all the raw material necessary for the production of the flat steel. Stainless steel hot rolled flat product, or "SSHR" is the next phase in the production process of SSCR. It is produced from the hot-rolling of slabs into coils. SSHR can either be black, when it has not yet undergone final annealing and pickling, or white when it has achieved that stage.

Production of stainless steel slabs in Indonesia: In Indonesia, the stainless steel slabs are produced from nickel pig iron (NPI) which itself contains the nickel ore found to be subsidised on machinery/land also found to be subsidised. It is important to have in mind that the Indonesian stainless steel operations do not solely focus on the export of finished products but also rely to a large extent on exports of semi-finished products. Due to the massive subsidies received, the Indonesian exporters has such a cost advantage that it can be more profitable, even for integrated producers, to idle upstream capacities and rely on Indonesian imports of semi-finished products rather than self-production. Similarly, re-rollers operating outside of Indonesia will find the Indonesian semi-products cheaper than the alternative produced domestically or imported from other sources. Therefore, Indonesian stainless steel tend to integrate the worldwide stainless steel trade flows at various level - both finished and semi-products - widely exporting the distortions resulting from the subsidisation in Indonesia.

Austenitic stainless steel and imports figures: Stainless steel is essentially characterised by its chromium content which provides it with its anti-corrosion properties. However, stainless steel can also be distinguished based on whether or not it contains another alloy: nickel. The two main families of grades of stainless steel are therefore austenitic (containing nickel) or ferritic (with no nickel). Due to the high price of nickel, the difference between the two families of stainless steel is also visible in the price of the products, with austenitic stainless steel being more expensive than ferritic stainless steel. That distinction between the two families of stainless steel is particularly important when considering imports - direct or indirect - from Indonesia. This is because the Indonesian stainless steel complex has precisely been established to exploit the subsidised nickel resources in that country. Therefore, exports from Indonesia are almost exclusively focused on austenitic materials, which even if sold at unnaturally low prices remain more expensive than ferritic products.

Processing of a slab/ of SSHR in a third country confers non-preferential origin: As the Commission recently found in case R778, the transformation of a stainless steel slab into the product directly downstream the hot-rolled flat stainless steel (SSHR) for which the slabs is the sole input brings very limited added value. The same is true for the processing phase directly after the hot-rolling, the

transformation of SSHR into SSCR via cold-rolling (see assembly part). Nonetheless, transformation of the slabs into SSHR or SSCR or of SSHR into SSCR confers non-preferential origin under the list rules of Annex 22-01 of the delegated act of the EU Custom code. This means that the "indirect imports" imports of Indonesian SSCR in the EU assessed by EUROFER are formally originating in the targeted third country.

Imports of Indonesian stainless steel in the EU: Over the last few years, the Commission has initiated several trade actions to address imports of stainless steel products from Indonesia, with AD measures on SSHR and AD and CVD measures on SSCR. Although these measures have their limitations, on account notably of the extent of the nickel price distortion in Indonesia, they mostly allow dealing with the imports of Indonesian SSHR and SSCR. For SSCR in particular, the imposition of the AS measures on SSCR in March 2022 has allowed to significantly reduce imports.

Imports of Indonesian stainless steel in third countries: As evidenced by the Commission over the recent years, Indonesia's massive stainless steel production capacity has been built from scratch in the recent years. As Indonesia only has a very limited consumption of stainless steel, this industrial powerbase is entirely dedicated to exports. Indonesia's stainless steel semi-finished and finished products exports have gone from negligible in 2015 to the first worldwide, overtaking China, already in 2020. Those production capacity and therefore exports are overwhelmingly dedicated to austenitic (nickel-based) stainless steel, to leverage the advantage granted by the Indonesian government on nickel ore. Consequently, these massive capacities, in a sector already plagued by Chinese overcapacities, have deeply affected traditional trade flows for stainless steel over a very short period of time. Massive exports from Indonesia have not only targeted the EU market but also all the other markets and in particular close-by Asian countries. In these countries, imports of Indonesian stainless steel products have substituted to a large extent domestic supply of finished products (SSCR) or of intermediate products (slabs, SSHR) thanks to their major price advantage.

In tonnes	2015	2016	2017	2018	2019	2020	2021	2022	%2015-2022
Indonesia	35,481	82,583	690,191	1,998,656	3,770,480	3,430,475	4,750,911	4,635,934	8345%
China	2,037,446	3,415,165	3,418,791	3,389,826	3,008,972	2,827,993	2,536,265	3,923,822	-34%
EU27	1,141,281	1,006,090	2,688,259	2,605,870	2,911,609	1,201,011	1,801,808	1,189,943	-22%
Taiwan	1,758,849	1,735,307	1,350,631	1,789,638	1,124,975	945,873	1,047,101	1,101,189	-4%
South Korea	1,415,000	1,475,756	1,527,291	1,627,712	1,547,516	1,358,770	1,230,294	918,003	-34%
India	551,872	721,602	815,021	750,167	727,909	678,239	652,100	761,165	18%
Japan	571,544	557,448	825,681	797,661	687,606	591,717	701,838	554,555	-50%
United States	301,410	391,184	955,890	657,420	428,225	310,477	342,641	348,052	-50%
South Africa	510,520	722,109	805,351	958,100	907,591	473,807	207,593	200,776	-36%

Imports in the EU of stainless steel produced from Indonesian semi-products from third countries: The increasing use of cheaper Indonesian stainless steel semi-finished products (slabs, SSHR) in the production of finished SSCR in third countries has mechanically led to the rapid appearance of a new trade flow: the imports in the EU of austenitic SSCR produced in third countries from Indonesian slabs or SSHR (the "indirect" imports of Indonesian SSCR). These flows have grown exponentially and now represent a significant share of the EU market. That significant increase is due to the fact that they share with the direct imports of SSCR from Indonesia a major advantage over EU producers: the heavy subsidisation of the upstream phase of the production process. However, as processing of slabs or SSHR into SSCR confers the non-preferential origin, they are not subject to the measures imposed on Indonesian imports of SSCR from Indonesia.

2. METHODOLOGY FOR THE ASSESSMENT OF INDIRECT IMPORTS

2.1 Presentation of the methodology

Methodology for the quantification of the indirect imports of SSCR to the EU: Due to the non-preferential origin rules, it is impossible to assess the extent of these indirect imports or double flow of SSCR solely by looking at EU import statistic as those do not provide any information on whether the slab or SSHR used to produce SSCR originate in Indonesia or elsewhere. EUROFER has therefore prepared a comprehensive assessment looking at (i) the imports in the third country, according to its official database, of stainless steel semi-finished products (slabs, SSHR) from Indonesia and all other sources, (ii) the production of stainless steel slabs in the country, if any and (iii) the imports in the EU of stainless steel from that third country. As Indonesian-produced stainless steel is solely nickel-based, the analysis focuses on austenitic stainless steel, based on actual custom data when they provide for the distinction (EU, Turkey, Taiwan) and/or on the relevant production split between austenitic and other types of stainless steel in the third country when the distinction is not available.

Relevant third countries: For the purpose of the assessment, EUROFER has focused exclusively on countries for which it had identified a sizeable flow of imports of stainless slabs and/or SSHR from Indonesia, a sizeable flow of exports of SSCR to the EU as well as a significant price impact on the EU market/ the perspective of an additional price impact. This means that the analysis is conservative because other flows likely exists.

The assessment therefore covers Taiwan, Turkey and Vietnam. The flows via these countries have been assessed both jointly and on an individual basis.

Application of the methodology: The methodology works in two-steps: first, assessing the share of Indonesian inputs in the total output of the country of austenitic SSCR; second, applying that share to the exports to the EU in order to obtain a reasonable assumption of the volume of SSCR from the third country which in fact contains Indonesian slabs or SSHR. The assessment is made on a quarterly basis and, in order to account for the processing of the Indonesian semi-products in the third country, a standard 3-month delay between imports of semi-finished product and exports of SSCR is taken into account. The methodology is subject to minor adjustments when available information for a country allow presenting a more accurate assessment.

2.2 Application for a country with melting capacities: Taiwan

Taiwanese custom statistics allow the identification of whether import and exports are austenitic or not. Out of the four countries assessed, Taiwan is the sole country with its own melting and hot-rolling capacities. In that country, Indonesian SSCR inputs may therefore be slabs or SSHR.

1. *Identification of the imports of austenitic semi products: the methodology isolates on one hand the imports from Indonesia and the imports from third countries of stainless slabs and SSHR. As the Taiwanese database allows identifying austenitic products, the analysis focuses only on these products.*
2. *Calculation of the domestic melting of austenitic stainless steel: As Taiwan has a domestic production of stainless steel slabs, that source of semi-product is also accounted for. Based on the proportion of austenitic stainless steel in the overall quantify of stainless steel slabs produced in Taiwan for the relevant period, a quantity of domestic austenitic production is calculated.*

3. Definition of the origin of semi-products in exports of SSCR from Taiwan: Based on the imports of austenitic semi-products and the production of domestic austenitic slabs, a ratio is calculated to assess the share of Indonesian SSHR and slabs over the total inputs available in Taiwan for the production of austenitic SSCR (domestic, Indonesian inputs, third countries inputs). That ratio is considered representative of the output of SSCR independently of whether it is sold domestically or exported to the EU or a third country.
4. Calculation of the volume of indirect imports of Indonesian melted SSCR to the EU via Taiwan: the ratio defined above is then applied to the total volume of imports of austenitic stainless steel in the EU (Eurostats imports under the CN codes for Ni>2,5% and CN codes ending in 3100 and falling under "other" whose average prices correspond to austenitic prices). To account for the processing of the inputs and the shipping to the EU, a three months delay is applied, meaning that the ratio defined for quarter N is applied to imports in the EU in quarter N+1.
5. Assessment of the maximum volume of imports of Indonesian melted SSCR to the EU via Taiwan: Beside the estimated volume of indirect imports estimated according to the methodology described above, an alternative methodology is also used to assess the maximum possible level of indirect imports of SSCR melted in Indonesia via Taiwan. That assessment consists in a comparison of the volume of semi-products imported in Taiwan from Indonesia with the imports in the EU of austenitic SSCR from Taiwan on the following quarter (three months delay). The lower of the two figures corresponds to the maximum volume of imports of SSCR from Taiwan integrating Indonesian inputs into the EU.

2.3 Application for a country without melting capacities: Vietnam

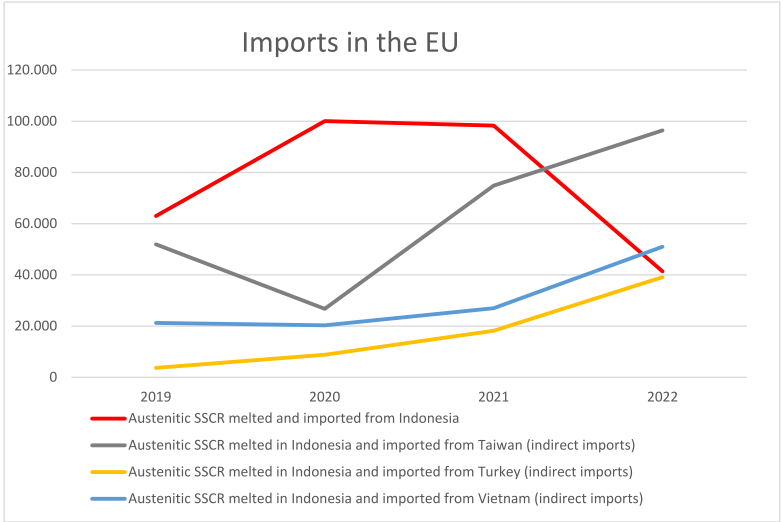
The methodology for Vietnam¹ is essentially the same as used for Taiwan with the following differences:

1. This database does not allow identifying whether imported inputs (in that case exclusively SSHR) are austenitic or ferritic. For Indonesia, due to the focus on nickel-based stainless steel, all imports are considered as being austenitic. For imports from other origins, an assessment is made on the basis of the overall share of austenitic stainless steel in melting in Asia (according to ISSF) to define the share of austenitic SSHR in imports from third countries. This assessment is conservative due to the pre-eminence of Indonesia in melting of austenitic stainless steel.
2. In the absence of domestic melting capacities for stainless steel in that country (production of SSCR is exclusively from re-rolling SSHR), inputs from the production of SSCR are 100% imported. This means that the ratio to define the origin of the semi-products used as inputs in the production of SSCR is calculated solely by a comparison between imports from Indonesia and imports from another source.

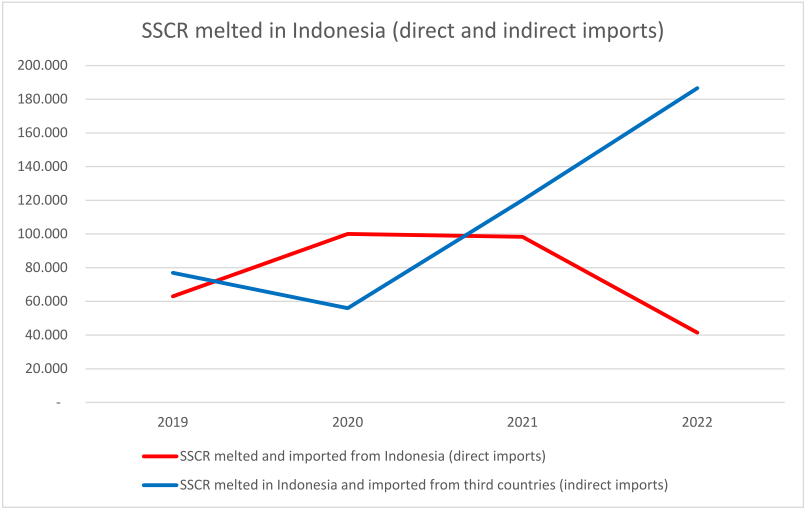
With regard to **Turkey**, whereas the principles are the same, additional factors are considered. First, as the Turkish custom statistics allow identifying the austenitic SSHR and SSCR, it is not necessary to rely on estimate to identify austenitic materials. Second, as imports of Indonesian slabs in Turkey were already investigated by the Commission in case R778 and it is known that these were exported to the EU as SSHR, slabs are therefore not accounted for in the assessment of the indirect imports of Indonesian SSCR for which EUROFER only relies on imports into Turkey of Indonesian SSHR.

¹ The Vietnamese data are identified via exports and imports from third countries due to incomplete set of Vietnamese data

Indirect imports of Indonesian melted SSCR to the EU via third countries - Estimate In tonnes				
Austenitic SSCR melted and imported from Indonesia	62.974	100.055	98.329	41.400
Austenitic SSCR melted in Indonesia and imported from Taiwan (indirect imports)	51.927	26.764	74.884	96.454
Austenitic SSCR melted in Indonesia and imported from Turkey (indirect imports)	3.667	8.842	18.199	39.142
Austenitic SSCR melted in Indonesia and imported from Vietnam (indirect imports)	21.305	20.310	26.976	50.983
Imports of SSCR melted in Indonesia (direct and indirect imports)	139.872	155.970	218.388	227.978
SSCR melted and imported from Indonesia (direct imports)	62.974	100.055	98.329	41.400
SSCR melted in Indonesia and imported from third countries (indirect imports)	76.898	55.915	120.059	186.578
Other SSCR imported from third countries	512.026	372.316	400.096	720.405
SSCR imports of austenitic (total)	651.898	528.286	618.484	948.383
Total EU Imports of SSCR (Eurostats) all grades	2019	2020	2021	2022
Total EU imports	928.993	776.245	893.946	1.300.417
Taiwan	185.614	125.070	218.792	251.418
Turkey	87.967	73.833	105.600	125.057
Vietnam	36.855	35.338	51.559	86.720
Targeted countries	310.436	234.241	375.951	463.195
Indonesia	72.768	106.488	107.364	51.379



Indirect imports of Indonesian melted SSCR to the EU via third countries - Maximum 2022
41.400
141.452
89.678
75.044
347.574
41.400
306.174
642.209
948.383



In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Taiwan	51.927	26.764	74.884	96.454
In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Turkey	3.667	8.842	18.199	39.142
In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Vietnam	21.305	20.310	26.976	50.983
In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
3 countries	76.898	55.915	120.059	186.578

In tonnes	2019	2020	2021	2022
Imports from Indonesia in the EU	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic SSCR	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports in the EU of SSCR from the targeted countries	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which Indirect imports in the EU	76.898	55.915	120.059	186.578
Index	100	73	156	243
Imports of SSCR from Taiwan	185.614	125.070	218.792	251.418
Index	100	67	118	135
Of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186
Imports of SSCR from Turkey	87.967	73.833	105.600	125.057
Index	100	84	120	142
Of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1.067
Imports of SSCR from Vietnam	36.855	35.338	51.559	86.720
Index	100	96	140	235
Of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

3 countries

In tonnes and %

	2019	2020	2021	2022
Inputs sourced from Indonesia	761.512	836.642	1.276.119	1.205.724
Inputs from other sources	Confidential business information			
Total imports of austenitics in the EU	197.344	131.297	236.022	306.320
Indirect imports in the EU (with 3 month delay)	76.898	55.915	120.059	186.578
Total imports in the EU of SSCR	310.436	234.241	375.951	463.195

Taiwan

In tonnes and %

	2019	2020	2021	2022
Inputs sourced from Indonesia	548.647	631.372	960.353	747.941
Inputs from other sources	Confidential business information			
Total imports of austenitics in the EU	100.617	48.490	116.306	141.452
Indirect imports in the EU (with 3 month delay)	51.927	26.764	74.884	96.454
Total imports in the EU of SSCR	185.614	125.070	218.792	251.418

Turkey

In tonnes and %

	2019	2020	2021	2022
Inputs sourced from Indonesia (SSHR only)	15.500	26.402	73.367	100.795
Inputs from other sources	145.105	142.024	148.848	144.861
Total imports of austenitics in the EU	61.702	50.012	75.378	89.824
Indirect imports in the EU (with 3 month delay)	3.667	8.842	18.199	39.142
Total imports in the EU of SSCR	87.967	73.833	105.600	125.057

Vietnam

In tonnes and %

	2019	2020	2021	2022
Inputs sourced from Indonesia (SSHR only)	197.366	178.868	242.399	356.987
Total Austenitic inputs from other sources	116.445	122.035	143.830	140.204
Total imports of austenitics in the EU	313.811	300.903	386.229	497.191
Indirect imports in the EU (with 3 month delay)	21.305	20.310	26.976	50.983
Total imports in the EU of SSCR	292.506	280.593	359.253	446.208

In tonnes and %
Inputs from Indonesia
Index
Imports of SSCR in the EU
Index
Of which Indirect imports in the EU
Index

In tonnes
Inputs from Indonesia
Index
Imports of SSCR in the EU
Index
Of which Indirect imports in the EU
Index

In tonnes
Inputs from Indonesia
Index
Imports of SSCR in the EU
Index
Of which Indirect imports in the EU
Index

In tonnes
Inputs from Indonesia
Index
Imports of SSCR in the EU
Index
Of which Indirect imports in the EU
Index

Exports from Indonesia (all de	2017	2018	2019	2020	2021	2022
Slabs	302.837	207.859	243.809	153.602	484.906	723.830
SSHR Wide Strips	324.109	1.221.896	1.608.666	1.171.342	2.028.868	1.608.445
Slabs + SSHR Wide Strips	626.946	1.429.754	1.852.475	1.324.944	2.513.774	2.332.275

Trade By CN8 Codes
Imports Comext
Indonesia
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	72.768	106.484	107.360	51.379
72193100	1	5	451	-
72193210	4.391	9.661	8.058	4.083
72193290	37	40	3	-
72193310	33.316	53.569	58.115	24.011
72193390	799	916	1.816	2.370
72193410	23.736	35.493	31.160	13.211
72193490	7.966	3.832	5.374	5.761
72193510	986	822	400	90
72193590	684	1.205	333	987
72199020	-	-	-	-
72199080	75	126	24	2
72202021	16	161	87	-
72202029	-	3	487	416
72202041	39	170	26	3
72202049	308	433	1.018	445
72202081	407	45	-	-
72202089	-	-	-	-
72209020	-	-	-	-
72209080	7	3	8	-

Trade By CN8 Codes
Imports Comext
Taiwan
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	185.614	125.070	218.792	251.292
72193100	1.038	614	581	488
72193210	10.902	4.796	15.482	23.470
72193290	2.591	2.220	2.832	3.789
72193310	32.563	13.701	48.075	61.262
72193390	11.841	8.555	16.916	18.877
72193410	33.876	16.338	37.065	42.724
72193490	47.979	46.799	64.182	69.949
72193510	8.965	4.355	7.898	6.180
72193590	18.579	16.888	15.000	15.614
72199020	-	-	-	-
72199080	12.579	8.043	6.635	6.548
72202021	-	30	52	68
72202029	-	-	4	-
72202041	580	387	404	388
72202049	3.976	2.117	3.526	1.741
72202081	108	225	110	183
72202089	31	1	26	8
72209020	2	-	1	3
72209080	4	1	3	-

Trade By CN8 Codes
Imports Comext
Vietnam
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	36.855	35.338	51.559	87.609
72193100	-	-	-	-
72193210	3.242	3.544	3.341	6.356
72193290	316	279	143	582
72193310	15.539	12.642	13.772	29.384
72193390	556	547	1.127	2.450
72193410	13.776	13.887	22.921	34.268
72193490	730	1.497	5.276	8.168
72193510	1.628	1.740	3.412	4.557
72193590	209	220	636	393
72199020	-	-	-	-
72199080	3	205	249	376
72202021	-	-	-	-
72202029	-	-	-	-
72202041	382	451	364	229
72202049	-	-	21	83
72202081	454	315	279	763
72202089	19	-	18	-
72209020	-	-	-	-
72209080	1	11	-	-

Trade By CN8 Codes
Imports Comext
Turkey
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	87.967	73.833	105.600	125.057
72193100	832	575	1.003	813
72193210	4.819	4.980	4.591	6.341
72193290	148	231	199	335
72193310	23.494	21.980	26.305	34.323
72193390	4.464	4.452	4.529	5.810
72193410	25.986	15.228	32.978	39.862
72193490	11.873	9.598	10.563	13.755
72193510	5.246	5.322	6.752	5.250
72193590	3.410	2.380	4.870	4.204
72199020	15	1	-	1
72199080	353	510	1.272	1.516
72202021	55	175	95	50
72202029	36	53	211	3
72202041	644	842	853	773
72202049	5.556	5.812	8.302	10.251
72202081	163	77	236	173
72202089	778	1.295	1.548	875
72209020	-	-	-	-
72209080	95	322	1.293	722

Trade By CN8 Codes
Imports Comext
Indonesia
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.917	1.873	1.956	2.621
72193100	2.500	2.034	2.518	-
72193210	1.939	1.742	1.875	2.647
72193290	1.351	1.712	1.790	-
72193310	1.933	1.901	1.927	2.680
72193390	1.475	1.628	1.559	2.401
72193410	2.009	1.895	2.086	2.587
72193490	1.463	1.560	1.707	2.511
72193510	2.113	2.118	2.259	3.139
72193590	1.425	1.889	1.996	2.618
72199020	-	-	-	-
72199080	2.207	2.134	1.919	2.375
72202021	2.244	2.004	2.221	-
72202029	-	1.893	1.626	2.482
72202041	2.334	2.038	2.647	3.053
72202049	1.607	1.714	1.977	2.886
72202081	5.169	4.658	-	-
72202089	-	-	-	-
72209020	-	-	-	-
72209080	4.013	3.457	5.334	-

Trade By CN8 Codes
Imports Comext
Taiwan
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.684	1.495	1.897	2.950
72193100	1.884	2.221	2.247	2.882
72193210	1.956	1.835	2.245	3.472
72193290	1.147	1.015	1.518	2.561
72193310	1.937	1.831	2.244	3.404
72193390	1.251	1.134	1.542	2.388
72193410	2.027	2.009	2.357	3.537
72193490	1.349	1.222	1.433	2.230
72193510	2.189	2.059	2.479	3.834
72193590	1.293	1.224	1.359	2.180
72199020	-	-	-	-
72199080	1.935	1.984	2.230	3.588
72202021	-	1.274	1.934	3.946
72202029	-	-	2.765	-
72202041	2.285	1.747	2.321	3.387
72202049	1.315	1.279	1.447	2.559
72202081	2.828	3.399	3.320	3.430
72202089	1.502	1.740	2.676	4.980
72209020	7.920	-	18.280	4.087
72209080	12.035	16.230	11.680	-

Trade By CN8 Codes
Imports Comext
Vietnam
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	2.061	1.951	2.280	3.701
72193100	-	-	-	-
72193210	2.031	1.877	2.232	3.791
72193290	1.165	1.266	1.188	2.158
72193310	1.994	1.871	2.341	3.741
72193390	1.369	1.415	1.366	2.561
72193410	2.126	2.054	2.375	3.897
72193490	1.412	1.412	1.627	2.600
72193510	2.413	2.414	2.760	4.401
72193590	1.293	1.247	1.543	2.614
72199020	-	-	-	-
72199080	2.183	1.757	2.671	2.753
72202021	-	-	-	-
72202029	-	-	-	-
72202041	2.505	2.339	2.625	4.058
72202049	-	-	1.673	2.562
72202081	3.710	3.085	3.668	6.088
72202089	4.015	-	3.861	-
72209020	-	-	-	-
72209080	6.790	1.751	-	-

Trade By CN8 Codes
Imports Comext
Turkey
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.891	1.818	2.359	3.374
72193100	3.154	2.965	3.570	4.338
72193210	2.046	1.966	2.640	3.918
72193290	1.277	1.159	1.712	2.539
72193310	1.994	1.911	2.595	3.775
72193390	1.347	1.311	1.858	2.299
72193410	2.093	2.043	2.622	3.712
72193490	1.390	1.366	1.795	2.417
72193510	2.285	2.322	2.462	4.022
72193590	1.576	1.465	1.703	2.331
72199020	3.061	2.330	-	8.780
72199080	2.406	2.720	2.857	3.759
72202021	2.686	2.313	3.164	4.003
72202029	2.185	1.376	2.104	4.620
72202041	2.082	2.246	3.138	4.295
72202049	1.476	1.425	1.602	2.297
72202081	2.854	2.711	3.550	5.278
72202089	1.485	1.346	1.381	2.378
72209020	-	-	-	-
72209080	2.553	1.806	2.146	2.589

	Company	Cold-rolling capacity in '000 tonnes
Taiwan	Walsin Lihwa	350-500
	YUSCO	600-800
	Tung Mung	150-250
	Yuan Long	100-170
	Chia Far	50-100
	Chien Shing	70-130
	Tang Eng	200-275
Turkey	POSCO	275-425
	Trinox	Minimum 75
Vietnam	Yongjin	250
	POSCO	200-400
	Hoa Binh	150-220
Indonesia	PT Jindal Indonesia	150-200
	Indonesia Ruipu Stainless steel	1000-1500

Source: <https://www.linkedin.com/company/trinox-stainless-steel/about/>

Overview

TRINOX METAL, serves as an stainless steel flat producer since 2014 in Çorlu production facilities which Turkey's first cold rolling manufacturer of stainless steel DAIYANG METAL had began operations in 2007.

TRINOX's production facilities are located in an area of 80,000 square meters in Avrupa Serbest Bolgesi (ASB) region, Northern Tekirdag. The company has 75,000 tons of production capacity per year and can produce 60,000 tons of 2B surface and 15,000 tons of BA surface.

As an affiliate company of a world-famous stainless-steel processing business group, Trinox metal is engaged in entire value chain from production to processing and marketing and strives for customer satisfaction with a deeper understanding of the fast-changing business environments that today's customers are facing.

With a humble vision to become the most beloved and reliable supplier, the genuine Turkish corporation actively fulfills principles of excellence and devotion and exerts a great deal of effort to get growing while achieving customer advocacy.

Website

<http://www.trinoxmetal.com>

Confidential information not susceptible of summarisation

Statement in the complaint:
"The plant started operation in 2022 (...)"

Source:
Kallanish [Kallanish, Yongjin Vietnam sees first coil production, 22 March 2022, https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/.](https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/)

Home > Steel News > Market Reports

22MAR

11:50

799 Views

Yongjin Vietnam sees first coil production

China-listed Zhejiang Yongjin Metal Technology Company announced on Monday that it has officially started production at its Vietnamese stainless steel plant. Kallanish notes: Yongjin Metal Technology (Vietnam) Company was established in April 2019. It started the construction of a 250,000 tonnes/year capacity precision cold rolled stainless steel strip project in Tinh Tien Giang in 2020. The main equipment includes two 1,450mm cold rolling lines (one 1,450...

This article contains premium data.

It is only available for active subscribers and clients currently on trial. To continue reading, see the options below.

LATEST PRICES

KOHE 58% Fe / Qingdao CFR USD/t /en/

Rebar / Singapore CFR USD/t /en/price/

Welded Pipe (S235) / Turkey FOB USD/t

KORE 65% Fe / Qingdao CFR USD/t /en/

HMS 1&2 80-20 / Turkey CFR USD/t /en/

SGX 65% Fe Futures - one month forward

Wire Rod / N Europe / Ex-Works EUR/t /

Heavy Scrap / China / CNY/t /en/price/

MORE FERROUS PRICES (/EN/PRICES/)

青山控股

TSINGSHAN

ABOUT US

GLOBAL BUSINESS

SOCIAL RESPONSIBILITY

NEWS

CONTACT US

LOGIN

中文

Home / News / News

NEWS

The Cornerstone Laying Ceremony of Guangdong Yongjin Project Was Successfully Held

Time: 2018-05-25

Visits: 2,202

5070 sayılı kanun gereğince güvenli elektronik imza ile imzalanmıştır. ID:E37ABD78E42740E37ABD. Bu kod ile https://evrak.oaib.org.tr/ adresinden doğrulayabilirsiniz.

On the morning of June 22, the Cornerstone Laying Ceremony of the 680,000-ton Precision Stainless Steel Deep Processing Project of Guangdong Yongjin Metal Technology Co., LTD. was successfully held at the port industrial park of Yangjiang High-tech Development Zone. More than 300 people attended the ceremony, including CHEN Xiaoshan, the secretary of Yangjiang Municipal Party Committee, LIN Ruixi, the secretary-general of Yangjiang Municipal Party Committee, LIN Jinliu, the deputy director of the standing committee of the municipal people's congress and secretary of the party committee of Yangjiang High-tech Development Zone, ZHANG Lei, the deputy mayor of Yangjiang City, and the other municipal and district leaders, as well as XIANG Guangda, the chairman of TSINGSHAN's board of directors, HUANG Ping, the chairman of GDFTG, LIN Xianliao, the chairman of board of supervisors of provincial enterprises accredited by provincial SASAC, WANG Lei, the chairman of GQMT, HE Congzhen, the general manager of GQMT and guests from the other iron and steel enterprises.

← → 🔍 <https://www.tsigroup.com/en/en/the-cornerstone-laying-ceremony-of-guangdong-yongjin-project-was-successfully-held/> 🌐 ⭐ 🌟



ABOUT US

GLOBAL BUSINESS

SOCIAL RESPONSIBILITY

NEWS

CONTACT US

Q

LOGIN

Project of Guangdong Yongjin Metal Technology Co., LTD. was successfully held at the port industrial park of Yangjiang High-tech Development Zone.

More than 300 people attended the ceremony, including CHEN Xiaoshan, the secretary of Yangjiang Municipal Party Committee, LIN Ruixi, the secretary-general of Yangjiang Municipal Party Committee, LIN Jinliu, the deputy director of the standing committee of the municipal people's congress and secretary of the party committee of Yangjiang High-tech Development Zone, ZHANG Lei, the deputy mayor of Yangjiang City, and the other municipal and district leaders, as well as XIANG Guangda, the chairman of TSINGSHAN's board of directors, HUANG Ping, the chairman of GDFTG, LIN Xianliao, the chairman of board of supervisors of provincial enterprises accredited by provincial SASAC, WANG Lei, the chairman of GQMT, HE Congzhen, the general manager of GQMT and guests from the other iron and steel enterprises.

At the ceremony, DONG Zhaoyong, the chairman of Guangdong Yongjin, introduced the overall situation of the project. And the municipal and district leaders have delivered speeches successively. WANG Lei delivered a speech on behalf of GQMT. He pointed out that the construction of Guangdong Yongjin 680,000-ton precision stainless steel deep processing project was of great significance for the development of the stainless-steel industry in Yangjiang. GQMT firmly believed that the cooperation and alliance with Yongjin would eventually beneficial to the realization of the dream of high-end stainless steel cluster production and make greater contributions to the development of China's stainless steel industry.

Internal intelligence of the applicant on the relationship between the Tsingshan Indonesia and exporters in third countries, information on supply etc... not susceptible of further summarisation

Internal intelligence of the applicant on the relationship between the Tsingshan Indonesia and exporters in third countries, information on supply etc... not susceptible of further summarisation

60% threshold assessment

	Value of Indonesian input in total value of inputs	
	Unadjusted reported value	Adjusted fair value (+21,4% to Indonesian inputs value)
Taiwan	62,3%	66,7%
Vietnam	60,4%	64,9%

Turkey- Trinox	>90%	>90%

Summary of confidential information

	2022		
	Value in EUR		
	No adjustment	Adjusted for subsidisation (+21,4% to value)	
Relevant Inputs from Indonesia value	1.600.000.000 - 2.000.000.000		Indonesian inputs susceptible to be used in re-rolling operation
Relevant Inputs from Indonesia via third countries	Negligible	Business confidential	Indonesian inputs imported via countries with no production of SSHR or from countries where Indonesian inputs are used for the production of SSHF
Inputs from other sources	1.150.000.000 - 1.450.000.000	information	including domestic melting and other imports
Inputs not susceptible to be used in SSCR to the EU	230.000.000 - 280.000.000		Inputs not susceptible to be used in re-rolling operation, originating from other sources
Share of Indonesian inputs	62,3%	66,7%	

Information relating to custom clearance point of Company Trinox

OVERVIEW	
Company name:	Trinox Metal Industry and Trade Ltd.
Establishment:	SSZF
Address:	European Free Zone Osman Sahin Bulvari No:7, Etiler, Beşiktaş - 34096
Products:	Flat-rolled stainless steel coil
Classes:	300 Series - 304, 304L, 316, 316L, 321 200 Series - 329, 301, 301L, 304, 304L, 304S
Surfaces:	2B, 2D, Bright, Bright No. 4, Mirror
Dimensions:	2850, 3000, 3200mm X 1000mm 3045, 3175 - 4200mm X 1000mm

GENERAL DATA	
Serial No:	Trinox Kona İşletme Noktası - E
Kind:	SSZF
Area:	European Free Zone (European Free Zone) / European Free Zone - 34096
Owner:	Societal Trade and Trade of Stainless Steel
Serial:	304, 304L, 304S, 316, 316L, 321, 329, 301, 301L, 304, 304L, 304S
Category:	EU 28 - 304, 304L, 304S, 316, 316L, 321, 329, 301, 301L, 304, 304L, 304S
Details:	(304, 304L, 304S, 316, 316L, 321, 329, 301, 301L, 304, 304L, 304S) (304, 304L, 304S, 316, 316L, 321, 329, 301, 301L, 304, 304L, 304S)



- 1/ Trinox is established on the European Free Zone Osman Sahin Bulvari, in Turkish "Avrupa Serbest Bölgesi"
- 2/ It is the sole producer of SSCR established on that zone
- 3/ [Confidential information summarised as follows : Trinox purchases SSHR]
- 4/ Imports and export by Trinox can be tracked based on the custom clearing point

2022		
Value in EUR		
	No adjustment	Adjusted for subsidisation (+21,4% to value)
Indonesian inputs	150.000.000 - 200.000.000	Business confidential information
Other imported inputs	5.975.000 - 6.500.000	
All inputs	155.975.000 - 206.500.000	
Share of Indonesian inputs	>90%	>90%

Summary of confidential information

	2022		
	Value in EUR		
	No adjustment	Adjusted for subsidisation (+21,4% to value)	
Relevant Inputs from Indonesia value	775.000.000 - 875.000.000	Business confidential information	<i>Indonesian inputs susceptible to be used in re-rolling operation</i>
Relevant Inputs from Indonesia via third countries	35.000.000 - 45.000.000		<i>Indonesian inputs imported via countries with no production of SSHR or from countries where Indonesian inputs are used for the production of SSHR</i>
Relevant inputs from other sources	500.000.000 - 600.000.000		<i>Inputs susceptible to be used in re-rolling operation originating from other sources</i>
Share of Indonesian inputs	60,4%	64,9%	

Information for 2023 show an even higher estimated level of Indonesian Inputs in the Vietnamese inputs used for production of SSCR

General methodology

The calculation aim at assessing the share of Indonesian inputs in the production of SSCR in the countries through which indirect imports from the countries concerned occur.

The calculation was adapted on a country specific basis for Taiwan and Vietnam depending on the following:

- Specificities of the production process in the country
- Availability and level of details of the custom statistics from the countries

It relies on the fact that slabs or SSHR are the sole "part" to be assessed in the context of an assembly operation test.

In general, the approach is the following:

1/ Valuation of the inputs from Indonesia based on custom statistics

2/ Valuation of the inputs from third countries based on custom statistics (imports). When applicable, valuation of the inputs produced in third countries based on reasonable inferences.

3/ When inputs are imported from a country in which there is no production of the inputs, the actual origin of the inputs is defined based on available information and split between Indonesian and non-Indonesian origin.

4/ Valuation of the inputs not used for the production of exports to the EU (overly expensive imports, imports linked to grade not exported to the EU, value of exports not produced from Indonesian inputs...)

Calculation of the share of the value of the share of Indonesian inputs on the total share of inputs potentially used for the production of SSCR in the country for exports to the EU as follows:

$$\text{Indonesian input value} / (\text{Indonesian input value} + \text{other input value} - \text{excluded input value}) = X\%$$

A second calculation is then made accounting for a corrected value of the Indonesian inputs, accounting for the subsidisation taking place in Indonesia, as follows:

$$((\text{Indonesian input value} * (1 + \text{CVD duty rate})) / ((\text{Indonesian input value} * (1 + \text{CVD duty rate})) + \text{other input value} - \text{excluded input value}) = X\%$$

The above calculation are made with regards to SSCR as a whole but is also available for austenitic SSCR only.

With regard to Turkey, the very same assessment is made on a company specific level based on the custom clearance point used by the company.

Summary

Product	Product stage	Total cost	Processing cost to SSCR	Added value share to produce SSCR from input
slab 304	slabs	2000-3800 EUR/t	Business confidential information	[10-14]%
304 black band	black SSHR	2000-3800 EUR/t		[4-8]%
304 white band 3mm	white SSHR	2250-4050 EUR/t		[2-6]%
304 2B 2mm	SSCR	2250-4050 EUR/t		

* Cost of production of 1 tonne of the products for (i) actual data for EU producer Company A (EU) in 2022) and (ii) estimated cost of Asian producer Company B (Asia) in 2022

The costs of production include:

- Charge cost: inputs used for the production as well as their average prices for 2022
- Energy
- Labor
- Other consumable
- yield effects

In tonnes	2019	2020	2021	2022
Total imports	929.004	776.148	893.946	1.300.417
Index	100	84	96	140
Imports from targeted countries	310.440	234.156	375.936	463.195
<i>Index</i>	100	75	121	149
Of which Indirect imports	76.898	55.915	120.059	186.578
<i>Index</i>	100	73	156	243
Imports from other countries (excluding China)	608.352	528.000	483.486	528.822
<i>Index</i>	100	87	79	87
Imports from China	10.212	13.992	34.524	308.400
<i>Index</i>	100	137	338	3.020

cf. Annex volume of indirect imports

All SSCR	Indirect imports only			Total SSCR imports			Indirect imports share of total imports of SSCR	Austenitic SSCR	Indirect imports only			Total imports of austenitic SSCR			Indirect imports share of total imports of austenitic SSCR
	2022			2022					2022			2022			
	Taiwan	96.454	2,4%	Taiwan	251.418	6,1%	38,4%		Taiwan	96.454	3,3%	Taiwan	141.452	4,8%	68,2%
	Turkey	39.142	1,0%	Turkey	125.057	3,1%	31,3%		Turkey	39.142	1,3%	Turkey	89.678	3,1%	43,6%
	Vietnam	50.983	1,2%	Vietnam	86.720	2,1%	58,8%		Vietnam	50.983	1,7%	Vietnam	75.044	2,6%	67,9%
	Total	186.578	4,6%	Total	463.195	11,3%	40,3%		Total	186.578	6,4%		306.174	10,5%	60,9%
	SSCR EU Market (total)	4.088.315			4.088.315				Austenitic SSCR EU Market	2.924.511			2.924.511		

Indirect imports of Indonesian melted SSCR to the EU via third countries - Estimated

Indirect imports of Indonesian melted SSCR to the EU via third countries - Maximum

EU consumption and market share (All SSCR) (in tonnes and %)	2019	2020	2021	2022
SSCR EU Market	3.628.512	3.325.224	3.853.431	4.088.315
EU mills deliveries	2.699.508	2.549.076	2.959.485	2.787.898
Imports	929.004	776.148	893.946	1.300.417
<i>Of which SSCR imported from targeted countries</i>	310.440	234.156	375.936	463.195
<i>Of which indirect austenitic SSCR melted in Indonesia</i>	76.898	55.915	120.059	186.578
market share EU mills	74,4%	76,7%	76,8%	68,2%
market share imports	25,6%	23,3%	23,2%	31,8%
<i>Of which SSCR from targeted countries</i>	8,6%	7,0%	9,8%	11,3%
<i>Of which indirect SSCR melted in Indonesia</i>	2,1%	1,7%	3,1%	4,6%

Based on the austenitic sales of EU mills and imports SSCR EU market for austenitic (estimate)	2.699.614	2.478.453	2.841.849	2.924.511

EU consumption and market share (aust. SSCR) (in tonnes and %)	2019	2020	2021	2022
market share EU mills austenitic	75,9%	78,7%	78,2%	67,6%
market share imports austenitic	24,1%	21,3%	21,8%	32,4%
<i>Of which austenitic SSCR imported from targeted countries</i>	7,3%	5,3%	8,3%	10,5%
<i>Of which indirect SSCR melted in Indonesia</i>	2,8%	2,3%	4,2%	6,4%

	2019	2020	2021	2022
Total Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Imports of austenitic SSCR from Indonesia	62.974	100.055	98.329	41.400
Market share of imports of SSCR from Indonesia	2,0%	3,2%	2,8%	1,3%
Market share of imports of austenitic SSCR from Indonesia for austenitic sales	2,3%	4,0%	3,5%	1,4%

	2022
SSCR EU Market	4.088.315
EU mills deliveries	2.787.898
Imports	1.300.417
Austenitic SSCR from third countries	306.174
market share EU mills	
market share imports	
<i>Of which m.s. of indirect aust melted in Indonesia</i>	7,5%

market share EU mills austenitic	68%
market share imports austenitic	32%
<i>Of which m.s. of indirect aust melted in Indonesia</i>	10,5%

Nota: figures in the table below are monthly averages

to/month	EU27 Market supply	Deliveries by EU mills	Third Countries out EU27	of which:				
Period				China	Taiwan	Turkey	Vietnam	Indonesia
average 2022	340.699	232.325	108.368	25.700	20.952	10.421	7.227	4.282
average 2021	321.119	246.624	74.496	2.877	18.234	8.797	4.297	8.947
average 2020	277.102	212.423	64.679	1.166	10.415	6.153	2.945	8.874
average 2019	302.376	224.959	77.417	851	15.468	7.331	3.071	6.064

Sources: Imports: Eurostat/Comext
EU mills deliveries: EUROFER

	<table><tr><th>2019</th><th>2020</th><th>2021</th><th>2022</th></tr><tr><td>3.628.512</td><td>3.325.224</td><td>3.853.431</td><td>4.088.389</td></tr><tr><td>310.440</td><td>234.156</td><td>375.936</td><td>463.195</td></tr><tr><td>76.898</td><td>55.915</td><td>120.059</td><td>186.578</td></tr><tr><td>929.004</td><td>776.148</td><td>893.946</td><td>1.300.417</td></tr><tr><td>651.898</td><td>528.286</td><td>618.484</td><td>948.383</td></tr></table>	2019	2020	2021	2022	3.628.512	3.325.224	3.853.431	4.088.389	310.440	234.156	375.936	463.195	76.898	55.915	120.059	186.578	929.004	776.148	893.946	1.300.417	651.898	528.286	618.484	948.383			
2019	2020	2021	2022																									
3.628.512	3.325.224	3.853.431	4.088.389																									
310.440	234.156	375.936	463.195																									
76.898	55.915	120.059	186.578																									
929.004	776.148	893.946	1.300.417																									
651.898	528.286	618.484	948.383																									
EU Market																												
Imports targeted countries																												
of which indirect imports				Cf annex volume of indirect imports																								
Total imports																												
of which austenitic				Cf annex volume of indirect imports																								
Imports of SSCR from Taiwan	<table><tr><td>185.614</td><td>125.070</td><td>218.792</td><td>251.418</td></tr><tr><td>51.927</td><td>26.764</td><td>74.884</td><td>96.454</td></tr><tr><td>87.967</td><td>73.833</td><td>105.600</td><td>125.057</td></tr><tr><td>3.667</td><td>8.842</td><td>18.199</td><td>39.142</td></tr><tr><td>36.855</td><td>35.338</td><td>51.559</td><td>86.720</td></tr><tr><td>21.305</td><td>20.310</td><td>26.976</td><td>50.983</td></tr></table>	185.614	125.070	218.792	251.418	51.927	26.764	74.884	96.454	87.967	73.833	105.600	125.057	3.667	8.842	18.199	39.142	36.855	35.338	51.559	86.720	21.305	20.310	26.976	50.983			Cf annex volume of indirect imports
185.614	125.070	218.792	251.418																									
51.927	26.764	74.884	96.454																									
87.967	73.833	105.600	125.057																									
3.667	8.842	18.199	39.142																									
36.855	35.338	51.559	86.720																									
21.305	20.310	26.976	50.983																									
Of which indirect imports				Cf annex volume of indirect imports																								
Imports of SSCR from Turkey				Cf annex volume of indirect imports																								
Of which indirect imports				Cf annex volume of indirect imports																								
Imports of SSCR from Vietnam				Cf annex volume of indirect imports																								
Of which indirect imports				Cf annex volume of indirect imports																								
Imports of SSCR from Indonesia	<table><tr><td>72.768</td><td>106.488</td><td>107.364</td><td>51.379</td></tr><tr><td>62.974</td><td>100.055</td><td>98.329</td><td>41.400</td></tr></table>	72.768	106.488	107.364	51.379	62.974	100.055	98.329	41.400			Cf annex volume of indirect imports																
72.768	106.488	107.364	51.379																									
62.974	100.055	98.329	41.400																									
of wich austenitic SSCR				Cf annex volume of indirect imports																								

Nickel price https://www.westmetall.com/en/markdaten.php?action=averages&field=LME_Ni_cash

in USD/ tonne

2022	
Month	LME Nickel Cash-Settlement
December	28.854
November	25.257
October	21.936
September	22.682
August	21.998
July	21.483
June	25.838
May	27.950
April	33.298
March	31.861
February	24.178
January	22.326

Average 25.638 USD/ Tonnes

increase by 84,4%

2019	
Month	LME Nickel Cash-Settlement
December	13.801
November	15.200
October	17.113
September	17.673
August	15.682
July	13.462
June	11.970
May	11.998
April	12.819
March	13.061
February	12.650
January	11.455

13.907 USD/ Tonnes

EU COP for SSCR

2022
3400-3700

EUR/ Tonnes

increase by 54,8%

2019
2100-2400

EUR/ Tonnes

Average COGS for the Applicant

2022	All SSCR	indirect imports only
Undercutting by import from Taiwan	13,7%	18,5%
Undercutting by import from Turkey	14,5%	19,7%
Undercutting by import from Vietnam	11,2%	16,8%

2022	All SSCR	indirect imports only
Undercutting by imports from third countries	13,5%	18,3%

Taiwan

EU Imports from Taiwan	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	81.127	72.978	49.924	47.389	251.418
SSCR (<2.5% Ni)	31.512	31.452	26.139	20.863	109.966
SSCR (>2.5% Ni and 3100)	47.280	39.174	22.864	25.583	134.901
SSCR (others)	2.335	2.352	921	943	6.551
SSCR (>2.5% Ni, 3100 and others)	49.615	41.526	23.785	26.526	141.452
EU Imports from Taiwan	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	2.626	2.965	3.092	3.335	2951
SSCR (<2.5% Ni)	2.076	2.263	2.401	2.394	2267
SSCR (>2.5% Ni and 3100)	2.964	3.491	3.847	4.075	3477
SSCR (others)	3.217	3.602	3.989	4.080	3588
SSCR (>2.5% Ni, 3100 and others)	2.976	3.497	3.852	4.075	3482

Share	Duty	Landed price 2022	Comparable EU price	UC
54,3%	6,80%	3.151	3.652	13,7%

Turkey

EU Imports from Turkey	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	27.969	36.819	36.468	23.801	125.057
SSCR (<2.5% Ni)	10.171	10.930	7.732	6.400	35233
SSCR (>2.5% Ni and 3100)	17.009	25.459	28.363	16.760	87.591
SSCR (others)	789	430	373	641	2.233
SSCR (>2.5% Ni, 3100 and others)	17.798	25.889	28.736	17.401	89824
EU Imports from Turkey	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	3.008	3.321	3.578	3.574	3374
SSCR (<2.5% Ni)	2.276	2.354	2.401	2.414	2353
SSCR (>2.5% Ni and 3100)	3.422	3.725	3.911	4.032	3785
SSCR (others)	3.524	3.951	2.717	3.191	3376
SSCR (>2.5% Ni, 3100 and others)	3.426	3.728	3.895	4.001	3774

Share	Duty	Landed price 2022	Comparable EU price	UC
27,0%	0%	3.374	3.945	14,5%

Vietnam

EU Imports from Vietnam	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	17.864	17.074	24.503	27.279	86.720
SSCR (<2.5% Ni)	3.521	2.745	4.220	1.190	11676
SSCR (>2.5% Ni and 3100)	13.967	14.329	20.283	26.089	74.668
SSCR (others)	376	0	0	0	376
SSCR (>2.5% Ni, 3100 and others)	14.343	14.329	20.283	26.089	75044
EU Imports from Vietnam	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	3.101	3.489	3.751	4.330	3748
SSCR (<2.5% Ni)	2.427	2.661	2.623	2.596	2570
SSCR (>2.5% Ni and 3100)	3.280	3.647	3.986	4.409	3937
SSCR (others)	2.757	0	0	0	2757
SSCR (>2.5% Ni, 3100 and others)	3.266	3.647	3.986	4.409	3931

Share	Duty	Landed price 2022	Comparable EU price	UC
19%	0%	3.748	4.222	11,2%

TOTAL UC
13,5%

Total imports 3 countries463.195

Comparable EU price is defined based on the import mix of the targeted country and the the EU price splits of Applicants for austenitic and ferritic SSCR

Indirect imports

Calculation of the prices of the indirect imports

- 1/ Indirect imports are austenitic
2/ Indirect imports benefit from austenitic inputs from Indonesia that are at a lower price than other austenitic imports
3/ In some countries, possibility to see the difference in price of austenitic inputs (Taiwan and Turkey), for Vietnam no possibility
4/ Definition of country specific or general ratio at SSHR level (to avoid issues of Slabs vs SSHR mix)

		Indonesian SSHR/ Non Indonesian SSHR		
Taiwan		94,22%		
Turkey		91,78%		
Vietnam		85,30%	Estimated based on average prices in Taiwan and Turkey	
		Taiwan	Turkey	Vietnam
Total imports of austenitics in the EU	tonne	141.452	89.824	75.044
Average price of austenitic imports	EUR/ tonne	3.482	3.774	3.931
Indirect imports in the EU	tonne	96.454	39.142	50.983
Share of indirect imports	%	68,19%	43,58%	67,94%
Other imports of austenitic in the EU	tonne	44.998	50.682	24.061
Share of other imports	%	31,81%	56,42%	32,06%
Price indirect imports	EUR/ tonne	3.416	3.593	3.725
Price other austenitic imports	EUR/ tonne	3.625	3.915	4.367
		2022	UC	Applicable duty
	border	duty paid	%	%
Taiwan	3416	3648	18,5%	6,80%
Turkey	3593	3593	19,7%	0%
Vietnam	3725	3725	16,8%	0%

Cf. annex volume of indirect imports

Average price import price 2022 (indirect)	3.657	EUR/ Tonne	Source: average sales price of the Applicant
EU price to unrelated austenitic SSCR in 2022	4.476	EUR/ Tonne	
Undercutting	18,3%		

Austenitic imports

Volume of indirect imports in the EU in tonnes	2022
Taiwan	96.454
Turkey	39.142
Vietnam	50.983

Price of Imports in the EU (Eurostats) in EUR/tonnes	2022
Taiwan	3.482
Turkey	3.774
Vietnam	3.931

Price of imports in the EU with applicable duties in EUR/tonnes	duty	2022 duty paid	UC
Taiwan	6,8%	3.719	16,9%
Turkey	0,0%	3.774	15,7%
Vietnam	0,0%	3.931	12,2%

Average price import price 2022 (indirect)	3.789 EUR/ Tonne
EU price to unrelated austenitic SSCR in 2022	4.476 EUR/ Tonne

Source: average sales price of Applicant

Undercutting	15,3%

Source: Applicants internal Intelligence

Austenitic SSCR

<i>in EUR/ tonne</i>	Price information	EUROSTAT CIF +duty	Difference in price
Example of Turkish prices - 2022	3000-3300	3.774	474-774
Example of Taiwan prices - 2022	3000-3300	3.719	419-719
Example of Company A (Turkey) price - Q4 2022	3400-3700	4.001	301-601

Source Annex 9 - UC all imports

1. Step 1: increase in export price for Indonesian SSCR to assess increase in Indonesian NV

- 1/ Excluding exports to China because of the existence of related companies (and information on exports of unprocessed 2E SSCR)
2/ Excluding exports to the EU (as they were found to be dumped and therefore not representative)

	IP	2022	Variation
Volume	168.624	156.690	
Value	268.426.176	419.936.497	
EUR/ Tonne	1.592	2.680	168%

2. Step 2: Calculation of the prices of the indirect imports

- 1/ Indirect imports are austenitic
2/ Indirect imports benefit from austenitic inputs from Indonesia that are at a lower price than other austenitic imports
3/ In some countries, possibility to see the difference in price of austenitic inputs (Taiwan and Turkey), for Vietnam no possibility
4/ Definition of country specific or general ratio at SSHR level (to avoid issues of Slabs vs SSHR mix)

Price diff. Indirect / other				
Taiwan	94,22%			
Turkey	91,78%			
Average	85,30%	Estimated based on average prices in Taiwan and Turkey		
		Taiwan	Turkey	Vietnam
Total imports of austenitics in the EU	tonne	141.452	89.824	75.044
Average price of austenitic imports	EUR/ tonne	3482	3774	3931
Indirect imports in the EU	tonne	96.454	39.142	50.983
Share of indirect imports	%	68,19%	43,58%	67,94%
Other imports of austenitic in the EU	tonne	44.998	50.682	24.061
Share of other imports	%	31,81%	56,42%	32,06%
Price indirect imports	EUR/ tonne	3.416	3.593	3.725
Price other austenitic imports	EUR/ tonne	3.625	3.915	4.367

Source UC indirect imports of SSCR in Annex undercutting
Source UC indirect imports of SSCR in Annex undercutting

Source UC indirect imports of SSCR in Annex undercutting

3. Step 3: Dumping caculation

- 1/ Calculation of the adjusted Indonesian EP for 2022
2/ Definition of the non-dumped EU price for imports in 2022 based on residual AD duty
3/ Dumping calculation for indirect imports
4/ Dumping calculation for total imports

Dumping calculation				
Dumping SSCR imports from Indonesia (IP)		IP	2022	
Indonesian CIF export price to the EU		1962	3303	Source AD prov Reg
Indonesian dumping margin		20,20%	20,20%	Source AS Reg
Minimum non dumped CIF price		2.358	3.970	
Indirect imports	EUR/ tonne	Dumping	Dumping margin	
Taiwan	3416	555	16,2%	
Turkey	3593	377	10,5%	
Vietnam	3725	246	6,6%	
Total imports	EUR/ tonne	Dumping	Dumping margin	
Taiwan	2.951	1.020	34,6%	
Turkey	3.374	596	17,7%	
Vietnam	3.748	223	5,9%	

source UC overall imports (annex 9)

Dumping calculation	Overall imports	Indirect imports
Taiwan	34,6%	16,2%
Turkey	17,7%	10,5%
Vietnam	5,9%	6,6%

FOR INSPECTION BY INTERESTED PARTIES

Please note that this is a consolidated version of the original anti-circumvention review request submitted on 30/06/2023 and additional information provided by the applicant afterwards.

To the Commission of the European Union

APPLICATION

Under Article 13 of Regulation (EU) No 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

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE G				
Date	30/6/2023	N°	S 7042006	
Attribution :				
SK				
Copie	CAB			

To the Commission of the European Union

APPLICATION

Under Article 13 of Regulation (EU) No 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

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE G ^h				
Date	25/6/23	N°	79959/10	
Attribution : SK				
Copie	CAB			

1. INTRODUCTION

- (1) On 17 November 2021, the European Commission (the 'Commission') imposed a definitive anti-dumping duty on stainless steel cold-rolled flat products ('SSCR') from Indonesia and India.¹ That Regulation was amended on 15 March 2022 by the Regulation imposing countervailing duties on imports of SSCR from the same origin.² The anti-dumping duty imposed range between 9,3% and 35,3% (9,3% to 19.3% for Indonesia).
- (2) However, as early as a year after the original measures, the anti-dumping duties imposed on imports from Indonesia are being massively and clearly circumvented. Duties on SSCR from Indonesia are evaded through a limited processing operation of Indonesian stainless steel products in third countries, before exporting it to the Union market. The scale of the circumvention via these indirect imports from Indonesia is substantial. The Applicant has, at this stage, identified such flow of imports via no less than three different countries: Taiwan, Turkey and Vietnam. Imports from these countries exhibit all the characteristics of a circumvention.
- (3) The circumvention patterns via the identified third countries clearly show the intention to avoid the duties imposed by the EU on Indonesian SSCR. These increased flows rely on a less efficient organisation of the production process by splitting it among various countries, with limited processing and added value outside of Indonesia. The timeline is unambiguous: the change in the pattern of trade coincided with the Commission's investigation and its imposition of anti-dumping duties on Indonesian imports.
- (4) The emergence of circumvention patterns is not fully unexpected. In the original investigation, the Complainant cautioned against circumvention of the measures, and stressed that the Indonesian exporters are large corporate groups which rely on intra-group transactions, with presence in several third countries.³ In response, the Commission explicitly set out its intention to be vigilant for circumvention of these measures.⁴ Nonetheless, and unfortunately, this circumvention of EU measures has so far been successful.
- (5) In addition to the change in the pattern of trade, and although prices and costs of SSCR have increased since the original investigation, the prices of SSCR from the countries concerned are very low, undercutting Union prices. Combined with significant volumes, these imports undermine the remedial effect of the measures and perpetuate the dumping found by the Commission over the course of the initial investigation.
- (6) In summary, exporting producers in the targeted countries engage in circumvention within the meaning of Article 13 of EU Regulation 2016/1036 ('the basic AD Regulation'). This Application demonstrates that there is a change in the pattern of trade stemming from a practice not justified by any reason other than the imposition of the duties, that this change undermines the remedial effects of the duties and that the imported like product is dumped on the EU market. In such

¹ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

² Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia

situations, Article 13 of the basic AD Regulation allows the Commission to extend anti-dumping duties imposed on imports from a country to imports from a third countries of the like product, *"whether slightly modified or not"*.

- (7) On behalf of the SSCR Union Industry, Eurofer therefore urges the Commission to ensure that the anti-dumping duties, set to protect the Union industry against injurious unfair imports of SSCR, are enforced. The continuation of the flows of dumped SSCR, despite the findings and measures of the Commission, is a clear challenge to the ability of the EU to provide effective protection against unfair trade. In Eurofer's view, it is of the utmost importance for the integrity of the Union Trade Defence system to put an end to such practices swiftly and decisively. It therefore respectfully asks the Commission to urgently initiate an anti-circumvention investigation with a view to extend the anti-dumping duties on imports of SSCR from Indonesia to the targeted countries and to register imports of SSCR from these countries.

2. APPLICANT

- (8) This Application is submitted by Eurofer, the European Steel Association, on behalf of its members active in the production of SSCR.

Eurofer - the European Steel Association
Address: Avenue de Cortenbergh 172, 1000 Brussels
Tel: +32 2 738 79 20
Fax: +32 2 738 79 55
Contact Person: Matteo Rigamonti
Email: M.Rigamonti@eurofer.be

- (9) Eurofer is the European Steel association, representing more than 95% of steel production in the European Union. Eurofer members are steel companies and national steel federations throughout the EU.
- (10) The companies active in the production of SSCR on behalf of which Eurofer files submit this Application are:
- Acerinox Europa SAU
 - Aperam Stainless Europe
 - Outokumpu Oyj
 - Acciai Speciali Terni SpA
- (11) These four companies account for the large majority of the EU production of SSCR.⁵ They acted as Complainant in the original anti-dumping investigation that led to the imposition of duties and actively cooperated to the investigation, including as part of the sample of Union producers. The Applicant is therefore undoubtedly an "interested party" within the meaning of Article 13 of the basic AD Regulation.

Annex 1 - Representation letters

3. OTHER INTERESTED PARTIES

- (12) For the purpose of the investigation, the Applicant provides information on the identity of the exporting producers in the targeted countries as well as on their suppliers. It also provides information on the other EU producers.
- (13) The Applicant also notes that imports of SSCR in the EU are mostly made by stockists, distributors and service centres, but also by some re-rollers and tube manufacturers. They may also be done through companies related to the exporting producers. SSCR products are used in a wide-array of products and applications, and as a significant share of users source their products through distributors, stockists or unrelated service centres. The Applicant provides a list of the main identified importers and users of SSCR in the EU.

Annex 2 - Other interested parties

4. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) As the circumvention pattern identified occurs through a re-organisation of the production process of the product concerned, the Applicant considers it useful to revert briefly to the characteristics of the product concerned and the like product, as well as to its production process. The developments below are in line with the findings of the Commission over the course of the original investigation.

4.1 Description of the stainless steel cold-rolled flat products

4.1.1 Metallurgical characteristics

- (15) Stainless steel is a steel alloy with a minimum content of 10.5% chromium and a maximum content of 1.2% carbon, a metallurgical characteristic shared by all stainless steel families. The addition of chromium provides stainless steel with its stainless properties. When exposed to oxygen, the chromium forms a passivation layer of chromium oxide, which is capable of reforming quickly when the surface is scratched. The layer is too thin to be visible, but protects the metal beneath by making it impermeable to water and air. As a result, stainless steel requires no added surface protection against corrosion.
- (16) There are a large number of stainless steel types with widely varying chemical compositions. Stainless steels have traditionally been divided into categories depending on their microstructure at room temperature. This gives a division into four main groups of grades families (i) austenitic, (ii) ferritic, (iii) martensitic and (iv) duplex. All four have different levels of corrosion resistance and strength. The differences result from the controlled addition of alloying elements, notably chromium and nickel.
- (17) As found in the original investigation, Indonesian SSCR production principally focuses on austenitic grades, grades containing nickel, as Indonesian exporting producers have access to significant local nickel ore reserves for their production. Nickel-based austenitic grades account for the largest part of the production of stainless steel worldwide, with about 75% of the total production. As an alloying element, nickel enhances important properties of stainless steel such as formability, weldability and ductility, while increasing corrosion resistance in certain applications. Austenitic stainless steel grades are used in a large number of industrial applications such as pumps, piping and heat exchangers, as well as in construction applications.

4.1.2 Production process

Melting stage

- (18) The first stage of the production process of SSCR consists in melting the raw materials containing the necessary alloying elements. The melt is then casted into stainless steel slab, a solid thick rectangular-shaped semi-product.
- (19) The raw materials used at the melting stage may be recycled materials with the appropriate chemical composition, ferro-alloys of various grades (share of the alloying element) and, more exceptionally, pure chemical elements. Chromium is usually available as ferrochromium or through stainless steel scraps, while nickel is typically available in scraps and ferronickel. Iron is essentially provided through scraps, or ferro-alloys. As pure nickel and high grade ferronickel are costly compounds subject to significant fluctuations in price, a relatively new type of low-grade ferro-nickel, produced through smelting of low nickel content laterite ore,⁶ a highly polluting process, has been increasingly used in Eastern Asia especially: the nickel pig iron (NPI).⁷
- (20) In the EU, along with the US and Japan, stainless steel producers primarily rely on recycled stainless steel scrap as the main raw material for the production of stainless steel, complemented by high-grade ferro-alloys. These inputs, containing all the chemicals necessary to achieve the desired grades, are melted together in an electric arc furnace (EAF). To remove excess carbon, the molten material is further processed in an argon oxygen decarburisation converter (AOD) and secondary treatments are carried out as necessary. The liquid steel is then processed through a continuous casting process in which the molten metal is poured directly into a mould to produce the required shapes. After leaving the mould, the strand's shell is further cooled until it has completely solidified. The strand is cut into lengths to obtain compact rectangular blocks of crude steel, the stainless steel slabs.
- (21) In more recent stainless steel producing countries, essentially China and Indonesia, and as found by the Commission over the course of the original investigation, instead of scraps, stainless steel producers essentially rely on low-grade ferro-alloys, the above mentioned NPI. In that process NPI is obtained after a first reduction of nickel ore in a rotary kiln with a mixture of thermal coal and lime, before a final reduction and complete melting inside an electrical smelter with the further addition of coal. In parallel, liquid ferrochromium is produced within a specific furnace dedicated to melting solid ferrochromium or liquid ferrochromium coming directly from a smelter process. NPI and ferrochromium are then poured into an AOD (argon oxygen decarburization) or VOD (vacuum oxygen decarburization). The liquid metal obtained is then finally transferred to the continuous casting machine for transformation into stainless steel slabs.

Hot-rolling stage

- (22) In a second step, the stainless steel slab is reheated and transformed into SSHR coils through mechanical hot-rolling.
- (23) At the hot-rolling production stage, the slabs are preheated to a high temperature and then reduced to a predetermined thickness in the roller gap of a hot-rolling mill, by pressure applied

⁶ Nickel laterite ore is common mostly in tropical environments such as Australia, New Caledonia, Indonesia and the Philippines

⁷ NPI usually has a content of about 10-15% nickel, 1% chromium, 83% iron and 3% carbon

between one or several sets of two rollers. The resulting product is known as "hot-rolled black band" ("black SSHR"), a product covered by a layer of scale, giving it its black colour.

- (24) For the purpose of production of SSCR, black SSHR subsequently undergoes hot annealing and pickling to become "hot-rolled white band" or "HRAP" ("white SSHR"). Annealing consists in heating cold steel to make it more suitable for bending and shaping, as well as to prevent breaking and cracking. Pickling is the process through which stainless steel is cleaned using chemical baths of diluted acid to remove impurities such as rust, dirt, scale and oil from the surface, without changing the underlying properties of the metal. The removal of the scales results in the typical white colour of white SSHR.
- (25) Depending on the industrial process of the producer, this process of annealing and pickling may constitute the last phase of the hot-rolling stage, or the first stage of the cold-rolling process. For re-rollers, the level of integration will define the type of inputs to be used for production of SSCR: black coils if they can undertake annealing and pickling of SSHR, white bands if they don't.

Cold-rolling stage

- (26) In a third step, the white SSHR coil is transformed into SSCR through further mechanical rolling at room temperature.
- (27) The white SSHR is rolled to the required thickness on reversing cluster mills or tandem mills for a number of times until the desired dimensions are achieved, or until hardening necessitates further annealing. In order to obtain the desired thickness, in particular for the lower thickness materials, the same coil may be subjected to several stages of rolling. This process of cold reduction generates heat, part of which is transferred to the rolling oil that is sprayed onto the steel and rolls for cooling as well as lubrication and is subsequently dissipated through heat exchangers to cooling water systems.
- (28) After cold-rolling, or between two cold-rolling phases, the SSCR then undergoes a second annealing, a re-heating of the product above 650°C on continuous lines or in batch furnaces, to restore the physical and mechanical properties of the steel, notably the formability of the steel. For bright finishes ("bright annealed"), annealing is undertaken on dedicated machineries in controlled oxygen-free environments.
- (29) SSCR is then tempered, a minimal reduction in gauge (up to 2 %) to improve the flatness of the product, increase the product yield strength and obtain the desired surface finish. After that process, additional surface treatments, such as polishing or brushing may be undertaken in order to render the product suitable for particular uses.
- (30) Following control, defective coil parts are eliminated or, if necessary, the material is subjected to additional treatments for the removal of the defect. The product is then cut into the coil weights ordered by the customers, protective films or oils are applied and, finally, the product is packaged.

4.2 Product concerned of the original investigation

- (31) A definitive anti-dumping duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90,

7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80.⁸

- (32) It includes steel cold-rolled flat products that have undergone one or more of the surface treatments, are cut to a shape other than square or rectangular, or have undergone, after rolling, operations such as perforating, bevelling, edge-rounding, brushing or polishing.

5. THE EU AD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES

5.1 There is a change in the pattern of trade

5.1.1 Indonesian stainless steel is processed in third countries and exported to the EU

- (33) Following a complaint lodged by the Union Industry, the Commission opened an anti-dumping investigation into Indonesian SSCR on 30 September 2020,⁹ leading to the imposition of definitive measures in November 2021,¹⁰ amended in March 2022. In parallel, based on another complaint of the Union Industry, the Commission opened an anti-subsidy investigation into SSCR from both countries on 17 February 2021, and imposed definitive anti-dumping duties in March 2022.¹¹
- (34) As a result of the investigation, the expectation, and then the actual implementation of substantial duties, exports of SSCR from Indonesia have been reorganised under new and rapidly expanding new trade flow patterns. Direct flows of exports of SSCR by the main Indonesian exporter targeted in the original investigation have been replaced by indirect flows via third countries, in which SSCR inputs, slabs or SSHR, have been further processed into SSCR and exported to the EU.
- (35) While direct imports from Indonesia have significantly reduced as a result of the original measures, imports on the EU market of SSCR originally melted and poured in Indonesia but processed in a third country have increased to alarmingly high levels, at unfairly low prices resulting from the Indonesian dumping of its stainless steel complex. An obvious and massive import substitution has thus been taking place: direct Indonesian imports have been replaced by 'indirect Indonesian imports'. The Applicant has identified so far the existence of such a pattern in a number of countries, in particular Taiwan, Turkey and Vietnam. It is not excluded that indirect imports also occur through other third countries.

⁸ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

⁹ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

¹⁰ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

¹¹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia

- (36) The circumventing trade pattern and the method of circumvention identified echo the findings of the Commission in its recent investigation into circumvention of the anti-dumping measures on Indonesian SSHR via Turkey.¹² After initiation of an investigation aiming to impose measures on Indonesia, the same pattern occurred: a combination between a flow of semi-products from Indonesia to a third country, a processing with very limited added value on site, and a re-export to the EU of the finished product under the non-preferential origin of that country, thus allowing avoidance of the duties.
- (37) In the case at hand, the pattern starts with stainless steel slabs first melted and poured in Indonesia, then hot-rolled in Indonesia and finally exported to one of the third countries where it is then cold-rolled domestically before being exported to the EU. As cold-rolling is sufficient to confer the non-preferential origin to SSCR, that SSCR, indirectly imported by way of any of the countries concerned, evades the duties that would apply to direct imports. In some occasions, the export to the third country takes place right after the slab phase, with the hot-rolling and cold rolling taking place in the third country. These imports into the EU of Indonesian stainless steel semi-products that are processed into SSCR in a third country before being exported to the EU are referred to in this Application as 'indirect imports'.
- (38) Incidentally, the Commission has already identified the occurrence and relevance of such trade patterns in the original anti-subsidy investigation into SSCR. This concerned Chromeni, an Indian SSCR producer that is a joint-venture between Tsingshan and various Indian business groups.¹³ The Commission found that "*Chromeni purchased however upstream products, namely hot rolled coils, from a related company in Indonesia, which may have benefited from the GOID provision of nickel ore for less than adequate remuneration (...)*".¹⁴ The Commission itself has thus already witnessed, on no less than two occasions, that part of the business model of Tsingshan consists of feeding stainless steel semi-products to exporting producers in third countries, who then export finished products to the EU. As found with respect to SSHR from Turkey, these practices increase significantly as soon as corrective trade measures against Indonesia are considered or implemented.
- (39) As such, the indirect imports are an inescapable consequence of the Indonesian massive export-oriented overcapacity: when direct access to the Union market at unfair prices is restricted, flows are redirected via indirect channels. As the second exporter of stainless steel worldwide, with a nearly negligible domestic consumption, Indonesia simply needs to maintain access to the Union market, the second worldwide, to maintain a rational use of its enormous production capacities. If measures correcting the unfair advantages prevent direct export flows, leveraging processing operations in third countries constitutes the second best option, as shown below.
- (40) This new pattern of trade, expanding to unprecedented levels as a consequence of the EU investigations and measures against Indonesian unfair imports relies on a multitude of agreements between the main Indonesian exporting producer and producers (essentially re-rollers) in third countries. These have taken place either on a circumstantial basis or in application

¹² Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

¹³ Chromeni, <https://www.chromenisteels.com/>.

¹⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 301.

of longer term partnerships. Sometimes, but not systematically, they coincide with efforts of the third party to establish an industrial base in Indonesia through joint ventures with the Indonesian exporter, with the ultimate aim to manage the flow of Indonesian inputs internally. As such, the Indonesian exporter is able to rely on a wide network of exporting producers in third countries, which purchase its SSHR or slabs, process them and then export them to the EU.

- (41) Below, the Applicant provides a detailed assessment of the change in the pattern of trade via third countries and the capacities used in these countries to process Indonesian material. The exporting producers in the third countries nonetheless share a certain number of characteristics. First, they have significant capacities which are usually disproportionate compared to the size of domestic consumption - with Yongjin's Vietnam factory being a prime example (see below). Second, these capacities either are not backed by upstream capacities (in which case the producers are really only re-rollers) or have higher SSCR capacities than they do upstream. This means that the capacities are designed to rely on purchased inputs, essentially white or black SSHR. While this phenomenon is not exceptional among steelmakers, the sheer concentration of upstream capacities in close or even neighbouring third countries with little to no domestic outlet reveals that these aim to a large extent at circumventing trade measures targeting the Chinese- and Indonesian-owned industries.
- (42) Finally, and crucially, as already mentioned, a vast majority of the above producers maintain close relationships with Tsingshan Indonesia and sometimes with State-owned Chinese producers. Similar to Tsingshan, the latter have interests in Indonesia and are "*strictly follow[ing] the policy of the GoC*".¹⁵

5.1.2 Volume of indirect imports in the EU

- (43) The Applicant finds that a massive amount of EU imports of SSCR from the third countries are in fact indirect imports from Indonesia, which undergo only limited processing in the targeted countries before being re-exported to the Union. These flows of indirect imports constitute a significant share of the exports of SSCR from these countries to the EU. The Applicant has calculated the indirect imports to only include SSCR produced from stainless steel melted and poured in Indonesia, imported and processed into the third country and then sent to the Union market.
- (44) In order to identify the volumes, the Applicant has cross-referenced available information on the volume of imports of the upstream inputs - slabs and SSHR - from Indonesia and other sources in the third countries, the domestic melting capacity in the third countries and the exports of SSCR from the third countries to the EU. This methodology accounts for the fact that, as previously established by the Commission over the course of multiple investigation, Indonesian stainless steel, and consequently SSCR produced from Indonesian stainless steel is essentially nickel-based. It also account for the time necessary to process stainless in the third countries. The Applicant has adapted the methodology to the specificities of the country in question, as is detailed below.

Annex 3 - Methodology for the assessment of indirect imports

¹⁵ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 628.

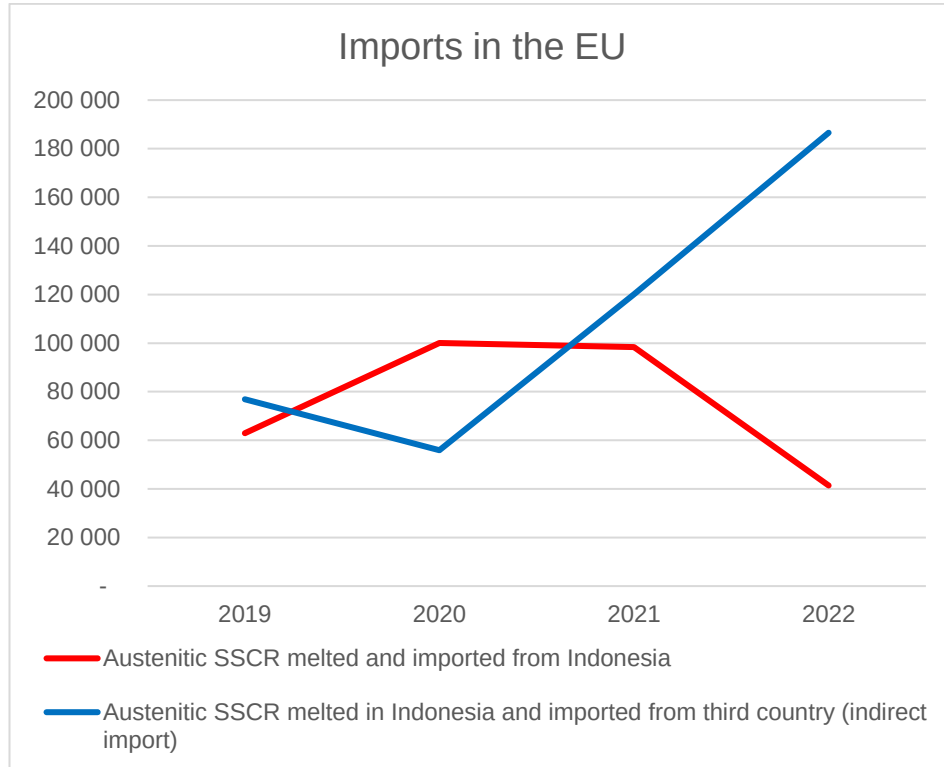
- (45) The calculations of the indirect imports is based on solid and consistent information from available public sources and the applicant's market intelligence. This approach adopted is deliberately conservative and might to a certain extent underestimate the actual volume of indirect imports. This is because the methodology does not assume that exporters in the third countries would specifically allocate their Indonesian inputs to exports to the EU, although such behaviour is manifestly the case for certain exporters. With a wider methodology, it could be argued that all the austenitic imports from the targeted third countries in 2022 could be indirect imports because imports of inputs from Indonesia exceed exports of austenitic SSCR to the EU, even accounting for yield.

5.1.3 Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia

- (46) The above methodology reveals the rapid substitution of prior sources of SSCR inputs (imports from other countries or produced domestically) by SSHR or slabs from Indonesia. In line with the growth of Indonesian inputs in these countries, visible as from 2021, a growing share of the imports from the countries identified consists in fact of processed Indonesian material. It is that processing of Indonesian material which drove the increase in exports to the EU. That substitution coincided with the initiation of the investigation and massively increased with the imposition of the EU measures.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in the targeted countries	761.512	836.642	1.276.119	1.205.724
Index	100	110	168	158
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

- (47) Comparing EU imports from Indonesia to indirect imports into the EU shows that the pattern of trade changed directly after the initiation of the investigation. Indirect imports from the third countries, which had initially declined between 2019 and 2020, started to pick up over the course of the investigations in 2021, ultimately skyrocketing after the imposition of the measures in 2022. This variation is opposed to the trends of Indonesian imports: after a massive increase in 2020, despite the Covid-crisis, imports from Indonesia plateaued in 2021 as a result of the investigation, before decreasing massively in 2022 as a result of the entry into force of the measures.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	77.192	55.823	119.741	186.242
Index	100	72	155	241

Annex 4 - Volume of indirect imports

- (48) It is therefore obvious that the indirect SSCR imports substituted and then exceeded the SSCR imports from Indonesia. This change in the pattern of trade coincided precisely with the initiation of the investigation and the imposition of the measures on imports of SSCR from Indonesia. This coincidence in time is not accidental: the slabs and SSHR that were originally used in Indonesia to produce SSCR for export to the EU were increasingly used in the third countries to produce SSCR for export to the EU - when it became apparent that measures would be imposed on imports from Indonesia.
- (49) This change in the pattern of trade and the substitution of imports of Indonesian SSCR is visible at the level of the indirect imports as a whole. It is also manifestly apparent at the level of the individual countries through which the indirect imports reach the EU. This confirms the widespread nature of the circumvention. It also confirms that the rise in indirect imports to the EU is not a coincidence. Rather, this increase follows the activation of alternative channels to supply the EU market with Indonesian melted and poured material (which benefited from Indonesian distortions but avoids the anti-dumping duties).

5.2 Change in the pattern of trade via specific third countries

- (50) The above confirms that the change in the pattern of trade is manifestly clear from the point of view of the total indirect imports into the EU. However, a country-specific focus also confirms that, for each of the sources identified, there is a change in the pattern of trade. This focus also allows highlighting actors in these countries that are actively participating to the change in the pattern of trade, as well as the nature of their relationship with the Indonesian exporting producer.

Annex 5 - Exporting producers in third countries and capacities

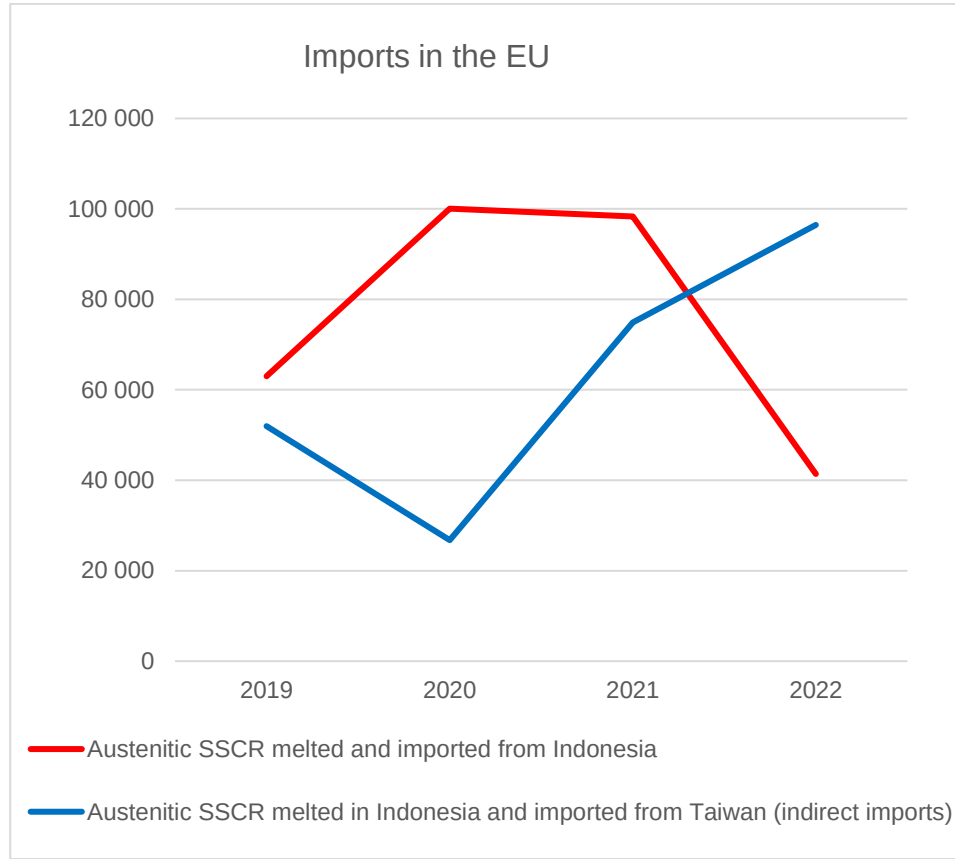
- (51) The analysis below solely focuses on the exporting producers actively participating to the circumvention of the EU measures. However, the Applicant is aware that these flows may be complemented by consignment of SSCR produced in Indonesia via third countries before re-export to the EU under a fraudulent origin.

5.2.1 Indirect imports via Taiwan

- (52) Taiwan holds significant production capacities for SSCR and has historically been an exporter of the product concerned to the EU. However, and at an increasing speed, the country has more and more shifted from integrated production to the processing of inputs from third countries. This is in particular true with regard to austenitic stainless steel, where Indonesian supply of slabs and SSHR progressively substituted domestically melted stainless steel inputs.
- (53) The existence of these domestic melting capacities, and the share of these capacities dedicated to the production of austenitic crude steel, have been duly taken into account by the Applicant. Domestic production was accounted for, together with the imports of inputs from Indonesia and other sources. As such, the Applicant assessed the share of Indonesian material in the Taiwanese production and therefore the indirect imports to the EU.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Taiwan	548.647	631.372	960.353	747.941
Index	100	115	175	136
Imports of SSCR from Taiwan in the EU	185.614	125.070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (54) The increase in imports of inputs from Indonesian in Taiwan is particularly important in 2021 and 2022. In these years, the use of inputs from other sources, notably from domestic melting significantly declined, showing a clear substitution. This substitution is equally apparent in the massive increase as from 2021 of the indirect imports to the EU.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Taiwan in the EU	185.614	125.070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (55) Taiwan is one of the main channels for indirect imports to the EU that circumvent the measures on imports from Indonesia. That imports of SSCR from Taiwan increased so dramatically in 2021 and 2022 can only be fully explained by the opening of the investigation and then the imposition of duties on Indonesian SSCR. 2021 and 2022 show a clear reversal of 2019 and 2020 trends. Since the beginning of the investigation, indirect imports of Indonesian SSCR via Taiwan have dramatically increased, going up by 86% between 2019 and 2022 and 134 percentage points between 2020 and 2022. This increase coincided with the plateauing and then the strong reduction in volumes imported from Indonesia. It shows that Indonesian stainless slabs and SSHR are melted in Indonesia, further processed in Taiwan and then exported to the Union as SSCR, avoiding the duties.
- (56) Even accounting for domestic production, the share of Indonesian austenitic slabs and SSHR processed in Taiwan is very high and is equally reflected in the significant volume of indirect

imports to the EU.¹⁶ While exporting producers in Taiwan may rely on Indonesian material for their exports to the EU to varying degrees, this section shows that the vast majority of them likely do.

- (57) One of the main entry points for Indonesian stainless steel inputs in Taiwan is re-roller Walsin Lihwa, which has established a partnership with Tsingshan Indonesia for the supply of stainless steel to Taiwan.
- This partnership extends beyond a mere commercial agreement but reflects a long term strategy of reliance on Indonesian distorted inputs. Together, Walsin and Tsingshan run a Nickel Pig Iron (NPI) joint venture in Indonesia.¹⁷ Walsin Lihwa also recently acquired a 29,5% share in Indonesian PT Westrong Metal Industry,¹⁸ also linked to Tsingshan.¹⁹ Following the investment, Walsin's production capacity of nickel, in accordance to its equity ownership in various production facilities, will increase to 84.000 tons per year. 55.000 of this stems from PT Westrong Metal Industry.²⁰
 - In Taiwan, Walsin Lihwa, directly or through subsidiaries, has cold-rolling capacities [of between 350 000 and 500 000 tonnes. The Applicant has added confidential information on production capacity]. With upstream hot-rolling capacities much more limited, this mean that the company exclusively relies on SSHR inputs and on its partnership with Tsingshan to fill this capacity.
- (58) Main Taiwanese stainless steel manufacturer YUSCO (Yieh United Steel) is also increasingly reliant on Indonesian inputs for its exports of stainless steel (in particular of SSCR to the EU). This reliance also includes purchasing from Tsingshan.
- YUSCO has cold-rolling capacities of [between 600 000 and 800 000 tonnes. The Applicant has added confidential information on feedstock]. For the time being, the latter is purchased from Indonesian actors, which include Tsingshan. Thanks to its hot-rolling capacities, YUSCO can purchase its Indonesian semi-products as slabs, black SSHR or white SSHR to optimise its load and logistics.
 - This reliance on Indonesian austenitic inputs is highlighted by YUSCO's strategic decision to move its melting capacities to Indonesia, and correspondingly reduce use of its Taiwanese melting capacities.²¹ In 2022, the company announced that it acquired two nickel ore mines in Indonesia and that it invested in Indonesian plants "*to produce stainless steel slabs and hot-rolled stainless steel (...)*".²² A month later, YUSCO also announced that its subsidiary

¹⁶ See annex 60% threshold assessment (Taiwan)

¹⁷ SMM, Indonesia's NPI out went up in June amid expanded production of Tsingshan, 15 July 2021, [Indonesia's NPI out went up in June amid expanded production of Tsingshan](https://www.smm.com.cn/news/indonesia-npi-out-went-up-in-june-amid-expanded-production-of-tsingshan) SMM | Shanghai Non ferrous Metals. .

¹⁸ Marketscreener, Walsin Lihwa : Announcement for the Company's BOD resolved to acquire 29.5% equity of PT. Westrong Metal Industry, 8 May 2022, <https://www.marketscreener.com/quote/stock/WALSIN-LIHW-CORPORATION-6492359/news/Walsin-Lihwa-Announcement-for-the-Company-s-BOD-resolved-to-acquire-29-5-equity-of-PT-Westrong-M-41211556/>; Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

¹⁹ Investasi kontan, Analysts Recommend Buying Harum Energy (HRUM) Shares, Here's the Review, 12 May 2022, <https://investasi.kontan.co.id/news/analisis-rekomendasikan-beli-saham-harum-energy-hrum-begini-ulasannya>.

²⁰ Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

²¹ Wood Mackenzie, Tsingshan Indonesia shakes up stainless steel markets in South East Asia, 15 July 2019, <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>.

²² Yieh Corp, Taiwan's Yusco to expand its investment in Indonesia, 23 August 2022, <https://www.yieh.com/en/NewsItem/136009>.

Hongyu Asset Management increased its investment in ferronickel Indonesian subsidiary PT E United Ferro Indonesia by 12,4 million USD.²³

(59) Available information also shows that Tsingshan is selling to other re-rollers like Tung Mung and Yuan Long.²⁴

- For its part, Tung Mung has [capacities between 150 000 and 250 000 tonnes].
- Yuan Long has [between 100 000 and 170 000] tonnes of cold-rolling line

(60) It is thus apparent that Taiwanese actors engaging in the production of SSCR maintain links with Tsingshan Indonesia and rely to a varying extent on Indonesian supply of stainless steel for their production and their exports to the EU. These exporting producers, with direct links to the use of inputs from Indonesia, account for [business confidential information not susceptible to public summary] of the cold-rolling capacity in Taiwan.

(61) It is however likely that other actors with SSCR capacity also process Indonesian inputs, purchased directly from Tsingshan or via Walsin, and therefore contribute to a various extent to indirect imports to the EU. The companies are the following:

- Chia Far, with its [50 000 to 100 000] tonnes of cold-rolling capacities
- Chien Shing with its [70 000 to 130 000] tonnes of cold-rolling capacities
- Tang Eng with its [200 000 to 275 000] tonnes of cold-rolling capacities

5.2.2 Indirect imports via Turkey

(62) SSCR production in Turkey exclusively stems from re-rollers, as the country currently has no dedicated operational melting and hot rolling capacities for stainless steel at all. This means that all the SSCR produced in Turkey is produced from SSHR imported from third countries, notably from Indonesia. Combined with the limited number of domestic producers, this makes it relatively easy to identify indirect imports to the EU.

(63) The Commission has recently found that Turkish re-rollers are circumventing EU TDI measures on Indonesian stainless steel by importing Indonesian stainless steel slabs, hot-rolling them in Turkey, and exporting the resulting SSHR to the EU.²⁵ In that circumvention case, the Commission convincingly found that *"the assembly/completion operations in Türkiye started in significant volumes only after the initiation of the original investigation against Indonesia. The agreement (...) focused specifically on basing that supply on stainless steel slabs from Indonesia – the country under measures. Moreover, the Indonesian producer of stainless steel slabs was also the supplier of SSHR. Normally, one does not move one step up the value chain of its vertically integrated supplier for reasons of security of supply. Unless, of course, the threat that*

²³ Yieh Corp, Yieh Phui increases investment in Indonesia subsidiary, 22 September 2022, <https://www.yieh.com/en/NewsItem/136614>.

²⁴ Please see Annex - Exporting producers in third countries and capacities.

²⁵ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

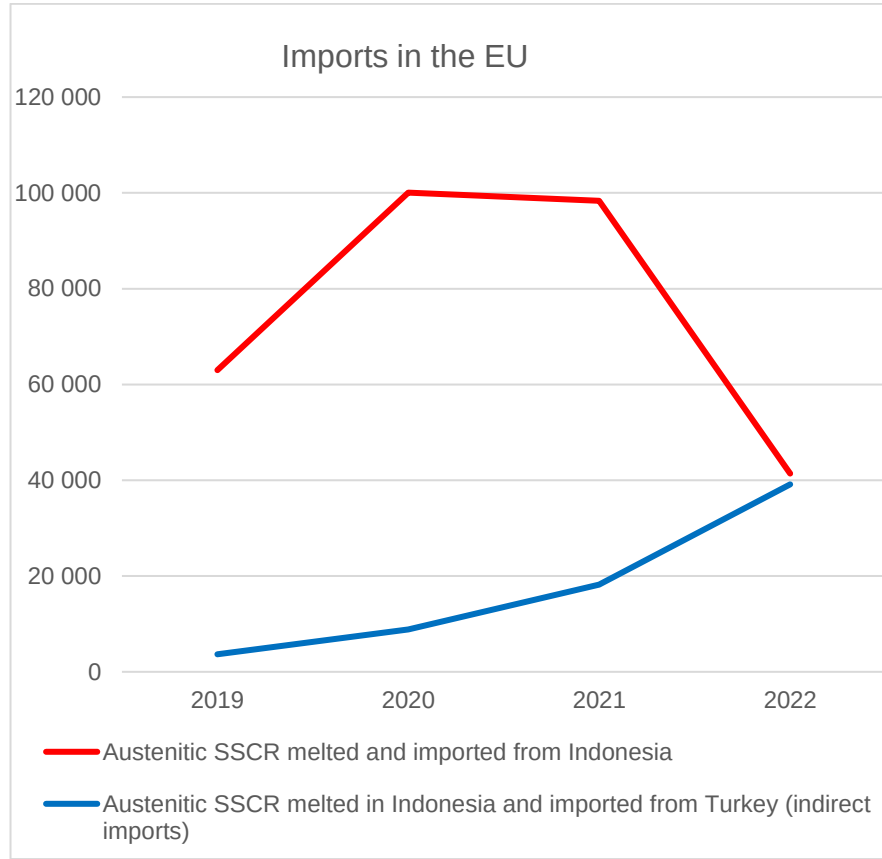
*is being addressed are potential measures affecting the lower step in that value chain – in this case the anti-dumping duty on imports of SSHR from Indonesia (...) the Commission concluded that the anti-dumping duty imposed on imports of SSHR originating in Indonesia was circumvented by imports of the product under investigation consigned from Türkiye by Çolakoğlu."*²⁶

- (64) Because of the above, and because the Commission convincingly established that slabs imported into Turkey are exported to the EU as SSHR, the Applicant has not included Indonesian stainless steel slabs in its assessment of the indirect imports via Turkey. It therefore only accounted for the imports of SSHR from Indonesia and other sources.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Turkey	15.500	26.402	73.367	100.795
Index	100	170	473	650
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
Of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (65) Imports into Turkey of Indonesian-sourced inputs have exploded by more than 500% since 2019, from about 15.500 to above 100.000 tonnes. The main increase occurred as from 2021 onwards. As inputs from other sources have remained more or less the same, all increase has come exclusively from Indonesia. This increasing trend corresponds to the increase of indirect imports via Turkey into the Union, the main driver behind the significant increase in imports from Turkey.

²⁶ Ibid., rec. 68,108.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (66) Indirect imports from Turkey have increased exponentially since the opening of the investigation and the imposition of measures on Indonesian SSCR. This is largely due to the re-routing of Indonesian inputs through Turkey, located at the EU's doorstep. The speed at which indirect imports increased in 2021 and 2022 contrasts with the stability and then decline of the imports from Indonesia to the EU, highlighting the emergence of an alternative channel of imports. The rapid increase in imports from Turkey owes much to the fact that, as evidenced in the SSHR investigation, Turkey is a convenient base for Tsingshan to access the Union market.
- (67) There are two producers of SSCR in Turkey which, according to available information, rely to varying degrees on SSHR from Indonesia to supply the EU market on the back of supply agreement with Tsingshan.

- South-Korean owned POSCO Assan TST [has cold-rolling capacities of 275 000 to 425 000 tonnes. The Applicant has also added confidential information on Posco feedstock.]²⁷
- In addition, Turkey is also home to the re-roller Trinox, which [has cold-rolling capacities of minimum 75 000 tonnes. The Applicant has also added confidential information on Trinox feedstock.]²⁸

5.2.3 Indirect imports via Vietnam

- (68) SSCR production in Vietnam exclusively stems from re-rollers, as the country currently has no stainless steel melting and hot rolling capacities. This means that all the SSCR produced in Vietnam is produced from SSCR imported from third countries, and notably from Indonesia. This makes it relatively easy to identify indirect imports to the EU.
- (69) Vietnam has previously been used as a circumvention hub by Chinese-owned companies. On 29 March 2023, the US Department of Commerce determined that duties on cold-rolled stainless steel from China were circumvented by processing them in Vietnam.²⁹

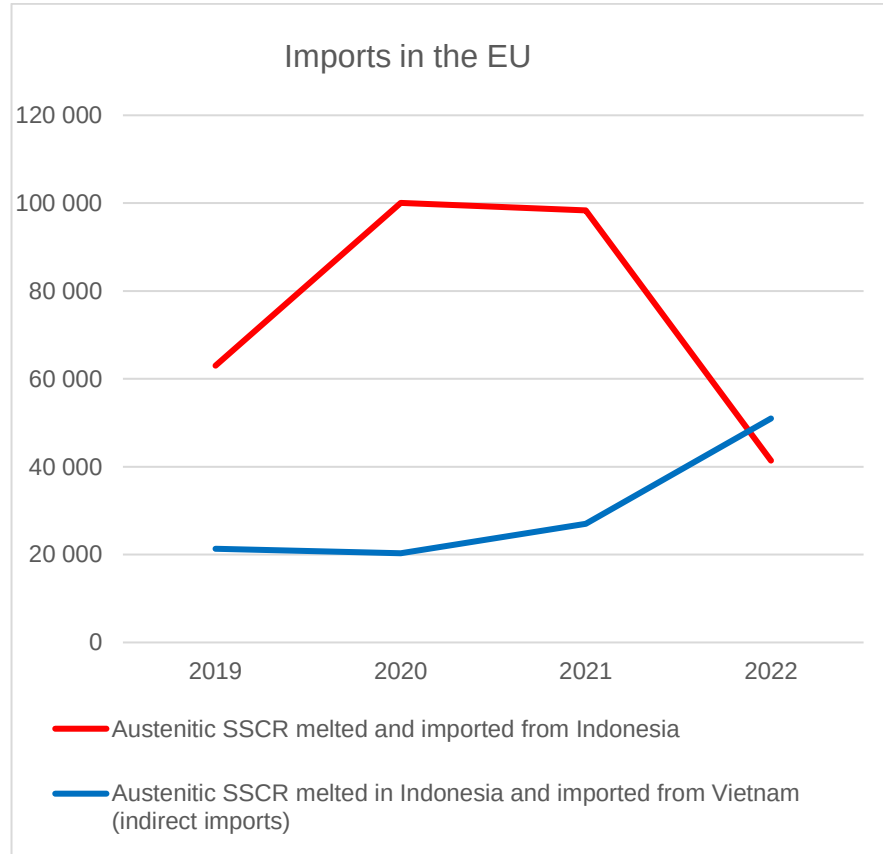
In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Vietnam	197.366	178.868	242.399	356.987
Index	100	91	123	181
Imports in the EU of SSCR from Vietnam	36.855	35.338	51.559	86.720
Index	100	96	140	235
Of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (70) The imports of Indonesian inputs into Vietnam have similarly increased by 81% since 2019, progressively marginalising imports from other sources, as from 2021 in particular. The massive increase in imports in 2022 confirms the reliance on imports from Indonesia for exports to third countries. The 2022 volume corresponds to an increase indirect imports of Indonesian SSCR into the Union via Vietnam of 139%, or from 21.305 to 50.983 tonnes.

²⁷ Please see Annex - Exporting producers in third countries and capacities.

²⁸ Please see Annex - Exporting producers in third countries and capacities.

²⁹ International Trade Administration, Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam, 29 March 2023, <https://www.federalregister.gov/documents/2023/03/29/2023-06500/stainless-steel-sheet-and-strip-from-the-peoples-republic-of-china-final-scope-ruling-and-final>.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Vietnam in the EU	36.855	35.338	51.559	86.720
Index	100	96	140	235
of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (71) Vietnam is an important exporter of SSCR to the Union, most of which concerns indirect imports from Indonesia. The country has no melting capacity and all SSCR exported to the Union is thus by definition melted in a third country. While the volume of indirect imports was stable and limited between 2019 and 2020, it increased as from 2021 and skyrocketed in 2022. This increase largely coincide with the EU investigation and measures, and the subsequent decline in imports from Indonesia. The increase in imports between 2020 and 2021 and, more significantly between 2021 and 2022 therefore marks a change in the pattern of trade.
- (72) The exporting producers of SSCR in Vietnam maintain close links with Tsingshan. As evidenced by the US investigation, capacities in Vietnam are routinely used (and possibly dedicated) to circumvent trade measures, including on Indonesian SSCR. Despite marginal domestic consumption, Vietnam is home to no less than three re-rollers, mostly focusing on exports.

- (73) The main exporting producer in Vietnam is Chinese producer Yongjin. A close associate of Tsingshan, [business confidential information not susceptible to public summary].³⁰
- The Company has started construction, in 2020, of a new factory in Long Giang Industrial park in Tien Giang, Vietnam. The capacity of the plant amount to 250.000 tonnes of SSCR fed exclusively from imported SSHR. The plant started operation in 2022³¹ and its purpose is to *"increase production further and develop overseas market"*.³²
 - In 2022, the same Yongjin announced another Vietnam factory for stainless steel, this time in Tan Viet.³³ The project concerns a 125 million USD investment on an area of about 12,6 hectares. In total, the projected SSCR output is 260.000 tonnes each year.
- (74) It is unlikely that these project primarily aim to serve the domestic market. Already in 2019, local steel producers protested the establishment of the Tien Giang factory because Vietnam already had stainless overcapacities: *"The total designed capacity of the domestic cold-rolled steel industry reached more than 700,000 tonnes, so local producers now can only run at about half of their designed capacity, according to the petition. The local demand for stainless steel will continue to be met with an oversupply of 229,000 tonnes up until 2021, according to global market analysis by CRU Group calculated on the assumption of 8.4 per cent positive average growth per year."*³⁴ The SSCR produced by Yongjin, soon up to 510.000 tonnes per year, is thus likely produced from Indonesian SSHR and meant for export.
- (75) Two other SSCR producers also operate in Vietnam.
- (76) South Korean owned POSCO VST has a cold-rolling line with a capacity of [between 200 000 and 400 000 tonnes. The Applicant also included confidential information on Posco feedstock].³⁵
- (77) Vietnamese producer Inox Hoa Binh has a cold-rolling line with a capacity of [between 150 000 and 220 000 tonnes. The Applicant also included confidential information on Inox feedstock].³⁶

³⁰ Please see Annex - Exporting producers in third countries and capacities.

³¹ Kallanish, Yongjin Vietnam sees first coil production, 22 March 2022, <https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/>.

³² Asian Metal, Yongjin starts construction of precision stainless steel plate and strip project in Vietnam, 28 October 2020, <https://www.asianmetal.com/news/1591383/Yongjin-starts-construction-of-precision-stainless-steel-plate-and-strip-project-in-Vietnam>.

³³ Nghe An Portal, Granting the Investment Registration Certificate for Tan Viet Metal Science and Technology Plant project, 9 November 2022, <https://nghean.gov.vn/new-events/granting-the-investment-registration-certificate-for-tan-viet-metal-science-and-technology-plant-539706>.

³⁴ Vietnam Investment Review, New steel projects bewilder producers, 14 June 2019, <https://vir.com.vn/new-steel-projects-bewilder-producers-68495.html>.

³⁵ Please see Annex - Exporting producers in third countries and capacities.

³⁶ Please see Annex - Exporting producers in third countries and capacities

5.3 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty

5.3.1 Practice, process or work

5.3.1.1 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty.

(78) As set out above, the change in the pattern of trade consists of substituting a significant share of imports of Indonesian SSCR by imports of SSCR produced from Indonesian stainless steel slabs and SSHR in the targeted countries. These indirect imports result from the re-organisation of trade flows between Indonesia, their original source and their final destination - the European Union. This pattern involves the Indonesian exporting producer targeted by the original investigation.

(79) This segmentation of the production process combined with the reorganisation of the trade flow between Indonesia and the EU, constitutes a 'practice, process or work' through which the EU measures are circumvented, within the meaning of Article 13 of the basic AD Regulation. The practice of slightly modifying Indonesian stainless steel inputs into the product concerned also constitutes an assembly or completion operation, as set out in recent Commission findings on SSHR from Turkey.³⁷ It is obvious that this behaviour is explained by the desire to avoid anti-dumping duties on Indonesian SSCR, and that the reorganisation of the pattern of trade has insufficient due cause or economic justification.

5.3.1.2 Practice, process or work

(80) For lack of an exhaustive list of the practices susceptible to constitute circumvention under the basic AD Regulation, processing Indonesian stainless steel slabs and SSHR into SSCR stands at the halfway point between the 'slight modification' and 'consignment' via a third country. This operation is undoubtedly a practice, process or work with the meaning of the basic Regulation, following the example recently found by the Commission to constitute an assembly or completion operation. Despite its very limited cost, this operation is sufficient to avoid EU duties on Indonesian SSCR by taking advantage of the EU rules on non-preferential origin, as set out in Annex 22-01 of Regulation 2015/2446.³⁸

(81) This reorganisation of trade flows, transferring processing phases which require production facilities but generate limited costs of productions to third countries, essentially serves the purpose of avoiding measures. That cold-rolling (and sometimes hot- and cold- rolling) takes place in a third country, along traditional sea roads to the EU, confirms that the overall purpose of the operation is to ensure delivery free of anti-dumping duties of a product normally subject to measures on the EU market.

(82) The change in the pattern of trade of SSCR between Indonesia and the EU therefore stems from a practice, process or work within the meaning of Article 13 of the basic AD Regulation. It is not

³⁷ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not

³⁸ Introductory notes and list of substantial processing or working operations conferring non-preferential origin of the COMMISSION DELEGATED REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

the accidental outcome of a resurgence in fair imports following the imposition of the EU AD measures, nor the result of exogenous economic factors.

5.3.2 Assembly operation

- (83) As found by the Commission in recent investigations, including on SSHR from Turkey, and as set out in Article 13(2) of the basic Regulation, circumvention of a measure may stem from an assembly or completion operation when (i) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and when (ii) the parts concerned from the country subject to measures constitute 60% or more of the total value of the parts of the assembled product and the value added to the parts brought in, during the assembly or completion operation, is lower than 25% of the manufacturing cost.
- (84) The figures provided show, both at cumulated and country-specific level, that the practice became substantial only after the initiation of the investigations on imports from Indonesia. It is also apparent that it developed in parallel to the investigation, further increasing after imposition of the measures.

60% threshold

- (85) As indicated in the description of the production process, stainless steel slabs and, directly downstream, SSHR are the sole "part" used in the production of SSCR, and therefore in the "assembly" or "completion" operation resulting into SSCR. These "parts" therefore necessarily represent 100% of the total value of the parts of the completed products. As a consequence, the parts used in the production process necessarily "*constitute 60 % or more of the total value of the parts of the assembled product*" with regard to indirect imports from Indonesia.³⁹
- (86) In line with the intrinsic logic of the assembly or completion test, the 60% threshold must be assessed at the level of the circumventing product itself rather than at the level of the entire production of the like product in a company or a country. Doing otherwise would unduly extend the requirements under the assembly test and set an acceptable level of circumvention in relation to the proportion of legitimate exports by a producer. Such an approach would unduly limit the efficiency of the anti-circumvention tool with regard to producers already active in the production of the like product and who are active both in circumvention and legitimate production.
- (87) It is in any event obvious, in view of the volume of indirect imports from the countries targeted, that the Indonesian stainless steel semi-products, slabs and or SSHR, represent a large majority or a substantial part of the input used by the exporting producer in the targeted third countries engaging in circumvention of the EU measures. As such, it is clear that exporters processing Indonesian SSHR and slabs into SSCR before exporting them to the EU engage in circumvention of the EU measures.
- (88) The value of the Indonesian inputs used in the production in the targeted countries is a further indication of the extent of the circumvention. However, should the Commission find it necessary to assess the share that this value represents over the total input used in targeted countries or companies, the Applicant has also prepared a specific assessment.

³⁹ Article 13(2)(b) of the basic AD Regulation.

- (89) For Taiwan and Vietnam, the Applicant has estimated the share of Indonesian inputs used in the production of SSCR, as an indication for the share of Indonesian input used in the SSCR exported to the EU.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Taiwan	62,3%
Vietnam	60,4%

Annex 6 - Assessment of the 60% threshold in production of SSCR

- (90) For Turkey, the Applicant has identified that one of the Turkish re-roller, Trinox, [business confidential information not susceptible to public summary]. In view of the high level of imports of Indonesian inputs in Turkey and of the recent findings of the Commission on circumvention of the product directly upstream,⁴⁰ the confirm the high likelihood that exporters in Turkey circumvent the measures.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Trinox (Turkey)	[more than 90%]

- (91) This therefore further confirms the likelihood that, in the targeted countries, Indonesian inputs represent above 60% of the value of inputs used in the SSCR imported to the EU. It also confirms that virtually all exporters from those countries are likely to engage, to varying extents, in circumvention. Due account should also be taken of any behaviour funnelling specifically SSCR produced from Indonesian inputs to the EU and of any specific pricing patterns on export prices to the EU that would reflect a focused use of Indonesian inputs by exporting producers for their exports to the EU.
- (92) The above notwithstanding, the Applicant insists that the fact that exporting producers in the targeted countries also export SSCR to the EU produced from non-Indonesian input is irrelevant to the circumvention assessment. It should have no bearing on the findings that they engage in circumvention if they export to the EU SSCR produced from Indonesian inputs.

25% Threshold

- (93) In addition, the assessment of the respective costs of production of stainless steel slabs, SSHR and SSCR reveals that completion of these items into SSCR only bring a limited added value, in any event significantly below 25%. It has been found in previous EU investigations that downstream processing of stainless steel slabs only bears limited added costs, notably the processing of slabs into SSHR. Similarly, processing stainless steel slabs or SSHR into SSCR represent a very limited addition to the costs of manufacturing.
- (94) Figures of the Union producers and estimates of the cost of manufacturing of Asian exporters, with significantly lower energy and labour cost, reveal that in 2022, accounting for yield and recovery of internal scrap, the processing of white SSHR into SSCR only brings an added value of about 5%. Processing of black SSHR into SSCR represents less than 8% of the cost of

⁴⁰ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

manufacturing of that product. Production of SSCR from stainless steel slabs only require about 10% of added value.

Product stage	Added value share
Slabs	[10-14]%
Black SSHR	[4-8]%
White SSHR	[2-6]%
SSCR	

Annex 7 - Assembly operation test

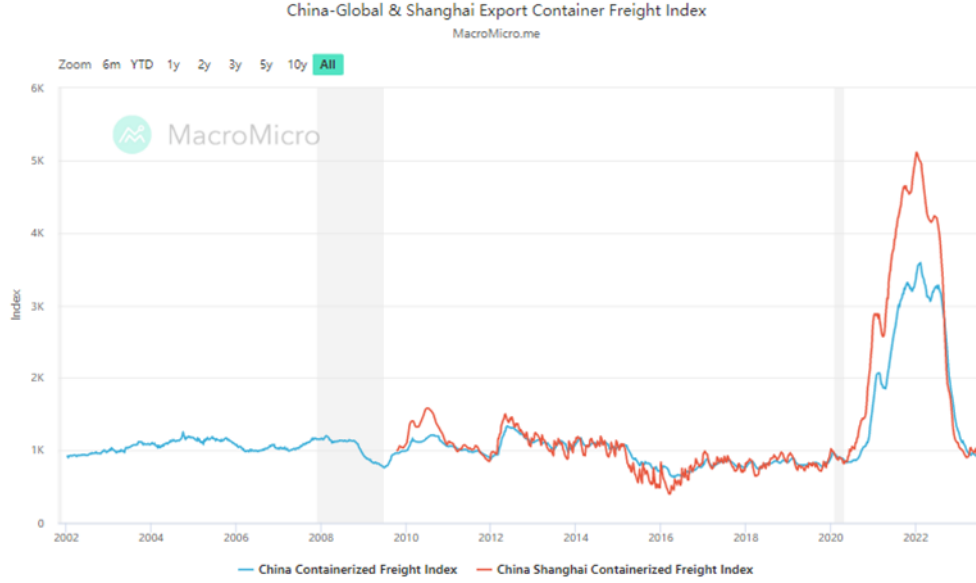
Conclusion

- (95) It is therefore obvious that the part imported from the country subject to the measures – the Indonesian slab or SSHR – represents significantly more than 60% of the parts of SSCR. In the meantime, the value brought by the completion operation – the cold-rolling, potentially complementing hot-rolling – is considerably lower than 25% of the manufacturing cost of the SSCR. The indirect import from Indonesia via third countries of SSCR therefore constitutes a circumvention within the meaning of Article 13 of the basic Regulation.

5.3.3 Insufficient due cause or economic justification other than the imposition of the duty

- (96) Before the initiation of the investigation and the imposition of the measures, EU importers bought their SSCR directly from Indonesia, already cold-rolled. The import numbers set out above are proof of this: Indonesian imports from 2019 were high, increased in 2020 despite COVID, plateaued in 2021 parallel to the initiation of the investigation, and then steeply declined in 2022 once the Commission imposed measures on imports of Indonesian SSCR.
- (97) Exporting SSCR directly from Indonesia was demonstrably the most efficient trade pattern before the imposition of duties, and is indeed the most logical and efficient way to obtain Indonesian SSCR. However, the imposition of the anti-dumping measures caused a limited part of the production process of SSCR to move to various third countries, as a way to reroute Indonesian imports destined for the Union market. There is no economically sound reason why the relevant players would separate a production process normally completed in Indonesia into various stages all over the world. To the contrary: it adds a needlessly complex, displaced step to an otherwise fairly straightforward and completely vertically integrated production process.
- (98) In fact, from a production point of view, the main difference between the new pattern of trade and the former is that it induces significant additional inefficiencies. Instead of a single direct shipment of SSCR from Indonesia to the EU, the new pattern of trade implies a myriad of new shipping routes to the third countries and then shipping to the EU. As such, it requires at least two distinct shipping operations for every third country, which in turn at least doubles the number of loading and unloading operations. It also requires additional road transportations in the third country in question: transporting the semi-finished product from the third country port to the cold-rolling plant (and sometimes the hot-rolling plant), and back to the port with finished SSCR.
- (99) Those additional logistic steps were exceptionally inefficient in 2022, a year with very high freight rates. Throughout the year, rates stayed well above those of previous years, as a consequence of worldwide supply chain bottlenecks and the war in Ukraine. The graph below shows that spot

rates in Asia remained at unprecedented heights throughout 2022, and that each additional container of freight could dramatically increase production costs.



Freight rates⁴¹

- (100) Elsewhere, operators dealt with this by increasing local supply (thus avoiding overseas freight costs and minimising transport). The extremely high prices in the beginning of 2022, for example, translated to higher railway freight volumes, which only decreased when container prices decreased slightly at the end of 2022.⁴² Indeed, this is a logical and efficient reaction to high maritime freight prices.
- (101) Crucially, indirect imports of Indonesian SSCR show a completely opposite reaction. As shown above, imports from Indonesia decreased in 2021 and 2022 (years with extremely high maritime freight prices), and indirect imports, which require exporting Indonesian SSHR or slabs to a third, overseas country which then in turn re-exports the finished SSCR to the EU, became a much more popular option. Rather than directly exporting SSCR from Indonesia, the preferred option was adding an additional, overseas journey, with all the costs and availability risks that entailed. This additional journey had the purpose of generally adding less than 10% of the value of SSCR, an operation for which Indonesia had ample capacities (reaching up to [1 150 000 - 1 700 000 tonnes] annually in 2022)⁴³ - as evident from the massive volumes of direct imports in 2020 and 2021. This unnecessary, risky, expensive complication has the purpose of avoiding the Union's import duties - which significantly exceed the cost of processing Indonesian inputs in third countries.
- (102) Besides the additional freight cost, the new pattern also creates a completely separate range of inefficiencies. One of such inefficiency relates to the replacement of an integrated and calibrated industrial process by a process in separate stages, where each actor requires adequate remuneration. Another relates to the limited added value of the processing operations

⁴¹ Source: <https://en.macromicro.me/charts/947/commodity-ccfi-scfi>.

⁴² Apply, China-EU rail freight: a highly sensitive market, 21 February 2023, <https://market-insights.apply.com/en/china-eu-rail-freight-a-highly-sensitive-market>.

⁴³ See annex Exporting producers and capacities

themselves, which would normally seriously limit the competitiveness of re-rollers when exporting beyond their domestic market. This is in particular true when re-rolling facilities lack facilities for initial annealing and pickling and require the use of white SSHR. Along other industrial inefficiencies, separating the melting phase from the hot-rolling phase also prevents energy gains related to proximity from the melting and casting. Similarly, separation of the hot-rolling and/or cold-rolling phase from the melting means that internal scrap and dust resulting from yield cannot be re-melted directly but has to be collected and sold to the market, or even represent net losses for actors.

- (103) On top of these production issues, those new patterns also requires that exporting producers, despite the limited additional value of the last production steps, develop oversea subsidiaries or supply agreements, as well as coordinate the production schedule of multiple producing entities in various third countries. Importers, in turn, must account for increased lead times and an increased likelihood of supply disruptions, and are faced with additional risks of technical defects as a result of the number of actors involved.
- (104) The multiplication of re-rolling activities in third countries, far beyond the need of domestic consumption, as a way to splinter the production process solely to avoid duties is an increasingly common feature of the steel trade flows. Stainless steel is not spared from this fate: recent circumvention findings both in the US on the product concerned and in the EU on the directly upstream product confirm that these investments are driven by the wish to avoid of duties on the main export market. This is further evidenced by the close links between the main Indonesian exporter and many of the re-rollers and by the fact that that these intermediate actors, despite an organically lower level of efficiency, are able to successfully target long range export markets.
- (105) All these elements very plainly show what is happening: the Indonesian SSCR exports are still ending up on the Union market, dumped, only this time they are taking a *pro forma* detour through third countries. Moving this marginal part of the production process through these third countries is costly, inefficient and redundant – until one takes the duties into account, which then plainly become the only possible reason for such a manoeuvre to take place. Despite all these inefficiencies, such pattern allows continuation of unfairly low priced imports of Indonesian stainless steel in the EU, as the additional costs incurred remain significantly lower than paying the anti-dumping duties on Indonesian SSCR.
- (106) In the absence of the duties, there would be no justification and no economic benefit for EU users to rely on such a complex pattern rather than importing SSCR directly from Indonesia. Consequently, it is apparent that the change in the pattern of trade stems from a practice for which there is no due cause or economic justification.

6. CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES

- (107) The purpose of the anti-dumping duties is to protect the Union Industry against the damaging effect of imports from a third country engaging in injurious dumping. In the original investigation, the Commission highlighted the dumping level of Indonesian SSCR and decided to offset this dumping through substantial anti-dumping duties. The circumvention of the measures via the countries concerned effectively negates that protection to the detriment of the Union Industry, as it allows for a significant volume of imports of SSCR at remarkably low prices.

6.1 Significant volume of imports undermining the remedial effect of the measures

- (108) As shown above, after an initial decline, the indirect imports of Indonesian SSCR into the Union have increased at a staggering pace. Between 2020 and 2022, they increased massively, almost four-fold. This increase clearly coincided with the investigation and the measure, hence their explosion in 2022, when ostensibly the new routes planned out after the initiation of the investigation fully started to get used.
- (109) As a result of their massive increase, the indirect imports represent a significant share of the overall imports of SSCR in the EU and an increasing share of the overall imports of SSCR from the targeted countries, significantly outpacing their growth. With imports from the targeted countries representing 35,6% of imports of SSCR in the EU, indirect imports reached an estimated and conservative level of 14,3% of the imports in 2022. The true extent of how indirect imports undermine the remedial effect thus lies somewhere between these two numbers.

In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia in the EU	72.768	106.488	107.364	51.379
Index	100	146	148	71
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

Annex 8 - Effect on the EU market: volumes and market share

- (110) That trend is also visible on a country per country level. In each of the targeted countries, the estimated indirect imports also represent a significant share of the total imports of SSCR in the EU. The assessment proposed by the Applicant shows that these indirect imports represent no less than a third of the imports in the EU of SSCR from the third countries and sometimes significantly more. As the methodology of the Applicant is conservative and likely underestimates the volume of these indirect imports, the actual volume from those countries provides a good indication of the potential extent of the indirect imports, in terms of volumes. That share is even more prevalent and exceeds 60% on average for austenitic stainless steel.

In tonnes, in 2022	Imports from targeted countries	Of which Indirect imports	Share
Taiwan	251.418	96.454	38,4%
Turkey	125.057	39.142	31,3%
Vietnam	86.720	50.983	58,8%
Total imports	463.195	186.578	40,3%

- (111) In addition, this massive increase of imports in terms of volume is particularly telling when compared to the overall imports of SSCR in the EU. First, because the imports from the targeted countries and in particular the estimated indirect imports represent a massive and quickly increasing share of overall imports. Second, because the speed at which they have increased starkly contrasts with the increase of other imports. This is all the more true as most of the increase of other imports originate in China, through which the Applicant suspects that indirect imports could also occur. This clearly shows that the volume concerned of relevant imports is of a nature to affect the situation on the EU market.

In tonnes	2019	2020	2021	2022
Total imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Index	100	84	96	140
Imports of SSCR from the targeted countries in the EU	310.440	234.156	375.936	463.195
Index	100	75	121	149
Of which Indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243
Imports of SSCR from other countries (excluding China) in the EU	608.341	528.097	483.486	528.822
Index	100	87	79	87
Imports of SSCR from China in the EU	10.212	13.992	34.524	308.400
Index	100	137	338	3.020

- (112) Evidently, the high volumes of imports from the targeted countries, including the indirect imports, make up a significant and vastly increased share of the EU consumption of the product concerned. Overall, the market share of imports from the targeted countries has grown substantially to reach nearly 12% of the EU market share, an increase evidently achieved on the back of growing indirect imports. Once again, this share and its growth is even more substantial when considering austenitic stainless steel in particular.

EU consumption, market share (in tonnes and %)	2019	2020	2021	2022
SSCR EU market	3.628.501	3.325.321	3.853.431	4.088.315
EU mills deliveries	2.699.508	2.549.076	2.959.485	2.787.898
Total Imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Of which imports of SSCR from the targeted countries	310.440	234.156	375.936	463.195
Of which indirect imports	76.898	55.915	120.059	186.578
Market share EU mills	74,4%	76,7%	76,8%	68,2%
Market share imports of SSCR in the EU	25,6%	23,3%	23,2%	31,8%
Of which imports of SSCR from the targeted countries	8,6%	7,0%	9,8%	11,3%
Of which indirect imports	2,1%	1,7%	3,1%	4,6%

- (113) That market share remains very significant when assessed at the level of the EU market as a whole, showing the disruptive impact of the indirect imports on the EU market and their ability to undermine the remedial effect of the measures. The market share of imports from the targeted countries, including indirect imports in particular, has significantly increased over the last four years. It is significant enough to allow the indirect imports to have a major shaping power on supply and prices on the EU market. For reference, the combined market share of India and

Indonesia in the original measures was found to amount to 5,5-5,8% of the EU market.⁴⁴ The market share for imports from Indonesia peaked in 2020 amounted to 3,2% for SSCR as a whole and 4,0% for austenitic SSCR before declining in 2021 and more significantly in 2022.⁴⁵

- (114) Imports from the targeted countries (including indirect imports) represent collectively, in 2022, a major share of EU imports. This is also true on an individual basis. As for the volume of indirect imports, these shares are conservative estimates and are likely higher in reality. Unsurprisingly, these shares are even more substantial when focusing solely on the EU market for austenitic stainless steel.

Market share, in 2022	Imports from the targeted countries	Of which indirect imports
Taiwan	6,1%	2,4%
Turkey	3,1%	1,0%
Vietnam	2,1%	1,2%
Total imports	11,3%	4,6%

- (115) The above reveal both the extent of the circumvention pattern identified and its ability to undermine imports on the basis of sheer volumes imported in the EU. It reveals the utmost necessity for the Commission to address the circumvention pattern and to take all necessary measures to prevent the continuation of alternative flows of indirect imports. In any event, the indirect flow of imports seriously affects the usefulness of the anti-dumping measures adopted by the Commission, threatening the integrity of that measure on imports from Indonesia and of the Union's TDI policy overall.

6.2 Low prices undermining the remedial effect of the measures

- (116) It was found over the course of the investigation that imports of SSCR from Indonesia undercut EU prices by 12 to 12,4%.⁴⁶ The Commission also identified that the depreciating impact of the price of Indonesian imports went beyond that undercutting. It calculated injury margins of above 30%.⁴⁷
- (117) When assessing the price effect of the indirect imports on the EU market, it is crucial that costs and prices of SSCR worldwide and in the EU have skyrocketed since the imposition of the measures. A massive increase in the cost of raw materials (nickel in particular) and general inflationary pressure on other inputs, pushed up prices for SSCR in line with costs. This means that although prices are significantly higher than during the original IP, this does not prevent them from undermining the EU measures.
- (118) This general increase in prices reflects in particular the increase in cost of the main raw materials. Between 2019 and 2022, the cost of nickel, the main driver of the cost of production, almost doubled, increasing by about 85%. This translated into an increase by nearly 50% of the cost of

⁴⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Table 5.

⁴⁵ See annex Effect on the EU market - volumes and market share

⁴⁶ Commission Implementing Regulation (EU) 2021/854 of 27 May 2021 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 105.

⁴⁷ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 150.

production of the Union Industry. This worldwide price increase dwarfs the increase in cost of energy suffered by the Union Industry over the same period and is the main driver of the increase in the costs and selling prices of the Union Industry since the original investigation period.

	EU COP of SSCR (EUR/tonne)	World Nickel price (USD/tonne)
2019	2.331	13.907
2022	3.609	25.638
Variation	+54,8%	+84,4%

Annex 9 - Variation of cost of production, raw materials and inputs

- (119) Against this backdrop of significantly increased prices and costs of the Union producers, the import prices from the targeted countries significantly undercut EU prices, even if 2022 prices exceeded those of Indonesian imports during the original IP. The Applicant has assessed the existence of undercutting both for the overall imports from the targeted countries and based on an estimated level of price of the indirect imports.
- (120) To provide a meaningful comparison, the Applicant has accounted for the difference in the product mix between EU producers and third country exporters in the undercutting calculations based on the imports from the targeted countries as a whole. The Applicant has assessed the price of indirect imports specifically conservatively, based on the price difference between austenitic SSHR inputs from Indonesia and from other sources. When necessary, it also accounted for the existing anti-dumping duties on imports of SSCR from the countries concerned, at the level of the higher residual duty.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting	13,5%	18,3%

Annex 10 - Effect on the EU market: undercutting

- (121) That overall significant level of undercutting for imports from the targeted countries already shows, a priori, how indirect imports undermine the efficiency of the EU measure by allowing the persistence of imports at a price significantly lower than that of the EU producers in 2022. It is also particularly telling that the overall level of undercutting exceeds the level established for imports from Indonesia over the initial investigation period. This price pressure and clear undercutting can also be established on an individual basis for each of the third countries via which the indirect imports of SSCR reach the EU market.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting by import from Taiwan	13,7%	18,5%
Undercutting by import from Turkey	14,5%	19,7%
Undercutting by import from Vietnam	11,2%	16,8%

- (122) As mentioned above, the average prices for imports from the third countries include both indirect imports of SSCR and "normal imports" from those third countries without established links with Indonesian inputs, slabs or SSHR. As a consequence, it is likely that the actual levels of undercutting are substantially higher for the indirect imports made from processed Indonesian subsidised inputs. This is reflected in the estimated prices for indirect imports assessed on the

basis of the differential in price between Indonesian and non-Indonesian inputs. Multiple examples of abnormally low priced imports from the targeted countries confirm that the approach adopted by the Applicant is reasonable.

Annex 11 - Illustration of low priced imports from third countries

- (123) The protection granted to the Union industry by the original measures has largely been rendered insufficient by the developments of flows of low priced indirect imports. The indirect import prices are about a fifth below the average comparable EU prices, making any fair competition impossible.
- (124) The Indonesian dumping and the persisting distortions on raw materials therefore continue through indirect imports, entering the EU in significant volumes and at unfairly low prices to disrupt the Union market and prices through indirect imports. The indirect imports of SSCR to the EU thus undermine the remedial effect of the measures, initially intended to prevent the main Indonesian exporting producer from exporting at dumping prices to capture the EU market.

7. INDIRECT IMPORTS OF SSCR ARE DUMPED

- (125) Despite the significant variation in the prices of SSCR since the original investigation, there is no doubt that the actors engaging in the circumvention of the EU measure via indirect imports also engage in dumping at a significant level. This dumping, as previously found with regard to Indonesia, is a key factor of the increased competitiveness and the increase in imports from the countries concerned.
- (126) Over the course of the original investigation, the Commission found that the Indonesian exporting producer of SSCR actively engaged in dumping on the EU market. For that country, it calculated a residual dumping margin of 20.2%.⁴⁸ Even though the residual duty eventually imposed is reduced to 19.3% on account of the parallel countervailing duties, that margin is nonetheless relevant for the assessment of the existence of dumping.

Annex 12 - Dumping calculation

- (127) In order to address the variation of prices of SSCR, linked to the factors described above, the Applicant has simulated the increase of the normal value and of the non-dumped export price to the EU between the original IP and the PoR of the application based on the Indonesian export statistic. It has compared the export price of SSCR from Indonesia over the two period, excluding the exports to the EU due to the existence of dumping and to China due to the prevalence of intragroup transaction of Tsingshan and exports of SSCR with minimal processing (2E finishes) to avoid duties. On that basis, mirroring the approach used by the Commission to assess dumping in its regulation extending the duties on SSHR from Indonesia to Turkey, it found that the Indonesian normal value, and consequently the non-dumped export price, should have had increased by 68%.

⁴⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, recital 1067

Price variation	Original IP	PoR
Indonesian CIF export price to the EU ⁴⁹	1 962 EUR/ tonne	3 303 EUR/ tonne
Indonesian dumping margin	20.2%	20.2%
Minimum non dumped CIF price to the EU	2 358 EUR/ tonne	3970 EUR/ tonne

- (128) It then compared that minimum non dumping CIF price to the EU with the prices of the imports to the EU, first for the overall imports from the countries and then for the indirect imports of SSCR. With regard to the overall imports of SSCR from the countries concerned, the dumping finding are substantial, in particular for Taiwan and Turkey.

Dumping calculation	Overall imports of SSCR
Taiwan	34,6%
Turkey	17,7%
Vietnam	5,9%

- (129) To assess the dumping specifically on the indirect imports, the Applicant has assessed the price of the indirect imports to the EU conservatively on the basis of the price difference between austenitic SSHR inputs from Indonesia and from other sources. The assessment also highlight a substantial level of dumping.

Dumping calculation	Indirect imports of SSCR
Taiwan	16,3%
Turkey	10,5%
Vietnam	6,6%

- (130) The Applicant notes in particular that the dumping assessed with regard to Taiwan, regardless of the calculation, widely exceed the previous dumping findings of the Commission with regard to SSCR originating in that country. This confirms that the increasing reliance on Indonesian materials in third countries reflect an extension of the unfair practices found by the Commission to take place in Indonesia.

- (131) The level of the dumping margins confirms that the exporting producers are deliberately evading the EU measures to maintain their trading at unfair conditions to the detriment of the Union Industry and of the effective enforcement of EU trade measures.

8. IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT

- (132) The emergence of the indirect imports, as detailed above, have exposed a serious shortcoming in the application of the measure, as evidenced in the present anti-circumvention. That flaw is the ease with which non-preferential rules of origin for stainless steel, in particular the rules of list

⁴⁹ Commission implementing Regulation (EU) 2021/854 of 27 May 2021 imposing a provisional anti-dumping duty on imports of stainless steel cold-rolled flat products originating in India and Indonesia, table 3

provided in Annex 22-01 of the Union Custom Code Delegated Act, allow a change in origin of the targeted goods with near minimal processing operations. Consequently, as shown above when assessing the existence of an assembly operation, the processing of slabs or SSHR into SSCR despite transformation costs less than 15% (usually 5%) and allows SSCR to acquire the non-preferential origin of the country where that last processing occurred

- (133) Whereas that flow of indirect imports was difficult to anticipate at the stage of the initial investigation, the recent developments described in this would justify the adoption, under Article 14(3) of the basic AD Regulation, of "*special provisions, in particular with regard to the common definition of the concept of origin*" to ensure the efficiency of the measures. The Commission has notably relied on that provision in the past to ensure the efficiency of measures when the sole implementation of the non-preferential rules of origins prevented the measure to achieve their expected purposes. Those special provisions derive from the fact that, in trade defence investigation, custom rules apply only in so far that they allow to achieve the objectives set in the basic Regulations.
- (134) The special provisions could be implemented by means of an obligation to present at customs a mill certificate providing the plant of melting. Such information is commonly provided by exporters, together with the heat numbers to allow control of grades and follow-up of claims.
- (135) If the Commission finds that the indirect imports indeed circumvent the measures, the mill certificate should be imposed on imports from companies found not to engage in circumvention from the targeted third countries. Acting in complement to the measures on circumventing exporters, that requirement would constitute a proportionate safeguard against circumvention by companies that could easily switch their supply to (or in the case of an holistic assessment, increase their supply of) Indonesian semi-products if cleared from circumvention. It would limit the risk of multiplication of anti-circumvention action.
- (136) Eurofer therefore respectfully requests the Commission use the possibilities granted by the EU legislator to ensure the efficiency of trade measures. This is instrumental to ensure a correct implementation of the measure and to limit the burden on the Union Industry to document each and every example of evasion of the duties.

9. CONCLUSION

- (137) As reported in this Application, there is clear and consistent evidence that, in order to avoid duties on Indonesian SSCR, substantial volumes of Indonesian stainless steel slabs and SSHR are imported in third countries where they undergo hot-rolling and/or cold-rolling before being exported to the EU, in conditions undermining the remedial effect of the EU measures and at dumped prices. It is also apparent that this change in the pattern of trade aims precisely at exploiting the blind spots of the EU anti-dumping measures on imports of SSCR from Indonesia.
- (138) The Commission should therefore act decisively to ensure the sturdiness and reliability of the EU measures in the face of that challenge of the EU Trade Defence measures. In view of the above, Eurofer therefore respectfully requests that the Commission:
- Expediently initiates an investigation on imports of SSCR from Taiwan, Turkey and Vietnam under Article 13 of the basic AD Regulation;
 - Registers imports of SSCR from Taiwan, Turkey and Vietnam as from the initiation of the

investigation, with a view to applying retroactive duties from that date;

- Imposes anti-dumping duties at a level of 19,3% on imports of SSCR from Taiwan, Turkey and Vietnam;
- If necessary, implements under Article 14(3) of the basic AD Regulation a control of mill certificate for imports of SSCR by the exporting producers exempted from the exemption of the measures to prevent recurrence of circumvention.

TABLE OF CONTENT

1.	INTRODUCTION	2
2.	APPLICANT	3
3.	OTHER INTERESTED PARTIES	4
4.	PRODUCT CONCERNED AND LIKE PRODUCT	4
4.1	Description of the stainless steel cold-rolled flat products.....	4
4.1.1	Metallurgical characteristics	4
4.1.2	Production process	5
4.2	Product concerned of the original investigation.....	6
5.	THE EU AD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES	7
5.1	There is a change in the pattern of trade.....	7
5.1.1	Indonesian stainless steel is processed in third countries and exported to the EU	7
5.1.2	Volume of indirect imports in the EU	9
5.1.3	Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia.....	10
5.2	Change in the pattern of trade via specific third countries	12
5.2.1	Indirect imports via Taiwan	12
5.2.3	Indirect imports via Vietnam	18
5.3	The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty	21
5.3.1	Practice, process or work	21
5.3.2	Assembly operation	22
5.3.3	Insufficient due cause or economic justification other than the imposition of the duty.....	24
6.	CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES	26
6.1	Significant volume of imports undermining the remedial effect of the measures.....	27
6.2	Low prices undermining the remedial effect of the measures	29
7.	INDIRECT IMPORTS OF SSCR ARE DUMPED	31
8.	IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT	32
9.	CONCLUSION.....	33

TABLE OF ANNEXES

Annex 1 - Representation letters	3
Annex 2 - Other interested parties.....	4
Annex 3 - Methodology for the assessment of indirect imports.....	9
Annex 4 - Volume of indirect imports.....	11
Annex 5 - Exporting producers in third countries and capacities	12
Annex 6 - Assessment of the 60% threshold in production of SSCR.....	23
Annex 7 - Assembly operation test.....	24
Annex 8 - Effect on the EU market: volumes and market share	27
Annex 9 - Variation of cost of production, raw materials and inputs	30
Annex 10 - Effect on the EU market: undercutting	30
Annex 11 - Illustration of low priced imports from third countries	31
Annex 12 - Dumping calculation	31



LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Acciai Speciali Terni S.p.A.
- Address: V.le B. Brin 218, 05100 Terni (IT)
- Address for Communications: info@acciaitermi.it
- Tel: +39 0744 4901
- Fax: +39 0744 490752

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Terni, 22-06-2023

Vice-President

Mario Carlo Arvedi Caldonazzo

Annex I - Confidential



LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Acerinox Europa SAU
- Address: Avda. Acerinox Europa, s/n Poligono Industrial Palmones, 11379, Los Barrios Cadiz, Spain
- Address for Communications: Calle Santiago de Compostela 100, 28035 Madrid, Spain
- Tel: Confidential
- Fax: Confidential
- E-Mail: Confidential

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Madrid, 21st June 2023



Luis Gimenez Valledor
Secretary General Acerinox SA

Annex I - Contact person: Confidential

LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone, fax) of the company supporting the application

- Name: Aperam Stainless Euroe
- Address: 6, rue André Campra 93210 La Plaine Saint- Denis France
- Address for Communications: 6, rue André Campra 93210 La Plaine Saint- Denis France, email : stainless@aperam.com
- Tel: +33 1 71920652
- Fax: +33 1 71920798

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Signed in Paris, July 23rd 2023



Nicolas Changeur

CEO Aperam Services and Solutions & CMO Europe

Annex I - Contact person: Confidential



LETTER OF SUPPORT

Application for an investigation on imports of stainless steel cold rolled flat products from third countries evading the measures on imports of stainless steel cold rolled flat products from Indonesia

Identity (name, address, telephone) of the company supporting the application

- **Name:** Outokumpu Oyj
- **Address:** Salmisaarenranta 11, 00180 Helsinki, Finland
- **Address for Communications:** Confidential
- **Tel:** Confidential

The persons who should be contacted for this entity are set out below. Please ensure that all such persons are copied on correspondence with this entity.

Hereby, the company stated above supports the above as Applicant in the Application lodged by EUROFER and authorises EUROFER to act on its behalf in all matters concerning the above mentioned proceedings.

Pia Aaltonen-Forsell

Signed in Helsinki, 21 June

Pia Aaltonen-Forsell – Chief Financial Officer

Annex I - Contact person: Confidential

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2
NOVA TRADING S.A.									
THE METAL CENTRE									
Norder Band AG									
ThyssenKrupp Schulte (BSM) GmbH									
BTH Import Stal									
Damstahl a/s									
Roba Metals bv									
ThyssenKrupp materials nv									
Sadel									
TAD INOX BV									
IMS Belgium									
ALACER MAS SA									
ACINESGON SA									
NICHELCROM ACCIAI INOX S.P.A.									
EUROACCIAI S.p.A									
GAVINOX S.R.L.									
MANNI INOX S.P.A.									
SIDERMARIOTTI S.R.L.									
Lemvigh-Muller A/S									
TKM GmbH									
ThyssenKrupp Schulte (BSM) GmbH									
Carl Spaeter GmbH									
Damstahl GmbH									
Kreuer Edelstahl GmbH									
HW-INOX GmbH									
Hernandez Stainless GmbH									
Norder Band AG									
ELG Haniel GmbH									
Chrom Stahl- und Metallhandel GmbH									
EuroStahl Handels GmbH & Co. KG									
H. Butting GmbH & Co. KG									
THE METAL CENTRE									
Marcegaglia									
Ita Inox SPA									
Oikr Acciai Inossidabili S.p.A.									
S.I.P.I. Spa									
Acciai Vender S.P.A.									
C.P.C. Inox S.P.A.									
LSI Lamiere Speciali Inox S.P.A.									
Ferlat Acciai S.P.A.									
Padana Tubi e Profilati Acciaio Inox									
Commit Metalli S.R.L.									
Ravani Acciai S.P.A.									
NICHELCROM ACCIAI INOX S.P.A.									
Inox PA S.p.A.									
Arinox									
Sogemet									
Duferco									
Gavinox									
Tresoldi Metalli Srl									
Sidermariotti S.R.L.									
Ecor SPA									
Century Steel									
Hyosung BNG									
MCB Group									
Amari Metals									
Nova Trading SA									
Otelinox									
Irestal Group Bergara									
Alacer Mas SL									
Acinesgon									
Alinox S.A.									
Tibnor AB									

Company	Street	Zip code	Town	Country	Tel	Fax	E fax	Contact Name	E-mail	E-mail 2
STALATUBE OY										
TKM GmbH										
Carl Spaeter GmbH										
Damstahl GmbH										
Kreuer Edelstahl GmbH										
HW-INOX GmbH										
Hernandez Stainless GmbH										
Norder Band AG										
ELG Haniel GmbH										
Chrom Stahl- und Metallhandel GmbH										
EuroStahl Handels GmbH & Co. KG										
H. Butting GmbH & Co. KG										
Klöckner & Co Deutschland GmbH Zweigniederlassung Osnabrueck										
VERTRIEBSGESELLSCHAFT MAIKRANZ GMBH & CO.KG										
Eberspächer ETSW AB										
Marcegaglia										
Itta Inox SPA										
Oiki Acciai Inossidabili S.p.A.										
S.I.P.I. Spa										
Acciai Vender S.P.A.										
C.P.C. Inox S.P.A.										
LSI Lamiere Speciali Inox S.P.A.										
Ferlat Acciai S.P.A.										
Padana Tubi e Profilati Acciaio Inox										
Commit Metalli S.R.L.										
Ravani Acciai S.P.A.										
MCB Group										
Amari Metals										
Nova Trading SA										
Otelinox										
Irestal Group Bergara										
Alacer Mas SL										
Acinesgon										
Alinox S.A.										
Tibnor AB										
Blanco GmbH & Co KG										
Replasa										
Samsung Electronics Poland Manufacturing sp. z o. o.										
Padana Tubi E Profilati Acciaio SPA										
Arinox S.p.A.										
Siderinox S.p.A.										
Itta Inox S.p.A.										
A.D. Tubi Inossidabili S.p.A.										

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
Eurofer	172 Avenue d	1000	Brussels	Belgium						https://www.eurofer.eu/

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
PT IMR ARC STEEL										
PtT. BINTANG ASIA USAHA										
PT OBSIDIAN STAINLESS STEEL										
PT INDONESIA TSINGSHAN STAINLESS STEEL										
PT INDONESIA TSINGSHAN STEEL										
PT E-UNITED FERRO INDONESIA (partly owned by Yusco)										
PT DEXIN STEEL (partly owned by Hanwa)										
PT INDONESIA GUANG CHING NIKEL AND STAINLESS STEEL INDUSTRY										
PT INDONESIA RUIPU NICKELA ND CHROME ALLOY										
PT SULAWESI MINING INVESTMENT INDONESIA										
PT EKASA YAD RESOURCES										
PT HANWA INDONESIA										
IMR METALLURGICA L RESOURCES AG										
PT BINTANGDELEP AN; MINERAL INDONESIA										
ETERNAL TSINGHAN GROUP LIMITED										
PT VIRTUE DRAGON NICKEL										

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
YIEH CORP.										https://www.yieh.com/en/Contact
WALSIN										https://www.walsin.com/walsin/home.do
TANGENG										http://www.tangeng.com.tw/eindex.asp
Tung Mung										https://www.tungmung.com.tw/index.html
Yuan Long										https://en.ylss.com.tw/
Chia Far										https://www.chiafar.com/en/
Chien Shing										www.csssc.com.tw

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
TSIIA (Taiwan Steel & Iron Industries Association)										https://www.tsiaa.org.tw/

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
Yongjin										
POSCO										https://www.poscovietnam.com/vn/main/getMain.do
Hoa Binh										www.inoxhoabinh.vn

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website
Assan TST/POSCO										https://poscoassan.com.tr/
Trinox										https://www.trinoxmetal.com/

Company	Street	Zip code	Town	Country	Tel	Fax	E-Fax	E-mail	E-mail 2	Website

Turkish
Steel
Producers
Associatio
n

<https://celik.org.tr/en/iletisim/>

Methodology for the assessment of "indirect imports"

This note explains how EUROFER has assessed the volume of indirect imports of SSCR from Indonesia in the EU. These imports are referred to as "indirect" because they result from the processing, in a country other than Indonesia or the EU, of SSCR inputs into SSCR before export to the EU.

Through a detailed assessment of official statistics and market intelligence, EUROFER is able to provide an estimate of the indirect imports. That assessment reveals a systemic and wide-ranging evasion of the duties on imports of SSCR from Indonesia because of the existence of a double flow: import of stainless steel semi-products from Indonesia to a third country and imports of SSCR from that third country into the EU.

1. PRELIMINARY REMARKS

Stainless steel slab and SSHR: slabs are semi-finished steel products. They are the output of the first stage of the production process of flat steel. The inputs necessary for the production of steel are melted in a furnace and then poured via a casting machine into solid rectangular shaped thick steel products called slabs. Slabs already contain all the raw material necessary for the production of the flat steel. Stainless steel hot rolled flat product, or "SSHR" is the next phase in the production process of SSCR. It is produced from the hot-rolling of slabs into coils. SSHR can either be black, when it has not yet undergone final annealing and pickling, or white when it has achieved that stage.

Production of stainless steel slabs in Indonesia: In Indonesia, the stainless steel slabs are produced from nickel pig iron (NPI) which itself contains the nickel ore found to be subsidised on machinery/land also found to be subsidised. It is important to have in mind that the Indonesian stainless steel operations do not solely focus on the export of finished products but also rely to a large extent on exports of semi-finished products. Due to the massive subsidies received, the Indonesian exporters has such a cost advantage that it can be more profitable, even for integrated producers, to idle upstream capacities and rely on Indonesian imports of semi-finished products rather than self-production. Similarly, re-rollers operating outside of Indonesia will find the Indonesian semi-products cheaper than the alternative produced domestically or imported from other sources. Therefore, Indonesian stainless steel tend to integrate the worldwide stainless steel trade flows at various level - both finished and semi-products - widely exporting the distortions resulting from the subsidisation in Indonesia.

Austenitic stainless steel and imports figures: Stainless steel is essentially characterised by its chromium content which provides it with its anti-corrosion properties. However, stainless steel can also be distinguished based on whether or not it contains another alloy: nickel. The two main families of grades of stainless steel are therefore austenitic (containing nickel) or ferritic (with no nickel). Due to the high price of nickel, the difference between the two families of stainless steel is also visible in the price of the products, with austenitic stainless steel being more expensive than ferritic stainless steel. That distinction between the two families of stainless steel is particularly important when considering imports - direct or indirect - from Indonesia. This is because the Indonesian stainless steel complex has precisely been established to exploit the subsidised nickel resources in that country. Therefore, exports from Indonesia are almost exclusively focused on austenitic materials, which even if sold at unnaturally low prices remain more expensive than ferritic products.

Processing of a slab/ of SSHR in a third country confers non-preferential origin: As the Commission recently found in case R778, the transformation of a stainless steel slab into the product directly downstream the hot-rolled flat stainless steel (SSHR) for which the slabs is the sole input brings very limited added value. The same is true for the processing phase directly after the hot-rolling, the

transformation of SSHR into SSCR via cold-rolling (see assembly part). Nonetheless, transformation of the slabs into SSHR or SSCR or of SSHR into SSCR confers non-preferential origin under the list rules of Annex 22-01 of the delegated act of the EU Custom code. This means that the "indirect imports" imports of Indonesian SSCR in the EU assessed by EUROFER are formally originating in the targeted third country.

Imports of Indonesian stainless steel in the EU: Over the last few years, the Commission has initiated several trade actions to address imports of stainless steel products from Indonesia, with AD measures on SSHR and AD and CVD measures on SSCR. Although these measures have their limitations, on account notably of the extent of the nickel price distortion in Indonesia, they mostly allow dealing with the imports of Indonesian SSHR and SSCR. For SSCR in particular, the imposition of the AS measures on SSCR in March 2022 has allowed to significantly reduce imports.

Imports of Indonesian stainless steel in third countries: As evidenced by the Commission over the recent years, Indonesia's massive stainless steel production capacity has been built from scratch in the recent years. As Indonesia only has a very limited consumption of stainless steel, this industrial powerbase is entirely dedicated to exports. Indonesia's stainless steel semi-finished and finished products exports have gone from negligible in 2015 to the first worldwide, overtaking China, already in 2020. Those production capacity and therefore exports are overwhelmingly dedicated to austenitic (nickel-based) stainless steel, to leverage the advantage granted by the Indonesian government on nickel ore. Consequently, these massive capacities, in a sector already plagued by Chinese overcapacities, have deeply affected traditional trade flows for stainless steel over a very short period of time. Massive exports from Indonesia have not only targeted the EU market but also all the other markets and in particular close-by Asian countries. In these countries, imports of Indonesian stainless steel products have substituted to a large extent domestic supply of finished products (SSCR) or of intermediate products (slabs, SSHR) thanks to their major price advantage.

Stainless exports codes 7216 to 7220									
In tonnes	2015	2016	2017	2018	2019	2020	2021	2022	%22 vs 15
Indonesia	35,481	37,583	690,191	1,998,656	3,770,480	3,430,475	4,750,911	4,635,934	8345%
China	2,037,446	3,415,165	3,418,791	3,389,826	3,008,972	2,827,993	2,536,265	3,213,422	-34%
EU27	1,141,281	1,006,190	2,688,259	2,605,870	2,911,609	2,201,011	1,801,898	1,189,743	-52%
Taiwan	1,758,849	1,735,377	1,350,631	1,789,638	1,124,975	945,873	1,247,101	1,171,159	-4%
South Korea	1,415,000	1,475,756	1,527,291	1,627,712	1,547,516	1,358,770	1,230,294	918,003	-34%
India	521,372	721,602	815,021	750,167	727,309	678,239	652,100	761,165	18%
Japan	571,544	557,448	825,681	797,661	687,606	591,717	701,838	554,575	-50%
United States	301,410	391,184	955,890	657,420	428,225	210,477	342,641	348,752	-57%
South Africa	110,520	122,119	805,351	958,100	907,591	473,807	207,593	200,776	-86%

Imports in the EU of stainless steel produced from Indonesian semi-products from third countries: The increasing use of cheaper Indonesian stainless steel semi-finished products (slabs, SSHR) in the production of finished SSCR in third countries has mechanically led to the rapid appearance of a new trade flow: the imports in the EU of austenitic SSCR produced in third countries from Indonesian slabs or SSHR (the "indirect" imports of Indonesian SSCR). These flows have grown exponentially and now represent a significant share of the EU market. That significant increase is due to the fact that they share with the direct imports of SSCR from Indonesia a major advantage over EU producers: the heavy subsidisation of the upstream phase of the production process. However, as processing of slabs or SSHR into SSCR confers the non-preferential origin, they are not subject to the measures imposed on Indonesian imports of SSCR from Indonesia.

2. METHODOLOGY FOR THE ASSESSMENT OF INDIRECT IMPORTS

2.1 Presentation of the methodology

Methodology for the quantification of the indirect imports of SSCR to the EU: Due to the non-preferential origin rules, it is impossible to assess the extent of these indirect imports or double flow of SSCR solely by looking at EU import statistic as those do not provide any information on whether the slab or SSHR used to produce SSCR originate in Indonesia or elsewhere. EUROFER has therefore prepared a comprehensive assessment looking at (i) the imports in the third country, according to its official database, of stainless steel semi-finished products (slabs, SSHR) from Indonesia and all other sources, (ii) the production of stainless steel slabs in the country, if any and (iii) the imports in the EU of stainless steel from that third country. As Indonesian-produced stainless steel is solely nickel-based, the analysis focuses on austenitic stainless steel, based on actual custom data when they provide for the distinction (EU, Turkey, Taiwan) and/or on the relevant production split between austenitic and other types of stainless steel in the third country when the distinction is not available.

Relevant third countries: For the purpose of the assessment, EUROFER has focused exclusively on countries for which it had identified a sizeable flow of imports of stainless slabs and/or SSHR from Indonesia, a sizeable flow of exports of SSCR to the EU as well as a significant price impact on the EU market/ the perspective of an additional price impact. This means that the analysis is conservative because other flows likely exists.

The assessment therefore covers Taiwan, Turkey and Vietnam. The flows via these countries have been assessed both jointly and on an individual basis.

Application of the methodology: The methodology works in two-steps: first, assessing the share of Indonesian inputs in the total output of the country of austenitic SSCR; second, applying that share to the exports to the EU in order to obtain a reasonable assumption of the volume of SSCR from the third country which in fact contains Indonesian slabs or SSHR. The assessment is made on a quarterly basis and, in order to account for the processing of the Indonesian semi-products in the third country, a standard 3-month delay between imports of semi-finished product and exports of SSCR is taken into account. The methodology is subject to minor adjustments when available information for a country allow presenting a more accurate assessment.

2.2 Application for a country with melting capacities: Taiwan

Taiwanese custom statistics allow the identification of whether import and exports are austenitic or not. Out of the four countries assessed, Taiwan is the sole country with its own melting and hot-rolling capacities. In that country, Indonesian SSCR inputs may therefore be slabs or SSHR.

1. *Identification of the imports of austenitic semi products: the methodology isolates on one hand the imports from Indonesia and the imports from third countries of stainless slabs and SSHR. As the Taiwanese database allows identifying austenitic products, the analysis focuses only on these products.*
2. *Calculation of the domestic melting of austenitic stainless steel: As Taiwan has a domestic production of stainless steel slabs, that source of semi-product is also accounted for. Based on the proportion of austenitic stainless steel in the overall quantify of stainless steel slabs produced in Taiwan for the relevant period, a quantity of domestic austenitic production is calculated.*

3. Definition of the origin of semi-products in exports of SSCR from Taiwan: Based on the imports of austenitic semi-products and the production of domestic austenitic slabs, a ratio is calculated to assess the share of Indonesian SSHR and slabs over the total inputs available in Taiwan for the production of austenitic SSCR (domestic, Indonesian inputs, third countries inputs). That ratio is considered representative of the output of SSCR independently of whether it is sold domestically or exported to the EU or a third country.
4. Calculation of the volume of indirect imports of Indonesian melted SSCR to the EU via Taiwan: the ratio defined above is then applied to the total volume of imports of austenitic stainless steel in the EU (Eurostats imports under the CN codes for Ni>2,5% and CN codes ending in 3100 and falling under "other" whose average prices correspond to austenitic prices). To account for the processing of the inputs and the shipping to the EU, a three months delay is applied, meaning that the ratio defined for quarter N is applied to imports in the EU in quarter N+1.
5. Assessment of the maximum volume of imports of Indonesian melted SSCR to the EU via Taiwan: Beside the estimated volume of indirect imports estimated according to the methodology described above, an alternative methodology is also used to assess the maximum possible level of indirect imports of SSCR melted in Indonesia via Taiwan. That assessment consists in a comparison of the volume of semi-products imported in Taiwan from Indonesia with the imports in the EU of austenitic SSCR from Taiwan on the following quarter (three months delay). The lower of the two figures corresponds to the maximum volume of imports of SSCR from Taiwan integrating Indonesian inputs into the EU.

2.3 Application for a country without melting capacities: Vietnam

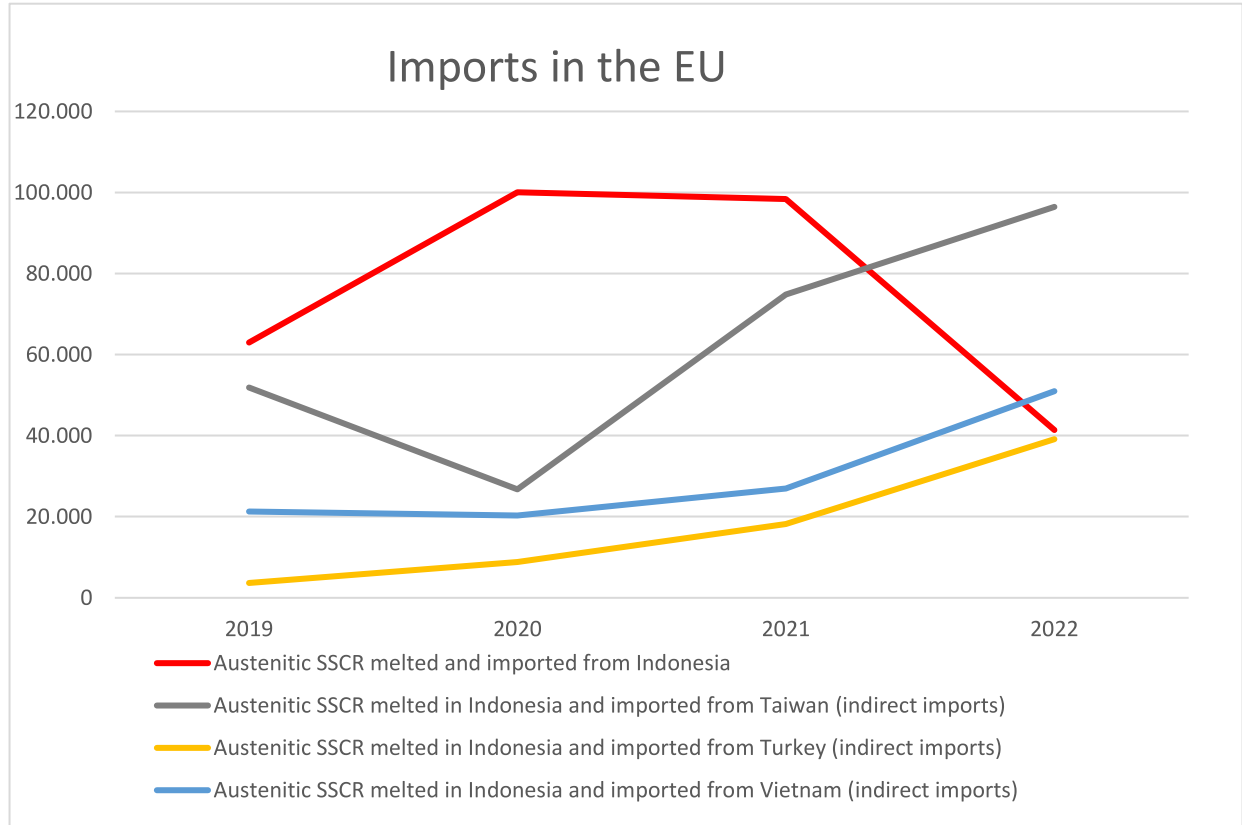
The methodology for Vietnam¹ is essentially the same as used for Taiwan with the following differences:

1. These databases do not allow identifying whether imported inputs (in that case exclusively SSHR) are austenitic or ferritic. For Indonesia, due to the focus on nickel-based stainless steel, all imports are considered as being austenitic. For imports from other origins, an assessment is made on the basis of the overall share of austenitic stainless steel in melting in Asia (according to ISSF) to define the share of austenitic SSHR in imports from third countries. This assessment is conservative due to the pre-eminence of Indonesia in melting of austenitic stainless steel.
2. In the absence of domestic melting capacities for stainless steel in that country (production of SSCR is exclusively from re-rolling SSHR), inputs from the production of SSCR are 100% imported. This means that the ratio to define the origin of the semi-products used as inputs in the production of SSCR is calculated solely by a comparison between imports from Indonesia and imports from another source.

With regard to **Turkey**, whereas the principles are the same, additional factors are considered. First, as the Turkish custom statistics allow identifying the austenitic SSHR and SSCR, it is not necessary to rely on estimates to identify austenitic materials. Second, as imports of Indonesian slabs in Turkey were already investigated by the Commission in case R778 and it is known that these were exported to the EU as SSHR, slabs are therefore not accounted for in the assessment of the indirect imports of Indonesian SSCR for which EUROFER only relies on imports into Turkey of Indonesian SSHR.

¹ The Vietnamese data are identified via exports and imports from third countries due to incomplete set of Vietnamese data

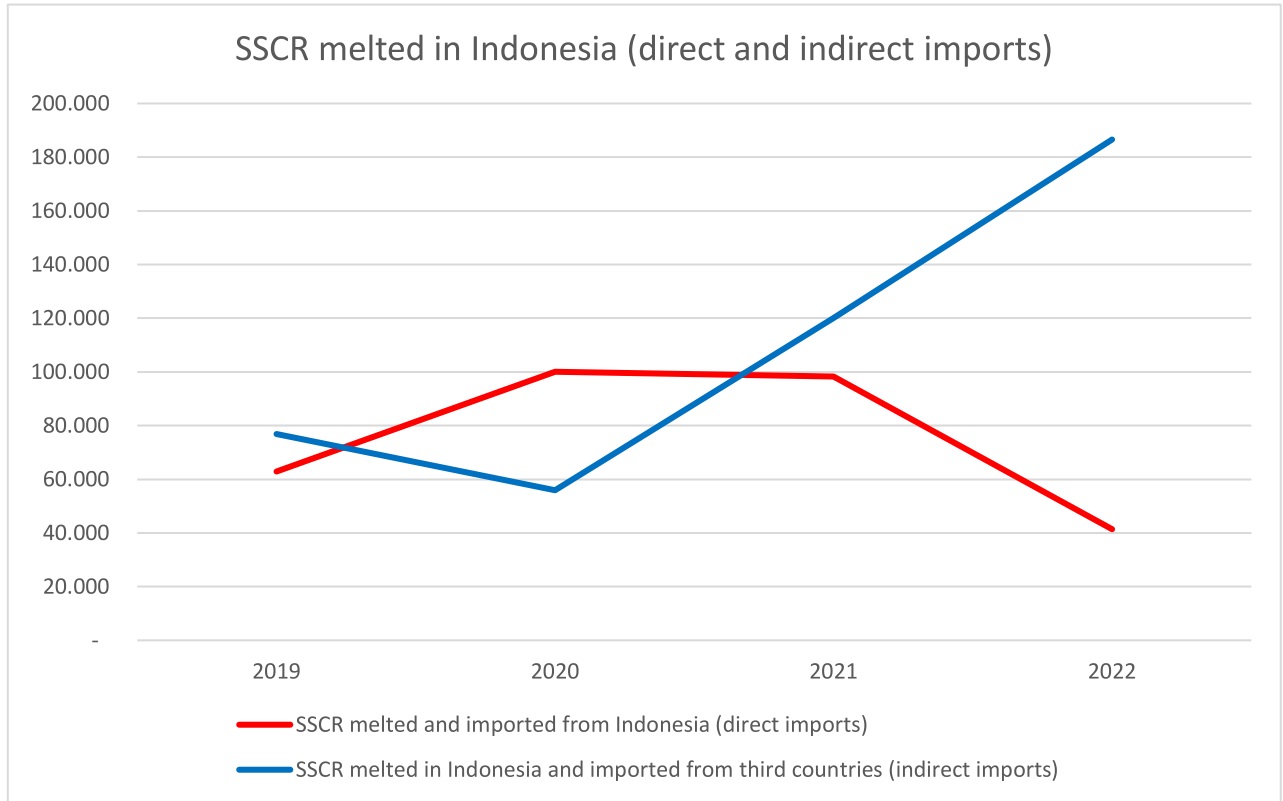
Indirect imports of Indonesian melted SSCR to the EU via third countries - Estimate				
In tonnes	2019	2020	2021	2022
Austenitic SSCR melted and imported from Indonesia	62.974	100.055	98.329	41.400
Austenitic SSCR melted in Indonesia and imported from Taiwan (indirect imports)	51.927	26.764	74.884	96.454
Austenitic SSCR melted in Indonesia and imported from Turkey (indirect imports)	3.667	8.842	18.199	39.142
Austenitic SSCR melted in Indonesia and imported from Vietnam (indirect imports)	21.305	20.310	26.976	50.983
Imports of SSCR melted in Indonesia (direct and indirect imports)	139.872	155.970	218.388	227.978
SSCR melted and imported from Indonesia (direct imports)	62.974	100.055	98.329	41.400
SSCR melted in Indonesia and imported from third countries (indirect imports)	76.898	55.915	120.059	186.578
Other SSCR imported from third countries	512.026	372.316	400.096	720.405
SSCR imports of austenitic (total)	651.898	528.286	618.484	948.383
Total EU Imports of SSCR (Eurostats)	2019	2020	2021	2022
all grades				
Total EU imports	928.993	776.245	893.946	1.300.417
Taiwan	185.614	125.070	218.792	251.418
Turkey	87.967	73.833	105.600	125.057
Vietnam	36.855	35.338	51.559	86.720
Targeteted countries	310.436	234.241	375.951	463.195
Indonesia	72.768	106.488	107.364	51.379



Indirect imports of Indonesian melted SSCR to the EU via third countries - Maximum 2022

41.400
141.452
89.678
75.044

347.574
41.400
306.174
642.209
948.383



In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Taiwan	51.927	26.764	74.884	96.454

In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Turkey	3.667	8.842	18.199	39.142

In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
Vietnam	21.305	20.310	26.976	50.983

In tonnes	2019	2020	2021	2022
Indonesia (total SSCR)	72.768	106.488	107.364	51.379
3 countries	76.898	55.915	120.059	186.578

In tonnes	2019	2020	2021	2022
Imports from Indonesia in the EU	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic SSCR	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports in the EU of SSCR from the targeted countries	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which Indirect imports in the EU	76.898	55.915	120.059	186.578
Index	100	73	156	243
Imports of SSCR from Taiwan	185.614	125.070	218.792	251.418
Index	100	67	118	135
Of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186
Imports of SSCR from Turkey	87.967	73.833	105.600	125.057
Index	100	84	120	142
Of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1.067
Imports of SSCR from Vietnam	36.855	35.338	51.559	86.720
Index	100	96	140	235
Of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

3 countries

<i>In tonnes and %</i>	2019	2020	2021	2022
Inputs sourced from Indonesia	761.512	836.642	1.276.119	1.205.724
Inputs from other sources	Confidential business information			
Total imports of austenitics in the EU	197.344	131.297	236.022	306.320
Indirect imports in the EU (with 3 month delay)	76.898	55.915	120.059	186.578
Total imports in the EU of SSCR	310.436	234.241	375.951	463.195

Taiwan

<i>In tonnes and %</i>	2019	2020	2021	2022
Inputs sourced from Indonesia	548.647	631.372	960.353	747.941
Inputs from other sources	Confidential business information			
Total imports of austenitics in the EU	100.617	48.490	116.306	141.452
Indirect imports in the EU (with 3 month delay)	51.927	26.764	74.884	96.454
Total imports in the EU of SSCR	185.614	125.070	218.792	251.418

Turkey

<i>In tonnes and %</i>	2019	2020	2021	2022
Inputs sourced from Indonesia (SSHR only)	15.500	26.402	73.367	100.795
Inputs from other sources	145.105	142.024	148.848	144.861
Total imports of austenitics in the EU	61.702	50.012	75.378	89.824
Indirect imports in the EU (with 3 month delay)	3.667	8.842	18.199	39.142
Total imports in the EU of SSCR	87.967	73.833	105.600	125.057

Vietnam

<i>In tonnes and %</i>	2019	2020	2021	2022
Inputs sourced from Indonesia (SSHR only)	197.366	178.868	242.399	356.987
Total Austenitic inputs from other sources	116.445	122.035	143.830	140.204
Total imports of austenitics in the EU	35.025	32.795	44.338	75.044
Indirect imports in the EU (with 3 month delay)	21.305	20.310	26.976	50.983
Total imports in the EU of SSCR	36.855	35.338	51.559	86.720

In tonnes and %	2019	2020	2021	2022
Inputs from Indonesia	761.512	836.642	1.276.119	1.205.724
<i>Index</i>	<i>100</i>	<i>110</i>	<i>168</i>	<i>158</i>
Imports of SSCR in the EU	310.436	234.241	375.951	463.195
<i>Index</i>	<i>100</i>	<i>75</i>	<i>121</i>	<i>149</i>
Of which Indirect imports in the EU	76.898	55.915	120.059	186.578
<i>Index</i>	<i>100</i>	<i>73</i>	<i>156</i>	<i>243</i>

In tonnes	2019	2020	2021	2022
Inputs from Indonesia	548.647	631.372	960.353	747.941
Index	<i>100</i>	<i>115</i>	<i>175</i>	<i>136</i>
Imports of SSCR in the EU	185.614	125.070	218.792	251.418
Index	<i>100</i>	<i>67</i>	<i>118</i>	<i>135</i>
Of which Indirect imports in the EU	51.927	26.764	74.884	96.454
Index	<i>100</i>	<i>52</i>	<i>144</i>	<i>186</i>

In tonnes	2019	2020	2021	2022
Inputs from Indonesia	15.500	26.402	73.367	100.795
<i>Index</i>	<i>100</i>	<i>170</i>	<i>473</i>	<i>650</i>
Imports of SSCR in the EU	87.967	73.833	105.600	125.057
<i>Index</i>	<i>100</i>	<i>84</i>	<i>120</i>	<i>142</i>
Of which Indirect imports in the EU	3.667	8.842	18.199	39.142
<i>Index</i>	<i>100</i>	<i>241</i>	<i>496</i>	<i>1.067</i>

In tonnes	2019	2020	2021	2022
Inputs from Indonesia	197.366	178.868	242.399	356.987
<i>Index</i>	<i>100</i>	<i>91</i>	<i>123</i>	<i>181</i>
Imports of SSCR in the EU	36.855	35.338	51.559	86.720
<i>Index</i>	<i>100</i>	<i>96</i>	<i>140</i>	<i>235</i>
Of which Indirect imports in the EU	21.305	20.310	26.976	50.983
<i>Index</i>	<i>100</i>	<i>95</i>	<i>127</i>	<i>239</i>

Imports from Indonesia in the targeted countries aggregated from data provider available upon subscription, based on official custom database
Information on melting of slabs in relevant countries available from company specific evidence and internal intelligence

Exports from Indonesia (all de	2017	2018	2019	2020	2021	2022
Slabs	302.837	207.859	243.809	153.602	484.906	723.830
SSHR Wide Strips	324.109	1.221.896	1.608.666	1.171.342	2.028.868	1.608.445
Slabs + SSHR Wide Strips	626.946	1.429.754	1.852.475	1.324.944	2.513.774	2.332.275

Trade By CN8 Codes
Imports Comext
Indonesia
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	72.768	106.484	107.360	51.379
72193100	1	5	451	-
72193210	4.391	9.661	8.058	4.083
72193290	37	40	3	-
72193310	33.316	53.569	58.115	24.011
72193390	799	916	1.816	2.370
72193410	23.736	35.493	31.160	13.211
72193490	7.966	3.832	5.374	5.761
72193510	986	822	400	90
72193590	684	1.205	333	987
72199020	-	-	-	-
72199080	75	126	24	2
72202021	16	161	87	-
72202029	-	3	487	416
72202041	39	170	26	3
72202049	308	433	1.018	445
72202081	407	45	-	-
72202089	-	-	-	-
72209020	-	-	-	-
72209080	7	3	8	-

Trade By CN8 Codes
Imports Comext
Taiwan
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	185.614	125.070	218.792	251.292
72193100	1.038	614	581	488
72193210	10.902	4.796	15.482	23.470
72193290	2.591	2.220	2.832	3.789
72193310	32.563	13.701	48.075	61.262
72193390	11.841	8.555	16.916	18.877
72193410	33.876	16.338	37.065	42.724
72193490	47.979	46.799	64.182	69.949
72193510	8.965	4.355	7.898	6.180
72193590	18.579	16.888	15.000	15.614
72199020	-	-	-	-
72199080	12.579	8.043	6.635	6.548
72202021	-	30	52	68
72202029	-	-	4	-
72202041	580	387	404	388
72202049	3.976	2.117	3.526	1.741
72202081	108	225	110	183
72202089	31	1	26	8
72209020	2	-	1	3
72209080	4	1	3	-

Trade By CN8 Codes
Imports Comext
Vietnam
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	36.855	35.338	51.559	87.609
72193100	-	-	-	-
72193210	3.242	3.544	3.341	6.356
72193290	316	279	143	582
72193310	15.539	12.642	13.772	29.384
72193390	556	547	1.127	2.450
72193410	13.776	13.887	22.921	34.268
72193490	730	1.497	5.276	8.168
72193510	1.628	1.740	3.412	4.557
72193590	209	220	636	393
72199020	-	-	-	-
72199080	3	205	249	376
72202021	-	-	-	-
72202029	-	-	-	-
72202041	382	451	364	229
72202049	-	-	21	83
72202081	454	315	279	763
72202089	19	-	18	-
72209020	-	-	-	-
72209080	1	11	-	-

Trade By CN8 Codes
Imports Comext
Turkey
Eu 27

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	87.967	73.833	105.600	125.057
72193100	832	575	1.003	813
72193210	4.819	4.980	4.591	6.341
72193290	148	231	199	335
72193310	23.494	21.980	26.305	34.323
72193390	4.464	4.452	4.529	5.810
72193410	25.986	15.228	32.978	39.862
72193490	11.873	9.598	10.563	13.755
72193510	5.246	5.322	6.752	5.250
72193590	3.410	2.380	4.870	4.204
72199020	15	1	-	1
72199080	353	510	1.272	1.516
72202021	55	175	95	50
72202029	36	53	211	3
72202041	644	842	853	773
72202049	5.556	5.812	8.302	10.251
72202081	163	77	236	173
72202089	778	1.295	1.548	875
72209020	-	-	-	-
72209080	95	322	1.293	722

Trade By CN8 Codes
Imports Comext
Indonesia
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.917	1.873	1.956	2.621
72193100	2.500	2.034	2.518	-
72193210	1.939	1.742	1.875	2.647
72193290	1.351	1.712	1.790	-
72193310	1.933	1.901	1.927	2.680
72193390	1.475	1.628	1.559	2.401
72193410	2.009	1.895	2.086	2.587
72193490	1.463	1.560	1.707	2.511
72193510	2.113	2.118	2.259	3.139
72193590	1.425	1.889	1.996	2.618
72199020	-	-	-	-
72199080	2.207	2.134	1.919	2.375
72202021	2.244	2.004	2.221	-
72202029	-	1.893	1.626	2.482
72202041	2.334	2.038	2.647	3.053
72202049	1.607	1.714	1.977	2.886
72202081	5.169	4.658	-	-
72202089	-	-	-	-
72209020	-	-	-	-
72209080	4.013	3.457	5.334	-

Trade By CN8 Codes
Imports Comext
Taiwan
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.684	1.495	1.897	2.950
72193100	1.884	2.221	2.247	2.882
72193210	1.956	1.835	2.245	3.472
72193290	1.147	1.015	1.518	2.561
72193310	1.937	1.831	2.244	3.404
72193390	1.251	1.134	1.542	2.388
72193410	2.027	2.009	2.357	3.537
72193490	1.349	1.222	1.433	2.230
72193510	2.189	2.059	2.479	3.834
72193590	1.293	1.224	1.359	2.180
72199020	-	-	-	-
72199080	1.935	1.984	2.230	3.588
72202021	-	1.274	1.934	3.946
72202029	-	-	2.765	-
72202041	2.285	1.747	2.321	3.387
72202049	1.315	1.279	1.447	2.559
72202081	2.828	3.399	3.320	3.430
72202089	1.502	1.740	2.676	4.980
72209020	7.920	-	18.280	4.087
72209080	12.035	16.230	11.680	-

Trade By CN8 Codes
Imports Comext
Vietnam
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	2.061	1.951	2.280	3.701
72193100	-	-	-	-
72193210	2.031	1.877	2.232	3.791
72193290	1.165	1.266	1.188	2.158
72193310	1.994	1.871	2.341	3.741
72193390	1.369	1.415	1.366	2.561
72193410	2.126	2.054	2.375	3.897
72193490	1.412	1.412	1.627	2.600
72193510	2.413	2.414	2.760	4.401
72193590	1.293	1.247	1.543	2.614
72199020	-	-	-	-
72199080	2.183	1.757	2.671	2.753
72202021	-	-	-	-
72202029	-	-	-	-
72202041	2.505	2.339	2.625	4.058
72202049	-	-	1.673	2.562
72202081	3.710	3.085	3.668	6.088
72202089	4.015	-	3.861	-
72209020	-	-	-	-
72209080	6.790	1.751	-	-

Trade By CN8 Codes
Imports Comext
Turkey
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless Cr	1.891	1.818	2.359	3.374
72193100	3.154	2.965	3.570	4.338
72193210	2.046	1.966	2.640	3.918
72193290	1.277	1.159	1.712	2.539
72193310	1.994	1.911	2.595	3.775
72193390	1.347	1.311	1.858	2.299
72193410	2.093	2.043	2.622	3.712
72193490	1.390	1.366	1.795	2.417
72193510	2.285	2.322	2.462	4.022
72193590	1.576	1.465	1.703	2.331
72199020	3.061	2.330	-	8.780
72199080	2.406	2.720	2.857	3.759
72202021	2.686	2.313	3.164	4.003
72202029	2.185	1.376	2.104	4.620
72202041	2.082	2.246	3.138	4.295
72202049	1.476	1.425	1.602	2.297
72202081	2.854	2.711	3.550	5.278
72202089	1.485	1.346	1.381	2.378
72209020	-	-	-	-
72209080	2.553	1.806	2.146	2.589

	Company	Cold-rolling capacity in '000 tonnes
Taiwan	Walsin Lihwa	350-500
	YUSCO	600-800
	Tung Mung	150-250
	Yuan Long	100-170
	Chia Far	50-100
	Chien Shing	70-130
	Tang Eng	200-275
Turkey	POSCO	275-425
	Trinox	Minimum 75
Vietnam	Yongjin	250
	POSCO	200-400
	Hoa Binh	150-220
Indonesia	PT Jindal Indonesia	150-200
	Indonesia Ruipu Stainless steel	1000-1500

Source: <https://www.linkedin.com/company/trinox-stainless-steel/about/>

Overview

TRINOX METAL, serves as an stainless steel flat producer since 2014 in Çorlu production facilities which Turkey's first cold rolling manufacturer of stainless steel DAIYANG METAL had began operations in 2007.

TRINOX's production facilities are located in an area of 80,000 square meters in Avrupa Serbest Bölgesi (ASB) region, Northern Tekirdag. The company has 75,000 tons of production capacity per year and can produce 60,000 tons of 2B surface and 15,000 tons of BA surface.

As an affiliate company of a world-famous stainless-steel processing business group, Trinox metal is engaged in entire value chain from production to processing and marketing and strives for customer satisfaction with a deeper understanding of the fast-changing business environments that today's customers are facing.

With a humble vision to become the most beloved and reliable supplier, the genuine Turkish corporation actively fulfills principles of excellence and devotion and exerts a great deal of effort to get growing while achieving customer advocacy.

Website

<http://www.trinoxmetal.com>

Confidential information not susceptible of summarisation

Statement in the complaint:
"The plant started operation in 2022 (...)"

Source:
Kallanish, Yongjin Vietnam sees first coil production, 22 March 2022, <https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/>.

Home > Steel News > Market Reports

22MAR

11:50

Yongjin Vietnam sees first coil production

799 Views

na-listed Zhejiang Yongjin Metal Technology Company announced on Monday that it has officially started duction at its Vietnamese stainless steel plant. Kallanish notes: Yongjin Metal Technology (Vietnam) Company established in April 2019. It started the construction of a 250,000 tonnes/year capacity precision cold rolled nless steel strip project in Tinh Tien Giang in 2020. The main equipment includes two 1,450mm cold rolling lines 1 one 1,450...

This article contains premium data.

It is only available for active subscribers and clients currently on trial. To continue reading, see the options below.

LATEST PRICES

KOBE 58% Fe / Qingdao CFR USD/t /en

Rebar / Singapore CFR USD/t /en/price

Welded Pipe (S235) / Turkey FOB USD/t

KOBE 65% Fe / Qingdao CFR USD/t /en

HMS 1&2 80 20 / Turkey CFR USD/t /en/u

SIX 65% Fe Futures - one month forward

Wire Rod / N Europe / Ex-Works EUR/t /

Heavy Scrap / China / CNV/t /en/price

MORE FERROUS PRICES /EN/PI

← → ↺

https://www.tsigroup.com.cn/en/the-cornerstone-laying-ceremony-of-guangdong-yongjin-project-was-successfully-held/

青山控股

TSINGSHAN

ABOUT USGLOBAL BUSINESSSOCIAL RESPONSIBILITYNEWSCONTACT US

Q

LOGIN

中文

Home / News / News

NEWS

The Cornerstone Laying Ceremony of Guangdong Yongjin Project Was Successfully Held

Time: 2018-06-25Visits: 2,202

On the morning of June 22, the 'Cornerstone Laying Ceremony' of the 680,000-ton Precision Stainless Steel Deep Processing Project of Guangdong Yongjin Metal Technology Co., LTD., was successfully held at the port industrial park of Yangjiang High-tech Development Zone. More than 300 people attended the ceremony, including CHEN Xiaoshan, the secretary of Yangjiang Municipal Party Committee, LIN Ruixi, the secretary-general of Yangjiang Municipal Party Committee, LIN Jinqiu, the deputy director of the standing committee of the municipal people's congress and secretary of the party committee of Yangjiang High-tech Development Zone, ZHANG Lei, the deputy mayor of Yangjiang City, and the other municipal and district leaders, as well as XIANG Guangda, the chairman of TSINGSHAN's board of directors, HUANG Ping, the chairman of GDFTG, LIN Xiamiao, the chairman of board of supervisors of provincial enterprises accredited by provincial SASAC, WANG Lei, the chairman of GQMT, HE Congzhen, the general manager of GQMT and guests from the other iron and steel enterprises.

← → ↺

https://www.tsigroup.com.cn/en/the-cornerstone-laying-ceremony-of-guangdong-yongjin-project-was-successfully-held/

青山控股

TSINGSHAN

ABOUT USGLOBAL BUSINESSSOCIAL RESPONSIBILITYNEWSCONTACT US

Q

LOGIN

中文

Project of Guangdong Yongjin Metal Technology Co., LTD., was successfully held at the port industrial park of Yangjiang High-tech Development Zone. More than 300 people attended the ceremony, including CHEN Xiaoshan, the secretary of Yangjiang Municipal Party Committee, LIN Ruixi, the secretary-general of Yangjiang Municipal Party Committee, LIN Jinqiu, the deputy director of the standing committee of the municipal people's congress and secretary of the party committee of Yangjiang High-tech Development Zone, ZHANG Lei, the deputy mayor of Yangjiang City, and the other municipal and district leaders, as well as XIANG Guangda, the chairman of TSINGSHAN's board of directors, HUANG Ping, the chairman of GDFTG, LIN Xiamiao, the chairman of board of supervisors of provincial enterprises accredited by provincial SASAC, WANG Lei, the chairman of GQMT, HE Congzhen, the general manager of GQMT and guests from the other iron and steel enterprises.

At the ceremony, DONG Zhaoyong, the chairman of Guangdong Yongjin, introduced the overall situation of the project. And the municipal and district leaders have delivered speeches successively. WANG Lei delivered a speech on behalf of GQMT. He pointed out that the construction of Guangdong Yongjin 680,000-ton precision stainless steel deep processing project was of great significance for the development of the stainless-steel industry in Yangjiang. GQMT firmly believed that the cooperation and alliance with Yongjin would eventually beneficial to the realization of the dream of high-end stainless steel cluster production and make greater contributions to the development of China's stainless steel industry.

At the end of the ceremony, the leaders and guest representatives jointly laid the stone on the foundation site symbolizing the completion of the Foundation Stone Laying Ceremony.

5070 sayılı kanun gereğince güvenli elektronik imza ile imzalanmıştır. ID:E37ABD78E4274DE37ABD. Bu kod ile <https://evrak.osb.org.tr/> adresinden doğrulayabilirsiniz.

Internal intelligence of the applicant on the relationship between the Tsingshan Indonesia and exporters in third countries, information on supply etc... not susceptible of further summarisation

Internal intelligence of the applicant on the relationship between the Tsingshan Indonesia and exporters in third countries, information on supply etc... not

60% threshold assessment

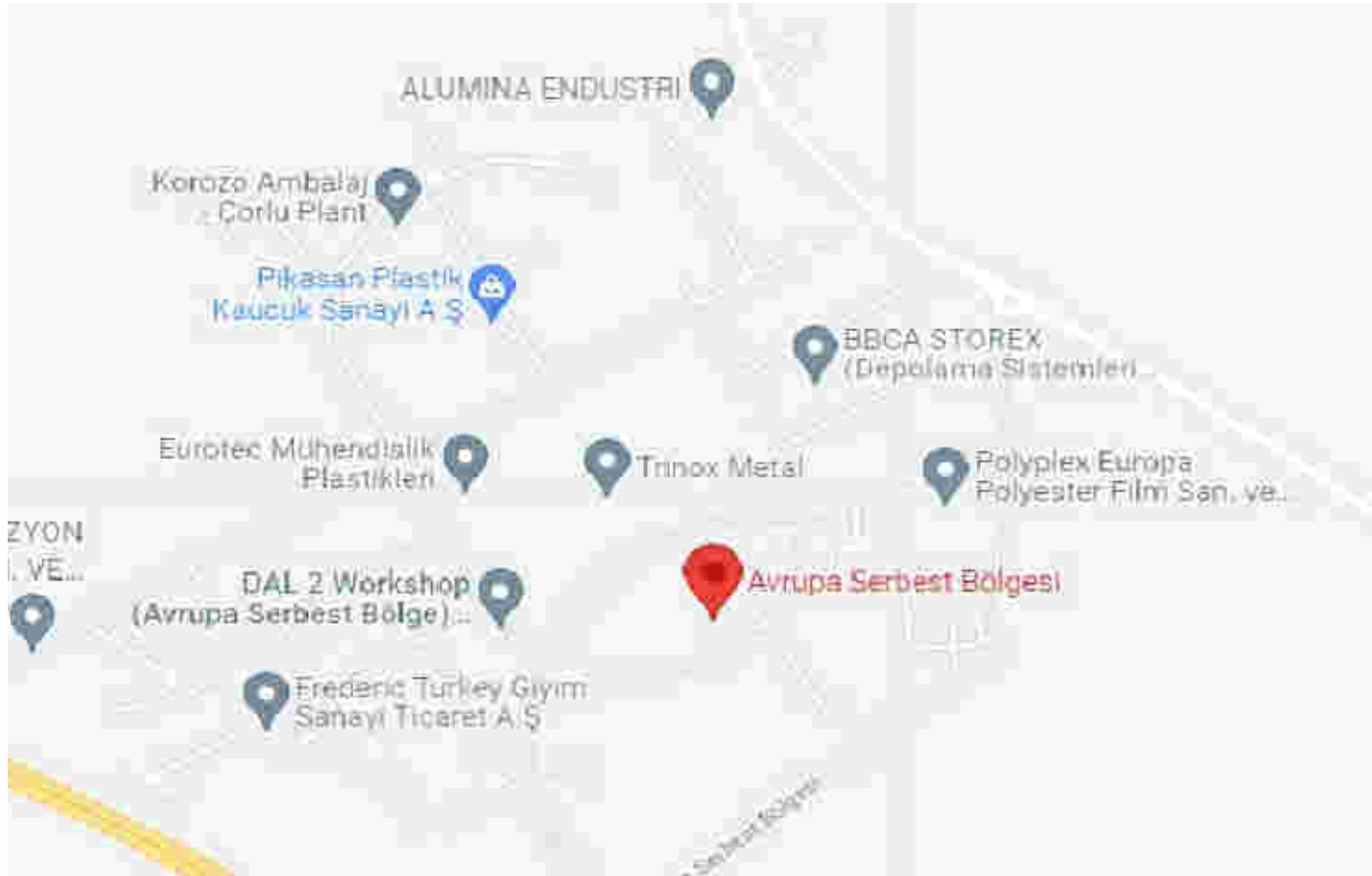
	Value of Indonesian input in total value of inputs	
	Unadjusted reported value	Adjusted fair value (+21,4% to Indonesian inputs value)
Taiwan	62,3%	66,7%
Vietnam	60,4%	64,9%
Turkey- Trinox	>90%	>90%

Summary of confidential information

		2022		
		Value in EUR		
		No adjustment	Adjusted for subsidisation (+21,4% to value)	
Relevant Inputs from Indonesia value		1.600.000.000 - 2.000.000.000	Business confidential information	Indonesian inputs susceptible to be used in re-rolling operation
Relevant Inputs from Indonesia via third countries		Negligible		Indonesian inputs imported via countries with no production of SSHR or from countries where Indonesian inputs are used for the production of SSHR
Inputs from other sources		1.150.000.000 - 1.450.000.000		including domestic melting and other imports
Inputs not susceptible to be used in SSCR to the EU		230.000.000 - 280.000.000		Inputs not susceptible to be used in re-rolling operation, originating from other sources
Share of Indonesian inputs		62,3%	66,7%	

OVERVIEW	
Company name	Trinox Metal Industry and Trade AS
Establishment	2007
Address	European Free Zone Osman Sahin Bulvari No.7 Ergene, Tekirdag – TURKEY
Products	Cold Rolled Stainless Steel Coil
Classes	300 Series – 304(L), 309, 316(L), etc. 400 Series - 420, 430, 439, 441, etc.
Surfaces	BA, 2B, Scotch Bright, No.4, Linen
Dimensions	(2B) 0.30~2.00mm X 1300mm (BA) 0.15~1.20mm X 800mm

GENEL BAKIS	
Sirket Adi	Trinox Metal Sanayi ve Ticaret A.S.
Kurulus	2007
Adres	Avrupa Serbest Bölgesi Osman Sahin Bulvari No.7 Ergene, Tekirdag – TÜRKİYE
Ürünler	Soguk haddelenmis Paslanmaz Çelik Rulo
Sınıflar	300 Serisi – 304(L), 309, 316(L), vb. 400 Serisi - 420, 430, 439, 441, vb.
Yüzeyler	BA, 2B, Scotch Bright, No.4, Linen
Ölçüler	(2B) 0.30~2.00mm X 1300mm (BA) 0.15~1.20mm X 800mm



- 1/ Trinox is established on the European Free Zone Osman Sahin Bulvari, in Turkish "Avrupa Serbest Bölgesi"
- 2/ It is the sole producer of SSCR established on that zone
- 3/ [Confidential information summarised as follows : Trinox purchases SSHR]
- 4/ Imports and export by Trinox can be tracked based on the custom clearing point

2022		
	Value in EUR	
	No adjustment	Adjusted for subsidisation (+21,4% to value)
Indonesian inputs	150.000.000 - 200.000.000	Business confidential information
Other imported inputs	5.975.000 - 6.500.000	
All inputs	155.975.000 - 206.500.000	
Share of Indonesian inputs	>90%	>90%

Summary of confidential information

		2022		
		Value in EUR		
		No adjustment	Adjusted for subsidisation (+21,4% to value)	
Relevant Inputs from Indonesia value		775.000.000 - 875.000.000	Business confidential information	<i>Indonesian inputs susceptible to be used in re-rolling operation</i>
Relevant Inputs from Indonesia via third countries		35.000.000 - 45.000.000		<i>Indonesian inputs imported via countries with no production of SSHR or from countries were a Indonesian inputs are used for the production of SSHR</i>
Relevant Inputs from other sources		500.000.000 - 600.000.000		<i>Inputs susceptible to the used in re-rolling operation originating from other sources</i>
Share of Indonesian inputs		60,4%	64,9%	

Information for 2023 show an even higher estimated level of Indonesian Inputs in the Vietnamese inputs used for production of SSCR

General methodology

The calculation aim at assessing the share of Indonesian inputs in the production of SSCR in the countries through which indirect imports from the countries concerned occur.

The calculation was adapted on a country specific basis for Taiwan and Vietnam depending on the following:

- Specificities of the production process in the country
- Availability and level of details of the custom statistics from the countries

It relies on the fact that slabs or SSHR are the sole "part" to be assessed in the context of an assembly operation test.

In general, the approach is the following:

1/ Valuation of the inputs from Indonesia based on custom statistics

2/ Valuation of the inputs from third countries based on custom statistics (imports). When applicable, valuation of the inputs produced in third countries based on reasonable inferences.

3/ When inputs are imported from a country in which there is no production of the inputs, the actual origin of the inputs is defined based on available information and split between Indonesian and non-Indonesian origin.

4/ Valuation of the inputs not used for the production of exports to the EU (overtly expensive imports, imports linked to grade not exported to the EU, value of exports not produced from Indonesian inputs...)

Calculation of the share of the value of the share of Indonesian inputs on the total share of inputs potentially used for the production of SSCR in the country for exports to the EU as follows:

$$\text{Indonesian input value} / (\text{Indonesian input value} + \text{other input value} - \text{excluded input value}) = X\%$$

A second calculation is then made accounting for a corrected value of the Indonesian inputs, accounting for the subsidisation taking place in Indonesia, as follows:

$$(\text{Indonesian input value} * (1 + \text{CVD duty rate})) / ((\text{Indonesian input value} * (1 + \text{CVD duty rate})) + \text{other input value} - \text{excluded input value}) = X\%$$

The above calculation are made with regards to SSCR as a whole but is also available for austenitic SSCR only.

With regard to Turkey, the very same assessment is made on a company specific level based on the custom clearance point used by the company.

Summary

Product	Product stage	Total cost	Processing cost to SSCR	Added value share to produce SSCR from input
<i>slab 304</i>	slabs	2000-3800 EUR/t	Business confidential information	[10-14]%
<i>304 black band</i>	black SSHR	2000-3800 EUR/t		[4-8]%
<i>304 white band 3mm</i>	white SSHR	2250-4050 EUR/t		[2-6]%
<i>304 2B 2mm</i>	SSCR	2250-4050 EUR/t		

* Cost of production of 1 tonne of the products for (i) actual data for EU producer Company A (EU) in 2022) and (ii) estimated cost of Asian producer Company B (Asia) in 2022

The costs of production include:

- Charge cost: inputs used for the production as well as their average prices for 2022
- Energy
- Labor
- Other consumable
- yield effects

In tonnes	2019	2020	2021	2022
Total imports	929.004	776.148	893.946	1.300.417
Index	100	84	96	140
Imports from targeted countries	310.440	234.156	375.936	463.195
<i>Index</i>	100	75	121	149
Of which Indirect imports	76.898	55.915	120.059	186.578
<i>Index</i>	100	73	156	243
Imports from other countries (excluding China)	608.352	528.000	483.486	528.822
<i>Index</i>	100	87	79	87
Imports from China	10.212	13.992	34.524	308.400
<i>Index</i>	100	137	338	3.020

cf. Annex volume of indirect imports

All SSCR	Indirect imports only			Total SSCR imports			Indirect imports share of total imports of SSCR	Austenitic SSCR	Indirect imports only			Total imports of austenitic SSCR			Indirect imports share of total imports of austenitic SSCR
	2022			2022					2022			2022			
	Taiwan	96.454	2,4%	Taiwan	251.418	6,1%	38,4%		Taiwan	96.454	3,3%	Taiwan	141.452	4,8%	68,2%
	Turkey	39.142	1,0%	Turkey	125.057	3,1%	31,3%		Turkey	39.142	1,3%	Turkey	89.678	3,1%	43,6%
	Vietnam	50.983	1,2%	Vietnam	86.720	2,1%	58,8%		Vietnam	50.983	1,7%	Vietnam	75.044	2,6%	67,9%
	Total	186.578	4,6%	Total	463.195	11,3%	40,3%		Total	186.578	6,4%		306.174	10,5%	60,9%
	SSCR EU Market (total)	4.088.315			4.088.315				Austenitic SSCR EU Market	2.924.511			2.924.511		

Indirect imports of Indonesian melted SSCR to the EU via third countries - Estimated

Indirect imports of Indonesian melted SSCR to the EU via third countries - Maximum

EU consumption and market share (All SSCR) (in tonnes and %)	2019	2020	2021	2022
SSCR EU Market	3.628.512	3.325.224	3.853.431	4.088.315
EU mills deliveries	2.699.508	2.549.076	2.959.485	2.787.898
Imports	929.004	776.148	893.946	1.300.417
Of which SSCR imported from targeted countries	310.440	234.156	375.936	463.195
Of which indirect austenitic SSCR melted in Indonesia	76.898	55.915	120.059	186.578
market share EU mills	74,4%	76,7%	76,8%	68,2%
market share imports	25,6%	23,3%	23,2%	31,8%
Of which SSCR from targeted countries	8,6%	7,0%	9,8%	11,3%
Of which indirect SSCR melted in Indonesia	2,1%	1,7%	3,1%	4,6%

Based on the austenitic sales of EU mills and imports SSCR EU market for austenitic (estimate)	2.699.614	2.478.453	2.841.849	2.924.511

EU consumption and market share (aust. SSCR) (in tonnes and %)	2019	2020	2021	2022
market share EU mills austenitic	75,9%	78,7%	78,2%	67,6%
market share imports austenitic	24,1%	21,3%	21,8%	32,4%
Of which austenitic SSCR imported from targeted countries	7,3%	5,3%	8,3%	10,5%
Of which indirect SSCR melted in Indonesia	2,8%	2,3%	4,2%	6,4%

	2019	2020	2021	2022
Total Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Imports of austenitic SSCR from Indonesia	62.974	100.055	98.329	41.400
Market share of imports of SSCR from Indonesia	2,0%	3,2%	2,8%	1,3%
Market share of imports of austenitic SSCR from Indonesia for austenitic sales	2,3%	4,0%	3,5%	1,4%

	2022
SSCR EU Market	4.088.315
EU mills deliveries	2.787.898
Imports	1.300.417
Austenitic SSCR from third countries	306.174
market share EU mills	
market share imports	
Of which m.s. of indirect aust melted in Indonesia	7,5%

market share EU mills austenitic	68%
market share imports austenitic	32%
Of which m.s. of indirect aust melted in Indonesia	10,5%

Nota: figures in the table below are monthly averages

to/month	EU27 Market supply	Deliveries by EU mills	Third Countries out EU27	of which:	Taiwan	Turkey	Vietnam	Indonesia
Period				China				
average 2022	340.699	232.325	108.368	25.700	20.952	10.421	7.227	4.282
average 2021	321.119	246.624	74.496	2.877	18.234	8.797	4.297	8.947
average 2020	277.102	212.423	64.679	1.166	10.415	6.153	2.945	8.874
average 2019	302.376	224.959	77.417	851	15.468	7.331	3.071	6.064

Sources: Imports: Eurostat/Comext
EU mills deliveries: EUROFER

	2019	2020	2021	2022	
EU Market	3.628.512	3.325.224	3.853.431	4.088.389	
Imports targeted countries	310.440	234.156	375.936	463.195	
of which indirect imports	76.898	55.915	120.059	186.578	<i>Cf annex volume of indirect imports</i>
Total imports	929.004	776.148	893.946	1.300.417	
of which austenitic	651.898	528.286	618.484	948.383	<i>Cf annex volume of indirect imports</i>
Imports of SSCR from Taiwan	185.614	125.070	218.792	251.418	<i>Cf annex volume of indirect imports</i>
Of which indirect imports	51.927	26.764	74.884	96.454	<i>Cf annex volume of indirect imports</i>
Imports of SSCR from Turkey	87.967	73.833	105.600	125.057	<i>Cf annex volume of indirect imports</i>
Of which indirect imports	3.667	8.842	18.199	39.142	<i>Cf annex volume of indirect imports</i>
Imports of SSCR from Vietnam	36.855	35.338	51.559	86.720	<i>Cf annex volume of indirect imports</i>
Of which indirect imports	21.305	20.310	26.976	50.983	<i>Cf annex volume of indirect imports</i>
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379	<i>Cf annex volume of indirect imports</i>
of wich austenitic SSCR	62.974	100.055	98.329	41.400	<i>Cf annex volume of indirect imports</i>

Nickel pricehttps://www.westmetall.com/en/markdaten.php?action=averages&field=LME_Ni_cash*in USD/ tonne*

2022	
Month	LME Nickel Cash-Settlement
December	28.854
November	25.257
October	21.936
September	22.682
August	21.998
July	21.483
June	25.838
May	27.950
April	33.298
March	31.861
February	24.178
January	22.326

Average 25.638 USD/ Tonnes

increase by **84,4%**

2019	
Month	LME Nickel Cash-Settlement
December	13.801
November	15.200
October	17.113
September	17.673
August	15.682
July	13.462
June	11.970
May	11.998
April	12.819
March	13.061
February	12.650
January	11.455

13.907 USD/ Tonnes

EU COP for SSCR

2022
3400-3700

 EUR/ Tonnesincrease by **54,8%**

2019
2100-2400

 EUR/ Tonnes***Average COGS for the Applicant***

2022	All SSCR	indirect imports only
Undercutting by import from Taiwan	13,7%	18,5%
Undercutting by import from Turkey	14,5%	19,7%
Undercutting by import from Vietnam	11,2%	16,8%

2022	All SSCR	indirect imports only
Undercutting by imports from third countries	13,5%	18,3%

Taiwan

EU Imports from Taiwan	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	81.127	72.978	49.924	47.389	251.418
SSCR (<2.5% Ni)	31.512	31.452	26.139	20.863	109.966
SSCR (>2.5% Ni and 3100)	47.280	39.174	22.864	25.583	134.901
SSCR (others)	2.335	2.352	921	943	6.551
SSCR (>2.5% Ni, 3100 and others)	49.615	41.526	23.785	26.526	141.452
EU Imports from Taiwan	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	2.626	2.965	3.092	3.335	2951
SSCR (<2.5% Ni)	2.076	2.263	2.401	2.394	2267
SSCR (>2.5% Ni and 3100)	2.964	3.491	3.847	4.075	3477
SSCR (others)	3.217	3.602	3.989	4.080	3588
SSCR (>2.5% Ni, 3100 and others)	2.976	3.497	3.852	4.075	3482

Share	Duty	Landed price 2022	Comparable EU price	UC
54,3%	6,80%	3.151	3.652	13,7%

Turkey

EU Imports from Turkey	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	27.969	36.819	36.468	23.801	125.057
SSCR (<2.5% Ni)	10.171	10.930	7.732	6.400	35233
SSCR (>2.5% Ni and 3100)	17.009	25.459	28.363	16.760	87.591
SSCR (others)	789	430	373	641	2.233
SSCR (>2.5% Ni, 3100 and others)	17.798	25.889	28.736	17.401	89824
EU Imports from Turkey	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	3.008	3.321	3.578	3.574	3374
SSCR (<2.5% Ni)	2.276	2.354	2.401	2.414	2353
SSCR (>2.5% Ni and 3100)	3.422	3.725	3.911	4.032	3785
SSCR (others)	3.524	3.951	2.717	3.191	3376
SSCR (>2.5% Ni, 3100 and others)	3.426	3.728	3.895	4.001	3774

Share	Duty	Landed price 2022	Comparable EU price	UC
27,0%	0%	3.374	3.945	14,5%

Vietnam

EU Imports from Vietnam	2022				2022
tonnes	Q1	Q2	Q3	Q4	Fy
SSCR (total)	17.864	17.074	24.503	27.279	86.720
SSCR (<2.5% Ni)	3.521	2.745	4.220	1.190	11676
SSCR (>2.5% Ni and 3100)	13.967	14.329	20.283	26.089	74.668
SSCR (others)	376	0	0	0	376
SSCR (>2.5% Ni, 3100 and others)	14.343	14.329	20.283	26.089	75044
EU Imports from Vietnam	2022				2022
euro/tonne	Q1	Q2	Q3	Q4	Fy
SSCR (total)	3.101	3.489	3.751	4.330	3748
SSCR (<2.5% Ni)	2.427	2.661	2.623	2.596	2570
SSCR (>2.5% Ni and 3100)	3.280	3.647	3.986	4.409	3937
SSCR (others)	2.757	0	0	0	2757
SSCR (>2.5% Ni, 3100 and others)	3.266	3.647	3.986	4.409	3931

Share	Duty	Landed price 2022	Comparable EU price	UC
19%	0%	3.748	4.222	11,2%

TOTAL UC
13,5%

Total imports 3 countries463.195

Comparable EU price is defined based on the import mix of the targeted country and the the EU price splits of Applicants for austenitic and ferritic SSCR

Indirect imports

Calculation of the prices of the indirect imports

- 1/ Indirect imports are austenitic
2/ Indirect imports benefit from austenitic inputs from Indonesia that are at a lower price than other austenitic imports
3/ In some countries, possibility to see the difference in price of austenitic inputs (Taiwan and Turkey), for Vietnam no possibility
4/ Definition of country specific or general ratio at SSHR level (to avoid issues of Slabs vs SSHR mix)

		Indonesian SSHR/ Non Indonesian SSHR		
Taiwan		94,22%		
Turkey		91,78%		
Vietnam		85,30%	Estimated based on average prices in Taiwan and Turkey	
		Taiwan	Turkey	Vietnam
Total imports of austenitics in the EU	tonne	141.452	89.824	75.044
Average price of austenitic imports	EUR/ tonne	3.482	3.774	3.931
Indirect imports in the EU	tonne	96.454	39.142	50.983
Share of indirect imports	%	68,19%	43,58%	67,94%
Other imports of austenitic in the EU	tonne	44.998	50.682	24.061
Share of other imports	%	31,81%	56,42%	32,06%
Price indirect imports	EUR/ tonne	3.416	3.593	3.725
Price other austenitic imports	EUR/ tonne	3.625	3.915	4.367
		2022	UC	Applicable duty
	border	duty paid	%	%
Taiwan	3416	3648	18,5%	6,80%
Turkey	3593	3593	19,7%	0%
Vietnam	3725	3725	16,8%	0%

Cf. annex volume of indirect imports

Average price import price 2022 (indirect)	3.657	EUR/ Tonne	Source: average sales price of the Applicant
EU price to unrelated austenitic SSCR in 2022	4.476	EUR/ Tonne	
Undercutting	18,3%		

Austenitic imports

Volume of indirect imports in the EU in tonnes	2022
Taiwan	96.454
Turkey	39.142
Vietnam	50.983

Price of Imports in the EU (Eurostats) in EUR/tonnes	2022
Taiwan	3.482
Turkey	3.774
Vietnam	3.931

Price of imports in the EU with applicable duties in EUR/tonnes	duty	2022 duty paid	UC
Taiwan	6,8%	3.719	16,9%
Turkey	0,0%	3.774	15,7%
Vietnam	0,0%	3.931	12,2%

Average price import price 2022 (indirect)	3.789	EUR/ Tonne	
EU price to unrelated austenitic SSCR in 2022	4.476	EUR/ Tonne	Source: average sales price of Applicant
Undercutting	15,3%		

Source: Applicants internal Intelligence

Austenitic SSCR

<i>in EUR/ tonne</i>	Price information	EUROSTAT CIF +duty	Difference in price
Example of Turkish prices - 2022	3000-3300	3.774	474-774
Example of Taiwan prices - 2022	3000-3300	3.719	419-719
Example of Company A (Turkey) price - Q4 2022	3400-3700	4.001	301-601

Source Annex 9 - UC all imports

OFFICIAL DIARY OF THE UNION

Published on: 02/12/2022 | Edition: 226 | Section: 1 | Page: 54

Body: Ministry of Economy/Chamber of Foreign Trade/Executive Management Committee

GECEX RESOLUTION NO. 421, OF DECEMBER 1, 2022

It applies a definitive countervailing duty, for a period of up to five years, to Brazilian imports of austenitic stainless steel flat-rolled products of AISI 304 standard and similar, including its variations, such as 304L and 304H, cold-rolled, with a thickness equal to or greater than 0.35 mm but less than 4.75 mm, originating in the Republic of Indonesia.

THE EXECUTIVE MANAGEMENT COMMITTEE OF THE CHAMBER OF FOREIGN TRADE, in the use of the attributions conferred by art. 7, item VI, of Decree No. 10,044, of October 4, 2019, and considering the information, reasons and grounds present in Annexes I and II of this Resolution, and the deliberation at its 200th meeting, held on the 23rd of November 2022, resolves:

Art. 1st Close the investigation with the application of a definitive countervailing duty, for a period of up to five years, to Brazilian imports of flat rolled products of austenitic stainless steel of AISI 304 standard and similar, including their variations, such as 304L and 304H, cold rolled, with a thickness equal to or greater than 0.35 mm, but less than 4.75 mm, commonly classified under sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the Mercosur Common Nomenclature - NCM, originating in the Republic of Indonesia, to be collected in the form of an ad valorem rate, fixed as a percentage to be applied on the customs value of the product, on a Cost, Insurance & Freight - CIF basis, determined in accordance with the legislation, in the amount specified below :

Origin	Producer/Exporter	Ad valorem countervailing duty, CIF basis (%)
Indonesia	all companies	18.79

Art. 2nd End the public interest assessment established through Circular Secex nº 40, of June 2, 2021, published in the Federal Official Gazette on June 2, 2021, rectified on June 9, 2021.

Art. 3º Make public the facts that justified the decisions contained in this resolution, as set out in Annexes I and II.

Art. 4 This Resolution enters into force on the date of its publication.

MARCELO PACHECO DOS GUARANYS
Chairman of the Deputy Executive Committee

ANNEX I

1 OF THE INVESTIGATION

1.1 History of anti-dumping investigations

1.1.1 From the original anti-dumping investigation of cold-rolled products not exceeding 3 mm thick (1998-2000)

1. On August 10, 1998, the company Cia. Aços Especiais Itabira - Acesita, petition for the initiation of a dumping investigation in exports to Brazil of cold-rolled flat products, made of stainless steel, with a thickness not exceeding 3 mm, classified under sub-items 7219.33.00, 7219.34.00, 7219.35 .00 and 7220.20.90 of the Mercosur Common Nomenclature - NCM, originating in South Africa, Germany, Italy, Japan and Mexico. Based on data contained in the petition, imports originating in France and Spain were verified in relevant volumes of the product in question. Therefore, such countries were incorporated into the sources investigated for the purpose of starting the investigation.

South Africa	Too much
Spain	Acerinox and others
France	Ugine and others
Japan	Kawasaki, Nippon Yakin, Kogyo, Nisshin Steel, NipponMetal, Nippon Sumitomo, Metal and more
Mexico	Mexinox and more
Source: Interministerial Ordinance No. 34, of 2000.	
Elaboration: SDCOM.	

1.1.1 End-of-period review of the anti-dumping measure for cold-rolled
not exceeding 3 mm (2005-2006)

4. On February 25, 2005, the company Acesita filed an end-of-period report with the aim of extending the anti-dumping duty applied to Brazilian imports of cold-rolled steel products, with a thickness not exceeding 3 mm, originating in South Africa and Mexico.

5. The review was initiated through SECEX Circular nº 31, of May 23, 2005, and Circular nº 32, of May 25, 2005.

6. CAMEX Resolution No. 10, of May 2, 2006, published in the DOU of June 7, 2006, extended the anti-dumping duty applied to Brazilian imports of stainless steel products, cold rolled, of thickness not exceeding 3 mm, excluding refractory standards, AISI 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H and 347 standards, AISI 301L and DIN 18253 flat steel product stainless steel, cold rolled, known commercially as stainless steel 7C27MO2 or UHB716 with a thickness between 0.152 and 0.889 mm. The anti-dumping duty was applied in the form of a specific rate, for two years. Such application period was justified by the economic situation in the sector, whose prices were influenced by Asian demand and by uncertainty in the international market and limited forecasts regarding the evolution of these prices, detailed below.

Anti-dumping duty applied through the CAMEX Resolution No. 10 of 2006		
Country	Producer/Exporter	Antidumping Duty (US\$/t)
South Africa	Columbus	92.49
South Africa	Too much	245.17
Spain	all companies	1,425.76
France	all companies	642.97
Japan	all companies	755.39

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

stated in SECEX Circular n° 35, of July 26, 2012, published in the DOU of July 27,

10. Having verified the existence of dumping in exports of flat rolled type 304 (304, 304L and 304H) and ferritic stainless steel type 430, cold rolled, greater than 0.35 mm, but less than 4.75 mm, originating in Germany, China, So Taipei and Vietnam, and damage to domestic industry resulting from such provisions of art. 42 of Decree No. 1602, of 1995, the investigation was closed, No. 79, of October 3, 2013, published in the DOU of October 4, 2013, with the anti-dumping duty, in the form of specific rate, as follows.

Anti-dumping duty applied through the CAMEX Resolution No. 79 of 2013		
Country	Producer/Exporter	Antidumping Du
Germany	All	952.90
China	Lianzhong Stainless Steel Corporation	853.46
China	Shanxi Taigang Stainless Steel Co., Ltd.	235.59
China	Too much	853.46
South Korea	Posco Pohang Steel Works	267.84
South Korea	Hyundai BNG Steel	267.84
South Korea	Too much	940.47
Finland	Outokumpu Stainless Oy	1,030.20
Finland	Too much	1,076.86
Chinese Taipei	Yieh United Steel Corporation (Yusco)	616.67
Chinese Taipei	Yieh Mau Corp.	616.67
Chinese Taipei	Tang Eng Iron Works Co., Ltd.	616.67
Chinese Taipei	YC Inox Co. Ltd. (YC).	705.61
Chinese Taipei	Chia Far Industrial Factory Co., Ltd.	673.18
Chinese Taipei	Ever Lasting Stainless Steel Indl. Co., Ltd.	673.18
Chinese Taipei	Froch Enterprise Co., Ltd.	673.18
Chinese Taipei	Genn Hann Stainless Steel Enterprise Co., Ltd.	673.18
Chinese Taipei	Lien Kuo Metal Industrial Co., Ltd.	673.18
Chinese Taipei	Lung An Stainless Steel Ind. Co., Ltd.	673.18
Chinese Taipei	Mirage Precision Material Technology Co., Ltd.	673.18
Chinese Taipei	S-More Steel Materials Co., Ltd.	673.18
Chinese Taipei	stanch stainless steel co.,ltd.	673.18
Chinese Taipei	Tung Mung Development Co., Ltd.	673.18
Chinese Taipei	Yes Stainless International Co., Ltd.	673.18

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

steel type 430, cold-rolled, with a thickness equal to or greater than 0.35 mm, hereinafter referred to as cold-rolled cold, commonly classified under sub-items 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, originating in Germany, China, Chinese Taipei and Vietnam, pursuant to the provisions of art. . 106 of Decree hereinafter also referred to as the Brazilian Regulation.

12. The review was initiated through SECEX Circular No. 41, of October 3, 2018.

13. On October 2, 2019, the Special Secretariat for Foreign Trade (SECINT), published Ordinance No. 4,353, of October 1, 2019, in which it extended definitive anti-dumping duty, for a period of up to 5 (five) years, applied to Brazil austenitic stainless steel type 304 (304, 304L and 304H) and ferritic stainless steel with a thickness equal to or greater than 0.35 mm, but less than 4.75 mm, common items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the Nomenclature - NCM, originating in China and Chinese Taipei, to be collected at a rate fixed in US dollars per ton, in the amounts specified below, and it did not apply to (Germany, South Korea, Finland and Vietnam), through Circular Secex nº 58, of October 3, 2019.

Anti-dumping duty extended through SECINT Ordinance No. 4,353, of 2019	
Origin	Producer/Exporter
China	Shanxi Taigang Stainless Steel Co., Ltd., when exporting through exporting company Tisco Stainless Steel (HK) Limited
China	Shanxi Taigang Stainless Steel Co.,Ltd
China	Galaxy International Trade (Wuxi) Co., Ltd.
China	Henan Jianhui Construction Machinery Co., Ltd.
China	Hunan Bright Stainless Co., Ltd.
China	Jieyang Kailian Stainless Steel Co., Ltd.
China	Shanghai Stal Precision Stainless Steel Co., Ltd.
China	Wuxi Steel Co. Ltd.
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.
China	Foshan Shunhengli Import & Export Ltd.
China	Too much.
Chinese Taipei	CSSSC
Chinese Taipei	Chain Chon Industrial Co., Ltd.

Taipei	TC Stainless Steel Co., Ltd.
Chinese Taipei	Yuan Long Stainless Steel Corp. (YLSS)
Chinese Taipei	Yes Stainless International Co., Ltd.
Chinese Taipei	Yeun Chyang Industrial Co., Ltd.
Chinese Taipei	Yieh Corporation Limited
Chinese Taipei	Yieh Mau Corp.
Chinese Taipei	Yieh United Steel Corporation (YUSCO)
Chinese Taipei	Yue Seng Industrial Co., Ltd.
Chinese Taipei	Yu Ting Industrial Co., Ltd.
Chinese Taipei	Yuen Chang Stainless Steel Co., Ltd.
Chinese Taipei	Too much

14. At this point, it should be noted that the anti-dumping duty extension No. 4.353, of 2019, applies to imports of flat-rolled products produced from austenitic 304 and ferritic stainless steel type 430, of differently from the current investigation of cold-rolled products made exclusively from austenitic stainless steel type 304, 304L and 304H.

1.1.4 Anti-dumping investigation of type 304 stainless steel flat products

15. On July 31, 2020, Aperam Inox América Do Sul SA, hereinafter Aperam, filed a petition to initiate an investigation into the practice of dumping in exports of austenitic 304 products that meet the AISI standard 304 and similar, including variations thereof, cold-rolled, of a thickness equal to or greater than 0.35 mm but less than 4 mm, marketed in various forms, such as, but not limited to coils, plates and strips, under the name to as "cold rolled products 304", commonly classified under NCM sub-iterations 7219.34.00, 7219.35.00 and 7220.20.90, originating in South Africa, Indonesia and other countries, pursuant to 37 of Decree No. 8058 of July 26, 2013.

16. After requesting and analyzing additional information by the investigation published in the DOU on February 25, 2021, through SECEX Circular No. 15, of 2021, the investigation of dumping in exports of 304 cold-rolled stainless steel products

Type of investigation	Start date	Origins investigated	Product	Fin
Original investigation - Antidumping	11/30/1998	South Africa, Germany, Spain, France, Italy,	Cold-rolled, of stainless steel, of a thickness not exceeding 3 mm	Int No Ap du ori Sp
		Japan and Mexico		Ja for
End of period review	05/25/2005	South Africa, Spain, France, Japan and Mexico	Cold-rolled, of stainless steel, of a thickness not exceeding 3 mm	CA Ma the du in Fra
				Me sp
Original investigation - Antidumping	04/13/2012	South Africa, Germany, China, South Korea, the United States of	Flat rolled austenitic stainless steel type 304 (304, 304L and 304H) and ferritic stainless steel type 430, cold rolled,	CA Oc of du Ge Ko
		America (USA), Finland, Chinese Taipei and Vietnam	with a thickness equal to or greater than 0.35 mm but less than 4.75 mm	Ch for
End of period review	10/03/2018	Germany, China, South Korea, Finland, Chinese Taipei and Vietnam	Cold-rolled flat-rolled austenitic stainless steel type 304 (304, 304L and 304H) and ferritic stainless steel type 430, cold-rolled, with a thickness equal to or	SE of de on Ch the
			greater than 0.35 mm but less than 4.75 mm	
Original investigation - Antidumping	02/25/2021	South Africa and Indonesia	Austenitic stainless steel flat products that comply with AISI 304 and similar standards, including its variations, such as 304L and 304H,	SE 20 inv jud sim me the ina

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

1.2 From the petition to the present investigation

20. The Company Aperam Inox América do Sul SA, hereinafter "Aperam", filed this document on September 30, 2020, four months after the end of the proposed damage investigation period, in this document and concomitantly with the antidumping investigation petition of which is the subject of this document, filed through its legal representative, in the Digital DECOM System, requesting the opening of an investigation of subsidies that can be used on Brazilian imports of cold-rolled products commonly classified under sub-items 7219.33.00, 7219.34.00, 7219.35.00 and 7219.36.00 of the Common Nomenclature - NCM, hereinafter referred to as "cold-rolled products", originating in Indonesia, and damage to the domestic industry arising from such practice, pursuant to Decree No. 1751 of December 19, 1995, hereinafter also referred to as the Brazilian Regulation.

21. After examining the petition, SDCOM, through Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, requested additional information to that provided in the petition, based on the caput of art. 26 of Decree No. 1751 of December 19, 1995.

22. By means of Official Letter No. 1.844/2020/CGMC/SDCOM/SECEX, of October 19, 2020, in response to the request for a deadline extension for additional information to that provided in the petition of subsidies that can be applied to imports of cold rolled products, sent through Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, the deadline for responding to the request, through SDD, on October 19, 2020, the deadline for responding to the request, through Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, was extended to November 19, 2020.

23. Through Official Letter No. 1.972/2020/CGMC/SDCOM/SECEX, of December 21, 2020, in relation to the petition and response to Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, with the provisions of § 1 of art. 26 of Decree No. 1751 of 1995, SDCOM indicated that the information presented demonstrated the need for new complementary information.

24. By means of Official Letter No. 43/2021/CGMC/SDCOM/SECEX, of January 15, 2021, in response to the request for an extension of the deadline for additional information to that provided in the investigation of subsidies that can be used on imports of cold rolled products, sent through Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, the deadline for responding to the request, through Digital System - SDD, on January 15, 2021, the deadline for responding to the request, through Official Letter No. 1.972/2020/CGMC/SDCOM/SECEX/2020, of December 21, 2020, was extended to February 15, 2021.

25. The responses were filed in a timely manner with the DECOM System on February 8, 2021.

26. After examining the set of documents filed and analyzing by the SDCOM, the information provided until 02/08/2021, through Official Letter No. 217/2021/CGMC/SDCOM/SECEX, of January 15, 2021, the petitioner was informed that the evaluation of the information received was completed and to consider the petition duly filed, pursuant to § 2 of art. 26 of Decree No. 1751 of 1995.

30. In the communication, the Government of Indonesia was informed that the information received led SDCOM to consider the petition duly prepared, under art. 26 of Decree No. 1751, of December 19, 1995. The notification was sent by Ordinance SECEX No. 21, of March 30, 2020.

31. In accordance with the provisions of § 1 of art. 27 of the aforementioned communication, the Government of Indonesia was invited to carry out the aim of clarifying the situation regarding the matters dealt with in art. 25 of the same article, obtain a mutually satisfactory solution. Furthermore, the Government of Indonesia, in compliance with the terms of the same article, the deadline for expressing interest in carrying out the consultation, which must be carried out within a period of thirty days counting from the date of the communication.

32. With a view to providing the Government of Indonesia with information for consultation, the list of programs and the Internet address where the complete version of the referred petition was made available, including information concerning the user's password to enable the extraction of this protected information. On that occasion, at 9:00 am Brasilia time (19:00 Jakarta time) was presented as a suggestion, via electronic message, in compliance with the deadlines set forth in Decree No. 1,751 of 1995, and other measures to face the public health emergency of international importance resulting from COVID-19).

33. On April 12, 2021, through an electronic message from the Directorate of Foreign Trade of the General Directorate of Foreign Trade of the Ministry of Foreign Trade of Indonesia, the Government of Indonesia timely accepted the suggested date of April 19, 2021, at 9:00 am Brasilia time (19:00 Jakarta time) for the consultation.

34. On the agreed date, consultations were held via videoconference between SDCOM and representatives of the Government of Indonesia, represented by the Directorate of Trade Defense of the General Directorate of Foreign Trade of the Ministry of Foreign Trade of Indonesia, by members of the Indonesian Embassy in Brazil and Legal Counsel. The procedures provided for in Decree No. 1,751 of 1995 were complied with, and a copy of any written manifestations by the Government of Indonesia to be sent for consultation. SDCOM prepares its recommendation on the initiation of the investigation.

35. On April 20, 2021, the Government of Indonesia, via email from the Directorate of Foreign Trade of the General Directorate of Foreign Trade of the Ministry of Foreign Trade of Indonesia, in writing and provided the list of participants From you. On the same day, SDCOM sent a communication to the Government of Indonesia thanking it for sending its list of participants, providing the list of participants on its part so that the Aide Mémoire could be prepared.

38. In compliance with the provisions of § 2 and § 3 of art. 30 of Decree No. 10,961/2006, all interested parties identified as interested parties and notified of the initiation of the investigation, to the petitioner, the Government of Indonesia, all known foreign produce exporters and all known foreign producers and importers of the product allegedly benefited from an actionable subsidy.

39. The Undersecretariat, through the detailed import data made available by the Secretariat of the Federal Revenue of Brazil (RFB) of the Ministry of Economy, identified the producing/exporting companies of the product allegedly benefiting from an actionable subsidy during the analysis period.

40. The Brazilian importers who purchased the said product during the investigation period were identified using the same procedure.

41. In compliance with § 4 of art. 30 of the Brazilian Regulation, a confidential text of the petition that gave rise to the investigation, as well as the information, was also made available in the notification to the producers/exporters and the government, via email.

42. The GOI was given the opportunity to manifest itself in order to identify the companies that were exporters, trading companies or producers of the product under investigation.

43. The parties were further informed that the electronic file containing the petition of the Government of Indonesia, as well as the producer/exporter questionnaire, would be forwarded later, by means of a new notification. The counting of deadlines would only start when the notification of the questionnaire was received.

44. On June 29, 2021, pursuant to the provisions of art. 37 of the Brazilian Regulation, the questionnaires were forwarded to the Government of Indonesia and to all identified interested parties. In addition, a period of forty days was informed, counting from the date of dispatch, for the return of the questionnaire, which expired on August 16, 2021.

45. [RESTRICTED]

1.6 Qualification requests

46. In a request dated 6/21/2021, the Brazilian Association of Staircase Distributors - APRODINOX, submitted a request for qualification as an Interested Party. In response to the request of the aforementioned association, its representatives were qualified to access the restricted records of the present investigation.

1.7 Receipt of the requested information

1.7.1 Domestic Industry

50. Firstly, PT IRNC dealt with the context of changes in the damage industry, making references to the then concomitant anti-dumping investigation. Aperam's manifestation would have been presented as a reflection of the information in the Coordination of Anti-dumping, Safeguards and Support for Exporters - CGSA's aforementioned anti-dumping investigation that concerns the same product (Indonesia) and the same period of analysis; highlighting that after two requests, the petitioner was asked by the CGSA to present evidence of the data provided.

51. In this context, the company highlighted the identity of the damage, dumping and subsidies investigations, so that Aperam had been defined as a damage investigation of the same scope and for the same period investigated; and he stressed that the evidence sent to Aperam allowed the petitioner to make changes to the data provided in the phase, provided that such changes were not significant.

52. The INRC stated that the aforementioned manifestation by Aperam allowed the petitioner to make significant changes, as understood by the CGSA, in the damage and subsidy investigation.

53. Second, IRNC reaffirmed that the changes proposed by Aperam should not be mere minor corrections; pointing out the reasons for the characterization of the damage data, regarding Sales of the similar product in the domestic market, Expenses, so that the loss of reliability of the damage data of the initial petition and complementary information letters was evaluated by SDCOM.

54. Thirdly, IRNC argued that the changes proposed in Aperam's manifestation were extemporaneous, arguing that the presentation of data by the petitioner was at different moments: when the initial petition (already consummated); when responding to the CGSA's letters (already completed); and when responding to the letter of evidence (already consummated), admitting only minor corrections, noting that there is no proposal for changes other than those mentioned.

55. In a statement dated November 22, 2021, IRNC reiterated the reasons for the closure of the present investigation of subsidies without resolution of merit, as of October 8, 2021, as well as communicating a new fact that, in the company's manifestation, the closure of the present investigation of subsidies without resolution of merit.

56. The IRNC presented as a new fact in the present investigation of subsidies the aforementioned anti-dumping investigation, without resolution on the merits, by the CGSA on November 3, 2021, which concluded by the "lack of reliability of the data contained in the damage data, beginning and by the magnitude and timeliness of the changes", pointing out that the changes proposed by Aperam in the present investigation of subsidies would be the same proposed in the related anti-dumping investigation - for the same damage data, of the same domestic market.

based on the comparison of the file "Apendices_Restritos_Info_Con" "Annexo115_Base_Capacity_Restrito" and with the file "Apendices_Corrigidos_R" information on Other Inputs/Outputs of stocks, based on the comparison of the of the file "Apendices" of the petition with the respective s "Apendices_Corrigidos_Restritos", so that IRNC verified that the same occurred v dumping investigation, which undermined the transparency of the informat Aperam.

60. In addition, the IRNC argued that the petitioner had not adequate versions available, noting that the restricted version of the appendices submitted providing additional information would be apparently incomplete, as shown s this petition; emphasizing that the absence of restricted versions implies violation of Decree No. 8,058/2013, a decree that would deal with the dumping investigation which the confidential and restricted versions should be submitted simultaneously procedural deadlines; emphasizing that the only appendix made available in responding to the complementary information would be "Appendix VIII (Install the IRNC added that since the other appendices filed in a confidential version simultaneously filed in a restricted version, it is considered, under the terms 8.058/2013, that the confidential version may be disregarded by this authority.

61. The IRNC argued that the Official Letter SEI No. 299872/2021/M CGMC informed that the information provided by the petitioner in the petition would be verified, with the exception of specific adjustments that may be presented before the verification started, and there is no mention in that Official Letter "adjusted" data when Aperam's voluntary manifestation of October 5, 2021.

62. In this context, IRNC proposed a hypothetical analysis if Aperam voluntarily submitted, without any additional request for additional information its data, after the deadline for replying to the questionnaire and the additional context, the IRNC asserted that SDCOM's practice would be to receive information the investigated foreign parties as they are requested (original questionnaire or and, sometimes, a second request for supplementary information) and, lastly, verification procedure, except for the submission of minor corrections;

63. In view of the above, the IRNC requested the non-receipt of the corrections proposed in the Aperam statement of October 5, 2021 due to the extemporaneous provision; the evaluation of the continuity of the investigation of subsidies, since in the nature of minor corrections; and verification of the occurrence of an apparent

that the restricted versions of the appendices presented in the petition do not being limited to the total values, despite the adjustments made in the mentioned appendices VII, XVIII and XIX, such adjustments did not have the restrictions of such appendices presented in the petition, which remained an argument that the information presented by this petitioner is incomplete would data would have been duly presented,

67. In a statement dated December 23, 2021, Aprodinox supported the IRNC, with regard to the alleged loss of confidence in the data that would cause damage of the petitioner.

68. Aprodinox explained that the set of data presented by the petitioner in the discussion, would have been the object of evaluation and grounds for closing the dumping practice and the alleged damage resulting from such practice initiated at the beginning of the year 2021.

69. On the subject, Aprodinox informed that it presents evidence of the data under analysis as the data object of said antidumping process and how in the considered untimely in the same procedural phase, since they do not characterize timeless, as alleged by the petitioner.

70. Aprodinox also highlighted how the request for the application in the context of a preliminary determination, requested by Aperam would be considered would lack compliance with the legal requirements that would give rise to an event.

71. Aprodinox reiterated the position of the IRNC, presented in the petition submitted on October 8 and November 22, 2021, regarding the loss of reliability of the petitioner, understanding that the petitioner would have filed information that they deal with significant adjustments at a later time than legally established and the response to letters of supplementary information. It argued that after the would only be allowed to present minor adjustments, minor corrections, prior verification or in response to the letter of evidence, to validate or eventually close the initiation petition that justified the opening of the present investigation.

72. In this context, Aprodinox highlighted that the data presented in the petition on October 5, 2021 would have been inserted without adequate justifications why they were admitted or, even, the reasons why they would have occurred; illustrating, for example, it was only alleged that there was "a lapse" in relation to the 17 in which a significant change was presented without any indication of justification, clarifying and emphasizing that they were presented at an inappropriate procedural moment, as data is not allowed without the prior manifestation of SDCOM, as is the case with

least as far as it would be possible for the interested parties to verify from the context, among the identified data, there would be: i) list of products with categorized generating impact on costs; ii) 17 unreported invoices with various Financial Expenses/Income, with very significant changes and cascading impact and indicators.

77. In this sense, Aprodinox highlighted that there would still be reported by the petitioner, such as the production volume of the like product and have been identified, in the context of an anti-dumping investigation by the investigating authority, which would demonstrate the same identity of the petitioner's systematic analysis.

78. In this context, Aprodinox understood that SDCOM would inconsistencies and judged them as being significant and sufficiently force investigation, pursuant to item I of art. 74 of Decree no. 8,058 of 2013. And that petitioner and the interested parties, even more inconsistencies and lack of transparency as those related to inventories. And in this way, through SECEX Circular No pursuant to Technical Note No. 51909/2021/CGSA/SDCOM/SECEX, the investigation would have been recommended due to the inconsistencies present.

79. In this vein, Aprodinox emphasized that it would be inferred from 51.909/2021/CGSA/SDCOM/SECEX that the data presented by Aperam in their practices would have been considered untimely because they were considered late.

80. In this sense, Aprodinox pointed out that art. 5 of SECEX Normative Instruction August 17, 2020, would find an equivalent right in art. 9 of SECEX Normative Instruction 22, 2021; explaining that he understands that such Normative Instructions were during the pandemic, the norms and consolidated practices of the investigating authority data verification procedure and the acceptance of information during on-site investigations.

81. In these terms, Aprodinox understood that such data should be corrected and that, considering the volume of information and its impact on the results of this investigation of subsidies should be closed, following the understanding of an anti-dumping investigation.

82. In a statement dated June 14, 2022, the IRNC argued that the period of the present subsidy investigation would be comprised between the months of January and since the investigation was initiated with the publication of the Opening Circular, it would be certain to be a lapse of at least a full 14 months between (i) the latest available data and (ii) and the initiation of the investigation.

that gave rise to the investigation, through requests for additional information responses and such requests, until the day on which the petition was considered, pointing out that almost 8 months had passed after the filing of the Petition.

87. The IRNC clarifies that it sought to demonstrate, with a historical and procedural steps, that what caused the observed 14-month time lapse was the petitioner's claim, since only after 2 requests for complementary information and analysis, the petition was considered instructed by SDCOM, and that if Aperam's claim was initial, not deficient, with the details that it was responsible for and that were already known, since it was a petitioner, the time lapse would not be as long .

88. IRNC recognized the difficulty in gathering information and evidence to grant investigation petition. However, he points out that the magnitude of the information requested by SDCOM from Aperam would be obvious, covering both aspects of form and content information and content.

89. For the IRNC, the Dispute Settlement Body (DSB) of the WTO in "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", would have been of the opinion that the 15-month lapse between the last data contained in the petition, specifically damage, and the opening of the investigation, would constitute a violation of the obligation of authorities to be based on "positive evidence", as established in Art. 3.1 of the ADA and Art. 15.1 of the ASMC.

90. For the IRNC, transposing this consideration to the present investigation, it would be heterodox to consider that a lapse of 14 months, that is, one month less, would prevent the sole objective of imposing compensatory measures (or other remedies): neutralize the harmful effects to the domestic industry arising from subsidized foreign products, as can be seen from Art. 10 of the ASMC and respective jurisprudence.

91. For the IRNC, therefore, to base itself on damage data lagged by more than 14 months, regardless of who gave rise to such circumstance, "violating the duty of guidance to use objective evidence, because it would be analyzing and considering non-current damage indicators".

92. For the IRNC, given that the purpose of trade defense remedies is to ensure a level-playing from the neutralization of damage and the practice of commerce, it should and apply a compensatory measure based on remote evidence of damage to the domestic industry/exporters for past practices - and not equalizing current trade distortions.

93. The IRNC submitted the Appellate Body (AB) report on the panel report in "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", referring to the Antidumping Agreement, to argue that the AB would come to agree that the

the Mexican trade defense authority would have violated Art. 3.1 of the Antidumping

97. For the IRNC, there would be an absolute identity between the Agreement and Art. 15.1 of the ASMC, with the case law of the OSC on anti-reference in subsidy investigations; emphasizing that the "WTO Analytical Index 15 (Jurisprudence)" and other judgments of the OSC would expressly recognize

98. Therefore, for the IRNC, it would be evident, therefore, the fra outdated investigation period, as would have occurred in the present investigation

99. The IRNC, noted that, considering the time course of the i subsidies under Brazilian law, of 12 months, any compensatory measure wou 2022, with a lag, in relation to the scenario damage, 26 months (2 years and that the present investigation would have been extended for an additional 6 m Circular nº 22, of 5/31/2022 (DOU of 6/1/2022), the possibility of applying com lag of almost 3 years (2 years and 8 months, or 32 months) in relation to the cons

100. For the IRNC, in this regard, the AB, endorsing the understand Definitive Anti-dumping measures on beef and rice (DS295)", in analysis of the the concrete case, confirmed that not only the hiatus of 15 months between t the opening, as well as the gap of almost 3 years between the end of the in imposition of the final anti-dumping duties, had "the ability to 'raise doubts sufficient link between the data related to the investigated period and the curre

101. In addition, for IRNC, AB's understanding in such a dispute wo recent decision of the panel in January 2021, within the scope of the dispute Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirat IRNC, in this judgment, when analyzing the requirements of Art. 3.1 of the (corresponding to Art. 15.1 of the ASMC), the panel expressly links the conce positive evidence to an analysis of the time lapse between the investigi determination, since they had already after 31 months.

102. Based on its understanding of the AB's positions, the IRNC a subsidy case, with the extension of the investigation for an additional 6 months, 32 months between the end of the investigated period and the final determi determination opinion has not yet been issued in the present investigation, a and, respecting all legal deadlines for eventual final determination, it wou investigation would reach the 32-month period date lag.

103. In this context, the IRNC argued that the aforementioned pane other elements that would have been considered in its decision, and that wou the AB, "in addition to the recognition of violations of multilateral agreements

105. In this context, the IRNC stated that, possibly, what would be o would be that there could be, by choosing to start from a pole, a subjective inte the IRNC, such a scenario, if true, would be contrary to the duty of objective and Thus, for the IRNC, in the present case, as highlighted by AB, it would have be the period analyzed and not determined by SDCOM.

106. With regard to the other items in the WTO Appellate Body's authority would not have presented reasons for the lag period to be acceptable present case, at least At least up to the present moment, there would be no j attest, with reason, the appropriateness of the period of investigation indicated when it was delayed when opening the investigation and, even more, when clos

107. In addition, the IRNC stated that, "as it is presumed, there would this time delay in view of the provisions of article 35", of Decree No. 1,751/1995, provisions of § 1 of art. 35, which provides that the investigation period for the subsidy should comprise the closest possible twelve months prior to the investigation, and may retroact until the beginning of the beneficiary's acco ended and for which they are available reliable financial and other relevant "eventually", there is an exception in the legislation to allow a delay in the ir ability to favor the accounting year of the investigated country, and, for the IRN have this excuse,

108. For the IRNC, the period was not updated at the opening and the any reasons that would jeopardize that then possibility, so that for the IR indicators would be the natural way to overcome the problem now exposed and

109. At this point, IRNC highlighted that in the case of another subsidy laminates, now in progress, this same SDCOM was for good, already in the Oper n° 43, of 6/18/2021 , recommend updating the investigated period, given the the end of the investigated period and the respective opening of the investi absolutely appropriate and taken ex officio by SDCOM.

110. For the IRNC, both in the context of the investigation of alum present investigation, parallel claims were presented for the investigation subsidies, so that the presentation of a related request for an anti-dumping in justification for SDCOM not requesting the period update in the subsidy investig

111. For the IRNC, the authority would have the duty to examine, un the ASMC and §1 of art. 28 of Decree No. 1,751/1995, the accuracy and adequacy in the petition, so that if the evidence provided by Aperam in the petition i

this authority.

115. In addition, IRNC argued that, if not even attempted by the a procedure would be patent, due to a precedent of an antidumping investigation SDCOM chooses not to request the update of the period and remain in line with jurisprudence, the IRNC would have no alternatives other than requesting t investigation, without a decision on the merits.

116. The IRNC requests that the assessment of this fact be already opinion and argues for the non-application of provisional compensatory measur

117. Aperam, in a demonstration on June 30, tried to refute the r APRODINOX. First, it pointed out that, as stated in the Report of the WTO App aforementioned case (WT/DS295/AB/R):

According to the Panel, although the Anti-Dumping Agreement do rules concerning the period to be used for data collection in an anti-dumping mean that the investigating authority's discretion in using a certain period of inve

118. This understanding would be confirmed by the WTO Committee in its "Recommendation concerning the periods of data collection for anti-dump on May 5, 2000 (G/ADP/6):

The Committee notes that although the Agreement on Implement 1994 refers to the period of data collection for dumping investigations when investigation", it does not establish any specific period of investigation [foot establish guidelines for determining an appropriate period of investigation, fo dumping or injury.

119. Therefore, in the absence of such guides in the Antidumping A although not establishing rules, would have established recommendations for th

The Committees consider that guidelines for determining what collection may be appropriate for the examination of dumping and of inj Committee also recognizes, however, that such guidelines do not preclude in taking account of the particular circumstances of a given investigation in s collection for both dumping and injury, to ensure that they are appropriate in ea

120. Therefore, the Committee's recommendations would have estab

In light of the foregoing considerations, the Committee recomm original investigations to determine the existence of dumping and consequent in

3. In order to increase transparency of proceedings, investigating a public notices or in the separate reports provided pursuant to Article 12.2 of the of the reason for the selection of a particular period for data collection if it differs from paragraph 1 of this recommendation, national legislation, regulation, or established practice.

121. Therefore, although there were no specific rules regarding the period considered for the purposes of injury and dumping analysis, this fact does not mean that the period adopted in an unreasonable way. In this sense, it would be verified, in the present case, that the period complied with the aforementioned recommendations of the Antidumping Practice.

122. In the case mentioned by the IRNC, concerning the DS295 case, the WTO Appellate Body, "[t]he investigation was initiated on 11 December 2000, the end of the period of investigation." However, it would be essential to note that, in such a case, the period considered ended in August 1999, the petition was filed in June 2000. Therefore, after the petition was filed, the analysis period was delayed by 10 months.

123. Such a situation would be totally different from that of the case mentioned in the case file and explicitly mentioned in item 1.2 of the Annex to SECEX Circular No. 15, regarding the opening of this investigation. That is, even though Decree No. 1,751, of 1995, does not establish a deadline for filing the petition in relation to the damage analysis period, the petitioner was required to file the petition at the end of the fourth month after the end of the analysis period considered, which was already adopted in Decree No. 8,058, of 2013.

124. Furthermore, considering the concomitant anti-dumping petition and the subsidy petition, it has been possible to carry out a joint assessment of the elements of dumping and injury, and damage, since they involve the same investigated product.

125. Therefore, as in all dumping investigation processes under the Antidumping Practice of 2013, once the investigation begins, the analysis period considered in the petition is the period of the investigation. It should be noted that, in the present case, the anti-dumping investigation process was initiated in 2021, through SECEX Circular No. 15. However, in the case of the subsidy petition, it was necessary to carry out consultations with the government of the exporting country, pursuant to the Subsidy and Countervailing Measures Agreement (ASMC) of the World Trade Organization.

As soon as possible after an application under Article 11 is accepted, the investigating authorities shall initiate the investigation of any investigation, Members of the products of which may be subject to the investigation. It may be invited for consultations with the aim of clarifying the situation as to the matter, pursuant to paragraph 2 of Article 11 and arriving at a mutually agreed solution.

129. Once the investigation is initiated and while it is being carried out, the period of analysis becomes more delayed, as would be recognized by the same aforementioned WTO Appellate Body regarding the dispute "Mexico - Definitive Anti-dumping measures on certain hot-rolled flat products of iron or non-alloy steel" (WT/DS295/AB/R):

Thus, for the Panel, it is necessary to base a determination of dumping on data that is pertinent or relevant with regard to the current situation, taking into account the delay caused by the practical need to conduct an investigation. [...] For the Panel, the period concerning dumping, injury and the causal link should include, to the extent possible, the relevant information, taking into account the inevitable delay caused by the need for an investigation and any practical problems of data collection in any particular case."

130. The same WTO Appellate Body Report would again highlight that:

This, of course, does not imply that investigating authorities are not allowed to use data of investigation that covers a past period. We note that, contrary to what Mexico claims, the state that the Anti-Dumping Agreement requires a coincidence in time between the data used therein. [footnote omitted] On the contrary, the Panel recognized that the data on the basis of which [the determination that dumped imports cause injury] is based on a past period, known as the period of investigation."¹⁵⁷ In order to determine whether dumping exists when the investigation takes place, "historical data" may be used. However, however, that more recent data is likely to provide better indications about current dumping.

¹⁵⁷ Panel Report, para. 7.58. The Panel also added that "the inevitable delay in the investigation for an investigation, as well as any practical problems of data collection in any particular case, should be taken into account. (Ibid.)

131. In the present case, the investigation would have started in June 2022, with a period of one year for completion, counted from the start date, "except if, in exceptional circumstances, an extension is necessary, when the period may be up to eighteen months", as provided in the Opening Circular. On June 1st 2022, through SECEX Circular No. 22, the duration of the investigation was extended for up to six months, thus reaching a maximum of 18 months.

132. In this sense, it would be essential to highlight that such deadline is determined by the WTO Agreement on Subsidies and Countervailing Measures, Article 12.1:

Investigations shall, except in special circumstances, be concluded within a period of 18 months from the date of initiation of the investigation, and in no case more than 18 months, after their initiation.

133. It would remain clear, therefore, that the lag of 18 months between the start of the investigation and its conclusion would be considered inherent to the conduct of an investigation, since it is not recommended to update the period of analysis during the conduct of the investigation.

the analysis period and the date of completion of the investigation, so that such updating the analysis period during the conduct of the investigation nor the already previously requested from interested parties, especially after such data to a verification procedure by the investigating authority.

138. If new updated information were required by the investigating authority in investigation, new procedures for verifying data would be necessary, new a practice and causal link would be necessary, which would require non-existent which , legally, has a deadline to complete, as discussed earlier.

139. In this sense, it would be worth highlighting the inconsistency of by the IRNC, which, while stating in its aforementioned statement that it would procedure, to request new information from all interested parties for a new u stated, in his other manifestation dated June 14, 2022, that there would be no from the Chinese government about possible transnational subsidies.

140. In view of all the above, it would remain clear that the period of present investigation would be in line with the rules established by Decree No. WTO Agreement on Subsidies and Compensatory Measures.

141. On September 9, 2022, the company IRNC presented a considerations made by APERAM on its statement presented on June 14, 2022.

142. Initially, it reiterated the existence of non-compliance with investigation in relation to multilateral precedents, since they are lagged (i) by Opening Circular and, potentially, (ii) by approximately 31 months in relation to taken no later than October 28, 22.

143. Such an understanding would have been based on two p Settlement Body (DSC) of the World Trade Organization (WTO): Mexico - Definit on beef and rice (DS295), and Pakistan - Anti-Dumping Measures on Biaxially C from the United Arab Emirates (DS 538).

144. According to the company, in both disputes, the OSC would have defense authorities in question would not have complied with the duty of positive evidence, in the strictness of art. 3.1 of the Antidumping Agreement and Countervailing Measures Agreement (ASMC), when based on damage data lagged to the opening (DS 295) and by 31 months in relation to the final determination motivating or justifying such a gap.

investigations", the period of investigation to be chosen must end as close to the opening of the investigation; and 2) by the same Recommendation of item 1, in which the general rule of paragraph 1 is not complied with (as would be in the investigation), it asserts that it is advisable for the authority to justify the choice of period, which would not have occurred.

149. Thus, he highlighted that by APERAM's own arguments it is not the investigated period adopted for the present investigation would be in line with the Committee's recommendations, and would contradict clear precedents of the WTO.

150. Still regarding APERAM's statements, specifically on the factors causing the delay, the IRNC reiterated that it matters little who caused the time lapse. According to the IRNC, what is relevant to the investigation would be solely and exclusively the use of evidence to constitute, in the strictness of art. 15.1 of the ASMC, positive and objective evidence.

151. He also cited that APERAM would have indicated that the phase of the Government investigated as another factor that would have contributed to the delay. However, it did not recognize that this procedure only took 2 months - while the information to the petition would have taken 8 months, as addressed in the IRNC's decision of 06/14/2022.

152. The IRNC, in a statement dated September 9, 2022, reiterated its position on compliance with the damage data of the present investigation, from April 2015 to the present, with multilateral precedents since they are lagged (i) by 14 months in relation to the decision of 6/2/2021, and, potentially, (ii) in approximately 31 months in relation to the final decision, that such understanding was based on two precedents of the Dispute Settlement Body of the World Trade Organization (WTO), namely, disputes "Mexico - Definitive Anti-dumping Measures on Certain Steel Products (DS295)" and "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polyethylene Terephthalate (DS 538)"; noting that in both disputes, the OSC would have found that the defense authorities in question would not have complied with the duty of providing positive evidence, cf. Articles 3.1 of the Antidumping Agreement and 15.1 of the Countervailing Measures Agreement (ASMC), as they are based on outdated information motivating or justifying such a delay.

153. For the IRNC, it would not be heterodox to consider that such a delay is within the power to remove elementary qualities from the proofs and evidences in the investigation, cf. art. 15.1 of the ASMC. In this context, IRNC mentioned the work published by the Max Planck Institute for Comparative Public Law and International Law, an excerpt that makes reference to the dispute "Mexico - Definitive Anti-dumping Measures on Certain Steel Products (DS295)".

investigation period

157. The GOI, in its final statement, referred to the anti-dumping investigation Circular No. 75, of November 3, 2021. According to the GOI, under the Circular No. 727/2021/CGSA/SDCOM/SECEX, regarding to the information provided, the GOI concluded that, due to its size and/or nature, (i) it was considered untimely, (ii) adjustments to the data and (iii) it undermined the proof of the existence of the industry.

158. Thus, the GOI pointed out that in the present case the same information and a similar conduct of disregard should be taken in the analysis of positive evidence by the ASMC.

159. Aperam, in its final statement, pointed out that the IRNC presented the Questionnaire without questioning that the investigation period would be out of date and require updating. Only after the deadline originally foreseen for the completion of the investigation, the opinion of the petitioner, due to the fact that the investigating authority not only reached conclusions about it would take into account the best information available, but also, due to the response to the Questionnaire sent by SDCOM, went on to claim that the data have been updated.

160. The petitioner added that she did not choose the analysis period for the anti-dumping petition. She added the atypical situation of the present investigation, which occurred under the context of the pandemic and which incurred great effort in organizing the present investigation. In the end, she expressed her agreement with SDCOM's update of the data.

161. In its final statements, IRNC alleges that in the context of the present case, the authority did not comply with the rules and jurisprudence of the Dispute Settlement Body of the World Trade Organization (WTO) of objective examination and based on evidence positives of the case, it needs current data, and there was no clear and duly motivated justification for the authority to override such a rule; as well as there was no attempt by the authority to update the data, nor a discussion about the impossibility of updating the data.

162. In this context, IRNC asserts that SDCOM highlighted and ignored the facts and considerations brought, in which it could have found that the satisfaction of the present case is observed to an equal or greater degree than that of the case of L...

163. For the IRNC, SDCOM's argument against the position of the petitioner that the analysis would not only be an objective and mathematical analysis in counting the data, but also to consider other factors. However, the IRNC adds that in the case of the DS 29, where factors were postulated, as well as in the DS 538 other factors were also analyzed in addition to the data.

remain evident, the fragility of adopting such an outdated period of investigation.

167. On the other hand, IRNC understands that SDCOM, in the NTF, identified potential problems that the pandemic would have caused both for data collection and for the damage scenario - in what it would consider justified the choice of a period of investigation, satisfying the duty to justify a period that is not as close as precedents of DS 295 and DS 538 of the OSC of the WTO.

168. For IRNC, the arguments brought by SDCOM in this regard in the NTF of a "new normal" was created where 25% of Aperam employees would be working in a way that was not included in the file during the probationary period ; so that IRNC found it "curious", since no argument or factual circumstance of impossibility of obtaining data was adduced after the opening of the investigation, and even in its pre-opening phase. In n° 40, of June 1, 2021, published in the DOU on 06/02/2021, nothing is mentioned that consultants or companies might have experienced a year and a half after the pandemic , and which could motivate the use of a lagged period.

169. In another turn, for the IRNC, another very pertinent argument brought by SDCOM related to the problems that the pandemic could bring to the damage scenario was the impact on the supply and demand of the investigated product; however, in the opinion of IRNC, the DS 295 case made by SDCOM is correct, however its interpretation seems incorrect. For IRNC, SDCOM also pertinently cites the case of DS 538, but forgets to compare it with its transcription, so that, similarly to the case of DS 295, the criticism of the investigating authority : "made no attempt to update the investigated data and, consequently, provide any discussion of the choice of investigated period".

170. IRNC asserts that in the present investigation, SDCOM did not update the data throughout the investigation nor did it offer a justification at the time of opening of the investigation a period already lagged by 14 months, and would have tried, after the probationary period, to reframe the past, reaching a justification based on the pandemic that was never mentioned during the probationary period, as legally it would have to be; concluding in the NTF that the data (lag) would be "fully justified and in accordance with national and multilateral practice".

171. IRNC argues that the discussion to justify itself and accept a period of investigation should not be made only within the scope of the Technical Note, but when opening the investigation that the interested parties could take advantage of the contradictory and wide such justification, being able to produce all the evidence that is legally assured.

172. For the IRNC, a trade defense authority cannot simply ignore a period of investigation, so the data must be available to the authority, even if it decides not to use it in its decision-making due to for whatever reason, and the authority cannot simply as

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

177. In this way, the IRNC lists the factors that demonstrate SDCOM's failure to follow domestic regulations and jurisprudence:

i. The investigation period would have been defined by the petitioner, SDCOM when the investigation was opened in June 2021 and in all subsequent editions of the Technical Note.

ii. Neither upon publicly initiating the investigation nor throughout the investigation period would SDCOM have identified any practical problem with necessarily keeping the investigation period open;

iii. No argument, reason or proof was provided demonstrating that the investigation period would be impossible;

iv. There would have been no attempt by the investigating authority to update the investigation period;

v. SDCOM would not have given any reason as to why it did not attempt to update data throughout the probationary period and at any time prior to the Technical Note. As a more procedural issue and not simply material, the authority could have addressed the issue at the time of issuing the updated investigation deadlines, but even at that time of issuing the updated deadlines, all interested parties, SDCOM would have chosen to not to use the evidentiary period. SDCOM's failure of not using current data and not assessing the existence of a current damage situation.

178. The IRNC concludes that the characteristics of the present dispute are similar to the factors that led the WTO DSB to conclude, in those disputes, that the time lag between the initiation of the investigation and the issuance of the final determination, in the absence of positive evidence, which would be capable of allowing an analysis based on current data as well as enabling a causality analysis; in order to determine the existence of a causal relationship, counterbalancing the possible existence, simultaneous and current, of unfavourable conditions suffered.

179. Thus, IRNC asserts that there is an irremediable flaw in the present dispute, the need for SDCOM to determine the closure of the case without recommending compensatory measures or trying to update the period so that it can be in conformity with multilateral jurisprudence, for which there would clearly be no more time, not in the present investigation.

180. In addition, IRNC claims that the interested parties' right to a fair and equitable defense was not safeguarded when SDCOM justified the delayed period of the investigation, the probationary period, in the NTFE, thus deciding a basic and very important issue in the investigation (investigation period) when the interested parties can no longer adduce evidence.

1.7.1.3 SDCOM's comments on the domestic industry information

according to the verification script previously sent and arts. 36 and 37 of Decree

(...)

Verification staff can confirm the reported information as well as the a

composition of the CODIP [CONFIDENTIAL], which in fact reconciles v
case file in the present investigation on October 5. Thus, the SDCOM team c
apparent divergence that occurred in the parallel investigation of dumping
production within the scope of the verification of evidence procedure to
(emphasis in the original).

184. The changes in the company's other data, even though they c
considered in the analyzed damage, did not change the curves and trends of
affecting the general conclusions of SDCOM contained in the opinion at the beg

185. It should also be noted that the changes were considered
investigation of dumping in view of the context in which they were presented
the investigation: they were only pointed out during the verification of evidence
tried to untimely file corrections to the data presented, in breach of § 1 of art. 7
the Secretariat of Foreign Trade No. 1, of July 6, 2021. This situation is abso
happened in the present case, in which this authority had ample time for an
verification. In the end, this conclusion is supported by the fact that Aperam's
the on-site verification procedure,

186. Thus, the claim for closure of the present investigation sh
"coherence of administrative action by SDCOM". However, the conclusion expre
considered the moment in the administrative process in which there was the ch

187. Regarding SEI Letter No. 299872/2021/ME, SDCOM duly no
brought by the petitioner in the petition and additional information, which incl
October 5, 2021, would be verified. SDCOM considered the changes promoted
in a restricted setting, so much so that the protester was able to rebel ag
"significant". On the question of the alleged absence of appendices - as expl
appendices in which there was no change in the restricted version were not resu

188. About the hypothetical analysis brought by PT IRNC, it is consid
unacceptable, since each factual situation is analyzed concretely, according
occurs. It should be noted that the investigating authority conducts the
impartially, in light of the legislation in force, so that the conjectures proposed b

does not even define Decree No. 1,751, of 1995, as a "probationary period", more it is a purely procedural matter, as the party itself pointed out, and there is evidence to be collected in the case file, whose absence would harm the case. It is surprising that neither PT IRNC pointed out what would be the crucial evidence in a purely procedural discussion. In any case, the parties had ample space to present their arguments during the investigation. The contradiction was so much possible that the parties' manifestations during the process on the subject, and even a long final manifestation on the issue of the period considered. During the course of the investigation, not only the petitioner, debated the issue as they wished.

192. The protester puts undue weight on the procedural matters. Since the considerations were rendered - now, as the preliminary determination is optional - Decree No. 1,751, of 1995, the issue was addressed as early as possible, within the Technical Note issued by SDCOM, as provided for in Article 12.8 of the ASMC. Thus, this minor part of PT IRNC's allegations are based, is absolutely unfounded.

193. The initial opinion did not address this issue, as the interval between the damage period and the beginning of the investigation were shorter than the case. Settlement Body - OSC and all multilateral understandings and national legislation. Thus, SDCOM had no way of anticipating that PT IRNC would raise this point. He answered at the first opportunity, that is, at the procedural moment foreseen in the technical note of essential facts by SDCOM. It is recalled that the Circular for the subsidy investigation of aluminum rolled products imported from China, SECEX/2021, already included the decision to update the period,

194. SDCOM agrees with the protesters regarding the argument that investigation periods cannot be allowed to be unjustified. As will be seen, it happened, with full reasons to justify the periods used.

195. With respect to DS295 - Mexico — Definitive Anti-Dumping Measures, it is noted initially that both the Panel and the Appellate Body (AB) made it clear that the investigation period is not a violation per se: "We agree with Mexico that using the investigation period is not per se a violation of Article 3.1". That said, the AB makes it clear that in its conclusion, several factors were analyzed:

149. (...) The Panel underlined that: during the investigation, no attempt was made to update any of the information obtained from the interested parties to reflect the 12 months between the end of the period of investigation in August 1999 and the beginning of December 2000; Mexico did not argue that practical problems necessitated the investigation or that updating the information was not possible; and Mexico did not argue as to why more recent information was not sought

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

made out.

196. That is, a shallow analysis, which considers only the temporal c
AB expressly refuted. The other elements must be analyzed, as listed by the AB:

- i) the period of investigation chosen by Economia was that proposed
- ii) Mexico did not establish that practical problems necessitated investigation;
- iii) it was not established that updating the information was not possible;
- iv) no attempt was made to update the information; and
- v) Mexico did not provide any reason—apart from the allegation that it did not accept the period of investigation practice submitted by the petitioner—why Mexico did not sought.

197. Contrary to what was stated by PT IRNC, in the present case, it chose the investigation period - quite the contrary, she only followed § 1 of a 1995. And here it is worth mentioning the decontextualized speech of PT IRNC in item 6 of Official Letter nº 1.762/2020, of September 30, 2020, only asked to declare the periods considered. It should also be noted that SDCOM only made other parties would have easier access to such information, that is, in order to the contradictory.

198. The decision to update or not the period is up to SDCOM considered - if SDCOM really wanted to question Aperam about the period, it was a question in that sense. Since this is a purely procedural point, it is also recalled that the investigation of aluminum laminates (process SEI/ME No. 19972.101384/2021- regarding such update was not requested before the decision was taken. Therefore, the sense that Aperam "was even consulted on its choice" remains fallacious. It was no choice on the part of the petitioner, but strict compliance with a legal condition.

199. There is also an evident practical problem involved in the present case. It seems to forget that the pandemic situation of COVID-19 has undermined the authority, but also all companies, imposing restrictions in relation to human and economic activity in general, horizontally to all companies in Brazil and perhaps in the world. It is considered that the period of damage considered in the present investigation is within the margins of the outbreak of the pandemic - in Brazil the state of public calamity was declared by Legislative Decree No. 29 of 2020. Thus, it must be recognized that even the data was updated until March 2020, already certainly imposed herculean work on the petitioner to quickly to the "new normal" and filing a complete petition four months after the decision.

do not know, unlike the investigated producers/exporters. Also from this point of view, the update sought would impose an excessive burden on the petitioner. It should be noted that petitioners in anti-subsidy investigations often need to collect evidence of subsidies that they do not know, unlike the investigated producers/exporters. Also from this point of view, the update sought would impose an excessive burden on the petitioner.

200. Even disregarding the restrictions linked to the pandemic, which was also mentioned that the unnecessary update still had, indirectly, a benefit: the update of March 2020 could misrepresent the damage analyzed, as it would advance the analysis to the pandemic period, in which demand and supply were affected in a way never seen before. DS295 - "Thus, Mexico could have sought to show that the information in the investigation conveyed indications as to current injury and constituted an approximation of whether there was current injury, regardless of its remoteness.", for this investigation, the update considered, in which the data are free of pandemic impact, is what best represents the current situation of the company, as businesses are returning to pre-pandemic levels of economic activity. The month update of the investigation period, for example, would only include data from the affected production, with supply and demand also being abruptly depressed. It should be noted that in the case analyzed in DS295, the authority only imposed measures almost at the end of the damage period, which is also not what happens in the present case.

201. At this point, it should be noted that PT IRNC, in its final statement, mentioned the issue of the pandemic. Now, if the update were indeed necessary in line with the legislation, SDCOM would have carried it out. Obviously, SDCOM would only have access to the data needed to perform the update - so it is also evident that the decision to update or not to update is whether or not there are distortions in updating. The comment above, misinterpreting the statement, only sought to make it clear that, since the update was not required by multilateral jurisprudence, the fact that the update was not carried out still had no effect on avoiding distortions and bring the analysis as close as possible to reality, aiming at the duly documented unfair trade practice on the situation of the domestic industry. If updating the period had been necessary under the terms of the legislation, under the understanding of the WTO, such update would have been made by SDCOM. The fact that the pandemic would have been a reason for not investigating data and facts is irrelevant. The decision on the update does not take into account particularities of the position of the domestic industry, whether it is necessary or not the update in the light of the legislation and its jurisprudence. If updating the period had been necessary under the terms of the legislation, under the understanding of the WTO, such update would have been made by SDCOM. The fact that the pandemic would have been a reason for not investigating data and facts is irrelevant. The decision on the update does not take into account particularities of the position of the domestic industry, whether it is necessary or not the update in the light of the legislation and its jurisprudence.

event of a positive determination of dumping and subsidies practiced by major companies. To avoid the adoption of the so-called double remedy, an obligation provided for in Article 35 of Decree n° 1.751, of 1995, which indicates the use of the "twelve months" period. Therefore, in addition to being unnecessary in the light of multilateral legislation, the introduction of a new investigation period of the two cases initiated against unfair trade practices practices would introduce enormous complexity in the treatment of the double remedy. Furthermore, the authority decided not to have carried out a double remedy calculation in periods of analysis of subsidies. Thus, in light of the circumstances mentioned, there was full compliance with Article 35 of Decree n° 1.751, of 1995, which indicates the use of the "twelve months" period.

204. Thus, the authority considers the lapse between the period considered for the determination of the damage and the beginning of the investigation to be fully justified, in accordance with the decision in the WTO.

205. Regarding the lapse between the end of the investigation period and the determination by application of measures, in which the protester invoked the D, the authority decided that, once again, the protester made a biased analysis of the jurisprudence.

206. Initially, it should be noted that there was, in the case analyzed, a lapse of two years (22 months) between the end of the damage period and the beginning of the investigation. The non-update tried to be justified by the foreign authority for already having refused: "The selection of a POI that was almost two years old already at the time of the investigation is explained by the fact that the investigating authority already had on file data relating to the damage, and therefore save some time in its investigation."

207. Also in this case, the OSC carried out a context analysis that led to the conclusion that the time lapse between the end of the period of damage and the beginning of the investigation of measures - not being a mere numerical analysis, as did PT IRNC. From the data available, it was concluded that the time lapse was justified.

7.68. To assess whether data for such a POI were evidence of current dumping, the authority considered the other factors surrounding the authority's selection of the POI.

(...)

7.76. To sum up, therefore, the NTC relied on a dumping POI that was almost two years old by the time of initiation and two years and seven months old by the time of the final determination. The attempt to update it and, during the proceedings, it provided no discussion why it was not updated. For these reasons, we find that in making its determination of dumping, the NTC did not consider the existence of current dumping, as required by Article 2.1. (emphasis in the original)

208. It is noted, therefore, that exactly the same analysis was carried out in the previous case, which is why the arguments already set out are initially reiterated.

reading of item 1 of this document demonstrates that the time required to analyze the initial opinion is justified, given the complexity and scope of the intervention in the steel sector since 2009, when the DMO began through of MEMR Regulation 2020, the end of the investigated period.

212. It cannot be forgotten that the unnecessary update would still involve collating new data for the petitioner, and also the additional work of analyzing subsidies data for SDCOM. It should be noted that, in anti-subsidy investigations, a period can cause major impacts, much greater than in anti-dumping investigations. IRNC itself and the GOI brought, shortly after the end of the period of this investigation, N° 11, of 2020, was edited, which would impact the analysis to be carried out in the program (and also the collection of the petitioner's data, who would have to update claimed by PT IRNC was not carried out as it was unnecessary.

213. The lack of response to the questionnaire by the investigated producer is a complicating factor in the case, given that it eliminated the possibility of obtaining data directly from these interested parties on the participation in a given program, the authority to search for parameters to be used in the conclusions for the investigation, the analysis of the calculations presented by the Domestic Industry in a spreadsheet, which even involve econometric calculations and used dozens of different sources, verified by the authority. In this context, despite such lack of response to the questionnaire, the cooperation of Indonesian producers/exporters, there is intense stakeholder participation.

214. It should also be noted that this authority is surprised that PT IRNC has a great negative impact caused by its lack of collaboration in this investigation, which increases the workload of this authority. The protester also forgets that the intervals existing between the end of the damage period and the beginning/end of the investigation that existed in the cases analyzed in the OSC.

215. Finally, it is reinforced that PT IRNC's analysis of case law focuses on the possibility of obtaining data for updating and the effort to update, when the core issue is whether the update was really necessary - to which the answer is negative. The authority, in the light of multilateral precedents, which forgets the real issue in the present case, skips the effort to update) and going straight to the consequent (possibility of updating).

216. In this context, it is urged to reinforce that even considering, in particular the unforeseen difficulties introduced by the COVID-19 pandemic, the deadlines published by this authority fully respect both national legislation and the facts having been duly treated all the "several factors" brought in the ventilated OSC.

facts also available to the GOI in relation to such gaps, as provided for in art. 179 of the Brazilian Constitution. 221. The GOI was notified through Official Letter SEI No. 228693/2021 that it did not provide fully verifiable information in a timely manner, about the stainless steel market, the way of attracting capital and on miners, and also on i) the nickel ore, coal and coke and land for less than adequate remuneration; ii) the price of fiscal programs; iv) the capital injection program; and v) failure to comply regarding the acceptance of documents in a foreign language.

222. It should be noted that the GOI filed in response to such Letter and the manifestations were considered in item 4.2.1.1 and in each program individually.

1.7.3 Importers

223. As informed in item 1.5 above, through Circular Letter No. 75/2021 of June 7, 2021, questionnaires were sent to all identified importers: Aço Cearense Recovery; Acojota Comércio de Metais Ltda; ACZ Inox Comercial Ltda; Braço Comercial Parinox Ltda; Elinox Central de Aço Inoxidável Ltda; Hipermetal Metais de Máquinas para Gastronomia Ltda; Inconel Industria e Comercio de Aços Ltda; de Aço Ltda; Inoxsteel Comercial de Aços Ltda; Inox-Tech Comércio de Aços e Metais Ltda; Komlog Import Ltd. -in Judicial Recovery; Krominox Aço Importação Comercio e Industria de Aço Inoxidável Ltda; Mebrafe Refrigeration Ltd Meridian Distribuidora Ltda; Metalcasty Ltd; Metalúrgica Biasi Ltda; R2 Distrib. Ind. and with. Ltda; Retinox Importação e Exportação de Aços Inoxidáveis Ltda; Suprir Indústria de Metais Ltda; Timbro Distribuidora Ltda; Upper Trade Import Metais Ltda; and Vinícola Angelo Luvison Ltda.

224. Only four importing companies responded to the importer's questionnaire: Aço Inoxidável Ltda; Inconel Comércio Importação e Exportação de Produtos Metais Ltda; and the company Sianfer Ferro e Aço Ltda.

225. The company Empresa Sianfer Ferro e Aço Ltda., however, presented a confidential version, violating the provisions of paragraph 2 of article 38 of the Brazilian Constitution, according to which confidential information must be accompanied by restrictions that allow a reasonable understanding of the information provided, under the confidential information; in the event that it is not possible to present the confidential information, the interested party must justify this circumstance in writing, this justification being in the present case, no justification was presented and the company was notified, by Circular Letter No. 117086/2022/ME, of April 19, 2022, that, under the terms established in the Decree No. 1,751 of 1995,

1.7.4 Producers/exporters

230. Since the response was filed by the company on September 15, 2021, the IRNC concluded that, in breach of the provisions of §§ 1 and 5 of art. 79 Decree No. 1751/1995, the company did not respond satisfactorily to the questionnaire, not having fully provided verification in the required manner. In summary, as explained in detail in the aforementioned letter, it was found that the company did not file the confidential version of the narrative part of the response to the questionnaire, which made it impossible for this authority to analyze. SDCOM sent the restricted version of its response to understand the information, which proved that the company did not provide the requested information.

231. The company was notified of this fact through Official Letter SEI n° 74860/2022/ME, of February 18, 2022, and was informed that the determination on granting subsidies to Nickel and Chrome Alloy and other companies of the Tsingshan group would be based on the available facts. It was also informed that the group would have until March 4, 2022, to present the issues covered by the letter.

232. On February 24, 2022, the IRNC filed a document called "additional information" (IRNC) and on March 4, 2022, the explanations regarding the facts related to the investigation 49.146/2022/ME were filed.

233. In this context, after a brief inspection of the document called "additional information" (IRNC) by SDCOM, it was shown that this was the response to the producer/exporter's questionnaire filed by the company on June 29, 2021. Thus, considering that the deadline for the final response to the aforementioned questionnaire ended on September 15, 2021, the company's response was untimely, under the terms established in the caput c/c § 1 of art. 37 of Decree No. 1751/1995. By Official Letter SEI n° 74860/2022/ME, of March 15, 2022, the group was informed that, since the document is the answer to the questionnaire, such document would not be considered in the investigation. Information to the questionnaire, situation dealt with in § 2 of art. 37 of Decree No. 1751/1995.

234. Thus, the company was notified that, considering the investigation, the untimely response would not be considered in the determinations to be issued by the IRNC, pursuant to art. 79 of Decree No. 1751/1995.

235. Through said Official Letter, the company was also informed that the letter of transmittal that accompanied the response to the untimely questionnaire, filed on June 29, 2021, as the manifestation filed on March 4, 2022, would be considered in the determination of the investigation in the context of this investigation. In addition, it was also emphasized that the investigation would not present any comments it deems relevant in the investigation records during its investigation.

236. It is pointed out that the company maintained in its statements that the final statements to be considered for the Technical Note of Essential Facts (NT) would be the names of the companies listed. This fact is particularly relevant as it undermines the investigation.

characterized any obstacle to the regular continuation of the feat.

239. In this context, the IRNC added that the understanding of the F States — Anti-Dumping and Countervailing Duties on Certain Products and the 539), within the scope of the WTO Dispute Settlement System about art. Subsidies and Compensatory Measures - ASMC, it would be in the sense that the provided after the expiration of the deadline ("time limit"), even if referring to the questionnaire, would not mean that has been provided within a reasonable period necessary to evaluate the specific circumstances of the concrete case.

240. In these terms, IRNC explained that having been notified in a letter 5 (five) months after the protocol of its response to the questionnaire, the confidential version of the narrative had not been regularly carried out, to understand the IRNC's responses using only the restricted version of the narrative make available, through the new manifestation, the entirety of the excerpts emphasizing that such excerpts reflect in a systematic way the content of all annexes, especially with regard to the performance of related parties.

241. In addition, the IRNC understood that the procedure would be in line with what would allow the receipt of complementary or additional information, that there is no need for the Government of Indonesia or to the importers, in a situation in which all other information pertaining both to IRNC and its related parties, as well as the restricted version of the narrative, duly and timely received by SDCOM, so that acceptance by SDCOM of this additional information would not impede the smooth running of the investigation and the compliance with other provisions.

242. Finally, the IRNC understood that the interpretation of art. 12.7 of the aforementioned Panel would be in line with the treatment given by SDCOM to the information of a material nature presented by the petitioner in the data filed at the time of the investigation, so that, in compliance with the principle of isonomy, impersonality and impartiality, art. 37, paragraph 2, of Decree No. 1751/1995, would support the receipt of complementary information presented by exporters with regard to the narrative part of the questionnaire.

243. In a statement dated March 4, 2022, the IRNC presented its findings and facts reported in Official Letter SEI No. 49.146/2022/ME, of February 18, 2022, and the facts available to the IRNC.

244. IRNC reiterated that, on July 16, 2021, through the DECOM Digital Platform, the producer/exporter have timely submitted a request for an extension of the deadline for submission of the producer/exporter's questionnaire, which was granted by the DECOM Digital Platform 576/2021/CGMC/DECOM/SECEX, dated July 27, 2021, the date remaining expired.

the protocol of the response to the questionnaire from the producer/exporter proof: i) the existence of duplicity in the questionnaire protocol, which would de achievement of uploading and sending files in the SEI system, as pointed o manifestation of 09/16/2021, in which the IRNC requests the removal of th screenshots of other protocol attempts that did not succeed due to system ins printscreens captured in the attempt to protocol the confidential version of questionnaire.

248. IRNC claimed that receiving its response to the producer/exporter is essential in light of the exegesis of Brazilian legislation, Decree No. Brazilian Law

249. The IRNC argued that the receipt of its questionnaire from SDCOM would not impose any harm on the other interested parties in terms of g and ample defense, established in art. 2, caput, of Law nº 9.784/1999, since t would have access to the restricted version of the IRNC producer/exporter collaborative exporter.

250. The IRNC argued that it would have acted with its duty of loyalty under the terms of art. 4, item II, of Law nº 9.784/1999, and as proof of th highlighted that the letter of submission of the IRNC questionnaire, in its versions, would expressly state that the narrative part would compose the D response, demonstrating that the company would not have had the intention o the narrative part of the response or subtracting information of a confidential presented confidential screenshots of the .PDF file of the confidential narrativ would demonstrate that this was effectively prepared by the company for su changed since then.

251. The IRNC notes that in administrative law, once the ad demonstrated, the administrator must act according to certain precepts that le for the regularization of procedural acts to occur in a proportional and equ imposition of burdens excessive, according to the sole paragraph of art. 21 of the

252. The IRNC recognized that SDCOM complied with the duty to e and administrative consequences" by asserting, in Official Letter SEI nº 4 determination on the granting of subsidies to PT Indonesia Ruipu Nickel and Ch account the available facts", in compliance with the caput of art. 21 of LINDB; b sole paragraph of the same art. 21, of the right to regularize the response to th questionnaire, by not providing any possibility of regularizing the administrative challenges of the case in question: (i) the transition phase from the SDD systems unprecedented tool "QuebrArquivos" to help divide heavy files; (iii) protocol co and (iv) the instabilities presented by the SEI system on 09/15/2021.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

analyzed by SDCOM, since it was the formal question provided for by law, there to the contrary.

257. For the IRNC, the formal requirement that would be made 49.146/2022/ME would not find foundation in the legislation, according to p Letter No. 49.146/2022/ME, and there would be no reason, nor would it show I to resort to the restricted version of the narrative to try to "understand the re requested in the producer/exporter questionnaire", a contradiction in relation to disregard the entirety of the response to the IRNC questionnaire, of so that conception that the simultaneous protocol requirement of the confidential and be a matter of form.

258. The IRNC highlighted that the greater degree of flexibility of 1.751/1995, of the use of the additional information of its § 2 of art. 37, would data voluntarily submitted by the petitioner, on 10/5/2021, which were accepted cf. appears in paragraph 37 of the On-site Verification Report of Aperam Inox Am

259. Thus, the IRNC called for isonomy in the treatment of the parties art. 5 of the Federal Constitution of 1988, claiming that on 2/24/2022 he submitted to the narrative part of his response to the producer/exporter's questionnaire, presented in a "reasonable period of time for consideration of this Understanding multilateral precedents of the Dispute Settlement Body (DSB) of the World Trade art. 12.7 Agreement on Subsidies and Countervailing Measures (ASMC).

260. In this context, in addition to the prerogative brought by § 1.571/1995, § 5 of art. 79 of the same decree would allow the use of information presented, has not been presented "adequately in all respects". In addition, transparency of the IRNC, it would be absolutely plausible to support the analysis of this Understanding a first request for additional information that there was: consideration of the annexes of the response to the IRNC questionnaire combined with the narrative consideration of the additional information presented on 2/24/2022; or confidential narrative itself, now presented by the foundations of facts and law p

261. In addition to the above, IRNC claimed that its non-compliance with response to the producer/exporter's questionnaire, through the application of absence of a simultaneous protocol of confidential and restricted versions of support in precedents of the SDCOM.

262. Within the scope of the end-of-period review of the anti-dumping through the Letter of additional information to ABICALÇADOS 1.932/2020/CGSA/DECOM/SECEX, would have given the petitioner the opportunity

version, so that the Indian company Britesa Industries Private Limited could requirement provided for in Decree No. 8,058/2013, which governs the investor deciding to disregard documents and resort to the use of available information, producer/exporter questionnaire in the anti-dumping investigation of polyester restricted version of a number of statements, more precisely 13 files, sent as con

265. In this context, IRNC calls for due receipt of the confidential narrative in light of multilateral precedents, cf. the art. 12.7 of the ASMC and the DS 539 panel of February 24, 2022 of the confidential excerpts of its confidential narrative questionnaire, as additional information, cf. art. 37, §2.º, of Decree n° 1.571/1993. Information to be disregarded by an authority, resorting to the application of art. 12.7, ensured that the general requirements of art. 12.7 are verified in the specific case. In the light of the said Panel, the simple fact that information was provided after the deadline to the deadline for answering the questionnaire,

266. In this context, the company alleges that requests for additional information in the narrative part of the response to the questionnaire, mainly in a situation where the appendices were timely received by SDCOM, so that the acceptance by this authority of additional documents submitted on 2/24/2022 would not prevent the proper processing and compliance with the other deadlines of the process.

267. On the other hand, IRNC understood that it would be possible to understand the company's response to the questionnaire based on the restricted version combined with the confidential versions of the appendices and annexes duly provided. IRNC provided an Annex with information from the statements and the appendices of the response to the questionnaire, in which each excerpt marked as confidential was correlated with the information provided in the statements and in the appendices of the response to the questionnaire, and which could instruct a request for information from SDCOM regarding to the relevant sections. As this is an original grant investigation, the deadline to be extended for up to 18 months,

268. In this context, contrary to what SDCOM stated in the Official Letter, IRNC reached the conclusion that "several elements essential for proper analysis by this authority in the restricted version of the response narrative", since they could be supplied by the statements, annexes and appendices, as demonstrated by IRNC in said Annex.

269. In this sense, IRNC explained that regarding the two excerpts from the narrative reproduced in the letter, it understands that Statement A.3C.1 - Production and Statement B-2.1 Sales Flowchart, would allow, even if in a limited way, understanding of the respondent group. Likewise, from the analysis of the spreadsheets and app

art. 79, § 5.º, of Decree nº 1.751/1995, could not be entirely disregarded.

274. In a statement dated March 17, 2022, IRNC argued that, contrary to the response to the producer/exporter's questionnaire, art. 21 of the LINDB administrative authority should indicate conditions for regularization of the act. IRNC from being penalized promptly, disproportionately and excessively, to the available facts, similar treatment to companies that did not cooperate at all with the petitioner seemed to forget the content of Art. 21 of LINDB and reiterated that would privilege, in Public Law relations, the adoption of regularization measures preserving the general interests, to the detriment of the imposition of abnormal on the Administrator.

275. Thus, since the administrative procedure governed by Decree No. 8.058/2013 the simultaneous filing of confidential and restricted versions of documents and deadlines and obligations set forth therein, as does Decree No. 8.058/2013 and 10.839/2021, the complete invalidation of the response to the IRNC questionnaire opportunity for regularization, would go against the command of Art. 21 of the LINDB.

276. In this context, IRNC argued that this possibility of regularization occurred in other investigative procedures conducted by SDCOM through the provision of additional information to the parties, since on more than one occasion, SDCOM allowed, after the end of the period, the resubmission of files that, despite being indicative of protocols, were no longer presented to the Undersecretary, thus enabling the industry petitions and exporter questionnaires; despite the legislation to verify the Decree nº 8.058/2013, which is stricter and links the simultaneous protocol of confidential versions to the fulfillment of deadlines and obligations.

277. Thus, IRNC alleged that administrative practice would refute that it would not be up to SDCOM "to request the presentation of confidential information in the response presented in the restricted form, since it is not even possible to request the response", adding that the missing documents whose resubmission was allowed by the Undersecretariat in other procedures had not even been filed in a restricted version. In the case of the IRNC, access to the entire content of the response to the questionnaire, with the exception of excerpts considered confidential by the company, was part.

278. With regard to the alleged opening of an unacceptable procedure, SDCOM could present restricted versions with incomplete texts and index-number data. At its discretion, the information actually requested in the Questionnaires sent by IRNC that such fear would be absolutely unreasonable in the face of this specific case.

Coal, Coke and Land, Annex F - Financing, Annex H - Direct Tax Benefit and A for 5 companies.

279. In this context, IRNC questioned whether it would be reasonable for IRNC annexes, if the company simply fills in the appendices and tables in accordance with the instructions? if without the confidential version of the narrative, SDCOM's information would be unknown to that Undersecretariat; if without the confidential version of the narrative, the information would become unknown to that Undersecretary to the point of not being able to identify what those data refer to? whether specific data capable of quantifying the amount of subsidies would be less important than generic information that reproduces the content of Indonesian legislation?

280. In this context, the IRNC asserted that most of the information contained in the narrative would concern the identification of the respondent group, which is contained in the confidential annexes, or contain only explanations of a generic nature and the context of additional information. The IRNC informed its indignation that the petitioner's fear that the company could give rise to such absurd fear on the part of the petitioner.

281. With regard to the interpretation of Art. 12.7 of the ASMC and on the basis of the additional information in a "reasonable period of time", the IRNC contested the petitioner's position. If this understanding was accepted, "all interested parties could submit the information ex post facto", and alleges that the petitioner, in her protocol of October 5, 2021, undid the "minor rectifications", would have done the same; and SDCOM would have accepted the information submitted in a "reasonable period of time" based on §2 of Art. 37 of D.

282. In this sense, for the IRNC, its timely protocol of additional information and statements would be similar to that of the petitioner who changed its data in the course of the verification of this investigation of subsidies; emphasizing that this procedure was not part of the anti-dumping investigation, however, in this case, it was considered that the information presented in a reasonable period of time for SDCOM's appreciation would be in line with the understanding of the petitioner's data.

283. The IRNC alleged that the petitioner seemed to forget the content of Decree n° 1.751/1995, which would determine the use of verifiable information presented in the narrative. It is not adequate in all aspects, when requesting that the decision entered in the system 49.146/2022/ME be confirmed; since such provision reinforces the claim of the petitioner that the disregard of its questionnaire would be a disproportionate and excessive measure. The data and information made available in a confidential version.

Undersecretariat in the questionnaire were, in a confidential version, submitted for acceptance of the response to the questionnaire by the producer/exporter being investigated.

287. Aperam, in a statement dated March 15, 2022, highlighted that it had not only have faced the same change, and not only in the process in question, but in other similar petitions, which was the subject of notification by SDCOM, with different presentations. In addition, even though the system may have presented instability, the fact is that the response to the Producer/Exporter Questionnaire. Such protocol would have occurred in the presentation of the text of the response to said Questionnaire, therefore, such a transition of trade defense processes to the SEI.

288. It maintained that, although the legislation determines that the documents electronically signed must be listed, so that they are validated, the mere listing of simply listing which files were being presented cannot be understood as validation of the fact, sent in a timely manner to the investigating authority.

289. It highlighted that the Questionnaires sent by SDCOM to the parties did not allow the simultaneous presentation of the confidential and restricted versions. If the investigating authority could question confidentiality justifications or even the validity of the restricted version, the opposite is not true, and SDCOM is not responsible for releasing confidential information based on an insufficient response presented in the restricted version, even possible to know the content of the answer. If that were the case, an understanding could be set, in which the parties could present, within the deadlines determined by the investigating authority, only supposedly restricted versions, with incomplete texts and data in index form, to be released later, at their discretion. ,

290. Likewise, it should not be said that the presentation of the confidential version of the response to the Producer/Exporter Questionnaire by IRNC only after sending the Letter by SDCOM would have been carried out within a reasonable period of time to the investigating authority . If such an understanding is accepted, the meaning and the understanding established by the investigating authority for submitting responses to the Questionnaire, since all interested parties could submit their complete information a priori, would be an understanding.

291. In addition, he highlighted that § 3 of art. 37 of Decree No. 1751 of 2012, which states that the information should be submitted within the deadlines determined by the investigating authority, an understanding would be ratified in § 1 of art. 79 of the same Decree.

292. It should be noted that this case is not about corrections or omissions of information, but rather a response in which several essential elements are missing or incomplete, to the investigating authority, thus not allowing SDCOM understand the answers to the

determinations lacking any factual support and that although SDCOM could not be a cooperative party, this authority cannot make use of adverse inferences with an excessive punitive burden in its determinations related to the IRNC, but only the information available in the present case file to fill in the informational gap that is observed in art. 12.7.

298. The company ended its statement by providing, as the best available secondary information, the subsidy margin determined in the subsidy investigation in the European Union in the face of imports of cold-rolled stainless steel products of the company added that "the subsidy margin determined in the European subsidy investigation is below, constitutes adequate secondary data as the best available information available in the information that the IRNC, in the view of the investigating authority Brazilian, failed to obtain."

1.7.4.1.1.2 Manifestations after the Technical Note

299. PT IRNC, in its final statement, pointed out that it disagreed with SDCOM, which stated that no response was received to the questionnaire sent to the company. For the company, the use of this language does not reliably reflect the facts of the investigation. It adds that it agreed to review the confidentiality of the names of the company in its final statement, noting that there was no request from Aperam in this regard.

300. He also pointed out that on March 4, 2022, he brought comments to his response to Official Letter SEI No. 49.146/2022/ME, and that he would have maintained the intelligibility of the questionnaire as a whole based on the narrative in a restricted manner in the annexes and confidential appendices, indicating schematically where the information was located. He reiterated that, according to the Law of Introduction to the Norms of Brazil, it was the duty to provide opportunities for the regularization of the act, and that this was the purpose of the investigations. Even so, this SDCOM would have confirmed the application of the law, but the company expressed its absolute disagreement.

301. He reiterated the existence of good faith, which would have been demonstrated in detail in item B.II of Section B of the manifestation of March 4, 2022.

de 2022. In it, the company would have proven that it effectively provided a confidential version of the narrative of its response to the producer/exporter's request, which would demonstrate that the missing document, in addition to being effectively provided, had not been altered since then.

302. It defended the lack of damage to the contradictory, as the request had not been filed. He expressed his disagreement with SDCOM, when this authority in its statement pointed out that "It would also harm the other interested parties, given that SDCOM could not proceed from analyzing the company's response [since it was not received], cannot

asserting that it complied with them, which would be remarkable. He accused fallacious allegation, since what would be in this case would not only be the private individual in the midst of an administrative proceeding, but a de administrative authority regarding the receipt or not of that documentation, LINDB

306. The prediction of the sole paragraph of art. 21 of the LIN administration the duty to provide opportunities for the regularization of the inv normative expression of rules that already appear in the Brazilian legal system. formalism provided for in the Federal Administrative Procedure Law (Law instrumentality of forms, according to the Code of Civil Procedure. In the compa offense to the rights of those managed - in the present case, of the other Undersecretary should receive the confidential version of the narrative of the IR

307. Whereas in the NTFE it was clear that the disregard of the IRNC due to a mere question of form (simultaneous presentation of the questionnaire the alleged impossibility of SDCOM to understand the company's answer conjugation of the restricted narrative of the questionnaire with the appendices the answer, the IRNC added that it would be possible to present, as voluntary a on the permissive of art. 36 and especially of art. 37, §2 of Decree nº 1.751/1995, of the confidential version of the narrative of its response to the producer/expor

308. Contrary to SDCOM's assertion, there would also be time confidential information from the IRNC response was already in SDCOM's posse - two weeks before the issuance of the first request for additional informa Indonesia, and only eight months later the NTFE was handed down.

309. Since the reasons invoked are false, the administrative decision the terms of art. 50, § 1, of the Federal Administrative Procedure Law.

310. He reiterated the precedents regarding Article 12.7 of the ASM information must be submitted in a "reasonable period of time", which would h request for additional information to the GOI was only issued two weeks after excerpts. In this way, due to the duty to provide opportunities for the regulariz the moderate formalism of administrative processes and, especially, due to the of forms and the decision in DS539, the deadline for answering the questionnaire He also added that he disagrees that the case of DS539 is "sensibly different", si of the company would have nothing of relevance to what is now being discussed be the receipt of information within a reasonable period, even after a certain SDCOM would only have pointed out the timeliness of the response as the reaso

confidential narrative part absent.

314. The central element of the questionnaire sent by SDCOM was response, which is the document containing the answer to all the questions asked. In the confidential version, a basic element that would serve to instruct the entire questionnaire indicates, in its completion guidelines, that the company must answer all questions:

No question or section should be left unanswered. Clearly refer to the questions that have been answered. Answer the questions in the order presented in this questionnaire. The answers must be provided in the requested formats and must be clearly labeled.

(....)

A confidential version and a restricted version of the response to the questionnaire must be stored in the Decom Digital System - SDD, or a system that replaces it, simultaneously.

(...)

Taking into account the provisions of the caput of art. 37 of Decree No. 49146/2022/ME, the response to this questionnaire, in its restricted and confidential versions, must be delivered within 40 (forty) days from the date of transmission of the questionnaire.

315. There is no need to talk about lack of reasonableness or proportionality, given that it was the company that failed to provide a timely response to the questionnaire. The documentation contained blemishes that were impossible to overcome, as explained in the report No. 49146/2022/ME:

Aware of the apparent gap in the company's response, this SDCOM decided to analyze the content of the restricted version of the narrative contained in the response. It was evaluated whether it would be possible to understand the responses to the questionnaire sent to interested parties, using only the restricted version of the narrative in the protocol. However, such an attempt remained impracticable, given that the elements for proper analysis by this authority are absent in the restricted version of the response. Thus, the filed response does not allow this SDCOM to understand basic and essential information for analysis, such as the complete information of the responding companies,

316. Unlike the references to other cases made by the IRNC, the company did not provide means of a supplementary information letter, precisely because it would not be relevant information, but the response to the questionnaire itself. It is not up to the interested party to indicate relevant or not to present, nor to indicate how the investigating authority should

320. First, it should be noted that art. 21 of LINDB is not applicable to the situation explained below. However, even if, in theory, such an article were applicable, SDCOM informed the interested parties, in a clear and objective way, of all the reasons for the legislation due to the non-acceptance of the files submitted by the company in the questionnaire of the investigated producer/exporter. It should be noted that SDCOM complied with its duty to expressly indicate the "legal and administrative consequences" of asserting, in Official Letter SEI nº 49.146/2022/ME, "that the determination on the non-acceptance of PT Indonesia Ruipu Nickel and Chrome Alloy (...) will take into account available information".

321. The IRNC accusations constitute a material misunderstanding of the rules contained in articles 20 and 21 of the LINDB and in the appropriateness of the administrative process in question, in addition to a material misunderstanding of the Administrative Acts and the procedural acts, of believing to have produced an act carrying out an instrumental act within the scope of the administrative procedure, and not a defense investigation.

322. Articles 20 and 21 of Decree-Law No. 4,657, of September 4, 1966 (the Norms of Brazilian Law - LINDB), provide that:

Art. 20. In the administrative, controlling and judicial spheres, decisions shall be based on abstract legal values without considering the practical consequences of the act. (Included by Law No. 13,655 of 2018)

Single paragraph. The motivation will demonstrate the need and the proportionality of the measure or the invalidation of an act, contract, adjustment, process or administrative rule, taking into account the possible alternatives. (Included by Law No. 13,655 of 2018)

Art. 21. The decision that, in the administrative, controlling or judicial spheres, the invalidity of an act, contract, adjustment, process or administrative rule must express the administrative consequences. (Included by Law No. 13,655 of 2018)

Single paragraph. The decision referred to in the caput of this article shall indicate the conditions for the regularization to occur in a proportional and equitable manner, without prejudice to the general interests, not being able to impose on the affected subject a burden that, in depending on the peculiarities of the case, whether abnormal or exceptional, is disproportionate. (Included by Law No. 13,655 of 2018)

323. Contrary to what the IRNC states, that "Art. 21 of the Law of Introduction of the Brazilian Law ("LINDB") determines that conditions for regularization of the act by the administrative authority", art. 21 of the LINDB is only applicable for the invalidation of acts issued by the Public Administration itself. In the present case, the non-acceptance of the files submitted by the company in the questionnaire of the investigated producer/exporter, is not an act issued by the Public Administration itself.

325. Even though the response to the questionnaire is obviously not a final decision, PT IRNC cannot invoke the principle of real truth or the other principle of the acceptance of information filed at an absolutely late procedural moment without an express requirement of applicable law. There is no doubt that the lack of response hindered the investigation, and such an absence was unwelcome for both the parties. However, this is an unavoidable situation, since there was not enough time to complete the investigation, with the justification of providing opportunities to remedy irregularities. The conclusion of the investigation.

326. In this context, in view of the timeliness of the document filed, according to the rule in the caput c/c § 1 of art. 37 of Decree nº 1.751/95, SDCOM respects the normative content of art. 20 of LINDB. It is clear that the IRNC's accusations are based on the interpretation of the norms contained in articles 20 and 21 of the LINDB, regarding their impositions in the administrative process in question, as well as the legal nature of the Acts and the acts procedural, as it believes it has produced an Administrative Instrumental act within the scope of the administrative processes of the investigation.

327. SDCOM vehemently refutes PT IRNC's accusation that this act is a fallacious allegation when considering that art. 21 of LINDB to the company's case. The response to the producer/export questionnaire would be a merely instructive act, which is considered, as PT IRNC wants, that in this case there is "a decision by the authority regarding the receipt or not of this documentation", art. 21 of the LINDB, with the question, since if it only applies when the "invalidation of an act, contract, administrative rule" - in casu, there is no act of the administration invalidated, but a decision for non-acceptance of documentation. By insisting on this question,

328. Let it be repeated once again so that the protester bears in mind that arts. 20 and 21 of the LINDB as if they were applicable to the same types of acts. If applicable horizontally, in art. 21 there is express limitation to the "decision that invalidates an act, contract, adjustment, process or administrative rule (...)".

329. Thus, unlike what the IRNC alleges, what we have is compliance with the command on the part of SDCOM, the legal requirement of not receiving a decision without occurrence of the temporal limitation, a decision with duly decision-making power, reasoned, strictly in accordance with the provisions of art. 20 of LINDB, since SDCOM responded by means of OFFICIO SEI No. 74860/2022/ME, of March 15, 2022, of the immediate response.

Single paragraph. If the subpoena is not complied with, the competent authority, in the matter relevant, make up for the omission ex officio, not exempting itself from the duty (with emphasis).

334. In addition, SDCOM is important to highlight the topology of the Law n° 9784/99, which is inserted in chapter IV - "the beginning of the procedure". The Law points out that the sole paragraph of art. 50 of the same Law No. 9784/99 provides that the decision must be motivated, with an indication of the facts and legal grounds. In these circumstances, the IRNC's allegations of unjustified refusal, and emphasizes that it fully complied with the requirements of Law No. 9784/99 by informing IRNC in an "explicit, clear and congruent" manner. The SEI No. 74860/2022/ME, of 3/15/2022, of the untimeliness of the document is not considered as "additional information from IRNC", which was, actually responding to the question. At the time the protocol was already closed, under the terms established in the caput c/c of art. 1.751/95, not constituting, therefore, as additional information to the questionnaire, in accordance with the same article of Decree n° 1.751/95.

335. With regard to the so-called moderate formalism and the instructions, the Law points out that item VIII of the sole paragraph of art. 2 of Law No. 9,784/1999 provides that administrative procedures shall observe, among others, the criteria for observing the formalities, the protection of the rights of those under administration, and item XIII provides that administrative acts shall observe, among others, the interpretation of administrative norm in the way that best ensures the fulfillment of the public purpose to which it is directed, retroactive application of administrative acts being forbidden.

336. In effect, Art. 2 of Law No. 9,784/1999 provides that the Public Administration shall observe, among others, the principles of legality, purpose, motivation, reasonableness, proportionality, defense, contradictory, legal certainty, public interest and efficiency; with its sole paragraph providing that administrative processes will observe, among others, the criteria of:

- I - acting in accordance with the law and the Law;
- II - fulfillment of purposes of general interest, the total or partial exercise of administrative competences being prohibited, unless authorized by law;
- III - objectivity in serving the public interest, the personal promotion of the agent being prohibited;
- IV - acting according to ethical standards of probity, decorum and good conduct;
- V - official disclosure of administrative acts, subject to the hypotheses established in the Constitution;

out that, according to the same scholar, contrary to what was intended by the due to the non-provision or partial provision of the required information due to the part, in its confidential version, when the protocol fails from its response to the questionnaire, it is precisely highlighted that:

(...) informalism cannot be used by the administration to fail to comply with the legal order establishes regarding its mode of action, nor to evade compliance with the rules of due process (gn).

338. SDCOM also points out that the principle of the instrumentality of the judicial process, would only have a logical-legal sense if the documents in question does not occur in the present case. Furthermore, an invalid administrative act with a defect is curable.

339. Thus, there is no need to speak of a violation of the model of administrative processes, given that there was no failure to observe a mere absence of relevant content for the authority's analysis. In this vein, considering "sans grief", taking into account the investigation deadlines, the undeniable damage from accepting a rectification or addendum to the response, as claimed by the company. There would also be damage to the other interested parties, given that SDCOM, from analyzing the company's response, could not even assess whether the response of the company was reasonable.

340. In its final statement, PT IRNC pointed out, regarding the confidentiality of the group's companies, that it would supposedly be possible for SDCOM to ensure the confidentiality of the response, under the terms of § 2 of art. 38 of Decree No. 1, is only in a position to know whether or not the confidentiality hidden in the rest of the information analyzed in comparison with the confidential version (with all the information) is reiterated: without the confidential version, it remains impossible for SDCOM to know the content and then request the resubmission of its restricted version, with objection from the interested parties in this fact. Confidentiality can only be raised for something that has not been filed - otherwise it is untimely information improperly filed. Although this is not the results of the investigation, it is undeniable that the confidential treatment of the notoriously public nature impaired the understanding of the other interested parties.

341. The protester tries to match her protocol with a new response, which is information filed as additional information pursuant to art. 37, §2 of Decree No. 1, the provision of this article is intended to fill gaps in the response, and not to justify an unprecedented response. It is impossible to talk about the instrumentality of the response, does not eliminate the fact that the company did not file its response within the

7.357 For the above reasons, we find that Korea has established inconsistently with Article 12.7 of the SCM Agreement because it rejected the cross-owned affiliate input suppliers solely on the basis that it was provided a by the USDOC, without considering whether, in light of the specific facts information submitted by POSCO was nonetheless submitted within a "reasonable

346. However, there was a significantly different situation here, given that the DSB, the company in question was verified, and the US authority did not in disregarding the response other than non-compliance with the deadline. In the PT IRNC prevented any analysis of the questionnaire, as well as SDCOM had the company why it would not be possible to accept a new response, including by the company to SDCOM. The interpretation of this decision by PT IRNC was, of

347. Analyzing a questionnaire response is a task that takes months in a subsidy investigation, which involves thousands of pages and dozens of pieces managed to send the first request for additional information to the GOI on March questions being asked for the GOI.

348. Contrary to what was alleged, there was not enough time to allow PT IRNC, analyze such response, make any requests for additional information, verification and carry it out. The fact that the error in the response was only response was filed in no way diminishes the company's guilt: the authority began within the deadline already established internally and in which there would be the investigation.

349. It should be noted that, in its final statement, PT IRNC once again sufficient time, for having filed its new response two weeks before the issuance additional information to the Government of Indonesia. PT IRNC also adduced invoked motives would be 'false'. Such a very serious allegation is so unreasonable levity and borders on bad faith. As can be seen from the protester's arguments, file had just begun" or "the investigative procedure in relation to the Government first request for additional information, would only be issued, as mentioned, only after protocol of confidential IRNC excerpts in sanitation to previous protocol."),

350. Well, the protester's intellectual fragility is such that it does not scrutiny. On February 18, 2022, notification was sent about the problems with March 8, 2022, the 1st request for Complementary Information was sent to the GOI received months before such submission, and extensive work was carried out analysis of the response to the GOI - which, in its restricted version, has 77 attachments

for the SDCOM team, as it was based on the assumption that the interested party had the files on the system, he would not forget - or, for whatever reason unknown to the team, precisely the most important element of his answer. Thus, the SDCOM team's conclusion of absence did not result from any internal error in the use of the IT tools used to analyze the "zipped" files contained in the SEI, as well as any internal failure of IT systems. Internally, the team concluded that the failure could only be attributable to the interested party itself.

354. It is worth clarifying here about the work undertaken to verify the company's response, and that it involved research in relation to information technology, as suggested by PT IRNC, which in its final statement indicated that it "never received this E. authority regarding the aforementioned verification procedure with the relevant department", it is clarified here, so emphatically, that no consultation was made with the Ministry of Economy about any failure in the SEI System or any issue related to the SDCOM team. The SDCOM team is absolutely sure that the absence of a response to the question arose from the company's own action, and not from any failure in the operation of the system.

355. The internal tests carried out by the SDCOM team to make sure the IT tools involved the analysis of the registered .zip files. Given that the response was a .zip file divided into nine parts, using the tool made available by SDCOM, the team verified whether the .zip files could have been modified in some way after submission by: 1) whether the reconstitution of the complete file is done successfully; 2) whether, in the reconstruction, only the file with the narrative could have been excluded; 3) whether it was possible for the reconstructed .zip file to contain the file with the narrative part, but somehow not the other parts.

356. To answer these questions, the case team itself sought the .zip file format. The .zip format is based on PKZIP, and an ISO specification was also created to ensure interoperability. ISO 21320-1, Information Technology - Document Container File — Part 1: Core specification, it is clear that all the possibilities mentioned in the previous paragraph are impossible. The .zip format specifies, for each file, the "Central Directory", which is a list of files in the resulting .zip:

4.3 General Format of a .ZIP file

4.3.1 A ZIP file MUST contain an "end of central directory record". A ZIP file without an "end of central directory record" is considered an empty ZIP file. Files MAY be added to a ZIP file, or deleted.

A ZIP file MUST have only one "end of central directory record". Other specifications MAY be used as needed to support storage requirements for individual files.

response one by one in order to verify that there was no error in the indication. SDCOM was also careful to calculate the CRC and MD5 hashes of the analyzed notification letter of the use of available facts, so that PT IRNC would have an excuse for itself in the presentation of any technical allegations. Nothing was pointed out.

359. In conclusion on this point, SDCOM reaffirms that no consumer was harmed by the Ministry's IT area, as it was able to eliminate on its own any possibility that an error occurred in the Ministry's IT system during the submission, download or still rebuilding the system. In fact, is, there was absolutely no technical doubt that, in fact, the non-submission of the response narrative was exclusively the fault of PT IRNC.

360. In this context, SDCOM carefully complied with the provisions of the Consumer Protection Regulation and also with the WTO jurisprudence, and, as will be seen in section 361, the provisions were used in a reasonable manner, not to punish, but to fill gaps, even in the face of the lack of response and partial collaboration from the GOI. As will be better treated in section 362, of each program, SDCOM used various elements such as available facts, and also included the decision of the European authority, considering that such use was appropriate (which is even enshrined in Ordinance SECEX No. 172, of February 14, 2022).

361. The company seriously failed in its duty to provide the requested information to the investigating authority in a timely manner, and it is not acceptable for the interest of justice that the failure attributable solely and exclusively to itself, to try to impose its version of the facts on the investigating authority should act on the hypothesis of non-cooperation of the interested party to use available facts in light of the non-cooperation.

362. It should be noted here that once again PT IRNC was untruthful in its statement that "the alleged timeliness of the response to the questionnaire from the producer is not a factor that SDCOM bases its rejection". It should also be noted that the document cited in the rejection, Official Letter SEI No. 74860/2022/ME, referred exclusively to the document received from PT IRNC called "additional information from IRNC" (received 5 months after the end of the investigation) and not the original response to the questionnaire filed by PT IRNC.

363. The rejection was extensively based on several factors, based on the lack of time to analyze a new response given the state of the investigation and also on the impossibility of using the restricted response to deduce information underscoring the fault of sole fault on the part of the company. SDCOM used the term "untimely" to qualify the answer in a short description, but as the company knows, several factors can support the rejection, when there was an opportunity to discuss it.

protocol of the confidential version of the narrative of its response to the question. It also regretted the delay in attempting to protocol a new response (5 months after the deadline) and the positions and the facts that occurred, the fact that the company misrepresented a biased manner and made serious false accusations, in an unfortunate attempt of exclusive incompetence.

1.8 On-site checks

1.8.1 Verification in the domestic industry

367. Based on § 2^o of art. 40 of Decree No. 1,751 of 1995, SDCOM technical verification at Aperam's facilities, from December 6 to 10, 2021, with the aim of greater detail of the information provided by the company in the petition.

368. The procedures set out in the verification scripts, previously set out, were complied with, with the data presented in the petition and in the supplementary information verified.

369. SDCOM considered the information provided by the company in the investigation to be valid, after making the relevant corrections. The domestic producer/exporter data in this document incorporate the results of the on-site verification.

370. The restricted versions of the on-site verification reports are confidential file and the supporting documents were received on a confidential basis.

1.8.2 Verification at the Government of Indonesia

371. Based on § 1 of art. 40 of Decree No. 1751 of 1995, DECOM technical spot checks at the premises of the Government of Indonesia, from May 23 to 27, 2022, confirming and obtaining greater detail of the information provided by the Government of Indonesia in the investigation.

372. The procedures set out in the verification scripts, previously set out, were complied with, with the data presented in the answers to the questionnaires and the information having been verified.

373. The restricted versions of the on-site verification reports are confidential file and the supporting documents were received on a restricted and confidential basis.

374. The analyzes contained in this Final Determination Opinion take into account the results of this on-site verification.

1.8.2.1 Statements on on-site checks

375. Aperam, in a statement on May 17, 2022, highlighted some points. The verification by the Government of Indonesia would be fundamental for the due diligence.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

legislation requested by the investigating authority, not just the "relevant Indonesian Government itself.

380. He added that the presentation of documents exclusively in Bahasa Indonesia is in line with the provisions of art. 433 of Ordinance Secex n° 172, of 2022, since they are respective translations, as, for example, in the cases of Finance Regulation No 14 of 2015, Ministry of Trade Regulation No 32 of 2015, Ministry of Finance Regulation No 18 of 2020 RPJM 2020-2024, Ministry of Finance Regulation No 35 of 2018, Ministry of Finance Regulation No 130 of 2020, Ministry of Trade Regulation No 102 of 2015, Ministry of Trade Regulation No 39 of 2014 and Ministry of Trade Regulation No 95 of 2018.

381. The Government of Indonesia, in a statement dated 29 July 2020, confirmed the on-site verification report. He informed that Presidential Regulation No 18 of 2015, National Medium-Term Development Plan 2015 - 2019, and that it was valid until 2019, was replaced by the plan from 2020 to 2024, Presidential Regulation No. 18, of 2020. Presidential Regulation No. 2 of 2018 refers to the National Industrial Policy 2015 - 2019.

382. The GOI also stated that MEMR Regulation No. 11, of 2020, establishes a reference price for sales, and not transaction prices. Transaction prices would be higher than the reference price, which acts as a floor. He reiterated that prior to such a change, the HPM was used only to calculate royalties. Still in this context, it clarified the statement during verification - "as the smelters implemented the price set by the government", meaning that smelters simply complied with the HPM price as a floor.

383. The GOI was also keen to point out that the IMIP would not have been the result of the high-level economic dialogue between Indonesia and China - as the IMIP was signed by private parties, namely the Tsingshan Group and the Bintang Delapan Group in 2015, and the government of China would only have witnessed the signing, which was not applied internationally. He informed that the GOI applies equal treatment to all investors willing to invest and who have invested in Indonesia are obliged to comply with regulations in force in Indonesia.

384. He highlighted that the IMIP area has several uses, it would not only be for mining property, but would also be destined for agriculture, residential, fishing, etc., in accordance with the Space Regulation of Morowali n° 7/2019.

1.8.2.2 SDCOM Comments

385. Regarding Aperam's comments, SDCOM reiterates that due to the procedures that had been previously informed in the verification script were followed, the verification report was timely incorporated into the records of this review.

1.10 Decision not to carry out a preliminary determination and deadlines

389. SECEX Circular No. 37, of August 19, 2022, published in the August 19, 2022, in addition to making public the facts that justified the preliminary determination on the existence of a practice of subsidies, damage to the causal link between them, made public the deadlines that would serve as a part of this investigation.

Deadlines
Closing of the period for consideration of manifestations for Technical Note
Disclosure of the Technical Note containing the essential facts that are under analysis and that will be considered in the final determination
Final hearing
Closing of the period for submission of final statements by interested parties and end of the investigation phase of the process
Issuance, by SDCOM, of the final determination opinion

Source and elaboration: SDCOM

1.11 Calling and holding the final hearing

390. In compliance with the provisions of art. 43 of Decree No. 1751 of 1996, all interested parties were summoned to the final hearing, as well as the Confédération Nationale du Commerce Extérieur - CNEC, the National Confederation of Livestock of Brazil - CNA, the National Confederation of Commerce - CNC, the National Industry - CNI and the Foreign Trade Association - AEB.

391. At that time, they were notified that the hearing would be held on September 29, 2022 and that the Technical Note containing the essential facts was available to interested parties on September 26, 2022, through the Electronic process SEI/ME nº 19972.101391/2021-52 (Restricted).

392. At the request of the GOI, on 23 September 2022 the time of the hearing was changed in order to allow the participation of representatives of the GOI direct from Jandaia do Sul.

393. The final hearing was held as scheduled, on September 29, 2022. On the occasion, in addition to SDCOM officials, representatives of the Brazilian government, the producing and exporting company PT IRNC and Aprodinox were present.

394. The hearing term and the attendance list of interested parties were made available as part of the restricted case file.

399. PT IRNC was the only interested party to present a statement. The comments from the interested party were considered in this Opinion, as will be discussed below.

1.13 Closing of the instruction phase

400. Thus, on October 14, 2022, the deadline for instruction of the affected parties ended (with the exception of the items mentioned in the previous section). The provisions of §2 of art. 43 of Decree No. 1751 of 1995. On that date, 15 days after the disclosure of the essential facts under judgment, embodied in the Technical Note of the aforementioned article, for the interested parties to present their final manifestations on the previous item, due to the disclosure of the errata of the restricted version of the essential facts, the deadline for manifestations by interested parties exclusively on non-attribution (section 7.2.6 of the technical note) and on the evolution of costs ended on October 25, 2022.

401. Within the regulatory period, the petitioner, the Indonesian government, the exporting company PT IRNC and Aprodinox expressed their views on the aforementioned facts. The comments of these interested parties on the essential facts under judgment are included in the document, according to each topic addressed.

402. It should be noted that, during the course of the investigation, the interested parties had access to all the non-confidential information contained in the file, having been able to broadly defend their interests.

2 THE PRODUCT AND SIMILARITY

2.1 The product under investigation

403. The product object of this investigation is commonly classified under codes 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the Mercosur Common Nomenclature.

404. The product under investigation includes austenitic stainless steel of standard and similar, including its variations, such as 304L and 304H, cold rolled or greater than 0.35 mm, but less than 4, 75mm, manufactured and marketed in Indonesia, not limited to, coils, sheets and strips/tapes, originating in Indonesia, herein referred to as "cold-rolled", produced in Indonesia.

405. Stainless steels are alloys of iron (Fe) and chromium (Cr), with a minimum of 10.5% chromium and various metallic elements, such as nickel (Ni), carbon (C), silicon (Si), manganese (Mn), phosphorus (P) can also be part of these alloys. In stainless steels, two elements must be highly present: chromium and nickel. The most relevant of all, due to its important role in increasing corrosion resistance, is chromium, which contributes to the improvement of mechanical properties.

ABNT/AISI Brazil/USA	euronorm European Union	WN Germany	DIN 17707 Germany	BSI Great Britain	UNE Spain
304	X6CrNi1810	1.4301 1.4303	X5CrNi1810 X5CrNi1812	304 S 31 304 S 15	X6CrNi1910
304L	X3CrNi1810	1.4307 1.4306	X2CrNi1811	304 S 11	X2CrNi1910
304H	----	1.4948	----	304 S 51	X6CrNi1910
Source: Initial Petition					

410. In this sense, stainless steels are manufactured and sold with a the ASTM A-480 standard of the American Society for Testing and Materials Annex 2 of the petitioner's initial petition, defines, in a non-exhaustive manner which are as follows:

-No. 1: Hot rolled, annealed and pickled - the surface is a little rough finish on materials with a thickness of no less than 3.00 mm, intended for industrial manufacture of the final part, the material is subjected to other finishes, such as

-No. 2D: Cold rolled, annealed and pickled - much less rough than the a matte surface, usually called "matt". This finish is not used, for example, conformation these materials give rise to the appearance of Lüder lines;

-No. 2B: Cold-rolled, annealed and pickled followed by a slight lam with shiny cylinders (skin pass) - it has a higher gloss than the 2D finish and is cold-rolling finishes. As the surface is smoother, polishing is easier than with #1 and

-BA: Cold rolled with polished cylinders and annealed in an inert atmosphere shiny and reflective surface, characteristics that are more evident as the thickness thinner. The furnace atmosphere can be hydrogen or mixtures of hydrogen and nitrogen

- No. 3: Material sanded in one direction - normally the sanding (diamond grain size) of approximately 100 mesh;

-Nº 4: Material sanded in one direction with 120 to 150 mesh abrasives roughness than that of N° 3;

-No. 6: Material with a No. 4 finish, then finished with cloths soaked in matte, satin appearance, with lower reflectivity than the No. 4 finish. The finish direction and the appearance varies a little because it depends on the type of cloth

appearance is of a sanding with high roughness. Roughness ranges from 2.00 to 2.50 micros Ra;

-SF (Super Finish) - finishing the material with sandpaper with a grain of 1000. It is a low roughness sanding, varying between 0.70 and 1.00 micros Ra;

-ST (Satin Finish) - Scotch Brite finish, without the use of abrasive. It is a low roughness sanding that varies between 0.10 and 0.15 micros Ra, even if its appearance is of a sanding with high roughness;

-HL (Hair Line) - material finished in continuous lines, made with sandpaper with 80 mesh. It is also a high roughness finish (2.00 to 2.50 micron Ra); It is a sanding with high roughness;

-BB (Buffing Bright) - polishing made with grains ranging from 400 to 600 mesh. It is a high roughness finish (2.00 to 2.50 micron Ra). Roughness is less than 0.05 micron Ra.

412. Regarding the production process of cold rolled products, the process involves reduction, melt shop, hot rolling and cold rolling.

413. In this context, with regard to the production process of the products, according to information provided by Aperam within the scope of the Preliminary investigation of dumping of cold-rolled stainless steel products 304, Indonesia has a process developed on an industrial scale by companies that produce NPI (Nickel Pig Iron) at their premises and introduce it directly into the melt shop AOD already cast.

414. In the initial process, the so-called NPI would be produced in a unit called RKEF (Rotary Kiln Electric Furnace). This unit initially receives the nickel ore through the stages of drying, calcination and pre-reduction in rotary kilns and then goes to the AOD vessels. The nickel ore is reduced, generating NPI with a composition of 10 to 11% Ni, 1% Cr and 82% Fe, which is directed to the AOD vessels of the steel shop. In the AOD, raw materials are also added, such as coal in a ladle, such as purchased or recirculated 304 steel scrap, nickel iron, chrome iron, manganese iron, silicon iron, etc. So the basic difference between the integrated route is that most of the Nickel charge is via NPI already cast and not nickel iron that need to be preheated in an electric arc furnace. After cooling, the integrated route is identical to the traditional one.

415. With regard to the differences between the traditional route and the integrated route, on November 9, 2020, in response to Official Letter No. 1.762/2020/CGMC, the Ministry of Industry provided additional information to the initial petition of SECEX Process No. 52272.00495. The Ministry informed that the traditional route is heavily centered on the use of 304 steel scrap, nickel iron and chromium iron for load balance. Producers using the traditional route purchase these materials (scrap, nickel iron, chrome iron) on the local market or via imports, and trade them daily on exchanges such as LME and in international publications. In turn, in the integrated route, steel is produced from basic ores, such as nickel ore, chromium ore, coal, Nickel

19. Furthermore, with regard to questions regarding the traditional route, the petitioner informed that the traditional route is heavily centered on with additions of nickel iron and chromium iron for the balance of load. Process route would tend to acquire raw materials (scrap, nickel iron, chrome iron) imports, and prices are largely quoted daily on exchanges such as LME and in in

420. In this context, in the integrated route or process, steel is produced from nickel ore, chromium ore, coal, with nickel pig iron (NPI), chromium iron (less other ferroalloys. The differences between the traditional route and the integrated up to the steelmaking phase. Until this stage, therefore, the use of different raw production processes are different. In the case of the integrated route, for example electricity and coal, in addition to a greater need for access to ores.

421. On the other hand, the petitioner clarifies that such a process also involves consumption of electric energy in the melt shop, since the raw materials are also used in the following phases of the production process. Due to the more intensive coal, this route also implies higher CO₂ emissions. On the other hand, in the 304 steel scrap is used as raw material, complemented with nickel iron and chromium intensive consumption of electricity and coal, with consequent lower CO₂ emissions in melt shop, there are no longer process differences and any differences are minor which can lead to design variations in hot or cold rolling. Thus, the option is therefore, depends on several variables, being fundamental the access availability (price) of the raw materials and inputs that can be used, such as scrap, nickel iron, coal and electricity.

422. The petitioner explained that the CODIP suggestion presented in the investigation petition complies with the provisions of art. 23 of Ordinance SECEX/2013 for the information necessary for the preparation of petitions related to a petition pursuant to art. 39 of Decree No. 8058, of July 26, 2013, represented by an alphanumeric code, letters and numbers, ordered from left to right, in order of importance, using letters for each characteristic, reflecting the following attributes: type of steel, thickness, finish

CODIP	
Attribute A	Type of Steel (AISI Standard)
A01	304 and variations thereof, except 304L and/or 304H
A02	304L
A03	304H
Attribute B	Thickness
B01	Equal to or greater than 0.35 mm, but less than 0.45 mm

C07	NR8 - ASTM 480
C08	BB (Buffing Bright)
C09	GF (Grinding Finish)
C10	TR - ASTM 480
C11	SF (Super Finish)
C12	BA - ASTM 480
C13	Other (Specify)
D attribute	WIDTH
D01	Less than 600 mm
D02	Equal to or greater than 600 mm

Elaboration: SDCOM

Source: petitioner.

423. In this sense, the petitioner explained that the length of the coil in the marketing of the product under analysis, normally only the thickness is informed. This is because when the customer acquires the coil, it will normally be transformed, gradually, into sheets or strips, according to the demand of the customers, in the case of distributors, so that, in general, length information is not relevant when the product is marketed in sheets. Anyway, the length of a cold-rolled coil can be estimated approximately from the following formula: $P = A * B * X * 7.85$, where: P = weight of the coil; A = coil width; B = coil length; and 7.85 = stainless steel density in t/m^3 .

424. The petitioner also explained that the product is not characterized by different models, and the observed variations are related to the specifications and standards, such as, for example, the chemical composition, so that it does not correspond to the research characterizations relating to potency or capacity.

425. With regard to the main uses and applications of the product, both the product and the similar national product have the same uses and applications in the manufacture of towers, tubes, tanks, general, deep and/or precision stamping, such as in the aeronautical, railway, shipbuilding, petrochemical, pulp and paper, hospital, food, dairy, pharmaceutical, cosmetic, chemical, domestic utensils, distilleries, photography industries, among others.

426. With regard to distribution channels, the petitioner indicated that the investigation is mostly imported by distributors/resellers, but also directly by the same, depending, normally, on the volumes and specifications demanded by the

7219.3	Simply cold rolled
7219.32.00	Of a thickness of 3 mm or more but less than 4.75 mm
7219.33.00	Of a thickness greater than 1 mm but less than 3 mm
7219.34.00	Of a thickness of 0.5 mm or more but not more than 1 mm
7219.35.00	Thickness less than 0.5 mm
72.20	Flat-rolled products of stainless steel, less than 600 mm wide
7220.20	Simply cold rolled
7220.20.90	Others
Source: NCM/TEC	
Elaboration: SDCOM	

430. With regard to the evolution of the import tax tariff of sub-items 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, for which the products are classified, It is noted that the tariff remained unchanged at 14% during the period in accordance with CAMEX Resolution No. 94, of December 8, 2011, and CAMEX Resolution No. 10, of December 15, 2016.

431. However, it should be noted that there are Economic Complementarity Agreements (ALC) and Tariff Preferences Agreements (APTR) entered into by Brazil that can reduce the rate of Import Tax levied on the like product. The following table presents the preference granted up to P5, and its respective agreement.

Tariff Preferences for Brazilian Imports, on 03/30/2020		
Subitems 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM		
Country	Legal base	Tariff Preference
Argentina	ACE 18 - Mercosur	100%
Bolivia	ACE 36 - Mercosur - Bolivia	100%
Chile	ACE 35 - Mercosur - Chile	100%
Colombia	ACE 72 - Mercosur - Colombia	100%
Egypt	FTA - Mercosur - Egypt	30%
Ecuador	ACE 59 - Mercosur - Ecuador	69%
Israel	FTA - Mercosur - Israel	100%
Paraguay	ACE 18 - Mercosur	100%
Peru	ACE 58 - Mercosur - Peru	100%
Uruguay	ACE 18 - Mercosur	100%
Venezuela	ACE 69 - Brazil - Venezuela	100%

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

being possible to supply the product in the width demanded by the customer and

435. In this context, the petitioner informs that it supplies the product

-No. 2B: Cold-rolled annealed and pickled followed by a light rolling
shiny cylinders (skin pass);

- No. 3: Material sanded in one direction;
- No. 4: Material sanded in one direction with 120 to 150 mesh abrasive;
- No. 6: The material finished No. 4, later finished with cloths soaked in
- TR Finish: ASTM A-480 definitions apply;
- BB (Buffing Bright): ASTM A-480 definitions apply;
- RF (Rugged Finish): ASTM A-480 definitions apply;
- SF (Super Finish): ASTM A-480 definitions apply; It is
- HL (Hair Line): ASTM A-480 definitions apply.

436. In this regard, the petitioner reported that cold-rolled products
used in the same applications as imported cold-rolled products and that more i
at the website <https://brasil.aperam.com/produtos/forcainox/technical-library>

437. With regard to Aperam's production process, the petitioner exp
traditional, with the use of scrap, similar to European processes, the United St
Thus, for Aperam, its process is not entirely traditional because the petitioner u
its load balance, but in small quantities.

438. The petitioner indicated that the stainless steel production proc
stage in which the blast furnaces are fed with iron ore and reducer (charcoal i
forming pig iron liquid. The liquid pig iron is placed in the torpedo car and tran
stage in which the pig iron undergoes a first pre-treatment, removing impurities
phosphorus, sulfur, carbon and nitrogen. This first stage is typical of inte
participation of pig iron in the melt shop load is small. In the analyzed period, on
of cold-rolled steel were used, where the pig iron enters already melted dire
function of adjusting the iron balance. The rest of the load of raw materials use
follows the traditional flow used in Europe, the United States, Japan and even i
Nickel (in the form of electrolytic nickel, iron-nickel or type 304 stainless ste
form of iron-chromium or type 304 stainless steel scrap) are added to elec
melting. , iron in the form of carbon steel scrap, silicon iron, manganese iron, and
for adjustments to some specific material property.

442. Thus, based on the information provided by Aperam within the the current concurrent investigation into the dumping of 304 cold-rolled steel, petitioner understands that once they meet the technical standards, goods manufactured in the Brazil and the imported ones do not present differences in substitution.

443. In this context, according to information obtained in the initial petition and complementary information from the petitioner, the product object of investigation produced in Brazil, in general, produced from the same raw materials, namely, nickel.

444. According to customer demand, both the product under investigation and the one manufactured in Brazil follow the same international standards.

445. Despite the differences in the reduction stage, resulting from the differences in the production process of the similar product manufactured by the domestic industry and the process of identified producers of the investigated origin.

446. With regard to the uses and applications of cold rolled products, there are no differences between the product under investigation and the one manufactured in Brazil intended for the aforementioned purposes.

447. Considering the fact that both the product under investigation and the one manufactured in Brazil are subject to technical standards that define their main characteristics, there is a high degree of substitution between these products, which is corroborated by the statements of customers of the domestic industry that are equal to customers of the importers.

448. Finally, it was verified, in the import data provided by the RFB, that the product would be sold through the same distribution channels as the product manufactured in Brazil, either by direct sales to industries and final consumers or by through distributors.

2.4 Conclusion regarding the product and similarity

449. Taking into account the detailed description contained in item 2.1, the investigation concluded that flat austenitic stainless steel products that comply with AISI 304, including their variations, such as 304L and 304H, cold-rolled, with a thickness of 0.35 mm but less than 4.75 mm, manufactured and marketed in various forms, such as coils, sheets and strips/tapes, when originating in Indonesia.

450. As provided in the sole paragraph of art. 4 of Decree No. 11.923/2006, "the product" shall be understood as an identical product, equal in all respects to the product under consideration, or, in the absence of such a product, another which, although not exactly equal, has characteristics very close to those of the product under consideration.

455. The present investigation was initiated through SECEX Circular published in the Official Gazette of June 2, 2021, having been initiated with the following alleged subsidy programs:

1. Supply of goods for less than adequate remuneration:
 - 1.1. nickel ore
 - 1.2. Coal and Coke
 - 1.3. scrap and waste
 - 1.4. lands
2. Income or price support programs;
3. Preferred loans
4. Direct tax programs:
 - 4.1. Reduction of income tax for large investments;
 - 4.2. Import duty exemptions;
 - 4.3. VAT reductions and exemptions on machinery and equipment;
5. Income Tax facilities to certain industries;
6. Tax and preferential tax regime in the area of industrial development;
7. Capital injection.

456. For all alleged programs in respect of which an investigation was presented on the existence of subsidies, the benefits accrued and the specificity

4.2 Essential facts for the purposes of final determination

4.2.1 Use of available facts for final determination purposes

457. Pursuant to § 3 of art. 37 of Decree No. 1751 of 1995, in the event a party denies access to the necessary information, fails to provide it within a reasonable time, or creates obstacles to the investigation, determinations may be made based on the facts available with the provided in art. 79 of Decree No. 1751 of 1995.

458. Under the terms of arts. 36 and 37 of Decree No. 1,751 of 1995, under the terms of the above investigation, questionnaires were sent to interested parties to obtain the information required and how this information should be structured in their responses. Pursuant to the aforementioned Decree, available facts could be used, including those obtained from the initiation of the investigation, if the data and information requested, duly according to the

462. In a statement dated September 1, 2022, the Government comments on the application of "best available information" against the GOI, pu No. 228693/2022/ME, of August 19, 2022 , and the specific manifestations a considered later, when analyzing them individually.

463. With regard to paragraph 13 of the Charter, the GOI clarified th to translate all documents provided into English; as it was not possible to provi documents completely on time, therefore requesting SDCOM to positively cons GOI submitted during the investigation.

464. The Government of Indonesia understood that due to its sufficie in this investigation it would not see evidence that the Government would ev failed to provide the necessary information within a reasonable period, investigation.

465. The Government of Indonesia regretted that SDCOM did not Annex II of the Antidumping Agreement which would establish strict rule investigating authority to be able to apply BIA.

466. The Government of Indonesia reminded SDCOM that in paragra Rebar case, the Panel would have considered that, in accordance with paragr read in conjunction with paragraph 286 of the decision in the case, Imperfect dismissed as unverifiable.

467. The Government of Indonesia asked SDCOM to exclude any p facts in this Indonesia investigation.

4.2.1.2 SDCOM's comments on the use of available facts

468. SDCOM is aware of difficulties related to the language of do authority. Precisely for this reason, the rules of Ordinance SECEX nº 172/2022 ha the present investigation, which made the acceptance more flexible and waive translations, as stated in the record added to the file of the case on March 16, way, SDCOM understands to have facilitated the participation of all parties - n case.

469. In this context, SDCOM stressed several times that the party translations and certify for them. Evidently, as the GOI representatives are fluent better conditions to bring faithful translations to the records. In the Initial Op there was a document that was not accepted because it was only in Bahasa, an parties since the beginning of the investigation and according to the instructio subsequent letters.

increasing the added value of Indonesian exports through the development of
of Nickel ore and Mineral Coal, abundant in that country. This quest to incre
reiterated several times by GOI representatives during the on-site visit.

473. Article 33(3) of the 1945 Constitution of the Republic of Indones
and natural resources are controlled by the state and are used to maximize the
order to elaborate the objectives, the government of Indonesia, through Law 17
term planning, National Long-Term Development Plan (RPJPN) 2005-2025.

474. To further detail the government plans, Indonesia has medium-te
Term Development Plan - RPJMN), and for the period of such RPJPN there are fo

National RPJMN I Year 2005-2009;

National RPJMN II Year 2010-2014;

National RPJMN III 2015-2019;

National RPJMN IV 2020-2024.

475. In the RPJMN IV 2020-2024, nickel is mentioned by several reg
one of the industries that the GOI wants to see strengthened and "downstre
vectors expressly mentioned as part of the "structural transformation to en
government expressing its intent in "Increasing value-added mining that sup
downstream industries".

476. As described by the GOI in its response to the questionnaire: "(th
of the President's vision, mission and programs whose preparation guided by
national development strategies, general policies, Ministries/Agency
Ministry/Agency, regional and cross territory, as well as a macroeconomic
picture of the economy comprehensively including the direction of fiscal policy
of a framework indicative regulatory and funding framework."

477. In this scenario, the elements of the process show that the
framework created by the GOI to encourage such a transition from a nickel e
producer, through adjustments throughout the production chain, especially in th
of other important inputs such as coal.

478. Law n° 3, of 2014, makes clear, already in its preamble, the inter
industrial development in the country and the existence of strategic industries:

Considering (...)

policy of the GOI, regarding the use of natural resources, must be regulated according to domestic industry.

480. Government Regulation No. 14/2015, relating to the National Industrial Development Plan (Rencana Induk Pembangunan Nasional - hereinafter RIPIN 2015-2035, details the GOI's intentions, explicitly indicating the steel sector and stainless steel sector.

481. According to official information from the document Facts and Figures of the Indonesian Ministry of Industry, RIPIN details, among others, that in the first five-year development plan (2015-2019), the objective is to increase the added value of natural resources. About RIPIN 2015-2035, he adds that there is the government's intention to develop strategic industry, through equity capital, establishment of joint ventures and private capital in strategic industry. Another objective would be to increase the use of national products (Penggunaan Produk Dalam Negeri), through advertising and providing incentives for industrial products with a qualified percentage of local content .

482. In the section of the document entitled "Construction of Industrial Estate", the government establishes a framework in which it points out the need to provide a conducive environment inside and outside industrial parks, the establishment of policies and regulations, a conducive climate for the sector industrial and allocation and facility of competitive financing for national industry. It also points out 10 key industries to be promoted. Among them is the "Basic Metal and Non-Metallic Mineral Industry", which as an upstream industry, aims at the improvement of particular specifications used in the downstream industry, serving the downstream industry. Within this priority industry, the document lists four specific types - a) iron and steel refining industry; b) Non-ferrous base metal refinery and processing industry; c) rare earths and nuclear fuel; and d) Non-metallic Mineral Industry.

483. The document also mentions incentives in the area of energy, land, and tax incentives. Among the tax incentives, mention is made of a tax exemption ('tax holiday') for industries, created by Regulation of the Ministry of Finance (PMK) n° 192/2010 and 130/2011. For this exemption, it is mentioned that the base metal industry is included in the priority industry. The document also mentions other tax exemptions.

484. Finally, the Indonesian Ministry of Industry lists the ferronickel industry in the iron and steel industry sector in general as a sector to be encouraged, and is also explicitly targeted by the government to have their development facilitated:

The development of industrial estate aims to support the achievement of industrial development objectives as stated in the Master Plan of National Industry. The government facilitates the development of 14 industrial estates outside Java in the

the entire upstream chain, as will be explained in the following items.

489. It is also important to mention Regulation No. 25/2018, which states that the GOI can establish the sales price formulas for Minerals in accordance with the nation's interests:

Article 34

(1)The Minister can stipulate the selling price formula of metallurgical minerals in accordance with the nation's interests.

(2)The nation's interests as referred to in paragraph(1) is based on the following criteria:

- a.Sustainability of mining business activities; and
- b.Domestic Enhancement of Added Values of Mineral.

490. This occurs with several elements, and the HPM price of nickel will be discussed below, which configures another significant element of GOI control over the nickel market.

491. It was also found that the construction of smelters was encouraged by the GOI, so that its own smelters would be facilitated to extend their mining licenses:

Policies intended to add value to nickel mining, such as the nickel ore price control, have encouraged some firms to invest in smelting capacity, as previously discussed. In addition to the control of domestic nickel ore prices, another new law, passed in May, encourages downstream investment by making it easier for firms with smelting capacity to extend mining licenses. The GOI has listed smelters among its national strategic projects.

492. The government's intention to encourage the construction of smelters was proven in the on-site visit, when the GOI confirmed that the change in nickel prices, among others, to increase cash flow of miners so that they could build smelters. There is a tension between the concession of the license and the obligation to increase the added value of the mineral, the objective of Law n° 4/2009. As will be seen in greater detail, the GOI created policies that favor smelters in their relationship with miners, even with regard to surveyors, and the content of ores.

493. There is also GOI control over the construction of smelters by miners. The license must contain information on the status of construction. As stated by the GOI director, it was the government's intention to encourage miners to build smelters, increase their productivity, and generate a multiplier effect for the population.

494. An emblematic case in this government project is the Morowali Industrial Park (IMIP), in which the producer company PT Freeport Indonesia Stainless Steel operates. According to data from its 2017 annual report, 8% of the company's revenue

Indonesia and China, and the president of Indonesia was in direct contact with them soon after the policy of export restrictions was initiated:

In July, Indonesian President Joko Widodo held a meeting with Xiang Group executives at a presidential palace. Xiang offered "several policy suggestions to improve the business environment and briefed the group on plans to expand Tsingshan's total investment to \$15 billion, including a plant making nickel chemicals for electric-car batteries to be released from the company. Two months later, Indonesia announced it would ban nickel ore exports for two years.

497. The positive impacts for the Indonesian stainless steel chain that have been analyzed here are exposed in the same IMIP report (page 83), when it deals with the new smelter installed in the park:

The new Mining Law announced by the Indonesian government in 2014 encouraged mineral export in 2014, which at the same time, encouraged investment in smelting in mining areas, and aimed at developing domestic smelting industry. As a result of the Indonesian government's policy, and based on a comprehensive economic and industrial trend combined with experience and community social relation collected in the park, the two investors reached an understanding, in addition to the mining development, they also seriously prepared an NPI smelter project, namely the SMI'S NPI smelter with a capacity of a thousand ton of NPI per year and power plant 2x65 MW (Project SMI).

498. The report also makes clear the intention of obtaining value-added products, encouraging smelters:

IMIP Park not only fulfills the legal requirement No.4 of 2009 on mining from the Ministry of Energy, and Mineral Resources and Law No.3 of 2014 regarding Value Added from the Ministry of Industry, which requests the construction of smelter for nickel in the chain to process the smelted product into an even more value-added product.

499. News at the time of implementation in Indonesia makes clear the government's policies to restrict exports. According to the Secretary General of the Stainless Steel Enterprises Association:

The previously imported nickel ore often contained sediments and impurities. A Chinese enterprise to build a plant there (in Indonesia). (emphasis added)

500. In this regard, SDCOM confirmed that, in the last Trade Policy Review 2020, it is explicitly cited as justification of export restriction policies "developing downstream industrial sectors, including stainless steel production (emphasis added)

505. Finally, it is pointed out that Indonesia's export restrictions at the European Union within the scope of the WTO in DS592. The questioning takes into account that Indonesia has restrictions on the export of nickel ore since at least 2014, and between January 2019 and January 2019, exports of nickel with a concentration of less than 1.7% were allowed. However, since January 2020, all exports of nickel ore, regardless of concentration, are prohibited. It is also pointed out that the authorities of the European Union and India have made negative determinations regarding the subsidies granted by Indonesia to the stainless steel industry. The application of compensatory duties specifically on the producers investigated has been found to be necessary.

506. Of solar clarity statement by the President of Indonesia, Mr. Jokowi, regarding the outcome of the aforementioned WTO dispute, leaves no doubt about Indonesia's deliberate policy to protect its steel industry. The President thus said in September 2022:

"It looks like we will lose at the WTO, but it's fine, the industry is already strong. The president is known.

4.2.3 Subsidy programs considered

507. For the purposes of this Opinion of final determination, the following subsidy programs are considered:

1. Supply of nickel ore for less than adequate remuneration;
2. Supply of Coal and Coke for less than adequate remuneration;
3. Supply of Scrap and Waste for less than adequate remuneration;
4. Provision of land for less than adequate remuneration;
5. Income or price support programs;
6. Preferred loans;
7. Bonded Zones;
8. Direct tax programs:
 - 8.1. Reduction of income tax for large investments;
 - 8.2. Import duty exemptions;
 - 8.3. VAT reductions and exemptions on machinery and equipment;
9. Income Tax facilities to certain industries;
10. Tax and preferential tax regime in the area of industrial development;
11. Capital injection.

So what's the point of importing LFG, importing huge volume of product, actually develop nickel; current account deficit will be made up. I guarantee (de) than three years if we add one commodity, turn some attention to it, we'll be done.

511. The National Industry Plan 2015-2019 foresees, in relation to the restriction of nickel ore exports, with priority given to meeting domestic needs for NiPI, ferronickel and nickel-mate; the restriction on exploration of the nickel according to the smelter's current processing capacity; guarantee on the absorption of nickel-mate produced by the national steel and stainless steel industry; and facilitating the stainless steel industry integrated with the upstream industry.

512. Smelters have different incentives from the GOI, ranging from what is apparently minor, but also significant elements, such as the fact that miners are appointed by the GOI, while smelters can hire their own surveyors, which directly affects the nickel ore purchased, since the nickel content is a preponderant element in the following news:

Nickel mining entrepreneurs stated that currently they have suffered from the lack of nickel content by smelter entrepreneurs.

Secretary General of the Indonesian Nickel Miners Association (APNI) stated that local businessmen experienced injustice in the distribution of nickel metal content.

He said there were 11 surveyors in nickel mining, 10 surveyors on the buyer side, the surveyor on the smelter side, the nickel smelter.

On the other hand, national entrepreneurs are burdened with various obligations that do not apply to foreign entrepreneurs.

This injustice is evident when businessmen holding nickel mining business are required to use surveyors appointed by the government, while smelters, which are foreign, use their own surveyors.

This is where the inequality comes from. According to Meidy, the difference regarding the discrepancy between the results of the nickel metal content test by surveyors appointed by the government and those appointed by the buyer.

The results of nickel content analysis by buyer surveyors are often higher than mining surveyors.

Meidy described that the decline could be far, from 1.8% to 1.5% and even more.

article 44, items e and f, that the company must obtain a recommendation from the Director General of the Ministry of Economy and Finance (MEMR) and export approval, similar to a non-automatic export license, by the MEMR to provide reports on export performance. In its article 53, it establishes that the company's remaining nickel ore reserve of the company covers at least five years of operation and that the volumes that can be exported cannot exceed the input capacity of the facility of Purification and that the export quantity within the framework of the work plan and budget presented by the company from said regulation are reproduced below:

Article 44

At the time this Ministerial Regulation comes into force:

(...)

It is. The sales abroad in the specific amount as referred to in letter a, can only be done after obtaining the Export Approval from the Director General of the Ministry of Economy and Finance in the field of foreign trade; and

f. Before obtaining the Export Approval as referred to in letter e, the company must obtain the Business License (IUPK) for Production Operation of metallic Mineral, Mining Business License (IUP) for Production Operation of metallic Mineral, Mining Business License (IUP) specifically for the processing and/or purification, and other parties that produce nickel ore, as required to obtain the Recommendation from the Director General.

(...)

Article 53

(1) The specific amount of Sales abroad as referred to in article 44 letter d is determined based on the consideration:

The. Reserve estimation or guarantee of raw material supply to fulfil the requirements of Purification;

B. Amount of sales abroad in the approval of Annual Work Plan and Budget for the next year; and

w. Input capacity of the facility of Purification.

(2) The Minister shall stipulate the guidelines on implementation of the approval of granting export recommendation

516. Finally, it is widely reported that since the beginning of 2020, 11/2019, which amended Regulation MEMR 25/2018, all nickel ore exports from the country which was also confirmed by an on-site visit.

and foreign markets, making the aforementioned reference price considered the export price in Indonesia, thus leading to an effective tax rate greater than the a

520. Decree No. 154 K/30/MEM/2019 was also issued, which de implementation of the construction or acquisition of smelters in Indonesia, es how sanctions for delays in the construction of smelters would be imposed, in amount of fines payable by the mining company in question will be equivalent accumulated mineral export sales revenue during the last six months.

521. Also, pursuant to MEMR Decree No. 154/2019, if a company d 90% progress in the construction of the smelter, the MEMR (through the Direc Coal) issues a recommendation to suspend from export approval to the dir foreign trade affairs.

522. The company must, under said Regulation, pay the fines throug and send proof of payment to the MEMR within three days after the payment is to pay the penalties within one month, the MEMR will issue a recommendation export approval.

523. MEMR Decree No. 154/2019 further stipulates that the pay sufficient to allow exports to resume. Only the MEMR could issue a recomm suspension once there is a report from an independent verifier confirming tha 90% progress mark in building smelters over the past six months. That is, r obliged to compensate for the delay in construction if they want to resume e Decree No. 154/2019 has the following requirements:

The progress for smelter establishment should be at least 90% construction development plan for every six-month period based on the report

Failure to satisfy this obligation would result in: (a) the issu suspension recommendation to the relevant government authorities in charge o penalty of 20% of the export cumulative value in the last six months period.

Failure to pay the penalty would result in: (a) temporary suspens business activities for a maximum of 60 days, (b) license revocation if no payme of the temporary suspension, and (c) the issuance of export suspension recon government authorities in charge of international trade.

To guarantee the 90% smelter establishment completion progr mining companies are required to deposit a surety bond of 5% of export multiplied by the export benchmark price. A mining company will be entitled to it has completed at least 75% of the overall smelter construction plan. The gov the surety bond if the mining company fails to meet its obligations.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

527. Until September 28, 2018, the Letter of Credit Requirement applied to nickel products, including Processed Nickel products (NPI, other ferronickels, etc.), considering the frequent changes in the list of products, the deletion of the requirement is temporary.

528. Thus, as pointed out by the petitioner and established in the investigation, although the formal ban on exports began in January 2020, during this period almost always present together with relaxation mechanisms and the possibility of export.

4.2.3.1.1.2 Mandatory internal processing

529. As another instrument of the GOI in this incentive framework to increase nickel, there is also an obligation to process domestic minerals and coal, pursuant to Article 102 of the Mining Law (Law No. 4 of 2009):

Article 102

The holder of an IUP and an IUPK are obligated to increase the value-added of coal resources in the implementation of development, processing, and purification and exploitation of minerals and coal.

Article 103

(1) The holder of a Production Operations IUP and an IUPK is obligated to carry out processing and purification activities on domestic mine products.

(2) The holder of an IUP and an IUPK as stated in paragraph (1) can process and purify products of other IUP and IUPK holders.

(3) Further provisions concerning the increase of the value-added as stated in paragraph (2) are to be regulated in Government Regulation (with emphasis).

530. Likewise, the Ministry of Energy and Mineral Resources Regulation (No. 7/2020), superseding the regulation, MEMR Regulation No. 7/2020), explicitly links export controls and the obligation of domestic processing to supply nickel ore and coal.

CHAPTER VI

RIGHTS, OBLIGATIONS, AND PROHIBITIONS

Part One

Rights, Obligations, and Prohibition of the Holders of Mining Business License (IUP) and Special Mining Business License (IUPK)

(1) The holders of Mining Business License (IUP) and Special Mining Business License (IUPK) shall:

[...]

g. Prioritizing the fulfillment of mineral and coal needs in the country of production and sales;

k. To increase the added value of mineral or coal of mining products in accordance with the provisions of laws and regulations;

[...]

paragraph 3

Prohibition

Article 65

The holders of Mining Business License (IUP) or IUPK are prohibited from

The. Sell the products of mining proceeds abroad before processing in the country in accordance with the provisions of legislation;

Part Two

Rights, Obligations, and Prohibition of the Mining Business License (IUP)

Production Operation specifically for Processing and/or Purification

paragraph 1

Right

Article 66

The holders of Mining Business License (IUP) for Production and/or processing and/or purification shall be entitled to:

The. Buy, sell, and transport the mining commodities which will be processed and/or refined;

paragraph 2

Obligations

Article 67

(1) The holders of Mining Business License (IUP) for Production and/or processing and/or purification shall:

type of Metallic Mineral commodity. (2) HPM Logam as referred to in sub-article 1 of Logam for the following commodities: a. nickel, may in the form of: 1. nickel hydroxyde presipitate; 4. mixed sulphide presipitate; 5. nickel metal shot; 6. nickel and/or 8. nickel-matte.

Article 6 (1) Determining HPM Logam as referred to in Article 5 is determined by the formula. (2) HPM Logam formula as referred to in sub-article (1) is determined by the following variables: a. value/content of Metallic Mineral; B. constant; w. HMA; d. Corrective factors and refining charges, and/or f. payable metal. (3) Value/content of Metallic Mineral in sub-article (2) letter is determined according to the certificate of analysis. (4) The size of HMA as referred to in sub-article (4) is determined referring to Metal Market Index issued by among others: a. London Metal Exchange; B. London Bullion Market Association and/or d. Indonesian Commodity and Derivatives Exchange. (6) HPM Logam formula in article (1) and sub-article (2) may be reviewed periodically every 6 (six) months if necessary.

533. The HPM price respects the formula $HPM = (T \times HMA \times FP)$, where T is the Nickel ore, HMA is the reference price for Nickel based on international factors (e.g., Asian metal etc); and FP is the correction factor, which varies in relation to the nickel grade, decreasing 1% in relation to the increase/decrease in 0.1% in the nickel grade. The nickel is also considered and other elements, pursuant to the above legislation.

534. Thus, it remains proven that the HPM price, despite having elements in the HMA, has applied a reducer determined by the GOI. As a result, the price is significantly lower than that applicable in other countries.

535. We then proceed to analyze the applicability of the HPM price, to be used by companies in Indonesia, or if it is a mere reference.

536. In this context, the GOI, both in its written response and in the oral statement, stated that the HPM price was only used for charging royalties, and that it would only be used as a reference price. In April 2020 in MEMR Regulation No. 11/2020. The GOI also argued during the hearing that the obligation to follow the HPM in 2020 was given to increase the price received by smelters, being rewarded by smelters, and cited article 3 of Regulation MEMR n° 7/2017.

537. In this area, SDCOM points out that, although the government has not been able to present evidence to corroborate such a statement, despite the results of the on-site visit, it was proven that the GOI has control over all transactions in the nickel market, which must be reported to the government, at least through Regulation MEMR n° 7/2017.

The Minister can stipulate the selling price formula of metallic Mineral

interest. (emphasis added).

541. Finally, there is evidence and statements by members of the GOI April 2020 amendment, which also indicate this, as for example in the following

Head of the Investment Coordinating Board (BKPM) Bahlil Lahadalia mineral price (HPM) of US\$30 per ton applies to nickel miners who will sell nickel ore of grade of 1.65 percent to 1.7 percent because they don't want to sell nickel ore at the end of this year.

"So the price of US\$30 per tonne is only valid until December 31. This price of domestic nickel prices later on January 1, 2020 will be discussed again," he said at BKPM, Tuesday (12/11/2019) night.

According to him, the nickel price benchmark is not affected by the nickel prices. The nickel price benchmark for this smelter is in accordance with China nickel transshipment and taxes, in accordance with the free on board (FOB) sales scheme.

Bahlil guarantees that 2 million tons of nickel ore will be received by the smelters. However, the ban on exports of low grade nickel will remain in effect. The agreement between nickel, smelter and government entrepreneurs is in the form of a contract, there is no SK (decree)," said Bahlil . (emphasis added)

542. It is also important to highlight the attitude of the government of Indonesia during the visit, for not having informed the nickel transaction prices, even when partially provided the requested information about the nickel market on the spot, making it impossible for additional questions by SDCOM. Thus, at no time did the price list in force in the period, despite having requested it several times: in the requested information, item 8.8, it was requested as follows:

Regarding specific question 10, please present in more detail how the reference price works, necessarily presenting the calculation performed in at least one of the damage investigation period. List all HPM in effect in the damage investigation period.

543. In response, the GOI only presented a graph with HMA price. The company calculates HPM prices individually. During the on-site visit, SDCOM had the opportunity to present the current HPM. The GOI, however, only presented a graph of HPM.

544. Finally, the European Union authority, in an investigation that included the collection and analysis of the companies' actual data, concluded as follows:

- a) annual RKAB;
- b) mining waste water quality report;
- c) mine accident and incident statistics report;
- d) labor disease statistics reports;
- e) Report on implementation of complaint; It is
- f) Internal report on Management System implementation on Mineral

547. The annual budget and work plans - RKAB (Rencana Kerja dan working and budgeting plan) stand out in the list. As verified during the accordance with MEMR Regulation No. 25/2018, contain operational, technical being confidential company information sent to the government. MEMR Regulation that reports must be sent monthly and quarterly (art. 82).

548. The RKAB are documents that detail all aspects of the mining of 1806K/30/MEM/2018 establishes guidelines for the preparation, evaluation According to Annex 2 of such Decree, the following are required: aspects of ex infrastructure (for example: construction of roads, including with regard to (mining method, feasibility studies); financial (including sales); and social n information required in the RKAB are:

- 2.3.4. actual production;
- 2.3.5. mining recovery;
- 2.3.7. mining tools;
- 2.3.8. cost mining;
- 2.4. processing and refining;
 - 2.4.1. method for processing and refining;
 - 2.4.3. recovery;
 - 2.4.4. byproduct(tailing);
 - 2.4.5. utility of byproduct;
 - 2.4.6. processing tools;
 - 2.4.7. cost for processing;
- 2.5. inventory;
- 2.6. environmental;

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

even leads to the cancellation of the mining company's exploration license, as more than 1000 miners. According to art. 101 of Government Regulation No. 23 of 2017, license holders must submit their annual RKAB 45 days before the end of each year. License holders may not build, mine, produce or export minerals before approval of their annual RKAB. They are, therefore, yet another means of government controls miners, ensuring that their operation is in line with the government's policy to support stainless steel producers.

4.2.3.1.1.5 Disinvestment obligation

551. The Mining Law establishes in its article 112 that:

After 5 (five) years of production, the company holding an IUP and owned by foreigners is obligated to undertake a divestment of shares to the Government, state-owned enterprises, regional-owned enterprises, or national private enterprises.

552. This obligation was regulated in Article 97 of Government Regulation No. 23 of 2017, which establishes a progressive divestment policy from the 5th year onwards so that the mining company must be owned by Indonesian companies. The obligation is detailed in MEMR Regulation n° 9/2017, article 14, which establishes the percentage that must be held by Indonesian companies: in the 5th year, 30%, in the 8th year, 37%, in the 9th year, 44% and in the 10th year, 51%.

553. According to the same Regulation, there is an order of priority within the scope of the divestment policy: Government, provincial government-owned enterprises, state-owned enterprises, national private entities. That is, the government has full priority if it wants to buy the shares of a mining company in the country. Although the GOI explained that the government does not intend to exercise its preference to buy the shares, there are elements in the file that indicate that the GOI does in fact exercise such preference, as in the case of PT Vale.

554. Pursuant to Articles 5 and 14 MEMR Regulation No. 9/2017, the scope of the divestment policy must take into account fair market value. Pursuant to MEMR Regulation No. 43/2018, a new divestment method was introduced - issuance of new shares - which was implemented on the way of calculating the fair value.

555. Therefore, this is a way for the GOI to allow foreign investment, but with the condition that, if the GOI is interested, it will be able to control the mining company.

4.2.3.1.1.6 Reduction of royalties on processed nickel products

556. With regard to royalties, as verified with the GOI, Annex 1 of Government Regulation No. 81/2019 establishes the applicable royalty percentages, which is 10% for raw nickel ore, reduced to up to 1.5% for the different types of processed nickel.

evident, considering what was found in the investigation, that the core of such measures is to have a stainless steel industry developed in its country, in order to add value to its reserves.

560. Therefore, the effect of these export restrictions was to distort the Indonesian industry through an oversupply of raw material, available at a reduced price, which totally distorts the price practiced in the domestic market. In a completely open market, nickel is acquired by industries in other regions of the world and in Brazil are purchased at market prices, in line with a market economy.

561. Such effect on the price is a notorious fact, as reiterated in the China - Raw Materials cases and the China - Rare Earths case:

Whereas export quotas may reduce foreign demand for Chinese raw materials, the Panel that they will also stimulate domestic consumption by effectively reserving raw materials for use by domestic downstream industries" (emphasis added).

562. It is evident, considering the elements in the case file of the present dispute, that a "perverse signal" to domestic consumers is also present in the context of nickel. It was much so that the GOI itself confirmed during the on-site visit that it received complaints that consumers were being subjugated by smelters, holders of all the power in their acquisition of nickel.

563. These measures would also be harmful at the international level, by restricting the supply, raising international prices, burdening industries around the world, as stated in The Economic Impact of Export Restrictions on Raw Materials, by the Organisation for Economic Development (OECD).

564. There are elements in the case file that prove that subsidies granted to the transformation industry are "passed on" to the Indonesian stainless steel manufacturers. The recipient of the subsidy belongs to the manufacturer, or because, due to trade obligations and supply obligations in the domestic market, there is an overabundance of nickel in the market, resulting in lower prices in this market. All this is combined with the price ceiling established by the GOI, which was constantly below the international price in the market.

565. All these measures caused an oversupply in the Indonesian market, leading to a fall in prices, with the smelters holding all the purchasing power, which caused the manufacturers to complain about the low prices charged for nickel ore, which was confirmed by the on-site visit.

566. The ban on exports and other measures, combined with the forced production, resulted in a situation of such disproportion that it was recognized by the WTO. In a scenario of profound imbalance between supply and demand, the GOI maintained

567. According to the GOI itself, it is planned to accelerate such an increasing the processing requirements for exported nickel:

He said this was also the government's consideration to speed up the grade nickel ore, which took effect on January 1, 2020. That way, nickel ore resale Maintained to anticipate the need for input smelters which will be operational in indeed banned nickel exports in order to anticipate the capacity of the smelter Yunus added. (emphasis added)

568. The effects of the policies addressed here were presented by the seen in other sources. For example, S&P Global Consulting brings a survey Indonesian Nickel Miners Association, which indicates that the floors established respected, and that Indonesian smelters buy nickel at prices around 40% International:

The nickel ore miners are, therefore, either unable to sell their ore to domestic smelters at lower prices than for export, depending on the ore grade compensate by putting a floor under nickel ore prices, starting May 14, but ore 1.65% — formerly largely exported to China — cannot be sold to local smelters for grade material. In addition, according to recent APNI data, domestic smelters buy per wet metric tonne on a cost, insurance and freight basis. This is below US\$34/wmt CIF and well below the US\$43-US\$46/wmt CIF price for low international market. (emphasis added)

569. Bearing in mind that, as already mentioned, the production of steel thirds of the world's nickel, it is clear that policies that affect nickel will directly stainless steel. BKPM presentation displays the effect of such measures, correlating phases of export restrictions (restrictions, relaxation, ban):

<<IMAGE 2 HERE>>

<<IMAGE 3 HERE>>

570. Thus, SDCOM understands that the effects of GOI policies can be producer of the product under investigation, when acquiring nickel ore for the production to the industry producing the product under investigation by through its relations along the production chain.

4.2.3.1.2 Elements of fact or law (Legal/documentary basis)

571. The nickel supply program at less than adequate remuneration from all levels of government, among which the following stand out:

I. Law No. 4/2009, Mining law;

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

4.2.3.1.3 Financial contribution

572. The financial contribution of the program resides in the verification that the product under investigation had access to nickel, an important input in the production process, for less than adequate remuneration.

573. It is also necessary to analyze whether the financial contribution is made by a public body or by a instructed or entrusted private entity, under the terms of the Brazilian Regulation, as will be discussed below.

4.2.3.1.3.1 The performance of miners as a "public body"

574. Regarding the classification of miners as a "public body", the WTO Panel in DS379 - US - Anti-dumping and Countervailing Duties on Certain Products from Brazil found that a public body within the meaning of Article 1.1. (a)(1) of the SCM Agreement must "exercise or is vested with governmental authority." (emphasis added).

575. Furthermore, it is also a fact that "The absence of an explicit exercise of governmental authority does not necessarily preclude a finding that an entity is a public body." (see DS437 - US - Countervailing Duty Measures on Certain Products from China).

576. It is also important to know, in the classification of an entity as a public body, whether it performs a function "which would normally be the responsibility of the government" (Article 1.1. (iv), of the SCM Agreement and Art. 4, II, d), of the Brazilian Regulation), according to the Appellate body in DS379. WTO jurisprudence has already pointed out that it is a key point to know whether the functions or conduct of a given entity are of a governmental nature in the legal order of the country under investigation.

577. That said, the focus in the "public body" analysis is the entity, not the function it performs, which generates the financial contribution. The focus is not on whether the conduct can be considered a governmental function, but rather on the core characteristics and governmental nature of the entity that performs that conduct. In this context, the fact that such conduct is a systematic function is one of the types of evidence to be considered, as it potentially sheds light on such nature.

578. Although the simple fact that the government owns a certain entity is not sufficient, even if it is a majority shareholder, or that there are other formal ties between the government and the entity, is not sufficient for a conclusive determination about the classification as a "public body". Other factors are considered in the analysis of the authority.

579. Finally, the provisions of DS436 are highlighted, in the sense that they require the investigating authority to seek or accept specific evidence about the existence of a public body, which exceeds its obligation to base its determinations on reasoned and adequate explanations.

lack of response from all identified producers/exporters were verified. Such parties is a factor that was even considered in the aforementioned jurisprudence.

583. Thus, regarding miners, there is a clear governmental framework and authority to exercise governmental functions. According to Article 33(3) of the 1945 Constitution, "The land, the waters and the natural resources within shall be under the power of the state and shall be used to the greatest benefit of the people."

584. As highlighted by the GOI itself in its response to the questionnaire, Law No. 4, of 2009, establishes in its preamble:

The. That mineral and coal in the mining jurisdiction of Indonesia are non-renewable natural resources are endowed by God Almighty and play an important role in the needs of people at large and therefore, the management of mineral and coal resources has added value to the national economy in pursuit of people's welfare and prosperity.

B. That mineral and coal mining business which constitutes mining business, oil and gas as well as the ground water play an important role in giving real and sustainable economic growth and sustainable regional development.

585. The granting of nickel, coal and other minerals mining licenses is regulated by Law and lower instruments. The Mining Law, in its 4th article establishes that "The land, the waters and the natural resources within shall be under the power of the state and shall be used to the people's welfare." There is also article 5, which establishes that the government shall regulate the production and export of ores and coal to give priority to domestic interests, and to increase the added value, which are mandatory for the holder of exploration licenses, as confirmed by the GOI in the on-site visit, under penalty of revocation of the license, pursuant to the Mining Law. The GOI recently temporarily banned all coal exports after "

586. As discussed in the paragraphs above, and as discussed in the previous document, there is a framework in Indonesia that establishes strong links between the performance of governmental functions, providing miners with governmental policies of Indonesia regarding the management of natural resources, based on the

4.2.3.1.3.3 Designation of mining companies as "National Vital Objects"

587. According to Presidential Decree n° 63, of 2004, there is, in Indonesia, the concept of - "Obyek Vital Nasional / National Vital Objects" (also known as obvitnas), generally considered strategic - "The National Vital Object is the area/location, building, or facility that concerns the lives of many people, the interests of the country and/or the national income".

stability. The TNI must always protect strategic national projects for the benefit of the nation. Major General Andi Muhammad while in the CNI Group Mining Business Permit A

According to Major General TNI Andi Muhammad, as a vital national project belonging to the CNI Group must be protected because this project is for the benefit of the nation. Moreover, CNI Group is the only Domestic Investment (PMDN) (...) (emphasis added)

590. GOI statements also highlight the importance of companies classified as vital national interests:

In addition, the purpose of the Commander in Chief visiting the Mining and Mineral Resources is to further understand the activities of the Energy and Mineral Resources to strengthen the TNI's commitment to securing these vital national objects. "To support, the TNI has the strength and ability, must be able to make a full commitment to protect investors, In this ESDM there are various investors, many and large, we must protect the project is related to the dignity of the people's lives," said Moeldoko.

Regarding the existence of TNI personnel who may be involved in the project, Moeldoko stated, "So far the TNI may have hesitated in taking action, for me, with national interests, I don't care, I will send troops". (emphasis added)

591. SDCOM asked the GOI, in its second request for additional information, whether the companies in the aforementioned top 5 were classified as "National Vital Objects". The GOI expressly stated that "All of the companies mentioned above have never been classified as National Vital Objects so the question is not applicable".

592. During the on-site visit, the GOI corrected the information and indicated that PT Vale hold such status. Therefore, contrary to what was initially stated by the GOI, to prove the designation of mining companies, as well as several companies in the list of the object of the investigation, as "National Vital Objects".

593. MEMR Decree No. 77 K/90/MEMILIKI/2019, in its most current version, classifies mining companies in the ores and coal sector as obvitnas. Even PT IMIP itself also holds this status, representative stating that: "the presence of the TNI in PT IMIP's KI is not only to ensure security but also to ensure that investments can run well" (emphasis added)) - TNI is the Tentara Nasional Indonesia). The representative's speech also reinforces that the project involves not only consequences in relation to safety issues, but an entire prioritization of the project.

594. Thus, the designation of several mining companies and companies in the laminated chain as obvitnas is yet another element that reveals that the mining companies exercise or are vested with governmental authority" (emphasis added), in terms of WTO jurisprudence in DS379.

following list.

The. PT. Ekasa Yad Resources

B. PT. GAG NIKEL

w. PT. ANTAM Tbk

d. PT. Ceria Nugraha Indotama, and

It is. PT. Indonesia valley

599. The GOI informed that PT Ekasa Yad Resources is not a mine. It should be noted that, according to data verified in the on-site visit, there is a company from the Tsingshan group (to which the investigated producer/exporter belongs). The lack of response from the group prevented the SDCOM to obtain more information.

600. PT GAG Nickel, a subsidiary of the state-owned company PT Antam, that has not had its link with the GOI previously informed to SDCOM. As reported by the GOI, the company did not provide the meeting minutes of the mining company PT GAG Nickel, which holds 25% of the company. Note that the GOI indicated that it did not have access to Antam's minutes, no information was provided about the 2019 ordinary shareholders' meeting, and about the extraordinary meeting for that year. In addition, the complete minutes of the meeting apparently were not provided, as the document submitted is called the "Summary of the Meeting".

601. There is a stake in PT Vale by the company PT Indonesia Asahan Aluminium, a state-owned company. It is important to note that the elements indicating the participation in PT Vale began within the scope of divestment policies, and this was not reported to the GOI at any time.

602. With regard to other companies outside the top 5 informed, SDCOM found, from public sources, namely the Antam report for the year 2020, an indication that the Tsingshan group (by through the company Strand Minerals Pte. Ltd), owns a stake in PT GAG Nickel. It should be noted that, despite being questioned, this relevant fact was not reported by any of the parties to the investigation, which prevented SDCOM from obtaining more information in this area as well.

603. It is clear that there was a significant lack of collaboration from the companies in the area of information about miners in Indonesia. Faced with the lack of detailed information about the mining area in Indonesia, an attempt was made to fill this gap with the facts available in the public domain.

604. According to the investigating authority of the European Union, based on the available data, the companies in which the GOI holds a stake represent 27% of the total production of nickel, demonstrating that the GOI has direct influence over a significant portion of the nickel production. In addition, it was also verified, regarding PT Antam, that the GOI holds special "Dividend" shares.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

mineral or coal mining by way of auction in the event that:

The. no BUMN and BUMD are interested in the WIUPK offer as referred to in Article 27 paragraph (1); and/or

B. there are no BUMN and BUMD that meet requirements as referred

606. Thus, according to the information available in the case file, a significant portion of Indonesian nickel ore production are partially or wholly owned by BUMN and BUMD, although such companies are managed and/or controlled by GOI.

4.2.3.1.3.6 Regulatory control by the GOI

607. As already mentioned, the mere share control by the GOI, does not suffice for classifying a given entity as a "public body". In this way, the GOI has to establish the control of the conduct of entities in order to exercise the supervision to art. 4, II, "c", of Decree No. 1,751, of 1995.

608. In this context, the GOI has a series of instruments through which it controls companies at its discretion, so that they perform the governmental functions that are mentioned:

- i) export restrictions;
- ii) the domestic processing obligation;
- iii) establishment of the reference price;
- iv) submission of mandatory detailed reports;
- v) divestment obligations;
- vi) approval of changes in the shareholding structure; It is
- vii) approval of the exchange of directors/commissioners.

609. Considering that items i) to v) have already been sufficiently dealt with above, the other items will be dealt with below.

4.2.3.1.3.7 Approval of changes in the shareholding structure

610. According to Article 64 of MEMR Regulation No. 7, of 2020, on the Areas for and Licensing and Reporting on Mineral and Coal Mining Business Activities, the instrument superseded by it, MEMR Regulation No. 11, of 2020, any change in mining companies, including changes in control (acquisitions) must be subject to GOI approval:

Article 64

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

(...)

(3) IJP or IJPK holders Who have made changes to the b commissioners are obligated to submit a report to the Minister or governor authority no later than 14 (fourteen) working days after getting approval from the government affairs in the field of law.

614. The measures indicated here show the existence of strong companies, which cannot perform their duties as a company would normally interests.

4.2.3.1.3.9 Miners' instruction or trust

615. We now proceed to analyze the alternative of the GOI supplying lower than adequate through the performance of private entities instructed or art. 4, II, "d", of Decree No. 1.751, of 1995: "

d) the government makes payments to a fund mechanism, or instruct entity to carry out one or more of the functions described in the previous normally be the responsibility of the government, and whose performance does that of the practice customarily followed by governments.

616. WTO jurisprudence highlights three elements for the cha "instruction" present in the Brazilian Regulation, or "entrust" and "direct", under (iv) of the Agreement SCM:

It follows from the ordinary meanings of the two words "entrust" and the government must contain a notion of delegation (in the case of entrustment of direction). To our minds, both the act of entrusting and that of directing them the following three elements:

- (i) an explicit and affirmative action, be it delegation or command;
- (ii) addressed to a particular party; and
- (iii) the object of which action is a particular task or duty.

In other words, the ordinary meanings of the verbs "entrust" and elements - something is necessarily delegated, and it is necessarily delegated same token, someone is necessarily commanded, and he is necessarily commanded therefore do not believe that either entrustment or direction could be said to these three elements are present.

supplying nickel ore for less than adequate remuneration, can be attributed to the government, if the decision to supply nickel ore has been freely made by choice of private entities, after they have considered all relevant factors, including regulatory constraints. It is also necessary to assess whether such a provision represents a transfer of responsibility of the government, and whether the performance of such entities is different from the practice usually followed by the government, that is, whether there is a difference between the way in which miners/producers acted with the way in which the GOI acted.

619. As already explained in this document, over the years, the GOI has created a non-normative framework, which, taken together, constitutes an "explicit and exclusive" order to pursue the declared intention of increasing the added value of its nickel ore, the main raw material for stainless steel, and encourage the construction of the country, implementing measures such as export restrictions, price controls, and obligations, among others, which involve, as well, the obligation to supply the nickel ore under conditions imposed by the GOI.

620. Contrary to what was stated by the GOI, plans and policies of the GOI are not an element of enforcement for private parties, so much so that, for example, measures can be revoked if a given mining company does not follow the plans of construction of the GOI.

621. Thus, the supply of nickel for less than adequate remuneration is not an "effect" of legitimate state action, but as the very objective of such policies. The GOI is an alternative but to supply the nickel ore under the conditions determined by the GOI, to export and could not even determine the sale prices, even if such action would be in line with business logic, as obviously the miners would like to be able to access the international market at higher prices. Failure to comply with such measures would lead to the suspension of licenses. Although the GOI states that the HPM price guarantees fairness in price, it is not in the records of members of both the APNI (Indonesian Nickel Miners Association) and the HPM.

622. As mentioned in the previous section, the management and control of the GOI is a governmental function. Therefore, the miners acted as a mere proxy for the GOI in the government's policy of encouraging the stainless steel sector by supplying nickel ore for less than adequate remuneration, instructed to do so through the framework created by the GOI. Effectively, "the government exercises its authority over a private body", in line with the definition of a state body.

4.2.3.1.3.10 SDCOM Final Comments on this Topic

623. Considering the relevance of the topic discussed here, SDCOM presents its Initial Opinion of this investigation are presented here, in order to summarize the findings of the Undersecretariat.

context, the GOI stated that such element of "instruction or trust" had not decision to sell the products and at what price the products would be sold would be by the business management. SDCOM disagrees with the government's claim. the case file of the existence of a meticulously crafted legal framework to force to sell their production on the Indonesian domestic market, increasing the products and consequently lowering the price, as will be analyzed in follow. I.e,

628. As governs Regulation of the Ministry of Energy and Mineral Resources after fulfilling domestic obligations can the holder of a IUP or IUPK be able to export the Decree of the Ministry of Energy and Mineral Resources No. 23, of 2010 obligations for coal. Regulation No. 13/2017 of the Ministry of Economy eliminated that export controls and export taxes are due to "support the downstream products". With regard to Indonesian Government Regulation No. 23 of 2010, the context in which it is inserted: "Increase in added value in the undertaking of mining and refining/smelting domestically".

629. MOMR Regulation No. 25/2018, which revoked MOMR Regulation No. 13/2017, in this context:

Article 32

(1)The Minister shall perform the control of Mineral and Coal sales which shall be based on:

- a.Guarantee the supply of domestic needs of Mineral and Coal;
- b.Maintaining the economic resilience;
- c.Maintaining the stability of defense and security; and
- d.Controlling the prices of Mineral and Coal

Article 34

(1)The Minister can stipulate the selling price formula of metallurgical products based on the nation interests.

(2)The nation interests as referred to in paragraph(1) is based on the consideration of:

- a.Sustainability of mining business activities; and
- b.Domestic Enhancement of Added Values of Mineral.

630. Under that regulation, if a mining company wishes to obtain a license from the MEMR, it must first submit a smelter construction plan. The MEMR will issue a license for smelter construction against this plan at least every six months. The mining company must submit a smelter construction plan at least every six months. The mining company must submit a smelter construction plan at least every six months.

an affirmative action or instruction (command) by the government to local miners to supply inputs in the domestic market at prices lower than those that would be paid in international markets if there were no restrictions and to make investments that, under normal conditions, they would not. In line with what was recently a clear instruction to miners, obliging them to supply the Indonesian domestic market with supply to the domestic market applicable for coal.

633. In summary, through the export tax, export restrictions, and by other acts requiring ore and coal producers to sell domestically in Indonesia, the GOI provides a financial contribution to coal producers, steel in the form of sales of nickel at adequate remuneration.

634. The nature of such actions is evidently within the scope of the national industry of the mining chain, as confirmed in the Declaration of the Minister of Natural Resources, which explained that the coal policy was intended to "maintain the coal industries", or even the statement by the ministry that confirmed that the new policy was intended to "accelerate the establishment of domestic smelters while its nickel is the official document describing the 2015-2035 RIPIN, export control is merely a strategy for the national industry.

4.2.3.1.3.11 Conclusion on the financial contribution

635. From the foregoing, it is concluded that there is a financial contribution by a government or public body (such as, for example, through PT Antam) or, alternatively, financial entities instructed or entrusted by it, under the terms of paragraphs "c" and "d", of Law No. 1,751 of 1995, since the investigated companies now have additional revenue in acquiring nickel ore is lower than what they would have to incur if they obtained market prices.

4.2.3.1.4 Specificity

636. It should be noted that GOI did not provide a list, by industry and region, of companies in Indonesia that participated in this program during the investigation period. There were no transactions carried out in the nickel market. There was still a total absence of revenue for producers/exporters. Thus, as already pointed out in this document, pursuant to Law No. 1,751 of 1995, the available facts, which indicate that the program is available and accessible to producers, given that this is notably the sector that consumes the most nickel in the country of the program, according to statements GOI officials.

4.2.3.1.5 Result of the investigation

2022, when information on transactions in the nickel market was again in production and sales reports, making it impossible for the authority to analyze and disregard such documents, due to non-compliance with the legal requirements. In full demonstration of the goodwill of this authority in relation to the GOI, the government had its third chance to present the sales data, and it also did not provide

640. It is recalled that such sales information is data already provided by the companies to the Minister of Energy and Mineral Resources, that is, the GOI's authority. It is difficult to contact companies in order to obtain the information, or even to prevent the supply.

4.2.3.1.6 Manifestations prior to the Technical Note about the program

641. The GOI claimed, in response to SEI/ME letter No. 228693/2020, that it had submitted information about the volume produced to the RKAB, as well as that it had submitted information about the volume produced to the site visit, as well as explaining the operation of the MOMS system. In addition, the GOI of MEMR Regulation No. 7/2017 establishes the use of the HPM price for royalties.

642. It added that "prior to the implementation of MEMR Regulation No. 7/2017,

2020, the GOI did not require the nickel producer and nickel ore producer to be involved in mineral transaction to take HPM as the reference price for transactions.

643. PT IRNC, in its manifestation of September 9, 2022, also claimed that it believes that "the normative texts and other elements contained in the restrictive argument by the GOI that, during the period of investigation, the HPM would be used in the calculation of royalties", citing both the petition and the legislative change. However, during the on-site visit, mentioned a Decree on the HPM price monitoring to be under MEMR Regulation No. 11/2020, and not under the aegis of the previous Regulation No. 7/2017.

644. PT IRNC added that "it shares the understanding of the GOI that the government price to be compared with a market price to determine the amount of royalties is no need to talk about the supply of goods at prices less than adequate during the investigated period".

645. He also pointed out that, contrary to what is alleged by the petitioner, the prices of ferronickel are for export, citing PT Antam's annual report as evidence of this fact.

646. He stated that SDCOM could not use Philippine prices for China as having an extraterritorial effect of raising Philippine export prices due to the significant international supply of this raw material, affecting the benchmark used.

on miners for priority sales to the domestic market, the Government of Indonesia requested information regarding the prices and sales volumes of nickel in that country and would not have responded to questions from the SDCOM team of technicians regarding sales volumes of nickel in the domestic market of that country; relating to the "Memorandum of Understanding", 2013; relating to "stipulation of reference guideline for selling nickel in industrial buildings in Industrial Estates at the suggestion of the Industrial Estate Development the Cooperation team for the China-Indonesia integrated industrial estate; and Minister of Industry of Republic of Indonesia Number 432/M-IND/Kep/7/2014.

652. In addition, he emphasized that the Government of Indonesia would not have requested information regarding the prices and sales volumes of nickel in that country and would not have responded to questions from the SDCOM team of technicians regarding sales volumes of nickel in the domestic market of that country; relating to the "Memorandum of Understanding", 2013; relating to "stipulation of reference guideline for selling nickel in industrial buildings in Industrial Estates at the suggestion of the Industrial Estate Development the Cooperation team for the China-Indonesia integrated industrial estate; and Minister of Industry of Republic of Indonesia Number 432/M-IND/Kep/7/2014.

653. The GOI pointed out, in its statement regarding the use of available information, what was stated by SDCOM, it would have provided the RKAB in the 2nd request for information and on the first day of verification it would have provided the RKAB in a search for information. He informed that he had forwarded the requested production and sales reports and studies. Regarding the minutes of the meeting, he informed that he partially provided information asked for the official website of PT Antam to be used as a source of additional data.

654. The GOI also stated that, regarding the MoU signed in the context of the IMIP, that it was signed by private entities, so it does not have access to the confidential information of the Government of China were only present during the signing, but did not receive information. He pointed out that the report on external investments in the IMIP was provided within the 1st day of verification, with the documents provided on June 3, 2022.

655. For these reasons, the GOI requested that available facts not be used.

656. The GOI added that the MEMR representative was present at the meeting to discuss about the volume of nickel ore produced, as well as the MOMS collection system. Before the HPM, before the 2020 amendment, was used only for royalties, in accordance with the formula used and an explanation was provided on the formula used, and such explanation should be provided.

4.2.3.1.7 Statements after the Technical Note about the program

657. On October 13, 2022, the GOI filed a statement in which it argued that the Indonesian stainless steel industry are not necessarily linked to the Indonesian stainless steel industry. It provides an opportunity to sell their products worldwide. What is described in paragraph 41 of the Technical Note describes the mechanism to ensure that export restrictions are in line with the need to establish smelters. In this way, such provisions do not put any additional burden on the industry. On the contrary, it gives them the opportunity to earn the necessary money to build the

nickel ore or cooperate with any other smelters.

662. He pointed out that the monitoring by the GOI of a sector that such as mining, and the fact that companies in this sector must follow regulations, companies are a 'public body'. In addition, obligations with respect to nickel ore processed to a certain grade, not sold to stainless steel producers. The difference between raw and processed ore are not incentives for smelters, but only a measure of fairness. For a smelter requires considerable commitment and investment.

663. According to the GOI, in analyzing the effect of the measure on the oversupply in the nickel ore market, and the effect of this on prices. However, for this was carried out or evidence was found about the existence of control over mining of nickel ore to smelters linked to the Indonesian stainless steel industry.

664. For the GOI, in the context of the DS379 brought, in the definition of a public body passage "must be an entity that possesses, exercises or is vested with a public function, fundamental, being necessary an examination of what exactly is the direction of the activities of miners. The GOI only requires that the value of nickel ore be increased up to a certain level beyond that are established, for example, to supply the ore to the stainless steel industry. According to the GOI, have full control over their decision to sell - there are no signs that they do not wish to sell due to price, which would be a strong indication that there is no control.

665. There would be no instruction or mandate given by the GOI to the mining companies. The Constitution gives the State the right to control the resources in its territory, and there is only this processing and purification requirement.

666. Regarding the designation of sectors as National Vital Objects, in the context of the "internal security system", in accordance with Article 4 of Presidential Decree No. 1/2001, also ensured by the Indonesian police. Therefore, this question has no implications for the financial contribution.

667. The GOI further argued that:

publicly available information taken from PT ANTAM (https://antam.com/en/products/nickel) as excerpted below: "ANTAM conducts mining with a selective mining to produce high grade and low grade nickel ore. Nickel ore is sold to Pomalaa ferronickel plant as well as being sold to domestic market".

In addition, we also present a public available information taken from Vale's website (http://www.vale.com/indonesia/EN/business/mining/nickel/nickelindonesia).

achieving the state's intention to increase the value of the raw mineral, the Regulation No. 25 of 2018 provides explanations for the minimum level of purification such that after reaching the minimum level of purification, processed nickel can be exported to the international market. It added that "SDCOM shall interpret Indonesian domestic price as Indonesian support to the stainless steel industry."

672. With regard to the specificity and SDCOM's allegation that the program benefited a narrow sector and region of companies that benefited from the program, the GOI asserted that the legal instruments that would describe the existence of a supply program of nickel ore did not exist. If the non-existence of the program, there would be no solid basis to provide any evidence of a mechanism or any statistics related to it. The legislation would only obligate the minimum purification, nothing with regard to acquisition for less than adequate remuneration.

673. It added that access to Indonesian nickel ore in Indonesia is not a subsidy, as none of the factors required by Article 2.1(c) of the SCM Agreement exist. As a result of the Countervailing Measures (China), the inherent characteristics of nickel ore cannot be used for establishing specificity.

674. It reiterated that it does not establish prices, and that the Regulation, serves as a minimum price, not a maximum, and the transaction price is determined by the market.

675. The GOI concluded by reaffirming the DS 194 position that the program does not constitute a financial contribution under the Agreement.

676. PT IRNC, in its final statement of October 14, 2022, pointed out that SDCOM's position for the reasons already explained in its statement of September 13, 2022, and the explanations presented by the GOI in its final statement of 13 of October. In the absence of HPM was already constituted in the reference price of the transactions prior to the issuance of Regulation n° 11/2020, there would be no need for the issuance of said regulation.

677. The company also added that the Decree of the Coordinating Ministry of Economic Affairs and Investment n° 108/2020, mentioned under paragraph 431 of the Technical Note, is part of the normative framework taken into account in the investigation, as it can be used during the investigation period.

678. Regarding the proposed adjustment in the calculation of the benefit, the Petitioner stated that its suggestion only aimed to capture the extraterritorial effect of rising nickel prices in the Philippines, according to the very logic exposed by the Petitioner. He also pointed out that he understood SDCOM's consideration regarding its alleged lack of cooperation in the proposed adjustment in the benchmark (paragraph 560 of the Technical Note), as its market data was not accompanied by all the data.

MRME on prices and volumes of nickel in the Indonesian domestic market had day of the verification. Furthermore, the team indicated that it would like to ask on the documents presented. The GOI representative reported that he coordinated said that the MRME informed him that they were ready to provide the data, but following Monday, the 30th, by which time the on-site verification would already team recalled that not only did it have to receive the information during the verification check the information, and, as informed on the 1st day,

683. Regarding the use of HPM in addition to royalties, the fact that HPM is used for royalties does not mean, a contrario sensu, that it would not be used for other purposes. Otherwise, the existence of strong evidence in this direction was demonstrated by MEMR Regulation No. 7/2017 expressly states that license holders must follow the HPM

684. Also on this point there was no cooperation from the GOI, which did not allow each producer and could prove the price actually paid. Regarding the fact that the team mentioned the Decree on the HPM price supervision team issued already by the GOI, Regulation n° 11/2020 (therefore, outside the period of investigation), and not the previous Regulation, as already mentioned by this authority, the lack of collaboration did not present any document from such a supervisory team, prevented the assessment of the context of the team's performance. It is reasonable to believe that, even though the team was created in a given month, it may have acted in past factual situations, within the period of investigation, more so considering that the GOI expressly pointed out during the on-site verification that it received about the prices charged - obviously such complaints would be about the HPM. It is noted that such Decree is just one of several elements in the context, not the only one. SDCOM.

685. Despite GOI's claims that smelters are free to determine prices, the team found in the case file to the contrary. It is cited, for example, the existence of statements from the GOI itself in this regard. It should be noted that such statements were not content of a statement, but the GOI only brought the context in which they were said, without the existence of statements that pointed to price determination through the HPM.

686. It is also true that the GOI has control over all transacted prices (through the RKABs), and could have provided them so that SDCOM would be able to analyze them. In doing so, SDCOM sought to fill in the gaps. The GOI cannot now claim that there was no regulation in the way in which the HPM price is used as a transaction price or even claim that the regulation in 2020 would prove that previously the HPM prices were used only for royalties. It holds the evidence that would allow SDCOM to assess concretely - the GOI having

export price to China, it is noted that such benchmark was chosen based on a will be further examined in the next section of this document. SDCOM and Philippines are an adequate benchmark, considering that they represent real market conditions which reflect circumstances of a free market, and, for this same reason, and pressures of other markets, such as the Indonesian market itself, where there is a

691. In this context, it has already been decided even within the same panel that external prices of the investigated country used as a benchmark do not need to be adjusted for government interventions:

We note that the central inquiry under Article 14(d) in choosing an appropriate benchmark for assessing benefit is whether government intervention results in price distortion. A comparison of-of-country prices is warranted. At the same time, the market from which the benchmark is taken must not be completely free of any government intervention. The Appellate Body has stated that "price distortion" is not equivalent to any impact on prices as a result of any government intervention.

692. It has also been decided that when the authority undertakes to choose a benchmark, the benchmark adequately relates to conditions in the investigated market, as required by Article 14(d) indicates that the investigating authority should investigate the relationship between the benchmark and the investigated financial contribution.

693. Furthermore, the methodology proposed by PT IRNC, which weights domestic price in Indonesia and the export price in the Philippines, shows not only a departure from WTO jurisprudence on the part of the protester, but also demonstrates an incorrect understanding. As is well known, the OSC has repeatedly stated that the use of benchmarks external to the domestic market is only authorized when it is assumed that domestic prices in the investigated country are distorted. According to art. 14(d) to the ASMC. Thus, a benchmark that would combine prices in the domestic market and external prices defies logic, as a rule, it would only be appropriate to use external prices in the event of a disrepute of internal prices.

694. Even disregarding such conditions, which is done by epitrope, it is materially and mathematically absurd to have 72% of the weight for Indonesia in the benchmark. To carry out a comparison with the Indonesian prices that are the object of the investigation, it is noted that a benchmark will always be a proxy, and that it must be reasonably representative. The panel points out that, although the IRNC released such comments, it did not quantify its allegations, nor did it file any evidence that would prove its allegations, or even that would eventually lead the panel to adjust the chosen benchmark or even use another benchmark. And here it is worth noting that, to the final manifestation of PT IRNC, that SDCOM understands that way because it did not bring any concrete data capable of eroding the Philippines benchmark, nor did it propose a reasonable benchmark - considering that the benchmark proposed by PT IRNC

697. With regard to production and sales reports and environmental , should be made regarding the legal requirements for data acceptance by this of the meeting, as the GOI stated, there was partial collaboration, not all the minutes that were provided are called "summary of minutes", that is, they Regarding the reports of external investments in the IMIP, contrary to what additional deadline was agreed for the supply of such documents, and this fact by SDCOM to the GOI, as stated in the minutes of the meeting signed by both the

698. Regarding the GOI's comments on the production volume of nickel explained during the on-site visit, it is not enough to present the number, since it is necessary for the party to explain the source of the data and prove the accuracy. The GOI was unable to accomplish. From the visit report:

The SDCOM team recalled that it would be necessary not only to inform how the total was calculated, presenting the calculation memory line by line (e.g. in which the data came from the system and from manual reports) .

699. With regard to the use of the HPM price for royalties, SDCOM has not been issued, not having been able to change the understanding of this author. The GOI's explanations about the formula were used, as can be seen in this section. The fact that the formula calculated by each company has no impact on SDCOM's conclusions, given that the formula is determined by the GOI. From the HMA, obtaining the HPM is a requirement

700. Regarding the provisions on Letters of Credit, the fact that the requirements increased (no link or concrete source of the data was presented) does not eliminate the Letters of Credit already exposed:

- a) the price indicated in the L/C should not be less than the global market price;
- b) payment should be made to a domestic foreign exchange bank;
- c) the L/C mechanism should be indicated in the export declaration (e.g. L/C number);
- d) the L/C would be subject to audit by the Ministry of Commerce; It is not allowed to use L/Cs that are not subject to audit;
- e) exports that do not meet L/C requirements would not be permitted.

701. Although it is normal to monitor companies and regulate sectoral activities, in the GOI's Opinion, the regulations and monitoring of the GOI go far beyond mere monitoring. The GOI's role is the protection of the environment - but enable the GOI to determine the objectives and influence on business decisions (even on decisions that tend to go against the company itself). In this sense, the analysis carried out by SDCOM on the existence of several elements, as detailed in the relevant section, using all the verified information

703. Regarding the information brought from PT Antam and PT Vale, the allegations brought would affect the analysis carried out, given that both are forced to process it internally due to the framework created by the GOI, offer. The figure of 27 percent quoted by the GOI was obtained, as already mentioned, from available information, as investigated by the European Union. In this context, it is clear that this percentage represents a significant effect on the domestic market.

704. The GOI's allegations about MEMR Regulation No. 25 of 2018 have not been answered, and this SDCOM points out that the GOI itself admitted support for the program in its final statement, in verbis, "SDCOM shall interpret Indonesian domestic production as Indonesian support to the stainless steel industry."

705. Regarding the fact that the GOI did not present a list by sector and company that benefited from the program, this was yet another element of the GOI's lack of transparency in the scope of the program. Although the GOI argues that there is no program, and that there is no such list, in which this SDCOM frontally disagrees, as already mentioned in the previous paragraph, crucial information denied by the GOI was requested under this program, such as information on transactions in the nickel market, information on sales volumes, etc.

706. Regarding the jurisprudence cited in the case US - Countervailing Duty on Certain Imports of Softwood Lumber from Canada, for example, where a subsidy program operates in an economy made up of one or more industries, and that those industries may have been the main beneficiaries of a subsidy program, "to demonstrate 'predominant use'", SDCOM did not take its conclusion of predominant use as a result, rather because of the Indonesian government's proven intent to create a stainless steel industry in the country to increase value-added exports, as has been said repeatedly by the GOI at all echelons, such as the president himself Mr. Joko Widodo:

Joko said that Indonesia can ensure the security of foreign investment and the sustainable development of Indonesia's economy. He thanked Chinese enterprises for building a stainless steel smelting technology, which has greatly increased the added value of Indonesia. When processing nickel ore into ferronickel, the added value is increased by 14 times. When processing stainless steel, the added value is increased by 19 times. Joko also said that he believed that his country can also benefit from the development of the industrial park and have a lot of business opportunities.

4.2.3.1.9 Conclusion

707. In short, SDCOM was able to confirm, with a view to final determination, the facts presented at the beginning of the investigation.

legislation the existence of policies related to nickel ore, in order to favor producers/exporters and the gaps in the government's response, the facts are considered a priority in the government's plans, it is also configured as specific art. 6, caput, of the Brazilian Regulation, and therefore subject to the anti-dumping measures.

4.2.3.1.10 Calculation

713. With regard to the calculation, considering the complete lack of cooperation from producers/exporters and the gaps in the government's response, the facts available are used.

714. Regarding the amount of nickel ore involved, data from the 2019-2020 period which indicate a production of nickel ore (Ni ore) and pure nickel of, respectively 32,069.38 tons, as well as an average concentration of Nickel ore content of 1.9% NiPI ore per NPI at 1.8% of 101.44 t/t NiPI was determined.

715. With regard to the price of nickel ore, two elements are necessary: the purchases of the investigated companies and the benchmark for comparison.

716. Regarding the prices practiced, as already mentioned, these are not representative of the entire Indonesian market, and it is reasonable to believe that this would be the prices practiced. However, there was an absolute lack of cooperation from the producers; they did not provide HPM prices for the period, despite being repeatedly urged to do so (see 4.2.3.1.1.3, above). Thus, based on reports from the company installed at IMIP, NPI's Quarterly Activity Reports, an average cost of nickel ore practiced in Indonesia (as a benchmark HPM price, as already indicated) in the investigated period of 28.27 \$/t.

717. Regarding the benchmark to be used, art. 14(d) of the ASMC thus provides:

(d) the provision of goods or services or purchase of goods by a government authority is considered as conferring a benefit unless the provision is made for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good or service in question, as provided for in the provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale). (emphasis added)

718. This article makes it clear that market prices in the investigated country are to be considered. However, it is settled case law that the authority may seek benchmark prices if it is believed that prices in the investigated country are distorted:

446. In short, we are of the view that an investigating authority may use benchmark prices if it reaches the conclusion that these are too distorted due to the predatory behavior of the government as a supplier in the market, thus rendering the comparison required.

grew in production volume and exports to the main market in the world, which is the Philippines, the largest supplier of nickel ore imported from China. Moreover, it is also an Asian country. Indonesian nickel ore has the same properties as Indonesian ore and similar concentration. The nickel ore being mined according to the same open pit process and having nickel ore with similar properties as both countries have similar climates. For these reasons, this authority considers the prices to be reasonable and appropriate.

721. Once the benchmark country has been established, data from the Philippines point to the market cost (export from the Philippines to China) of nickel ore being investigated.

722. Considering this difference in the amount of nickel used to produce nickel ore in the investigation, using the available facts, as informed by the petitioner, it was verified that the system considered adequate by SDCOM, as stated in document submitted by the petitioner on September 8, 2022, an amount of subsidies of 216.98 USD/t.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
all companies	216.98	10.62

Source: Best available information - Petitioner's statement, GOI response

Elaboration: SDCOM

4.2.3.2 Program 2 - Supply of coal and coke for less than adequate remuneration

4.2.3.2.1 Facts found about the program

723. Initially, it is pointed out that, as already done in the Opinion of the investigating authority, considering that all of the petitioner's arguments regarding program 2, "Supply of electricity for less than adequate remuneration" - was based on in-country production - price caps and domestic market obligations (DMO), SDCOM combined the two programs into one. In this way, an attempt was made to simplify the logical process of facilitating the broad defense of the interests of all interested parties,

724. Thermal coal and metallurgical coal are fundamental and extremely important in all stages of NiPI production, that is, in energy generation, drying, calcination and reduction of NiPI ore. Nickel. It is also noteworthy that the IMIP itself claims that electricity (from the IMIP report, 2017, page 128: "Coal is the source of energy for the evidence used at the beginning of the investigation.

725. During the course of the investigation, the existence of policies was confirmed, most notably the domestic market supply policy - Domestic Market Supply Policy - maximum price policy for electricity.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

13: "Mineral and Coal Mining Business Entities are obliged to sell minerals or mineral and coal for the domestic demands", and the MEMR Regulation No. would also reaffirm the DMO.

728. Therefore, coal producers can only export once the internal market, in turn, is divided into two elements: 1) coal as an industrial input; 2) production.

729. The GOI reported that, every year, the MEMR analyzes the considering, for example, demands from the PLN, the cement industry, etc. It is the BMD level is established. MEMR Decree No. 261 of 2019 established the company's production has to be sold domestically).

730. During the on-site visit, the GOI informed that there is reconciliation between the company and the government between what was sold internally and production received on a quarterly basis. For example, if the company has 1 million tons production plan, and there is a DMO of 25%, it means that the company must sell 250,000 tons/year, 62,5000 tons/quarter. The GOI then compares the report received quarterly with the plan achievement target.

731. The GOI also reported that the DMO has been complied with by companies in cases where some coal companies did not comply with the DMO, domestic demand.

4.2.3.2.1.2 Maximum coal price policy

732. During the course of the proceedings, the existence of a maximum price for electricity was confirmed. This policy comes in particular from Regulation 1395/k/30/MEM/2018 and Regulation 261/K/30/MEM/2019, and establishes the maximum price when sold for use in public electricity (or electricity for public interest purposes) at \$70/t.

733. That said, considering the lack of cooperation from the companies, the gaps in the information provided by the Indonesian government, as notified by Regulation 228693/2022/ME, in particular the absence of RKABs, which would allow the determination of volumes and transaction prices of coal, and the absence of information about the authority had no alternative but to use the facts available in the process, pursuant to Article 1751 of 1995.

734. The facts available in the process, confirmed in the on-site visit, the MEMR n° 7/2017, most recently amended by Regulation MEMR n° 11/2020, establish the obligation of companies holding charcoal production licenses to follow the maximum price (charcoal reference price) - HPB in their sales of the product:

5. Steam (thermal) coal HBA means average price from steam coal relevant month calculated in equivalent coal quality of 6322 kkal/kg Gross as R

Article 3

(1) Formula for steam (thermal) Coal Benchmark Price as stated in Art a benchmark in calculating steam (thermal) Coal Benchmark Price for primary c

(2) Primary Coal Benchmark Price as referred to in paragraph (1) formula with the following variables:

The. Steam (thermal) Coal Benchmark Price - HBA;

B. Coal Calorific Value;

w. Moisture Content;

d. Sulfur Content; and

It is. AshContent.

(3) Other Coal Benchmark Price as referred to in paragraph (1) shall be determined using formula with the following variables:

The. Primary HPB (price marker);

B. Coal Calorific Value;

w. Moisture Content;

d. Sulfur Content; and

It is. AshContent. (emphasis added)

736. Annex II of the decree establishes the exact formula:

ATTACHMENT II TO REGULATION OF DIRECTOR GENERAL FOR MINE

DATE: 24 March 2011

STEAM COAL BENCHMARK PRICE (...)

4. Coal Benchmark Price Marker No. 1 - 7

HPB Marker (i) = $HBA * K(i) * A(i) - (B(i) + U(i))$ [USD/ton]

Onde:

HPB Marker (i), = HPB from 7 coal price markers [USD/ton]

$$U(i) = (\text{Coal Ash Content (I, — 15)} * 0.4 \text{ [USD/ton]})$$

$$(4) = \text{price marker 8 [USD/ton]}$$

737. In the original in Bahasa:

<<IMAGE 4 HERE>>

738. SDCOM was able to find a more recent document that mentions MEMR Regulation of director general of mineral and coal n° 480K/30/DJB/20 established for HPB:

1) Calorific value > 4200 kcal/ kg GAR

$$\text{HPB FC/RC} = \text{FP} * ((\text{HBA} * \text{K} * \text{A}) - (\text{B} + \text{U})) * \text{PS (USD/ton)}$$

Note:

The. HPB FC/RC = HPB fine coal and/ or reject coal (USD/ ton)

B. HBA = Reference Price of Coal (USD/ton)

w. FP = factor of deduction (fraction)

d. K = calorific value of coal (fraction)

It is. A = (100 - water content of coal)/ (100 - 8) (fraction)

f. B = (sulfur content of coal - 0.8)*PB (USD/ ton)

g. U = (ash content of coal - 15)*PU (USD/ton)

H. PB = deduction of sulfur content (USD/ton)

i. PU = deduction of ash content (USD/ton)

j. PS = multiplication of Sodium content (fraction)

2) Calorific value $\geq$ 4200 kcal/ kg GAR

The. TM < 35%

$$\text{HPB FC/RC} = \text{FP} * ((\text{HBA} * \text{K} * \text{A}) - (\text{B} + \text{U})) * \text{PS (USD/ton)}$$

Note:

1. HPB FC/RC = HPB fine coal and/ or reject coal (USD/ ton)

2. HBA = Reference Price of Coal (USD/ton)

3. FP = factor of deduction (fraction)

example, Ministerial Decision No.2 K/30/MEM/2020 established the reference price for coal in January 2020 at 65.93 USD/ton.

741. It is also pointed out that Government Regulation No. 8, of 2010, and Government Regulation No. 23, of 2010, determining, in its Article 1, the inclusion of Article 85 of the 1945 Constitution in Article I.

Article 85 a

The price set by the Minister is valid for the same coal specification and to protect domestic interests.

Determination of a separate coal selling price by the minister with due attention to the public interest.

742. In view of the total absence of collaboration from the producers and the lack of collaboration of the GOI, this SDCOM understands that prices for industrial use are not

743. Thus, there are two aspects to prices for coal in Indonesia: 1) the maximum price for industrial purposes, limited to 70 USD/t; 2) HPB prices, calculated by each company based on its own

4.2.3.2.1.3 The framework of the IMIP

744. The lack of collaboration from the investigated company installed by the authority from having access to information and documents in the context of the framework of the IMIP under the two aspects, in order to verify what would be, in fact, the price of coal purchased by IMIP. The lack of cooperation from the IMIP companies also prevented SDCOM to have access to documents such as the Electric Power Supply Business Plan to clarify this issue.

745. The GOI's own responses in this context also proved erratic. In the questionnaire, at one time the government stated that the ceiling of 70 USD/t for "industrial plants" (page 41 of the response to the GOI questionnaire), at another time it stated that it was the PLN. Questioned about such inconsistency multiple times, the GOI always referred to the Regulation, without presenting any other evidence that it demonstrably had in mind the coal transaction prices reported in the RKAB).

746. Thus, unable to verify such a condition both by the company and by the facts available in the process were resorted to. SDCOM was able to find a statement which points out that there would be a framework for the IMIP within the scope of its purposes:

transmission network (lease mechanism/ power wheeling) for the public interest and the capacity of the transmission network and the Grid Code".

749. It cements once and for all the question about the framework of energy for the public interest when consulting articles 10 and 11 of law n° 30/20

Article 10

(1) Public power supply business as intended by Article 9 item (a) types of business:

A. power generation;

B. power transmission;

C. power distribution;

D. and/or power sale.

(2) Public power supply business as intended by section (1) may be conducted in any manner.

(3) Public power supply business as intended by section (2) shall be conducted within 1 (one) business area.

(4) Limited business areas as intended by section (3) shall also apply to business limited to only power distribution and/or power sale.

(5) Business areas as intended by section (3) and section (4) shall be determined by the Government.

Article 11

(1) Public power supply business as intended by Article 10 section (1) shall be conducted by state-owned entities, region-owned entities, private entities, cooperatives, and other entities engaged in the field of power supplies.

(2) State-owned entities as intended by section (1) shall receive first priority in power supply business.

(3) The competent Government or regional governments shall allow private-owned entities, private entities, or cooperatives to conduct integrated power supply where power service is not yet provided.

(4) Where no region-owned entities, private entities, or cooperatives are present in those areas, the Government must commission a state-owned entity(ies) to be added)

754. The program for supplying coal at less than adequate remuneration, in violation of laws, from all levels of government, among which the following stand out:

I. Law No. 4/2009, Mining law;

II. Law No. 30/2009;

III. Law No. 3/2014;

IV. Government Regulation No. 23/2010;

V. Government Regulation No. 14/2015, National Industry Development Plan
(Rencana Induk Pembangunan Industri Nasional - RIPIN);

SAW. Government Regulation No. 81/2019, on royalties;

VII. Presidential Regulation No. 2 of 2015, industrial policy plan 2015-2019;

VIII. Presidential Regulation No. 2 of 2018, industrial policy plan 2015-2019;

IX. Decree MEMR No. 1395/k/30/MEM/2018

X. Decree of Director General of Mineral and Coal N° 515.K/ 32/DJB/2018

XI. MEMR Regulation No. 25 of 2018;

4.2.3.2.3 Financial contribution

755. The financial contribution of the program resides in the verification that the product under investigation had access to coal, an important input in the production process, at less than adequate remuneration, in the months in which the ceiling of 70 dollars per ton was higher than that amount. Thus, under the terms of lines "c" and "d", of item II of the Decree of 1995, companies that participated in the program enjoy a clear benefit.

756. Regarding the classification as a "public body" or "instructed company", the analysis reinforces the understanding set out in sections 4.2.3.1.3.1 and 4.2.3.1.3.9, given that, for miners, with slight adaptations, the measures explained there, which demonstrate that they perform the governmental functions that the GOI wants:

i) export restrictions;

ii) the domestic processing obligation;

iii) establishment of the reference price;

iv) submission of mandatory detailed reports;

v) divestment obligations;

companies in Indonesia that participated in this program during the investigation of the transactions carried out in the coal market in Indonesia. Furthermore, in view of the requested information by the selected producers/exporters, as well as the information as already mentioned, they were used, pursuant to art. 79 of Decree No. 1751 of 2011.

759. It is a fact that coal is an important input in the stainless steel industry. Coal is a source of energy in the IMIP (according to IMIP data in its annual report 2019-2020 mentioned in the official presentation by the GOI, only 55 companies throughout the "Electricity Supply Business Area", capable of purchasing coal at a price regulated by the GOI. That of these 55 companies, IMIP is, by far, the largest energy producer (not only in the country, according to GOI data, IMIP produces 2,478 MW of energy, producing twice and a half the 2nd place, and almost five times more energy than the 3rd place.

760. Thus, in view of the facts available in the case file, which demonstrate the intention to create a framework of incentives for the installation of companies in order to increase the added value of the country's mineral resources, in order to meet the economic policies of the country, the program treated here is configured as a specific subsidy within the meaning of art. 6, §3, of the Brazilian Regulation, and therefore subject to the application of the provisions of art. 6, §3, of the Brazilian Regulation, and therefore subject to the application of the provisions of art. 6, §3, of the Brazilian Regulation.

4.2.3.3 Manifestations prior to the Technical Note about the program

761. The GOI and PT IRNC state that the maximum coal price of US\$ 100 per ton for the purchase of coal by PLN (state electricity company). Thus, coal buyers other than PLN are not allowed for the purchase of coal at the said limit price, and there would be no benefit to the companies. This conclusion that had also been reached by the European Union authority.

762. Aperam stated, with regard to coking coal, that the Government of Indonesia stated that most of it is exported, with "only a small portion being used in the domestic market". In the presented production data for such a type of coal to the SDCOM team, the company stated that it attested that these were compiled from data submitted by companies, and "could be updated in the data later". Thus, the Government of Indonesia stated that "the data compiled by the company is revised once extracted from the system, so the information may be discrepant from the actual data that such information cannot be properly verified.

763. Aperam, in a statement dated September 9, 2022, argued that the company would have confirmed, in its response to the questionnaire, that there would be no subsidies in the domestic market of that country.

764. In addition, Aperam argued that the subsidies granted resulting in lower prices with lower than adequate remuneration would be transferred (passed on) to the producers, including the product under investigation.

769. With regard to prices, he reiterated that Government Regulation No. 23, of 2010, determining, in Article 1, the inclusion of coal in the list of goods subject to Government Regulation, with the following wording:

85A In order to fulfill the need for coal for domestic interests and in paragraph (1), the Minister shall set a separate selling price for coal

770. At the same time, it noted that Regulation 19 of 2018 would explain

PROCEDURES FOR DETERMINING THE SELLING REFERENCE PRICE OF COAL AND COAL.

771. Thus, such Regulation would include, in Regulation of the Ministry of Energy and Mineral Resources No. 7, of 2017, article 8A, with the following determination:

Article 8A

(1) In order to meet the needs of coal for domestic purposes, the Minister shall set the selling price of coal for domestic purposes in accordance with the quality of coal

(2) The determination of the selling price as referred to in paragraph (1) shall take into account the public purposes.

772. It would remain clear that the determination of establishing the selling price for the domestic market would not be exclusive to the supply of public energy, applying

773. Likewise, Regulation of the Ministry of Energy and Mineral Resources No. 7, of 2017, amend Regulation of the Ministry of Energy and Mineral Resources No. 7, of 2017, to the effect that it would be about price fixing reference sale to be practiced, not about calculating royalties.

774. The second article of the aforementioned Regulation would clarify the matter of establishing prices to be practiced in coal sales operations in the domestic

775. Aparam maintained that there would be no limitation as to the use of coal. Furthermore, it would be clear that coal sellers would be obliged to sell coal to the Government of Indonesia in their sales operations. In this sense, it would be clear that coal were simply used for purposes of calculating the payment of royalties, there would be no obligation for sellers to practice the price set by the Government, simply charging royalties on

776. It would appear that, in addition to being the sale price to be practiced in the domestic market, such prices would also be considered for purposes of calculating royalties paid for such sales.

781. In its statement on the use of available facts, the GOI pointed out that the MEMR participated in the verification, having provided sufficient information on production data, which would be confirmed in paragraph 139 of the visit report. The government informed that such data was never requested, only about coking coal that coking coal is beyond the scope of the investigation, as it is imported, with no

4.2.3.4 Statements after the Technical Note about the program

782. The GOI pointed out in its final statement that exporters can only fulfil the requirements of the DMO. About the HPB, he added that the correct way to have a fair HPB according to the quality of a particular coal. He added that the HPB is the HPM, and is only applicable to royalties, in accordance with MEMR Regulation No. 25/2018 and that the price of 70 usd/t was set for a specific use, public power, in line with the regulation. In this context, added the GOI, SDCOM's understanding that the use must follow the HPB is wrong, and "coal selling price" does not mean "HPB". Regulation No. 8 of 2018 uses a specific terminology.

783. The GOI also stated that, contrary to what was stated by SDCOM, coking coal is not solely intended for the generation of electricity, this being the primary use, but not exclusive. The GOI brought a publication that would prove, in its opinion, that coking coal is intended to meet the needs of the PLN.

784. He concluded the GOI by asking SDCOM to decide along the line of the regulation, which that authority pointed out that there was no benefit to Indonesian producers in an investigation with the cooperation of the producers and the GOI.

785. PT IRNC reiterated in its final statement the positions of the GOI, only for royalties, regarding the electricity ceiling and regarding the use of the E

786. In her final statement, the petitioner reaffirmed SDCOM's conclusion that no changes could be made to the amounts already calculated and presented in

4.2.3.5 Comments from SDCOM

787. As explained in detail, there is strong evidence that IMIP (and, consequently, access to coal with the maximum prices established by the GOI, considering the applicable legislation and official documents of the GOI already described. Thus, in the absence of collaboration on the part of the company, the facts available in the process were

788. At this point, it is important to point out that, contrary to what was stated in Indonesian legislation that equates "coal selling price" with "HPB", according to Regulation 515.K/32 /DJB/2011, which is the specific Regulation on the HPB price

the documentation analyzed by them. It is known that anti-subsidy investigations are often difficult and difficult to access documentation, especially when it comes to documenting the present case. Thus, the conclusion expressed by the European authority is not based on strong elements considered in the present case. Even if the GOI claims that that is the case, it should not be forgotten that a comparison was made with the benefits during the investigation period, which may not have resulted in benefit in the case of the other companies.

792. Furthermore, it should be emphasized that the evidence collected by SDCOM - for example, obtaining an official presentation from the GOI that shows that electricity for public purposes was the result of extensive research by that SDCOM. Such evidence in GOI in bahasa, evidence of extreme difficulty to obtain by this authority, most probably undermines the authority of the European Union and contradicts the conclusion of that authority that IMIP is a producer of energy for public purposes (classifying it in the number 1.1 "electricity supply business area", in automatic translation):

<<IMAGE 6 HERE>>

793. For the purposes of final determination, this SDCOM was able to obtain another presentation by the GOI (more specifically, by the MEMR) in which the GOI reaffirmed: "The business of providing electricity for the public interest is carried out by state-owned enterprises, regionally-owned enterprises, private enterprises, cooperative enterprises and other organizations operating in the field of electricity supply".

794. Even more serious is the fact that, even though this SDCOM was a member of the government, the information that the IMIP supplied energy for public purposes was not available at any time. SDCOM regrets that the collaboration of the GOI took place partially. The MEMR had full conditions to appoint the IMIP as a producer of electricity for public purposes, but it was not done.

795. The publication brought by the GOI only highlights that the main objective of the ceiling is to benefit the PLN, which does not indicate anything about the other objectives for public purposes, as the IMIP demonstrably is - the GOI did not make any comment on this. Neither PT IRNC, a company of the IMIP group.

796. Regarding the GOI's comments, although the representative of the GOI tried to explain the source of the data, these were not evidenced (for example, through reports received by the GOI). It is reiterated that SDCOM always made it clear during the investigation enough to verify the data in the system, the GOI would have to evidence the source of the data. Furthermore, as described in paragraph 139 of the visit report, invoked by the GOI, the GOI informed that it could not provide access to the data:

such information being essential for verifying the DMD, for example. As described in the visit, the government did not provide the information requested by SDCOM documents requested during the visit, which would include domestic consumption (question). In any case, it is pointed out that this was not the main point that led to the set of gaps and lack of cooperation from the producers.

799. Regarding the GOI's comments on paragraph 624 of the Technical Report, it is pointed out that there was probably a problem in the translation carried out by the GOI. This does not concern any position of this SDCOM, being a manifestation of APERAM. In any case, the GOI stated that coal from DMO is not exclusively used for electricity generation. On the issue of royalties and on the HPB remedial factor, the lack of cooperation by the parties is evident. Available facts, and these indicate that the use of HPB is not restricted to royalties, but is an element of absolute discretion. It should also be noted that the GOI held back information resolving any doubts in this regard - which were intentionally not presented.

4.2.3.5.1 Conclusion

800. SDCOM concluded, based on the information contained in the report, that the subsidies granted through the supply of coal for remuneration lower than the actual cost, as an incentive is configured as a subsidy since it involves a financial contribution by the government body, under the terms of items "c" and "d", of item II, of art. 4 of Decree No. 11.929/2006, for companies reached by the program in question, since such companies now have a lower cost compared to those that do not participate in the program.

801. As already discussed, the program treated here is configured as a subsidy under the terms of art. 6, §3, of the Brazilian Regulation, and therefore subject to compensatory measures, with regard to the market for consumption other than electricity, under the terms of art. 6, caput, of the Brazilian Regulation, regarding coal for electricity.

802. Also, in view of the lack of collaboration already exposed and the facts indicated, it is concluded that the domestic HPB prices for coal are distorted as compared to the HPM price, when applying the formula with the deduction factor.

4.2.3.5.2 Calculation

803. With regard to the calculation, considering the lack of cooperation from producers/exporters and the gaps in the government's response, the facts available were used.

804. As explained, it was verified the existence of a program for the supply of electricity (with a ceiling established by the GOI), and on the aspect of coal as a cost, it was concluded, using the available facts, that HPB prices do not reflect market prices.

minimal way, the subsidy perceived by companies in Indonesia.

808. There is an official GOI website where you can check all HBA re that, as already mentioned, in the months when the HBA was above 70 dollars, t applied to the purchased coal, the situation is as follows:

Month	price with ceiling	HBA price
April/2019	70	88.85
May/2019	70	81.86
June/2019	70	81.48
July/2019	70	71.92
August/2019	70	72.67
September/2019	65.79	65.79
October/2019	64.8	64.8
Nov-19	66.27	66.27
Dec/2019	66.3	66.3
January/2020	65.93	65.93
February/2020	66.89	66.89
March/2020	67.08	67.08
Average	67.75	71.65

<<IMAGE 7 HERE>>

809. Thus, while for the investigated period, the average price pa ceiling was US\$ 67.76/t, the average HBA price was US\$71.65/t, resulting in a di

810. The petitioner estimated the consumption of electricity through under investigation (production of FeCr and FeSi and Steelmaking - hot segregating between what was produced internally (that is, where there consumed) and intermediate products in which electricity has not been consum expenditure to produce a ton of the product under investigation, the amount US\$ 3.63 per ton was reached. The Petitioner also brought the charcoal us smelter to use in the reducer, appropriating for the final product the subsidy pe stages, through a pass-through system considered adequate by SDCOM,

811. It should be noted that there was no comment from the other proposed calculation.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)

elements in the case file in this regard.

815. It should be noted that the petitioner did not bring new evidence that justified the initiation of the investigation. Nor was it possible evidence that the producers/exporters acquire scrap and waste used in the product. Thus, in line with the request contained in a statement presented by F that there is no actionable subsidy in relation to the alleged supply of scrap remuneration.

4.2.3.9 Program 4 - Supply of land for less than adequate remuneration

4.2.3.9.1 Facts found about the program

816. As found in the on-site visit and in SDCOM research, in order to understand land regulations in Indonesia, it is necessary to go back to the pre-independence period which there were two systems: Eigendom (Dutch law) and Adat/Common law. The first was own land during Dutch colonization before agrarian law existed. The second was community custom within the region.

817. In 1960, the Agrarian Law No. 5/1960 was enacted in Indonesia, abolishing Eigendom. Since then there are 4 types of land rights:

a) Hak Milik/possession/property rights® the most "strong" and complete right, with no time limit, only for Indonesians;

b) Hak Guna Bangunan/to build® granted to use the land to build so-called buildings for 30 years, which may be extended for 20 years, for companies or industries;

c) Hak Guna Usaha/to cultivate® granted only to person/entity for agricultural purposes, extendable for 25 years, large scale;

d) Hak Pakai/ to use® granted to use a land, 25 years, which may be renewed for another 25 years, sawah, jagung (foreigners), the owner of which is the people.

818. The land of the type Tanah swapraja - inheritance of the Dutch colonial period, the pemerintah hindia belanda (Dutch East Indies), became, from September 24, 1959, n° 32/1979 lands of the type tanah negara .

819. That said, we move on to the analysis of the IMIP land. The producer/exporter PT IRNC and other companies of the Tsingshan group are located in the region.

820. It is known that, according to RIPIN 2015-2035, it is informed that the government also has as one of its main concerns the industrialization of the region. This is also a concern of the government in the context of encouraging the industrialization of the region. The Indonesian Ministry of Industry document Facts and Figures, 2015:

with land issues;

B. the planning of industrial estate development, including feasibility studies and master plan;

w. the establishment of institution and land bank regulation for the industrial estates;

d. coordination between the provincial/district/city governments and other institutions for determining the location of industrial allotment within the Region;

It is. carrying out review to the development of industrial allotment;

f. the provision of land through the development of industrial infrastructure both within and outside of industrial estates; and

g. provision of land through the development of industrial infrastructure both within and outside the industrial allotment.

821. With regard to the IMIP, it is installed in the district of Morowali. During the on-site visit, the oldest spatial plan for Morowali is Regional Regulation No. 10/2012, the region was designated as the Morowali Regional Regulation No. 10/2012, the region was designated as a "National Strategic Project". After the Regional Spatial Regulation of Morowali, the possible use of the land was more detailed. In its position, the GOI reported that the land could also have other uses.

822. As reported in the GOI on-site visit, the current status of the land is to build - Sertifikat hak guna bangunan - 'SHGB', dated 18 August 2015. Before that, through a certificate, was informed on the on-site visit to the GOI that the land was tanah negara. According to the government, such status would indicate that the land was controlled by the government, owned by the people.

823. That is, the land where the IMIP is located had Swapraja status under the Law, which were lands that, before Indonesia's independence, belonged to sultanates with certain independence. After independence, it became tanah negara land, still with Swapraja status on the part of the communities that lived there.

824. It was also confirmed in the on-site visit that the IMIP started obtaining the required licenses, which was possible due to its status as a national project.

825. However, the SHGB certificates were not displayed during the on-site visit. The acknowledgment letter (surat yg diterbitkan oleh kecamatan kepada masyarakat) was prevented from verifying the status of the IMIP land. Neither did the sultanate.

directly controlled by the State" is tanah negara.

831. Generally speaking, the local communities living there were affected by the arrival of the IMIP, and their livelihoods were threatened in various ways. Those who had their productivity significantly reduced due to deforestation, construction of watercourses. That is, although in theory the land could have other uses, as stated by the communities were forced to transfer the right of use (with compensation) because the environmental impact caused by the construction affected the productivity of the land. This was considered by the CEO of IMIP:

"When you are building a new house, do you bother to take a look at the land? You will handle it properly later after the development is fully completed," Barus said.

832. The result of an investigation by the European Union was also used in the process, which also dealt with stainless steel laminates in a similar investigation. The terrain was analyzed, in the context of which the authority described it as follows:

The investigation found that the GOID facilitated the necessary land acquisition. The land in question was the property of the Indonesian State. IMIP agreed with the assistance of the Bahodopi district authorities, on a single average payment, a compensation, for the individuals using the land at the time.

(...)

First, the GOID amended the spatial planning of the Morowali Area, changing the land from farmland to industrial land, more specifically linked to a nickel project. Morowali Regency Regulation No. 10 of 2012 designated as nickel mining area the Bahodopi sub-regency entity where IMIP is located. Moreover, Article 29 of the same Morowali Regency Regulation designated the Bahodopi district also as an Industrial Area 'based on mining raw materials'. The Morowali Regency identified a 'large industrial area in Bahodopi District' as 'an area from the point of utilization of natural resources' (Article 37). Finally, Article 9 of the Bahodopi District Regulation identified Bahodopi district as the area where a special mining project. The change of use left the villagers with no choice but to relinquish their right to own the land, as they could no longer use it for farming activities.

Second, IMIP contacted the local authorities in the area, ie, the mayor of the area, and agreed with them on a compensation to be provided to the people who were identified as occupants of the plots of land in the area. In this process, the following was highlighted: (i) IMIP agreed on the compensation with the village heads also with the officials of the Bahodopi district, because the contracts show that they later with

the investigation was confirmed. However, even though the operation exists, the records that indicate that there is a benefit to the investigated producers/exporters operations mentioned.

4.2.3.9.2 Elements of fact or law (Legal/documentary basis)

836. The program is based on Indonesian industrial policies, in particular Morowali Regional Regulations No. 10/2012, and No. 7/2019, as well as the Land

4.2.3.9.3 Financial contribution

837. The program's financial contribution comes from the fact that the land was granted at a reduced price when compared to market prices.

838. It is also known that the GOI, as by law the owner of land with the right to grant, granted the land to the IMIP.

839. Alternatively, the fact that there was participation of the local communities is analysed. Even if one considers their participation in the supply chain occurred because the GOI acted directly to promote the removal of these obstacles from the community who were there were never the owners of the land, but they transferred their use rights to IMIP in a concerted manner by the GOI, with the latter, in accordance with article 43 of the Agrarian Law of 1960, and also with the government, according to elements analyzed in section 4.2.3.8.1. It is also recalled that the complainant has access to the complete documentation about the lands, one of the reasons why the file were used.

840. Thus, analyzing the elements mentioned in item 4.2.3.1.3.9, it appears an express command in order to instruct the farmers/village leaders to transfer the land, otherwise they would not have survived. Such transfers were not a mere side effect enacted by the GOI, but one more piece in the puzzle of incentives promoted by the government. From this perspective, there is a financial contribution under the terms of the ASMC.

4.2.3.9.4 Specificity

841. According to the elements available in the file, the program was implemented in zones of industrial interest, designed for the IMIP, a project classified by the government as a "strategic project", which imposes several advantages, in the context of the intention of the government to promote the appearance of a stainless steel industry, as exposed in the previously mentioned

842. Considering that the government did not answer the questions raised, to assess the specificity of the program, it is clear that the context of encouraging the stainless steel industry in the country, according to the various plans already outlined here

infrastructure.

(2) The provision of the Industrial infrastructure is conducted both in Industrial allocated zones.

(3) The Industrial infrastructure as referred to in section (2) covers at least

845.a. Industrial land in the form of the Industrial Estate and/or Industrial

846. As for Government Regulation No. 14 of 2015, which deals with the Development Plan from 2015 to 2019, the period of greatest development of the nickel chain, until the production of the product under investigation, in the "Development of Industrial Facilities and Infrastructure", would determine that:

V. DEVELOPMENT OF INDUSTRIAL FACILITIES AND INFRASTRUCTURE

The development of a competitive national industry needs to be supported by industrial facilities and infrastructure including:

B. Industrial Infrastructure

The infrastructure required by industry, both inside and/or outside the industrial area, includes energy and industrial area land.

1. Energy

847. With regard to the Government of Indonesia's determination to develop the nickel chain from nickel ore to stainless steel production, which is considered a priority, the Government of Indonesia would have provided the land for the establishment of the chain, allowed its use without the requirement of formal legal requirements.

848. Furthermore, as stated in the Report of the visit carried out to the industrial area, it would therefore be clear that the assertion presented by the Government of Indonesia that the acquisition by the IMIP would have occurred from private parties, without its intervention, demonstrated, it is a mere allegation.

849. The GOI, in its statement regarding the use of available facts, stated that it had sample documents of land sales and purchase and a land certificate (SHGB) which was adequate to prove that IMIP sought the land under direct transaction with the GOI's intervention. As such, the GOI believes that it should be sufficient to assess the land ownership. He added that the NJOP prices were explained by the representative of the GOI. The originals of the requested documents could not be shown, but which the representative informed that they were authentic.

4.2.3.11 Comments after the Technical Note about the program

communities, government, society and/or the business sector. There would not be a regional regulation that stipulates provisions regarding land, let alone a regulation for the community or residents in Morowali to sell their land to the IMIP below the market value.

854. The GOI also pointed out that Morowali Regional Regulation No. 1 of 2017, the basis for land subsidy claims, aims to direct productive, controlled, equitable and sustainable use of land to improve people's well-being, and it would not regulate the purchase and sale and transfer of land rights.

855. Thus, according to the GOI, SDCOM would not have been able to provide the required level of financial contribution and specificity in the provision of Land, and the investment would be made without measure.

856. PT IRNC, in its final statement, pondered that the European Union authority only considered the cost of the land itself, as the benchmark used by the European Union. The benchmark comprises the value of the HGB held by Jindal. In this way, the benchmark of the European Union does not only include "development costs", but the cost of the land itself, which is the cost of compensation paid by the IMIP. Thus, he reiterated the use of the percentage of 10%.

857. In her final statement, the petitioner reiterated SDCOM's conclusion that, by pleading with PT IRNC for the use of information from the European Union, the existence of the program, and that the defense of the percentage applied by SDCOM to demonstrate that, "in fact, the facts contained in the case records lead to the conclusion that the percentage is higher than that suggested by the IRNC".

858. PT IRNC requested, on October 13, 2022, access to the calculation program for less than adequate remuneration.

4.2.3.12 Comments by SDCOM

859. This SDCOM points out that, although the determination of the facts to be used as available facts (as indeed it was in other points of this document), the facts with respect to the calculation, there is more adequate information available. The authority itself expressed that: "the

Commission only considered the development costs incurred by IMIP

land purchased as forest and plantation into land ready for industrial use, which SDCOM has no way of knowing, since it does not know what information the authority or does not even have access to the calculations performed, and according to this, on, it is unclear how the European Union authority considered the cost of the land and not just the development costs.

proposed calculation other than the generic criticism;

862. Regarding the GOI's comments, SDCOM points out that, as stated in the act, samples of the documentation were presented, and that even such documents were prepared and took place under the supervision of the GOI, which was present in the acts. Regarding NJOP prices, the representative's explanation was considered in the act, and it is pointed out that the studies or any supporting documentation for the NJOP prices presented were not. As for documentation, the visit itinerary made it clear that original documents could be noted, however, that this point was only incidental to the other serious gaps in the act about the program. Regarding the GOI's comments about the NJOP not being accurate information, SDCOM reiterates that it used the NJOP to fill in gaps, even knowing that it was absolutely not 100% linked to the price, since there are statements from representatives indicating that the NJOP is overestimated - three times the real price, as stated by the representative. In this context, even knowing that the use of the NJOP overestimated the land (which reduces the calculated amount), it is more accurate information than the other information in the file, such as the price reported by the petitioner. SDCOM used the NJOP as accurate as possible, having used NJOP from Morowali. Since there are statements from representatives indicating that the NJOP is overestimated - three times the real price, as stated by the representative. In this context, even knowing that the use of the NJOP overestimated the land for the land (which reduces the calculated amount), it is more accurate information than the costs or other information in the file, such as the price reported by the petitioner. SDCOM found NJOP as accurate as possible, having used NJOP from Morowali. Since there are statements from representatives indicating that the NJOP is overestimated - three times the real price, as stated by the representative. In this context, even knowing that the use of the NJOP overestimated the land for the land (which reduces the calculated amount), it is more accurate information than the costs or other information in the file, such as the price reported by the petitioner. SDCOM found NJOP as accurate as possible, having used NJOP from Morowali.

863. Regarding the participation of the GOI in the transactions, the representative stated that, by changing the destination of the land, had a primordial participation in the occupation of the land by the occupants, and the participation of the GOI went far beyond mere administrative management, as pointed out. The GOI did not comment on the status of the land as tanah had been changed, in fact that it does not contain, as alleged by the GOI, expressly provisions on land rights does not exclude it from the legal framework considered in the program. The change of land was changed precisely in order to encourage the increase of the administrative management of the assembly of the IMIP.

864. Regarding the petitioner's comment, the fact that PT IRNC defers the calculation of the percentage calculated by the European Union is not, in itself, an element that indicates the application of a compensatory measure or even indicates that the calculation

such companies now have additional resources compared to those that do not p

867. It was also concluded that the subsidy in question is specific in 6, paragraph 3, of Decree No. 1,751/1995, as it is limited, as interpreted by the RIPIN 2015-2035, to companies belonging to industrial sectors designated industrial policies, including steel industry and its chain. Furthermore, the l analyzed here are specific due to their regionality, pursuant to art. 7 of Decree M are limited to companies located within a geographical region located within the authority. In this way, it is configured as a specific subsidy, under the terms of a Regulation, subject, therefore, to the application of compensatory measures.

4.2.3.12.2 Calculation

868. With regard to the calculation, considering the lack producers/exporters and the gaps in the government's response, the facts ava that is, the calculations brought by the petitioner adjusted by SDCOM.

869. For the calculation in this program, three elements are needed land; ii) the market price of land (benchmark); and iii) the affected area.

870. With regard to the price paid by the IMIP on its lands, it should although as already commented, the government has not received any remun IMIP, it is considered that the benefit must be determined in relation to to th someone else for such land, even if not to the GOI, that is, the farmers instructed

871. In this context, the information available in the file was used, th samples of contracts provided and also a public source found by SDCOM that s Morowali. SDCOM considered such information to be more accurate than presented by the petitioner based on a public source, as the information use involving the IMIP land.

872. It should be noted that such a calculation is extremely conserv the contracts provided used in the calculation do not involve the original acquis the original land holders, but rather acquisition contracts between the IMIP cor higher prices per m² (prices per m² referring to contracts between com [CONFIDENTIAL] times more expensive than those between IMIP and farmers); i SDCOM refers to prices for non-industrial use, which are more expensive than NJOP values are used by the GOI for land-related taxes, and it is reasonable to highest possible value region, for due tax collection. Including,

report, the area occupied by each manufacturing element and each company of

<<IMAGE 8 HERE>>

876. Thus, the amount arising from each of these manufacturing elements of the final product investigated, considering the amount of subsidies per m² calculated by the system considered adequate by SDCOM, as stated in the document submitted on September 8, 2022. Such value was appropriated for 30 years, the duration reaching the amount of subsidies of US\$ 28.63/t. It should be noted that the benchmark was used, considering the company's lack of collaboration, it cannot be lands held by the company were not the object of the program either, which is the calculation applied.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
all companies	28.63	1.40

Source: Best available information - Petitioner's statement, GOI response

Elaboration: SDCOM

4.2.4 Program 5 - Income or price support programs

877. As stated in the opening opinion of the investigation, SDCOM endeavored to provide more information in order to clarify the framework of the financial contributions related to nickel ore, coal and coke and stainless steel scrap and waste and other materials for remuneration lower than the appropriate, under the terms of line item n° 1.751, of 1995, or as support for rents and prices, under the terms of item I, of a

878. Considering what appears in the case file, this SDCOM concludes that, within the hypothesis of supplying raw materials for less than adequate remuneration,

879. It should be noted that the petitioner, in her statement of July 1, 2022, alleged several financial contributions that would supposedly be included in the alleged total amount of subsidy actionable of 140.50 USD/t. In a later statement, the petitioner reclassified such programs into program 11 - "capital injection", which SDCOM as untimely, since, in fact, a perfunctory analysis of the alleged financial contributions it was of new programs.

880. Thus, considering the time impossibility to proceed with the investigation in the present procedure, after carrying out an on-site visit to the GOI, SDCOM rejected the petitioner's claim, rejecting the inclusion of such new programs in the present investigation.

4.2.4.1 Manifestations prior to the Technical Note about the program

established in Indonesia was proven in the course of the investigation.

884. One of the banks involved in this program is Eximbank Indonesia (Lembaga Pembiayaan Ekspor Indonesia - LPEI), which is a government policy bank created by Law No. 10 of 1997 on domestic export finance in the form of finance, security, insurance and consultancy, and export guarantee. According to the LPEI, the purpose of providing national export financing is to support Indonesia's foreign trade growth and increase the competitiveness of business and industry. The government policies within the scope of encouraging the national export financing are presented in the presentation of the bank on its website (<https://www.indonesiaeximbank.go.id/>)

885. As listed on its website, Eximbank is wholly owned (100%) by the Government of the Republic of Indonesia, describing itself as a "financial institution under the Government of the Republic of Indonesia" and is under the direct control of the GOI. As its sole shareholder, the Indonesian Government has the autonomy to appoint the board of supervisors and ensure the effective direction and management of the bank.

886. The aforementioned Trade Policy Review of Indonesia, a document prepared by the Trade Policy Secretariat, discusses the functioning of the Eximbank as follows:

The entirely state-owned Indonesia Eximbank (Lembaga Pembiayaan Ekspor Indonesia) is supervised by the MoF, remains the sole institution to support national export financing, add value and competitiveness of export commodities by providing financing, insurance, and overseas insurance and consultation services for exporters, as well as contribute to the growth of export-oriented SMEs (Table 3.9). It provides finance for transactions or projects of export-oriented banks, but have the prospects to increase exports; and assists in overcoming bottlenecks of banks or financial institutions in providing financing for exporters that have commercial value and are important for the country's economic development.

887. In addition to the fact that the policy implemented by the government is to improve the performance of exports, the work of the Indonesian Eximbank is centered on export-oriented and strategic by the government of that country. This fact is explicit, for example, in the annual report, which lists the bank's focus sectors, which include mining:

Indonesia Eximbank's sharia financing strategy in 2020 will focus on financing indirect tier 1 exporters, particularly in the automotive, food & beverage, chemical, and textile products industries. In addition to the industrial sector, sharia financing will also be provided to downstream industry, tourism, fisheries and marine products, pharmaceuticals, and the paper industry. (emphasis added)

888. There is evidence in the case file of the bank's relevance and its role in the export sector for several years, and the bank's desire to encourage the conversion of traditional products into added products, in full compliance with the country's industrial policy as expressed in the

890. The petitioner further added that in LPEI's 2019 annual report, bank provides preferential loans, including loans with interest rates as low as in foreign currencies. World Bank data indicate that commercial lending rates in 2009 and 2019 were not less than 10.4%, having reached 14.5% in 2009.

891. During the course of the investigation, funding of US\$ 160,000,000 for Antam's ferronickel production expansion project (as per Antam's 2018 Financial Report) for the implementation of a PT COR Industry Indonesia (CORII) smelter located in Morowali.

892. With regard to banks with branches established in Indonesia, but during the on-site visit, this SDCOM requested clarification on the conditions of the license. It was informed that, according to the OJK (the Financial Services Authority) Regulation No. 1/2015, there is no discrimination between an Indonesian or a foreign commercial bank, both follow the same requirements to get the license. However, when requesting more detail about the conditions, the OJK was unable to comply with the request, according to the visit report:

156. On points b) and c), when asked about the national regulation regarding the opening of foreign banks in Indonesia and the procedure for a foreign bank to open a branch, the OJK representative replied that, according to the OJK (The Financial Services Authority) Regulation No. 1/2015, there is no discrimination between an Indonesian and foreign commercial bank, both follow the same requirements to get the license.

157. Representatives of the financial regulatory authority, OJK, requested a written response to SDCOM staff's inquiries regarding the procedure for licensing a foreign bank and also the presentation of any differences in the treatment of foreign financial institutions compared to the national ones, to which the SDCOM team agreed.

158. When questioned about Eximbank, OJK representatives explained that Eximbank is classified as a commercial bank per se, being considered a "non-bank", a special type of bank whose objective is to offer credit to exporters. The SDCOM team also asked the OJK for any differences in treatment with respect to the Eximbank's treatment of other banks. The OJK representatives also requested a written submission to SDCOM by the end of the visit. It was mentioned that there is Law n° 2/2009 on the Eximbank, and even that there are no differences as well.

159. By the end of the verification, such written explanations on these issues were received. (our emphasis).

893. During the visit, SDCOM was able to confirm that the GOI has a system of capital taken by companies, given that there is a system of the financial authority, Otoritas Jasa Keuangan, which centralizes all credit operations and the existing

permission to the Indonesian bank to operate in China, and China asked Indonesia to open more Chinese banks in Indonesia. The main theme in the last meetings was to deal with the issue of opening banks in the respective counterpart countries having been added)

897. The GOI and IRNC point out that there was a loan from Exibank to

898. Furthermore, the European Union authority concluded that the program in relation to preferential loans with the participation of branches established

899. Thus, according to the elements in the file, there are banks in Indonesia for stainless steel producers/exporters and their related companies, such as mining companies that produce essential raw materials for production of stainless steel.

4.2.5.2 Elements of fact or law (Legal/documentary basis)

900. The program is based on Indonesia's industrial policies, as demonstrated notably by RIPIN and RPJMN. Furthermore, also relevant to the program are Law No. 19 of 2008 on the creation of the IMI, MoUs signed within the scope of the creation of the IMI, and Regulation No. 142 of 2015, when prescribing the instruments of control of the IMI Estates. It should be noted that the lack of collaboration by the GOI within the program, in particular by the OJK (The Financial Services Authority) prevented this authority from obtaining information about the legal elements of the program, which is why the facts available

4.2.5.3 Specificity

901. Taking into account that the Government of Indonesia did not provide sufficient information to assess eligibility for the program, for the purposes of this document, under art. 79 of Decree No. 1751 of 1995, the available facts. In this context, considering Indonesia's industrial policies, due to the privilege given to the stainless steel sector, as pointed out in this document, it was considered that there was specificity in the program. 6, paragraph 3, of the Regulation. Additionally, considering the fact that the program is linked to exports according to the bank's own mission, it is presumed that the terms of Item I of art. 8 of Decree No. 1751 of 1995.

4.2.5.4 Financial contribution

902. The program's financial contribution comes from the fact that stainless steel producing/exporting companies have access to capital at lower rates than those of other companies.

903. Considering the total lack of collaboration by the GOI and the lack of important inquiries carried out by this SDCOM, using the facts available in the file and manifestations in the case file, as well as the decision of the European Union authority,

Article 44

The Government shall facilitate the provision of competitive development.

The financing as referred to in section (1) may derive from the Government, enterprises and/or individuals.

Financing which is derived from the Government and/or the Regiona in section (2) may only be granted to the Industrial Company in the form of st regionally-owned enterprises.

The financing as referred to in section (3) shall be granted in the form

The. loan;

B. grant; and/or

w. capital participation.

Article 45

(1) The Government may allocate financing and/or grant financing f Companies.

(2) The allocation of financing and/or the granting of facilities as r conducted in the form of:

The. capital participation;

B. granting of loan;

w. relief in interest rates;

d. reduction in purchase prices of machinery and equipment; and/or

It is. granting of machinery and equipment.

The allocation of financing and/or the granting of financing fac Companies as referred to in section (2) shall be imposed upon the State Budget

907. It reiterated that, as would be seen in the 2019 annual report o to the case file, the bank would provide preferential loans, including loans with in both rupee and foreign currencies. It is not understood, therefore, how an en profitability would provide loans at zero interest rates.

908. Thus, the data would demonstrate that the Indonesian Eximba companies in the nickel ore chain up to the production of stainless steel install subsidy, equivalent to the difference between the amount of loans provided by

912. The GOI stated, in its final statement, that it would have been verification, including in the system, that none of the producers applied for or from Eximbank Indonesia, with no benefit.

913. In addition, SDCOM would not have presented information in the analysis of the pass-through of the IMIP benefit to stainless steel products highlighted paragraph 718 of the Technical Note, which mentioned that the Indonesia would be focused on specific sectors considered strategic by the government such as mining - at this point, the GOI stated that the operations of Eximbank were only on specific sectors, but almost all sectors include the operations of Indonesia with no specificity in the program. He added that although the bank's annual report shows the sector is the second most relevant sector for the Bank, SDCOM would not have identified beneficiaries of the loans. Like this,

914. He concluded the GOI by stating that, even though it was stated that the GOI denied complete access to the OJK system, the Eximbank would not provide information. Therefore, as PT Indonesia Ruipu Nickel and Chrome and PT Jindrapada did not apply for financial services from Eximbank, the investigation should be based on application.

915. The petitioner, in her final statement, highlighted that "in her statement of September 8, 2022, all sources, methodologies and calculations related to the analysis period were detailed, including with regard to the benchmarks, so that there, equivalent to US\$ 195.81/t or 9.58% of the FOB value, should be considered available for the purposes of calculating the amount of subsidies that can be provided by the Government of Indonesia through preferential loans".

4.2.5.7 SDCOM comments

916. SDCOM reiterates that the inadequate concealment of the name of PT IRNC by the IRNC, despite not having caused any damage with respect to the treatment by the SDCOM, prevented the due adversarial process from the other parties interested. It should be noted that PT IRNC only brought in its final manifestations the name of PT IRNC, restricted headquarters, being a public and notorious fact, according to the decision of the European authority that the IRNC is related to several companies under investigation, such as PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Steel Indonesia, PT Indonesia Guang Ching Nickel and Stainless Steel Industry, PT Industrial Park and PT Ekasa Yad Resources.

158. When questioned about Eximbank, OJK representatives explained that Eximbank is not classified as a commercial bank per se, being considered a "non-bank", a special type of financial institution. Its main objective is to offer credit to exporters. The SDCOM team also asked the OJK for any differences in treatment with respect to the Eximbank's treatment of other banks. The OJK representatives also requested a written submission to SDCOM by the end of the visit. The OJK mentioned that there is Law n° 2/2009 on the Eximbank, and even that there are no differences as well.

159. By the end of the verification, such written explanations on these issues were received.

918. Thus, it was impossible to verify whether, in fact, there was any assistance from Eximbank Indonesia through other banks. Furthermore, even if the GOI's cooperation would have allowed SDCOM only a partial verification of the facts, since a full verification would only be possible with a verification of the investigated companies, it was not possible in the absence of responses. In general, verification by the government does not have the power to fully verify the assistance within the scope of the programs, given that, in general, any assistance is not captured solely based on the visit to the government, and there may be assistance not captured in a check at the company receiving the assistance.

919. That said, SDCOM decided to use the European Union's decision as a reference information, in line with what was suggested by the IRNC, as described in the BIA letter, because the information from the European Union was fully used that no calculation was required for pass-through, as pointed out by the GOI, as the calculation by the other authorities.

920. Regarding the GOI's comments, the displayed exhibit shows the operation of the program, and SDCOM would need the contract to be able to adequately verify the conditions. With regard to what is expressed in item 10.f of the BIA letter, the GOI provided the required information, as expressed in the visit script previously forwarded:

5.1. Explain how the interministerial team/working group works Timor-Leste

Pinjaman Komersial Luar Negeri, 'PKLN', pursuant to Presidential Regulation No. 1/2018, necessarily explaining what kind of decisions the PKLN takes and what its scope is, and which issues it is inserted;

5.2. Present the results of PKLN's work on loans

related to Indonesia Morowali Industrial Park - IMIP or any loans granted to companies and their related companies, necessarily including the approval process for the loans;

exports (according to the Eximbank mission), as well as, in view of the lack of scope of the use of available facts, the fact that the mining sector being the 2nd largest as well as being a well-known fact that the bank provides support to nickel mining, taking into account the investigation of the European Union, concluded SDCOM specificity as already pointed out. The GOI cannot claim that SDCOM has not a beneficiary, when the GOI itself has not provided the required information - on its own lack of cooperation.

924. Regarding the petitioner's comments, SDCOM remains convinced that the most appropriate information possible was used in the Technical Note, and reiterates that in the Final Determination, the conclusion already presented, with the petitioner not being able to change it.

4.2.5.8 Conclusion

925. It should be noted that the GOI's refusal to provide all the requested information for the program, as well as the absence of a response from the investigated companies, made the authority extremely difficult, making use of the facts available in the case file, art. 79 of Decree No. 1751 of 1995.

926. It was concluded, in this context, that the "Preferential Loans" constitute a financial contribution by the Government of Indonesia - under the terms of paragraph 1 of art. 4 of Decree No. 1,751 of 1995, since the practice implies direct transfer of funds or obligations through Eximbank, enabling the investigated companies to obtain preferential conditions.

927. Considering the elements available in the case file, Eximbank is an institution that implements industrial policies of the Government of Indonesia, as well as the GOI (BKPM) of all the capital invested in IMIP and other Indonesian companies.

928. Based on the elements presented, there is evidence that there is a benefit and benefit, since the cost of financing the companies involved is lower than what they would have if they obtained resources at normal commercial interest rates, allowing them to benefit the receiving company.

929. With regard to specificity, as stated there is a clear focus on certain companies in the previous item, fitting into § 3 of art. 6 of Decree No. 1,751 of 1995, and, decimally, the bank's activities are clearly linked to exports and it is in this context that there is evidence that it is configured as a prohibited subsidy because it is linked to exports, specific, pursuant to art. 8, item I, of the Brazilian Regulation, and subject to compensatory measures.

4.2.5.9 Calculation

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

purpose of producing and selling the processed product, either to Indonesia or abroad (the bonded zone would function as a kind of processing zone - material is imported, processed and then exported or sold domestically).

933. Regarding the functioning of the program, according to Article 131/2018, the bonded zone program is a legal framework that gives access to various tax incentive programs, which in the Regulation is known as PDRI (tax in the framework of income tax). If a company has the bonded zone license, it has an incentive through the suspension of payment of corporate income tax (10%) on imports and income tax on imports (2.5%). This income tax on imports is different from the corporate income tax, dealt with in this Opinion in program 8. The income tax on imports is included in the calculation of the corporate income tax. Tax incentives within the bonded zone occur from the construction of the plant, with the suspension of the VAT that also occurs once it starts operating.

934. Articles 3, 4 and 16 establish the following requirements: (1) be established in an industrial bonded zone in Indonesia; (2) to carry out processing in a bonded zone or be a factory in the customs zone; (3) import raw materials for processing; (4) export the final goods produced with the imported goods. Thus, if the goods remain permanently within the bonded zone, no tax is payable either.

935. The GOI informed SDCOM that PT IRNC and its related companies, PT Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia, PT Ching Nickel and Stainless Steel Industry are within a bonded zone. However, when licenses for such companies were requested, the GOI informed that it could only issue licenses for PT IRNC (Ruipu), and not for the others, which, according to the GOI, would not be in the bonded zone.

936. The GOI also did not cooperate with regard to the amounts involved. During the on-site visit it was informed that it was not possible, for confidentiality reasons, to report by it to the program.

4.2.6.1.1 Elements of fact or law (Legal/documentary basis)

937. The program is regulated by MOF Regulation 131/2018, and by the Ministry of Finance Regulation 147/2011. In addition, the implementation regulation of the bonded zone, whose number is Regulation 2/BC/2019, of the Director General for Customs is applicable.

4.2.6.1.2 Financial contribution

938. The program's financial contribution lies in the fact that companies participating in the program now have additional resources, not available to companies not participating in the program. The financial contribution generates benefits to its recipients, as it increases the liquidity of the companies.

operate as bonded zone".

941. The GOI also stated that the program would apply to all industries without limitation, and that, as such, this program would not be specific.

942. Asked in the request for additional information to explain in more detail why, if the GOI believes that the program does not confer benefits, the GOI stated that:

At the outlet, goods entering a Bonded Zone are not yet considered as imported. Please see Article 2 MOF Regulation No 147 of 2011 concerning Bonded Zones, which defines a bonded zone as an area defined as a customs area and is completely under the supervision of the Director General of Customs and Excise. By this understanding, Customs cannot collect import duty, income tax, luxury tax, and excise upon the goods as long as they are located inside the Bonded Zone. Inside the Bonded Zone, they are not subject to taxes and customs until they leave the zone; hence there is no revenue forgone in the sense of the difference between the income tax and import duty paid on imports.

Indonesian Customs Authority also implements a very strict control system in the Bonded Zone area through the presence of Customs office in each zone and an integrated electronic system fully operated. This allows full control of Customs over the Bonded Zone status and as such no excess of duty or tax exemption including for goods entering the Bonded Zone. Therefore, programs in Bonded Zone are not countervailable and should be established upon the program.

943. Aperam, in manifestations on July 25, 2022 and September 8, 2022, stated that the program was caused by the lack of cooperation on the part of the government and Indonesian companies in the present proceeding, presented methodology and simulation of the program granted by the Government of Indonesia to the producers/exporters of the product, and was seeking to fill in the information that was not presented by the Indonesian parties. The investigating authority to analyze, in the most complete and appropriate way, the subsidies under analysis in the process on screen.

944. Aperam, in a statement dated September 9, 2022, maintained that the Government of Indonesia would have stated that "IRNC has established itself as Bonded Zone and does not have its own facilities" and that "IRNC never benefits from facilities under Industrial Estate as a producer in Industrial Estate." However, as it would be analyzed in relation to programs granted to IRNC and other companies of the same Group, in fact, would use subsidies granted in the program.

945. He added that, in its response to the request for additional information, the Government of Indonesia had changed its information, in its statement dated September 26, 2022, "Mining Investment was granted a Bonded Zone status on 26 September 2018",

analysis of the facts by the investigating authority.

4.2.6.1.5 Manifestations after the Technical Note on the program

949. The GOI stated in its final statement that goods that enter considered fully imported, therefore, import tax, income tax, value added tax. The "bonded zones" are internationally recognized and are consistent with multilateral trade rules, supervised by customs, as seen in the on-site visit. Being a neutral territory, it does not constitute a financial contribution. Furthermore, the "bonded zone" program applies to companies from all sectors with no specificity.

950. The petitioner, in her final statement, reaffirmed SDCOM's conclusions.

4.2.6.1.6 SDCOM comments on the manifestations

951. Regarding the allegations that the program does not confer a benefit, SDCOM conducted an inspection of bonded zones, despite being provided for in the regulation, the GOI did not provide evidence of the inspection carried out. When asked during the on-site visit for the inspection report, the GOI was not able to provide it. Thus, the authority had no way of knowing if there was proper control or even the excess refund of suspended taxes, and the GOI stated that in the past, the program has already been used incorrectly. The arguments brought by the petitioner in the manifestation brought nothing new, and the alleged supervision cannot be considered as already mentioned.

952. Regarding the alleged lack of specificity of the program, the GOI did not answer questions 12 and 13 of the questionnaire that would allow SDCOM to determine if the program, which is why the available facts were used, which indicate, depending on the context in Indonesia and intentions exposed by the Indonesian government, a direction towards the export sector and the IMIP in particular. It should be noted that the GOI reiterated the lack of specificity in the final statement, but did not comment on the fact that it did not answer questions as requested, preventing SDCOM from correctly evaluating this point. The lack of specificity in this program is reiterated.

4.2.6.1.7 Conclusion

953. SDCOM concluded that the bonded zones program is an incentive, a financial contribution, a subsidy, since it involves a financial contribution by the government or public body, "b", of item II, of art. 4 of Decree No. 1,751 of 1995, since it stopped the GOI from paying duties due.

954. With regard to specificity, in view of the absence of a completed questionnaire in the relevant items, as noted above, and considering that the evidence available to date considered in this document points to the direction of the program in the

provide any documentation about the qualification, evaluation of the concession of the amounts involved in the programs or even about any monitoring that deal with confidential tax information, and which should be requested received it.

4.2.7.1 Program 8.1 - Reduction of income tax for large investments

4.2.7.1.1 Facts found about the program

957. The program was established on August 15, 2011, renewed and on August 14, 2015 by Ordinance of the Minister of Finance - MoF - No. 159/2015, a second time on June 27, 2016 by MoF Regulation No. 103/2016, renewed for 2018 by MoF Regulation No. 35/2018 and renewed for the third time on November 2018 by MoF Regulation No. 150/ 2018.

958. In the most current wording for the program, pursuant to MoF Regulation No. 150/2018, a reduction of up to 100% is established in the Corporate Income Tax rate for "pioneer industry" that undertake a new equity investment of at least Indonesian Rupiah (IDR). Pursuant to Article 2 of the said regulation:

Investments (Indonesian Rupees)	Tax Exemption Percentage
Of at least 500 billion	100%
Between 100 billion and 500 billion (exclusive)	50%

959. With regard to the period, paragraph 4 of article 2 establishes the period of the tax exemption or reduction, as shown in the table below:

Investments (Indonesian Rupees)	Tax Exemption Period
From 500 billion to 1 trillion	5 years
From 1 trillion to 5 trillion	7 years
From 5 trillion to 15 trillion	10 years
From 15 trillion to 30 trillion	15 years
Over 30 trillion	20 years

960. In addition, for the two years following the expiry of the aforementioned exemptions, the Regulation provides for a 50% reduction in the CIT for investments of at least 500 billion rupees and 25% for investments between 100 and 500 billion rupees. The translation submitted by the GOI:

B. for 7 (seven) fiscal years for new investment with planned
Rp1,000,000,000,000.00 (one trillion rupiah) and less than Rp5,000,000,000,000.00

w. for 10 (ten) fiscal years for new investment with planned
Rp5,000,000,000,000.00 (five trillion rupiah) and less than Rp15,000,000,000,000.00 (fifteen trillion rupiah);

d. for 15 (fifteen) fiscal years for new investment with planned
Rp15,000,000,000,000.00 (fifteen trillion) and less than Rp30,000,000,000,000.00 (thirty trillion rupiah);

It is. for 20 (twenty) fiscal years for new investment with planned
Rp30,000,000,000,000.00 (thirty trillion rupiah).

(5) The term of Corporate Income Tax deduction as described in paragraph (4) is given for five (5) fiscal years.

(6) After the expiration of the term of provision of Corporate Income Tax deduction in paragraph (4) or paragraph (5), taxpayers shall be given of Corporate Income Tax deduction

The. 50% (fifty percent) of the Corporate Withholding Tax payable for new investment as referred to in paragraph (3) point a; or

B. 25% (twenty five percent) of the Corporate Withholding Tax payable for new investments as referred to in paragraph (3) point b.

961. Article 3 of Indonesian Regulation 150/2018 provides a list of pioneer industries, including the upstream base metal industry (iron, steel and non-steel).

Article 3 (1) In order to obtain Corporate Income Tax deduction in paragraph (1) corporate Taxpayers must meet the following criteria:

The. it is a Pioneer Industry;

B. it is an Indonesia's corporation;

w. it is a new investment to which it has not been issued a decision on objection concerning the rejection of Corporate Income Tax deduction;

d. it has an investment plan of at least Rp100,000,000,000.00 (one hundred billion rupiah);

It is. it meets the provision of debt and capital ratio as referred to in the Finance Law concerning the determination of the company's debt and capital ratio for calculating withholding tax.

(2) Pioneer Industry as referred to in paragraph (1) a includes:

The. upstream base metal industry;

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

BKPM through the OSS system, an entity that then prepares a letter of recommendation attesting whether the grant is recommended or not. The MoF is the body responsible for monitoring the program.

965. The GOI pointed out in its response to the questionnaire that PT IRNC participated in the program, and that no other company in its group was granted assistance. This information cannot be proven, as the GOI informed, during the on-site visit, that there is no any documentation regarding the qualification and use of the program, as this is requested directly from the company PT IRNC (PT Ruipu). The GOI also did not provide information that would allow SDCOM to assess the distribution of assistance under the program covered.

966. Considering that SDCOM did not receive any response to the questionnaire from the producer/exporter, pursuant to art. 79 of Decree No. 1751 of 1995, the available information contained in the case file.

4.2.7.1.2 Elements of fact or law (Legal/documentary basis)

967. The program is regulated by MoF Regulation No. 150 of 2018.

4.2.7.1.1 Financial contribution

968. The program's financial contribution resides in the fact that companies participating in the program now have additional resources, not available to companies not participating in the program. Said financial contribution generates benefits to its recipients, as it increases their productivity, which now have additional resources arising from the non-payment, by the GOI, of the due revenues, pursuant to art. 4, II, "b", of Decree No. 1.751/95.

4.2.7.1.2 Specificity

969. Companies as established by the Regulation are eligible, especially those in the "pioneer industry" sectors and that make an investment of at least 100 billion. In the program's law has been configured, pursuant to art. 6, caput, of Decree No. 1.751/95, regulations limit the program to certain pioneering companies, among which companies that are not benefited.

4.2.7.1.3 Manifestations prior to the Technical Note about the program

970. PT IRNC, in its statement of September 9, 2022, stated that IRNC did not benefit from the tax holiday alleged by the GOI, that benefited from the Tax Holiday granted in said program. The companies that were not benefited.

971. It also states that "the audited reports of the other related parties of PT IRNC do not show the tax holiday deducted from income tax, as this verifying authority can verify that, based on the available information the percentage of 1.65% calculated by the investigating authority is not correct."

obtained a 100% reduction in the amount of income tax, based on the approval of the Ministry of Economy 35/2018, for the Hengjaya Nickel project, as per informed presented in the petition. Furthermore, Nickel Mines would have obtained the same benefit in relation to its Ranger Nickel project, also in partnership with the Tsingshan Group, as presented in the petition.

977. These tax reductions would therefore qualify as a financial contribution in the form of government revenue that is otherwise forgiven or not collected, pursuant to art. 4 of Decree 1751/95 and Article 1.1(a)(1)(ii) of the SMC Agreement.

978. It also highlighted that the Government of Indonesia, in its representation by SDCOM, would have confirmed that the Tax Holiday program is in effect for the company IRNC. He added that, between 2018 and March 2020, industries in the "Mining Industry" sector would have represented 9 of the 19 concessions of the Tax Holiday program in the Central Sulawesi region, this would have represented, in the same period, 9 of the 19 concessions of such a benefit.

979. Also, as stated in the Verification Visit Report in the Government of Indonesia, the Tax Holiday programs related to benefits arising from accelerated depreciation. In this context, the Regulation would present, in its appendix 2, a list of sectors and regions to which the program would apply, with number 26 referring to "nickel mining" and the program would be available for all concessions, with the exclusion of some, having been verified that it is available for Morowali.

4.2.7.1.4 Statements after the Technical Note about the program

980. PT IRNC, in its final statement, adduced that "normally audited reports" constitute a "parameter" for verifying information submitted by the exporter to the authority, but that, in the absence of such reports, issued by an independent third party, the external auditors' reports have only a probative force of mere indications, but constitute, on the contrary, the "parameter" for verifying other information of an accounting-financial nature contributed by the investor. PT IRNC commented that it understands that there is no way to attribute greater weight to the calculation proposed by the Petitioner, who considers that the group companies would obtain a benefit, to the detriment of what is stated in the audited reports,

4.2.7.1.5 SDCOM comments

981. Pursuant to § 5 of art. 79 of Decree n° 1.751, of 1995: "when forming a decision based on verifiable information that has been presented in a timely manner and that, therefore, is not adequate in all respects, will be taken into account. ". There is an essential requirement for the use of "verifiable information".

access to the documentation that the authority had access to, there is no documentation was analyzed in this specific program.

985. Regarding the argument brought in the final statement on the EU, it is noted that it is not known what documentation was analyzed in this specific program. In the investigation there is a full example of how the authority of the European Union analyzed certain documents (in casu, the official documentation found by SDCOM on the electricity supply program, apparently not analyzed by the EU). And here it is noted that IRNC's suggestion would be equivalent to simply transplanting decisions of other authorities in critical sense, which could lead to the suggestion - as a last resort - of not applying the same amount of other authorities to all Software. When appropriate calculation by the European Union, even when the petitioner had suggested an example, in the preferential loan program the petitioner had suggested an amount of 9.58%, and the Federal Government's calculation was used as the best available information, 1.84% or US\$ 37.60/t. In terms of using available facts, this authority obviously used the amount to be applied, but what information best fills in the gaps left by the petitioner.

986. Also worthy of note is the fact that PT IRNC continued without carrying out the calculation carried out, even though the calculation was detailed in detail which showed the profit values of the companies of the Tsingshan group (based on the information allegedly provided). It is alleged, there was no participation of certain companies of the group in the program. PT IRNC had the opportunity to counter-argument in the sense of the lack of profit and participation. PT IRNC reiterated that SDCOM only sought the available facts in view of the total lack of information from the producers/exporters, who did not respond to the questionnaire, as already stated by the Government of Indonesia, which refused to provide any concrete data about the program and all other programs.

987. SDCOM also pointed out in the Technical Note that it was surprising that the names of its related companies brought by PT IRNC in its statement prior to the manifestation of information is notoriously public knowledge, as present in the 2017 IMIP report. It is noted that the authority of the European Union. By hiding such names, it made it extremely difficult for interested parties to contradict, who did not even have the conditions to know and verify whether the information expressed in the manifestation is correct. In order to be decisive for the rejection of the attached documentation, it is an element that should be noted that, for the purposes of final manifestation, PT IRNC lifted the secret.

4.2.7.1.6 Conclusion

988. SDCOM concluded that the income tax reduction/exemption for investments is an incentive that is configured as a subsidy, since it involves a financial contribution from a government or public body, under the terms of item "b", of item II, of art. 4 of Decree No. 17/2010.

and profit of the companies involved in the Tsingshan group, and calculated under investigation, through a pass-through system considered adequate by S document submitted by Aperam in the case file on September 8, 2022, exemption, which is compatible with the applicable legislation and the amount 69.37 USD/t.

993.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
all companies	69.37	3.39

Source: Best Information Available - Petitioner's Manifestation

Elaboration: SDCOM

4.2.7.2 Program 8.2 - Exemption from import duties

4.2.7.2.1 Facts found about the program

994. Pursuant to Regulation no. 176/2009 of the MoF, amended by r 188/2015, companies involved in industries producing goods and/or services r duties on machinery, goods and materials.

995. This exemption is normally granted for a maximum period of two exemption from import duties. The objective of this Regulation is to support the in MoF Regulation n° 176/2009 (translation submitted by the GOI): "in o investment to strengthen the national economy which faces the global competi an exemption from import duty on the imports of machines, goods and materi development of industry in the frame of investment".

996. According to article 1 of MoF Regulation No. 176/2009, the ma used to build or develop industries, while "goods and materials" cover all goods their type and composition, used as materials or components for the production

997. According to the Regulation, there is a limitation to receiving ass service providers, limited to a list of seven industries, which are listed in the ar 176/2009: "1. Tourism and culture 2. Transportation (for public transportation services 4. Mining 5. Construction 6. Telecommunication 7. Port" (emphasis added establish limitations to the producers of goods.

998. As stated by the petitioner, considered the best information ava tax rates on machines classified in chapters 84 and 85 of the Harmonized System

4.2.7.2.2 Elements of fact or law (Legal/documentary basis)

1002. The program is regulated by MoF Regulation No. 176/2009, being carried out by MoF Regulation No. 188/2015.

4.2.7.2.1 Financial contribution

1003. The program's financial contribution resides in the fact that companies that now have additional resources, not available to companies not participating in the program. Said financial contribution generates benefits to its recipients, as it increases their revenues, which now have additional resources arising from the non-payment, by the Government, of due revenues, pursuant to art. 4, II, "b", of Decree No. 1.751/95.

4.2.7.2.2 Specificity

1004. According to MoF Regulation No. 188/2015, the program is aimed at producing goods and 7 service sectors, including mining.

1005. It is pointed out that, taking into account that the GOI did not provide the information necessary to evaluate the companies that actually obtained assistance, according to the questions in the questionnaire, and that SDCOM was unable to provide the questionnaire to this program during the on-site visit, as will be detailed in the findings, the purposes of Final Determination were used, pursuant to art. 79 of Decree No. 1.751/95, in the facts.

1006. In this context, as the lack of collaboration by the GOI in the exercise of its authority from assessing how the government distributes or exercises its exemptions, in view of the government policies expressed in RIPIN 2015-2035, the elements of the processes point to the existence of a de facto specificity in the program for producers investigated, pursuant to § 3^o of art. 6^o of Decree n° 1.751/1995, in addition to the fact that, pursuant to art. 6^o, caput, of Decree No. 1.751/1995 in relation to mining companies, the upstream chain of the product under investigation.

4.2.7.2.3 Manifestations prior to the Technical Note about the program

1007. In its response to the questionnaire, the GOI stated that the program aims to promote and accelerate development and that, according to MoF Regulation No. 176/2009, it is aimed at all companies, and for that reason, it would not be specific. The IRNC points out the understanding of the GOI that such benefit would be general for any company, the program not being specific, but requests, in any case, that the calculation made by the EU be maintained.

1011. Finally, he mentioned that the Government of Indonesia confirmed the existence of the program. (sic)"

4.2.7.2.4 Statements after the Technical Note about the program

1012. The petitioner, in her final statement, reaffirmed SDCOM's conclusion that the program was a subsidy. She also added that the calculations would be conservative, since they were carried out at lower than adequate remuneration, and not, as it should be, on comparable market prices carried out at market prices.

4.2.7.2.5 SDCOM comments

1013. This SDCOM emphasizes, once again, the character of promoting the export of goods, which is in line with the GOI's policies related to incentives, as expressed in the government's market liberalization strategy. It also states that none of the statements made any comments on the calculation brought by the petitioner, which was considered the best information available.

1014. With regard to specificity, the statements by the GOI were unclear. There were no elements, not even the GOI having responded to SDCOM's questions that would indicate the specificity of the program arising, for example, from the way in which the GOI excluded certain sectors from the scope of the program. Furthermore, the program's legislation expressly restricts the program to certain service sectors, including mining, which attests to the existence of specificity.

1015. Regarding the petitioner's final comments, SDCOM points out that the acquisition of machines allegedly at lower than adequate remuneration were not a condition for the acquisition, though the petitioner may present a future claim in this regard, if she deems it appropriate. If the alleged program is investigated, there are no elements in the file that would indicate the existence of the statement.

4.2.7.2.6 Conclusion

1016. SDCOM concluded that the import duty exemption program was configured as a subsidy, since it involves a financial contribution by the government, in the terms of item "b", item II, of art. 4 of Decree No. 1,751 of 1995, since it stopped the collection of public revenue due.

1017. With regard to specificity, in view of the lack of a complete response to the relevant items, as noted above, and considering that the evidence presented in this Determination indicate that the program is inserted in the context of importation for producers, it is concluded that there is a de facto specificity in relation to the program pursuant to § 3^o of art. 6th - of Decree No. 1,751/1995, and therefore su

Source: Best Information Available - Petitioner's Manifestation

Elaboration: SDCOM

4.2.7.3 Program 8.3 - VAT reductions and exemptions on machinery and

1021. According to Law no 8/1983, on VAT of Goods and Services Sale, the GOI established that for productive activities in certain sectors, the purchase of certain taxable goods may be exempt from value added tax (IVA). Value Added Tax exemptions stipulations provided for in government regulations. A limited list of these strategic goods is included in Article 1 of Law 8/1983 and includes factory machinery and equipment that are used in the production process of taxable goods (excluding spare parts). As such, this exemption covers the import and purchase of machinery and equipment for mining activities, in the upstream and downstream chains, therefore covering the machines involved in the stainless steel production process.

1022. In this context, MoF Regulation No. 176/2009, as well as Government Regulation No. 81/2015, respectively, delimit certain imported or transferred strategic taxable goods that are exempt from VAT.

1023. In turn, Government Regulation No. 81, of 2015, in its own right, aims to encourage national development, through the granting of tax incentives in the form of exemption from the Application of Tax on Added Value on the import and/or acquisition of Certain Taxable Goods of strategic nature in certain business sectors", determines that certain imported or transferred goods are exempt from VAT, according to article 1:

Article 1

(1) Certain taxable goods that are of a strategic nature, the importation and/or acquisition, without the application of Value Added Tax, include:

The. factory machinery and equipment that constitute a unit, installed and used directly in the production process of Taxable Goods by the Tax Entrepreneur, excluding spare parts;

(...)

(2) Certain Taxable Goods of a strategic nature that, upon delivery, are exempt from collection of Value Added Tax are:

The. factory machinery and equipment that constitute a unit, installed and used directly in the production process of Taxable Goods by the Tax Entrepreneur, excluding spare parts;

1027. Government Regulation No. 18/2015, in force since May 6, 2015, in terms of income tax ("Income Tax facilities") by the Indonesian government have been regulated by the MoF Regulation No. 89/2015 and Government Regulations deal with four incentives:

a) Reduction of net taxable income of up to 30% of the amount invested in fixed assets (including land), prorated at 5% for six years, and provided that the asset is not being misused or transferred within a certain period (whichever is longer than the period of commercial production or the useful life of the asset based on accelerated depreciation);

b) Accelerated depreciation and amortization;

c) Withholding tax on dividends paid to non-residents at 10%; It is

d) An extended payment forgiveness period from five years to a maximum of ten years.

1028. According to article 3 of the same Government Regulation, the condition for obtaining the listed financial concessions, including a high investment or export value:

Article 3

Any Taxpayer making Investment as referred to in Article 2 paragraph (1) of the Income Tax facilities as referred to in Article 2 paragraph (2) to the extent they meet the following conditions:

A. have a high investment value or for export;

B. have a high rate of labor absorption; or

C. have a high local content.

1029. Government Regulation No. 18/2015 establishes financial concessions for the government to certain industries, as explained in item 1 of article 2 of the aforementioned Regulation.

Article 2

1. To the Taxpayer of domestic agencies which carry out of the capital investment and expansion from there is business, on:

A. Certain business fields as referred contained in Appendix I of this Government Regulation; and/or

B. Certain business fields and Certain regions as referred contained in Appendix II of this Government Regulation, can be awarded Income Tax facilities.

1031. As will be seen below, Article 2 of Government Regulation No 18/2022 provides for the following incentives. Each of them will be presented separately, in order to facilitate the understanding of each incentive:

- a) Decrease in net taxable income;
- b) Accelerated depreciation and amortization;
- c) Withholding tax on dividends paid to non-residents at 10%;
- d) Extension of the period for transposition of tax losses.

1032. Item "a" of item 2 of article 2 of Government Regulation No 18/2022 provides for the reduction of net taxable income. This occurs in the form of a reduction of up to 30% (thirty percent) in the form of qualified fixed assets (including land), prorated at 5% for six years, provided that the invested assets are not being misused or transferred within a certain period. (within a period of six years from the start of commercial production or the useful life of the asset for depreciation/amortization):

Article 2

(1/4)

(2) Income Tax facilities as referred to in paragraph (1) above shall be

The reduction of net income by 30% (thirty percent) of the total value of tangible fixed assets, including any land used for the business main activities, shall be calculated in six years, respectively of 5% (five percent) per year calculated from the commencement of commercial production.

1033. Item "b" of item 2 of article 2 of Government Regulation No 18/2022 provides for the reduction of net taxable income by depreciation and amortization:

Article 2

(1/4)

(2) Income Tax facilities as referred to in paragraph (1) above shall be

(1/4)

B. accelerated depreciation on tangible assets and amortization on intangible assets within the framework of new Investment and/or business expansion, with the useful life of the asset as well as amortization rates as follows:

1. for the Accelerated depreciation of tangible fixed asset:

<<IMAGE 9 HERE>>

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

applicable double taxation treaty; and

1036. Item "d" of item 2 of article 2 of Government Regulation No. 103/2015 on extension of the period for transposing tax losses beyond the five years normal period of 10 years:

Article 2

($\frac{1}{4}$)

(2) Income Tax facilities as referred to in paragraph (1) above shall be

($\frac{1}{4}$)

d. Loss compensation for more than 5 (five) years but not more than 10 (ten) years following provisions as follows:

1. 1 year extra: in case the New Capital Investment in business fields regulated in letter a is conducted in industrial estate and/or bonded zone;

2. 1 year extra: in case the Taxpayer which undertake of New Capital Investment with cost for the economic and/or social infrastructure in business location exceeds Rp10,000,000,000.00 (ten billion rupiah);

3. 1 year extra: in case it uses materials and/or domestic products researched and developed (seventy percent) since the 4 (fourth) year;

4. 1 year extra or 2 years:

a) 1 (one) year extra in case it hires at least 500 (five hundred) Indonesian employees in consecutive years; or

b) 2 (two) year extra in case it hires at least 1000 (one thousand) Indonesian employees in consecutive years;

5. 2 years extra: in case issued of cost of domestic research and development or production efficiency at least 5% (five percent) from the total Capital Investment in 5 (five) years period;

6. 2 years extra: in case the Capital Investment this is expansion from Certain Business Fields and/or Certain Regions which regulated in the paragraph 1 of the financing source parts coming from earning after tax the Taxpayer in the issued year of principal license of expansion of the capital investment; and/or

7. 2 years extra: in case undertake to export at least 30% (thirty percent) of the value, for the Capital Investment in the business fields which regulated in paragraph 1 of the financing source parts coming from earning after tax the Taxpayer in the issued year of principal license of expansion of the capital investment; and/or out in the outside of bonded zone.

2014 decision in the case of investigation of actionable subsidies on exports from to Brazil of yarns with a predominance of acrylic fibers, Circular SECEX n° 37, of was identified and concluded by if it is an actionable subsidy, although in that investigated companies was not verified.

4.2.8.2 Elements of fact or law (Legal/documentary basis)

1042. The program is regulated by MoF Regulation No. 89 of 2015 and No. 78/2019, which replaced Government Regulation No. 18 of 2015.

4.2.8.3 Financial contribution

1043. The program's financial contribution lies in the fact that companies in the program now have additional resources, not available to companies not participating in the program. The financial contribution generates benefits to its recipients, as it increases the liquidity of companies now have additional resources arising from the non-payment, by the Government, of revenues, pursuant to art. 4, II, "b", of Decree No. 1.751/95.

4.2.8.3.1 Specificity

1044. Considering that the GOI did not provide the requested information, the companies that actually obtained assistance under the program, according to the questionnaire, for the purposes of this document, they were used, pursuant to art. 17 of Decree No. 1.751/1995, the available facts. Such facts indicate that the subsidies in question are specific in terms of art. 6, caput, of Decree n° 1.751/1995, since it is limited to certain companies and producers of metal products.

4.2.8.4 Statements prior to the Technical Note on the program

1045. The GOI reported that PT Sulawesi Mining Investment (SMI) was not entitled to such an incentive. PT IRNC pointed out that such information would be contrary to the reports of the IRNC as well as the other related parties ([CONFIDENTIAL]) do not have a facility deducted from income tax, as this verifying authority can verify". He suggested that information the percentage of 0.06% calculated by the European Union authorities.

1046. Aperam, in a statement dated September 9, 2022, reiterated the information in the petition and its complementary information, as well as throughout the investigation, although the GOI has all the documentation and information regarding the use of the Government of Indonesia has not provided the information requested by SDCO. Although the petitioner, it would be possible to consider that other companies installed subsidies granted through this program, and not just PT Sulawesi Mining Investment.

4.2.8.5 Comments after the Technical Note on the program

and the documents also make it clear that there is an incentive to build smelters in the sectors of basic metal manufacturing and coal and metal mining, which fits the intention as already explained in item 4.1.

1051. Although not raised by the petitioner or by the GOI, SDCOM wa indicates that the Regulation suggested in the petition (Government Regulation by Government Regulation 78/2019. The new regulation also includes the "B and mining sectors, with the conclusions remaining unchanged.

1052. As pointed out in the logo in article 1, item 3, of both Regula sectors with high priority for the country: "Certain Business Fields shall be bus economic activity with high priority on the national scale ".

1053. Regarding the petitioner's comments, it is pointed out that the does not authorize the authority to freely conclude for the use of a certain prog is necessary to collect reasonable elements that indicate the use of the progra brought up in several of the programs analyzed here. In this sense, the c petitioner, although mathematically correct, is not able to overcome this barrier other programs, in which the calculation itself is already an important element example, the existence of profit. For this reason, the absence of comments from this specific program, a relevant element.

1054. Thus, although SDCOM regrets the lack of cooperation from considers that the dividends, in this specific case, cannot be considered actiona

4.2.8.7 Conclusion

1055. Considering the lack of collaboration and the use of the elem concluded that there is evidence about the non-payment of taxes due with: i) re ii) accelerated depreciation and amortization; iii) 10% withholding tax on divid and iv) extension of the period for transposing tax losses. However, this S elements in the file do not authorize the existence of a financial contribution un regarding the withholding of taxes on dividends paid to non-residents.

1056. In this context, although it is a fact that the company's divide availability of capital for new investments in the controlled company, in addit initial propensity to invest when, in the absence of the benefit, they would not h was not able to bring to the file evidence that this actually occurred in the prese

1057. Bearing in mind that the elements presented also point out th are specific to law under the terms of art. 6, caput, of Decree n° 1.751/1995, s companies, among which mining companies and producers of metal products,

1060. Government Regulation No. 142/2015, the GOR provides for "Industrial Development Areas", which refer to certain areas in which companies benefit from certain facilities, being eligible for certain benefits, notably in terms of concerns tax on purchases of electricity. The regulation thus governs:

CHAPTER VIII

INDUSTRIAL PARK FACILITIES

Article 41

(1) Industrial Park Management Companies and Industrial Companies receive tax incentives.

(2) The tax incentives as referred to in paragraph (1) are granted to companies located in (Industrial Development Area) grouping.

(3) In the case of granting tax incentives, there is a change in the group of companies, by means of the Regulation of the Minister in charge of government affairs in the form of a recommendation of the Minister.

(4) Other provisions relating to tax incentives, as referred to in paragraph (1), are regulated through Regulations of the Minister in Charge of Government Affairs in the Energy and Mineral Resources Sector.

Article 42

(1) The Industrial Park Management Companies have facilities for the management of electricity for their needs and the needs of the industrialists in the area.

(2) Other provisions relating to installations to facilitate the development of electric power, as referred to in paragraph (1), are regulated by means of Regulations of the Minister in Charge of Government Affairs in the Energy and Mineral Resources Sector.

Article 43

(1) Industrial Park Management Companies and Industrial Companies receive regional incentives.

(2) The provisions relating to regulations on regional incentives, as referred to in paragraph (1), are established in accordance with legal provisions.

1061. As established in Regulation No. 105/2016 of the Indonesian Minister of Energy and Mineral Resources, in industrial development areas, various levels of tax exemptions are granted, depending on the location where they are located. It is also noteworthy that in the preamble of the Regulation the

Considering:

the WPI Potential II zone will thus receive more benefits than those located should be noted that the Advanced WPI (Java), in turn, does not grant specific also details the types of incentives involved:

(3) Tax and/or Customs Incentives as referred to in paragraph (1) may

The. Income Tax Incentives, namely:

1. Income Tax tax incentives for capital investment in certain lines of regions; or

2. Incentives in the form of reduced Income Tax for companies;

B. Value Added Tax exemption incentives on the import and/or equipment that are considered as a unit, whether installed or dismantled, use process of Taxable Goods by a Businessperson Subject to the Incidence of Taxable Goods, excluding spare parts; and/or

w. Tax exemption incentives for the importation of machinery and goods out by Industrial Companies in Industrial Parks and Management Companies or out business activities in the industrial sector of production of goods and / or services

(4) Exemption from import duties on machinery and materials as mentioned in letter (c) may be granted for machinery and goods and materials originating in Special Economic Zones or Bonded Storage Areas.

1064. The following articles 3, 4, 5 and 6 detail the incentives granted to WPI Advanced, WPI Mature, WPI I and WPI II, respectively. WPI's Mature industrial located in South Sulawesi, East Kalimantan, North Sumatra excluding Batam and South Sumatra. In these areas, income tax incentives are granted: net income tax over six years, in addition to allowing depreciation and amortization at a faster rate on dividends in 10%, and the possibility to carry forward losses for up to eight years

1065. Companies installed in the Mature industrial development area VAT exemption provided for in Government Regulation 81/2015 on imports and equipment (excluding spare parts) that are used directly to produce goods. In development phases, they can also benefit from an exemption on import duties for five years (a period that can be extended to up to the duration of the development) and exemption on import of goods and materials for up to three years (extendable for one year). The duty exemption can be extended for another year if certain domestic content limits

is, however, limited to five years, renewable for one year. Likewise, the provisions of the regulation on the investment incentives also apply.

1070. The document entitled "A brief guide to investment in the Indonesia Investment Coordinating Board (BKPM), details which areas of the country are designated as industrial development areas (WPI), as reproduced below:

The exact amount of the tax incentives will depend on the classification of the industrial development areas. In this regulation, there are four categories of Industrial Estates Development (Kawasan Industri) (located on Java Island), Developing WPI (South Sulawesi, East Kalimantan, North Kalimantan, and Karimun, and South Sumatera) , Potential I WPI (North Sulawesi, Maluku, and Nusa Tenggara), and Potential II WPI (Papua and West Papua).

1071. In addition to IMIP, located in Morowali District, Central Sulawesi, there is another industrial area located in Sulawesi Tenggara, while PT OSS (Obsidian Stainless Steel), would be located in Sulawesi. There is evidence of operation in the Bantaeng industrial area (located in Sulawesi) by at least two companies, PT Huadi Nickel Alloy Indonesia and PT Bantaeng Central Asia Steel. Indonesia's mmlIndustry portal informs the list of companies that signed an agreement with ENMP in the Industrial Park Bantaeng:

The companies that signed the deal with ENMP were PT Huadi Nickel Alloy Indonesia, PT Bantaeng Central Asia Steel, PT Sinar Deli Bantaeng, PT Intim Perkasa, PT Pratama, PT Sergion Techno and Inensunan Mills Indonesia.

1072. The following table presents the stainless steel and nickel industries in the areas of industrial development:

WPI type	Industrial Development Area	Company Name	Company Type (real)
WPI Potential I (WPI 3)	Morowali (IMIP) Sulawesi Tengah	PT. Sulawesi Mining Investment*	NPI
		PT. Indonesia Guang Ching Nickel and Stainless Steel Industry*	NPI, coils
		Indonesia Tsingshan Stainless Steel*	NPI, coils
		PT C*	Stainless Steel
		EN Broly Nickel Industry	Nickel

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

1073. PT IRNC and GOI pointed out that it would not be necessary to provide a subsidy amount for this program, since any existing Indonesian government incentive programs and have their own regulations.

1074. Aperam, in a statement dated September 9, 2022, The tax and the area of industrial development has already been broadly and in detail presented in supplementary information, as well as throughout the process and in this document that program, the petitioner pointed out that the Government of Indonesia claimed that "the private sectors". In Aperam's opinion, everything exposed in the process and the document demonstrates that, in fact, the creation of the IMIP was controlled and administered by the Government of Indonesia. Aperam also stated that the petitioner claimed that "as for Industrial Estate, normally the GOI builds general infrastructure areas to improve the livelihood of the area", stating that, in the IMIP,

1075. Aperam continued stating that, regarding such program, the petitioner stated that "PT IRNC resides in Indonesia Morowali Industrial Park (IMIP) as Indonesia IRNC has not received any benefit of taxes incentives under Industrial Estate." In order to have all the documentation and information related to such a program, the petitioner would not have shown them to SDCOM's servers.

4.2.9.3 Conclusion

1076. SDCOM concluded that, in line with what the GOI brought to PT IRNC, the process are not sufficient to lead this authority to conclude that what is described is no longer included in other programs. Therefore, this authority concluded that the petitioner should receive a subsidy for this program separately. However, the Industrial Estates legislation is not the investigation, in particular Government Regulation No. 142/2015, which is part of the framework of incentives proposed by the GOI to the sectors it considers a priority.

1077. For example, such regulation provides that an Industrial Estate must submit reports to the GOI:

(5) Industrial Estate Companies that already have Principle Permits, Initial Permits, Expansion Permits are required to submit Industrial Estate Data periodically to the GOI and/or regents/mayors in accordance with the IUKI.

4.2.10 Program 11 - Capital injection

1078. SDCOM was able to confirm the GOI's capital injection into Inalum. The documents available in the case file do not indicate that there was any benefit to the producers arising from such an operation. Therefore, this SDCOM concluded that there is no subsidy for this program.

1082. The Indonesian government, through the Indonesian Investment Coordinating Board (BKPM) expressly requested, in May 2011, China to invest in nickel processing in the Morowali Park is established: "[t]he Investment Coordinating Board (BKPM) invited Chinese companies from China to invest in processing mining product. [...] In addition, BKPM also asked Chinese companies to invest in nickel processing in Southeast Sulawesi".

1083. As already demonstrated in the process, the Chairman of Board of Directors of PT IMIP, IRNC, that "the parent company in China has nine joint venture companies in the nickel industry and power plant in Morowali" and that "[t]he investment made is quite significant" and that "only company in Indonesia that processes ferronickel into 'stainless steel'", demonstrating the Government's intention to support IMIP investments and develop stainless steel industry.

1084. In this context, Aperam added that the Government of Indonesia invited Chinese companies to participate in improving Indonesia's industrial capacity and pledged to create a more attractive environment for foreign investments, including those from China. The Government of Indonesia said it expected Chinese companies to "invest in the nickel industry" and "briefed China on its efforts to improve the management of its mining industry". The governments agreed to "gear up efforts to further solidify and expand cooperation". These statements would prove that Indonesia sought, in these agreements, to implement its industrial policies, notably in order to strengthen the downstream capacity of the nickel industry.

1085. The injection of capital through the acquisition of machinery and equipment at a price lower than the adequate remuneration would be explicitly determined in Law No. 11 of 2001 on Industrial Affairs, in its article 45.

1086. In this context, Aperam highlighted the cooperation established between PT IMIP and the Credit Insurance Corporation (Sinosure), from China, for the provision of loan guarantees without direct negotiation with foreign suppliers/investors.

1087. With regard to the IMIP, it is worth remembering that, as established in Law No. 3 of 2014 relating to industry, as a form of State responsibility for the well-being of the nation, the government has the authority to organize public affairs in the industrial sector, including regulation, direction and development of industry. Furthermore, art. 33 of Government Regulation No. 142 of 2015, relating to Industrial Estates, certifies that their management is the responsibility of the Estate Management. Therefore, the authority of the Government of Indonesia in this case, is passed to the Industrial Estate administration, in this case, the IMIP administration.

1088. That is, Indonesian law delegates to the managing company the authority to implement its industrial policies. In this sense, PT IMIP, as manager of the Morowali Park, is attributed the governmental power to implement the nickel policy, including the investment policy.

chain, allocated to the product under investigation .

1092. In this sense, Aperam concluded by saying that, given the lack of evidence and proven by the Indonesian producers/exporters and by the Government of Indonesia's efforts to present estimates of the amounts actually spent on the acquisition of machinery and equipment by the companies of the production chain of the investigated product installed at IMIP, as well as the amounts of similar products purchased at appropriate market prices, according to documents in the file of the present proceeding. He also pointed out that the calculation of the amount of the subsidy by the Government of Indonesia resulting from preferential tax reductions (income tax and corporate tax) is not adequate.

4.2.10.2 Manifestations after the Technical Note on the program

1093. The petitioner argued, in her final statement, that the capital injection was not adequate to the acquisition of machinery and equipment with less than adequate remuneration, which is the question of transnational subsidies, being directly related to the Government of Indonesia.

1094. He also highlighted that the injection of capital through the acquisition of machinery and equipment at a price lower than the adequate remuneration is explicitly determined in the 2014 Law on Industrial Affairs, in its article 45.

1095. He concluded by pointing out that it made its best efforts to determine the amounts effectively spent on the acquisition of machinery and equipment by the companies of the production chain of the investigated product installed at IMIP, as well as the amounts of similar products purchased at appropriate market prices , having presented a calculation of the amounts spent on the acquisition of machinery and equipment for less than adequate remuneration, or 6.9% of the FOB price.

4.2.10.3 SDCOM Comments

1096. Although Aperam's comments are potentially relevant, SDCOM considers that the inclusion of an untimely presentation of such alleged government incentives related to the acquisition of machinery and equipment at a price lower than the appropriate remuneration. As can be seen from the description of the alleged incentives, this is a new program, which must follow a proper understanding and contradiction by the other interested parties, which was not possible due to the late inclusion of these incentives in the scope of this present investigation.

1097. It is a fact that export restrictions have already been the object of a decision by the Settlement Body and that it was decided that i) even though export restrictions are imposed on private agents, this occurs only as a by-product of state regulation , not being a "instruction or trust" (entrust or direct) necessary in this situation to characterize a subsidy.

in the process on screen.

1100. In addition, the report on the verification visit to the Government of Indonesia demonstrate that various information relevant to the analysis and calculation of subsidies granted by that government to the producers of the product under investigation would not have been presented, thus jeopardizing the analysis of the facts by the investigating authorities.

1101. Thus, in view of the lack of cooperation on the part of the government of Indonesia, producing/exporting companies in the present case, the petitioner presented a simulation of calculations of the subsidies granted by the Indonesian government to the producers/exporters of the product under investigation, seeking to supply the information no longer presented by the Indonesian parties, allowing the investigating authorities to analyze in a complete and appropriate way possible, the granting of subsidies under analysis. All the sources of information used, the methodologies adopted and the calculations are presented in detail in annex to the petitioner's manifestation and will be presented for each investigated program.

1102. Aperam, in a manifestation of May 17, 2022, reiterated its manifestation of May 17, 2022, through which it defended that, in addition to the subsidies granted directly by the Government of Indonesia and already analyzed by this Undersecretary in the aforementioned manifestation, the Indonesian producers/exporters of the product under investigation would also receive subsidies during the analysis period, indirect subsidies, granted by the Government of China, but recorded by the Government of Indonesia as their own, which should also be subject to measures.

1103. He highlighted that the Government of China should also be subject to measures regarding the financial system in that country, including information on the bank guarantees, export guarantees and insurance granted in the context of the IMIP and the Free Trade Cooperation Zones. In this context, on a collaborative basis, it highlighted, in its manifestation, information and documents whose supply suggested that they be demanded from the Government of China.

1104. With regard to preferential loans, the Government of China has granted preferential financing to Chinese cold-rolled stainless steel producers established in Indonesia through state-owned and state-owned commercial banks. These banks would act as public bodies, granting financing on the basis of state policy rather than on the basis of solvency or other market-based factors.

1105. Furthermore, the Government of Indonesia is said to have actively encouraged its producers to adopt Chinese financing through a bilateral cooperation system to encourage the development of previously smelted nickel in China, to develop their activities in Indonesia. In this

supposedly "endorsed", "recognised" or "adopted" by the Government of Indonesia.

1109. For the IRNC, the petitioner would allege that the indirect subsidy result of actions by the Government of Indonesia - GOI with the aim of taking resources to secure preferential financing from China for the development of the nickel, which includes, in the downstream chain, the productive segment of the investigation.

1110. In this regard, the IRNC argued that the petitioner would rely on the Government of China, in granting preferential loans, should be attributed to Indonesia as providing such subsidies indirectly via the foreign Government; the petitioner would find support in the maxim that the Government of Indonesia would have accepted and adopt as its own the preferential financing granted by the Government of China, as demonstrated by the history of bilateral cooperation between the referred Government of Indonesia could be considered as grantor of Chinese financial contribution. Article 1.1(a) of the Subsidies and Countervailing Measures Agreement.

1111. The IRNC then noted that the Government of Indonesia had clarified that it would not be a representative of the Government, nor would it be jointly managed by the Government of Indonesia.

1112. Aprodinox, in a statement dated September 9, 2022, argued that at the present moment, the possibility of instruction to investigate transnational subsidies is not applicable, applying transnational subsidies in light of Brazilian legislation and the WTO Agreement on Subsidies and Countervailing Measures, in addition to sustaining the absence of a causal link.

1113. Argued that "transnational subsidy" could be defined as a subsidy granted to a company who manufactures the product in question outside the territory of the granting country, it would occur when a government subsidizes a company that would not be under the jurisdiction of the granting country. If its application would be controversial. Article 1.1(a) of the Agreement on Subsidies and Countervailing Measures (ASMC) would comment that the financial contribution must be made from the territory of a member.

1114. He exemplified that China would have already manifested itself as actionable subsidies only those that comply with the principle of territoriality. A subsidy granted from a government to a third party beneficiary located in another country would not be an actionable subsidy, since the concession by countries to beneficiaries, in their own territory, is a condition for the existence of these subsidies according to the rules of the World Trade Organization (WTO).

a higher standard than that applied to other subsidy programs for the investigation of subsidies, as explicit in current Brazilian legislation.

1119. He pointed out that only in the first supplementary information (65523/2022/ME) did SDCOM request some information on "the existence of cooperation between the Government of Indonesia and the Government of China in the sector of investment in the creation of the Indonesia Morowali Industrial Park (IMIP)". It would be important that the conducts analyzed in the investigations of subsidies would be government conducts, and the opportunity to grant participation in a timely manner to the government of China was not granted prior to the opening of the investigation, response to the questionnaire, additional verification in loco, etc.) would be critical to any determination of actionable subsidies by the government, even though they are alleged to have been "

1120. He added that China's actions were being evaluated as alleged subsidies, without support, therefore, its rights of adversary and ample defense should be preserved. China should have the right to comment on the alleged subsidies, since, according to the LPA, they are legitimized as interested parties in the administrative process. The government that initiated the process, have rights or interests that may be affected by the decision.

1121. If SDCOM had also wanted to investigate the Chinese government's actions in another territory, it should have given the People's Republic of China time for its defense in the process, time for it to understand the allegations made and opportunity to be heard. The interested party manifests itself, so that the basic principles of the process of law, full defense and contradictory.

1122. He also recalled that Decree No. 1,751/1995, in its Article 27, would require to reach an agreement between the parties before a possible dispute, which would be the investigation, in case it was decided to activate the alleged Chinese subsidies in the above, it understood that the most prudent thing, at this procedural moment, was not to apply the said subsidies.

1123. He argued that, as the present investigation would be governed by the LPA pursuant to art. 192 of Decree No. 10.839/2021, there would be no provision in the statute for the investigation of transnational subsidies. As a result, there would be incompatibility with the predictability that trade defense procedures must have and with the government whose practices are investigated.

1124. The appropriate procedural moment for indicating transnational subsidies, the rules in force, would be in the initial petition. This prediction indicates the conclusion of the investigative course (on the side of the authority) and the dialectical course

would not regulate SECEX Ordinance No. 172/2022.

1129. He emphasized that it could not be argued that such a consolidated SDCOM's practice on the subject, as would be the case of the aforementioned ordinance. As far as Aprodinox is aware, the investigation of subsidies, as the petitioner calls it, would be a novelty for the Brazilian authorities then. Its application in this investigation would therefore be irregular and atypical.

1130. Finally, as a rule, the non-use of this type of subsidy could be seen in the excerpt from Portaria Secex No. 172, of February 14, 2022:

Art. 112. As a rule, the Undersecretariat for Commercial Defense shall not consider as actionable subsidies granted by the government of a country other than the investigated company is located, nor subsidies granted by an international institution, with the following conditions exceptions:

1131. It also argued that the scrutiny for these subsidy programs, if attributed to another, to be verified and actionable should be higher than that required by the exceptionality, according to the text of the Ordinance below in item II of art. 112.

II - if the government of the country of the investigated company, expressly or implicitly endorses, recognizes or adopts the granting of subsidies by the other government, if these were part of its own policy of granting subsidies

1132. It would therefore be forced to conclude that the application of the information would not be adequate to configure such programs as actionable subsidies. Practices would be required, at least for acts of endorsement, recognition and approval without reasonable doubt by the authority, the rule of not activating the referred programs. The elements previously present in the case file would not, therefore, be sufficient. The only evidence of the normal strengthening of bilateral trade diplomatic relations with China. Likewise, the programs would not be clearly defined and proven in order to be actionable.

1133. It should be understood, initially, that the granting of financial benefits to a firm (or firms) outside the territory of the granting state (transnational subsidies) according to art. 1 of the ASMC. A clear reading of the provision of the agreement must exist, for purposes of applying compensatory measures, both the granting measure and the benefit must be in the same territory. A financial contribution granted by one member of the same territory would therefore not be covered. In principle, therefore, the application of the agreement to this class of subsidies would be inconsistent with WTO agreements and, consequently, with national legislation.

granting authority. According to the current configuration of the international legal system, the principle of territoriality of jurisdiction still prevails. Even in the case of extraterritoriality of the jurisdiction essentially depend on execution/collaboration in order to be executed. Jurisdiction therefore remains confined to the territory of the evidence presented for the territorial limitation of compensatory measures. See also footnote 63 of Annex IV of the ASMC, clarifying and reaffirming such limitation.

2. Except as provided in paragraphs 3 through 5, in determining whether the subsidization exceeds 5 per cent of the value of the product, the value of the product shall be the total value of the recipient firm's (63) sales in the most recent 12-month period available, preceding the period in which the subsidy is granted. (64) (1/4)

63. The recipient firm is a firm in the territory of the subsidizing Member.

1137. It remains clear, therefore, that only subsidies granted by an authority of its own territory can be actionable under the SMC Agreement.

1138. In her claim, the petitioner used art. 11 of the Draft Articles on State Responsibility for Unlawful Acts as a criterion for attributing the conduct of Chinese banks. This argument was also used in the case of the European Union. The use of that article would have the objective of circumventing the discussion of the interpretation of the SMC Agreement. The use would, of course, be inadequate as there are specific criteria for attributing conduct to a state as previously mentioned, the use of general international custom being unreasonable. The use of international custom is possible to interpret the agreements, according to the historical circumstances of their formation. In this way, the true meaning of the provisions would remain clear.

1139. Another relevant point to be addressed would be that, even if these programs, they would be, for all legal purposes, financial concessions but not subsidies to support development. The application of the Draft Articles on the International Law of Unlawful Acts would therefore be inappropriate.

1140. Activation of transnational subsidies would therefore, in addition to being and controversial, be a possible instrument to undermine the performance of development non-discriminatory arrangements in search of financing for development.

4.4 SDCOM's comments on the general manifestations

1141. As noted in this document, in fact SDCOM used the available facts in order to reach a determination on a point. In this context, the calculations brought one more element to be evaluated - when it was considered that it sufficiently filled in the gaps, it was used.

considered that the petitioner presented the matter at an advanced procedure impossible to deal with the claim,

4.5 Summary of subsidy programs

1145. The following table summarizes the findings regarding the programs investigated the existence of actionable subsidy programs by the Government in the previous sections:

Summary about grant programs

Program number and name	Type of Financial Contribution - Decree 1751/1995	granting authority	specificity	C a (U
Program 1 - Supply of nickel ore for remuneration lower than adequate	Art. 4th, II, c) c/cd)	GOI, Direct and Indirect.	By law - art. 6th, <i>head</i>	2
Program 2 - Supply of Coal and Coke for less than adequate remuneration	Art. 4th, II, c) c/cd)	GOI, Direct and Indirect.	By law - art. 6, <i>caput</i> In fact - art. 6th, §3rd	18
Program 3 - Supply of Scrap and Waste for less than adequate remuneration				
Program 4 - Provision of land for less than adequate remuneration	Art. 4th, II, c)	GOI, Direct.	Indeed - art. 6th, §3rd	2
Program 5 - Income or price support programs				
Program 6 - Preferred Loans	Art. 4th, II, a) with c/cd)	GOI, Direct and Indirect.	Indeed - art. 6, §3 Presumed - art. 8th, I	3
Program 7 - <i>Bonded Zones</i>	Art. 4th, II, b)	GOI	Indeed - art. 6th, 3rd Regional - art. 7th	2
Program 8.1 - Direct tax incentives - Income tax reduction for large investments	Art. 4th, II, b)	GOI	By law - art. 6th, <i>head</i>	6
Program 8.2 - Direct tax incentives - Exemption from import duties	Art. 4th, II, b)	GOI	By law - art. 6, <i>caput</i> In fact - art. 6th, §3rd	4
Program 8.3 - Direct tax incentives - VAT reductions and exemptions on machinery and equipment				

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

5 IMPORTS AND THE BRAZILIAN MARKET

1148. This item will analyze Brazilian imports and the Brazilian market for products 304.

1149. The period of analysis must correspond to the period considered for investigating damage to the domestic industry in accordance with the provisions of Decree No. 1,751 of 1995, which, as explained in item 1.2 above, was indicated by the analysis of damage and causal link encompassing the months of April 2015 to March 2020. The period of analysis of actionable subsidies of the petition is the months of April 2015 to March 2020.

1150. Thus, the period from April 2015 to March 2020 was considered as follows:

P1 - April 2015 to March 2016;

P2 - April 2016 to March 2017;

P3 - April 2017 to March 2018;

P4 - April 2018 to March 2019; It is

P5 - April 2019 to March 2020.

5.1 Imports

1151. For the purpose of calculating the values and quantities of flat cold-rolled products 304 imported by Brazil in each period, import data referring to sub-items 7219.32.00, 7219.35.00 and 7220.20.90 of the NCM, provided by the RFB.

1152. In addition to flat cold-rolled products 304, cold-rolled products 304, such as 430, and thicknesses outside the scope of the investigation, and subitems, in addition to other products.

1153. For this reason, a purification of the imports contained in the data was carried out in order to obtain information referring exclusively to flat cold-rolled products of type 304 (304, 304L and 304H), cold-rolled, with thickness equal to or greater than 4.75 mm. The methodology for purifying the data consisted of excluding those that do not comply with the parameters described in this item.

1154. The following were not considered to be the product under investigation: products 304 of different degrees from 304 and/or with a thickness of less than 4.75 mm, perforated sheets, wear, friction plates, profiles, plates, sheets, plates, sealing tapes, tiles, exhaust accessories, steel cable strap, stainless steel, and others.

South Africa	100	120.52	143.13	118.49	84
Malaysia (1)	100	182.67	269.32	292.34	26
Malaysia (2)	100	-	14.13	-	-
Other countries (3)	100	49.03	64.01	66.11	60
Total (except under analysis)	100	79.46	121.97	115.99	98
Variation	-	(20.5%)	53.5%	(4.9%)	(15
Grand total	100	80.92	122.08	130.12	17
Variation	-	(19.1%)	50.9%	6.6%	33
1 - Operations carried out by exporting companies whose origin was disqualified					
2 - Operations carried out by exporting companies whose origin was not disqua					
3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, China, South					
Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (Holland), P					
Kingdom, Romania, Sweden, Thailand, Taiwan (Taiwan), Turkey and Uruguay.					
Source: RFB.					
Elaboration: SDCOM.					

1158. The volume indicator (in tons) of Brazilian imports of flat cold rolled products from the investigated origin increased 38.5% from P1 to P2 and decreased 8.7% from P2 to P3. In the periods, there was a significant increase of 443.7% between P3 and P4, and from P4 to P5 there was an increase of 357.9%. When considering the entire analysis period, the volume in tons of imports from the investigated origin indicated a notable positive variation of 3,047.1%, considering P5 in relation to P1.

1159. Regarding the variation in volume (in tons) of Brazilian imports of flat cold rolled products 304 from other origins (the total except the investigated origin) over the analyzed period, there was a reduction of 20.5% between P1 and P2, while from P2 to P3 it was possible to observe an increase of 53.5%. From P3 to P4 there was a reduction of 4.9%, and between P4 and P5 there was an increase of 33.7%. When considering the entire analyzed series, the indicator of volume of Brazilian imports from other origins presented a reduction of 1.4%, considering P5 in relation to P1.

1160. With regard to the variation in total Brazilian imports (in tons) of flat cold rolled products 304 in the analyzed period, there was a decrease of 19.1% between P1 and P2, but no significant variation was found between P2 and P3, growth of 6.6% from P3 to P4, and between P4 and P5 there was an increase of 33.7%. Analyzing the entire period, Brazilian imports from all origins presented a reduction of 1.4%, considering P5 in relation to P1.

1161. According to § 4 of art. 21 of Decree No. 1751 of 1995, the imports of flat cold rolled products 304 occur in an insignificant volume, as they were greater than four percent of total imports of flat cold rolled products 304.

5.1.2 Value and price of imports

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Other countries (3)	100	39.94	60.05	65.20	54.12	
Total (except under analysis)	100	65.09	115.18	118.13	92.44	
Variation	-	(34.9%)	77.0%	2.6%	(21.7%)	(7.6%)
Grand total	100	66.12	114.73	131.28	155.44	
Variation	-	(33.9%)	73.5%	14.4%	18.4%	+ 55.4%

1 - Operations carried out by exporting companies whose origin was

2 - Operations carried out by exporting companies whose origin was

3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, CH
Spain, Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (N)
United Kingdom, Romania, Sweden, Thailand, Taiwan (Taiwan), Turkey and Uruguay

Source: RFB.

Elaboration: SDCOM.

1164. The indicator of the value of Brazilian imports of flat cold rolled
investigated origin (Thousand US\$ CIF) increased by 1.5% from P1 to P2 and de
P3. In subsequent periods, there was a significant increase of 482.5% between P
there was a 297.5% increase. When considering the entire period of analysis, t
Brazilian imports from the investigated origin indicated a notable positive variat
P5 in relation to P1.

1165. Regarding the variation in the value of Brazilian imports of cold
304 from other origins (the total except the investigated origin) (Thousand U
analysis, there was a reduction of 34.9% between P1 and P2, while from P2 to P
an increase of 77.0%. From P3 to P4 there was an increase of 2.6%, and between
by 21.7%. When considering the entire analyzed series, the indicator for the valu
product from other origins decreased by 7.6%, considering P5 in relation to P1.

1166. Observing the variation in the value of total Brazilian imports
304 (Thousand US\$ CIF) in the analyzed period, there was a decrease of 33.9%
increase of 73.5% between P2 and P3, growth of 14.4% from P3 to P4, and betw
showed an increase of 18.4%. Analyzing the entire period, total Brazilian imports
304 from all origins expanded by 55.4%, considering P5 in relation to P1.

Price of Total Imports (in CIF USD / (t))						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5

3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, Chile, Spain, Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (Curaçao), Norway, Poland, Portugal, Romania, Sweden, Thailand, Taiwan (Taiwan), Turkey and Uruguay.

Source: RFB.

Elaboration: SDCOM.

1167. The average CIF price indicator per weighted ton of Brazilian cold rolled products 304 from the investigated origin decreased by 26.7% from P1 to P2, from P2 to P3. In subsequent periods, there was an increase of 7.1% between P3 and P4, 13.2%, considering the interval between P4 and P5. When considering the average price indicator (CIF US\$/t) of Brazilian imports of cold rolled products 304 from the investigated origin revealed a negative variation of 26.8%, considering P5 in relation to P1.

1168. With regard to the variation in the average CIF price per weighted ton of cold-rolled flat-rolled products 304 from other origins (the total except for the investigated origin) during the period of analysis, there was a reduction of 18.1% between P1 and P2, and an increase of 15.3% between P2 and P3. From P3 to P4 there was an increase of 15.3% and P5 the indicator fell by 8.0%. When considering the entire analyzed series, the average price indicator (CIF US\$/t) of Brazilian imports of cold rolled products 304 from other sources revealed a negative variation of 6.2%, considering P5 in relation to P1.

1169. Observing the variation in the average CIF price per weighted ton of cold-rolled flat-rolled products 304 in the analyzed period, there was a decrease of 18.1% between P1 and P2, but an increase of 15.0% between P2 and P3 and growth of 7.4% from P3 to P4. Considering the entire period, the indicator showed a retraction of 11.5%. Analyzing the entire period, the average price indicator (CIF US\$/t) of Brazilian imports of flat cold rolled products 304 from all origins showed a decrease of 11.5%, considering P5 in relation to P1.

5.2 The Brazilian market

1170. Considering that there was no captive consumption of flat cold rolled products 304 by the domestic industry, the Brazilian market for this product is equivalent to the apparent consumption (ANC) of the similar product in Brazil.

1171. With a view to dimensioning the Brazilian market for flat cold rolled products 304, the quantities manufactured and sold in the domestic market, net of returns from the domestic industry, and the total imported quantities, calculated based on official data from the RFB, were presented. It should be noted that domestic industry sales only include sales of

The Brazilian Market and the Evolution of Imports (t)

[RESTRICTED]

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

analysis period, the indicator for the Brazilian market of cold rolled products 304 showed a variation of 31.0%, considering P5 in relation to P1.

1173. Regarding the variation of the indicator of Brazilian imports of cold rolled products 304 from the origin investigated throughout the period of analysis, there was an increase between P1 and P2, while from P2 to P3 it was possible to detect a reduction of 4.9%. There was a significant increase of 443.7%, and between P4 and P5 the indicator showed a variation of 357.9%. When considering the entire analyzed series, the indicator of cold rolled products 304 from the investigated origin increased by 3,047.1%, considering P5 in relation to P1.

1174. In turn, the indicator of Brazilian imports (in tons) of cold-rolled products 304 from other sources showed a decrease of 20.5% from P1 to P2 and an increase of 15.1% in subsequent periods, there were decreases of 4.9% between P3 and P4 and 15.1% between P4 and P5. When considering the entire analysis period, the indicator of cold rolled products 304 from other origins revealed a negative variation of 1.4%, considering P5 in relation to P1.

5.3 Evolution of imports

5.3.1 Participation of imports in the Brazilian market

1175. The following table presents the share of Brazilian imports (in tons) of cold rolled flat rolled products 304 in the Brazilian market (in tons) of cold rolled flat rolled products 304.

Participation in the Brazilian Market [RESTRICTED]				
	P1	P2	P3	P4
Brazilian market {A+B+C}	100	116.33	124.14	131.14
Share of Total Imports {C/(A+B+C)}	100	69.83	98.35	99.14
Share of Imports - Origins under Analysis {C1/(A+B+C)}	100	116.67	100.00	516.67
Share of Imports - Other Origins {C2/(A+B+C)}	100	68.22	98.31	88.86

Source: RFB and petitioner.

Elaboration: SDCOM

1176. With regard to the evolution of the percentage share of imports from Indonesia in the Brazilian market (in tons), there was an increase from P1 to P2 and a reduction from P2 to P3 ([RESTRICTED] pp). In subsequent periods, there was an increase in the evolution of the participation of imports from the investigated origin in the Brazilian market.

	P1	P2	P3	P4	P5
National Production (A)	100	97.54	94.10	84.78	77.12
Imports - Origins under Analysis (B)	100	138.44	126.41	687.22	3,047.1%
Relationship with the National Production Volume (B/A)	100	150.00	150.00	875.00	4,000.0%
Variation	[RESTRICED]	[RESTRICED]	[RESTRICED]	[RESTRICED]	[RESTRICED]

Source: RFB and petitioner.

Elaboration: SDCOM

1179. It was observed that the relationship between the volume of imports of products 304 from the investigated origin and the volume of domestic production of the like product increased [RESTRICED] pp from P1 to P2, and from P2 to P3 did not vary. In the periods, there was an increase of [RESTRICED] pp between P3 and P4, and [RESTRICED] pp between P4 and P5. When considering the entire period of analysis, the relationship between the volume of imports of cold rolled products 304 from the investigated origin and the volume of domestic production revealed a significant positive variation of [RESTRICED] pp, considering P5 in relation to P1.

5.4 Conclusion regarding imports

1180. During the damage investigation period, the volume of imports of cold rolled products 304 from the investigated origin increased remarkably.

1181. In absolute terms, the volume of imports (in tons) of cold rolled products 304 from the investigated origin went from [RESTRICED] t in P1 to [RESTRICED] t in P5, an increase of [RESTRICED] t, corresponding to a variation positive of 3,047.1%, considering P5 in relation to P1.

1182. It is also noted that the imports considered here did not occur in significant quantities since they exceeded four percent of total imports of the like product, under the provisions of Decree No. 1751 of 1995.

1183. Regarding the Brazilian market (in tons), the share of imports of cold rolled products 304 from the investigated origin went from [RESTRICED] %, in P1 to [RESTRICED] % in P5, revealing a positive evolution of participation of these imports of the order of [RESTRICED] pp, considering P5 in relation to P1.

1188. According to the applied methodology, the values in current are divided by the average price index for the period, multiplying the result by the base year. This methodology was applied to all monetary amounts in reais presented.

6.1.1 Sales volume

1190. The following table presents sales (in tons) of the domestic commodity manufactured by the Company, destined for the domestic and foreign markets,

<u>Domestic Industry Sales (t)</u>					
[RESTRICTED]					
	P1	P2	P3	P4	P5
A. Total Domestic Industry Sales	100.0	99.4	95.2	85.5	72.1
<i>Variation</i>	-	(0.6%)	(4.2%)	(10.2%)	(15.1%)
TO 1. Domestic Market Sales	100.0	127.7	124.8	132	117.3
<i>Variation</i>	-	27.7%	(2.2%)	5.8%	(11.2%)
A2. Foreign Market Sales	100.0	63.7	57.7	26.6	15.8
<i>Variation</i>	-	(36.3%)	(9.3%)	(54.0%)	(40.6%)
Representativeness of Sales					
Domestic market share in Total Sales {A1/A}	100.0	128.4	131.0	154.3	161.1
Foreign market share in total sales {A2/A}	100.0	63.9	60.5	31.1	21.8
Elaboration: SDCOM					
Source: RFB and Domestic Industry					

1191. It was observed that the sales volume (in tons) destined to the domestic market grew 27.7% from P1 to P2 and decreased 2.2% from P2 to P3. In subsequent periods, sales in the domestic market grew 5.8% from P3 to P4 and decreased by 11.2% from P4 to P5. When considering the entire period of the damage investigation (in tons) of the domestic industry for the domestic market grew 17.3%, considering the base year P1.

1192. Regarding sales (in tons) to the foreign market, there was a decrease throughout the analyzed period, from 36.3% from P1 to P2, from 9.3% from P2 to P3, from 54.0% from P3 to P4, and 40.6% from P4 to P5. When considering the extremes of the series, the sales of the domestic industry to the foreign market presented an accumulated decrease of 74.5% in relation to P1.

1193. It should be noted, at this point, that foreign sales (in tons) of the domestic industry represented, at most, [RESTRICTED] % of total sales (in tons) of the self-manufactured products during the damage investigation period, reaching its lowest level in P5, with a participation of 21.8%.

1196. The evolution of the domestic industry's share of sales in the B market 304 grew from P1 to P2 in [RESTRICTED] pp From then on, the evolution [RESTRICTED] pp from P2 to P3, reduced [RESTRICTED] pp from P3 to P4, and [RESTRICTED] pp from P4 to P5. Considering the entire period of analysis, [RESTRICTED] pp in the evolution of the domestic industry's share of sales considering P5 in relation to P1.

6.1.3 Production and degree of use of installed capacity

1197. According to data contained in the petitioner's initial petition, the cold-rolled product of the domestic industry takes place at the Aperam plant located in

1198. To calculate the nominal capacity, the company calculated the production of each of the cold rolling mills used in the production of the like product ([CON] average productivity of each rolling mill was then multiplied by the number of hours x 365 days). The sum of the capacity of the three rolling mills reflects the nominal capacity.

1199. To calculate the effective capacity, the nominal capacity of each mill was multiplied by the annual operating index of each rolling mill. This operating index reflects the efficiency of the equipment, taking into account operational downtime, such as setup and changeover, maintenance, and the number of working days in each year. In addition, the company considers maintenance (RCO - Return to Original Conditions) and productive investments v

Production (t), Installed Capacity (t) and Degree of Occupancy					
[RESTRICTED]					
	P1	P2	P3	P4	P5
A. Production Volume - Similar Product	100.0	97.5	94.1	84.8	73.3
Variation	-	(2.5%)	(3.5%)	(9.9%)	(13.6%)
B. Production Volume - Other Products	100.0	101.6	103.1	100.3	91.4
Variation	-	1.6%	1.5%	(2.7%)	(8.8%)
C. Effective Installed Capacity	100.0	103.6	99.6	94.6	100
Variation	-	3.6%	(3.9%)	(5.0%)	5.7%
D. Degree of Occupation $\{(A+B)/C\}$	100.0	96.8	100.7	100.8	85.7
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]
Elaboration: SDCOM					

from P2 to P3, and an increase of [RESTRICTED] pp from P3 to P4. Afterwards, a decrease of [RESTRICTED] pp from P4 to P5 was observed. Considering the entire period of analysis, the occupancy of the installed capacity registered a decrease, reducing by [RESTRICTED] in relation to P1.

6.1.4 Stocks

1204. The following table indicates the accumulated stock of the product of cold rolled products of the domestic industry, in tons, at the end of each period, considering the initial stock in P1 of [RESTRICTED] t. It should be noted that the stock in foreign markets are already net of returns.

Stocks (t)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P6
Production Volume - Similar Product	100.0	97.5	94.1	84.8	73.3	[RESTRICTED]
Variation	-	(2.5%)	(3.5%)	(9.9%)	(13.6%)	(17.7%)
Domestic Market Sales	100.0	127.7	124.8	132	117.3	[RESTRICTED]
Variation	-	27.7%	(2.2%)	5.8%	(11.2%)	+10.0%
Foreign Market Sales	100.0	63.7	57.7	26.6	15.8	[RESTRICTED]
Variation	-	(36.3%)	(9.3%)	(54.0%)	(40.6%)	(62.6%)
Other Inputs/Outputs	-100.0	27.3	-16.3	-269	-325.8	[RESTRICTED]
Final storage	100.0	85.5	82.5	59.7	60.9	[RESTRICTED]
Variation	-	(14.5%)	(3.5%)	(27.6%)	2.0%	(3.5%)
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1205. The volume of the final stock of the similar cold-rolled product of the domestic industry, in tons, showed successive decreases of 14.5% from P1 to P2, from 3.5% from P2 to P3 to P4. In the following period, the volume of the final stock of the similar cold-rolled product of the domestic industry increased by 2.0% from P4 to P5. Considering the extremes of the volume of the domestic industry's similar cold-rolled product, in tons, decreased by 3.5% in relation to P1.

1206. The following table presents the relationship between the accumulated stock of the like cold-rolled product, in tonnes, and the production of the like cold-rolled product, in tonnes, in each analysis period.

Final Stock/Production Ratio

stock/production ratio of the domestic cold-rolled like product showed a decrease considering P5 in relation to P1.

6.1.5 Employment, productivity and wage bill

1208. The following tables present the number of employees, production and wage bill to the production/sale of the similar product of domestic cold rolled products.

1209. For apportionment of the number of employees for the similar product, the criterion used was the labor cost of cold-rolled stainless steel 304 contained in Aperam's COGS.

1210. The allocation of the wage bill for the similar domestic cold-rolled product used the same apportionment criterion used for the number of employees.

	P1	P2	P3	P4	P5	P6
Number of Employees - Total	100.0	100.3	99.4	94.0	83.3	71.1
Variation	-	0.3%	(0.9%)	(5.4%)	(11.3%)	(16.9%)
Number of Employees - Production	100.0	100.0	99.0	93.7	83.1	70.6
Variation	-	(0.0%)	(1.0%)	(5.4%)	(11.3%)	(16.9%)
Number of Employees - Adm. and Sales	100.0	107.7	107.7	100.0	87.7	71.1
Variation	-	7.7%	-	(7.1%)	(12.3%)	(16.9%)

Elaboration: SDCOM

Source: RFB and Domestic Industry

1211. It was verified that the number of employees who work in the production line of domestic cold rolled products remained unchanged from P1 to P2. From P2 to P3, the number showed successive reductions of 1.0% from P2 to P3, 5.4% from P3 to P4 and 11.3% from P4 to P5. Considering the entire period of analysis, a decrease of 16.9% was observed in the number of employees who work in the production line of the similar product of domestic cold rolled products in relation to P1.

1212. As for the number of employees in the Administration and Sales area, there was an increase of 7.7% from P1 to P2 and stability from P2 to P3. From P3 to P4 there was a decrease of 7.1% and from P4 to P5 there was a decrease of 12.3%. Considering the entire analysis period, the number of employees in the Administration and Sales area of 12.3%, considering the entire period of analysis.

1213. Regarding the total number of employees, there was an increase of 0.3% from P1 to P2, followed by successive reductions in subsequent periods, from 0.9% from P2 to P3, 5.4% from P3 to P4, and 11.3% from P4 to P5. When considering the total period of analysis, there was a decrease of 16.9%.

product showed consecutive falls over the period analyzed, from 2.1% from P1 to P2, from 4.8 % from P2 to P3, and from 2.6% from P3 to P4, and from 2.6% from P4 to P5. Considering the analysis, the productivity per employee linked to the production of the similar product fell by 11.9%, considering P5 in relation to P1.

1216. Information on the wage bill related to the production/sale of domestic cold-rolled like product is summarized in the following table.

Payroll (in index number)

[CONFIDENTIAL]

	P1	P2	P3	P4	P5	P1 - P5
Payroll - Total	100.0	84.2	89.5	79.2	64.3	
<i>Variation</i>	-	(15.8%)	6.4%	(11.5%)	(18.9%)	(35.7%)
Payroll - Production	100.0	84.7	89.7	78.8	64.1	
<i>Variation</i>	-	(15.3%)	5.9%	(12.1%)	(18.6%)	(35.9%)
Payroll - Adm. and Sales	100.0	79.9	88.4	82.8	65.4	
<i>Variation</i>	-	(20.1%)	10.6%	(6.3%)	(21.0%)	(34.6%)
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1217. Regarding the wage bill of employees on the production line, there was a decrease of 15.8% from P1 to P2 and an increase of 5.9% from P2 to P3. In subsequent periods, there was a decrease of 12.1% from P3 to P4, and 18.6% from P4 to P5. In the analysis of the extremes of the period, the wage bill of the production line decreased by 35.9% in real terms, considering P5 in relation to P1.

1218. With regard to the salary mass of employees linked to administration and sales of the similar product, there was a decrease of 20.1% from P1 to P2 followed by a growth of 10.6% in subsequent periods, there were successive reductions of 6.3% from P3 to P4 and 21.0% from P4 to P5. Considering the entire damage analysis period, the salary mass of employees linked to administration and sales of the similar product fell by 34.6%, considering P5 in relation to P1.

1219. With regard to the total wage bill, there was a retraction of 15.8% from P1 to P2 followed by a growth of 6.4% from P2 to P3. In subsequent periods, there were successive reductions of 11.5% from P3 to P4, and 18.9% from P4 to P5. Considering the entire period of damage analysis, the total wage bill of employees of the similar product showed a decline of 35.7%, considering P5 in relation to P1.

6.1.6 Income statement

6.1.6.1 Net revenue

Participation [C7A]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1222. Net revenue referring to sales of self-made cold flat rolled market, in updated thousands of Reais, fluctuated over the analyzed period, 13.1% from P1 to P2, from 5, 3% from P2 to P3, and new growth of 14.6% from P3 to P4, presented a decline of 15.5% from P4 to P5. When considering the extremes of the series, referring to sales of cold rolled flat rolled products manufactured by the company, presented an accumulated decrease of 15.3, considering P5 in relation to P1.

1223. With regard to the net revenue obtained from the sale of products manufactured in-house in the foreign market, it showed a continuous decrease over the analyzed, from 49.4% from P1 to P2, from 0.7% from P2 to P3, 46.1% P3 to P4; and considering the extremes of the series, the net revenue referring to sales of products manufactured in-house in the foreign market presented an accumulated decrease of 96.2% from P5 in relation to P1.

6.1.6.2 Weighted average prices

1224. The following table presents the weighted average selling price indicator of products manufactured by the company in the domestic market, in Reais restated to 2019, the ratio between net revenues and the respective quantities sold of cold rolled products, as previously presented, respectively, in items 6.1.7 and 6.1.1 of this opinion.

Weighted Average Prices (in Reais/t)						
[CONFIDENTIAL]/[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Price in the Domestic Market	100.0	88.6	95.4	103.4	98.3	
Variation		(11.4%)	7.7%	8.4%	(4.9%)	(1.7%)
Price in the Foreign Market	100.0	79.5	88.3	103.4	100.5	
Variation		(20.5%)	11.0%	17.2%	(2.9%)	+0.5%
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1225. The weighted average selling price indicator of the similar products manufactured in-house in the domestic market, in updated Reais presented over the analyzed period, with a decline of 11.4% from P1 to P2, followed by growth of 7.7% from P2 to P3 and a new growth of 8.4% from P3 to P4. In the following period, this weighted average selling price indicator presented a decline of 4.9% from P4 to P5.

[CONFIDENTIAL]/[RESTRICTED]				
	P1	P2	P3	P4
A. Domestic Market Net Revenue	100.0	113.1	119.1	136.1
Variation		13.1%	5.3%	14.6%
B. Cost of Goods Sold - COGS	100.0	110.7	118.8	138.1
Variation		10.7%	7.3%	16.6%
C. Gross Profit {AB}	100.0	121.1	120.1	129.1
Variation		21.1%	(0.8%)	7.8%
D. Operating Expenses	100.0	117.5	149.8	131.8
Variation		17.5%	27.5%	(12.0%)
D1. General and Administrative Expenses	100.0	113.2	112.6	108.1
D2. Selling Expenses	100.0	105.7	111.2	117.1
D3. Financial Result (FR)	100.0	115.7	123.2	135.1
D4. Other Operating Expenses (Revenues) (OD)	100.0	199.0	826.5	249.1
E. Operating Result {CD}	100.0	123.0	104.1	128.1
Variation		23.0%	(15.3%)	23.1%
F. Operating Result (except RF) {C-D1-D2-D4}	100.0	121.2	108.8	129.1
Variation		21.2%	(10.2%)	19.4%
G. Operating Result (except RF and OD) {C-D1-D2}	100.0	122.5	121.2	131.9
Variation		22.5%	(1.1%)	8.9%
H. Gross Margin {C/A}	100.0	107.1	100.9	95.1
Variation		[CONF.]	[CONF.]	[CONF.]
I. Operating Margin {E/A}	100.0	108.8	87.8	93.9
Variation		[CONF.]	[CONF.]	[CONF.]
J. Operating Margin (except RF) {F/A}	100.0	107.2	91.3	95.4
Variation		[CONF.]	[CONF.]	[CONF.]
K. Operating Margin (except RF and OD) {G/A}	100.0	108.0	101.5	96.5
Variation		[CONF.]	[CONF.]	[CONF.]
Elaboration: SDCOM				
Source: RFB and Domestic Industry				

1228. Operating income and expenses were calculated based on ap...
representativeness of the net sales of the similar national product in relation to t...

1229. With regard to other expenses, Aperam informed that they...
among others: [CONFIDENTIAL] .

P2 followed by a 10.2% decline from P2 to P3. In the following periods, there was a decline of 11.8% from P3 to P4 and a 32.1% decline from P4 to P5. When considering the extremes of the series, excluding the financial result, of the domestic industry with the sale of the similar product manufactured in-house in the domestic market, in thousands of R\$, showed a negative variation of 11.8 %, considering P5 in relation to P1.

1233. The operating result, except the financial result and other income, of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in thousands of restated R\$, also showed fluctuations over the period analyzed, with growth of 22.5% from P1 to P2 followed by a decline of 1.1% from P2 to P3. In the following periods, there was an increase of 8.9% from P3 to P4 and a decline of 32.9% from P4 to P5. When considering the extremes of the series, the operating result, excluding the financial result and other income, of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market, in updated thousands of R\$, showed a negative variation of 11.8 %, considering P5 in relation to P1.

1234. The gross margin of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market increased by [CONFIDENTIAL] pp from P1 to P2. In the following periods, there were consecutive declines of [CONFIDENTIAL] pp from P2 to P3, [CONFIDENTIAL] pp from P3 to P4, and of [CONFIDENTIAL] pp from P4 to P5. When considering the extremes of the series, the gross margin of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market showed a negative variation of [CONFIDENTIAL]pp, considering P5 in relation to P1.

1235. The operating margin of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market showed fluctuations over the period analyzed, with growth of [CONFIDENTIAL] pp from P1 to P2 followed by a decline of [CONFIDENTIAL] pp from P2 to P3. In the following periods, there was an increase of [CONFIDENTIAL] pp from P3 to P4 and a decline of [CONFIDENTIAL]pp from P4 to P5. When considering the extremes of the series, the operating margin of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market showed a negative variation of [CONFIDENTIAL]pp, considering P5 in relation to P1.

1236. The operating margin, excluding the financial result, of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market showed fluctuations over the period analyzed, with growth of [CONFIDENTIAL] pp from P1 to P2 followed by a decline of [CONFIDENTIAL] pp from P2 to P3. In the following periods, there was an increase of [CONFIDENTIAL]pp from P3 to P4, and a decline of [CONFIDENTIAL]pp from P4 to P5. When considering the extremes of the series, the operating margin, excluding the financial result and other income, of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market showed a negative variation of [CONFIDENTIAL]pp, considering P5 in relation to P1.

	P1	P2	P3	P4
A. Domestic Market Net Revenue	100.0	88.6	95.4	103.4
Variation		(11.4%)	7.7%	8.4%
B. Cost of Goods Sold COGS	100.0	86.7	95.2	105.0
Variation		(13.3%)	9.7%	10.3%
C. Gross Profit {AB}	100.0	94.8	96.2	98.1
Variation		(5.2%)	1.4%	1.9%
D. Operating Expenses	100.0	92.0	120.1	99.9
Variation		(8.0%)	30.5%	(16.8%)
D1. General and Administrative Expenses	100.0	88.7	90.2	82.3
D2. Selling Expenses	100.0	82.8	89.1	88.7
D3. Financial Result (FR)	100.0	90.6	98.7	102.3
D4. Other Operating Expenses (Revenues) (OD)	100.0	155.9	662.2	189.0
E. Operating Result {CD}	100.0	96.3	83.4	97.1
Variation		(3.7%)	(13.4%)	16.4%
F. Operating Result (except RF) {C-D1-D2-D4}	100.0	94.9	87.2	98.4
Variation		(5.1%)	(8.2%)	12.9%
G. Operating Result (except RF and OD) {C-D1-D2}	100.0	96.0	97.1	99.9
Variation		(4.0%)	1.1%	2.9%
Elaboration: SDCOM				
Source: RFB and Domestic Industry				

1239. The unit COGS of the domestic industry with the sale of the cold rolled products manufactured in-house in the domestic market, in restated R\$ per ton, presented a decline of 13.3% from P1 to P2. In the following periods, there were consecutive increases of 10.3% from P3 to P4. Afterwards, there was a decline of 0.2% from P4 to P5. When comparing the series, the unit COGS of the domestic industry with the sale of the similar products manufactured in-house in the domestic market, in restated R\$ per ton, presented a variation of 4.7%, considering P5 in relation to P1.

1240. The gross unitary result of the domestic industry with the sale of the cold rolled products manufactured by the company in the domestic market, in restated R\$ per ton, presented a decline of 5.2% from P1 to P2. In the following periods, there were consecutive increases of 1.4% from P2 to P3 and 1.9% from P3 to P4. Afterwards, there was a significant

0%, considering P3 in relation to P1.

1243. In turn, the unit operating result, excluding the financial result domestic industry showed reductions of 4.0% from P1 to P2 and 24.4% from P1 to P3. In the periods there was a slight increase of 1.1% from P2 to P3 and 2.9% from P3 to P4. At the extremes of the series, the unit operating result, excluding the financial result domestic industry with the sale of the similar product of flat cold rolled product in the domestic market, in updated R\$ per ton, showed a negative variation of 24.4% in relation to P1.

6.1.7 Factors that affect domestic prices

6.1.7.1 Costs

1244. In the initial petition, the petitioner clarified that it would not use production cost segregated by CODIP, since the costing is assigned in the material code, considering that these codes determine a thickness range and width, and that, based on that information on the specific characteristics of width and thickness of the product, in the company's accounting system, it would not be possible to fit the codes of the product to the characteristics of CODIP.

1245. Additionally, Aperam clarified that the material code determines the thickness and width, so that the same material code could be classified in more than one specific thickness and width of the product sold. Likewise, the same CODIP could be used for different material codes.

1246. In this context, data referring to the cost of the product sold (COGS) would be used as the cost of production, since the use of the COGS would not affect the analysis, since the company produces to order, the values related to production and sales would be only one-off inventories referring to sales that have not yet been dispatched. Therefore, the unit cost of the product sold would be similar to its production cost and would be calculated by CODIP.

1247. Thus, the following table was prepared, which presents the evolution of the unit cost of the domestic industry based on its COGS. For this purpose, the quantities sold to the domestic and foreign markets, net of returns, were considered.

Evolution of Costs (in index number)				
[CONFIDENTIAL]				
	P1	P2	P3	P4
Production Cost (in R\$/t) [A + B]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variation		(12.1%)	9.2%	11.8%

1248. It was verified that the unit cost of production of the similar products manufactured by the domestic industry, in updated R\$ per ton, showed a positive variation of 6.5% from P1 to P2. In the following periods, there were consecutive increases of 9.2% from P2 to P3, 11.8% from P3 to P4. Afterwards, there was a new decline of 0.8% from P4 to P5. When considering the entire series, the unit cost of production of the similar product of flat cold rolled products manufactured by the domestic industry, in updated R\$ per ton, presented a positive variation of 6.5% from P1 to P5.

6.1.7.2 Cost/price ratio

1249. The following table shows the relationship between the unit production cost of the domestic industry's own cold-rolled flat-rolled similar product, in restated R\$ per ton, and the industry's selling price on the domestic market, in R\$ restated per ton, thus indicating the variation of this cost in the domestic industry's selling price, in the domestic market, over the periods of investigation.

Costs and Cost/Price Ratio						
[CONFIDENTIAL]/[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 . P5
<u>A. Unit Production Cost</u>	100	87.90	96.01	107.34	106.47	
Variation		(12.1%)	9.2%	11.8%	(0.8%)	+ 6.5%
<u>B. Price in the Domestic Market</u>	100.0	88.6	95.4	103.4	98.3	
Variation		(11.4%)	7.7%	8.4%	(4.9%)	(1.7%)
<u>C. Cost / Price Ratio [A/B]</u>	100.00	99.21	100.66	103.81	108.27	
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1250. The evolution of the share of cost in the domestic industry's selling price of the similar product of flat cold rolled products manufactured in-house in the domestic market, in R\$ per ton, only showed a decline of [CONFIDENTIAL] pp from P1 to P2. In the following periods, there were consecutive increases in [CONFIDENTIAL] pp from P2 to P3, [CONFIDENTIAL] pp from P3 to P4, and [CONFIDENTIAL] pp from P4 to P5. When considering the extremes of the series, the share of participation of the cost in the domestic industry's selling price with the sale of flat cold rolled products manufactured in-house in the domestic market, in restated R\$ per ton, presented a positive variation of [CONFIDENTIAL] pp, considering P5 in relation to P1.

6.1.7.3 Comparison between the price of the product under investigation and the price of the similar product

Marine (V/RMM), and c/ hospitalization expenses, estimated at 0.2% of the CIF value of the questionnaires received in this investigation.

1254. It should be noted that the unit value of the AFRMM was calculated as a percentage of 25% on the value of international freight referring to each of the imports mentioned in the RFB data, when applicable. It should be noted that it was taken into account the tax levied on certain import operations, such as, for example, those via air transport, those in the Manaus Free Trade Zone and those carried out under the protection of the specific tariff.

1255. Finally, each total value mentioned above was divided by the total quantity of the product under investigation, in order to obtain the value per ton of each of these items. These values were then summed, arriving at the CIF internal price of the investigated imports.

1256. It should be noted that the characteristics of the product (CODIP) were considered, and the channel (industrial user/final consumer and distributors) were considered, and the product (CODIP) were identified through the detailed description of each one of the imports contained in the RFB import data and also in the information contained in the questionnaire. It is noteworthy that, in comparison with the data presented in the questionnaire, some adjustments were necessary to allow a better comparison between the investigated product and the similar national product.

1257. In this sense, the classification by CODIPs was based on the description of the product in the official data, making it possible to identify, for most imports, the CODIP up to the last digit of the imported product (finish). It should be noted that, for those CODIPs in which it was not possible to identify all such characteristics, the closest possible characteristics were used. Thus, the classification for this final determination incorporates a greater level of detail compared to that at the beginning of the investigation.

1258. The internal prices of the product from the investigated imports were updated based on the IPA-OG-Industrial Products, in order to obtain updated values for comparison with them with the prices of the domestic industry.

1259. The following table shows the calculations made and the undercutting for each damage investigation period.

Interned CIF average price and undercutting - Origin investigated [RESTRICTED]						
	P1	P2	P3	P4	P5	
CIF Price (BRL/t)		100.0	73.9	75.3	97.8	92.2
Import tax (R\$/t)		100.0	85.5	87.2	113.2	106.0
AFRMM (BRL/t)		100.0	191.8	277.5	183.6	235.0

an increase in unit production costs at a higher level than the price increase, extremes of the period, since there was an increase in production costs accompanying the average unit sales price of the domestic industry in the domestic market. Between production cost and selling price recorded continuous increase from P1 to P2, [CONFIDENTIAL]pp from P2 to P3, [CONFIDENTIAL]pp from P3 to P4 and [CONFIDENTIAL]pp from P4 to P5, as indicated in item 6.1.7.2. Considering the extremes of the series, in which period the average selling price of the similar product decreased by 1.7% and the total cost increased by an increase of [CONFIDENTIAL]pp

6.1.8 Cash flow

1264. The following table shows the cash flow presented by the domestic industry. Due to the impossibility of the company presenting complete and exclusive cash flows for rolled products 304, the cash flow analysis was carried out based on the petitioner's businesses.

Cash Flow (In index number)						
[CONFIDENTIAL]						
	P1	P2	P3	P4	P5	P1 - P5
Cash flow	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	
Variation		102.1%	4,486.1%	(47.4%)	274.2%	+ 286.0%
Source: Domestic industry and RFB.						
Elaboration: SDCOM.						

1265. It was observed that the total net cash generated in domestic industry was negative in P1, increased by 102.1%, becoming positive in P2. Then, it showed a reduction between P2 and P3, a reduction of 47.4% between P3 and P4 and a new increase of 274.2% between P4 and P5. When considering the extremes of the series (from P1 to P5), there was a net increase in the cash flow generated by the company.

6.1.9 Return on investments

1266. The following table presents the return on investments, comparing the profit values of the domestic industry by the total assets values of each period in the financial statements of the companies. That is, the calculation refers to the profits and losses as a whole, and not just those related to the like product.

Return on Investments (In index number)						
[CONFIDENTIAL]						
	P1	P2	P3	P4	P5	P1 - P5

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

continuation/resumption of damage.

1269. The general liquidity ratio indicates the ability to pay short-term and the current ratio indicates the ability to pay short-term obligations.

Ability to raise funds or investments (In index number)						
[CONFIDENTIAL]						
	P1	P2	P3	P4	P5	P1 - P5
General Liquidity Index (ILG)	100.0	98.6	95.9	101.4	101.4	
Variation		[Conf.]	[Conf.]	[Conf.]	[Conf.]	[Conf.]
Current Liquidity Ratio (CLI)	100.0	107.5	111.9	117.5	110.6	
Variation		[Conf.]	[Conf.]	[Conf.]	[Conf.]	[Conf.]

Source: Domestic industry and RFB.

Elaboration: SDCOM.

1270. The general liquidity index fell by 1.4% between P1 and P2 and Then, it presented an increase of 5.6% between P3 and P4, remaining stable considering the entire analysis period, from P1 to P5, this indicator increased by .

1271. The current liquidity index, in turn, behaved as follows: growth 4.1% between P2 and P3 and 5.0% between P3 and P4, followed by a decrease The aforementioned indicator presented an accumulated growth of 10.6% betw

6.1.11 The growth of the domestic industry

1272. The domestic industry's sales volume to the domestic market sales volume recorded in P4 (11.2%), but higher than that recorded in P1 (17.3%). of the domestic industry is characterized by an increase in the volume of sales can be seen that the domestic industry grew, in absolute terms, during the inves

1273. On the other hand, when the extremes of the series are analyzed, 17.3% rise in domestic industry sales volume on the domestic market was accounted from P1 to P5, of the Brazilian market. Thus, the domestic industry reduced its s ([RESTRICTED] pp) throughout the damage investigation period.

1274. From P4 to P5, the 11.2% reduction in sales volume was accompanied in the Brazilian market over the same period. In this sense, the domestic reduction in its sales, having reduced its share in the Brazilian market by [REST question.

6.2 Statements after the Technical Note regarding the damage

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

exports. For the GOI, paragraph 1028 of the NTFE hides the growth of net revenue of the domestic industry, which from P1 to P5 managed to increase, which corresponds to the domestic industry to maintain the price as expressed in paragraph 1032 of the NTFE, and the price sold by the Brazilian domestic industry fell only slightly. He also added that the cash flow and an increase in the Cost of goods sold by [RESTRICED] %, while the net revenue [RESTRICED] %, which would not be related to imports. There would also be an increase in investment and in the ability to raise funds.

1279. The GOI added that even though paragraph 1055 of the NTFE states that the price was crucial in increasing the COGS, this would be the real challenge for the domestic industry in the face of the challenges arising from the investigated imports.

1280. Aperam, in its final statement, highlighted that the evolution of the domestic industry demonstrates the existence of damage to the domestic industry. He also referred to the fact that, at the final hearing of the process in question, stated that the damage to the domestic industry would have been verified only in P5 and that, therefore, it would not be possible to attribute the cause of such damage would be the object imports of the investigation. For Aperam, it would be inconceivable, as it would demonstrate that the entity understands that the domestic industry must suffer damage for several years, while importers would benefit under the current distortedly low prices practiced on imports, before it seeks to adopt the appropriate measures to defend against unfair practices adopted by other players in the Brazilian market. He also sought the adoption of appropriate compensatory measures in view of the current Brazilian regulations. It terminated Aperam by reiterating SDCOM's conclusions regarding the existence of harm and causation.

1281. PT IRNC, in its manifestations regarding the errata to the Technical Report, alleged material error in the table "Income Statement in the Domestic Market" between P1 and P2, drops 13.3% and the Revenue Net MI drops 11.4% - negative change in the gross result, this correlation, the gross result between P1 and P2 deteriorated by 5.2% - which would not make sense when there is a drop in costs greater than the drop in price. He also stated that the COGS has a positive variation greater than the price, and the gross result had a negative variation, which would be counterintuitive in a scenario of rising costs at a level higher than the current. Regarding the calculation of the operating result, the index number of line E is fully equivalent to the index number of line F, except RF, line F,

6.3 SDCOM's comments

1282. Regarding the elements of the damage analysis, although there was an improvement in some indicators, the fact is that, as already shown, there was a decrease in some indicators, such as a decrease in the share of domestic industry sales in the Brazilian market, a decrease in the gross result, gross margin, operating margin and in the worsening of the cash flow.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

between P1 and P5, but with a decrease of 11.2% between P4 and P5. This was accompanied by the deterioration of operating results if the extremes of the period are registered, from P1 to P5: decreases of 24.0% in the operating result (fall of 40.7% of the operating result excluding the financial result (32.1% decrease from P4 to P5) and of the operating result excluding the financial result and other expenses (32.9% decrease from P4 to P5);

b) despite the growth in sales by the domestic industry in the domestic market in the previous item, there was a decrease in the share of sales by the domestic industry in the domestic market (reduction of [RESTRICED] pp from P1 to P5 and of [RESTRICED] pp from P4 to P5). The domestic industry presented an increase of 31.0% when comparing P1 with P5;

c) the domestic industry's production of cold rolled 304 products in the investigation period, decreasing by 26.7% from P1 to P5 and by 13.6% from P4 to P5, accompanied by stability in installed capacity, which led to a decrease in the occupancy rate of installed capacity from P1 to P5 ([RESTRICED] pp) and from P4 to P5 ([RESTRICED] pp). The occupancy rate also seemed to have been influenced by the drop in sales in the analyzed period (-84.2%), mainly between P4 and P5 (-40.6%);

d) inventories decreased by 39.1% from P1 to P5. Between P4 and P5, there was a decrease of 2.0%;

e) the number of employees linked to production decreased over the period. Indeed, from P1 to P5 the indicator recorded a fall of 16.9%, while from P4 to P5 it was 11.3%. Productivity per employee showed a similar behavior, recording a decrease of 11.3% and 2.6% from P4 to P5;

f) the net revenue obtained by the domestic industry in the domestic market decreased from P1 to P5, driven by the growth in domestic industry sales in the period (increase of 11.3% between P1 and P4. Between P4 and P5, there was a decline of 15.5%. It is worth noting that the growth in sales was lower than the growth in domestic demand, which led to a decline in the domestic industry;

g) despite the growth in net revenue, the gross result decreased by 30.8% from P4 to P5, while the gross margin presented a negative evolution of 11.3% from P1 to P5, and from [CONFIDENTIAL] pp from P4 to P5. The operating result, as previously mentioned, decreased by 24.0% between P1 and P5, and by 40.7% between P4 and P5. In the same sense, the operating result excluding the financial result showed a decline of [CONFIDENTIAL] pp from P1 to P5, and of [CONFIDENTIAL] pp from P4 to P5;

h) there was a drop in the price practiced by the domestic industry in the domestic market between P1 and P5, and of 4.9% between P4 and P5. In turn, the cost of production decreased between P1 and P5, while between P4 and P5 there was a reduction of 0.8%. Such a reduction was also observed in the cost of production excluding the financial result and other expenses;

from P4 to P5, when there was an increase of [RESTRICTE] % in the volume imp

1289. Regarding the participation of imports of cold rolled products it was found that in P1 imports from the investigated origin were responsible Brazilian market and imports from other origins accounted for [RESTRICTE] increase in imports from Indonesia in the damage analysis period, the share [RESTRICTE] %, in P5, and only in the period from P4 to P5 did the share quintuple, when it went from [RESTRICTE] % to [RESTRICTE] %. On the other imports from other origins decreased to [RESTRICTE] %, in P5.

1290. It was assessed that the increase in the volume of imports ori market gains to the detriment, mainly, of the share of domestic industry sales w [RESTRICTE] % and, in the last period, represented [RESTRICTE] %. In this from the investigated origin increased their share in the Brazilian market, from P while the domestic industry lost [RESTRICTE] pp and imports from [RESTRICTE] pp , in the same period.

1291. The following table details the distribution of the Brazilian mar 304, considering the portions that fell to sales by the domestic industry of ow those related to imports from the investigated origin and from other origins.

Brazilian market share [RESTRICTE]			
	domestic industry sales	Investigated origin imports	Imports from other ori
P1	100.0	100.0	100.0
P2	109.7	116.7	68.3
P3	100.5	100.0	98.2
P4	100.3	516.7	88.2
P5	89.5	2,400.0	75.3
Source: Petitioner and RFB; previous tables. Elaboration: SDCOM.			

1292. The highest undercutting value for the damage investigation 6.1.7.3, occurred in P3. In P1, P2 and P4 there was no occurrence of undercutting, as a result of the decrease in the price of the product from th intensity greater than the decrease in the price registered by the domestic indu it was in P5 that the largest volume of the analyzed period was imported.

1296. In view of the indicated analyses, it was verified that there were no significant price increases with evidence of actionable subsidies on the indicators of the domestic industry in the period of damage analysis, especially between P4 and P5.

7.2 Possible other factors causing damage and non-attribution

7.2.1 Volume and price of non-subsidized imports

1297. Based on the analysis of Brazilian imports of cold rolled product, imports from other sources fluctuated over the damage analysis period (- 20.0% from P2 to P3, - 4.9% from P3 to P4, - 15.0% from P4 to P5, and - 1.4% from P1 to P2).

1298. In this sense, imports from other origins, except those from the investigated origin, had a share in the Brazilian market only in period P3 ([RESTRICED] pp). When compared to the damage analysis period, the share of these imports in the Brazilian market decreased by 1.4%.

1299. On the other hand, imports from the investigated origin showed a significant increase in the period, especially in P5 (increase of 357.9% in relation to P4), which coincides with the deterioration of domestic industry indicators.

1300. It should also be noted that the average CIF price in US dollars of imports from other sources was higher than the price of imports from the investigated source. It was also observed that in no period did imports from other origins enter the Brazilian market at prices that were undercut in relation to the price of the domestic industry, that is, that the average CIF internal price of non-subsidized imports were higher than the price of the domestic industry in the Brazilian market, as shown in the table below.

Interned CIF average price and undercutting - Other origins [RESTRICED]					
	P1	P2	P3	P4	P5
CIF Price (BRL/t)	100.0	106.6	96.7	113.0	104.0
Import tax (R\$/t)	100.0	105.0	100.9	113.0	103.0
AFRMM (BRL/t)	100.0	105.7	112.2	97.3	102.7
Hospitalization expenses (R\$/t)	100.0	106.6	96.7	113.0	104.0
CIF Interned (BRL/t)	100.0	106.4	97.2	112.9	103.9
CIF Admitted (updated BRL/t) (a)	100.0	99.5	89.4	94.3	81.6
Domestic industry price (updated R\$/t) (b)	100.0	88.6	95.4	103.4	98.3
Undercutting (updated BRL/t) (ba)	-100.0	-114.5	-81.2	-82.0	-58.8
Source: Domestic industry and RFB.					
Elaboration: SDCOM.					

considering the entire damage analysis period, the Brazilian cold rolled considering P5 in relation to P1.

1306. Thus, there was no contraction in demand for cold rolled products during the analysis period.

1307. In addition, during the analyzed period, no changes were observed in the pattern of the Brazilian market.

7.2.4 Trade restrictive practices by domestic and foreign producers and their effects on them

1308. Restrictive practices to the trade of cold rolled products 304 were not identified by the domestic industry or by foreign producers, nor factors that affected competition.

7.2.5 Technological progress

1309. Neither was the adoption of technological developments nor the preference of imported products over national ones being identified. The companies under investigation and those manufactured in Brazil compete with each other, as indicated in the analysis.

7.2.6 Export performance and production of other products

1310. As presented in item 6.1 of this document, the sales volume of the domestic industry to the foreign market by the domestic industry showed a retraction in all periods of analysis, with a decrease of 84.2%, considering P5 in relation to P1.

1311. When analyzing the period-by-period behavior, it is observed that, in absolute terms, the retraction reached [RESTRICED] t, the highest volume of sales in the periods. However, the domestic industry began to present in period P2, in relation to the previous period, an improvement in the volume of internal sales, in an amount of [RESTRICED] t, and in the external market (+ 27.6% and [RESTRICED] t), and in the financial indicators of the domestic industry there was no deterioration in domestic industry indicators that could be attributed to the performance in this period.

1312. That notwithstanding, after a relatively smaller fall from P2 to P3, in P5 there were new sharp falls in sales to the foreign market of the similar magnitude as in the domestic industry, both in absolute terms as in relative terms. Considering the increase in P3, these decreases corresponded to 54.0% and [RESTRICED] t in P4, and 71.0% and [RESTRICED] t in P5, in relation to the export volumes of P3. It can be inferred that these drops, although in absolute terms, reference (the only one in which there was not such a relatively expressive drop in sales to the foreign market and which, still, did not show growth in the equivalent volume of sales to the domestic market, unlike P2), influenced the decrease in the production of the domestic industry of 9,

1315. Given that, in these two periods (P4 and P5), the domestic industry, among others, in its gross margin and in its operating margin excluding the operating expenses/revenues, in addition to presenting a worsening in its costs related to the similar product it produces and sells in the Brazilian market, with the extent the worsening of its export performance and the drop in the production of the product produced by it may have impacted its scenario of observed damage.

1316. In this sense, even considering that the very existence of Indonesia contributed to the worsening of the export performance of the domestic industry, a scenario analysis was carried out to separate and distinguish the effects of the reduction in the production of other products, with the objective of estimating the effects of these two factors on the damage observed in the financial indicators of the domestic industry. The non-attribution exercise considered the following assumptions:

a) exports of the like product produced by the domestic industry in periods P4 and P5 remaining identical to the volume verified in P3.

[RESTRICTED]

similar product	P3	P4	P5
Effective external sales (t) (a)	100	46.0	27.3
Adjusted foreign sales (t) (b)	100	100	100
Difference in foreign sales (ba)	-	100	134.6

Source: Petitioner.

Elaboration: SDCOM.

b) maintaining the volume of foreign sales of the like product produced by the domestic industry in periods P4 and P5 would imply an increase in the production of the like product by the domestic industry in these periods. Obtaining the production volume of the like product considered the difference in foreign sales in the previous table. Bearing in mind that the stock of the domestic industry was lower in periods P4 and P5, no adjustment was made in the sense of discounting the variation in stocks due to lower sales volume.

[RESTRICTED]

similar product	P3	P4	P5
Effective production (t) (a)	100	90.1	77.9
Adjusted production (t) (b)	100	104.5	97.3
Difference in production (ba)	-	100	134.6

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Total Production	P3	P4	P5
Effective production (t) (a)	100.0	95.1	85.5
Adjusted production (t) (a)	100.0	101.4	99.2
Difference in production (ba)		100.0	220.9

Source: Petitioner and previous tables.

Elaboration: SDCOM.

e) the simulated increase in production would be limited to the effective production presented in item 6.1.3. It was verified, however, that the simulated total production would not exceed the effective installed capacity.

f) the unitary variable costs would remain unchanged, as incurred unitary fixed costs were recalculated, in order to reflect the dilution of the total fixed costs incurred as a result of the greater simulated total production volume.

[CONFIDENTIAL]

Effective Production Cost (R\$/t)	P3	P4	P5
Effective variable unit costs	100.0	114.9	113.0
Effective fixed unit costs	100.0	91.6	97.2
Total unit cost of production (fixed + variable) effective	100.0	111.8	110.9

Source: Petitioner and previous tables.

Elaboration: SDCOM.

[CONFIDENTIAL]

Adjusted Production Cost (R\$/t)	P3	P4	P5
Effective variable unit costs	100.0	114.9	113.0
Adjusted fixed unit costs	100.0	78.8	76.0
Total unit cost of production (fixed + variable) adjusted (R\$/t)	100.0	110.1	108.0
Variation in total unit cost (Effective x Adjusted)	-	100.0	163.0

Source: Petitioner and previous tables.

Elaboration: SDCOM.

Brazilian market to assess the impact on its financial indicators arising from its drop in production of other products. Even though the proposed scenario does not affect the industry's sales volume in the domestic market and, therefore, there is no change in revenue, operating expenses showed variations. This occurs because the domestic operating expenses taking into account the share of the net operating revenue of each product by type of market (domestic or foreign) in relation to its total net operating revenue. The increase in the volume of foreign sales led to an increase in the net operating revenue. In the proposed scenario, there was, as a consequence, an increase in the amount of net operating revenue of APERAM. Below,

[RESTRICTED]/[CONFIDENTIAL]

Foreign Market Sales	P3	P4	P5
Effective volume (t)	100.0	46.0	27.3
Adjusted volume (t)	100.0	100.0	100.0
Price (BRL/t)	100.0	117.2	113.8
Effective NOR (thousand BRL)	100.0	53.9	31.1
Adjusted NOR (thousand BRL)	100.0	117.2	113.8
NOR ME Difference (thousand BRL)		100.0	130.8

Source: Petitioner.

Elaboration: SDCOM.

[CONFIDENTIAL]

Net Operating Revenue (thousand BRL)	P3	P4	P5
NOR Total effective APERAM	100.0	120.2	112.5
Adjusted Total APERAM NOR	100.0	123.4	116.7
Difference		100.0	130.8

Source: Petitioner.

Elaboration: SDCOM.

[CONFIDENTIAL]

NOR MI Participation	P3	P4	P5
ROI MI (thousand BRL)	100.0	114.6	96.8
Total APERAM effective NOR (thousand BRL)	100.0	120.2	112.5
Adjusted APERAM Total NOR (thousand BRL)	100.0	123.4	116.7

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Source: Domestic industry.

Elaboration: SDCOM.

1317. Based on the assumptions described above, it is possible to retraction of sales to the foreign market and the reduction in the production margins and financial results of the domestic industry, simulating an adjusted in the data collected above.

Income Statement for the Simulated Year (adjusted in P4 and P5 to s effects of the drop in exports and the reduction in the production of other pr Sales

	P1	P2	P3	P4*	P5*
Raw score	100	121.1	120.1	136.7	100.2
Variation		21.1%	-0.8%	13.8%	-26.7%
Gross Margin (%)	100	107.1	100.8	100.1	86.9
Variation		[CONF.]	[CONF.]	[CONF.]	[CON
Operational result	100	123.0	104.1	140.9	94.2
Variation		23.0%	-15.3%	35.3%	-33.1%
Operating margin (%)	100	108.8	87.4	103.2	81.7
Variation		[CONF.]	[CONF.]	[CONF.]	[CON
Operating Result (Except RF ¹)	100	121.2	108.8	138.6	100.8
Variation		21.2%	-10.2%	27.4%	-27.3%
Operating Margin (Except RF) (%)	100	107.2	91.4	101.5	87.4
Variation		[CONF.]	[CONF.]	[CONF.]	[CON
Operating Income (except RF and OD) (%)	100	122.5	121.2	140.4	100.9
Variation		22.5%	-1.1%	15.9%	-28.1%
Operating Margin (except RF and OD)(%)	100	108.4	101.8	102.9	87.5
Variation		[CONF.]	[CONF.]	[CONF.]	[CON

¹ Financial Result.

² Other operating income or expenses.

* Results and margins for the period adjusted according to the assun

Source: Domestic industry.

Elaboration: SDCOM.

the production volume of the like product decreased by 27.1% from P1 to P5 and

1322. Thus, there is no deterioration in domestic industry indicators productivity.

7.2.8 Captive consumption

1323. There was no captive consumption by the domestic industry period.

7.2.9 Imports or the resale of the imported product by the domestic industry

1324. It should be noted that there were no imports or resale of the domestic industry during the damage analysis period.

7.2.10 The practice of dumping in Indonesian exports

1325. It should be noted that, as pointed out in item 7.2.1 above, the practices in exports from Indonesia and South Africa was closed, without analysis concluded by the lack of reliability of the data contained in the petition for initial timeliness of the alterations, in the aggregate, presented in terms of evidence existence of damage to the domestic industry being impaired, under the terms No. 8058 of 2013.

1326. Thus, the damage to the domestic industry cannot be attributed dumping.

7.3 Statements prior to the Technical Note regarding the causal relationship

1327. Initially, the IRNC mentioned that there was no sufficiently between the damage perceived by the domestic industry - especially in P5 - investigated in order to justify the application of compensatory measures.

1328. According to the investigation data, APERAM performed well in with improvements in all its indicators. Exception only in P5, when there is a drop the domestic market concomitant with an increase in the volume of imports in conclusion of SDCOM in the Opening Opinion.

1329. It would be exactly during this period that a drop in the productivity of the industry is observed, which, in the understanding of the IRNC, originates from the drop accompanied by the price. However, it would not be possible to carry out a profitability, since P5, specifically, is configured as a period mixed with other exports and sales of other products by the domestic industry.

hypothesis that the same error had been committed with the variation indicator treatment was put on the agenda.

1331. In light of this scenario, with regard to the considerations required for the exercise, within the scope of the causality and damage analysis, the IRNC requires the Adjusted Income Statement be reviewed, in the terms indicated in the present report.

1332. Aprodinox, in statements on December 23, 2021 and June 14, 2022, explained the possible impacts on the petitioner resulting from the imports, explained that if the investigated origin would have proved to be negligible throughout the entire period, causing harm to the petitioner.

1333. He highlighted that in the Opening Opinion that supported the proceeding, the investigating authority informed that there was a considerable increase in imports from the investigated origin. However, Aprodinox argued that, as the data were presented, it was not possible to identify the representativeness of imports from Indonesia in the periods 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90; and in this context, although the import volume, 76% of this import volume in P5 would still come from other origins.

1334. Thus, for Aprodinox, even with all the increase in the volume of imports, it would be verified that 2/3 of that total imported would still come from other origins. The application of anti-dumping measures for origins China and Chinese Taipei.

1335. Furthermore, Aprodinox noted that domestic industry sales would grow at the same pace as the market between P1 and P4; so that only in P5, the growth of the market would be accompanied by the sales of the domestic industry.

1336. Furthermore, for Aprodinox, the average price of the domestic industry would have remained practically the same, in the comparison between P1 and P5, and would have varied at the same pace as inflation; so that this fact would indicate that a significant part of the period would have been passed on to prices, and that the only periods in which there was an increase in updated prices were P2 and P3, years in which imports from Indonesia would not have any effect on the domestic industry.

1337. In this table, Aprodinox, considering the evolution of domestic industry prices practiced by Aperam, noted that the updated revenues from sales in the domestic market have increased by 15% in P5 when compared to P1; so that the fact that in P5 there was a significant pace of growth of domestic industry sales, with a loss of share for imports, would not justify programs that would represent supposed subsidies granted by the Indonesian government. It would exist, stress- if at least since 2014.

industry; and in P4, the first period of large increase in imports from the investor would not be observed.

1343. Thus, Aprodinox understood that everything indicates that the increase would be the result of an increase in domestic industry prices in a scenario of falling imports; the domestic industry was exercising its market power, charging higher prices than the competition.

1344. In this context, Aprodinox emphasized the inefficiency of the domestic industry which would have operated with negative net profits between P1 and P3; and in period P4, from Indonesia, the petitioner had positive net profits, which is a sign of the impact of Indonesia on Aperam's results.

1345. Thus, for Aprodinox, there would be no elements that substantiate the alleged Indonesian government subsidy programs and the results of the domestic industry.

1346. He added that Aperam would be a monopolist in the Brazilian market due to a series of anti-dumping measures and by relations with competing distributors, leaving it having little incentive to remain efficient; and from 2019 Aperam would have exclusive distributors which would have passed to the condition of non-exclusive, so that the increase in imports motivated the increase in imports and non-practices of alleged subsidies by exporters.

1347. The IRNC, in a statement dated September 9, 2022, underlined the lack of a sufficiently clear causality relationship between the damage perceived by the domestic industry and the volume of imports investigated that could justify the application of compensatory measures.

1348. He added that Aperam would have performed well in the domestic market with improvements in all its indicators; with the exception of P5, with a drop in the sales volume on the domestic market concomitant with an increase in the volume of imports, concomitant with a drop in the profitability of the domestic industry which, in the opinion of the IRNC, originates from the increase in its costs not accompanied by the price.

1349. However, P5 is configured as a period mixed with other factors such as the drop in the sales volume of other products of the domestic industry. The calculations of the exercise of non-attribution made by SDCOM would present a logical postulate correction in the Technical Note of Essential Facts. For IRNC, SDCOM's summary, the following assumptions: 1. kept fixed sales to the ME from P3 onwards; 2. kept the volumes of foreign sales of the similar product produced by the domestic industry; 3. consequent increase in production volume; 3 kept the production of other products fixed from P3 onwards, so that the combination of incremental volumes indicated in item 1348.

negligible decline between P4 and P5; the unitary variable cost in P5 being even higher than in P4, the numbers presented by SDCOM would be wrong.

1353. For IRNC, fixed unit costs seem not to be those presented by SDCOM. The data indicates a drop of 8.4% between P3 and P4 and a subsequent increase of 15.7% between P4 and P5.

1354. For the IRNC, the same analyzes and differences found seem to be consistent with the well as for the adjusted calculation of general, administrative and financial expenses.

1355. For IRNC, if the adjusted production had created a scenario where unit fixed costs and expenses in both P4 and P5, it would not be logical that P5 could have a unit fixed cost greater than its effective one, which is why the variation of unit fixed costs, when compared to the benchmark, follows the pattern of decrease in P4 and increase in P5, but without reaching the level reached in P3.

1356. In addition, IRNC pointed to a possible formula error in the calculation of the unit fixed cost on page. 222 of the Opening Opinion, which would simulate the income statement for the exercise, having found that the calculated variations were not measuring the difference between the unit fixed cost and its immediate predecessor - of P1/P2, P2/P3, P3/P4 and P4/P5.

1357. The IRNC concludes that the excessive lag of the data would not be consistent with the and positive character of the proofs and evidence for the determination of damage caused by the subsidies against the multilateral precedents addressed. The IRNC requested closure of the proceedings without resolution of the merits and requested that the Adjusted Income Statement be revised.

1358. Aprodinox, in a statement dated September 9, 2022, reiterated its position on the elements that substantiate the causal link between the alleged subsidy program and the results of the domestic industry. The reasons that justify the causal link are demonstrated below. Domestic industry sales grew at the same pace as the market. Only in P5, market growth was not accompanied by domestic industry sales, which was due to the subsidies under discussion, but by the movement of the main distributors of Aprodinox, in a condition of exclusive distributors, with no possibility of importing products from other countries or distributors.

1359. The fact that in P5 there was a reduction in the pace of growth of domestic industry sales, with a loss of share for imports, would not be related to the programs that were the subject of the subsidies granted by the Indonesian government that exist, supposedly, at least in part, in the effect on domestic industry in P5 would not be related to alleged subsidy programs.

represented a small percentage of total imports, and would deal with a volume of alleged damage.

1363. One last aspect to be emphasized would be related to the impact of Aperam, which would have operated with negative net profits between P1 and P5. Even if increased imports from Indonesia, the company would have had positive net profits. This demonstrates the irrelevance of imports from Indonesia on the results of Aperam — a company that would remain efficient, since it would be a monopolist in the Brazilian market, being protected by antidumping measures and by relationships with distributors competition from other companies.

1364. It would be clear that there is no causal link between the investment in Indonesia and the damage to the domestic industry, therefore there is no motivation for applying antidumping measures to Indonesian imports.

7.4 Statements after the Technical Note regarding the causal relationship

1365. Aprodinox, in its final statement, pointed out that the increase in sales of the reaction of the main Brazilian distributors to the anti-competitive practices of the petitioner, in response to what was exposed in the Technical Note, the increase in general to P5, of the order of 35%, began to occur when the exclusive distributors transferred their sales to the petitioner's practices; in such a way that this increase was initially concentrated in the application of anti-dumping duties in force for other origins, applied to Germany, Finland, Chinese Taipei and Vietnam, under the terms of CAMEX Resolution No. 10, which provided that the extinction of rights for Germany, South Korea, Finland and Vietnam occurred by SECINT Ordinance No. 4.

1366. Aprodinox argued that during practically the entire period of investigation, the domestic importers had as regular and established suppliers, effectively, the exporters from the United States of America, in South Africa and in Malaysia; with Indonesia, the 2nd largest export origin, it had a substantially positive trade balance in the period, it was available to export to Brazil throughout the period.

1367. In this sense, for Aprodinox, there are no elements that support the claim of alleged Indonesian government subsidy programs and the results of the domestic industry sales grew at practically the same pace as the market between P1 and P5, which offsets the fact that domestic industry sales grew at a faster pace than the Brazilian market. Only in P5 the market growth was not accompanied by the sales of the domestic industry.

1368. Furthermore, Aprodinox added that the price remained practically stable in the comparison between P1 and P5, varying with inflation; which indicates that the cost of production was passed on to prices.

market power, with prices higher than those of the imported product.

1374. Thus, Aprodinox understands that, despite the increase in Indonesian imports would not have the power to harm the domestic industry.

1375. Aprodinox emphasizes the inefficiency of Aperam, which operates between P1 and P3, and that in periods of increased imports from Indonesia, the profits.

1376. Aprodinox notes that there are significant imports from the in (and a little in P4), a period in which the company obtains a positive return on possible, based on the indicators of the domestic industry, establish any relationship and damage; since the increase in imports was not motivated by the beginning migration of distributors to the DRA condition (non-exclusive), it is possible to the indicators of the domestic industry only in P5.

1377. For Aprodinox, the objective of working with 5 (five) years/60 the damage involves the need to verify a consistent movement for some period results of the domestic industry motivated by the constant increase in subsidized

1378. In this scenario, Aprodinox understands that in the present case, which one can talk about some damage to the domestic industry, with no cause and the damage to the domestic industry, concentrated in P5 and related to the subsidy.

1379. The GOI questioned in its final statement the existence of imports, since the first indicator affected would have been domestic sales. However, increase in sales during the investigation period shows the resilience of the Brazilian impact of other origins, whose participation varies from [RESTRICTED] % in the forgotten. Thus, SDCOM's analysis would only have focused on Indonesia, without origins or explaining the increase in domestic sales.

1380. PT IRNC, in its statement regarding the errata to NTFE, points non-attribution carried out regarding the decrease in exports and the profit resulted in the existence of any damage would be a very tenuous damage, substantial and very clearly demonstrated by the domestic industry, in the 1.751/1995.

1381. For PT IRNC, the damage, if eventually existing and quantifiable, prices greater than the drop in costs. However, when performing the non-attribution verified that all the damage suffered by Aperam boils down to the -4.93% price; therefore, the elimination of the harmful effect of the decrease in its exports

increase in total imports cited by Aprodinox, concentrated on imports from Indo

1384. Regarding the analysis of other factors and non-attribution, con the GOI, imports from other sources were duly analyzed, as indicated in item 7 these did not present undercutting in any period and, still, decreased in pa period. With regard to the analysis of the GOI on sales by the domestic ind believes that the Brazilian national industry is resilient, it nevertheless verified damage and a causal link between the investigated imports and the aforeme there was a relative deterioration of several indicators of the domestic industry and 7.1 of this final determination.

1385. Aprodinox's statement is also unfounded when it points out tha the result of a relative increase in prices in the domestic industry, given [RESTRICTED] % from P4 to P5, and even so it was verified undercutting th product in relation to the price of the domestic industry. It should also be noted per ton of imports fell [RESTRICTED] %. In this scenario, what was observed w attempt to compete with subsidized imports - so much so that there was a ge indicators from P4 to P5.

1386. Pursuant to § 2 of art. 21 of Decree No. 1751 of 1995, the subsidized product must be evaluated with the objective of assessing w insignificant and whether there has been a substantial increase in imports, bo relation to production or for consumption in Brazil.

1387. As informed in item 5.4 of this document, the volume of impo 304 originating in Indonesia increased [RESTRICTED] tons in absolute terms, relative terms, the participation of these imports in the Brazilian market went fro [RESTRICTED] % in P5, revealing a positive evolution of the participation of th magnitude of [RESTRICTED] pp In relation to national production the volume rolled products 304 from the investigated origin represented [RESTRICTED] % and started to represent [RESTRICTED] % in P5, revealing a positive variation analyzes point to the growth of imports investigated in the damage analysis po Brazilian Regulation.

1388. Furthermore, under the terms of art. 22 of Decree nº 1.751, of compensatory measures, it is necessary to demonstrate a causal link between product and the damage to the domestic industry based on the examination of:

I - relevant evidence; It is

the explosion of Brazilian imports of subsidized Indonesian product in P4 and, es

1392. With regard to the comments on the non-attribution analysis, causal link analysis comprises both the assessment of the impact of subsid industry (positive analysis) and the separation and distinction of the effects analysis), which cannot be attributed to the imports under investigation. In the p the positive part of the analysis, there was an increase in the volume of subs terms and in relation to the Brazilian market; the effect on the price of the dom and the consequent impact of such imports on the domestic industry was clear out. With regard to the negative part of the analysis (non-attribution), it appears

1393. It should be noted that the calculations were updated determination, to reflect the adjustments in the domestic industry indicators and verification and to correct typing errors when publishing the Technical Note. Th "Industry Unit Operating Expenses" was changed to, in fact, present values in values. Such alterations had an impact on some tables, without, however, cha the deterioration of the indicators, especially the profit margins, is still present scenario.

1394. IRNC tries to reproduce the non-attribution exercises carried out opinion and alleges that the investigating authority made material errors. SDC point is that the logic of the exercise adopted is relatively simple, as this type of already been carried out by SDCOM on several occasions. However, trying without having access to confidential data is a practically impossible task, so correctly pointed out elements to be corrected (due to the incorrect use of inde version), it is not you can expect it to be able to match the results obtained by S use of confidential data.

1395. All the assumptions of the exercise were explained repeatedly unitary variable costs were not adjusted in the proposed counterfactual exercise premise that such costs grow linearly with production volume, keeping the rat production) unchanged. Fixed unit costs, however, can be diluted due to increas basic premise of the year. Therefore, everything else constant, the increase in pr reduction in unit fixed cost. Thus, the effect of the counterfactual exercise is the through the dilution of fixed costs, which are apportioned by a production hyp production actually occurred in the period object of the adjustment. It should a attribution exercise presented is just one more tool for SDCOM to separate an other factors, which cannot be attributed to the investigated imports. Howe cornerstone of the entire causality analysis carried out by SDCOM since the be as PT IRNC made it appear in its manifestations.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

compared to P3.

1399. It should also be noted that the proposed exercise has a greater impact on maximizing export performance in a remotely possible way, as it assumes that Indonesia starts to be able to supply the similar product to the whole world. It is not to be believed that a similar movement of representative and intense growth of subsidies in the entry into operation of PT IRNC that occurred in the Brazilian market also occurred in the world. And this caveat is reinforced by the fact that the European Union and India have taken measures against Indonesia and against the same producers/exporters investigated. It has been verified a vertiginous growth in the volume of imports. Even with such a caveat, the exercise assumes exports in volume practically [RESTRICED] times greater than the real volume, still found in the indicators of the domestic industry attributable to the investigation.

1400. Therefore, PT IRNC's allegation about the alleged damage based on "prices greater than the drop in costs", as extensively demonstrated by the investigation, is unreasonable.

1401. Regardless of the interested party's disagreement about the attribution exercise, that is, when choosing the adjustment parameters, it should be noted that, of greater production of the domestic industry, considering both the similar period and that share the installed capacity, it was P2, in which the volume reached [RESTRICED]. The adoption by SDCOM led to a hypothetical production, in P5, of [RESTRICED] times the hypothetical production of P5 and the highest production of the period considered, therefore, immaterial. Therefore, in view of the purpose of the adoption, which is to assess the impact of reducing the production volume on the domestic industry, the consequent impact on the profitability of the domestic industry,

1402. Regarding IRNC's claim that the fall in profitability of the domestic industry was due to an increase in costs not accompanied by an increase in prices, it should be noted that there was an increase in costs from P4 to P5, but a reduction in the average unit cost in this period (-0.8%). In the domestic market, there was a reduction of 4.9% from P4 to P5, which was greater than the cost/price ratio of the domestic industry, with repercussions on its profitability. In the case file that may have led to the depression of prices from P4 to P5 was the increase in undercut imports in this interval, which grew in absolute and relative terms in the detriment of sales by the domestic industry. Soon,

1403. Regarding the repetition of the arguments, by the IRNC, about the domestic industry data and the impairment of the objective and positive nature of the determination of damage, this SDCOM refers to item 1.7.1.3.2. *supra*, where the issue has been addressed.

as pointed out by the GOI, it is undeniable that their share has fallen, an element of the GOI in its manifestation.

1408. In addition, with regard to the other financial indicators of the period observed, in this period, as a result of the decrease in its selling price and the increase in its cost and in its cost of the product sold, decreases in the result gross, operating income, operating income excluding financial income and operating income excluding financial income as well as all associated margins.

1409. Also during the damage analysis period, as shown in the table, there was a continuous growth in the volume of imports of cold rolled products 304 originating from the investigated origin, with an increase of [RESTRICED] %, considering P5 in relation to P1; highlighting the fact that there was an increase of [RESTRICED] % in the volume imported from that origin. As a result of this increase resulted in the evolution of the share of these imports in the Brazilian market, [RESTRICED] in P5, and only in the period from P4 to P5 did the share of these imports increase.

1410. Additionally, it should be noted that the weighted average price of the product from the investigated origin, interned in Brazil, was undercut in relation to the weighted average price of the domestic industry in P3 and P5. It was observed, in the same period, a drop in sales price of the similar product produced by the domestic industry, throughout the analysis period, and a depression of this price. Furthermore, there was suppression of prices from the investigated origin, deterioration in the relationship between production cost and selling price.

1411. In addition to the deteriorating scenario of the domestic industry, there was a reduction in its production of cold rolled products 304 over the investigation period, reducing its production volume in relation to P1. It should be noted that this reduction was accompanied by a decrease in sales, which led to a decrease in the degree of occupancy of installed capacity, from [RESTRICED] % in P1 to [RESTRICED] % in P5.

1412. It should be recalled, at this point, as explained in item 7.2.6 of the report, that the volume of cold rolled products 304 to the foreign market by the domestic industry decreased over the period of investigation, resulting in a decrease of 84.2%, considering P5 in relation to P1. P3 as a reference (the only one in which there was not such a relatively significant decline in sales to the foreign market and which, still, did not show growth in the equivalent volume in the domestic market, unlike P2) , it can be inferred that these declines also impacted the domestic similar product, which had a decrease of 10.3% in P4 and 13.6% in P5.

1413. In addition, as explained in the same item 7.2.6, were observed in the period of investigation a period (period of greater total production volume - in a volume approximately equivalent to the volume of greater production volume of other products produced by domestic industry).

on price and profitability of the domestic industry. When analyzing the evolution of adjusted financial indicators for the year presented in item 7.2.6, the period with the highest absolute growth of investigated imports, it is observed that even the gross and operating results (except RF and other expenses) indicate a worsening of 26.7% and 28.1%, respectively. In this way, the competition of the drop in exported volume and the drop in the production volume of other products for the damage to the domestic industry does not rule out the materiality of the damage caused by the investigated imports, considering both the effects on volume as well as the effects on price and profitability of the domestic industry. When analyzing the evolution from P4 to P5 of all adjusted financial indicators presented in item 7.2.6, the period with the highest absolute growth of investigated imports, it is observed that even the gross and operating results (except RF and other expenses) indicate a worsening of 26.7% and 28.1%, respectively. In this way, the competition of the drop in exported volume and the drop in the production volume of other products for the damage to the domestic industry does not rule out the materiality of the damage caused by the investigated imports, considering both the effects on volume as well as the effects on price and profitability of the domestic industry. it is observed that even the gross and operating results (except RF and other expenses) indicate a worsening of 26.7% and 28.1%, respectively. In this way, the competition of the drop in exported volume and the drop in the production volume of other products for the damage to the domestic industry does not rule out the materiality of the damage caused by the investigated imports, considering both the effects on volume as well as the effects on price and profitability of the domestic industry. it is observed that even the gross and operating results (except RF and other expenses) indicate a worsening of 26.7% and 28.1%, respectively. In this way, the competition of the drop in exported volume and the drop in the production volume of other products for the damage to the domestic industry does not rule out the materiality of the damage caused by the investigated imports, considering both the effects on volume as well as the effects on price and profitability of the domestic industry.

1415. In this sense, for the purposes of Final Determination, considering the factors provided for in art. 22 of Decree No. 1751 of 1995, it was verified that imports from the origin with evidence of actionable subsidies contributed significantly to the determination of the damage to the domestic industry in the damage investigation period, found in item 6.2 of the Final Determination of P4 to P5.

8 Of the other manifestations

8.1 Other manifestations prior to the Technical Note

1416. Aperam Inox América do Sul SA, in a statement dated November 14, 2022, when the investigation began, there was evidence of the practice of actionable subsidies resulting from such practice. He added that the investigating authority already had sufficient information to make a preliminary positive determination of the existence of actionable subsidies and causality.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

prices quoted on the LME, since that nickel suppliers would carry out negotiations additions to the daily quotations of such exchange. She also claimed that so have verticalized production (raw materials and steel), as would be the case. However, the reference in the world market for the sale of steel would continue while, on the cost side, the industrial, tax and financial subsidies provided by the would be observed, already recognized in a Union decision European Union evaluation in the present investigation.

1420. He emphasized that, as reported in information vehicles around nickel on the LME would have started to show significant appreciation from the this phenomenon would be attributed to operations carried out by the founder. Added to this scenario, the beginning of the Russia-Ukraine war would have added supply of nickel due to Russia's relevant participation in the world market (with 10%). He claimed that, in early March 2022, the quotation value on the LME 25,450.00/t, a value that would have practically doubled between the 4th and movement would have intensified even more more, with the price of nickel surging.

1421. The LME would then have decided to suspend quotations until have paralyzed the market. There would be no confirmation of the extent of the Chinese Group. As reported by the press, however, such a position would involve of nickel.

1422. This sudden upward movement in price would represent the beginning of the LME, created 145 years ago. Once negotiations resumed on March 16, the price around US\$ 33,000.00/t, far from normality, and conditioned to a new negotiation already been revised several times throughout the month. As a result of this surge as well as several other producers around the world, would have suspended the steels including the product under analysis for a few days, in view of having been. Differently, the companies of the Tsingshan Group in Indonesia, which base supplied NPI (Pink-Nickel) at subsidized prices, would continue to market their a

1423. According to the petitioner, it was clear that the companies of ignore the LME crisis, since, unlike companies that would follow the rules of market economy, such as Aperam, the subsidies received from the Indonesian demonstrated in the present investigation, would support its predatory and speculative be noted that LME contracts could be physically settled with metals that stretching from the Netherlands to Malaysia. In order to protect their inventories in the price of nickel, stainless steel producers would use financial hedging maintenance of a regular flow of purchases and sales of the metal. In the case crisis would strongly affect its financial results.

subsidy, damage to the domestic industry and a causal link between both, and that interim measures would be necessary to stop the damage; therefore, such measures were not verified in the present case, explaining that it would not be possible to establish the existence of damage, since the petitioner would rely on operational margins,

1427. Thus, for APRODINOX, the application of provisional compensatory measures seem to be appropriate given the lack of reliability in relation to the damage data, which imply doubt as to its own damage.

1428. He reinforced that the application of a provisional measure would prevent damage from occurring during the investigation, however, in this context, he observed that since the opening of the investigation there has been no significant increase in imports of the product similar originating from the investigated origin indicating the occurrence of damage during investigation. In view of the above, Aprodinox recommended the application of the provisional right in a preliminary ruling, as the requirements to justify such a measure are absent.

1429. Aprodinox, in a statement dated June 14, 2022 regarding the damage alleged by the petitioner, explained that there was a conjunctural variation that affected all metals in general, and not just in nickel.

1430. With regard to nickel, specifically, Aprodinox noted that the movement in line with the trend of other metals, before the outbreak of the Ukraine conflict, would be a return to normality, with the alignment of expectations.

1431. In this context, for Aprodinox, considering that nickel represents a significant part of the physical composition of 304 steel), there would be pressure for a 3% increase in the existence of a mechanism of Aperam hedge; so there was a variation of the supply/demand ratio, given the ongoing conflict.

8.2 Other manifestations after the Technical Note

1432. Aprodinox, in its final statement, adduced that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Subsidies and Countervailing Measures (ASMC) has a specific provision establishing, as a general rule, the application of the lesser right rule for situations in which it is possible to mark amounts lower than those established, pursuant to Article 19.2 and Article 55 of the ASMC. Thus, in line with footnote 50 of the ASMC, requests that any rights be marked in the margins found for P5.

1433. Aperam, in its final statement, requests the closure of the investigation of compensatory measures for five years. He also adduced that, in the case of subsidies, and considering the use of the best information available both for p

could not be carried out in 2021, pursuant to SECEX Normative Instruction No. 3

1437. The comments on damage were considered in the analysis m
With regard to the other comments by the petitioner and Aprodinox about the p
Ukraine, these seem to go beyond what is analyzed in this investigation.

1438. With regard to Aprodinox's comments on the use of unde
recommended rights, this SDCOM points out that, as correctly pointed out by t
what is known as a lesser right in anti-subsidy investigations is not mandatory,
there is no element that justifies its application.

1439. On Aperam's comment, SDCOM recommended application in a

9 Calculation of compensatory measures

9.1 The amount of actionable subsidies

1440. The calculations developed indicated the existence of action
from Indonesia to Brazil, as shown below:

Actionable Grant

Producer/Exporter	Subsidy Amount (US\$/t)	Ad valorem amount , FOB basis
all companies	400.76	19.60%

Source: table in item 4.5.

Elaboration: SDCOM.

1441. It is observed that, as shown in the table, the amounts of subsid
companies investigated exceeded what is considered de minimis, in the terms
of Decree No. 1751 of 1995.

10 OF THE RECOMMENDATION

1442. Based on the foregoing analysis, it was determined that there
on exports of cold-rolled stainless steel 304 products from Indonesia to I
domestic industry resulting from such practice. Thus, it is proposed to apply co
period of up to five years, in the form of ad valorem rates, set as a percentage to
value of the product, on a Cost, Insurance & Freight - CIF basis, calculated pursu
amounts specified below.

Recommended Compensatory Measure

Country	Producer/Exporter	Compensatory measure ad valorem , CIF basis

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

the Foreign Trade Secretariat (Secex) that initiates the respective trade defense investigation. Specifically, the public interest assessment seeks to answer the following question: Will the imposition of the trade defense measure impact the supply of the product under investigation in the domestic market (from both domestic producers and imports), in a way that significantly reduces the supply in the national market (including upstream and downstream links and the industry's ability to produce the product in quantity, quality and variety, among others)?

It is important to mention that Decrees nº 9.679, of January 2, 2019, and Decree nº 9.745/2019, changed the regulatory structure of the Ministry of Economy, until then called Ministry of Planning, and the Ministry of International Affairs of the Ministry of Finance (SAIN). More specifically, Decree nº 9.745/2019 provides for proposing the suspension or amendment of the application of trade defense measures due to public interest.

1.1 Public interest questionnaires

On June 2, 2021, Circular Secex nº 40, of June 1, 2021, was published, instituting the public interest investigation of actionable subsidies on exports from Indonesia to Brazil of products 304, commonly classified in subitems 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7220.20.90 of the NCM, and damage to the domestic industry resulting from the application of art. 13 of said Circular, a public interest assessment was also initiated on the application of the anti-dumping measure in question, pursuant to art. 4, of Ordinance Secex No. 13/2020. Decree nº 13 of Circular Secex nº 46/2020 also established that the interested parties have the right to submit a response to the public interest questionnaire,

Before the original deadline for submitting the public interest questionnaire, the following interested parties submitted a request for an extension of the deadline: Administrative Council for Economic Defense (CADE), Associação Brasileira de Aço Inoxidável (Abrasão), Inox América do Sul SA (Aperam), Brazilian Association of Stainless Steel Producers (Aprodinox), Inconel Comércio Importação e Exportação de Produtos Similares (Inconel), Inoxplasma Comércio de Metais Ltda. (Inoxplasma), Usinas Metais Ltda. (Usinas), Associação Brasileira de Comércio e Importação de Aços Ltda. (Jati).

With regard to CADE, it should be remembered that the competition authority is a guest member of GECEX, therefore, with legitimacy to present considerations and assessments with respect to the evidentiary phase of the process, as well as to the final decision making of the GECEX, pursuant to §§ 2 and 7 of art. 5 of Secex Ordinance No. 13/2020.

The parties Aperam, Aprodinox, CADE, Inconel, Inoxplasma and Usinas submitted their responses to the public interest questionnaire before the deadline established, in order to allow the preliminary conclusions, pursuant to art. 5, §2, of Secex Ordinance No. 13/2020.

domestic utilities segment, cutlery would have substitute products,

- the Brazilian stainless steel market would be made up of two industrial customers and distributors. Aperam would have differentiated distributors: Aperam Integrated Distributor (DIA), Aperam Regular Distributors and other distributors. Both DIA and DRA distributors would have a contract with Aperam for minimum monthly purchases, with no barriers to migration between relations. Other distributors would have no commitment to Aperam. There would be no price competition between distributor segments, with the exception of purchased volume;

- domestic stainless steel prices would adjust to international prices, forming a long-term equilibrium relationship;

- Aperam would not be able to exercise market power, given that the market is open to imports and would have few barriers to entry, with the price of the domestic market based on international prices. Thus, there would be no ability to control prices and margins;

- the comparison between the import tax rates applied by Brazil and other WTO member countries would not be adequate, since the tariffs applied in countries for cold rolled products 304 would tend to be lower or, even, reset;

- there would be no difficulties or absence of meeting domestic demand if the requested anti-dumping measure were to be implemented, since it would not require installed capacity to serve the entire Brazilian market, if necessary;

- the domestic industry would be technologically updated in its product portfolio, competing under similar technological and quality conditions with imports of origin.

1.1.2 Aprodinox, Inconel, Inoxplasma, Metal Plants

Aprodinox, an entity that represents stainless steel processors and metal companies Inconel, Inoxplasma, Jati and Usinas Metais, importers of cold rolled products. In summary, the following arguments in the case file:

- stainless steel would have specific applications, thus there are no perfect substitutes from the point of view of demand. From the perspective of supply, manufacturers of other products with the capacity to start manufacturing cold rolled products with low investment;

- Aperam Serviços, a related party of Aperam, would have possible influence in the distribution chain in relation to other distributors served by Aperam;

- the Brazilian market for cold rolled products 304 would be highly concentrated, acting as the only element capable of regulating the prices practiced by the domestic industry.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

following arguments in the case file:

- no products were identified as substitutes for cold-rolled products being "fundamental to balance the Brazilian market";
- in proceedings that have already passed through CADE (AC nº 08/PA nº 08700.010789/2012-73) regarding this relevant market, concern was expressed by the national industry in relation to imports and the need to maintain the open exercise of market power;
- Aperam would hold most of the Brazilian market share, and the growth of the company is an important response to the balanced functioning of the market and the pursuit of public interest is
- there would be potential competition concerns regarding the proposed measure regarding international competition in the sector.

1.2 Procedural instruction

On June 9, 2021, a notification was sent to the members of the Administrative Council of Economic Defense (CADE) Committee of the Foreign Trade Chamber (Gecex), through Circular Letter SEI nº 7306/2021. In the sending of such correspondence, the bodies were invited to participate in the public interest assessment as interested parties, providing information related to their spheres of activity. The need for this assessment has manifested itself, through Official Letter No. 7306/2021, as reported in item 1.1.

On February 7, 2022, an official letter was sent to Jati - Serviços Comerciais Ltda. (Jati), to present documentation that would allow the regularization of the company's legal representative. The company did not present the necessary documentation to regularize the legal representative. Thus, the response to the company's public interest assessment was considered for the purposes of this assessment since the due regularization of the legal representation was not carried out, pursuant to §§ 4 and 7 of article 5 of Ordinance Secex No. 13/2020.

It should be noted that, for the purposes of the final assessment, the information provided by October 20, 2022, the deadline for submitting expressions of interest, informed in Dispatch SEI-ME 28695303, was considered.

On May 31, 2022, Aperam filed a statement regarding the arguments presented in its response to the public interest questionnaire. On July 7, 2022, Aprodinox filed a statement presenting new information regarding the elements presented by Aperam. It should be noted that, to art. 5, §§ 2 and 7, of Ordinance Secex No. 13/2020, such information was not considered for the determination of this public interest assessment, being incorporated in this final assessment.

reiterating its arguments for the absence of elements of public interest that would justify the reduction of compensatory measures to imports of the product under analysis, the Ministry of Economy annex letters support from 3 entities and a technical note prepared by Consultoria Econômica, and an economic analysis carried out for the case. Also on October 20, 2022, Aprova reissued its decision, reiterating its arguments for the application of a compensatory measure.

It should be noted that, for the purposes of the final evaluation of the evidence, the manifestations brought until October 20, 2022 - final phase of procedural instruction No. 7, of Secex Ordinance No. 13/2020.

The additional arguments and evidence brought along the procedural instruction No. 7, of Secex Ordinance No. 13/2020, by the parties were distributed in this document according to the thematic relevance for the final evaluation criteria.

1.3 History of dumping investigations

1.3.1 From the original investigation of cold rolled products not covered by the NCM (1998/2000) - South Africa, Spain, France, Japan and Mexico

On August 10, 1998, the company Cia. Aços Especiais Itabira - Acesita initiated a dumping investigation in exports to Brazil of cold-rolled flat products, maximum thickness not exceeding 3 mm, classified under sub-items 7219.33.00, 7219.34.00, 7219.35.00, 7220.20.90 of the Mercosur Common Nomenclature - NCM, originating in South Africa, Germany, Spain, France, Italy, Japan and Mexico.

Based on data contained in the petition, imports originating in France, Germany, Spain, Italy, Japan and Mexico were relevant volumes of the product in question. Therefore, such countries were included in the investigation. The investigation was investigated for the purpose of starting the investigation.

On November 30, 1998, through Circular Secex nº 42, of November 30, 1998, the investigation was initiated to verify the existence of dumping in exports to Brazil of flat products, cold-rolled, of thickness not exceeding 3 mm, classified under sub-items 7219.33.00, 7219.34.00, 7219.35.00, 7220.20.90 of the NCM, originating in South Africa, Germany, Spain, France, Italy, Japan and Mexico, and the damage to industry household resulting from such practice.

Interministerial Ordinance No. 34, of May 24, 2000, published in the Official Gazette of the Union on May 26, 2000, closed the investigation with the application of a definitive anti-dumping duty on imports of flat stainless steel, cold-rolled products, with thickness not greater than 3 mm, classified under sub-items 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, originating in South Africa, Germany, Spain, France, Italy, Japan and Mexico, excluding refractory steels, among which are classified AISI 302H, 316Ti, 317, 321H and 347 stainless steels and AISI 301L and DIN 1.4110 stainless steels, at ad valorem rates, for a period of five years.

elements in the DOU that signal the legal basis for changing the duration of the duty, whether for reasons of public interest or not.

1.3.3 From the original investigation of flat rolled austenitic stainless steel type 304 (304 and 304H) and ferritic stainless steel type 430, cold rolled, with a thickness equal to or greater than 0.35 mm, but less than 4.75 mm (2011/2012) - Germany, China, South Korea, Finland, Chinese Taipei and Vietnam

On December 15, 2011, Aperam Inox América do Sul SA (Aperam) filed, through its legal representative (SDD), a petition to initiate an anti-dumping investigation in exports of flat rolled austenitic stainless steel type 304 (304 and 304H) and ferritic stainless steel type 430 ferritics, cold-rolled, of a thickness of 0.35 mm or more, originating in South Africa, Germany, China, South Korea, the United States of America, Chinese Taipei and Vietnam, and damage to domestic industry resulting from such dumping.

The investigation was initiated through Circular Secex nº 17, of April 13, 2012, published in the DOU of April 13, 2012.

Pursuant to item III of art. 41 of Decree No. 1602, of August 23, 1995, the investigation of dumping in exports from South Africa and the USA to Brazil was initiated, with the application of duties, since it was verified that the volume of imports of these products was greater than that stated in Circular Secex nº 35, of July 26, 2012, published in the DOU of July 27, 2012.

Having verified the existence of dumping in exports of flat-rolled austenitic stainless steel type 304 (304, 304L and 304H) and ferritic stainless steel type 430, cold-rolled, with a thickness greater than 0.35 mm, but less than 4.75 mm, originating in Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, and damage to the domestic industry resulting from such dumping, in accordance with the provisions of art. 42 of Decree No. 1602, of 1995, the investigation was closed, through Circular Secex No. 79, of October 3, 2013, published in the DOU of October 4, 2013, with the application of an anti-dumping duty, in the form of specific rates for a period of five years.

1.3.4 End-of-period review of flat-rolled austenitic stainless steel type 304 (304 and 304H) and ferritic stainless steel type 430, cold-rolled, with a thickness equal to or greater than 0.35 mm, but less than 4.75 mm (2018/2019) - Germany, China, South Korea, Finland, Chinese Taipei and Vietnam

On April 27, 2018, Aperam Inox América do Sul SA filed, through its legal representative (SDD), a petition to initiate an end-of-period review in order to extend the anti-dumping duty on Brazilian imports of flat rolled products austenitic stainless steel type 304 (304 and 304H) and ferritic stainless steel type 430, cold rolled, with a thickness equal to or greater than 0.35 mm, commonly classified under sub-items 7219.32.00, 7219.33.00, 7219.34.00, of NCM, originating in Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, in accordance with the provisions of art. 106 of Decree No. 8058 of July 26, 2013.

thickness equal to or greater than 0.35 mm, but less than 4.75 mm, manufactured in the form of coils, sheets and Strips/Strips, hereinafter referred to as "Products 304", commonly classified under sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, originating in South Africa, Indonesia and Malaysia .

It should be noted that Secex ended, in 2020, three special procedures for preferential origin with the disqualification of the Malaysian origin for cold-rolled products classified in sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, be produced by Excel Metal Industries Sdn Bhd., Yankong Stainless Sdn. Bhd. E I

Bearing in mind that all Brazilian imports of cold rolled 304 products were carried out by companies that had their origin disqualified by Secex in such procedures, the volumes of imports remaining from that origin in this period for the purposes of exports to Brazil originating in Malaysia, it was concluded that the anti-dumping investigation on this origin was not opened.

On February 18, 2021, in compliance with the provisions of art. 47 of the Law No. 10,730 of 2003, the governments of South Africa and Indonesia were notified, through Official Letter No. 1, duly prepared petition, with a view to initiating a dumping investigation referred to in the

Based on what was contained in Opinion No. 3/2021, since sufficient evidence was not found in exports of cold rolled products 304 from South Africa and Indonesia to justify the damage to the domestic industry resulting therefrom, the Circular Secex nº 15/2021, in the context of initiating the investigation of dumping on screen.

Already on November 4, 2021, based on the Technical Note, of October 2021, nº 75, of November 3, 2021, was published, which closed, without judgment, the investigation, since which was concluded by the lack of reliability of the data collected, by the magnitude and timeliness of the alterations, in the aggregate, presented, leaving the proof of the existence of damage to the domestic industry in the investigation proceeding impaired , pursuant to item I of art. 74 of Decree No. 8058 of 2013.

1.3.6 Trade defense measures in force

Having reported all dumping investigation processes, the following trade defense measures in force applied to Brazilian imports of cold rolled products 304

Trade Defense Measures in force

Origin	Producer/Exporter
China	Shanxi Taigang Stainless Steel Co., Ltd. , when exporting through the exporting company Tisco Stainless Steel (HK) Limited

Chinese Taipei	Genn-Hann Stainless Steel Enterprise Co., Ltd.
Chinese Taipei	Lien Kuo Metal Industrial Co., Ltd.
Chinese Taipei	Midson International Co., Ltd.
Chinese Taipei	S-More Steel Materials Co., Ltd.
Chinese Taipei	stanch stainless steel co.,ltd.
Chinese Taipei	TM Development Co., Ltd.
Chinese Taipei	Tang Eng Iron Works Co., Ltd.
Chinese Taipei	TSL Stainless Co.,Ltd
Chinese Taipei	YC Stainless Co., Ltd.
Chinese Taipei	Yuan Long Stainless Steel Corp. (YLSS)
Chinese Taipei	Yes Stainless International Co., Ltd.
Chinese Taipei	Yeun Chyang Industrial Co., Ltd.
Chinese Taipei	Yieh Corporation Limited
Chinese Taipei	Yieh Mau Corp.
Chinese Taipei	Yieh United Steel Corporation (YUSCO)
Chinese Taipei	Yue Seng Industrial Co., Ltd.
Chinese Taipei	Yu Ting Industrial Co., Ltd.
Chinese Taipei	Yuen Chang Stainlees Steel Co., Ltd.
Chinese Taipei	Too much

Thus, it appears that trade defense measures are in force on Brazil products 304, applied on two origins, namely, China and Chinese Taipei.

1.4 History of public interest assessments

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

(restricted) and n° 19972.101392/2021-05 (confidential).

It should be noted that, pursuant to art. 4 of Ordinance SECEX No. 13, assessment was also initiated regarding the possible application of a compensatory duty on imports of cold-rolled products, commonly classified under sub-items 7219.33.00 and 7220.20.90 of the MERCOSUR Common Nomenclature - NCM, originating from Brazil, in the context of Processes SEI-ME No. 19972.101391/2021-52 (restricted) and No. 19972.101392/2021-05 (confidential).

On August 19, 2022, Circular Secex n° 37, of August 19, 2022, was published, stating the facts that justified the decision not to prepare a preliminary determination of the existence of subsidies, damage to domestic industry and the causal link between them. Technical Note SEI n° 43660/2022/ME was issued, which presented the essential facts of the analysis and that would form the basis for the Undersecretariat for Commercial Defense to establish the final determination in the scope of trade defence.

2. FINAL ASSESSMENT CRITERIA OF PUBLIC INTEREST

In the final assessment of public interest in trade defense, the following factors were considered: 1) characteristics of the product, production chain and market of the product; 2) international offer of the product under analysis; 3) national offer of the product; and 4) impacts of the trade defense measure on the dynamics of the domestic market.

The harm analysis period in the original investigation of actionable subsidies, for reference also in this public interest assessment, was divided as follows:

P1 - April 2015 to March 2016;

P2 - April 2016 to March 2017;

P3 - April 2017 to March 2018;

P4 - April 2018 to March 2019; It is

P5 - April 2019 to March 2020.

Finally, it should be noted that the data related to the domestic industry were obtained through the site verification procedure:

2.1 Characteristics of the product, the production chain and the market of the product, for analysis as an input or final product

2.1.1 Characteristics of the product under review

The product subject to the investigation of actionable subsidies is cold-rolled steel flat products that meet the AISI 304 standard and similar ones, including 304L and 304H, cold rolled, with a thickness equal to or greater than 0.35 mm.

nomenclature as AISI. There are, however, other international nomenclatures types of stainless steel that can be used, depending on the region/country manufactured/marketed.

Stainless steels are manufactured and marketed with a wide variety. The most used in stainless steels are listed in the ASTM A-480 standard, which is not mentioned below:

- N° 1: Hot rolled, annealed and pickled. The surface is a little rough finish on materials with a thickness of no less than 3.00 mm, intended for industrial use. After the manufacture of the final part, the material is subjected to other finishes, such as 2D, 2B, BA, 3, 4, 6, 7, 8 and TR.
- N° 2D: Cold rolled, annealed and pickled. Much less rough than finish 1, it has a matte surface, popularly called matte. This finish is not used, for example, on polished materials. During conformation, these materials give rise to the appearance of Luder lines.
- N° 2B: Cold rolled annealed and pickled followed by a light rolling (skin pass). It has a higher gloss than the No. 2D finish and is the most common finish. As the surface is smoother, polishing is easier than with finishes No. 1 and 2D.
- BA: Cold rolled with polished cylinders and annealed in an inert atmosphere. It has a shiny and reflective surface, features that are more evident as the thickness increases. The atmosphere can be hydrogen or mixtures of hydrogen and nitrogen;
- No. 3: Material sanded in one direction. Normally, sanding is done with a grain size) of approximately 100 mesh;
- No. 4: Material sanded in one direction with 120 to 150 mesh abrasive. It has a roughness than that of N° 3;
- No. 6: Material with No. 4 finish, finished with cloths soaked in abrasive. The appearance is matte, satin, with lower reflectivity than the No. 4 finish. The finish is obtained in one direction and the appearance varies depending on the type of cloth used;
- No. 7: High-gloss finish. The surface is finely polished, but retains a matte appearance. The material with a high degree of reflectivity obtained with progressively finer polishing.
- No. 8: Mirror finish. The surface is polished with finer and finer abrasives until the Luder lines disappear. It is the finest finish available and allows stainless steels to be used as mirrors and reflectors; It is
- TR Finish: Finish obtained by cold rolling or cold rolling with annealing. This material has special mechanical properties. Generally, the mechanical properties are higher than the other finishes and the main use is in structural applications.

shiny material. Roughness is less than 0.05 micron Ra.

Aperam manufactures 304 cold rolled products in standard widths of 1,220 mm, 1,240 mm, 1,250 mm, 1,270 mm, 1,295 mm and 1,320 mm, however, it can produce a product in any width the customer requires, up to the limit of 1,320 mm. The products are manufactured by the company with the following finishes: n° 2B, n° 3, n° 4, (Bright), RF (Rugged Finish), SF (Super Finish) and HL (Hair Line).

304 cold rolled products are used in the manufacture of towers, tubes, precision stamping, with diverse applications, such as domestic utensils, cryogenic equipment, photography, as well as in the aeronautical, railway, shipbuilding, petrochemical, meatpacking, hospital, food, dairy, pharmaceutical, cosmetic, chemical, among others.

Thus, it is concluded that cold rolled 304 are characterized as inputs for various sectors such as: automotive, civil construction, chemical and petrochemical, defense and equipment, among many others.

2.1.2 Production chain of the product under analysis

As informed by Aperam, the production process of cold rolled 304 consists of: reduction, melt shop, hot rolling and cold rolling.

Reduction is the stage in which the blast furnaces are fed with iron and liquid pig iron. It should be noted that foreign producers use coke as a reducer, while the charcoal used by Aperam.

In the next stage, the liquid pig iron is placed in the torpedo car in the melt shop, where it undergoes a first pre-treatment, removing impurities such as phosphorus and nitrogen. Afterwards, nickel (in the form of electrolytic nickel, iron-nickel or nickel scrap), chromium (in the form of iron-chromium or scrap of 304 stainless steels), iron scrap, ferrosilicon, ferromanganese, and some other metal alloy to make adjustments to the material property. This molten load is then transferred to the AOD (Argon-Oxygen Decarburization). Argon is added to the pig iron from the blast furnaces for final temperature and composition control and degassing.

The next step is hot rolling, which consists of hot forming the plates to the required thickness. First, the plates are reheated. Subsequently, the preliminary adjustment is carried out, to then start rolling in the Rougher and Steckel rolling mills in order to obtain plates up to 8 mm thick.

The coils obtained in the hot rolling stage are then sent to the cold rolling stage, through coil preparation machines, annealing and pickling lines, cold rolling mills, in order to reach the 304 cold rolled products with thicknesses between 0.35 mm and 3 mm.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

cutlery, pans, among others, with participation of [CONFIDENTIAL]%, civil elevators, facades and finishes in general, with participation of [CONFIDENTIAL]%, (hospitals, restaurants and catering in general, with participation of [CONFIDENTIAL]%), (decorative and standardized tubes, with participation of [CONFIDENTIAL]%), air conditioning systems, with participation of [CONFIDENTIAL]%), transport (truck tanks, among others, with participation of [CONFIDENTIAL]%), capital goods (oil and gas, beverages, agribusiness, mining, purchases for equipment maintenance, among others, with participation of [CONFIDENTIAL]%) and resales (companies commercial that buy from distributors and resell to end customers, with participation of [CONFIDENTIAL]%).

According to the company, both the white line and the automotive industry are large steel consuming companies, especially carbon and alloy steel, with cold rolled steel demanded. In the case of capital goods, despite demanding [CONFIDENTIAL]%, the investment value related to cold rolled 304, from [CONFIDENTIAL], becomes a fact in the context of the segment, a fact that, according to Aperam, reinforces the use of stainless steel in most manufactured products.

In addition, he argued that segments such as civil construction, health and safety, being more relevant sectors for cold rolled products 304. He also informed that there are product resellers, which are present in practically all cities medium and large, locksmiths and designers/assemblers of small artifacts of commercial utility. In the production chain of 304 cold rolled products is complex, comprising around 10 work not only with the product, but also with other types of stainless steel, such as copper, aluminum, etc.

In addition, he informed that the Brazilian stainless steel market is made up of large industrial customers, who are supplied directly from the mills on the domestic market, imports, and distributors. According to the company, the following stand out as large cutlery shops, manufacturers of white goods and articles for civil construction, capital goods segment. The distributors, on the other hand, would supply the products to a large number of "small and medium-sized customers from the most diverse segments, and in this segment, sales would be made in smaller quantities and in a pulverized manner. The distributors would not be interested in keeping high inventories in their plant.

The party pointed out that the Brazilian market for cold rolled products consumed 78.8 thousand tons in P5, with 24.8 thousand tons related to direct purchases from the mills and 54.0 thousand tons via distribution, with channels such as: Aperam Integrated Distribution (AID), Regular Distributor (DRA) and independent distributors.

companies, representing different segments (white goods, housewares, civil construction, stainless steel tubes, the automotive industry, transport, capital, among others) to

2.1.3 Substitutability of the product under analysis

In this section, the objective is to verify if there are other substitutes for the product under analysis, both on the demand side and on the supply side.

Regarding the substitutability of the product from the point of view of the public interest questionnaire, stated that, in applications such as the capital goods, 304 are considered essential, with no substitutes, in view of its characteristics, such as strength and good formability. However, according to the company, in some segments (vats, sinks and elevators) there may be competition with other products, especially in terms of performance. Furthermore, he indicated that, in the domestic utilities segment, there are products, such as glass, aluminum, copper, plastic, which can replace more expensive

In addition, he argued, through the analysis carried out by Tendências, that these products compete with other materials, such as carbon steel, stones (marble, granite), non-ferrous products (aluminum, silver, bronze, brass, among others), others), glass and ceramics. For the company, the choice of material does not depend only on price, considering, for example, the material, in the case of heat exchangers in sugar mills, and architectural applications in buildings and elevators.

He also argued that 304 cold rolled steel can be replaced by other 400 series. Such replacement would be possible due to the addition of elements such as molybdenum and niobium, which would improve corrosion resistance properties and thermal stability. According to Tendências, the 400 series steels are composed of iron and chromium, with nickel in their composition. With the replacement of nickel by other alloys, it would not affect the price of the product, which "also stops oscillating as a result of changes in the price of nickel".

Furthermore, he indicated that the 200 series steels, which are made of iron, chromium and nickel (low content compared to the 304 cold rolled steel, around 4.0%), could also replace the product object of analysis, although little used, due to inappropriate substitutions. Finally, he informed that steels that are not stainless steel have disadvantages in certain attributes such as useful life, thickness and weight.

According to Aprodinox, in its public interest questionnaire, stated that, in applications, therefore, there are no products that can be considered substitutes for the product under demand. In this sense, he informed that he was unaware of differences between the domestic one in Brazil and the imported one, with the exception of some finishes and mechanical properties manufactured in the domestic market. In view of this, he argued that the national product could be replaced by the imported product with the same specifications.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

In a statement filed on October 3, 2022, Aperam reaffirmed that cold rolled 304 could be replaced by other types of stainless steel or by aluminum, stone, glass, etc., depending on the choice of material for the application of the product, the its technical requirements.

Thus, it is concluded, based on the manifestations of the interested parties, the substitutability of cold rolled 304 from the point of view of supply appears to be high. Furthermore, from the perspective of demand, the elements attached to the product under analysis in the records did not allow for a glimpse of substitutability between the product under analysis and other types of product.

2.1.4 Market concentration of the product under analysis

In this section, we seek to analyze the market structure, in order to determine whether the eventual application of the trade defense measure can influence the market structure and competition.

Regarding the subject, CADE stated, in its public interest questionnaire, that the cold rolled 304 market is formed by only one national producer, Aperam, responsible for the entire supply.

In its response to the public interest questionnaire, Aprodinox argued that it is a stainless steel manufacturer in Brazil and that the company adopts anticompetitive practices ensuring that its customers and distributors do not choose to import the product from abroad, as there are no substitute products from the point of view of demand. Furthermore, it alleged that the Brazilian market is highly concentrated, with a few players, an element capable of regulating the prices practiced by the domestic industry. In the event of the application of the anti-dumping measure on imports from South Africa and China, it would be the only disciplining factor of domestic prices, given the existence of an anti-dumping measure on imports originating in China, the main manufacturer of cold rolled products 304. Aprodinox noted, however, that the anti-dumping investigation in relation to imports from South Africa was closed through Secex Circular No. 75, of November 3, 2021.

On the other hand, Aperam claimed, in its public interest questionnaire, that it does not have market power on the part of any player in the product market under analysis, thus not influencing the prices and/or volume offered. According to the company, this fact would be verified through the verification of the existence of damage resulting from imports of cold rolled 304.

In this context, Aperam, through the analysis carried out by the interested parties, concluded that the company is not capable of exercising market power for at least two reasons:

- the Brazilian market would be open to imports and would have few players.

entry and ease of changing the origin for importing the product".

In response to this argument, Aprodinox, in a statement filed on July 14, 2022, stated that the import volumes brought by the company Tendências would cover other countries, thus not overestimating such volumes, so that the analysis does not "appear to be adequate".

On September 9, 2022, Aprodinox presented a statement in which it reiterated the information previously presented.

Having presented the manifestations of the parties, we move on to the analysis of the market structure. The existence of concentrated structures can lead to excessive market power, expressed in the ability to charge prices in excess of costs, providing greater profit to the producer/consumer and, consequently, a decrease in the well-being of the economy.

In this context, the Herfindahl-Hirschman Index (HHI) can be used to measure market concentration. This index is obtained by summing the square of the market share of each company in a given market. The HHI can reach up to 10,000 points, a value at which there is a single company with 100% of the market.

According to the Horizontal Concentration Analysis Guide, issued by the Cade, the market is classified as follows:

- Not concentrated: HHI below 1500 points;
- Moderately concentrated: HHI between 1,500 and 2,500 points; It is subject to monitoring;
- Highly concentrated: HHI above 2,500.

For the purposes of this final assessment of public interest, the market share of the companies of origin and other countries exporting the product were calculated in aggregate, for each company, in the period between P1 and P5, according to the data provided in the import statistics of the RFB and in the import statistics of the RFB. The analysis of the composition of the market for the product and the calculation of the HHI are described in the table below.

Participation (in %) ranges in the Brazilian market and HHI index [CONFIDENTIAL]								
Periods	aperam	Indonesia	South Africa	USA	Malaysia	Spain	China	Too m
P1	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10
P2	80-70	0-10	0-10	0-10	0-10	0-10	0-10	0-10
P3	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10
P4	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10
P5	60-70	10-20	0-10	0-10	0-10	0-10	0-10	0-10

in P5, that is, a reduction of [CONFIDENTIAL] pp between P1 and P5.

Aperam informed, in a statement filed on October 20, 2022, that a when observed separately, show high numbers that would point to a con suggested to consider the specificities of each case.

With regard to concentration acts in the affected sector, CADE Concentration Act No. 08012.005092/2000-89, referring to the acquisition of Amorim SA Aços Inoxidáveis, in addition to the shareholding in the companies Inox tubos SA, by Acesita SA In the process, the relevant market was delimited distribution of cold and hot rolled stainless steel with thicknesses from 0.15 m scope that includes products not addressed in this analysis.

According to the agency, the operation was approved without r however, on the risks and effects of vertical integration when carried concentrated economic agents. CADE informed that the leading vo recommendations and determined three items of abstention, addressed to endorsed by the plenary":

"(...) Acesita, which, due to its dominant position in the Brazilian special penalty of infringing the economic order and incurring the penalties of Le1) products, for all distributors, price and payment on equal terms with Amorim, inc

2) respect the retrospective and evolutionary volumes of each distr quantification and qualification of the distributors' purchase programs; other S In addition, Acesita must refrain from d1) creating any obstacle for steel distr products or not, to import products without any restriction, even if these produ products,2) create any consignment sales system for Amorim that is not distributors; 3) privilege Amorim with a special supply in a continuous and dir give it an advantage that does not extend to its other Service/Distribution Centr

Furthermore, CADE identified Administrative Proceeding No. 08700 there were allegations of non-compliance with the guidelines expressed by anticompetitive practices in the stainless steel segment, within the scope of E No. 08012.005092/2000-89 . According to the agency, one of the prac imposition of anti-dumping duties, which would prove to be an addition Acesita/Aperam's dominant position in the Brazilian market.

According to CADE, Technical Note from the General Secretariat (SC opening of an administrative process, pointing out concern with Aperam's pri charged by the company were above the market price, there would be a ten according to the agency, imports would be limited by means of a contract

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

The body also argued that the SG understood that the policy according to the percentage of the purchase volume that is dedicated to the adherence to the absolute volume of effective purchases" constituted a form of discrimination. He stated that such a discount policy could have the scope of "restricting purchases without efficiency considerations for the represented company that eventually led to the practice".

Administrative Proceeding No. 08700.010789/2012-73 was terminated by the Cessation Commitment Term, in which Aperam undertook to:

- "not to practice any non-linear discount to distributors whose purpose is the exclusive acquisition of products from the Buyer";
- "refrain from adopting a clause that has the object or effect of restricting purchases of stainless steel"; It is
- "refrain from imposing any change in commercial policies due to the purchase of a competing product by distributors".

Thus, CADE argued that the potential practice of restrictions on imports was "clear and serious in the Administrative Proceedings". In addition, the TCC provided a pecuniary contribution in the amount of BRL 5,574,075.21, based on the Superintendent's decision at the time:

"62. As can be seen from the precedents indicated, this investigation is based on the following facts: (i) the Compromise proposed an agreement proposal shortly after the start of the process; (ii) the duration of the process, from the complaint to the proposed agreement, was (two) years; (iii) although there is no precision as to the duration of the conduct, it was less than the two aforementioned precedents.63. warned by Cade, within the scope of Administrative Proceeding No. 08012.005092/2000-89, not to adopt discriminatory conduct. Therefore, in the absence of a need for reprimand via pecuniary contribution ". "In calculating its value, however, it is adequate, in view of the cited precedents."

The body pointed out, however, that the execution of the TCC did not constitute a merit regarding the object of the aforementioned Administrative Proceeding. In this regard, the managers and representatives did not make a "confession regarding the practice, acknowledgment of guilt, illegality or any irregularity of conduct, and, on the other hand, generate precedent on the matter" .

According to Technical Note No. 12/2015, CADE reported that, "in cases of this nature, which, in most cases, the illegality of the practice depends on a detailed analysis of its structure, its pattern of competition and also the justifications for the practice".

made Aperam focus on two protectionist strategies: the recurrent use of trade the creation of anti-competitive conditions to the benefit of its vertically integrated Aprodinox alleged that Aperam was not complying with the provisions of Administrative Proceeding No. 08700.010789/2012-73 that "

Regarding the Economic Concentration Act nº 08012.005092/2000 its public interest questionnaire, that, at the time, Acesita SA was the only company producing special steels in Brazil, and that said acquisition resulted in the vertical integration between Acesita SA (currently Aperam Usina and Aperam Inox Serviços Brasil Ltda., according to the association, there was vertical integration between:

- the production of special steels (performed by Aperam, the only company producing special steel at the time and currently) and the distribution of such products (distributed by Amorim SA, currently Aperam Inox Serviços Brasil Ltda.); It is
- the production of special steels and special steel tubes (according to the association, Acesita used Aperam products in its production process).

The association also highlighted Administrative Proceeding No. 08700.010789/2012-73 against Aperam due to "anti-competitive practices that consisted of discriminating against foreign products, restricting imports and favoring the distributor of the same economic group as Acesita, which was initiated based on representations from the company Inox-Tech and the National Association of Steel Drawing and Lamination Industry, hereinafter referred to as "SICETEL".

In this sense, he summarized the conduct denounced by Inox-Tech in the administrative process:

- Aperam would be discouraging, via price pressure, imports made by other distributors of the product; It is
- the company would also be favoring the distributors of its economic group.

According to the party, the economic study presented by Inox-Tech in Administrative Proceeding No. 08700.010789/2012-73 indicated the following mechanisms adopted by Aperam:

- creation of "RAD", a distribution network for the Promise Party, with the obligation of "RAD" distributors to acquire 75% of their demand directly from Aperam;
- creation of a mechanism called "Virtual Import", through which Aperam offered discounts if they did not import products competing with those of the Buyer and gradually as they started to import such products;

committed to practicing the same prices and payment terms for DIA and DRA volumes are purchased, in addition to equivalent registration and credit conditions that the term established in the TCC was five years, a period that ended in April 2018. The TCC must remain indefinitely, according to an excerpt from the TCC brought by the parties.

"8. TERM OF TERM

8.1. The Agreement will remain in force for a period of 5 (five) years, starting from the date of this TCC, without prejudice to the fulfillment of the

definitive obligations, in order to ensure the conditions of competition for the provision of processing and distribution services for stainless flat steel.

8.2. The obligation provided for in clause three, items 3.1, 3.2, 3.3 and 3.4, shall expire at the expiration of the period provided for in item 8.1,

except for the eventual hypothesis of modification of the antitrust law, which authorizes these conducts."

It should be noted that the practices and conduct in the competitive market of the larger product niche, that is, not specifically linked to the product under analysis.

Thus, it appears that the increase in the share of imports from China, combined with the fall in the share of the domestic industry, contributed to the concentration of the Brazilian market for cold rolled products 304 between P1 and P5, even though it was concentrated in all analyzed periods.

2.2 International offer of the product under analysis

The analysis of the international supply seeks to verify the availability of the product under investigation. To this end, the existence of suppliers of the same product from other sources not investigated by the practice of actionable subsidies is verified. It is necessary to consider the hospitalization costs and the existence of barriers to entry, such as technical barriers.

2.2.1 Alternative origins of the product under analysis

2.2.1.1 Production capacity of the product under analysis

In its public interest questionnaire, Aperam presented data on the production of cold rolled products by country, extracted from the CRU Monitor Steel report, mentioning that these data include other cold rolled products, in addition to the product under assessment of public interest. The world capacity data of the 10 (ten) largest producers of cold rolled products are consolidated in the table below, considering the period from 2015 to 2018 and estimates from 2019 to 2023.

world, representing 47.7% of the production capacity of said product in 2018, reaching 51.8% in 2023, period between 2015 and 2018 and 17.0% between 2018 and 2023, period between 2018 and 2023, period of publication. Then come the USA and India, with shares of 7.7% and 7.4% in the world production capacity of the product in 2018, respectively.

Furthermore, Chinese Taipei, another origin affected by the anti-dumping measure, is the sixth country with the highest production capacity in 2018, representing 5.0% of the world production capacity of the product in question. Indonesia, the origin object of this public interest assessment, is the fifteenth origin in terms of production capacity of the product in question, with a share of 1.0% in 2018.

It is worth noting, in the case of Indonesia, that the data for 2018 corresponds to the installed capacity observed in the following years. It should be noted that the estimates presented for the year 2020 already show that Indonesia would be the second largest installed capacity in the world, with a share of 2.1%.

Thus, in 2018, origins not recorded or not investigated were responsible for 1.0% of the production capacity of cold rolled products, while recorded or investigated origins were responsible for 99.0% of the production capacity, according to data presented by Aperam.

The company also presented estimates of world production, based on data consolidated below:

Production of cold rolled products by country/bloc. 2015-2023 (in thousand tons)								
Origins	2015	2016	2017	2018	2019	2020	2021	2022
China	10,883	12,381	13,380	14,269	14,466	15,208	15,810	16,590
India	1734	1854	1943	2,112	2,217	2,410	2,579	2,782
USA	1,460	1,513	1,631	1,686	1737	1805	1853	1889
Japan	1,369	1,358	1,463	1,460	1,439	1,444	1,498	1,536
Chinese Taipei	1,051	1,270	1,306	1,252	1,168	1,217	1,268	1,309
South Korea	1,186	1,219	1,263	1,223	1,238	1,284	1,344	1,388
Finland	740	770	753	718	728	715	709	723
Italy	612	612	630	631	693	686	702	724
France	505	498	509	544	562	586	591	608
Belgium	465	474	481	485	470	554	579	580
too many origins	2,738	2,772	2,892	3,158	3,369	3,474	3,658	3,800
Total	22,743	24,723	26,250	27,538	28,086	29,382	30,591	31,930

With regard to the world production of cold rolled products, China is the main source, accounting for a share of 47.9% of production in 2015 and reaching 51.8% in 2023. Chinese production grew 31.1%, while the growth forecast between 2018 and 2023 is 17.0%.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

that some origins were presented in aggregate form, such as , for example, Finland and the United Kingdom. It should also be noted that relevant origins did not have their data for 2019, being allocated in the "Other Origins" line. In view of this and considering the data presented by Aperam refer to the year 2018, the year 2018 was used as a comparison.

Production of aluminum laminates by country/block. 2013-2019 (in thousand tons)							
Origin	2013	2014	2015	2016	2017	2018	2019
China	18,984	21,692	21,562	24,938	25,774	26,706	29,400
India	2,891	2,858	3,060	3,324	3,486	3,740	3,930
Japan	3,175	3,328	3,061	3,093	3,168	3,283	2,960
USA	2,030	2,389	2,346	2,481	2,754	2,808	2,590
South Korea	2,143	2,038	2,231	2,276	2,383	2,407	AT*
Other Origins	9,285	9,379	9,287	9,665	10,516	11,785	13,320
Total	38,506	41,686	41,548	45,778	48,081	50,730	52,200

As seen in the data provided by Aperam, China was the most relevant origin, with a share of 49.3% of world production in 2013 and reaching 52.6% in 2018. Domestic production grew by 40, 7%. Then come India and Japan, with shares of 7.4% and 7.8% of the product in 2018, respectively.

In this context, Indonesia and Chinese Taipei appear in relevant positions, with 2.3% and 2.3% of world production of stainless steel in the period, respectively. Data not recorded or not investigated accounted for 40.7% of the global production of stainless steel, recorded or investigated accounted for 59.3%, according to data presented by Aperam.

2.2.1.2 Worldwide exports of the product under analysis

In order to analyze the international supply of the product, we sought to identify the largest exporters of products classified under codes 7219.32, 7219.33, 7219.34, 7219.35, Harmonized System (HS), as shown in the following table. It should be noted that the data from debug international statistics in a disaggregated manner, given the lack of data for 2019 included in the identified volumes, the export data in question may include products with the same tariff code, but different from the laminates to cold 304.

List of 304 Cold Rolled Rolls Exporting Countries in 2020			
	Origins	Exported Volume (t)	Participation in world exports (%)
1	China	958,398.67	15.2%
two	Indonesia	628,562.02	9.9%
3	Chinese Taipei	598,199.03	9.5%

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

with 15.2% of world exports. In second place appears Indonesia, investing participation, in third Chinese Taipei, with 9.5%. According to Comtrade, countries/territories exported products classified in the reference codes in 2020 through Ordinance No. 4,353, of 2019.

In terms of origins not investigated or encumbered by anti-dumping measures, the exporting origin was Italy, responsible for 8.3% of the total exported volume, followed by Netherlands (7.0 %), Belgium (5.3%) and France (5.1%), which occupy a relevant share of exports.

In summary, it is observed that origins not recorded or not investigated represent 34.6% of global exports of cold rolled products 304, while origins recorded or investigated represent 65.4% of exports of the referred product.

In this sense, Aprodinox pointed out that the main alternative origin is Indonesia, a target of anti-dumping measures by the Brazilian government, and, until October 2020, duties were in force against imports of cold rolled products 304 originating from Germany, South Korea, Finland and Vietnam. Only anti-dumping measures applied to China and Chinese Taipei have been extended until 2024.

On the other hand, Aperam highlighted the export potential represented by the exportable surplus from Indonesia, calculated by the company based on the international publication CRU Monitor Steel of August 2017, the difference between the installed capacity of origin and sales to the domestic market between P1 and P3, and as the difference between the capacity and exports. According to Aperam, as the data in the publication only presents estimates for 2017, to use export data obtained from the TradeMap platform. However, this method does not consider captive consumption of the product, in addition to not considering domestic sales.

Still, the international scenario can be analyzed from the perspective of the market practiced. Based on the data provided by Comtrade, the average price practiced in 2020 for the product classified under the HS codes in question was identified. The identified values are shown in the table and in the dispersion graph attached.

Average price of exports of cold rolled products 304. 2020	
Origins	US\$/t
China	2,485.21
Indonesia	1,745.29
Chinese Taipei	1,868.31
Italy	2,434.13
South Korea	1,961.55

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

2.2.1.3 Trade balance of the product under analysis

In order to assess the profile of the largest exporters listed above, we calculated net exports from such origins based on their net exports (balance of exports minus imports), classified under codes 7219.32, 7219.33, 7219.34 , 7219.35 and 7220.20 (HS), according to the table below.

Balance of Trade Balance - 2020			
countries	Exported Weight (t)	Imported Weight (t)	Commercial Balance (t)
China	958,399	522,089	436,310
Indonesia	628,562	94,267	534,295
Chinese Taipei	598,199	84,114	514,085
Italy	524,971	625,006	-100,035
South Korea	478,630	203,728	274,901
Netherlands	442,448	581,170	-138,722
Belgium	333,514	84,303	249,210
France	319,618	128,786	190,832
Germany	302,116	918,444	-616,328
Spain	260,632	64,890	195,742
Japan	244,175	132,544	111,631
USA	179,908	157,153	22,755
South Africa	142,952	13,556	129,396
Malaysia	131,899	87,595	44,304
Sweden	101,315	66,240	35,075

It appears that, in 2020, Indonesia had trade surpluses in cold-rolled flat products and was a net exporter.

Among the countries with high export potential, few origins not investigated by the trade defense measure obtained trade surpluses, which can, in principle, be confirmed by an export profile based on the composition of exports and trade flow. In this context, France, Spain, South Africa and Japan stand out.

2.2.1.4 Brazilian imports of the product under analysis

In examining possible alternative sources, it is still necessary to obtain data on Brazilian imports. Thus, the table below shows the volume of Brazilian imports by origin, during the period of damage analysis of the dumping investigation,

South Korea	100.0	714.3	-	-	18,357.1
Germany	100.0	25.3	102.8	1.6	16.5
Other countries ¹	100.0	51.8	66.4	58.7	43.0
Total (except under analysis)	100.0	79.5	122.0	116.0	98.6
Grand total	100.0	80.9	122.1	130.1	174.0

The data show a growth trajectory of Brazilian imports of cold rolled flat products during the analyzed period. From P1 to P5, the total volume of Brazilian imports, in tons, grew 129.7%, mainly caused by imports from Indonesia, which grew 3,047% from P1 to P5. Imports from China registered an increase of 63.5% in the period. The period of greatest increase occurred from P3 to P5, when they went from [CONFIDENTIAL] tons to [CONFIDENTIAL] tons, an increase of 2,389.6%. On the other hand, imports from South Africa declined by 15.7% between P1 and P5. It should also be highlighted the growth of imports originating in Malaysia (129.7% between P1 and P5) after the origin disqualification procedure carried out by this Secex,

The result of these movements was a 1.4% decline in non-investigated imports from P1 to P5. The growth of imports from the USA was counterbalanced by the reduction in imports from South Africa. Therefore, while investigated imports showed a substantial increase, non-investigated imports registered a decrease.

In the case of China, the origin was affected with the renewal of the anti-dumping measure set out through Ordinance No. 4,353, of 2019, imports from that country showed a growth of 63.5% from P1 and P5, reaching [CONFIDENTIAL] tons in P5. Imports from Chinese Taipei, which was also affected by the anti-dumping measure, increased 891.6% in the period, reaching [CONFIDENTIAL] tons in P5.

With regard to the origins exempted from the edition of Ordinance No. 4,353, of 2019 (South Korea, Finland and Vietnam), it is possible to notice that there was no relevant increase in imports imported by Brazil: the highest increase observed refers to the imports from South Korea, which went from [CONFIDENTIAL] tons in P1 to [CONFIDENTIAL] tons in P5. It is worth mentioning, however, the short period of time between P1 and P5 for such imports, since the tariff reduction occurred on October 2, 2019 and the P5 period covers the period from April 2019 to March 2020.

Additionally, it is important to analyze the share of origins in Brazilian imports of cold rolled flat products 304:

Participation in Total Imports (in percentage ranges) [CONFIDENTIAL]					
Origin	P1	P2	P3	P4	P5
Indonesia	[0-10]	[0-10]	[0-10]	[10-20]	[40-50]
Total under analysis	[0-10]	[0-10]	[0-10]	[10-20]	[40-50]

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Among the origins not investigated, the USA stands out, with [CONFIDENTIAL] pp in the share of Brazilian imports, was responsible for [CONFIDENTIAL] imported by Brazil in P5. Also noteworthy is South Africa which, despite having participation, represented [CONFIDENTIAL] % of the total imports of cold rolled P5.

In this sense, Aprodinox highlighted, in its public interest questionnaire of the origin investigated in the volume imported by Brazil. The association claimed that the injury was not caused by the practice of dumping, but rather by the reduced rates of purchasing the product on the international market. He also highlighted the production of cold rolled 304 in 2018, with significant imports only from P4.

Furthermore, CADE claimed, in its public interest questionnaire, that there are competition concerns regarding the effects of a countervailing measure regarding the origin in the sector. In the organ's view, there would apparently be five possible alternative origins: Germany and Chinese Taipei, both origins recorded by trade defense measure, Indonesia, India, and South Africa. In the case of South Africa, it is worth remembering that the investigation in relation to origin was closed without judgment on the merits. Other origins, imports from Malaysia, another possible alternative origin, "are also prohibited for non-compliance with rules of origin".

That said, there is a relevant increase in imports of cold rolled product in the period analyzed, with most of this increase due to the growth in imports from India. In the case of South Africa, despite the reduction in the volume imported over the period, this origin remains one of the main origins of Brazilian imports of cold rolled product. Among the possible alternative sources relevant in terms of volume imported by Brazil, there is South Africa, with shares of [CONFIDENTIAL], respectively, in Brazilian imports of the period. The elimination of the origins of Germany, South Korea, Finland and Vietnam as of 2018.

2.2.1.5 Price of Brazilian imports of the product under analysis

To deepen the examination of the existence of possible alternative origins, it is also important to verify the evolution of prices charged by the main origins of imports. In addition to the commercial defense investigation, the analysis was carried out on a CIF basis. The analysis of the value of imports more uniform, considering that freight and insurance costs by origin considered, have a relevant impact on the price of competition between imports and the Brazilian market.

Average price of imports (in index number of US\$ CIF/ton)

[CONFIDENTIAL]

[CONFIDENTIAL], registering a reduction of 10.7% between P1 and P5.

The average price of imports from Indonesia was [CONFIDENTIAL] reduction of 26.8% between P1 and P5. In turn, the average price of imports [CONFIDENTIAL] in P5, a value 6.2% lower than that recorded in P1.

Considering individually the prices of the origins analyzed, it is observed that the average price of the product originating in South Africa was [CONFIDENTIAL] in P5, recording a decline of 26.8% in relation to P1. The average price of the product imported from Indonesia was [CONFIDENTIAL] decline of 26.8% in relation to P1. The USA, the most relevant uninvestigated origin, imported by Brazil, charged an average price of [CONFIDENTIAL] in P5, a value 6.2% lower than that practiced by the investigated origin in the period.

It should be noted, in this sense, that the average price practiced by the investigated origin from South Africa was lower than that of Indonesia between P1 and P4, while the average price of the investigated origin from P2 to P5.

2.2.1.6 Conclusions on alternative sources

Therefore, considering the elements brought to the file for the purpose of interest assessment, the following is observed:

- with regard to installed capacity and world production for 304 stainless steel, it is estimated that Indonesia would be unrepresentative in terms of participation, representing 1.9% of world production in 2018. Bear in mind, however, that such data do not take into account production and installed capacity growth in the following years, until reaching the world's installed capacity in 2020, according to data presented by Aperam. Moreover, that China and Chinese Taipei, recorded origins, are countries with relevant share of production capacity and world production of cold rolled 304, with China being the first country. In this sense, according to data from the publication CRU Monitor Stainless Steel, the investigated would account for 53,

- on exports of the product, Indonesia accounted for 9.9% of the world's exports, being the second most relevant country in terms of exported volume. Again, among the recorded origins, account for a relevant share of world trade in cold rolled 304, with participation of 24.6%. Possible alternative origins, with emphasis on Italy, South Korea, France, USA, corresponded to 65.4% of the volume exported in this period;

- the average export price practiced by Indonesia was the second lowest among the origins, being 34.3% lower than the general price average. relevant origins, being 34.3% lower than the general price average. Furthermore, the average prices of the other possible alternative origins were higher than the overall average.

Thus, evidence was observed that characterize Indonesia as a promoter of the product, especially when considering its position in terms of world exports, being the second most relevant origin. In addition, this origin has prospects for growth in production capacity and production volume, making the country more relevant in terms of world trade. There is evidence of a trade surplus in the trade balance for the origin.

It should also be noted that China and Chinese Taipei, relevant world origins, have been subject to anti-dumping measures. Thus, investigated origins account for more than 50% of the production and production capacity of laminates.

On the other hand, there are elements that indicate that South Africa is a relevant alternative origin for the supply of cold rolled products 304 in the world, since there are elements of participation in terms of productive capacity, production or world export volume. Despite the reduction in the volume imported over the period, remained one of the most relevant origins of imports of cold rolled products 304, being the second most relevant origin not only in terms of volume, with the participation of [CONFIDENTIAL] % in the total volume imported by Brazil, but also in terms of price, noted that the origin practiced prices lower than those practiced by Indonesia. Thus, South Africa is the most relevant alternative origin in terms of penetration of imports throughout the period.

In addition, the US also stands out as a relevant alternative origin, with a participation of [CONFIDENTIAL] % in the volume imported by Brazil in P5, although with an average price higher than that practiced in imports from the investigated origin. Although other important origins such as Belgium, South Korea, Holland and France also sell the product in the Brazilian market, the prices exported by these origins are currently much lower than those from Indonesia. Thus, among the origins, only Belgium, South Korea and France are net exporters of the product.

In short, South Africa proved capable of rivaling the origin under analysis in terms of volume and price, being the second most relevant origin in Brazilian imports of cold rolled products 304. The USA has also consolidated itself as a possible alternative origin in terms of production volume to Brazil, in addition to being the most relevant alternative origin for Brazilian imports, but with an average price higher than that practiced by Indonesia.

2.2.2 Tariff and non-tariff barriers to the product under analysis

2.2.2.1 Trade defense measures applied to the product

In this topic, we seek to verify if there are other origins of the product that are subject to trade defense measures by Brazil and even if there are cases of application of trade defense measures for the same product. With this, considerations on the feasibility of the measures are deepened and evidence of the frequency of dumping practices and actions taken by the authorities in question is obtained.

anti-dumping	India	European Union	04/22/2009
anti-dumping	India	South Korea	04/22/2009
anti-dumping	India	South Africa	04/22/2009
anti-dumping	Malaysia	China	02/08/2018
anti-dumping	Malaysia	South Korea	02/08/2018
anti-dumping	Malaysia	Chinese Taipei	02/08/2018
anti-dumping	Malaysia	thailand	02/08/2018
anti-dumping	Chinese Taipei	China	08/15/2013
anti-dumping	Chinese Taipei	South Korea	08/15/2013
anti-dumping	Chinese Taipei	Russia	12/18/2015
anti-dumping	thailand	China	12/10/2013
anti-dumping	thailand	Japan	03/13/2003
anti-dumping	thailand	South Korea	03/13/2003
anti-dumping	thailand	Chinese Taipei	03/13/2003
anti-dumping	USA	China	04/03/2017
anti-dumping	USA	Japan	07/27/1999
anti-dumping	USA	South Africa	07/27/1999
anti-dumping	USA	Chinese Taipei	07/27/1999
anti-dumping	USA	South Korea	07/07/1999
anti-dumping	Vietnam	China	10/04/2014
anti-dumping	Vietnam	Indonesia	10/04/2014
anti-dumping	Vietnam	Malaysia	10/04/2014
anti-dumping	Vietnam	Chinese Taipei	10/04/2014
Compensatory Measure	India	China	09/07/2017
Compensatory Measure	Chinese Taipei	China	10/09/2019
Compensatory Measure	USA	China	04/03/2017
Compensatory Measure	USA	South Korea	08/06/1999

In the reference period, 33 (thirty-three) trade defense measures re question were in force, of which 29 (twenty-nine) were anti-dumping duties measures. It should be noted that Indonesia is the target of an anti-dumping me

The I-TIP database informs, moreover, the existence of dump investigating authority of India, in relation to imports of cold rolled products, w European Union, Indonesia, Japan, South Korea, Malaysia, Mexico, Singapore, S

7219.34.00, 7219.35.00 and 7220.20.90 of the NCM. The import tax tariff for unchanged at 14% during the analysis period, according to Camex Resolution No. 125, of December 15, 2016.

In order to compare the Brazilian tariff with the international scenario, more aggregate levels of tariff codes, corresponding to the 6 (six) digit nomenclature, were used to compare the Brazilian tariff of 14% for the product under assessment in P5, with the Favoured Nation tariffs reported by WTO member countries, excluding Brazil. A comparison between 2015 and 2020 was calculated, in relation to Harmonized System (HS) codes 7219.34, 7219.35 and 7220.20. The results of this comparison have been compiled in Table 2.2.2.2.

It can be seen that the average international tariff for the product is 7.3%, which is lower than that charged by Brazil. Furthermore, the Brazilian tariff of 14% is above the level reported by most countries that reported their rates to the WTO. Only the countries Algeria, Comoros, Republic, Chad, Comoros, Gabon and Tonga practice import rates higher than Brazil. In comparison with the five largest exporters of the product in 2020, the Brazilian tariff is higher than the import tariffs practiced by China (7.3%), Indonesia (9.5%), Chinese Taipei (0%) and the United States (0%). No tariffs were reported for Italy, the fourth largest exporter of the product.

In this sense, Aperam, in its public interest questionnaire, argued that the II rates applied by Brazil and the average of the WTO member countries would be similar. However, the tariffs applied in countries that do not produce rolled cold 304 would tend to be higher. However, it should be noted, as seen above, that the Brazilian rate is higher than the average of the 304 most relevant countries producing cold rolled products in world trade. The Brazilian rate is lower than the II in Brazil between 2015 and 2020.

It should be noted that, in November 2021, GECEX Resolution No. 421 granted a temporary reduction of around 10% in import tariffs applied to 87% of the NCM, including the product under analysis, in force until December 31, 2022. In January 2022, Resolution No. 353 increased the previously applied temporary tariff reduction to 11%. The rate applicable to the codes related to cold rolled products 304 increased to 11%, from 12.6%.

On July 20, 2022, Mercosur announced, at the last Presidential Summit, that Argentina, Paraguay and Uruguay agreed to convert the 10% reduction announced in November 2021 into a definitive reduction of the TEC, making the rate for cold-rolled 304 to be permanent.

2.2.2.3 Tariff preferences

The sub-items referring to 304 cold rolled products have the following characteristics: granted in agreements by Brazil/Mercosur:

Tariff Preferences

rolled products 304 in P5, with only [CONFIDENTIAL] % of the total volume imported from the investigated origin.

2.2.2.4 Temporary product protection

Brazilian imports of cold rolled 304 products originating in Indonesia are subject to a temporary trade defense measure.

It should be noted, however, that the product under analysis, which is cold rolled 304 stainless steel, has been enacted by a definitive trade defense measure since 2013. Camex Resolution No. 79/2013, and remains in force until today. current Ordinance SECINT No. 4,353, of 2019, in line with what is presented in item 2.2.2.3, has been applied for approximately 8 years with antidumping duty applied. Germany, South Korea and Japan have had their antidumping rights terminated by the same Ordinance, after a period of 6 years.

2.2.2.5 Other non-tariff barriers

In consulting the TRAINS database of the United Nations Conference on Trade and Development (UNCTAD), no possible non-tariff barriers imposed by Brazil on cold rolled 304 products with codes 7219.32, 7219.33, 7219.34, 7219.35 and 7220.20 of the SH were found. For the same purposes, 474 non-tariff barriers were found by another 65 countries in relation to cold rolled 304 products. System codes.

In its public interest questionnaire, Aperam informed that, in Brazil, the nomenclatures are used to define the different types of stainless steel, the most common is that of the American Iron and Steel Institute - AISI. In Brazil, according to the Brazilian Association of Technical Standards - ABNT adopts the same nomenclature as AISI. However, there are other international nomenclatures that specify the different types of stainless steel used, depending on the region/country in which the product is manufactured. In the public interest questionnaire, presented the same information.

Therefore, no non-tariff barriers imposed by Brazil on cold rolled products originating in Indonesia.

2.3 National offer of the product under analysis

2.3.1 Brazilian market

In order to evaluate the Brazilian cold rolled 304 market, it is worth noting that the volume of sales by the domestic industry, imports from the investigated origin and imports from other origins. The importance of this analysis is to verify how much domestic industry sales are in the Brazilian product market. Thus, the Brazilian market for cold rolled 304 is provided by the domestic industry and RFB statistics.

According to the data presented, the Brazilian market for cold rolled 31.0% from P1 to P5, going from [CONFIDENTIAL] tons to [CONFIDENTIAL] tons. The market showed increases of 16.3%, from P1 to P2, 6.7%, from P2 to P3 and 6.0%, from P3 to P4, considering the interval between P4 and P5, a reduction of 0.4% was recorded.

Following the growth trend of the Brazilian market, the internal sales also registered an increase, of 17.3% between P1 and P5. It was observed that the internal market grew 27.7% from P1 to P2 and decreased 2.2%, from P2 to P3, sales grew by 5.8% from P3 to P4 and a reduction of 11.4% from P4 to P5.

In the same period, there was a significant increase in imports from 3,047.0% considering the period between P1 and P5. Imports from other sources presented a retraction of 1.4% between P1 and P5.

The domestic industry had its greatest share in the Brazilian market of % of the total volume traded. Since then, continuous reductions have occurred [CONFIDENTIAL] pp from the market from P2 to P5, when it reaches its lowest share of [CONFIDENTIAL] %. The space lost by domestic industry sales was occupied by the investigated origin, which grew [CONFIDENTIAL] percentage points in the Brazilian market.

Aperam, through the analysis carried out by Tendências, informed that the product takes place through sales made directly to the industry or through commercialization with the industry. Aperam's share of direct sales, according to Tendências, is influenced by factors such as: the technical assistance offered, the exposure of the steel in the price of nickel, the size of industrial clients, the industry segment, among others. The consultancy, the share of sales to distributors started from [CONFIDENTIAL] company in P1, reaching [CONFIDENTIAL] % in P5, which would reveal the relevance of the commercialization of this product.

Therefore, it is noted that the Brazilian market for cold rolled 304L grew at a greater rate than domestic industry sales, causing the domestic industry to lose market share in the analyzed period. The same occurred with imports from non-investigated sources. The Brazilian market were supplied via imports from the investigated origin.

2.3.2 Risk of shortages and supply interruptions in quantitative terms

In this section, we seek to analyze the risk of shortages and supply interruptions for the domestic industry, in the event of application of the trade defense measure. The production of the domestic industry is analyzed in relation to the installed capacity and the idle capacity. The data of the domestic industry so that they can be compared with the data of the Brazilian market.

throughout the periods analyzed: 2.5% from P1 to P2, 3.5% from P2 to P3, 9.9% from P4 to P5. Considering the entire analysis period, the volume produced in the production of 304 cold rolled products was higher than the Brazilian market by this trend from P4 onwards. Product production was, on average, equivalent to the Brazilian market from P1 to P5. The production of other products, in turn, also reduced the period of analysis, reducing by 8.6% between P1 and P5. As a result, the domestic installed capacity showed a reduction of [CONFIDENTIAL] pp from P1 to P5, [CONFIDENTIAL] %.

From the data presented, it appears that the effective production of the domestic industry is, on average, [CONFIDENTIAL] times higher than the Brazilian market. It is noted that the production line of the similar national product is shared with the production volume from P1 to P5 is, on average, [CONFIDENTIAL] times higher than products 304.

Regarding this point, in a statement filed on October 20, 2022, Aperam, common in integrated plants, representing, instead of risk, a guarantee of sustainability in all aspects for the producing companies. Aprodinox, in a statement, accused negative impacts caused by the prioritization of more profitable products and withdrew its demand for shortages due to the possibility of maintaining a supply of suppliers due to the decrease in the values of freight and insurance, the cooling of the unit and the decrease of the TEC.

The degree of occupancy of the 304 cold-rolled production line remained low throughout the period of analysis, ranging from [CONFIDENTIAL] % at the highest occupancy period (P1) to [CONFIDENTIAL] % at the lowest occupancy period (P5), which demonstrates the need to increase the production of the product. The nominal idleness of the domestic industry ([CONFIDENTIAL] tons), would allow the domestic industry to still serve [CONFIDENTIAL] market in the same period.

In this regard, Aprodinox and Inoxplasma claimed, in their public information, that Brazil has faced a shortage of steel products, including stainless steel, to supply the second half of 2020, that is, outside the period investigated.

Inoxplasma has stated that [CONFIDENTIAL]. The company cited [CONFIDENTIAL] as an example.

Similarly, Usinas Metais and Inconel claimed that [CONFIDENTIAL]. [CONFIDENTIAL]. In this sense, they claimed that [CONFIDENTIAL].

application of a compensatory measure would only aim to correct the distortion in subsidies by the Indonesian government and guarantee fair competition between the Brazilian market".

Furthermore, Aprodinox, in a statement filed on July 7, 2022, alleged that the domestic industry's production of cold rolled products by the petitioner. In response to the allegation made, Aperam, in its memorandum dated October 3, 2022, informed that during the context of the pandemic, the domestic industry's production in the Brazilian market and, once the supply via imports was regularized, the distortion would be for these to the detriment of acquisitions from the domestic industry.

With regard to sharing the production line with other products, Aperam, in its memorandum dated October 10, 2022, claimed that it is common in integrated plants to guarantee the production in all its aspects to the producing companies. In this context, he also stated that no foreign producer/exporter works with a line exclusively for the similar products in the same sense for the Brazilian producer.

In view of the above, there is evidence that the effective installed production capacity of the domestic industry was superior to the Brazilian market in all periods analyzed and that the domestic industry significantly expand the production of cold rolled products 304.

In addition, arguments were presented relating to delays in the supply of cold rolled products 304, but without supporting evidence. The domestic industry claimed to have guaranteed domestic supply in a period of import restrictions during the pandemic. In this sense, even if the occurrence of delays in supply is admitted, the domestic industry parties throughout the process did not allow to evidence quantitative restriction in the domestic industry.

Furthermore, as the domestic industry has sales in the foreign market, it is necessary to analyze whether there is the possibility of prioritizing such operations, which could lead to a reduction in sales in the Brazilian market. To this end, the characteristics of all domestic industry operations (domestic market and exports) are analyzed, as shown in the table below:

Domestic Industry Sales (in ton index number) [CONFIDENTIAL]					
	sales at Intern market	%	Foreign Market Sales	%	Total Sales
P1	100.0	[50-60]	100	[40-50]	100.0
P2	127.7	[70-80]	63.7	[20-30]	99.4
P3	124.8	[70-80]	57.7	[20-30]	95.2
P4	132.0	[80-90]	26.6	[10-20]	85.5
P5	117.3	[90-100]	15.8	[0-10]	72.5

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

analyzed in order to identify possible restrictions to the product offer, as shown below.

Price and average cost of production in the domestic industry (in R\$/t index number) [CONFIDENTIAL]		
Periods	Production Cost (A)- (R\$/t)	Sales Price in the Domestic Market (B)- (R\$/t)
P1	100.0	100
P2	87.9	88.6
P3	96.0	95.4
P4	107.3	103.4
P5	106.5	98.3

Note that the ratio of production costs to prices charged by the domestic industry, on average, [CONFIDENTIAL] % over the analyzed period, increasing from [CONFIDENTIAL] % in P1 to [CONFIDENTIAL] % in P5, period higher cost/price ratio. This movement was the result of the increase in production costs and cold rolled 304, combined with a 1.7% decrease in the sales price over the period analyzed. Therefore, it can be noted that the ratio between production costs and domestic sales price showed successive increases, with deterioration of the cost-price ratio, analysis, that is, with loss of profitability in the cost-price ratio.

Complementarily, the behavior of nominal prices of the domestic industry is analyzed in the evolution of indices associated with the weightings of groups and individual products, the Producer Price Index, according to the sectors of origin (IPA-OG-DI). The objective of this analysis is to verify the price of the domestic industry product varied in relation to other industrial products. For this, the monthly price index for industrial products for each period was considered. The domestic industry prices and indicators have been transformed into index numbers for comparison.

It should be noted that, considering the whole period analyzed, the index of industrial product increased by 25.2%, while the industrial products index increased by 15.5%. The index followed, roughly speaking, the same growth trend, with the exception of the period P2, where the domestic industry suffered a nominal reduction, while the price index registered a slight increase. At the extremes of the series, it can be concluded that domestic industry prices registered a higher growth than that observed in the index of industrial products.

Still regarding the evolution of prices, it is worth comparing the trade of the domestic producer with the price of Brazilian imports of cold rolled products for comparison based on P5. In the table below, imports from the analyzed origin and the average of other origins are used as a basis for comparison, in CIF reais per ton based on the operations, according to RFB import statistics.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

domestic industry recorded variations greater than inflation, measured by throughout 2018 and 2019, which represented real growth in prices of the produ

It is worth noting, however, as previously shown, that the growth domestic industry throughout 2018 and 2019 offset the drop that occurred in price index to increase more than that observed in Aperam's domestic prices , v period of analysis.

It also presented a comparison between the sale price of the produ and the cost of nickel, in index numbers based on January 2017. For domestic in to gauges 0.49 were used. ~ 0.40 and 4.00 ~ 2.00, products with higher vo percentage, according to Aprodinox. The association did not disclose the sou The data is shown in the following graph:

However, based on the data provided by the association, it was no evolution of nickel costs, as presented. In the graph shown, the average co appears to be lower than that recorded in January 2017, while the data provided period, based on the monthly average of daily closing prices, or that is, wi registered in domestic industry prices.

Aperam, through the analysis carried out by the Tendências cointegration tests to verify the long-term relationship between the domes domestic industry and the prices practiced in the international market, and es vector (VEC), used to corroborate the results obtained based on the cointegrat the monthly prices of 304 stainless steel charged by Aperam for its customers a parameter and, as an international price parameter, adopted the monthly price (2mm) China Export FOB from the data provided by CRU Group. Tendência considering data between January 2011 and December 2020. Shipping and added to international prices,

- Maritime freight from China to Brazil in the amount of US\$ 50.00/t;
- Import tax of 14% on the CFR value;
- Port expenses in the amount of US\$ 44.00/t;
- Ground freight from port to customer US\$ 10.00/t.

In addition to the international price, common cost components existence of a long-term relationship between domestic and foreign prices of the following variable cost composition:

- International price of nickel ([CONFIDENTIAL] %);

In response to the test carried out by the company Tendência statement filed on July 7, 2022, that such an exercise would have a limitation in the differences between the price levels practiced by the domestic industry and international prices. According to the association, Aperam could, over the period evaluated, be exercising charging prices well above those of the imported product: "its prices would be above international prices, but with a high margin of comfort. the opposite could also be true. tests carried out would not be sufficient to conclude that the prices of imported products are higher than the company's prices, "

In its manifestations of October 3, 2022, reiterated by the final manifestation of October 20, 2022, Aperam defends that domestic industry prices followed international market prices. In its final manifestation of October 20, 2022, Aprodinox criticized the Tendência fact that there was no finding that prices in Indonesia and South Africa would be higher than the domestic industry.

In view of the above, there is evidence that the nominal domestic industry prices followed the industrial price index, having even recorded a decrease in the analyzed period. It should also be noted that, in real terms, the price of the domestic industry was higher than international prices between P1 and P5, while there was a real increase in the cost of production, thus increasing the cost/price ratio.

Evidence was also presented of a relationship between stainless steel prices in the domestic market and in the international market in the long run, so that domestic prices would follow international prices, thus not having the market power of the domestic industry to control prices. Based on import statistics and on the cointegration test presented by Aperam, it appears that domestic industry prices follow the prices charged by other origins. However, in all analyzed periods, prices practiced by the domestic industry were higher than the analyzed origins and other origins, in all analyzed periods.

2.3.3.2 Risk of restrictions on national supply in terms of quality and variety

With regard to the risk of restrictions on national supply in terms of quality and variety, Inoxplasma, Inconel, Jati and Usinas Metais argued that the domestic industry does not produce cold rolled 304 in standard widths and finishes of cold rolled products 304. information contained in the public information 19972.100974/2021-66 (public) and nº 19972.100976/2021-55 (confidential), Aprodinox argued that cold rolled 304 in standard widths of 1,020 mm, 1,040 mm, 1,220 mm, 1,240 mm, 1,260 mm and 1,320 mm, it being possible, however, to supply the product in the

Furthermore, the company claimed, in a statement filed on May 31, 304 cold rolled products with different finishing standards. In the case of the BA produced by the domestic industry, Aperam argued that it produces the product that also provides a reflective and shiny effect, the difference between these types is "to the naked eye". In the view of the party, the products under analysis would follow the standard that there would be no differences in quality between the domestic and imported products.

In this sense, he cited Camex Resolution No. 79/2013, which applies to Brazilian imports of cold-rolled stainless steel (grades 304 and 430), originating from Korea, Finland, from Chinese Taipei and Vietnam:

"Similarly, finishes, even if processed differently via chemical or mechanical surface, will generate similar products that will be used in similar applications.

Thus, the position set out in DECOM Technical Note n 43 of 2013 is that the product manufactured in Brazil has the same physical characteristics, chemical composition and the same uses as the imported product. Both compete in the same market, and are cold rolled stainless steel in which it is impossible to replace the imported product with the domestic product [...]."

Similarly, he cited Ordinance Secint No. 4.353/2019, which extends the scope of the Decree from China and Chinese Taipei:

"It should be noted that possible differences in the quality of the products do not lead to different conclusions regarding similarity. There is information in the file that contradicts the statements of the importers. Tramontina Farroupilha stated, for example, that there would be no difference between the imported product and that produced by the domestic industry. Regarding the quality obtained through the BA-type finish, it should be clarified, in spite of the fact that the product manufactured by the domestic industry and the imported product, different finishes, when they involve additional productive stages that are considered for purposes of similarity.

With regard to 304 cold rolled products with widths greater than 1,500 mm, it was indicated that the product with a width of less than 1,500mm could "perform the same applications as flat laminates with a width greater than 1,500 mm, therefore, regarding the similarity, he again cited Camex Resolution No. 79/2013:

"With regard to claims for the exclusion of types of products due to the production of laminates with certain widths or certain finishes, it should be remembered that the concept of similarity encompasses not only the identical product, but with similar characteristics.

Regarding product quality, Aprodinox states in its final statements that even with similarity, there would be products with different qualities for the market.

In view of the elements presented in this public interest assessment, the elements were presented that indicate quality restrictions in relation to the domestic industry. With regard to the variety of the national offer, despite the national industry that it would not produce the product with a thickness greater than 1.5 mm finishes, no elements were provided in the process that indicate the distinct use of the product variety for the downstream chain, nor on the availability of the products of the producers/exporters of the origin under analysis. In this sense, it was not possible to conclude that there would be restrictions on the national offer in terms of variety.

2.3.4 Risk of restrictions on the national offer in terms of discrimination against customers

With regard to the risk of restrictions on national supply in terms of discrimination between clients, CADE cited, in its public interest questionnaire, the Economic Commission's findings on the effects of a vertical integration when carried out between horizontally concentrated companies.

Furthermore, CADE cited Administrative Proceeding No. 08700.0107/2000-89, which contained allegations of non-compliance with the guidelines expressed by the Brazilian Antitrust Law regarding anticompetitive practices in the stainless steel segment, within the scope of Economic Administrative Proceeding No. 08012.005092/2000-89. Within the scope of this Administrative Proceeding, at the time, potential indications of anti-competitive conduct were identified with respect to the treatment of distributors who were part of the Aperam group and the Aperam's policy of limiting access to the company's products.

The body also argued that the policy of "discounts for distributors according to the purchase volume that is dedicated to the represented company, with a minimum absolute purchase volume" carried out "configured a form of non-linear discount policy that could have as its scope 'restricting the competition of its direct counterparts for the represented company that eventually justifies the legitimization of the policy'".

The Administrative Proceeding in question was terminated by the Administrative Commitment Term signed in April 2015, in which the company undertook to:

- not to offer any commercial advantage to the distributor of its group, which is not extended to the other distributors: "the Promise Party undertakes the obligation not to offer any advantage to the distributor of its group, especially regarding price, terms and conditions, which is not extended to other distributors, whenever purchases are made under the exclusive acquisition of products from the Buyer";
- "not to practice any non-linear discount to distributors whose purpose is the exclusive acquisition of products from the Buyer";

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

between independent distributors, but the values would be higher than those of independent distributors. It also stated that purchases in this category would only be made from independent distributors. Technical assistance would be limited to products supplied by Aperam.

Furthermore, Aprodinox stated that the prices practiced for DIA would depend on the volume purchased, with no differentiation between these categories. If the price practiced for the independent distributors category would be used. However, in the past few years, there has been a significant migration of DIA distributors to the DRA.

Furthermore, the association claimed that Aperam, "in clear abuse of its economic dominance, has repeatedly adopted anti-competitive conduct in order to ensure that independent distributors do not choose to import the product". In this context, he claimed to have filed a request with CADE against Aperam for abuse of a dominant position, in line with the information provided.

CADE produced a technical note in which it decided to initiate an investigation to Investigate Violations of the Economic Order. In the Technical Note for the investigation, CADE informed that the Board must adopt the following measures, without prejudice to the measures necessary: dispatch of letters to market distributors for data collection and to determine how each one is affected for the denounced practices; evaluation of how to change the pricing policy for the product; detailed analysis of Aperam discount tables and their amendments; and a better understanding of the MD system.

In addition, in a statement filed on July 7, 2022, the association stated that the DIA condition to the DRA would imply the loss of a series of advantages: "if the importation of the product by distributors, at the same time it ends up making a range with lower discounts or even making spot purchases, which would affect the competitiveness of this distributor in the market, given that the differences between the discount ranges of the highest discount ranges can exceed 10%".

In this sense, he stated that the three largest distributors of cold rolled steel moved from the DIA category to the DRA between 2019 and 2020, leaving only the companies of two more "small companies" in the DIA category. The association presented a chart showing the number of distributors allocated in each category. According to the data, there was a reduction of distributors from 19 to 17 and the migration of DIA distributors to the DRA represented 63% of the total in June 2016 (12 out of 19) and now represent more than 80% depending on the association.

According to Aprodinox, "in order not to lose import volume - which was a key factor in the implementation of a new commercial policy, with a new pricing model. This model was a practice that clearly distorted the spirit of the TCC". The association argued that

On September 9, 2022, Aprodinox filed a statement in which it previously presented.

Regarding the subject, Aperam informed, in its public interest questionnaires, that its distributors, which have a closer relationship with the company and undertake not to import products from other distributors, on the other hand, could import any product, without an exclusive contract. Both DIA and DRA distributors have a contract with Aperam and undertake to make purchases, with no barriers to migration between relationship models. Finally, Aprodinox has no commitment to Aperam and are usually supplied through imports. Aprodinox has only one price differentiation criterion in the supply to distributors, that is, the volume of purchases.

Furthermore, the company argued, in a statement filed on May 11, 2022, that the Administrative Procedure No. 8700.000841/2021-74 would have the purpose of determining whether the analysis is a matter within the competence of CADE or if it concerns only a matter of the competence of the Council. Thus, according to the party, there would not be the establishment of an "investigative procedure of an inquisitorial nature (called Administrative Process)" much less for the opening of an administrative process to impose administrative sanctions on the economic order (called of Administrative Process)".

With regard to the Term of Cessation Commitment signed in April 2022, the party stated that the monitoring carried out by CADE would have been "rigorous and intense". Aprodinox would not have presented to CADE any fact or allegation of its possible anticompetitive conduct. In this sense, according to Aperam, the representation presented by Aprodinox to CADE refers to the following facts: "all data and information presented by Aprodinox to CADE refer to the period of force and in which CADE monitored and supervised intensely the performance of the party indicated that it had not practiced any type of discrimination between distributors, applying the same commercial policy to all customers, including Aperam Serviços,

Having reported the manifestations, it is pointed out that, from the public interest analysis, it was not possible to conclude whether the distribution policy would be configured as a restriction to the national offer. Distribution among distributors was non-exclusive with volume discounts (DRA) and spot purchases was subject to the same policy also observed in the supply of several other products. That said, the alleged anticompetitive conduct pointed out by the party, as reported in this document, are currently being analyzed by the authority, through Preparatory Procedure No. 8700.000841/2021-74, and not by the competent authority in investigation of anticompetitive conduct.

2.3.5 Conclusions on the national offer of the product under analysis

Thus, regarding the national offer of the product under analysis, it is concluded that

production price showed continuous increases over the period analyzed, reaching 25.2% when it reached [CONFIDENTIAL]%. This movement was the result of the increase in the price of cold rolled 304, combined with the reduction in the domestic sale price of the product.

- in terms of price evolution, considering the whole period analyzed, the domestic industrial product increased by 25.2%, while the industrial products index increased by 12.2%. The index followed, roughly speaking, the same growth trend, with the exception of the domestic industry suffered a nominal reduction, while the price index registered a 1.7% increase. The price of the domestic industrial product recorded a lower increase than that observed for industrial products over the analyzed period;

- in terms of comparing the price of the domestic industry and imported products, the domestic industry was higher than the price of the imported product (calculated from the investigated origin and from other origins in all periods. It is also observed that the price of the investigated origin declined 7.8% from P1 to P5, while the prices of the domestic industry dropped 1.7% and 12.2%, respectively, in the period;

- no elements were presented that indicate quality restrictions on the products supplied by the domestic industry. With regard to the variety of the national offer, there was no difference between the parties, without providing elements that indicate different use and/or not commercialized by the domestic industry, nor about the availability of the products of the producers/exporters of the origin under review; It is

- in relation to the restrictions on the national offer in terms of discrimination between customers, the elements presented by the interested parties were not sufficient to reach a conclusion.

Thus, it was identified that the domestic industry has sufficient production capacity to supply the Brazilian market of cold rolled products 304 and that there was no prioritization of the domestic industry in relation to domestic sales.

With regard to prices, it was verified that, even with the application of the price comparison relation to several origins in the analyzed period, the domestic industry was not profitable, having presented the lowest gross profit margin in P5, and modified the price of the domestic product than the industrial products index. On the other hand, the price of the domestic product was higher than the price of imported products from the origin analyzed and the average price of the domestic product, with the exception that such comparison is affected by the difference in the basket of products of the origin.

Finally, the arguments presented regarding delays in supply, lack of variety and discriminatory practices between customers do not allow for a conclusion of restricting the national supply. The variety restriction arguments lack elements to

interest, as in New Zealand and the United Kingdom, which reinforces the adequacy of the model, as it follows the best international practices. In any case, it is emphasized that the parties adopted this model, as clarified in the Consolidated Public Interest Guide.

Such a partial equilibrium model departs from the Armington framework, where products of different origins are treated as imperfect substitutes and, given the constant elasticity of substitution structure, the substitutability between products can be governed by the elasticity of substitution, as the Armington elasticity. The structure of the presented model followed the Armington model, with the only difference being that it considered the perspective of a single country, while the model considers a global model with "n" countries importing and exporting.

Considering the absence of estimates for the Brazilian market in relation to the domestic supply, it was decided to adopt, instead, estimates made by the United States International Trade Commission (USITC), measured in intervals. The elasticity estimates for the products "cold-rolled flat steel products" were used to define the parameter, which includes several products: 7209.15, 7209.16, 7209.17, 7209.18, 7209.25, 7209.26, 7209.27, 7209.28, 7209.90, 7211.90, 7212.40, 7225.50, 7225.99 and 7226.92 of the SH (investigation regarding Japan), in line with the suggestion made by Aperam in this public interest assessment.

In any case, it is recognized, as a limitation of the availability of information, that steel products include other goods other than the cold-rolled 304 under analysis. To overcome this limitation, a proportion of the same tariff level SH-2 to the product under review. In this sense, a sensitivity analysis was carried out in order to establish maximum and minimum limits, based on the range of elasticity of supply to reduce the limitations of the available data. According to the USITC, the elasticity of supply for domestic supply is between 4 and 8. Thus, an intermediate value of 6 was adopted for domestic supply, assuming that the Brazilian producer behaves similarly to the elasticity of supply from other sources, a value of 99 was adopted,

Regarding the price elasticity of demand (h), also estimated for the case of "cold-rolled flat steel products", the value of -0.5 was adopted, based on the estimated value for the range of -0.75 and -0.25. For the elasticity of substitution between 3 and 5, that is, 4. The value used is consistent with the estimates found in the specialized economic literature. In any case, a sensitivity analysis was carried out to establish maximum and minimum limits based on the range of elasticity parameters.

The market configuration in P5 (April 2019 to March 2020), the domestic supply was used as the base scenario for carrying out the simulations. Information provided by the RFB was used, as well as import statistics from the RFB. The import tax for each origin was calculated based on the amounts actually collected in P5, according to the RFB import statistics.

	P1	P2	P3	P4	P5
Production line	100	100	99.0	93.8	83.3
Administration and Sales	100	107.7	107.7	100.0	84.6
Total	100	100.3	99.4	94.0	83.3

From the data presented, it was observed that the number of production line remained constant from P1 to P2, showing consecutive declines from P2 to P3, 5.3% from P3 for P4 and 11.2% of P4 for P5. When considering the entire analyzed series, the number of employees who work in the production line revealed a negative variation of 16.7% from P1 to P5.

With regard to the variation in the number of employees working in administration and sales over the period under review, there was growth of 7.7% between P1 and P2, followed by a decline of 7.1% between P2 and P3. In the other periods, there were reductions of 7.1% between P3 and P4 and 11.2% between P4 and P5. When considering the entire analyzed series, the number of employees working in administration and sales declined by 15.4% from P1 to P5.

When evaluating the variation in the total number of employees in the analyzed series, it was observed that from P1 and P2 there is an increase of 0.3%. It is also possible to verify, in the other periods, a decline of 0.9% between P2 and P3, 5.4% between P3 and P4 and 11.4% between P4 and P5. When considering the entire analyzed series, the total number of employees presented a contraction of around 16.7% from P1 to P5.

Next, the results obtained for the cold rolled 304 business in the domestic industry are described, considering the period from P1 to P5. The values of the indicators in the reference process were updated by the IPA-OG, from Fundação Getúlio Vargas.

Evolution of results in sales of cold rolled products 304 by the domestic industry (in index number of thousand updated reais) [CONFIDENTIAL]			
	P1	P2	P3
Net Revenue	100.0	113.1	119.0
Raw score	100.0	121.1	120.0
Operational result	100.0	123.0	104.0
Operating income (except RF and OD)	100.0	122.5	121.0

It was observed that the net revenue indicator, in updated thousands of reais, in the domestic market showed increases of 13.1% from P1 to P2, from 5.3% from P2 to P3 for P4. Between P4 and P5, the indicator suffers a reduction of 15.5%. When considering the entire analyzed series, the net revenue indicator referring to sales in the domestic market revealed a reduction of 15.3% in P5, compared to P1.

Changes in consumer surplus, producer surplus, revenue, and welfare	
Component	Variation (in millions of US\$)
consumer surplus	-4.91
producer surplus	1.89
Collection	4.35
Liquid well-being (A)	1.33
Price index variation	2.40%
ID Quantity Variation	3.46%

The company argued that the increase in the quantity produced by the domestic price were expected, since the application of compensatory measures by the investigated sources to resume market prices against the national producers, claimants of the cold-rolled stainless steel 304 to import less to the detriment of the domestic industry, which leads to an increase in the quantity produced by the domestic industry. Consequently, the net welfare result would be positive, that is, "losses for consumers would be more than offset by gains for producers and the government".

In its final statement, Aperam refuted Aprodinox and CADE's allegations that the national manufacturer is the only producer of 304 cold rolled products in the market. In this condition, Aperam would be able to exercise market power and price control. The economic study that it presented on the occasion of the response to the PDI and the verification of the existence of damage resulting from imports of cold-rolled stainless steel 304 in Indonesia corroborate the argument that its prices follow international prices. Furthermore, Aperam reiterated its allegations that there is no difficulty or shortage of demand, nor any risk that this may occur, even with the application of the measure.

Aprodinox, in a statement filed on July 7, 2022, argued that the Tendências do not exactly refer to the product under investigation. In the case of Brazil, they refer to cold-rolled steel flat products and in the case of Brazil, they refer to cold-rolled steel flat products. Therefore, in neither case are the elasticities shown to be adequate ". Thus, he argued that a restricted classification of products (as is the case of this investigation) and the use of imperfect substitutes (even if imperfect)", that the price elasticities of demand would tend to be those of more aggregate product ratings. He claimed, therefore, that the results would tend to generate negative net well-being. Furthermore,

The Partial Equilibrium Model predicts a negative variation of US\$ 1.75 million in consumer surplus and a positive variation of US\$ 4.79 million in producer surplus and US\$ 1.75 million in government revenue.

From the point of view of the domestic industry, the probable variations in the quantity of cold-rolled 304 sold by the domestic producer were also estimated, as shown in Table 1.

According to the simulation, it is observed that the quantity sold by the domestic producer would grow 4.83% with the imposition of the measure. Likewise, domestic product prices would increase by 4.83%.

Observing the ranges of elasticities considered, it is possible to estimate the minimum and maximum shares for the domestic producer and for imports in the Brazilian cold rolled steel market.

Thus, the simulation of the Partial Equilibrium Model predicts that the imposition of a dumping duty would reduce the share of imports originating in Indonesia in the Brazilian market to a range of [CONFIDENTIAL]% to [CONFIDENTIAL]%. On the other hand, the domestic producer's share increased to a range between [CONFIDENTIAL]% and [CONFIDENTIAL]%. The share of the rest of the world would grow in relative terms, ranging from [CONFIDENTIAL]% to [CONFIDENTIAL]% of the Brazilian market.

Participation in quantity - Initial and simulated			
[CONFIDENTIAL]			
Origin	Initial Participation (%)	Minimum participation (%)	Maximum participation (%)
Brazil	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Indonesia	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]
Rest of the world	[CONFIDENTIAL]	[CONFIDENTIAL]	[CONFIDENTIAL]

Thus, considering the results obtained in the simulation, the even the imposition of a dumping duty to cold-rolled 304 imported from Indonesia would not be enough to eliminate its presence from the Brazilian market or make its presence insignificant. However, the competition from imports from other sources is reinforced, with emphasis on the USA and South Africa, which are the 13th largest global net exporters of the product under analysis, in terms of possible participation in the Brazilian market.

In the considered limit scenario (minimum share of imports from Indonesia), the share of imports of cold rolled products 304 originating in Indonesia would still represent [CONFIDENTIAL]% of the Brazilian market. In this scenario, imports from other sources, in turn, would increase to the percentage observed in the base scenario, representing at least [CONFIDENTIAL]% of the Brazilian market.

Brazilian imports of cold rolled products 304 originating in China and Chinese T that a company in the downstream market would have pointed out conduct by A No. 08700.010789/2012-73, previously reported in the case file of the present c as an abuse of economic power. CADE added statements in response to the i the following terms: "

Regarding the impacts of imposing the measure on the downstream an economic study, in which it carried out a General Equilibrium analysis - I model -, and estimated "variations in production from a change in final demand government consumption, household consumption, exports and changes in in company, the model is configured as a general equilibrium one, as it abso changes throughout the economy, so that the results can be extended to m such as added value, production, indirect taxes, jobs and income.

The simulation results have been compiled in the following tables. I positive effects on the productive link of the steel industry more than compensa impacts downstream. Thus, the company claimed that the adoption of compens from the investigated origin would generate gains in economic activity, in production, added value, income, indirect taxes and jobs: "even if the consumers with an eventual increase in price, this effect would be more than offset by th agents. Also, the repercussions on the links in the chain indicate that the po industry are more representative in relation to the effects on the downstream lin

Economic Impact by chain link

chain link	default scenario
LF 304 steel	44.28
downstream sectors	-10.00

General Equilibrium Model Results (in R\$ mi for 2021)

chain link	default scenario
Production	147
Added value	56
Income	25
indirect taxes	4
Jobs (units)	693

the power to limit the effects of possible price increases of the product under an

Aprodinox, in its final statement, argued that there is great practicality in the product under analysis, due to the characteristics of corrosion resistance and with economic and even regulatory restrictions for the application of other materials. The aforementioned association cited CADE's conclusion on the irreplaceability of cold-rolled 304 stainless steel that "there is no other product that fulfills the same function as cold-rolled 304 stainless steel in domestic and international markets". Aprodinox also reiterated the argument that the shortage of stainless steel, including cold-rolled steel, by the industry for the application of the product would have been the lack of the product in several industries, with negative short- and long-term impacts for the industry and the entire economy. The consequence of this would have been the prioritization by the domestic industry of the product - supposedly more profitable - in the investigated period and immediately after the decision, resulting from this commercial decision. Finally, regarding the analysis of the economic losses by Aperam, Aprodinox reiterated the comments already brought in previous periods, despite the losses resulting from this commercial decision. Finally, regarding the analysis presented by Aperam, Aprodinox reiterated the comments already brought in previous periods, despite the losses resulting from this commercial decision. Finally, regarding the opinion presented by Aperam, Aprodinox reiterated the comments already brought in previous periods, despite the losses resulting from this commercial decision. Finally, regarding the manifestations.

Having considered the parts in question, as a way of measuring the impact on the downstream chain, the projections for the variation of price indices and market quantities for the market of cold rolled products 304 are presented in the table below, based on the Partial Equilibrium Model for the application of the recommended antidumping duty rate prevailing in the baseline scenario.

Variation in price and quantity

Variable	Variation (%)
P	2.27
Q	-1.12

The simulation suggests that the application of a compensatory measure for cold rolled products originating in Indonesia would increase the price index of the market by 2.27%, at the same time that it would decrease the total quantity consumed by 1.12%.

It is recognized, in this sense, that the application of compensatory measures has the power to increase domestic prices at the same time as it reduces the quantity demanded in the market, which may lead to loss of well-being. Given this context, it is necessary to consider the impact of the application of the recommended antidumping duty rate on the domestic market.

short term. Furthermore, from the perspective of demand, the elements attached to the assessment records did not allow for a glimpse of substitutability between the product and another type of product;

- the Brazilian market remained at highly concentrated levels throughout the period (above 2,500 points of the HHI), even though the increase in the share of imports and concentration, with P5 being the period with the lowest level;

- Indonesia and the USA are among the main origins for the supply of cold-rolled products in the world, while South Africa would be a less relevant origin in terms of production and volume exported worldwide. In turn, China and Chinese Taipei, relevant origins, constitute feasible alternative origins, since they are encumbered by an anti-dumping duty. The recorded and investigated origins account for more than half of world production and for 34.6% of world exports of the product. In this sense, the origins USA, South Africa, Holland and France stand out as possible alternative origins, which together with Indonesia exports. Among such origins, only the USA, Belgium,

- the average export price practiced by Indonesia to all its destinations was lower than among all relevant origins, being 34.3% lower than the general price average. In turn, South Africa had the lowest price among the relevant origins, 36.0% lower than the general average. Furthermore, the average prices of the other possible alternative origins Italy, China, Belgium and France were below the total price average, while the average price of France was above the average;

- with regard to the evolution of imports, there is a relevant increase in the number of products 304, of 74.0% over the period analyzed, with most of this increase due to imports from Indonesia and the USA, which recorded increases of 3,047.0% and 63.5%, respectively. It appears that the USA is the main alternative origin, with a participation of [CONFIDENTIAL] of imports imported by Brazil in P5, followed by South Africa, with a participation of [CONFIDENTIAL];

- Indonesia practiced average prices lower than the other origins of cold-rolled products. The lowest price in P5. South Africa, another relevant alternative origin in terms of production, had lower prices than Indonesia between P1 and P4. The US, the most relevant alternative origin, had an average price 15.5% higher than the average price of imports investigated in P5;

- in the reference period, 33 (thirty-three) trade defense measures were applied related to the tariff codes corresponding to cold-rolled products 304, of which 29 (twenty-nine) dumping duties and 4 (four) compensatory measures. Indonesia is the target of 11 (eleven) measures applied by Vietnam;

- the space lost by domestic industry sales was occupied, above the investigated origin, which grew by 3,047.0% between P1 and P5, registering an increase in the share of participation in the Brazilian market in the period, and by imports originating from the investigated origin, which grew by 63.5% in the period, showing an increase of [CONFIDENTIAL] percentage points;

- the domestic industry has sufficient production capacity to fully serve the Brazilian market. It should be noted, in this regard, that the degree of occupancy of the production line remained at low levels throughout the analyzed period, reaching [CONFIDENTIAL]%. The idleness of the production line in P5 would allow the domestic industry to still serve the Brazilian market in the same period;

- there was an increase in the importance of domestic industry sales in the total sales, which corresponded, on average, to [CONFIDENTIAL]% of total operations from P1 to P5. It was not possible to indicate possible prioritization of markets in this product in relation to the period;

- the ratio of cost to production price showed continuous increase throughout the analyzed period, reaching its highest level in P5, when it reached [CONFIDENTIAL]%. This reflects the increase in the cost of production of cold rolled 304, combined with the reduction in the price of the product;

- the price of the domestic industrial product increased by 25.2%, while the price index increased by 27.4%. The price and the index followed, roughly speaking, the same trend, with the exception of P2, in which the price of the domestic industry suffered a non-significant decrease, while the price index registered growth. Thus, the price of the domestic industrial product was higher than that observed in the index of industrial products over the analyzed period;

- the sale price of the domestic industry was higher than the price of the investigated origin (calculated in the CIF condition) from the investigated origin and from other origins. It was observed that the price of the investigated origin declined 7.8% from P1 to P5, while the price of the domestic industry and other origins dropped 1.7% and 12.2%, respectively, in the same period;

- no elements were presented that indicate quality restrictions on the products supplied by the domestic industry. With regard to the variety of the national offer, it was observed that between the parties, without providing elements that indicate different use and destination, products not commercialized by the domestic industry, nor about the availability of the products of the producers/exporters of the origin under review;

- it was not possible to conclude whether the distribution policy practiced by the domestic industry was configured as a restriction to the national supply. The alleged anti-competitive practices of the interested parties are currently being analyzed by the competition authority.

rest of the world would grow in relative terms, ranging from [CONFIDENTIAL]% of the Brazilian market.

In this way, relevant alternative sources were identified with regard to productive capacity, world exports and to Brazil, in addition to the trade balance with the USA. Other important producers such as Italy, Belgium, South Korea, the USA, have exported to Brazil in smaller volumes in the analyzed period, but have relevant productive capacity and a large share in world exports of the product under analysis - 33% of the total exports.

South Africa proved capable of rivaling the origin under analysis in terms of volume and price, being the second most relevant origin in Brazilian imports of the product. It should be noted that the US has also consolidated itself as a possible alternative source of supply available for export to Brazil, in addition to being the most relevant source of supply for the product, although with an average price higher than that practiced by Indonesian producers.

It should also be remembered that Germany, South Korea, France and the USA are encumbered by anti-dumping duties until mid-P5 - ended by SECINT Ordinance No. 10/2011. They have the potential to consolidate themselves as alternative origins of the product.

With regard to domestic supply, it was found that the domestic industry has sufficient productive capacity, which is [CONFIDENTIAL] times higher than the Brazilian market for cold rolled products 304 in P5. Even if the production line is shared with other products, only the current capacity is enough to serve the Brazilian market [CONFIDENTIAL] times. With regard to price, the average price of the domestic industry is, as a rule, higher than the average of imported products. The price variation in the analyzed period is consistent with international prices and low for industrial products.

Regarding the impact simulation, it is considered that the application of the proposed measures naturally has the power to increase domestic prices at the same time as the volume sold on the domestic market, which may lead to a loss of well-being in about [CONFIDENTIAL] in the cold rolled products market. In the market share estimates, it is concluded that the application of a compensatory measure to Indonesian producers/exporters, as per the final determination of the subsidy investigation process, would decrease the share of origin from [CONFIDENTIAL] between [CONFIDENTIAL] % and [CONFIDENTIAL] %, which would be insufficient to serve the Brazilian market for cold rolled products 304 or make its participation insignificant.

In this sense, it appears that the possible application of the proposed measures in the present case does not seem to significantly impact the dynamics of the Brazilian market for cold rolled products 304, considering that the elements analyzed throughout this public inquiry indicate that the national demand for the product will continue to be adequately served by the national and national offer.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Resolução, e o deliberado em sua 200ª reunião, ocorrida no dia 23 de novembr

Art. 1º Encerrar a investigação com aplicação de direito compensatório de até cinco anos, às importações brasileiras de produtos laminados planares austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304L, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, comumente denominados 304 e 304L, sob os códigos 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura NCM, originárias da República da Indonésia, a ser recolhido sob a forma de alíquota percentual a ser aplicado sobre o valor aduaneiro do produto, em base Custo de Aquisição, apurado nos termos da legislação, no montante abaixo especificado:

Origem	Produtor/Exportador	Direito compensatório ad valorem, base CIF (%)
Indonésia	Todas as empresas	18,79

Art. 2º Encerrar a avaliação de interesse público instaurada por meio
2 de junho de 2021, publicada no Diário Oficial da União de 2 de junho de 2021,
2021.

Art. 3º Tornar públicos os fatos que justificaram as decisões contidas
consta dos Anexos I e II.

Art. 4º Esta Resolução entra em vigor na data de sua publicação.

MARCELO PACHECO DO
Presidente do Comitê-Executivo

sem a aplicação de direitos, uma vez constatado que o volume de importações é insignificante, conforme consta da Circular SECEX nº 35, de 26 de julho de 2012 e de julho de 2012.

10. Tendo sido verificada a existência de dumping nas exportações de aço inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originários da Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, e de dano à indústria doméstica, conforme o disposto no art. 42 do Decreto nº 1.602, de 1995, a investigação realizada pela Resolução CAMEX nº 79, de 3 de outubro de 2013, publicada no DOU de 4 de outubro de 2013, resultou na aplicação do direito antidumping definitivo, na forma de alíquota específica, com base no seguinte quadro:

Direito antidumping aplicado por meio da Resolução CAMEX nº 79, de 2013		
País	Produtor/Exportador	Direito Antidumping
Alemanha	Todos	952,90
China	Lianzhong Stainless Steel Corporation	853,46
China	Shanxi Taigang Stainless Steel Co., Ltd.	235,59
China	Demais	853,46
Coreia do Sul	Posco Pohang Steel Works	267,84
Coreia do Sul	Hyundai BNG Steel	267,84
Coreia do Sul	Demais	940,47
Finlândia	Outokumpu Stainless Oy	1.030,20
Finlândia	Demais	1.076,86
Taipé Chinês	Yieh United Steel Corporation (Yusco)	616,67
Taipé Chinês	Yieh Mau Corp.	616,67
Taipé Chinês	Tang Eng Iron Works Co., Ltd.	616,67
Taipé Chinês	YC Inox Co. Ltd. (YC).	705,61
Taipé Chinês	Chia Far Industrial Factory Co., Ltd.	673,18
Taipé Chinês	Ever Lasting Stainless Steel Indl. Co., Ltd.	673,18
Taipé Chinês	Froch Enterprise Co., Ltd.	673,18
Taipé Chinês	Genn Hann Stainless Steel Enterprise Co., Ltd.	673,18
Taipé Chinês	Lien Kuo Metal Industrial Co., Ltd.	673,18
Taipé Chinês	Lung An Stainless Steel Ind. Co., Ltd.	673,18
Taipé Chinês	Mirage Precision Material Technology Co., Ltd.	673,18
Taipé Chinês	S-More Steel Materials Co., Ltd.	673,18
Taipé Chinês	Stanch Stainless Steel Co., Ltd.	673,18

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

DECOM Digital (SDD), petição para início de revisão de final de período com o direito antidumping aplicado às importações brasileiras de laminados planos de aço inoxidável tipo 304 (304, 304L e 304H) e de aço inoxidáveis ferríticos tipo 430, laminados a frio, com espessura superior a 0,35 mm, mas inferior a 4,75 mm, doravante denominados laminados planos de aço inoxidáveis, classificadas nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, consoante o Decreto nº 8.058, de 26 de julho de 2013, doravante também denominado Regulamento.

12. A revisão foi iniciada por meio da Circular SECEX nº 41, de 02 de dezembro de 2018, no DOU de 03 de outubro de 2018.

13. Em 2 de outubro de 2019, a Secretaria Especial de Comércio Exterior e das Relações Internacionais (SECINT), publicou a Portaria nº 4.353, de 1º de outubro de 2019, de aplicação do direito antidumping definitivo, por um prazo de até 5 (cinco) anos, para as importações brasileiras de laminados planos de aço inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aço inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, comumente classificadas nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, recolhido sob a forma de alíquota específica fixada em dólares estadunidenses, e não prorrogou para as demais origens da Alemanha, China, Coreia do Sul, Finlândia e Vietnã, por meio da Circular Secex nº 58, de 1º de outubro de 2019.

Direito antidumping prorrogado por meio da Portaria SECINT Nº 4.353, de 2019	
Origem	Produtor/Exportador
China	Shanxi Taigang Stainless Steel Co., Ltd., quando exportar por meio da empresa exportadora Tisco Stainless Steel (H.K.) Limited
China	Shanxi Taigang Stainless Steel Co., Ltd
China	Galaxy International Trade (Wuxi) Co., Ltd.
China	Henan Jianhui Construction Machinery Co., Ltd.
China	Hunan Bright Stainless Co., Ltd.
China	Jieyang Kailian Stainless Steel Co., Ltd.
China	Shanghai Stal Precision Stainless Steel Co., Ltd.
China	Wuxi Steel Co. Ltd.
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.
China	Foshan Shunhengli Import & Export Ltd.
China	Demais.

Chinês	Tang Eng Iron Works Co., Ltd.
Taipé Chinês	TSL Stainless Co., Ltd
Taipé Chinês	Y C Inox Co., Ltd.
Taipé Chinês	Yuan Long Stainless Steel Corp. (YLSS)
Taipé Chinês	Yes Stainless International Co., Ltd.
Taipé Chinês	Yeun Chyang Industrial Co., Ltd.
Taipé Chinês	Yieh Corporation Limited
Taipé Chinês	Yieh Mau Corp.
Taipé Chinês	Yieh United Steel Corporation (YUSCO)
Taipé Chinês	Yue Seng Industrial Co., Ltd.
Taipé Chinês	Yu Ting Industrial Co., Ltd.
Taipé Chinês	Yuen Chang Stainlees Steel Co., Ltd.
Taipé Chinês	Demais

14. Neste ponto, frisa-se que o direito antidumping prorrogado por nº 4.353, de 2019, incide sobre as importações de produtos laminados planos p/ aço inoxidáveis austeníticos tipo 304 e de aços inoxidáveis ferríticos tipo 430, da presente investigação, que abarca somente os laminados a frio elaborados exclusivamente por produtos inoxidáveis austeníticos tipo 304 e suas variações, tais como 304L e 304H.

1.1.4 Da investigação antidumping de produtos planos de aços inoxidáveis em 2020

15. Em 31 de julho de 2020, a Aperam Inox América Do Sul S.A., doravante denominada Aperam, apresentou uma petição por meio do SDD, petição para início de investigação da prática de dumping na importação de produtos planos de aços inoxidáveis austeníticos que atendam à norma AISI 304 e suas variações, tais como 304L e 304H, laminados a frio, com espessura igual ou superior a 4,75 mm, fabricados e comercializados em diversas formas, tais como

de mérito foi prejudicada em razão da falta de acurácia e inadequação das informações da indústria doméstica".

1.1.5 Quadro resumo das investigações originais e revisões de final de período para produtos laminados de aços inoxidáveis

19. Apresenta-se abaixo tabela que consolida todas as investigações de final de período para este produto, incluindo a presente petição, descrita no item 1.2 abaixo.

Investigações de defesa comercial - Laminados a frio 304			
Tipo da investigação	Data de início	Origens investigadas	Produto
Investigação original - Antidumping	30/11/1998	África do Sul, Alemanha, Espanha, França, Itália,	Laminados a frio, de aço inoxidável, de espessura não superior a 3 mm
		Japão e México	
Revisão de final de período	25/05/2005	África do Sul, Espanha, França, Japão e México	Laminados a frio, de aço inoxidável, de espessura não superior a 3 mm
Investigação original - Antidumping	13/04/2012	África do Sul, da Alemanha, da China, da Coreia do Sul, dos Estados Unidos da	Laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio,
		América (EUA), da Finlândia, de Taipé Chinês e do Vietnã	com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm

			diversas formas, tais como, mas não limitadas a bobinas, chapas e tiras/fitas
Investigação original - antissubsídios	Presente processo	Indonésia	Produtos planos de aço inoxidáveis austeníticos que atendam à norma AISI 304 e similares, incluindo suas variações, tais como 304L e 304H,
			laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, fabricados e comercializados em
			diversas formas, tais como, mas não limitadas a bobinas, chapas e tiras/fitas

1.2 Da petição para a presente investigação

20. A Empresa Aperam Inox América do Sul S.A., doravante "Aperam", em 17 de julho de 2020, quatro meses após o fim do período de investigação de dano econômico deste documento e concomitantemente à petição de investigação antidumping deste documento, protocolou por meio de seu representante legal, no Sistema de Petição de Abertura de Investigação de Subsídios Acionáveis nas Importações de Produtos Laminados a Frio, comumente classificados nos subitens 7219.33.00, 7219.34.00 da Nomenclatura Comum do Mercosul - NCM, doravante denominados "produtos", quando originárias da Indonésia, e de dano à indústria doméstica decorrente do Decreto nº 1.751, de 19 de dezembro de 1995, doravante também denominado F

21. Após o exame da petição, a SDCOM, por meio do Ofício nº 1.762/2020/CGMC/SDCOM/SECEX, de 30 de setembro de 2020, solicitou informações complementares àquelas fornecidas na petição, com base no caput do art. 26 do Decreto nº 1.751, de 19 de dezembro de 1995.

22. Por meio do Ofício nº 1.844/2020/CGMC/SDCOM/SECEX, de 2 de outubro de 2020, em atendimento à solicitação de prorrogação de prazo para as informações necessárias à investigação de subsídios acionáveis às importações de laminados a frio, em 19 de outubro de 2020, o prazo para a apresentação das informações solicitadas no Ofício nº 1.762/2020/CGMC/SDCOM/SECEX, de 30 de setembro de 2020, foi prorrogado para 19 de novembro de 2020.

27. Ressalte-se que, em 1º de setembro de 2021, nos termos da Portaria nº 120/2021/CGMC/SDCOM/SECEX, de 30 de março de 2021, os documentos protocolados no Sistema Decom Digital - SDD no Processo SECEX nº 52272.004953/2020-01 foram transferidos para o Processo nº 19972.101391/2021-52 (Restrito) e para o Processo nº 19972.101392/2021-05 no Sistema Eletrônico de Informações do Ministério da Economia - SEI/ME.

28. As partes interessadas foram notificadas, por meio da Portaria nº 120/2021/CGMC/SDCOM/SECEX e do Ofício nº 643/2021/CGMC/SDCOM, em 30 de agosto de 2021, acerca da migração e dos procedimentos necessários para acesso ao SDD.

1.3 Da notificação ao Governo do país exportador e das consultas

29. Em atendimento ao que determina o art. 27 do Decreto nº 1.751, de 19 de dezembro de 2019, o Governo da Indonésia foi notificado, por intermédio de sua Embaixada no Brasil, em 30 de março de 2021, da existência de uma demanda instruída, protocolada no Sistema DECOM Digital (SDD) pela Aperam Inox América do Sul S.A., em 30 de julho de 2020, de investigação da prática de concessão de subsídios acionáveis à produção de produtos planos laminados a frio de aço inoxidável 304, comuns às partidas 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Harmonizada NCM, originários da Indonésia, objeto do Processo SECEX/ME nº 52272.004953/2020-01.

30. Na comunicação, o Governo da Indonésia foi informado de que as informações recebidas levou a SDCOM a considerar a petição devidamente instruída, nos termos do art. 26 do Decreto nº 1.751, de 19 de dezembro de 1995. A notificação foi enviada por correio eletrônico, de acordo com a Portaria SECEX nº 21, de 30 de março de 2021.

31. Em conformidade com o contido no § 1º do art. 27 do Decreto nº 1.751, de 19 de dezembro de 1995, na comunicação supramencionada, o Governo da Indonésia foi convidado à realização de uma reunião com o objetivo de esclarecer a situação relativa às matérias tratadas no art. 25 do referido Decreto, a fim de se obter solução mutuamente satisfatória. Ademais, o Governo da Indonésia foi informado de que, nos termos do mesmo artigo, é de dez dias o prazo para manifestação de interesse em participar da reunião, que deverá ser realizada no período de trinta dias contados a partir da ciência da notificação.

32. Com vistas a subsidiar o Governo da Indonésia com informações para a realização da consulta, foram encaminhados, anexos ao referido Ofício, a lista dos programas de investigação de subsídios, onde foi disponibilizado o texto completo da versão restrita da referida petição, bem como senha para possibilitar a extração dessas informações. A consulta foi apresentada como sugestão a data de 19 de abril de 2021 às 9h no horário de Brasília (GMT-3, horário de Jacarta), por meio de videoconferência, para garantir o cumprimento dos prazos estabelecidos no art. 27 do Decreto nº 1.751, de 1995, e o cumprimento das medidas de proteção ao enfrentamento da pandemia pública de importância internacional decorrente do coronavírus (COVID-19).

47. A peticionária apresentou suas informações na petição de início quando da apresentação de suas informações complementares. Conforme pedido de informações encaminhado pelo DECOM, a Aperam apresentou requeridos com a finalidade de compor a indústria doméstica, bem como informações complementares encaminhado posteriormente pela autoridade inv

48. Em 5 de outubro de 2022, a Aperam apresentou, voluntariamente anteriormente apresentados na petição e em suas informações complement referiram a ajustes na lista de produtos, vendas do produto similar no mercado similar no mercado externo, devoluções e despesas operacionais.

1.7.1.1 Das manifestações prévias à Nota Técnica sobre as informações o período de investigação

49. Em manifestação datada de 8 de outubro de 2021, a empresa PT Chrome Alloy (doravante também denominada PT IRNC), aduziu suas con peticionária teria considerado "pequenas retificações nos dados anteriormente em suas informações complementares" consoante a manifestação de 05 de c teriam sido reapresentadas e alteradas diversas informações atinentes aos c doméstica.

50. Em primeiro lugar, a PT IRNC tratou do contexto das alterações indústria doméstica, fazendo remissões à então concomitante investigação anti a manifestação da Aperam teria sido apresentada reflexamente às apurações Antidumping, Salvaguardas e Apoio ao Exportador - CGSA - no bojo da referida que recai sobre o mesmo produto, para uma mesma origem (Indonésia) e o r destacando que após dois pedidos de informações complementares, a petição CGSA a apresentar elementos de prova dos dados aportados.

51. Nesse contexto, a empresa destacou a identidade dos dados de c de dumping e de subsídios, de sorte que a Aperam havia sido definida como o mesmo escopo e para o mesmo período investigado; e ressaltou que o refer prova enviado à Aperam oportunizou a realização de alterações pela peticion apresentados quando da fase da petição, desde que tais alterações não fossem

52. A INRC expôs que a referida manifestação da Aperam seria uma t proceder em alterações significativas, como assim entendidas pela CGSA, nos c investigação de subsídios.

magnitude e intempestividade das alterações", pontuando que as alterações presente investigação de subsídios seriam as mesmas propostas no âmbito da correlata - para os mesmos dados de dano, da mesma indústria doméstica, do mesmo período, e, por fim, para o mesmo período investigado, anotando que a alteração de metodologia do processo antidumping, que diria respeito às despesas operacionais, foi voluntariamente replicada na investigação de subsídios pela Aperam a partir da comparação dos dados.

57. Nesse contexto, a IRNC entendeu que, por uma questão de eficiência administrativa da SDCOM, deveriam as análises e conclusões da CGMC, tal como a CGSA, apontar para o encerramento da presente investigação de subsídios, sem necessidade das mesmas razões constantes da Nota Técnica nº 51.909/2021/CGSA/SDCOM, dada a confiabilidade dos dados constantes da petição de início e pela magnitude das alterações".

58. Em terceiro lugar, a IRNC entendeu que a reconhecida falta de cooperação da indústria doméstica pela CGSA já constituiria fato per se suficiente a ensejar o encerramento da investigação de subsídios, destacando que a peticionária teria se valido de toda a diligência para não trilhar o mesmo caminho que teria levado a investigação antidumping, cabendo à peticionária sustentar a tese de que seria tempestiva a proposta de alteração apresentada na manifestação de 5 de outubro de 2021.

59. A IRNC anota haver outras alterações não narradas textualmente na petição de 5/10/21 nem explicadas pela Peticionária quanto ao Volume de Produção do Fornecedor, a partir da comparação do arquivo "Apendices_Restritos_Info_Completa" com o arquivo "Anexo115_Base_Capacidade_Restrito" e com o arquivo "Apendices_Corrigido", e com as informações de Outras Entradas/Saídas dos estoques, a partir da comparação do arquivo "Apendices" da petição com a respectiva planilha do arquivo "Apendices_Corrigido", forma que a IRNC verificou que o mesmo ocorreu no âmbito da investigação antidumping, prejudicou a transparência das informações trazidas aos autos pela Aperam.

60. Ademais, a IRNC arguiu que a peticionária não teria disponibilizado as versões restritas, anotando que a versão restrita dos apêndices submetidos pela peticionária informações complementares estaria aparentemente incompleta, conforme pode ser verificado no anexo da presente petição; destacando que a ausência de versões restritas importa em violação do art. 51 do Decreto nº 8.058/2013, decreto que tratava do processo de investigação de subsídios, em acordo com o qual as versões confidenciais e restritas deveriam ser apresentadas ao órgão de fato devido cumprimento dos prazos processuais; salientando que o único apêndice restrito apresentado quando da resposta às informações complementares seria o "Apêndice 1 - Informações sobre a Indústria Doméstica". Nesse quadro, a IRNC aduziu que uma vez que os demais apêndices protocolados

oportunidades, posto que os protocolos seriam considerados intempestivos, destacando que a questão seria de tratamento isonômico às partes.

63. Ante o exposto, a IRNC requereu o não recebimento das alterações propostas na manifestação da Aperam de 5 de outubro de 2021 em razão da ausência de previsão legal; a avaliação da continuidade da investigação das retificações não teriam natureza de minor corrections; e verificação da ocorrência procedimental de que a versão restrita dos apêndices apresentados em 1.762/2020/CGMC/SDCOM/SECEX pela Aperam estaria incompleta, em desobediência ao Decreto nº 8.058/2013.

64. A Aperam, em manifestação de 17 de dezembro de 2021, demonstrou que as alterações realizadas nos dados apresentados originalmente na petição teriam sido devidamente esclarecidas. Ademais, ressaltou que os esclarecimentos complementares e correções realizadas nos dados apresentados teriam sido apresentados aos técnicos de verificação in loco realizada na peticionária, na qual a veracidade e validade dos dados teria sido analisada e confirmada.

65. A peticionário abordou o questionamento constante em manifestação de 17 de dezembro de 2021 de constar, na versão restrita dos Apêndices apresentados pela peticionária, informações complementares, em 9 de novembro de 2020, apenas o Apêndice VIII, embora os dados tenham sido corrigidos. A Aperam esclareceu, conforme estaria detalhado no documento, que as mencionadas informações complementares, que a necessidade de correção dos dados eram similares com o CODIP e que, em decorrência de tais alterações, estavam sendo corrigidos os Apêndices VII, XVIII e XIX, com as devidas retificações.

66. Portanto, as correções realizadas impactariam apenas em ajustes nos valores dos CODIPs dos produtos similares, não implicando em alteração nos valores totais reportados. Considerando que as versões restritas dos apêndices apresentados pela peticionária apresentam detalhamento por CODIP, limitando-se aos valores totais, a despeito das versões confidenciais dos mencionados apêndices VII, XVIII e XIX, tais ajustes não alteram as versões restritas de tais apêndices apresentados na petição, as quais continuam válidas. Dessa forma, não caberia a argumentação da IRNC no sentido de que a informação apresentada pela peticionária estaria incompleta, uma vez que os dados corrigidos teriam sido devidamente esclarecidos, mantendo-se válidas as informações que não foram objeto de correção, conforme determinado pela autoridade investigadora.

67. Em manifestação datada de 23 de dezembro de 2021, a Aprodinco alegou que a IRNC, no que se referem à alegada perda de confiança dos dados que buscam comprovar o dano da peticionária.

significativos, as minor corrections, em momento anterior a realização da verificação ao ofício de elementos de prova, para validar ou eventualmente esclarecer a petição de início que fundamentou a abertura da presente investigação.

72. Nesse contexto, a Aprodinox destacou que os dados apresentados pela peticionária de 5 de outubro de 2021 teriam sido inseridos sem as adequadas alterações e ajustes deveriam ser admitidos ou, ainda, das razões pelas quais haveriam alterações referentes a vendas, por exemplo, apenas alegou-se que houve "um lapso" em relação ao ressaltando que houve a apresentação de uma alteração significativa sem haver justificativa, esclarecimento ou motivação; destacando também que foram alterados os dados processual inadequado, uma vez que não se admite aporte de dados de maneira unilateral na manifestação da SDCOM, como é o caso dos ofícios complementares.

73. Nesses termos, a Aprodinox ressaltou que a partir desses ajustes e feitos sem previsão legal, que envolveram algumas das principais contas e itens para a análise do dano, a exemplo de despesas operacionais e custos, colocou-se em dúvida quanto ao conjunto total de informações fornecido pela peticionária.

74. A Aprodinox apontou que em face da identidade dos dados apresentados na investigação da prática de subsídios acionáveis e os da investigação de dumping, que representa a Indústria Doméstica em ambos os processos de investigação, que ocorreu no mesmo período de análise e a mesma origem para fins de avaliação, tais alterações não são significativas pela própria SDCOM, na referida investigação de dumping.

75. Ademais, a Aprodinox aduziu que a identidade dos dados apresentados relacionados ao dano, teria sido explicitada pela própria peticionária em sua manifestação de Interesse Público, mesmo que para o âmbito de processo com origens diversas e que também estava sendo investigada a África do Sul, e que trata de análise do dano apresentar-se-iam como um todo pouco distinguível, o qual teria tido sua origem nesse seria o entendimento da própria SDCOM.

76. Nesses termos, a Aprodinox ressaltou que as contas retificadas e a manifestação seriam exatamente aquelas questionadas pela SDCOM, em sede de dumping, ao menos naquilo que seria possível às partes interessadas serem verificados e restritos. Nesse contexto, dentre os dados identificados, constariam: i) lista de itens erroneamente categorizados gerando impactados nos custos; ii) 17 notas fiscais com impactos não reportados; e iii) Despesas/Receitas financeiras, com alterações que tiveram impacto em cascata em várias outras contas e indicadores.

outubro de 2021; expondo que entende que tais Instruções Normativas viriam durante a pandemia, as normas e práticas consolidadas da autoridade procedimento de verificação de dados e o aceite de informações durante as inv

81. Nesses termos, a Aprodinox entendeu que tais dados não deveriam corrections e que, considerando o volume das informações e seu impacto na deve-se encerrar esta investigação de subsídios, seguindo o entendimento investigação de dumping.

82. Em manifestação de 14 de junho de 2022, a IRNC argumentou o dano da presente investigação de subsídios seria compreendido entre os meses de 2020, e tendo a investigação sido iniciada com a publicação da Circular de 2021, seria certo haver um decurso de pelo menos 14 meses completos entre (i) da indústria doméstica e (ii) e o início da investigação.

83. No entender da IRNC, tal circunstância seria extremamente problemática e precedentes já enfrentados pelo Órgão de Solução de Controvérsias (OSC) do Comércio (OMC), especificamente na disputa "Mexico - Definitive Anti-dumping (DS295)", uma vez que tal lapso temporal entre os dados de dano e o início da investigação entendimento do próprio OSC, violação ao dever de basear as análises de danos nos termos do Art. 15.1 do Agreement on Subsidies and Countervailing Measures.

84. Para a IRNC, para além desse lapso temporal, que afeta a objetividade da autoridade, porquanto faz abarcar indicadores remotos e não representativos da indústria doméstica, outros pontos do precedente "Mexico - Definitive Anti-dumping and rice (DS295)" serão cotejados; assim como o entendimento esposado pelo

Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the (DS538)".

85. A IRNC asseverou que a cumulação desse lapso temporal (de 14 meses) alvitados pelo OSC da OMC, irremediavelmente, constituiriam um cenário de violação ao uso de provas e evidências positivas, e que "sendo de rigor" investigar da presente investigação, "sob pena de, ao não o fazer, incorrer em v

86. A IRNC fez um histórico do trâmite legal da investigação, desde o seu início deu origem à investigação, passando pelas solicitações de informações complementares das respostas e tais pedidos, até o dia em que a petição foi considerada instruída, apontando que teriam transcorrido quase 8 meses após o protocolo da Petição.

87. A IRNC esclarece que buscou demonstrar com a retrospectiva dos atos processuais, que o que deu causa ao lapso temporal de 14 meses que decorreu da incompletude do pleito da peticionária, já que somente após 2 pedidos de infor

91. Para a IRNC, dessa forma, pautar-se em dados de dano defasados despeito de quem deu causa a tal circunstância, "violam o dever de orientação objetivas, porque se estaria analisando e considerando indicadores de dano excessivamente defasados".

92. Para a IRNC, dado que o propósito dos remédios de defesa com level-playing a partir da neutralização do dano e da prática de deslealdade com medida compensatória com base em evidências de dano remotas é penalizar por práticas pretéritas - e não equalizar as distorções comerciais correntes.

93. A IRNC apresentou o relato do Órgão de Apelação (Appellate Body) das conclusões do painel no caso "Mexico - Definitive Anti-dumping measures" referente ao artigo 3.1 do Acordo Antidumping, para arguir que o AB viria a concluir que o dano seja baseada em evidência positiva, de forma que a evidência, pertinente com respeito à questão a ser decidida, não seria evidência positiva, do Acordo Antidumping. Dessa forma, o intervalo de 15 meses entre o final do período de abertura da investigação constituiu um hiato suficientemente grande para a obtenção de dados de dano, como assenta o entendimento da OSC.

94. Nesse contexto, a IRNC destacou que as previsões acerca de "prova de dano" do Acordo Antidumping, para fins de determinação de dano, encontrariam identidade com o Art. 15.1 do ASMC, de sorte que as considerações trazidas pelo painel e confirmadas pelo AB são aplicáveis a todo à esfera do ASMC e à presente investigação.

95. Para a IRNC, seria esse o caso, pois os dados de dano da presente investigação são idênticos àqueles oferecidos pela peticionária na investigação antidumping iniciada pela Circular SECEX nº 75, de 3 de novembro de 2021. Ademais, para a IRNC, a presente investigação, sob o nº 1.762/2020/CGMC/SDCOM/SECEX, teria requerido que fossem juntados aos processos de dano e demais tópicos comuns às investigações de dumping e de subsídios procedimentos de dano.

96. Dessa forma, para a IRNC, se o intervalo de 15 meses entre o final da investigação e a abertura da investigação constituiu um hiato suficientemente grande para a obtenção de dados de dano, como assentaria o entendimento da OSC, não há dúvida de que a prova que seria considerada "positiva" e "objetiva", e por essa razão, no caso da presente investigação, que a autoridade mexicana de defesa comercial teria violado o Art. 3.1 do Acordo Antidumping.

97. Para a IRNC, haveria uma absoluta identidade entre o Art. 3.1 do Acordo Antidumping e o Art. 15.1 do ASMC, sendo a jurisprudência do OSC em antidumping utilizada em investigações de subsídios; destacando que do "WTO Analytical Index - Subsidies" (Jurisprudence)" e de outros julgados do OSC haveria o exposto reconhecimento de que a autoridade mexicana de defesa comercial teria violado o Art. 3.1 do Acordo Antidumping.

Measures on Biaxially Oriented Polypropylene Film from the United Arab Emira para a IRNC, nesse julgado, ao analisar os requisitos do Art. 3.1 do Acordo Anti 15.1 do ASMC), o painel expressamente atrela o conceito de provas positivas "c análise do lapso temporal decorrido entre o período investigado e a determ haviam decorrido 31 meses.

102. A partir desse seu entendimento das posições do AB, a IRNC ar de subsídios, com a extensão da investigação por 6 meses adicionais, pode inaceitável de 32 meses entre o fim do período investigado e a determinação t parecer de determinação preliminar ainda não emitido na presente investiga pelas partes, e, respeitando todos os prazos legais de eventual determinação que essa investigação atingisse o lapso de 32 meses de defasagem de datas.

103. Nesse contexto, a IRNC argumentou que o referido painel ta elementos que teriam sido considerados em sua decisão, e que teriam sido r além do reconhecimento de violações a acordos multilaterais por uma atua basear suas análises de dano em dados temporalmente defasados, vale-se d forma que a IRNC afirmou que as circunstâncias do caso concreto, "de cer subjetividade incompatível com procedimentos de defesa comercial e indicaria deveria vestir as autoridades investigadoras", de forma que a INRC apontou colocadas no Relatório do Órgão de Apelação da OMC que sustentariam essa a além das questões de hiato temporal anteriormente apresentadas, as qu circunstâncias levadas em conta pelo referido painel:

- (i) o período de investigação escolhida teria sido proposto pela petici
- (ii) o México não teria estabelecido que o problema prático n investigação particular;
- (iii) não teria sido estabelecido que a atualização das informações nã
- (iv) não houve tentativa de atualizar as informações;
- (v) o México não forneceu razão - fora a alegação de que isso seria a aceitar o período de investigação submetida pela peticionária - qual a mais buscada.

104. A IRNC afirmou que "o período de investigação foi escolhido pel enxerto do Relatório do Órgão de Apelação da OMC informa que o período de sido proposto pela peticionária.

destacando que, eventualmente, na única exceção na legislação para permitir o investigado com o condão de privilegiar o ano contábil do país investigado, e a desculpa teria a SDCOM, posto que o ano contábil da Indonésia seria de janeiro a dezembro. O ano investigado não foi alterado para corresponder com o ano calendário da Indonésia, ficando desatualizado e abarcando cinco períodos de abril a março.

108. Para a IRNC, o período não foi atualizado quando da abertura da investigação por quaisquer razões que prejudicassem aquela então possibilidade, de forma que a manutenção dos indicadores de dano seria o caminho natural para superação do problema apontado pela OSC.

109. Neste ponto, a IRNC destacou que no caso de outra investigação de laminados de alumínio, ora em curso, esta mesma SDCOM houve por bem, por meio da Circular SECEX nº 43, de 18/6/2021, recomendar a atualização do período investigado de 17 meses entre o final do período investigado e a respectiva abertura da investigação, o que foi absolutamente apropriada e tomada de ofício pela SDCOM.

110. Para a IRNC, tanto no âmbito da investigação de laminados de alumínio quanto na investigação, foram apresentados pleitos paralelos para a investigação da prática de subsídios, de forma que a apresentação de um pedido conexo de investigação poderia ser uma justificativa para a SDCOM deixar de solicitar a atualização de período de subsídios.

111. Para a IRNC, a autoridade teria o dever de examinar, nos termos do §1º do art. 28 do Decreto nº 1.751/1995, a acurácia e adequação dos elementos da petição, de forma que se os elementos de prova fornecidos pela Aperam na petição de subsídios, dano e nexos causais "correntes" (respeitando o ditame legal referente a fatos próximos possíveis anteriores), não poderia ter a SDCOM concluído pela existência de dano na petição para justificar a abertura da investigação.

112. Nesse contexto, a IRNC destacou o art. 2º do Decreto nº 1.751/1995, que trata dos elementos de prova da existência de subsídio e de dano por ele causado, e dispõe que serão examinadas, com base nas informações de outras fontes, a correção e a adequação dos elementos de prova oferecidos na petição, e a existência de motivos suficientes que justifiquem a abertura da investigação.

113. Nesse contexto, para a IRNC não teria sido outro o entendimento na disputa "Pakistan – Anti-Dumping Measures on Biaxially Oriented Polypropylene from the United Arab Emirates (DS 538)", devido à identidade entre o Art. 5.3 do Acordo Antidumping e o art. 2º do Decreto nº 1.751/1995, de forma que a IRNC entende que as conclusões desse referido painel são aplicáveis às investigações de subsídios.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

118. Esse entendimento seria confirmado pelo Comitê de Práticas em sua "Recommendation concerning the periods of data collection for an investigation", adotado em 5 de maio de 2000 (G/ADP/6):

The Committee notes that although the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 refers to the period of data collection for dumping investigations when "the period of investigation", it does not establish any specific period of investigation. In order to establish guidelines for determining an appropriate period of investigation, for dumping or injury.

119. Assim sendo, não havendo tais guias no Acordo Antidumping, o Comitê teria estabelecido recomendações para tal:

The Committee considers that guidelines for determining what period of data collection may be appropriate for the examination of dumping and of injury. The Committee also recognizes, however, that such guidelines do not preclude investigators from taking account of the particular circumstances of a given investigation in setting the period of data collection for both dumping and injury, to ensure that they are appropriate in each case.

120. Assim sendo, as recomendações do Comitê teriam estabelecido:

In light of the foregoing considerations, the Committee recommends that in original investigations to determine the existence of dumping and consequent injury:

(a) the period of data collection for dumping investigations normally should be no less than six months, [nota de rodapé emitida] ending as close as practicable to the date of initiation of the investigation;

(b) the period of data collection for investigating sales below cost [nota de rodapé emitida] should be the same as the period of data collection for dumping investigations, normally should be no less than six months, ending as close as practicable to the date of initiation of the investigation;

(c) the period of data collection for injury investigations normally should be the same as the period of data collection for dumping investigations, unless a party from whom data is being gathered has existed for a lesser period of time during the entirety of the period of data collection for the dumping investigation;

(d) In all cases the investigating authorities should set and make known to the parties the periods of time covered by the data collection, and may also set the dates for the collection and/or submission of data. If such dates are set, they should be made known to the parties.

2000. Ou seja, quando do protocolo da petição, o período de análise estava definido. Tal situação seria totalmente distinta daquela do processo em tela, que foi iniciado após a abertura da presente investigação. Ou seja, ainda que o Decreto nº 1.751, de 1991, estabeleça o prazo para protocolo da petição em relação ao período de análise de dano, a petição foi protocolada ao final do quarto mês após o fim do período de análise considerada o procedimento já adotado no Decreto nº 8.058, de 2013.

124. Ademais, considerando o protocolo concomitante de petição de dano, é possível realizar a avaliação conjunta dos elementos de dumping, de subsídios e de dano, uma vez que envolvem o mesmo produto investigado.

125. Assim sendo, como em todos os processos de investigação de dano, pelo Decreto no 8.058, de 2013, uma vez iniciada a investigação, mantém-se o período de análise na petição. Ressalte-se que, no caso em tela, o processo de investigação antidumping foi iniciado em fevereiro de 2021, por meio da Circular SECEX nº 15. Entretanto, no caso da petição de dano, não se cumprir a exigência de realização de consultas com o governo do país exportador, conforme o item 13.1 do Acordo de Subsídios e Medidas Compensatórias (ASMC) da Organização Mundial do Comércio (OMC):

As soon as possible after an application under Article 11 is accepted, the competent authorities, at the initiation of any investigation, Members the products of which may be subject to investigation, shall be invited for consultations with the aim of clarifying the situation as to the matter in dispute and arriving at a mutually agreed solution.

126. Dessa forma, como consta no item 1.3 da Circular de Abertura, o Governo da Indonésia teria sido notificado da existência de petição devidamente protocolada pelo Governo, na mesma comunicação, convidado à realização de consultas, as quais foram realizadas em 19 de abril de 2021. Considerando todos os elementos apresentados na petição e os esclarecimentos apresentados pelo Governo da Indonésia, foi iniciada a investigação de dano por subsídios acionáveis em 2 de junho de 2021, mantendo-se o mesmo período de análise da investigação antidumping então já iniciada.

127. Cabe destacar que a Circular de Abertura teria indicado qual seria o prazo para a apresentação dos dados considerado no processo, tendo as informações solicitadas pela autoridade investigadora nos questionários enviados às partes interessadas igualmente indicado o período para a apresentação dos dados.

128. A despeito de tal fato, a IRNC apresentou sua resposta ao Governo da Indonésia no momento, teria questionado que tal prazo estaria defasado e/ou que demandava maior esclarecimento. Apenas após findo o prazo originalmente previsto para a conclusão da investigação.

data used therein. [nota de rodapé omitida] On the contrary, the Panel recognizes that the data on the basis of which [the determination that dumped imports caused injury] is based on a past period, known as the period of investigation."¹⁵⁷ In order to determine whether injury caused by dumping exists when the investigation takes place, "historical data" may be used. In the Panel's view, the Panel, however, that more recent data is likely to provide better indications of injury. [nota de rodapé omitida]

¹⁵⁷ Panel Report, para. 7.58. The Panel also added that "the inevitable time lag between the initiation of an investigation, as well as any practical problems of data collection in any particular case, must be taken into account. (Ibid.)

131. No presente caso, a investigação teria sido iniciada em junho de 2021, com prazo de um ano para conclusão, contado da data de início, "salvo se, em circunstâncias excepcionais, necessária a prorrogação, quando o prazo poderá ser de até dezoito meses", conforme a Circular de Abertura. Em 1^o de junho de 2022, por meio da Circular SECEX n^o 10/2022, a presente investigação foi prorrogada por até seis meses, atingindo, assim, um total de 18 meses no total.

132. Nesse sentido, seria fundamental destacar que tal prazo está previsto no Artigo 17.6 do Acordo de Subsídios e Medidas Compensatórias da OMC, em que se estabelece:

Investigations shall, except in special circumstances, be concluded within 18 months of the date of initiation, or case more than 18 months, after their initiation.

133. Restaria claro, portanto, que a defasagem de 18 meses desde a data de início da investigação até a sua conclusão seria considerada inerente à própria condução da investigação, não sendo preconizada a atualização do período de análise durante a condução da investigação.

134. Como constaria no Relatório do Órgão de Apelação da OMC, sobre o caso "Pakistan - Anti-dumping Measures on Biaxially Oriented Polypropylene from the Arab Emirates" (WT/DS538/R):

It is true that an investigation takes time, leading to a gap between the date of initiation and the date of final determination.

135. No caso acima citado, o período de análise de dano consideraria o período anterior a quando que a abertura da investigação teria ocorrido em abril de 2012, ou seja, mais de 10 anos. Quanto à questão, o painel atestou, de início, que:

[w]hile the temporal gap alone is not enough to conclude that the data on the basis of which the determination of current dumping causing injury, these gaps are quite considerable, ranging from one to more than two full years.

hábil para solicitar informações ao governo da China sobre possíveis subsídios t

140. Diante de todo o exposto, restaria claro que o período de análise de investigação estaria em consonância com as regras estabelecidas pelo Decreto nº 6.894/2011, do Acordo de Subsídios e Medidas Compensatórias da OMC.

141. Em 09 de setembro de 2022, a empresa IRNC apresentou considerações feitas pela APERAM sobre sua manifestação apresentada no dia 30 de junho de 2022.

142. Inicialmente, reiterou a existência de desconformidade dos dados em relação a precedentes multilaterais, posto que defasados (i) em 14 meses em relação à abertura e, potencialmente, (ii) em aproximadamente 31 meses em relação à abertura tomada no prazo máximo de 28 de outubro de 22.

143. Tal entendimento teria sido pautado em dois precedentes Controvérsias (OSC) da Organização Mundial do Comércio (OMC): Mexico - Measures on beef and rice (DS295), e Pakistan - Anti-Dumping Measures on Polypropylene Film from the United Arab Emirates (DS 538).

144. Segundo a empresa, em ambas as disputas, o OSC teria reconhecido que a defesa comercial em questão não teriam cumprido com o dever de análise de dados positivos, no rigor do art. 3.1 do Acordo Antidumping e do 15.1 do Acordo de Medidas Compensatórias (ASMC), ao se pautarem em dados de dano defasados em relação à abertura (DS 295) e em 31 meses em relação à determinação final (DS 538) que justificassem tamanha defasagem.

145. A IRNC trouxe tais precedentes por entender que os dados de dano de investigação seriam igualmente defasados - ou pelo menos com uma defasagem em relação à abertura, o lapso temporal seria de 14,06 meses e, em relação a de 31 meses para o dia 28/10/2022, conforme a Circular SECEX nº 37/2022, a defasagem seria de 14,06 meses.

146. Nesse contexto, a IRNC mencionou que não seria heterodoxo considerar lapsos temporais (14,06 e 30,92 meses), uma vez que afastaria qualidades elementares que a SDCOM deveria fiar-se, a objetividade e positividade, estatuídas no art. 3.1 do Acordo Antidumping e no 15.1 do Acordo de Medidas Compensatórias (ASMC), também que esta não seria sua opinião, mas o entendimento expresso do OSC (DS 295 e DS 538).

147. A IRNC mencionou que concordaria com a citação da APERAM sobre a manifestação de 30 de junho de 2022, que citou que inexistiria no AA e no período de respeito do período investigado, adotado para coleta de dados. Mas, segundo a empresa, que essa questão foi levada ao OSC da OMC.

como outro fator que teria contribuído para o lapso temporal que se observa. Não que esse procedimento só tomou 2 meses - enquanto os pedidos de informação e a própria petição teriam tomado 8 meses, como abordado na manifestação da IRNC de 14 de setembro de 2022.

152. A IRNC, em manifestação de 9 de setembro de 2022, reiterou que os dados de dano da presente investigação, de abril de 2015 a março de 2020, são multilaterais posto que defasados (i) em 14 meses em relação à Circular de Informação, e (ii) potencialmente, (ii) em aproximadamente 31 meses em relação à determinação de dano. O entendimento pautou-se em dois precedentes do Órgão de Solução de Controvérsias da Organização Mundial do Comércio (OMC), quais sejam, disputas "Mexico - Anti-dumping measures on beef and rice (DS295)" e "Pakistan - Anti-Dumping Measures on Polypropylene Film from the United Arab Emirates (DS 538)"; destacando que o OSC teria reconhecido que as autoridades de defesa comercial em questão não têm o dever de análise de dano pautada em provas positivas, cf. os artigos 3.1 do Acordo de Subsidios e Medidas Compensatórias (ASMC), ao se pautarem em dados negativos sem que motivassem ou justificassem tamanha defasagem.

153. Para a IRNC não seria heterodoxo considerar que tais lapsos tenham afastado qualidades elementares às provas e evidências referentes à objetividade da análise de dano do ASMC. Nesse contexto, a IRNC fez menção à obra "WTO - Trade Remedies", de John H. Garret, Institute for Comparative Public Law and International Law, especificamente de como a falta de dados à disputa "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)".

154. Nesse quadro, a IRNC expôs que concorda com a alegação de que o próprio AB Report da disputa "Mexico - Definitive Anti-dumping measures on beef and rice" inexisteria no AA (e também no ASMC) regras específicas a respeito do período de coleta de dados e que esse entendimento foi confirmado pelo Comitê de Práticas Comerciais da OMC em sua 'Recommendation concerning the periods of data collection for anti-dumping investigations', ressaltando que por esse motivo o tema foi levado ao OSC da OMC, que considerou os dados de 15 meses em relação à abertura e de 31 meses em relação ao dano, o que desconstituiria o caráter positivo e objetivo da prova, acrescentando que essas práticas das provas e exames nos termos do art. 15.1 do ASMC.

155. Para a IRNC, haveria um gap de 14,06 meses, estando a abertura da investigação em desconformidade a Recomendação de que o período de investigação a ser considerado seja o mais próximo possível da data da abertura da investigação; ademais, porque a recomendação recomenda à autoridade que justifique a escolha de período diverso ou específico.

156. Argumentou que pouco importaria quem teria dado causa ao lapso, pois o que tem relevo à investigação seria única e exclusivamente o uso de dados e a observância do rigor do art. 15.1 do ASMC, evidências positivas e objetivas.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

160. Acrescentou a peticionária que não escolheu o período de análise para a petição antidumping. Acrescentou a situação atípica da presente investigação no contexto da pandemia e que incorreu em grande esforço na organização da investigação. Ao final, expressa concordar com o entendimento da SDCOM.

161. Em suas manifestações finais, a IRNC aduz que no bojo da presente não atendeu às regras e à jurisprudência do Órgão de Solução de Controvérsias Mundial do Comércio (OMC) de exame objetivo e pautado em provas positivas, necessita de dados correntes, e não houve justificativa clara e devidamente motivada para ser feita para relevar tal regra; assim como não houve nenhuma tentativa para atualizar o período de investigação, tampouco uma discussão sobre a impossibilidade de obter dados.

162. Nesse quadro, a IRNC assevera que que a SDCOM relevou os elementos e considerações trazidos, nos quais poderia ter constatado que os "elementos" no presente caso se observa em igual ou maior grau que aquele do caso DS 538.

163. Para a IRNC, o argumento da SDCOM contrário ao posicionamento temporal não seria somente uma análise objetiva e matemática na contagem de meses, precisa considerar outros fatores. Entretanto, a IRNC aduz que no caso da decisão DS 538 outros fatores foram postulados, assim como no DS 538 outros fatores também foram considerados no âmbito temporal.

164. Nesse contexto, a IRNC destaca que nunca relacionou a decisão DS 538 "simples" contagem dos meses e, assim, uma violação per se do artigo 3.1 do Acordo de Comércio e Facilitação de Comércio (ADA) e o artigo 15.1 do Acordo de Comércio e Facilitação de Comércio (ASMC), tendo trazido elementos para correlacionar ao caso concreto, analisando outros fatores trazidos pelo Órgão de Solução de Controvérsia da OMC, demonstrando que outros fatores também ocorreram no presente caso; os quais, porém, não teriam sido considerados na NTFE, embora constassem expressamente das manifestações da IRNC.

165. Para a IRNC, primeiramente, a SDCOM tenta afastar os argumentos dos dados de dano sob o pretexto de que os precedentes DS 295 e DS 538 não são aplicáveis ao presente caso antidumping, o que a IRNC manifesta sua absoluta discordância, nos exemplos apresentados, exaustivamente aduziu em manifestações pretéritas.

166. Ademais, a IRNC relembra também o art. 3.1 do ADA e o art. 15.1 do ASMC. Em seu entender, a absoluta identidade entre os textos dos artigos, de modo que as decisões ou interpretações totalmente díspares, e repisa que o conteúdo da decisão DS 538 de 14/6/2022 é absolutamente claro, de identidade entre o Art. 3.1 do Acordo de Comércio e Facilitação de Comércio (ADA) e o artigo 15.1 do Acordo de Comércio e Facilitação de Comércio (ASMC), sendo a jurisprudência do OSC em antidumping utilizada como referência para subsídios, no "WTO Analytical Index - SCM Agreement - Article 15 (Jurisprudência)

169. Noutro giro, para a IRNC, outro argumento bastante pertinente referente aos problemas que a pandemia poderia trazer ao cenário de dano p efeitos na oferta e demanda do produto investigado; no entanto, no entender do DS 295 feita pela SDCOM, está correta, porém sua interpretação parece e IRNC, a SDCOM também cita de forma pertinente o caso do DS 538, mas e essencial de sua transcrição, de forma que igualmente ao caso do DS 295, a c que a autoridade investigadora: "não fez nenhuma tentativa para atualizar os da o processo, não forneceu qualquer discussão sobre a escolha do período invest

170. A IRNC assevera que na presente investigação, a SDCOM não longo da investigação nem ofereceu uma justificativa no momento da abe aceitar um período já defasado em 14 meses, e teria tentado, em mome reinterpretar e ressignificar o passado, alcançando uma justificativa baseada na conhecimento das partes no curso do período probatório, como legalmente ha NTFE que o lapso temporal dos dados (defasagem) estaria "plenamente legislação pátria e multilateral".

171. A IRNC aduz que a discussão para se justificar e aceitar un defasado não deve ser feita apenas no bojo da Nota Técnica, mas quando da a sorte que as partes interessadas pudessem valer-se do contraditório e ampla justificativa, podendo produzir todas as provas que lhe são legalmente assegur

172. Para a IRNC, uma autoridade de defesa comercial não pode período, principalmente um período corrente, de forma que os dados deve autoridade, mesmo que ela decida não dar um peso importante para sua toma motivo que fosse, não podendo a autoridade simplesmente presumir que os d piores ou estariam eivados de efeitos negativos para uma análise de dano e ne que o objetivo de uma autoridade investigadora não é atingir uma determina existência de dano, mas analisar a necessidade de equilibrar uma eventual c penalizando um exportador por uma prática passada, mas sim analisar uma equilibrar tal situação.

173. Dessa forma, para a IRNC, a pandemia não deveria em si ser apurar dados e fatos.

174. No entanto, a própria IRNC concorda com a SDCOM de que o hia uma violação ao regramento da OMC, mas, no entanto, entende que devem ex que efetivamente tenham impossibilitado a autoridade investigadora de atua para um período corrente de dano.

dados por parte da peticionária seria impossível,

iv. Não teria existido, por parte da autoridade investigadora, nenhuma atualização o período investigado;

v. A SDCOM não teria concedido nenhuma razão no sentido de ex obter dados mais atualizados ao longo de todo o período probatório e em ne Nota técnica. Como esse seria um tema mais procedimental e não simplesm poderia ter abordado essa discussão no momento da expedição dos prazos a mas mesmo nesse momento de expedição de um documento público a toda SDCOM teria optado por não se valer do prazo probatório para discutir a opção atuais e não avaliar a existência de um cenário de dano corrente.

178. A IRNC conclui que as características do presente processo p fatores que levaram o OSC da OMC a concluir, naquelas disputas, que a c também ao vício legal de ausência de provas positivas, que fossem capazes objetiva de dano com base em dados correntes bem como possibilitar uma an intuito de se apurar um direito que permitisse contrabalancear a eventual existê práticas desleais e dano sofrido.

179. Dessa forma, a IRNC assevera que há no presente processo necessidade de a SDCOM determinar o encerramento do caso sem a recom medidas compensatórias ou tentar atualizar o período para que possa esta regramento e jurisprudência multilateral, para o que claramente não haveria curso da presente investigação.

180. Ademais, a IRNC alega que o direito de contraditório e interessadas não foi resguardado quando a SDCOM justificou o período defasa do prazo probatório, na NTFE, vindo a decidir questão basilar e importantíssim (período de investigação) quando as partes interessadas não podem mais aport

1.7.1.3 Dos comentários da SDCOM sobre as informações da indústria

1.7.1.3.1 Com relação ao protocolo de 5 de outubro de 2021 e o ped investigação

181. Com relação aos comentários acerca da retificação aos dados pontua-se que a empresa voluntariamente protocolou em 5 de outubro de dados, possivelmente como resultado do procedimento de verificação de elem antidumping paralelo, com base no § 2º do art. 37 do Decreto nº 1.751, de 1995.

totalmente sanada a situação de aparente divergência que ocorreu na investigação (grifos no original).

184. As alterações nos demais dados da empresa, muito embora tenham sido consideradas, não foram consideradas no dano analisado, não alteraram as curvas e tendências, não afetando as conclusões gerais da SDCOM constantes do parecer de início de investigação.

185. Observe-se ainda que as alterações foram consideradas significativas para a investigação paralela de dumping em face do contexto em que foram apresentadas para a investigação: somente foram apontadas durante o procedimento de verificação in loco. Também naquele caso, a Aperam tentou protocolar intempestivamente as alterações, apresentados, em desconformidade com o § 1º do art. 7º da Instrução Normativa do Ministério do Comércio Exterior nº 1, de 6 de julho de 2021. Tal situação é absolutamente presente no presente processo, em que esta autoridade teve amplo tempo de análise prévia. Ao final, corrobora para tal conclusão o fato de que os dados da Aperam foram apresentados durante o procedimento de verificação in loco, sem que a empresa tivesse apresentado as alterações antes da verificação in loco - perfazendo positive evidence para todos os fins da investigação.

186. Deste modo, não deve prosperar o pleito de encerramento da investigação por falta de "coerência de atuação administrativa da SDCOM". Ora, a conclusão expressa no parecer considerou o momento no processo administrativo em que houve a alteração.

187. Sobre o Ofício SEI nº 299872/2021/ME, a SDCOM devidamente verificadas as informações trazidas pela peticionária em sede de petição e informações, o que inclui o trazido em 5 de outubro de 2021. Pontua-se também que as alterações foram suficientemente explicadas, em sede restrita, as alterações promovidas, tanto que a peticionária é capaz de se insurgir contra elas, reputando-as "significativas". Sobre a questão dos apêndices - conforme explicado pela peticionária, os anexos em que não foram apresentados em sede restrita não foram reapresentados.

188. Sobre a análise hipotética trazida pela PT IRNC, considera-se que a análise deve ser feita pois cada situação fática é analisada concretamente, de acordo com o contexto. Ressalte-se que a autoridade investigadora conduz o procedimento de forma correta, de acordo com a legislação em vigor, de modo que são rechaçadas as conjecturas propostas pela peticionária.

189. Sobre a manifestação acerca da aplicação de direito provisório, considera-se ter havido perda de objeto, já que não houve determinação preliminar para a aplicação de direitos provisórios. Com relação ao comentado acerca das alterações consideradas significativas na investigação paralela, como dito, trata-se de um momento processual em que dita alteração foi recebida, não sendo cabível no presente momento.

manifestante apresentou todas manifestações durante o processo sobre a manifestação final de 34 páginas específica sobre a questão do período de investigação, não só a PT IRNC, bem como também a peticionária, debateram a

192. A manifestante põe um peso indevido no momento processual da SDCOM foram vertidas - ora, sendo a determinação preliminar opcional sobre de 1995, foi abordada a questão tão cedo quanto possível, no âmbito da Nota emitida pela SDCOM, conforme previsto no Artigo 12.8 do ASMC. Assim, esse por parte das alegações da PT IRNC se baseia, é absolutamente improcedente.

193. O parecer de início nada trouxe sobre esta questão, pois, sendo período de dano e o início da investigação menores do que os casos analisados em Controvérsias - OSC e respeitados todos os entendimentos multilaterais e legais, uma non-issue. Assim, a SDCOM não tinha como antecipar que a PT IRNC levava uma vez levantado, foi respondido na primeira oportunidade, ou seja, no momento para elaboração da nota técnica de fatos essenciais pela SDCOM. Relembra-se a investigação antissubsídios de produtos de laminados de alumínio importados em 43, de 18 de junho de 2021, já trouxe a decisão de atualização do período de investigação tinha se dado com decurso maior do que os 15 meses considerados ocorreu no presente caso.

194. A SDCOM concorda com as manifestantes no que tange ao argumento permitir a adoção de períodos de investigação de forma injustificada. Como se que ocorreu, havendo plenos motivos a justificar os períodos utilizados.

195. Com relação ao caso DS295 - Mexico Definitive Anti-Dumping, pontua-se inicialmente que tanto o Painel, quanto o Órgão de Apelação (AB) concluiu o período de investigação remoto não é uma violação per se: "We agree with Mexico that the investigation period is not per se a violation of Article 3.1". Isto posto, o AB deixou alcançada tal conclusão, analisou-se vários fatores:

149. (...)The Panel underlined that: during the investigation, no attempt to update any of the information obtained from the interested parties to reflect developments in the months between the end of the period of investigation in August 1999 and the end of December 2000; Mexico did not argue that practical problems necessitated the investigation or that updating the information was not possible; and Mexico did not argue as to why more recent information was not sought

167. (...) The Panel arrived at this conclusion on the basis of several factors: the importance to the existence of a 15-month gap between the end of the period of initiation of the investigation, and a gap of almost three years between the end of the investigation and the imposition of final anti-dumping duties. However, these t

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

ii) Mexico did not establish that practical problems necessitated investigation;

iii) it was not established that updating the information was not possible;

iv) no attempt was made to update the information; and

v) Mexico did not provide any reason apart from the allegation of bad practice to accept the period of investigation submitted by the petitioner which was not sought.

197. Ao contrário do afirmado pela PT IRNC, no presente caso, escolheu o período de investigação - muito pelo contrário, esta somente se baseou no Decreto nº 1.751, de 1995. E aqui cumpre ressaltar a fala descontextualizada na manifestação final: o item 6 do Ofício nº 1.762/2020, de 30 de setembro de 2020, a peticionária declarasse expressamente os períodos considerados. Ressalte-se que fez tal pedido para que as demais partes tivessem acesso mais fácil a tal informação, e não para mais uma vez prestigiar o contraditório.

198. A decisão por atualizar ou não o período cabe à SDCOM e não à PT IRNC, sob os aspectos - se a SDCOM quisesse de fato questionar a Aperam acerca do período, poderia expressa nesse sentido. Sendo este um ponto meramente processual, relembra-se a investigação de laminados de alumínio (processo SEI/ME nº 19972.101384/2020) e a posição da peticionária acerca de tal atualização antes da tomada de decisão. O comentário da PT IRNC no sentido de que a Aperam "chegou a ser consultada" não se que não houve escolha por parte da peticionária, mas sim o estrito cumprimento do dever.

199. Há, ainda, evidente problema prático envolvido na presente investigação. Parece olvidar que a situação pandêmica do COVID-19 solapou não só esta autuação, como todas as empresas, impondo restrições em relação aos recursos humanos e financeiros, geral, horizontalmente a todas as empresas no Brasil e quiçá, no mundo. Ademais, que o período de dano considerado na presente investigação terminou em março de 2020, o estopim da pandemia - no Brasil o estado de calamidade pública foi reconhecido pelo Decreto nº 6, de 2020, de 18 de março de 2020. Deste modo, há que se reconhecer que a peticionária, atualizados até março de 2020, já certamente impuseram transformações, conseguiu se adaptar rapidamente ao "novo normal" e protocolar quatro meses depois da investigação uma petição completa, em 31 de julho de 2020. Conforme mencionado, os funcionários da Aperam tiveram que ser reposicionados em home office, o que não é o caso nesse cenário de profundas mudanças organizacionais, a empresa conseguiu cumprir a completa petição antissubsídios de cinco períodos. Lembra-se ainda que os períodos

201. Neste ponto, cumpre ressaltar que a PT IRNC, em sede de comentários sobre a questão da pandemia. Ora, se a atualização fosse de fato entendimentos multilaterais, a SDCOM a teria realizado. Como é óbvio, SDCOM após o P5 se tivesse procedido à atualização - sendo assim, também é evidente atualizar ou não nada tem a ver com o fato de haver ou não distorções em seu âmbito, mal interpretado pela PT IRNC em sede de manifestação final, só buscando sendo a atualização requerida conforme entendimentos da jurisprudência multilateral. O procedimento à atualização ainda teve a vantagem analítica de se evitar distorções o mais próximo possível da realidade, objetivando identificar o impacto da prática devidamente documentada, sobre a situação da indústria doméstica. Reiterando que o período fosse necessária nos termos da legislação e do entendimento jurisprudencial, a atualização teria sido feita pela SDCOM. Assim, refuta-se a afirmação de que o motivo motivador para não se apurar dados e fatos, pois a ratio decidendi da SDCOM se baseia em conta particularidades do pós período a ser atualizado, mas sim se é necessária a luz da legislação e de seu entendimento jurisprudencial.

202. Sobre o apontado acerca do Decreto nº 1.751, de 1995, não se pode dizer que a presente investigação foi iniciada, já estava em curso a investigação de dumping de produtos de aço inoxidável laminados a frio 304, originárias da África do Sul e da Índia, no meio da Circular SECEX nº 15, de 24 de fevereiro de 2021. Neste contexto, a investigação antidumping cumpria os requisitos do Decreto nº 8.058, de 2013, e foram apresentadas simultaneamente pela Indústria Doméstica, ocorreu a investigação antissubsídios requereu pedidos adicionais de informações complementares, e a autoridade investigadora sobre os alegados programas de subsídios à luz da jurisprudência da OMC.

203. Assim, uma vez considerada devidamente instruída a petição de antissubsídios, mesmo tendo sido necessário tempo adicional para análise de dumping, a SDCOM não vislumbrou necessidade de atualização no início da investigação, e a investigação foi devidamente iniciada dentro dos prazos limites constantes da jurisprudência da OMC (art. 295). Não se pode ainda esquecer que, em caso de determinação positiva de dumping praticados pela Indonésia, seria necessário evitar a adoção de chamado duplo remédio, obrigação prevista pelo Artigo VI do GATT. Assim sendo, além de desnecessário e desnecessário multilateral, o descasamento do período de investigação dos dois processos de dumping e de subsídios desleais de comércio praticadas pela Indonésia introduziria uma enorme complexidade e um double remedy. Inclusive, se desconhece qualquer autoridade que tenha realizado double remedy em períodos de análise de dumping e de subsídios descasados. Assim, as alegações apontadas, houve pleno cumprimento do preceituado no § 1º do Art. 35 do Decreto nº 8.058, de 2013, que indica a utilização dos "doze meses mais próximos possíveis" .

(...)
7.76. To sum up, therefore, the NTC relied on a dumping POI that was time of initiation and two years and seven months old by the time of the final attempt to update it and, during the proceedings, it provided no discussion why, for these reasons, we find that in making its determination of dumping, the NTC ignored the existence of current dumping, as required by Article 2.1. (grifo no original)

208. Nota-se, portanto, que exatamente a mesma análise foi realizada pelo mesmo motivo pelo qual inicialmente se reiteram os argumentos já expostos.

209. Ademais, convém enfatizar que, no decurso da pandemia, esboçou-se a necessidade de promover profundas adaptações em seus fluxos de trabalho - deixando temporariamente de realizar verificações in loco, e suspendendo o prazo de investigações com base no artigo de 29 de janeiro de 1999, que invoca motivo de força maior devidamente justificada situação nunca antes ocorrida, devidamente justificada e publicizada no DSDCOM.

210. Neste cenário, a condução da presente investigação antissubvenção enfrentou desafios. Como de praxe, a autoridade empenhou-se tanto quanto possível para que fossem analisadas as informações da forma mais robusta e precisa possível, sendo realizadas verificações in loco presencialmente na Indústria Doméstica e também no GOI, o que demandou tempo adicional para que se verificasse a existência de condições de deslocamento e entrada dos técnicos da autoridade investigadora. Ademais, devido aos resultados da investigação antidumping paralela, fez-se verificação na Indústria Doméstica, o que ocorreu também demandou tempo adicional da equipe.

211. Devem ainda ser consideradas todas as particularidades do caso, envolvendo dez programas de elevada complexidade e acerca de uma legislação complexa, o DSDCOM, o que requereu da autoridade investigadora tempo para análise dos fatos, aos autos do processo e estudo da jurisprudência da OMC acerca das normas implementadas pelo GOI. A leitura atenta do item 4 deste documento demonstra a necessidade para análise da petição e elaboração do parecer de início se justifica, considerando a abrangência das intervenções promovidas pelo GOI no setor siderúrgico desde a criação do DMO por meio da MEMR Regulation nº 34/2009, a março de 2020, fim do período.

212. Não se pode olvidar que a desnecessária atualização ainda impede a disponibilização de dados novos para a peticionária, e também o trabalho adicional de coleta de dados de dano e de subsídios para a SDCOM. Salienta-se que, em investigações antissubvenção de longo período pode ocasionar grandes impactos, muito maiores do que em investigações de curto exemplo, como a própria PT IRNC e o GOI trouxeram, logo após o fim do período.

existentes na presente investigação entre o fim do período de dano e o início das medidas antidumping, e o fim do período de dano e o início das medidas antidumping, inferiores aos que existiram nos casos analisados no OSC.

215. Por fim, reforça-se que a análise da PT IRNC sobre a jurisprudence dos elementos acerca da possibilidade de se obter dados para atualização e de quando a pergunta correta é precedente: se a atualização era mesmo necessária ou não, negativa. Por isso, trata-se de uma leitura enviesada dos precedentes multilaterais para a questão no presente caso, pulando-se o antecedente (necessidade de atualização) e consequente (possibilidade de se atualizar).

216. Neste contexto, insta reforçar que mesmo considerados todos os fatores, e especial as dificuldades não previstas introduzidas pela pandemia do COVID-19, os procedimentos publicados por esta autoridade respeitam integralmente tanto a legislação pátria e multilaterais, tendo sido devidamente tratados todos os "several factors" tratados e ventilados.

217. Em suma, esta autoridade firmemente concluiu que o período de "evidence" conforme requerido pela legislação pátria e multilateral, sendo os laudos de dano, o início da investigação e eventual imposição de medidas plenamente vista a data de protocolo da petição pela peticionária e os trabalhos desenvolvidos no contexto exposto neste item, entende-se que o período de análise de dano adotado é o mais próximo possível, sem que tenha havido qualquer prejuízo com relação à causalidade empreendida, de natureza objetiva e imparcial, conforme metodologia investigadora de defesa comercial.

1.7.2 Do Governo da Indonésia

218. O Governo da Indonésia, após ter sua solicitação de dilação de prazo, respondeu tempestivamente sua resposta ao questionário do produtor/exportador em 3 de maio de 2022.

219. Diante da necessidade de esclarecimentos adicionais, a autoridade em 29 de abril de 2022, o Ofício nº SEI Nº 125396/2022/ME de solicitação de informações complementares. A resposta do Governo da Indonésia foi tempestivamente dada em 3 de maio de 2022.

1.7.2.1 Do uso dos Fatos Disponíveis para o Governo da Indonésia

220. Após análise dos documentos apresentados e com base nos fatos disponíveis, constatou-se que houve lacunas na resposta do Governo da Indonésia, e que os fatos disponíveis também ao GOI no que atine a tais lacunas, conforme previsto no artigo 1995.

Aços Ltda; Inox-Tech Comércio de Aços Inoxidáveis Ltda; Intersteel Aços e Metais Ltda. -em Recuperação Judicial; Krominox Aços e Metais Eireli; Martinox Importação e Exportação de Aço Inoxidável Ltda; Mebrafe Instalações e Equipamentos Frigoríficos Ltda; Metalcasty Ltda; Metalúrgica Biasi Ltda; R2 Distribuidora Ltda; RefriBrasil Importação e Exportação de Aços Inoxidáveis Ltda; Sianfer Ferro e Aço Ltda; Timbro Distribuidora Ltda; Upper Trade Importação e Exportação Eireli; U Angelo Luvison Ltda.

224. Apenas quatro empresas importadores apresentaram respostas de importador, quais sejam: Brasinox Aço Inoxidável Ltda; Inconel Comércio Importação e Exportação de Produtos Siderúrgicos Ltda; Usina Metais Ltda; e a Empresa Sianfer Ferro e Aço Ltda.

225. A empresa Empresa Sianfer Ferro e Aço Ltda., contudo, apresentou apenas a versão unicamente em versão confidencial, violando o disposto no do § 2º do artigo 1995, segundo o qual as informações confidenciais deverão estar acompanhadas de detalhes que permitam compreensão razoável da informação fornecida, sob pena de violação da informação confidencial; no caso que não seja possível a apresentação da informação, a interessada deve justificar por escrito tal circunstância, sendo essa justificativa anexada em tela, não foi apresentada justificativa e a empresa foi notificada, por meio do processo 117086/2022/ME, de 19 de abril de 2022, que, nos termos estabelecidos no Decreto nº 1.751, de 1995, sua resposta ao questionário do importador não foi considerada para as determinações a serem emanadas pela SDCOM.

1.7.4 Dos produtores/exportadores

226. Conforme já descrito, foram enviados questionários aos produtores/exportadores identificados: Bahru Stainless SDN BHD, PT Indonesia Allow, PT Indonesia Tsingshan Stainless Steel e PT Jindal Stainless Indonesia.

227. A SDCOM recebeu resposta da empresa PT Indonesia Ruipu Nickel, doravante denominada "IRNC", pertencente ao grupo Tsingshan, do qual o produtor/exportador identificado, PT Indonesia Tsingshan Stainless Steel. Conforme 1.7.4.1 verificou-se que a empresa não protocolou a versão confidencial da parte do questionário do produtor/exportador, o que impossibilitou a análise desta e a resposta da IRNC não foi considerada por ter sido recebida incompleta, tendo sido disponibilizados sobre o uso dos fatos disponíveis.

228. As demais empresas não responderam ao questionário encaminhado.

1.7.4.1 Do uso dos Fatos Disponíveis para a PT Indonesia Ruipu Nickel

explicações sobre as questões objeto do referido Ofício.

232. Em 24 de fevereiro de 2022, a IRNC protocolou documento adicional da IRNC" e em 4 de março de 2022 foram protocoladas as explicações relatadas no Ofício SEI nº 49.146/2022/ME.

233. Neste contexto, após breve inspeção do documento denominado "IRNC" por parte da SDCOM evidenciou que este se tratava da resposta do produtor/exportador encaminhado à empresa em 29 de junho de 2021. Assim, o prazo final prorrogado para resposta da empresa ao referido questionário encerrou-se em 29 de junho de 2021, tal resposta seria intempestiva, nos termos estabelecidos no caput c/c § 1º do art. 1.751/95. Deste modo, por intermédio do Ofício SEI nº 74860/2022/ME, de 15 de março de 2022, foi informado que, justamente por ser o documento a resposta ao questionário, o referido documento como informação adicional ao questionário, situação tratada no § 1º do art. 1.751/95.

234. Assim, a empresa foi notificada que, considerando os prazos de validade, a resposta intempestiva não seria considerada nas determinações a serem emanadas por esta, nos termos do art. 79 do Decreto nº 1.751/1995.

235. Por meio da referido Ofício a empresa também foi informada que as determinações e missiva que acompanhavam a resposta ao questionário intempestivo, protocoladas em 29 de junho de 2022, bem como a manifestação protocolada em 4 de março de 2022, não tinham a determinação a ser emanada no âmbito da presente investigação. Ademais, a empresa interessada pode sempre apresentar quaisquer comentários que julgar pertinentes durante a sua instrução.

236. Pontua-se que a empresa manteve em suas manifestações as manifestações finais a serem consideradas para a Nota Técnica de Fatos Essenciais, mantendo confidenciais os nomes das empresas relacionadas. Tal fato tem especial relevância injustificadamente o devido contraditório das demais partes interessadas no processo, sendo público e notório (advindo do próprio relatório do IMIP e da decisão da autoridade competente) que a IRNC é relacionada a várias empresas relevantes para a investigação, como PT Tsinghan Steel Indonesia, PT Indonesia Tsinghan Stainless Steel, PT Ching Nickel and Stainless Steel Industry, PT Indonesia Morowali Industrial Park, PT Tais empresas em conjunto foram aqui denominadas "Grupo Tsingshan". Em sua manifestação final, a Nota Técnica, o grupo não mais manteve como confidencial a sua composição.

1.7.4.1.1 Das manifestações da INRC acerca do uso dos fatos disponíveis

1.7.4.1.1.1 Manifestações prévias à Nota Técnica

240. Nesses termos, a IRNC expôs que tendo sido notificada em 1º de fevereiro de 2022, 5 (cinco) meses após o protocolo de sua resposta a IRNC, o recebimento somente da versão confidencial da narrativa não havia sido regularizado. A SDCOM intentou compreender as respostas da IRNC utilizando somente a versão pública. A empresa houve por bem disponibilizar por meio da nova manifestação a integralidade das informações como confidenciais, destacando que tais excertos refletem de forma sistemática a narrativa, haviam sido devida e tempestivamente recebidos pela SDCOM, de forma que a apresentação da SDCOM das presentes informações adicionais não impediria o bom andamento do processo e o cumprimento dos demais prazos processuais.

241. Ademais, a IRNC entendeu que o procedimento encontrar-se-ia em andamento, o que permitiria o recebimento de informações complementares ou adicionais, caso fossem necessárias, a ser emitida ao Governo da Indonésia nem aos importadores, em uma situação em que a narrativa e apêndices, pertinentes tanto à IRNC como a suas partes relacionadas, bem como as informações da narrativa, haviam sido devida e tempestivamente recebidos pela SDCOM, de forma que a apresentação da SDCOM das presentes informações adicionais não impediria o bom andamento do processo e o cumprimento dos demais prazos processuais.

242. Por fim, a IRNC entendeu que a interpretação do art. 12.7 do ASME, que estabelece que o Panel estaria em linha com o tratamento conferido pela SDCOM às alterações e complementares material apresentadas pela peticionária nos dados protocolados quando o material for complementar, de modo que, em atendimento ao princípio da isonomia e da legalidade, o art. 36 e o art. 37, §2º, do Decreto nº 1.751/1995, respaldariam o recebimento das informações complementares ou adicionais apresentadas pelos exportadores no que tange ao questionário do produtor/exportador.

243. Em manifestação datada de 4 de março de 2022, a IRNC apresentou a sua resposta acerca dos fatos relatados no Ofício SEI nº 49.146/2022/ME, de 18 de fevereiro de 2022, e a aplicação de fatos disponíveis à IRNC.

244. A IRNC reiterou que teria, em 16 de julho de 2021, ainda pelo Sistema Eletrônico de Informações - SEI, tempestivamente submetido pedido de prorrogação de prazo para apresentação do questionário do produtor/exportador, o que lhe foi concedido pelo Ofício SEI nº 576/2021/CGMC/DECOM/SECEX, datado de 27 de julho de 2021, restando a apresentação da resposta de 1º de setembro de 2021, ocasião em que a IRNC procedeu, tempestivamente, com a apresentação da resposta ao questionário do produtor/exportador, em suas versões confidenciais, e os recibos constantes das versões respectivas dos autos.

245. A IRNC destacou que o manejo do Processo Eletrônico de Informações - SEI teria imposto dificuldades ao protocolo da IRNC, uma vez que a apresentação da resposta ao questionário do produtor/exportador, especialmente os confidenciais, teria sido muito superior aos 30 MB/arquivo suportados pelo sistema SEI. Por essa razão, a IRNC

248. A IRNC alegou que o recebimento de sua resposta ao questionário faz-se mister à luz da exegese da legislação brasileira, do Decreto nº 1.751/1999 administrativa e dos comandos da Lei de Introdução às Normas do Direito Brasileiro.

249. A IRNC arguiu que o recebimento do seu questionário do SDCOM não importaria às demais partes interessadas qualquer prejuízo em contraditório e ampla defesa, estatuídos no art. 2º, caput, da Lei nº 9.784/1999, partes interessadas teriam acesso à versão restrita do questionário do produtor/exportador colaborativo.

250. A IRNC argumentou que teria agido com seu dever de lealdade nos termos do art. 4º, inciso II, da Lei nº 9.784/1999, e como prova da boa-fé constaria expressamente da carta de encaminhamento do questionário de acesso restrito e confidencial, que a parte narrativa comporia o Doc. 1 dos anexos à resposta. A empresa não teria tido a intenção de negar o acesso à SDCOM à parte narrativa da informação de natureza confidencial da SDCOM; e apresentou as capturas de tela em PDF da narrativa confidencial do questionário que demonstrariam que esta não foi alterada pela empresa para submissão e não foi alterada desde então.

251. A IRNC anota que no direito administrativo, sendo demonstrada a necessidade, deve o administrador agir segundo certos preceitos que levem e indiquem a regularização dos atos processuais ocorra de modo proporcional e equânime, sem excessivos, conforme parágrafo único do art. 21 da LINDB.

252. A IRNC reconheceu que a SDCOM cumpriu com o dever de informar as "consequências jurídicas e administrativas" ao asseverar, no Ofício SEI nº 49.146/2022/ME, determinação sobre a concessão de subsídios à PT Indonesia Ruipu Nickel and Cobalt, em consideração os fatos disponíveis", em atendimento ao caput do art. 21 da LINDB, e não desconsideradas as previsões do parágrafo único do mesmo art. 21, do direito administrativo, ao questionário do produtor/exportador da IRNC, ao não oportunizar a regularização do ato administrativo, em face dos desafios concretos do caso em questão: (i) dos sistemas SDD ao SEI; (ii) da nova e inédita ferramenta "QuebrArquivos" para arquivos pesados; (iii) a complexidade do protocolo mais de 75 arquivos apresentados pelo sistema SEI na data de 15/09/2021.

253. A IRNC apontou ausência de previsão legal que atrelasse o acesso à SDCOM às obrigações previstos no regulamento brasileiro ao protocolo simultâneo de acesso à SDCOM restrita e confidencial, sob pena de desconsideração integral da resposta e aplicação do princípio da proporcionalidade, como parece indicar a SDCOM no Ofício SEI nº 49.146/2022/ME.

haveria por que, e tampouco mostrar-se-ia legal, a SDCOM recorrer à versão restrita para tentar "compreender as respostas às informações solicitadas no questionário" e não apresentar uma contradição frente aquilo que seria alegado para desconsiderar a versão restrita. O questionário da IRNC, de forma que tal fato faria confirmar sua concepção de que a apresentação simultânea das versões confidencial e restrita seria uma questão de forma.

258. A IRNC destacou que o maior grau de flexibilidade das normas do uso das informações adicionais do seu § 2º do art. 37, teria sido empregado voluntariamente apresentados pela peticionária, em 5/10/2021, que foram aceitos pela SDCOM, cf. consta do parágrafo 37 do Relatório de Verificação in loco da Aperam.

259. Dessa forma, a IRNC clamou por isonomia do tratamento das partes do art. 5º da Constituição Federal de 1988, alegando que apresentou informações adicionais à parte narrativa de sua resposta ao questionário do produtor/exportador. Entender, foram apresentadas em "período de tempo razoável para a consideração" em linha com os precedentes multilaterais do Órgão de Solução de Controvérsias do Mundial do Comércio (OMC) sobre o art. 12.7 Acordo sobre Subsídios e Medidas Antidumping.

260. Nesse contexto, além da prerrogativa trazida pelo §2º do art. 37, o § 5º do art. 79 do mesmo decreto permitiria o uso de informações que, quando apresentadas, não tenham sido apresentadas "de forma adequada sob todos os aspectos". Transpondo-se ao caso concreto da IRNC, seria absolutamente plausível para a Subsecretaria e subsidiar um primeiro pedido de informações completas para a consideração dos apêndices e anexos confidenciais da resposta ao questionário. A parte narrativa em versão restrita; consideração das informações adicionais apresentadas ou a consideração da própria narrativa confidencial, ora apresentada pelos fatos e direito apresentados.

261. Além do exposto, a IRNC alegou que seu inconformismo com a sua resposta ao questionário do produtor/exportador, mediante a aplicação da ausência de protocolo simultâneo de versões confidencial e restrita da narrativa, precedentes da SDCOM.

262. No âmbito da revisão de final de período do direito antidumping, pelo meio do Ofício de informações complementares à petição da ABIC 1.932/2020/CGSA/DECOM/SECEX, teria oportunizado à peticionária a apresentação teria deixado de ser apresentado quando do protocolo da petição, impropriedade da representatividade da indústria doméstica, destacando que nesse caso da ABIC do protocolo de uma das versões do referido apêndice (confidencial ou restrita) que se o mesmo critério que ora se emprega à IRNC fosse adotado para com a petição, parágrafo 7º do art. 51 e da Seção I do Decreto nº 8.058/2013, a petição deveria

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

semente em versão confidencial.

265. Nesse contexto, a IRNC clama pelo devido recebimento da nar questionário à luz de precedentes multilaterais, cf. o art. 12.7 do ASMC e o pain apresentação em 24 de fevereiro de 2022 dos excertos reputados confidencial ao questionário do produtor/exportador, na qualidade de inform §2.º, do Decreto nº 1.571/1995, destacando que para que uma informação seja autoridade, recorrendo-se à aplicação de fatos disponíveis, deve-se assegurar art. 12.7 se verifiquem no caso concreto, uma vez que na interpretação do referi uma informação ter sido fornecida após a expiração do prazo, ainda que se refir questionário, não significa que não tenha sido fornecida dentro um período ra utilização, sendo necessário avaliar as circunstâncias específicas do caso concre

266. Nesse quadro, a empresa alega que pedidos de informações fazer referência à parte narrativa da resposta ao questionário, principalmente n os anexos e apêndices foram tempestivamente recebidos pela SDCOM, de forn autoridade das informações adicionais apresentadas em 24/2/2022 não impe investigação e o cumprimento dos demais prazos do processo.

267. Por outro lado, a IRNC entendeu que seria plausível e inteligível da empresa ao questionário com base na versão restrita da narrativa conjug dos apêndices e anexos devidamente recebidos pela SDCOM, e forneceu um A demonstrativos e dos apêndices da versão confidencial da resposta ao questio tachado como confidencial na narrativa seria correlacionado às info demonstrativos e nos apêndices da versão confidencial da resposta ao questio um pedido de informações complementares da SDCOM relativo às seções pe um procedimento original de investigação de subsídios que pode ser prorr poderiam inclusive ser solicitadas pela SDCOM mais rodadas de informaç esclarecer tantos pontos quantos fossem necessários.

268. Nesse contexto, ao contrário do que consignou a SDCOM no C conclusão de que "diversos elementos imprescindíveis à devida análise por pa ausentes na versão restrita da narrativa da resposta", posto que poderiam ser s anexos e dos apêndices confidenciais, como demonstrado pela IRNC no referid

269. Nesse sentido, a IRNC explicou que acerca dos dois excertos da reproduzidos no ofício, entende que o Demonstrativo A.3C.1 - Production Demonstrativo B-2.1 Sales Flowchart, permitiriam, ainda que de modo lim estrutura do grupo respondente. Igualmente, da análise das planilhas e apêndic

sob todos os aspectos", as informações foram tempestivamente protocoladas e encaminhadas para análise por esta autoridade, e conforme dispõe o art. 79, § 5.º, do Decreto nº 8.000/2013, não serão integralmente desconsideradas.

274. Em manifestação datada de 17 de março de 2022, a IRNC defendeu a completa desconsideração da resposta ao questionário do produtor/exportador, alegando que determinaria que fossem indicadas pela autoridade administrativa condições que impediria que a IRNC fosse penalizada de pronto, desproporcional e exorbitante a aplicação dos fatos disponíveis, tratamento similar às empresas que não cooperaram com a SDCOM. Acrescentou que a peticionária parecia esquecer o teor do Art. 21 da Lei nº 13.665/2018 privilegiaria, nas relações de Direito Público, a adoção de medidas que a Administração, preservados os interesses gerais, em detrimento da imposição de sanções excessivos ao Administrado.

275. Desta forma, uma vez que o procedimento administrativo regido pelo Decreto nº 8.000/2013 não atrelaria o protocolo simultâneo de versões confidenciais e restritas dos documentos aos prazos e obrigações nele previstos, assim como o faz o Decreto nº 8.000/2013, o Decreto nº 10.839/2021, a invalidação completa da resposta ao questionário sem a oportunidade prévia de regularização, iria de encontro ao comando do Art. 21 da Lei nº 13.665/2018.

276. Nesse contexto, a IRNC aduziu que essa possibilidade de regularização por meio de outros procedimentos investigatórios conduzidos pela SDCOM por meio de solicitações de informações complementares às partes, uma vez que em mais de uma oportunidade efetivamente possibilitou, após o término do prazo, a reapresentação de documentos indicados pelas partes em seus protocolos, deixaram de ser apresentados à SDCOM, assim a validação seja de petições da indústria doméstica seja de questionários de dumping, apesar de legislação para averiguar a existência de dumping, Decreto nº 8.000/2013, não atrela o protocolo simultâneo de versões confidenciais e restritas ao cumprimento dos prazos.

277. Dessa forma, a IRNC alegou que a prática administrativa refutaria a alegação de que não caberia à SDCOM "solicitar a apresentação de informações confidenciais insuficiente apresentada sob a forma restrita, uma vez que nem mesmo é exigida a resposta", aduzindo que os documentos faltantes cuja reapresentação foi feita em outros procedimentos Subsecretaria em outros procedimentos não haviam sido nem mesmo protocolados na mesma forma que a SDCOM teve, no caso da IRNC, acesso ao inteiro teor da resposta do produtor/exportador, à exceção dos excertos reputados confidenciais pela autoridade e a narrativa.

SDCOM? se sem a versão confidencial da narrativa, as instruções da SDCOM to
dessa Subsecretaria; se sem a versão confidencial da narrativa, as instruções
desconhecidas dessa Subsecretaria a ponto de não se conseguir identificar m
referem aqueles dados? se os dados específicos capazes de quantificar
concedidos seriam menos importantes do que informações genéricas que re
relatórios auditados ou do que as legislações indonésias?

280. Nesse contexto, a IRNC asseverou que a maior parte da
confidenciais na narrativa diriam respeito à identificação do grupo respondente
anexos confidenciais, ou contém somente explanações de cunho genér
esclarecidas em sede de informações complementares. A IRNC informou sua
ocorrido com a empresa possa dar ensejo a tão absurdo receio por parte da pet

281. No que concerne à interpretação do Art. 12.7 do ASMC e
apresentação de informações adicionais em "período razoável de temp
argumentação da peticionária de que, caso aceite tal entendimento, "tod
poderiam apresentar suas informações completas a posteriori", e alega q
protocolo de 5 de outubro de 2021, sob a alegação de se tratar de "pequena
mesmo; e a SDCOM teria aceitado informações adicionais apresentadas em "p
com base no §2º do Art. 37 do Decreto nº 1.751/1995.

282. Nesse sentido, para a IRNC seriam semelhantes o seu
informações complementares aos anexos e demonstrativos e o da peticionár
dados previamente à verificação in loco dessa investigação de subsídi
procedimento levaria ao término a investigação antidumping, porém nesta cons
adicionais apresentadas em período razoável de tempo para apreciação da SDC
se obter o real entendimento dos dados da peticionária.

283. A IRNC alegou que a peticionária parecia se esquecer do teor d
nº 1.751/1995, que determinaria a utilização de informações verificáveis apre
ainda que não estejam de forma adequada sob todos os aspectos, ao solicita
Ofício SEI nº 49.146/2022/ME seja confirmada; posto que tal dispositivo reforç
completa desconsideração de seu questionário seria medida desproporcional e
dos dados e informações disponibilizados em versão confidencial.

284. Nesse diapasão, a IRNC destacou que a aplicação de fatos o
investigadora não seria ilimitada, conforme seria o entendimento do Órgão
"Mexico - Anti-Dumping Measures on Rice" (DS295, §§293-295), trazendo longa
haveria consideração de que o recurso aos fatos disponíveis não perm
investigadora usasse qualquer informação da maneira que escolher, e apontar

287. A Aperam, em manifestação de 15 de março de 2022, destinada às partes interessadas, teria enfrentado a mesma mudança, e não apenas no processo de apresentação de processos e petições em andamento, a qual foi objeto de notificação e de apresentações diversas sobre tal transição. Além disso, ainda que o sistema apresentasse instabilidade, fato é que a IRNC logrou protocolar sua resposta ao Questionário. Tal protocolo teria ocorrido, de qualquer forma, sem a apresentação do Questionário, não estando, portanto, tal falta, relacionada à transição dos procedimentos para o SEI.

288. Sustentou que, embora a legislação determine que se apresentem anexos ao documento assinado eletronicamente, para que estes sejam válidos, não é válido. Ou seja, simplesmente listar que arquivos estariam sendo apresentados, sem ser entendido como validação dos mesmos, se estes não são, de fato, enviados temerariamente pela investigadora.

289. Destacou que os Questionários enviados pela SDCOM às partes interessadas apresentaram uma apresentação simultânea das versões confidencial e restrita. Ademais, a investigadora pudesse questionar justificativas de confidencialidade ou mesmo a versão restrita, o oposto não é verdadeiro, não cabendo à SDCOM compartilhar informações confidenciais a partir de uma resposta insuficiente apresentada sob o argumento de que nem mesmo é possível saber o teor da resposta. Se assim o fosse, seria inaceitável, em que as partes poderiam apresentar, nos prazos determinados pela investigadora, apenas supostas versões restritas, com textos incompletos e para apresentar posteriormente, a seu critério, as informações de fato solicitadas e enviados pela SDCOM.

290. Da mesma forma, não haveria que se falar que a apresentação da resposta ao Questionário do Produtor/Exportador pela IRNC apenas após o envio pela SDCOM teria sido realizada em período de tempo razoável para ser considerada válida pela investigadora. Sendo aceito tal entendimento, perde-se o sentido e validade da apresentação pela autoridade investigadora para apresentação das respostas ao Questionário, pois as partes interessadas poderiam apresentar suas informações completas a qualquer tempo, sob o entendimento.

291. Ademais, destacou que o § 3º do art. 37 do Decreto nº 1.751, de 1997, que estabelece que as informações deveriam ser apresentadas nos prazos determinados pela autoridade investigadora, tal entendimento seria ratificado no § 1º do art. 79 do mesmo Decreto.

297. Citou ainda o caso China - GOES" (DS414), que diferencia os fatos disponíveis (fatos disponíveis) e "adverse inference", pontuando que não cooperação não ausentes de qualquer esteio factual e que "ainda que a SDCOM considere cooperativa, não pode esta autoridade valer-se de inferências adversas com caráter punitiva demasiada em suas determinações relativas à IRNC, mas tão somente os fatos disponíveis nos presente autos para preencher o gap informacional que se observa do art. 12.7.

298. A empresa finalizou sua manifestação fornecendo, a título de melhor informação disponível, na qualidade de informação secundária, a margem de subsídios a produtos laminados a frio originárias da Indonésia em face das importações de produtos laminados a frio originárias da Indonésia. Acrescentou a empresa que "a margem de investigação de subsídios europeia, como será visto abaixo, constitui-se em da melhor informação disponível, suprimindo de modo razoável as informações que a autoridade investigadora brasileira, falhou em tempestivamente prover".

1.7.4.1.1.2 Manifestações posteriores à Nota Técnica

299. A PT IRNC, em sua manifestação final, pontuou discordar do li afirmou não ter sido recebida nenhuma resposta ao questionário do produtor. Para a empresa, o emprego dessa linguagem não reflete, de modo fidedigno, a presente investigação. Acrescenta ainda que concordou em revisar a confidencialidade das partes relacionadas na manifestação final, notando que não houve qualquer prejuízo no sentido.

300. Pontuou ainda que em 04 de março de 2022 trouxe como resposta ao Ofício SEI nº 49.146/2022/ME, e que teria ainda demonstrado o questionário como um todo a partir da narrativa em versão restrita conjugando informações confidenciais, indicando esquematicamente o local onde as informações foram obtidas conforme a Lei de Introdução às Normas do Direito Brasileiro, haveria a regularização do ato, e que tal teria ocorrido em outras investigações. Ainda não confirmado a aplicação dos fatos disponíveis, no que a empresa expressou sua preocupação.

301. Reiterou a existência de boa-fé, o que teria sido boa-fé foi detectado no item B.II da Seção B da manifestação de 04 de março

de 2022. Nela, a empresa teria comprovado que efetivamente a confidencialidade da narrativa de sua resposta ao questionário do produtor/exportador demonstrariam que o documento faltante, além de efetivamente preparado, não estava então.

em prol da tomada de decisão da própria Administração Pública. Em outras palavras, a SDCOM teria se interessado pelas informações cujo conhecimento interessa, em primeira análise, a esta própria SDCOM.

305. Acerca dos arts. 20 e 21 da Lei de Introdução às Normas do Direito Brasileiro, a SDCOM teria apontado na NTFE que não se aplicam tais disposições, e, ao mesmo tempo, alegou que as cumpriu, o que seria notável. Acusou, a SDCOM de ter feito uma alegação contraditória, pois teria neste caso não seria unicamente o protocolo de um documento por um processo administrativo, mas uma decisão da autoridade administrativa sobre o recebimento ou não dessa documentação, aplicando-se as disposições da LINDB.

306. A previsão do parágrafo único do art. 21 da LINDB, que impõe a oportunidade da regularização do ato inválido, seria a expressão normativa de uma regra que constam do ordenamento jurídico brasileiro. Conforme o formalismo preceitual do Processo Administrativo Federal (Lei nº 9.784/1999) ou a instrumentalidade da ação de Processo Civil. No entender da empresa - inexistindo ofensa aos direitos das partes no presente caso, das outras partes interessadas - esta E. Subsecretaria deveria rejeitar a narrativa do questionário da IRNC.

307. Considerando que na NTFE restou claro que a descon sideração da NTFE não decorreria apenas de uma mera questão de forma (apresentação simplificada do questionário), mas pela alegada impossibilidade da SDCOM de compreender a narrativa apenas com base na conjugação da narrativa restrita do questionário com os dados confidenciais da resposta, acrescentou a IRNC que seria possível apresentação de informações adicionais voluntárias, com fulcro no permissivo do art. 36 e especialmente do art. 1.751/1995, dos trechos confidenciais da versão confidencial da narrativa de submissão do produtor/exportador.

308. Haveria também, ao contrário do afirmado pela SDCOM, ter sido dada a resposta - as informações confidenciais da resposta da IRNC já estavam em posse da SDCOM em fevereiro de 2022 - duas semanas antes da emissão do primeiro pedido de informações ao Governo da Indonésia, e somente oito meses depois veio a ser proferida a NTFE.

309. Em sendo falsos os motivos invocados, a decisão administrativa é anulável nos termos do art. 50, § 1º, da Lei do Processo Administrativo Federal.

310. Reiterou os precedentes acerca do Artigo 12.7 do ASMC, que estabelece que as informações devem ser apresentadas em "período razoável de tempo", o que teria sido o caso das informações complementares ao GOI só foi emitido duas semanas depois do recebimento das informações confidenciais. Deste modo, pelo dever de oportunidade à regularização do ato administrativo moderado dos processos administrativos e, especialmente, pelo princípio da razoabilidade, formas e o decidido no DS539, o prazo de resposta ao questionário não seria aplicável, pois que discorda que o caso do DS539 seja "sensivelmente distinto", pois a re

Tem-se que tal prazo total de setenta dias é peremptório, sendo que a inadequada resposta protocolada no dia 15 de setembro de 2021 resta insanável. A alegada instabilidade do protocolo da resposta ao questionário do produtor/exportador da IRNC (ou de qualquer outra parte) em nada altera a composição do arquivo .zip que foi desenvolvido pela empresa com a parte narrativa confidencial ausente.

314. Restou ausente na resposta protocolada o elemento central do processo, a SDCOM, que é o documento contendo a resposta a todas as perguntas feitas pela empresa, versão confidencial, elemento base que serviria para instruir toda a análise. A SDCOM indica, em suas orientações de preenchimento, que a empresa deve apresentar respostas a todas as perguntas:

Nenhuma pergunta ou seção deve ser deixada sem resposta. Refira-se sempre à pergunta específica que está sendo respondida. Responda às questões na ordem apresentada. As informações tabuladas devem ser fornecidas de acordo com os formatos especificados e claramente rotuladas.

(....)

Deverão ser protocoladas no Sistema Decom Digital - SDD, ou no SDD, e, simultaneamente, uma versão confidencial e uma versão restrita da resposta ao questionário.

(...)

Tendo em conta o disposto no caput do art. 37 do Decreto nº 1.751, de 1998, o questionário, em suas versões restrita e confidencial, deve ser protocolado no SDD (quarenta) dias contados a partir da data da transmissão do questionário.

315. Não há que se falar em falta de razoabilidade ou proporcionalidade, visto que foi a empresa que falhou em fornecer resposta tempestiva à autoridade competente submetida continha máculas impossíveis de serem superadas, como exposto no Parecer 49146/2022/ME:

Ciente da aparente lacuna da resposta da empresa, esta SDCOM, apesar de sua forma criteriosa, o conteúdo da versão restrita da narrativa constante da 2ª subseção não possibilita possível compreender as respostas às informações solicitadas no questionário. O questionário encaminhado às partes interessadas utilizando-se somente a versão restrita da narrativa. Entretanto, restou impraticável tal intento, haja visto que diversos elementos necessários para a análise por parte desta autoridade estão ausentes na versão restrita da narrativa. A resposta protocolada não permite à esta SDCOM compreender informações básicas para qualquer análise, como as informações completas das empresas respondentes, a estrutura do grupo e a operacionalização de programas nas empresas (...)

assevera que as acusações da IRNC de desconsideração das previsões do parágrafo 1º da LINDB, violação do comando do art. 21 da LINDB, são improcedentes, pelas razões de fato e de direito a seguir.

320. Deve-se, primeiramente, observar que o art. 21 da LINDB não é aplicável, como será explanado a seguir. Contudo, ainda que, em tese, tal artigo fosse aplicável, a SDCOM informou às partes interessadas, de forma clara e objetiva, todas as consequências da legislação em decorrência da não aceitação dos arquivos submetidos pela IRNC no questionário do produtor/exportador da investigação. Cabe destacar que a própria SDCOM cumpriu com o dever de indicar de modo expresso as "consequências jurídicas e administrativas" ao asseverar, no Ofício SEI nº 49.146/2022/ME, "que a determinação sobre a comercialização da Indonésia Ruipu Nickel and Chrome Alloy (...) levará em consideração os fatos da investigação".

321. As acusações da IRNC constituem equívoco material tanto da interpretação das normas contidas nos artigos 20 e 21 da LINDB quanto do cabimento das suas consequências jurídicas e administrativas em tela, além de equívoco material quanto à própria natureza dos atos Administrativos e dos atos procedimentais, de acreditar ter produzido um Ato Administrativo instrumental no âmbito dos processos administrativos da presença da IRNC no comércio.

322. Os arts. 20 e 21 do Decreto-Lei nº 4.657, de 4 de setembro de 1938 (Decreto-Lei das Normas do Direito Brasileiro - LINDB), dispõem que:

Art. 20. Nas esferas administrativa, controladora e judicial, não se decidem sobre questões jurídicas abstratas sem que sejam consideradas as consequências práticas da decisão. (Incluído pela Lei nº 13.655, de 2018)

Parágrafo único. A motivação demonstrará a necessidade e a adequação da decisão, bem como a invalidação de ato, contrato, ajuste, processo ou norma administrativa, inclusive quando se tratar de condutas alternativas. (Incluído pela Lei nº 13.655, de 2018)

Art. 21. A decisão que, nas esferas administrativa, controladora ou judicial, anula ato, contrato, ajuste, processo ou norma administrativa deverá indicar as consequências jurídicas e administrativas. (Incluído pela Lei nº 13.655, de 2018)

Parágrafo único. A decisão a que se refere o caput deste artigo deverá indicar as condições para que a regularização ocorra de modo proporcional e adequado aos interesses gerais, não se podendo impor aos sujeitos atingidos ônus ou onerosidade peculiares do caso, sejam anormais ou excessivos. (Incluído pela Lei nº 13.655, de 2018)

detalhadamente planejado não poderia ser cumprido com a regularização de prazo. Salienta-se, ainda, que não se trataria de mera regularização, mas sim de versão confidencial da narrativa do questionário da PT IRNC.

325. Ainda que a resposta ao questionário seja informação evidentemente pode a PT IRNC invocar o princípio da verdade real ou os outros princípios invocados o aceite de informações protocoladas em momento processual absolutamente expresso requisito da legislação aplicável. É indubitável que a falta de resposta à investigação, tendo sido tal ausência indesejada tanto para a autoridade. Entretanto, trata-se de situação incontornável, já que não havia tempo hábil para. Não se pode, com a justificativa de oportunizar sanar irregularidades, impedir a investigação.

326. Nesse contexto, em face da intempestividade do documento de fevereiro de 2022, conforme a regra do caput c/c § 1º do art. 37 do Decreto nº 10.911/2020, expressamente com o conteúdo normativo do art. 20 da LINDB. Tem-se patente que a PT IRNC tratam-se de equívoco material tanto da interpretação das normas contidas na LINDB e do cabimento das suas imposições no processo administrativo em geral, quanto da natureza jurídica do Atos Administrativos e dos atos procedimentais, por esta acrescida de natureza Administrativa ao realizar mero ato instrumental no âmbito dos processos administrativos de investigação de defesa comercial.

327. A SDCOM rebate veementemente a acusação da PT IRNC de que a alegação falaciosa ao considerar não ser aplicável o art. 21 da LINDB ao conteúdo do protocolo de sua resposta ao questionário do produtor/exportador seria ato meramente administrativo: ainda que se considere, como quer a PT IRNC, que se tem no caso "uma situação administrativa competente a respeito do recebimento ou não dessa documentação, nada teria a ver com a questão, já que se apenas se aplica quando da "invalidação de um processo ou norma administrativa" - in casu, não há nenhum ato da administração pública, ato de notificação de decisão pela não aceitação de documentação. Ao insistir na alegação demonstra cristalina leviandade.

328. Repise-se mais uma vez para que a manifestante tenha em mente que os arts. 20 e 21 da LINDB como se fossem aplicáveis aos mesmos tipos de decisões administrativas. Aplicável de forma horizontal, no art. 21 há expressa delimitação à "decisão que anula, modifica ou revoga ato, contrato, ajuste, processo ou norma administrativa (...)".

329. Assim, diferentemente do que alega a IRNC, o que se tem no caso é um comando legal vinculado por parte da SDCOM, de exigência legal de não recebimento de documentos em face da ocorrência da preclusão temporal, decisão com conteúdo decisório.

administrativo no âmbito da Administração Pública Federal, dispõe que:

Art. 39. Quando for necessária a prestação de informações ou a apuração de fatos, interessadas ou terceiros, serão expedidas intimações para esse fim, mencionando as condições de atendimento.

Parágrafo único. Não sendo atendida a intimação, poderá o órgão ou entidade relevante a matéria, suprir de ofício a omissão, não se eximindo de proferir a decisão.

334. Ademais, a SDCOM importante destacar a topologia do referido documento, que está inserido capítulo IV - "do início do processo". Nesse quadro, a SDCOM, no parágrafo único do art. 50 da mesma Lei nº 9784/99 dispõe que os atos administrativos devem conter a indicação dos fatos e dos fundamentos jurídicos. Nesses termos, a SDCOM refutou a recusa imotivada, e ressalta que cumpriu integralmente com o disposto no art. 50 da Lei nº 9784/99, ao informar de forma motivada "explícita, clara e congruente" à IRNC, por meio do processo nº 74860/2022/ME, de 15/3/2022, da intempestividade do documento produzido, denominado "informação adicional da IRNC", que se tratava, na realidade de reabertura do prazo para o protocolo já se encontrava encerrado, nos termos estabelecidos pelo Decreto nº 1.751/95, não se configurando, portanto, como informação adicional, situação tratada no § 2º do mesmo artigo do Decreto nº 1.751/95.

335. No que concerne ao chamado formalismo moderado e à instrução do processo, a SDCOM ressalta que, o inciso VIII do parágrafo único do art. 2º da Lei nº 9784/99 estabelece que nos processos administrativos serão observados, entre outros, os critérios de observância dos princípios essenciais à garantia dos direitos dos administrados, e o inciso XIII do mesmo artigo estabelece que nos processos administrativos serão observados, entre outros, a interpretação da norma aplicável de modo a melhor garantir o atendimento do fim público a que se dirige, vedada qualquer outra interpretação.

336. Com efeito, o Art. 2º da Lei nº 9.784/1999 dispõe que a Administração Pública deve observar, dentre outros, aos princípios da legalidade, finalidade, motivação, razoabilidade, proporcionalidade, moralidade, ampla defesa, contraditório, segurança jurídica, interesse público e eficiência. O parágrafo único dispondo que nos processos administrativos serão observados os seguintes princípios:

I - atuação conforme a lei e o Direito;

II - atendimento a fins de interesse geral, vedada a renúncia total das competências, salvo autorização em lei;

III - objetividade no atendimento do interesse público, vedada a procrastinação ou omissões das autoridades;

público a que se dirige, vedada aplicação retroativa de nova interpretação.

337. A esse respeito, a IRNC traz citação do magistério de Marçal SDCOM ressalta que, conforme o mesmo doutrinador, contrariamente ao p legitimar seu direito em razão do não fornecimento ou fornecimento parcial d decorrência da ausência da parte narrativa, em sua versão confidencial, quan sua resposta ao questionário do produtor/exportador, destaca-se justamente q

(...) informalismo não pode ser empregado pela administração p prescrições que a ordem jurídica estabelece relativamente a seu modo de cumprimento das regras elementares do devido processo (g.n).

338. A SDCOM ressalva ainda que o princípio da instrumentalidade d judicial, só teria sentido lógico-jurídico se os documentos em questão fossem no presente caso. Ademais, só se convalida ato administrativo inválido, e se o v

339. Assim, não há que se falar em violação ao formalismo mode administrativos, haja visto que não ocorreu inobservância de mera formal ausência de conteúdo relevante para a análise da autoridade. Neste diapasão "pas de nullité sans grief", tendo-se em conta os prazos da investigação, inega público na aceitação de retificação ou de documento aditivo à resposta, como de fevereiro de 2022. Haveria também prejuízo às demais partes interessadas, ter sido impedida de analisar a resposta da empresa, não pode sequer confidencialidade proposta pela empresa. A SDCOM chegou a apontar q confidencial a própria composição do grupo e as empresas que f surpreendentemente continuou a fazê-lo até mesmo em sua manifestação (2022), o que é inaceitável, haja visto que se trata de informação pública, e contraditório das outras partes.

340. Em sua manifestação final a PT IRNC apontou, acerca da confid empresas do grupo, que supostamente seria possível para a SDCOM confidencialidade da resposta, nos termos do § 2º do art. 38 do Decreto nº 1. tem condições de saber se as confidencialidades ocultas na versão restrita e analisadas em cotejo com a versão confidencial (com todas as informações rev ausente a versão confidencial, resta impossível para a SDCOM adivinhar o c então requerer a reapresentação de sua versão restrita, havendo evidente pre interessadas neste fato. Só pode ser levantada confidencialidade de algo co caso contrário se trata de informação intempestiva protocolada indevidamente

encaminhado, conforme já dito).

344. Há aqui, reitera-se, uma outra confusão da empresa, ao apor meramente de forma, sendo que não apenas houve falha de forma, mas sim conteúdo em sua resposta.

345. Mesmo indo além da jurisprudência pátria e a existência peremptórios, cabe, ainda, considerar a jurisprudência da OMC. No caso "United States – Anti-Dumping Duties on Certain Products and the Use of Facts Available" (WT/DS461), que os EUA agiram de forma inconsistente com o Artigo 12.7 do ASMC:

7.357 For the above reasons, we find that Korea has established inconsistency with Article 12.7 of the SCM Agreement because it rejected the cross-owned affiliate input suppliers solely on the basis that it was provided a by the USDOC, without considering whether, in light of the specific facts information submitted by POSCO was nonetheless submitted within a "reasonable

346. Entretanto, houve aqui situação sensivelmente distinta, haja vista pelo OSC, chegou a haver verificação da empresa em questão, bem como a autoridade apontou nenhuma razão outra para a desconsideração da resposta que não o fato. No presente caso, a falha da PT IRNC impediu qualquer análise do questionário e a oportunidade de explicar para a empresa por quais motivos não seria possível a resposta, inclusive nas reuniões solicitadas pela empresa à SDCOM. A interpretação IRNC foi, mais uma vez, enviesada.

347. A análise de uma resposta ao questionário é tarefa que demora investigação antissubsídios, que envolve milhares de páginas e dezenas de dias. Não logrou enviar o primeiro pedido de informações complementares ao GOI no dia 15, tendo sido formuladas dezenas de perguntas para o GOI.

348. Ao contrário do alegado, não havia tempo hábil para aceitar e analisar tal resposta, fazer os eventuais pedidos de informação complementar e realizá-la. O fato de a falha na resposta só ter sido verificada meses depois da resposta em nada diminui a culpa da empresa: a autoridade iniciou a análise internamente estabelecido e no qual haveria tempo hábil para a conclusão da investigação.

349. Pontua-se que, em sua manifestação final, a PT IRNC tornou a alegar que não teria protocolado sua nova resposta duas semanas antes da emissão do primeiro pedido de informações complementares ao Governo da Indonésia. Aduziu ainda a PT IRNC que, por esse motivo, os motivos invocados'. Tal gravíssima alegação é tão descabida que ultrapassa o limite da razoabilidade. Conforme se depreende da argumentação da manifestante ("o expediente administrativo havia acabado de começar" ou "o procedimento investigatório em relação ao

informações devem ser trazidas dentro de período razoável. Considera-se a omissão do dispositivo ao caso em tela, pois o novo questionário da PT IRNC só foi protocolado em 18 de dezembro de 2022, 5 meses e 2 semanas ou 162 dias depois do prazo de resposta ao questionário de setembro de 2021. Em nenhum momento a PT IRNC explicou por qual motivo não diligenciou diligentemente e verificou mais cedo a ausência em sua resposta confidencial. O fato da SDCOM ter enviado o Ofício meses depois não elimina o fato de que a própria SDCOM não verificou a ausência. Evidentemente, não se trata de prazo razoável o protocolo 5 meses depois do original.

353. Pontua-se ainda que o próprio processo de averiguação e o documento central da resposta ao questionário (narrativa confidencial) tomaram como base a equipe da SDCOM, pois se partiu do pressuposto de que a parte interessada não havia excluído arquivos no sistema, não se olvidaria - ou, por qualquer motivo desconhecido, não se lembraria - de incluir justamente o elemento mais importante de sua resposta. Assim, a equipe da SDCOM certificou de que a ausência não decorria de algum erro interno no uso das ferramentas para fazer o download e a reconstrução dos arquivos "zipados" constantes do Sistema. Uma falha interna de sistemas de TI. Uma vez que se confirmou internamente o erro, atribuível à própria parte interessada, a autoridade avaliou a possibilidade de de fato não ter enviado a resposta, analisando a versão restrita da narrativa e a documentação enviada. Demandou tempo até que finalmente fosse expedido o ofício notificando a PT IRNC que os documentos disponíveis, o que ocorreu em 18 de fevereiro de 2022.

354. Cabe aqui um esclarecimento acerca do trabalho empreendido pela SDCOM para se deus devido à própria empresa, e que envolveu pesquisa com relação à tecnologia de arquivos, contrário do sugerido pela PT IRNC, que em sua manifestação final indicou que a SDCOM não tinha informação por parte desta E. autoridade a respeito do mencionado procedimento. "De acordo com seu departamento de Tecnologia da Informação", esclarece-se aqui, de forma que a consulta foi feita junto à área de TI do Ministério da Economia sobre qualquer falha ou qualquer questão relativa a este caso específico, uma vez que a equipe da SDCOM é absoluta que a ausência da resposta ao questionário (narrativa confidencial) decorre da própria empresa, e não de qualquer falha na operação do SEI, que é utilizado pelo F. Ministério da Economia de forma ampla para a tramitação de processos administrativos.

355. Os testes internos realizados pela equipe da SDCOM para se confirmar a falha de ferramentas de TI envolveram a análise dos arquivos .zip protocolados. A resposta em arquivo compactado .zip dividido em nove partes, com uso da ferramenta de descompactação pela SDCOM, aventou-se: 1) se poderiam terem sido os arquivos .zip modificados antes da submissão pela parte, e ainda assim a reconstituição do arquivo completo se

4.3.2 Each file placed into a ZIP file MUST be preceded by a "local file header". Each "local file header" MUST be accompanied by a corresponding "central directory entry" in the central directory section of the ZIP file.

4.3.3 Files MAY be stored in arbitrary order within a ZIP file. A ZIP file MAY be split into user-defined segment sizes. All values MUST be stored in the local file header unless otherwise specified in this document for a specific data element. (grifos n

357. A presença de tal "Central Directory" torna impossível que h resultante, e ainda tem-se que há uma verificação da integridade dos arquivos (por meio do CRC32 checksum). Assim, qualquer alteração no arquivo após submetido não tenta reconstruir o arquivo, o que não ocorreu. Ainda, no processo de união para reconstruir o arquivo .zip original, é efetuada verificação no local file header, o que não há nenhum problema nos arquivos. Isso é feito automaticamente em qualquer formato .zip. Como o arquivo foi reconstruído e extraído sem qualquer erro, portanto, qualquer modificação não detectada no arquivo submetido.

358. A análise técnica detalhada anterior, obviamente, requereu tempo, mas se a isso o fato de a PT IRNC ter protocolado absolutamente todos os arquivos em duplicidade, mais vez prejudicando o andamento programado da investigação. A SDCOM conferiu um a um os arquivos .pdf da resposta a fim de verificar se não teria havido o nome dos arquivos. A SDCOM teve ainda o cuidado de calcular os hashes dos arquivos analisados, informando-os no ofício de notificação do uso dos fatos disponíveis, dando ampla oportunidade de defesa na apresentação de quaisquer alegações técnicas.

359. Em conclusão sobre este ponto, a SDCOM reafirma que não foi a área de TI do Ministério, pois pôde eliminar por conta própria qualquer possibilidade de alteração interna no sistema de TI do Ministério quando da submissão, do download ou da extração dos arquivos .zip submetidos. Ou seja, não restou absolutamente nenhuma dúvida sobre a submissão do arquivo com a narrativa confidencial se deu exclusivamente por conta da área de TI.

360. Neste contexto, a SDCOM cumpriu atentamente ao disposto no Art. 1º do Antissubsídios Brasileiro e também na jurisprudência da OMC, sendo que, confiante, foram utilizados os fatos disponíveis de forma razoável, não para preencher lacunas, mesmo ante a total ausência de resposta da empresa e parcial colaboração. Mais bem tratado nas seções individuais de cada programa, a SDCOM utilizou os fatos disponíveis como fatos disponíveis, sempre fundamentadamente, o que incluiu a decisão de considerar razoável tal utilização quando cabível (o que é, inclusive, consagrado no Parecer de 14 de fevereiro de 2022).

desenhos e carta, mas como sabido pela empresa, foram trazidos vários outros elementos, mas não houve a aceitação da empresa, sendo a resposta rejeitada, quando se teve a oportunidade de discorrer sobre ela.

364. Sobre a reclamação acerca de se afirmar que não foi recebida a SDCOM, dados os problemas relatados, desconsiderou a resposta protocolada. Nos fins, de fato não foi recebida resposta ao questionário, sendo que esta determina a elaboração de uma resposta detalhada, detalha o ocorrido, permitindo que o leitor tenha pleno conhecimento dos fatos.

365. Com relação à alegada boa-fé da empresa, o protocolo de 04 de dezembro demonstra que a empresa falhou em cumprir com o requerido, não protocolou as capturas de tela nada demonstram, já que datas podem ser livremente alteradas. A boa-fé da empresa teria sido melhor demonstrada caso esta tivesse expressamente se comprometido em não protocolar a narrativa confidencial de sua resposta e, a partir daí, atuar de boa-fé. Pelo contrário, veio se insurgir usando argumentos enviesados e até mesmo falsos, e não somente apontou a intempestividade como motivo ou alegar que a SDCOM não chegou junto a seu departamento de TI, em uma lamentável tentativa de desviar de sua responsabilidade.

1.7.4.1.1 Da conclusão da SDCOM acerca do uso dos fatos disponíveis

366. A SDCOM reitera o uso dos fatos disponíveis para a PT IRNC, considerando o normativo aplicável, à ausência de tempo hábil para se analisar a situação ante ao estado da investigação e à carga de trabalho, à impossibilidade de a SDCOM ser restrita para se depreender informações compreensíveis, à existência de culpa exclusiva da empresa no não protocolo da versão confidencial da narrativa de sua resposta, à tentativa tardia (5 meses após o prazo) de protocolar nova resposta. Lamentando os posicionamentos da SDCOM e fatos ocorridos, o fato de a empresa os ter deturpado, a narrativa enviesada e feito graves falsas acusações, em infeliz tentativa de desviar de sua responsabilidade e incompetência.

1.8 Das verificações in loco

1.8.1 Da verificação na indústria doméstica

367. Com base no § 2º do art. 40 do Decreto nº 1.751, de 1995, técnica de verificação in loco nas instalações da Aperam, no período de 6 a 10 de dezembro, com o intuito de confirmar e obter maior detalhamento das informações prestadas pela empresa.

368. Foram cumpridos os procedimentos previstos nos roteiros de verificação previamente à empresa, tendo sido verificados os dados apresentados na resposta e anexos complementares.

374. As análises constantes deste Parecer de Determinação Final e os resultados dessa verificação in loco.

1.8.2.1 Das manifestações sobre as verificações in loco

375. A Aperam, em manifestação de 17 de maio de 2022, descreveu a apresentação e comprovação pelo Governo da Indonésia seriam fundamentais para o processo.

376. Quanto ao minério de níquel, ademais das informações mencionadas no roteiro da visita de verificação, deveriam ser verificados, além dos volumes de minério de níquel nos mercados interno e externo, os preços efetivamente praticados no minério no mercado interno, uma vez que se trata de informação disponível conforme disposto no Decree of the Coordinating Minister for Maritime Affairs No. 1 of 2018, que estabelece que ao "Executor" da equipe de supervisão do HPM cabe verificar a purchase of nickel ore made by mining business and processing and refining business and the price used in the sale and purchase transaction of ore is in accordance with the market price.

377. Ainda com relação ao minério de níquel, assim como ao carvão, a apresentação de atas de reunião e documentos relacionados às tratativas com as associações Indonesian Nickel Miners Association (APNI) e a Indonesia Coal Association sobre a produção e comercialização do minério de níquel e de carvão no mercado interno.

378. No caso das bonded zones, seria fundamental que fosse esclarecido se as máquinas e equipamentos utilizados na produção de bens exportáveis são isentos do programa, uma vez que tais máquinas e equipamentos não se referem a insumos produtivos e nem são sujeitos em si à reexportação ou venda no mercado interno.

379. A Aperam ressaltou que o Governo da Indonésia deveria fornecer as legislações solicitadas pela autoridade investigadora, e não apenas as leis classificadas pelo próprio Governo indonésio.

380. Acrescentou que a apresentação dos documentos exclusivos não atenderiam ao determinado no art. 433 da Portaria Secex nº 172, de 2022, se não acompanhados de suas respectivas traduções, como, por exemplo, nos casos 131-PMK.04-2018, Government Regulation No 14 of 2015, Ministry of Trade Regulation No 18 of 2020 RPJM 2020-2024, Ministry of Finance Regulation No 7 of 2021, Ministry of Finance Regulation No 130 of 2020, Ministry of Trade Regulation No 39 of 2014 e Ministry of Trade Regulation No 95 of 2014.

regulamentos vigentes na indonésia.

384. Destacou que a área do IMIP tem vários usos, não seria estratégica industrial, mas também seria destinada à agricultura, residen Regulamento Espacial Regional de Morowali nº 7/2019.

1.8.2.2 Dos Comentários da SDCOM

385. Em relação aos comentários da Aperam, a SDCOM reitera que d cumpridos os procedimentos que haviam sido previamente informados no rot relatório da verificação foi tempestivamente incorporado aos autos desta revisã

386. Sobre os comentários do GOI, pontua-se que as questões rela do IMIP serão discutidas em detalhes na seção 4. Pontua-se, resumidamen apontam que o HPM era utilizado não somente para royalties, e que o fato de a em tese, para outros usos, não altera as conclusões a que chegou esta auto disponíveis no processo. Sobre o acordo do IMIP ter sido supostamente estabel a assinatura do acordo sobre o IMIP ter sido testemunhada pelos presidente evidencia o alto nível com o qual o projeto foi considerado pelas partes - lem colaboração da PT IRNC e do GOI impediu à SDCOM de obter maiores assinatura.

387. As análises apresentadas neste Parecer levam em consideraçã in loco, inclusive no concernente às lacunas na colaboração do GOI durante a GOI sobre a visita, como será tratado em cada programa específico.

1.9 Da prorrogação da investigação

388. Em 24 de junho de 2022, todas as partes interessadas conhe que, nos termos do item 2 da Circular SECEX nº 22, de 31 de maio de 2022, pu União de 1º de junho de 2022, o prazo regulamentar para o encerramento da in por até seis meses, consoante o art. 49 do Decreto nº 1.751, de 1995.

1.10 Da decisão de não realização de determinação preliminar e da investigação

389. A Circular SECEX nº 37, de 19 de agosto de 2022, publicada no l de agosto de 2022, além de tornar públicos os fatos que justificaram a decis determinação preliminar sobre a existência de prática de subsídios, de dano nex causal entre eles, tornou públicos os prazos que serviriam de parâmetro p investigação.

Prazos

392. Atendendo a pedido do GOI, em 23 de setembro de 2022, alterado para as 9 da manhã, de modo a possibilitar a participação dos representantes da PT IRNC em audiência pública, a audiência foi realizada em ambiente virtual em 23 de setembro de 2022, às 9h, no Auditório do Ministério da Indústria, Comércio Exterior e Turismo, em Brasília, DF, com a presença de representantes da PT IRNC, do governo da Indonésia, da empresa produtora e exportadora PT IRNC, do Ministério da Indústria, Comércio Exterior e Turismo, do Ministério da Justiça e do Ministério da Economia. A audiência foi transmitida ao vivo pelo canal de YouTube do Ministério da Indústria, Comércio Exterior e Turismo. A audiência foi realizada em ambiente virtual em 23 de setembro de 2022, às 9h, no Auditório do Ministério da Indústria, Comércio Exterior e Turismo, em Brasília, DF, com a presença de representantes da PT IRNC, do governo da Indonésia, da empresa produtora e exportadora PT IRNC, do Ministério da Indústria, Comércio Exterior e Turismo, do Ministério da Justiça e do Ministério da Economia. A audiência foi transmitida ao vivo pelo canal de YouTube do Ministério da Indústria, Comércio Exterior e Turismo.

393. A audiência final foi realizada conforme previsto, no dia 29 de setembro de 2022, às 14h, no Auditório do Ministério da Indústria, Comércio Exterior e Turismo, em Brasília, DF, com a presença de representantes da PT IRNC, do governo da Indonésia, da empresa produtora e exportadora PT IRNC, do Ministério da Indústria, Comércio Exterior e Turismo, do Ministério da Justiça e do Ministério da Economia. A audiência foi transmitida ao vivo pelo canal de YouTube do Ministério da Indústria, Comércio Exterior e Turismo.

394. O termo de audiência e a lista de presença das partes interessadas no evento integram os autos restritos do processo.

395. As manifestações apresentadas durante a realização da audiência pública tempestivamente a termo foram devidamente consideradas neste Parecer nos termos do art. 43 do Decreto no 1.751, de 1995.

1.12 Da errata à Nota Técnica de fatos essenciais

396. No dia 10 de outubro de 2022, foi divulgada errata à Nota Técnica de fatos essenciais nº 43660/2022/ME, pois se observou erros materiais em alguns números-índice, no item 6.1.7.1, tabela "Evolução dos Custos (R\$/t)" e nas tabelas da seção 7.2.6 "Descrição da produção de outros produtos". Ressalta-se que não foi verificada incorreção na versão confidencial da nota técnica de fatos essenciais, tendo ocorrido erro na preparação da versão restrita em alguns dados de algumas tabelas.

397. Pontua-se ainda que, embora não tenha sido verificada nenhuma incorreção na versão restrita, tendo permanecido inalteradas as conclusões expressas na Nota Técnica de fatos essenciais nº 43660/2022/ME e demais fatos essenciais nela contidos, de forma conservadora, para garantir ampla defesa e ao contraditório especificamente com relação à presente investigação, a manifestação da IRNC, foi aberto novo prazo para manifestações acerca do disposto no item 6.1.7.1, tabela "Evolução dos Custos (R\$/t)".

398. Dessa forma, as partes interessadas dispuseram do prazo de 05 dias, a contar de 25 de outubro de 2022, para apresentar manifestações exclusivamente acerca da atribuição (seção 7.2.6 da nota técnica), ou sobre a evolução dos custos (seção 6.1.7.1, tabela "Evolução dos Custos (R\$/t)").

399. A PT IRNC foi a única parte interessada a apresentar manifestações acerca do disposto no item 6.1.7.1, tabela "Evolução dos Custos (R\$/t)". Os comentários da parte interessada foram considerados neste Parecer, conforme o art. 43 do Decreto no 1.751, de 1995.

1.13 Do encerramento da fase de instrução

400. Deste modo, encerrou-se, no dia 14 de outubro de 2022, a fase de instrução da investigação em epígrafe (com exceção dos itens pontuados na seção anterior). O prazo estabelecido no §2º do art. 43 do Decreto no 1.751, de 1995. Naquela data, com a divulgação dos fatos essenciais sob julgamento, consubstanciados na Nota Técnica de fatos essenciais nº 43660/2022/ME, do referido artigo, para que as partes interessadas apresentassem suas manifestações acerca do disposto no item 6.1.7.1, tabela "Evolução dos Custos (R\$/t)".

austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304 com espessura igual ou superior a 0,35mm, mas inferior a 4,75mm, fabrica diversas formas tais como, mas não limitadas a bobinas, chapas e tiras/fitas doravante denominados simplesmente "laminados a frio", produzidos na Indoné

405. Aços inoxidáveis são ligas de ferro (Fe) e cromo (Cr), com um m elementos metálicos, tais como níquel (Ni), carbono (C), silício (Si), manganês (M também podem integrar essas ligas. Nos aços inoxidáveis, dois elementos c cromo (Cr), mais relevante de todos, por seu importante papel em elevar a re níquel, que contribui para a melhoria das propriedades mecânicas.

406. De forma simplificada, os aços inoxidáveis podem ser divididos os da série 300; e ii) os da série 400. Os da série 300, na qual se enquadra o p aços inoxidáveis austeníticos, ou seja, aços inoxidáveis não magnéticos com centradas, basicamente ligas Fe-Cr-Ni.

407. Por sua vez, os da série 400, nos quais se incluem os aços inoxidáveis magnéticos com estrutura cúbica de corpo centrado, basicamente ser subdivididos em dois grupos: os ferríticos propriamente ditos, que em ge mais elevado e de C mais baixo, e os martensíticos, nos quais predomina teor d elevado, em comparação com os ferríticos.

408. Cada série de aços inoxidáveis é dividida em diferentes tipos, o aço, o que implica, também, usualmente, em diferentes utilizações. Internac diferentes nomenclaturas, sendo a mais utilizada a do American Iron and Steel I

409. No Brasil, a Associação Brasileira de Normas Técnicas nomenclatura do AISI. Existem, contudo, outras nomenclaturas internacio diferentes tipos de aços inoxidáveis que podem ser utilizadas, a depender produto é fabricado/comercializado. Na petição, a peticionária também aprese de nomenclaturas internacionais, a seguir reproduzida, a título exemplificativo.

Equivalência de Nomenclaturas Internacionais

ABNT/AISI Brasil/EUA	Euronorm União Europeia	W.N. Alemanha	DIN 17707 Alemanha	BSI Grã Bretanha	UNE Espanha
304	X6CrNi1810	1.4301 1.4303	X5CrNi1810 X5CrNi1812	304 S 31 304 S 15	X6CrNi1910
304L	X3CrNi1810	1.4307 1.4306	X2CrNi1811	304 S 11	X2CrNi1910
304H	----	1.4948	----	304 S 51	X6CrNi1910

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

mais fácil do que nos acabamentos nº 1 e Nº 2D;

-BA: Laminado a frio com cilindros polidos e recozido em forno de a lisa, brilhante e refletiva, características que são mais evidentes à medida em mais fina. A atmosfera do forno pode ser de hidrogênio ou misturas de hidrogênio

- Nº 3: Material lixado em uma direção - normalmente o lixamento grana (tamanho do grão de diamante) de aproximadamente 100 mesh;

-Nº 4: Material lixado em uma direção com abrasivos de grana d acabamento com rugosidade menor que a do Nº 3;

-Nº 6: Material com acabamento Nº 4, acabado depois com pa abrasivas e óleos - aspecto fosco, satinado, com refletividade inferior à acabamento não é dado em uma única direção e o aspecto varia um pouco p pano utilizado;

-Nº 7: Acabamento com alto brilho - a superfície é finalmente poli linhas de polido. É um material com alto grau de refletividade obtido com po vez mais finos;

-Nº 8: Acabamento espelho - a superfície é polida com abrasivos c todas as linhas de polimento desapareçam. É o acabamento mais fino que ex inoxidáveis sejam usados como espelhos. Também é utilizado em refletores; e

-Acabamento TR - acabamento obtido por laminação a frio ou recozimento e decapagem de maneira que o material tenha proprieda Geralmente as propriedades mecânicas são mais elevadas que a dos outros a utilização é em aplicações estruturais.

411. Nesse contexto, na petição, a peticionária ainda informa que exi de acabamentos de aços inoxidáveis, os quais não estão incluídos na norma AS

-Nº 0: Laminado a quente e recozido - apresenta a cor preta dos ó recozimento. Não é realizada decapagem. Às vezes são vendidas desta forma c e, particularmente, aços inoxidáveis refratários que serão utilizados em altas ter

-Nº 5: Material do acabamento Nº 4 submetido a um ligeiro passe c brilhantes (skin pass) - apresenta um brilho maior do que o do acabamento Nº 4

-RF (Rugged Finish) - obtido com lixas, com grana entre 60 e 100 m lixamento com alta rugosidade. A rugosidade varia de 2,00 a 2,50 micros Ra.;

-SF (Super Finish) - acabamento do material com lixas com grana lixamento de baixa rugosidade, variando entre 0,70 e 1,00 micros Ra;

se direcionam para fornos elétricos onde são reduzidos, gerando NPI com composição 1% de Cr e 82% de Fe. Em seguida este NPI fundido é direcionado para os vasos e também são adicionadas matérias-primas que são aquecidas com carvão em processo de aço 304 comprada ou recirculada, ferro níquel, níquel eletrolítico, ferro cromo, ferro manganês, etc. De forma que a diferença básica entre a rota tradicional e a integrada é que no caso da rota integrada o Níquel é via NPI já fundido e não via sucata de aço 304 ou ferro níquel que precisa ser fundido no forno elétrico a arco. Após o AOD/lingotamento contínuo, a rota integrada é idêntica à rota tradicional.

415. No que concerne às diferenças entre a rota tradicional e rota integrada, a petição de 2020, na resposta ao Ofício nº 1.762/2020/CGMC/SDCOM/SECEX de informações, em resposta à petição inicial do Processo SECEX nº 52272.004953/2020-01, a petição afirma que a rota tradicional é fortemente centrada na utilização de sucata de aço 304, com ferro níquel e de ferro cromo para o balanço de carga. As produtoras que utilizam sucata para adquirir as matérias-primas (sucata, ferro níquel, ferro cromo) no mercado internacional, os preços são em grande parte cotados diariamente em bolsas como LME e em dólar. Por sua vez, na rota ou processo integrado o aço é produzido a partir de minério de ferro, níquel, minério de cromo, carvão, sendo produzidos internamente nas usinas o ferro cromo (menos comum), a energia elétrica e outros ferros ligas. Assim, as diferenças entre a rota tradicional e a rota integrada ocorrem até a fase de aciaria. Até essa fase a utilização de sucata implica processos produtivos distintos. No caso da rota integrada, por exemplo, a utilização de energia elétrica e de carvão, além de haver maior necessidade de acesso a recursos, o processo permite uma otimização do consumo de energia elétrica na aciaria, pois as matérias-primas já estão fundidas, prontas para utilização nas fases seguintes do processo. Devido à utilização mais intensiva de energia elétrica e de carvão, tal rota também gera maior emissão de CO₂. Na rota tradicional, por se utilizar como matéria-prima as sucatas de aço 304 com ferro níquel e ferro cromo, há consumo menos intensivo de energia elétrica, o que resulta em consequente menor emissão de CO₂. A partir da aciaria não há mais diferenças entre as rotas, as diferenças são mais ligadas a escalas da planta, o que pode levar a variações de custo quente ou a frio. A opção por uma ou outra rota depende de variáveis diversas, como as condições de disponibilidade de acesso (quantidade e preço) das matérias-primas a serem utilizadas, como sucata, minério de ferro, níquel, cromo, ferro níquel, carvão, energia elétrica, etc.

416. Em 8 de fevereiro de 2021, em resposta ao Ofício nº 1.972/2020/CGMC/SDCOM/SECEX de informações complementares à petição inicial deste processo, a petição afirma que, em 2013, a maioria das empresas teria adotado, ao invés de altos fornos, o processo de produção de ferro níquel via RKEF (Rotary Kiln Electric Furnaces).

417. No que concerne ao balanço de carga, a peticionária explicou que utiliza uma expressão utilizada na siderurgia para calcular as quantidades dos diversos materiais necessários para a produção de um determinado volume de aço na aciaria e depois fazer ajustes para a rota integrada.

rota tradicional tendendo à adquirir as matérias-primas (sucata, ferro níquel) local ou via importação e os preços são em grande parte cotados diariamente em publicações internacionais.

420. Nesse contexto, na rota ou processo integrado o aço é produzido a partir de matérias-primas básicas, como minério de níquel, minério de cromo, carvão, sendo produzidos o Ferro Níquel e o Níquel Pig Iron (NPI), o ferro cromo (menos comum), a energia elétrica e outros produtos. Entre a rota tradicional e a rota integrada, portanto, ocorrem até a fase de aciaria diferenças na utilização de matérias-primas distintas implica em os processos produtivos também serem diferentes. Na rota integrada, por exemplo, há utilização intensiva de energia elétrica e de carvão, com a necessidade de acesso a minérios.

421. Por outro lado, a peticionária esclarece que tal processo pressupõe maior consumo de energia elétrica na aciaria, uma vez que as matérias-primas já estão sendo utilizadas nas fases seguintes do processo produtivo. Devido à utilização mais intensiva de energia elétrica e de carvão, tal rota também implica em maior emissão de CO₂. Já na rota tradicional, a matéria-prima as sucatas de aço 304, complementadas com ferro níquel e ferro cromo, é menos intensivo de energia elétrica e de carvão, com consequente menor emissão de CO₂. A partir da aciaria não há mais diferenças de processo e eventuais diferenças são decorrentes da planta, o que pode levar a variações de projeto nas laminações a quente ou a frio. Portanto, ou outra rota, portanto, depende de variáveis diversas, sendo fundamentada na disponibilidade de acesso (quantidade e preço) das matérias-primas e insumos, como sucata, minério de níquel, cromo, ferro níquel, carvão e energia elétrica.

422. A peticionária explicou que a sugestão de CODIP apresentada na investigação de dumping atende ao determinado no art. 23 da Portaria SECOT/ME sobre as informações necessárias para a elaboração de petições relativas a dumping, conforme o art. 39 do Decreto nº 8.058, de 26 de julho de 2013, representada por uma sequência alfanumérica de letras e números, ordenados da esquerda para a direita, em ordem crescente, sendo utilizados letra e números para identificar cada característica, refletindo os seguintes atributos: espessura, acabamento e largura.

CODIP	
Atributo A	Tipo de Aço (Norma AISI)
A01	304 e suas variações, exceto 304L e/ou 304H
A02	304L
A03	304H
Atributo B	Espessura
B01	Igual ou superior a 0,35 mm, mas inferior a 0,45 mm

C07	NR8 - ASTM 480
C08	BB (Buffing Bright)
C09	GF (Grinding Finish)
C10	TR - ASTM 480
C11	SF (Super Finish)
C12	BA - ASTM 480
C13	Outros (Especificar)
Atributo D	LARGURA
D01	Inferior a 600 mm
D02	Igual ou superior a 600 mm

Elaboração: SDCOM

Fonte: peticionária.

423. Nesse sentido, a peticionária explicou que o comprimento da bobina é relevante na comercialização do produto sob análise, sendo informados a espessura e a largura da bobina. Isso porque quando o cliente adquire a bobina, ela é colocada em uma desbobinadeira, sendo transformada, paulatinamente, em tiras, com a demanda em sua fábrica ou dos clientes, no caso de distribuidores, sendo a informação do comprimento é apresentada apenas quando o produto é comercializado, sendo relevante quando o produto é comercializado em bobina, tiras ou flocos. O comprimento de uma bobina laminada a frio pode ser estimado aproximadamente considerando a seguinte fórmula: $P = A * B * X * 7,85$, onde: P = peso da bobina; A = espessura da bobina; X = comprimento da bobina; e 7,85 = densidade do aço inoxidável.

424. A peticionária explicou ainda que o produto não é caracterizado por modelos distintos, sendo as variações observadas relativas às especificações técnicas, como, por exemplo, a composição química, de forma que não se aprofundou a investigação das caracterizações relativas à potência ou capacidade.

425. No que concerne aos principais usos e aplicações do produto alegadamente subsidiado como o produto similar nacional têm os mesmos usos e aplicações utilizados na fabricação de torres, tubos, tanques, estampagem geral, profundas e superfícies diversas, como nas indústrias aeronáutica, ferroviária, naval, petroquímica, têxtil, frigorífica, hospitalar, alimentícia, laticínios, farmacêutica, cosmética, químicas, instalações criogênicas, destilarias, fotografia, dentre outras.

produtos. Os referidos subitens encontram-se a seguir descritos:

NCM	DESCRIÇÃO
72.19	Produtos laminados planos de aço inoxidável, de largura igual ou superior a 1 mm
7219.3	Simplesmente laminados a frio
7219.32.00	De espessura igual ou superior a 3 mm, mas inferior a 4,75 mm
7219.33.00	De espessura superior a 1 mm, mas inferior a 3 mm
7219.34.00	De espessura igual ou superior a 0,5 mm, mas não superior a 1 mm
7219.35.00	De espessura inferior a 0,5 mm
72.20	Produtos laminados planos de aço inoxidável, de largura inferior a 1 mm
7220.20	Simplesmente laminados a frio
7220.20.90	Outros
Fonte: NCM/TEC	
Elaboração: SDCOM	

430. No que concerne à evolução da tarifa do imposto de importação dos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, para os quais se classificou a petição, tem-se que a tarifa se manteve inalterada em 14% durante o período de vigência da Resolução CAMEX nº 94, de 8 de dezembro de 2011, e Resolução CAMEX nº 106, de 12 de dezembro de 2016.

431. Não obstante, deve-se ressaltar que há Acordos de Complementação Econômica (ACE), Acordos de Livre Comércio (ALC) e de Preferências Tarifárias (APTR) celebrados pelo Brasil, que concedem redução do Imposto de Importação incidente sobre o produto similar. A tabela a seguir apresenta a preferência tarifária concedida até P5, e seu respectivo acordo.

Preferências Tarifárias às Importações brasileiras, em 30/03/2020		
Subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM		
País	Base Legal	Preferência Tarifária
Argentina	ACE 18 - Mercosul	100%
Bolívia	ACE 36 - Mercosul - Bolívia	100%
Chile	ACE 35 - Mercosul - Chile	100%
Colômbia	ACE 72 - Mercosul - Colômbia	100%
Egito	ALC - Mercosul - Egito	30%
Equador	ACE 59 - Mercosul - Equador	69%
Israel	ALC - Mercosul - Israel	100%
Paraguai	ACE 18 - Mercosul	100%

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

434. Ademais, importa destacar que, com base nas informações no âmbito do Processo da concomitante atual investigação de dumping de produtos laminados a frio 304, a Aperam fabrica os produtos planos de aços inoxidáveis na questão nas larguras padrão: 1.020mm, 1.040mm, 1.240mm, 1.220mm, 1.250mm, 1.320mm, sendo possível fornecer o produto na largura demandada pelo cliente.

435. Nesse quadro, a peticionária informa que fornece o produto nos seguintes acabamentos:

- Nº 2B: Laminado a frio recozido e decapado seguido de um ligeiro polimento em laminador com cilindros brilhantes (skin pass);

- Nº 3: Material lixado em uma direção;

- Nº 4: Material lixado em uma direção com abrasivos de grana de 120 a 220;

- Nº 6: O material com acabamento Nº 4, posteriormente acabado com pastas abrasivas e óleos;

- Acabamento TR: aplicam-se as definições da ASTM A-480;

- BB (Buffing Bright): aplicam-se as definições da ASTM A-480;

- RF (Rugged Finish): aplicam-se as definições da ASTM A-480;

- SF (Super Finish): aplicam-se as definições da ASTM A-480; e

- HL (Hair Line): aplicam-se as definições da ASTM A-480.

436. Nesse sentido, a peticionária informou que os laminados a frio produzidos pela Aperam são utilizados nas mesmas aplicações que os laminados a frio importados e que podem ser encontrados obtidas no sítio eletrônico <https://brasil.aperam.com/produtos/forcainox/bibliografia>.

437. No que concerne ao processo produtivo da Aperam, a peticionária informou que o mesmo é praticamente tradicional, com a utilização de sucata, de forma semelhante aos processos utilizados nos Estados Unidos da América, Japão etc. Assim, para a Aperam, o seu processo produtivo é tradicional porque a peticionária utiliza gusa líquido para ajustar seu balanço de massa e controlar a quantidade.

438. A peticionária indicou que o processo produtivo dos aços inoxidáveis envolve a redução, etapa em que os altos-fornos são alimentados com minério de ferro e coque (no caso da Aperam), formando, assim, o ferro-gusa líquido. O ferro-gusa líquido é então transferido para a aciaria, etapa em que o ferro-gusa sofre um primeiro pré-tratamento para remover as impurezas do ferro-gusa, como fósforo, enxofre, carbono e nitrogênio. Estes processos são integrados, mas a participação do ferro gusa na carga da aciaria é limitada. Os processos analisados foram utilizados apenas cerca de 90 Kg de ferro gusa/t de aço laminado. O ferro gusa entra já fundido diretamente no AOD com a função de ajustar o balanço de massa.

bobinas, linhas de recozimento e decapagem, laminadores a frio e equipamentos para atingir espessuras que podem variar de 0,35 mm a 4,75 mm.

440. Por fim, ressalte-se que a peticionária vende seus produtos tanto diretamente aos clientes como também para distribuidores.

2.3 Da similaridade

441. No que concerne as possíveis diferenças entre o produto objeto da investigação e o produto similar produzido no Brasil, particularmente no que diz respeito a: matéria-prima, composição química, características físicas, normas e especificações técnicas, processo produtivo, grau de substitutibilidade e canais de distribuição, a peticionária expõe na petição as seguintes informações: em conta as aplicações de cada tipo de laminado a frio, o produto similar fabricado no Brasil e o produto objeto da investigação apresentam as mesmas características, uma vez que diferenças relacionadas a matéria-prima não afetam o produto final e foram informadas anteriormente, em item específico.

442. Assim, com base nas informações fornecidas pela Aperam no item 2.2.1, bem como a concomitante atual investigação de dumping de produtos de aço inoxidável, a peticionária entende que uma vez que atendam às normas técnicas, os produtos similares fabricados no Brasil e os importados não apresentam diferenças que impeçam sua substituição.

443. Nesse contexto, conforme informações obtidas na petição e nas informações complementares da peticionária, o produto objeto da investigação é produzido no Brasil, em geral, produzidos a partir das mesmas matérias-primas, como o aço, níquel e ferro-ligas.

444. Conforme demanda dos clientes, tanto o produto objeto da investigação quanto o produto similar fabricado no Brasil seguem as mesmas normas internacionais.

445. Em que pesem as diferenças na etapa da redução, decorrentes da origem mineral ou vegetal, o processo de produção do produto similar fabricado no Brasil é semelhante ao processo de produtores identificados da origem investigada.

446. No que se refere aos usos e aplicações de laminados a frio 304, o produto objeto da investigação e aquele fabricado no Brasil, sendo ambos os produtos similares anteriormente citadas.

447. Considerando-se o fato de tanto o produto objeto da investigação quanto o produto similar fabricado no Brasil estarem sujeitos a normas técnicas que definem suas propriedades, o elevado grau de substituição entre esses produtos, o que é corroborado pelo fato de ambos serem utilizados pela indústria doméstica que são iguais a clientes dos importadores do produto a

3 DA INDÚSTRIA DOMÉSTICA

452. De acordo com o art. 24 do Decreto nº 1.751, de 1995, o termo é entendido como a totalidade dos produtores nacionais do produto similar, ou cuja produção conjunta do mencionado produto constitua parcela significativa do produto.

453. Assim, conforme indicado no item 1.4 acima, definiu-se como indústria a produção de laminados a frio 304 da Aperam, que representou 100% da produção de laminados a frio 304 no período de investigação de dano.

4 DOS PROGRAMAS INVESTIGADOS

454. Utilizou-se o período de abril de 2019 a março de 2020 como período de subsídios a fim de se verificar a existência de concessão de subsídios às exportações de produtos laminados a frio de aço inoxidável originários da Indonésia.

4.1 Dos programas de subsídios identificados no início da investigação

455. A presente investigação foi iniciada por meio da Circular SECEX nº 2021, publicada no Diário Oficial da União de 2 de junho de 2021, tendo sido solicitada a investigar os seguintes alegados programas de subsídios:

1. Fornecimento de bens por remuneração inferior à adequada:

1.1. Minério de Níquel

1.2. Carvão e Coque

1.3. Sucatas e resíduos

1.4. Terras

2. Programas de sustentação de renda ou de preços;

3. Empréstimos preferenciais

4. Programas fiscais diretos:

4.1. Redução do imposto de renda para grandes investimentos;

4.2. Isenções de direitos de importação;

4.3. Reduções e isenções de IVA sobre máquinas e equipamentos;

5. Income Tax facilities a determinadas indústrias;

6. Regime tributário e tributário preferencial na área de desenvolvimento

que, nestas situações, o resultado poderia ser menos favorável a parte interessada que tivesse cooperado.

459. Ressalte-se que, dentre as empresas identificadas como produtoras/exportadoras do produto objeto da investigação, considerando o período em que foi recebida nenhuma resposta ao questionário do produtor/exportador, as determinações da SDCOM neste âmbito se utilizaram dos fatos disponíveis, conforme o Decreto nº 1.751, de 1995.

460. O Governo da Indonésia tempestivamente respondeu ao questionário encaminhado pela autoridade investigadora brasileira, bem como as informações solicitadas nos Ofícios SEI Nº 65523/2022/ME, de 8 de março de 2022, e SEI Nº 228693/2022/ME, de 19 de agosto de 2022. Salienta-se que estão também aqui consideradas os resultados da investigação realizada de 23 a 27 de maio de 2022, conforme item 1.8.2.

461. Ressalte-se, contudo, que houve lacunas na resposta do Governo da Indonésia, ensejando o uso dos fatos disponíveis também ao GOI no que atine a análise, conforme notificado no Ofício SEI Nº 228693/2022/ME, de 19 de agosto de 2022, conforme item 1.8.2.

4.2.1.1 Das manifestações acerca da utilização dos fatos disponíveis

462. Em manifestação de 1º de setembro de 2022, o Governo da Indonésia apresentou comentários sobre a aplicação das "melhores informações disponíveis" contra o produto, conforme SEI Nº 228693/2022/ME, de 19 de agosto de 2022, sendo que as manifestações do programa vão ser consideradas mais adiante, quando da análise individual deste programa.

463. Em relação ao parágrafo 13 da Carta, o GOI esclareceu que fez esforços para traduzir todos os documentos fornecidos para o inglês; não tendo sido possível traduzir todos os documentos completamente no prazo, de forma que solicitamos ao GOI fornecer positivamente todos os documentos que o GOI apresentou durante a investigação.

464. O Governo da Indonésia entendeu que devido à sua suficiência de informações, nesta investigação não veria provas de que o Governo alguma vez teria recebido as informações necessárias dentro de um período razoável, durante a investigação.

465. O Governo da Indonésia lamentou que a SDCOM não tenha considerado o Anexo II do Acordo Antidumping que estabeleceriam regras e procedimentos para a autoridade de investigação fosse capaz de aplicar BIA.

466. O Governo da Indonésia lembrou à SDCOM que no parágrafo 286 do Rebar, o Painel teria considerado que, de acordo com os parágrafos 3 e 5 do Acordo, com parágrafo 286 do decidido no caso, informações imperfeitas não deveriam ser utilizadas.

470. Desta forma, por uma limitação legal, a autoridade não tem como a língua não têm como serem aceitos. Ressalta-se também que a previsão juramentados só pode ocorrer com relação a documentos públicos, de modo sendo fato que o GOI solicita até mesmo que esta própria SDCOM traduza documentos públicos, como os RKAB, o que é, também por este motivo, absolutamente inadequado.

471. Como descrito neste documento, e também em outros, como o GOI impediu o acesso a documentos relevantes, como os relatórios de vendas e quaisquer documentos fiscais das empresas, significativamente dificultando a identificação de elementos importantes do caso, muito embora se reconheça que o GOI também realizou investigação em outros aspectos, o que foi devidamente ponderado e valorizado de forma cabível. Tal ocorreu, por exemplo, quando o GOI forneceu informação imperfeita de modo que esta autoridade assegura ter agido conforme as regras multilaterais e de direito.

4.2.2 Comentários iniciais da SDCOM sobre o setor de laminados de madeira da Indonésia

472. A SDCOM pôde confirmar as alegações da peticionária, com base no SECEX nº 40, de 2 de junho de 2021, que apontou que o Governo da Indonésia vem adotando uma política de valorização de suas reservas de matérias-primas, inspirado no denominado "Programa de Valorização da Matéria-Prima", com o objetivo de aumentar o valor agregado das exportações indonésias através das indústrias a jusante do minério de Níquel e do Carvão Mineral, abundantes no país. O aumento do valor agregado foi, inclusive, reiterado várias vezes pelos representantes locais.

473. O artigo 33 (3) da Constituição de 1945 da República da Indonésia estabelece que a água e os recursos naturais são controlados pelo Estado e são usados para o benefício do povo. A fim de elaborar os objetivos, o governo da Indonésia, por meio da Lei nº 25 de 2000 sobre o planejamento de longo prazo, National Long-Term Development Plan (RPJPN) 2005-2009,

474. Para detalhar ainda mais os planos governamentais, há na Indonésia três planos de longo prazo (National Medium Term Development Plan - RPJMN), sendo que para o período 2005-2009, há quatro planos:

National RPJMN I Year 2005-2009;

National RPJMN II Year 2010-2014;

National RPJMN III 2015-2019;

National RPJMN IV 2020-2024.

Considering (...)

a. that the development of an advanced Industry is realized through independent, healthy and competitive Industrial structure namely by empowering efficiently as well as encouraging Industrial growth throughout Indonesia by working between advancement and unity of the national economy which is based on the justice and noble values of the nation by placing priority on national interests;

Article 84

(1) Strategic Industries are controlled by the state.

(2) Strategic Industries as referred to in section (1) consist of Industries

a. meet needs which are important for the welfare of the people and necessities;

b. increase or produce added value to strategic natural resources; and

c. correlate with the interests of state defense and security.

479. A mesma Lei estabelece em seu artigo 30 que o plano de utilização deve seguir a política industrial nacional, e reitera, em seus arts. 31 e 32, o encorajamento do desenvolvimento de uma indústria a fim de aumentar o valor agregado podendo levar a cabo políticas de restrição às exportações para tal fim. No âmbito da política industrial do GOI, no que tange à utilização dos recursos naturais, deve ser observado com o interesse da indústria doméstica.

480. O Regulamento do Governo nº 14/2015, relativo ao Plano Direção da Indústria Nacional (Rencana Induk Pembangunan Nasional - doravante RIPIN) ou RPJPN, e detalha as intenções do GOI, explicitamente indicando o setor de atividades prioritários. O RIPIN foi assim descrito pelo GOI: "RIPIN is basically a guidance for the government and/or local governments) to make necessary measures to develop the industry is implemented across the country".

481. Segundo informações oficiais do documento Facts and Figures da Indústria da Indonésia, o RIPIN detalha, dentre outros, que na primeira fase do plano do país (2015-2019), o objetivo é aumentar o valor agregado da indústria base, incluindo minerais. Sobre o RIPIN 2015-2035, acrescenta ainda que há o objetivo do governo de desenvolver a indústria estratégica, por meio de capital equity, estabelecimento de joint ventures e instalações para tal indústria estratégica. Outro objetivo seria aumentar a utilização de recursos naturais (chamado de Peningkatan Penggunaan Produk Dalam Negeri), mediante propagação de incentivos e preferência de preço para produtos industriais com porcentagem

indústria siderúrgica em geral como setor a ser incentivado, sendo ainda ex
indústrias focadas pelo governo para ter seu desenvolvimento facilitado:

The development of industrial estate aims to support the achiev
development objectives as stated in the Master Plan of National Industry
government facilitates the development of 14 industrial estates outside Java in t

(...)

<<IMAGEM 1 AQUI>>

485. A versão 2017 do documento repete todas as indicações transcr

486. A intenção do governo é ainda reiterada em declaração do Min
plano 2015-2019, sendo afirmado que "não queremos continuar a exportar noss
sem processamento", acrescentando que a indústria de manufatura alcanço
incluindo produtos agrícolas e mineração mineral, como derivados de óleo e
produtos para smartphones. Ainda na Lei nº 4/2009, que regula o setor de mi
de se adicionar valor na atividade da indústria de mineração.

487. Na visita in loco, o representante do BKPM deixou claro tamb
atrair capital estrangeiro nessa empreitada, conforme relatório: "O representan
ideia não é só atrair capital para minerar o níquel e exportar, mas atrair capital
valor agregado."

488. Ademais, há uma combinação de restrições às exportações d
Carvão (energia), estabelecimento de preços internos mais baixos destes ins
concessão de isenções sistemáticas de impostos e outros direitos para m
produtores de aço inoxidável laminados a frio e toda a cadeia a montante, co
itens a seguir.

489. Importante ainda citar o Regulamento nº 25/2018, que estabel
GOI pode estabelecer as fórmulas de preços de venda dos Minerais de acordo c

Article 34

(1)The Minister can stipulate the selling price formula of metallic Mine

(2)The nation interests as referred to in paragraph(1) is based on the c

a.Sustainability of mining business activities; and

b.Domestic Enhancement of Added Values of Mineral.

493. Há, ainda, o controle do GOI sob a construção dos smelters por parte dos RKABs, no qual deve constar informação do status da construção. Conforme visita in loco, havia a intenção governamental para que se levasse os mineradores a aumentar o valor agregado na Indonésia e gerar o efeito multiplicador disso para o país.

494. Um caso emblemático nesse projeto governamental é o PT Indonesia Morowali Industrial Park, doravante IMIP), no qual opera a empresa Tsingshan Stainless Steel. Segundo dados de seu relatório anual 2017, 8% de todo o aço inoxidável mundial são ali produzidos. Ou seja, sozinho esse parque em outubro de 2013, já produzia em 2017 mais aço inoxidável do que os Estados Unidos como um todo.

495. Ressalta-se ainda que a Tsingshan, controladora da PT Indonesia Morowali Industrial Park (IRNC), produtora do produto objeto da investigação, faz parte, por meio do SHIMIP, do grupo de acionistas desse pool de empresas que forma o IMIP. O relatório do governo, e assim resume o projeto governamental:

Indonesia is one of countries that have the richest nickel resource in the world. In the past, mining domestic products were used to be exported. According to incomplete statistics, nickel ore export in 2013 reached 60 million ton. In order to increase added value of nickel products, the Indonesian government issued a new law, namely the Law No. 4 of 2009 on Mining, and since January 2014 raw material export was officially prohibited. The government policy encouraged and urged investment in smelter development in nickel industry to develop domestic smelting industry. (grifo nosso)

496. O IMIP tem importância e prioridade reconhecidas legalmente e formalmente reconhecido como "Objeto Vital Nacional" - Obvitnas (Objek Vital Nasional) - Proyek Strategis Nasional (PSN). Seu acordo de criação contou com a presença dos presidentes da Indonésia e da China, sendo que o autor esteve em contato diretamente com o CEO da Tsingshan, e logo após foi iniciada a exportação:

In July, Indonesian President Joko Widodo held a meeting with Xiang's executives at a presidential palace. Xiang offered "several policy suggestions" to improve the business environment and briefed the group on plans to expand Tsingshan's total investment to \$15 billion, including a plant making nickel chemicals for electric-car batteries. The release from the company. Two months later, Indonesia announced it would ban nickel ore exports by two years.

499. Notícia à época da implantação na Indonésia deixa clara a existência de restrições governamentais de restrição da exportação. Segundo o secretário-geral da Stail Special Steel Enterprises Association:

The previously imported nickel ore often contained sediments and the Chinese enterprise to build a plant there (in Indonesia). (grifo nosso)

500. Neste sentido, a SDCOM confirmou que, no último Trade Policy Review de 2020, é explicitamente citado como justificativa das políticas de restrição à exportação de aço para acelerar certos setores industriais downstream, incluindo produção de aço inoxidável.

501. Com a edição do Regulamento MEMR nº 11/2019, as exportações de níquel foram totalmente proibidas.

502. Em suma, dos elementos trazidos aos autos pela Peticionária, nota-se que há um arcabouço legal relacionado ao níquel, carvão e coque, com restrições à exportação per se. Mesmo quando a exportação era permitida por esta ocorria sob severas condições. Não apenas as restrições à exportação existiam, além e ativamente instruindo os fornecedores da cadeia de insumos a vender no mercado interno, no bojo do plano governamental de adicionar valor à pauta por meio de suas sanções e políticas aplicadas em caso de descumprimento. Conforme a Petição, as políticas têm tido consequências sobre o preço de insumos utilizados na produção de aço, conforme a investigação.

503. Notícia do site oficial do GOI (nº 361.Pers/04/SJI/2021) resume as palavras do Presidente da Indonésia, Joko Widodo:

Besides increasing mineral added value, the construction of smelter and downstream industries will strengthen downstream industries. The President said he would instruct mining companies, state-owned, to carry out downstream activities so that mining commodities would be added value.

504. Em recente entrevista à Bloomberg, o Presidente Joko Widodo afirmou:

505. Por fim, pontua-se que as restrições à exportação da Indonésia foram contestadas pela União Europeia no âmbito da OMC no DS592. O questionamento levou a Indonésia a suspender as restrições à exportação de minério de níquel desde, pelo menos, janeiro de 2017 a dezembro de 2019, as exportações de níquel com concentração permitidas sob certas condições; contudo, desde janeiro de 2020, todas as exportações de níquel, independente da concentração, foram proibidas. Pontua-se, ainda, que a União Europeia e da Índia já exararam determinações positivas acerca dos subsídios concedidos aos produtores de aço inoxidável, inclusive aplicando direitos compensatórios aos produtores aqui investigados.

8. Programas fiscais diretos:

8.1. Redução do imposto de renda para grandes investimentos;

8.2. Isenções de direitos de importação;

8.3. Reduções e isenções de IVA sobre máquinas e equipamentos;

9. Income Tax facilities a determinadas indústrias;

10. Regime tributário e tributário preferencial na área de desenvolvim

11. Injeção de capital.

508. Optou-se por aceitar a sugestão de forma de apresentação separado o programa Bonded Zones, que é um programa já incluído nos pro Parecer de Início da investigação, de modo a promover melhor entendimento d nesta determinação final, preservando ainda mais, assim, o contraditório por par

4.2.3.1 Programa 1 - Fornecimento de Minério de Níquel por remunera

4.2.3.1.1 Fatos apurados sobre o programa

509. O níquel é insumo essencial para o aço inoxidável, sendo qu mundial de níquel são consumidos para produzir aço inoxidável. É evidente, po níquel na cadeia produtiva do produto objeto da investigação.

510. Considerando os elementos coletados no decurso da investiga essencial nos planos do GOI de aumento do valor agregado dos recursos mi com as maiores reservas mundiais de níquel, bem como o maior país produtor oficiais do GOI, é afirmado que "One of the mining commodities in the spo preponderante, que o processamento do níquel é inclusive apontado pelo P para o déficit nas transações correntes do país:

So what's the point of importing LPG, importing huge volume of p actually develop nickel; current account deficit will be made up. I guarantee (de than three years if we add one commodity, turn some attention to it, we'll be dor

511. O Plano Nacional da Indústria 2015-2019 prevê, em relação à inc de exportação de minério de níquel, com prioridade para atender às necessida de exportação de NiPI, ferroníquel e níquel-mate; a restrição à exploração da ca minério de níquel, de acordo com a capacidade de processamento atual do absorção de NiPI, ferroníquel e níquel-mate produzido pela indústria nacional facilitação no desenvolvimento da indústria de aço inoxidável integrada à indús

This is where the inequality comes from. According to Meidy, regarding the discrepancy between the results of the nickel metal content test appointed by the government and those appointed by the buyer.

The results of nickel content analysis by buyer surveyors are often different from mining surveyors.

Meidy described that the decline could be far, from 1.8% to 1.5% and even lower.

As a result, entrepreneurs suffer losses because nickel content is very low. The higher the percentage content, the more expensive the nickel price.

"If we talk about grades, this is indeed the case because our data from the contracts, nickel ore, from 5 thousand, there is an extraordinary difference," he said.

513. Como se verá a seguir, houve a criação de um arcabouço normativo que incentivava a criação de smelters e favorecimento à compra de minério de níquel ao detrimento dos minadores.

4.2.3.1.1.1 Das restrições à exportação

514. Há uma série de normativos do Ministério da Energia e Recursos Minerais e do Ministério do Comércio (MoT) que impuseram seguidas restrições à exportação de minério de níquel. Em 2017, pelo Regulamento MoT 1/2017, alterado pelos Regulamentos MEM 2017, permitida a exportação de minério de Níquel de níveis mais baixos (< 1,7% de NiPI) e limitado. Para que fossem aprovadas tais exportações, as empresas deveriam ter o minério processado na Indonésia, ou se comprometer a instalar fundidores locais e a construção e operação de fundições (smelters) de NiPI, beneficiando a indústria de aço inoxidável. Além disso, havia a obrigatoriedade de fornecer internamente ao minador o minério de níquel de fundidores locais.

515. O Regulamento nº 25/2018 do Ministério da Energia e Recursos Minerais, artigo 44, alíneas "e" e "f", que a empresa deve obter uma recomendação de um órgão de aprovação de exportação, semelhante a uma licença de exportação não automática, que fornecer relatórios sobre o desempenho das exportações. Em seu artigo 44, a exportação só é possível se a reserva remanescente de minério de níquel da empresa for de cinco anos de operações das instalações de fundição e que os volumes que a empresa pode exportar não podem exceder a capacidade de entrada da instalação de refino e a quantidade prevista no plano de trabalho e do orçamento apresentado pelo governo. Os trechos citados estão reproduzidos a seguir:

Article 44

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

b. Amount of sales abroad in the approval of Annual Work Plan and Budget for the year; and

c. Input capacity of the facility of Purification.

(2) The Minister shall stipulate the guidelines on implementation of the approval of granting export recommendation

516. Por fim, é amplamente noticiado que, desde o início de 2020, MEMR 11/2019, que alterou o Regulamento MEMR 25/2018, todas as exportações de minério de níquel da Indonésia estão proibidas, o que foi também confirmado em sede de visita in loco.

517. O Regulamento MEMR 25/2018 também traz outras sérias restrições.

Ninety percent of the smelter's physical construction development must be completed, calculated and verified by an independent verifier.

Sanctions on failure to meet the 90% smelter construction plan would be (a) to revoke the export approval to the relevant authority and (b) a penalty of 20% of the value.

Failure to pay such penalty would result in: (a) a temporary suspension of business activities for maximum 60 days and (b) a license revocation after the 60 days.

518. Além disso, conforme argumentado pela peticionária e confirmado, durante o período de abril 2015 a março de 2020, quando foi estabelecida, pelo MEMR, a proibição de exportação de minério de níquel, ainda havia a possibilidade de exportação de minério de níquel em teor. As exportações que eram possíveis de serem realizadas, entretanto, estavam limitadas a uma taxa de exportação de 10%, nos termos do artigo 2º do Regulamento do Ministério da Indústria e Comércio.

519. Neste contexto, a peticionária pontuou que o preço de referência do minério de níquel que leva em conta nos preços médios mais altos no mercado internacional e nos mercados interno e externo, fazendo com que o mencionado preço de referência seja maior do que o preço real de exportação na Indonésia, levando, assim, a uma taxa de exportação superior aos 10% aplicáveis.

520. Foi ainda editado o Decreto nº 154 K/30/MEM/2019, que regulamenta a implementação da construção ou aquisição de smelters na Indonésia, estabelecendo, entre outras coisas, como seriam impostas as sanções por atrasos na construção de smelters, além das multas pagáveis pela empresa de mineração em questão será equitativa com a acumulada de vendas de exportação de minerais da empresa durante os últimos três anos.

suspension recommendation to the relevant government authorities in charge of international trade, and (d) a penalty of 20% of the export cumulative value in the last six months period.

Failure to pay the penalty would result in: (a) temporary suspension of business activities for maximum 60 days, (b) license revocation if no payment is made within 30 days after the temporary suspension, and (c) the issuance of export suspension recommendation to the relevant government authorities in charge of international trade.

To guarantee the 90% smelter establishment completion program, mining companies are required to deposit a surety bond of 5% of export value multiplied by the export benchmark price. A mining company will be entitled to the surety bond if it has completed at least 75% of the overall smelter construction plan. The government will forfeit the surety bond if the mining company fails to meet its obligations.

524. Outro requisito com relação às exportações de minério de ferro é a exigência de utilização de cartas de crédito (Letters of Credit ou L/C) para exportação, conforme o Regulamento MoT nº 94/2018. O mecanismo de exigência de cartas de crédito visa garantir um preço mínimo de exportação, ao estabelecer vários requisitos que impedem a capacidade de exportar o produto, tais como:

- a) o preço indicado na L/C não deveria ser inferior ao preço de mercado global;
- b) o pagamento deveria ser feito a um banco de câmbio doméstico;
- c) o mecanismo L/C deveria ser indicado na declaração de exportação;
- d) a L/C estaria sujeita à auditoria pelo Ministério do Comércio; e
- e) não seriam permitidas exportações que não atendam aos requisitos acima descritos.

525. Efetivamente, o governo da Indonésia dispõe que o preço declarado não pode ser inferior ao preço de mercado global, apesar das enormes reservas do país. Isso cria uma vantagem competitiva que os produtores locais poderiam ter sobre seus concorrentes no mercado internacional, reduzindo, desta forma, as oportunidades comerciais no mercado interno.

526. Portanto, através da obrigação de exportar a um preço mínimo global, sob o risco de proibição da exportação em caso de descumprimento, o regulamento tinha um impacto semelhante ao da proibição de exportação e ao acima descritos.

527. Até 28 de setembro de 2018, a Carta de exigência de crédito aplicava-se aos produtos mais importante de produtos, incluindo produtos de Níquel processado (NPP) e outros). No entanto, considerando as frequentes alterações na lista de produtos,

Part Two Rights, Obligations, and Prohibition of the Mining Business License (IUP)

Production Operation specifically for Processing and/or Purification

Paragraph 1

Right

Article 66

The holders of Mining Business License (IUP) for Production processing and/or purification shall be entitled to:

a. Buy, sell, and transport the mining commodities which will and have refined;

Paragraph 2

Obligations

Article 67

(1) The holders of Mining Business License (IUP) for Production processing and/or purification shall:

[...]

e. Fulfill the restriction of processing and/or purification to conduct accordance with the provisions of legislation;

f. Comply with the benchmark price of mineral or coal sales in accordance with legislation;

g. Prioritizing the fulfillment of mineral and coal needs in the country;

531. Sob tais restrições, o minerador restou forçado a construir internamente o minério de níquel para processamento por outra empresa, sendo da Mining law, concedeu-se um período de graça de 5 anos para que a empresa efetivamente obrigada a promover tal processamento.

4.2.3.1.1.3 Do preço HPM

532. Central neste programa é o Harga Patokan Mineral ou Miner established in the Decree MEMR N° 2946 K/30/MEM/2017 e MEMR Regulation 5° e 6°:

CHAPTER II HPM LOGAM

minério de níquel, HPM é preço de referência para o níquel com base em metais (Metal Exchange, Asian metal etc); e FP é o fator de correção, que varia com aumentando ou diminuindo 1% com relação ao aumento/diminuição em 0,1% que são ainda considerados também o fator de umidade no níquel e ou legislação supra.

534. Assim, resta comprovado que o preço HPM, apesar de ter no internacionais, tem aplicado um redutor determinado pelo GOI. Disso resulta Indonésia é sensivelmente inferior ao aplicável nos outros países.

535. Passa-se então a analisar a aplicabilidade do preço HPM, ou se pelas empresas na Indonésia, ou se trata de mera referência.

536. Neste contexto, o GOI, tanto em sua resposta por escrita argumentou ser o preço apenas utilizado para a cobrança de royalties, e que s referência de fato a partir da alteração de abril de 2020 na MEMR Regu argumentou também durante a visita in loco que tal a obrigatoriedade de se deu para aumentar o preço recebido pelos mineradores, que não estavam se smelters, e citou o artigo 3 do Regulation MEMR nº 7/2017.

537. Nesta seara, a SDCOM pontua que, muito embora tenha o go sentido, não logrou apresentar evidências que corroborassem tal afirmação resultados da visita in loco, ficou comprovado que o GOI tem o controle realizadas no mercado de níquel, que devem obrigatoriamente ser informadas meio do no RKAB / artigo 11(3) da Regulation MEMR nº 7/2017.

538. Embora de fato o artigo 3 do Regulation MEMR nº 7/2017 royalties, como afirmou o GOI, nada é dito neste artigo acerca da impossibilidade HPM que não para apuração dos royalties. Muito pelo contrário, o artigo imec seção 2, já explicitamente estabelece que "Holders of Metal Mineral Production Metallic Minerals or Coal (...) produced must be guided by the Metal HPM", e tan guided by Metal HPM or the HPB as referred to in paragraph (1) also applies Metallic Minerals or Coal produced to its Affiliates".

539. Outros regulamentos oficiais reforçam o entendimento SDCOM HPM não apenas considerado para os royalties, como i) a Government Regulation 85 expressamente indica que "exporting minerals and/or coal produced must b price", e que este seja determinado com base no preço de mercado ou preço d ii) o Decreto of the Coordinating Minister for Maritime Affairs and Investment n equipe de supervisão do HPM deve se certificar que os preços de vendas estão

According to him, the nickel price benchmark is not affected by the prices. The nickel price benchmark for this smelter is in accordance with China transshipment and taxes, in accordance with the free on board (FOB) sales scheme.

Bahlil guarantees that 2 million tons of nickel ore will be received by the smelters. However, the ban on exports of low grade nickel will remain in effect. The agreement between nickel, smelter and government entrepreneurs is in the form of a decree, "there is no SK (decree)," said Bahlil. (grifos nosso)

542. Importante ressaltar, ainda, a atitude do governo de colaboração por não ter informado os preços de transação do níquel, mesmo quando instado a fornecer parcialmente as informações solicitadas sobre o mercado de níquel no Brasil, impossibilitando perguntas adicionais por parte da SDCOM. Assim, em nenhuma hipótese recebeu a lista de preços HPM vigente no período, apesar de ter demandado o pedido de informações complementares, item 8.8, foi assim requerido:

Com relação à pergunta específica 10, presente em maiores detalhes no questionário, o estabelecimento do preço de referência HPM, necessariamente apresentando o valor de, no mínimo, um HPM estabelecido no período de investigação de dano. Liste todos os dados de investigação de dano.

543. Em resposta, o GOI apenas apresentou gráfico com os preços HPM da empresa calcula os preços HPM individualmente. Na visita in loco, a SDCOM não foram apresentados os HPM vigentes. O GOI, contudo, somente apresentou o HPM.

544. Por fim, a autoridade da União Europeia, em investigação que ocorreu in loco e análise dos reais dados das empresas, assim concluiu:

The fact that the HPM as transposed into legislation in April 2020 was not a new mechanism has also been corroborated in the investigation. The main difference between MEMR 11/2020 entered into force, in the sale-purchase agreements for nickel ore the HPM was stipulated as an absolute value. After the MEMR 11/2020 entered into force, the sale-purchase agreements was set up as the government HPM. The empirical data from the investigation (i.e. purchases of nickel ore of the IRNC Group) confirmed that the HPM before and after the entry into force of MEMR 11/2020 are substantially the same, thus confirming the mechanism in its version pre- and post-April 2020.

545. Neste contexto, considerando ainda a ausência de produtores/exportadoras selecionadas, a SDCOM conclui, com base nos fatos, que o preço HPM estabelecido pelo GOI era, de fato, o preço das transações no mercado.

RKABs, conforme o Regulamento MEMR nº 25/2018, contêm aspectos ambientais, tratando-se de informação confidencial da empresa enviada ao go nº 7/2020, estabelece que os relatórios devem ser enviados mensalmente e tri

548. Os RKAB são documentos que detalham todos os aspectos MEMR nº 1806K/30/MEM/2018 estabelece guidelines para confecção, avalia Conforme Anexo 2 de tal Decreto, são requeridos: aspectos de exploração, cons exemplo: construção de estradas, inclusive no que tange aos smelters); aspec de mineração, estudos de viabilidade); financeiros (incluindo vendas); e respon das informações requeridas no RKAB são:

2.3.4. actual production;

2.3.5. mining recovery;

2.3.7. mining tools;

2.3.8. cost mining;

2.4. processing and refining;

2.4.1. method for processing and refining;

2.4.3. recovery;

2.4.4. byproduct (tailing);

2.4.5. utility of byproduct;

2.4.6. processing tools;

2.4.7. cost for processing;

2.5. inventory;

2.6. environmental;

2.7. mining safety;

2.8. support service for mining;

2.9. labor;

2.10. community;

2.11. use of good in the mining companies;

2.12. finance and state remedy;

2.12.1. finance - accounting, cashflow, profit and loss;

After 5 (five) years of production, the company holding an IUP and owned by foreigners is obligated to undertake a divestment of shares to the Government, state-owned enterprises, regional-owned enterprises, or national private companies.

552. Tal obrigação foi regulada no Artigo 97 da Government Regulation n° 43/2018, que estabelece uma política progressiva de desinvestimento a partir do 5º ano em que o capital esteja na Indonésia. A obrigação é detalhada na MEMR Regulation n° 9/2017, que estabelece progressivamente o percentual que deve ser detido por empresas estrangeiras: 20%, no 7º ano, 30%, no 8º ano, 37%, no 9º ano, 44% e no 10º ano, 51%.

553. De acordo com a mesma Regulation, há ordem de prioridade para a venda no âmbito da política de desinvestimento: Government, provincial government, private company, national private entities. Ou seja, o governo detém total prioridade para comprar qualquer mineradora do país. Muito embora tenha o GOI explicado que nem sempre exercer sua preferência de comprar as ações, há elementos nos autos que indicam que exerce tal preferência, como no caso da PT Vale.

554. Conforme artigos 5 e 14 MEMR Regulation n° 9/2017, o preço de venda na política de desinvestimento devem levar em conta valor justo de mercado. Com a Portaria 43/2018, foi introduzido um novo método de desinvestimento - emissão de novas ações - e implementadas outras mudanças sobre a forma de cálculo do valor justo.

555. Tem-se, portanto, que se trata de uma forma de o GOI permitir a venda das ações, mas, ao mesmo tempo assegurar que, havendo o interesse do GOI, este poderá exercê-lo.

4.2.3.1.1.6 Da redução dos royalties sobre produtos de Níquel processados

556. Com relação aos royalties, conforme pôde ser verificado junto ao GOI, a Government Regulation n° 81/2019 estabelece os percentuais de royalties aplicáveis sobre o minério de níquel bruto (Bijih Nikel), sendo reduzido para até 1,5% para os produtos processados.

557. Assim, restam confirmados os indícios do parecer de início de prova em que os elementos "para incentivar mais mineradores a desenvolver fundidores de níquel" foram representados pelo representante oficial do governo e confirmado na resposta 12 das perguntas específicas ao governo, já que o níquel mais processado paga cerca de 5 vezes menos royalties do que o não processado. Assim, forçoso reconhecer tal incentivo ao processamento no arcabouço da indústria de aço inoxidável.

4.2.3.1.1.7 Dos efeitos das medidas

internacional, em linha com uma economia de mercado.

561. Tal efeito sobre o preço é fato notório, conforme reiterada jurisprudência, por exemplo nos casos China - Raw Materials e o caso China - Rare Earths:

Whereas export quotas may reduce foreign demand for Chinese raw materials, the Panel that they will also stimulate domestic consumption by effectively reserving raw materials for use by domestic downstream industries" (grifo nosso).

562. Evidente, considerando os elementos nos autos da presente demanda, o efeito "perverso" aos consumidores domésticos também está presente no contexto da Indonésia. Tanto assim é que o próprio GOI confirmou na visita in loco que os mineradores, que estariam sendo subjugados pelos smelters, detentores das aquisições de insumos.

563. Estas medidas também seriam danosas no âmbito internacional, elevando os preços internacionais, onerando as indústrias ao redor do mundo, demonstrado no estudo The Economic Impact of Export Restrictions on Raw Materials para a Cooperação e Desenvolvimento Econômico (OCDE).

564. Há elementos nos autos que comprovam que os subsídios à transformação do níquel são "repassados" ao fabricante indonésio de aço. O destinatário do subsídio é de propriedade do fabricante, seja porque, devido às exportações e às obrigações de fornecimento no mercado interno, gera-se o produto no mercado interno, implicando em preços menores neste mercado. Também o preço de referência HPM, estabelecido pelo GOI, que esteve constante internacional no período investigado.

565. Todas essas medidas ocasionaram uma sobreoferta no mercado, depressão dos preços, com os smelters detendo todo o poder de compra. Os mineradores reiteradamente reclamavam dos baixos preços praticados no mercado, confirmado pelo GOI na visita in loco.

566. A proibição das exportações e as demais medidas, combinada com a produção dos mineradores, ocorreu uma situação de tamanho descompasso que o próprio GOI. Mesmo nesse cenário de profundo desequilíbrio entre oferta e demanda, a proibição às exportações, de modo a aguardar a construção de smelters:

THE MINISTRY of Energy and Mineral Resources (ESDM) notes that the nickel ore in the country is still far higher than the input capacity of smelter plants.

(...)

indeed banned nickel exports in order to anticipate the capacity of the smelters. (grifo nosso)

568. Os efeitos das políticas aqui tratadas foram apresentados pelos dados vistos também em outras fontes. Por exemplo, a Consultoria S&P Global traz dados da Indonesian Nickel Miners Association, que indicam que os pisos estabelecidos estariam sendo respeitados, e que os smelters indonésios compram níquel a preços inferiores aos preços do mercado internacional:

The nickel ore miners are, therefore, either unable to sell their ore to domestic smelters at lower prices than for export, depending on the ore grade. The government may compensate by putting a floor under nickel ore prices, starting May 14, but ore prices are 1.65% higher than the floor. Formerly largely exported to China, low-grade material cannot be sold to local smelters because of the low grade material. In addition, according to recent APNI data, domestic smelters buy ore at US\$34/wmt CIF and well below the US\$43-US\$46/wmt CIF price for low-grade material in the international market. (grifo nosso)

569. Tendo-se em mente que, como já dito, a produção de aço inoxidável depende do níquel em nível mundial, resta evidente que políticas que afetam o níquel afetam a produção de aço inoxidável. Apresentação do BKPM exhibe o efeito de tais medidas com as diferentes fases das restrições à exportação (restrições, relaxamento, proibição).

<<IMAGEM 2 AQUI>>

<<IMAGEM 3 AQUI>>

570. Dessa forma, a SDCOM entende que os efeitos das políticas são sentidos tanto diretamente pela produtora do produto objeto da investigação, ao adquirir a matéria-prima para a produção de NPI, ou repassado à indústria produtora do produto objeto da investigação, ou ainda a empresas relacionadas ou não ao longo da cadeia produtiva.

4.2.3.1.2 Elementos de fato ou de direito (Base legal/documental)

571. O programa de fornecimento de níquel a remuneração inferior ao de mercado é regulado por inúmeras legislações, de todos os níveis de governo, dentre os quais destaca-se:

I. Lei nº 4/2009, Mining law;

II. Lei nº 3/2014;

III. Government Regulation nº 23/2010;

IV. Government Regulation nº 14/2015, National Industry Development Policy (Rencana Induk Pembangunan Industri Nasional - RIPIN);

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

573. Faz-se também necessária análise acerca da contribuição financeira do órgão público ou por entidade privada instruída ou confiada, nos termos do Regulamento Brasileiro, como será tratado a seguir.

4.2.3.1.3.1 Da atuação dos mineradores como "órgão público"

574. Com relação ao enquadramento dos mineradores como "órgão público" da OMC no caso DS379 - US - Anti-dumping and Countervailing Duties on Certain Products from China, que: "A public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement possesses, exercises or is vested with governmental authority." (grifo nosso).

575. Ademais, é também fato que "The absence of an express finding of governmental authority does not necessarily preclude a finding that an entity is a public body." (DS437 - US - Countervailing Duty Measures on Certain Products from China).

576. Também importante saber-se no enquadramento de entidade pública seria uma função "as quais seriam normalmente incumbência do governo" (conforme o Acordo SCM e Art. 4º, II, d), do Regulamento brasileiro), segundo interpretação da OMC no DS379. A jurisprudência da OMC já apontou que pode ser relevante neste ponto a conduta de determinada entidade são de um tipo normalmente classificadas como ordem legal do país investigado.

577. Isto posto, o foco na análise de "órgão público" é a entidade que alegadamente gera a contribuição financeira. O foco não é se a conduta pode ser considerada uma função governamental, mas sim acerca das características nucleares e características da entidade que faz aquela conduta. Neste contexto, o fato de tal conduta ser praticada por um dos tipos de evidência a serem considerados, por potencialmente trazer a contribuição da entidade.

578. Muito embora o simples fato de que o governo detenha certa entidade que seja majoritário, ou que existam outros vínculos formais entre eles, não seja, por si só, uma determinação conclusiva acerca do enquadramento como "órgão público", os fatos são considerados na análise da autoridade.

579. Por fim, salienta-se o estabelecido no DS436, no sentido de que a autoridade investigadora procurar ou aceitar provas específicas sobre a existência de um órgão público da sua obrigação de fundamentar suas determinações em explicações fundamentadas.

580. De modo a atender ao preceituado na jurisprudência da OMC, o enquadramento do arcabouço criado pelo GOI conforme os três prismas considerados.

583. Assim, acerca dos mineradores, há claro arcabouço governamental e autoridade para exercer funções governamentais. Segundo o Artigo 33(3) da Constituição da Indonésia: "The land, the waters and the natural resources within shall be under the power of the state to be used to the greatest benefit of the people."

584. Conforme destacado pelo próprio GOI em sua resposta ao questionamento nº 4, de 2009, assim estabelece em seu preâmbulo:

a. That mineral and coal in the mining jurisdiction of Indonesia which are natural resources are endowed by God Almighty and play an important role in fueling the economy at large and therefore, the management of mineral and coal must be to give the maximum benefit to the national economy in pursuit of people's welfare and prosperity;

b. That mineral and coal mining business which constitute mining business, oil and gas as well as the ground water play an important role in giving real and sustainable economic growth and sustainable regional development.

585. A concessão das licenças de mineração de níquel, carvão e ouro é regulada pela Mining Law e instrumentos inferiores. A Mining Law, em seu artigo 4º estabelece que "mineral and coal as non-renewable natural resources constitute national wealth controlled by the state for the benefit of the people's welfare.". Há ainda o artigo 5º, que estabelece que o GOI deve priorizar a produção e exportação de minérios e carvão para dar prioridade aos interesses nacionais e obrigações de aumentar o valor agregado, que são obrigatórias ao detentor da licença, conforme o próprio GOI confirmou na visita in loco, sob pena de revogação da licença de acordo com o artigo 119 da Mining Law. O GOI recentemente proibiu temporariamente todas as exportações de minérios "avisar diversas vezes os mineradores" para preencherem suas obrigações de valor agregado base no artigo 5(2) da Mining Law.

586. Conforme tratado nos parágrafos acima, e conforme analisado no documento, há um arcabouço na Indonésia que estabelece fortes vínculos entre o setor e o desempenho de funções governamentais, dotando os mineradores de autonomia para levar a cabo as políticas da Indonésia no que concerne ao gerenciamento dos recursos minerais na Constituição do país.

4.2.3.1.3.3 Da designação das mineradoras como "National Vital Objects"

587. Segundo o Presidential Decree nº 63, de 2004, há, na Indonésia, a designação de "Obyek Vital Nasional / National Vital Objects" (também conhecida como "National Vital Objects") para determinadas empresas consideradas estratégicas - "The National Vital Objects are building/installation and/or effort that concerns the lives of many people, the economy and/or the country's strategic sources of income".

stability. The TNI must always protect strategic national projects for the benefit of the nation. Major General Andi Muhammad while in the CNI Group Mining Business Permit A

According to Major General TNI Andi Muhammad, as a vital national project belonging to the CNI Group must be protected because this project is for the benefit of the nation. Moreover, CNI Group is the only Domestic Investment (PMDN) (...) (grifo nosso)

590. Declarações do GOI também ressaltam a importância das empresas obvitnas nos interesses nacionais:

In addition, the purpose of the Commander in Chief visiting the Mining Resources is to further understand the activities of the Energy and Mining, strengthen the TNI's commitment to securing these vital national objects. "With support, the TNI has the strength and ability, must be able to make a full commitment to investors, In this ESDM there are various investors, many and large, we must protect what is related to the dignity of the people's lives," said Moeldoko.

Regarding the existence of TNI personnel who may be involved in the project, Moeldoko stated, "So far the TNI may have hesitated in taking action, for me, with national interests, I don't care, I will send troops". (grifo nosso)

591. A SDCOM questionou ao GOI, em seu segundo pedido de informação, acerca de quais as mineradoras do já citado top 5 eram classificadas como "National Vital Objects". O GOI expressamente afirmou que "All of the companies mentioned above has been designated as national vital objects so the question is not applicable".

592. Durante a visita in loco, o GOI retificou a informação e informou que as empresas não detêm tal status. Tem-se, portanto, que ao contrário do afirmado pelo GOI inicialmente, não se comprovam a designação de mineradoras, bem como de várias empresas na citada investigação, como "National Vital Objects".

593. O MEMR Decree nº 77 K/90/MEMILIKI/2019, em sua mais recente versão, designa as empresas do setor de minérios e carvão como obvitnas. Inclusive, a própria Portaria estabelece o status, sendo que representante do GOI afirmou que: "the presence of the TNI is to provide security support, but also to ensure that investments can run well"(grifo nosso). As Forças Armadas da Indonésia (Tentara Nasional Indonesia). A fala do representante do GOI sobre a designação como obvitnas envolve não só consequências com relação às quais se trata de toda uma priorização daquele investimento.

594. Assim, tem-se que a designação de várias mineradoras e empresas de aço inoxidável como obvitnas é mais um elemento que revela que as mineradoras "are or are vested with governamental authority" (grifo nosso), nos termos da já citada

598. No item nº 3 do segundo pedido de informações complementares, o GOI informou a seguinte lista:

- a. PT. Ekasa Yad Resources
- b. PT. GAG NIKEL
- c. PT. ANTAM Tbk
- d. PT. Ceria Nugraha Indotama, and
- e. PT. Vale Indonesia

599. O GOI informou que a PT Ekasa Yad Resources não é um minerador. Salienta-se que, conforme dados verificados na visita in loco, há nela participação da empresa do grupo Tsinghsan (ao qual pertence o produtor/exportador investigado). A ausência de resposta do grupo impediu a SDCOM de obter maiores informações sobre suas operações.

600. A PT GAG Nickel, empresa subsidiária da empresa estatal PT Antam, não teve seu vínculo com o GOI previamente informado à SDCOM. Conforme relatório in loco, o GOI não forneceu as atas de reunião da empresa mineradora PT Antam, detenha 25% da empresa. Observe-se que o GOI indicou não possuir acesso a tais atas. As atas da PT Antam, não foram fornecidas quaisquer informações acerca da reunião ordinária, mas apenas acerca da reunião extraordinária para tal ano. Além disso, a SDCOM recebeu fornecidas as atas completas das reuniões da PT, pois o documento submetido foi "Minutes of Minutes".

601. Há participação na PT Vale por parte da empresa PT Indonesia Nickel, empresa 100% estatal. Importante ressaltar que os elementos indicam que a PT Vale iniciou-se no âmbito das políticas de divestment, sendo que tal fato não foi informado pelo GOI em nenhum momento.

602. Com relação a outras empresas fora do top 5 informado, a SDCOM verificou em fontes públicas, qual seja, o relatório da Antam do ano de 2020, indicação de participação com o grupo Tsingshan (por meio da empresa Strand Minerals Pte. Ltd), detém participação na PT Weda Bay Nickel. Salienta-se que, apesar de questionado, tal relevante informação não foi informada pela SDCOM por qualquer das partes da investigação, o que impediu que a SDCOM obtivesse informações também neste âmbito.

603. Resta claro que houve importante falta de colaboração do GOI em fornecer informações acerca dos mineradores na Indonésia. Ante a falta de informações sobre a produção de níquel na Indonésia, buscou-se preencher tal lacuna com os fatos

(.../

Article 30

2) The Minister offers WIUPK to private business entities engaged in mineral or coal mining by way of auction in the event that:

a. no BUMN and BUMD are interested in the WIUPK offer as referred to in Article 27 paragraph (1); and/or

b. there are no BUMN and BUMD that meet requirements as referred

606. Assim, de acordo com as informações disponíveis nos autos, representam parcela significativa da produção na Indonésia de minério de níquel de propriedade do GOI, e ainda que tais empresas são gerenciadas e/ou contro

4.2.3.1.3.6 Do controle normativo por parte do GOI

607. Como já dito, o mero controle acionário por parte do GOI, apesar não é suficiente para o enquadramento de determinada entidade como "ór passam a ser analisados os instrumentos de que dispõe o GOI para estabelecer entidades de modo a exercer o fornecimento de minério de níquel, conforme 1.751, de 1995.

608. Neste contexto, o GOI dispõe de uma série de instrumentos que controla as empresas mineradoras a seu alvitre, para que estas desempenhem que o GOI deseja, dentre os quais se cita:

- i) as restrições à exportação;
- ii) a obrigação de processamento doméstico;
- iii) estabelecimento do preço de referência;
- iv) submissão de relatórios obrigatórios detalhados;
- v) obrigações de desinvestimento;
- vi) aprovações de alterações no quadro acionário; e
- vii) aprovação de troca de diretores/comissários.

609. Considerando que os itens de i) a v) já foram suficientemente acima, os demais itens serão tratados a seguir.

4.2.3.1.3.7 Da aprovação de alterações no quadro acionário

4.2.3.1.3.8 Da aprovação de trocas de Diretores e/ou Comissários

613. Também por força do artigo 64 da MEMR Regulation nº 7, de 2002, a detentora de licença de mineração que seja submetida ao GOI qualquer mudança e/ou commissioners. Tal mudança será então sujeita a avaliação do GOI.

Article 64

(...)

(3) IIJP or IIJPK holders Who have made changes to the board of commissioners are obligated to submit a report to the Minister or governor of the authority no later than 14 (fourteen) working days after getting approval from the affairs government in the field of law.

614. As medidas aqui apontadas evidenciam a existência de um conflito de interesses das mineradoras, que não podem exercer suas funções conforme uma empresa não pode atuar de seus próprios interesses.

4.2.3.1.3.9 Da instrução ou confiança dos mineradores

615. Passa-se agora a analisar a alternativa de o GOI ter fornecido uma remuneração inferior à adequada por meio da atuação de entidades privadas confiadas, conforme art. 4º, II, "d", do Decreto nº 1.751, de 1995: "

d) o governo faça pagamentos a um mecanismo de fundo, ou institua uma empresa privada a realizar uma ou mais das funções descritas nas alíneas anteriores, assumindo a incumbência do governo, e cuja atuação não difira, de modo significativo, da atuação seguida pelos governos."

616. A jurisprudência da OMC ressalta três elementos para a caracterização de "instrua" presentes no Regulamento brasileiro, ou "entrust" e "direct", nos termos do Acordo SCM:

It follows from the ordinary meanings of the two words "entrust" and "direct" that the government must contain a notion of delegation (in the case of entrustment) or of direction. To our minds, both the act of entrusting and that of directing them contain the following three elements:

- (i) an explicit and affirmative action, be it delegation or command;
- (ii) addressed to a particular party; and
- (iii) the object of which action is a particular task or duty.

exercises its authority over a private body. In both instances, the government undertakes to effectuate one of the types of financial contributions listed in paragraph 617. It is difficult to identify precisely, in the abstract, the types of government actions that are in the direction and those that do not.

618. Assim, a questão centra-se no fato de a contribuição financeira para a produção de minério de níquel por remuneração inferior à adequada, poder ser atribuída livremente feita por escolha das entidades privadas, após estas terem considerado o mercado, o que inclui as restrições regulatórias. Necessário também avaliar a normalmente incumbência do governo, e se a atuação de tais entidade não difere da prática habitualmente seguida pelo governo, ou seja, se haveria diferença entre os mineradores/produtores agirem com o modo em que o GOI agiria.

619. Conforme já explicitado neste documento, no decorrer dos anos 1970, o GOI normativo e não normativo, que, considerado em conjunto constitui um comando geral de modo a perseguir o declarado intuito de aumentar o valor agregado de especial o minério de níquel, principal insumo do aço inoxidável, e incentivar a indústria de seu país, implantando medidas como as restrições à exportação, controle de processamento doméstico, entre outros, que envolvem, assim, a obrigação de funcionamento do mercado interno sob condições impostas pelo GOI.

620. Ao contrário do afirmado pelo GOI, planos e políticas comerciais são um elemento de enforcement às partes privadas, tanto é que, por exemplo, as licenças inclusive, serem revogadas caso determinada mineradora não siga os planos comerciais conforme acordado.

621. Deste modo, o fornecimento de níquel por remuneração inferior ao preço de mercado como "side effect" da legítima atuação estatal, mas como próprio objeto da atuação dos mineradores não restou nenhuma alternativa a não ser fornecer o minério a preços determinadas pelo GOI, já que não poderiam exportar e sequer poderiam deter o acesso ao mercado ainda que tal atuação fosse contrária a qualquer decisão de lógica empresarial. Os mineradores gostariam de poder acessar o mercado internacional e vender livremente. Descumprimento de tais medidas levaria à suspensão e até cassação das licenças. O GOI afirma que o preço HPM garante a justiça nos preços, há nos autos declaração da Associação dos Mineradores (Indonesian Nickel Miners Association - associação dos mineradores), quanto à Associação das Empresas de Fundição (Smelting Companies Association - associação dos smelters), ainda que menos do que o descontentamento com o estabelecimento de preços pelo GOI, já que os preços variam diariamente.

625. Inicialmente, pontua-se que, na linha do reiteradamente decidido de Controvérsias da OMC, a análise desta SDCOM centrar-se-á na natureza da medida em seus efeitos. A SDCOM concorda com o GOI no sentido de que nem todas as medidas que conferem benefícios podem ser consideradas serem subsídios.

626. Isto posto, como se sabe, para se ter configurado um programa de subsídios nos termos do art. 4º do Decreto nº 1.751, de 1995, deve-se haver qualquer forma de intervenção de preços, ou existir uma contribuição financeira por governo ou órgão público, direta ou indireta, instruída ou confiada, sendo que tal contribuição financeira deve gerar um benefício. Um subsídio deve ser específico.

627. Com relação à contribuição financeira, conforme alegado na petição do GOI, a SDCOM, o presente caso trata da hipótese de instrução ou confiança à entidade beneficiária. O GOI afirmou não ter sido comprovado tal elemento da "instrução ou confiança", alegando que os produtos e a que preço os produtos estariam sendo vendidos seria feita de acordo com a gestão empresarial. A SDCOM discorda da afirmação do governo. Há evidências no processo sobre a existência de um arcabouço legal meticulosamente engendrado para permitir às mineradoras a terem que vender sua produção no mercado interno da Indonésia em vez de interna de produtos refinados e consequentemente abaixando o preço, como se alega. As políticas implementadas pelo GOI vão além da imposição de restrições à exportação.

628. Como rege o Regulamento do Ministério da Energia e Recursos Minerais, apenas depois de cumprir as obrigações domésticas é que o detentor de uma licença pode exportar. No mesmo sentido está o Decreto do Ministério de Energia e Recursos Minerais sobre as obrigações DMO para o carvão. O Regulamento nº 13/2017 do Ministério da Energia e Recursos Minerais, que explicita que o controle de exportações e o imposto de exportação são necessários para "support the downstream program of domestic mineral products". Com referência ao Regulamento do Governo da Indonésia nº 23, de 2010, o preâmbulo deixa claro o contexto em que a medida se insere: "in added value in the undertaking of mineral and coal processing and refining/selling".

629. O Regulamento MOMR nº 25/2018, que revogou o Regulamento anterior, também se insere neste contexto:

Article 32

(1)The Minister shall perform the control of Mineral and Coal sales which shall include:

- a.Guarantee the supply of domestic needs of Mineral and Coal;
- b.Maintaining the economic resilience;
- c.Maintaining the stability of defense and security; and

A spokesman at the ministry of energy and mineral resources says ensure mining companies "add value" rather than just "exporting our earth". The companies start exporting again if they show they are "serious" about building adds.

(...)

The Harita project and a new proposal by Oleg Deripaska's Rusal, the producer, to build another alumina refinery in West Kalimantan appear to suggest policy is working, forcing companies to invest in billion-dollar processing facilities that would not build. (grifo nosso)

632. Nos termos do teste exigido pelo DS194, a SDCOM concluiu que a instrução (comando) do governo aos mineradores locais, que fornece insumos no mercado doméstico a preços inferiores aos que seria possíveis nos mercados internacionais caso não houvesse restrição e a fazer investimentos em condições normais, não fariam. Na linha do recentemente decidido no caso, a instrução aos mineradores, obrigando-os a fornecer no mercado interno indonésio de fornecimento ao mercado interno aplicável para o carvão.

633. Em resumo, por meio do imposto de exportação, restrições à exportação, uma miríade de atos jurídicos exigindo que os produtores de minério e carvão vendam na Indonésia, o GOI direcionou entidades privadas a fornecer contribuição financeira na forma de venda de minério de níquel e carvão com remuneração inferior à de mercado.

634. A natureza de tais ações dá-se, evidentemente, no âmbito do planejamento da cadeia mineradora, como foi confirmado em Declaração do Ministro de Energia que explicitou ser a política do carvão destinada a "manter a competitividade" ou ainda a declaração do ministério que confirmou ter a nova proibição de exportação como objetivo de "accelerate the establishment of domestic smelters while its nickel industry". O documento oficial que descreve o RIPIN 2015-2035, é citado como estratégia da indústria nacional o controle de exportações.

4.2.3.1.3.11 Da conclusão sobre a contribuição financeira

635. Do supra exposto, conclui-se pela existência de contribuição financeira ao órgão público (como por exemplo, por meio da PT Antam) ou, alternativamente, por entidades privadas por ele instruídas ou confiadas, nos termos das alíneas "c" e "d" do Decreto nº 1.751, de 1995, posto que as empresas investigadas passam a contribuir uma vez que o custo de aquisição do minério de níquel é inferior ao que elas obtivessem estes insumos a preços de mercado.

somente ocorreria com relação aos royalties. Como já tratado na seção 4.2.3.1.1 não encontra esteio ante aos elementos presentes nos autos, o que inclui os res

639. Importante ressaltar que o GOI não forneceu os preços de níquel na Indonésia, apesar de dispor de tal informação e de ter sido reite SDCOM. Em resposta à pergunta 5 da subseção b.1 do questionário original, o explique os tipos de registros mantidos pela autoridade governamental adm GOI forneceu resposta evasiva e sequer informou à autoridade que dispunha d meio dos RKAB. Mesmo no segundo pedido de informação complementar, Ofício de 29 de abril de 2022,, quando foi novamente expressamente solicitada inform no mercado de níquel nas perguntas do 3º parágrafo do Ofício, o GOI forneceu relatórios de produção e venda solicitados, impossibilitando qualquer an autoridade, que foi forçada a desconsiderar tais documentos, por descumprime aceitação de documentos. Em plena demonstração da boa vontade desta auto durante a visita in loco o governo teve sua terceira chance de apresentar os o também assim não procedeu.

640. Relembra-se que tais informações de venda são dados já forn empresas ao Minister of Energy and Mineral Resources, ou seja, não procede sentido de haver dificuldade de contatar as empresas a fim de conseguir a confidencialidade que impediria o fornecimento.

4.2.3.1.6 Manifestações prévias à Nota Técnica acerca do programa

641. O GOI alegou, em resposta ao ofício SEI/ME nº 228693/2022/M bem como que havia submetido as informações acerca do volume produzido loco, bem como explicado o funcionamento do sistema MOMS. Além disso, o G MEMR Regulation nº 7/2017 estabelece a utilização do preço HPM somente par

642. Acrescentou que "prior to the implementation of MEMR Regulati

2020, the GOI did not require the nickel producer and nickel ore involved in mineral transaction to take HPM as the reference price for transactio

643. A PT IRNC, em sua manifestação de 09 de setembro de 2022, sentido, pois acredita que "os textos normativos e demais elementos cons corroboram o quanto argumentado pelo GOI de que, durante o período de obrigatório tão somente para o cálculo dos royalties", citando tanto a petição qu Acrescentou que a SDCOM teria, na visita in loco, mencionado um De monitoramento do preço HPM emitido já no âmbito da MEMR Regulation nº 11/ Regulamento anterior.

minério de níquel, carvão e sucata de aços inoxidáveis por remuneração inferior

649. Apontou para trechos das repostas do Governo da Indonésia p intervenção direta nas negociações entre compradores e vendedores de mine que os preços a serem praticados em tais operações fossem inferiores à remun

650. Ressaltou que o Decreto do Coordinating Minister for Maritim datado de agosto de 2010, comprovaria que o Governo da Indonésia estabelecimento e o controle dos preços de venda de minério de níquel no formas de aumentar a eficácia de tal controle.

651. Apontou ainda o relatório de verificação para concluir que por aos mineradores para venda prioritária ao mercado doméstico, o Governo o excesso de oferta no mercado interno, pressionando os preços do minério de n o fornecimento de minério de níquel à cadeia a jusante a preços inferiores à rem

652. Ademais, ressaltou que o Governo da Indonésia não teria ap solicitadas relativas aos preços e volumes de venda de níquel no mercado inter respondido a questionamentos da equipe de técnicos da SDCOM relativas aos de níquel no mercado interno daquele país; relativas ao Morowali Memorand 2013; relativas a "stipulation of reference guideline for selling or renting plots a Industrial Estates at the suggestion of the Industrial Estate Committee"; relativ the China-Indonesia integrated industrial estate; e relativas ao Decree of Ministr Indonesia Number 432/M-IND/Kep/7/2014. Nestes casos, teria se limitado a a referidos não teriam sido implementados.

653. O GOI pontuou, em sua manifestação acerca do uso dos fatos d do afirmado pela SDCOM, teria sim fornecido os RKAB no 2º pedido de informa primeiro dia da verificação teria fornecido os RKAB em versão pesquisável (O encaminhou os relatórios de produção e vendas solicitados, bem como estudo de reunião, informou que forneceu parcialmente a informação, e rogou para qu da PT Antam como fonte de dados adicionais.

654. O GOI afirmou ainda que, sobre o MoU assinado no contexto da assinado por entes privados, por isso não tem acesso ao documento. O GOI e estavam presentes durante a assinatura, mas não receberam cópias. Por fim, po investimentos externos no IMIP foi fornecido no prazo acordado no quarto dia o documentos fornecidos no dia 3 de junho de 2022.

655. Por tais motivos, o GOI solicitou que não sejam usados os fatos o

Regulation 11, de 2020, só serviria para o cálculo dos royalties, que este seria o artigo 2 da MEMR Regulation 7, de 2017, deve ser lido em conjunto com o Government Regulation nº 23, de 2020 seria regulado pela MEMR Regulation 7. O HPM é calculado por cada empresa, sendo o HMA determinado todo mês.

660. Ponderou ainda que os comentários do Sr. Bahlil Lahadalia tiveram em um contexto de mediação entre mineradores e fundidores, pois no fim os smelters teriam sido verificados pelo MEMR, o que causou dúvidas acerca se não "law grade nickel" (sic). Em situações normais o governo não interfere no mercado livremente estabelecido.

661. Para o GOI, a SDCOM falhou em apresentar evidências sólidas indicando a obrigatoriedade de se utilizar o HPM como preço de transação, se usam o HPM para a transação, não necessariamente indica que o GOI interfere. Acrescentou que o GOI não obriga os mineradores a vender seus produtos para smelters, eles são livres para processar o minério de níquel ou cooperar com o mercado.

662. Pontuou que o monitoramento por parte do GOI de um setor que não é como o de mineração, e o fato de que as empresas deste setor devam seguir regras que tais empresas sejam 'public body'. Além disso, as obrigações com relação ao minério obrigam que o minério seja processado até certo teor, e não que sejam vendidos para smelters. Os diferentes royalties aplicados ao minério de níquel e processados para smelters, mas tão somente uma medida de justiça, considerando que consiga cumprir o compromisso e investimento considerável.

663. Segundo o GOI, na análise do efeito das medidas, a SDCOM deu uma visão geral do mercado de minério de níquel, e o efeito disto nos preços. Entretanto, para uma devida análise ou encontrada evidência sobre a existência de controle sobre o minério para vender minério de níquel para smelters ligados à indústria de aço inoxidável.

664. Para o GOI, no contexto do DS379 trazido, na definição de 'public body' o trecho "must be an entity that possesses, exercises or is vested with government powers" requer um exame de qual exatamente é a direção dada pelo GOI aos mineradores. O GOI obriga que seja aumentado o valor do minério de níquel até um certo teor, nem que seja estabelecida, por exemplo, fornecer o minério à indústria de aço inoxidável. Segundo o GOI, total controle com relação à sua decisão de venda - não é o caso dos mineradores que não desejem vender devido ao preço, o que seria um forte incentivo para 'public body' nesse contexto.

668. O GOI destacou que embora a SDCOM tenha apontado que o por cento da produção de minério de níquel na Indonésia, é muito duvidoso, a Indonésia em conjunto apresentam efeitos significativos para o mercado do níquel, ambas as empresas têm a capacidade de processar os minérios internamente no mercado.

669. Sobre a previsão de aprovação de mudanças societárias, o GOI alega que o artigo 64 do Regulamento MEMR nº 7, de 2020, dispõe que o GOI conduzirá a empresa para a aprovação de mudanças na estrutura societária e a Comissão de Comissários, o que é um critério objetivo, o que implica em não haver nestas mudanças governamental nas mineradoras. O GOI asseverou ainda que, como a estrutura societária relacionada com o direito de exploração concedido pelo governo, é natural que o GOI seja ciente da composição da gestão nas empresas de mineração.

670. Deste modo, a investigação deveria ser terminada pela ausência de evidências nos termos do Acordo SCM.

671. No que diz respeito à alegação da SDCOM sobre a criação de um novo regulamento que, em conjunto, constituiria um comando explícito e afirmativo com a intenção estatal de aumentar o valor do mineral bruto, o GOI arguiu que o Regulamento de 2018 fornece explicações sobre o nível mínimo de purificação do mineral bruto. Para atingir o nível mínimo de purificação, os produtos processados de níquel são exportados. Acrescentou que "SDCOM shall interpret Indonesian domestic price as Indonesian support to the stainless steel industry."

672. No que diz respeito à especificidade e à alegação da SDCOM de que a lista por setor e região das empresas que se beneficiaram do programa, o GOI alega que instrumentos legais que descreveriam a existência de um programa de fornecimento e dessa forma, ante a não existência do programa, não haveria base sólida para a descrição sobre a natureza, o mecanismo ou quaisquer estatísticas relacionadas. Apenas obrigaria o nível mínimo de purificação, nada com relação a aquisição adequada.

673. Acrescentou que o acesso ao minério de níquel indonésio na Indonésia pelo GOI governa, não havendo nenhum dos fatores exigidos pelo Artigo 2.1(c) do Acordo, o decidido no caso US - Countervailing Measures (China), as características inerentes não podem ser utilizadas como base para estabelecer a especificidade.

674. Reiterou que não estabelece preços, e que o HPM, mesmo após a revisão, serve como preço mínimo, e não máximo, sendo que o preço de transação pode

conclusões da SDCOM da Nota Técnica de fatos essenciais, e afirmou que não nos montantes apurados.

4.2.3.1.8 Comentários da SDCOM

680. Com relação aos comentários em resposta ao ofício SEI/ME nº se que, durante a visita in loco, apenas foi exibido o sistema MOMS, e então SDCOM solicitou ver a fonte dos dados. Conforme consta do relatório da visita in

"A equipe da SDCOM lembrou que seria necessário não apenas in como o total foi calculado, apresentando memória de cálculo linha por linha (2019, em que os dados vinham do sistema e dos relatórios manuais)".

681. Considerando que o GOI não logrou apresentar tal memória de considerando que se trata de informação do RKAB, resta justificada a utilização seara.

682. Ademais, relembra-se, conforme relatado no relatório da visita in informação prestada, que impediram a devida verificação dos dados:

No último dia da verificação, a equipe da SDCOM lembrou ao GOI o 1º dia da verificação os esclarecimentos do MRME sobre os preços e volume interno da Indonésia. Ademais, a equipe informou que gostaria de fazer perguntas documentos apresentados. O representante do GOI relatou que coordenou com MRME o informou que estavam prontos a fornecer os dados, mas não naquele seguinte, dia 30, momento em que a verificação in loco já estaria encerrada. lembrou que não apenas tem que receber a informação durante a verificação, checar a informação, e, como informado no 1º dia, aquelas informações eram para serem feitas perguntas adicionais sobre o mercado interno de níquel na Indonésia.

683. Sobre o uso do HPM para além dos royalties, o fato de a lei previr royalties não significa, a contrario sensu, que este não seria utilizado para os propósitos. modo, foi demonstrada a existência de fortes evidências nessa direção. Ademais, Regulation nº 7/2017 expressamente indica que os detentores de licença devem

684. Também neste ponto não houve colaboração do GOI, que poderia comprovar o preço efetivamente pago. Como SDCOM teria mencionado Decreto sobre a equipe de supervisão do preço HPM, MEMR Regulation nº 11/2020 (portanto, fora do período da investigação). O Regulamento anterior, como já dito por esta autoridade, a falta de colaboração e nenhum documento de tal equipe de supervisão, impediu a autoridade de avaliar a equipe. É razoável acreditar que, muito embora a equipe tenha sido criada

687. Ressalte-se, por fim, que o GOI afirma que o fato de os mineradores HPM não indicar que o GOI interferiu nesta negociação, entretanto reitera-se que o GOI, bem como a própria legislação (artigo 2 do Regulation MEMR nº 7/2010 "Holders of Metal Mineral Production Operation IUP in selling Metallic Minerals shall be guided by the Metal HPM". Ademais, o GOI teve diversas oportunidades para considerar que considerasse úteis na questão, inclusive durante a visita. Relevante ainda as únicas alternativas dos mineradores - ou eles processam o minério ou cooperam - não há outra possibilidade.

688. Assim, ante a falta de colaboração nesta seara, foram utilizados os preços de fins de determinação final, sendo que esta autoridade tem amplos elementos para o preço HPM para transações do níquel, como indicado no item 4.2.3.1.1.3, acima. A União Europeia, em investigação sobre o mesmo setor e com os mesmos produtos, chegou à mesma conclusão.

689. Sobre as vendas da PT Antam, cabe ressaltar que tal ponto não foi considerado pela autoridade. Ademais, é fato estabelecido nos autos de que a PT Antam detém, no país manifestante, uma mineradora, para a qual não se foi fornecida nenhuma informação sobre sua existência para esta SDCOM.

690. Com relação aos comentários sobre o benchmark sugerido para a exportação das Filipinas para a China, pontua-se que tal benchmark foi escolhido entre os disponíveis. Essa situação que será melhor examinada na seção seguinte de conclusões. O painel entendeu que os preços na Filipinas são um benchmark adequado, considerando os preços reais de mercado de minério de níquel, que refletem circunstâncias de um mercado livre. O mesmo motivo, refletem também as pressões concorrenciais de outros mercados no mercado Indonésio, em que há a proibição de exportações.

691. Neste contexto, já foi decidido até mesmo no âmbito da OMC que o país investigado utilizado como benchmark não precisa estar livre de intervenções.

We note that the central inquiry under Article 14(d) in choosing an appropriate benchmark for assessing benefit is whether government intervention results in price distortion. The fact that of-country prices is warranted. At the same time, the market from which the benchmark is chosen must not be completely free of any government intervention. The Appellate Body has held that "price distortion" is not equivalent to any impact on prices as a result of any government intervention.

692. Também já foi decidido que, quando a autoridade realiza a aplicação do benchmark adequadamente se relaciona às condições no mercado investigado. O ASMC, nada no Artigo 14(d) indica que a autoridade investigadora deve investigar a diferença entre o benchmark e a contribuição financeira investigada.

absolutamente ilógico o benchmark proposto pela PT IRNC (média entre p Filipinas), por utilizar elementos de preços distorcidos. Assim, a emp fundamentadamente qualquer outro benchmark (não ilógico) que considerasse foi feito.

695. Assim reitera-se que a irresignação da PT IRNC não se c colaboração também nesse sentido, ainda mais em se tratando de um benchn obtido em publicações de acesso restrito, aos quais a autoridade não tem SDCOM utilizou para os fins de determinação final os preços das exportações informação trazida aos autos pela peticionária e considerada adequada pe coincidentemente, também pela autoridade europeia.

696. Sobre os comentários do GOI, pontua-se que os RKAB fo informação complementar foram recebidos no idioma bahasa, em desconform legislação aplicável e conforme o GOI já tinha sido alertado diversas vezes. Inclu início já houve desconsideração de documento por ter sido apresentado son apresentado na visita in loco, cabe ressaltar que a apresentação da versão com preencher os requisitos legais, ademais, o GOI tampouco protocolou os docum alertado oralmente e constava expressamente da ata da visita. Deste modo, pa investigação, tem-se que não foram fornecidos os RKAB solicitados, sendo es não o único) que levou ao uso dos fatos disponíveis.

697. Sobre os relatórios de produção e vendas e os estudos a comentário acerca dos requisitos legais de aceitação de dados por parte desta reunião, como o GOI afirmou, houve colaboração parcial, sendo que não foram as atas que foram fornecidas são denominadas "summary of minutes", ou seja, resumos. Sobre os relatórios de investimentos externos no IMIP, ao contrário do acordado nenhum prazo adicional para fornecimento de tais documentos reiteradamente informado pela SDCOM ao GOI, conforme consta inclusive na a ambas as partes.

698. Sobre os comentários do GOI acerca do volume de produção de equipe da SDCOM explicou durante a visita in loco, não basta que seja apre processo de validação é necessário que a parte explique a fonte dos dados fonte, o que o GOI não logrou realizar. Do relatório da visita:

A equipe da SDCOM lembrou que seria necessário não apenas in como o total foi calculado, apresentando memória de cálculo linha por linha (2019, em que os dados vinham do sistema e dos relatórios manuais).

regulação para proteção do meio ambiente - mas possibilitam ao GOI a deter mineradoras e influência nas decisões comerciais (até mesmo em decisões interesse da própria empresa). Neste sentido, a análise feita pela SDCOM sobre levou em consideração diversos elementos, como detalhado na seção concern todas as informações verificadas apresentadas pelas partes nos autos e disponíveis, ante a falta de colaboração das partes. Não se pode falar que as empresa sua decisão de venda pelo fato de não haver qualquer sanção expressa aos miner vender devido ao preço, pois trata-se de um cenário de preços controlados e caso se as empresas não realizarem a venda nas condições impostas pelo GOI, certamente há nenhuma outra alternativa. Assim, a SDCOM reitera sua conclusão pela existência de "public body" no âmbito do fornecimento de minério de níquel como National Vital Objects é mais um elemento acessório a evidenciar o sua importância dada pelo GOI a ela. Sobre a aprovação de mudanças societárias apresentou quaisquer elementos que evidenciariam que tal avaliação do critério objetivos, bem como, de todo modo, reitera-se que a mera existência de mudanças societárias, combinada com a obrigatoriedade de desinvestimento são elementos que evidenciam controle por parte do GOI. O Governo estar gestão é absolutamente distinto do fato de o governo necessitar de aprovar qual

702. A consideração do GOI sobre os royalties não parece fazer sentido estabelecer uma mineradora e extrair o minério de níquel é necessário considerável. A cobrança de um royalty inferior para o produto processado é governo que incentiva o processamento do níquel e aumento do valor agregado objetivos declarados do GOI.

703. Sobre as informações trazidas da PT Antam e PT Vale, o GOI alegações trazidas afetariam a análise realizada, sendo fato que ambas as empresas forçadas a o processar internamente devido ao arcabouço criado pelo GOI, interna. O número de 27 por cento citado pelo GOI foi obtido, como já dito, com disponível, conforme investigado pela União Europeia. Neste contexto, porcentagem representa efeito significativo no mercado doméstico.

704. As alegações do GOI sobre o Regulamento MEMR nº 25 de 2008 respondidas, sendo que esta SDCOM ressalta que o próprio GOI admitiu o inoxidável em sua manifestação final, in verbis, "SDCOM shall interpret Indonesian obligation as the Indonesian support to the stainless steel industry".

stainless steel, the added value is increased by 15 times. Some also said that he himself can also benefit from the development of the industrial park and have opportunities.

4.2.3.1.9 Conclusão

707. Em suma, a SDCOM logrou confirmar, com vistas à dete

apresentados no início da investigação.

708. Reitera-se que a ausência de respostas por parte das empres

colaboração do GOI nos termos acima mencionados impediram que o merca

avaliado, e conseqüente, que fossem avaliadas plenamente as condições de for

709. As diversas medidas com relação ao níquel, em especial a

exportação, controle e incentivo à construção de smelters, conforme element

indícios de apoio, por parte do GOI, ao estabelecimento de uma indústria de

efetivamente uma vantagem competitiva artificial através da redução indevida

especial os aqui investigados, carvão e níquel.

710. Assim sendo, diante da falta de colaboração já exposta, com bas

nos autos, concluiu-se que há elementos de prova indicando a existência de su

minério de níquel por remuneração inferior à adequada.

711. Tal incentivo se configura em subsídio, já que envolve uma

governo ou órgão público ou, alternativamente, uma contribuição financeira por

instruídas ou confiadas, nos termos das alíneas "c" e "d", do inciso II, do art. 4º d

posto que as empresas investigadas passam a contar com recursos adicionais

aquisição do minério de níquel é inferior ao que estas teriam que incorrer caso o

preços de mercado.

712. Tendo em vista que os elementos de prova considerados n

expressamente na legislação a existência de políticas relacionadas ao mine

privilegiar os produtores de aço inoxidável, tido como prioritário nos planos

também como subsídio específico de direito, nos termos do art. 6º, caput, do

portanto, sujeito à aplicação de medidas compensatórias.

4.2.3.1.10 Cálculo

713. No que atine ao cálculo, considerando a completa ausência de

parte dos produtores/exportadores e as lacunas na resposta do governo,

disponíveis nos autos.

determined in relation to prevailing market conditions for the good or service in question, or the provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale). (grifo nosso)

718. Tal artigo deixa claro que devem ser considerados os preços no país investigado. Entretanto, é jurisprudência pacífica que a autoridade pode buscar preços em outros países quando se acredita que os preços no país investigado estão distorcidos:

446. In sum, we are of the view that an investigating authority may use prices from other countries if it reaches the conclusion that these are too distorted due to the predominant role of the government as a supplier in the market, thus rendering the comparison required by Article 14(d) of the SCM Agreement circular. (...)

447. In the light of the above, we do not consider that the Panel interpreted Article 14(d) of the SCM Agreement as permitting the rejection of in-country private prices as a result of the application of a per se rule based on the role of the government as the predominant supplier. Rather, the Panel correctly interpreted Article 14(d) of the SCM Agreement as requiring the investigating authority to determine whether in-country private prices are distorted such that they cannot meaningfully be compared to prices in other countries. This is one that must be determined on a case-by-case basis, having considered all relevant factors, even in situations where the government is the predominant supplier in the market.

719. Há, no mercado da Indonésia, diversos elementos que apontam para a existência de distorções internas, como já visto extensivamente neste documento: os preços são controlados pelo governo, a proibição de exportação do minério de níquel, bem como a obrigação de manutenção das licenças de mineração, os incentivos com royalties etc. Este contexto da política de aumento de valor agregado, inundou o mercado doméstico de minério de níquel, direcionada pelas políticas do GOI, o que levou à depressão de preços, doméstico da Indonésia.

720. Dessa forma, a SDCOM considerou o mercado de minério de níquel na Indonésia, recorrendo-se a benchmark externo. Neste contexto, as Filipinas, desde a produção de minério de níquel na Indonésia, cresceram em volume de produção e exportação para o mercado do mundo, que é a China, se tornando o principal fornecedor do minério de níquel para a China. Ademais, também é um país Asiático não distante da China, cujo minério de níquel possui propriedades do minério Indonésio e concentração similar de níquel, além de estar sujeito ao mesmo processo a céu aberto e ter o minério de níquel com níveis de umidade semelhantes a ambos os países de clima similar. Por tais motivos, esta autoridade considerou a utilização dos preços da Filipinas.

723. Inicialmente, pontua-se que, como já feito no Parecer de considerando que toda a argumentação da peticionária a respeito do p "Fornecimento de eletricidade por remuneração inferior à adequada" - baseou para produção de eletricidade - preços máximos e obrigações do mercado inte por consolidar ambos os programas em um só. Desse modo, buscou-se simpl das informações, facilitando a ampla defesa dos interesses de todas as partes in

724. O carvão térmico e o carvão metalúrgico são matéria extremamente relevantes em todas as fases de produção do NiPI, ou seja, secagem, na calcinação, na pré-redução e na redução do minério do Níquel próprio IMIP afirma ser o carvão a fonte de sua eletricidade (do relatório do IMIP the source of energy for IMIP Park"), o que confirma os indícios utilizados no início

725. Confirmou-se também no decurso da investigação a existência carvão, das quais se destacam a política de fornecimento no mercado i Obligation - DMO e política de preços máximos para a eletricidade.

4.2.3.2.1.1 Da Domestic Market Obligation - DMO

726. Sob a Domestic Market Obligation (DMO), encontra-se também m Regulation nº 23/2010 (art. 84) e nº 96/2021 (art. 157), que regem que en preencher a quota interna antes de poderem exportar:

Article 84

(1) Holders of Mining Business License (IUP) for Production Operation Business License (IUPK) for Production Operation must prioritize the needs of domestic purposes.

(2) The Minister stipulates the domestic need for mineral and coal as includes the need for the domestic processing industry and direct use.

(3) Holders of Mining Business License (IUP) for Production Operation Business License (IUPK) for Production Operation may export minerals or fulfillment of domestic mineral and coal needs as referred to in paragraph (1).

(4) Further provisions concerning the procedure for prioritizing m domestic purposes shall be regulated by a Ministerial Regulation.

727. Em nível ministerial, foi reproduzido conforme MEMR Regulation "Mineral and Coal Mining Business Entities are obliged to sell minerals or coal to and coal for the domestic demands", sendo que a MEMR Regulation nº 7/2020 reafirmaria a DMO.

732. Confirmou-se no decurso do processo a existência de política de carvão vendido para a eletricidade. Tal política é advinda em especial da Regulation 1395/K/30/MEM/2018 e a Regulation 261/K/30/MEM/2019, e estabelece o preço quando da venda para uso em eletricidade pública (ou eletricidade para os fins domésticos) se verá mais adiante) em \$70/t.

733. Isto posto, considerando a falta de colaboração das empresas fornecedoras nas informações prestadas pelo governo da Indonésia, conforme notificação MEMR 228693/2022/ME, em especial a ausência dos RKABs, que permitiriam avaliar os preços de transação do carvão, e a ausência de informações acerca do consumo doméstico, a autoridade alternativa à autoridade senão utilizar os fatos disponíveis no processo, a teor do artigo 19 de 1995.

734. Os fatos disponíveis no processo, confirmados na visita in loco realizada em 2017, MEMR nº 7/2017, mais recentemente emendada pela Regulation MEMR nº 11/2017, art. 2º a obrigatoriedade das empresas detentoras de licença de produção doméstica de Patokan Batu Bara (preço de referência do carvão) - HPB em suas vendas do produto.

Article 2

(4) Holders of Metal Minerals Production Operation IUP, Coal Production Operations Metal Minerals IUPK, and Coal Production Operation IUPK or Coal products must be guided by Metal HPM or HPB.

735. Tal preço HPB é determinado por uma fórmula estabelecida no Regulamento of Mineral and Coal N° 515.K/ 32/DJB/2011. O artigo 1º de tal Decreto traz ainda o artigo 3º define as variáveis envolvidas:

Article 1

In This Regulation of Director General:

1. Coal Benchmark Price, hereinafter to be called as HPB, means average price of steam (thermal) coal and coking (metallurgical) coal.
2. Primary HPB (price marker) means Coal Benchmark Price for 8 (eight) types of coal.
3. Other HPB means Coal Benchmark Price other than Primary HPB (price marker).
4. Coal Benchmark Price, hereinafter to be called as HBA, means average price index for previous month.
5. Steam (thermal) coal HBA means average price from steam coal for relevant month calculated in equivalent coal quality of 6322 kkal/kg Gross as Reference.

Article 3

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

- c. Moisture Content;
- d. Sulfur Content; and
- e. Ash Content. (grifo nosso)

736. O Anexo II do decreto estabelece a exata fórmula:

ATTACHMENT II TO REGULATION OF DIRECTOR GENERAL FOR MINE

DATE : 24 March 2011

STEAM COAL BENCHMARK PRICE (...)

4. Coal Benchmark Price Marker No. 1 - 7

HPB Marker (i) = $HBA * K(i) * A(i) - (B(i) + U(i))$ [USD/ton]

Where:

HPB Marker (i), = HPB from 7 coal price markers [USD/ton]

$K(i) = (100 - \text{Coal Calorific Value}(i)) / 6322$ [Fraction]

$A(i) = (100 - \text{Coal Moisture Content}(i)) / (100 - 8)$ [Fraction]

$B(i) = (\text{Coal Sulfur Content}(i) - 0.8) * 0.4$ [USD/ton]

$U(i) = (\text{Coal$

$(i) = \text{price marker } 1 - 7$ [USD/ton]

3. Coal Benchmark Price Marker No. 8

HPB Marker (i) = $(HBA * K(i) * A(i) - (B(i) + U(i)))$ [USD/ton]

Where:

HPB Marker (i) = HPB from coal price marker 8 [USD/ton]

$K(i) = \text{Coal Calorific Value}(i) / 6322$ [Fraction]

$A(i) = (100 - \text{Coal Moisture Content}(i)) / (100 - 8 / FKA(i))$ [Fraction]

$FKAG(i) = (((100, --3) / (100 - \text{Coal Moisture Content}(i))$

$\text{Coal Moisture Content}(i) + (100 - 8)) / 100$ [Percent]

$B(i) = (\text{Coal Sulfur Content}(i) - 0.8) * 4$ [USD/ton]

$U(i) = (\text{Coal Ash Content}(i, 15) * 0.4$ [USD/ton]

$(4) = \text{price marker } 8$ [USD/ton]

g. $U = (\text{ash content of coal} - 15) \times PU$ (USD/ ton)

h. $PB = \text{deduction of sulfur content}$ (USD/ ton)

i. $PU = \text{deduction of ash content}$ (USD/ ton)

j. $PS = \text{multiplication of Sodium content}$ (fraction)

2) Calorific value £ 4200 kcal/ kg GAR

a. $TM < 35\%$

$HPB\ FC/RC = FP \times ((HBA \times K \times A) - (B + U)) \times PS$ (USD/ ton)

Note:

1. $HPB\ FC/RC = \text{HPB fine coal and/ or reject coal}$ (USD/ ton)

2. $HBA = \text{Reference Price of Coal}$ (USD/ ton)

3. $FP = \text{factor of deduction}$ (fraction)

4. $K = \text{calorific value of coal}$ (fraction)

5. $A = (100 - \text{water content of coal}) / (100 - 8/FKA)$ (fraction)

6. $FKA = (((100 - 8) / (100 - \text{water content of coal})) \times \text{water content of coal})$ (fraction)

7. $B = (\text{sulfur content of coal} - 0.8) \times PB$ (USD/ ton)

8. $U = (\text{ash content of coal} - 15) \times PU$ (USD/ ton)

9. $PB = \text{deduction of sulfur content}$ (USD/ ton)

10. $PU = \text{deduction of ash content}$ (USD/ ton)

11. $PS = \text{multiplication of Sodium content}$ (fraction)

b. $TM \geq 35\%$

$HPB\ FC/RC = FP \times (HBA \times K \times A) \times PS$ (USD/ ton) (Grifo nosso)

739. Assim, nota-se que a fórmula mais recente incorpora um 'fator de ajuste'.

740. Do exposto, tem-se que o Hargu Batubara Acuan - HBA é um índice de referência para o preço de venda de carvão mineral. O HBA é publicado mensalmente pelo GOI e é estabelecido utilizando-se 4 diferentes fatores. A Portaria Interministerial Decision nº 2 K/30/MEM/2020, estabeleceu o preço de referência do carvão mineral em janeiro 2020 em 65,93 USD/ton.

741. Pontua-se também que o Government Regulation nº 8, de 2010, e o Government Regulation nº 23, de 2010, determinando, em seu artigo 1, a inclusão do Artigo 8º da Portaria Interministerial Decision nº 2 K/30/MEM/2020.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

como o Electric Power Supply Business Plan (RUPTL), o que também poderia ser
745. As próprias respostas do GOI neste contexto também se mostraram ao questionário, hora o governo afirmou que o teto de 70 USD/t aplicava-se (página 41 da resposta ao questionário do GOI), hora afirmou que se aplicava só acerca de tal inconsistência múltiplas vezes, o GOI sempre referenciou ao apresentar quaisquer outros elementos de prova dos quais comprovadamente de transação de carvão reportados nos RKAB).

746. Assim, impossibilitado de se verificar tal condição tanto por parte do governo, recorreu-se aos fatos disponíveis no processo. A SDCOM logrou encontrar no GOI que aponta que haveria enquadramento do IMIP no âmbito da energia para

On the occasion, Wanhar also revealed the requirement for business to have an Electric Power Supply Business Plan (RUPTL). According to him, currently there are only three companies on the island of Sulawesi besides PT PLN (Persero), namely PT Indonesia Morowali Karampuang Multi Daya (KMD), and PT Sultra Energi Indonesia (SEI). Of the three, only PT KMD has an approved RUPTL.

"Two other wilus holders, namely PT KMD and PT SEI, must immediately submit a RUPTL as the basis for implementing the business of providing electricity for the public interest."

747. Há ainda duas apresentações oficiais do GOI que listam as atividades de fornecimento de eletricidade para os fins de interesse público, pois o IMIP, com o documento de planejamento de eletricidade para fins públicos, como afirma o próprio GOI:

<<IMAGEM 5 AQUI>>Figura 1 - Apresentação sobre o setor de energia elétrica

748. O IMIP é classificado como "pemegang wilayah usaha penyediaan tenaga listrik" (electricity supply business area holder), inserido no plano nacional - note na figura 1, no qual o RUPTL é expressamente ressaltado "PLN AND NON PLN", e ainda "Basic infrastructure for electricity supply business for the public interest" (grifo nosso). Na mesma apresentação, são listadas certas obrigações dos "electricity supply business area Holder", como o IMIP: "The electricity supply businesses are obliged to open up opportunities for joint utilization of the electricity supply network (lease mechanism/ power wheeling) for the public interest by taking into account the transmission network and the Grid Code".

749. Cimenta de vez a questão acerca do enquadramento do IMIP no âmbito do interesse público quando se consulta os artigos 10 e 11 da lei nº 30/2009:

Article 10

(1) Public power supply business as intended by Article 9 item (a) shall be divided into two types of business:

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

engaged in the field of power supplies.

(2) State-owned entities as intended by section (1) shall receive first priority in power supply business.

(3) The competent Government or regional governments shall allow private owned entities, private entities, or cooperatives to conduct integrated power supply where power service is not yet provided.

(4) Where no region-owned entities, private entities, or cooperatives exist in those areas, the Government must commission a state-owned entity(ies) to supply power.

750. Importante notar que, no original em bahasa, o termo "kepentingan umum", é usado tanto no artigo 11 da Lei 30/2009, quanto no artigo 1395K/30/MEM/2018, quando este estabelece o teto de 70 USD/t para o preço de venda. A interpretação do GOI de que somente a empresa estatal PLN se enquadraria e a própria Lei nº 30/2009 explicita que o rol é muito mais amplo.

751. Salta aos olhos também que o IMIP fez acordo de venda de energia com a PLN, uma evidência de que sua energia é para o interesse público. A SDCOM lamentavelmente não forneceu tais relevantes informações, das quais certamente dispunha:

Last year, IMIP signed a power purchase agreement with state electricity company PLN, a way for the latter to buy excess electricity of 5 megawatts (MW) from IMIP's power plant in its industrial complex.

752. Assim, os elementos nos autos, tanto pela legislação, quanto pela jurisprudência do GOI, ou seja, elementos de fato e de direito, são claros na possibilidade de serem de âmbito do interesse público, e, portanto, se enquadrar no teto de 70 USD/t em preço de venda.

753. Os fatos disponíveis no processo também indicam que as empresas privadas não teriam acesso ao carvão conforme tabelado pelo HPB, conforme explicado no item 4.2.3.2.2.

4.2.3.2.2 Elementos de fato ou de direito (Base legal/documental)

754. O programa de fornecimento de carvão a remuneração inferior ao mercado é previsto em inúmeras legislações, de todos os níveis de governo, dentre os quais destaca-se:

I. Lei nº 4/2009, Mining law;

II. Lei nº 30/2009;

III. Lei nº 3/2014;

IV. Government Regulation nº 23/2010;

756. Acerca da enquadramento como "órgão público" ou entidade SDCOM reforça o entendimento exposto nas seções 4.2.3.1.3.1 e 4.2.3.1.3.9, aplicam aos mineradores de carvão, com leves adaptações, as medidas ali existentes para controle para que estas desempenhem as funções governamentais que o GOI cobra:

- i) as restrições à exportação;
- ii) a obrigação de processamento doméstico;
- iii) estabelecimento do preço de referência;
- iv) submissão de relatórios obrigatórios detalhados;
- v) obrigações de desinvestimento;
- vi) aprovações de alterações no quadro acionário; e
- vii) aprovação de troca de diretores/comissários.

757. Neste contexto, muito embora não estivesse a exportação do carvão analisado (recentemente houve proibição por um período), havia a obrigação de processamento doméstico - DMO, a fim de se preencher a demanda local. Assim, pelo fato de não haver exportação pelo GOI, subsiste o mesmo efeito de deturpação nas condições normais de mercado econômica com relação aos mineradores de carvão, no que foi assim resolvido:

Imagine you are the owner of a coal mine in Indonesia, or a trader. If you are an actor motivated by profit, you would be crazy not to chase big margins on coal exports. But the government supply domestic power plants at an artificially low rate.

Looked at in this way, the export ban is the state's way of telling the private sector they have no choice but to leave those profits on the table and make sure the domestic market is served, even if it goes against their own economic self-interest. They can chase exports and profits, but the message was delivered, because within a matter of days the export ban was implemented.

4.2.3.2.4 Especificidade

758. Salienta-se que GOI não apresentou lista, por indústria e por região, de produtores da Indonésia que participaram deste programa durante o período de investigação. Também não foram transações efetuadas no mercado de carvão na Indonésia. Ademais, ante a ausência de informações solicitadas por parte dos produtores/exportadores selecionados para a resposta do GOI, conforme já apontado, foram utilizados, nos termos do art. 195, os fatos disponíveis.

qualquer benefício aos investigados, conclusão que também fora alcançada Europeia.

762. A Aperam afirmou, com relação ao carvão de coqueria, que o Go que a maior parte é exportada, sendo que "apenas pequena parcela é utili Entretanto, embora tenha apresentado dados de produção de tal tipo de car Governo da Indonésia atestou que estes foram compilados de dados apresenta que "as empresas podem editar (atualizar) os dados posteriormente". Assim afirmou que "os dados compilados pelo MEMR não são revisados uma vez ex pode a informação estar discrepante." Conclui-se, portanto, que tais info verificadas devidamente.

763. A Aperam, em manifestação de 9 de setembro de 2022, argu Indonésia teria confirmado, em sua resposta ao questionário, que haveria a obr no mercado interno daquele país.

764. Ademais, a Aperam defendeu que os subsídios concedidos de de carvão a preços com remuneração inferior à adequada seriam trans produtores de aços inoxidáveis, incluindo o produto objeto da investigação.

765. Reiterou que o Decreto 23, de 2018, trataria especificamente d percentual mínimo de 25% da produção total de carvão fosse fornecido ao mer

766. Acrescentou que o Regulamento do Ministério das Minas e implementaria provisões e teria ratificado o objetivo de fornecimento de carv Assim, restaria claro que, além de explicitamente determinada a obrigaçã mercado interno, tal obrigação englobaria todo tipo de carvão, indepen incluindo, mas não se limitando, para a utilização na geração de energia ele demonstrada uma preocupação em especial com tal fornecimento.

767. Defendeu que, a análise do Decreto Nº 261, de 2019, demonstr alegado pelo Governo da Indonésia, a obrigação de fornecimento de carvã estaria limitada ao fornecimento de energia elétrica pública. Nesse sentido, co artigo 4, mencionado pelo Governo da Indonésia, com o artigo 2 do mesmo De forma, que os mencionados artigos tratariam de duas obrigações distintas e co de fornecimento de carvão no mercado interno, independentemente de ut obrigação de cumprir o fornecimento de carvão para energia elétrica pública de venda. Notar-se-ia, inclusive, que apenas o artigo 2 faria referência ao a obrigação de fornecimento de 25% do volume de produção para vendas no r também de maneira geral, não se limitando a nenhum tipo de aplicação especif

(2) The determination of the selling price as referred to in paragraph taking into account the public purposes.

772. Restaria claro que a determinação de se estabelecer o preço no mercado interno não seria exclusiva para fins de fornecimento de energia pública e vendas de carvão.

773. Da mesma forma, o Regulamento do Ministério de Energia e Recursos Minerais nº 19/2020, alteraria o Regulamento do Ministério de Energia e Recursos Minerais nº 7/2018 de início, que se trataria de fixação de preço de venda de referência a ser praticado como simples base para cálculo de royalties.

774. O artigo segundo do mencionado Regulamento claramente determinava o estabelecimento de preços a serem praticados nas operações de venda de carvão.

775. A Aparam sustentou que não haveria limitação quanto ao tipo de operação de venda de carvão. Ademais, restaria claro que os vendedores de carvão seriam obrigados a praticar os preços fixados pelo Governo da Indonésia em suas operações de venda. Nesse sentido, os preços fossem simplesmente utilizados para fins de cálculo de pagamento de royalties, não havia necessidade de obrigar os vendedores a praticar o preço fixado pelo Governo, mas apenas sobre o valor definido por ele.

776. Verificar-se-ia que, além de se tratar do preço de venda a ser praticado no mercado interno, tais preços também seriam considerados para fins de serem pagos por tais vendas.

777. Cabe destacar que a obrigação de praticar os preços fixados pelo Governo nas operações de venda de carvão no mercado interno ainda seria reforçada pelo fato de que às empresas que não praticarem tais preços.

778. Por fim, citou que o Decreto MEMR 1.395, de 2018, mencionado anteriormente, relativamente aos preços do carvão para energia elétrica faria referência ao Regulamento MEMR 19, de 2018, que alterou o Regulamento MEMR 7, de 2018. O Decreto, embora estabeleça preços de venda de carvão para fins de energia elétrica, não estabelece o estabelecimento de preços de venda de carvão a tais operações.

779. Restaria claro, portanto, que tais regulamentações estabeleceriam a obrigação de venda de carvão no mercado interno (denominada "Domestic Market Obligation" - DMO) e os preços determinados pelo governo da Indonésia, que estipularia valores abaixo do valor de remuneração inferior àquela que seria adequada.

PLN, em linha com o regulamento. Neste contexto, aduziu o GOI, o entendimento de que o preço para uso industrial deve seguir o HPB é errado, e "coal selling price" não é o preço da Government Regulation nº 8, de 2018 usa uma terminologia específica.

783. Afirmou ainda o GOI que, ao contrário do afirmado pela SDCOM, o DMO não é unicamente destinado à geração de eletricidade, sendo este o objeto principal, mas não exclusivo. Trouxe o GOI publicação que comprovaria, em seu entender, que o DMO é destinado ao cumprimento das necessidades da PLN.

784. Finalizou o GOI rogando à SDCOM que decida na linha da União. A autoridade apontou não haver benefício aos produtores indonésios advindo do DMO com cooperação dos produtores e do GOI.

785. A PT IRNC reiterou em sua manifestação final as posições do PT IRNC, não somente para royalties, acerca do teto da eletricidade e sobre o uso da decisão da SDCOM.

786. A peticionária reafirmou em sua manifestação final as conclusões da PT IRNC, que não caberia nenhuma alteração nos montantes já apurados e apresentados.

4.2.3.5 Comentários da SDCOM

787. Conforme detalhadamente exposto, há fortes evidências de que, em consequência, a PT IRNC), teve acesso ao carvão com os preços máximos, considerando os próprios termos em bahasa utilizados na legislação aplicável. O GOI já descritos. Assim, considerando a ausência total de colaboração por parte da PT IRNC, fatos disponíveis no processo.

788. Neste ponto, importante salientar que, ao contrário do afirmado, a legislação da Indonésia que iguala "coal selling price" com o "HPB", conforme, Regulation 515.K/32/DJB/2011, que é a Regulation específica sobre o preço HPB.

Article 2

(1) Director General on behalf of Minister hereby determine Coal Benchmark Price (thermal) and coking (metallurgical) coal on a monthly basis based on formula of average coal price index under the prevailing market mechanism and/or acceptable in international market.

(2) Coal Benchmark Price as referred to in paragraph (1) shall be used for the holder of Operation Production IUP and Operation Production IUPK and P (nosso).

bahasa, evidência de difícilima obtenção por parte desta autoridade, mu
analisada pela autoridade da União Europeia e contradiz a conclusão daquela
apontando o IMIP como produtor de energia para fins públicos (classificando-o
"holders of electricity supply business area", em tradução automática):

<<IMAGEM 6 AQUI>>

793. Para os fins de determinação final, esta SDCOM logrou encontrar a
apresentação do GOI (mais especificamente, do MEMR) em que é reafirmado os
business of providing electricity for the public interest is carried out by state-own
owned enterprises, private enterprises, cooperatives, and non-governmental or
field of electricity supply".

794. Ainda mais grave é o fato de que, mesmo tendo ocorrido verific
no governo, a informação de que o IMIP fornecia energia para fins públicos não
nenhum momento. A SDCOM lamenta que a colaboração do GOI se deu parcial
agora, o MEMR tinha plenas condições de apontar o IMIP como produtor de ele
o que não foi feito.

795. A publicação trazida pelo GOI somente destaca que o objeti
dólares é beneficiar a PLN, o que nada indica sobre os demais produtores de
como o IMIP comprovadamente o é - o GOI não teceu nenhum comentário
tampouco a PT IRNC, empresa do grupo do IMIP.

796. Sobre os comentários do GOI, muito embora o representante
explicado a fonte dos dados, estes não foram evidenciados (como por exemplo
dos relatórios recebidos pelo GOI). Reitera-se que a SDCOM sempre deixou cla
bastava verificar os dados no sistema, o GOI teria que evidenciar a fonte dos d
como está descrito no próprio parágrafo 139 do relatório da visita, invocado pe
que não poderia fornecer acesso aos dados:

139. A equipe da SDCOM solicitou que fossem apresentados os volum
coking coal. O GOI informou que as empresas são obrigadas a inform
trimestralmente por meio do sistema Minerba Online Monitoring System (htt
governo apresentou planilha com volume de algumas empresas, o que foi verifi
sido encontradas divergências. A equipe da SDCOM então informou que se
dados reportados, tendo o GOI explicado que a informação é das próprias emp
teria acesso. (Grifo nosso)

797. Assim, ressalta-se que o GOI já detinha os dados cuja comp
exemplo, por meio dos RKAB. De todo modo, como o próprio GOI informou
empresas podem editar (atualizar) os dados posteriormente" e "os dados comp

geração de eletricidade. Sobre o uso do HPB apenas para royalties e sobre o fato de colaboração das partes levou à SDCOM a utilizar os fatos disponíveis, e estes não é adstrito aos royalties e o fator corretivo é elemento de absoluta discricionariedade, ainda que o GOI detinha as informações capazes de dirimir quaisquer dúvidas, intencionalmente não foram apresentadas.

4.2.3.5.1 Conclusão

800. A SDCOM concluiu, com base nas informações contidas nos autos, que os subsídios concedidos por meio do fornecimento de carvão por remuneração é inadequada. Tal incentivo se configura em subsídio já que envolve uma contribuição ou órgão público, nos termos das alíneas "c" e "d", do inciso II, do art. 4º do Decreto 6.898/2011, conferindo benefício às empresas alcançadas pelo programa em questão, uma vez que elas não contam com recursos adicionais em relação àquelas que não participam do programa.

801. Como já tratado, configura-se o programa aqui tratado como subsídio nos termos do art. 6º, §3º, do Regulamento Brasileiro, e, portanto, sujeito a medidas compensatórias, no que tange ao mercado para o consumo que não para exportação, e o direito, nos termos do art. 6º, caput, do Regulamento Brasileiro, com relação ao preço de mercado.

802. Ainda, diante da falta de colaboração já exposta e com base nos autos, conclui-se que os preços internos HPB para o carvão encontram-se distorcidos em relação ao preço HPM, ao se aplicar a fórmula com o fator de dedução.

4.2.3.5.2 Cálculo

803. No que atine ao cálculo, considerando a ausência de resposta dos produtores/exportadores e as lacunas na resposta do governo, foram utilizados os preços de mercado e os preços HPB.

804. Como exposto, constatou-se a existência de um programa tanto para a eletricidade (com teto estabelecido pelo GOI), quanto pela vertente industrial (onde concluiu-se, com uso dos fatos disponíveis, que os preços HPB são superiores ao preço de mercado). Neste contexto, esta autoridade entende que, ante a total ausência de colaboração do produtor/exportador, e a parcial colaboração do GOI, os fatos disponíveis permitem concluir a existência de subsídios em ambas as vertentes, ou seja, tanto no fornecimento de carvão para a produção de eletricidade quanto no fornecimento de carvão que não o empregado para produção de eletricidade (siderúrgico), que deve, conforme legislação, seguir o HPB.

805. Nesse contexto, tem-se que a fórmula do HPB é altamente complexa do que a do preço HPM para o níquel, por exemplo, sendo que na fórmula do HPB não se considera até mesmo a marca do Carvão empregado, conforme Anexo II do Decreto 6.898/2011.

Abril/2019	70	88,85
Maio/2019	70	81,86
Junho/2019	70	81,48
Julho/2019	70	71,92
Agosto/2019	70	72,67
Setembro/2019	65,79	65,79
Outubro/2019	64,8	64,8
Nov-19	66,27	66,27
Dez/2019	66,3	66,3
Janeiro/2020	65,93	65,93
Fevereiro/2020	66,89	66,89
Março/2020	67,08	67,08
Média	67,75	71,65

<<IMAGEM 7 AQUI>>

809. Assim, enquanto para o período investigado, o preço médio pago se o teto foi de US\$ 67,76/t, o preço médio HBA foi de US\$71,65/t, resulta US\$3,89/t.

810. A peticionária estimou o consumo de eletricidade em toda a investigação (produção de FeCr e FeSi e Aciaria - laminação a quente e laminação a frio) que era produzido internamente (ou seja, em que havia sido consumida energia elétrica) e intermediários em que não havia sido consumida energia elétrica. Considerando para se produzir uma tonelada do produto objeto da investigação, alcançou-se um valor de US\$ 3,63 por tonelada. A Peticionária trouxe ainda o carvão empregado no smelter até uso no redutor, apropriando-se para o produto final o subsídio intermediárias, por meio de sistemática de pass-through considerada adequada. Consta de documento submetido pela Aperam nos autos do processo em 08 de dezembro de 2022.

811. Salienta-se que não houve comentário das demais partes interessadas ao projeto proposto.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	18,48	0,90

Fonte: Melhor informação disponível - manifestação da peticionária e demais partes interessadas.

Elaboração: SDCOM

produtores/exportadores adquirem sucatas e resíduos empregados na produção. Desse modo, na linha do pedido constante em manifestação apresentada pela não haver subsídio acionável com relação ao alegado fornecimento de sucatas adequada.

4.2.3.9 Programa 4 - Fornecimento de terrenos por remuneração inferior

4.2.3.9.1 Fatos apurados sobre o programa

816. Conforme apurado na visita in loco e em pesquisas da SD regramento atual sobre terras na Indonésia, é preciso regressar ao período a "período holandês", em que havia dois sistemas: Eigendom (lei holandesa) e Agrário. O primeiro era o direito de possuir a terra durante a colonização holandesa agrário. Já o segundo era estabelecido conforme o costume comunidade dentro

817. Em 1960, foi promulgada na Indonésia a Lei agrária nº 5/1960 sobre Eigendom. Desde então há 4 tipos de direitos de terra:

- a) Hak Milik/direitos de posse/propriedade os mais "fortes" e completos, sem limite de tempo, apenas para indonésios;
- b) Hak Guna Bangunan/para construir concedido para utilizar o terreno por prazo máximo de 30 anos, podendo ser prorrogado por 20 anos, para empresas;
- c) Hak Guna Usaha/para cultivar concedido apenas a pessoa/empresa por 25 anos, podendo ser prorrogado por 25 anos, grande escala;
- d) Hak Pakai/ para usar concedido para utilizar uma terra, 25 anos ou 30 anos, 20 anos, para sawah, jagung (estrangeiros), sendo que o proprietário é o povo.

818. A terra do tipo Tanah swapraja - herança da ocupação holandesa pelo pemerintah hindia belanda (Dutch East Indies), se tornou, a partir de 24 de setembro de 1979, Presidencial nº 32/1979 terras do tipo tanah negara.

819. Isto posto, passa-se à análise do terreno do IMIP, empresa produtora/exportadora investigada PT IRNC e demais empresas do grupo Tsing

820. Sabe-se que, conforme o RIPIN 2015-2035, é informado que também uma preocupação do governo no contexto do incentivo à industrialização. Facts and Figures, 2015, do Ministério da Indústria da Indonésia:

Infrastructure for Industry

- b. the planning of industrial estate development, including feasibility studies and master plan;
- c. the establishment of institution and land bank regulation for the industrial estates;
- d. coordination between the provincial/district/city governments and other institutions for determining the location of industrial allotment within the Region;
- e. carrying out review to the development of industrial allotment;
- f. the provision of land through the development of industrial allotment and infrastructure both within and outside of industrial estates; and
- g. provision of land through the development of industrial allotment and infrastructure both within and outside the industrial allotment.

821. Com relação ao IMIP, este está instalado no distrito de Morowali. As informações obtidas na visita in loco, o plano espacial mais antigo de Morowali é o Regulamento Regional de Morowali nº 10/2012, a região agrícola. Depois do Regulamento Regional de Morowali nº 10/2012, a região foi designada como industrial estratégico ("National Strategic Project"). Depois do Regulamento Regional de Morowali nº 7/2019, continuou sendo para tal uso, só que mais foi mais detalhado o uso. Após a manifestação pós-verificação, o GOI informou que a terra poderia ter também o status de propriedade do povo.

822. Segundo informado na visita in loco do GOI, o atual status da terra é 'SHGB' - Sertifikat hak guna bangunan - 'SHGB', datado de 18 de agosto de 2015. Segundo o governo, tal status indicaria que o terreno não é de propriedade do governo, de propriedade do povo.

823. Ou seja, a terra onde está o IMIP tinha status Swapraja, sob a Baian, terras que, antes da independência da Indonésia, pertenciam a sultanatos locais. Após a independência, se tornou terra tanah negara, ainda com a parte das comunidades que lá viviam.

824. Foi também confirmado na visita in loco que o IMIP iniciou sua construção com as licenças requeridas, o que foi possível devido a seu status de projeto estratégico.

825. Entretanto, não foram exibidos na visita in loco os certificados de acknowledgment letter (surat yg diterbitkan oleh kecamatan kepada masyarakat). SDCOM restou impedida de verificar o status do terreno do IMIP. Tampouco as informações indicariam que a propriedade do terreno não seria do governo, comprovaram a

"terra diretamente controlada pelo Estado" é a tanah negara.

831. De modo geral, as comunidades locais que lá vivam foram afetadas pela chegada do IMIP, e tiveram sua subsistência ameaçada de diversos modos. Os moradores na terra tiveram a produtividade reduzida sensivelmente devido ao desflorestamento, estradas e desvio dos cursos d'água. Ou seja, ainda que em tese a terra poderia ser usada como afirmou o GOI, na prática as comunidades foram forçadas a transferir a terra (em compensação), pelo fato de o impacto ambiental causado pela construção ter afetado a terra. Tal questão foi considerada pelo CEO do IMIP:

"When you are building a new house, do you bother to take a look at the land? You will handle it properly later after the development is fully completed," Barus said.

832. Também foi utilizado como fato disponível no processo o relatório da Comissão Europeia que também versava sobre laminados de aço inoxidável em uma estrutura semelhante, em que foi analisado o terreno do IMIP, no âmbito da qual a autoridade local estava planejando a construção de uma fábrica de laminados de aço inoxidável.

The investigation found that the GOID facilitated the necessary land acquisition. The land in question was the property of the Indonesian State. IMIP agreed with the assistance of the Bahodopi district authorities, on a single average payment, to provide a compensation, for the individuals using the land at the time.

(...)

First, the GOID amended the spatial planning of the Morowali Area, changing the land from farmland to industrial land, more specifically linked to a nickel project. Morowali Regency Regulation No. 10 of 2012 designated as nickel mining area the sub-regency entity where IMIP is located. Moreover, Article 29 of the Regulation designated the Bahodopi district also as an Industrial Area 'based on nickel'. More generally, the Morowali Regency identified a 'large industrial area in Bahodopi district as a strategic area from the point of utilization of natural resources' (Article 37). Finally, Morowali Regency Regulation identified Bahodopi district as the area where a nickel mine is located. This change of use left the villagers with no choice but to relinquish their land as they could no longer use it for farming activities.

Second, IMIP contacted the local authorities in the area, i.e., the mayor of the area, and agreed with them on a compensation to be provided to the people identified as occupants of the plots of land in the area. In this process, the following was highlighted: (i) IMIP agreed on the compensation with the village heads also with the officials of the Bahodopi district, because the contracts show that they later with the village heads certified the use and the ensuing right to compensation of the villagers; (ii) the occupants were identified by the village heads have more or less all the same area.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

da investigação. Entretanto, muito embora existente a operação, não se verificou nos autos que indicam haver benefício aos produtores/exportadores envolvidas operações apontadas.

4.2.3.9.2 Elementos de fato ou de direito (Base legal/documental)

836. O programa baseia-se nas políticas industriais da Indonésia, em seus Regulamentos Regionais de Morowali nº 10/2012, e nº 7/2019, além da Lei

4.2.3.9.3 Contribuição financeira

837. A contribuição financeira do programa advém do fato que o IMIP vende o preço reduzido quando comparado aos preços do mercado.

838. Tem-se ainda que o GOI, como é por lei o proprietário de terras, concedeu diretamente as terras ao IMIP.

839. Analisa-se, alternativamente o fato de que houve participação de comunidades ocupantes. Mesmo que se considere as participações destes em terrenos, tal fato só se deu pois o GOI atuou diretamente para promover a saída das pessoas da comunidade que lá estavam nunca foram os proprietários das terras ocupantes, e transferiram seus direitos de uso ao IMIP de forma concertada com a anuência deste, conforme artigo 43 da Lei Agrária de 1960, e ainda com a participação conforme elementos analisados na seção 4.2.3.8.1. Lembra-se, ainda, que esta é a integralidade da documentação acerca das terras, um dos motivos pelo qual não estão disponíveis nos autos.

840. Assim, analisando-se os elementos pontuados no item 4.2.3.1.3, verifica-se um comando expresso de modo a instruir os fazendeiros/líderes dos vilarejos quanto ao uso das terras, já que de forma diversa não teriam como sobreviver. Tais transferências são produto da legislação exarada pelo GOI, mas mais uma peça no quebra-cabeça promovidos pelo GOI. Assim, também por este prisma, se verifica uma contribuição do ASMC.

4.2.3.9.4 Especificidade

841. De acordo com os elementos disponíveis nos autos, o programa prevê a criação de zonas de interesse industrial, desenhado para o IMIP, projeto conhecido como "projeto estratégico nacional", o que impõe várias vantagens, no contexto de fomentar surgimento de uma indústria de aço inoxidável, como exposto nos comentários.

estabeleceria que:

Article 62

(1) The Government and Regional Governments ensure the provision of industrial infrastructure.

(2) The provision of the Industrial infrastructure is conducted both inside and outside Industrial allocated zones.

(3) The Industrial infrastructure as referred to in section (2) covers at least:

845. a. Industrial land in the form of the Industrial Estate and/or Industrial Zone;

846. Já o Government Regulation N° 14 de 2015, que trata do Plano de Desenvolvimento de 2015 a 2019, período de maior desenvolvimento do IMIP de níquel, até a produção do produto objeto da investigação, no item que trata do "Industrial Facilities and Infrastructure", determinaria que:

V. DEVELOPMENT OF INDUSTRIAL FACILITIES AND INFRASTRUCTURE

The development of a competitive national industry needs to be supported by industrial facilities and infrastructure including:

B. Industrial Infrastructure

The infrastructure required by industry, both inside and/or outside the industrial area, includes energy and industrial area land.

1. Energy

847. Em se tratando da determinação do Governo da Indonésia de que a produção jusante do minério de níquel, até a produção de aços inoxidáveis, considerada como IMIP, o Governo da Indonésia teria fornecido a terra para o estabelecimento do IMIP sem a exigência dos requisitos legais formais.

848. Ademais, como constaria no Relatório da visita realizada no GOI, ficou claro, portanto, que a afirmação apresentada pelo Governo da Indonésia de que o IMIP teria ocorrido de partes privadas, sem a sua interferência, não teria sido de mera alegação.

849. O GOI, em sua manifestação acerca do uso dos fatos disponíveis, presented the sample documents of land sales and purchase and a land certificate which are adequate to prove that IMIP procured the land under direct transaction without GOI's intervention. As such, the GOI believes that it should be sufficient to assess

853. Segundo o GOI, o RIPIN não tem o elemento de comando de transferência de direitos fundiários, etc.), mas apenas o desenvolvimento de industrial. Além disso, o Regulamento Regional da Regência de Morowali Número 1000/2012, plano espacial da Regência de Morowali de 2012 a 2032 visa realizar desenvolvimento em regiões e comunidades, governo, sociedade e/ou o setor empresarial. Não há o regulamento regional que estipule disposições relativas à terra, muito menos que permita a comunidade ou os residentes em Morowali a vender suas terras para o IMIP abaixo.

854. O GOI também pontuou que o Regulamento Regional de Morowali Número 1000/2012, utilizado como base para alegações de subsídios sobre terrenos, visa direcionar o desenvolvimento produtivo, controlado, equitativo e sustentável para melhorar o bem-estar da comunidade, regularia a compra e venda de terras, direitos fundiários e transferência de direitos.

855. Deste modo, segundo o GOI, a SDCOM não teria conseguido obter a transparência, contribuição financeira e especificidade na provisão de Terrenos, devendo ser tomada alguma medida.

856. A PT IRNC, em sua manifestação final, ponderou que a autoridade da União Europeia considerou o custo do terreno em si, pois o benchmark utilizado pela autoridade da União Europeia compreende o valor do HGB devido pela Jindal. Desta forma, o benchmark da União Europeia, não compreende somente os "development costs", mas o custo do terreno, e não somente o montante da compensação paga pelo IMIP. Assim, reiterou pela União Europeia.

857. A peticionária em sua manifestação final reiterou as conclusões da Comissão, ainda que, ao pleitear a PT IRNC pelo uso da informação da União Europeia, tenha alegado o programa, e que a defesa do percentual aplicado pela outra autoridade derivada dos fatos constantes nos autos do processo levam a cálculo de montante superior a 10%.

858. A PT IRNC solicitou, em 13 de outubro de 2022, acesso à memória da Comissão de fornecimento de terrenos por remuneração inferior à adequada.

4.2.3.12 Comentários da SDCOM

859. Esta SDCOM pontua que, muito embora a determinação da União Europeia não possa ser utilizada como fatos disponíveis (como de fato o foi em outros pontos desta decisão), a Comissão considerou que, com relação ao cálculo, há informação mais adequada disponível. A União Europeia expressou que: "the

Commission considered only the development costs incurred by IMIP

detalhadamente construído e explicado, constitui melhor informação disponível para o programa do que o cálculo da União Europeia. O cálculo da SDCOM utiliza preços da terra elementos concretos do local considerado - NJOP de morowali reais do IMIP - a SDCOM concluiu serem estas informações mais precisas do que os autos. Reitera-se também que não houve qualquer manifestação das partes sobre qualquer mácula no cálculo proposto que não a crítica genérica, mesmo em seu muito embora a documentação esteja disponível nos autos para comentários desde julho de 2022.

862. Sobre os comentários do GOI, a SDCOM ressalta que, como dito, foram apresentadas amostras da documentação, e que mesmo tais documentos transações ocorreram sob a supervisão do GOI, que estava presente nos atos. Sobre os preços NJOP, a explicação do representante foi considerada na decisão, que não foram apresentados os estudos ou qualquer documentação de suporte apresentados. Quanto à documentação, o roteiro da visita deixava claro que se tratava de originais dos documentos. Ressalta-se, entretanto, que tal ponto foi apenas uma das sérias lacunas nas informações prestadas sobre o programa. Com relação aos preços NJOP não ser informação adequada de preço, a SDCOM reitera que utilizou os preços NJOP, mesmo sabendo que este não é absolutamente a informação 100% verdadeira. As declarações de representantes do próprio GOI a indicar que o NJOP é superior ao preço real, no exemplo dado pelo representante. Neste contexto, mesmo sabendo que superestimou o preço pago pela terra (o que diminui o montante apurado), é incoerente que development costs ou demais informações dos autos, como o preço informado, a SDCOM ainda tomou o cuidado de encontrar NJOP o mais preciso possível, tendo em vista Morowali.

863. Sobre a participação do GOI nas transações, o regulamento espaldado para a destinação da terra, teve participação primordial na decisão de venda da terra. A participação do GOI foi muito além de meros serviços administrativos, como mencionado no comentário sobre o status da terra como tanah negara. Sobre o RIPIN, o fato de alegado pelo GOI expressamente disposições sobre direitos fundiários ou não fundiários não o exclui do arcabouço legal considerado no programa, já que a legislação foi alterada justamente no intuito de fomentar o aumento do valor agregado advindo da terra.

864. Sobre o comentário da peticionária, o fato de a PT IRNC ter um valor percentual calculado pela União Europeia não, é por si só, elemento apto a justificar uma compensatória ou ainda indicaria que o cálculo seria superior. Pelo contrário, a comprovação da existência dos elementos conforme legislação pátria torna o cálculo pormenorizado, o que foi feito nesta investigação.

participar do programa.

867. Concluiu-se ainda que o subsídio em questão é específico de parágrafo 3º, do Decreto nº 1.751/1995, por ser limitado, conforme interpretação no contexto do RIPIN 2015-2035, a empresas pertencentes a setores industriais de acordo com as políticas industriais da Indonésia, entre os quais se incluem a indústria de madeira. Ademais, as operações de concessão de terrenos aqui analisados são específicas nos termos do art. 7º do Decreto nº 1.751/1995 porque limitados a empresas localizadas geograficamente situadas no interior da jurisdição da autoridade outorgante. Dessa forma, trata-se de subsídio específico, nos termos dos arts. 6º e 7º do Regulamento Brasileiro, sujeito a medidas compensatórias.

4.2.3.12.2 Cálculo

868. Com relação ao cálculo, considerando a ausência de resposta dos produtores/exportadores e as lacunas na resposta do governo, foram utilizados os autos, qual seja, os cálculos trazidos pela peticionária ajustados pela SDCOM.

869. Para o cálculo neste programa, são necessários três elementos: i) o preço de mercado da terra (benchmark); e ii) a área afetada.

870. Com relação ao preço pago pelo IMIP em suas terras, salienta-se que, como já comentado, o governo não tenha recebido qualquer remuneração pela terra. Assim, se que o benefício deve ser apurado com relação ao preço pago pelo IMIP a terceiros e não ao GOI, qual seja, os fazendeiros instruídos pelo GOI.

871. Neste contexto, foram utilizadas as informações disponíveis nos autos, as amostras de contratos fornecidas e ainda também uma fonte pública que mostra mais valores NJOP de Morowali. A SDCOM considerou tal informação para o cálculo do preço da terra do IMIP apresentado pela peticionária com base em fonte pública. A fonte utilizada reflete transações reais envolvendo a terra do IMIP.

872. Ressalta-se que tal cálculo é extremamente conservador, haja vista que os contratos fornecidos utilizados no cálculo não envolvem a aquisição original feita pelos produtores originais da terra, mas sim contratos de aquisição entre as empresas do IMIP, que pagam preços mais elevados (os preços por m² referentes aos contratos entre empresas do IMIP são [CONFIDENCIAL] vezes mais caros do que os entre o IMIP e os fazendeiros); ii) a SDCOM se refere a preços para uso não industrial, mais caros do que os de uso agrícola. Os NJOP são utilizados pelo GOI para tributos relacionados à terra, sendo razoável considerar o maior valor possível daquela região, para devida arrecadação tributária. Inclusive, o GOI - governador de South Sulawesi) já deu declaração de que o NJOP é tão alto quanto o preço real, no exemplo dado) que até inibe investimentos:

875. Acerca da área ocupada pela terra, com base no mapa do IMIP relatório IMIP 2017, foi calculada a área ocupada por cada elemento fabril e cada

<<IMAGEM 8 AQUI>>

876. Assim, foi repassado ao produto final investigado o montante a elementos fabris, considerando o montante de subsídios por m² calculado, pass-through considerada adequada pela SDCOM, conforme consta de de Aperam nos autos do processo em 08 de setembro de 2022. Tal valor foi duração de um HGB na indonésia, alcançando-se o montante de subsídios d que, muito embora tenha sido utilizado benchmark da PT Jindal, considerando empresa, não se pode descartar que outras terras detidas pela empresa tamb do programa, motivo pelo qual também a ela se aplica o cálculo aplicado.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	28,63	1,40

Fonte: Melhor informação disponível - manifestação da petição pesquisas da SDCOM.

Elaboração: SDCOM

4.2.4 Programa 5 - Programas de sustentação de renda ou de preços

877. Conforme exposto no parecer de início da investigação, a SD interessadas a fornecerem maiores informações de forma a esclarecer o enq financeira dos programas relacionados ao minério de níquel, carvão e coque e inoxidável como programas de fornecimento de matérias-primas por remune nos termos da alínea c, do inciso II, do art. 4º do Decreto nº 1.751, de 1995, ou co e preços, nos termos do inciso I, do art. 4º do mesmo Decreto.

878. Considerando o que consta nos autos, esta SDCOM conclui enquadram na hipótese de fornecimento de matérias primas por remuneração i

879. Ressalta-se que a peticionária, em sua manifestação de 25 de j setembro de 2022 alegou diversas contribuições financeiras que supostamen tal programa, em um alegado montante total de subsídio acionável de 140,5 posterior, de 08 de setembro de 2022, a peticionária reclassificou tais programa de capital", o que também foi considerado pela SDCOM como intempestivo, perfunctória das alegadas contribuições financeiras evidenciou se tratar de nov

4.2.5 Programa 6 - Empréstimos preferenciais

4.2.5.1 Fatos apurados na investigação

883. Com relação aos empréstimos preferenciais, restou com a investigação o apoio aos produtores de aço inoxidável por parte dos bancos estatais.

884. Um dos bancos envolvidos neste programa é o Eximbank Indonesia (Lembaga Ekspor Indonesia - LPEI), que é um banco de política governamental criado para fornecer financiamento nacional à exportação na forma de financiamento, seguro, consulta e também garantia de empréstimos. De acordo com o LPEI, o objetivo do financiamento nacional à exportação é acelerar o crescimento do comércio exterior, aumentar a competitividade dos agentes empresariais e apoiar as políticas governamentais de incentivo ao programa nacional de exportação, conforme se verifica na apresentação no site eletrônico (<https://www.indonesiaeximbank.go.id/general-information>).

885. Conforme lista em seu site, o Eximbank é totalmente propriedade do Estado da Indonésia, descrevendo-se como uma "instituição financeira sob o Governo da Indonésia, portanto, sob o controle direto do GOI. Como seu único acionista, o GOI possui total autonomia para nomear o conselho de supervisores e garantir a direção do Eximbank LPEI.

886. O já citado Trade Policy Review da Indonésia, documento feito pelo OMC, assim discorre sobre o funcionamento do Eximbank:

The entirely state-owned Indonesia Eximbank (Lembaga Pembiayaan Ekspor Indonesia) supervised by the MoF, remains the sole institution to support national export growth by adding value and competitiveness of export commodities by providing financing, insurance, overseas insurance and consultation services for exporters, as well as contributing to the growth of export-orientated SMEs (Table 3.9). It provides finance for transactions or projects supported by banks, but have the prospects to increase exports; and assists in overcoming the constraints of the banks or financial institutions in providing financing for exporters that have creditworthy products that are important for the country's economic development.

887. Além de a política implementada pelo LPEI ser contingente de crédito para as exportações, a atuação do Eximbank da Indonésia é centrada em setores estratégicos pelo governo daquele país. Tal fato está explícito, por exemplo, no site do banco, em que são listados setores de foco do banco, que incluem a mineração e a indústria de bens de consumo.

Indonesia Eximbank's sharia financing strategy in 2020 will focus on supporting indirect tier 1 exporters, particularly in the automotive, food & beverage, chemical and textile products industries. In addition to the industrial sector, sharia financing will also be provided to support the development of the agricultural sector.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

889. Ademais, os relatórios anuais do banco de 2018 (em sua página 526) e 2019 (página 554) um montante de cerca de US\$ 1,5 bilhão em financiamento, havendo, portanto, evidências de que houve contribuição para a mineração, tanto por meio de empréstimos diretos, ou pela participação do Eximbank em empréstimos de outros bancos.

890. A peticionária acrescentou, ainda, que no relatório anual de 2019 o banco fornece empréstimos preferenciais, incluindo empréstimos com taxas de 0%, tanto em rupia quanto em moedas estrangeiras. Os dados do Banco Mundial sobre empréstimos comerciais na Indonésia entre 2009 e 2019 não foram inferiores a 14,5% em 2009.

891. Foram também confirmados no decurso da investigação o valor de US\$ 160.000.000 para projeto de expansão da produção de ferroníquel da Antam (Financeiras da Antam de 2018) e a implementação de fundição da PT CORONA localizada em Morowali, Centro de Sulawesi.

892. Com relação aos bancos com branches estabelecidos na Indonésia estrangeira, durante a visita in loco, esta SDCOM solicitou esclarecimentos sobre a participação, tendo o GOI informado que, de acordo com a OJK (the Financial Regulation nº 12/2021, não há discriminação entre um banco comercial da Indonésia e um banco estrangeiro, ambos seguiriam os mesmos requisitos para conseguir a licença. Entretanto, em detalhamento acerca de tal afirmação, o GOI não logrou atender ao solicitado, com exceção de detalhes.

156. Sobre os pontos b) e c), Perguntados sobre o regulamento de funcionamento de bancos estrangeiros na Indonésia e o procedimento para abrir um branch na Indonésia, o GOI respondeu que, de acordo com a OJK (the Financial Authority) Regulation nº 12/2021, não há discriminação entre um banco comercial da Indonésia e um banco estrangeiro, ambos seguem os mesmos requisitos para conseguir a licença.

157. Os representantes da autoridade reguladora financeira, OJK, apresentaram por escrito a resposta aos questionamentos da equipe da SDCOM sobre o licenciamento de um banco estrangeiro e doméstico e também a apresentação de tratamento de entidades financeiras estrangeiras em comparação às nacionais. SDCOM anuiu.

158. Questionados sobre o Eximbank, os representantes da OJK explicaram que é classificado em banco comercial propriamente dito, sendo considerado um banco financeiro especial que tem por objetivo oferecer crédito para exportadores. A OJK também apresentou ao OJK as diferenças legislativas e qualquer diferença de tratamento.

quaisquer características acerca dos empréstimos.

896. Assim, faz-se necessário o recurso aos fatos disponíveis no processo de abertura de crédito no Decreto nº 1.751, de 1995. Neste âmbito, os fatos disponíveis no processo de empréstimos bancários aos produtores/exportadores Indonésios, bem como a abertura de tais empréstimos ocorressem, conforme relatório de verificação:

81. Foi ainda perguntado se foram tratadas nas discussões entre o GOI e a IRNC o capital que vem da China, por se tratar de montantes elevados. O GOI informou que geralmente se discutem questões pendentes entre os países, por exemplo, no âmbito da concessão de permissão ao banco da Indonésia operar na China, e a China solicitou à IRNC a abertura de branches de mais dois bancos chineses na Indonésia. O tema principal nas últimas reuniões foi sobre vacinas, tendo sido resolvida essa questão de abertura dos bancos nos respectivos países. (Grifo nosso)

897. O GOI e a IRNC pontuam que houve empréstimo do Exibank ao IIRNC.

898. E ainda, a autoridade da união europeia, concluiu existir programas de empréstimo com relação aos empréstimos preferenciais com participação de branches estabelecidas no exterior.

899. Assim, tem-se, de acordo com os elementos nos autos, que houve programas de empréstimo concedidos aos produtores/exportadores de aço inoxidável e seleniados, e a IRNC concedem empréstimos aos produtores/exportadores de aço inoxidável e seleniados, e a IRNC concedem empréstimos às empresas de mineração e fundidores que produzem matérias-primas essenciais para a indústria de aço inoxidável.

4.2.5.2 Elementos de fato ou de direito (Base legal/documental)

900. O programa se baseia nas políticas industriais da Indonésia, conforme o documento, dentre os quais se destaca o RIPIN e o RPJMN. Ademais, também se baseia na Lei nº 2/2009, e os sobre acordos e MoUs assinados no âmbito da criação do programa. O Government Regulation No. 142 of 2015, ao prescrever os instrumentos de abertura de crédito Industrial Estates. Ressalta-se, que a falta de colaboração do GOI no âmbito de abertura de crédito da OJK (The Financial Services Authority) impediu esta autoridade de obter todos os elementos de direito do programa, motivo pelo qual foram aplicados os fatos disponíveis.

4.2.5.3 Especificidade

901. Tendo em conta que o Governo da Indonésia não forneceu as informações necessárias para avaliar a elegibilidade ao programa, para fins deste documento foram utilizados os fatos disponíveis no Decreto nº 1.751, de 1995, os fatos disponíveis. Neste contexto, considerando as políticas industriais da Indonésia, tem-se que, devido ao privilégio ao setor de aço inoxidável, conforme apontado neste documento, considerou-se que haver especificidade.

a comprehensive manner the process by which loans were requested, granted industry". (grifo nosso).

4.2.5.5 Das manifestações prévias à Nota Técnica sobre os empréstimos

905. A Aperam, em manifestação de 9 de setembro de 2022, alegou Indonésia de conceder empréstimos preferenciais e incentivos diversos às empresas de níquel até a produção de aços inoxidáveis.

906. Ainda assim, vale destacar novamente que a Law Number 3 of 2022 estabelece, em seu artigo 44, que:

Provision of Sources of Financing

Article 44

The Government shall facilitate the provision of competitive financing for development.

The financing as referred to in section (1) may derive from the Government, enterprises and/or individuals.

Financing which is derived from the Government and/or the Regional Government in section (2) may only be granted to the Industrial Company in the form of state regionally-owned enterprises.

The financing as referred to in section (3) shall be granted in the form of:

- a. loan;
- b. grant; and/or
- c. capital participation.

Article 45

(1) The Government may allocate financing and/or grant financing for the Industrial Companies.

(2) The allocation of financing and/or the granting of facilities as referred to in (1) shall be conducted in the form of:

- a. capital participation;
- b. granting of loan;
- c. relief in interest rates;
- d. reduction in purchase prices of machineries and equipment; and/or

fático, pois a Aperam adota a presunção absurda de que todos os investimentos relacionados com capital financiado seriam oriundos de recursos obtidos com o IMIP junto ao Indonesia Eximbank".

910. Por fim, a PT IRNC pediu para que fosse utilizado como melhor aplicado pela União Europeia em caso similar, no montante de 1,18%.

911. O GOI, em sua manifestação acerca do uso dos fatos disponíveis, afirmou que o GOI-ADD-20 já fornece as informações requeridas acerca da operação em questão. Acrescentou que, em resposta ao item 10.f do ofício de BIA, a resposta aos pedidos de informações complementares provê informação sobre o trabalho da equipe de Pesquisa e Desenvolvimento da PT Negeri, e que tal equipe não tem como competência empréstimos privados.

4.2.5.6 Das manifestações posteriores à Nota Técnica sobre o programa

912. O GOI afirmou, em sua manifestação final, que teria sido compreendido in loco, inclusive no sistema, que nenhum dos produtores se pleiteou ou recebeu benefício do Eximbank Indonesia, não havendo benefício.

913. Além disso, a SDCOM não teria apresentado informações na análise do repasse do benefício do IMIP aos produtores de aço inoxidável (ver parágrafo 718 da Nota Técnica, que citava que as operações do Eximbank Indonesia são realizadas em setores específicos considerados estratégicos pelo governo daquele país, e, neste ponto, o GOI afirmou que as operações do Eximbank da Indonésia não se concentram em setores específicos, mas quase todos os setores incluem as operações do Eximbank Indonesia com especificidade no programa. Complementou que apesar de os relatórios anuais do Banco do Brasil apontarem o setor de mineração é o segundo setor mais relevante para o Banco, a SDCOM não forneceu quaisquer detalhes sobre os beneficiários dos empréstimos. Assim, o GOI afirmou que a análise seria suficiente para determinar a existência de aporte financeiro do IMIP aos produtores investigados.

914. Finalizou o GOI afirmando que, muito embora tenha sido afirmado anteriormente que o GOI negou acesso completo ao sistema da OJK, o Eximbank teria fornecido acesso. Assim, como a PT Indonesia Ruipu Nickel and Chrome and PT Jindal Stainless solicitaram serviços financeiros do Eximbank, a investigação deve ser terminada.

915. A peticionária, em sua manifestação final, destacou que "foram realizadas manifestações datadas de 25 de julho e de 8 de setembro de 2022, todas as quais confirmaram os cálculos relativamente aos empréstimos preferenciais concedidos no período em questão, com respeito aos benchmarks, de forma que os valores ali apurados, equivalentes

bem como o BKPM também falhou ao não fornecer informações cruciais, conforme in loco:

150. Ainda sobre a lei em questão, foi mostrado a alínea "c" do artigo que deve elaborar relatório trimestral a respeito das atividades realizadas e submetê-lo ("Report on investment activities"). O relatório é obrigatório e o não envio por parte da instância, cassação da licença de funcionamento da empresa. Tal disposição afeta tanto investidores nacionais quanto estrangeiros.

151. Foi perguntado aos representantes do governo se o capital estrangeiro passou pelo mesmo procedimento descrito acima, tendo sido respondido afirmativamente. A SDCOM solicitou ao BKPM então cópia dos relatórios da PT IMIP, PT IRNC (Ruipeng) para os anos de 2016, 2017 e 2020. O GOI informou que não tinha os relatórios disponíveis. Os representantes da BKPM, presentes naquele momento na reunião de visita in loco, informaram que o setor responsável pelos relatórios não estava presente.

(...)

158. Questionados sobre o Eximbank, os representantes da OJK explicaram que o Eximbank é classificado em banco comercial propriamente dito, sendo considerado uma instituição financeira especial que tem por objetivo oferecer crédito para exportadores. A OJK também informou ao GOI as diferenças legislativas e qualquer diferença de tratamento entre o Eximbank com relação às demais entidades financeiras, e os representantes do GOI apresentaram por escrito à SDCOM até o final da verificação. Foi citado que há diferenças entre o Eximbank, e ainda que existem diferenças operacionais também.

159. Até o final da verificação, tais explicações por escrito sobre as diferenças foram recebidas.

918. Deste modo, restou impedida a verificação se, de fato, não há discriminação contra o Eximbank Indonésia por meio de outros bancos. Ademais, mesmo que a cooperação fosse plena, isso teria permitido à SDCOM apenas verificação parcial dos fatos, pois uma verificação adequada somente seria possível com uma verificação nas empresas investigadas. Uma verificação possível ante a ausência de respostas ao questionário do produtor/exportador não é possível. A verificação no governo não tem o condão de verificar por completo os fatos. A assistência no âmbito dos programas, haja visto que, em geral, qualquer verificação é realizada tão somente com base na visita no governo, podendo haver montantes que só seriam descobertos em uma verificação na empresa recebedora da assistência.

919. Isto posto, a SDCOM decidiu por utilizar como melhor informação disponível a União Europeia, na linha do sugerido pela IRNC, conforme descrito em seção 9.1.2. Foi fornecida integralmente a informação da União Europeia que não foi realizada qualquer

5.4. Aponte os montantes envolvidos nas operações a que alude o parágrafo 5.3 e

5.5. Ressalta-se que as questões dos itens 5.1 a 5.4 referem-se ao conjunto de tratativas do projeto que levou à construção do IMIP.

921. Contudo, nenhum dos pontos acima foi respondido pelo GOI.

922. Salienta-se, por fim, que não faz sentido se falar em empréstimo. Conforme informado pelo GOI, em especial pelo BKPM e OJK, todo o financiamento na Indonésia tem que passar por banco indonésio, ocasião em que passa por um relatório da visita in loco:

Perguntados sobre o fluxo de capital, este sai do país estrangeiro, da Indonésia e vai para um projeto específico, informou ainda que o sistema financeiro é necessário para facilitar o investimento.

923. Sobre a especificidade, não apenas se trata de subsídio presumido, mas vinculado às exportações (conforme missão do Eximbank), bem como, ante a falta de âmbito do uso dos fatos disponíveis, o fato de o setor de mineração ser o 2º setor com ser fato notório que o banco provê suporte à mineração e fundição de níquel. Na investigação da União europeia, concluiu a SDCOM pela existência de subsídios. Não pode o GOI alegar que a SDCOM nada aduziu sobre os beneficiários, pois forneceu as informações requeridas - ninguém pode se beneficiar de sua própria negligência.

924. Com relação aos comentários da peticionária, a SDCOM resta a ser analisado. O programa, foi utilizada na Nota Técnica a informação mais adequada possível. Na Determinação Final, a conclusão já apresentada, não tendo a peticionária apresentado nada apto a alterá-la.

4.2.5.8 Conclusão

925. Salienta-se que a recusa do GOI em fornecer todas as informações sobre o programa, bem como a ausência da resposta das empresas investigadas, a falta de investigação da autoridade, fazendo-se uso dos fatos disponíveis nos autos, a título de exemplo, o Decreto nº 1.751, de 1995.

926. Concluiu-se, neste contexto, que o programa "Empréstimos Finais" não representa contribuição financeira por parte do Governo da Indonésia - nos termos das alíneas do art. 4º do Decreto nº 1.751, de 1995, uma vez que a prática implica transferência de potenciais transferências de fundos ou obrigações por meio do Eximbank, pois as empresas investigadas o acesso a empréstimos com condições preferenciais.

fatos disponíveis nos autos.

931. Neste contexto, considerando que restou provada a ex preferenciais, restando a lacuna acerca dos montantes envolvidos, após disponíveis nos autos, utilizou-se como melhor informação disponível o cálculo Europeia no já citado caso, em que foi calculado o montante de 1,84% neste processo, convencida de que, para este específico programa, o cálculo proposto pela preenche as lacunas presentes.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as Empresas	37,60	1,84%

Fonte: Melhor informação disponível - Decisão da autoridade da União

Elaboração: SDCOM

4.2.6 Programa 7 - Bonded zones

4.2.6.1 Fatos apurados sobre o programa

932. Segundo apurado pela SDCOM no decorrer do processo, em bonded zones são áreas controladas pela alfândega da Indonésia, na qual as empresas têm a finalidade de produção e vender o produto processado, seja para a Indonésia ou para exportação. Em resumo, funcionariam como um tipo de zona de processamento - o material é processado e vendido (para exportação ou internamente).

933. Sobre o funcionamento do programa, conforme Artigo 20 da M, o programa bonded zone é um arcabouço legal que dá acesso aos outros países sem pagar impostos, o que no Regulamento se conhece como PDRI (tax in the framework of the bonded zone). Se a empresa tem a licença de bonded zone, esta tem incentivo por meio da sua redução de direitos de importação, de IVA (10%) nas importações e de income tax nas importações. O sistema de tax nas importações, gerenciado pelo customs é diferente do corporate income tax no programa 8, pois funciona como um crédito que entra no cálculo do imposto. Os incentivos fiscais no âmbito das bonded zones ocorrem desde a construção o programa, pois o IVA que seria recolhido, o que também ocorre uma vez que ela passa a operar no programa.

934. Os artigos 3.º, 4.º e 16.º estabelecem os seguintes requisitos para a criação de bonded zones na indonésia; (2) ser estabelecido em uma zona industrial alfandegada na Indonésia; (3) ser utilizada para produção atividades na zona alfandegada ou ser usina na zona alfandegada; (4) ser utilizada para produção de bens finais ou produtos para posterior processamento; (5) exportar os bens finais produzidos para o exterior. Desta forma, se o bem é exportado ou resta permanentemente dentro da bonded zone, não é devido imposto.

aumenta a liquidez das empresas, que passavam a contar com recursos recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme 1.751/95.

4.2.6.1.3 Especificidade

939. Tendo em vista que os elementos de prova apresentados apontam para a concessão da contribuição financeira a empresas localizadas dentro de uma região interior da jurisdição da autoridade outorgante, consoante art. 7º do Decreto nº 1.751/95 disponíveis no processo indicam ainda, consoante a política industrial da Indonésia, pelo governo da Indonésia, um direcionamento ao setor de aço inoxidável e outros termos do art. 6º, § 3º, do Regulamento Brasileiro, configurando-se também o fato, e, portanto, sujeito à aplicação de medidas compensatórias. Há, neste contexto, a decisão da autoridade europeia, que indica que o GOI exerce discricionariedade em relação à bonded zone, mesmo para as empresas que estão teoricamente dentro da zona, ainda evidências de que o programa é vinculado às exportações, sendo presumido

4.2.6.1.4 Manifestações prévias à Nota Técnica sobre o programa

940. O GOI afirmou em sua resposta ao questionário que "existe uma zona aduana" e que "como a Zona Alfandegada é território alfandegário neutro, onde a importação não podem ser arrecadados, este programa não constitui uma vantagem para as empresas que operam como bonded zone".

941. Também afirmou o GOI que o programa aplicar-se-ia a todas as regiões sem limitação, e que, como tal, este programa não seria específico.

942. Instado no pedido de informações complementares a explicar os motivos pelos quais o GOI acredita que o programa não confere benefícios, o GOI respondeu:

At the outset, goods entering a Bonded Zone are not yet considered taxable. Please see Para Article 2 MOF Regulation No 147 of 2011 concerning Bonded Zones defined as a custom are and is completely under the supervision of the Directorate of Excise. By this understanding, Customs cannot collect import duty, income tax, luxury tax, and excise upon the goods as long as they are located inside the Bonded Zone, they are not subject to taxes and customs duties upon their exit from the Zone, hence there is no revenue forgone in the sense of the difference between the value of the goods and the income tax and import duty paid on imports.

Indonesian Customs Authority also implements a very strict control system in the Bonded Zone area through the presence of Customs office in each zone and an integrated electronic system fully operated. This allows full control of Customs

Questionário enviado pela SDCOM, o Governo da Indonésia teria alterado sua informação. "PT Sulawesi Mining Investment was granted a Bonded Zone status on 26 September 2019. PT Guang Ching Nickel and Stainless Steel Alloy was granted a Bonded Zone status on 26 September 2019. PT PT Indonesia Tsinghan Stainless Steel was granted a Bonded Zone status on 27 September 2019. PT PT Indonesia Tsinghan Steel Indonesia was granted a Bonded Zone status on 27 September 2019." Além da IRNC, as quatro empresas mencionadas obtiveram, praticamente de fato, o status de bonded zone.

946. Durante a visita de verificação realizada no Governo da Indonésia, o representante do GOI apresentou o respectivo relatório, "[f]oi informado que a PT IRNC e suas relacionadas PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia e PT Indonesia Stainless Steel Industry estão dentro de uma bonded zone." Entretanto, instado a fornecer as licenças de bonded zones de tais empresas, "o GOI teria informado que não possuía a licença da PT IRNC (Ruipu), e não das demais, que não eram investigadas."

947. Mesmo no que diria respeito apenas aos dados da IRNC, com a visita de verificação no Governo da Indonésia, este apenas teria exibido à equipe uma tabela com montantes que se refeririam à PT IRNC, porém, relativa apenas a dois anos, e não seria possível a comprovação dos dados de tal tabela.

948. A peticionária concluiu que restaria claro, portanto, que as informações e documentos solicitados pela SDCOM, simplesmente demonstram a falta de colaboração por parte do Governo da Indonésia nessa investigação, prejudicando a apuração dos fatos pela autoridade investigadora.

4.2.6.1.5 Manifestações posteriores à Nota Técnica sobre o programa de bonded zone

949. O GOI afirmou em sua manifestação final que mercadorias que não são consideradas totalmente importadas, assim, não podem ser isentas de imposto de importação, imposto de renda, imposto sobre valor agregado (IVA), 'luxury tax' e outros tributos internacionalmente reconhecidas e são consistentes com as regras multilaterais estabelecidas estritamente pela alfândega, como visto na visita in loco. Sendo um território sob jurisdição financeira. Ademais, o programa de "bonded zone" se aplica a empresas de todo o mundo, havendo especificidade.

950. A peticionária, em sua manifestação final, reafirmou as conclusões sobre o programa.

4.2.6.1.6 Comentários da SDCOM sobre as manifestações

953. A SDCOM concluiu que o programa bonded zones trata-se de um subsídio, já que envolve uma contribuição financeira por governo ou órgão público, alínea "b", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que deixou de pagar as contribuições aduaneiras e de impostos e taxas públicas devidas.

954. Com relação à especificidade, tendo em vista a ausência de respostas no questionário nos itens pertinentes, como apontado acima, e considerando que os dados apresentados até a data considerada neste documento apontam o direcionamento do programa no contexto das políticas que privilegiam os produtores de aço inoxidável, seto estratégico dos planos do governo, tem-se que o programa configura-se como subsídio específico, nos termos do art. 6º, § 3º, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas antidumping. Ainda em relação à especificidade regional, a teor do art. 7º do Decreto nº 1.751, de 1995, o programa é vinculado às exportações, sendo presumidamente específico.

4.2.6.1.8 Cálculo

955. Utilizou-se como fatos disponíveis para tal programa a decisão da Comissão Europeia, cuja investigação versa sobre produtos e produtores equivalentes. Na investigação a autoridade apurou o montante de 1,18% para o programa bonded zones.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as Empresas	24,11	1,18%

Fonte: Melhor informação disponível - Decisão da autoridade da União Europeia.

Elaboração: SDCOM

4.2.7 Programa 8 - Incentivos fiscais diretos

956. Com relação aos programas fiscais, pontua-se que o GOI, na ausência de qualquer documentação acerca da habilitação, avaliação da concessão e dos montantes envolvidos nos programas ou ainda acerca de qualquer monitoramento, trata de informação fiscal confidencial, e que deveria ser solicitada às empresas interessadas.

4.2.7.1 Programa 8.1 - Redução do imposto de renda para grandes investidores

4.2.7.1.1 Fatos apurados acerca do programa

957. O programa foi estabelecido em 15 de agosto de 2011, renovado pela primeira vez em 14 de agosto de 2015 pela Portaria do Minister of Finance - MoF - nº 10/2015, modificado pela segunda vez em 27 de junho, 2016 pelo Regulamento do MoF nº 10/2016, pela segunda vez em 4 de abril de 2018 pelo Regulamento do MoF nº 35/2018, e pela terceira vez em 27 de novembro de 2018 pelo Regulamento do MoF nº 150/2018.

De 15 trilhões a 30 trilhões	15 anos
Acima de 30 trilhões	20 anos

960. Além disso, para os dois anos seguintes ao término das reduções citadas, o Regulamento estabelece uma redução de 50% no CIT para os investimentos acima de 500 bilhões de rúpias e de 25% para os investimentos entre 100 e 500 bilhões de rúpias. A tradução submetida pelo GOI:

Article 2

(1) Corporate Taxpayers making new investments in Pioneer Industries shall be entitled to an Income Tax Deduction on income received or gained from their Main Business Activities.

(2) The new capital investment as referred to in paragraph (1) shall be at least Rp100.000.000.000,00 (one hundred billion rupiah).

(3) Corporate Income Tax deduction as referred to in paragraph (1) shall be:

a. 100% (one hundred percent) of the Corporate Withholding Tax payable for new investments as referred to in paragraph (1) of at least Rp500.000.000.000,00 (five hundred billion rupiah);

b. 50% (fifty percent) of the Corporate Withholding Tax payable for new investments as referred to in paragraph (1) of at least Rp100.000.000.000,00 (one hundred billion rupiah) and less than Rp500.000.000.000,00 (five hundred billion rupiah).

(4) The term of Corporate Income Tax deduction as described in paragraph (3) shall be given based on the following provisions:

a. for five (5) fiscal years for new investment and the planned investment value is at least Rp500.000.000.000,00 (five hundred billion rupiah) and less than Rp1.000.000.000.000,00 (one trillion rupiah);

b. for 7 (seven) fiscal years for new investment with planned investment value at least Rp1.000.000.000.000,00 (one trillion rupiah) and less than Rp5.000.000.000.000,00 (five trillion rupiah);

c. for 10 (ten) fiscal years for new investment with planned investment value at least Rp5.000.000.000.000,00 (five trillion rupiah) and less than Rp15.000.000.000.000,00 (fifteen trillion rupiah);

d. for 15 (fifteen) fiscal years for new investment with planned investment value at least Rp15.000.000.000.000,00 (fifteen trillion) and less than Rp30.000.000.000.000,00 (thirty trillion rupiah);

e. for 20 (twenty) fiscal years for new investment with planned investment value at least Rp30.000.000.000.000,00 (thirty trillion rupiah).

concerning the rejection of Corporate Income Tax deduction;

d. it has an investment plan of at least Rp100.000.000.000.00 (one hundred billion)

e. it meets the provision of debt and capital ratio as referred to in the Finance concerning the determination of the company's debt and capital ratio, after calculating withholding tax.

(2) Pioneer Industry as referred to in paragraph (1) a includes:

a. upstream base metal industry:

1. steel; or

2. non-steel, without or with its integrated derivatives; (¼) (grifo nosso)

962. Em suma, as empresas precisam cumprir cinco condições para receber a isenção:

ser uma Indústria Pioneira;

ser uma empresa estabelecida na Indonésia;

ser um novo investimento, para o qual ainda não foi emitida uma carta de isenção de imposto de renda das empresas;

o valor do investimento deve ser de, pelo menos, Rp 100 bilhões; e

a empresa deve cumprir os requisitos legais da relação dívida/patrimônio líquido.

963. Cabe notar que, embora possam pertencer a grupos internacionais, os produtores de aço inoxidável na Indonésia investigados foram incorporados como entidades jurídicas elegíveis, portanto, à redução do imposto de renda. De acordo com o presente regulamento, o investimento limitado necessário para se beneficiar da redução de impostos, por fim, conforme elementos dos autos tem-se que todos os produtores de aço inoxidável integrados ou não, são elegíveis para este regime de subsídios.

964. Tem-se, ainda, que a solicitação de apoio no âmbito do programa é feita pelo sistema OSS, entidade que então elabora uma carta de recomendação para ser recomendada a concessão ou não. O MoF é o órgão responsável pela condução do programa.

965. O GOI apontou em sua resposta ao questionário que a empresa não participou do programa, e que nenhuma outra empresa de seu grupo teve concedida a isenção. A informação não pode ser comprovada, pois o GOI informou, na visita in loco, não ter sequer qualquer documentação referente à habilitação e uso do programa.

969. São elegíveis as empresas conforme estabelecido pelo Reg. pertencentes aos setores de "pioneer industry" e que realizem um investimento. Deste modo, tem-se configurada a especificidade de direito do programa, nos Decreto nº 1.751/1995, uma vez que o normativo limita o programa a determinadas entre as quais as empresas da cadeia siderúrgica.

4.2.7.1.3 Manifestações prévias à Nota Técnica acerca do programa

970. A PT IRNC, em sua manifestação de 09 de setembro de 2022, única empresa, como alegado pelo GOI, que se beneficiou do Tax Holiday conforme de modo que suas partes relacionadas não foram beneficiadas.

971. Afirma ainda que "os relatórios auditados das demais partes relacionadas apresentam nenhum tax holiday deduzido do imposto de renda, como essa a constatar". Sugere como melhor informação disponível o percentual de 1,65% investigadora da União Europeia, o qual seria, na sua opinião, consistente com prestadas pelo GOI e pela IRNC, já que, na sua opinião, o cálculo trazido dos subsídios recebidos no imposto de renda por suas partes relacionadas sem qual

972. A Aperam, em manifestação de 9 de setembro de 2022, anteriores na petição e suas informações complementares, em especial Government Regulation 18 of 2015, Ministry of Finance Regulation 89 of 2015 e of 2016.

973. Destacou, ainda, que o Ministry of Finance Regulation 35 of 2016 redução de 100% na alíquota do Imposto de Renda das Empresas (CIT) para a um novo investimento de capital de, pelo menos, 500 bilhões de rúpia. Regulamento, entretanto, teria sido substituído pelo Regulamento do Ministério que teria mantido a mesma redução de 100%, porém, apenas a empresas cujo R ao menos, Rp 500 bilhões.

974. Como se verificaria, o mencionado Regulamento estabeleceria 50% na alíquota do Imposto de Renda das Empresas para novos investimentos 500 bilhões.

975. Defendeu que em todos os casos, os subsídios estabelecidos igual ao montante da receita abdicada pelo governo e dos direitos não recolhidos

976. Destacou que a Nickel Mines, em sua parceria com o Grupo redução de 100% do valor do Imposto de Renda, com base no mencionado Re Economia 35/2018, para o projeto Hengjaya Nickel, conforme informado em

4.2.7.1.4 Manifestações posteriores à Nota Técnica acerca do program

980. A PT IRNC, em sua manifestação final, aduziu que "normalmen considerados o "parâmetro" de verificação de informações submetidas pelo ex justamente por serem emitidos por um terceiro independente, os auditores relatórios auditados, via de regra, não possuem força probante de meros indícios. Ao contrário, no "parâmetro" de comparação para as demais informações de aportadas pela empresa investigada". Assim, a PT IRNC comentou que entende força probante maior ao cálculo proposto pela Peticionária, que considera c receberam o benefício do Tax Holiday, em detrimento do que é afirmado pelo apontariam que nem todas as empresas do grupo receberam tais benefícios.

4.2.7.1.5 Dos comentários da SDCOM

981. Nos termos do § 5º do art. 79 do Decreto nº 1.751, de 1995: "ao se levar-se-ão em conta as informações verificáveis que tenham sido apresentad portanto, possam ser utilizadas ainda que não estejam de forma adequada sob aí um requisito imprescindível encontrado no uso de "informações verificáveis".

982. Neste contexto, a apresentação de relatórios auditados não é s requisito e ser possível a utilização no caso, que exige não apenas meros indícios se alega. No presente caso não se trata de informação verificável, já que a questionário por parte da PT IRNC impediu qualquer verificação (lembrando ain fornecer comprovações específicas de cada empresa, alegando confidencial verificação de tal programa, indispensável a verificação dos tax returns das em desta SDCOM.

983. Ademais, não se pode esquecer, como o fez a PT IRNC em sua m relatórios não são públicos, e não estão livremente acessíveis nem para est demais partes interessadas exercerem o contraditório. Ainda que estivessem todo modo seria imprescindível a verificação dos dados neles contidos. C necessária verificação in loco de dados contábeis, bastaria a autoridade ler todas as investigações. Não se pode olvidar, ainda, que já ocorreu em outras inv descoberto incorreções (intencionais ou não) em relatórios auditados. Não proc da PT IRNC.

984. Deste modo, considerando os fatos disponíveis nos autos, a SD legislação aplicável, a melhor informação disponível nos autos é o trazido pela i) a manifestante não apontou diretamente nenhuma mácula no cálculo re

986. Digno de destaque, ainda, é o fato de que a PT IRNC continuou a não apresentar valores de receita e lucro das empresas do grupo Tsingshan (com base nas informações) se como alegado não houve participação de certas empresas do grupo no programa. Há ampla oportunidade de contra-argumentar no sentido da falta de lucro e de prejuízo. Reitera-se ainda que a SDCOM somente buscou os fatos disponíveis ante a total falta de parte dos produtores/exportadores, que não responderam ao questionário, com o Governo da Indonésia, que se negou a fornecer quaisquer dados concretos acerca das empresas, deste e de todos os outros programas.

987. A SDCOM pontuou ainda na Nota Técnica estar surpresa com a omissão dos nomes de suas empresas relacionadas trazida pela PT IRNC em sua manifestação, por ser tal informação de notório conhecimento público, como presente no processo ou na decisão da autoridade da União Europeia. Ao ocultar tais nomes, a SDCOM cria um contraditório das demais partes interessadas, que sequer tinham condição de conhecer as empresas e verificar se procede a informação expressa na manifestação. A falta de transparência determinante para a rejeição da documentação acostada, é elemento que não pode ser ignorado. Ressalta-se que, para os fins de manifestação final, a PT IRNC levantou o sigilo e as outras partes não tenham tido tempo hábil de considerar o levantamento (já que a PT IRNC só foi protocolada no fim do prazo), a própria SDCOM já o tinha levantado antes.

4.2.7.1.6 Conclusão

988. A SDCOM concluiu que o programa de redução/isenção de impostos para grandes investimentos trata-se de incentivo que se configura em subsídio, pois há contribuição financeira por governo ou órgão público, nos termos da alínea "b" do art. 1º do Decreto nº 1.751, de 1995, posto que deixou o GOI de recolher receitas públicas e de pagar impostos.

989. Com relação à especificidade, tendo em vista a ausência de resposta no questionário nos itens pertinentes, como apontado acima, e considerando que os autos apontam expressamente a existência de políticas de modo a privilegiar o setor de aço inoxidável, setor tido como prioritário nos planos do governo, tem-se que o programa também como subsídio específico de direito, nos termos do art. 6º, caput, do Decreto nº 1.751, de 1995, portanto, sujeito à aplicação de medidas compensatórias.

4.2.7.1.7 Cálculo

990. O cálculo do benefício levou em consideração os fatos disponíveis no processo do Decreto nº 1.751, de 1995.

4.2.7.2 Programa 8.2 - Isenção de direitos de importação

4.2.7.2.1 Fatos apurados sobre o programa

994. Nos termos do Regulamento nº 176/2009 do MoF, alterado 76/2012 e 188/2015, as empresas envolvidas em indústrias produtoras de bens são isentas de direitos de importação sobre máquinas, bens e materiais.

995. Esta isenção é normalmente concedida por um período máximo de 5 anos após a decisão sobre isenção de direitos de importação. O objetivo deste Regulamento é aumentar o investimento nacional, como afirma o Regulamento nº 176/2009 do MoF (tradução submetida): "to increase domestic investment to strengthen the national economy which faces a crisis. It is necessary to grant an exemption from import duty on the imports of machines, equipment, and establishment or development of industry in the frame of investment".

996. De acordo com o artigo 1º do Regulamento MoF nº 176/2009, as indústrias beneficiárias são aquelas utilizadas para construir ou desenvolver indústrias, enquanto que "the exemption applies to all goods or materials, independently of their type and composition, used as components for the production of finished goods".

997. De acordo com o Regulamento, há limitação ao recebimento de bens por prestadores de serviços, limitando-se a uma lista de sete indústrias, que estão listadas no Regulamento MoF nº 176/2009: "1. Tourism and culture 2. Transportation and communication services) 3. Public health services 4. Mining 5. Construction 6. Telecommunications". A legislação não estabelece limitação aos produtores de bens.

998. Segundo afirmado pela peticionária, considerada a melhor prática, as alíquotas do imposto de importação relativas às máquinas classificadas no Sistema Harmonizado variam em torno de 5%.

999. Durante a visita in loco, ao ser questionado o GOI acerca do programa, os funcionários do SDCOM foram informados que a equipe do BKPM responsável pelo programa forneceu as explicações. Conforme relatado no relatório da visita:

Perguntados sobre as Regulations MOF 72/2012 e MOF 188/2015, a respeito da isenção de impostos, foi explicado que se trata de incentivo temporário no âmbito da construção sendo tal programa gerenciado pelo BKPM, pois diz respeito aos investimentos em máquinas, por exemplo, realizados, e não sobre os produtos em uma bonded zone. O âmbito do programa saber se a isenção ocorre antes ou depois da construção. Após 5 anos, a empresa pode aplicar para uma bonded zone. Foi ainda ressaltado que

1013. Esta SDCOM ressalta, mais uma vez, o caráter de promoção do desenvolvimento das políticas do GOI relacionado aos incentivos, como expressado na manifestação de que nenhuma das manifestações teceu quaisquer comentários sobre o cálculo que foi considerado melhor informação disponível.

1014. Com relação à especificidade, as afirmações do GOI fornecem elementos probatórios, não tendo sequer o GOI respondido às perguntas de fato para avaliar eventual especificidade de fato do programa advinda, por exemplo, da natureza de sua discricionariedade no âmbito do programa. Ademais, a legislação do programa restringe sua aplicação a apenas alguns setores de serviços, incluindo mineração, o que reduz a especificidade.

1015. Sobre os comentários finais da peticionária, a SDCOM pontua que os programas de aquisição das máquinas supostamente a remuneração inferior à de mercado possa a peticionária apresentar pleito futuro neste sentido, caso entenda ser necessário. Se o programa seja investigado, não há nos autos elementos que permitam à peticionária afirmar.

4.2.7.2.6 Conclusão

1016. A SDCOM concluiu que o programa de isenções dos direitos de importação é um incentivo que se configura em subsídio, já que envolve uma contribuição financeira do governo público, nos termos da alínea "b", do inciso II, do art. 4º do Decreto nº 1.751, de 1990, de recolher receitas públicas devidas.

1017. Com relação à especificidade, tendo em vista a ausência de respostas no questionário nos itens pertinentes, como apontado acima, e considerando que os dados apresentados até a data considerada nesta Determinação apontam que o programa se enquadra no contexto de incentivos aos produtores de aço inoxidável, conclui-se pela existência de fato com relação às produtoras investigadas, nos termos do § 3º do art. 6º do Regulamento, portanto, sujeito à aplicação de medidas compensatórias. Ademais, o programa está expressamente incluído na lista de setores de serviço com acesso ao programa, portanto, como subsídio específico de direito, nos termos do art. 6º, caput, do Regulamento, portanto, sujeito à aplicação de medidas compensatórias.

4.2.7.2.7 Cálculo

1018. A SDCOM considerou razoável o cálculo trazido pela peticionária. A peticionária trouxe metodologia que estimou os custos envolvidos com as aquisições por parte das empresas do grupo Tsingshan. A SDCOM alterou o imposto de importação em tais importações, pois a Regulation MoF (Ministério da Fazenda) nº 6, de 2008,

Salé, o GOI estabeleceu que para atividades produtivas em determinados setores de determinados bens tributáveis poderá ser isenta do imposto sobre o valor agregado (Value Added Tax - VAT), sujeita a novas estipulações previstas nas normas limitadas desses bens estratégicos está prevista no artigo 1º da Lei 8/1996 para equipamentos de fábrica que são utilizados diretamente no processo de produção (excluindo peças de reposição). Como tal, essa isenção é prevista na importação de equipamentos para atividades de mineração, incluindo as cadeias a montante. Portanto, as máquinas envolvidas no processo de produção de aço inoxidável.

1022. Neste contexto, tem-se que o Regulamento MoF nº 1/2015 e o Regulamento Governamental nº 81/2015, respectivamente, delimitam certos bens importados ou transferidos que são isentos do IVA.

1023. Por sua vez, o Regulamento do Governo nº 81, de 2015, em seu artigo 1º, para incentivar ainda mais o desenvolvimento nacional, por meio da concessão de isenção de tributação na forma de Isenção da Aplicação de Imposto sobre Valor Agregado na aquisição de Determinadas Mercadorias Tributáveis que são de natureza estratégica para os setores de negócios", determina que certos bens tributáveis estratégicos importados sejam isentos do IVA, conforme artigo 1º:

Artigo 1

(1) Determinadas mercadorias tributáveis que são de natureza estratégica e que estão isentas da aplicação do Imposto sobre o Valor Agregado, incluem:

a. máquinas e equipamentos de fábrica que constituam uma unidade produtiva que sejam utilizadas diretamente no processo de produção de Mercadorias Tributáveis pelo Empreendedor Tributário que os produza, excluindo as peças sobressalentes;

(...)

(2) Determinadas Mercadorias Tributáveis de natureza estratégica que estão isentas da cobrança do Imposto sobre o Valor Agregado são:

a. máquinas e equipamentos fabris que constituam uma unidade, insalváveis que sejam utilizadas diretamente no processo de produção de Mercadorias Tributáveis pelo Empreendedor Tributário que as produza, excluindo as peças sobressalentes;

4.2.7.3.1 Elementos apurados sobre o programa

1024. Não obstante o exposto supra, mesmo ante tal previsão legal e a falta de provas das empresas investigadas, utilizando-se os fatos disponíveis nos autos, a SDC tem elementos disponíveis aptos a transpor os meros indícios colacionados

89/2015 e pelo Regulamento Governamental nº 9/2016. Tais regulamentos oferecem os seguintes incentivos:

a) Redução do lucro tributável líquido de até 30% do valor investido em ativos qualificados (incluindo terras), rateados em 5% por seis anos, e desde que os ativos não sendo mal utilizados ou transferidos dentro de um determinado período (o qual varia de 5 a 10 anos a partir do início da produção comercial ou a vida útil do ativo com base na depreciação acelerada);

b) Depreciação e amortização aceleradas;

c) Retenção de impostos sobre dividendos pagos a não residentes em território nacional;

d) Um período de perdão do pagamento estendido de cinco anos para o pagamento de impostos.

1028. Conforme o artigo 3 do mesmo Regulamento do Governo, a obtenção das concessões financeiras listadas o atendimento das condições condicionante para a obtenção das concessões financeiras listadas o atendimento das condições incluindo, no item "a", a existência de um alto valor de investimento ou de exportação.

Article 3

Any Taxpayer making Investment as referred to in Article 2 paragraph (1) shall be eligible for Income Tax facilities as referred to in Article 2 paragraph (2) to the extent they meet the following conditions:

a. have a high investment value or for export;

b. have a high rate of labor absorption; or

c. have a high local content.

1029. Já o Regulamento do Governo nº 18/2015 estabelece contribuições fiscais do governo da Indonésia a determinadas indústrias, conforme explicitado no mencionado regulamento:

Article 2

1. To the Taxpayer of domestic agencies which carry out of the capital investment and expansion from there is business, on:

a. Certain business fields as referred contained in Appendix I of this Government Regulation; and/or

b. Certain business fields and Certain regions as referred contained in Appendix II of this Government Regulation, can be awarded Income Tax facilities.

a) Redução do lucro tributável líquido;

b) Depreciação e amortização aceleradas;

c) Retenção de impostos sobre dividendos pagos a não residentes em;

d) Extensão do período de transposição de prejuízos fiscais.

1032. O item "a" do item 2 do artigo 2 do Regulamento do Governo prevê a redução do lucro tributável líquido. Esta ocorre na forma de redução de até 30% (trinta por cento) do lucro tributável líquido, calculado sobre a base de ativos fixos qualificados (incluindo terras), rateados em 5% por seis anos, desde que os investimentos não estejam sendo mal utilizados ou transferidos dentro de um determinado período mais longo entre seis anos a partir do início da produção comercial ou a vida útil da depreciação/amortização acelerada):

Article 2

($\frac{1}{4}$)

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:

a. reduction of net income by 30% (thirty percent) of the total Investment in fixed assets, including any land used for the business main activities, shall be calculated respectively of 5% (five percent) per year calculated from the commencement of the investment;

1033. O item "b" do item 2 do artigo 2 do Regulamento do Governo prevê a depreciação e amortização aceleradas:

Article 2

($\frac{1}{4}$)

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:

($\frac{1}{4}$)

b. accelerated depreciation on tangible assets and amortization on intangible assets within the framework of new Investment and/or business expansion, with the useful life of the assets as well as amortization rates as follows:

1. for the Accelerated depreciation of tangible fixed asset:

<<IMAGEM 9 AQUI>>

2. for the Accelerated Amortization of intangible fixed asset:

<<IMAGEM 10 AQUI>>

extensão do período de transposição de prejuízos fiscais para além dos concedidos, com um máximo de 10 anos:

Article 2

($\frac{1}{4}$)

(2) Income Tax facilities as referred in paragraph (1) above shall be as

($\frac{1}{4}$)

d. Loss compensation for more than 5 (five) years but not more than 5 (five) years following provisions as follows:

1. 1 year extra: in case the New Capital Investment in business field letter a is conducted in industrial estate and/or bonded zone;

2. 1 year extra: in case the Taxpayer which undertake of New Capital Investment cost for the economic and/or social infrastructure in business location of at least Rp10,000,000,000.00 (ten billion rupiah);

3. 1 year extra: in case it uses materials and/or domestic products respectively at least (seventy percent) since the 4 (fourth) year;

4. 1 year extra or 2 years:

a) 1 (one) year extra in case it hires at least 500 (five hundred) Indonesian employees consecutive years; or

b) 2 (two) year extra in case it hires at least 1000 (one thousand) Indonesian employees (five) consecutive years;

5. 2 years extra: in case issued of cost of domestic research and development or production efficiency at least 5% (five percent) from the total Cost of Sales in the 5 (five) years period;

6. 2 years extra: in case the Capital Investment this is expansion from Certain Business Fields and/or Certain Regions which regulated in the paragraph 1 of the financing source parts coming from earning after tax the Taxpayer in the issued year of principal license of expansion of the capital investment; and/or

7. 2 years extra: in case undertake of export at least 30% (thirty percent) of the value, for the Capital Investment in the business fields which regulated in paragraph 1 out in the outside of bonded zone.

da base de cálculo, e, em última análise, do imposto devido, é, evidentemente b

1041. Salienta-se que tal programa é de conhecimento por parte da S
decisão de 2014 no caso de investigação de subsídios acionáveis nas exp
Indonésia para o Brasil de fios com predominância de fibras acrílicas, a Circu
junho de 2014, o programa foi identificado e se concluiu por se tratar de subsíci
naquele caso não tenha sido verificada a participação das empresas investigada

4.2.8.2 Elementos de fato ou de direito (Base legal/documental)

1042. O programa é regulado pelo Regulamento MoF nº 89, de
Regulation nº 78/2019, que substituiu a Government Regulation nº 18, de 2015.

4.2.8.3 Contribuição financeira

1043. A contribuição financeira do programa reside no fato de que
acesso ao programa passaram a contar com recursos adicionais, não dispo
participantes do programa. A referida contribuição financeira gera benefícios
aumenta a liquidez das empresas, que passam a contar com recursos a
recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme
1.751/95.

4.2.8.3.1 Especificidade

1044. Considerando-se que o GOI não forneceu as informações s
avaliar as empresas que de fato obtiveram assistência no âmbito do program
questionário, para fins deste documento foram utilizados, nos termos do art.
1995, os fatos disponíveis. Tais fatos indicam que os subsídios em questão são
termos do art. 6º, caput, do Decreto nº 1.751/1995, uma vez que se limita a dete
as quais as empresas mineradoras e produtoras de produtos de metal.

4.2.8.4 Das manifestações prévias à Nota Técnica sobre o programa

1045. O GOI informou que a PT Sulawesi Mining Investment (SMI) te
incentivo. A PT IRNC pontuou que tal informação seria correta, e que "os relatór
como das demais partes relacionadas ([CONFIDENCIAL]) não apresentam ner
deduzido do imposto de renda, como essa autoridade verificadora pode const
informação disponível o percentual de 0,06% calculado pela autoridade da Uniã

1046. A Aperam, em manifestação de 9 de setembro de 2022, rei
petição e suas informações complementares, bem como ao longo do processo
tenha toda a documentação e informações relativas à utilização de tal program

somente sobre os dividendos, esta autoridade considerou mais adequado utilizar disponível o cálculo da autoridade da União Europeia.

1050. Sobre o Regulamento Governamental nº 18/2015, esta SDC fontes públicas resumos da legislação feitos pelas consultorias PWC e funcionamento geral dos quatro incentivos apresentado pela petição Governamental nº 89/2015, sendo que os documentos também deixam construção de fundidores para produtos de mineração, e nos setores de manu mineração de carvão e de metais, o que se encaixa no intuito geral do govern item 4.1.

1051. Apesar de não levantado pela peticionária ou pelo GOI, evidências que indicam que o Regulamentado aventado na petição (Regul 18/2015), foi substituído pelo Regulamento Governamental 78/2019. No n constam os setores "Basic metals manufacturing" e da mineração, restando inal

1052. Como pontuado no logo no artigo 1º, item 3, de ambos os R visam setores com alta prioridade para o país: "Certain Business Fields shall be of economic activity with high priority on the national scale".

1053. Sobre os comentários da peticionária, pontua-se que o uso da autoriza a autoridade a livremente concluir pelo uso de certo programa. Há, m colacionar elementos razoáveis que indiquem a utilização do programa, como t em vários dos programas aqui analisados. Neste sentido, o cálculo trazido p matematicamente correto, não é apto a transpor essa barreira - ao contr programas, em que o próprio cálculo já é importante elemento que evidencia existência de lucro. Por este fator, a ausência de comentário das demais partes específico, elemento de relevo.

1054. Assim, muito embora a SDCOM lamente a falta de colabor considerar que os dividendos, neste caso concreto, não podem ser considerados

4.2.8.7 Conclusão

1055. Considerando a falta de colaboração e o recurso aos elemen concluiu que há evidências acerca do não recolhimento de tributos devidos tributável; ii) depreciação e amortização aceleradas; iii) retenção de impostos não residentes em 10%; e iv) extensão do período de transposição de prejuí SDCOM considera que os elementos nos autos não autorizam a existência de termos do ASMC no que tange à retenção de impostos sobre dividendos pagos

Fonte: Melhor informação disponível - Decisão da autoridade da União

Elaboração: SDCOM

4.2.9 Programa 10 - Regime tributário e tributário preferencial na industrial

4.2.9.1 Fatos apurados sobre o programa

1060. O Regulamento Governamental nº 142/2015, o GOI prevê "Desenvolvimento Industrial", que se referem a áreas determinadas nas quais as instalações específicas de investimento, sendo elegíveis a certos benefícios respeito a isenções fiscais e a compras facilitadas de eletricidade. O regulamen

CAPÍTULO VIII

INSTALAÇÕES DE PARQUE INDUSTRIAL

Artigo 41

(1) As Empresas de Gestão de Parque Industrial e as Empresas Inc Parques Industriais recebem incentivos fiscais.

(2) Os incentivos fiscais conforme referido no parágrafo (1) são agrupamento de WPI (Área de Desenvolvimento Industrial).

(3) No caso de concessão de incentivos fiscais, verifica-se a alteração regulamentado por meio de Regulamento de Ministro encarregado pelos as setor financeiro por meio de recomendação do Ministro.

(4) Outras disposições relativas aos incentivos fiscais, conforme refer são regulamentadas por meio de Regulamento de Ministro encarregado de a setor financeiro

Artigo 42

(1) As Empresas de Gestão de Parque Industrial dispõem de instal gestão de energia elétrica para as suas necessidades e necessidades da Industriais.

(2) Outras disposições relativas às instalações para facilitar o des energia elétrica, conforme referido no parágrafo (1), são regulamentadas por Ministro encarregado pelos assuntos governamentais no setor de energia e rec

Artigo 43

1. Parque Industrial é a área onde se concentram as atividades, instalações e infraestruturas de apoio desenvolvidas e geridas por uma Empresa Industrial.

(...)

5. A Área de Desenvolvimento Industrial, doravante abreviada como Área de Desenvolvimento Industrial, é o território do Estado Unitário da República da Indonésia com base em anteriores planos (forward) de seus recursos e instalações de apoio, e que se atenta ao alcance e à qualidade da construção da indústria.

1063. Conforme o Artigo 2 do Capítulo 2 do Regulamento, regiões são classificadas em três categorias, dependendo de seu nível de desenvolvimento econômico: Advanced WPI (WPI Berkembang), WPI Potential I (WPI Potensial I) e WPI Potential II. Empresas industriais na zona WPI Potential II receberão, assim, mais benefícios do que as empresas em zona de Mature WPI. Cabe notar que o Advanced WPI (Java), por sua vez, não possui incentivos específicos. Tal artigo ainda detalha os tipos de incentivos envolvidos:

(3) Os Incentivos Fiscais e / ou Aduaneiros conforme referidas no parágrafo anterior, na forma de:

a. Incentivos Fiscais de Imposto de Renda, a saber:

1. Incentivos fiscais de Imposto de Renda para investimento de capital em negócios e / ou em determinadas regiões; ou

2. Incentivos na forma de redução do Imposto de Renda para empresas em zonas de desenvolvimento industrial;

b. Incentivos de isenção do Imposto sobre o Valor Agregado na importação de máquinas e equipamentos que são consideradas como uma unidade, quer importadas ou produzidas diretamente no processo de produção de Bens Tributáveis por Empresas Industriais em Parque Industrial e Empresas de Gestão de Parques Industriais, excluindo peças sobresselvas e acessórios.

c. Incentivos de isenção do imposto para a importação de máquinas e equipamentos por Empresas Industriais em Parque Industrial e Empresas de Gestão de Parques Industriais, para atividades de negócios no setor industrial de produção de bens e / ou serviços.

(4) A isenção de impostos de importação sobre máquinas e materiais de capital no parágrafo (3) alínea (c) pode ser concedida para máquinas e bens e materiais de capital em Zonas Francas, Zonas Econômicas Especiais ou Áreas de Armazenamento Alfândega.

do Norte, Kalimantan Ocidental, Bati e Nusa Tenggara. Assim como o Malé, concedidas às empresas instaladas uma redução do imposto de renda líquido de seis anos, bem como uma depreciação acelerada e amortização dos ativos com alíquota sobre dividendos. No entanto, a possível compensação das perdas é de dez anos.

1067. As empresas instaladas nas áreas de desenvolvimento industrial se beneficiam de uma isenção de IVA sobre máquinas e equipamentos, Regulamento Público 81/2015, e de uma isenção de direitos de importação de mercadorias. A duração da isenção para bens é, no entanto, de quatro anos. Aplicam-se as mesmas disposições citadas relativas ao conteúdo doméstico.

1068. O WPI Potential II abrange as regiões de Papua e Papua Ocidental localizadas nas áreas de desenvolvimento industrial dessas WPI têm direito a uma redução de renda de 10% a 100% por um período de 5 a 15 anos. O regime apresenta a isenção fiscal prevista anteriormente à sua alteração de 201864, sendo aplicável às jurídicas registradas após 15 de agosto de 2015.

1069. As empresas instaladas nas áreas de desenvolvimento industrial se beneficiam de uma isenção de IVA sobre máquinas e equipamentos, Regulamento Governamental nº 81 de 2015, e da isenção de direitos de importação de mercadorias. A duração da isenção para bens é, no entanto, limitada a cinco anos. Da mesma forma, as disposições relativas ao conteúdo doméstico também se aplicam.

1070. O documento intitulado "A brief guide to investment in the industrial sector" do Investment Coordinating Board (BKPM), detalha quais áreas do país estão incluídas no desenvolvimento industrial (WPI), conforme reproduzido a seguir:

The exact amount of the tax incentives will depend on the classification of the WPI. In this regulation, there are four categories of Industrial Estates Development (WPI): Core WPI (located on Java Island), Developing WPI (South Sulawesi, East Kalimantan, North Kalimantan, Bintan, and Karimun, and South Sumatera), Potential I WPI (North Sulawesi, West Sulawesi, and Nusa Tenggara), and Potential II WPI (Papua and West Papua).

1071. Além do IMIP, localizado em Morowali District, Central Sulawesi, estaria situada em Sulawesi Tenggara, enquanto a PT OSS (Obsidian Stainless Steel) está localizada no Sudeste da Sulawesi. Há evidências de operação na área industrial Bantaeng, em Sulawesi, de ao menos duas empresas, a PT Huadi Nickel Alloy Indonesia e a PT Bantaeng Nickel Alloy. O portal mmIndustry da Indonésia, informa a lista de empresas que firmaram acordos de energia para o Industrial Park Bantaeng:

		PT Broly Nickel Industry	Óxido Coque
			Usina
	Konawe (VDNIP) Sulawesi Tenggara	PT. VDNI	NPI
		PT OSS (Obsidian Stainless Steel)	NPI, St
			Usina
WPI Mature (WPI 4)	Bantaeng Sulawesi Selatan	PT Huadi Nickel Alloy Indonesia	NPI
		PT Titan Mineral Utama	NPI
		PT Bantaeng Central Asia Steel	Ferron
		PT Sinar Deli Group	NPI
		PT Cinta Jaya	NPI
			Usina

(*) Empresas situadas no parque industrial IMIP e ligadas à empresa c

4.2.9.2 Das manifestações prévias à Nota Técnica sobre o programa

1073. A PT IRNC e o GOI pontuaram que não haveria que se calcular em separado para este programa, posto que os eventuais incentivos do go foram desmembrados em outros programas e possuem regulamentos próprios

1074. A Aperam, em manifestação de 9 de setembro de 2022, O re preferencial na área de desenvolvimento industrial já foi ampla e detalhadame e suas informações complementares, bem como ao longo do processo e n âmbito desse programa, a peticionária pontuou que o Governo da Indonésia al by private sectors". Na opinião da Aperam, todo o exposto no processo e presente documento demonstra que, de fato, a criação do IMIP foi id administrada pelo Governo da Indonésia. Afirmou ainda a Aperam que o Govern "as for Industrial Estate, normally the GOI builds general infrastructure in the su the livelihood of area", afirmando que, no IMIP, se limitou a fornecer uma residências de baixo custo.

and/or regents/mayors in accordance with the IUKI.

4.2.10 Programa 11 - Injeção de capital

1078. A SDCOM pôde confirmar a operação de injeção de capital de que os elementos disponíveis nos autos não indicam que tenha havido qualquer investigação de aço inoxidável advindo de tal operação. Deste modo, esta SDCOM subsídio acionável para este programa.

4.2.10.1 Manifestações prévias à Nota Técnica sobre o programa

1079. A Aperam, em manifestação de 9 de setembro de 2022, amplamente demonstrada injeção de capital por meio da transferência gratuita do Governo da Indonésia para a empresa Inalum, entende a empresa a aquisição de máquinas e equipamentos pelas empresas instaladas no IMIP a preços inferiores ao valor de mercado, configurando-se, dessa forma, no Programa de Injeção de Capital. O processo.

1080. De acordo com o Artigo 1.1(a)(1) do ASMC, um subsídio é definido como "contribution by a government". O Governo da Indonésia proativamente teria induzido a se instalarem na Indonésia para a criação e desenvolvimento da indústria de Morowali.

1081. Conforme já demonstrado nos autos do processo, em abril de 2005, entre o Presidente da Indonésia e o Presidente da China, durante o qual foi assinada a Conjunta de Parceria Estratégica estabelecendo que ambas as partes iriam "cooperation by increasing mutual understanding and networking among investors in the private sectors, and by creating more conducive eco-socio-political and legal environment for investments". Em junho de 2005, durante sua visita a Beijing, o Ministro da Economia do Vice-Primeiro Ministro da China prospectou de investimento em 4 setores, incluindo recursos naturais, e afirmou que "[h]e also hoped more Chinese business for investment, saying that the Indonesian government would create a favorable environment for Chinese investors". Nesse contexto, o Vice-Primeiro-Ministro da China solicitou que os investimentos chineses naquele país seriam lucrativos, condição esta a ser considerada pela Economia da Indonésia.

1082. O governo da Indonésia, por meio do Indonesian Investment Board, expressamente solicitou, em maio de 2011, à China que investisse no processamento de Sulawesi, onde o Parque Morowali está estabelecido: "[t]he Investment Board directs potential investors from China to invest in processing mining products. It asked China to invest in nickel processing in Southeast Sulawesi".

1086. Nesse contexto, ressaltou a Aperam a cooperação estabelecida com a Sinosure Insurance Corporation (Sinosure), da China, para o fornecimento de garantias para a negociação direta com fornecedores/investidores estrangeiros.

1087. No que diz respeito ao IMIP, vale lembrar que, conforme est. Number 3 of 2014, relativo à indústria, como forma de responsabilidade do governo em relação à população, o governo tem a autoridade para organizar as questões públicas nos aspectos de regulação, direção e desenvolvimento da indústria. Ademais, Regulation Number 142 of 2015, relativo aos Industrial Estates, atesta que a autoridade cabe ao Industrial Estate Management. Portanto, a autoridade do Governo da Indonésia, nesse caso, é passada à administração do Industrial Estate, no caso, a administração do IMIP.

1088. Ou seja, a legislação da Indonésia delega à empresa administradora do IMIP a autoridade para implementar suas políticas industriais. Nesse sentido, à PT IMIP, no Parque Industrial de Morowali, é atribuído o poder governamental de implementar políticas, especialmente no sentido de criar toda a cadeia a jusante, até a produção dos produtos e o produto objeto da investigação.

1089. O Governo da Indonésia também está diretamente envolvido na administração dos Industrial Estates por meio da criação do Industrial Estate Committee, um órgão governamental responsável pelo crescimento, monitoramento e promoção dos parques industriais na Indonésia. De acordo com Government Regulation No. 142/2015, o comitê é composto, dentre outros, por representantes dos governos regionais.

1090. Dessa forma, tanto por meio da atuação da PT IMIP como por meio da legislação da Indonésia concede garantias, nos termos do inciso II.a do art. 4o do Decreto de 2014, para aquisições de máquinas e equipamentos pelas empresas instaladas no IMIP, onde são aplicados preços preferenciais em tais operações de aquisição.

1091. Verifica-se, assim, que, em decorrência das garantias concedidas pela Indonésia, os equipamentos e máquinas adquiridos pelas empresas do Grupo foram adquiridos a preços inferiores àqueles praticados em condições normais de mercado, consequentemente, benefício às empresas do mencionado Grupo, nos termos do art. 1.751, de 1995. O montante de tal benefício equivale à diferença entre os preços pagos em tais aquisições e os preços comparáveis de mercado para máquinas e equipamentos utilizados na cadeia produtiva dos aços inoxidáveis, alocado ao produto objeto da investigação.

1092. Nesse sentido, concluiu a Aperam dizendo que, diante das alegações apresentadas e comprovadas pelos produtores/exportadores indonésios e por não ter recebido os melhores esforços para apresentar estimativas dos valores efetivamente pagos na aquisição de máquinas e equipamentos pelas empresas parte da cadeia produtiva.

da cadeia de produção do produto investigado instaladas no IMIP, bem como similares adquiridos a preços adequados de mercado, tendo apresentado relacionados à aquisição de máquinas e equipamentos por remuneração inferior a US\$ 140,50/t ou 6,9% sobre o preço FOB.

4.2.10.3 Comentários da SDCOM

1096. Ainda que potencialmente pertinentes os comentários da Aperam que houve a apresentação intempestiva de tais alegados incentivos governamentais para aquisição de máquinas e equipamentos a preço inferior à remuneração adequada, a mera descrição dos alegados incentivos, trata-se de um novo programa, que deve permitir a devida compreensão e contraditório pelas demais partes interessadas, preservado com a tardia inclusão destes incentivos no bojo da presente investigação.

1097. É fato que as restrições à exportação já foram objeto de análise em Controvérsias e que foi decidido que i) muito embora restrições à exportação a agentes privados, isto ocorre apenas como by-product de uma regulação estatal, elemento de "instrução ou confiança" (entrust or direct) necessário nessa situação, o programa de subsídio acionável nos termos do acordo, e ainda que ii) a sustentação pelo Acordo SCM não inclui movimento de preços como resultado indireto de intervenção governamental.

1098. Os comentários finais da Aperam reforçam a intempestividade da peticionária nomeia a "injeção de capital" de "aquisição de máquinas e equipamentos a preço inferior à adequada" e traz base legal absolutamente distinta da considerada no processo, evidente que não se trata de uma injeção de capital, mas de um programa de subsídios apresentado. Deste modo reitera-se que, ainda que possa a peticionária apresentar o caso, para que alegado programa seja investigado, não há como permitir à SDCOM aplicar qualquer montante com relação a esse novo programa.

4.3 Das manifestações gerais sobre os programas de subsídios

1099. A Aperam Inox América do Sul S.A., em manifestação de 31 de dezembro de 2022, alega que a SDCOM teria notificado a produtora/exportadora indonésia PT Indonésia Alloy (IRNC) que a determinação sobre a concessão de subsídios a tal empresa e ao grupo que poderiam ser identificadas pela Subsecretaria com base nas informações no processo levaria em consideração os fatos disponíveis, nos termos do § 3º do artigo 1º do Decreto nº 1.751, de 1995, tendo em vista a não apresentação do texto da relação Produtor/Exportador no processo em tela.

período de análise, subsídios indiretos, concedidos pelo governo da China, não pelo Governo da Indonésia como seus próprios, os quais também deveriam ser compensatórios.

1103. Destacou que ao Governo da China também deveriam ser fornecidas informações relativas ao sistema financeiro naquele país, incluindo informações sobre financiamentos, garantias à exportação e seguro concedidos no contexto do Free Trade and Cooperation Zones. Nesse contexto, a título colaborativo, destacou, que o governo da China deveria fornecer informações e documentos cujo fornecimento sugeriu que fossem demandados.

1104. Em relação aos empréstimos preferenciais, o Governo da China deveria fornecer preferencial aos produtores chineses de aço inoxidável laminado a frio estabelecido por bancos de policy banks e bancos comerciais estatais. Esses bancos atuariam como órgãos de empréstimos de acordo com as políticas do Estado, e não com base na solvabilidade baseada no mercado.

1105. Ademais, o Governo da Indonésia teria buscado, reconhecer o financiamento chinês por meio de um sistema de cooperação bilateral para incentivar a indústria que anteriormente fundiam níquel na China, a desenvolver suas atividades na Indonésia. O IRNC defendeu que deveria ser solicitado ao governo da China, por exemplo, a fornecer informações sobre o alegado controle governamental dos bancos/instituições financeiras e a ausência de intervenção do Estado que distorceria o mercado financeiro no país.

1106. Ademais, em relação ao Parque Industrial de Morowali (II), uma zona econômica especial gerida essencialmente por empresas chinesas, o Governo da Indonésia sob pressão sobre o Governo da Indonésia para apoiar empresas chinesas, que anteriormente operavam na China, a desenvolver suas atividades na Indonésia. Nesse sentido, entendeu que deveria ser solicitado ao governo da China, por exemplo, documentos relacionados ao investimento chinês, explicações sobre o papel e o funcionamento do China-ASEAN Investment Cooperation Fund no contexto do investimento externo chinês.

1107. A IRNC, em manifestação de 14 de junho de 2022 apresentou uma relação à solicitação da peticionária Aperam de notificação do Governo da China sobre o presente procedimento investigatório, para fornecer informações acerca dos subsídios transnacionais, os quais supostamente beneficiariam os produtores/exportadores do produto investigado e deveriam ser objeto de medidas compensatórias.

1108. A IRNC entendeu pela impossibilidade de se proceder à investigação processual, da eventual concessão de subsídios acionáveis pelo governo da China, "endossados", "reconhecidos" ou "adotados" pelo Governo da Indonésia como se

momento, possibilidade de instrução para investigar subsídios transnacionais, aplicação dos subsídios transnacionais frente a legislação brasileira e o Acordo de Compensatórias da OMC, além de sustentar ausência de nexo de causalidade.

1113. Argumentou que "subsídio transnacional" poderia ser de concedido a um beneficiário que fabrica o produto em questão fora do território de concessão. Em outras palavras, ocorreria quando um governo subsidia uma empresa em uma jurisdição. Como seria sabido, sua aplicação seria controversa. O artigo 1.1 (a) do Anexo 1 das Medidas Compensatórias (ASMC) comentaria que a contribuição financeira é concedida no território de um membro.

1114. Exemplificou que a China já teria se manifestado no sentido de acionáveis apenas aqueles que atenderem ao princípio da territorialidade. Ou apoio financeiro de um governo a um terceiro beneficiário localizado em acionável, pois a concessão por países a beneficiários, em seus próprios te existência desses subsídios segundo as regras da Organização Mundial do Com

1115. Argumentou ainda que o caso de filamentos de fibras de vidro e do reconhecimento e de aplicação, pela União Europeia dessa classe de subsídios da UE, dado que a interpretação utilizada pela Comissão Europeia, com amparo no Responsabilidade dos Estados por Atos Internacionalmente Ilícitos, não teria fundamento interno e acadêmico. A aplicação das medidas compensatórias teria implicado decisão do Tribunal de Justiça da União Europeia pelos exportadores egípcios, caso contrário, em mérito.

1116. Acrescentou que a legislação dos EUA, por sua vez, desde 19 transnacionais, sejam eles fornecidos por outros países ou por instituições in dados por inexistentes perante a autoridade investigadora.

1117. Sustentou que, nas palavras do WTO Expert Group on Trade Remedies, "é inteiramente claro se o [ASMC] se aplica ou não quando a entidade que comete o crime encontra no território do Membro cujos bens estão alegadamente subsidiados".

1118. Argumentou que diante dos elementos elencados, ficaria claro extremamente controverso, cuja entendimento quanto à aplicação não é conhecimento desta autoridade. Por oportuno, evidenciou que nem mesmo na entendimento maduro, como demonstrado pela contestação do caso filiar. Reforçou, portanto, a necessidade de um standard maior do que o aplicado ao subsídio para a investigação e aplicação desses subsídios, conforme explicita a

1121. Caso a SDCOM quisesse investigar também as políticas de aplicação de medidas compensatórias em outro território, deveria ter oportunizado tempo à República para a devida habilitação no processo, tempo para que compreenda as alegações feitas e para que essa parte eventualmente interessada se manifeste, para que fossem satisfeitos os princípios do processo quais sejam devido processo legal, ampla defesa e contraditório.

1122. Relembrou também, que o Decreto nº 1.751/1995, em seu artigo 112, inciso I, estabelece que de acordo entre as partes antes de uma possível contenda, o que não teria ocorrido, se decidia pelo acionamento dos supostos subsídios chineses em território indonésio, o juiz entendeu que o mais prudente, nesse momento processual, seria a decisão pelo não acionamento dos referidos subsídios.

1123. Defendeu que, como a presente investigação seria regida pelos termos do art. 192 do Decreto nº 10.839/2021, inexistiria, no diploma antigo, previsão para investigação de subsídios transnacionais. Com isso, haveria incertezas jurídicas e imprevisibilidade que devem ter os procedimentos de defesa comercial para compatibilização com o governo cujas práticas são investigadas.

1124. O momento processual adequado para indicação de subsídios transnacionais, com as regras vigentes, seria na petição inicial. Essa previsão indica a previsão de um completo curso investigatório (pelo lado da autoridade) e o curso dialético (pelo lado das interessadas). A inexistência de legislação específica sobre subsídios transnacionais no Decreto nº 1.751/1995 atrairia e faria aplicável as disposições do art. 112 sobre tal matéria no Decreto nº 172/2022, ficando evidente a desconformidade das afirmações da Peticionária.

1125. Argumentou ainda que a consulta pública para a nova regulamentação dos subsídios (Circular SECEX nº 38, de 31 de maio de 2021) teria sido publicada no Diário Oficial de 01 de junho de 2021, ou seja, muito antes do protocolo da APERAM de 23 de fevereiro de 2022, em que a peticionária já poderia ter ciência da intenção do legislador quanto ao tema.

1126. Sustentou que a indicação de supostos indícios de tais subsídios antes do protocolo da petição e o requerimento para que fossem investigados imediatamente pela peticionária, seria uma clara afronta à lógica estabelecida na Portaria SECEX nº 38/2021.

1127. Defendeu que a investigação de subsídios transnacionais, o acionamento e aplicação de medidas compensatórias não estaria prevista no Decreto nº 10.839/2021, presente investigação, ou seja, o Decreto nº 1.751, de 19 de dezembro de 1995, não previa a investigação de alegados programas concedidos por entidades chinesas a firmas indonésias com o intuito de obter vantagem legal interna.

força da sua excepcionalidade, conforme texto da Portaria abaixo no inciso II do

II - se o governo do país da empresa investigada, de modo a reconhecer ou adotar a concessão de subsídios por parte do outro governo com base na política de concessão de subsídios

1132. Seria forçoso, portanto, concluir que a aplicação da melhor informação disponível é adequada para configurar tais programas como acionáveis. Seriam necessários argumentos inequívocos das práticas, ao menos, quanto aos atos de endosso, reconhecimento ou aceitação, para que não haja dúvida razoável pela autoridade dever-se-ia aplicar a regra de não acionamento. Os elementos até então presentes nos autos não seriam, portanto, suficientes para concluir-se tratando-se apenas de evidências do estreitamento normal das relações diplomáticas entre Indonésia e China. Do mesmo modo, os programas não estariam, assim, suficientemente comprovados a fim de serem acionáveis.

1133. Deve-se compreender, inicialmente, que a concessão de contribuição financeira para gerem benefício a uma firma (ou firmas) fora do território do estado concedente não existe segundo o art. 1 do ASMC. Uma leitura clara do dispositivo do acordo não permite a existência, para fins de aplicação de medidas compensatórias, tanto o membro concedente quanto o beneficiário devem estar no mesmo território. Uma contribuição financeira concedida por um país a uma firma em seu território não estaria, portanto, abrangida. A princípio, desse modo, a aplicação de medidas compensatórias a essa classe de subsídios seria inconsistente com o acordo e, conseqüentemente, com a legislação federal.

1134. Tal interpretação está, inclusive, adequada com a reconstrução da intenção do negociador do ASMC, fonte suplementar de interpretação segundo o art. 32 da Lei de Interpretação do Direito dos Tratados (1969). Conforme apontam alguns estudiosos, os EUA não tinham a possibilidade para que ajudas financeiras concedidas, a fim de garantir o acesso humanitário pudessem ser alvo de medidas compensatórias. Desse modo, a interpretação territorial nos acordos. Alguns exemplos, levantados nesses estudos, são: a ajuda financeira Mundial ao Brasil, as ajudas do Plano Marshall e as reparações de guerra do Japão. Não há uma legislação específica nos EUA que limita a aplicação de subsídios transnacionais, mas há evidência desse processo.

1135. Outro elemento complementar de interpretação é a própria Parte II do acordo, que apenas se evidencia a participação de exportadores e das autoridades competentes, consubstanciando uma ideia de unidade territorial entre os entes, conforme a interpretação divergente, contudo, aponta para uma diferença entre o Membro concedente e o beneficiário para aquele beneficiário da contribuição financeira, implicando na possibilidade de subsídios transnacionais. Ainda que essa não seja a melhor interpretação,

1137. Resta claro, portanto, que somente podem ser acionáveis, segundo o artigo 11 do Projeto de Artigo Internacional dos Estados por Ato Ilícito, os subsídios concedidos por uma autoridade para uma firma dentro de seu próprio território.

1138. Em seu pleito, a peticionária utilizou o art. 11 do Projeto de Artigo Internacional dos Estados por Ato Ilícito como critério de atribuição da conduta da Indonésia. Tal argumentação foi igualmente utilizada no caso da União Europeia. No presente caso, teria como objetivo contornar a discussão da interpretação da utilização seria, de plano, inadequada por existirem critérios específicos de atribuição da OMC, conforme apontado anteriormente, sendo irrazoável o uso do costume internacional geral é possível para interpretar os acordos, igualmente o é as circunstâncias históricas da sua formação. Desse modo, o sentido dos dispositivos do acordo.

1139. Outro ponto relevante a ser tratado seria que, mesmo considerando programas, eles seriam para todos os fins lícitos, concessões financeiras entre países para suporte ao desenvolvimento. A aplicação dos Projeto de Artigos sobre Reservas dos Estados por Ato Ilícito seria, portanto, inadequado.

1140. O acionamento dos subsídios transnacionais seria, portanto, por si só, e controverso, um possível instrumento para minar a atuação dos países em arranjos não discriminatórios em busca de financiamento para o desenvolvimento.

4.4 Dos comentários da SDCOM sobre as manifestações gerais

1141. Como se nota deste documento, de fato a SDCOM utilizou em suas manifestações disponíveis a fim de se alcançar uma determinação sobre um ponto. Nesse contexto, pela peticionária foram mais um elemento a ser avaliado - quando se considerou suficiente e mais adequada preenchia as lacunas, fez-se dele uso.

1142. Sobre os ditos "subsídios indiretos, concedidos pelo Governo da Indonésia e adotados pelo Governo da Indonésia como seus próprios", pontua-se que, mesmo o GOI e o Governo da China permeie vários dos programas, e já tenha sido com debatida neste documento, não foi este o elemento principal da presente investigação.

1143. Nesta seara, ao contrário do afirmado pela PT IRNC, há ampla possibilidade de comprovar o papel do IMIP nos planos do GOI e o arranjo entre o GOI e o GOI na consecução, sendo que o fato de o IMIP ser uma empresa privada em nada altera a conclusão, se surpreender que também tenha sido neste sentido a conclusão das autoridades da Índia.

	Decreto 1.751/1995		
Programa 1 - Fornecimento de minério de níquel por remuneração inferior à adequada	Art. 4º, II, c) c/c d)	GOI, Direta e Indiret.	De direito - art. 6º, <i>caput</i>
Programa 2 - Fornecimento de Carvão e Coque por remuneração inferior à adequada	Art. 4º, II, c) c/c d)	GOI, Direta e Indiret.	De direito - art. 6º, <i>caput</i> De fato - art. 6º, §3º
Programa 3 - Fornecimento de Sucatas e Resíduos por remuneração inferior à adequada			
Programa 4 - Fornecimento de terrenos por remuneração inferior à adequada	Art. 4º, II, c)	GOI, Direta.	De fato - art. 6º, §3º
Programa 5 - Programas de sustentação de renda ou de preços			
Programa 6 - Empréstimos preferenciais	Art. 4º, II, a) c/c d)	GOI, Direta e Indiret.	De fato - art. 6º, §3º Presumida - art. 8º, I
Programa 7 - <i>Bonded Zones</i>	Art. 4º, II, b)	GOI	De fato - art. 6º, 3º Regional - art. 7º
Programa 8.1 - Incentivos fiscais diretos - Redução do imposto de renda para grandes investimentos	Art. 4º, II, b)	GOI	De direito - art. 6º, <i>caput</i>
Programa 8.2 - Incentivos fiscais diretos - Isenção de direitos de importação	Art. 4º, II, b)	GOI	De direito - art. 6º, <i>caput</i> De fato - art. 6º, §3º
Programa 8.3 - Incentivos fiscais diretos - Reduções e isenções de IVA sobre máquinas e equipamentos			
Programa 9 - Income Tax facilities a determinadas indústrias	Art. 4º, II, b)	GOI	De direito - art. 6º, <i>caput</i>
Programa 10 - Regime tributário e tributário preferencial na área de desenvolvimento industrial			
Programa 11 - Injeção de capital			

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Total Geral	100	80,92	122,08	130,12	174,08
Variação	-	(19,1%)	50,9%	6,6%	33,7%
1 - Operações realizadas por empresas exportadoras cuja origem foi desqualificada					
2 - Operações realizadas por empresas exportadoras cuja origem não foi desqualificada					
3 - Demais países: Alemanha, Argentina, Áustria, Bélgica, Canadá, China, Coreia do Sul, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México, Países Baixos, Portugal, Reino Unido, Romênia, Suécia, Tailândia, Taiwan (Formosa), Turquia e Uruguai					
Fonte: RFB.					
Elaboração: SDCOM.					

1158. O indicador de volume (em toneladas) das importações brasileiras laminados planos a frio 304 da origem investigada cresceu 38,5% de P1 para P2 e diminuiu 1,4% de P2 para P3. Nos períodos subsequentes, houve aumento expressivo de 443,7% entre P3 e P4 e crescimento de 357,9%. Ao se considerar todo o período de análise, o indicador de volume das importações brasileiras da origem investigada indicou uma notável variação de 482,2%, considerando-se P5 em relação a P1.

1159. Com relação à variação de volume (em toneladas) das importações brasileiras laminados planos a frio 304 das outras origens (o total exceto a origem investigada) da análise, houve redução de 20,5% entre P1 e P2, ao passo que de P2 para P3 houve ampliação de 53,5%. De P3 para P4 houve redução de 4,9%, e entre P4 e P5 o indicador mostrou ampliação de 15,0%. Ao se considerar toda a série analisada, o indicador de volume das importações brasileiras do produto das outras origens apresentou redução de 1,4%, considerando-se P5 em relação a P1.

1160. No que concerne à variação das importações brasileiras totais laminados planos a frio 304 no período analisado, verificou-se diminuição de 1,4% de P1 para P2, apurou-se elevação de 50,9% entre P2 e P3, crescimento de 6,6% de P3 para P4 e o indicador mostrou ampliação de 33,7%. Analisando-se todo o período, as importações brasileiras do produto das origens apresentaram expansão da ordem de 74%, considerando-se P5 em relação a P1.

1161. Consoante § 4º do art. 21 do Decreto nº 1.751, de 1995, tem-se que as importações consideradas não ocorreram em volume insignificante, eis que superiores a 1% do volume das importações totais do produto similar.

5.1.2 Do valor e do preço das importações

1162. Visando tornar a análise do valor das importações mais uniforme e o seguro, dependendo da origem considerada, têm impacto relevante sobre o preço do produto. Entre os produtos ingressados no mercado brasileiro, a análise foi realizada em

Variação	-	(34,9%)	77,0%	2,6%	(21,7%)	(7,6%)
Total Geral	100	66,12	114,73	131,28	155,44	
Variação	-	(33,9%)	73,5%	14,4%	18,4%	+ 55,4%

1 - Operações realizadas por empresas exportadoras cuja origem foi

2 - Operações realizadas por empresas exportadoras cuja origem
Secex.

3 - Demais países: Alemanha, Argentina, Áustria, Bélgica, Cana
Dinamarca, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México
Polônia, Portugal, Reino Unido, Romênia, Suécia, Tailândia, Taiwan (Formosa), Tur

Fonte: RFB.

Elaboração: SDCOM.

1164. O indicador do valor das importações brasileiras de produtos L
da origem investigada (Mil US\$ CIF) cresceu 1,5% de P1 para P2 e diminuiu
períodos subsequentes, houve aumento expressivo de 482,5% entre P3 e
crescimento de 297,5%. Ao se considerar todo o período de análise, o indicador
brasileiras da origem investigada indicou uma notável variação positiva de 2.2
em relação a P1.

1165. Com relação à variação do valor das importações brasileiras de
a frio 304 das outras origens (o total exceto o da origem investigada) (Mil US\$ C
análise, houve redução de 34,9% entre P1 e P2, ao passo que de P2 para P3 foi p
de 77,0%. De P3 a P4 houve aumento de 2,6%, e entre P4 e P5 o indicador so
considerar toda a série analisada, o indicador do valor das importações brasile
origens apresentou redução de 7,6%, considerando-se P5 em relação a P1.

1166. Observando-se a variação do valor das importações bras
laminados planos a frio 304 (Mil US\$ CIF) no período analisado, verificou-se dim
P2, mas apurou-se elevação de 73,5% entre P2 e P3, crescimento de 14,4% de P
indicador mostrou ampliação de 18,4%. Analisando-se todo o período, as impo
produtos laminados planos a frio 304 de todas as origens apresentaram exp
considerando-se P5 em relação a P1.

Preço das Importações Totais (em CIF USD / (t))						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Indonésia	100	73,28	78,68	84,29	73,16	

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

3 - Demais países: Alemanha, Argentina, Austrália, Bélgica, Canadá, Dinamarca, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México, Polônia, Portugal, Reino Unido, Romênia, Suécia, Tailândia, Taiwan (Formosa), Turquia.

Fonte: RFB.

Elaboração: SDCOM.

1167. O indicador de preço CIF médio por tonelada ponderado das importações brasileiras de produtos laminados planos a frio 304 da origem investigada diminuiu 26,7% de P1 para P2 e de P2 para P3. Nos períodos subsequentes, houve aumento de 7,1% entre P3 e P4 e de 1,1% entre P4 e P5, considerando-se o intervalo entre P4 e P5. Ao se considerar todo o período de análise, o indicador sofreu redução de 26,8%, considerando-se P5 em relação a P1.

1168. Com relação à variação de preço CIF médio por tonelada ponderado das importações brasileiras de produtos laminados planos a frio 304 das outras origens (origem não investigada) ao longo do período da análise, houve redução de 18,1% entre P1 e P2 e de 1,1% entre P2 e P3. De P3 para P4 foi possível detectar ampliação de 15,3%. De P4 para P5 o indicador sofreu queda de 8,0%. Ao se considerar toda a série analisada, o indicador sofreu redução de 6,2%, considerando-se P5 em relação a P1.

1169. Observando-se a variação do preço CIF médio por tonelada ponderado das importações brasileiras totais de produtos laminados planos a frio 304 no período analisado, houve redução de 18,3% entre P1 e P2, mas apurou-se elevação de 15,0% entre P2 e P3 e crescimento de 1,1% entre P3 e P4. Entre P4 e P5 o indicador mostrou retração de 11,5%. Analisando-se todo o período de análise, o indicador apresentou contração da ordem de 10,7%, considerando-se P5 em relação a P1.

5.2 Do mercado brasileiro

1170. Tendo em vista que não houve consumo cativo de produtos laminados planos a frio 304 por parte da indústria doméstica, o mercado brasileiro desse produto equívoco ao produto semelhante aparente (CNA) do produto similar no Brasil.

1171. Com vistas a se dimensionar o mercado brasileiro de produtos laminados planos a frio 304 foram consideradas as quantidades fabricadas e vendidas no mercado interno da indústria doméstica e as quantidades totais importadas, apuradas com base nos dados apresentados previamente. Frisa-se que as vendas internas da indústria doméstica são as vendas de fabricação própria.

Do Mercado Brasileiro e da Evolução das Importações (t)

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

6,0% entre P3 e P4, e diminuição de 0,4% considerando-se o intervalo entre P4 e P5. No período de análise, o indicador do mercado brasileiro de laminados a frio 304 apresentou aumento de 31,0%, considerando-se P5 em relação a P1.

1173. Com relação à variação do indicador das importações brasileiras de produtos laminados planos a frio 304 da origem investigada ao longo do período, houve aumento de 38,5% entre P1 e P2, ao passo que de P2 para P3 foi possível detectar diminuição de 1,5%. Entre P3 e P4 houve um expressivo aumento de 443,7%, e entre P4 e P5 o indicador sofreu diminuição de 357,9%. Ao se considerar toda a série analisada, o indicador das importações brasileiras de produtos laminados planos a frio 304 da origem investigada apresentou aumento de 3.047,1%, considerando-se P5 em relação a P1.

1174. Por sua vez, o indicador das importações brasileiras (em toneladas) de produtos laminados planos a frio 304 das outras origens apresentou diminuição de 20,5% de P1 para P2 e de 1,5% de P2 para P3. Nos períodos subsequentes, houve diminuições de 4,9% entre P3 e P4 e de 1,5% entre P4 e P5. Ao se considerar todo o período de análise, o indicador das importações brasileiras de laminados a frio 304 das outras origens revelou diminuição de 22,5%, considerando-se P5 em relação a P1.

5.3 Da evolução das importações

5.3.1 Da participação das importações no mercado brasileiro

1175. A tabela a seguir apresenta a participação das importações brasileiras de produtos laminados planos a frio 304 da origem investigada no mercado brasileiro (em toneladas) de produtos laminados planos a frio 304.

Participação no Mercado Brasileiro [RESTRITO]			
	P1	P2	P3
Mercado Brasileiro {A+B+C}	100	116,33	124,14
Participação das Importações Totais {C/(A+B+C)}	100	69,83	98,35
Participação das Importações - Origens sob Análise {C1/(A+B+C)}	100	116,67	100,00
Participação das Importações - Outras Origens {C2/(A+B+C)}	100	68,22	98,31

Fonte: RFB e peticionária.

Elaboração: SDCOM

produtos laminados planos a frio 304 da origem investigada e a produção nacional de produto similar doméstico.

Importações da origem investigada e produção nacional (t)				
[RESTRITO]				
	P1	P2	P3	P4
Produção Nacional (A)	100	97,54	94,10	84,78
Importações - Origens sob Análise (B)	100	138,44	126,41	687,22
Relação com o Volume de Produção Nacional (B/A)	100	150,00	150,00	875,00
Variação	[RESTRITO]	[RESTRITO]	[RESTRITO]	[RESTRITO]

Fonte: RFB e peticionária.

Elaboração: SDCOM

1179. Observou-se que a relação entre o volume das importações (em toneladas) a frio 304 da origem investigada e o volume da produção nacional (em toneladas) doméstico cresceu [RESTRITO] p.p. de P1 para P2, e de P2 a P3 não se alterou. Não houve aumento de [RESTRITO] p.p. entre P3 e P4, e crescimento de [RESTRITO] p.p. considerar todo o período de análise, a relação entre o volume das importações da origem investigada e o volume da produção nacional revelou expressiva variação p.p., considerando-se P5 em relação a P1.

5.4 Da conclusão a respeito das importações

1180. No período de investigação de dano, o volume das importações de produtos laminados planos a frio 304 da origem investigada aumentou de forma

1181. Em termos absolutos, o volume das importações (em toneladas) da origem investigada passou de [RESTRITO] t em P1 para [RESTRITO] t em P5, ou seja, [RESTRITO] t, correspondendo a uma variação positiva de 3.047,1%, considerando-se P5 em relação a P1.

1182. Tem-se ainda que as importações aqui consideradas não são insignificantes, eis que superiores a quatro por cento das importações totais do produto do § 4º do art. 21 do Decreto nº 1.751, de 1995.

1183. Em relação ao mercado brasileiro (em toneladas), a participação (em toneladas) de laminados a frio 304 da origem investigada passou de [RESTRITO] % em P1 para [RESTRITO] % em P5, revelando uma evolução positiva da participação dessas importações no mercado brasileiro [RESTRITO] p.p., considerando-se P5 em relação a P1.

1188. De acordo com a metodologia aplicada, os valores em reais foram divididos pelo índice de preços médio do período, multiplicando-se o preço médio de P5. Essa metodologia foi aplicada a todos os valores monetários.

6.1.1 Do volume de vendas

1190. A tabela a seguir apresenta as vendas (em toneladas) da indústria a frio de fabricação própria, destinadas ao mercado interno e ao mercado externo.

Vendas da Indústria Doméstica (t)			
[RESTRITO]			
	P1	P2	P3
A. Vendas Totais da Indústria Doméstica	100,0	99,4	95,2
Variação	-	(0,6%)	(4,2%)
A1. Vendas no Mercado Interno	100,0	127,7	124,8
Variação	-	27,7%	(2,2%)
A2. Vendas no Mercado Externo	100,0	63,7	57,7
Variação	-	(36,3%)	(9,3%)
Representatividade das Vendas			
Participação no mercado interno nas Vendas Totais {A1/A}	100,0	128,4	131,0
Participação no mercado externo nas vendas totais {A2/A}	100,0	63,9	60,5
Elaboração: SDCOM			
Fonte: RFB e Indústria Doméstica			

1191. Observou-se que o volume de vendas (em toneladas) destinado ao mercado interno cresceu 27,7% de P1 a P2 e diminuiu 2,2% de P2 a P3. Nos períodos subsequentes, houve um aumento de 5,8% de P3 a P4 e redução de 11,2% de P4 a P5. Ao se considerar todo o período, o volume de vendas (em toneladas) da indústria doméstica para o mercado interno apresentou um crescimento de 32,7% em relação a P1.

1192. Com relação às vendas (em toneladas) ao mercado externo, houve uma redução de 36,3% de P1 a P2, de 9,3% de P2 a P3, de 54,0% de P3 a P4 e de 11,2% de P4 a P5. Quando considerados os extremos da série, o volume de vendas (em toneladas) da indústria doméstica ao mercado externo apresentou decréscimo acumulado de 84,2% em relação a P1.

1193. Ressalte-se, nesse ponto, que as vendas externas (em toneladas) representaram, no máximo, [RESTRITO] % da totalidade de vendas (em toneladas) da indústria doméstica ao longo do período de investigação de dano, atingindo seu

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Participação no Mercado Brasileiro {A/B}	100,0	116,3	124,1	131,5	131
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]
Elaboração: SDCOM					
Fonte: RFB e Indústria Doméstica					

1196. A evolução da participação das vendas da indústria doméstica de laminados a frio 304 cresceu de P1 a P2 em [RESTRITO] p.p. A partir de P2 a participação diminuiu em [RESTRITO] p.p. de P2 a P3, reduziu-se em [RESTRITO] p.p. de P3 a P4, apresentou queda de [RESTRITO] p.p. de P4 a P5. Considerando-se todo o período observado observou-se decréscimo de [RESTRITO] p.p. na evolução da participação da indústria doméstica no mercado interno, considerando-se P5 em relação a P1.

6.1.3 Da produção e do grau de utilização da capacidade instalada

1197. Conforme dados constantes da petição inicial da petição similar de laminados a frio da indústria doméstica ocorre na planta da Aperam Laminados a Frio do Brasil Ltda.

1198. Para o cálculo da capacidade nominal, a empresa apurou a produção nominal de cada um dos laminadores a frio utilizados na produção do produto similar (CONFIRMAÇÃO). A média ponderada de cada laminador foi, então, multiplicada pela quantidade de horas de funcionamento por ano (24 horas x 365 dias). A soma da capacidade dos três laminadores refletiu a capacidade nominal da empresa.

1199. Para o cálculo da capacidade efetiva, a capacidade nominal foi multiplicada pelo índice anual de funcionamento de cada laminador. Esse índice foi determinado com base na efetividade esperada dos equipamentos, levando em consideração as paradas programadas e manutenções preventivas e corretivas, e a quantidade de dias úteis em cada ano, descontadas as paradas relativas a grandes manutenções (RCO - Retorno à Operação) e outros investimentos produtivos.

Produção (t), Capacidade Instalada (t) e Grau de Ocupação					
[RESTRITO]					
	P1	P2	P3	P4	P5
A. Volume de Produção - Produto Similar	100,0	97,5	94,1	84,8	73,3
Variação	-	(2,5%)	(3,5%)	(9,9%)	(13,6%)
B. Volume de Produção - Outros Produtos	100,0	101,6	103,1	100,3	91,4
Variação	-	1,6%	1,5%	(2,7%)	(8,8%)
C. Capacidade Instalada Efetiva	100,0	103,6	99,6	94,6	100,0
Variação	-	3,6%	(3,9%)	(5,0%)	5,7%

tendo-se elevado em [RESTRITO] toneladas em P3 comparativamente a crescimento inferior a 0,1%.

1203. No que concerne à evolução do grau de ocupação da capacidade que houve diminuição de [RESTRITO] p.p. de P1 a P2, aumento de [RESTRITO] crescimento de [RESTRITO] p.p. de P3 a P4. Após, observou-se diminuição de Considerando-se todo o período inteiro de análise, a evolução do grau de instalada registrou decréscimo reduzindo-se em [RESTRITO] p.p., considerando

6.1.4 Dos estoques

1204. A tabela a seguir indica o estoque acumulado da produção laminados a frio da indústria doméstica, em toneladas, no final de cada período se o estoque inicial em P1 de [RESTRITO] t. Registre-se que as vendas no mercado externo já estão líquidas de devoluções.

Estoques (t)					
[RESTRITO]					
	P1	P2	P3	P4	P5
Volume de Produção - Produto Similar	100,0	97,5	94,1	84,8	73,3
Variação	-	(2,5%)	(3,5%)	(9,9%)	(13,6%)
Vendas no Mercado Interno	100,0	127,7	124,8	132	117,3
Variação	-	27,7%	(2,2%)	5,8%	(11,2%)
Vendas no Mercado Externo	100,0	63,7	57,7	26,6	15,8
Variação	-	(36,3%)	(9,3%)	(54,0%)	(40,6%)
Outras Entradas/Saídas	-100,0	27,3	-16,3	-269	-325,8
Estoque Final	100,0	85,5	82,5	59,7	60,9
Variação	-	(14,5%)	(3,5%)	(27,6%)	2,0%
Elaboração: SDCOM					
Fonte: RFB e Indústria Doméstica					

1205. O volume do estoque final do produto similar de laminados a frio em toneladas, apresentou diminuições sucessivas de 14,5% de P1 a P2, de 3,5% de P3 a P4. No período seguinte, o volume do estoque final do produto similar de laminados a frio da indústria doméstica apresentou elevação de 2,0% de P4 a P5. Considerando-se os extremos do estoque final do produto similar de laminados a frio da indústria doméstica, houve diminuição de 39,1%, considerando-se P5 em relação a P1.

indústria doméstica, em toneladas, apresentou redução de [RESTRITO] p.p. estabilidade entre P2 e P3. Entre P3 e P4 a evolução da relação estoque final/p de laminados a frio da indústria doméstica apresentou decréscimo de [RESTRITO] da relação estoque final/produção do produto similar de laminados a frio apresentou elevação de [RESTRITO] p.p. entre P4 e P5. Considerando-se os ex da relação estoque final/produção do produto similar de laminados a frio apresentou diminuição de [RESTRITO] p.p, considerando-se P5 em relação a P1.

6.1.5 Do emprego, da produtividade e da massa salarial

1208. As tabelas a seguir apresentam o número de empregados, salarial relacionados à produção/venda do produto similar de laminados a frio c

1209. Para o rateio do número de empregados para o produto s doméstico, o critério utilizado foi o custo de mão de obra dos aços inoxidáveis l custo de mão de obra total constante do CPV da Aperam.

1210. A alocação da massa salarial para o produto similar de lami realizada com base no mesmo critério de rateio utilizado para o número de emp

	P1	P2	P3	P4	P5	P1
Qtde de Empregados - Total	100,0	100,3	99,4	94,0	83,3	[R
Variação	-	0,3%	(0,9%)	(5,4%)	(11,3%)	(16
Qtde de Empregados - Produção	100,0	100,0	99,0	93,7	83,1	[R
Variação	-	(0,0%)	(1,0%)	(5,4%)	(11,3%)	(16
Qtde de Empregados - Adm. e Vendas	100,0	107,7	107,7	100,0	87,7	[R
Variação	-	7,7%	-	(7,1%)	(12,3%)	(12

Elaboração: SDCOM

Fonte: RFB e Indústria Doméstica

1211. Verificou-se que o número de empregados que atuam na linha similar de laminados a frio doméstico manteve-se inalterado de P1 a P2. Nos p número apresentou reduções sucessivas de 1,0% de P2 a P3, de 5,4% de P3 a P Considerando-se o período inteiro de análise, observou-se decréscimo no n atuam na linha de produção do produto similar de laminados a frio doméstico P5 em relação a P1.

1212. Quanto ao número de empregados na área de Administração aumento de 7,7% de P1 a P2 e estabilidade de P2 a P3. De P3 a P4 houve rec observou-se diminuição de 12,3%. Considerando-se o período inteiro de anál

1215. A produtividade por empregado ligado à produção do produto doméstico apresentou quedas consecutivas ao longo do período analisado, de P2 a P3, de 4,8% de P3 a P4, e de 2,6% de P4 a P5. Considerando-se todo o período, a produtividade por empregado ligado à produção do produto similar de lá apresentou queda de 11,9%, considerando-se P5 em relação a P1.

1216. As informações sobre a massa salarial relacionadas à produção de laminados a frio doméstico da indústria doméstica encontram-se sumarizadas na tabela abaixo:

Massa Salarial (em número índice)

[CONFIDENCIAL]

	P1	P2	P3	P4	P5	P1 - P5
Massa Salarial - Total	100,0	84,2	89,5	79,2	64,3	
<i>Variação</i>	-	(15,8%)	6,4%	(11,5%)	(18,9%)	(35,7%)
Massa Salarial - Produção	100,0	84,7	89,7	78,8	64,1	
<i>Variação</i>	-	(15,3%)	5,9%	(12,1%)	(18,6%)	(35,9%)
Massa Salarial - Adm. e Vendas	100,0	79,9	88,4	82,8	65,4	
<i>Variação</i>	-	(20,1%)	10,6%	(6,3%)	(21,0%)	(34,6%)
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1217. Sobre o comportamento da massa salarial dos empregados ligados à produção de laminados a frio doméstico da indústria doméstica, observou-se queda de 15,3% de P1 a P2 e aumento de 5,9% de P2 a P3. Nos períodos subsequentes, houve reduções sucessivas de 12,1% de P3 a P4, e de 18,6% de P4 a P5. Na análise dos dados, a massa salarial da linha de produção diminuiu 35,9% em termos reais, considerando-se P5 em relação a P1.

1218. No que concerne à massa salarial dos empregados ligados à administração e às vendas do produto similar, observou-se queda de 20,1% de P1 a P2 seguida de crescimento de 10,6% de P2 a P3. Nos períodos subsequentes, houve reduções sucessivas de 6,3% de P3 a P4, e de 21,0% de P4 a P5. Considerando-se todo o período de análise de dano, a massa salarial da administração e às vendas do produto similar apresentou queda de 34,6%, considerando-se P5 em relação a P1.

Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]
Receita Líquida Mercado Interno (B)	100,0	113,1	119,1	136,5	115,3
Variação		13,1%	5,3%	14,6%	(15,5%)
Participação {B/A}	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Receita Líquida Mercado Externo (C)	100,0	50,6	51,0	27,5	15,9
Variação		(49,4%)	0,7%	(46,1%)	(42,3%)
Participação {C/A}	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboração: SDCOM					
Fonte: RFB e Indústria Doméstica					

1222. A receita líquida referente às vendas de laminados planos a frio no mercado interno, em milhares de Reais atualizados, apresentou oscilação ao longo da série analisada, com crescimento contínuo de 13,1% de P1 a P2, de 5,3% de P2 a P3, e novo crescimento de 14,6% de P3 a P4; tendo então apresentado declínio de 15,5% de P4 a P5. Quando considerada a receita líquida referente às vendas de laminados planos a frio de fabricação própria no mercado interno, apresentou decréscimo acumulado de 15,3, considerando-se P5 em relação a P1.

1223. No que concerne à receita líquida obtida com a venda de laminados planos a frio de fabricação própria no mercado externo apresentou decréscimo contínuo ao longo da série analisada, de 49,4% de P1 a P2, de 0,7% de P2 a P3, 46,1% de P3 a P4; e de 42,3% de P4 a P5. Quando considerados os extremos da série, a receita líquida referente às vendas de laminados planos a frio de fabricação própria no mercado externo apresentou decréscimo acumulado de 42,3, em relação a P1.

6.1.6.2 Dos preços médios ponderados

1224. A tabela a seguir apresenta os preços médios ponderados de laminados planos a frio de fabricação própria no mercado interno, em Reais atualizados por tonelada, entre as receitas líquidas e as respectivas quantidades vendidas de laminados planos a frio, devolução, conforme apresentado anteriormente, respectivamente, nos itens 6.1.6.1 e 6.1.6.2.

Preços Médios Ponderados (em Reais/t)						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Preço no Mercado Interno	100,0	88,6	95,4	103,4	98,3	
Variação		(11,4%)	7,7%	8,4%	(4,9%)	(1,7%)
Preço no Mercado Externo	100,0	79,5	88,3	103,4	100,5	
Variação		(20,5%)	11,0%	17,2%	(2,9%)	+ 0,5%

de 0,5%, considerando-se P5 em relação a P1.

6.1.6.3 Dos resultados e margens

1227. O quadro a seguir apresenta o demonstrativo de resultados da com a venda do produto similar de laminados planos a frio de fabricação p conforme informado pela indústria doméstica.

Demonstrativo de Resultado no Mercado Interno (em Mil Reais) e Margens de R				
[CONFIDENCIAL]/[RESTRITO]				
	P1	P2	P3	P
A. Receita Líquida Mercado Interno	100,0	113,1	119,1	1
Variação		13,1%	5,3%	1
B. Custo do Produto Vendido - CPV	100,0	110,7	118,8	1
Variação		10,7%	7,3%	1
C. Resultado Bruto {A-B}	100,0	121,1	120,1	1
Variação		21,1%	(0,8%)	7
D. Despesas Operacionais	100,0	117,5	149,8	1
Variação		17,5%	27,5%	(
D1. Despesas Gerais e Administrativas	100,0	113,2	112,6	1
D2. Despesas com Vendas	100,0	105,7	111,2	1
D3. Resultado Financeiro (RF)	100,0	115,7	123,2	1
D4. Outras Despesas (Receitas) Operacionais (OD)	100,0	199,0	826,5	2
E. Resultado Operacional {C-D}	100,0	123,0	104,1	1
Variação		23,0%	(15,3%)	2
F. Resultado Operacional (exceto RF) {C-D1-D2-D4}	100,0	121,2	108,8	1
Variação		21,2%	(10,2%)	1
G. Resultado Operacional (exceto RF e OD) {C-D1-D2}	100,0	122,5	121,2	1
Variação		22,5%	(1,1%)	8
H. Margem Bruta {C/A}	100,0	107,1	100,9	9
Variação		[CONF.]	[CONF.]	[
I. Margem Operacional {E/A}	100,0	108,8	87,8	9
Variação		[CONF.]	[CONF.]	[
J. Margem Operacional (exceto RF) {F/A}	100,0	107,2	91,3	9
Variação		[CONF.]	[CONF.]	[
K. Margem Operacional (exceto RF e OD) {G/A}	100,0	108,0	101,5	9
Variação		[CONF.]	[CONF.]	[

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

apresentou oscilações ao longo do período analisado, com crescimento de 23,1% de P1 a P2 e declínio de 15,3% de P2 a P3. Nos períodos seguintes, houve crescimento de 40,7% de P4 a P5. Quando considerados os extremos da série, o resultado da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em milhares de R\$ atualizados, apresentou variação negativa de 24,0% em relação a P1.

1232. O resultado operacional, exceto resultado financeiro, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em milhares de R\$ atualizados, apresentou oscilações ao longo do período analisado, com crescimento de 10,2% de P1 a P2 sucedido de declínio de 10,2% de P2 a P3. Nos períodos seguintes, houve crescimento de 40,7% de P4 a P5. Quando considerados os extremos da série, o resultado operacional, exceto resultado financeiro, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em milhares de R\$ atualizados, apresentou variação negativa de 11,8%, considerando-se P5 em relação a P1.

1233. O resultado operacional, exceto resultado financeiro e outras despesas, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em milhares de R\$ atualizados, também apresentou oscilações ao longo do período analisado, com crescimento de 22,5% de P1 a P2 sucedido de declínio de 1,1% de P2 a P3. Nos períodos seguintes, houve crescimento de 8,9% de P3 a P4 e declínio 32,9% de P4 a P5. Quando considerados os extremos da série, o resultado operacional, exceto resultado financeiro e outras despesas, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em milhares de R\$ atualizados, apresentou variação negativa de 11,5%, considerando-se P5 em relação a P1.

1234. A margem bruta da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno apresentou crescimento de 10,2% de P1 a P2. Nos períodos seguintes, houve declínios consecutivos de [CONFIDENCIAL] p.p. de P2 a P3, de [CONFIDENCIAL] p.p. de P3 a P4, e de [CONFIDENCIAL] p.p. de P4 a P5. Quando considerados os extremos da série, a margem bruta da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno apresentou variação negativa de 11,5%, considerando-se P5 em relação a P1.

1235. A margem operacional da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno apresentou crescimento de [CONFIDENCIAL] p.p. de P1 a P2 e declínio de [CONFIDENCIAL] p.p. de P2 a P3. Nos períodos seguintes, houve crescimento de 40,7% de P3 a P4, e declínio de [CONFIDENCIAL] p.p. de P4 a P5. Quando considerados os extremos da série, a margem operacional da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno apresentou variação negativa de 11,5%, considerando-se P5 em relação a P1.

1242. O resultado operacional unitário, exceto resultado financeiro, da venda do produto similar de laminados planos a frio de fabricação própria e atualizados por tonelada, apresentou declínios consecutivos de 5,1% de P1 a P2 e nos períodos seguintes, houve oscilações com crescimento de 12,9% de P3 a P4 e de P4 a P5. Quando considerados os extremos da série, o resultado operacional e financeiro, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em R\$ atualizados por tonelada, apresentou variação de 17,8% considerando-se P5 em relação a P1.

1243. Por sua vez, o resultado operacional unitário, exceto resultado financeiro e despesas, da indústria doméstica apresentou reduções de 4,0% de P1 a P2 e de 1,1% de P2 a P3 e de 1,1% de P3 a P4. Quando considerados os extremos da série, o resultado operacional unitário, exceto resultado financeiro e despesas, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em R\$ atualizados por tonelada, apresentou variação de 2,9% considerando-se P5 em relação a P1.

6.1.7 Dos fatores que afetam os preços domésticos

6.1.7.1 Dos custos

1244. Na petição inicial, a peticionária esclareceu que não seria possível a produção segregada por CODIP, uma vez que o custeio é atribuído no código de material tendo em vista que esses códigos determinam uma faixa de espessura e de largura e de momento da venda é que são geradas, no sistema contábil da empresa, características específicas de largura e de espessura do produto vendido, não sendo os códigos dos materiais produzidos nas características do CODIP.

1245. Adicionalmente, a Aperam esclareceu que o código de material é gerado com base na espessura e de largura, de forma tal que um mesmo código de material poderia ser atribuído a um CODIP, a depender da espessura e da largura específica do produto vendido. Assim, o mesmo CODIP poderia estar relacionado a diferentes códigos de material.

1246. Nesse contexto, utilizou-se os dados referentes ao custo do produto para a construção do custo de produção, pois a utilização do CPV não prejudicaria a identificação dos custos, uma vez que a empresa produz contra pedido, os valores relativos à produção são muito próximos, sendo os estoques apenas pontuais, referentes a vendas ainda não realizadas. Assim, considerou-se que o custo unitário do produto vendido seria semelhante ao custo de produção, permitindo a identificação por CODIP.

B3. Depreciação Operacional	100,0	99,7	101,4	101,7
B4. Manutenção	100,0	106,9	114,9	89,7
B5. Indireta Operacional	100,0	87,7	105,6	105,7
Elaboração: SDCOM				
Fonte: RFB e Indústria Doméstica				
¹ Nota: A rubrica "matéria-prima" inclui ligas de inox, outras ligas, outras matérias-primas, redutores e minérios.				
² Nota: A rubrica "outros insumos" inclui refratários e outros insumos.				
³ Nota: A rubrica "utilidades" inclui energia elétrica e outras utilidades.				
⁴ Nota: A rubrica "outros custos variáveis" inclui serviços.				

1248. Verificou-se que o custo unitário de produção do produto similar a frio de fabricação própria da indústria doméstica, em R\$ atualizados por tonelada, variou 12,1% de P1 a P2. Nos períodos seguintes, houve crescimentos consecutivos de 9,2% de P2 a P3 e 11,8% de P3 a P4. Após, houve novo declínio de 0,8% de P4 a P5. Quando considerado o custo unitário de produção do produto similar de laminados planos a frio de fabricação própria da indústria doméstica, em R\$ atualizados por tonelada, apresentou variação positiva de 6,4% em relação a P1.

6.1.7.2 Da relação custo/preço

1249. Na tabela seguinte é explicitada a relação entre o custo unitário de produção do produto similar de laminados planos a frio de fabricação própria da indústria doméstica, em R\$ atualizados por tonelada, e o preço de venda da indústria doméstica no mercado interno, em R\$ atualizados por tonelada, indicando, assim, a participação desse custo no preço de venda da indústria doméstica, ao longo do período de investigação de dano.

Dos Custos e da Relação Custo/Preço						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
<u>A. Custo de Produção Unitário</u>	100	87,90	96,01	107,34	106,47	
Variação		(12,1%)	9,2%	11,8%	(0,8%)	+ 6,4%
<u>B. Preço no Mercado Interno</u>	100,0	88,6	95,4	103,4	98,3	
Variação		(11,4%)	7,7%	8,4%	(4,9%)	(1,7%)
<u>C. Relação Custo / Preço [A/B]</u>	100,00	99,21	100,66	103,81	108,27	
Variação	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1252. A fim de se comparar o preço de laminados a frio 304 importados com o preço médio de venda da indústria doméstica no mercado interno, o preço CIF internado dos produtos importados da origem investigada no mercado de venda da indústria doméstica no mercado interno foi obtido pela razão entre os preços atualizados, e a quantidade vendida, em toneladas, no mercado interno durante o período de dano.

1253. Para o cálculo dos preços internados do produto importado da origem investigada, foram considerados os valores totais de importação do produto em condição CIF, em reais, obtidos dos dados brasileiros de importação, fornecidos pela RFB, foram somados: a) o Imposto de Importação (II), considerando-se os valores efetivamente pagos; b) o Adicional de Frete para Renovação da Marinha Mercante (AFRMM); e c) as despesas estimadas em 3,2% sobre o valor CIF, com base nos questionários de importação da origem investigada.

1254. Destaque-se que o valor unitário do AFRMM foi calculado aplicando-se 25% sobre o valor do frete internacional referente a cada uma das operações de importação dos dados da RFB, quando pertinente. Cumpre registrar que foi levado em consideração que não incide sobre determinadas operações de importação, como, por exemplo, o frete aéreo, as destinadas à Zona Franca de Manaus e as realizadas ao amparo do regime de suspensão de direitos.

1255. Por fim, dividiu-se cada valor total supramencionado pelo valor unitário do objeto da investigação, a fim de se obter o valor por tonelada de cada uma das importações. O somatório das rubricas unitárias, chegando-se ao preço CIF internado das importações da origem investigada.

1256. Destaca-se que foram consideradas as características do produto e a sua distribuição (usuário industrial/consumidor final e distribuidores), sendo que as importações (CODIP) foram identificadas por meio da descrição detalhada de cada uma das importações constantes dos dados de importação da RFB e também das informações das respostas ao questionário do importador. Destaca-se que, em comparação com o início da investigação, alguns ajustes foram necessários para permitir melhor comparação entre o produto investigado e o similar nacional.

1257. Nesse sentido, a classificação por CODIPs teve como base a determinação dos dados oficiais, sendo possível identificar, para a maior parte das importações, a característica do produto importado (acabamento). Ressalta-se que, para aquelas importações em que não foi possível identificar todas tais características, foram utilizadas as características do produto similar. Dessa forma, a subcotação apresentada nesta determinação final incorpora melhor a comparação com a apresentada anteriormente no início da investigação.

1260. Da análise da tabela anterior, constatou-se que o preço médio importado da origem investigada, internado no Brasil, esteve subcotado em relação à doméstica em P5 e P3.

1261. Em relação aos preços médios de venda da indústria doméstica, houve aumento de P1 para P2, aumentos de 7,7% de P2 para P3 e de 8,4% de P3 para P4, seguidos de redução de P4 para P5. Ao analisar os extremos da série, verificou-se redução de 1,7% de P1 para P5 na venda da indústria doméstica.

1262. Observou-se, portanto, depressão do preço da indústria doméstica no período analisado, com queda dos preços, ao longo do período analisado, porém com variações positivas de P1 para P4.

1263. Por fim, verificou-se supressão de preços de P2 para P3 e de P3 para P4. Embora tenha havido aumento nos custos de produção unitários em nível superior ao aumento dos preços, considerando os extremos do período, uma vez que houve aumento de custo unitário de P2 para P3 e de redução do preço médio unitário de venda da indústria doméstica no mercado interno de P3 para P4, a relação entre custo de produção e preço de venda registrou elevações de [CONFIDENCIAL]p.p. de P2 para P3, [CONFIDENCIAL]p.p. de P3 para P4 e [CONFIDENCIAL]p.p. de P4 para P5, conforme indicado no item 6.1.7.2. Considerando os extremos da série, em comparação com o início de preços, o preço médio de venda do produto similar diminuiu 1,7% e o custo médio registrou uma elevação de [CONFIDENCIAL]p.p. na relação entre as duas variáveis.

6.1.8 Do fluxo de caixa

1264. A tabela a seguir mostra o fluxo de caixa apresentado pela indústria doméstica. Em vista da impossibilidade de a empresa apresentar fluxos de caixa completos e detalhados para a produção de laminados a frio 304, a análise do fluxo de caixa foi realizada em função da totalidade dos negócios da peticionária.

Do Fluxo de Caixa (Em número índice)						
[CONFIDENCIAL]						
	P1	P2	P3	P4	P5	P1 - P5
Fluxo de Caixa	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	
Variação		102,1%	4.486,1%	(47,4%)	274,2%	+ 286,0%
Fonte: Indústria doméstica e RFB.						
Elaboração: SDCOM.						

Total (R\$) / P1		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variação						

Fonte: Indústria doméstica e RFB.

Elaboração: SDCOM.

1267. A taxa de retorno sobre investimentos da indústria doméstica [CONFIDENCIAL] p.p. de P1 para P2, aumentou [CONFIDENCIAL] p.p. de P2 para P3, de P3 para P4, voltando a cair [CONFIDENCIAL] p.p. de P4 para P5. Considerando de análise de dano, houve aumento de [CONFIDENCIAL] p.p. do indicador em que

6.1.10 Da capacidade de captar recursos ou investimentos

1268. Para avaliar a capacidade de captar recursos, foram calculados o índice de liquidez geral e corrente a partir dos dados relativos à totalidade dos negócios da indústria doméstica. Quando estiverem disponíveis os dados exclusivamente relativos à produção do produto, os dados apresentados foram apurados com base nos balancetes referentes às demonstrações financeiras da empresa relativas ao período de continuação/retomada de dano.

1269. O índice de liquidez geral indica a capacidade de pagamento das obrigações de longo prazo e o índice de liquidez corrente, a capacidade de pagamento das

Capacidade de captar recursos ou investimentos (Em número índice)						
[CONFIDENCIAL]						
	P1	P2	P3	P4	P5	P1 - P5
Índice de Liquidez Geral (ILG)	100,0	98,6	95,9	101,4	101,4	
Variação		[Conf.]	[Conf.]	[Conf.]	[Conf.]	[Conf.]
Índice de Liquidez Corrente (ILC)	100,0	107,5	111,9	117,5	110,6	
Variação		[Conf.]	[Conf.]	[Conf.]	[Conf.]	[Conf.]

Fonte: Indústria doméstica e RFB.

Elaboração: SDCOM.

1270. O índice de liquidez geral apresentou quedas de 1,4% entre P1 e P2, de 2,6% entre P2 e P3. Em seguida, apresentou aumento de 5,6% de entre P3 e P4, mantendo-se o mesmo entre P4 e P5. Considerando todo o período de análise, de P1 para P5, esse indicador aumentou 1,4%.

1271. O índice de liquidez corrente, por sua vez, comportou-se com crescimentos de 7,5% entre P1 e P2, de 4,1% entre P2 e P3 e de 5,0% entre P3 e P4, decréscimo de 5,9% entre P4 e P5. O referido indicador apresentou crescimento de 10,6% entre P1 e P5.

do ASMC, a SDCOM não substituiu vários elementos importantes. Para o GOI, com a NT, apesar da retração das vendas totais da indústria doméstica brasileira, principalmente à tendência negativa das vendas de exportação ao invés das vendas internas, uma vez que de P1 a P5 as vendas de exportação se reduziram, enquanto as vendas internas mantiveram positivas, de forma tal que a pressão real teria sido derivada do mercado interno, podendo a imposição de medidas de defesa comercial por terceiros países ter sido evitada.

1276. Nesse contexto, para o GOI, as vendas totais teriam sido sustentadas pelo mercado interno sem uma participação significativa das vendas de exportação. A indústria doméstica brasileira pretendeu alterar seu foco de mercado para o mercado interno, medida de defesa comercial, para evitar a concorrência estrangeira, seria uma medida para mercados alternativos para impulsionar as exportações.

1277. A participação da indústria doméstica no mercado ainda estaria sendo sustentada, havendo que se falar em dano material, e a gradual redução de produção de P1 a P5 para o mercado externo. De todo modo, o percentual de produção ainda estaria em níveis seguros. O parágrafo 1011 da NT mostra contradição, pois aponta que mercadorias em estoque ao invés de restarem em estoque.

1278. Outros fatores que pioraram, como o emprego, se deveriam ser considerados nas exportações. Para o GOI, o parágrafo 1028 da NTFE oculta o crescimento da produção doméstica brasileira, que de P1 a P5 conseguiu aumentar, o que corresponde ao preço brasileiro de manter o preço conforme expresso no parágrafo 1032 da NTFE, o preço vendido pela indústria doméstica brasileira caiu apenas levemente. Apesar do incremento do fluxo de caixa e ainda aumento do Cost of goods sold em P5, as despesas operacionais cresceram em [RESTRITO] %, o que não seria relacionado ao dano. Haveria ainda melhora no retorno do investimento e na capacidade de captar recursos.

1279. Aduziu o GOI ainda que o parágrafo 1055 da NTFE evidencia o impacto crucial no aumento do COGS, seria esse o real desafio da indústria doméstica brasileira advindos das importações investigadas.

1280. A Aperam, em sua manifestação final, destacou que evolução da produção de forma cabal, a existência de dano à indústria doméstica. Rebateu, ainda, com a audiência final do processo em tela, afirmou que o dano à indústria doméstica ocorreu apenas em P5 e que, dessa forma, não seria possível atestar se a causa de tal dano é o objeto da investigação. Para a Aperam, tal interpretação seria inconcebível. A entidade entende que a indústria doméstica deve sofrer dano por vários anos, pois se beneficiariam indevida e deslealmente dos preços distorcidamente baixos praticados antes que busque adotar as medidas cabíveis e legais para se defender das importações.

apresentado. Assim, considerada a situação global da indústria doméstica, não há existência de dano material. Pontua-se ainda, que, consoante item 7.2.6, abaixo analisou a questão das exportações trazida na manifestação do GOI, tendo, mais uma vez, concluído que não há existência de dano material após a separação e distinção dos efeitos desse outro fator.

1283. Sobre os comentários da PT IRNC, muito embora não versar sobre a matéria em questão, errata, mas sim no item "Dos resultados e margens", de modo a prestigiar a informação, pontua estar integralmente correta a tabela "Demonstrativo de Resultados da Indústria da Unidade", tanto em sua versão confidencial, quanto na restrita. Relembra-se que a elevação) de um indicador ser maior do que o de outro não necessariamente ocorre nas magnitudes, a queda (ou subida) absoluta acompanhará tais percentuais. Portanto, operacional, a linha E está integralmente correta, e as variações da linha F também foram copiados inadvertidamente, e constam corretamente no presente documento.

6.4 Da conclusão sobre os indicadores da indústria doméstica

1284. A partir da análise dos indicadores expostos, verificou-se o seguinte na investigação de dano:

a) as vendas da indústria doméstica no mercado interno aumentaram entre P1 e P5, porém com queda de 11,2% entre P4 e P5. Tal evolução, contudo, não compensa a deterioração dos resultados operacionais se considerados os extremos da série, com decréscimos de 24,0% do resultado operacional (queda de 40,7% de P4 a P5) e do resultado operacional exceto o resultado financeiro (redução de 32,1% de P4 a P5) e do resultado operacional exceto o resultado financeiro e outras despesas (queda de 32,9% de P4 a P5);

b) a despeito do crescimento das vendas da indústria doméstica evidenciada no item anterior, houve queda da participação das vendas da indústria doméstica no mercado brasileiro (redução de [RESTRITO] p.p. de P1 a P5 e de [RESTRITO] p.p. de P4 a P5) e apresentou aumento de 31,0% quando comparados P1 com P5;

c) a produção de laminados a frio 304 da indústria doméstica apresentou queda no período de investigação, reduzindo-se em 26,7% de P1 a P5 e em 13,6% de P4 a P5. Acompanhada de estabilidade na capacidade instalada, o que gerou a diminuição da utilização da capacidade instalada de P1 para P5 ([RESTRITO] p.p.) e de P4 a P5 ([RESTRITO] p.p.). A ocupação também pareceu ter sido influenciada pela queda nas vendas ao mercado interno analisado (- 84,2%), principalmente entre P4 e P5 (- 40,6%);

d) os estoques diminuíram 39,1% de P1 para P5. Entre P4 e P5 houve a

relação custo/preço de P1 para P5 ([CONFIDENCIAL]p.p.) e de P4 para P5 ([CONFIDENCIAL]p.p.).

1285. Diante do exposto acima, verificou-se deterioração na maioria da indústria doméstica no período de investigação de dano, sobretudo entre P4 e P5.

7 DA CAUSALIDADE

1286. O art. 22 do Decreto nº 1.751, de 1995, estabelece a necessidade de demonstração causal entre as importações do produto alegadamente subsidiado e o dano. A demonstração de nexos causal deve basear-se no exame de elementos de fato e de direito, e não apenas em fatores conhecidos, além das importações alegadamente subsidiadas que possam ter afetado a indústria doméstica na mesma ocasião.

7.1 Do impacto das importações com evidências de subsídios acordados com a indústria doméstica

1287. Consoante o disposto no art. 22 do Decreto nº 1.751, de 1995, é necessário demonstrar que as importações do produto subsidiado contribuíram significativamente para o dano à indústria doméstica.

1288. A partir dos dados apresentados nos itens 5 e 6 deste documento, verificou-se que ao longo do período de análise de dano houve crescimento no volume das importações de laminados a frio de 304 originárias da Indonésia, apurando-se aumento de [RESTRITO] %, de P1 a P5. No período de P4 a P5, quando houve incremento de [RESTRITO] % no volume importado.

1289. Em relação à participação das importações de laminados a frio no mercado brasileiro, verificou-se que em P1 as importações da origem investigada eram responsáveis por [RESTRITO] % do mercado. Após o aumento das importações da Indonésia no período de análise de dano, a participação das importações alcançou [RESTRITO] %, em P5, sendo que somente no período de P4 a P5, essas origens praticamente quintuplicou, quando passou de [RESTRITO] % para [RESTRITO] %. Por outro lado, a participação das importações das demais origens recuou para [RESTRITO] %.

1290. Avaliou-se que o aumento do volume das importações originárias da Indonésia resultou no ganho de mercado em detrimento, principalmente, da participação das vendas da indústria doméstica. Assim, que, em P1, correspondia a [RESTRITO] % e, no último período, representou [RESTRITO] %. Em comparação, as importações da origem investigada aumentaram a participação no mercado de P1 a P5, em [RESTRITO] p.p., enquanto a indústria doméstica perdeu [RESTRITO] p.p. e as demais origens retraíram-se em [RESTRITO] p.p., no mesmo período.

1291. A tabela seguinte detalha a distribuição do mercado brasileiro de laminados a frio de 304, considerando as parcelas que couberam às vendas da indústria doméstica e às importações, bem como as pertinentes às importações da origem investigada e das demais origens.

registrou a queda mais expressiva ([RESTRITO] % em relação a P4), aliada à de laminados a frio 304 ([RESTRITO] % comparado a P4). Tal cenário ocasionou o esgotamento da capacidade instalada da indústria doméstica, cujo grau de ocupação caiu [RESTRITO] registrando o menor nível de ocupação em todos os períodos analisados.

1294. Aliado a esses fatores, registra-se o aumento dos custos de produção, apesar de despeito da redução de 0,8% de P4 a P5, sem que houvesse margem para repassasse tais custos para o preço praticado, inclusive observando-se a redução da relação a P1 e de 4,9% comparado a P4, em decorrência da perda de participação nas importações da origem investigada. Assim, houve deterioração da relação da indústria doméstica de [CONFIDENCIAL] p.p. de P4 a P5, e de [CONFIDENCIAL] p.p., comparado a P1.

1295. Em conjunto, tais fatores geraram a deterioração dos indicadores da indústria doméstica, principalmente no intervalo de P4 a P5, quando foram registradas quedas de [CONFIDENCIAL]%, nos resultados bruto ([CONFIDENCIAL]%), operacional ([CONFIDENCIAL]%), operacional exceto receitas financeiras e outras despesas ([CONFIDENCIAL]%), operacional bruta ([CONFIDENCIAL] p.p.), operacional ([CONFIDENCIAL] p.p.) e operacional exceto receitas e outras despesas ([CONFIDENCIAL] p.p.).

1296. Diante das análises indicadas, verificou-se ter havido impacto negativo com evidências de subsídios acionáveis sobre os indicadores da indústria doméstica no período de análise de dano, sobretudo entre P4 e P5.

7.2 Dos possíveis outros fatores causadores de dano e da não atribuição

7.2.1 Volume e preço das importações não subsidiadas

1297. Verificou-se, a partir da análise das importações brasileiras de laminados a frio 304, que as importações oriundas das outras origens oscilaram ao longo do período de análise de dano, com variações de + 53,5% de P2 para P3, - 4,9% de P3 para P4, - 15,0% de P4 para P5, e - 1,1% de P5 para P6.

1298. Nesse sentido, as importações das demais origens, exceto aquelas da origem investigada, ganharam participação no mercado brasileiro apenas no período P3 ([RESTRITO] %). Durante todo o período de análise de dano, a participação no mercado brasileiro dessas importações sofreu retração de [RESTRITO] p.p.

1299. Por outro lado, as importações oriundas da origem investigada aumentaram sua participação no período analisado, sobretudo em P5 (elevação de 357,9% em relação a P4) e em P6 (elevação de 100,0% em relação a P5), período de maior deterioração dos indicadores da indústria doméstica.

Subcotação (R\$ atualizados/t) (b-a)	-100,0	-114,5	-81,2	-82,0
Fonte: Indústria doméstica e RFB.				
Elaboração: SDCOM.				

1301. Assim, quando analisadas conjuntamente, não se verificaram efeitos das importações das demais origens tenham contribuído para a deterioração da indústria doméstica às importações não alegadamente subsidiadas. Ressalte-se, ainda, que no quadro anterior não levou em consideração os CODIPs ou tipos de produto.

7.2.2 Impacto de eventuais processos de liberalização das importações domésticos

1302. Conforme apontado no item 2.1.1 deste parecer, a tarifa do insumo subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM 14% durante todo o período de análise de dano.

1303. Adicionalmente, os acordos de preferência tarifária celebrados tiveram impacto sobre a evolução das importações brasileiras de laminados 304, tendo em vista com os quais esses acordos foram celebrados e a evolução dos seus volumes de importação.

1304. Dessa maneira, não se observou qualquer impacto sobre os volumes de importação que possa atribuir a eventuais processos de liberalização das importações.

7.2.3 Contração da demanda ou mudanças nos padrões de consumo

1305. Conforme apontado no item 5.2 deste documento, o mercado brasileiro de aço frio 304 apresentou crescimentos sucessivos de P1 até P4, apresentando retração em P5 (-0,6%). Quando considerado todo o período de análise de dano, o mercado brasileiro de aço 304 cresceu 30,7%, considerando-se P5 em relação a P1.

1306. Dessa forma, não foi observada contração da demanda doméstica durante o período de análise de dano.

1307. Além disso, durante o período analisado não foram constatadas mudanças no consumo do mercado brasileiro.

7.2.4 Práticas restritivas ao comércio de produtores domésticos e estrangeiros entre eles

1308. Não foram identificadas práticas restritivas ao comércio de produtos da indústria doméstica ou pelos produtores estrangeiros, tampouco fatores que possam ser atribuídos entre eles.

7.2.5 Progresso tecnológico

período imediatamente anterior (P3), essas quedas corresponderam a 54,0% e 11,3% em P5, em relação aos volumes de exportação de P3. Pode-se também tomando-se o período P3 como referência (único em que não houve queda expressiva no volume de vendas ao mercado externo e que, ainda, não apresentou queda equivalente de vendas no mercado interno, diferentemente de P2), influenciar a produção do produto similar doméstico, com reduções de 9,9% em P4 e de 14,5% em P5 em relação a P3.

1313. Sobre tais quedas do volume exportado pela indústria doméstica, observa-se que a própria existência dos subsídios acionáveis no segmento de aço inoxidável é uma ameaça à competitividade da indústria doméstica brasileira no cenário internacional. É fato que a Indonésia esteve em condições de exportar grandes volumes, com a existência do parque IMIP, no qual se localiza a empresa produtora/exportadora investida nos mercados mundiais sofreram grande pressão. A título de exemplo, de acordo com a investigação da União Europeia, as importações da UE do produto similar originário da Indonésia foram de cerca de 100 toneladas em 2017, para no mínimo 68.000 toneladas no período de junho 2020, de 0% a 2,4% do share). Conforme dados da investigação da Comissão Europeia, as importações daquele país do produto similar originário da Indonésia saem de 76.102 toneladas de abril 2018 a março 2019 (de 0% para 17% do share). Nessas e em outras investigações, tem-se aqui um novo player que causa pressão mundial no mercado.

1314. Com relação a outro fator observado, tem-se que, também houve quedas na produção de outros produtos produzidos pela indústria doméstica (11,3%). Observe-se que P3 foi o segundo período de maior volume de produção de produtos similares (aproximadamente igual ao de P2 - e de maior volume de produção de outros produtos similares pela indústria doméstica. Com isso, conseqüentemente, a produção total da indústria doméstica apresentou as suas maiores retrações nos períodos P4 (- 4,9%) e P5 (- 14,5%) em relação ao período P3 como referência.

1315. Dado que, nesses dois períodos (P4 e P5), a indústria doméstica apresentou quedas em sua margem bruta e em sua margem operacional exceto para despesas/receitas operacionais, além de apresentar piora em sua relação com o produto similar relacionado ao produto similar por ela produzido e vendido no mercado brasileiro, que medida a piora no seu desempenho exportador e a queda no volume de produtos por ela produzidos podem ter impactado o seu cenário de dano observado.

1316. Nesse sentido, mesmo considerando que a própria existência dos subsídios possa ter contribuído para a piora do desempenho exportador da indústria doméstica, procedeu-se à análise de cenário para separar e distinguir os efeitos da queda

ajustado considerou a diferença as vendas externas do quadro anterior. Tendo em vista que a produção da indústria doméstica foi menor nos períodos P4 e P5, não se julgou ser pertinente no mesmo sentido de descontar a variação de estoques em decorrência de menor volume.

[RESTRITO]

Produto similar	P3	P4	P5
Produção efetiva (t) (a)	100	90,1	77,9
Produção ajustada (t) (b)	100	104,5	97,3
Diferença na produção (b-a)	-	100	134,6

Fonte: Peticionária.

Elaboração: SDCOM.

c) a produção de outros produtos não teria caído, mantendo-se idêntica à produção efetiva.

[RESTRITO]

Outros Produtos	P3	P4	P5
Produção efetiva (t) (a)	100,0	97,3	88,7
Produção ajustada (t) (a)	100,0	100,0	100,0
Diferença na produção (b-a)		100,0	415,1

Fonte: Peticionária.

Elaboração: SDCOM.

d) a combinação dos volumes incrementais indicados nos itens (b) e (c) resultaria em um volume de produção total mais elevado nos períodos P4 e P5.

[RESTRITO]

Produção Total	P3	P4	P5
Produção efetiva (t) (a)	100,0	95,1	85,5
Produção ajustada (t) (a)	100,0	101,4	99,2
Diferença na produção (b-a)		100,0	220,9

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

Custo de Produção Ajustado (R\$/t)	P3	P4	
Custos unitários variáveis efetivos	100,0	114,9	
Custos unitários fixos ajustados	100,0	78,8	
Custo unitário de produção total (fixo + variável) ajustado (R\$/t)	100,0	110,1	
Variação do custo unitário total (Efetivo x Ajustado)	-	100,0	

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

g) o CPV variaria em consonância com as alterações no custo de produção de cada período. Assim, para efeitos da simulação, foram aplicadas no CPV efetivo reduções percentuais observadas no custo total de produção ajustado apresentadas na tabela abaixo:

[CONFIDENCIAL]

CPV	P3	P4	P5
CPV efetivo (R\$/t)	100,0	110,3	110,0
CPV efetivo ajustado (R\$/t)	100,0	108,6	107,2

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

h) as despesas unitárias com vendas não variariam com o aumento do volume de vendas (caráter de despesas variáveis, para fins do exercício), mas haveria impacto nas despesas administrativas, no resultado financeiro e nas outras despesas ou receitas (caráter de despesas fixas, para fins do exercício). Desse modo, as despesas ajustadas são as despesas incorridas ponderadas pela variação no volume de vendas efetivamente praticado no período ajustado. Contudo, recorde-se que se está reconstruindo a Demonstração do Resultado do Exercício das vendas do produto similar produzido pela indústria no mercado brasileiro com base em seus indicadores financeiros decorrente do seu desempenho exportador e comparado com outros produtos. Ainda que o cenário proposto não apresente alteração no volume de vendas doméstica no mercado interno e, assim, não haja alteração na sua receita operacional, as despesas operacionais exibiram variações. Isso ocorre porque a indústria doméstica realizou despesas levando-se em consideração a participação da receita operacional líquida do produto similar por tipo de mercado (interno ou externo) em relação à sua receita operacional. Assim, que o aumento do volume de vendas externas ocasionou crescimento da receita operacional associada no cenário proposto, verificou-se em consequência, aumento das despesas operacionais.

Receita Operacional Líquida (mil R\$)	P3	P4	P5
ROL Total APERAM efetiva	100,0	120,2	112,5
ROL Total APERAM ajustada	100,0	123,4	116,7
Diferença		100,0	130,8

Fonte: Peticionária.

Elaboração: SDCOM.

[CONFIDENCIAL]

Participação ROL MI	P3	P4	P5
ROL MI (mil R\$)	100,0	114,6	96,8
ROL Total APERAM efetiva (mil R\$)	100,0	120,2	112,5
ROL Total APERAM ajustada (mil R\$)	100,0	123,4	116,7
Participação MI efetiva (%)	100,0	95,4	86,1
Participação MI ajustada (%)	100,0	92,9	83,0

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

Despesas Operacionais Unitárias da Indústria Doméstica ajustadas por efeitos da queda nas exportações e da redução da produção de outros produtos (número índice) ¹

	P3	P4	P5
Despesas Operacionais ajustadas	100,0	81	79
Despesas gerais e administrativas ajustadas ¹	100,0	89	92
Despesas com vendas efetivas	100,0	100	86
Resultado financeiro ajustado ¹	100,0	101	105
Outras despesas (receitas) operacionais ajustadas ¹	100,0	28	14

¹ Metodologia: montante total de cada tipo de despesa efetivamente realizada dividido pela "Participação MI ajustada" obtida na tabela anterior.

Fonte: Indústria doméstica.

Elaboração: SDCOM.

Resultado Operacional (Exceto RF) (%)	100	121,2	108,8	138,8	100
Variação		21,2%	-10,2%	27,4%	-27,4%
Margem Operacional (Exceto RF) (%)	100	107,2	91,4	101,5	87,5
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]
Resultado Operacional (exceto RF e OD) (%)	100	122,5	121,2	140,4	100
Variação		22,5%	-1,1%	15,9%	-28,5%
Margem Operacional (exceto RF e OD)(%)	100	108,4	101,8	102,9	87,5
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]

¹ Resultado Financeiro.

² Outras despesas ou receitas operacionais.

* Resultados e margens do período ajustados de acordo com as premissas.

Fonte: Indústria doméstica.

Elaboração: SDCOM.

1318. Conforme os indicadores obtidos com o cenário construído, mediante a separação e distinção dos impactos causados pela queda nas vendas pela redução na produção de outros produtos nos indicadores financeiros, as margens operacional exceto resultado financeiro e operacional exceto resultado financeiro e receitas operacionais ainda apresentariam significativa deterioração em P5, tanto em P4, período imediatamente anterior ao maior crescimento de importações investigadas.

1319. Dessa forma, a concorrência da queda do volume exportado e da produção de outros produtos para o dano à indústria doméstica não afasta o dano causado pelas importações investigadas, considerando tanto os efeitos sobre o preço quanto sobre preço e lucratividade da indústria doméstica.

7.2.7 Produtividade de indústria doméstica

1320. A produtividade da indústria doméstica, calculada como o quociente entre a produção e o número de empregados envolvidos na produção no período, diminuiu em relação a P1 e P4, respectivamente.

1321. Este fato, porém, decorre da queda no número de empregados em um ritmo menor do que aquele observado na queda do volume de produção e não porque o número de empregados da linha de produção foi reduzido em 16,7% de P1 para P5, e o volume de produção do produto similar decresceu 27,1% de P1 para P5.

dumping.

7.3 Das manifestações prévias à Nota Técnica referentes à relação de

1327. Inicialmente, a IRNC mencionou inexistir relação de causalidade entre o dano percebido pela indústria doméstica - especialmente em P5 - e as medidas investigadas a fim de justificar a aplicação de medidas compensatórias.

1328. Conforme os dados da investigação, a APERAM teve bom desempenho em P4, com melhoras em todos seus indicadores. Exceção apenas em P5, quando houve queda de vendas no mercado interno concomitante a um incremento no volume das vendas no exterior, segundo a conclusão da SDCOM no Parecer de Abertura.

1329. Seria exatamente nesse período que se observa uma queda no desempenho da indústria doméstica que, ao entender da IRNC, origina-se do incremento de seus custos unitários e preço. Entretanto, não seria possível fazer uma análise mais depurada sobre o período, especificamente, configura-se como um período imiscuído de outros fatores, como as importações e as vendas de outros produtos da indústria doméstica.

1330. Nesse contexto, a IRNC rememorou o exercício de não-atribuição de efeitos para excluir tais efeitos da análise de dano, especificamente no que se refere a determinar o dano. A IRNC buscou refazer os cálculos da SDCOM, mas não obteve sucesso, visto que houve várias divergências: 1) custos variáveis unitários: segundo a empresa, os números não refletiriam os custos variáveis e tampouco os custos fixos apresentados na tabela de Abertura. O cálculo foi refeito considerando os montantes de P3 como parâmetro, como foi feito na análise de segregação e não-atribuição da SDCOM. Assim, a variação dos custos unitários indicaria um cenário de 15% de aumento de P4 em relação a P3, e de 10% em P5. Dessa forma, o declínio entre P4 e P5 seria irrisório e o número apresentado seria equivocado, que indicaria um custo variável unitário 1,7% inferior em P5 em relação a P4. 2) custos unitários: seguindo a mesma metodologia do item 1, a variação dos custos unitários indicaria um cenário de 8% de queda de P4 em relação a P3, e de 3% em P5 em relação a P4. Os custos apresentados pela SDCOM não estariam corretos; 3) A IRNC frisa que as medidas encontradas acima ocorreriam para o CPV, assim como para o cálculo ajustado por despesas administrativas e financeiras; e 4) erro de fórmula na construção da tabela de Abertura. No Parecer de Abertura, que simula o demonstrativo de resultados do exercício, a IRNC observou os valores que indicam a variação das rubricas, a IRNC constatou que a metodologia estava medindo a diferença entre um período e seu antecessor imediato - P4/P5, apenas em relação a P1. Dessa forma, colocou-se em pauta a hipótese de que o erro cometido com os indicadores de variação que obtiveram tratamento confidencial

1335. Ademais, a Aprodinox observou que as vendas da indústria do mesmo ritmo do mercado entre P1 e P4; de forma que somente em P5, o crescimento teria sido acompanhado pelas vendas da indústria doméstica.

1336. Além disso, para a Aprodinox, o preço médio da indústria atualizado, teria se mantido praticamente o mesmo, na comparação entre P1 e P5, variado no mesmo ritmo da inflação; de forma que esse fato indicaria que todo o aumento de preços no período teria sido repassado aos preços, e que os únicos períodos nos quais os preços não foram atualizados foram P2 e P3, anos nos quais as importações provenientes da Índia foram incapazes de gerar qualquer efeito sobre a indústria doméstica.

1337. Nesse quadro, a Aprodinox, considerando as evoluções das vendas e dos preços atualizados praticados pela Aperam, anotou que as receitas atualizadas da Aperam Interno teriam se elevado 15% em P5 quando comparadas com P1; de forma que a redução no ritmo de crescimento das vendas da indústria doméstica, com o aumento das importações, não guardaria relação com os programas que representariam suporte pelo governo da Indonésia e que existiriam, frise-se, pelo menos desde 2014.

1338. Nesse contexto, para a Aprodinox, não houve qualquer alteração a partir de 2019 que explicariam ou justificariam o efeito maior sobre a indústria doméstica que ocorreu de fato teria sido o início da migração dos distribuidores exclusivos da Aperam para a condição de não exclusivos a partir de 2019, conforme teria informado o processo de avaliação de interesse público.

1339. Dessa forma, para a Aprodinox, esta mudança de padrão de crescimento ocorreu ante o reconhecimento das ineficiências da Aperam e sua incapacidade de competir no mercado, somada à prática de preços excessivamente elevados.

1340. Neste cenário, a Aprodinox arguiu que, dada a existência de muitas importações da China e de Taipé Chinês, os distribuidores teriam passado a importar de outras origens, dentre as quais destaca-se a Indonésia; tendo sido este o motivo do incremento das importações da Indonésia para o Brasil e não os programas de apoio à indústria na Indonésia.

1341. Ademais, a Aprodinox observou que, com a maior concorrência especial em P5, não teria sido possível que a peticionária repassasse, pelo menos parcialmente, analisado, integralmente os incrementos de custos aos preços; e por esse motivo, os indicadores de desempenho da Aperam especificamente em P5.

importado, possuindo baixo incentivo para se manter eficiente; e a partir de 2017, que seus distribuidores exclusivos teriam passado para a condição de não exclusivos, o movimento teria motivado o aumento nas importações e não práticas dos alegados exportadores.

1347. A IRNC, em manifestação de 9 de setembro de 2022, entende que a causalidade suficientemente clara entre o dano percebido pela indústria doméstica e as importações investigadas que possam justificar a aplicação de medidas comerciais.

1348. Aduziu que a Aperam teria tido bom desempenho nos períodos P1 a P4 em todos seus indicadores; com a exceção em P5, com queda no volume de vendas doméstica no mercado interno concomitante a um incremento no volume das vendas externas concomitante a uma queda na lucratividade da indústria doméstica que, ao mesmo tempo, o incremento de seus custos não acompanhado do preço.

1349. Entretanto, P5 configura-se como um período imiscuído de dados das exportações e queda do volume de venda de outros produtos da indústria doméstica. Os cálculos do exercício de não atribuição feito pela SDCOM apresentariam uma incorreção em sede de Nota Técnica de Fatos Essenciais. Para a IRNC, resumidamente, os seguintes pressupostos: 1. manteve fixas as vendas ao ME doméstico e os volumes das vendas externas do produto similar produzido pela indústria doméstica; 2. seu consequente aumento em volume de produção; 3 manteve a produção de outros produtos de P3 em diante, de forma que a combinação dos volumes incrementais indicados por "a" (vendas ao ME) + "c" (produção outros produtos) resultaria em um volume de produção total novo; 4 o volume de produção total novo (com o incremento de volumes de produção de outros produtos ao ME + volume de outros produtos) seria limitado à capacidade instalada efetiva.

1350. Assim, a SDCOM teria verificado que o novo volume de produção total simulado seria limitado à capacidade instalada efetiva; os custos variáveis unitários permaneceriam conforme o incorrido pelo produto similar; os custos fixos unitários foram recalculados, de forma a refletir a diluição dos custos fixos incorridos em decorrência do maior volume de produção total simulado; o CPV unitário seria o custo de produção total recalculado em cada período.

1351. A IRNC refez todos os cálculos e apurou aquilo que eram inconsistências, para as quais requer sejam verificados pela SDCOM. Em primeiro lugar, que os números exibidos na tabela não refletiriam os custos variáveis e os custos fixos apresentados na tabela da pág. 200 do Parecer de Abertura, destacando sua inconsistência e a variação entre períodos parece acontecer em graus diferentes nas imagens, ainda que o parâmetro para desígnio do número-índice tenha sido P1.

um período e seu antecessor imediato - de P1/P2, P2/P3, P3/P4 e P4/P5.

1357. A IRNC conclui que a defasagem excessiva dos dados compromete o valor positivo das provas e evidências para a determinação de dano, em condutas semelhantes às precedentes multilaterais abordados. A IRNC solicitou o encerramento da presente resolução de mérito e requereu que fossem revisados os cálculos do Dano Estimado Ajustado.

1358. A Aprodinox, em manifestação de 9 de setembro de 2022, alega que os elementos que fundamentem o nexo de causalidade entre os alegados programas de subsídios da Indonésia e os resultados da indústria doméstica. As razões que justificam as demonstradas a seguir. As vendas da indústria doméstica cresceram, no mesmo período (P1 e P4). Somente em P5, o crescimento do mercado não foi acompanhado pelo crescimento da indústria doméstica, o que é explicado não pelos subsídios em discussão, mas pelo crescimento dos distribuidores dos produtos da APERAM da condição de distribuidores exclusivos (para importar produtos) para a de distribuidores não exclusivos.

1359. O fato de em P5 ter havido redução no ritmo de crescimento da indústria doméstica, com perda de share para as importações, não guardaria relação com os alegados subsídios. Representariam supostos subsídios concedidos pelo governo da Indonésia que começaram a ser aplicados pelo menos desde 2014. Esse maior efeito sobre a indústria doméstica em P5 decorreria de programas de supostos subsídios.

1360. Reiterou que desde 2019 a APERAM teria passado a verificar se os distribuidores exclusivos teriam passado para a condição de não exclusivos. Este movimento teria sido motivado pelas importações e não práticas dos alegados subsídios pelos países exportadores. A existência de medidas antidumping contra as importações da China e de outros países teria passado a recorrer a produtos de outras origens, dentre as quais destaca-se a China. O real fator que teria motivado o incremento das importações da Indonésia para a condição de subsídio, vigentes há anos, na Indonésia.

1361. A partir do demonstrativo de resultados da APERAM se verifica que as importações da Indonésia seriam mínimas, não guardando qualquer relação com o dano à indústria doméstica. Em P4, primeiro período de grande incremento do mercado investigado, não se observaria subcotação. Assim, o aumento das exportações da indústria doméstica em P4, não refletiria qualquer impacto sobre os indicadores da indústria doméstica. Isso indica que o resultado obtido em P5 seria resultado de incremento nos preços internacionais em um cenário de queda nos preços internacionais.

1365. A Aprodinox, em sua manifestação final, pontuou que o aumento deveu à reação dos principais distribuidores brasileiros face as práticas anticoncorrenciais da Indonésia. Acrescentou que, em resposta ao exposto na Nota Técnica, o incremento da participação de mercado entre P4 e P5, da ordem de 35%, passou a ocorrer quando da transição dos distribuidores da consequência das práticas da peticionária; de forma tal que esse incremento ocorreu na Indonésia em função da aplicação dos direitos antidumping vigentes para a Indonésia, para Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, nos termos da Portaria SECINT nº 4.353/2013, de 2013; tendo-se que a extinção dos direitos para Alemanha, Coreia do Sul e Vietnã ocorreu apenas em 3/10/2019, pela Portaria SECINT nº 4.353/2019.

1366. A Aprodinox arguiu que durante praticamente todo o período de análise, os principais importadores possuíam como fornecedores regulares e estabelecidos, efetivamente, fornecedores localizados nos Estados Unidos da América, na África do Sul e na Malásia; a peticionária, exportadora do produto, e com saldo comercial substancialmente positivo no período, para exportar para o mercado brasileiro no período.

1367. Nesse sentido, para a Aprodinox, não há elementos que demonstrem a causalidade entre os alegados programas de subsídio do governo da Indonésia e o crescimento da indústria doméstica; uma vez que as vendas da indústria doméstica cresceram no mesmo ritmo do mercado entre P1 e P4, e a queda em P3 compensa o fato das vendas terem crescido em ritmo mais acelerado que o mercado brasileiro em P2; de forma que o crescimento do mercado não foi acompanhado pelas vendas da indústria doméstica.

1368. Ademais, a Aprodinox aduziu que o preço se manteve praticamente estável na comparação entre P1 e P5, variando com a inflação; o que indica que todo o aumento foi repassado aos preços.

1369. No entanto, a Aprodinox entende que os únicos períodos nos quais os preços atualizados foram P2 e P5; uma vez que em P2 havia volume irrisório de vendas da Indonésia, incapazes de gerar qualquer efeito sobre a indústria doméstica; e o crescimento acentuado ocorrendo em P4, quando as importações da Indonésia passaram a ser relevantes.

1370. A Aprodinox anota que as receitas atualizadas das vendas da peticionária, atualizados da Aperam no Mercado Interno se elevaram 15% em P5 quando comparados com P4.

1371. Dessa forma, para a Aprodinox, a redução em P5 no ritmo de crescimento da indústria doméstica, com perda de share para as importações não guarda relação com a existência de supostos subsídios concedidos pelo governo da Indonésia; uma vez que os distribuidores exclusivos (DIA) da Aperam passaram para a condição de não exclusivos com a existência de medidas antidumping contra as importações da China e de Taipé Chinês, passaram a recorrer a produtos de outras origens, como a Indonésia.

piora nos indicadores da indústria doméstica somente em P5.

1377. Para a Aprodinox, o objetivo de se trabalhar com 5 (cinco) anos, apuração do dano envolve a necessidade de que se verifique um movimento de piora nos resultados da indústria doméstica motivado pelo aumento das importações subsidiadas.

1378. Nesse cenário, a Aprodinox entende que no presente caso há a possibilidade de se falar sobre algum dano à indústria doméstica, não havendo nexo de causalidade entre o dano à indústria doméstica, concentrado em P5 e relacionado a outros fatores.

1379. O GOI questionou em sua manifestação final a existência de um dano às vendas devido às importações, uma vez que o primeiro indicador afetado teria sido o de vendas internas. Não há contradição, o aumento de vendas durante o período de investigação mostra o crescimento da indústria nacional brasileira. Estaria ainda sendo esquecido o impacto das outras origens de importação? [RESTRITO] % no período. Deste modo, a análise da SDCOM só teria focado na análise das vendas internas, e não das outras origens ou explicar o aumento nas vendas internas.

1380. A PT IRNC, em sua manifestação acerca da errata à NTFE, pontua a atribuição realizado acerca da diminuição das exportações e da produção de bens e serviços, o resultado que a existência de eventual dano teria um dano muito tênue, não sendo substancial e muito claramente demonstrado pela indústria doméstica, no rigor da análise.

1381. Para a PT IRNC o dano, se eventualmente existente e quantificado, seria a queda nos preços maior do que a queda nos custos. Porém, quando perseguido a atribuição verificar-se-ia que todo o dano sofrido pela Aperam, resume-se à diminuição da produção. Quando se considera, então, a eliminação do efeito danoso da diminuição da produção de outros produtos, o CPV ajustado teria declinado. Questiona a empresa se essa diferença seria significativa, suficiente e taxativamente uma medida de defesa comercial por 5 anos contra os exportadores indonésios no mercado marcadamente monopolizado.

1382. Ademais, no cenário analisado, a lucratividade da indústria doméstica é praticamente intacta quando se excluem os efeitos danosos da diminuição das vendas de outros produtos da APERAM, o resultado operacional (exceto RF e OD), há um aumento em P5, demonstrando, no entender da PT IRNC, que o aumento das importações, ajustado pelo exercício de não atribuição, não seria suficiente para explicar a queda na lucratividade, inexistindo qualquer relação de causalidade.

7.5 Dos comentários da SDCOM

estudo em P1 e o resultado de incremento relativo nos preços da indústria doméstica da ID caiu [RESTRITO] % de P4 para P5, e mesmo assim foi verificada subcot investgado em relação ao preço da indústria doméstica. Ressalte-se, ainda, que preço por tonelada das importações caiu [RESTRITO] %. Neste cenário, o que se Indústria Doméstica de competir com as importações subsidiadas - tanto é que nos indicadores de P4 para P5.

1386. Nos termos do, § 2º do art. 21 do Decreto nº 1.751, de 1995, o produto subsidiado deve ser avaliado com o objetivo de se avaliar se este volume houve aumento substancial das importações, tanto em termos absolutos, quanto ou ao consumo no Brasil.

1387. Como informado no item 5.4 deste documento, o volume das importações a frio 304 originárias da Indonésia aumentou [RESTRITO] toneladas em termos absolutos. Ademais, em termos relativos, a participação destas importações no mercado brasileiro [RESTRITO] %, em P1 para [RESTRITO] % em P5, revelando uma evolução positiva das importações da ordem de grandeza de [RESTRITO] p.p. Em relação à produção nacional, as importações (em toneladas) de laminados a frio 304 da origem investigada representaram [RESTRITO] % da produção nacional em P1 e passou a representar [RESTRITO] % em P5, revelando um aumento de [RESTRITO] p.p. Tais análises apontam para o crescimento das importações i análise de dano, conforme previsto no Regulamento Brasileiro.

1388. Ademais, nos termos do art. 22 do Decreto nº 1.751, de 1995, para a concessão de medidas compensatórias, é necessária a demonstração de nexo causal entre as importações e o dano à indústria doméstica baseada no exame de:

I - elementos de prova pertinentes; e

II - outros fatores conhecidos, além das importações do produto sus causando dano à indústria doméstica na mesma ocasião, e tais danos, provocados serão imputados àquelas importações.

1389. Deste modo, a SDCOM concluiu que o crescimento verificado nas importações de laminados planos de aço 304, de P1 para P5, foi decorrência da política de Governo da Indonésia.

1390. Ademais, as investigações sobre subsídios acionáveis com origem na Indonésia para aços 304, conduzidas pela União Europeia e pela Índia, iniciadas em 18 de fevereiro de 2021 e 18 de outubro de 2019 e encerradas em 15 de março de 2022, resultaram na aplicação de medidas compensatórias, respectivamente em 2021 e 2020. Nas investigações se concluiu que havia nexo de causalidade entre o aumento das

preço da indústria doméstica e apontou-se, de forma clara e objetiva, o efeito das importações sobre a indústria doméstica. No que tange à parte negativa da verificação, verifica-se que, uma vez feita a separação e distinção dos outros fatores, conclui-se que o dano à indústria doméstica atribuível às importações investigadas.

1393. Ressalte-se que os cálculos foram atualizados para fins de detalhar os ajustes nos indicadores da indústria doméstica e os resultados da verificação de digitação quando da divulgação da Nota Técnica. A tabela "Despesas da Indústria Doméstica ajustadas" foi alterada para, de fato, apresentar os valores e não os valores totais. Tais alterações causaram impacto em algumas tabelas, sem, contudo, sendo que continua presente a deterioração dos indicadores, em especial das despesas, no cenário construído.

1394. A IRNC tenta reproduzir os exercícios de não atribuição efetuados de início e alega que a autoridade investigadora teria cometido erros materiais. A SDCOM sobre tal ponto é que a lógica do exercício adotado é relativamente razoável. Como realizado esse tipo de análise contrafactual pela SDCOM em diversas ocasiões, o exercício sem ter acesso aos dados confidenciais é tarefa praticamente impossível. Mesmo que a parte tenha corretamente apontado elementos a serem corrigidos (na utilização de números-índices na versão restrita), não se pode esperar que os resultados obtidos pela SDCOM, encontrados com base na utilização de dados reais.

1395. Todas as premissas do exercício foram repetidamente explicitadas. Os custos variáveis unitários não foram ajustados no exercício de contrafactual sob a premissa de que tais custos crescem de forma linear com o volume de produção (custo variável dividido pela produção) inalterada. Os custos fixos unitários, contudo, em função do aumento da produção, sendo essa a premissa básica do exercício, constante, o aumento do volume de produção leva à redução do custo fixo unitário. No exercício contrafactual é a diluição de custos de produção por meio da diluição dos custos fixos rateados por uma produção hipoteticamente maior do que a produção de fato. O exercício de ajuste. Ressalte-se ainda que o exercício de não atribuição apresentado é apenas uma ferramenta para a SDCOM separar e distinguir os efeitos de outros fatores, que não as importações investigadas. Contudo, esse aspecto não é a pedra angular de toda a análise feita pela SDCOM desde o início da investigação, como o fez parecer a PT IRNC.

1396. Ainda sobre o exercício realizado - trata-se de um esforço para distinguir os efeitos com relação ao desempenho exportador e da produção doméstica comprovada a existência de dano mesmo neste cenário, como já exposto. No

resultados bruto e operacionais (exceto IR e outras despesas) indicam, respectivamente.

1399. Salienta-se ainda que o exercício proposto possui grande do maximizar o desempenho exportador de forma remotamente possível, pois su condições de competir no mercado internacional e manter suas vendas extern possível antes de a Indonésia começar a ter condições de fornecer o produto s absolutamente razoável crer que movimento similar de representativo e importações subsidiadas causadas pela entrada de operação da PT IRNC brasileiro tenha ocorrido também em outros países do mundo. E tal ressalva União Europeia e a Índia terem aplicado medidas antissubsídios contra a Indo produtores/exportadores aqui investigados e também terem verificado um volume de importações. Mesmo com tal exercício conservador, que supõe praticamente [RESTRITO] vezes maior do que o real, ainda foi constatado dano indústria doméstica atribuível às importações investigadas.

1400. Resta assim descabido a alegação da PT IRNC sobre suposta "uma queda nos preços maior do que a queda nos custos", conforme exten indicadores analisados.

1401. Independentemente da discordância da parte interessada s nesse exercício de atribuição, ou seja, quando à escolha dos parâmetros de ajust o período de maior produção da indústria doméstica, considerando tanto o p produtos que compartilham a capacidade instalada, foi P2, em que o volume ajustes adotados pela SDCOM levaram a uma produção hipotética, em P5, de l entre a produção hipotética de P5 e a maior produção do período, em P2, é portanto, imaterial. Logo, tendo em vista o propósito do exercício contrafactu impacto da redução do volume de produção sobre a diluição de custos fixos e a rentabilidade da indústria doméstica, não haveria fundamento para ajustes n esta SDCOM.

1402. Sobre a alegação da IRNC de que a queda de lucratividade decorre de incremento de custos não acompanhado do incremento de preços houve aumento de custos de P4 para P5, mas sim uma redução do custo un (-0,8%). Já quanto ao preço médio de venda no mercado interno, observou-se u para P5, o que levou à deterioração da relação custo/preço da indústria dome sua rentabilidade. O único fator conhecido nos autos do processo que possa preços de P4 para P5 foi o aumento das importações subsidiadas e subco

7.6 Da conclusão sobre a causalidade

1406. Ao longo do período de análise de dano, observou-se crescimento da indústria doméstica no mercado interno (16,9%) e na receita líquida associada. Contudo, esses crescimentos foram acompanhados pela deterioração de todos os indicadores.

1407. Observou-se queda da participação das vendas da indústria brasileira (redução de [RESTRITO] p.p. de P1 para P5), isso em um cenário em que a produção apresentou aumento de 30,7%, considerando-se P5 em relação a P1. Assim, mesmo com o aumento em números absolutos, como apontou o GOI, é inegável que a participação da indústria brasileira foi elemento que foi desconsiderado pelo GOI em sua manifestação.

1408. Além disso, no que concerne aos demais indicadores financeiros, foram observados, nesse período, como decorrência da diminuição de seu preço, o aumento em seu custo de produção e em seu custo do produto vendido, decréscimo no resultado operacional, no resultado operacional exceto o resultado financeiro e no resultado financeiro exceto o resultado financeiro e outras despesas, assim como em todas as margens.

1409. Também no período de análise de dano, conforme exposto no item 1406, observou-se crescimento contínuo no volume das importações de laminados a frio 304, apurando-se aumento de [RESTRITO] %, considerando-se P5 em relação a P1. No período de P4 a P5, quando houve incremento de [RESTRITO] % no volume das importações. Destaca-se que esse aumento redundou em evolução da participação dessa indústria no mercado interno brasileiro, que alcançou [RESTRITO] em P5, sendo que somente no período de P1 a P5, a participação dessas origens praticamente quintuplicou.

1410. Adicionalmente, realce-se que o preço médio ponderado do produto investigado, internado no Brasil, esteve subcotado em relação ao preço da indústria doméstica. Observou-se, nesse mesmo período, queda dos preços de venda no mercado interno produzido pela indústria doméstica, ao longo do período analisado, indicando deterioração da produção e preço de venda. Outrossim, verificou-se supressão de preços de P1 a P5, refletindo a deterioração da produção e preço de venda.

1411. Some-se, ainda, ao cenário de deterioração dos indicadores financeiros, o declínio na sua produção de laminados a frio 304 ao longo do período de investigação (redução de 27,1%, considerando-se P5 em relação a P1). Destacando-se que essa redução ocorreu em uma estabilidade na capacidade instalada, o que gerou a diminuição do grau de utilização da capacidade instalada, de [RESTRITO] % em P1 para [RESTRITO] % em P5.

com o objetivo de estimar o impacto combinado desses dois fatores no dano financeiro da indústria doméstica em P4 e P5. Conforme os indicadores obtidos nesse referido item 7.2.6, constatou-se que, mesmo mediante a separação da queda nas vendas no mercado externo e os causados pela redução na produção das margens bruta, operacional, operacional exceto resultado financeiro e operacional financeiro e outras despesas ainda apresentariam significativa deterioração em P4 quanto a, em especial, P4, período imediatamente anterior ao maior crescimento observado para as importações investigadas. Ao se analisar a evolução de alguns indicadores financeiros ajustados do exercício apresentado no item 7.2.6, percentual absoluto das importações investigadas, observa-se que mesmo os resultados (resultado financeiro e outras despesas) indicam piora de 26,7% e 28,1%, respectivamente. Dessa queda do volume exportado e da queda no volume de produção de outros países, a indústria doméstica não afasta a materialidade do dano causado pelas importações considerando tanto os efeitos sobre volume como os efeitos sobre preço e lucro da indústria doméstica.

1415. Nesse sentido, para fins de Determinação Final, considerando os fatos e circunstâncias previstos no art. 22 do Decreto nº 1.751, de 1995, verificou-se que as importações com evidências de subsídios acionáveis contribuíram significativamente para o dano aos indicadores da indústria doméstica no período de investigação de dano, conforme o presente documento, sobretudo de P4 para P5.

8 Das outras manifestações

8.1 Das outras manifestações prévias à Nota Técnica

1416. A Aperam Inox América do Sul S.A., em manifestação de 11 de novembro de 2022, informou que, quando do início da investigação, havia sido constatada a existência de subsídios acionáveis e de dano decorrente de tal prática. Acrescentou que a empresa disporia de dados e informações suficientes para proceder a uma determinação da existência de subsídios acionáveis, de dano e de relação de causalidade.

1417. A Aperam chamou atenção para o significativo crescimento da produção da indústria doméstica em P4 e P5, especialmente, de P4 para P5. Assim, de P4 para P5, houve aumento das margens bruta, operacional, operacional exclusiva resultados financeiros e operacional exclusiva resultados financeiros e outras receitas e despesas. Da mesma forma, todas as margens de resultado sofreram redução em P5, mesmo a diminuição da média dos preços de venda em P5 teria sido suficiente para compensar a queda no volume de vendas no mercado interno, que diminuiu. Por essas razões, a Aperam solicitou a suspensão dos direitos provisórios, a fim de impedir o dano no curso da investigação.

1420. Ressaltou que, conforme teria sido relatado em verbais de inquirição, o preço do níquel na LME teria passado a apresentar valorização significativa. Grande parte deste fenômeno seria atribuída a operações realizadas pelo fundo. Adicionado a esse cenário, o início da guerra Rússia-Ucrânia teria acrescido o fornecimento de níquel devido à participação relevante da Rússia no mercado (cerca de 10%). Alegou que, no início de março de 2022, o valor da cotação na LME era de US\$ 25.450,00/t, valor que teria praticamente dobrado entre os dias 4 e 7. Em 8 de março, teria se intensificado ainda mais, com o preço do níquel ultrapassando os US\$ 100.000,00/t.

1421. A LME teria decidido, então, suspender as cotações até se normalizasse o mercado. Não haveria confirmação da extensão da negociação. Segundo relatado pela imprensa, porém, tal posição envolveria, pelo menos, 10% do estoque mundial.

1422. Esse movimento repentino de alta do preço representaria a maior alta criada há 145 anos. Retomadas as negociações em 16 de março, o preço do níquel chegou a US\$ 33.000,00/t, longe de uma normalidade, e condicionado a uma nova negociação. A LME teria sido revisada diversas vezes ao longo do mês. Em decorrência de toda essa situação, assim como diversos outros produtores mundo afora, teria suspenso por alguns dias a produção de aços inoxidáveis austeníticos incluindo o produto sob análise, tendo em vista a dificuldade de precificá-lo. De forma distinta, as empresas do Grupo Tsingshan na Indonésia, que não dependem do NPI (Gusa-Níquel) fornecido localmente, com preços subsidiados, como os seus aços inoxidáveis austeníticos, inclusive no Brasil, de acordo com relatos da imprensa, não teriam sofrido o aumento de custo decorrente de sua própria ação de especulação na LME.

1423. Segundo a peticionária, restaria claro que as empresas do Grupo Tsingshan, em crise da LME, pois, ao contrário das empresas que seguiriam regras de economia competitiva, como a Aperam, os subsídios recebidos do governo da Indonésia presentes na presente investigação, sustentariam sua estratégia predatória e especulativa. Os contratos da LME poderiam ser fisicamente liquidados com os metais que estão em depósitos que se estendem da Holanda à Malásia. Visando proteger seus interesses, diante dos abruptos no preço do níquel, os produtores de aços inoxidáveis se utilizariam de hedge, permitindo assim a manutenção de um fluxo regular de compra e venda. Portanto, segundo a peticionária, a crise da LME afetaria fortemente seus resultados financeiros.

1424. Restaria claro que o cenário apresentado, com interferência no mercado mundial, com consequências diretas no mercado brasileiro, agravadas pela concessão de subsídios pelo governo da Indonésia aos produtores/exportadores, conforme a presente investigação, corroborando e ratificando a necessidade premente de medidas compensatórias provisórias, conforme solicitação desta peticionária apresentada em 2021.

1427. Dessa maneira, para a APRODINOX a aplicação das medidas não pareceria ser adequada dado a falta de confiabilidade em relação aos dados que implicaria em dúvida quanto à sua própria do dano.

1428. Reforçou que a aplicação de medida provisória seria necessária se ocorresse dano durante a investigação, contudo, nesse contexto, para a Aprodinox desde a abertura da investigação não houve aumento expressivo do volume de exportações similar originária da origem investigada a indicar a necessidade de impedir a continuidade da investigação. Ante o exposto, a Aprodinox requereu a não recomendação da aplicação de medida em determinação preliminar, posto que ausentes os requisitos para justificar tal medida.

1429. A Aprodinox, em manifestação de 14 de junho de 2022 acerca do dano ao níquel alegada pela peticionária explicou que houve uma variação conjuntural nos metais em geral, e não apenas no níquel.

1430. No que toca ao níquel, em específico, a Aprodinox observou uma valorização em linha com a tendência de outros metais, antes da eclosão do conflito, e haveria um movimento de retorno à normalidade, com o alinhamento das expectativas.

1431. Nesse quadro, para a Aprodinox, considerando-se que o níquel representa 8% da composição física do aço 304, haveria pressão para aumento da existência de mecanismo de hedge da Aperam; de forma que houve uma consideração da relação oferta/demanda, em face do conflito ainda em curso.

8.2 Das outras manifestações posteriores à Nota Técnica

1432. A Aprodinox, em sua manifestação final, aduziu que o Acordo de Compensatórias possui disposição específica estabelecendo, como recomendação, a regra do menor direito para situações nas quais seja possível neutralizar o dano daqueles apurados, conforme Artigo 19.2 e art 55 do Decreto nº 1.751, de 1995. O de rodapé 50 do ASMC, solicita que eventuais direitos sejam balizados pela legislação encontradas para P5.

1433. A Aperam, em sua manifestação final, solicita o encerramento da aplicação por cinco anos de medidas compensatórias. Aduziu ainda que, em se tratando de subsídios governamentais, e considerando a utilização das melhores informações disponíveis por produtores/exportadores como para o Governo da Indonésia, deveria ser considerado compensatório, o montante total de subsídios apurado, não cabendo análise para tal fim.

1437. Os comentários sobre o dano foram considerados na análise. Com relação aos demais comentários da peticionária e da Aprodinox acerca da guerra na Ucrânia, estes parecem exorbitar do que é analisado nesta investigação.

1438. No que concerne aos comentários da Aprodinox sobre uso de direitos para direitos recomendados, esta SDCOM ressalta que, como bem pontuado pelo órgão, o que se conhece como menor direito em investigações antissubsídios não é o presente caso nenhum elemento que justifique sua aplicação.

1439. Sobre o comentário da Aperam, a SDCOM recomendou a aplicação de uma taxa *ad valorem*.

9 Do cálculo das medidas compensatórias

9.1 Do montante de subsídios acionáveis

1440. Os cálculos desenvolvidos indicaram a existência de subsídios da Indonésia para o Brasil, conforme demonstrado a seguir:

Subsídio Acionável

Produtor/Exportador	Montante de Subsídio (US\$/t)	Montante <i>ad valorem</i> , %
Todas as empresas	400,76	19,60%

Fonte: quadro do item 4.5.

Elaboração: SDCOM.

1441. Observa-se que, conforme apontado na tabela, os montantes dos subsídios das empresas investigadas superaram o considerado de minimis, nos termos previstos no Decreto nº 1.751, de 1995.

10 DA RECOMENDAÇÃO

1442. Consoante a análise precedente, ficou determinada a existência de dano à indústria doméstica decorrente de tal prática. Assim, propõe-se a aplicação de uma medida compensatória por um período de até cinco anos, na forma de alíquotas *ad valorem*, fixadas em percentuais sobre o valor aduaneiro do produto, em base Cost, Insurance & Freight - CIF, de acordo com a legislação, nos montantes abaixo especificados.

Medida Compensatória Recomendada

subsídios acionáveis em referência. Nos termos da Portaria Secint nº 13/2020, a investigação de interesse público é obrigatória nos casos de investigação original de dumping ou de subsídios. O ato da Secretaria de Comércio Exterior (Secex) que der início à respectiva investigação é de natureza comercial.

Especificamente, busca-se com a avaliação de interesse público respaldar a imposição da medida de defesa comercial impacta a oferta do produto sob investigação (oriunda tanto de produtores nacionais quanto de importações), de modo a preservar a dinâmica do mercado nacional (incluindo os elos a montante, a jusante e a própria produção), preço, quantidade, qualidade e variedade, entre outros?

Importante mencionar que os Decretos nº 9.679, de 2 de janeiro de 2019 e nº 9.745, de 4 de abril de 2019, alteraram a estrutura regimental do Ministério da Economia, criando a Secretaria de Assuntos Internacionais do Ministério da Fazenda (SAIN). Mais especificamente, o XVIII, do Decreto nº 9.745/2019 prevê propor a suspensão ou alteração de medidas antidumping ou compensatórias em razão de interesse público.

1.1 Dos questionários de interesse público

Em 2 de junho de 2021, foi publicada no D.O.U. a Circular Secex nº 46/2020, dando início à investigação de subsídios acionáveis nas exportações da Indonésia de aço inoxidável laminados a frio 304, comumente classificadas nos subítemos 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, e de dano à indústria doméstica. Conforme art. 13 da referida Circular, foi iniciada também avaliação de interesse público. A aplicação da medida antidumping em questão, nos termos do art. 4º, da Portaria Secex nº 13/2020, de 2 de janeiro de 2020. O art. 13 da Circular Secex nº 46/2020 estabeleceu, ainda, que os interessados dispunham, para a submissão da resposta ao questionário de interesse público, até o dia 19 de agosto de 2021, concedido para a restituição dos questionários de importador da investigação inicialmente para 20 de julho de 2021.

Antes do vencimento do prazo original de apresentação do questionário, as seguintes partes interessadas apresentaram pedido de prorrogação do prazo, para o dia 19 de agosto de 2021 a todas elas: Conselho Administrativo de Defesa Econômica (CADE), Aperam Inox América do Sul S.A. (Aperam), Associação Brasileira dos Processadores de Aços Inoxidáveis (Aprodinox), Inconel Comércio Importação e Exportação de Produtos (Inconel), Inoxplasma Comércio de Metais Ltda. (Inoxplasma), Usinas Metais Ltda. (Usinas) e Serviços Comércio e Importação de Aços Ltda. (Jati).

No tocante ao CADE, recorde-se que a autoridade concorrencial é permanente do GECEX, portanto, com legitimidade para apresentar considerações sobre o interesse público em respeito à fase probatória do processo, bem como para

matéria-prima utilizada nesta rota é a sucata de aço inoxidável;

- em aplicações como o segmento de bens de capital, não haveria concorrência com laminados a frio 304. No entanto, em alguns segmentos, como o de consumo (elevadores) pode haver concorrência com outros produtos, ainda que aprese

Ainda, no segmento de utilidades domésticas, a cutelaria disporia de produtos s

- o mercado brasileiro de aços inoxidáveis seria formado por dois gr

grandes clientes industriais e distribuidores. A Aperam possuiria modelos de rel

com distribuidores: Distribuidor Integrado Aperam (DIA), Distribuidor Regular Ap

independentes. Tanto os distribuidores DIA, quanto os DRA, possuiriam contr

exigência de compras mínimas mensais, não havendo barreiras à migraç

relacionamento. Os distribuidores independentes não possuiriam nenhum co

Não existiriam critérios de diferenciação de preços entre os segmentos de dist

volume adquirido;

- os preços dos aços inoxidáveis no mercado interno se ajustariam a

forma a manter uma relação de equilíbrio de longo prazo;

- a Aperam não seria capaz de exercer poder de mercado, dado que

aberto a importações e contaria com poucas barreiras à entrada, sendo o pr

definido com base nos preços internacionais. Não haveria, assim, capacidade c

volume ofertados;

- a comparação entre as alíquotas de imposto de importação aplic

dos países integrantes da OMC não seria adequada, uma vez que as tarifas

produtores de laminados a frio 304 tenderiam a ser mais baixas ou, até mesmo,

- não haveria dificuldades ou ausência de atendimento da demand

que a medida antidumping pleiteada venha a ser implementada, uma vez

instalada efetiva suficiente para atender todo o mercado brasileiro, caso necess

- a indústria doméstica estaria tecnologicamente atualizada em

portfólio, concorrendo em condições tecnológicas e de qualidade similares co

independentemente da origem.

1.1.2 Aprodinox, Inconel, Inoxplasma, Usinas Metais

A Aprodinox, entidade que representa os processadores e distribuidores

as empresas Inconel, Inoxplasma, Jati e Usinas Metais, importadoras de lamina

em resumo, os seguintes argumentos nos autos:

- inoxidáveis, para abastecimento que da demanda interna desde o segundo semestre;
- o preço da indústria doméstica teria registrado variações superiores ao IPCA e pelo IGP-DI, ao longo de 2018 e 2019, o que teria representado crescimento do produto;
 - a indústria doméstica não produziria determinadas larguras e acabamentos para aço frio 304 e haveria possíveis problemas de qualidade no produto.

1.1.3 CADE

O CADE, autoridade concorrencial e membro convidado permanente, apresentou em seu relatório de resumo, os seguintes argumentos nos autos:

- não foram identificados produtos substitutos aos laminados a frio importados "fundamental para equilibrar o mercado brasileiro";
- em processos que já passaram pelo CADE (AC nº 08012.00008700.010789/2012-73) a respeito desse mercado relevante, foi manifestado o comportamento da indústria nacional frente às importações e ressaltada a necessidade de mercado aberto para compensar potencial exercício de poder de mercado;
- a Aperam possuiria maior parte da participação do mercado e o crescimento de importações se revelou como uma resposta importante ao funcionamento do mercado e à busca de bem-estar econômico; e
- existiriam potenciais preocupações concorrenciais em relação à compensatória no tocante à contestação internacional no setor.

1.2 Da instrução processual

Em 9 de junho de 2021, foi enviada uma notificação aos membros do Conselho de Gestão da Câmara de Comércio Exterior (Gecex), por meio do Ofício Circular SECEX nº 730/2021, sobre o envio de tal correspondência, convidaram-se os órgãos a participar da avaliação em curso como partes interessadas, fornecendo informações relacionadas a sua atuação. No presente momento, apenas o CADE se manifestou, por meio do Ofício nº 730/2021, no item 1.1 deste documento.

Em 7 de fevereiro 2022, foi enviado ofício à parte Jati - Serviços Comerciais Ltda. (Jati), para que apresentasse documentação que permitisse a regularização do representante legal indicada. A empresa não apresentou documentação necessária da representante legal. Dessa forma, a resposta ao questionário de interesse público não foi considerada para fins desta avaliação pois não foi realizada a devida regularização da parte interessada, nos termos dos §§ 4º e 7º do art 5º da Portaria SECEX nº13/2021.

Nos termos do artigo 5º, § 1º, da Portaria Secex nº 13/2020, foi publicado em 19 de agosto de 2022, a Circular Secex nº 37, de 19 de agosto de 2022, tornando públicas as conclusões da avaliação de interesse público e também os fatos que justificaram a decisão de suspensão da determinação preliminar sobre a existência de prática de subsídios, de dano econômico e o nexo causal entre eles. A referida Circular decidiu, ainda, tornar públicos os fatos e circunstâncias parâmetro para o restante da referida investigação.

Já em 9 de setembro de 2022, a Aprodinox juntou aos autos da presente investigação de interesse público suas manifestações finais em sede da fase probatória. Por sua vez, a Aperam, em manifestação em 3 de outubro apresentando considerações ao processo em referência de 2022, a Aperam, em seu turno, protocolou manifestação final, reiterando seu pedido de elementos de interesse público que levem à suspensão ou redução das tarifas de importações do produto em análise, bem como apresentou no anexo cartas e uma nota técnica elaborada pela Consultoria Tendências, referente a uma análise econômica do caso. Ainda na data de 20 de outubro de 2022, a Aprodinox protocolou manifestação com argumentos pela aplicação de medida compensatória.

Ressalta-se que, para fins de avaliação final de interesse público, foram consideradas as manifestações finais trazidas até 20 de outubro de 2022 - fase final de instrução - conforme disposto no art. 5º, § 7º, da Portaria Secex nº 13/2020.

Os argumentos e evidências adicionais trazidos ao longo da instrução de fato pelas partes foram distribuídos neste documento de acordo com a pertinência para a avaliação de interesse público.

1.3 Do histórico de investigações de dumping

1.3.1 Da investigação original de laminados a frio, de espessura não superior a 3 mm, classificados nos códigos 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originários do Sul, Alemanha, Itália, Japão e México

Em 10 de agosto de 1998, foi protocolada, pela empresa Cia. Aços, uma petição de início de investigação de dumping nas exportações para o Brasil de laminados a frio, de aço inoxidável, de espessura não superior a 3 mm, classificadas nos códigos 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originários do Sul, Alemanha, Itália, Japão e México.

A partir de dados contidos na petição, foram constatadas importações de laminados a frio, de aço inoxidável, de Espanha em volumes relevantes do produto em questão. Por conseguinte, tais fatos levaram à abertura de uma investigação às origens investigadas para fins de início da investigação.

Espanha, França, Japão e México.

A revisão foi iniciada por meio da Circular Secex nº 31, de 23 de maio de 2005, publicada no D.O.U. de 25 de maio de 2005.

A Resolução Camex nº 10, de 2 de maio de 2006, publicada no D.O.U. encerrou a revisão com a prorrogação do direito antidumping aplicado às produtos planos de aço inoxidável, laminados a frio, de espessura não superior a 0,889 mm, refratários, classificados nas normas AISI 309, 309S, 310, 310S, 311, 312H, 316 e 316L, inoxidáveis AISI 301L e DIN 1.411 e o produto plano de aço inox, laminado em folha, comercialmente como fita de aço inoxidável GIN-6 ou 7C27MO2 ou UHB716.

O direito antidumping foi prorrogado na forma de alíquota específica pelo art. 57 do Decreto nº 1.602, de 23 de agosto de 1995. Tal prazo reduzido de aplicação trata-se de setor sensível, cujos preços tiveram comportamento influenciado por incertezas que permeavam o mercado internacional e limitavam previsões de preços. Não há elementos públicos no D.O.U. que sinalizem o fundamento jurídico da duração da medida de defesa comercial, se por razões de interesse público ou

1.3.3 Da investigação original de laminados planos de aços inoxidáveis austeníticos (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio com espessura superior a 0,35 mm, mas inferior a 4,75 mm (2011/2012) - Alemanha, China, Coreia do Sul, Índia, Japão, Chinês e Vietnã

Em 15 de dezembro de 2011, foi protocolada, pela Aperam Inox Am, petição de início de investigação de dumping nas exportações de laminados austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da da China, da Coreia do Sul, dos Estados Unidos da América (EUA), da Finlândia, e de dano à indústria doméstica decorrente de tal prática.

A investigação foi iniciada por meio da Circular Secex nº 17, de 12 de D.O.U. de 13 de abril de 2012.

Nos termos do inciso III do art. 41 do Decreto nº 1.602, de 23 de agosto de 2011, a investigação de dumping nas exportações da África do Sul e dos EUA para a aplicação de direitos, uma vez constatado que o volume de importações dessas mercadorias, conforme consta da Circular Secex nº 35, de 26 de julho de 2012, publicada em 27 de julho de 2012.

A investigação foi iniciada por meio da Circular Secex nº 41, de 1º de outubro de 2018, publicada no D.O.U. de 03 de outubro de 2018.

Em 2 de outubro de 2019, a Secretaria Especial de Comércio Exterior (Secint), publicou a Portaria nº 4.353, de 1º de outubro de 2019, na qual prorrogou o prazo de aplicação do direito antidumping definitivo, por um prazo de até 5 (cinco) anos, aplicado às laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, comumente classificadas nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 da Nomenclatura Comum do Mercosul - NCM, originárias da China e Taipé Chinês, de alíquota específica, e não prorrogando, assim, para as demais origens, quais sejam, Índia, Malásia, Sul, Finlândia e Vietnã.

1.3.5 Da investigação original de produtos planos de aços inoxidáveis austeníticos e ferríticos à norma AISI 304 e similares, incluindo suas variações, tais como 304L e 304H, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm (2020/2021) originários da Índia e da Malásia

Em 31 de julho de 2020, a Aperam protocolou, por meio do Sistema de Petição, uma petição para início de investigação da prática de dumping nas exportações de laminados planos de aços inoxidáveis austeníticos que atendam à norma AISI 304 e similares, incluindo 304L e 304H, laminados a frio, com espessura igual ou superior a 0,35 mm, comumente classificados nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originários da Índia, Indonésia e da Malásia.

Cumprando-se o disposto no art. 100 do Decreto nº 6.655, de 18 de maio de 2008, e no art. 1º da Portaria Secex nº 4.353, de 1º de outubro de 2019, a Secex encerrou, em 2020, três procedimentos de origem não preferencial com a desqualificação da origem Malásia para o produto de aços inoxidáveis austeníticos tipo 304 e 430, classificado nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 da NCM, originários da Índia, Indonésia e da Malásia, declarado como produzido pelas empresas Excel Metal Industries Sdn Bhd., Ya Bahu Stainless Sdn. Bhd.

Tendo em vista que a totalidade das importações brasileiras de laminados planos de aços inoxidáveis austeníticos e ferríticos à norma AISI 304 e similares, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originários da Índia, Indonésia e da Malásia, em P5, foi realizada por empresas desqualificadas pela Secex em tais procedimentos, não restando volumes significativos dessa origem nesse período para efeitos de análise de dumping de exportação, a Secex concluiu-se pela não abertura da investigação antidumping em relação à origem Malásia.

consolida todas as medidas de defesa comercial vigentes aplicadas sobre as laminados a frio 304:

Medidas de Defesa Comercial em vigor

Origem	Produtor/Exportador
China	Shanxi Taigang Stainless Steel Co., Ltd. ., quando exportar por meio da empresa exportadora Tisco Stainless Steel (H.K.) Limited
China	Shanxi Taigang Stainless Steel Co., Ltd
China	Galaxy International Trade (Wuxi) Co., Ltd.
China	Henan Jianhui Construction Machinery Co., Ltd.
China	Hunan Bright Stainless Co., Ltd.
China	Jieyang Kailian Stainless Steel Co., Ltd.
China	Shanghai Stal Precision Stainless Steel Co., Ltd.
China	Wuxi Steel Co. Ltd.
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.
China	Foshan Shunhengli Import & Export Ltd.
China	Demais.
Taiapé Chinês	C.S.S.S.C
Taiapé Chinês	Chain Chon Industrial Co., Ltd.
Taiapé Chinês	Datung Stainless Steel Co., Ltd.
Taiapé Chinês	Froch Enterprise Co., Ltd.
Taiapé Chinês	Genn-Hann Stainless Steel Enterprise Co., Ltd.
Taiapé Chinês	Lien Kuo Metal Industrial Co., Ltd.
Taiapé Chinês	Midson International Co., Ltd.
Taiapé Chinês	S-More Steel Materials Co., Ltd.
Taiapé Chinês	Stanch Stainless Steel Co., Ltd.
Taiapé Chinês	T.M. Development Co., Ltd.
Taiapé Chinês	Tang Eng Iron Works Co., Ltd.

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Chinês	Taichang Stainless Steel Co., Ltd.
Taipé Chinês	Demais

Assim, verifica-se que estão em vigor medidas de defesa comercial brasileiras de laminados a frio 304, aplicadas sobre duas origens, quais sejam, C

1.4 Do histórico de avaliações de interesse público

No dia 25 de fevereiro de 2021, a Secex do Ministério da Economia p
24 de fevereiro de 2021, que deu início à investigação da prática de dumping na
planos de aços inoxidáveis austeníticos que atendam à norma AISI 304 e
variações , tais como 304L e 304H, laminados a frio, com espessura igual ou
inferior a 4,75 mm, fabricados e comercializados em diversas formas, tais c
bobinas, chapas e tiras/fitas, comumente classificados nos subitens 7219.32.
7219.35.00 e 7220.20.90 da NCM, originários da África do Sul e da Indonésia.
determinou o início da avaliação de interesse público, referente à poss
antidumping sobre as importações em questão.

Contudo, a Circular Secex nº 75/2021, de 3 de novembro de 2021, p
novembro de 2021, encerrou a avaliação de interesse público em razão de su
que foi encerrada sem análise de mérito a investigação da prática de dum
Circular Secex nº 15/2021.

1.5 Da atual investigação sobre subsídios sujeitos a medidas compens

Com base na Circular Secex nº 40, de 1º de junho de 2021, in
averiguar a existência de subsídios sujeitos a medidas compensatórias conc
Indonésia que exportaram para o Brasil produtos de aço inoxidável 304 lan
classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da
MERCOSUL - NCM, e de dano à indústria doméstica decorrente de tal prática
ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial)

Ressalte-se que, nos termos do art. 4 da Portaria SECEX n º 13, de 20
a avaliação de interesse público referente à possível aplicação de medid
importações brasileiras de produtos laminados a frio, comumente classificado
7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do MERCOS
Indonésia, em decorrência do Processos SEI-ME nº 19972.101391/
19972.101392/2021-05 (confidencial).

P4 - abril de 2018 a março de 2019; e

P5 - abril de 2019 a março de 2020.

Destaque-se, por fim, que os dados relativos à indústria doméstica foram obtidos por meio de procedimento de verificação in loco:

2.1 Características do produto, da cadeia produtiva e do mercado do insumo ou produto final

2.1.1 Características do produto sob análise

O produto objeto da investigação de subsídios acionáveis contém aços inoxidáveis austeníticos que atendam à norma AISI 304 e similares, incluindo 304L e 304H, laminados a frio, com espessura igual ou superior a 0,35 mm, fabricados e comercializados em diversas formas, tais como, mas não limitados a, barras, tiras/fitas, originários da Indonésia, comumente classificados nos subitens 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, doravante denominados laminados.

Os produtos planos de aço inoxidável são ligas de ferro (Fe) e cromo (Cr) com 10,5% de Cr. Outros elementos metálicos também integram essas ligas, como silício (Si), manganês (Mn), fósforo (P) e enxofre (S).

Dois elementos destacam-se na composição dos aços inoxidáveis: o cromo, por seu importante papel na resistência à corrosão, e o níquel, por suas propriedades mecânicas.

Simplificadamente, pode-se dividir os aços inoxidáveis em dois grandes grupos: os da série 300 e os da série 400. Os produtos da série 300 são os aços inoxidáveis não magnéticos com estrutura cúbica de faces centradas, basicamente ligas Fe-Cr-Ni. Os produtos da série 400 são os aços inoxidáveis ferríticos, que são aços magnéticos com estrutura de corpo centrado, basicamente ligas Fe-Cr.

Cada série de aços inoxidáveis é dividida em tipos distintos, conforme a norma AISI, o que implica também, normalmente, diferentes utilizações. Internacionalmente, utiliza-se a nomenclatura para a definição dos distintos tipos de aços inoxidáveis, sendo adotada a do American Iron and Steel Institute - AISI. No Brasil, a Associação Brasileira de Normas Técnicas - ABNT adota a mesma nomenclatura do AISI. Existem, contudo, outras nomenclaturas que especificam os diferentes tipos de aços inoxidáveis que podem ser utilizadas, dependendo de qual o produto é fabricado/comercializado.

A atmosfera do forno pode ser de hidrogênio ou misturas de hidrogênio e nitrogênio;

- Nº 3: Material lixado em uma direção. Normalmente o lixamento é feito com grana (tamanho do grão de diamante) de aproximadamente 100 mesh;

- Nº 4: Material lixado em uma direção com abrasivos de grana fina. O acabamento com rugosidade menor que a do Nº 3;

- Nº 6: Material com acabamento Nº 4, acabado com panos embebidos em óleos. O aspecto é fosco, satinado, com refletividade inferior à do acabamento Nº 4. O acabamento é dado em uma única direção e o aspecto varia a depender do tipo de pano utilizado;

- Nº 7: Acabamento com alto brilho. A superfície é finamente polida com panos. O acabamento é dado em linhas de polido. É um material com alto grau de refletividade obtido com polimento de várias vezes mais finos;

- Nº 8: Acabamento espelho. A superfície é polida com abrasivos com grana fina. O acabamento é dado em todas as linhas de polimento desapareçam. É o acabamento mais fino que existe. Este tipo de acabamento em aços inoxidáveis sejam usados como espelhos. Também é utilizado em refletores; e

- Acabamento TR: Acabamento obtido por laminação a frio ou recozimento e decapagem de maneira que o material tenha propriedades mecânicas elevadas. Geralmente as propriedades mecânicas são mais elevadas que a dos outros tipos de acabamentos. A utilização é em aplicações estruturais.

Há ainda outros tipos de acabamentos de aços inoxidáveis não incluídos neste documento, dentre os quais, citam-se:

- Nº 0: Laminado a quente e recozido. Apresenta a cor preta dos aços inoxidáveis recozidos. Não é realizada decapagem. Às vezes são vendidas desta maneira com uma espessura, particularmente de aços inoxidáveis refratários, que serão utilizados em fornos;

- Nº 5: O material do acabamento Nº 4 submetido a um ligeiro polimento com cilindros brilhantes (skin pass). Apresenta um brilho maior que o acabamento Nº 4;

- RF (Rugged Finish): Obtido com lixas, com grana entre 60 e 100 mesh. O acabamento é feito com lixamento com alta rugosidade. A rugosidade varia de 2,00 a 2,50 microns Ra;

- SF (Super Finish): Acabamento do material com lixas com grana fina. O acabamento é feito com lixamento de baixa rugosidade, variando entre 0,70 e 1,00 microns Ra;

- ST (Satin Finish): Acabamento com Scotch Brite, sem uso de panos. O acabamento é feito com polimento possui uma rugosidade que varia entre 0,10 e 0,15 microns Ra, mesmo que sua

2.1.2 Cadeia produtiva do produto sob análise

Conforme informado pela Aperam, o processo produtivo de laminação a quente envolve as etapas de redução, aciaria, laminação a quente e laminação a frio.

A redução é etapa em que os altos-fornos são alimentados com carvão vegetal, para obtenção do ferro-gusa líquido. Ressalte-se que os produtores estrangeiros utilizam o coque como redutor nos altos-fornos no lugar do carvão vegetal utilizado pela Aperam.

Na etapa seguinte, o ferro-gusa líquido é colocado no carro torpedo onde sofre um primeiro pré-tratamento, removendo-se as impurezas, tais como o enxofre e o nitrogênio. Após, adicionam-se, nos fornos elétricos a arco (FEA), para serem fundidos, ferro de níquel eletrolítico, ferro-níquel ou sucata de aços inoxidáveis 304), o cromo (na forma de ferro-cromo ou sucata de aços inoxidáveis 304), o ferro (na forma de sucata de aço carbono), ferro-manganês e alguma outra liga metálica para realizar ajustes de alguma propriedade mecânica do material. Então, transfere-se essa carga fundida para o AOD (Argon-Oxygen Decarburization) junta ao ferro gusa proveniente dos altos-fornos para ajustes finais de temperatura e composição. Após a degaseificação, o aço, ainda líquido, é enviado para o lingotamento contínuo, que o solidificam no formato de placas (slabs).

A etapa seguinte é a laminação a quente, que consiste na conformação do aço com redução significativa de espessura. Primeiro, as placas são reaquecidas. Em seguida, ocorre o ajuste preliminar de espessura, para, então, iniciar a laminação nos laminadores a quente e obter bobinas a quente, de 2 a 8 mm de espessura.

As bobinas obtidas na etapa de laminação a quente são, então, direcionadas para a laminação a frio, onde passam pelas preparadoras de bobinas, pelas linhas de recozimento e para os laminadores a frio e por equipamentos auxiliares, de modo a se atingir as espessuras entre 0,35 mm e 4,75 mm.

De acordo com a Aperam, o processo produtivo no Brasil segue a rota tradicional adotada às rotas adotadas por tradicionais produtores de aços inoxidáveis do mundo, tais como a Europa, os EUA, o Japão, entre outros. A principal matéria-prima utilizada na produção do aço inoxidável, que, em conjunto com outras matérias-primas, tais como o ferro, o carbono, ferro silício, ferro manganês, ferro gusa e níquel eletrolítico, são levados para o forno a arco, na aciaria. O processo produtivo adotado pela Aperam é considerado tradicional, no qual se utiliza gusa líquido para ajustar o balanço de carga, embora se utilize cada vez mais quantidades.

que compram de distribuidores e revendem para pequenos clientes [CONFIDENCIAL]%).

Conforme a empresa, tanto a linha branca, quanto a indústria automotiva são grandes empresas consumidoras de aço, sobretudo aço carbono e ligado, sendo o primeiro pouco demandado. No caso dos bens de capital, apesar de demandarem [CONFIDENCIAL] consumo do produto, o valor de investimento relativo aos laminados a frio 304 torna pouco relevante no contexto do segmento, fato que, segundo a Aperam, justifica a participação do aço inoxidável na maioria dos produtos fabricados.

Ademais, argumentou que segmentos como construção civil, saúde e outros têm muitos players, sendo setores mais relevantes para os laminados a frio 304. Isso também acontece com as vendas do produto, que estão presentes em praticas médias e grandes e que atendem pequenos serralheiros e projetistas/montadores de utilidade comercial. Nesse sentido, alegou que a cadeia produtiva dos laminados a frio é sendo composta por cerca de 5.000 empresas que trabalham não apenas com o aço 304, mas com outros tipos de aço inoxidável, além de aço carbono, cobre, alumínio etc.

Além disso, informou que o mercado brasileiro de aços inoxidáveis é dividido em dois grupos: grandes clientes industriais, que se abastecem diretamente das usinas de aço, por meio de importações, e os distribuidores. Segundo a empresa, destacam-se dois tipos de grandes cutelarias, fabricantes de produtos da linha branca e de artigos para o segmento de bens de capital. Já os distribuidores forneceria o produto a "pequenos e médios clientes dos mais diversos segmentos e, também, revendas seriam realizadas em quantidades menores e de forma pulverizada, um distribuidor teria interesse em manter estoques elevados em sua planta.

A parte destacou que o mercado brasileiro de laminados a frio 304 representa 24,8 mil toneladas em P5, sendo 24,8 mil toneladas relativas a compras diretas do produto e 24,8 mil toneladas via distribuição, sendo que existem canais de distribuição, como: Distribuidor Independente (DIA), Distribuidor Regular Aperam (DRA) e distribuidores independentes.

A Aprodinox informou, em seu questionário de interesse público, que a aplicação do produto objeto da análise a poucos elos de cadeia, dada sua vasta utilização em diversos setores da economia. Nesse sentido, informou que os principais setores atendidos pela linha branca, baixelas e cutelaria UD, automotivo, arquitetura e construção civil, bens de capital, tubos e alimentos. Já os segmentos atendidos pelos distribuidores seriam: bens de capital, construção civil, baixelas e cutelaria UD, açúcar e

Nesta seção, objetiva-se averiguar se há outros produtos substitutos tanto pelo lado da demanda quanto pelo lado da oferta.

Sobre a substitutibilidade do produto sob a ótica da demanda, a Aprodinox de interesse público, afirmou que, em aplicações como o segmento de bens de 304 são considerados essenciais, não havendo substitutos, tendo em vista resistência à corrosão e de boa estampabilidade. No entanto, de acordo com segmentos, como o de construção civil (cubas, pias e elevadores) pode haver produtos, ainda que apresentem despenho inferior. Ademais, indicou que, no âmbito domésticas, a cutelaria dispõe de produtos substitutos, tais como vidro, alumínio podem substituir produtos mais caros.

Além disso, argumentou, por meio da análise realizada pela Tendências 304 concorrem com outros materiais, como aço carbono, pedras (mármore, granito), metais não ferrosos (alumínio, prata, bronze latão, entre outros), vidros e plástico. Segundo o material não depende apenas do preço, sendo considerados, por exemplo, no caso de trocadores de calor de usinas de açúcar, e aspectos arquitetônicos dos elevadores.

Argumentou, ainda, que os laminados a frio 304 podem ser substituídos como os da série 400. Tal substituição seria possível em função da adição de molibdênio e o nióbio, que aprimorariam as propriedades de resistência à corrosão térmica deste tipo de aço. De acordo com a Tendências, os aços da série 400 são de ferro e cromo, não havendo níquel em sua composição. Com a substituição do níquel é possível reduzir o preço do produto, que "também deixa de oscilar em decorrência do níquel".

Ademais, indicou que os aços da série 200, que são constituídos de ferro, cromo e níquel (baixo teor em comparação com os laminados a frio 304, vale dizer, também poderiam substituir o produto objeto da análise, apesar de pouca possibilidade de substituições inadequadas. Informou, por fim, que pode haver produtos não são inoxidáveis, embora haja desvantagens em determinados atributos como peso.

De acordo com a Aprodinox, em seu questionário de interesse público em aplicações específicas, não havendo, assim, produtos que possam ser considerados da demanda. Nesse sentido, informou desconhecer diferenças entre o produto importado, com exceção de alguns acabamentos e larguras que não seriam produzidos doméstico. Diante disso, argumentou que o produto nacional pode ser substituído importado com as mesmas especificações.

similares. Deste modo, alegou que a única forma de substitutibilidade dos laminados nacionais e importados. Em manifestação protocolada pela em Aprodinox corrobora o que foi relatado pelo CADE

Em manifestação protocolada em 3 de outubro de 2022 a Aperam re análise poderia ser substituído por outros tipos de aços inoxidáveis ou por cerâmicas, dentre outros, dependendo a escolha do material da aplicação do técnico-econômica,

Assim, conclui-se, a partir das manifestações das partes interessadas dos laminados a frio 304 sob a ótica da oferta se apresenta como improvável na ótica da demanda, os elementos acostados aos autos da avaliação de interesse vislumbrar substitutibilidade entre o produto sob análise e outro tipo de produto

2.1.4 Concentração do mercado do produto sob análise

Nesta seção, busca-se analisar a estrutura de mercado, de forma a avaliar a eventual aplicação da medida de defesa comercial pode influenciar a concorrência no mercado e concorrência.

No tocante ao tema, o CADE afirmou, em seu questionário de interesse brasileiro de laminados a frio 304 é formado por apenas um produtor nacional, 100% de sua produção.

Em sua resposta ao questionário de interesse público, a Aprodinox afirmou que é a única fabricante de aço inox no Brasil e que a empresa adota condutas anticorruptivas "que seus clientes e distribuidores não optem pela importação do produto". Contudo, não há produtos substitutos pela ótica da demanda ou da oferta, a estrutura do mercado brasileiro estaria restrita ao produzido pela Aperam e às importações. O mercado brasileiro é altamente concentrado, com as importações atuando como fator disciplinar os preços praticados pela indústria doméstica. Diante disso, argumenta que a medida antidumping sobre as importações provenientes da África do Sul e da Índia é um fator disciplinador dos preços domésticos, dada a existência de direitos de importações originárias da China, principal fabricante de laminados a frio 304. Contudo, que a investigação antidumping em relação às importações provenientes da Indonésia foi encerrada por meio da Circular Secex nº 75, de 3 de novembro de 2022.

Por outro lado, a Aperam alegou, em seu questionário de interesse público, que não há no mercado por parte de nenhum player no mercado do produto objeto da análise capacidade de controle de preços e/ou volume ofertados. De acordo com a Aprodinox, corroborado pela verificação de existência de dano decorrente das importações originárias da Indonésia.

ele oscilou para baixo, partindo de 82% em 2005 para 68% em 2020 e passando para 60% em 2013".

Dessa forma, alegou que uma análise baseada apenas na participação de mercado levaria à conclusão de um mercado potencialmente pouco competitivo, "quando se consideram as características de baixas barreiras à entrada e de facilidade de se trocar de produto".

Em resposta a este argumento, a Aprodinox, em manifestação protocolada em 12 de maio de 2022, argumentou que os volumes de importação trazidos pela empresa Terex para os tipos de aço inoxidável, superestimando tais volumes, de modo que a análise não refletisse a realidade.

Já em 9 de setembro de 2022, a Aprodinox apresentou manifestação reiterando as informações apresentadas anteriormente.

Apresentadas as manifestações das partes, passa-se à análise da existência de estruturas concentradas pode conduzir ao poder excessivo do produtor, expresso na capacidade de cobrar preços em excesso aos custos, proporcionalmente às despesas do consumidor e, conseqüentemente, a diminuição do bem-estar da comunidade.

Nesse contexto, o Índice Herfindahl-Hirschman (HHI) pode ser utilizado para medir o grau de concentração dos mercados. Esse índice é obtido pelo somatório do quadrado das participações de todas as empresas de um dado mercado. O HHI pode chegar até 10.000 pontos, no caso de monopólio, ou seja, há uma única empresa com 100% do mercado.

De acordo com o Guia de Análise de Atos de Concentração Horizontal, os mercados são classificados da seguinte forma:

- Não concentrados: HHI abaixo de 1500 pontos;
- Moderadamente concentrados: HHI entre 1.500 e 2.500 pontos; e
- Altamente concentrados: HHI acima de 2.500.

Para fins da presente avaliação final de interesse público, os valores de participação de mercado das origens gravadas e de outros países exportadores do produto foram agregadas, sem segmentação por empresa, no período entre P1 e P5, de acordo com os dados na investigação de dumping e nas estatísticas de importações da RFB. A metodologia para o mercado brasileiro do produto e o cálculo do HHI estão descritos na tabela a seguir.

Participação (em faixas de %) no mercado brasileiro e índice HHI [CONFIDENCIAL]									
Períodos	Aperam	Indonésia	África do Sul	EUA	Malásia	Espanha	China	De	

Por sua vez, a queda na concentração de mercado observada em parte, justificada pelo aumento da participação das importações no mercado [CONFIDENCIAL] % em P2 para [CONFIDENCIAL] % em P5. Destaca-se o aumento das importações da origem investigada, que passaram de [CONFIDENCIAL] % de [CONFIDENCIAL] % em P5, as quais corresponderam à maior parte do crescimento registrado no período.

Ademais, a queda na concentração observada no período parece decorrer da redução da participação das vendas da indústria doméstica no mercado [CONFIDENCIAL] % em P5, ou seja, uma redução de [CONFIDENCIAL] p.p. entre P2 e P5.

A Aperam informou, em manifestação protocolada em 20 de outubro de 2022, que os índices de concentração, como HHI ou C4, quando observados isoladamente, mostram números elevados, o que poderia sugerir um mercado concentrado, sendo assim é sugerido considerar as especificidades do mercado.

No tocante aos atos de concentração no setor afetado, o CADE analisou a Concentração Econômica nº 08012.005092/2000-89, referente à operação de aquisição da empresa Amorim S.A. Aços Inoxidáveis, além de participação acionária nas empresas Inox Tubos Ltda. e Inox Tubos S.A., pela Acesita S.A. No processo, o mercado relevante é o fornecimento e distribuição de aços inoxidáveis laminados a frio e a quente com espessura de 0,15 mm (séries 3XX e 4XX), escopo que abrange produtos não abordados na praxe.

De acordo com o órgão, a operação foi aprovada sem restrições, não havendo preocupação com os riscos e efeitos de uma integração vertical quando os mercados econômicos horizontalmente concentrados. O CADE informou que o voto foi favorável às recomendações principais e determinou três itens de abstenção, endereçadas à Acesita em unanimidade pelo plenário":

"(...) a Acesita que, por sua posição dominante no mercado brasileiro de aços inoxidáveis, incorrerá em pena de infringir a ordem econômica e incorrer nas penas da Lei 12.529/12 (Lei de Defesa da Concorrência) por praticar na venda de aços inoxidáveis a todos os distribuidores, preço e pagamento em igualdade de condições com os demais fornecedores de crédito e de prazo.

2) respeitar os volumes retrospectivos e evolutivos de cada distribuidor na quantificação e qualificação dos programas de compra dos distribuidores de Serviços/Distribuição. Além disso, a Acesita deve abster-se de: 1) criar qualquer discriminação aos distribuidores de aço, quer seja de produtos da Acesita, quer não, importados ou não, sob qualquer restrição, mesmo que estes produtos sejam concorrentes dos produtos da Acesita; 2) sistema de vendas por consignação para a Amorim que não seja extensivo a todos os distribuidores da Acesita; 3) privilegiar a Amorim com abastecimento especial em fluxo contínuo de determinado produto, ou dar-lhe vantagem que não seja extensiva aos seus demais Centros de Distribuição.

antidumping, de requisições de aumento da TEE e, possivelmente, das análises - de procurar impedir o avanço das importações no país".

Ademais, indicou que a Superintendência-Geral, por meio do Despacho nº 12/2015/CGAA3/SGA1/SG/CAD, ressaltou que foram identificados potenciais efeitos anticompetitivos no que tange, sobretudo, aos seguintes pontos da política comercial:

- Tratamento privilegiado dos distribuidores que faziam parte do grupo da rede de distribuidores da Aperam (RAD);
- Criação de dificuldades à importação de aços planos laminados; e
- Limitação de acesso aos produtos da Aperam.

O órgão argumentou, ainda, que a SG entendeu que a política "descontar o acordo com o percentual do volume de compra que é dedicado à representação" ao volume absoluto de compras efetivo configurava uma forma de desconto que tal política de desconto poderia ter como escopo "restringir a concorrência" e contrapartidas de eficiência para a representada que eventualmente justifique a adoção.

O Processo Administrativo nº 08700.010789/2012-73 foi encerrado com o Termo de Compromisso de Cessação, no qual a Aperam comprometeu-se a:

- "não praticar qualquer desconto não linear aos distribuidores que tenham a intenção de induzir a aquisição exclusiva de produtos da Compromissária";
- "abster-se de adotar cláusula que tenha por objeto ou efeito restringir a aquisição de produtos inoxidáveis"; e
- "abster-se de impor qualquer alteração das políticas comerciais que implique uma decisão de importação ou compra de produto concorrente pelos distribuidores".

Dessa forma, o CADE argumentou que a potencial prática de restrição foi considerada "clara e grave no Processo Administrativo". Ademais, o TCC calculou a contribuição pecuniária no valor de R\$ 5.574.075,21, fundamentada no valor da Superintendência-Geral à época:

"62. Como se percebe dos precedentes indicados, esta investigação se baseia nos seguintes fatos: (i) a Compromissária propôs uma proposta de acordo logo após o término do tempo de duração do processo, desde a denúncia até a proposta de acordo, fato que, embora não haja precisão do tempo de duração da conduta, há indícios de conduta nos precedentes citados. 63. Pesa contra a Compromissária o fato de ter sido alertada pelo Ato de Concentração nº 08012.005092/2000-89, para não adotar conduta que possa gerar o entendimento da SG, a necessidade de repreensão via contribuição pecuniária". "No caso, a contribuição parece adequada, tendo em vista os precedentes citados."

- Regra discriminatória entre Distribuidores DIA (Distribuidor Irregular) e Distribuidor Regular (Aperam);

- Mudanças nos critérios de faixas de volumes;
- Mudanças na política de preços da Aperam; e
- Condutas para limitar e desestimular a opção de importação".

Segundo o CADE, a Aprodinox teria afirmado em tal processo que "a falta de investimentos por parte da Aperam diante de um mercado internacional competitivo é o principal fator das práticas anticompetitivas da Aperam no mercado nacional. A falta de investimentos por parte da Aperam para acompanhar o mercado internacional, fez com que a Aperam se concentrasse em práticas anticompetitivas: o uso recorrente de mecanismos de defesa comercial e a falta de investimentos anticompetitivas em benefício de sua distribuidora verticalmente integrada". Além disso, alegado que a Aperam não estaria cumprindo com as determinações do Processo Administrativo nº 08700.010789/2012-73 de que "a importação deve ser indutora da competição". No âmbito da distribuição é peça-chave para manutenção de um ambiente competitivo no mercado. No decorrer de tal processo, a Aperam apresentou documentação na qual nega todas as acusações e informou que o processo se encontra em fase de instrução, não sendo possível o andamento por parte da autoridade quando do preenchimento do questionário de interesse público.

A respeito do Ato de Concentração Econômica nº 08012.0050/2012-73, a autoridade informou, em seu questionário de interesse público, que, à época, a Acesita S.A. era a principal fabricante de aços especiais no Brasil, sendo que a referida aquisição resultou na formação da Acesita S.A. e a Amorim S.A. (atualmente Aperam Usina e Aperam Inox Serviços Brasil Ltda. associação). Desse modo, de acordo com a associação, houve a integração vertical da Acesita S.A. e a Amorim S.A. (atualmente Aperam Usina e Aperam Inox Serviços Brasil Ltda. associação).

- a produção de aços especiais (realizada pela Aperam, única produtora de aços especiais na época e atualmente) e a distribuição de tais produtos (a distribuição seria realizada pela Aperam Inox Serviços Brasil Ltda.); e

- a produção de aços especiais e os tubos de aços especiais (conforme o processo produtivo utilizava os produtos da Aperam em seu processo produtivo).

A associação destacou, ainda, o Processo Administrativo nº 08012.0050/2012-73 em desfavor da Aperam em função de "práticas anticompetitivas que consistem na restrição aos adquirentes de aço inoxidável, restrição às importações e favorecimento da distribuição econômica da Aperam". Esse processo foi instaurado a partir de representação do Sindicato Nacional da Indústria de Trefilação e Laminação de Metais Ferrosos (SINIFER) e do "SICETEL".

Além disso, conforme a associação, o SICETEL alegou no P 08700.010789/2012-73 que a Aperam estaria se aproveitando de sua posição no mercado brasileiro para "impor condições de venda abusivas a seus distribuidores, com o intuito de sob pena de expulsão da rede credenciada e favorecimento à distribuidora própria".

O Processo Administrativo nº 08700.010789/2012-73, conforme o Parecer, foi encerrado mediante Termo de Compromisso de Cessação. Além do destacado, a Associação argumentou que a Aperam comprometeu-se também a não oferecer qualquer vantagem à distribuidora do seu grupo econômico que não seja extensível aos demais distribuidores. O Compromissária assume a obrigação de abster-se [...] conceder qualquer vantagem ao grupo, em especial relativa a preço, condições de pagamento e abastecimento, em igualdade de condições com os demais distribuidores, sempre que as aquisições sejam feitas em igualdade de condições.

Ainda, a parte informou que, por meio do TCC, a Aperam propôs a alteração do modelo de relacionamento com os distribuidores, o que foi aprovado pelo TCC. No TCC, segundo a associação, a Aperam teria se comprometido a oferecer os mesmos preços e prazos de pagamento para os distribuidores DIA e DRA, condições idênticas, além de condições cadastrais e de crédito equivalentes. Por outro lado, o prazo estabelecido no TCC foi de cinco anos, período que se encerrou em abril de 2017, mas deve subsistir por tempo indefinido, conforme trecho do TCC trazido pela parte interessada.

"8. DO PRAZO DE VIGÊNCIA

8.1. O Acordo vigorará por um período de 5 (cinco) anos, contados a partir da data de assinatura, sem prejuízo do cumprimento das

obrigações em caráter definitivo, a fim de que sejam asseguradas as condições de acesso ao mercado brasileiro de prestação de serviços de beneficiamento e distribuição de produtos inoxidáveis.

8.2. A obrigação prevista na cláusula terceira, itens 3.1, 3.2, 3.3 e 3.4, vigorará pelo decurso de prazo previsto no item 8.1,

ressalvada a eventual hipótese de modificação da legislação aplicável, não expressamente essas condutas."

Cabe ressaltar que as práticas e condutas na análise concorrencial são analisadas em relação ao produto maior, ou seja, não especificamente atrelada ao produto sob análise.

Assim, verifica-se que o aumento da participação das importações de laminados a frio 304 entre P1 e P5, ainda que em menor escala, contribuiu para a queda de participação da indústria doméstica, contribuindo para o movimento de concentração em todos os períodos analisados.

China	14.175	15.305	16.155	16.990	17.895	19.135	19.585	19.885
Índia	2.236	2.236	2.336	2.646	3.546	3.946	3.946	3.946
EUA	2.595	2.390	2.475	2.755	2.755	2.755	2.755	2.755
Coreia do Sul	1.986	1.986	1.986	1.986	1.986	1.986	1.986	1.986
Japão	1.877	1.877	1.877	1.877	1.877	1.877	1.877	1.877
Taiapé Chinês	1.668	1.668	1.768	1.768	1.768	1.768	1.768	1.768
Indonésia	150	150	150	350	550	850	850	850
França	850	850	850	850	850	850	850	850
Itália	775	775	843	843	843	843	843	843
Finlândia	750	750	750	750	750	750	750	750
Demais Origens	4.775	4.645	4.675	4.795	4.795	4.795	4.795	4.795
Total	31.836	32.631	33.864	35.609	37.614	39.554	40.004	40.300

Assim, a China, origem gravada pela medida antidumping aplicada em 4.353, de 2019, seria o país com maior capacidade de produção de laminados a frio, representando 47,7% da capacidade produtiva do referido produto em 2018, tendo crescido de 19,9% entre 2015 e 2018 e de 17,0% entre 2018 e 2023, período de dados disponíveis. Em seguida, aparecem EUA e Índia, com participações de 7,7% e de 7,4% na capacidade produtiva do produto em 2018, respectivamente.

Ademais, Taipé Chinês, outra origem gravada pela medida antidumping, é o país com maior capacidade produtiva em 2018, representando 5,0% da capacidade produtiva global. A Indonésia, origem objeto da presente avaliação de interesse público, figura com participação representativa em termos de capacidade produtiva do produto em questão, com 0,4% em 2018, mesmo ano.

Vale destacar, no caso da Indonésia, que os dados referentes ao crescimento da capacidade instalada observado nos anos seguintes, a saber, 2019 e 2020, demonstram que as estimativas apresentadas para o ano de 2020 já demonstram que a Indonésia é o país com maior capacidade instalada no mundo, com participação de 2,1%.

Desse modo, em 2018, as origens não gravadas ou não investigadas representam 46,3% da capacidade produtiva global de laminados a frio, enquanto as origens gravadas respondem por 53,7% da capacidade, conforme os dados apresentados pela Agência de Defesa Comercial.

A empresa apresentou, além disso, estimativas de produção mundial de laminados a frio, cujo relatório, cujos dados estão consolidados a seguir:

Produção de laminados a frio por país/bloco. 2015-2023 (em mil toneladas).

21,1%. Em seguida, aparecem Índia e EUA, com participações de 7,6% e de 6,1%, respectivamente. Novamente, Taipé Chinês aparece em uma quinta posição, como o quinto maior produtor de laminados a frio no período.

Já a Indonésia, origem investigada, apresentou pequena participação no produto, sendo o décimo sétimo maior produtor mundial. Vale destacar, no entanto, que os dados referentes ao ano de 2018 parecem não englobar o crescimento da produção das origens seguintes. Ressalta-se, dessa forma, que as estimativas apresentadas para o ano de 2019, que a Indonésia seria a décima primeira origem com maior produção global, com base nos dados de 2018.

Desse modo, em 2018, as origens não gravadas ou não investigadas responderam por 42,6% da produção global de laminados a frio, enquanto as origens gravadas e investigadas responderam por 57,4%, de acordo com os dados apresentados pela Aperam.

Ademais, a Aprodinox, em seu questionário de interesse público, apresentou dados de produção de laminados a frio por país, extraídos do relatório International Stainless Steel Survey, referente ao ano de 2020. A Associação destacou que estes dados se referem a todos os tipos de laminados a frio 304 corresponderiam a cerca de 25,97% do total.

Os dados de produção mundial dos 5 (cinco) maiores produtores de laminados a frio foram consolidados na tabela a seguir, considerando o período de 2013 a 2019. Foram considerados os 5 maiores produtores, tendo em vista que algumas origens foram apresentadas de forma agregada, como Finlândia, Suécia e Reino Unido. Registre-se, ainda, que origens relevantes não foram desagregados para o ano de 2019, sendo alocados na linha "Outras Origens". Devido ao fato de que os dados reais apresentados pela Aperam se referem até o ano de 2018, utilizamos os dados de 2018 para comparação o ano de 2018.

Produção de laminados de alumínio por país/bloco. 2013-2019 (em mil toneladas)							
Origem	2013	2014	2015	2016	2017	2018	2019
China	18.984	21.692	21.562	24.938	25.774	26.706	29.400
Índia	2.891	2.858	3.060	3.324	3.486	3.740	3.930
Japão	3.175	3.328	3.061	3.093	3.168	3.283	2.960
EUA	2.030	2.389	2.346	2.481	2.754	2.808	2.590
Coreia do Sul	2.143	2.038	2.231	2.276	2.383	2.407	N/A
Outras Origens	9.285	9.379	9.287	9.665	10.516	11.785	13.320
Total	38.506	41.686	41.548	45.778	48.081	50.730	52.200

Assim como visto nos dados trazidos pela Aperam, a China foi a origem responsável por uma parcela de 49,3% da produção mundial em 2013 e atingiu 56,3% em 2019. No período, a produção chinesa cresceu 40,7%. Em seguida, aparecem Índia e Japão, com participações de 7,6% e 6,1%, respectivamente.

2	Indonésia	628.562,02	9,9%
3	Taipe Chinês	598.199,03	9,5%
4	Itália	524.971,00	8,3%
5	Coreia do Sul	478.629,61	7,6%
6	Holanda	442.447,98	7,0%
7	Bélgica	333.513,83	5,3%
8	França	319.618,09	5,1%
9	Alemanha	302.115,81	4,8%
10	Espanha	260.632,26	4,1%
11	Japão	244.175,04	3,9%
12	EUA	179.908,02	2,8%
13	África do Sul	142.951,86	2,3%
14	Malásia	131.899,20	2,1%
15	Suécia	101.315,01	1,6%
	Demais Origens	671.207,90	10,6%
	Total	6.318.545,33	100,0%

Com base nos dados de exportação disponibilizados na ferramenta das Nações Unidas (ONU), em toneladas, observa-se que a China foi o maior produto classificado nos códigos tarifários de referência em 2020, com 15,2%. Em segundo lugar aparece a Indonésia, origem investigada, com 9,9% de participação. O Taiwan (Taipe Chinês), com 9,5%. De acordo com os dados do Comtrade, 62 (sessenta e dois) países exportaram produtos classificados nos códigos de referência em 2020. Conforme apresentado no item 1.1, que a China e Taipe Chinês são origens gravadas por decisão, a prorrogação se deu por meio da Portaria nº 4.353, de 2019.

Em termos de origens não investigadas ou não gravadas por medida, a origem exportadora mundial foi a Itália, responsável por 8,3% do volume total. Seguem a Coreia do Sul (7,6%), Holanda (7,0%), Bélgica (5,3%) e França (5,1%), as quais ocupam as primeiras posições em termos de exportações mundiais.

Em resumo, observa-se que as origens não gravadas ou não investigadas respondem por 65,4% das exportações globais de laminados a frio 304, enquanto as origens investigadas respondem por 34,6% das exportações do referido produto.

Nesse sentido, a Aprodinox destacou que as principais origens alvo de medidas antidumping por parte do governo brasileiro, sendo que, até o momento, não há medidas em vigor direitos antidumping contra as importações de laminados a frio 304.

China	2.485,21
Indonésia	1.745,29
Taipé Chinês	1.868,31
Itália	2.434,13
Coreia do Sul	1.961,55
Holanda	2.389,92
Bélgica	2.571,83
França	2.847,24
Alemanha	3.610,43
Espanha	2.314,11
Japão	3.345,10
EUA	3.087,15
África do Sul	1.701,55
Malásia	1.924,14
Suécia	4.739,38
Demais Origens	4.636,56
Média Total	2.657,85

Nota-se que o preço médio praticado pela Indonésia (US\$ 1.745,29/ton) dentre todas as origens mais relevantes, sendo 34,3% inferior à média de preços médios das possíveis origens alternativas África do Sul (menor preço praticado). Itália, Coreia do Sul, Holanda e Bélgica estiveram abaixo da média total de preços, da França esteve acima da média.

2.2.1.3 Saldo da balança comercial do produto sob análise

Com o intuito de avaliar o perfil dos maiores exportadores listados, para referenciar as importações de tais origens com base em suas exportações líquidas (menos importações) do produto, em toneladas, classificado nos códigos 7219.30 e 7220.20 do Sistema Harmonizado (SH), conforme tabela a seguir.

Saldo da Balança Comercial - 2020			
Países	Peso Exportado (t)	Peso Importado (t)	Saldo Comercial (t)
China	958.399	522.089	436.310
Indonésia	628.562	94.267	534.295
Taipé Chinês	598.199	84.114	514.085
Itália	524.971	625.006	-100.035

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

2.2.1.4 Importações brasileiras do produto sob análise

No exame de possíveis fontes alternativas, há ainda que se observar as importações brasileiras. Assim, a tabela abaixo apresenta o volume de importações de laminados a frio 304 por origem, durante o período de análise de dano da doença, conforme depuração realizada no âmbito dos Processos SEI-ME nº 19972.101392/2021-05 (confidencial). Os dados expostos desconsideram as importações de laminados a frio de graus diversos do 304 e/ou com espessura inferior a 0,35 mm, chapas perfuradas, placas de desgaste, placas de fricção, transferências de impressão recalcadas, fitas de vedação, telhas, acessórios para escada, aço, cinta em aço inoxidável, tubos, dentre outros.

Importações totais (em número-índice de toneladas) [CONFIDENCIAL]					
Origem	P1	P2	P3	P4	P5
Indonésia	100,0	138,4	126,4	687,2	3.147,0
Total sob Análise	100,0	138,4	126,4	687,2	3.147,0
África do Sul	100,0	120,5	143,1	118,5	84,3
Estados Unidos	100,0	56,6	170,1	174,0	163,5
Malásia	100,0	158,4	235,3	253,4	229,7
China	100,0	35,6	50,6	94,7	53,9
Itália	100,0	74,5	94,4	80,9	372,1
Taipe Chinês	100,0	-	-	187,1	992,3
Finlândia	100,0	-	-	142,9	1.338,1
Coreia do Sul	100,0	714,3	-	-	18.357,1
Alemanha	100,0	25,3	102,8	1,6	16,5
Demais países ¹	100,0	51,8	66,4	58,7	43,0
Total (exceto sob análise)	100,0	79,5	122,0	116,0	98,6
Total Geral	100,0	80,9	122,1	130,1	174,0

Os dados demonstram uma trajetória de crescimento das importações de laminados a frio 304 ao longo do período analisado. De P1 a P5, o volume total das importações em toneladas, cresceu 74,0%. Esse aumento é causado, destacadamente, pelas importações da Indonésia, que cresceram 3.047% de P1 a P5 e dos EUA, que registraram elevação no período de maior elevação das importações provenientes da Indonésia ocorreram, passando de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas -

crescimento de tais importações, uma vez que a desgravação ocorreu em 2019. Os dados de P5 contemplam o período de abril de 2019 a março de 2020.

Adicionalmente, é importante analisar a participação das origens nas importações de laminados a frio 304:

Participação nas Importações Totais (em faixas percentuais) [CONFIDENCIAL]					
Origem	P1	P2	P3	P4	P5
Indonésia	[0-10]	[0-10]	[0-10]	[10-20]	[40-50]
Total sob Análise	[0-10]	[0-10]	[0-10]	[10-20]	[40-50]
África do Sul	[30-40]	[30-40]	[30-40]	[30-40]	[10-20]
Estados Unidos	[20-30]	[10-20]	[30-40]	[20-30]	[20-30]
Malásia	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
China	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Itália	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Taiapé Chinês	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Finlândia	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Coreia do Sul	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Alemanha	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Demais países ¹	[20-30]	[10-20]	[10-20]	[10-20]	[0-10]
Total (exceto sob análise)	[90-100]	[90-100]	[90-100]	[90-100]	[50-60]
Total Geral	100,0	100,0	100,0	100,0	100,0

Durante o período analisado, a Indonésia aumentou sua participação nas importações brasileiras em [CONFIDENCIAL] p.p., atingindo [CONFIDENCIAL] % de participação nas importações brasileiras em P5. China e Taiapé Chinês, origens gravadas por meio de medidas antidumping, foram conjuntamente responsáveis por [CONFIDENCIAL] % do volume importado pelo Brasil em P5.

Dentre as origens não investigadas, destaca-se os EUA, que, em P5, teve uma participação de [CONFIDENCIAL] p.p. na participação nas importações brasileiras, foi responsável por [CONFIDENCIAL] % do volume importado pelo Brasil em P5. Destaca-se, ademais, a África do Sul, que, em P5, teve uma participação de [CONFIDENCIAL] p.p. de participação, representou [CONFIDENCIAL] % do total das importações de laminados a frio 304 em P5.

Nesse sentido, a Aprodinox ressaltou, em seu questionário de informações, que a participação da origem investigada no volume importado pelo Brasil. A participação não seria causada pela prática de dumping, mas sim pela mudança de origem.

brasileiras do produto. Ressalta-se também a desgravação das origens Alemanha e Vietnã a partir de outubro de 2019, cujo efeito ainda não pôde ser totalmente verificado devido à indisponibilidade dos dados.

2.2.1.5 Preço das importações brasileiras do produto sob análise

Para aprofundar o exame da existência de possíveis fontes alternativas de importação, é importante verificar a evolução de preços cobrados pelas principais origens de importação. Conforme a investigação de defesa comercial, a análise foi realizada em base de preços FOB. A análise do valor das importações mais uniforme, considerando que o frete e o seguro são da origem considerada, têm impacto relevante sobre o preço de concorrência entre as importações no mercado brasileiro.

Preço médio das importações (em número índice de US\$ CIF/tonelada)

[CONFIDENCIAL]

	P1	P2	P3	P4	P5
Indonésia	100,0	73,3	78,7	84,3	73,2
Total sob Análise	100,0	73,3	78,7	84,3	73,2
África do Sul	100,0	82,0	99,3	105,6	96,2
Estados Unidos	100,0	96,6	94,5	106,2	98,6
Malásia	100,0	81,7	100,3	99,3	87,8
China	100,0	79,3	107,1	95,0	88,3
Itália	100,0	86,3	82,2	130,8	101,6
Taiapé Chinês	100,0	-	-	143,4	123,0
Finlândia	100,0	-	-	80,0	74,6
Coréia do Sul	100,0	47,2	-	-	39,5
Alemanha	100,0	91,9	91,8	1.142,5	204,8
Demais Países ¹	100,0	81,0	91,5	99,9	89,7
Origens não investigadas	100,0	81,9	94,4	101,9	93,8
Total Geral	100,0	81,7	94,0	100,9	89,3

Observa-se que o preço médio das importações totais de laminação a quente de aço de 250 mm de largura nominal e 10 mm de espessura nominal, originários da Indonésia, foi de [CONFIDENCIAL], tendo registrado redução de 10,7% entre P1 e P5.

O preço médio das importações da Indonésia foi de [CONFIDENCIAL], tendo registrado redução de 26,8% entre P1 e P5. Por sua vez, o preço médio das importações da Alemanha foi de [CONFIDENCIAL] em P5, valor 6,2% inferior ao registrado em P1.

participação na capacidade instalada mundial em 2020, conforme dados apresentados. Lembrar, além disso, que a China e Taipé Chinês, origens gravadas, são países em termos de capacidade produtiva e de produção mundial dos laminados a frio mais relevantes. Nesse sentido, de acordo com os dados da publicação CRU, as origens gravadas ou investigada responderiam por 53,7% da capacidade produtiva global e por 57,4% da produção mundial em 2018. Os dados da publicação ISSF, apresentados, demonstram comportamento semelhante, sendo que a origem investigada e antidumping são responsáveis por 59,3% da produção mundial do produto, contra 50,7% em 2018.

- sobre as exportações do produto, a Indonésia correspondeu a 9,3% da produção mundial em 2020, sendo o segundo país mais relevante em termos de volume. A China e Taipé Chinês, origens gravadas, respondem por parcela relevante da produção de laminados a frio 304, com participação conjunta de 24,6%. As possíveis origens alternativas para a Itália, Coreia do Sul, Holanda, Bélgica, França, EUA, corresponderam a 6,1% da produção nesse período;

- o preço médio de exportação praticado pela Indonésia foi o segundo menor entre as origens relevantes, sendo 34,3% inferior à média de preço geral. Destaque-se que a Indonésia praticou o menor preço dentre as origens relevantes, sendo 36,0% inferior à média dos preços médios das demais possíveis origens alternativas Itália (US\$ 2.434,15/t), Coreia do Sul (US\$ 1.961,55/t), Holanda (US\$ 2.389,92/t) e Bélgica (US\$ 2.571,83/t) estiveram abaixo do preço médio enquanto o preço médio da França (US\$ 2.847,24/t) e dos EUA (US\$ 3.087,15/t) estiveram acima;

- em termos da balança comercial, em 2020, a Indonésia apresentou superávit nas transações de laminados a frio 304. Das origens com potencial exportador e das origens não investigadas EUA, Coreia do Sul, Bélgica e França obtiveram superávit. No princípio, se caracterizarem como origens de perfil exportador com base na comparação do fluxo de comércio;

- com relação à evolução das importações, nota-se relevante aumento das importações de laminados a frio 304, de 74,0% ao longo do período analisado, sendo que a maior parte deve ao crescimento das importações originárias da Indonésia e dos EUA, que cresceram 3.047,0% e de 63,5%, respectivamente, no período. Constata-se, assim, que os preços das importações da alternativa, com participação de [CONFIDENCIAL] % no volume importado pelo Brasil, África do Sul, com participação de [CONFIDENCIAL] % no período; e

- em relação aos preços das importações, nota-se que a Indonésia apresentou preços inferiores às demais origens, sendo o menor preço em P5. Já a África do Sul, sendo a origem mais relevante em termos de volume importado, praticou preços inferiores à Indonésia.

pelo Brasil em P5. Destaque-se, ainda, que a origem praticou preços inferiores à origem da Indonésia entre P1 e P4, sendo a origem alternativa mais relevante em termos de importações ao longo de P1 a P5.

Além disso, os EUA também se destacam como origem alternativa relevante, com cerca de [CONFIDENCIAL] % no volume importado pelo Brasil em P5, embora com preços inferiores ao praticado nas importações advindas da origem investigada. Apesar de serem países importantes como Itália, Bélgica, Coreia do Sul, Holanda e França também comumente no mercado brasileiro, os volumes exportados por essas origens atualmente são inferiores aos provenientes da Indonésia. Além disso, dentre tais origens, apenas a Bélgica, a China e a França são exportadoras líquidas do produto.

Em suma, a África do Sul revelou-se capaz de rivalizar com a origem da Indonésia em volume e preço importado, sendo a segunda origem mais relevante nas importações do produto. Da mesma forma, os EUA também se consolidaram como uma possível origem de produção disponível para exportação ao Brasil, além de ser a origem mais relevante nas importações brasileiras do produto em P5, porém com preço médio superior ao da Indonésia.

2.2.2 Barreiras tarifárias e não tarifárias ao produto sob análise

2.2.2.1 Medidas de defesa comercial aplicadas ao produto

Neste tópico, busca-se verificar se há outras origens do produto sob análise sujeitas a medidas de defesa comercial pelo Brasil e ainda se há casos de aplicação por outros países de defesa comercial para o mesmo produto. Com isso, aprofundam-se as análises de viabilidade de fontes alternativas e obtêm-se indícios da frequência da prática de medidas comerciais acionáveis no mercado em questão.

Conforme apresentado no item 1.1, os laminados a frio 304, com os códigos 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, foram alvo de medida de defesa comercial pelo Brasil quando importados da China e de Taipé em 2019, pelo nº 4.353, de 2019.

Em consulta ao Portal Integrado de Inteligência Comercial (Integrated Trade Information Portal - I-TIP) da Organização Mundial do Comércio (OMC) para os códigos 7219.32, 7219.33, 7219.34, 7219.35 e 7220.20 do Sistema Harmonizado (SH), verificou-se que há medidas de defesa comercial por outros países sobre o produto, conforme tabela abaixo:

Medidas de defesa comercial sobre as importações de laminados a frio 304

Medida de Defesa Comercial	Membro aplicador	Parceiro afetado	Data da primeira aplicação
Antidumping	União Europeia	China	26/06/2019

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

Antidumping	Tailândia	Coreia do Sul	13/03/200
Antidumping	Tailândia	Taipe Chinês	13/03/200
Antidumping	EUA	China	03/04/20
Antidumping	EUA	Japão	27/07/199
Antidumping	EUA	África do Sul	27/07/199
Antidumping	EUA	Taipe Chinês	27/07/199
Antidumping	EUA	Coreia do Sul	07/07/199
Antidumping	Vietnã	China	04/10/201
Antidumping	Vietnã	Indonésia	04/10/201
Antidumping	Vietnã	Malásia	04/10/201
Antidumping	Vietnã	Taipe Chinês	04/10/201
Medida Compensatória	Índia	China	07/09/201
Medida Compensatória	Taipe Chinês	China	09/10/201
Medida Compensatória	EUA	China	03/04/20
Medida Compensatória	EUA	Coreia do Sul	06/08/199

No período de referência, encontravam-se em vigor 33 (trinta e três) medidas comerciais relacionadas aos códigos tarifários em questão, sendo 29 (vinte e nove) antidumping (quatro) medidas compensatórias. Ressalta-se que a Indonésia é alvo de uma medida antidumping aplicada pelo Vietnã.

A base de dados I-TIP informa, ademais, a existência de investigações antidumping da autoridade investigadora da Índia, em relação às importações de laminados a frio 304 da China, União Europeia, Indonésia, Japão, Coreia do Sul, Malásia, México, Singapura, Taiwan, Chinês, Tailândia Emirados Árabes, EUA e Vietnã. Deve-se mencionar também a existência de uma condução de uma investigação de dumping em relação às importações originárias da Índia. Por fim, foi iniciada investigação de dumping por parte do México em relação às importações da China e de Taipei Chinês.

A Aperam e a Aprodinox, em seus questionários de interesse público, alegaram a adoção da Seção 232 pelos EUA, implementando sobretaxas nas importações de laminados a frio 304. As partes afirmaram, ainda, que, essas tarifas afetam a maior parte dos produtores de laminados a frio inclusive a origem investigada.

Por fim, as empresas alegaram que os laminados a frio 304 estariam protegidos por salvaguardas aplicadas pela União Europeia em 1º de fevereiro de 2019, "no âmbito de uma investigação sobre o volume que exceder a média simples do volume das importações do produto em questão, entanto, tal medida não foi encontrada na base de dados I-TIP.

comparação com os cinco maiores exportadores do produto em 2020, o Il bras de importação médias praticadas pela China (7,3%), Indonésia (9,5%), Taipé Chin Não foram reportadas tarifas para a Itália, quarto maior exportador do produto.

Nesse sentido, a Aperam, em seu questionário de interesse p comparação entre as alíquotas de Il aplicadas pelo Brasil e a média dos paí seria adequada, uma vez que as tarifas aplicadas em países não produtores tenderiam a ser mais baixas ou, até mesmo, zeradas. No entanto, cumpre regi que a alíquota brasileira é superior a 94,7% dos países, sendo que os países pro 304 mais relevantes no comércio mundial praticaram tarifas médias inferiores 2020.

Deve-se ressaltar que, em novembro de 2021, foi publicada a Reso concedendo redução temporária da ordem de 10% nas tarifas de importação a que compõem a NCM, incluindo o produto sob análise, vigente até 31 de dez maio de 2022, a Resolução GECEX nº 353 ampliou para 20% a redução tarifári aplicada, de forma que a alíquota de importação aplicável aos códigos relativo passou para 11,2%.

Em 20 de julho de 2022, o Mercosul anunciou, na última reunião de Brasil, Argentina, Paraguai e Uruguai concordaram em converter a reduç novembro de 2021 em redução definitiva da TEC, fazendo com a alíquota pa passasse para 12,6% de forma definitiva.

2.2.2.3 Preferências tarifárias

Os subitens referentes aos laminados a frio 304 contam com tarifárias, concedidas em acordos pelo Brasil/Mercosul:

Preferências Tarifárias			
País	Acordo	Entrada em Vigor do Acordo	Preferên
Argentina	ACE 18 - Mercosul	21 de novembro de 1991	100%
Paraguai	ACE 18 - Mercosul	21 de novembro de 1991	100%
Uruguai	ACE 18 - Mercosul	21 de novembro de 1991	100%
Ch-le	ACE 35 - Mercosul-Chile	19 de novembro de 1996	100%
Bolí-ia	ACE 36 - Mercosul-Bolívia	28 de maio de 1997	100%
P-ru	ACE 58 - Mercosul-Peru	30 de dezembro de 2005	100%
Equa-or	ACE 59 - Mercosul-Ecuador	01 de fevereiro de 2005	69%
Israel	ALC - Mercosul-Israel	28 de abril de 2010	100%
Venezu-la	ACE 69 - Brasil-Venezuela	07 de outubro de 2014	100%

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

anos com direito antidumping aplicado. Já Alemanha, Coreia do Sul, Finlândia e outros países tiveram direitos antidumping encerrados pela mesma Portaria, após vigência de 6 anos.

2.2.2.5 Outras barreiras não tarifárias

Em consulta à base de dados TRAINS da Conferência das Nações Unidas para o Comércio e Desenvolvimento (UNCTAD), não foram encontradas possíveis barreiras não tarifárias para a outros países relacionadas aos códigos 7219.32, 7219.33, 7219.34, 7219.35 e 7219.36. Na comparação internacional, foram encontradas 474 barreiras não tarifárias por outros países para a estes códigos do Sistema Harmonizado.

Em seu questionário de interesse público, a Aperam informou que, inicialmente, foram usadas sete diferentes nomenclaturas para a definição dos distintos tipos de produtos. No Brasil, a nomenclatura mais utilizada a do American Iron and Steel Institute - AISI. No Brasil, a Associação Brasileira de Normas Técnicas - ABNT adota a mesma nomenclatura. Ademais, que existem outras nomenclaturas internacionais que especificam produtos de aço inoxidáveis que podem ser utilizadas, a depender da região/país de origem ou de onde foi fabricado/comercializado. A Aprodinox, em seu questionário de interesse público, forneceu as seguintes informações.

Diante disso, não foram identificadas barreiras não-tarifárias importantes para os laminados a frio 304.

2.3 Oferta nacional do produto sob análise

2.3.1 Mercado brasileiro

Com o intuito de avaliar o mercado brasileiro de laminados a frio 304, foi analisado o comportamento das vendas da indústria doméstica, das importações da indústria doméstica e das importações de outras origens. A importância dessa análise é verificar o quanto as vendas domésticas e as importações representam no mercado brasileiro do produto. De acordo com o mercado brasileiro de laminados a frio 304, a partir dos dados fornecidos pela Receita Federal do Brasil (RFB).

Conforme explicitado na Circular Secex nº 40/2021, não houve coleta de dados da indústria doméstica, de forma que o consumo nacional aparente (CNA) e o consumo interno são equivalentes. Com o objetivo de dimensionar o mercado brasileiro de laminados a frio 304, foram consideradas as quantidades fabricadas e vendidas líquidas de devoluções e o volume total importado apurado com base nos dados oficiais do mercado interno e o volume total importado apurado com base nos dados oficiais da Receita Federal do Brasil (RFB).

Seguindo a tendência de crescimento do mercado brasileiro, as vendas doméstica também registraram elevação, de 17,3% entre P1 e P5. Observou-se que o mercado interno cresceu 27,7% de P1 para P2 e diminuiu 2% nos períodos subsequentes, as vendas apresentaram crescimento de 5,8% de P3 para P4 e de P4 para P5.

No mesmo período, houve elevação relevante das importações da origem investigada: 3.047,0% considerando o período compreendido entre P1 e P5. As importações das demais origens, por sua vez, apresentaram retração de 1,4% entre P1 e P5.

A indústria doméstica exerceu sua maior participação no mercado brasileiro em P1, com [CONFIDENCIAL] % do volume total comercializado. A partir de então, sua participação foi decrescente e contínua, perdendo [CONFIDENCIAL] p.p. do mercado de P2 a P5, quando atingiu [CONFIDENCIAL] %. O espaço perdido pelas vendas domésticas foi ocupado pelas importações provenientes da origem investigada, que cresceu sua participação no mercado brasileiro de P1 a P5.

A Aperam, por meio da análise realizada pela Tendências, informou que o produto se dá por meio de vendas realizadas diretamente à indústria ou a distribuidores que comercializam com a indústria. A participação de vendas diretas da Aperam dependeria de fatores como: a assistência técnica oferecida, a exposição do aço, o preço do níquel, o porte dos clientes industriais, o segmento da indústria, entre outros. A consultoria, a participação das vendas para distribuidores partiu de [CONFIDENCIAL] % pela empresa em P1, alcançando [CONFIDENCIAL] % em P5, o que revelaria a importância da comercialização desse produto.

Portanto, nota-se que o mercado brasileiro de laminados a frio 304 cresceu, o que fez com que as vendas internas da indústria doméstica, fazendo com que a indústria doméstica aumentasse sua participação de mercado ao longo do período analisado. O mesmo ocorreu com as vendas provenientes das origens não investigadas. As perdas de participação no mercado foram supridas via importações provenientes da origem investigada.

2.3.2 Risco de desabastecimento e de interrupção do fornecimento e

Nesta seção, busca-se analisar o risco de desabastecimento e de interrupção do fornecimento pela indústria doméstica, em caso de aplicação da medida de defesa comercial, comparando a produção da indústria doméstica em relação à capacidade instalada e à capacidade de produção a frio 304 da indústria doméstica para que possam ser comparados com os dados de produção do produto.

constantes em todo os períodos analisados: 2,5% de P1 para P2, 3,5% de P2 para P3, 13,6% de P4 para P5. Considerando todo o período de análise, o volume produzido de laminados a frio 304 foi superior ao mercado brasileiro entre P1 e P5, com tendência a partir de P4. A produção do produto foi, em média, equivalente ao mercado brasileiro de P1 a P5. A produção de outros produtos, por sua vez, também foi superior ao longo do período de análise, reduzindo-se em 8,6% de entre P1 e P5. O grau de ocupação da capacidade instalada apresentou redução de [CONFIDENCIAL] e atingiu [CONFIDENCIAL] %.

A partir dos dados apresentados, verifica-se que a capacidade efetiva da indústria doméstica é, em média, [CONFIDENCIAL] vezes superior ao mercado brasileiro e que a linha de produção do produto similar nacional é compartilhada com outros produtos. A produção de P1 a P5 é, em média, [CONFIDENCIAL] vezes superior ao dos laminados a frio 304.

Quanto a esse ponto, em manifestação protocolada em 20 de outubro de 2022, a Usinas Metais informou que tal fato é comum nas usinas integradas, representando, ao invés de uma vantagem, uma limitação e sustentabilidade da produção em todos os aspectos para as empresas produtoras. Em manifestação protocolada na mesma data, acusou impactos negativos causados pela redução de produto mais lucrativas, mas afirmou que retirou seu pleito de desabastecimento em razão da possibilidade de manutenção de um fluxo de abastecimento com os fornecedores estrangeiros em virtude da diminuição dos valores dos fretes e seguros, do arrefecimento da demanda e da unilateralidade da TEC.

O grau de ocupação da linha de produção de laminados a frio 304 foi considerado baixo ao longo do período de análise, variando de [CONFIDENCIAL] % (P4) a [CONFIDENCIAL] % no período de menor ocupação (P5), o que demonstra a ociosidade relevante para aumento da produção do produto. A ociosidade nominal da capacidade instalada (cerca de [CONFIDENCIAL] toneladas), permitiria à indústria doméstica atender a demanda do mercado brasileiro no mesmo período.

Nesse quesito, a Aprodinox e a Inoxplasma alegaram, em seus autos, que o Brasil tem enfrentado insuficiência de produtos siderúrgicos, inexistindo capacidade para abastecimento da demanda interna desde o segundo semestre 2020, fato que foi investigado.

A Inoxplasma afirmou que [CONFIDENCIAL]. A empresa citou como exemplo a produção de laminados a frio 304.

De maneira similar, a Usinas Metais e a Inconel alegaram que [CONFIDENCIAL] e, além disso, que [CONFIDENCIAL]. Nesse sentido, alegaram que [CONFIDENCIAL] e que [CONFIDENCIAL].

histórico de problemas na produção como indicados pelas empresas. Na aplicação de medida compensatória visaria, apenas, "corrigir a distorção causada pelos subsídios pelo governo da Indonésia e garantir justa concorrência entre os produtores brasileiros".

Ademais, a Aprodinox, em manifestação protocolada em 7 de julho de 2022, alegou que a entrega de produtos por parte da peticionária. Em resposta à alegação da peticionária, a manifestação protocolada em 3 de outubro de 2022, informou que durante o período em que a indústria doméstica garantiu o abastecimento do mercado brasileiro e, em caso de fornecimento via importações, os distribuidores novamente passaram a optar por aquisições junto à indústria doméstica.

No que se refere ao compartilhamento da linha de produção com a indústria estrangeira, em sua manifestação protocolada em 10 de outubro de 2022 alegou que a indústria estrangeira é integrada para a garantia de escala e sustentabilidade da produção em todas as empresas produtoras. Nesse contexto, também reiterou que, basicamente, nenhuma indústria estrangeira trabalha com linha exclusivamente para o produto similar, o mesmo que a indústria produtora brasileira.

Tendo em vista o exposto, há evidências de que a capacidade instalada da indústria doméstica foi superior ao mercado brasileiro em todos os períodos analisados, sendo a indústria doméstica disponível para expandir de forma relevante a produção de laminados a frio 304.

Além disso, foram apresentados argumentos relativos a atrasos no fornecimento pelos consumidores de laminados a frio 304, mas desacompanhados de evidências de que a indústria doméstica por sua vez, alegou ter garantido o abastecimento doméstico durante a pandemia de Covid-19. Nesse sentido, ainda que existissem atrasos no fornecimento, as manifestações das partes ao longo do processo não demonstram restrições quantitativas de fornecimento por parte da indústria doméstica.

Ademais, como a indústria doméstica apresenta vendas no mercado externo, para observar se existe a possibilidade de priorização de tais operações, o que poderia levar ao desabastecimento ao mercado brasileiro. Para tanto, analisam-se as características das operações da indústria doméstica (vendas ao mercado interno e exportações), o

Vendas da Indústria Doméstica (em número-índice de toneladas) [CONFIDENCIAL]					
	Vendas no Mercado Interno	%	Vendas no Mercado Externo	%	Vendas Totais
P1	100,0	[50-60]	100	[40-50]	100,0

Nesta seção, busca-se avaliar eventual risco de restrições à oferta na qualidade e variedade. No que se refere à análise de preço, averigua-se a expossam indicar eventual exercício de poder de mercado por parte da indústria c

Em relação ao risco de restrição à oferta nacional em termos informações disponíveis sobre o preço laminados a frio 304 vendidos pela in custo de produção, atualizados com base em P5, de forma a identificar poss produto, conforme tabela e gráfico abaixo.

Preço e custo médio de produção da indústria doméstica (em número-índice d [CONFIDENCIAL]		
Períodos	Custo de Produção (A)- (R\$/t)	Preço de Venda no Mercado Interno (E) (R\$/t)
P1	100,0	100
P2	87,9	88,6
P3	96,0	95,4
P4	107,3	103,4
P5	106,5	98,3

Nota-se que a relação dos custos de produção sobre os preços doméstica foi, em média, de [CONFIDENCIAL] % ao longo do período a [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P5, período de maior movimento foi resultado da elevação de 6,5% dos custos de produção e lamina decréscimo de 1,7% no preço de venda interno do produto ao longo do período se que a relação entre o custo de produção e o preço de venda interno aprese com deterioração dessa relação ao longo do período de análise, ou seja, com relação custo-preço.

De forma complementar, comparou-se o comportamento dos pre doméstica com a evolução de índices associados às ponderações dos grupos do Índice de Preços ao Produtor Amplo, segundo os setores de origem compreender como o preço do produto da indústria doméstica variou em rel produtos industriais. Considerou-se a média do índice de preços mensal para p período. Ademais, os preços da indústria doméstica e os indicadores foram tr índice com base em P1 para facilitar a comparação.

Nota-se que, considerando todo o período analisado, o preço do pro teve aumento de 25,2%, enquanto o índice de produtos industriais cresceu seguiram, grosso modo, a mesma tendência de crescimento, com exceção c

Nota-se que o preço de venda da indústria doméstica foi superior ao preço dos laminados a frio 304 importados da Indonésia e [CONFIDENCIAL] outras origens.

Nesse contexto, a Aprodinox, em seu questionário de interesse público, informou que a indústria doméstica registrou variações superiores à inflação, medida pelo IPCA, em 2018 e 2019, o que representou crescimento real dos preços do produto.

Vale ressaltar, no entanto, conforme apresentado anteriormente, que os preços praticados pela indústria doméstica ao longo de 2018 e 2019 compensou a inflação, fazendo com que o índice de preços industriais apresentasse elevação superior à dos preços domésticos da Aperam, ao se considerar todo o período de análise.

Apresentou, ademais, uma comparação entre o preço de venda da indústria doméstica e o custo do níquel, em números-índice com base em janeiro de 2017. Para a indústria doméstica, foram utilizados os dados referentes às bitolas 0,49 ~ 0,6 mm, com maiores volumes e maior percentual de desconto, segundo a Aprodinox. A fonte dos dados de custo do níquel. Os dados são apresentados no gráfico a seguir.

Entretanto, com base nos dados fornecidos pela associação, não foi possível verificar os custos do níquel, conforme apresentado. No gráfico apresentado, o custo do níquel de 2020 parece ser inferior ao registrado em janeiro de 2017, enquanto os dados da indústria doméstica mostram um crescimento de 31,2% no período, a partir da média mensal das cotações de 2017. Seja, com crescimento superior ao registrado nos preços da indústria doméstica.

A Aperam, por meio da análise realizada pela consultoria Tendências, realizou uma cointegração, para verificar a relação de longo prazo entre os preços internos da indústria doméstica e os preços praticados no mercado internacional, e estimou um vetor de equilíbrio (VEC), utilizado para corroborar os resultados obtidos com base no teste de cointegração. Para utilizar como parâmetro de preço da indústria doméstica os preços mensais praticados pela Aperam para seus clientes e, como parâmetro de preço internacional, adotou o preço de rolled Grade 304 (2mm) China Export FOB da base de dados fornecida pelo Aprodinox, realizou a análise considerando os dados entre janeiro de 2011 e dezembro de 2019. Para os preços internacionais foram acrescidos os custos de frete e de internalização, da seguinte forma:

- Frete marítimo da China para o Brasil no valor de US\$ 50,00/t;
- Imposto de importação de 14% incidente sobre o valor CFR;

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

longo prazo. De acordo com a consultoria, esses resultados "indicam o poder de mercado das indústrias internacionais causam sobre os preços domésticos, evidência compatível com a dinâmica de preços internacionais". Nesse sentido, alegou que a empresa não é o único produtor no mercado, não havendo, assim, capacidade de controle de preços e/ou volume de vendas. A empresa argumentou que a adoção de medidas de defesa comercial contra países que não são produtores internacionais somente é capaz de realinhar "os preços internalizados das importações para os preços de mercado do produto, também internalizados".

Em resposta ao teste realizado pela empresa Tendências, a Aprodinox apresentou manifestação protocolada em 7 de julho de 2022, que tal exercício possuiria utilidade para não verificar as diferenças entre os níveis dos preços praticados pela indústria doméstica e o preço importado internado. Conforme a associação, a Aperam poderia, ao longo do período, exercendo seu poder de mercado e praticando preços bem superiores aos praticados pela indústria doméstica: "seus preços seguiriam a dinâmica dos preços internacionais, mantendo uma margem de lucro confortável elevada. O oposto também poderia estar ocorrendo. Desse modo, os dados não são suficientes para que se conclua que os preços dos produtos importados influenciam os preços da empresa, "mas apenas permitem que se infira que os preços internacionais são relevantes na precificação (em especial nos incrementos e reduções nos preços)".

Em suas manifestações de 03 de outubro de 2022, reiteradas pelas manifestações de 09 de outubro de 2022, a Aperam defende que os preços da indústria doméstica não refletem o mercado internacional. Em 9 de setembro de 2022, a Aprodinox apresentou manifestação às informações apresentadas anteriormente e em suas manifestações finais de 03 de outubro de 2022, a Aprodinox criticou parecer Tendências no que tange ao fato de não haver correlação entre os preços da Índia e da Indonésia e África do Sul seriam balizadores dos preços da indústria doméstica.

Tendo em vista o exposto, há evidências de que o preço nominal da indústria doméstica apresentou comportamento semelhante ao índice de preços internacionais. No período registrado uma elevação inferior no período analisado. Ressalta-se, ainda, que, no período analisado, a indústria doméstica apresentou contração entre P1 e P5, enquanto houve expansão da produção, gerando, assim, uma elevação da relação custo/preço.

Foram também apresentados indícios de uma relação entre os preços praticados no mercado interno e no mercado internacional no longo prazo, de modo que os preços domésticos ajustariam aos preços internacionais, não havendo, assim, poder de mercado suficiente para controlar preços. Tanto com base nas estatísticas oficiais de importação quanto com base nas informações apresentado pela Aperam, verifica-se que a variação dos preços da indústria doméstica é semelhante aos preços praticados por outras origens. Contudo, cabe pontuar que os preços praticados pela indústria doméstica foram superiores ao da origem analisada e da média das outras origens analisadas.

Informou, ademais, que realizou investimentos que envolvem a planta produtiva, redução de custos de produção, eliminação de gargalos, desenvolvimento de novos produtos e em tecnologia. De acordo com a empresa, os resultados de tais investimentos são demonstrados nos "custos competitivos de produção" e no desenvolvimento de produtos sob demanda específica de cada cliente, fato que contribui para a melhoria dos produtos laminados a frio 304 e dos produtos finais produzidos na cadeia a jusante. De acordo com a indústria doméstica estaria tecnologicamente atualizada em seu processo produtivo, concorrendo em condições tecnológicas similares com os produtos importados de qualquer origem.

Ainda, a empresa alegou, em manifestação protocolada em 31 de março de 2022, que os produtos laminados a frio 304 com padrões de acabamento diversos. No caso do acabamento produzido pela indústria doméstica, a Aperam argumentou que produz o produto com acabamento "mat", qual também confere efeito reflexivo e brilhante, sendo a diferença entre tais produtos "mat" e "brilhante". Na visão da parte, os produtos sob análise seguiriam normas internacionais, não havendo existiriam diferenças de qualidade entre o produto nacional e o importado.

Nesse sentido, citou a Resolução Camex nº 79/2013, a qual aplicou a suspensão das importações brasileiras de laminados a frio de aços inoxidáveis (graus 304 e 316) provenientes da Alemanha, da China, da Coreia do Sul, da Finlândia, de Taipé Chinês e do Vietnã.

"De forma semelhante, os acabamentos, ainda que processados por métodos químicos ou físicos na superfície do aço, vão gerar produtos similares que serão considerados semelhantes.

Assim, reitera-se o posicionamento exarado na Nota Técnica DECOM nº 001/2022, de que o produto fabricado no Brasil possui as mesmas características físicas, químicas e mecânicas, presta às mesmas utilidades que o produto importado. Ambos concorrem no mesmo mercado em qualquer tipo de uso dos laminados a frio de aço inoxidável em que seja importado ou produzido no Brasil. Portanto, não há qualquer tipo de discriminação entre o produto importado pelo nacional. [...]."

De maneira similar, citou a Portaria Secint nº 4.353/2019, a qual prorrogou a suspensão das importações provenientes da China e Taipé Chinês:

"Destaque-se que possíveis diferenças na qualidade do produto não foram observadas em respeito da similaridade. Há informações nos autos que contradizem as alegações dos importadores. A Tramontina Farroupilha afirmou, por exemplo, que não há diferença entre o produto importado e o produzido pela indústria doméstica. Com relação às características da superfície obtidas através do acabamento tipo BA, deve-se esclarecer, e

Portanto, uma largura maior ou menor da bobina não vai determinar mercados distintos para seu uso.

[...]

Assim, reitera-se o posicionamento exarado na Nota Técnica DECOM/MDIC nº 001/2022, de 12 de setembro de 2022, que o produto fabricado no Brasil possui as mesmas características físicas, presta às mesmas utilidades que o produto importado. Ambos concorrem no mesmo mercado para qualquer e qualquer tipo de uso dos laminados a frio de aço inoxidável em que seja importado pelo nacional. Além disso, afirma-se novamente que uma largura maior ou menor da bobina não vai determinar mercados distintos para seu uso."

Desse modo, a parte argumentou que não existiram diferenças de qualidade entre o produto nacional e o importado, argumento reiterado em suas manifestações em 12 de setembro de 2022.

Sobre a qualidade dos produtos, a Aprodinox afirma em suas manifestações de 12 de outubro de 2022, que, mesmo havendo similaridade, haveria produtos com diferentes características no mercado.

Tendo em vista os elementos apresentados na presente avaliação, entende-se que não foram apresentados elementos que indiquem restrições de oferta do produto fornecido pela indústria doméstica. Já com relação à variedade da oferta, não houve reconhecimento pela indústria doméstica de que não produziria o produto com espessura de 1,5 mm e com alguns acabamentos, não foram fornecidos elementos no processo administrativo para demonstrar a existência de uma variedade distinta e a essencialidade dessa variedade do produto para a cadeia a jusante. A falta de disponibilidade de tal variedade entre os produtores/exportadores da origem não foi possível alcançar uma conclusão de que haveria restrições à oferta de uma variedade.

2.3.4 Risco de restrições à oferta nacional em termos de práticas comerciais

No tocante ao risco de restrições à oferta nacional em termos de práticas comerciais, o CADE citou, em seu questionário de interesse público, o Ato de Cofec nº 08012.005092/2000-89, no qual foram ressaltadas preocupações do órgão com o risco de uma integração vertical quando realizada entre agentes econômicos horizontais.

Ainda, o CADE citou o Processo Administrativo nº 08700.010789/2022-01, no qual foram alegações de descumprimento das orientações expressas pelo órgão quanto a práticas anticompetitivas no segmento de aços inoxidáveis, no âmbito do Ato de Cofec nº 08012.005092/2000-89. No âmbito deste Processo Administrativo, o órgão não encontrou elementos que indiquem restrições à oferta nacional em termos de práticas comerciais.

- "abster-se de adotar cláusula que tenha por objeto ou efeito restrição à importação de aço inoxidável"; e

- "abster-se de impor qualquer alteração das políticas comerciais que implique decisão de importação ou compra de produto concorrente pelos distribuidores";

O CADE alegou, nesse sentido, que a celebração do TCC não contraria o respeito do objeto do referido Processo Administrativo por parte do órgão. Da configuração por parte da Aperam, seus gestores e prepostos, "confissão quanto ao reconhecimento de culpa, ilegalidade ou qualquer irregularidade da conduta que gera precedente sobre a matéria".

Informou, também, que, "em casos de conduta unilateral em que, no entanto, a ilicitude da prática depende de uma avaliação detalhada da estrutura do mercado de competição e também das justificativas da prática em relação aos seus possíveis efeitos, não é obrigatório, em todos os casos, o reconhecimento do ilícito quando da celebração da forma, o TCC poderia ser celebrado sem que haja um entendimento final quanto à ocorrência ou não da infração à ordem econômica.

O CADE citou, por fim, o Procedimento Preparatório nº 8700.000-00/2022. Aprodinox apresentou relatório explicitando supostas condutas anticompetitivas praticadas pela Aperam:

- "Prática de preços pela Aperam Serviços incompatíveis com o mercado, venda abaixo dos custos, prejudicando as margens de lucro dos demais distribuidores (squeeze);

- Regra discriminatória entre Distribuidores DIA (Distribuidor Importador) e DIA (Distribuidor Regular Aperam);

- Mudanças nos critérios de faixas de volumes;

- Mudanças na política de preços da Aperam; e

- Condutas para limitar e desestimular a opção de importação".

No entanto, o CADE informou que o processo se encontra em fase de proferida decisão de mérito por parte da autoridade quando do preenchimento do interesse público.

A Aprodinox, por sua vez, também destacou o Processo Administrativo nº 73, em desfavor da Aperam em função de "práticas anticompetitivas que consistem em adquirir aço inoxidável, restrição às importações e favorecimento da distribuição

inox Aperam, no qual foram criados os modelos vigentes de relacionamento Distribuidor Integrado Aperam (DIA), Distribuidor Regular Aperam (DRA) e distribuidor independente.

A Aprodinox indicou que os distribuidores DIA comercializam com exclusividade com a indústria doméstica, tendo como exceção os produtos não fabricados pela associação, as principais vantagens dessa categoria seriam:

- Acesso a investimentos por parte da Aperam em marketing, vendas e inovação;
- Direito ao uso da marca Aperam;
- Acesso integral à assistência técnica corretiva, preventiva e diferenciada;
- Acesso ao material disponível em condições de igualdade com os distribuidores DIA e com prioridade em relação aos distribuidores DRA; e
- programação dos pedidos com dois meses de antecedência.

No tocante aos distribuidores DRA, a Aprodinox informou que estes não possuem exclusividade com a Aperam. Informou, ainda, que os pedidos devem ser realizados com antecedência, "mediante o oferecimento de pelo menos 2 (dois) pedidos de compra com antecedência, em volume e linha, para os meses à frente". Conforme a associação, essa categoria teria as seguintes vantagens:

- Acesso a alguns investimentos por parte da Aperam em marketing, vendas e inovação;
- Acesso integral à assistência técnica corretiva, preventiva e diferenciada;
- Acesso ao material disponível em condições de igualdade com os distribuidores DRA.

Por fim, os distribuidores independentes, chamados de "Compradores Independentes", não estariam submetidos a qualquer obrigação de aquisição regular da Aperam. De acordo com a associação, não há diferenciação de preços entre os distribuidores independentes, mas os preços praticados para os distribuidores DIA e DRA. Afirmou, além disso, que as vendas seriam realizadas apenas via leilão e a assistência técnica corretiva seria limitada e gerenciada pela Aperam.

Ademais, a Aprodinox afirmou que os preços praticados para os distribuidores independentes dependem do volume adquirido, não havendo diferenciação entre tais categorias. Para a venda, seria utilizado o preço praticado para a categoria dos distribuidores independentes, desde que, ao longo dos últimos anos, houve expressiva migração de distribuidores DIA para a categoria de distribuidores independentes.

maiores taxas de desconto podem ultrapassar 10%.

Nesse sentido, afirmou que os três maiores distribuidores de laminado migraram da categoria DIA para a DRA entre os anos de 2019 e 2020, restando apenas dois distribuidores na categoria DIA. A associação também demonstrando a evolução dos distribuidores alocados em cada categoria. Com a redução do número total de distribuidores de 19 para 17 e a migração de dois distribuidores para a condição de DRA. Os distribuidores DRA representavam 63% do total em janeiro de 2021, e passaram a representar mais de 76% (13 em 17), consoante a associação.

De acordo com a Aprodinox, "com o intuito de não perder o volume de vendas, em janeiro de 2021, a Aperam implantou uma nova política comercial, com um novo modelo de desconto. Esse modelo atrelava [CONFIDENCIAL], prática que claramente distorcia o espaço de mercado. A associação argumentou que a nova política de descontos praticada pela Aperam estabeleceu uma consideração seis períodos para o cálculo do volume médio de compra de cada distribuidor, o que gerou uma diferenciação entre DIA e DRA:

A Aprodinox informou, ademais, que teria sido criado um desconto diferenciado para os produtos comprados, consoante os seguintes critérios:

- Para variações de volumes de até 5%, o desconto seria de 3,8%;
- De 5,01% a 10%, desconto seria de 3%;
- Entre 10,01% e 15%, desconto de 1,6%;
- Entre 15,01% e 20%, o desconto de 0,8%; e
- Variação superior a 20%, sem desconto.

Desse modo, a associação alegou que os incentivos criados pela Aprodinox e implementados para garantir que os distribuidores, sejam eles DIA ou DRA, não fossem prejudicados junto à Aperam sempre no mesmo nível, evitando que "concentrem suas importações em alguns meses, nos quais as compras junto à Aperam seriam mais baratas. A associação eliminou os incentivos para que os distribuidores importem o produto sob análise de forma constante, beneficiando os distribuidores de menor porte em situações de redução de demanda.

Em 9 de setembro de 2022, a Aprodinox apresentou manifestação sobre as informações apresentadas anteriormente.

Em relação ao tema, a Aperam informou, em seu questionário de 2022, que os distribuidores DIA possuem um relacionamento mais estreito com a empresa, pois são responsáveis por importar produtos fabricados por ela. Os distribuidores DRA, por outro lado, possuem um relacionamento mais distante com a empresa, pois importam produtos sem contrato de exclusividade com a Aperam. Tanto os distribuidores DIA quanto os DRA possuem contrato com a Aperam e se comprometem a realizar compras mínimas.

intensamente a atuação da empresa. Por fim, a parte indutora não ter discriminado entre distribuidores, "aplicando rigorosamente a mesma política para todos os clientes, inclusive a Aperam Serviços, sem nenhuma alteração e sem revelar informações de mercado, como atestado durante os cinco anos nos quais a política foi monitorada e fiscalizada".

Relatadas as manifestações, pontua-se que, do ponto de vista da análise, não foi possível concluir se a política de distribuição praticada pela Aperam se adequa à oferta nacional. A distribuição entre distribuidores exclusivos (DIA), não exclusivos (DIA) e volume (DRA) e compras spot foi objeto de acordo com o CADE e é também o caso de diversos outros produtos. Dito isso, as supostas práticas anticoncorrenciais, conforme relatado neste documento, estão sendo objeto de análise pelo CADE em concorrência, por meio do Procedimento Preparatório nº 8700.000841/2022, encaminhamentos pela autoridade competente no caso de apuração de conduta.

2.3.5 Conclusões sobre oferta nacional do produto sob análise

Dessa forma, com relação à oferta nacional do produto sob análise, conclui-se que:

- o mercado brasileiro de laminados a frio 304 cresceu 31,0% entre P1 e P5, passando de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas. No mesmo intervalo, as vendas domésticas aumentaram 17,3% de P1 a P5, fazendo com que a Aperam perdesse participação de mercado. O espaço perdido pelas vendas da indústria doméstica foi preenchido principalmente, pelas importações provenientes da origem investigada, que apresentou um crescimento de 3.047,0% entre P1 e P5, registrando [CONFIDENCIAL] % de participação no mercado interno, superando as vendas pelas importações originárias dos EUA, que cresceram 63,5% no período, atingindo [CONFIDENCIAL] % de participação em P5;

- a capacidade efetiva de produção da indústria doméstica é, em média, superior ao mercado brasileiro no período respectivo. Destaca-se, ademais, que a produção da indústria doméstica permaneceu em patamares baixos ao longo do período, representando [CONFIDENCIAL] % em P5. Apesar da linha de produção do produto similar nacional, a ociosidade nominal em P5 permitiria à indústria doméstica produzir [CONFIDENCIAL] % do mercado brasileiro no mesmo período;

- em termos das operações da indústria doméstica, nota-se um aumento das vendas da indústria doméstica no mercado interno, que corresponderam, em média, a [CONFIDENCIAL] % das operações totais de P1 a P5, variando de [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P5. Portanto, não se pode indicar possível priorização de mercados neste produto e sua exportação;

divergência entre as partes, sem que tenham sido fornecidos elementos que in
a essencialidade de variedades não comercializadas pela indústria doméstica
disponibilidade desses produtos entre os produtores/exportadores da origem s

- em relação às restrições à oferta nacional em termos práticas dis
os elementos apresentados pelas partes interessadas não foram não foram s
uma conclusão definitiva.

Dessa forma, identificou-se que a indústria doméstica possui capa
para o pleno atendimento ao mercado brasileiro de laminados a frio 304 e que
operações de exportação da indústria doméstica frente às vendas domésticas.

Com relação aos preços, verificou-se que, mesmo com a aplicação c
relação a várias origens no período analisado, a indústria doméstica não
lucratividade, tendo apresentado a menor margem bruta de lucro em P5, e
patamares inferiores ao índice de produtos industriais. Por outro lado, o preço c
regra superior ao preço dos produtos importados da origem analisada e ao pre
ressalvando-se que tal comparação é afetada pela diferença na cesta de pro
cada origem.

Por fim, os argumentos apresentados sobre atrasos de fornecim
nacional de determinadas variedades e práticas discriminatórias entre cli
conclusão no sentido de restrição à oferta nacional. Os argumentos de restriç
elementos que abordem a essencialidade da demanda dos tipos indicados e al
enquanto as alegações de atrasos não foram devidamente comprovadas. Já a
anticoncorrenciais de discriminação entre clientes se encontram em análise pel
competente sobre o assunto.

2.1 Impactos da medida de defesa comercial na dinâmica do mercado

Na avaliação final de interesse público em medidas de defesa com
impactos da medida de defesa comercial na dinâmica do mercado nacio
necessário analisar os possíveis efeitos decorrentes da imposição do direito a
dos impactos sobre a dinâmica de mercado do produto face às conclusões alq
conforme Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.1013

Como uma das formas de estimar os efeitos da medida de defes
simulação com base em Modelo de Equilíbrio Parcial. A referida metodolo
Consolidado de Interesse Público em Defesa Comercial, que descreve o sistem
forma de obtenção da variação de bem-estar de interesse, disponível às partes

produtos classificados nos códigos 7209.10, 7210.10, 7210.17, 7210.18, 7210.20, 7209.90, 7210.70, 7211.23, 7211.29, 7211.90, 7212.40, 7225.50, 7225.99 e 7226.92 (às importações da China e do Japão), em consonância com a sugestão apresentada na presente avaliação de interesse público.

De todo modo, reconhece-se, como limitação da disponibilidade dos produtos de aço plano laminado a frio englobam outros bens distintos dos analisados, em que pese guardar proporção do mesmo nível tarifário SH-2 ao produto em análise, foi realizada análise de sensibilidade com intuito de estabelecer limites base no intervalo de parâmetros de elasticidade para diminuir as limitações. Segundo o USITC, a elasticidade da oferta doméstica americana está entre 4 e 6, com um valor intermediário de 6 para a oferta doméstica brasileira, supondo que o produtor brasileiro comporta de forma semelhante ao produtor americano. Para as elasticidades da demanda adotou-se um valor de 99, que se baseia na suposição de que a oferta estrangeira é mais elástica que a doméstica.

Com relação à elasticidade-preço da demanda (h), também utilizada pelo USITC no caso de "produtos de aço plano laminado a frio", foi adotado com base na média do valor estimado para o intervalo de -0,75 e -0,25. Para a elasticidade da oferta foi o valor médio entre 3 e 5, ou seja, 4. O valor utilizado é coerente com os valores encontrados em estudos realizados em estudos da literatura econômica especializada. De todo modo, foi realizada análise de sensibilidade com intuito de estabelecer limites máximos e mínimos com base nos parâmetros de elasticidade.

Foi utilizado como cenário base para realização das simulações a coleta de dados da P5 (abril de 2019 a março de 2020), período de análise de dumping. Foram utilizadas as informações fornecidas pela indústria doméstica, bem como as estatísticas de importações e exportações. A importação de cada origem foi calculado com base nos valores efetivamente importados de acordo com as estatísticas de importações da RFB.

Por sua vez, a alíquota efetiva média do direito antidumping que incide sobre as importações brasileiras de laminados a frio 304 originárias da Indonésia foram calculadas em [CONFIDENCIAL] %, com base nos montantes calculados na determinação do direito antidumping, conforme Processos SEI-ME nº 19972.101391/2021-52 (restrito) e 19972.101391/2021-52 (confidencial).

Os resultados apresentados são submetidos a uma análise de sensibilidade para verificar possíveis diferenças nas conclusões apresentadas com a variação dos parâmetros analisados nas faixas.

2.4.1 Impactos na indústria doméstica

comparativamente a P1.

Com relação à variação de número de empregados que atuam em longo do período em análise, houve crescimento de 7,7% entre P1 e P2, se patamar entre P2 e P3. Nos demais períodos, foram registradas reduções de 7, entre P4 e P5. Ao se considerar toda a série analisada, o indicador de número em administração e vendas declinou 15,4%.

Ao se avaliar a variação de quantidade total de empregados no período verifica-se uma elevação de 0,3%. É possível verificar, ainda, nos demais períodos 0,9% entre P2 e P3, 5,4% entre P3 e P4 e 11,4% entre P4 e P5. Analisando-se todo o período, o total de empregados apresentou contração da ordem de 16,7%, considerado P5.

Em seguida, descrevem-se os resultados apurados para o negócio no mercado interno da indústria doméstica, considerando o período de P1 a P5. Os dados correntes no processo de referência foram atualizados pela IPA-OG, da Fundação Getúlio Vargas industriais.

Evolução dos resultados nas vendas de laminados a frio 304 da indústria doméstica (em número-índice de mil reais atualizados) [CONFIDENCIAL]			
	P1	P2	P3
Receita líquida	100,0	113,1	119,1
Resultado bruto	100,0	121,1	120,1
Resultado operacional	100,0	123,0	104,1
Resultado operacional (exceto RF e OD)	100,0	122,5	121,1

Observou-se que o indicador de receita líquida, em mil reais atualizados, no mercado interno apresentou elevações de 13,1% de P1 para P2, de 5,3% de P2 para P3 e de 7,8% de P3 para P4. Já entre P4 e P5, o indicador sofre redução de 15,5%. Ao se considerar todo o período, o indicador de receita líquida referente às vendas no mercado interno revelou variação de 15,1% em P5, comparativamente a P1.

Com relação à variação de resultado bruto da indústria doméstica, foi observado ao longo do período em análise: elevação de 21,1% entre P1 e P2, redução de 0,9% entre P2 e P3, elevação de 7,8% entre P3 e P4 e retração de 30,8% entre P4 e P5. Ao se considerar todo o período, o indicador de resultado bruto da indústria doméstica registrou declínio de 29,9% em P5, relação ao início do período avaliado (P1).

De maneira análoga, o resultado operacional oscilou ao longo do período, com elevação de 23,0% entre P1 e P2, redução de 15,3% entre P2 e P3, aumento de 23,1% entre P3 e P4 e de 40,7% entre P4 e P5. Analisando-se todo o período, o resultado operacional apresentou crescimento de 31,8% em P5, relação ao início do período avaliado (P1).

A empresa argumentou que o aumento na quantidade produzida pelo preço doméstico eram esperados, uma vez que a aplicação de medidas compensatórias às importações das origens investigadas retomem preços de mercado frente a levaria os demandantes do aço inox laminado a frio 304 a importarem menos e nacional, o que acarreta aumento na quantidade produzida pela indústria nacional. Em efeito sobre todos os agentes, o resultado do bem-estar líquido seria positivo para os consumidores com a eventual inserção das medidas antidumping e compensatórias, sendo compensada pelo ganho para produtores e governo".

Em sua manifestação final, a Aperam refutou as alegações da Aprodinox do fato de a fabricante nacional ser a única produtora de laminados a frio 304. Nessa condição, a Aperam estaria apta a exercer poder de mercado e de produtora nacional, o estudo econômico que ela apresentou por ocasião da manifestação de Interesse Público e a própria verificação da existência de dano decorrente das importações de aço a frio 304 originárias da Indonésia corroboram o argumento de que seus preços são inferiores aos internacionais do referido produto. Ademais, a Aperam reiterou suas alegações de dificuldade ou ausência de atendimento da demanda interna, nem riscos de prejuízo mesmo com a aplicação da medida compensatória pleiteada.

A Aprodinox, em manifestação protocolada em 7 de julho de 2022, alegou que as elasticidades estimadas pela Tendências não se referem exatamente ao produto em questão. Para o caso dos EUA, "as elasticidades referem-se a bobinas laminadas a frio (cold-rolled products) e no caso do Brasil refere-se a uma cesta de produtos. Portanto, as elasticidades se mostram adequadas". Desse modo, argumentou, "considerando a restrição de produtos (como é o caso desta investigação) e a existência de alguns produtos imperfeitos", que as elasticidades-preço da demanda tenderiam a ser ainda maiores em classificações mais agregadas de produtos. Alegou, assim, que os resultados tenderiam a gerar bem-estar líquido negativo. Ademais, argumentou que a Tendências somente gerou bem-estar líquido positivo em função da "elevação dos preços associada à variação tarifária", que dependeria da evolução futura das importações investigadas.

Já em 9 de setembro de 2022 e em sua manifestação final de 2022, a Aprodinox reiterou as informações e os argumentos apresentados em sua manifestação de Interesse Público e em manifestações posteriores.

[CONFIDENCIAL] % do mercado brasileiro de laminados a frio 304. O saldo é negativa de US\$ 4,79 milhões no excedente dos consumidores e variações para o excedente do produtor e de US\$ 1,75 milhão para a arrecadação governamental.

Do ponto de vista da indústria doméstica, foram estimadas igualmente de preços e quantidades de laminados a frio 304 comercializado pelo produtor doméstico, conforme a tabela a seguir.

De acordo com a simulação, observa-se que a quantidade vendida cresceria 4,83% com a imposição da medida. Da mesma forma, os preços do produtor aumentariam 0,79%.

Observando-se as faixas de elasticidades consideradas, é possível verificar os resultados finais esperadas para o produtor doméstico e para as importações no mercado brasileiro de laminados a frio 304, em termos de valores mínimos e máximos.

Dessa forma, a simulação do Modelo de Equilíbrio Parcial prevê que a imposição de antidumping reduziria a participação das importações originárias da Indonésia para uma faixa de [CONFIDENCIAL]% a [CONFIDENCIAL]%. Por outro lado, o produtor doméstico teria uma participação aumentada para uma faixa entre [CONFIDENCIAL]% e [CONFIDENCIAL]%. As importações do resto do mundo cresceriam em termos relativos, variando de [CONFIDENCIAL]% de participação no mercado brasileiro.

Participações na quantidade - Inicial e simulado			
[CONFIDENCIAL]			
Origem	Participação Inicial (%)	Participação mínima (%)	Participação máxima (%)
Brasil	[CONFIDENCIAL]	[CONFIDENCIAL]	[CONFIDENCIAL]
Indonésia	[CONFIDENCIAL]	[CONFIDENCIAL]	[CONFIDENCIAL]
Resto do Mundo	[CONFIDENCIAL]	[CONFIDENCIAL]	[CONFIDENCIAL]

Assim, considerando os resultados obtidos na simulação, a imposição de antidumping aos laminados a frio 304 importados da Indonésia não seria suficiente para eliminar o produto do mercado brasileiro ou tornar sua presença insignificante. Não obstante, a medida poderia complementar as importações de outras origens, com destaque para a China, que é o 12º e 13º maiores exportadores líquidos globais do produto, dependendo da possível expansão.

No cenário-limite considerado (participação mínima das importações originárias da Indonésia), as importações de laminados a frio 304 originárias da Indonésia representam [CONFIDENCIAL] % do mercado brasileiro. Nesse cenário, as importações de laminados a frio 304 originárias da Indonésia representam [CONFIDENCIAL] % do mercado brasileiro.

farmacêutica, cosmética, química, de utensílios domésticos etc. O CADE analisou a eventual imposição da medida compensatória teria o condão de diminuir a competitividade do mercado das importações, em razão da existência de direitos antidumping em favor das brasileiras de laminados a frio 304 originárias da China e de Taipé Chinês. Por fim, a empresa do mercado a jusante teria apontado condutas da Aperam, de nº 08700.010789/2012-73, já relatadas anteriormente nos autos do presente processo, que configuram potencialmente como abuso de poder econômico. O CADE acrescentou manifestando que, em relatos da parte interessada nos seguintes termos: "eventual dano ao consumidor decorrente de eventual abuso do poder econômico, a autoridade investigadora para fins de apuração, a autoridade competente para examinar infrações à ordem econômica"

Em relação aos impactos da imposição da medida na cadeia a jusante, a empresa realizou estudo econômico, no qual realizou uma análise de Equilíbrio Geral - com base no Produto Bruto -, e estimou "variações na produção a partir de uma alteração na demanda por produtos de investimentos, consumo do governo, consumo das famílias, exportações e importações. Conforme a empresa, o modelo se configura como de equilíbrio geral por considerar as alterações setoriais em toda a economia, de modo que os resultados podem ser agregados econômicos, como valor adicionado, produção, impostos indiretos, e emprego.

Os resultados da simulação foram compilados nas tabelas a seguir. No geral, os impactos positivos sobre o elo produtivo da siderurgia mais que compensam os eventuais impactos negativos a jusante. Dessa forma, a empresa alegou que a adoção de medidas compensatórias oriundas da origem investigada geraria ganhos da atividade econômica, na forma de produção, valor adicionado, renda, impostos indiretos e empregos: "mesmo que os produtos produzidos sejam prejudicados com um eventual aumento no preço, tal efeito seria mais que compensado pelo ganho dos demais agentes do mercado. Ainda, as repercussões sobre os demais setores da economia e os impactos positivos da siderurgia são mais representativos em relação aos impactos negativos a jusante. O espriamento desse resultado aponta para ganho na economia nacional."

Impacto Econômico por elo da cadeia

Elo da cadeia	Cenário default
Aço LF 304	44,28
Setores a jusante	-10,00

Resultados Modelo Equilíbrio-Geral (em R\$ mi de 2021)

Elo da cadeia	Cenário default
Produção	147

informações apresentadas anteriormente.

Em sua manifestação final, a Aperam destacou a possibilidade de substitutos aos laminados a frio 304 tais como: aço carbono, pedras (mármore), produtos não ferrosos (alumínio, prata, bronze latão, entre outros), vidros e placas de aços inoxidáveis. Para a fabricante nacional, a existência de produtos substitutos de consumo teria o condão de limitar os efeitos de eventuais aumentos de preços em análise.

Já a Aprodinox, em sua manifestação final, argumentou que há grande possibilidade de substituição do produto sob análise, decorrente das características de resistência, estampabilidade, conjugada com restrições de ordem econômica e mesmo resistência de outros materiais. Adicionalmente, a referida associação citou a condição de insubstituibilidade dos laminados a frio para inferir que "não há outro produto que substitua o aço inoxidável 304 laminados a frio tanto no mercado nacional como no mercado internacional". A Aprodinox reiterou ainda o argumento de que teria havido desabastecimento de aço inoxidável laminados a frio, pela indústria para os seus distribuidores. A principal consequência do produto em diversas aplicações industriais, levando a impactos negativos de produtividade para a indústria e para toda a economia. Para a Aprodinox, a razão do suposto desabastecimento é a priorização pela indústria doméstica de outras linhas de produto - supostamente no período investigado e imediatamente posterior, a despeito dos prejuízos econômicos e comerciais. Por fim, em relação à análise do parecer econômico apresentado, a Aprodinox repetiu os comentários já trazidos em manifestações anteriores.

Feitas as considerações das partes em tela, como forma de mensuração da lesão à indústria nacional, a jusante, são apresentados na tabela a seguir as projeções para variação de preço e quantidade comercializadas no mercado brasileiro de laminados a frio 304, a partir do Modelo de Equilíbrio Parcial para a aplicação do direito antidumping sob as condições vigentes no cenário-base.

Variação em preço e quantidade

Variável	Variação (%)
P	2,27
Q	-1,12

A simulação sugere que a aplicação de medida compensatória sobre as importações de laminados a frio originárias da Indonésia aumentaria o índice de preços no mercado brasileiro em 2,27%, ao mesmo tempo em que diminuiria a quantidade total consumida no mercado brasileiro em 1,12%.

automotivo, construção civil, química e petroquímica, utensílios domésticos, entre diversos outros;

- a substitutibilidade dos laminados a frio 304 sob a ótica da improvável no curto prazo. Ademais, sob a ótica da demanda, os elementos de avaliação de interesse público não permitiram vislumbrar substitutibilidade em outro tipo de produto;

- o mercado brasileiro manteve-se em níveis altamente concentrado no período analisado (acima de 2.500 pontos do HHI), ainda que o aumento da participação tenha reduzido sua concentração, sendo P5 o período de menor nível;

- a Indonésia e os EUA estão entre as principais origens para fornecimento de laminados a frio 304 no mundo, enquanto a África do Sul seria uma origem menos relevante em termos de produtividade, produção e volume exportado mundial. Por sua vez, China e Taipé Chinesa são origens relevantes, não constituem origens alternativas factíveis, uma vez que estão sujeitas a medidas antidumping. Desse modo, as origens gravadas e a investigada respondem por 74,0% da produção e da capacidade produtiva mundial e por 34,6% das exportações mundiais de laminados a frio 304. Destacam-se, nesse sentido, as origens EUA, Itália, Bélgica, Coreia do Sul e França como possíveis origens alternativas, que em conjunto representam 36,1% das exportações mundiais de laminados a frio 304. Das origens, apenas os EUA, a Bélgica, a Coreia do Sul e a França são exportadoras de laminados a frio 304;

- o preço médio de exportação praticado pela Indonésia para todos os períodos analisados foi o mais baixo dentre todas as origens relevantes, sendo 34,3% inferior à média de preços das demais origens relevantes, ainda, que a África do Sul praticou o menor preço dentre as origens relevantes, sendo 3,0% inferior à média geral. Ademais, os preços médios das demais possíveis origens alternativas foram superiores à média geral. A Holanda e Bélgica estiveram abaixo da média total de preços, enquanto o preço médio dos EUA estiveram acima da média;

- com relação à evolução das importações, nota-se relevante aumento das importações de laminados a frio 304, de 74,0% ao longo do período analisado, sendo que a maior parte deve ao crescimento das importações originárias da Indonésia e dos EUA, que cresceram 3.047,0% e de 63,5%, respectivamente, no período. Constata-se que os EUA são a origem alternativa, com participação de [CONFIDENCIAL]% no volume importado pelo Brasil, enquanto a África do Sul, com participação de [CONFIDENCIAL]% no período.

- a Indonésia praticou preços médios inferiores às demais origens relevantes, sendo o menor preço em P5. Já a África do Sul, outra origem alternativa relevante, praticou preços inferiores à Indonésia entre P1 e P4. Os EUA, origem relevante, praticaram preço médio 15,5% superior ao preço médio das importações investigadas;

importação dos códigos tarifários correspondentes aos laminados a frio 304;

- o mercado brasileiro de laminados a frio 304 cresceu 31,0% [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas. No mesmo intervalo doméstica aumentaram 16,9% de P1 a P5, fazendo com que a Aperam perdesse participação de mercado;

- o espaço perdido pelas vendas da indústria doméstica foi coberto por importações provenientes da origem investigada, que apresentaram crescimento de P1 a P5, registrando elevação de [CONFIDENCIAL] p.p. de participação no mercado. As importações provenientes das demais origens cresceram 10,5% no período, e as pelas importações originárias dos EUA, que cresceram 63,5% no período, a [CONFIDENCIAL] p.p. de participação no período;

- a indústria doméstica possui capacidade produtiva suficiente para atender o mercado brasileiro de laminados a frio 304. Destaca-se, nesse sentido, que a indústria doméstica permaneceu em patamares baixos ao longo do período analisado, ficando em [CONFIDENCIAL]% em P5. A ociosidade nominal da linha de produção em P5 não permitiu a indústria doméstica atender ainda [CONFIDENCIAL]% do mercado brasileiro no mesmo período;

- houve aumento da importância das vendas da indústria doméstica no período analisado, corresponderam, em média, a [CONFIDENCIAL]% das operações totais de P1 a P5, o que pode indicar possível priorização de mercados neste produto em relação às operações de exportação;

- a relação do custo com o preço de produção apresentou elevação ao longo do período analisado, atingindo seu maior patamar em P5, quando alcançou [CONFIDENCIAL]%. Esse movimento foi resultado da elevação do custo de produção dos laminados a frio 304, o que refletiu no preço de venda interno do produto;

- o preço do produto da indústria doméstica teve aumento de 25,4% no período analisado. O preço dos produtos industriais aumentou em 27,4%. O preço e o índice seguiram, grosso modo, a mesma trajetória de crescimento, com exceção de P2, no qual o preço da indústria doméstica sofreu queda, enquanto índice de preços registrou crescimento. Dessa forma, o preço do produto da indústria doméstica registrou aumento inferior ao observado no índice de produtos industriais ao longo do período analisado;

- o preço de venda da indústria doméstica foi superior ao preço de venda da origem investigada (calculado na condição CIF) oriundo da origem investigada e das demais origens durante todo o período analisado. Observa-se, ainda, que o preço da origem investigada declinou 7,8% de P1 a P5, enquanto o preço da indústria doméstica e das demais origens retraíram 1,7% e 12,2%, respectivamente;

- não foram apresentados elementos que indiquem restrições de fornecimento do produto fornecido pela indústria doméstica. Já com relação à variedade de produtos, não foram apresentados elementos que indiquem divergência entre as partes, sem que tenham sido fornecidos elementos que indiquem

doméstica; e

- a simulação do Modelo de Equilíbrio Parcial prediz que a aplicação reduziria a participação das importações originárias da Indonésia no mercado [CONFIDENCIAL]% a [CONFIDENCIAL]%. Por outro lado, o produtor doméstico aumentada para uma faixa entre [CONFIDENCIAL]% e [CONFIDENCIAL]%. Da metade do resto do mundo cresceriam em termos relativos, variando de [CONFIDENCIAL] participação no mercado brasileiro.

Dessa forma, foram identificadas origens alternativas relevantes no capacidade produtiva mundial, exportações mundiais e para o Brasil, além de sejam, África do Sul e EUA. Outros produtores importantes como Itália, Bélgica, França exportam para o Brasil em menor volume no período analisado, produtiva relevante e grande participação nas exportações mundiais do produto exportado por todas as origens em 2020.

A África do Sul revelou-se capaz de rivalizar com a origem sob análise preço importado, sendo a segunda origem mais relevante nas importações brasileiras. Ressalta-se, ademais, que os EUA também se consolidaram como uma possível termos de produção disponível para exportação ao Brasil, além de ser a origem importações brasileiras do produto, porém com preço médio superior ao praticado

Cabe lembrar também que Alemanha, Coreia do Sul, Finlândia gravadas por direitos antidumping até meados de P5 - encerrados pela Portaria e apresentam potencial para se consolidarem como origens alternativas do produto

Com relação à oferta nacional, verificou-se que a indústria doméstica produz relevante, que é [CONFIDENCIAL] vezes superior ao mercado brasileiro de laminados. Ainda que a linha de produção seja compartilhada com outros produtos, apenas seria suficiente para atender o mercado brasileiro [CONFIDENCIAL] vezes. identificou-se que o preço da indústria doméstica é em regra superior ao da média que apresentou variação no período analisado condizente com os preços internos de preços dos produtos industriais.

Em relação à simulação de impacto, pondera-se que a aplicação da medida possui, naturalmente, o condão de aumentar os preços internos ao mesmo quantidade vendida no mercado interno, podendo acarretar perda de [CONFIDENCIAL]% do mercado de laminados a frio. Nas estimativas de participação se que a aplicação de uma medida compensatória aos produtores/exportadores recomendação final no processo de investigação de subsídios, diminuiria a

<https://www.in.gov.br/web/dou/-/resolucao-gecex-n-421-de-1-de-dezembro-de-2022-447345670>

2022			
Philippine FOB		Indonesia FOB	
Ni Ore 1,8%		Ni Ore 1,8%	
	USD/WMT	USD/WMT	Difference In USD/WMT
Average	75-95	45-65	10-30

Source: business intelligence of the Applicant

FOR INSPECTION BY INTERESTED PARTIES

Please note that this is a consolidated version of the original anti-circumvention review request submitted on 30/06/2023 and additional information provided by the applicant afterwards.

To the Commission of the European Union

APPLICATION

Under Article 23 of Regulation (EU) No 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not being Member States of the European Union

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE G				
Date	30/6/2023	N°	57042006	
Attribution :		SK		
Copie	CDB			

To the Commission of the European Union

APPLICATION

Under Article 23 of Regulation (EU) No 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not being Member States of the European Union

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE G.R.				
Date	25/07/2023	N°	5	7995940.
Attribution :				
SK				
Copie	CMS			

1. INTRODUCTION

- (1) On 15 March 2022, the European Commission (the 'Commission') imposed a definitive countervailing duty on stainless steel cold-rolled flat products ('SSCR') from Indonesia and India.¹ The Commission imposed a countervailing duty of between 13,5% and 21,4% on the Indonesian exporters receiving subsidies. In the original investigation, the Commission found that these duties were necessary to offset the subsidies received by the Indonesian exporters.
- (2) However, as early as a year after the original measures, these countervailing duties are being massively and clearly circumvented. Duties on SSCR from Indonesia are evaded through a limited processing operation of Indonesian stainless steel products in third countries, before exporting it to the Union market. The scale of the circumvention via these indirect imports from Indonesia is substantial. The Applicant has, at this stage, identified such flow of imports via no less than three different countries: Taiwan, Turkey and Vietnam. Imports from these countries exhibit all the characteristics of a circumvention.
- (3) The circumvention patterns via the identified third countries clearly show the intention to avoid the duties imposed by the EU on Indonesian SSCR. These increased flows rely on a less efficient organisation of the production process by splitting it among various countries, with limited processing and added value outside of Indonesia. The timeline is unambiguous: the change in the pattern of trade coincided with the Commission's investigation and its imposition of countervailing duties on Indonesian imports.
- (4) The emergence of circumvention patterns is not fully unexpected. In the original investigation, the Complainant cautioned against circumvention of the measures, and stressed that the Indonesian exporters are large corporate groups which rely on intra-group transactions, with presence in several third countries.² In response, the Commission explicitly set out its intention to be vigilant for circumvention of these measures.³ Nonetheless, and unfortunately, this circumvention of EU measures has so far been successful.
- (5) In addition to the change in the pattern of trade, and although prices and costs of SSCR have increased since the original investigation, the prices of SSCR from the countries concerned are very low, undercutting Union prices. Combined with significant volumes, these imports undermine the remedial effect of the AS measures while still benefiting from the massive subsidisation found by the Commission.
- (6) In summary, exporting producers in the targeted countries engage in circumvention within the meaning of Article 23 of EU Regulation 2016/1037 ('the basic AS Regulation'). This Application demonstrates that there is a change in the pattern of trade stemming from a practice not justified

¹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

² Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, recitals 1074-1076.

³ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, 1074-1076.

by any reason other than the imposition of the duties, that this change undermines the remedial effects of the duties and that parts of the imported like product still benefit from the subsidies. In such situations, Article 23 of the basic AS Regulation allows the Commission to extend countervailing duties imposed on imports from a country to imports from a third countries of the like product, "*whether slightly modified or not*".

- (7) On behalf of the SSCR Union Industry, Eurofer therefore urges the Commission to ensure that the countervailing duties, set to protect the Union industry against injurious unfair imports of SSCR, are enforced. The continuation of the flows of subsidised SSCR, despite the findings and measures of the Commission, is a clear challenge to the ability of the EU to provide effective protection against unfair trade. In Eurofer's view, it is of the utmost importance for the integrity of the Union Trade Defence system to put an end to such practices swiftly and decisively. It therefore respectfully asks the Commission to urgently initiate an anti-circumvention investigation with a view to extend the countervailing duties on imports of SSCR from Indonesia to the targeted countries and to register imports of SSCR from these countries.

2. APPLICANT

- (8) This Application is submitted by Eurofer, the European Steel Association, on behalf of its members active in the production of SSCR.

Eurofer - the European Steel Association
Address: Avenue de Cortenbergh 172, 1000 Brussels
Tel: +32 2 738 79 20
Fax: +32 2 738 79 55
Contact Person: Matteo Rigamonti
Email: M.Rigamonti@eurofer.be

- (9) Eurofer is the European Steel association, representing more than 95% of steel production in the European Union. Eurofer members are steel companies and national steel federations throughout the EU.
- (10) The companies active in the production of SSCR on behalf of which Eurofer files submit this Application are:
- Acerinox Europa SAU
 - Aperam Stainless Europe
 - Outokumpu Oyj
 - Acciai Speciali Terni SpA
- (11) These four companies account for the large majority of the EU production of SSCR.⁴ They acted as Complainant in the original anti-subsidy investigation that led to the imposition of duties and actively cooperated to the investigation, including as part of the sample of Union producers. The Applicant is therefore undoubtedly an "interested party" within the meaning of Article 23 of the basic AS Regulation.

Annex 1 - Representation letters

⁴ Between 85 and 95% for the original investigation

3. OTHER INTERESTED PARTIES

- (12) For the purpose of the investigation, the Applicant provides information on the identity of the exporting producers in the targeted countries as well as on their suppliers. It also provides information on the other EU producers.
- (13) The Applicant also notes that imports of SSCR in the EU are mostly made by stockists, distributors and service centres, but also by some re-rollers and tube manufacturers. They may also be done through companies related to the exporting producers. SSCR products are used in a wide-array of products and applications, and as a significant share of users source their products through distributors, stockists or unrelated service centres. The Applicant provides a list of the main identified importers and users of SSCR in the EU.

Annex 2 - Other interested parties

4. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) As the circumvention pattern identified occurs through a re-organisation of the production process of the product concerned, the Applicant considers it useful to revert briefly to the characteristics of the product concerned and the like product, as well as to its production process. The developments below are in line with the findings of the Commission over the course of the original investigation.

4.1 Description of the stainless steel cold-rolled flat products

4.1.1 Metallurgical characteristics

- (15) Stainless steel is a steel alloy with a minimum content of 10.5% chromium and a maximum content of 1.2% carbon, a metallurgical characteristic shared by all stainless steel families. The addition of chromium provides stainless steel with its stainless properties. When exposed to oxygen, the chromium forms a passivation layer of chromium oxide, which is capable of reforming quickly when the surface is scratched. The layer is too thin to be visible, but protects the metal beneath by making it impermeable to water and air. As a result, stainless steel requires no added surface protection against corrosion.
- (16) There are a large number of stainless steel types with widely varying chemical compositions. Stainless steels have traditionally been divided into categories depending on their microstructure at room temperature. This gives a division into four main groups of grades families (i) austenitic, (ii) ferritic, (iii) martensitic and (iv) duplex. All four have different levels of corrosion resistance and strength. The differences result from the controlled addition of alloying elements, notably chromium and nickel.
- (17) As found in the original investigation, Indonesian SSCR production principally focuses on austenitic grades, grades containing nickel, as Indonesian exporting producers have access to significant local nickel ore reserves for their production. Nickel-based austenitic grades account for the largest part of the production of stainless steel worldwide, with about 75% of the total production. As an alloying element, nickel enhances important properties of stainless steel such as formability, weldability and ductility, while increasing corrosion resistance in certain applications. Austenitic stainless steel grades are used in a large number of industrial applications such as pumps, piping and heat exchangers, as well as in construction applications.

4.1.2 Production process

Melting stage

- (18) The first stage of the production process of SSCR consists in melting the raw materials containing the necessary alloying elements. The melt is then casted into stainless steel slab, a solid thick rectangular-shaped semi-product.
- (19) The raw materials used at the melting stage may be recycled materials with the appropriate chemical composition, ferro-alloys of various grades (share of the alloying element) and, more exceptionally, pure chemical elements. Chromium is usually available as ferrochromium or through stainless steel scraps, while nickel is typically available in scraps and ferronickel. Iron is essentially provided through scraps, or ferro-alloys. As pure nickel and high grade ferronickel are costly compounds subject to significant fluctuations in price, a relatively new type of low-grade ferro-nickel, produced through smelting of low nickel content laterite ore,⁵ a highly polluting process, has been increasingly used in Eastern Asia especially: the nickel pig iron (NPI).⁶
- (20) In the EU, along with the US and Japan, stainless steel producers primarily rely on recycled stainless steel scrap as the main raw material for the production of stainless steel, complemented by high-grade ferro-alloys. These inputs, containing all the chemicals necessary to achieve the desired grades, are melted together in an electric arc furnace (EAF). To remove excess carbon, the molten material is further processed in an argon oxygen decarburisation converter (AOD) and secondary treatments are carried out as necessary. The liquid steel is then processed through a continuous casting process in which the molten metal is poured directly into a mould to produce the required shapes. After leaving the mould, the strand's shell is further cooled until it has completely solidified. The strand is cut into lengths to obtain compact rectangular blocks of crude steel, the stainless steel slabs.
- (21) In more recent stainless steel producing countries, essentially China and Indonesia, and as found by the Commission over the course of the original investigation, instead of scraps, stainless steel producers essentially rely on low-grade ferro-alloys, the above mentioned NPI. In that process NPI is obtained after a first reduction of nickel ore in a rotary kiln with a mixture of thermal coal and lime, before a final reduction and complete melting inside an electrical smelter with the further addition of coal. In parallel, liquid ferrochromium is produced within a specific furnace dedicated to melting solid ferrochromium or liquid ferrochromium coming directly from a smelter process. NPI and ferrochromium are then poured into an AOD (argon oxygen decarburization) or VOD (vacuum oxygen decarburization). The liquid metal obtained is then finally transferred to the continuous casting machine for transformation into stainless steel slabs.

Hot-rolling stage

- (22) In a second step, the stainless steel slab is reheated and transformed into SSHR coils through mechanical hot-rolling.
- (23) At the hot-rolling production stage, the slabs are preheated to a high temperature and then reduced to a predetermined thickness in the roller gap of a hot-rolling mill, by pressure applied

⁵ Nickel laterite ore is common mostly in tropical environments such as Australia, New Caledonia, Indonesia and the Philippines

⁶ NPI usually has a content of about 10-15% nickel, 1% chromium, 83% iron and 3% carbon

between one or several sets of two rollers. The resulting product is known as "hot-rolled black band" ("black SSHR"), a product covered by a layer of scale, giving it its black colour.

- (24) For the purpose of production of SSCR, black SSHR subsequently undergoes hot annealing and pickling to become "hot-rolled white band" or "HRAP" ("white SSHR"). Annealing consists in heating cold steel to make it more suitable for bending and shaping, as well as to prevent breaking and cracking. Pickling is the process through which stainless steel is cleaned using chemical baths of diluted acid to remove impurities such as rust, dirt, scale and oil from the surface, without changing the underlying properties of the metal. The removal of the scales results in the typical white colour of white SSHR.
- (25) Depending on the industrial process of the producer, this process of annealing and pickling may constitute the last phase of the hot-rolling stage, or the first stage of the cold-rolling process. For re-rollers, the level of integration will define the type of inputs to be used for production of SSCR: black coils if they can undertake annealing and pickling of SSHR, white bands if they don't.

Cold-rolling stage

- (26) In a third step, the white SSHR coil is transformed into SSCR through further mechanical rolling at room temperature.
- (27) The white SSHR is rolled to the required thickness on reversing cluster mills or tandem mills for a number of times until the desired dimensions are achieved, or until hardening necessitates further annealing. In order to obtain the desired thickness, in particular for the lower thickness materials, the same coil may be subjected to several stages of rolling. This process of cold reduction generates heat, part of which is transferred to the rolling oil that is sprayed onto the steel and rolls for cooling as well as lubrication and is subsequently dissipated through heat exchangers to cooling water systems.
- (28) After cold-rolling, or between two cold-rolling phases, the SSCR then undergoes a second annealing, a re-heating of the product above 650°C on continuous lines or in batch furnaces, to restore the physical and mechanical properties of the steel, notably the formability of the steel. For bright finishes ("bright annealed"), annealing is undertaken on dedicated machineries in controlled oxygen-free environments.
- (29) SSCR is then tempered, a minimal reduction in gauge (up to 2 %) to improve the flatness of the product, increase the product yield strength and obtain the desired surface finish. After that process, additional surface treatments, such as polishing or brushing may be undertaken in order to render the product suitable for particular uses.
- (30) Following control, defective coil parts are eliminated or, if necessary, the material is subjected to additional treatments for the removal of the defect. The product is then cut into the coil weights ordered by the customers, protective films or oils are applied and, finally, the product is packaged.

4.2 Product concerned of the original investigation

- (31) A definitive countervailing duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90,

7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80.⁷

- (32) It includes steel cold-rolled flat products that have undergone one or more of the surface treatments, are cut to a shape other than square or rectangular, or have undergone, after rolling, operations such as perforating, bevelling, edge-rounding, brushing or polishing.

5. THE EU CVD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES

5.1 There is a change in the pattern of trade

5.1.1 Indonesian stainless steel is processed in third countries and exported to the EU

- (33) Following a complaint lodged by the Union Industry, the Commission opened an anti-subsidy investigation into Indonesian SSCR on the 17 February 2021,⁸ leading to the imposition of definitive measures in March 2022.⁹ In parallel, based on another complaint of the Union Industry, the Commission opened an anti-dumping investigation into SSCR from both countries on the 30th of September 2020, and imposed definitive anti-dumping duties on 17 November 2022.¹⁰
- (34) As a result of the investigation, the expectation, and then the actual implementation of substantial duties, exports of SSCR from Indonesia have been reorganised under new and rapidly expanding new trade flow patterns. Direct flows of exports of SSCR by the main Indonesian exporter targeted in the original investigation have been replaced by indirect flows via third countries, in which SSCR inputs, slabs or SSHR, have been further processed into SSCR and exported to the EU.
- (35) While direct imports from Indonesia have significantly reduced as a result of the original measures, imports on the EU market of SSCR originally melted and poured in Indonesia but processed in a third country have increased to alarmingly high levels, at unfairly low prices resulting from the Indonesian subsidisation of its stainless steel complex. An obvious and massive import substitution has thus been taking place: direct Indonesian imports have been replaced by 'indirect Indonesian imports'. The Applicant has identified so far the existence of

⁷ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Article 1.

⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec.1.

⁹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

¹⁰ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

such a pattern in a number of countries, in particular Taiwan, Turkey and Vietnam. It is not excluded that indirect imports also occur through other third countries.

- (36) The circumventing trade pattern and the method of circumvention identified echo the findings of the Commission in its recent investigation into circumvention of the antidumping measures on Indonesian SSHR via Turkey.¹¹ After initiation of an investigation aiming to impose measures on Indonesia, the same pattern occurred: a combination between a flow of semi-products from Indonesia to a third country, a processing with very limited added value on site, and a re-export to the EU of the finished product under the non-preferential origin of that country, thus allowing avoidance of the duties.
- (37) In the case at hand, the pattern starts with stainless steel slabs first melted and poured in Indonesia, then hot-rolled in Indonesia and finally exported to one of the third countries where it is then cold-rolled domestically before being exported to the EU. As cold-rolling is sufficient to confer the non-preferential origin to SSCR, that SSCR, indirectly imported by way of any of the countries concerned, evades the duties that would apply to direct imports. In some occasions, the export to the third country takes place right after the slab phase, with the hot-rolling and cold rolling taking place in the third country. These imports into the EU of Indonesian stainless steel semi-products that are processed into SSCR in a third country before being exported to the EU are referred to in this Application as 'indirect imports'.
- (38) Incidentally, the Commission has already identified the occurrence and relevance of such trade patterns in the original anti-subsidy investigation. This concerned Chromeni, an Indian SSCR producer that is a joint-venture between Tsingshan and various Indian business groups.¹² The Commission found that "*Chromeni purchased however upstream products, namely hot rolled coils, from a related company in Indonesia, which may have benefited from the GOID provision of nickel ore for less than adequate remuneration (...)*".¹³ The Commission itself has thus already witnessed, on no less than two occasions, that part of the business model of Tsingshan consists of feeding stainless steel semi-products to exporting producers in third countries, who then export finished products to the EU. As found with respect to SSHR from Turkey, these practices increase significantly as soon as corrective trade measures against Indonesia are considered or implemented.
- (39) As such, the indirect imports are an inescapable consequence of the Indonesian massive export-oriented overcapacity: when direct access to the Union market at unfair prices is restricted, flows are redirected via indirect channels. As the second exporter of stainless steel worldwide, with a nearly negligible domestic consumption, Indonesia simply needs to maintain access to the Union market, the second worldwide, to maintain a rational use of its enormous production capacities. If measures correcting the unfair advantages prevent direct export flows, leveraging processing operations in third countries constitutes the second best option, as shown below.

¹¹ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or

¹² Chromeni, <https://www.chromenisteels.com/>.

¹³ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 301.

- (40) This new pattern of trade, expanding to unprecedented levels as a consequence of the EU investigations and measures against Indonesian unfair imports relies on a multitude of agreements between the main Indonesian exporting producer and producers (essentially re-rollers) in third countries. These have taken place either on a circumstantial basis or in application of longer term partnerships. Sometimes, but not systematically, they coincide with efforts of the third party to establish an industrial base in Indonesia through joint ventures with the Indonesian exporter, with the ultimate aim to manage the flow of Indonesian inputs internally. As such, the Indonesian exporter is able to rely on a wide network of exporting producers in third countries, which purchase its SSHR or slabs, process them and then export them to the EU.
- (41) Below, the Applicant provides a detailed assessment of the change in the pattern of trade via third countries and the capacities used in these countries to process Indonesian material. The exporting producers in the third countries nonetheless share a certain number of characteristics. First, they have significant capacities which are usually disproportionate compared to the size of domestic consumption - with Yongjin's Vietnam factory being a prime example (see below). Second, these capacities either are not backed by upstream capacities (in which case the producers are really only re-rollers) or have higher SSCR capacities than they do upstream. This means that the capacities are designed to rely on purchased inputs, essentially white or black SSHR. While this phenomenon is not exceptional among steelmakers, the sheer concentration of upstream capacities in close or even neighbouring third countries with little to no domestic outlet reveals that these aim to a large extent at circumventing trade measures targeting the Chinese- and Indonesian-owned industries.
- (42) Finally, and crucially, as already mentioned, a vast majority of the above producers maintain close relationships with Tsingshan Indonesia and sometimes with State-owned Chinese producers. Similar to Tsingshan, the latter have interests in Indonesia and are *"strictly follow[ing] the policy of the GoC"*.¹⁴

5.1.2 Volume of indirect imports in the EU

- (43) The Applicant finds that a massive amount of EU imports of SSCR from the third countries are in fact indirect imports from Indonesia, which undergo only limited processing in the targeted countries before being re-exported to the Union. These flows of indirect imports constitute a significant share of the exports of SSCR from these countries to the EU. The Applicant has calculated the indirect imports to only include SSCR produced from stainless steel melted and poured in Indonesia, imported and processed into the third country and then sent to the Union market.
- (44) In order to identify the volumes, the Applicant has cross-referenced available information on the volume of imports of the upstream inputs - slabs and SSHR - from Indonesia and other sources in the third countries, the domestic melting capacity in the third countries and the exports of SSCR from the third countries to the EU. This methodology accounts for the fact that, as previously established by the Commission over the course of multiple investigation, Indonesian stainless steel, and consequently SSCR produced from Indonesian stainless steel is essentially nickel-based. It also account for the time necessary to process stainless in the third countries.

¹⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 628.

The Applicant has adapted the methodology to the specificities of the country in question, as is detailed below.

Annex 3 - Methodology for the assessment of indirect imports

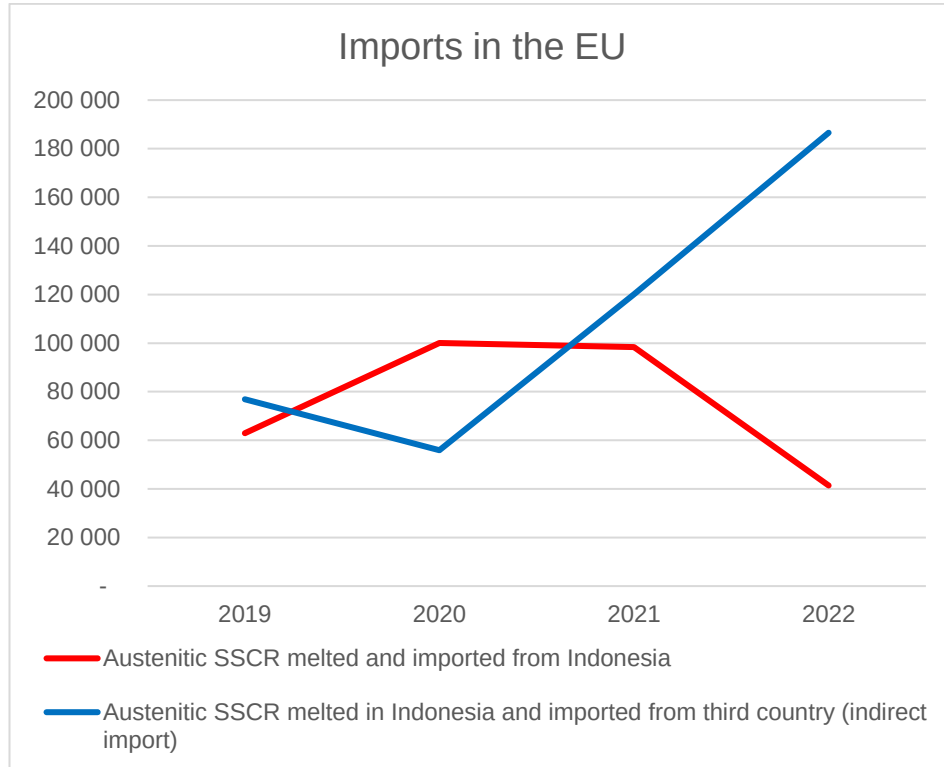
- (45) The calculations of the indirect imports is based on solid and consistent information from available public sources and the applicant's market intelligence. This approach adopted is deliberately conservative and might to a certain extent underestimate the actual volume of indirect imports. This is because the methodology does not assume that exporters in the third countries would specifically allocate their Indonesian inputs to exports to the EU, although such behaviour is manifestly the case for certain exporters. With a wider methodology, it could be argued that all the austenitic imports from the targeted third countries in 2022 could be indirect imports because imports of inputs from Indonesia exceed exports of austenitic SSCR to the EU, even accounting for yield.

5.1.3 Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia

- (46) The above methodology reveals the rapid substitution of prior sources of SSCR inputs (imports from other countries or produced domestically) by SSHR or slabs from Indonesia. In line with the growth of Indonesian inputs in these countries, visible as from 2021, a growing share of the imports from the countries identified consists in fact of processed Indonesian material. It is that processing of Indonesian material which drove the increase in exports to the EU. That substitution coincided with the initiation of the investigation and massively increased with the imposition of the EU measures.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in the targeted countries	761.512	836.642	1.276.119	1.205.724
Index	100	110	168	158
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

- (47) Comparing EU imports from Indonesia to indirect imports into the EU shows that the pattern of trade changed directly after the initiation of the investigation. Indirect imports from the third countries, which had initially declined between 2019 and 2020, started to pick up over the course of the investigations in 2021, ultimately skyrocketing after the imposition of the measures in 2022. This variation is opposed to the trends of Indonesian imports: after a massive increase in 2020, despite the Covid-crisis, imports from Indonesia plateaued in 2021 as a result of the investigation, before decreasing massively in 2022 as a result of the entry into force of the measures.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

Annex 4 - Volume of indirect imports

- (48) It is therefore obvious that the indirect SSCR imports substituted and then exceeded the SSCR imports from Indonesia. This change in the pattern of trade coincided precisely with the initiation of the investigation and the imposition of the measures on imports of SSCR from Indonesia. This coincidence in time is not accidental: the slabs and SSHR that were originally used in Indonesia to produce SSCR for export to the EU were increasingly used in the third countries to produce SSCR for export to the EU - when it became apparent that measures would be imposed on imports from Indonesia.
- (49) This change in the pattern of trade and the substitution of imports of Indonesian SSCR is visible at the level of the indirect imports as a whole. It is also manifestly apparent at the level of the individual countries through which the indirect imports reach the EU. This confirms the widespread nature of the circumvention. It also confirms that the rise in indirect imports to the EU is not a coincidence. Rather, this increase follows the activation of alternative channels to supply the EU market with Indonesian melted and poured material (which benefited from Indonesian subsidies but avoids the countervailing duties).

5.2 Change in the pattern of trade via specific third countries

- (50) The above confirms that the change in the pattern of trade is manifestly clear from the point of view of the total indirect imports into the EU. However, a country-specific focus also confirms that, for each of the sources identified, there is a change in the pattern of trade. This focus also allows highlighting actors in these countries that are actively participating to the change in the pattern of trade, as well as the nature of their relationship with the Indonesian exporting producer.

Annex 5 - Exporting producers in third countries and capacities

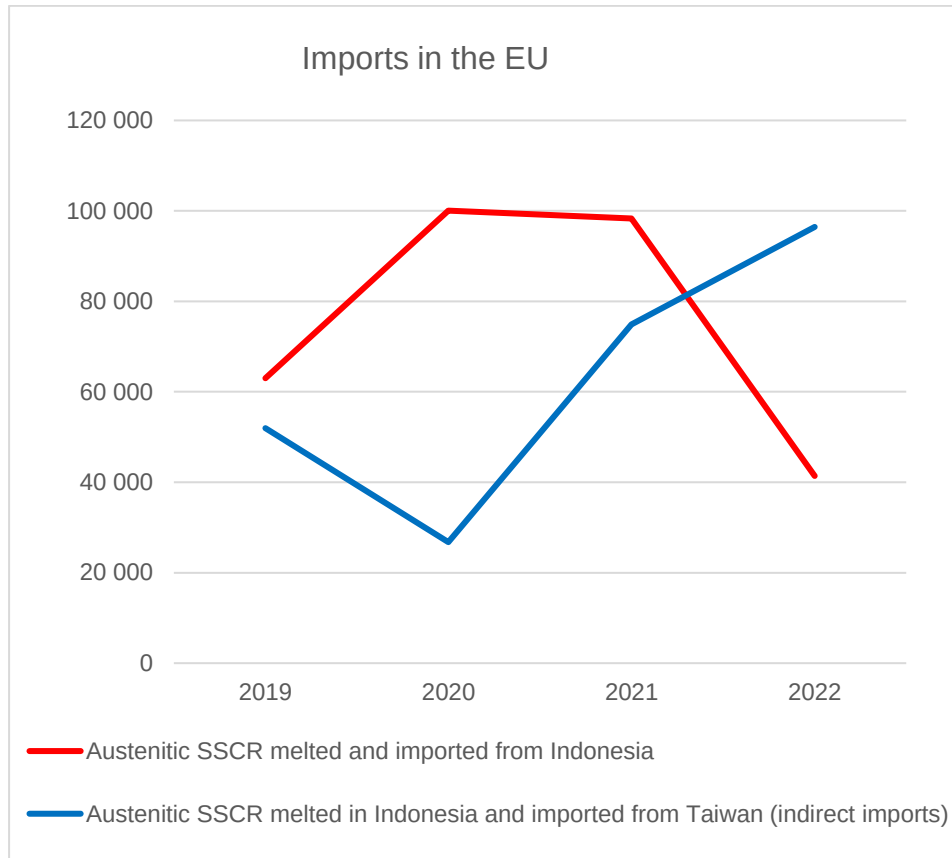
- (51) The analysis below solely focuses on the exporting producers actively participating to the circumvention of the EU measures. However, the Applicant is aware that these flows may be complemented by consignment of SSCR produced in Indonesia via third countries before re-export to the EU under a fraudulent origin.

5.2.1 Indirect imports via Taiwan

- (52) Taiwan holds significant production capacities for SSCR and has historically been an exporter of the product concerned to the EU. However, and at an increasing speed, the country has more and more shifted from integrated production to the processing of inputs from third countries. This is in particular true with regard to austenitic stainless steel, where Indonesian supply of slabs and SSHR progressively substituted domestically melted stainless steel inputs.
- (53) The existence of these domestic melting capacities, and the share of these capacities dedicated to the production of austenitic crude steel, have been duly taken into account by the Applicant. Domestic production was accounted for, together with the imports of inputs from Indonesia and other sources. As such, the Applicant assessed the share of Indonesian material in the Taiwanese production and therefore the indirect imports to the EU.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Taiwan	548.647	631.372	960.353	747.941
Index	100	115	175	136
Imports of SSCR from Taiwan in the EU	185.614	125.070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (54) The increase in imports of inputs from Indonesian in Taiwan is particularly important in 2021 and 2022. In these years, the use of inputs from other sources, notably from domestic melting, significantly declined, showing a clear substitution. This substitution is equally apparent in the massive increase as from 2021 of the indirect imports to the EU.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Taiwan in the EU	185.614	125.070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (55) Taiwan is one of the main channels for indirect imports to the EU that circumvent the measures on imports from Indonesia. That imports of SSCR from Taiwan increased so dramatically in 2021 and 2022 can only be fully explained by the opening of the investigation and then the imposition of duties on Indonesian SSCR. 2021 and 2022 show a clear reversal of 2019 and 2020 trends. Since the beginning of the investigation, indirect imports of Indonesian SSCR via Taiwan have dramatically increased, going up by 86% between 2019 and 2022 and 134 percentage points between 2020 and 2022. This increase coincided with the plateauing and then the strong reduction in volumes imported from Indonesia. It shows that Indonesian stainless slabs and SSHR are melted in Indonesia, further processed in Taiwan and then exported to the Union as SSCR, avoiding the duties.
- (56) Even accounting for domestic production, the share of Indonesian austenitic slabs and SSHR processed in Taiwan is very high and is equally reflected in the significant volume of indirect

imports to the EU.¹⁵ While exporting producers in Taiwan may rely on Indonesian material for their exports to the EU to varying degrees, this section shows that the vast majority of them likely do.

- (57) One of the main entry points for Indonesian stainless steel inputs in Taiwan is re-roller Walsin Lihwa, which has established a partnership with Tsingshan Indonesia for the supply of stainless steel to Taiwan.
- This partnership extends beyond a mere commercial agreement but reflects a long term strategy of reliance on Indonesian subsidised inputs. Together, Walsin and Tsingshan run a Nickel Pig Iron (NPI) joint venture in Indonesia.¹⁶ Walsin Lihwa also recently acquired a 29,5% share in Indonesian PT Westrong Metal Industry,¹⁷ also linked to Tsingshan.¹⁸ Following the investment, Walsin's production capacity of nickel, in accordance to its equity ownership in various production facilities, will increase to 84.000 tons per year. 55.000 of this stems from PT Westrong Metal Industry.¹⁹
 - In Taiwan, Walsin Lihwa, directly or through subsidiaries, has cold-rolling capacities [of between 350 000 and 500 000 tonnes. The Applicant has added confidential information on production capacity]. With upstream hot-rolling capacities much more limited, this mean that the company exclusively relies on SSHR inputs and on its partnership with Tsingshan to fill this capacity.
- (58) Main Taiwanese stainless steel manufacturer YUSCO (Yieh United Steel) is also increasingly reliant on Indonesian inputs for its exports of stainless steel (in particular of SSCR to the EU). This reliance also includes purchasing from Tsingshan.
- YUSCO has cold-rolling capacities of [between 600 000 and 800 000 tonnes. The Applicant has added confidential information on feedstock]. For the time being, the latter is purchased from Indonesian actors, which include Tsingshan. Thanks to its hot-rolling capacities, YUSCO can purchase its Indonesian semi-products as slabs, black SSHR or white SSHR to optimise its load and logistics.
 - This reliance on Indonesian austenitic inputs is highlighted by YUSCO's strategic decision to move its melting capacities to Indonesia, and correspondingly reduce use of its Taiwanese melting capacities.²⁰ In 2022, the company announced that it acquired two nickel ore mines in Indonesia and that it invested in Indonesian plants "*to produce stainless steel slabs and hot-rolled stainless steel (...)*".²¹ A month later, YUSCO also announced that its subsidiary

¹⁵ See annex 60% threshold assessment (Taiwan)

¹⁶ SMM, Indonesia's NPI out went up in June amid expanded production of Tsingshan, 15 July 2021, [Indonesia's NPI out went up in June amid expanded production of Tsingshan](https://www.smm.com.cn/news/indonesia-npi-out-went-up-in-june-amid-expanded-production-of-tsingshan) SMM | Shanghai Non ferrous Metals. .

¹⁷ Marketscreener, Walsin Lihwa : Announcement for the Company's BOD resolved to acquire 29.5% equity of PT. Westrong Metal Industry, 8 May 2022, <https://www.marketscreener.com/quote/stock/WALSIN-LIHW-CORPORATION-6492359/news/Walsin-Lihwa-Announcement-for-the-Company-s-BOD-resolved-to-acquire-29-5-equity-of-PT-Westrong-M-41211556/>; Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

¹⁸ Investasi kontan, Analysts Recommend Buying Harum Energy (HRUM) Shares, Here's the Review, 12 May 2022, <https://investasi.kontan.co.id/news/analisis-rekomendasikan-beli-saham-harum-energy-hrum-begini-ulasannya>.

¹⁹ Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

²⁰ Wood Mackenzie, Tsingshan Indonesia shakes up stainless steel markets in South East Asia, 15 July 2019, <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>.

²¹ Yieh Corp, Taiwan's Yusco to expand its investment in Indonesia, 23 August 2022, <https://www.yieh.com/en/NewsItem/136009>.

Hongyu Asset Management increased its investment in ferronickel Indonesian subsidiary PT E United Ferro Indonesia by 12,4 million USD.²²

- (59) Available information also shows that Tsingshan is selling to other re-rollers like Tung Mung and Yuan Long.²³
- For its part, Tung Mung has [capacities between 150 000 and 250 000 tonnes].
 - Yuan Long has [between 100 000 and 170 000] tonnes of cold-rolling line. It is thus apparent that Taiwanese actors engaging in the production of SSCR maintain links with Tsingshan Indonesia and rely to a varying extent on Indonesian supply of stainless steel for their production and their exports to the EU. These exporting producers, with direct links to the use of inputs from Indonesia, account for [business confidential information not susceptible to public summary] of the cold-rolling capacity in Taiwan.
- (60) It is however likely that other actors with SSCR capacity also process Indonesian inputs, purchased directly from Tsingshan or via Walsin, and therefore contribute to a various extent to indirect imports to the EU. The companies are the following:
- Chia Far, with its [50 000 to 100 000] tonnes of cold-rolling capacities
 - Chien Shing with its [70 000 to 130 000] tonnes of cold-rolling capacities
 - Tang Eng with its [200 000 to 275 000] tonnes of cold-rolling capacities

5.2.2 Indirect imports via Turkey

- (61) SSCR production in Turkey exclusively stems from re-rollers, as the country currently has no dedicated operational melting and hot rolling capacities for stainless steel. This means that all the SSCR produced in Turkey is produced from SSHR imported from third countries, notably from Indonesia. Combined with the limited number of domestic producers, this makes it relatively easy to identify indirect imports to the EU.
- (62) The Commission has recently found that Turkish re-rollers are circumventing EU TDI measures on Indonesian stainless steel by importing Indonesian stainless steel slabs, hot-rolling them in Turkey, and exporting the resulting SSHR to the EU.²⁴ In that circumvention case, the Commission convincingly found that *"the assembly/completion operations in Türkiye started in significant volumes only after the initiation of the original investigation against Indonesia. The agreement (...) focused specifically on basing that supply on stainless steel slabs from Indonesia – the country under measures. Moreover, the Indonesian producer of stainless steel slabs was also the supplier of SSHR. Normally, one does not move one step up the value chain of its vertically integrated supplier for reasons of security of supply. Unless, of course, the threat that is being addressed are potential measures affecting the lower step in that value chain – in this*

²² Yieh Corp, Yieh Phui increases investment in Indonesia subsidiary, 22 September 2022, <https://www.yieh.com/en/NewsItem/136614>.

²³ Please see Annex - Exporting producers in third countries and capacities.

²⁴ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

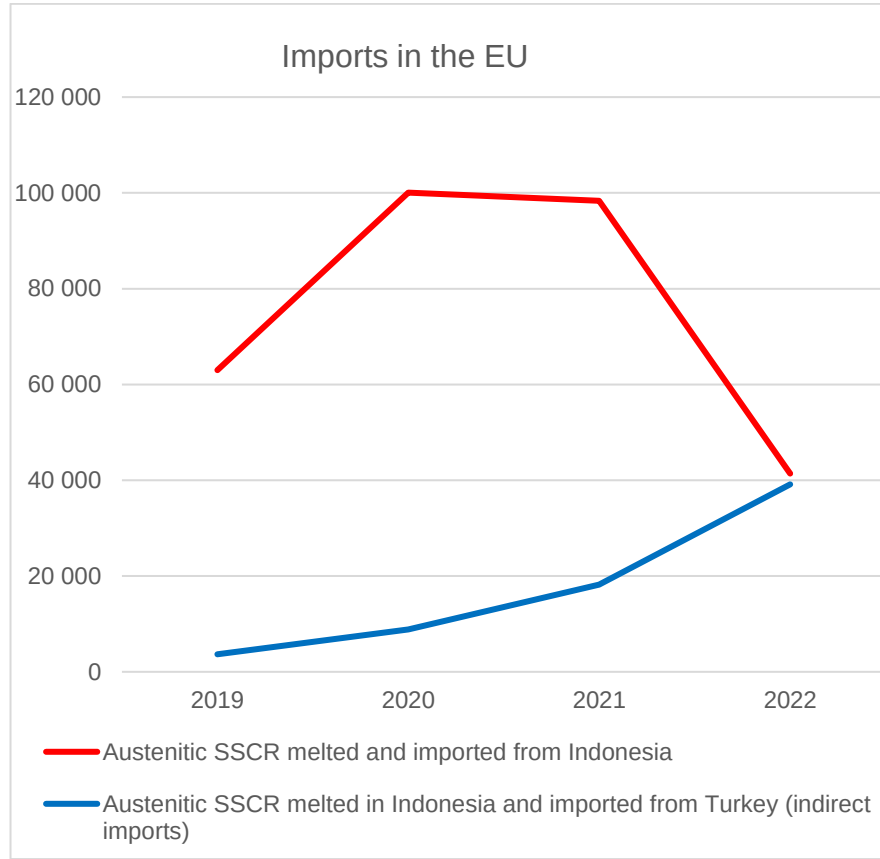
*case the anti-dumping duty on imports of SSHR from Indonesia (...) the Commission concluded that the anti-dumping duty imposed on imports of SSHR originating in Indonesia was circumvented by imports of the product under investigation consigned from Türkiye by Çolakoğlu."*²⁵

- (63) Because of the above, and because the Commission convincingly established that slabs imported into Turkey are exported to the EU as SSHR, the Applicant has not included Indonesian stainless steel slabs in its assessment of the indirect imports via Turkey. It therefore only accounted for the imports of SSHR from Indonesia and other sources.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Turkey	15.500	26.402	73.367	100.795
Index	100	170	473	650
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
Of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (64) Imports into Turkey of Indonesian-sourced inputs have exploded by more than 500% since 2019, from about 15.500 to above 100.000 tonnes. The main increase occurred as from 2021 onwards. As inputs from other sources have remained more or less the same, all increase has come exclusively from Indonesia. This increasing trend corresponds to the increase of indirect imports via Turkey into the Union, the main driver behind the significant increase in imports from Turkey.

²⁵ Ibid., rec. 68,108.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (65) Indirect imports from Turkey have increased exponentially since the opening of the investigation and the imposition of measures on Indonesian SSCR. This is largely due to the re-routing of Indonesian inputs through Turkey, located at the EU's doorstep. The speed at which indirect imports increased in 2021 and 2022 contrasts with the stability and then decline of the imports from Indonesia to the EU, highlighting the emergence of an alternative channel of imports. The rapid increase in imports from Turkey owes much to the fact that, as evidenced in the SSHR investigation, Turkey is a convenient base for Tsingshan to access the Union market.
- (66) There are two producers of SSCR in Turkey which, according to available information, rely to varying degrees on SSHR from Indonesia to supply the EU market on the back of supply agreement with Tsingshan.

- South-Korean owned POSCO Assan TST [has cold-rolling capacities of 275 000 to 425 000 tonnes. The Applicant has also added confidential information on Posco feedstock.]²⁶
- In addition, Turkey is also home to the re-roller Trinox, which [has cold-rolling capacities of minimum 75 000 tonnes. The Applicant has also added confidential information on Trinox feedstock.]²⁷

5.2.3 Indirect imports via Vietnam

- (67) SSCR production in Vietnam exclusively stems from re-rollers, as the country currently has no stainless steel melting and hot rolling capacities. This means that all the SSCR produced in Vietnam is produced from SSHR imported from third countries, and notably from Indonesia. This makes it relatively easy to identify indirect imports to the EU.
- (68) Vietnam has previously been used as a circumvention hub by Chinese-owned companies. On 29 March 2023, the US Department of Commerce determined that duties on cold-rolled stainless steel from China were circumvented by processing them in Vietnam.²⁸

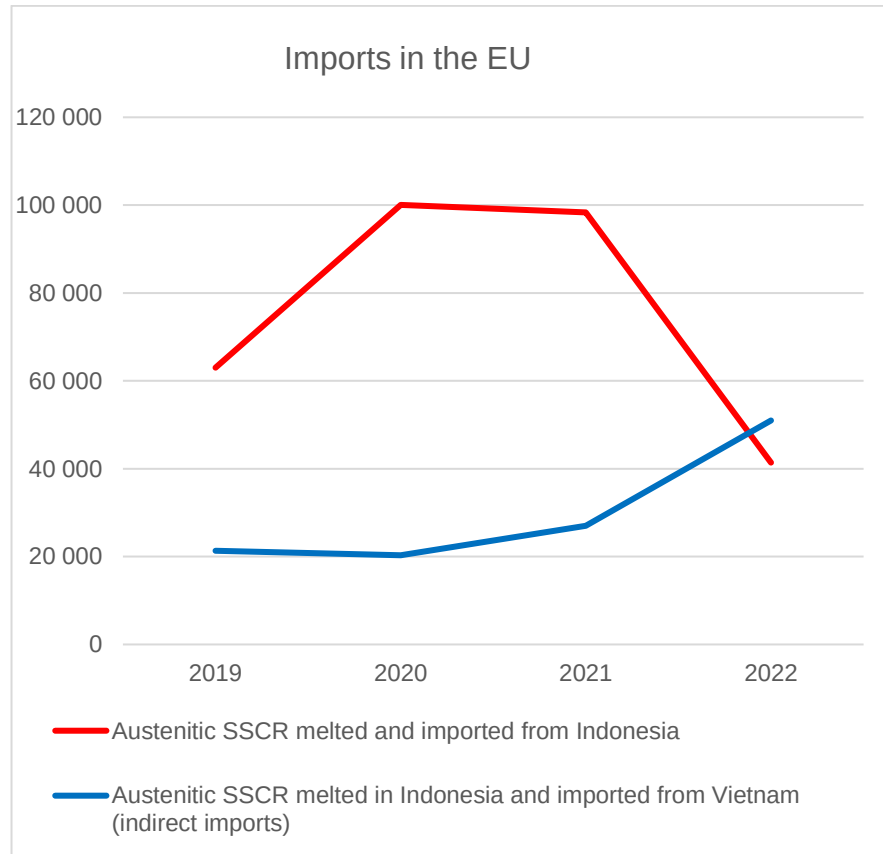
In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Vietnam	197.366	178.868	242.399	356.987
Index	100	91	123	181
Imports in the EU of SSCR from Vietnam	36.855	35.338	51.559	86.720
Index	100	96	140	235
Of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (69) The imports of Indonesian inputs into Vietnam have similarly increased by 81% since 2019, progressively marginalising imports from other sources, as from 2021 in particular. The massive increase in imports in 2022 confirms the reliance on imports from Indonesia for exports to third countries. The 2022 volume corresponds to an increase of indirect imports of Indonesian SSCR into the Union via Vietnam of 139%, or from 21.305 to 50.983 tonnes.

²⁶ Please see Annex - Exporting producers in third countries and capacities.

²⁷ Please see Annex - Exporting producers in third countries and capacities.

²⁸ International Trade Administration, Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam, 29 March 2023, <https://www.federalregister.gov/documents/2023/03/29/2023-06500/stainless-steel-sheet-and-strip-from-the-peoples-republic-of-china-final-scope-ruling-and-final>.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Vietnam in the EU	36.855	35.338	51.559	86.720
Index	100	96	140	235
of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (70) Vietnam is an important exporter of SSCR to the Union, most of which concerns indirect imports from Indonesia. The country has no melting capacity and all SSCR exported to the Union is thus by definition melted in a third country. While the volume of indirect imports was stable and limited between 2019 and 2020, it increased as from 2021 and skyrocketed in 2022. This increase largely coincide with the EU investigation and measures, and the subsequent decline in imports from Indonesia. The increase in imports between 2020 and 2021 and, more significantly between 2021 and 2022 therefore marks a change in the pattern of trade.
- (71) The exporting producers of SSCR in Vietnam maintain close links with Tsingshan. As evidenced by the US investigation, capacities in Vietnam are routinely used (and possibly dedicated) to circumvent trade measures, including on Indonesian SSCR. Despite marginal domestic consumption, Vietnam is home to no less than three re-rollers, mostly focusing on exports.
- (72) The main exporting producer in Vietnam is Chinese producer Yongjin. A close associate of Tsingshan, Yongjin is one of its primary partners in China for cold-rolling Indonesian products,

notably in the province of Fujian. Yongjin and Tsingshan maintain extensive supply agreements and participate together in a joint venture which supplies Yongjin's Guangdong (China) 680.000 tonne steel factory.²⁹

- The Company has started construction, in 2020, of a new factory in Long Giang Industrial park in Tien Giang, Vietnam. The capacity of the plant amount to 250.000 tonnes of SSCR fed exclusively from imported SSHR. The plant started operation in 2022³⁰ and its purpose is to "increase production further and develop overseas market".³¹
- In 2022, the same Yongjin announced another Vietnam factory for stainless steel, this time in Tan Viet.³² The project concerns a 125 million USD investment on an area of about 12,6 hectares. In total, the projected SSCR output is 260.000 tonnes each year.

(73) It is unlikely that these project primarily aim to serve the domestic market. Already in 2019, local steel producers protested the establishment of the Tien Giang factory because Vietnam already had stainless overcapacities: *"The total designed capacity of the domestic cold-rolled steel industry reached more than 700,000 tonnes, so local producers now can only run at about half of their designed capacity, according to the petition. The local demand for stainless steel will continue to be met with an oversupply of 229,000 tonnes up until 2021, according to global market analysis by CRU Group calculated on the assumption of 8.4 per cent positive average growth per year."*³³ The SSCR produced by Yongjin, soon up to 510.000 tonnes per year, is thus likely produced from Indonesian SSHR and meant for export.

(74) Two other SSCR producers also operate in Vietnam.

- South Korean owned POSCO VST has a cold-rolling line with a capacity of [between 200 000 and 400 000 tonnes. The Applicant also included confidential information on Posco feedstock].³⁴
- Vietnamese producer Inox Hoa Binh has a cold-rolling line with a capacity of [between 150 000 and 220 000 tonnes. The Applicant also included confidential information on Inox feedstock].³⁵

²⁹ Please see Annex - Exporting producers in third countries and capacities.

³⁰ Kallanish, Yongjin Vietnam sees first coil production, 22 March 2022, <https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/>.

³¹ Asian Metal, Yongjin starts construction of precision stainless steel plate and strip project in Vietnam, 28 October 2020, <https://www.asianmetal.com/news/1591383/Yongjin-starts-construction-of-precision-stainless-steel-plate-and-strip-project-in-Vietnam>.

³² Nghe An Portal, Granting the Investment Registration Certificate for Tan Viet Metal Science and Technology Plant project, 9 November 2022, <https://nghean.gov.vn/new-events/granting-the-investment-registration-certificate-for-tan-viet-metal-science-and-technology-plant-539706>.

³³ Vietnam Investment Review, New steel projects bewilder producers, 14 June 2019, <https://vir.com.vn/new-steel-projects-bewilder-producers-68495.html>.

³⁴ Please see Annex - Exporting producers in third countries and capacities.

³⁵ Please see Annex - Exporting producers in third countries and capacities

5.3 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty

5.3.1 Practice, process or work

5.3.1.1 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty.

(75) As set out above, the change in the pattern of trade consists of substituting a significant share of imports of Indonesian SSCR by imports of SSCR produced from Indonesian stainless steel slabs and SSHR in the targeted countries. These indirect imports result from the re-organisation of trade flows between Indonesia, their original source and their final destination - the European Union. This pattern involves the Indonesian exporting producer targeted by the original investigation.

(76) This segmentation of the production process combined with the reorganisation of the trade flow between Indonesia and the EU, constitutes a 'practice, process or work' through which the EU measures are circumvented, within the meaning of Article 23 of the basic AS Regulation. The practice of slightly modifying Indonesian stainless steel inputs into the product concerned also constitutes an assembly or completion operation, as set out in recent Commission findings on SSHR from Turkey.³⁶ It is obvious that this behaviour is explained by the desire to avoid countervailing duties on Indonesian SSCR, and that the reorganisation of the pattern of trade has insufficient due cause or economic justification.

5.3.1.2 Practice, process or work

(77) For lack of an exhaustive list of the practices susceptible to constitute circumvention under the basic AS Regulation, processing Indonesian stainless steel slabs and SSHR into SSCR stands at the halfway point between the 'slight modification' and 'consignment' via a third country. This operation is undoubtedly a practice, process or work with the meaning of the basic Regulation, following the example recently found by the Commission to constitute an assembly or completion operation. Despite its very limited cost, this operation is sufficient to avoid EU duties on Indonesian SSCR by taking advantage of the EU rules on non-preferential origin, as set out in Annex 22-01 of Regulation 2015/2446.³⁷

(78) This reorganisation of trade flows, transferring processing phases which require production facilities but generate limited costs of productions to third countries, essentially serves the purpose of avoiding measures. That cold-rolling (and sometimes hot- and cold- rolling) takes place in a third country, along traditional sea roads to the EU, confirms that the overall purpose of the operation is to ensure delivery free of countervailing duties of a product normally subject to measures on the EU market.

(79) The change in the pattern of trade of SSCR between Indonesia and the EU therefore stems from a practice, process or work within the meaning of Article 23 of the basic AS Regulation. It is not

³⁶ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not

³⁷ Introductory notes and list of substantial processing or working operations conferring non-preferential origin of the COMMISSION DELEGATED REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

the accidental outcome of a resurgence in fair imports following the imposition of the EU CVD measures, nor the result of exogenous economic factors.

5.3.2 Assembly operation

- (80) As found by the Commission in recent investigations, including on SSHR from Turkey, circumvention of a measure may stem from an assembly or completion operation when (i) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and when (ii) the parts concerned from the country subject to measures constitute 60% or more of the total value of the parts of the assembled product and the value added to the parts brought in, during the assembly or completion operation, is lower than 25% of the manufacturing cost.
- (81) The figures provided show, both at cumulated and country-specific level, that the practice became substantial only after the initiation of the investigations on imports from Indonesia. It is also apparent that it developed in parallel to the investigation, further increasing after imposition of the measures.

60% threshold

- (82) As indicated in the description of the production process, stainless steel slabs and, directly downstream, SSHR are the sole "part" used in the production of SSCR, and therefore in the "assembly" or "completion" operation resulting into SSCR. These "parts" therefore necessarily represent 100% of the total value of the parts of the completed products. As a consequence, the parts used in the production process necessarily *"constitute 60 % or more of the total value of the parts of the assembled product"* with regard to indirect imports from Indonesia.
- (83) In line with the intrinsic logic of the assembly or completion test, the 60% threshold must be assessed at the level of the circumventing product itself rather than at the level of the entire production of the like product in a company or a country. Doing otherwise would unduly extend the requirements under the assembly test and set an acceptable level of circumvention in relation to the proportion of legitimate exports by a producer. Such an approach would unduly limit the efficiency of the anti-circumvention tool with regard to producers already active in the production of the like product and who are active both in circumvention and legitimate production.
- (84) It is in any event obvious, in view of the volume of indirect imports from the countries targeted, that the Indonesian stainless steel semi-products, slabs and or SSHR, represent a large majority or a substantial part of the input used by the exporting producer in the targeted third countries engaging in circumvention of the EU measures. As such, it is clear that exporters processing Indonesian SSHR and slabs into SSCR before exporting them to the EU engage in circumvention of the EU measures.
- (85) The value of the Indonesian inputs used in the production in the targeted countries is a further indication of the extent of the circumvention. However, should the Commission find it necessary to assess the share that this value represents over the total input used in targeted countries or companies, the Applicant has also prepared a specific assessment.
- (86) For Taiwan and Vietnam, the Applicant has estimated the share of Indonesian inputs used in the production of SSCR, as an indication for the share of Indonesian input used in the SSCR exported to the EU.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Taiwan	62,3%
Vietnam	60,4%

Annex 6 - Assessment of the 60% threshold in production of SSCR

- (87) This assessment does not account for the fact as the parts imported from Indonesia "*still benefit from the subsidy*" within the meaning of Article 23 of the basic AS Regulation, the Commission should adjust the value of the Indonesian inputs to reflect the subsidisation findings. Accounting for the substantial subsidy margin found by the Commission in the original investigation, an assessment based on a fair value of the Indonesian inputs highlights an even higher value share of Indonesian inputs.
- (88) For Turkey, the Applicant has identified that one of the Turkish re-roller, Trinox, [business confidential information not susceptible to public summary]. In view of the high level of imports of Indonesian inputs in Turkey and of the recent findings of the Commission on circumvention of the product directly upstream,³⁸ the confirm the high likelihood that exporters in Turkey circumvent the measures.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Trinox (Turkey)	[more than 90%]

- (89) This therefore further confirms the likelihood that, in the targeted countries, Indonesian inputs represent above 60% of the value of inputs used in the SSCR imported to the EU. It also confirms that virtually all exporters from those countries are likely to engage, to varying extents, in circumvention. Due account should also be taken of any behaviour funnelling specifically SSCR produced from Indonesian inputs to the EU and of any specific pricing patterns on export prices to the EU that would reflect the use of those subsidised parts by exporting producers.
- (90) The above notwithstanding, the Applicant insists that the fact that exporting producers in the targeted countries also export SSCR to the EU produced from non-Indonesian input is irrelevant to the circumvention assessment. It should have no bearing on the findings that they engage in circumvention if they export to the EU SSCR produced from Indonesian inputs.

25% Threshold

- (91) In addition, the assessment of the respective costs of production of stainless steel slabs, SSHR and SSCR reveals that completion of these items into SSCR only bring a limited added value, in any event significantly below 25%. It has been found in previous EU investigations that downstream processing of stainless steel slabs only bears limited added costs, notably the processing of slabs into SSHR. Similarly, processing stainless steel slabs or SSHR into SSCR represent a very limited addition to the costs of manufacturing.
- (92) Figures of the Union producers and estimates of the cost of manufacturing of Asian exporters, with significantly lower energy and labour cost, reveal that in 2022, accounting for yield and

³⁸ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

recovery of internal scrap, the processing of white SSHR into SSCR only brings an added value of about 5%. Processing of black SSHR into SSCR represents less than 8% of the cost of manufacturing of that product. Production of SSCR from stainless steel slabs only require about 10% of added value.

Product stage	Added value share
Slabs	[10-14]%
Black SSHR	[4-8]%
White SSHR	[2-6]%
SSCR	

Annex 7 - Assembly operation test

- (93) As for the value of the Indonesian inputs, it is important, in the analysis of the added value in the production of SSCR exported to the EU from third countries, to account for the fact that the parts imported from Indonesia *"still benefit from the subsidy"*. Consequently, due account should be taken of the fact that the value of these inputs is likely to be artificially low. It is therefore necessary to replace it with a fair value to reach representative conclusions on the extent of the circumvention practice.

Conclusion

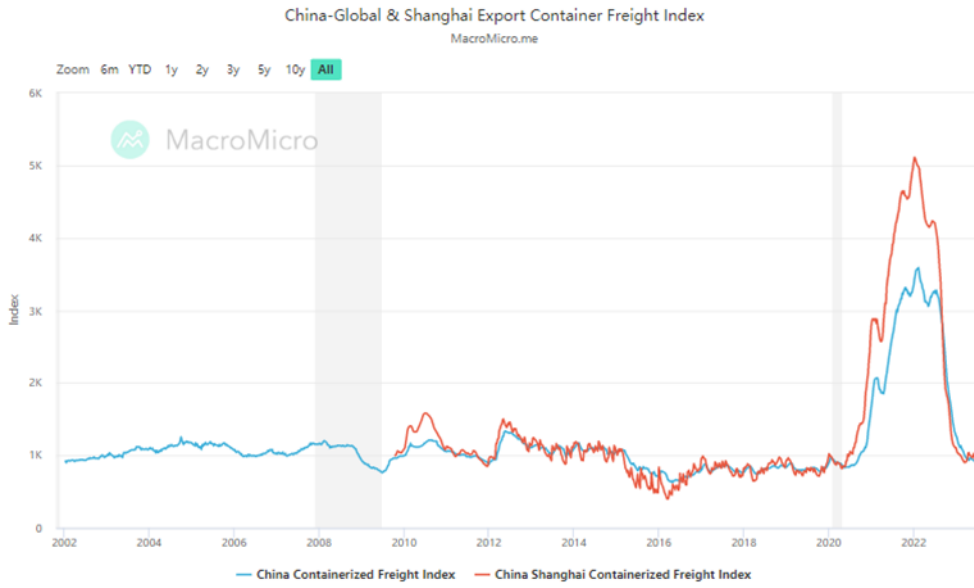
- (94) It is therefore obvious that the part imported from the country subject to the measures – the Indonesian slab or SSHR – represents significantly more than 60% of the parts of SSCR. In the meantime, the value brought by the completion operation – the cold-rolling, potentially complementing hot-rolling – is considerably lower than 25% of the manufacturing cost of the SSCR. The indirect import from Indonesia via third countries of SSCR therefore constitutes a circumvention within the meaning of Article 23 of the basic Regulation.

5.3.3 Insufficient due cause or economic justification other than the imposition of the duty

- (95) Before the initiation of the investigation and the imposition of the measures, EU importers bought their SSCR directly from Indonesia, already cold-rolled. The import numbers set out above are proof of this: Indonesian imports from 2019 were high, increased in 2020 despite COVID, plateaued in 2021 parallel to the initiation of the investigation, and then steeply declined in 2022 once the Commission imposed measures on imports of Indonesian SSCR.
- (96) Exporting SSCR directly from Indonesia was demonstrably the most efficient trade pattern before the imposition of duties, and is indeed the most logical and efficient way to obtain Indonesian SSCR. However, the imposition of the countervailing measures caused a limited part of the production process of SSCR to move to various third countries, as a way to reroute Indonesian imports destined for the Union market. There is no economically sound reason why the relevant players would separate a production process normally completed in Indonesia into various stages all over the world. To the contrary: it adds a needlessly complex, displaced step to an otherwise fairly straightforward and completely vertically integrated production process.
- (97) In fact, from a production point of view, the main difference between the new pattern of trade and the former is that it induces significant additional inefficiencies. Instead of a single direct shipment of SSCR from Indonesia to the EU, the new pattern of trade implies a myriad of new shipping

routes to the third countries and then shipping to the EU. As such, it requires at least two distinct shipping operations for every third country, which in turn at least doubles the number of loading and unloading operations. It also requires additional road transportations in the third country in question: transporting the semi-finished product from the third country port to the cold-rolling plant (and sometimes the hot-rolling plant), and back to the port with finished SSCR.

- (98) Those additional logistic steps were exceptionally inefficient in 2022, a year with very high freight rates. Throughout the year, rates stayed well above those of previous years, as a consequence of worldwide supply chain bottlenecks and the war in Ukraine. The graph below shows that spot rates in Asia remained at unprecedented heights throughout 2022, and that each additional container of freight could dramatically increase production costs.



Freight rates³⁹

- (99) Elsewhere, operators dealt with this by increasing local supply (thus avoiding overseas freight costs and minimising transport). The extremely high prices in the beginning of 2022, for example, translated to higher railway freight volumes, which only decreased when container prices decreased slightly at the end of 2022.⁴⁰ Indeed, this is a logical and efficient reaction to high maritime freight prices.
- (100) Crucially, indirect imports of Indonesian SSCR show a completely opposite reaction. As shown above, imports from Indonesia decreased in 2021 and 2022 (years with extremely high maritime freight prices), and indirect imports, which require exporting Indonesian SSCR or slabs to a third, overseas country which then in turn re-exports the finished SSCR to the EU, became a much more popular option. Rather than directly exporting SSCR from Indonesia, the preferred option was adding an additional, overseas journey, with all the costs and availability risks that entailed. This additional journey had the purpose of generally adding less than 10% of the value of SSCR, an operation for which Indonesia had ample capacities (reaching up to [1 150 000 - 1 700 000

³⁹ Source: <https://en.macromicro.me/charts/947/commodity-ccfi-scfi>.

⁴⁰ Upply, China-EU rail freight: a highly sensitive market, 21 February 2023, <https://market-insights.upply.com/en/china-eu-rail-freight-a-highly-sensitive-market>.

tonnes] annually in 2022)⁴¹ - as evident from the massive volumes of direct imports in 2020 and 2021. This unnecessary, risky, expensive complication has the purpose of avoiding the Union's import duties - which significantly exceed the cost of processing Indonesian inputs in third countries.

- (101) Besides the additional freight cost, the new pattern also creates a completely separate range of inefficiencies. One of such inefficiency relates to the replacement of an integrated and calibrated industrial process by a process in separate stages, where each actor requires adequate remuneration. Another relates to the limited added value of the processing operations themselves, which would normally seriously limit the competitiveness of re-rollers when exporting beyond their domestic market. This is in particular true when re-rolling facilities lack facilities for initial annealing and pickling and require the use of white SSHR. Along other industrial inefficiencies, separating the melting phase from the hot-rolling phase also prevents energy gains related to proximity from the melting and casting. Similarly, separation of the hot-rolling and/or cold-rolling phase from the melting means that internal scrap and dust resulting from yield cannot be re-melted directly but has to be collected and sold to the market, or even represent net losses for actors.
- (102) On top of these production issues, those new patterns also requires that exporting producers, despite the limited additional value of the last production steps, develop oversea subsidiaries or supply agreements, as well as coordinate the production schedule of multiple producing entities in various third countries. Importers, in turn, must account for increased lead times and an increased likelihood of supply disruptions, and are faced with additional risks of technical defects as a result of the number of actors involved.
- (103) The multiplication of re-rolling activities in third countries, far beyond the need of domestic consumption, as a way to splinter the production process solely to avoid duties is an increasingly common feature of the steel trade flows. Stainless steel is not spared from this fate: recent circumvention findings both in the US on the product concerned and in the EU on the directly upstream product confirm that these investments are driven by the wish to avoid of duties on the main export market. This is further evidenced by the close links between the main Indonesian exporter and many of the re-rollers and by the fact that that these intermediate actors, despite an organically lower level of efficiency, are able to successfully target long range export markets.
- (104) All these elements very plainly show what is happening: the Indonesian SSCR exports are still ending up on the Union market, widely subsidised, only this time they are taking a *pro forma* detour through third countries. Moving this marginal part of the production process through these third countries is costly, inefficient and redundant – until one takes the duties into account, which then plainly become the only possible reason for such a manoeuvre to take place. Despite all these inefficiencies, such pattern allows continuation of unfairly low priced imports of Indonesian stainless steel in the EU as the additional costs incurred remain significantly lower than paying the countervailing duties on Indonesian SSCR.
- (105) In the absence of the duties, there would be no justification and no economic benefit for EU users to rely on such a complex pattern rather than importing SSCR directly from Indonesia. Consequently, it is apparent that the change in the pattern of trade stems from a practice for which there is no due cause or economic justification.

⁴¹ See annex Exporting producers and capacities

6. CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES

- (106) The purpose of the countervailing duties is to protect the Union Industry against the damaging effect of imports from a third country engaging in injurious subsidisation. In the original investigation, the Commission highlighted the significant subsidisation of Indonesian SSCR and decided to countervail these subsidies through substantial countervailing duties. The circumvention of the measures via the countries concerned effectively negates that protection to the detriment of the Union Industry, as it allows for a significant volume of imports of SSCR at remarkably low prices.

6.1 Significant volume of imports undermining the remedial effect of the measures

- (107) As shown above, after an initial decline, the indirect imports of Indonesian SSCR into the Union have increased at a staggering pace. Between 2020 and 2022, they increased massively, almost four-fold. This increase clearly coincided with the investigation and the measure, hence their explosion in 2022, when ostensibly the new routes planned out after the initiation of the investigation fully started to get used.
- (108) As a result of their massive increase, the indirect imports represent a significant share of the overall imports of SSCR in the EU and an increasing share of the overall imports of SSCR from the targeted countries, significantly outpacing their growth. With imports from the targeted countries representing 35,6% of imports of SSCR in the EU, indirect imports reached an estimated and conservative level of 14,3% of the imports in 2022. The true extent of how indirect imports undermine the remedial effect thus lies somewhere between these two numbers.

In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia in the EU	72.768	106.488	107.364	51.379
Index	100	146	148	71
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

Annex 8 - Effect on the EU market: volumes and market share

- (109) That trend is also visible on a country per country level. In each of the targeted countries, the estimated indirect imports also represent a significant share of the total imports of SSCR in the EU. The assessment proposed by the Applicant shows that these indirect imports represent no less than a third of the imports in the EU of SSCR from the third countries and sometimes significantly more. As the methodology of the Applicant is conservative and likely underestimates the volume of these indirect imports, the actual volume from those countries provides a good indication of the potential extent of the indirect imports, in terms of volumes. That share is even more prevalent and exceeds 60% on average for austenitic stainless steel.

In tonnes, in 2022	Imports from targeted countries	Of which Indirect imports	Share
Taiwan	251.418	96.454	38,4%
Turkey	125.057	39.142	31,3%
Vietnam	86.720	50.983	58,8%
Total imports	463.195	186.578	40,3%

- (110) In addition, this massive increase of imports in terms of volume is particularly telling when compared to the overall imports of SSCR in the EU. First, because the imports from the targeted countries and in particular the estimated indirect imports represent a massive and quickly increasing share of overall imports. Second, because the speed at which they have increased starkly contrasts with the increase of other imports. This is all the more true as most of the increase of other imports originate in China, through which the Applicant suspects that indirect imports could also occur. This clearly shows that the volume concerned of relevant imports is of a nature to affect the situation on the EU market.

In tonnes	2019	2020	2021	2022
Total imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Index	100	84	96	140
Imports of SSCR from the targeted countries in the EU	310.440	234.156	375.936	463.195
Index	100	75	121	149
Of which Indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243
Imports of SSCR from other countries (excluding China) in the EU	608.341	528.097	483.486	528.822
Index	100	87	79	87
Imports of SSCR from China in the EU	10.212	13.992	34.524	308.400
Index	100	137	338	3.020

- (111) Evidently, the high volumes of imports from the targeted countries, including the indirect imports, make up a significant and vastly increased share of the EU consumption of the product concerned. Overall, the market share of imports from the targeted countries has grown substantially to reach nearly 12% of the EU market share, an increase evidently achieved on the back of growing indirect imports. Once again, this share and its growth is even more substantial when considering austenitic stainless steel in particular.

EU consumption, market share (in tonnes and %)	2019	2020	2021	2022
SSCR EU market	3.628.501	3.325.321	3.853.431	4.088.315
EU mills deliveries	2.699.508	2.549.076	2.959.485	2.787.898
Total Imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Of which imports of SSCR from the targeted countries	310.440	234.156	375.936	463.195
Of which indirect imports	76.898	55.915	120.059	186.578
Market share EU mills	74,4%	76,7%	76,8%	68,2%
Market share imports of SSCR in the EU	25,6%	23,3%	23,2%	31,8%
Of which imports of SSCR from the targeted countries	8,6%	7,0%	9,8%	11,3%
Of which indirect imports	2,1%	1,7%	3,1%	4,6%

- (112) That market share remains very significant when assessed at the level of the EU market as a whole, showing the disruptive impact of the indirect imports on the EU market and their ability to undermine the remedial effect of the measures. The market share of imports from the targeted countries, including indirect imports in particular, has significantly increased over the last four years. It is significant enough to allow the indirect imports to have a major shaping power on

supply and prices on the EU market. For reference, the combined market share of India and Indonesia in the original measures was found to amount to 5,5-5,8% of the EU market.⁴² The market share for imports from Indonesia peaked in 2020 amounted to 3,2% for SSCR as a whole and 4,0% for austenitic SSCR before declining in 2021 and more significantly in 2022.⁴³

- (113) Imports from the targeted countries (including indirect imports) represent collectively, in 2022, a major share of EU imports. This is also true on an individual basis. As for the volume of indirect imports, these shares are conservative estimates and are likely higher in reality. Unsurprisingly, these shares are even more substantial when focusing solely on the EU market for austenitic stainless steel.

Market share, in 2022	Imports from the targeted countries	Of which indirect imports
Taiwan	6,1%	2,4%
Turkey	3,1%	1,0%
Vietnam	2,1%	1,2%
Total imports	11,3%	4,6%

- (114) The above reveal both the extent of the circumvention pattern identified and its ability to undermine imports on the basis of sheer volumes imported in the EU. It reveals the utmost necessity for the Commission to address the circumvention pattern and to take all necessary measures to prevent the continuation of alternative flows of indirect imports. In any event, the indirect flow of imports seriously affects the usefulness of one of the most innovative countervailing measures adopted by the Commission, threatening the integrity of that measure on imports from Indonesia and of the Union's TDI policy overall.

6.2 Low prices undermining the remedial effect of the measures

- (115) It was found over the course of the investigation that imports of SSCR from Indonesia undercut EU prices by 12,4%.⁴⁴ In the parallel anti-dumping investigation, the Commission had identified that the depreciating impact of the price of Indonesian imports went beyond that undercutting. It calculated injury margins of above 30%.⁴⁵
- (116) When assessing the price effect of the indirect imports on the EU market, it is crucial that costs and prices of SSCR worldwide and in the EU have skyrocketed since the imposition of the measures. A massive increase in the cost of raw materials (nickel in particular) and general inflationary pressure on other inputs, pushed up prices for SSCR in line with costs. This means that although prices are significantly higher than during the original IP, this does not prevent them from undermining the EU measures.

⁴² Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Table 5.

⁴³ See annex Effect on the EU market - volumes and market share

⁴⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 968.

⁴⁵ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 150.

- (117) This general increase in prices reflects in particular the increase in cost of the main raw materials. Between 2019 and 2022, the cost of nickel, the main driver of the cost of production, almost doubled, increasing by about 85%. This translated into an increase by nearly 50% of the cost of production of the Union Industry. This worldwide price increase dwarfs the increase in cost of energy suffered by the Union Industry over the same period and is the main driver of the increase in the costs and selling prices of the Union Industry since the original investigation period.

	EU COP of SSCR (EUR/tonne)	World Nickel price (USD/tonne)
2019	2.331	13.907
2022	3.609	25.638
Variation	+54,8%	+84,4%

Annex 9 - Variation of cost of production, raw materials and inputs

- (118) Against this backdrop of significantly increased prices and costs of the Union producers, the import prices from the targeted countries significantly undercut EU prices, even if 2022 prices exceeded those of Indonesian imports during the original IP. The Applicant has assessed the existence of undercutting both for the overall imports from the targeted countries and based on an estimated level of price of the indirect imports.
- (119) To provide a meaningful comparison, the Applicant has accounted for the difference in the product mix between EU producers and third country exporters in the undercutting calculations based on the imports from the targeted countries as a whole. The Applicant has assessed the price of indirect imports specifically conservatively, based on the price difference between austenitic SSHR inputs from Indonesia and from other sources. When necessary, it also accounted for the existing anti-dumping duties on imports of SSCR from the countries concerned, at the level of the higher residual duty.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting	13,5%	18,3%

Annex 10 - Effect on the EU market: undercutting

- (120) That overall significant level of undercutting for imports from the targeted countries already shows, a priori, how indirect imports undermine the efficiency of the EU measure by allowing the persistence of imports at a price significantly lower than that of the EU producers in 2022. It is also particularly telling that the overall level of undercutting exceeds the level established for imports from Indonesia over the initial investigation period. This price pressure and clear undercutting can also be established on an individual basis for each of the third countries via which the indirect imports of SSCR reach the EU market.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting by import from Taiwan	13,7%	18,5%
Undercutting by import from Turkey	14,5%	19,7%
Undercutting by import from Vietnam	11,2%	16,8%

- (121) As mentioned above, the average prices for imports from the third countries include both indirect imports of SSCR and "normal imports" from those third countries without established links with Indonesian inputs, slabs or SSHR. As a consequence, it is likely that the actual levels of undercutting are substantially higher for the indirect imports made from processed Indonesian

subsidised inputs. This is reflected in the estimated prices for indirect imports assessed on the basis of the differential in price between Indonesian and non-Indonesian inputs. Multiple examples of abnormally low priced imports from the targeted countries confirm that the approach adopted by the Applicant is reasonable.

Annex 11 - Illustration of low priced imports from third countries

- (122) The protection granted to the Union industry by the original measures has largely been rendered insufficient by the developments of flows of low priced indirect imports. The indirect import prices are about a fifth below the average comparable EU prices, making any fair competition impossible.
- (123) The subsidies granted by the Indonesian government therefore continue through indirect imports, entering the EU in significant volumes and at unfairly low prices to disrupt the Union market and prices through indirect imports. The indirect imports of SSCR to the EU thus undermine the remedial effect of the measures, initially intended to prevent the main Indonesian exporting producer from leveraging its subsidies to capture the EU market.

7. SUBSIDISATION IN RELATION WITH THE LIKE PRODUCT FROM THIRD COUNTRIES

- (124) As shown above, prices of SSCR from the targeted countries significantly undercut EU prices at levels similar to or exceeding those of Indonesian imports over the original investigation period. That ability to sell significantly below fair prices on the EU market stems from the subsidisation occurring in Indonesia for the production of stainless steel, evidenced in the investigation leading to the imposition of the circumvented measures.
- (125) Over the course of the original investigation, the Commission found that the Indonesian exporting producer of SSCR benefited from massive subsidisation, in virtually all aspects of its activities. As a consequence, the Commission imposed a subsidy margin of 21.4% on Tsingshan imposed countervailing duties at that level.⁴⁶ The subsidisation findings related largely to the provision of nickel ore and land for less than adequate remuneration, support for capital investments, non-market loans and preferential fiscal and custom regimes. The subsidisation affected all sales of the products, regardless of the customer, with some additional subsidisation limited to export to third countries, including but not limited to the EU.
- (126) Because of its very nature, and because the purpose of that support was always to establish from scratch a fully integrated Indonesian stainless steel industry, these subsidies were provided to cover the entire production chain of SSCR; from the raw material until the end-products. This is particularly obvious for the provision of nickel ore at less than adequate remuneration, as set out in recital 532-534 of the original investigation. The same is true for significant financing provided to Tsingshan group's company Sulawesi Mining Investment, active on the upstream stages of the production process, NPI and melting of slabs,⁴⁷ through Reed International.

⁴⁶ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Article 1.

⁴⁷ 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, Recital 51.

- (127) The subsidisation found over the course of the original IP has continued. The Brazilian authorities have confirmed this in their investigation targeting Indonesia. They imposed countervailing duties of 18,79% on imports of certain SSCR from Indonesia, as recently as 1 December 2022. These findings identify the provision of nickel ore at less than adequate remuneration, affecting the direct inputs for SSCR.

Annex 12 - Findings of the Brazilian authorities

- (128) The Commission itself has also found that the subsidisation continues, for example when it held that benefit from the subsidies identified should be spread "*on the useful life of the assets*" found to be subsidised,⁴⁸ based on the depreciation period of the loans,⁴⁹ or on the amortisation duration of the machines.⁵⁰ Consequently, besides the recurring subsidies identified by the Commission which continue to apply in Indonesia, even one-off subsidies continue to affect the production and sales of SSCR in Indonesia, including for the upstream inputs.
- (129) As shown above, worldwide nickel prices have significantly increased since the original investigation period. In these circumstances, the benefit granted to Indonesian stainless steel producers through the provision of nickel ore at less than adequate remuneration mathematically increases, reinforcing the incentives and the means to circumvent the EU measures. That logic is further reinforced by the Indonesian's numerous announcements of its intent to complete its nickel policy with measures restricting the exports of NPI to increase the domestic production of stainless steel and to provide it with a supplementary advantage over overseas competitors. Similar to the measures on nickel ore, this will further increase domestic availability of NPI, reducing the costs of inputs for the exporting producers. Updated calculations reveal that in any event, Indonesian nickel remains priced at a level significantly lower than the available benchmark, confirming that subsidisation persist.

Annex 13 - Ni ore subsidy calculation

- (130) It is sufficient, for the purpose of demonstrating circumvention under Article 23 of the basic AS Regulation to establish that "*parts [of the imported like product] still benefit from the subsidy*". As the subsidisation covers all aspects of the production process, it is clear from the above that the "parts" assembled or rather completed in the third countries, the SSHR and/ or the slabs, still benefit from the subsidies. It should also be noted that in view of the close nature of the relationship between Tsingshan Indonesia and the exporting producers in the third countries, those parties are effectively in several cases related. This is evidenced by the comprehensive partnership agreement, corporate links and the overarching influence of the Chinese government. Consequently, in several occurrences subsidies are passed through from the

⁴⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 799 for example.

⁴⁹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 800 for example.

⁵⁰ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 908.

Indonesian producer to the operator in the third country, eventually exporting the SSCR to the EU.

- (131) It is therefore clear that the subsidisation of the exporting producer in Indonesia extends to the indirect imports of SSCR to the EU. As a result of the indirect imports of SSCR, the EU market and the EU industry remain significantly affected by the Indonesian subsidisation, preventing the countervailing duties on Indonesia to achieve their intended purpose.

8. IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT

- (132) The emergence of the indirect imports, as detailed above, have exposed a serious shortcomings in the application of the measure, as evidenced in the present anti-circumvention. That flaw is the ease with which non-preferential rules of origin for stainless steel, in particular the rules of list provided in Annex 22-01 of the Union Custom Code Delegated Act, allow a change in origin of the targeted goods with near minimal processing operations. Consequently, as shown above when assessing the existence of an assembly operation, the processing of slabs or SSHR into SSCR despite transformation costs less than 15% (usually 5%) and allows SSCR to acquire the non-preferential origin of the country where that last processing occurred.
- (133) Whereas that flow of indirect imports was difficult to anticipate at the stage of the initial investigation, the recent developments described in this application would justify the adoption, under Article 24(3) of the basic AS Regulation, of "*special provisions, in particular with regard to the common definition of the concept of origin*" to ensure the efficiency of the measures. The Commission has notably relied on that provision in the past to ensure the efficiency of measures when the sole implementation of the non-preferential rules of origins prevented the measure to achieve their expected purposes. Those special provisions derive from the fact that, in trade defence investigation, custom rules apply only in so far that they allow to achieve the objectives set in the basic Regulations.
- (134) That special provision could be implemented by means of an obligation to present at customs a mill certificate providing the plant of melting. Such information is commonly provided by exporters, together with the heat numbers to allow control of grades and follow-up of claims.
- (135) If the Commission finds that the indirect imports indeed circumvent the measures, the mill certificate requirement should be imposed on imports from companies found not to engage in circumvention from the targeted third countries. Acting in complement to the measures on circumventing exporters, that requirement would constitute a proportionate safeguard against circumvention by companies that could easily switch their supply to (or in the case of an holistic assessment, increase their supply of) Indonesian semi-products if cleared from circumvention. It would also limit the risk of multiplication of anti-circumvention action.
- (136) Eurofer therefore respectfully requests the Commission use the possibilities granted by the EU legislator to ensure the efficiency of trade measures. This is instrumental to ensure a correct implementation of the measure and to limit the burden on the Union Industry to document each and every example of evasion of the duties.

9. CONCLUSION

- (137) As reported in this Application, there is clear and consistent evidence that, in order to avoid duties on Indonesian SSCR, substantial volumes of Indonesian stainless steel slabs and SSHR are imported in third countries where they undergo hot-rolling and/or cold-rolling before being exported to the EU, in conditions undermining the remedial effect of the EU measures and benefiting from Indonesian subsidies. It is also apparent that this change in the pattern of trade aims precisely at exploiting the blind spots of the EU countervailing measures on imports of SSCR from Indonesia.
- (138) The Commission should therefore act decisively to ensure the sturdiness and reliability of the EU measures in the face of that challenge of the EU Trade Defence measures. In view of the above, Eurofer therefore respectfully requests that the Commission:
- Expeditiously initiates an investigation on imports of SSCR from Taiwan, Turkey and Vietnam under Article 23 of the basic AS Regulation;
 - Registers imports of SSCR from Taiwan, Turkey and Vietnam as from the initiation of the investigation, with a view to applying retroactive duties from that date;
 - Imposes countervailing duties at a level of 21.4% on imports of SSCR from Taiwan, Turkey and Vietnam;
 - If necessary, implements under Article 24(3) of the basic AS Regulation a control of mill certificate for imports of SSCR by the exporting producers exempted from the exemption of the measures to prevent recurrence of circumvention.

TABLE OF CONTENTS

1.	INTRODUCTION	2
2.	APPLICANT	3
3.	OTHER INTERESTED PARTIES	4
4.	PRODUCT CONCERNED AND LIKE PRODUCT	4
4.1	Description of the stainless steel cold-rolled flat products.....	4
4.1.1	Metallurgical characteristics	4
4.1.2	Production process	5
4.2	Product concerned of the original investigation.....	6
5.	THE EU CVD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES	7
5.1	There is a change in the pattern of trade.....	7
5.1.1	Indonesian stainless steel is processed in third countries and exported to the EU	7
5.1.2	Volume of indirect imports in the EU	9
5.1.3	Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia	10
5.2	Change in the pattern of trade via specific third countries	12
5.2.1	Indirect imports via Taiwan	12
5.2.2	Indirect imports via Turkey.....	15
5.2.3	Indirect imports via Vietnam	18
5.3	The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty	21
5.3.1	Practice, process or work	21
5.3.2	Assembly operation	22
5.3.3	Insufficient due cause or economic justification other than the imposition of the duty.....	24
6.	CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES	27
6.1	Significant volume of imports undermining the remedial effect of the measures	27
6.2	Low prices undermining the remedial effect of the measures	29
7.	SUBSIDISATION IN RELATION WITH THE LIKE PRODUCT FROM THIRD COUNTRIES	31
8.	IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT	33
9.	CONCLUSION	34

TABLE OF ANNEXES

Annex 1 - Representation letters	3
Annex 2 - Other interested parties.....	4
Annex 3 - Methodology for the assessment of indirect imports.....	10
Annex 4 - Volume of indirect imports.....	11
Annex 5 - Exporting producers in third countries and capacities	12
Annex 6 - Assessment of the 60% threshold in production of SSCR.....	23
Annex 7 - Assembly operation test.....	24
Annex 8 - Effect on the EU market: volumes and market share	27
Annex 9 - Variation of cost of production, raw materials and inputs	30
Annex 10 - Effect on the EU market: undercutting	30
Annex 11 - Illustration of low priced imports from third countries	31
Annex 12 - Findings of the Brazilian authorities	32
Annex 13 - Ni ore subsidy calculation	32

FOR INSPECTION BY INTERESTED PARTIES

Please note that this is a consolidated version of the original anti-circumvention review request submitted on 30/06/2023 and additional information provided by the applicant afterwards.

To the Commission of the European Union

APPLICATION

Under Article 23 of Regulation (EU) No 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not being Member States of the European Union

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE G				
Date	30/6/2023	N°	57042006	
Attribution :		SK		
Copie	CNR			

To the Commission of the European Union

APPLICATION

Under Article 23 of Regulation (EU) No 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not being Member States of the European Union

Submitted by

EUROFER

Avenue de Cortenbergh, 172
B-1000 Brussels
Belgium

Application for the initiation of an anti-circumvention investigation concerning imports of cold-rolled stainless steel sheets and coils from Taiwan, Turkey and Vietnam

OPEN VERSION

30 June 2023

TRADE GR				
Date	30/6/23	N°	1915740	
Attribution :				
SK				
Copie	CAS			

1. INTRODUCTION

- (1) On 15 March 2022, the European Commission (the 'Commission') imposed a definitive countervailing duty on stainless steel cold-rolled flat products ('SSCR') from Indonesia and India.¹ The Commission imposed a countervailing duty of between 13,5% and 21,4% on the Indonesian exporters receiving subsidies. In the original investigation, the Commission found that these duties were necessary to offset the subsidies received by the Indonesian exporters.
- (2) However, as early as a year after the original measures, these countervailing duties are being massively and clearly circumvented. Duties on SSCR from Indonesia are evaded through a limited processing operation of Indonesian stainless steel products in third countries, before exporting it to the Union market. The scale of the circumvention via these indirect imports from Indonesia is substantial. The Applicant has, at this stage, identified such flow of imports via no less than three different countries: Taiwan, Turkey and Vietnam. Imports from these countries exhibit all the characteristics of a circumvention.
- (3) The circumvention patterns via the identified third countries clearly show the intention to avoid the duties imposed by the EU on Indonesian SSCR. These increased flows rely on a less efficient organisation of the production process by splitting it among various countries, with limited processing and added value outside of Indonesia. The timeline is unambiguous: the change in the pattern of trade coincided with the Commission's investigation and its imposition of countervailing duties on Indonesian imports.
- (4) The emergence of circumvention patterns is not fully unexpected. In the original investigation, the Complainant cautioned against circumvention of the measures, and stressed that the Indonesian exporters are large corporate groups which rely on intra-group transactions, with presence in several third countries.² In response, the Commission explicitly set out its intention to be vigilant for circumvention of these measures.³ Nonetheless, and unfortunately, this circumvention of EU measures has so far been successful.
- (5) In addition to the change in the pattern of trade, and although prices and costs of SSCR have increased since the original investigation, the prices of SSCR from the countries concerned are very low, undercutting Union prices. Combined with significant volumes, these imports undermine the remedial effect of the AS measures while still benefiting from the massive subsidisation found by the Commission.
- (6) In summary, exporting producers in the targeted countries engage in circumvention within the meaning of Article 23 of EU Regulation 2016/1037 ('the basic AS Regulation'). This Application demonstrates that there is a change in the pattern of trade stemming from a practice not justified

¹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

² Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, recitals 1074-1076.

³ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, 1074-1076.

by any reason other than the imposition of the duties, that this change undermines the remedial effects of the duties and that parts of the imported like product still benefit from the subsidies. In such situations, Article 23 of the basic AS Regulation allows the Commission to extend countervailing duties imposed on imports from a country to imports from a third countries of the like product, "*whether slightly modified or not*".

- (7) On behalf of the SSCR Union Industry, Eurofer therefore urges the Commission to ensure that the countervailing duties, set to protect the Union industry against injurious unfair imports of SSCR, are enforced. The continuation of the flows of subsidised SSCR, despite the findings and measures of the Commission, is a clear challenge to the ability of the EU to provide effective protection against unfair trade. In Eurofer's view, it is of the utmost importance for the integrity of the Union Trade Defence system to put an end to such practices swiftly and decisively. It therefore respectfully asks the Commission to urgently initiate an anti-circumvention investigation with a view to extend the countervailing duties on imports of SSCR from Indonesia to the targeted countries and to register imports of SSCR from these countries.

2. APPLICANT

- (8) This Application is submitted by Eurofer, the European Steel Association, on behalf of its members active in the production of SSCR.

Eurofer - the European Steel Association
Address: Avenue de Cortenbergh 172, 1000 Brussels
Tel: +32 2 738 79 20
Fax: +32 2 738 79 55
Contact Person: Matteo Rigamonti
Email: M.Rigamonti@eurofer.be

- (9) Eurofer is the European Steel association, representing more than 95% of steel production in the European Union. Eurofer members are steel companies and national steel federations throughout the EU.
- (10) The companies active in the production of SSCR on behalf of which Eurofer files submit this Application are:
- Acerinox Europa SAU
 - Aperam Stainless Europe
 - Outokumpu Oyj
 - Acciai Speciali Terni SpA
- (11) These four companies account for the large majority of the EU production of SSCR.⁴ They acted as Complainant in the original anti-subsidy investigation that led to the imposition of duties and actively cooperated to the investigation, including as part of the sample of Union producers. The Applicant is therefore undoubtedly an "interested party" within the meaning of Article 23 of the basic AS Regulation.

Annex 1 - Representation letters

⁴ Between 85 and 95% for the original investigation

3. OTHER INTERESTED PARTIES

- (12) For the purpose of the investigation, the Applicant provides information on the identity of the exporting producers in the targeted countries as well as on their suppliers. It also provides information on the other EU producers.
- (13) The Applicant also notes that imports of SSCR in the EU are mostly made by stockists, distributors and service centres, but also by some re-rollers and tube manufacturers. They may also be done through companies related to the exporting producers. SSCR products are used in a wide-array of products and applications, and as a significant share of users source their products through distributors, stockists or unrelated service centres. The Applicant provides a list of the main identified importers and users of SSCR in the EU.

Annex 2 - Other interested parties

4. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) As the circumvention pattern identified occurs through a re-organisation of the production process of the product concerned, the Applicant considers it useful to revert briefly to the characteristics of the product concerned and the like product, as well as to its production process. The developments below are in line with the findings of the Commission over the course of the original investigation.

4.1 Description of the stainless steel cold-rolled flat products

4.1.1 Metallurgical characteristics

- (15) Stainless steel is a steel alloy with a minimum content of 10.5% chromium and a maximum content of 1.2% carbon, a metallurgical characteristic shared by all stainless steel families. The addition of chromium provides stainless steel with its stainless properties. When exposed to oxygen, the chromium forms a passivation layer of chromium oxide, which is capable of reforming quickly when the surface is scratched. The layer is too thin to be visible, but protects the metal beneath by making it impermeable to water and air. As a result, stainless steel requires no added surface protection against corrosion.
- (16) There are a large number of stainless steel types with widely varying chemical compositions. Stainless steels have traditionally been divided into categories depending on their microstructure at room temperature. This gives a division into four main groups of grades families (i) austenitic, (ii) ferritic, (iii) martensitic and (iv) duplex. All four have different levels of corrosion resistance and strength. The differences result from the controlled addition of alloying elements, notably chromium and nickel.
- (17) As found in the original investigation, Indonesian SSCR production principally focuses on austenitic grades, grades containing nickel, as Indonesian exporting producers have access to significant local nickel ore reserves for their production. Nickel-based austenitic grades account for the largest part of the production of stainless steel worldwide, with about 75% of the total production. As an alloying element, nickel enhances important properties of stainless steel such as formability, weldability and ductility, while increasing corrosion resistance in certain applications. Austenitic stainless steel grades are used in a large number of industrial applications such as pumps, piping and heat exchangers, as well as in construction applications.

4.1.2 Production process

Melting stage

- (18) The first stage of the production process of SSCR consists in melting the raw materials containing the necessary alloying elements. The melt is then casted into stainless steel slab, a solid thick rectangular-shaped semi-product.
- (19) The raw materials used at the melting stage may be recycled materials with the appropriate chemical composition, ferro-alloys of various grades (share of the alloying element) and, more exceptionally, pure chemical elements. Chromium is usually available as ferrochromium or through stainless steel scraps, while nickel is typically available in scraps and ferronickel. Iron is essentially provided through scraps, or ferro-alloys. As pure nickel and high grade ferronickel are costly compounds subject to significant fluctuations in price, a relatively new type of low-grade ferro-nickel, produced through smelting of low nickel content laterite ore,⁵ a highly polluting process, has been increasingly used in Eastern Asia especially: the nickel pig iron (NPI).⁶
- (20) In the EU, along with the US and Japan, stainless steel producers primarily rely on recycled stainless steel scrap as the main raw material for the production of stainless steel, complemented by high-grade ferro-alloys. These inputs, containing all the chemicals necessary to achieve the desired grades, are melted together in an electric arc furnace (EAF). To remove excess carbon, the molten material is further processed in an argon oxygen decarburisation converter (AOD) and secondary treatments are carried out as necessary. The liquid steel is then processed through a continuous casting process in which the molten metal is poured directly into a mould to produce the required shapes. After leaving the mould, the strand's shell is further cooled until it has completely solidified. The strand is cut into lengths to obtain compact rectangular blocks of crude steel, the stainless steel slabs.
- (21) In more recent stainless steel producing countries, essentially China and Indonesia, and as found by the Commission over the course of the original investigation, instead of scraps, stainless steel producers essentially rely on low-grade ferro-alloys, the above mentioned NPI. In that process NPI is obtained after a first reduction of nickel ore in a rotary kiln with a mixture of thermal coal and lime, before a final reduction and complete melting inside an electrical smelter with the further addition of coal. In parallel, liquid ferrochromium is produced within a specific furnace dedicated to melting solid ferrochromium or liquid ferrochromium coming directly from a smelter process. NPI and ferrochromium are then poured into an AOD (argon oxygen decarburization) or VOD (vacuum oxygen decarburization). The liquid metal obtained is then finally transferred to the continuous casting machine for transformation into stainless steel slabs.

Hot-rolling stage

- (22) In a second step, the stainless steel slab is reheated and transformed into SSHR coils through mechanical hot-rolling.
- (23) At the hot-rolling production stage, the slabs are preheated to a high temperature and then reduced to a predetermined thickness in the roller gap of a hot-rolling mill, by pressure applied

⁵ Nickel laterite ore is common mostly in tropical environments such as Australia, New Caledonia, Indonesia and the Philippines

⁶ NPI usually has a content of about 10-15% nickel, 1% chromium, 83% iron and 3% carbon

between one or several sets of two rollers. The resulting product is known as "hot-rolled black band" ("black SSHR"), a product covered by a layer of scale, giving it its black colour.

- (24) For the purpose of production of SSCR, black SSHR subsequently undergoes hot annealing and pickling to become "hot-rolled white band" or "HRAP" ("white SSHR"). Annealing consists in heating cold steel to make it more suitable for bending and shaping, as well as to prevent breaking and cracking. Pickling is the process through which stainless steel is cleaned using chemical baths of diluted acid to remove impurities such as rust, dirt, scale and oil from the surface, without changing the underlying properties of the metal. The removal of the scales results in the typical white colour of white SSHR.
- (25) Depending on the industrial process of the producer, this process of annealing and pickling may constitute the last phase of the hot-rolling stage, or the first stage of the cold-rolling process. For re-rollers, the level of integration will define the type of inputs to be used for production of SSCR: black coils if they can undertake annealing and pickling of SSHR, white bands if they don't.

Cold-rolling stage

- (26) In a third step, the white SSHR coil is transformed into SSCR through further mechanical rolling at room temperature.
- (27) The white SSHR is rolled to the required thickness on reversing cluster mills or tandem mills for a number of times until the desired dimensions are achieved, or until hardening necessitates further annealing. In order to obtain the desired thickness, in particular for the lower thickness materials, the same coil may be subjected to several stages of rolling. This process of cold reduction generates heat, part of which is transferred to the rolling oil that is sprayed onto the steel and rolls for cooling as well as lubrication and is subsequently dissipated through heat exchangers to cooling water systems.
- (28) After cold-rolling, or between two cold-rolling phases, the SSCR then undergoes a second annealing, a re-heating of the product above 650°C on continuous lines or in batch furnaces, to restore the physical and mechanical properties of the steel, notably the formability of the steel. For bright finishes ("bright annealed"), annealing is undertaken on dedicated machineries in controlled oxygen-free environments.
- (29) SSCR is then tempered, a minimal reduction in gauge (up to 2 %) to improve the flatness of the product, increase the product yield strength and obtain the desired surface finish. After that process, additional surface treatments, such as polishing or brushing may be undertaken in order to render the product suitable for particular uses.
- (30) Following control, defective coil parts are eliminated or, if necessary, the material is subjected to additional treatments for the removal of the defect. The product is then cut into the coil weights ordered by the customers, protective films or oils are applied and, finally, the product is packaged.

4.2 Product concerned of the original investigation

- (31) A definitive countervailing duty is imposed on imports of flat-rolled products of stainless steel, not further worked than cold-rolled (cold-reduced), currently falling under CN codes 7219 31 00, 7219 32 10, 7219 32 90, 7219 33 10, 7219 33 90, 7219 34 10, 7219 34 90, 7219 35 10, 7219 35 90,

7219 90 20, 7219 90 80, 7220 20 21, 7220 20 29, 7220 20 41, 7220 20 49, 7220 20 81, 7220 20 89, 7220 90 20 and 7220 90 80.⁷

- (32) It includes steel cold-rolled flat products that have undergone one or more of the surface treatments, are cut to a shape other than square or rectangular, or have undergone, after rolling, operations such as perforating, bevelling, edge-rounding, brushing or polishing.

5. THE EU CVD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES

5.1 There is a change in the pattern of trade

5.1.1 Indonesian stainless steel is processed in third countries and exported to the EU

- (33) Following a complaint lodged by the Union Industry, the Commission opened an anti-subsidy investigation into Indonesian SSCR on the 17 February 2021,⁸ leading to the imposition of definitive measures in March 2022.⁹ In parallel, based on another complaint of the Union Industry, the Commission opened an anti-dumping investigation into SSCR from both countries on the 30th of September 2020, and imposed definitive anti-dumping duties on 17 November 2022.¹⁰
- (34) As a result of the investigation, the expectation, and then the actual implementation of substantial duties, exports of SSCR from Indonesia have been reorganised under new and rapidly expanding new trade flow patterns. Direct flows of exports of SSCR by the main Indonesian exporter targeted in the original investigation have been replaced by indirect flows via third countries, in which SSCR inputs, slabs or SSHR, have been further processed into SSCR and exported to the EU.
- (35) While direct imports from Indonesia have significantly reduced as a result of the original measures, imports on the EU market of SSCR originally melted and poured in Indonesia but processed in a third country have increased to alarmingly high levels, at unfairly low prices resulting from the Indonesian subsidisation of its stainless steel complex. An obvious and massive import substitution has thus been taking place: direct Indonesian imports have been replaced by 'indirect Indonesian imports'. The Applicant has identified so far the existence of

⁷ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Article 1.

⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec.1.

⁹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

¹⁰ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia.

such a pattern in a number of countries, in particular Taiwan, Turkey and Vietnam. It is not excluded that indirect imports also occur through other third countries.

- (36) The circumventing trade pattern and the method of circumvention identified echo the findings of the Commission in its recent investigation into circumvention of the antidumping measures on Indonesian SSHR via Turkey.¹¹ After initiation of an investigation aiming to impose measures on Indonesia, the same pattern occurred: a combination between a flow of semi-products from Indonesia to a third country, a processing with very limited added value on site, and a re-export to the EU of the finished product under the non-preferential origin of that country, thus allowing avoidance of the duties.
- (37) In the case at hand, the pattern starts with stainless steel slabs first melted and poured in Indonesia, then hot-rolled in Indonesia and finally exported to one of the third countries where it is then cold-rolled domestically before being exported to the EU. As cold-rolling is sufficient to confer the non-preferential origin to SSCR, that SSCR, indirectly imported by way of any of the countries concerned, evades the duties that would apply to direct imports. In some occasions, the export to the third country takes place right after the slab phase, with the hot-rolling and cold rolling taking place in the third country. These imports into the EU of Indonesian stainless steel semi-products that are processed into SSCR in a third country before being exported to the EU are referred to in this Application as 'indirect imports'.
- (38) Incidentally, the Commission has already identified the occurrence and relevance of such trade patterns in the original anti-subsidy investigation. This concerned Chromeni, an Indian SSCR producer that is a joint-venture between Tsingshan and various Indian business groups.¹² The Commission found that "*Chromeni purchased however upstream products, namely hot rolled coils, from a related company in Indonesia, which may have benefited from the GOID provision of nickel ore for less than adequate remuneration (...)*".¹³ The Commission itself has thus already witnessed, on no less than two occasions, that part of the business model of Tsingshan consists of feeding stainless steel semi-products to exporting producers in third countries, who then export finished products to the EU. As found with respect to SSHR from Turkey, these practices increase significantly as soon as corrective trade measures against Indonesia are considered or implemented.
- (39) As such, the indirect imports are an inescapable consequence of the Indonesian massive export-oriented overcapacity: when direct access to the Union market at unfair prices is restricted, flows are redirected via indirect channels. As the second exporter of stainless steel worldwide, with a nearly negligible domestic consumption, Indonesia simply needs to maintain access to the Union market, the second worldwide, to maintain a rational use of its enormous production capacities. If measures correcting the unfair advantages prevent direct export flows, leveraging processing operations in third countries constitutes the second best option, as shown below.

¹¹ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or

¹² Chromeni, <https://www.chromenisteels.com/>.

¹³ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 301.

- (40) This new pattern of trade, expanding to unprecedented levels as a consequence of the EU investigations and measures against Indonesian unfair imports relies on a multitude of agreements between the main Indonesian exporting producer and producers (essentially re-rollers) in third countries. These have taken place either on a circumstantial basis or in application of longer term partnerships. Sometimes, but not systematically, they coincide with efforts of the third party to establish an industrial base in Indonesia through joint ventures with the Indonesian exporter, with the ultimate aim to manage the flow of Indonesian inputs internally. As such, the Indonesian exporter is able to rely on a wide network of exporting producers in third countries, which purchase its SSHR or slabs, process them and then export them to the EU.
- (41) Below, the Applicant provides a detailed assessment of the change in the pattern of trade via third countries and the capacities used in these countries to process Indonesian material. The exporting producers in the third countries nonetheless share a certain number of characteristics. First, they have significant capacities which are usually disproportionate compared to the size of domestic consumption - with Yongjin's Vietnam factory being a prime example (see below). Second, these capacities either are not backed by upstream capacities (in which case the producers are really only re-rollers) or have higher SSCR capacities than they do upstream. This means that the capacities are designed to rely on purchased inputs, essentially white or black SSHR. While this phenomenon is not exceptional among steelmakers, the sheer concentration of upstream capacities in close or even neighbouring third countries with little to no domestic outlet reveals that these aim to a large extent at circumventing trade measures targeting the Chinese- and Indonesian-owned industries.
- (42) Finally, and crucially, as already mentioned, a vast majority of the above producers maintain close relationships with Tsingshan Indonesia and sometimes with State-owned Chinese producers. Similar to Tsingshan, the latter have interests in Indonesia and are "*strictly follow[ing] the policy of the GoC*".¹⁴

5.1.2 Volume of indirect imports in the EU

- (43) The Applicant finds that a massive amount of EU imports of SSCR from the third countries are in fact indirect imports from Indonesia, which undergo only limited processing in the targeted countries before being re-exported to the Union. These flows of indirect imports constitute a significant share of the exports of SSCR from these countries to the EU. The Applicant has calculated the indirect imports to only include SSCR produced from stainless steel melted and poured in Indonesia, imported and processed into the third country and then sent to the Union market.
- (44) In order to identify the volumes, the Applicant has cross-referenced available information on the volume of imports of the upstream inputs - slabs and SSHR - from Indonesia and other sources in the third countries, the domestic melting capacity in the third countries and the exports of SSCR from the third countries to the EU. This methodology accounts for the fact that, as previously established by the Commission over the course of multiple investigation, Indonesian stainless steel, and consequently SSCR produced from Indonesian stainless steel is essentially nickel-based. It also account for the time necessary to process stainless in the third countries.

¹⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 628.

The Applicant has adapted the methodology to the specificities of the country in question, as is detailed below.

Annex 3 - Methodology for the assessment of indirect imports

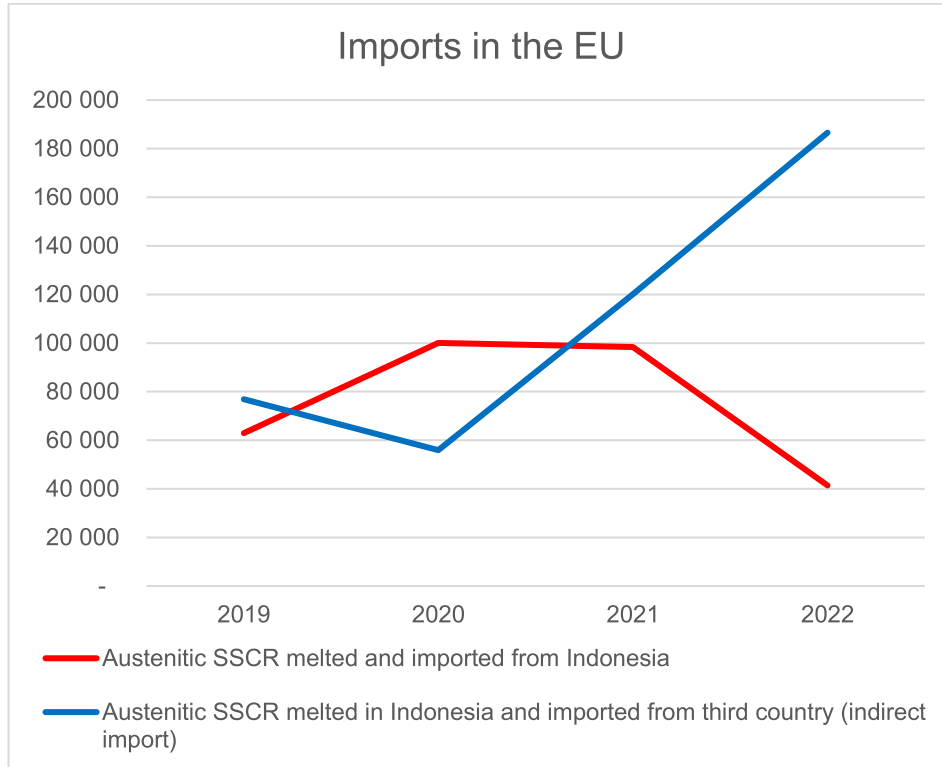
- (45) The calculations of the indirect imports is based on solid and consistent information from available public sources and the applicant's market intelligence. This approach adopted is deliberately conservative and might to a certain extent underestimate the actual volume of indirect imports. This is because the methodology does not assume that exporters in the third countries would specifically allocate their Indonesian inputs to exports to the EU, although such behaviour is manifestly the case for certain exporters. With a wider methodology, it could be argued that all the austenitic imports from the targeted third countries in 2022 could be indirect imports because imports of inputs from Indonesia exceed exports of austenitic SSCR to the EU, even accounting for yield.

5.1.3 Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia

- (46) The above methodology reveals the rapid substitution of prior sources of SSCR inputs (imports from other countries or produced domestically) by SSHR or slabs from Indonesia. In line with the growth of Indonesian inputs in these countries, visible as from 2021, a growing share of the imports from the countries identified consists in fact of processed Indonesian material. It is that processing of Indonesian material which drove the increase in exports to the EU. That substitution coincided with the initiation of the investigation and massively increased with the imposition of the EU measures.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in the targeted countries	761.512	836.642	1.276.119	1.205.724
Index	100	110	168	158
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

- (47) Comparing EU imports from Indonesia to indirect imports into the EU shows that the pattern of trade changed directly after the initiation of the investigation. Indirect imports from the third countries, which had initially declined between 2019 and 2020, started to pick up over the course of the investigations in 2021, ultimately skyrocketing after the imposition of the measures in 2022. This variation is opposed to the trends of Indonesian imports: after a massive increase in 2020, despite the Covid-crisis, imports from Indonesia plateaued in 2021 as a result of the investigation, before decreasing massively in 2022 as a result of the entry into force of the measures.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

Annex 4 - Volume of indirect imports

- (48) It is therefore obvious that the indirect SSCR imports substituted and then exceeded the SSCR imports from Indonesia. This change in the pattern of trade coincided precisely with the initiation of the investigation and the imposition of the measures on imports of SSCR from Indonesia. This coincidence in time is not accidental: the slabs and SSHR that were originally used in Indonesia to produce SSCR for export to the EU were increasingly used in the third countries to produce SSCR for export to the EU - when it became apparent that measures would be imposed on imports from Indonesia.
- (49) This change in the pattern of trade and the substitution of imports of Indonesian SSCR is visible at the level of the indirect imports as a whole. It is also manifestly apparent at the level of the individual countries through which the indirect imports reach the EU. This confirms the widespread nature of the circumvention. It also confirms that the rise in indirect imports to the EU is not a coincidence. Rather, this increase follows the activation of alternative channels to supply the EU market with Indonesian melted and poured material (which benefited from Indonesian subsidies but avoids the countervailing duties).

5.2 Change in the pattern of trade via specific third countries

- (50) The above confirms that the change in the pattern of trade is manifestly clear from the point of view of the total indirect imports into the EU. However, a country-specific focus also confirms that, for each of the sources identified, there is a change in the pattern of trade. This focus also allows highlighting actors in these countries that are actively participating to the change in the pattern of trade, as well as the nature of their relationship with the Indonesian exporting producer.

Annex 5 - Exporting producers in third countries and capacities

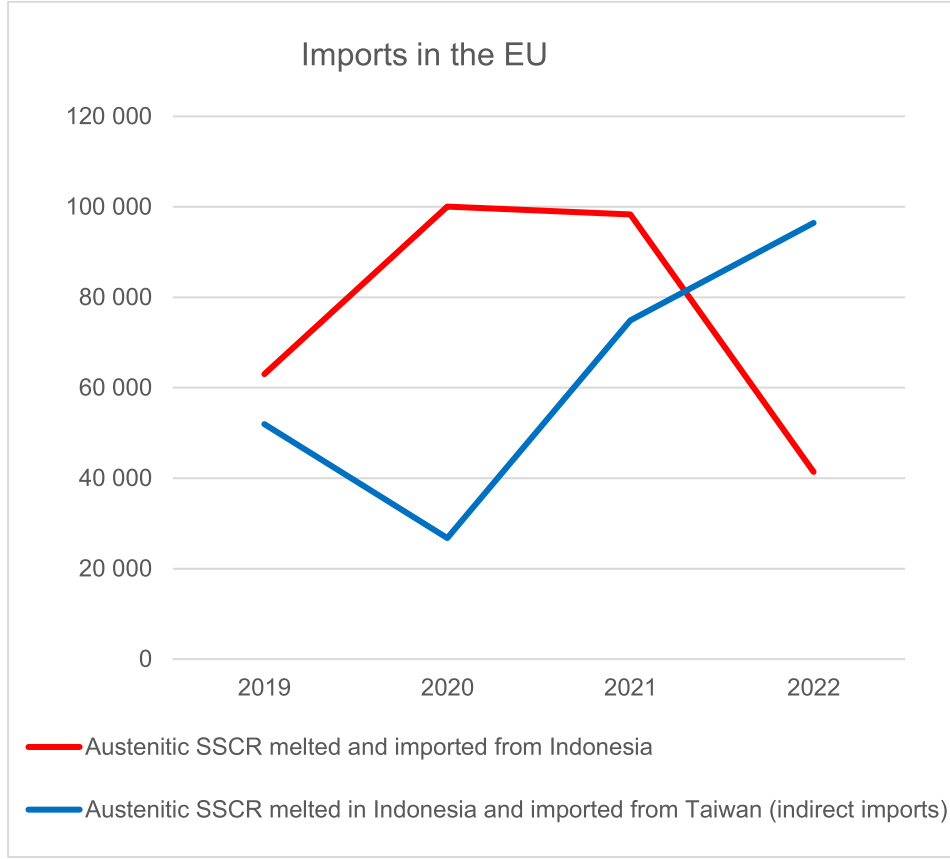
- (51) The analysis below solely focuses on the exporting producers actively participating to the circumvention of the EU measures. However, the Applicant is aware that these flows may be complemented by consignment of SSCR produced in Indonesia via third countries before re-export to the EU under a fraudulent origin.

5.2.1 Indirect imports via Taiwan

- (52) Taiwan holds significant production capacities for SSCR and has historically been an exporter of the product concerned to the EU. However, and at an increasing speed, the country has more and more shifted from integrated production to the processing of inputs from third countries. This is in particular true with regard to austenitic stainless steel, where Indonesian supply of slabs and SSHR progressively substituted domestically melted stainless steel inputs.
- (53) The existence of these domestic melting capacities, and the share of these capacities dedicated to the production of austenitic crude steel, have been duly taken into account by the Applicant. Domestic production was accounted for, together with the imports of inputs from Indonesia and other sources. As such, the Applicant assessed the share of Indonesian material in the Taiwanese production and therefore the indirect imports to the EU.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Taiwan	548.647	631.372	960.353	747.941
Index	100	115	175	136
Imports of SSCR from Taiwan in the EU	185.614	125.070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (54) The increase in imports of inputs from Indonesian in Taiwan is particularly important in 2021 and 2022. In these years, the use of inputs from other sources, notably from domestic melting, significantly declined, showing a clear substitution. This substitution is equally apparent in the massive increase as from 2021 of the indirect imports to the EU.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Taiwan in the EU	185.614	125070	218.792	251.418
Index	100	67	118	135
of which indirect imports	51.927	26.764	74.884	96.454
Index	100	52	144	186

- (55) Taiwan is one of the main channels for indirect imports to the EU that circumvent the measures on imports from Indonesia. That imports of SSCR from Taiwan increased so dramatically in 2021 and 2022 can only be fully explained by the opening of the investigation and then the imposition of duties on Indonesian SSCR. 2021 and 2022 show a clear reversal of 2019 and 2020 trends. Since the beginning of the investigation, indirect imports of Indonesian SSCR via Taiwan have dramatically increased, going up by 86% between 2019 and 2022 and 134 percentage points between 2020 and 2022. This increase coincided with the plateauing and then the strong reduction in volumes imported from Indonesia. It shows that Indonesian stainless slabs and SSHR are melted in Indonesia, further processed in Taiwan and then exported to the Union as SSCR, avoiding the duties.
- (56) Even accounting for domestic production, the share of Indonesian austenitic slabs and SSHR processed in Taiwan is very high and is equally reflected in the significant volume of indirect

imports to the EU.¹⁵ While exporting producers in Taiwan may rely on Indonesian material for their exports to the EU to varying degrees, this section shows that the vast majority of them likely do.

- (57) One of the main entry points for Indonesian stainless steel inputs in Taiwan is re-roller Walsin Lihwa, which has established a partnership with Tsingshan Indonesia for the supply of stainless steel to Taiwan.
- This partnership extends beyond a mere commercial agreement but reflects a long term strategy of reliance on Indonesian subsidised inputs. Together, Walsin and Tsingshan run a Nickel Pig Iron (NPI) joint venture in Indonesia.¹⁶ Walsin Lihwa also recently acquired a 29,5% share in Indonesian PT Westrong Metal Industry,¹⁷ also linked to Tsingshan.¹⁸ Following the investment, Walsin's production capacity of nickel, in accordance to its equity ownership in various production facilities, will increase to 84.000 tons per year. 55.000 of this stems from PT Westrong Metal Industry.¹⁹
 - In Taiwan, Walsin Lihwa, directly or through subsidiaries, has cold-rolling capacities [of between 350 000 and 500 000 tonnes. The Applicant has added confidential information on production capacity]. With upstream hot-rolling capacities much more limited, this mean that the company exclusively relies on SSHR inputs and on its partnership with Tsingshan to fill this capacity.
- (58) Main Taiwanese stainless steel manufacturer YUSCO (Yieh United Steel) is also increasingly reliant on Indonesian inputs for its exports of stainless steel (in particular of SSCR to the EU). This reliance also includes purchasing from Tsingshan.
- YUSCO has cold-rolling capacities of [between 600 000 and 800 000 tonnes. The Applicant has added confidential information on feedstock]. For the time being, the latter is purchased from Indonesian actors, which include Tsingshan. Thanks to its hot-rolling capacities, YUSCO can purchase its Indonesian semi-products as slabs, black SSHR or white SSHR to optimise its load and logistics.
 - This reliance on Indonesian austenitic inputs is highlighted by YUSCO's strategic decision to move its melting capacities to Indonesia, and correspondingly reduce use of its Taiwanese melting capacities.²⁰ In 2022, the company announced that it acquired two nickel ore mines in Indonesia and that it invested in Indonesian plants "*to produce stainless steel slabs and hot-rolled stainless steel (...)*".²¹ A month later, YUSCO also announced that its subsidiary

¹⁵ See annex 60% threshold assessment (Taiwan)

¹⁶ SMM, Indonesia's NPI out went up in June amid expanded production of Tsingshan, 15 July 2021, [Indonesia's NPI out went up in June amid expanded production of Tsingshan](https://www.smm.com.cn/news/indonesia-npi-out-went-up-in-june-amid-expanded-production-of-tsingshan) SMM | Shanghai Non ferrous Metals. .

¹⁷ Marketscreener, Walsin Lihwa : Announcement for the Company's BOD resolved to acquire 29.5% equity of PT. Westrong Metal Industry, 8 May 2022, <https://www.marketscreener.com/quote/stock/WALSIN-LIHW-CORPORATION-6492359/news/Walsin-Lihwa-Announcement-for-the-Company-s-BOD-resolved-to-acquire-29-5-equity-of-PT-Westrong-M-41211556/>; Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

¹⁸ Investasi kontan, Analysts Recommend Buying Harum Energy (HRUM) Shares, Here's the Review, 12 May 2022, <https://investasi.kontan.co.id/news/analisis-rekomendasikan-beli-saham-harum-energy-hrum-begini-ulasannya>.

¹⁹ Walsin, 9 August 2022, <https://www.walsin.com/en/2022/08/>.

²⁰ Wood Mackenzie, Tsingshan Indonesia shakes up stainless steel markets in South East Asia, 15 July 2019, <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>.

²¹ Yieh Corp, Taiwan's Yusco to expand its investment in Indonesia, 23 August 2022, <https://www.yieh.com/en/NewsItem/136009>.

Hongyu Asset Management increased its investment in ferronickel Indonesian subsidiary PT E United Ferro Indonesia by 12,4 million USD.²²

(59) Available information also shows that Tsingshan is selling to other re-rollers like Tung Mung and Yuan Long.²³

- For its part, Tung Mung has [capacities between 150 000 and 250 000 tonnes].
- Yuan Long has [between 100 000 and 170 000] tonnes of cold-rolling line. It is thus apparent that Taiwanese actors engaging in the production of SSCR maintain links with Tsingshan Indonesia and rely to a varying extent on Indonesian supply of stainless steel for their production and their exports to the EU. These exporting producers, with direct links to the use of inputs from Indonesia, account for [business confidential information not susceptible to public summary] of the cold-rolling capacity in Taiwan.

(60) It is however likely that other actors with SSCR capacity also process Indonesian inputs, purchased directly from Tsingshan or via Walsin, and therefore contribute to a various extent to indirect imports to the EU. The companies are the following:

- Chia Far, with its [50 000 to 100 000] tonnes of cold-rolling capacities
- Chien Shing with its [70 000 to 130 000] tonnes of cold-rolling capacities
- Tang Eng with its [200 000 to 275 000] tonnes of cold-rolling capacities

5.2.2 Indirect imports via Turkey

(61) SSCR production in Turkey exclusively stems from re-rollers, as the country currently has no dedicated operational melting and hot rolling capacities for stainless steel. This means that all the SSCR produced in Turkey is produced from SSHR imported from third countries, notably from Indonesia. Combined with the limited number of domestic producers, this makes it relatively easy to identify indirect imports to the EU.

(62) The Commission has recently found that Turkish re-rollers are circumventing EU TDI measures on Indonesian stainless steel by importing Indonesian stainless steel slabs, hot-rolling them in Turkey, and exporting the resulting SSHR to the EU.²⁴ In that circumvention case, the Commission convincingly found that *"the assembly/completion operations in Türkiye started in significant volumes only after the initiation of the original investigation against Indonesia. The agreement (...) focused specifically on basing that supply on stainless steel slabs from Indonesia – the country under measures. Moreover, the Indonesian producer of stainless steel slabs was also the supplier of SSHR. Normally, one does not move one step up the value chain of its vertically integrated supplier for reasons of security of supply. Unless, of course, the threat that is being addressed are potential measures affecting the lower step in that value chain – in this*

²² Yieh Corp, Yieh Phui increases investment in Indonesia subsidiary, 22 September 2022, <https://www.yieh.com/en/NewsItem/136614>.

²³ Please see Annex - Exporting producers in third countries and capacities.

²⁴ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

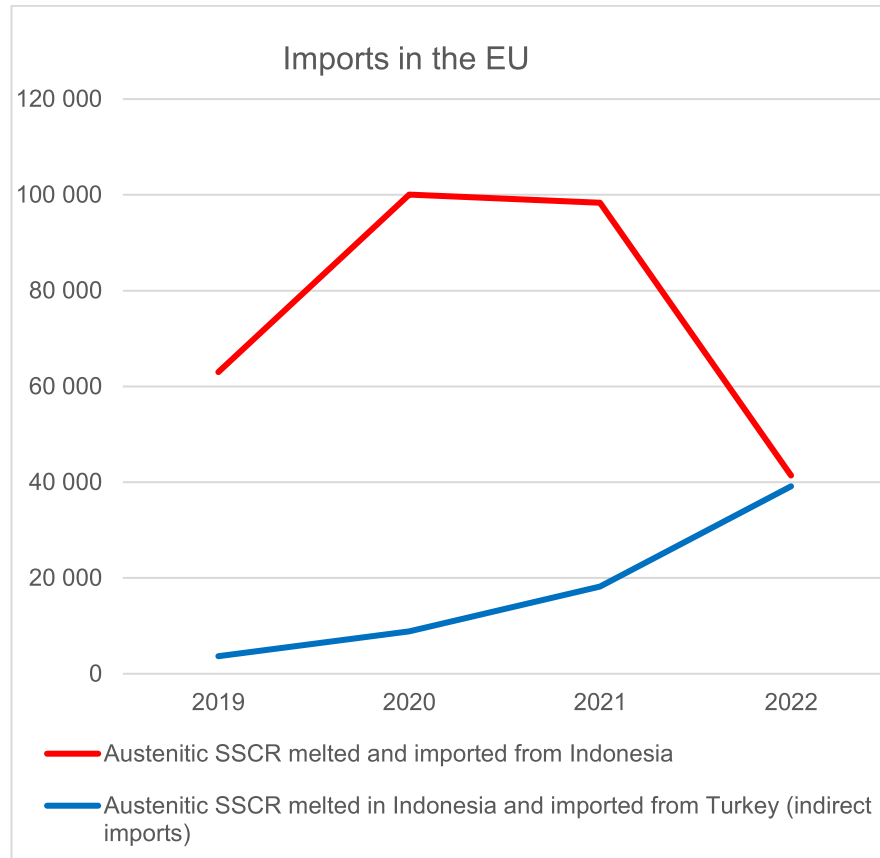
*case the anti-dumping duty on imports of SSHR from Indonesia (...) the Commission concluded that the anti-dumping duty imposed on imports of SSHR originating in Indonesia was circumvented by imports of the product under investigation consigned from Türkiye by Çolakoğlu."*²⁵

- (63) Because of the above, and because the Commission convincingly established that slabs imported into Turkey are exported to the EU as SSHR, the Applicant has not included Indonesian stainless steel slabs in its assessment of the indirect imports via Turkey. It therefore only accounted for the imports of SSHR from Indonesia and other sources.

In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Turkey	15.500	26.402	73.367	100.795
Index	100	170	473	650
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
Of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (64) Imports into Turkey of Indonesian-sourced inputs have exploded by more than 500% since 2019, from about 15.500 to above 100.000 tonnes. The main increase occurred as from 2021 onwards. As inputs from other sources have remained more or less the same, all increase has come exclusively from Indonesia. This increasing trend corresponds to the increase of indirect imports via Turkey into the Union, the main driver behind the significant increase in imports from Turkey.

²⁵ Ibid., rec. 68,108.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Turkey in the EU	87.967	73.833	105.600	125.057
Index	100	84	120	142
of which indirect imports	3.667	8.842	18.199	39.142
Index	100	241	496	1067

- (65) Indirect imports from Turkey have increased exponentially since the opening of the investigation and the imposition of measures on Indonesian SSCR. This is largely due to the re-routing of Indonesian inputs through Turkey, located at the EU's doorstep. The speed at which indirect imports increased in 2021 and 2022 contrasts with the stability and then decline of the imports from Indonesia to the EU, highlighting the emergence of an alternative channel of imports. The rapid increase in imports from Turkey owes much to the fact that, as evidenced in the SSHR investigation, Turkey is a convenient base for Tsingshan to access the Union market.
- (66) There are two producers of SSCR in Turkey which, according to available information, rely to varying degrees on SSHR from Indonesia to supply the EU market on the back of supply agreement with Tsingshan.

- South-Korean owned POSCO Assan TST [has cold-rolling capacities of 275 000 to 425 000 tonnes. The Applicant has also added confidential information on Posco feedstock.]²⁶
- In addition, Turkey is also home to the re-roller Trinox, which [has cold-rolling capacities of minimum 75 000 tonnes. The Applicant has also added confidential information on Trinox feedstock.]²⁷

5.2.3 Indirect imports via Vietnam

- (67) SSCR production in Vietnam exclusively stems from re-rollers, as the country currently has no stainless steel melting and hot rolling capacities. This means that all the SSCR produced in Vietnam is produced from SSHR imported from third countries, and notably from Indonesia. This makes it relatively easy to identify indirect imports to the EU.
- (68) Vietnam has previously been used as a circumvention hub by Chinese-owned companies. On 29 March 2023, the US Department of Commerce determined that duties on cold-rolled stainless steel from China were circumvented by processing them in Vietnam.²⁸

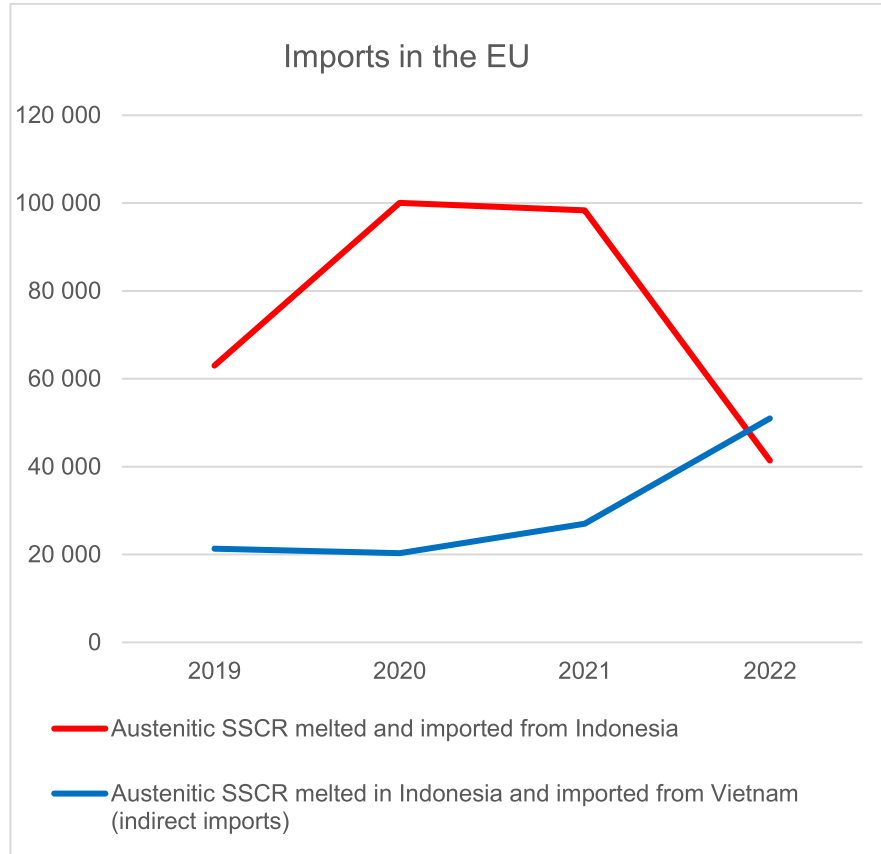
In tonnes	2019	2020	2021	2022
Inputs from Indonesia imported in Vietnam	197.366	178.868	242.399	356.987
Index	100	91	123	181
Imports in the EU of SSCR from Vietnam	36.855	35.338	51.559	86.720
Index	100	96	140	235
Of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (69) The imports of Indonesian inputs into Vietnam have similarly increased by 81% since 2019, progressively marginalising imports from other sources, as from 2021 in particular. The massive increase in imports in 2022 confirms the reliance on imports from Indonesia for exports to third countries. The 2022 volume corresponds to an increase of indirect imports of Indonesian SSCR into the Union via Vietnam of 139%, or from 21.305 to 50.983 tonnes.

²⁶ Please see Annex - Exporting producers in third countries and capacities.

²⁷ Please see Annex - Exporting producers in third countries and capacities.

²⁸ International Trade Administration, Stainless Steel Sheet and Strip From the People's Republic of China: Final Scope Ruling and Final Affirmative Determination of Circumvention for Exports From the Socialist Republic of Vietnam, 29 March 2023, <https://www.federalregister.gov/documents/2023/03/29/2023-06500/stainless-steel-sheet-and-strip-from-the-peoples-republic-of-china-final-scope-ruling-and-final>.



In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379
Index	100	146	148	71
of which austenitic imports	62.974	100.055	98.329	41.400
Index	100	159	156	66
Imports of SSCR from Vietnam in the EU	36.855	35.338	51.559	86.720
Index	100	96	140	235
of which indirect imports	21.305	20.310	26.976	50.983
Index	100	95	127	239

- (70) Vietnam is an important exporter of SSCR to the Union, most of which concerns indirect imports from Indonesia. The country has no melting capacity and all SSCR exported to the Union is thus by definition melted in a third country. While the volume of indirect imports was stable and limited between 2019 and 2020, it increased as from 2021 and skyrocketed in 2022. This increase largely coincide with the EU investigation and measures, and the subsequent decline in imports from Indonesia. The increase in imports between 2020 and 2021 and, more significantly between 2021 and 2022 therefore marks a change in the pattern of trade.
- (71) The exporting producers of SSCR in Vietnam maintain close links with Tsingshan. As evidenced by the US investigation, capacities in Vietnam are routinely used (and possibly dedicated) to circumvent trade measures, including on Indonesian SSCR. Despite marginal domestic consumption, Vietnam is home to no less than three re-rollers, mostly focusing on exports.
- (72) The main exporting producer in Vietnam is Chinese producer Yongjin. A close associate of Tsingshan, Yongjin is one of its primary partners in China for cold-rolling Indonesian products,

notably in the province of Fujian. Yongjin and Tsingshan maintain extensive supply agreements and participate together in a joint venture which supplies Yongjin's Guangdong (China) 680.000 tonne steel factory.²⁹

- The Company has started construction, in 2020, of a new factory in Long Giang Industrial park in Tien Glang, Vietnam. The capacity of the plant amount to 250.000 tonnes of SSCR fed exclusively from imported SSHR. The plant started operation in 2022³⁰ and its purpose is to "increase production further and develop overseas market".³¹
- In 2022, the same Yongjin announced another Vietnam factory for stainless steel, this time in Tan Viet.³² The project concerns a 125 million USD investment on an area of about 12,6 hectares. In total, the projected SSCR output is 260.000 tonnes each year.

(73) It is unlikely that these project primarily aim to serve the domestic market. Already in 2019, local steel producers protested the establishment of the Tien Giang factory because Vietnam already had stainless overcapacities: *"The total designed capacity of the domestic cold-rolled steel industry reached more than 700,000 tonnes, so local producers now can only run at about half of their designed capacity, according to the petition. The local demand for stainless steel will continue to be met with an oversupply of 229,000 tonnes up until 2021, according to global market analysis by CRU Group calculated on the assumption of 8.4 per cent positive average growth per year."*³³ The SSCR produced by Yongjin, soon up to 510.000 tonnes per year, is thus likely produced from Indonesian SSHR and meant for export.

(74) Two other SSCR producers also operate in Vietnam.

- South Korean owned POSCO VST has a cold-rolling line with a capacity of [between 200 000 and 400 000 tonnes. The Applicant also included confidential information on Posco feedstock].³⁴
- Vietnamese producer Inox Hoa Binh has a cold-rolling line with a capacity of [between 150 000 and 220 000 tonnes. The Applicant also included confidential information on Inox feedstock].³⁵

²⁹ Please see Annex - Exporting producers in third countries and capacities.

³⁰ Kallanish, Yongjin Vietnam sees first coil production, 22 March 2022, <https://www.kallanish.com/en/news/steel/market-reports/article-details/yongjin-vietnam-sees-first-coil-production-0322/>.

³¹ Asian Metal, Yongjin starts construction of precision stainless steel plate and strip project in Vietnam, 28 October 2020, <https://www.asianmetal.com/news/1591383/Yongjin-starts-construction-of-precision-stainless-steel-plate-and-strip-project-in-Vietnam>.

³² Nghe An Portal, Granting the Investment Registration Certificate for Tan Viet Metal Science and Technology Plant project, 9 November 2022, <https://nghean.gov.vn/new-events/granting-the-investment-registration-certificate-for-tan-viet-metal-science-and-technology-plant-539706>.

³³ Vietnam Investment Review, New steel projects bewilder producers, 14 June 2019, <https://vir.com.vn/new-steel-projects-bewilder-producers-68495.html>.

³⁴ Please see Annex - Exporting producers in third countries and capacities.

³⁵ Please see Annex - Exporting producers in third countries and capacities

5.3 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty

5.3.1 Practice, process or work

5.3.1.1 The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty.

(75) As set out above, the change in the pattern of trade consists of substituting a significant share of imports of Indonesian SSCR by imports of SSCR produced from Indonesian stainless steel slabs and SSHR in the targeted countries. These indirect imports result from the re-organisation of trade flows between Indonesia, their original source and their final destination - the European Union. This pattern involves the Indonesian exporting producer targeted by the original investigation.

(76) This segmentation of the production process combined with the reorganisation of the trade flow between Indonesia and the EU, constitutes a 'practice, process or work' through which the EU measures are circumvented, within the meaning of Article 23 of the basic AS Regulation. The practice of slightly modifying Indonesian stainless steel inputs into the product concerned also constitutes an assembly or completion operation, as set out in recent Commission findings on SSHR from Turkey.³⁶ It is obvious that this behaviour is explained by the desire to avoid countervailing duties on Indonesian SSCR, and that the reorganisation of the pattern of trade has insufficient due cause or economic justification.

5.3.1.2 Practice, process or work

(77) For lack of an exhaustive list of the practices susceptible to constitute circumvention under the basic AS Regulation, processing Indonesian stainless steel slabs and SSHR into SSCR stands at the halfway point between the 'slight modification' and 'consignment' via a third country. This operation is undoubtedly a practice, process or work with the meaning of the basic Regulation, following the example recently found by the Commission to constitute an assembly or completion operation. Despite its very limited cost, this operation is sufficient to avoid EU duties on Indonesian SSCR by taking advantage of the EU rules on non-preferential origin, as set out in Annex 22-01 of Regulation 2015/2446.³⁷

(78) This reorganisation of trade flows, transferring processing phases which require production facilities but generate limited costs of productions to third countries, essentially serves the purpose of avoiding measures. That cold-rolling (and sometimes hot- and cold- rolling) takes place in a third country, along traditional sea roads to the EU, confirms that the overall purpose of the operation is to ensure delivery free of countervailing duties of a product normally subject to measures on the EU market.

(79) The change in the pattern of trade of SSCR between Indonesia and the EU therefore stems from a practice, process or work within the meaning of Article 23 of the basic AS Regulation. It is not

³⁶ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not

³⁷ Introductory notes and list of substantial processing or working operations conferring non-preferential origin of the COMMISSION DELEGATED REGULATION (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code.

the accidental outcome of a resurgence in fair imports following the imposition of the EU CVD measures, nor the result of exogenous economic factors.

5.3.2 Assembly operation

- (80) As found by the Commission in recent investigations, including on SSHR from Turkey, circumvention of a measure may stem from an assembly or completion operation when (i) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and when (ii) the parts concerned from the country subject to measures constitute 60% or more of the total value of the parts of the assembled product and the value added to the parts brought in, during the assembly or completion operation, is lower than 25% of the manufacturing cost.
- (81) The figures provided show, both at cumulated and country-specific level, that the practice became substantial only after the initiation of the investigations on imports from Indonesia. It is also apparent that it developed in parallel to the investigation, further increasing after imposition of the measures.

60% threshold

- (82) As indicated in the description of the production process, stainless steel slabs and, directly downstream, SSHR are the sole "part" used in the production of SSCR, and therefore in the "assembly" or "completion" operation resulting into SSCR. These "parts" therefore necessarily represent 100% of the total value of the parts of the completed products. As a consequence, the parts used in the production process necessarily "*constitute 60 % or more of the total value of the parts of the assembled product*" with regard to indirect imports from Indonesia.
- (83) In line with the intrinsic logic of the assembly or completion test, the 60% threshold must be assessed at the level of the circumventing product itself rather than at the level of the entire production of the like product in a company or a country. Doing otherwise would unduly extend the requirements under the assembly test and set an acceptable level of circumvention in relation to the proportion of legitimate exports by a producer. Such an approach would unduly limit the efficiency of the anti-circumvention tool with regard to producers already active in the production of the like product and who are active both in circumvention and legitimate production.
- (84) It is in any event obvious, in view of the volume of indirect imports from the countries targeted, that the Indonesian stainless steel semi-products, slabs and or SSHR, represent a large majority or a substantial part of the input used by the exporting producer in the targeted third countries engaging in circumvention of the EU measures. As such, it is clear that exporters processing Indonesian SSHR and slabs into SSCR before exporting them to the EU engage in circumvention of the EU measures.
- (85) The value of the Indonesian inputs used in the production in the targeted countries is a further indication of the extent of the circumvention. However, should the Commission find it necessary to assess the share that this value represents over the total input used in targeted countries or companies, the Applicant has also prepared a specific assessment.
- (86) For Taiwan and Vietnam, the Applicant has estimated the share of Indonesian inputs used in the production of SSCR, as an indication for the share of Indonesian input used in the SSCR exported to the EU.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Taiwan	62,3%
Vietnam	60,4%

Annex 6 - Assessment of the 60% threshold in production of SSCR

- (87) This assessment does not account for the fact as the parts imported from Indonesia "*still benefit from the subsidy*" within the meaning of Article 23 of the basic AS Regulation, the Commission should adjust the value of the Indonesian inputs to reflect the subsidisation findings. Accounting for the substantial subsidy margin found by the Commission in the original investigation, an assessment based on a fair value of the Indonesian inputs highlights an even higher value share of Indonesian inputs.
- (88) For Turkey, the Applicant has identified that one of the Turkish re-roller, Trinox, [business confidential information not susceptible to public summary]. In view of the high level of imports of Indonesian inputs in Turkey and of the recent findings of the Commission on circumvention of the product directly upstream,³⁸ the confirm the high likelihood that exporters in Turkey circumvent the measures.

<i>Share of Indonesian inputs in the production of:</i>	SSCR
Trinox (Turkey)	[more than 90%]

- (89) This therefore further confirms the likelihood that, in the targeted countries, Indonesian inputs represent above 60% of the value of inputs used in the SSCR imported to the EU. It also confirms that virtually all exporters from those countries are likely to engage, to varying extents, in circumvention. Due account should also be taken of any behaviour funnelling specifically SSCR produced from Indonesian inputs to the EU and of any specific pricing patterns on export prices to the EU that would reflect the use of those subsidised parts by exporting producers.
- (90) The above notwithstanding, the Applicant insists that the fact that exporting producers in the targeted countries also export SSCR to the EU produced from non-Indonesian input is irrelevant to the circumvention assessment. It should have no bearing on the findings that they engage in circumvention if they export to the EU SSCR produced from Indonesian inputs.

25% Threshold

- (91) In addition, the assessment of the respective costs of production of stainless steel slabs, SSHR and SSCR reveals that completion of these items into SSCR only bring a limited added value, in any event significantly below 25%. It has been found in previous EU investigations that downstream processing of stainless steel slabs only bears limited added costs, notably the processing of slabs into SSHR. Similarly, processing stainless steel slabs or SSHR into SSCR represent a very limited addition to the costs of manufacturing.
- (92) Figures of the Union producers and estimates of the cost of manufacturing of Asian exporters, with significantly lower energy and labour cost, reveal that in 2022, accounting for yield and

³⁸ Commission Implementing Regulation (EU) 2023/825 of 17 April 2023 extending the anti-dumping duty imposed by Implementing Regulation (EU) 2020/1408 on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia to imports of certain hot rolled stainless steel sheets and coils consigned from Türkiye, whether declared as originating in Türkiye or not.

recovery of internal scrap, the processing of white SSHR into SSCR only brings an added value of about 5%. Processing of black SSHR into SSCR represents less than 8% of the cost of manufacturing of that product. Production of SSCR from stainless steel slabs only require about 10% of added value.

Product stage	Added value share
Slabs	[10-14]%
Black SSHR	[4-8]%
White SSHR	[2-6]%
SSCR	

Annex 7 - Assembly operation test

- (93) As for the value of the Indonesian inputs, it is important, in the analysis of the added value in the production of SSCR exported to the EU from third countries, to account for the fact that the parts imported from Indonesia *"still benefit from the subsidy"*. Consequently, due account should be taken of the fact that the value of these inputs is likely to be artificially low. It is therefore necessary to replace it with a fair value to reach representative conclusions on the extent of the circumvention practice.

Conclusion

- (94) It is therefore obvious that the part imported from the country subject to the measures – the Indonesian slab or SSHR – represents significantly more than 60% of the parts of SSCR. In the meantime, the value brought by the completion operation – the cold-rolling, potentially complementing hot-rolling – is considerably lower than 25% of the manufacturing cost of the SSCR. The indirect import from Indonesia via third countries of SSCR therefore constitutes a circumvention within the meaning of Article 23 of the basic Regulation.

5.3.3 Insufficient due cause or economic justification other than the imposition of the duty

- (95) Before the initiation of the investigation and the imposition of the measures, EU importers bought their SSCR directly from Indonesia, already cold-rolled. The import numbers set out above are proof of this: Indonesian imports from 2019 were high, increased in 2020 despite COVID, plateaued in 2021 parallel to the initiation of the investigation, and then steeply declined in 2022 once the Commission imposed measures on imports of Indonesian SSCR.
- (96) Exporting SSCR directly from Indonesia was demonstrably the most efficient trade pattern before the imposition of duties, and is indeed the most logical and efficient way to obtain Indonesian SSCR. However, the imposition of the countervailing measures caused a limited part of the production process of SSCR to move to various third countries, as a way to reroute Indonesian imports destined for the Union market. There is no economically sound reason why the relevant players would separate a production process normally completed in Indonesia into various stages all over the world. To the contrary: it adds a needlessly complex, displaced step to an otherwise fairly straightforward and completely vertically integrated production process.
- (97) In fact, from a production point of view, the main difference between the new pattern of trade and the former is that it induces significant additional inefficiencies. Instead of a single direct shipment of SSCR from Indonesia to the EU, the new pattern of trade implies a myriad of new shipping

routes to the third countries and then shipping to the EU. As such, it requires at least two distinct shipping operations for every third country, which in turn at least doubles the number of loading and unloading operations. It also requires additional road transportations in the third country in question: transporting the semi-finished product from the third country port to the cold-rolling plant (and sometimes the hot-rolling plant), and back to the port with finished SSCR.

- (98) Those additional logistic steps were exceptionally inefficient in 2022, a year with very high freight rates. Throughout the year, rates stayed well above those of previous years, as a consequence of worldwide supply chain bottlenecks and the war in Ukraine. The graph below shows that spot rates in Asia remained at unprecedented heights throughout 2022, and that each additional container of freight could dramatically increase production costs.



*Freight rates*³⁹

- (99) Elsewhere, operators dealt with this by increasing local supply (thus avoiding overseas freight costs and minimising transport). The extremely high prices in the beginning of 2022, for example, translated to higher railway freight volumes, which only decreased when container prices decreased slightly at the end of 2022.⁴⁰ Indeed, this is a logical and efficient reaction to high maritime freight prices.
- (100) Crucially, indirect imports of Indonesian SSCR show a completely opposite reaction. As shown above, imports from Indonesia decreased in 2021 and 2022 (years with extremely high maritime freight prices), and indirect imports, which require exporting Indonesian SSCR or slabs to a third, overseas country which then in turn re-exports the finished SSCR to the EU, became a much more popular option. Rather than directly exporting SSCR from Indonesia, the preferred option was adding an additional, overseas journey, with all the costs and availability risks that entailed. This additional journey had the purpose of generally adding less than 10% of the value of SSCR, an operation for which Indonesia had ample capacities (reaching up to [1 150 000 - 1 700 000

³⁹ Source: <https://en.macromicro.me/charts/947/commodity-ccfi-scfi>.

⁴⁰ Upply, China-EU rail freight: a highly sensitive market, 21 February 2023, <https://market-insights.upply.com/en/china-eu-rail-freight-a-highly-sensitive-market>.

tonnes] annually in 2022)⁴¹ - as evident from the massive volumes of direct imports in 2020 and 2021. This unnecessary, risky, expensive complication has the purpose of avoiding the Union's import duties - which significantly exceed the cost of processing Indonesian inputs in third countries.

- (101) Besides the additional freight cost, the new pattern also creates a completely separate range of inefficiencies. One of such inefficiency relates to the replacement of an integrated and calibrated industrial process by a process in separate stages, where each actor requires adequate remuneration. Another relates to the limited added value of the processing operations themselves, which would normally seriously limit the competitiveness of re-rollers when exporting beyond their domestic market. This is in particular true when re-rolling facilities lack facilities for initial annealing and pickling and require the use of white SSHR. Along other industrial inefficiencies, separating the melting phase from the hot-rolling phase also prevents energy gains related to proximity from the melting and casting. Similarly, separation of the hot-rolling and/or cold-rolling phase from the melting means that internal scrap and dust resulting from yield cannot be re-melted directly but has to be collected and sold to the market, or even represent net losses for actors.
- (102) On top of these production issues, those new patterns also requires that exporting producers, despite the limited additional value of the last production steps, develop oversea subsidiaries or supply agreements, as well as coordinate the production schedule of multiple producing entities in various third countries. Importers, in turn, must account for increased lead times and an increased likelihood of supply disruptions, and are faced with additional risks of technical defects as a result of the number of actors involved.
- (103) The multiplication of re-rolling activities in third countries, far beyond the need of domestic consumption, as a way to splinter the production process solely to avoid duties is an increasingly common feature of the steel trade flows. Stainless steel is not spared from this fate: recent circumvention findings both in the US on the product concerned and in the EU on the directly upstream product confirm that these investments are driven by the wish to avoid of duties on the main export market. This is further evidenced by the close links between the main Indonesian exporter and many of the re-rollers and by the fact that that these intermediate actors, despite an organically lower level of efficiency, are able to successfully target long range export markets.
- (104) All these elements very plainly show what is happening: the Indonesian SSCR exports are still ending up on the Union market, widely subsidised, only this time they are taking a *pro forma* detour through third countries. Moving this marginal part of the production process through these third countries is costly, inefficient and redundant – until one takes the duties into account, which then plainly become the only possible reason for such a manoeuvre to take place. Despite all these inefficiencies, such pattern allows continuation of unfairly low priced imports of Indonesian stainless steel in the EU as the additional costs incurred remain significantly lower than paying the countervailing duties on Indonesian SSCR.
- (105) In the absence of the duties, there would be no justification and no economic benefit for EU users to rely on such a complex pattern rather than importing SSCR directly from Indonesia. Consequently, it is apparent that the change in the pattern of trade stems from a practice for which there is no due cause or economic justification.

⁴¹ See annex Exporting producers and capacities

6. CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES

- (106) The purpose of the countervailing duties is to protect the Union Industry against the damaging effect of imports from a third country engaging in injurious subsidisation. In the original investigation, the Commission highlighted the significant subsidisation of Indonesian SSCR and decided to countervail these subsidies through substantial countervailing duties. The circumvention of the measures via the countries concerned effectively negates that protection to the detriment of the Union Industry, as it allows for a significant volume of imports of SSCR at remarkably low prices.

6.1 Significant volume of imports undermining the remedial effect of the measures

- (107) As shown above, after an initial decline, the indirect imports of Indonesian SSCR into the Union have increased at a staggering pace. Between 2020 and 2022, they increased massively, almost four-fold. This increase clearly coincided with the investigation and the measure, hence their explosion in 2022, when ostensibly the new routes planned out after the initiation of the investigation fully started to get used.
- (108) As a result of their massive increase, the indirect imports represent a significant share of the overall imports of SSCR in the EU and an increasing share of the overall imports of SSCR from the targeted countries, significantly outpacing their growth. With imports from the targeted countries representing 35,6% of imports of SSCR in the EU, indirect imports reached an estimated and conservative level of 14,3% of the imports in 2022. The true extent of how indirect imports undermine the remedial effect thus lies somewhere between these two numbers.

In tonnes	2019	2020	2021	2022
Imports of SSCR from Indonesia in the EU	72.768	106.488	107.364	51.379
Index	100	146	148	71
Imports of SSCR from the targeted countries in the EU	310.436	234.241	375.951	463.195
Index	100	75	121	149
of which indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243

Annex 8 - Effect on the EU market: volumes and market share

- (109) That trend is also visible on a country per country level. In each of the targeted countries, the estimated indirect imports also represent a significant share of the total imports of SSCR in the EU. The assessment proposed by the Applicant shows that these indirect imports represent no less than a third of the imports in the EU of SSCR from the third countries and sometimes significantly more. As the methodology of the Applicant is conservative and likely underestimates the volume of these indirect imports, the actual volume from those countries provides a good indication of the potential extent of the indirect imports, in terms of volumes. That share is even more prevalent and exceeds 60% on average for austenitic stainless steel.

In tonnes, in 2022	Imports from targeted countries	Of which Indirect imports	Share
Taiwan	251.418	96.454	38,4%
Turkey	125.057	39.142	31,3%
Vietnam	86.720	50.983	58,8%
Total imports	463.195	186.578	40,3%

- (110) In addition, this massive increase of imports in terms of volume is particularly telling when compared to the overall imports of SSCR in the EU. First, because the imports from the targeted countries and in particular the estimated indirect imports represent a massive and quickly increasing share of overall imports. Second, because the speed at which they have increased starkly contrasts with the increase of other imports. This is all the more true as most of the increase of other imports originate in China, through which the Applicant suspects that indirect imports could also occur. This clearly shows that the volume concerned of relevant imports is of a nature to affect the situation on the EU market.

In tonnes	2019	2020	2021	2022
Total imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Index	100	84	96	140
Imports of SSCR from the targeted countries in the EU	310.440	234.156	375.936	463.195
Index	100	75	121	149
Of which Indirect imports	76.898	55.915	120.059	186.578
Index	100	73	156	243
Imports of SSCR from other countries (excluding China) in the EU	608.341	528.097	483.486	528.822
Index	100	87	79	87
Imports of SSCR from China in the EU	10.212	13.992	34.524	308.400
Index	100	137	338	3.020

- (111) Evidently, the high volumes of imports from the targeted countries, including the indirect imports, make up a significant and vastly increased share of the EU consumption of the product concerned. Overall, the market share of imports from the targeted countries has grown substantially to reach nearly 12% of the EU market share, an increase evidently achieved on the back of growing indirect imports. Once again, this share and its growth is even more substantial when considering austenitic stainless steel in particular.

EU consumption, market share (in tonnes and %)	2019	2020	2021	2022
SSCR EU market	3.628.501	3.325.321	3.853.431	4.088.315
EU mills deliveries	2.699.508	2.549.076	2.959.485	2.787.898
Total Imports of SSCR in the EU	928.993	776.245	893.946	1.300.417
Of which imports of SSCR from the targeted countries	310.440	234.156	375.936	463.195
Of which indirect imports	76.898	55.915	120.059	186.578
Market share EU mills	74,4%	76,7%	76,8%	68,2%
Market share imports of SSCR in the EU	25,6%	23,3%	23,2%	31,8%
Of which imports of SSCR from the targeted countries	8,6%	7,0%	9,8%	11,3%
Of which indirect imports	2,1%	1,7%	3,1%	4,6%

- (112) That market share remains very significant when assessed at the level of the EU market as a whole, showing the disruptive impact of the indirect imports on the EU market and their ability to undermine the remedial effect of the measures. The market share of imports from the targeted countries, including indirect imports in particular, has significantly increased over the last four years. It is significant enough to allow the indirect imports to have a major shaping power on

supply and prices on the EU market. For reference, the combined market share of India and Indonesia in the original measures was found to amount to 5,5-5,8% of the EU market.⁴² The market share for imports from Indonesia peaked in 2020 amounted to 3,2% for SSCR as a whole and 4,0% for austenitic SSCR before declining in 2021 and more significantly in 2022.⁴³

- (113) Imports from the targeted countries (including indirect imports) represent collectively, in 2022, a major share of EU imports. This is also true on an individual basis. As for the volume of indirect imports, these shares are conservative estimates and are likely higher in reality. Unsurprisingly, these shares are even more substantial when focusing solely on the EU market for austenitic stainless steel.

Market share, in 2022	Imports from the targeted countries	Of which indirect imports
Taiwan	6,1%	2,4%
Turkey	3,1%	1,0%
Vietnam	2,1%	1,2%
Total imports	11,3%	4,6%

- (114) The above reveal both the extent of the circumvention pattern identified and its ability to undermine imports on the basis of sheer volumes imported in the EU. It reveals the utmost necessity for the Commission to address the circumvention pattern and to take all necessary measures to prevent the continuation of alternative flows of indirect imports. In any event, the indirect flow of imports seriously affects the usefulness of one of the most innovative countervailing measures adopted by the Commission, threatening the integrity of that measure on imports from Indonesia and of the Union's TDI policy overall.

6.2 Low prices undermining the remedial effect of the measures

- (115) It was found over the course of the investigation that imports of SSCR from Indonesia undercut EU prices by 12,4%.⁴⁴ In the parallel anti-dumping investigation, the Commission had identified that the depreciating impact of the price of Indonesian imports went beyond that undercutting. It calculated injury margins of above 30%.⁴⁵
- (116) When assessing the price effect of the indirect imports on the EU market, it is crucial that costs and prices of SSCR worldwide and in the EU have skyrocketed since the imposition of the measures. A massive increase in the cost of raw materials (nickel in particular) and general inflationary pressure on other inputs, pushed up prices for SSCR in line with costs. This means that although prices are significantly higher than during the original IP, this does not prevent them from undermining the EU measures.

⁴² Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Table 5.

⁴³ See annex Effect on the EU market - volumes and market share

⁴⁴ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 968.

⁴⁵ Commission Implementing Regulation (EU) 2021/2012 of 17 November 2021 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 150.

- (117) This general increase in prices reflects in particular the increase in cost of the main raw materials. Between 2019 and 2022, the cost of nickel, the main driver of the cost of production, almost doubled, increasing by about 85%. This translated into an increase by nearly 50% of the cost of production of the Union Industry. This worldwide price increase dwarfs the increase in cost of energy suffered by the Union Industry over the same period and is the main driver of the increase in the costs and selling prices of the Union Industry since the original investigation period.

	EU COP of SSCR (EUR/tonne)	World Nickel price (USD/tonne)
2019	2.331	13.907
2022	3.609	25.638
Variation	+54,8%	+84,4%

Annex 9 - Variation of cost of production, raw materials and inputs

- (118) Against this backdrop of significantly increased prices and costs of the Union producers, the import prices from the targeted countries significantly undercut EU prices, even if 2022 prices exceeded those of Indonesian imports during the original IP. The Applicant has assessed the existence of undercutting both for the overall imports from the targeted countries and based on an estimated level of price of the indirect imports.
- (119) To provide a meaningful comparison, the Applicant has accounted for the difference in the product mix between EU producers and third country exporters in the undercutting calculations based on the imports from the targeted countries as a whole. The Applicant has assessed the price of indirect imports specifically conservatively, based on the price difference between austenitic SSHR inputs from Indonesia and from other sources. When necessary, it also accounted for the existing anti-dumping duties on imports of SSCR from the countries concerned, at the level of the higher residual duty.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting	13,5%	18,3%

Annex 10 - Effect on the EU market: undercutting

- (120) That overall significant level of undercutting for imports from the targeted countries already shows, a priori, how indirect imports undermine the efficiency of the EU measure by allowing the persistence of imports at a price significantly lower than that of the EU producers in 2022. It is also particularly telling that the overall level of undercutting exceeds the level established for imports from Indonesia over the initial investigation period. This price pressure and clear undercutting can also be established on an individual basis for each of the third countries via which the indirect imports of SSCR reach the EU market.

2022	Imports from the targeted countries	Of which indirect imports
Undercutting by import from Taiwan	13,7%	18,5%
Undercutting by import from Turkey	14,5%	19,7%
Undercutting by import from Vietnam	11,2%	16,8%

- (121) As mentioned above, the average prices for imports from the third countries include both indirect imports of SSCR and "normal imports" from those third countries without established links with Indonesian inputs, slabs or SSHR. As a consequence, it is likely that the actual levels of undercutting are substantially higher for the indirect imports made from processed Indonesian

subsidised inputs. This is reflected in the estimated prices for indirect imports assessed on the basis of the differential in price between Indonesian and non-Indonesian inputs. Multiple examples of abnormally low priced imports from the targeted countries confirm that the approach adopted by the Applicant is reasonable.

Annex 11 - Illustration of low priced imports from third countries

- (122) The protection granted to the Union industry by the original measures has largely been rendered insufficient by the developments of flows of low priced indirect imports. The indirect import prices are about a fifth below the average comparable EU prices, making any fair competition impossible.
- (123) The subsidies granted by the Indonesian government therefore continue through indirect imports, entering the EU in significant volumes and at unfairly low prices to disrupt the Union market and prices through indirect imports. The indirect imports of SSCR to the EU thus undermine the remedial effect of the measures, initially intended to prevent the main Indonesian exporting producer from leveraging its subsidies to capture the EU market.

7. SUBSIDISATION IN RELATION WITH THE LIKE PRODUCT FROM THIRD COUNTRIES

- (124) As shown above, prices of SSCR from the targeted countries significantly undercut EU prices at levels similar to or exceeding those of Indonesian imports over the original investigation period. That ability to sell significantly below fair prices on the EU market stems from the subsidisation occurring in Indonesia for the production of stainless steel, evidenced in the investigation leading to the imposition of the circumvented measures.
- (125) Over the course of the original investigation, the Commission found that the Indonesian exporting producer of SSCR benefited from massive subsidisation, in virtually all aspects of its activities. As a consequence, the Commission imposed a subsidy margin of 21.4% on Tsingshan imposed countervailing duties at that level.⁴⁶ The subsidisation findings related largely to the provision of nickel ore and land for less than adequate remuneration, support for capital investments, non-market loans and preferential fiscal and custom regimes. The subsidisation affected all sales of the products, regardless of the customer, with some additional subsidisation limited to export to third countries, including but not limited to the EU.
- (126) Because of its very nature, and because the purpose of that support was always to establish from scratch a fully integrated Indonesian stainless steel industry, these subsidies were provided to cover the entire production chain of SSCR; from the raw material until the end-products. This is particularly obvious for the provision of nickel ore at less than adequate remuneration, as set out in recital 532-534 of the original investigation. The same is true for significant financing provided to Tsingshan group's company Sulawesi Mining Investment, active on the upstream stages of the production process, NPI and melting of slabs,⁴⁷ through Reed International.

⁴⁶ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, Article 1.

⁴⁷ 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, Recital 51.

- (127) The subsidisation found over the course of the original IP has continued. The Brazilian authorities have confirmed this in their investigation targeting Indonesia. They imposed countervailing duties of 18,79% on imports of certain SSCR from Indonesia, as recently as 1 December 2022. These findings identify the provision of nickel ore at less than adequate remuneration, affecting the direct inputs for SSCR.

Annex 12 - Findings of the Brazilian authorities

- (128) The Commission itself has also found that the subsidisation continues, for example when it held that benefit from the subsidies identified should be spread "*on the useful life of the assets*" found to be subsidised,⁴⁸ based on the depreciation period of the loans,⁴⁹ or on the amortisation duration of the machines.⁵⁰ Consequently, besides the recurring subsidies identified by the Commission which continue to apply in Indonesia, even one-off subsidies continue to affect the production and sales of SSCR in Indonesia, including for the upstream inputs.
- (129) As shown above, worldwide nickel prices have significantly increased since the original investigation period. In these circumstances, the benefit granted to Indonesian stainless steel producers through the provision of nickel ore at less than adequate remuneration mathematically increases, reinforcing the incentives and the means to circumvent the EU measures. That logic is further reinforced by the Indonesian's numerous announcements of its intent to complete its nickel policy with measures restricting the exports of NPI to increase the domestic production of stainless steel and to provide it with a supplementary advantage over overseas competitors. Similar to the measures on nickel ore, this will further increase domestic availability of NPI, reducing the costs of inputs for the exporting producers. Updated calculations reveal that in any event, Indonesian nickel remains priced at a level significantly lower than the available benchmark, confirming that subsidisation persist.

Annex 13 - Ni ore subsidy calculation

- (130) It is sufficient, for the purpose of demonstrating circumvention under Article 23 of the basic AS Regulation to establish that "*parts [of the imported like product] still benefit from the subsidy*". As the subsidisation covers all aspects of the production process, it is clear from the above that the "parts" assembled or rather completed in the third countries, the SSHR and/ or the slabs, still benefit from the subsidies. It should also be noted that in view of the close nature of the relationship between Tsingshan Indonesia and the exporting producers in the third countries, those parties are effectively in several cases related. This is evidenced by the comprehensive partnership agreement, corporate links and the overarching influence of the Chinese government. Consequently, in several occurrences subsidies are passed through from the

⁴⁸ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 799 for example.

⁴⁹ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 800 for example.

⁵⁰ Commission Implementing Regulation (EU) 2022/433 of 15 March 2022 imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia, rec. 908.

Indonesian producer to the operator in the third country, eventually exporting the SSCR to the EU.

- (131) It is therefore clear that the subsidisation of the exporting producer in Indonesia extends to the indirect imports of SSCR to the EU. As a result of the indirect imports of SSCR, the EU market and the EU industry remain significantly affected by the Indonesian subsidisation, preventing the countervailing duties on Indonesia to achieve their intended purpose.

8. IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT

- (132) The emergence of the indirect imports, as detailed above, have exposed a serious shortcomings in the application of the measure, as evidenced in the present anti-circumvention. That flaw is the ease with which non-preferential rules of origin for stainless steel, in particular the rules of list provided in Annex 22-01 of the Union Custom Code Delegated Act, allow a change in origin of the targeted goods with near minimal processing operations. Consequently, as shown above when assessing the existence of an assembly operation, the processing of slabs or SSHR into SSCR despite transformation costs less than 15% (usually 5%) and allows SSCR to acquire the non-preferential origin of the country where that last processing occurred.
- (133) Whereas that flow of indirect imports was difficult to anticipate at the stage of the initial investigation, the recent developments described in this application would justify the adoption, under Article 24(3) of the basic AS Regulation, of "*special provisions, in particular with regard to the common definition of the concept of origin*" to ensure the efficiency of the measures. The Commission has notably relied on that provision in the past to ensure the efficiency of measures when the sole implementation of the non-preferential rules of origins prevented the measure to achieve their expected purposes. Those special provisions derive from the fact that, in trade defence investigation, custom rules apply only in so far that they allow to achieve the objectives set in the basic Regulations.
- (134) That special provision could be implemented by means of an obligation to present at customs a mill certificate providing the plant of melting. Such information is commonly provided by exporters, together with the heat numbers to allow control of grades and follow-up of claims.
- (135) If the Commission finds that the indirect imports indeed circumvent the measures, the mill certificate requirement should be imposed on imports from companies found not to engage in circumvention from the targeted third countries. Acting in complement to the measures on circumventing exporters, that requirement would constitute a proportionate safeguard against circumvention by companies that could easily switch their supply to (or in the case of an holistic assessment, increase their supply of) Indonesian semi-products if cleared from circumvention. It would also limit the risk of multiplication of anti-circumvention action.
- (136) Eurofer therefore respectfully requests the Commission use the possibilities granted by the EU legislator to ensure the efficiency of trade measures. This is instrumental to ensure a correct implementation of the measure and to limit the burden on the Union Industry to document each and every example of evasion of the duties.

9. CONCLUSION

- (137) As reported in this Application, there is clear and consistent evidence that, in order to avoid duties on Indonesian SSCR, substantial volumes of Indonesian stainless steel slabs and SSHR are imported in third countries where they undergo hot-rolling and/or cold-rolling before being exported to the EU, in conditions undermining the remedial effect of the EU measures and benefiting from Indonesian subsidies. It is also apparent that this change in the pattern of trade aims precisely at exploiting the blind spots of the EU countervailing measures on imports of SSCR from Indonesia.
- (138) The Commission should therefore act decisively to ensure the sturdiness and reliability of the EU measures in the face of that challenge of the EU Trade Defence measures. In view of the above, Eurofer therefore respectfully requests that the Commission:
- Expeditiously initiates an investigation on imports of SSCR from Taiwan, Turkey and Vietnam under Article 23 of the basic AS Regulation;
 - Registers imports of SSCR from Taiwan, Turkey and Vietnam as from the initiation of the investigation, with a view to applying retroactive duties from that date;
 - Imposes countervailing duties at a level of 21.4% on imports of SSCR from Taiwan, Turkey and Vietnam;
 - If necessary, implements under Article 24(3) of the basic AS Regulation a control of mill certificate for imports of SSCR by the exporting producers exempted from the exemption of the measures to prevent recurrence of circumvention.

TABLE OF CONTENTS

1.	INTRODUCTION	2
2.	APPLICANT	3
3.	OTHER INTERESTED PARTIES	4
4.	PRODUCT CONCERNED AND LIKE PRODUCT	4
4.1	Description of the stainless steel cold-rolled flat products.....	4
4.1.1	Metallurgical characteristics	4
4.1.2	Production process	5
4.2	Product concerned of the original investigation	6
5.	THE EU CVD MEASURES ON INDONESIA ARE CIRCUMVENTED THROUGH IMPORTS OF SSCR FROM MULTIPLE THIRD COUNTRIES	7
5.1	There is a change in the pattern of trade.....	7
5.1.1	Indonesian stainless steel is processed in third countries and exported to the EU	7
5.1.2	Volume of indirect imports in the EU	9
5.1.3	Indirect imports of SSCR substituted and exceeded imports of SSCR from Indonesia	10
5.2	Change in the pattern of trade via specific third countries	12
5.2.1	Indirect imports via Taiwan	12
5.2.2	Indirect imports via Turkey.....	15
5.2.3	Indirect imports via Vietnam	18
5.3	The change stems from a practice for which there is insufficient due cause or economic justification other than the imposition of the duty	21
5.3.1	Practice, process or work	21
5.3.2	Assembly operation	22
5.3.3	Insufficient due cause or economic justification other than the imposition of the duty.....	24
6.	CIRCUMVENTION UNDERMINES THE REMEDIAL EFFECTS OF THE EU MEASURES	27
6.1	Significant volume of imports undermining the remedial effect of the measures	27
6.2	Low prices undermining the remedial effect of the measures	29
7.	SUBSIDISATION IN RELATION WITH THE LIKE PRODUCT FROM THIRD COUNTRIES	31
8.	IMPLEMENTATION OF A MILL CERTIFICATE REQUIREMENT	33
9.	CONCLUSION	34

TABLE OF ANNEXES

Annex 1 - Representation letters	3
Annex 2 - Other interested parties	4
Annex 3 - Methodology for the assessment of indirect imports.....	10
Annex 4 - Volume of indirect imports.....	11
Annex 5 - Exporting producers in third countries and capacities	12
Annex 6 - Assessment of the 60% threshold in production of SSCR.....	23
Annex 7 - Assembly operation test.....	24
Annex 8 - Effect on the EU market: volumes and market share	27
Annex 9 - Variation of cost of production, raw materials and inputs	30
Annex 10 - Effect on the EU market: undercutting	30
Annex 11 - Illustration of low priced imports from third countries	31
Annex 12 - Findings of the Brazilian authorities	32
Annex 13 - Ni ore subsidy calculation	32