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Our Ref AS678/ Final Disclosure/Comments

Your Ref

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European Commission

DG TRADE

Directorate G - Trade Defence

Investigations IV

Relations with third countries on Trade Defence matters

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Version open for inspection by interested parties

Case AS678 - Anti-subsidy investigation concerning imports of stainless steel cold-rolled flat products originating in India and Indonesia – Final disclosure – European Association of Non-Integrated Steel, Stainless Steel and Metal Importers, Distributors, Traders and Processors (hereinafter “EURAMI”)

Dear Case Team,

We hereby provide our comments regarding the General/Final Disclosure document in the above mentioned investigation.

1. Comments concerning injury and causation

1.1 No cumulation of the imports at issue from India and Indonesia is possible: absence of the relevant requirements set forth in the Basic Regulation.

In recitals 761 to 766 of the General Disclosure document (hereinafter GDD) the Commission argues that:

“(761) The Commission examined whether imports of SSCR originating in the countries concerned should be assessed cumulatively, in accordance with Article 8(3) of the basic Regulation.

(762) That provision stipulates that the imports from more than one country shall be cumulatively assessed only if it is determined that:

(a) the amount of countervailable subsidies established in relation to the imports from each country is more than de minimis as defined in Article 14(5), and the volume of imports from each country is not negligible; and

(b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the like Union product.

(763) The amount of countervailable subsidies established in relation to the imports from each of the two countries concerned are summarised under recitals (262) and (751). They are all, but for Jindal Indonesia, above the de minimis threshold laid down in Article 14(5) of the basic Regulation.

(764) The volume of imports from each of the two countries concerned was not negligible. Imports market shares in the investigation period were 3,4% for India and 2,8% for Indonesia.

(765) The conditions of competition between the subsidised imports from each of the two countries concerned and between them and the Union like product were similar. Indeed, SSCR originating in India and Indonesia competed with each other when imported for sale on the Union market, and with the like product produced by the Union industry, as all of them are sold to similar categories of customers.

(766) Therefore, all criteria set out in Article 8(3) of the basic Regulation were met and imports from the countries concerned were examined cumulatively for the purposes of injury determination.”

As it is apparent from recital (764) of the GDD, contrary to what the Commission states, the volume of imports market share for India and Indonesia was low if compared to the market quota of EU industry. Indeed, India amounted to only 3,4% of imports while Indonesia for 2,8%. With specific regard to imports during the IP, India’s imports expressed in tonnes volumes were much lower than India’s imports in years 2017 and 2018 and substantially similar to imports from India in year 2019. See to that extent Recital (796) with Table 5

reported below. Also the relevant market share and quota of India in the EU remained substantially stable over the years.

The import quotas of the product concerned from India are limited by the safeguard measures: India has a country quota while Indonesia falls within the “third countries” quota. Any extra-quota quantities are subject to duty of 25% ad valorem.

Imports from the countries concerned over the period concerned developed as follows:

Table 5 - Import volumes (tonnes) and market share

	2017	2018	2019	IP
India	114 865	120 729	105 359	108 885
<i>Index</i>	100	105	92	95
Market share	3,0%	3,2%	3,1%	3,4%
<i>Index</i>	100	110	103	114
Indonesia	[0-100]	[10 000 – 14 000]	[48 000 - 52 000]	[68 000 – 72 000]
<i>Index</i>	0	100	[400 – 450]	[550 – 600]
Market share	[0,0 - 0,1]%	[0,3 - 0,5]%	[1,4 - 1,7]%	[2,1 - 2,4]%
<i>Index</i>	0	100	[400 – 450]	[650 – 700]
Total countries concerned	[114 865 – 114 965]	[130 729 – 134 729]	[153 359 – 157 359]	[176 885 – 180 885]
<i>Index</i>	100	[115 – 117]	[136 – 138]	[154 – 156]
Market share	[3,0 - 3,1]%	[3,5 - 3,7]%	[4,5 - 4,8]%	[5,5 - 5,8]%
<i>Index</i>	100	[120 - 122]	[152 - 154]	[186 - 188]
<i>Source:</i> Eurostat, data of the exporting producers				

The above impacts on the appropriateness and lawfulness by the Commission in applying Article 8 (3) of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union¹ (hereinafter “the Basic Regulation”). In order to be applicable and consider together in a cumulative manner imports from more than one country such provisions require inter alia that it must first be determined that:

(....)

b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product.

In Recital (765) of GDD the Commission takes the view that the conditions of competition between the *subsidised* imports from each of the two countries concerned and between them and the Union like product were similar. Indeed, SSCR originating in India and Indonesia competed with each other when imported for sale on the Union market, and with the like product produced by the Union industry, as all of them are sold to similar categories of customers. Apart from such brief statement, however, no analysis of the condition of competition of the products of the countries at issue is present. The above statement cannot be considered a serious analysis of the conditions of competition of the products at issue on the EU market.

With regard to the above, Euranimi would like to be disclosed with:

- The theoretical models, of course in a non-confidential version, and/or the methodology used to assess the conditions of competition in the EU market of the products and countries at issue

¹ OJ L 176, 30.6.2016

- Know if the Directorate General of Competition as well as the services in charge of economic analysis by the European Commission have been consulted concerning such matter. If they have not so far, Euranimi invites the services in charge to proceed with such consultation without delay.

In conclusion the cumulative application of Article 8(3) of the Basic Regulation is inapposite here because:

- Imports from India were stable and even decreased during the IP;

- The analysis of the conditions of competition that need to be performed by the European Commission in order to be able to apply such provision and the cumulative assessment of import is totally missing or at least highly deficient from a technical point of view.

The Commission states that *“The conditions of competition between the subsidised imports from each of the two countries concerned and between them and the Union like product were similar”*. No analysis, data, let alone market analysis methodology is present to support such view. We are facing a statement based on no evidence. The Commission bases such finding also on the alleged fact that all products at issue would be sold to similar categories of customers. This however basically means nothing.

The DG TRADE’s services have omitted to perform at least a basic market substitution analysis concerning the products at issue and also a basic supply substitution analysis is completely missing. The reader does not understand what methodology, if any, has been applied to reach the above findings.

In conclusion concerning such a matter, both the limited and stable over the years market share of imports from India in the EU as well as the absence of a proper analysis of the conditions of competition between India and Indonesia’s products at issue on the EU market render Article 8(3) of the Basic Regulation inapplicable in order to allow for a cumulative analysis of such products.

1.2 The market share of EU industry increased during the IP

As Recital (783) and Table of GDD related to sales volume and market share show, the EU industry market share has increased by 2.1% in the IP if compared to year 2017. Such market share quota is almost the same of the one of year 2018 and substantially similar to the one of year 2019. This is clearly an indicator of absence of injury rather than of injury.

This proves that a potential increase in the market share of India and Indonesia even if assessed cumulatively (which we have seen above should not be the case), had no impact on the market share of the Union industry as it was taken from other third countries without damaging the market share of the Union industry.

The fact that the market share of EU industry increased during the IP constitutes positive and solid evidence that such industry suffered no injury during such period of investigation. In order to - none the less - prove the presence of injury, the Commission's services would be required to provide other positive evidence contradicting the above with regard to other important injury indicators.

In the present AS investigation, however, the Commission's services instead of basing their findings concerning the above positive evidence, artificially created a finding of injury by picking and choosing market and industry analysis in isolation each other and without a solid and clear process and methodology. This is frankly unacceptable.

1.3 Prices of the imports from the countries concerned and price undercutting

In recitals 771 to 774 of the GDD the Commission sets out the following:

“(771) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports from the countries concerned during the period concerned developed as follows:

Table 6 - Prices of the imports from the countries concerned (EUR/tonne)

	2017	2018	2019	IP
India	2 080	2 173	2 075	2 073
Index	100	104	100	100
Indonesia	N/A	[1 450 – 1 650]	[1 800 – 2 000]	[1 800 – 2 000]
Index	0	100	123 - 128	123 - 128
Average of the countries concerned	2080	[2 000 – 2 150]	[1 900 – 2 050]	[1 900 – 2 050]
Index	100	100 – 102	96 - 98	96 - 98
<i>Source: Eurostat, data of the exporting producers</i>				

(772) In case of India, the average import prices went up from 2017 to 2018 by 4%, but remained stable in the overall period considered, while for Indonesia they increased by 28% (imports in 2017 were negligible). Nevertheless, throughout the whole period considered, the average import prices from both countries concerned were consistently lower than Union producers' prices (see Table 10).

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

(a) the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(b) the corresponding weighted average prices per product type of imports from the cooperating exporting producers in the countries concerned to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.

(774) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed undercutting margins of 5,8% and 13,4% for the Indian exporting producers and 12,4% for the Indonesian exporting producer."

Also in this case we are faced with a statement by the Commission without any legal basis.

In fact, from the above-mentioned recitals of the GDD, in disregard of the rights of the defence, it is not possible to reconstruct on the basis of which criteria the values indicated therein were determined.

Indeed, it would appear that the Commission did not take into account sales to related companies when determining the undercutting margin.

The Commission is therefore requested to disclose, before proceeding with the imposition of definitive duties, the data and criteria it used to determine both the import prices of the product concerned and to calculate the undercutting margin.

1.4 Microeconomic indicators

Contrary to what the Commission maintains in recitals 797 to 802 of the GDD, there is no evidence that the alleged decrease in margins of European producers is linked to the trend of imports from India and Indonesia.

The negative profitability trend is not linked to imports from India and Indonesia: their volumes are so low that they cannot influence the market in such a marked way. The real causes of the reduction in profitability are other, such as e.g. the Covid 19 pandemic period and global economic crisis, competitive dynamics of European producers, and imports from other countries (like the Republic of Korea - see table 15 of the GDD).

The Commission has completely omitted to verify and assess properly the effects of the Covid 19 pandemic concerning the above and in general the injury (and anti-subsidy investigations) at issue. We invite the Commission to perform such analysis at its earliest convenience.

At the same time, the complainant companies had an increase in profits as confirmed in their their updated financial data (**Annex 1**)

The fact that such financial data are "not audited" is not significant, because they are public quarterly financial statements, obtained on the sites of producers who are listed companies. The data are therefore fully valid and usable, much more than audited one because published directly by the company (in the contrary they would be liable to be charged with false). The above data updated to 30/9/2021 of the four main producers have been further improved.

In light of the above, contrary to what the Commission claimed, the Union industry did not suffer any obvious injury.

1.5 Various

It is also worth contesting further considerations made by the Commission in the General Disclosure:

- in recital 755 the GDD the Commission stated "The like product was manufactured by 13 known producers in the Union during the investigation period. They constituted the 'Union industry' within the meaning of Article 9(1) of the basic Regulation". The Commission is asked to specify who these producers are, also in view of the fact that European producers are actually only six compared to the seven indicated in annex 3 of the complaint.

- It is unclear on the basis of which data the Commission has come to the conclusion that the total EU SSCR production during the IP is estimated to be around 3,1 million tonnes. The Commission is requested to disclose the data it has used to reach this conclusion.

- N.3 producers represent over 60% of the total Union production. There is clear evidence of a huge concentration of power within the hands of few producers. From data available to us, n.5 producers represent between 90/95% of the total EU production.
- The Commission is requested to disclose the data it has used to calculate EU consumption over the years.
- There is a clear evidence that the decrease of the capacity utilization is not linked to the imported quantities from India and Indonesia: the total production decreased from 3.708 K/Tonnes (2017) to 3.111 K/T (IP) (-597 K/T) while imports surged from 114 K/T (2017) to 176 K/T (IP) (+62 K/T).
- The Commission is requested to disclose the quantity imported by the EU producers from the countries concerned, directly or through related, affiliated or mother companies. From our data the producers largely affected the import volumes.

2. The Union Interest

In recitals 838 to 846 of the GDD the Commission sets out the following:

“(838) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious subsidisation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

(839) The Union industry consists of 13 producers located in several Member States and it employs directly 13 660 employees in relation to the product under investigation. None of the Union producers opposed the initiation of the investigation. As shown in section 5 above when analysing the injury indicators, the whole Union industry experienced a deterioration of its situation and was negatively affected by the subsidised imports.

(840) It is expected that the imposition of anti-subsidy duties will restore fair trading conditions on the Union market, end the price suppression and enable the Union industry to cover their increasing costs of production and improve their financial situation despite lost sales due to a shrinking market. This would result in an improvement of the Union industry's profitability towards levels considered necessary for this capital intensive industry. The Union industry has suffered material injury caused by subsidised imports from the countries concerned. It is recalled that a number of key injury indicators showed a negative trend during the period considered. In particular, indicators pertaining to the financial performance of Union producers were seriously affected. It is therefore important to restore prices to a non- subsidised level in order to allow all producers to operate on the Union market under fair trading conditions.

(841) It is therefore concluded that the imposition of anti-subsidy duties would be in the interest of the Union industry as it would allow it to recover from the effects of the injurious subsidisation found.

842) One unrelated importer came forward. Furthermore, one Union producer that acted also as unrelated importer and end user submitted a questionnaire reply.

(843) The unrelated importer pointed out potential negative impacts of the anti-subsidy measures on competition on the Union market which in turn would result in lack of supply, worse service, increasing prices and a worse quality of material.

(844) Notwithstanding potential anti-subsidy measures, the Commission concluded that there will remain a healthy level of competition in the Union given that there are 13 Union producers of the product under investigation, some of them not taking part in the complaint. Furthermore, imports from third countries still account for more than 20% of the market. Therefore, the potential negative impacts indicated by the importer are not likely to occur.

(845) Measures would also allow importers to pass-on prices to their customers and therefore the profitability of importers is not expected to be adversely affected. The product range and service quality is not expected to be reduced - to the contrary, protection against dumped imports allows the Union industry to have new investments and improve its quality.

(846) On the basis of the above, the Commission concluded that there were no compelling reasons to conclude that it was not in the Union interest to impose measures on imports of the product under investigation originating in the countries concerned.”

The European Commission in assessing the Union interest to impose measures on imports of the product under investigation did not take into account the current situation of the steel market.

The spread of the pandemic and the consequent adoption of lockdown policies aimed at preventing its spread have resulted in the marked slowdown in scrap extraction, refining and collection activities. This is the case, for example, of copper whose production in key countries such as Chile and Peru (which account for 40% of the world supply) has been in decline for almost a year now. In China the restrictions linked to the pandemic have been much more contained, but have been replaced by policies to reduce carbon emissions that have contributed to exacerbate the supply of markets such as plastics, aluminum, nickel, zinc and steel. It should also be added that the consumption boom that has matured in the light of the adoption of fiscal policies of an expansive nature has clashed with a long period of under-investment in production capacity by the mining and oil sector due to the downward trend in prices which has been witnessed from 2011 to 2016. In the last two years, the low investment phenomenon in new production capacity has been intensified by the adoption of targets for reducing carbon emissions (CO₂).

The general economic recovery that followed the Covid-19 pandemic not only led to a general increase in demand for essential raw materials and semi-finished products - with the raw material needs of each country (steel and stainless steel in particular) - but it has also led to

an unsustainable increase in the prices of raw materials - increasing the gap between supply and demand - as well as to a progressive shortage of raw materials, which inevitably conditioned the activity of raw material transformers.

The raw materials sector has recorded dramatic price increases from the second quarter of 2020 to date. From the low reached on 23 March last year, in the midst of the pandemic crisis, the LME index (which groups the trends of non-ferrous metals) registers an increase of 89%, driven in particular by copper (+ 112%), nickel (+ 82%), zinc (+ 80%) and aluminum (+ 72%). Copper in May 2021 in particular hit a new all-time high, reaching \$ 10,747 / t² (**Annex 2 e 3**)

The situation in the steel sector is particularly serious, where significant price increases have been recorded by rolled producers, so much so that the price of hot rolled coils in Italy has gone from € 370 / t in June to the current € 1,000 / t. The same goes for the stainless steel sector with the common alloy "304" which went from € 1,900 / t in the second quarter to the current € 4,500 / t.

In this way, in almost all sectors of European industry - from plastics to wood, from steel to chemicals - producers and distributors find themselves daily faced with cancellations of already confirmed deliveries, temporary suspensions of production and the consequent impossibility of meeting the requirements end customer request.

In addition, also consider that the market balance is also put to the test by another factor. Indeed, to date, the shipping costs by vessel have increased exponentially: container price from Asia grew from 1000 USD / container up to 10.000 USD / container.

In light of the situation described above on the steel market, we disagree with what the Commission stated in recital 844 of the GDD, that the potential negative effects indicated by the importer are unlikely to occur, as, despite the potential anti-subsidy measures, the

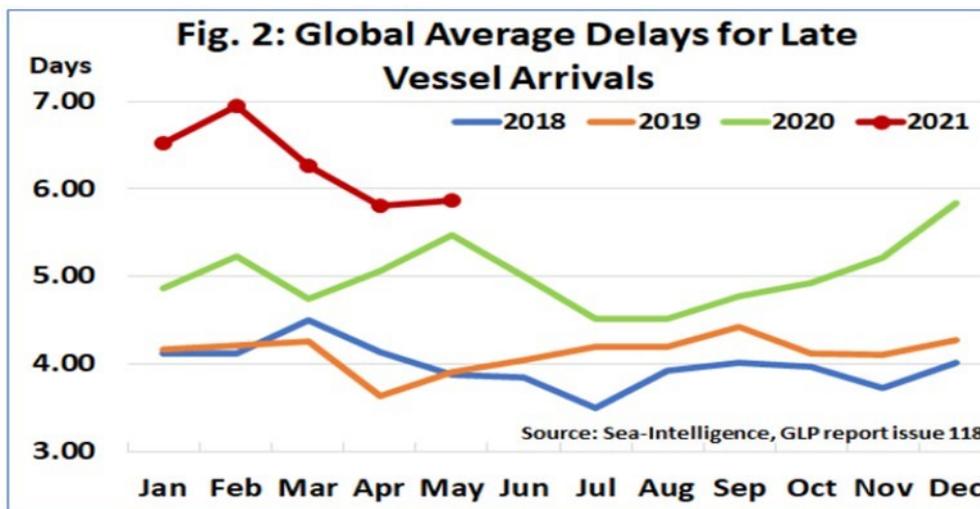
² CONFAPI – FOCUS MATERIE PRIME - 15 novembre 2021.

Commission concluded that a healthy level of competition will remain in the Union, as there are 13 Union producers of the product under investigation, some of which are not participating in the complaint. It is true that imports from third countries still represent more than 20% of the market. We cannot agree that a healthy level of competition exist in Europe with 5 producers covering around 90-95% of the EU production and 80% of the market with increasing market share over the years.

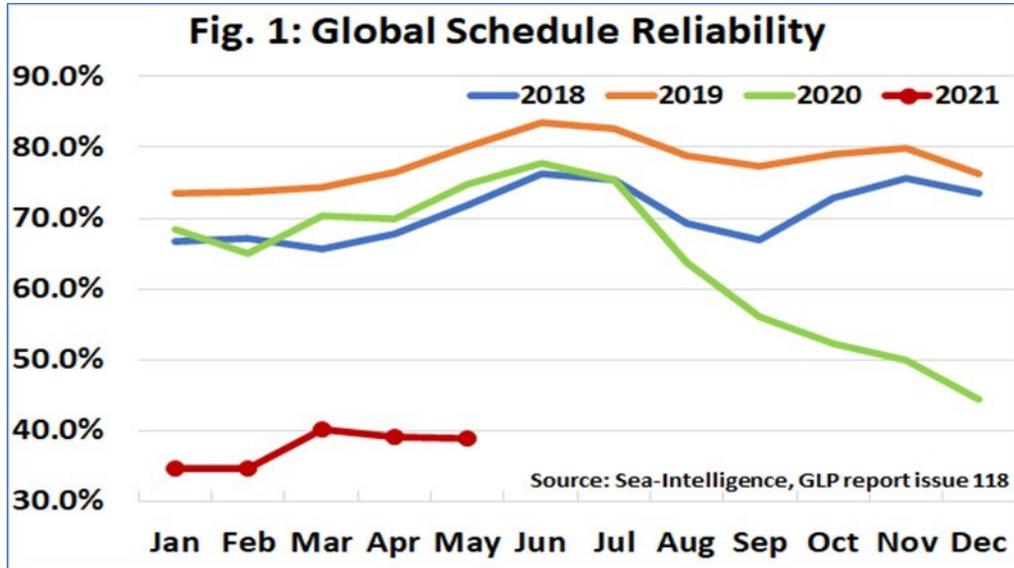
The imports from third countries (even if represents 15/20% of the market) are necessary for the EU market as the EU producers CANNOT MEET ACTUAL DEMAND. There is an evident lack of material and Euranimi’s members can confirm this. In this period of scarcity, the EU producers can decide who to sell and at what price level with no real linking to raw material costs. The target for Eu producers is to decrease imports trough AD & AS proceedings in order to take full control of the market imposing the highest prices in the world (**Annex 4**).

In addition to this, increasingly difficult logistics must also be taken into account.

(1) According to Sea-Intelligence’s latest Global Liner Performance (GLP) report, the average delay for vessel arrivals that were marked as late remains extremely high at 6-7 days in 2021 (Annex 5)



(2) Whilst schedule reliability has fallen dramatically since the middle of 2020:



There is therefore no doubt that the aforementioned situation is causing significant problems in the steel supply.

Users of SSCR are, therefore, faced with an uncoherent situation of shortage of raw materials due to the insufficient EU production and supply. The above situation is also caused by the being in place of an arsenal of protective barriers to imports in form of antidumping duties on SSCR as well as safeguards measures on certain steel product.

Currently, ordering today, some European producers are fully booked until April 2022 and quantity allocation for May and June 2022 is predicted to be very scarce and not enough to meet demand. In this market environment, AS678 duties will cause even higher scarcity. The price of cold rolled stainless steel is the highest in the world (see Annex 3) and it is unfair and unsustainable for the EU downstream industry (**Annex 6 - Restricted - For the Commission only**).

The EU producers are not able to meet the demand and the market is suffering a hard shortage.

In light of the foregoing, it is currently not in the interest of the Union to impose definitive anti-subsidy duties on stainless steel cold-rolled flat products (SSCR) originating in India and Indonesia.

For this reason, EURANIMI formally asks that the present investigation is discontinued/terminated with no imposition of duties.

3. Request for suspension of anti-subsidy duties (Article 24 (4) of the Basic Regulation)

As referred, the stainless steel market is facing a perfect storm of interrelated factors leading to unprecedented increases in raw material and processing costs, combined with logistical problems and product shortage. EU producers are reporting much improved financial results. Meanwhile downstream industries are unable to obtain supplies, even at increased prices.

All these factors are market driven; principally the post-Covid economic rebound from late 2020 and continuing in 2022. However, this also coincides exactly with the end of the IP in AS 678 (30 June 2020). Even accepting that the findings of DG Trade were sufficient to support definitive duties (which is contested), such is the scale of the changes in the market since June 2020, that any such findings are rendered meaningless.

At a time when demand for stainless steel products is outstripping demand, countries such as Russia and China are taking steps to shield their user industries as much as possible.

In this climate it makes no sense for the EU to impose import duties of 10-35,3 % and 10,2-20,2 % on stainless steel cold-rolled products from India and Indonesia.

For this reason, the proposed duties should be suspended whilst a full analysis is made of the Disclosure Document, according the art. 24 (4) of the Basic regulation, as already been taken

into account in the AD 668 antidumping proceeding concerning imports of aluminium rolled products from China.

As a subordinate, therefore, EURANIMI asks that the Commission taking into account the above mentioned exceptional circumstances duly investigate the post-IP period in order to reach a conclusion towards the suspension of the anti-subsidy duties and/or investigation at issue. EURANIMI hereby formally asks the Commission's services in charge to open a procedure aimed at ascertaining whether the application of the anti-subsidy duties at issue must be suspended due to the exceptional market conditions present now in year 2022 in the post-IP period. The fact that the COVID crisis unfortunately has regained power due to the new Omicron variant, which is starting causing serious problems to the economies of many EU member states, is also something that merits a proper assessment by the Commission's services.

In conclusion concerning the above, EURANIMI formally asks the Commission's services to open a formal procedure aimed at the suspension of application of the AS duties at issue. EURANIMI further reserves the right to provide the Commission's service with further evidence and analysis with regard to such suspension matter, should the Commission's services request it.

4. Reference to Euranimi in the Regulation

As a formally registered Brussels-based ivzw/aisbl (international non-profit association), EURANIMI kindly asks for reason of coherency and equality of arms that in the possible future Regulation imposing duties and/or better, in the procedure that the Commission may open for the suspension of duties it is referred to as "EURANIMI" rather than "an association of importers and distributors". This because other companies and often the complainant are specifically mentioned by name.

Yours truly,

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