

Submission filed by

GERBER STEEL GMBH

in the framework of the anti-circumvention investigations concerning
imports of stainless-steel cold-rolled flat products consigned from
Taiwan, Türkiye and Vietnam (R797/R798)

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1. INTRODUCTION

- (1) Gerber Steel GmbH, which represents the internationally active Gerber Group and its CEO Thorsten Gerber in these proceedings, is active in the global trade of raw materials. The company is headquartered in Germany, with branches in Italy, Asia and North America.
- (2) The core of the company's activities is trading in stainless steel cold rolled, hot rolled, long products and aluminium coils and sheets. In other words, in particular, trading in the products involved in these processes. The group trades more than 30,000 MT of stainless steel and aluminium per year.
- (3) The anti-circumvention case against SSCR from Taiwan, Turkey and Vietnam is, in our view, a renewed attack on free trade and fair competition in the European Union to the advantage of multinational conglomerates and to the detriment of small and medium-sized enterprises, which make up the majority of companies in the EU.
- (4) These large corporations abuse market protection mechanisms designed exclusively for their purposes, such as anti-dumping, anti-subsidy and, as in this case, anti-circumvention procedures of the EU in an unfair and market-distorting way to the detriment of a large part of the small and medium-sized enterprises in the member states of the Union. And thus, ultimately to the detriment of the EU citizens.
- (5) That discrimination against small and medium-sized enterprises (SMEs) is the order of the day in the EU is already evident from the fact that, in contrast to the few market-dominating oligopolies, large corporations, which, as in the present case, can easily muster 25% of the necessary total EU production of their industry for such a procedure. While 23 million SMEs, or 99.8%¹ of all companies in the EU, are virtually excluded.

¹ <https://www.bmwk.de/Redaktion/DE/Textsammlungen/Mittelstand/europaeische-mittelstandspolitik.html>

- (6) The regulations responsible for this are, among others, REGULATION (EU) 2016/1036 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on protection against dumped imports from countries not members of the European Union² and 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 Union³.
- (7) We will demonstrate in detail that all the key elements of the anti-circumvention case are contrived or far-fetched and will be used solely and unilaterally to protect the European stainless steel oligopoly and will only increase the damage already done to the European economy.

2. CHANGE IN TRADING PATTERNS – A CRITICAL LOOK

- (8) First, the core of the accusation must be examined. The claim that anti-circumvention investigations are justified because of deliberate and deliberate circumvention via second and third countries through existing anti-dumping (AD) and anti-subsidy (AS) measures requires rigorous scrutiny.

3. DELIBERATE UNDERMINING OF MEASURES – OR A CONTRIVED ACCUSATION?

- (9) EUROFER directs this serious accusation primarily against the import of stainless steel raw material from Indonesia. It suggests that trade flows have shifted as a direct result of AD and AS tariffs against India and Indonesia. The accusation against Vietnam and Taiwan is particularly explosive – for example, the insinuation that Vietnam built its cold rolling capacities solely for the purpose of circumventing these tariffs and that Taiwan stopped its EAF stainless steel production to deliberately circumvent tariffs with low-cost slabs and HRC from Indonesia.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R1036-20200811>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R1037-20200811>

4. A CRITICAL DIGRESSION INTO RECENT HISTORY

- (10) On closer inspection, these accusations appear to be baseless and contrived. The Vietnamese cold rolling mill, which was allegedly built as part of a circumvention scheme, received approval back in 2017⁴ – a time when European safeguard measures against Indonesia were not even in place. The completion of the plant in 2021/2022⁵ raises the question of how these capacities⁶ are said to have been deliberately built to circumvent measures that did not yet exist at the time of planning. The idea that this could be the case borders on conspiracy theories and is completely unfounded.
- (11) The criticism must therefore be: how can EUROFER assume such foresight without drifting into the realm of speculation? The logic behind these accusations is not only thin – it seems to be a desperate attempt to protect one's own market interests through questionable arguments.
- (12) And as Mr Vermulst noted in his article "EU Anti-Circumvention Rules: Do They Beat the Alternative?" back in 2015, circumvention is only possible if it occurs after the initiation of a procedure or during existing measures.
- (13) In the meaning of the EU AS/AD Basic Regulation, it could therefore be stated: "The pattern of trade between third countries (or between individual producers in these countries) and the EU must change. This generally means that imports of the product under investigation from the country concerned decrease and are replaced by imports of other products⁷ from other countries in the case of circumvention by the importing country or circumvention by changes in the product or in the case of circumvention by a third country." (Vermulst, EU Anti-Circumvention Rules: Do They Beat the Alternative?, 2015)

⁴ <https://vir.com.vn/new-steel-projects-bewilder-producers-68495.html>

⁵ <https://news.metal.com/newscontent/101720495/affected-by-the-epidemic-vietnam-yongjins-%22annual-production-capacity-of-250000-tons-of-precision-stainless-steel-strip-project%22-is-scheduled-to-be-put-into-production-in-march-2022>

⁶ https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2020_322_R_0006&from=EN

⁷ Polyester staple fibre from Belarus, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1997:346:FULL&from=DE>

- (14) “This substitution may start after the initiation of the original investigation or after the imposition of measures.” (Vermulst, EU Anti-Circumvention Rules: Do They Beat the Alternative?, 2015)

5. WASN'T THERE SOMETHING ABOUT FREE TRADE AGREEMENTS? – A CRITICAL SCRUTINY

- (15) The existence of free trade agreements between Indonesia and Vietnam, which have been recognized by the European Commission (EC) under the anti-subsidy procedure,⁸ casts a critical light on the allegations of circumvention. As a result of these agreements, the EC had to recalculate the subsidy margins and revise them downwards. The question therefore arises: why is that relevant factor not considered to be a sufficient reason for dismissing the action?

6. TAIWAN AND THE SHUTDOWN OF THE EAF – A DECISION OUT OF ECONOMIC NECESSITY?

- (16) With regard to Taiwan's decision to shut down most of its Electric Arc Furnaces (EAF) as early as 2018, the EC seems to have ignored important economic considerations. Taiwan began⁹ importing significant quantities of slabs and HRC from Indonesia as early as the end of 2017, indicating a strategic decision to outsource the cost-intensive parts of production to save costs. The fact that Taiwanese producers cut back on their melt shops and focused on rolling Indonesian slabs does not indicate a circumvention, but an adaptation to economic realities.

⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0433&from=EN>

⁹ <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>

7. TRADE FLOWS AND THE INCONVENIENT TRUTH

(17) The change in trade flows¹⁰ was obviously a reaction to economic incentives, not protectionist measures. How else can we explain why European stainless steel producers imported over 200,000 MT of slabs from Indonesia between 2019 and 2022¹¹? The irony here is that if one follows the logic of the anti-circumvention procedure, one will now also have to impose punitive tariffs on European stainless steel producers, as they also processed Indonesian slabs into finished products.

(18) The conclusion is unavoidable: the claim that EU market defense measures are solely responsible for the shift in trade and goods flows is not only untenable, but also appears to be deliberately misleading. It is time for the EC to set its own standards and recognize that economic efficiency, not circumvention, is the driving force behind these trading patterns.

8. STAINLESS STEEL PRODUCTION IN THE RKEF-AOD PROCESS – A CRITICAL ANALYSIS

(19) EUROFER's allegations that stainless steel slabs produced in Indonesia are made from nickel pig iron (NPI), which in turn is extracted from subsidized nickel ore, are a prime example of selective and half-true reasoning that portrays the competitive advantages of other countries as unfair practices.

¹⁰ <https://www.woodmac.com/press-releases/tsingshan-indonesia-shakes-up-stainless-steel-markets-in-south-east-asia/>

¹¹ <https://steelnews.biz/anti-circumvention-coming-against-eu-stainless-steel/>

9. THE PRODUCTION OF STAINLESS STEEL SLABS IN INDONESIA

- (20) Indonesia uses the RKEF-AOD process for stainless steel production, which offers a significant competitive advantage over the classic EAF method used by European manufacturers, especially in terms of energy savings. It is significant that EUROFER, which had the differences in CO₂ emissions between Europe, China and Indonesia scientifically investigated¹², does not mention the detailed information on the RKEF AOD in the proceedings, as this could weaken its own position. This deliberate suppression of information obviously serves to keep the Commission in the dark and to protect its own interests.

10. RKEF-AOD IS TECHNOLOGICALLY SUPERIOR TO EAF

- (21) The RKEF-AOD process is not only more energy-efficient than the outdated EAF processes used by European manufacturers, but also more cost-effective. The strategic positioning of Indonesian producers, who have direct access to local nickel deposits and use innovative production methods, is not a subsidy, but the result of economic innovation and geographical advantage.
- (22) In the further course of this text, we will explain that the EU stainless steel mills abused their oligopolistic market power to push stainless steel scrap prices in the EU27 to historic lows in a way that distorted competition and were also supported by the EC.

¹²

https://www.researchgate.net/publication/370214813_304_Stainless_steel_Carbon_Footprint_Comparisi-on-EU_Indonesia_and_China

11. FINLAND, FRANCE, SPAIN, ITALY – EXPORT DEPENDENCE AND ITS IMPLICATIONS

- (23) EUROFER's argument that the Indonesian stainless steel industry enjoys an unfair cost advantage due to massive subsidies is not only one-sided, but also ignores the fundamental export dependence of European stainless steel producers.

12. THE NECESSITY OF EXPORTING FOR EUROPEAN MANUFACTURERS

- (24) It is obvious that European stainless steel producers, such as Outokumpu in Finland with 2.55 million tonnes of melting capacity, cannot produce exclusively for the domestic market. From the outset, production is geared towards exports, which EUROFER deliberately overlooks in its argumentation. The ringleader behind this process, of which the Mittal family is the main shareholder, sheds light on the conflicts of interest within the industry and the export orientation of even the largest players, such as ArcelorMittal.

13. THE REALITY OF THE EUROPEAN STAINLESS STEEL TRADE

- (25) With annual exports¹³ of about 750,000 to 800,000 MT of stainless steel under tariff code 7219 outside the EU and a further 4 to 5 million tonnes traded within the EU27, the conclusion is inescapable: all European producers depend on exports, whether within the EU27 or beyond.

¹³ <https://trade.ec.europa.eu/access-to-markets/en/statistics>

14. THE INTERNATIONAL PERCEPTION OF THE EU AS A FRAGMENTED ENTITY

- (26) The fact that the EU member states are not perceived as a single entity on the international stage is made clear by the individual tariff rate quotas under the US Section 232 tariffs and by the specific anti-dumping measures against individual EU states. This reality undermines EUROFER's claim that Indonesian exporters have an unfair advantage through subsidies, while European producers themselves have to operate in a complex and fragmented international system.
- (27) The criticism must therefore be: EUROFER seems to be more interested in protecting its own industry from competition than in dealing with the actual conditions of the global market. Against this background, the accusations against Indonesia seem not only unjustified, but also hypocritical.

15. 90% ELECTRICITY PRICE REBATE FOR FRENCH STEEL PRODUCERS – AN OBVIOUS DILEMMA OF SUBSIDY POLICY

- (28) The irony of the situation is hard to ignore while EUROFER denounces the Indonesian stainless steel industry for alleged subsidies, European steel producers themselves enjoy massive state support. A look at the strategy paper of the German Federal Ministry for Economic Affairs and Climate Action reveals that French industrial companies received an electricity price rebate of 90% in 2022 – clear evidence of subsidy policy within the EU.

16. THE HYPOCRISY OF HIDDEN SUBSIDIES

- (29) The free allocation of EU ETS certificates since 2005, which has flushed billions of euros into the coffers of European steel mills, is another example of the double standards that prevail in the industry. These hidden subsidies seem to be ignored by EUROFER, while at the same time criticizing competitors for similar practices.

17. RKEF-AOD AND GREEN ENERGY – A THORN IN THE SIDE OF EUROFER AND THE EU STAINLESS STEEL MILLS?

- (30) The RKEF-AOD process, which uses up to 25% less energy than European methods, could outshine European mills in terms of environmental friendliness if it were to run on renewable energy. This seems to be reason enough for EUROFER to brand the procedure as unfair competition – an argument that seems far-fetched.

18. THE ISSUE OF CHINESE SSCR IMPORTS

- (31) The mysterious 300,000 MT SSCRs from China that arrived in Europe in mid-2022 raise more questions. Who bought these quantities? The data suggests that these are unlikely to be smaller players. It is clear that those seeking protection in these proceedings may have benefited or may still benefit from such imports.

19. THE ACCUSATION OF AN UNFAIR LOCATIONAL ADVANTAGE

- (32) The accusation of an unfair locational advantage is particularly absurd when applied to European conditions. Would Outokumpu be criticized for its chrome ore deposits, or Aperam blamed for using cheap French electricity¹⁴ from old, subsidized nuclear power plants? The electricity prices that Aperam enjoys in 2022 were only a fraction of what others in the EU27 and especially in Italy had to pay.
- (33) These comparisons clearly show that what EUROFER presents as unfair competition is nothing more than the use of geographical and technological advantages – something that European mills themselves know all too well. Against this background, the criticism of Indonesia seems not only unjustified, but also hypocritical and self-righteous.

¹⁴

https://ec.europa.eu/eurostat/databrowser/view/NRG_PC_205__custom_7644404/bookmark/table?lang=en&bookmarkId=809e5aad-5f7d-40d5-aafb-97c149477cd1

20. EU INDUSTRIAL ELECTRICITY PRICES UNDERCUT CHINA – A PARADOXICAL PRICE CALCULATION

- (34) The revelations by the German Federal Ministry for Economic Affairs and Climate Action¹⁵ show a paradoxical picture of the European energy price landscape. French industrial electricity, which was even cheaper than in China in 2019, 2022 and 2023, stands in stark contrast to the high energy cost surcharges demanded by some stainless steel mills. These surcharges, some of which have been quoted on the mills websites as more than 900 EUR/MT, raise questions that go far beyond simple cost calculations.

21. THE IMPLICATIONS OF ENERGY PRICING POLICY

- (35) The fact that French stainless steel producers could benefit from such low energy prices points to a possible unfair price advantage that exists not only within the EU, but also globally compared to Chinese competitors. This situation highlights the complexity and possible inconsistency of European industrial policy, which favours some operators while others suffer from high costs.

¹⁵ https://www.bmwk.de/Redaktion/DE/Publikationen/Industrie/industriepolitik-in-der-zeitenwende.pdf?__blob=publicationFile&v=12

**22. SSCR: 21 KG OF NICKEL CONTRIBUTES TO A 54.8% INCREASE IN
VALUE?**

- (36) SSCR AS Circumvention Body¹⁶ states that the EU COP 2019 averaged 2331 EUR/MT based on world nickel prices (LME) of 13907 USD/MT and increased to 3609 EUR/MT or 54.8% in 2022. The nickel price, which according to EUROFER had accounted for about 50% of the price increases at the SSCR, averaged 25638 USD/MT in 2022, which would mean an increase of 84.4% compared to 2019.

23. SCRAP RATE IN THE EAF OF OVER 90%

- (37) This is particularly interesting in view of the fact that EUROFER has made a wrong assumption here. Austenitic SSHR or SSCR produced in the EU, as the European Commission and DG-Trade are certainly aware, consists mostly of stainless steel scrap and a small proportion of conventional steel scrap. Only about 13 to 15% are materials for re-alloying, such as pure nickel, ferro-chrome, ferro-nickel, ferro-silicon, and silicone-manganese or, in the case of 316/316L, molybdenum. It's no wonder that there are more percentages than there are 100% in it: More material has to be added to the EAF so that 1,000 kg of molten stainless steel comes out in the end due to scrap and waste in production.
- (38) SSHR for the end customer often contains a higher proportion of scrap than SSCR. This is due, among other things, to the different purposes.

¹⁶ SSCR_AD_circumvention_body.pdf, p. 30/36

24. THE SCRAP QUOTAS OF EU STAINLESS STEEL PRODUCERS

- (39) Outokumpu mentions a percentage of more than 90% scrap¹⁷ on its website.
- (40) Aperam points out in its Sustainability Report 2022¹⁸ "Aperam Made for Life": 90% metallic scrap used in European austenitic stainless steels.
- (41) In the Aperam Infinite press release from September 2023¹⁹, the company even boasts of a scrap content of up to 98%.
- (42) And Acerinox's website says "Materials manufactured with more than 90% scrap".²⁰
- (43) Even though we only have one document from Arvedi AST from 2020 at our²¹ disposal, a significant scrap content of 89.3% is already noted there. An increase of 15.2% compared to 2019²², when it was 74.1%. It can therefore be assumed that Arvedi AST has done something in the following years to achieve the minimum value of 90%, which opens the door to European subsidies. This is in line with the EUROFER recommendation from 2020²³.

¹⁷ <https://www.outokumpu.com/en/sustainability/environment/circular-economy/stainless-steel-life-cycle>

¹⁸ https://www.aperam.com/sites/default/files/documents/2022_AperamMadeforLifeReport_Main.pdf

¹⁹ https://www.aperam.com/sites/default/files/documents/Aperam_infinite_Press_Release.pdf

²⁰ <https://www.acerinox.com/en/accionistas-e-inversores/kit-del-inversor/propuesta-de-inversion-sostenible/>

²¹ <https://www.acciaitermi.it/wp-content/uploads/2020/11/dichiaraz-Leed-v4-eng.pdf>

²² https://www.acciaitermi.it/wp-content/uploads/2019/07/Ass_amb_14021.pdf

²³ <https://www.EUROFER.eu/assets/publications/reference-documents/20201005-Using-the-standard-EN-19694-2-and-appropriate-scrap-content-eligibility-thresholds-for-an-EU-Taxonomy-fit-for-purpose.pdf>

25. WHY SO MUCH SCRAP?

(44) The background to the high scrap content is simple and prominently taken, for example, from the Aperam ESG presentation from July 2022²⁴ ²⁵ ²⁶:

(45) (2) EU Taxonomy* requires:

(46) for high alloy steel (stainless): 0.266 (mitigation) to 0.360 (adaptation) tCO₂ e/tcs ex-caster Scope 1 for EAF route or a 70% scrap ratio minimum.

(47) for carbon steel: 1,331 (mitigation) to 1.443 (adaptation) tCO₂ e/tcs ex-caster Scope 1 for hot metal i.e. BF route), or a scrap ratio at 90% minimum.

26. EUROFER'S COST OF PRODUCTION MISREPRESENTED

(48) In summary, the nickel price increase of 84.4% in the period 2019 to 2022 to a production cost increase of 54.8% at SSCR in the same period is simply wrong. Because real pure nickel only accounts for about 0.7% of the EAF production of European stainless steel. In addition, some ferro-nickel, which would result in a total of just 2.1% or 21 kg per 1000 kg for austenitic stainless steel 304 melted in the EU.

27. STAINLESS STEEL SCRAP ONCE AGAIN THE GAME CHANGER?

(49) Of course, stainless steel scrap now comes into play. This could actually have contributed mathematically to the fantasy value for SSCR of 3609 EUR/MT (Was Pipi Longstocking with her "I make the world the way I like it" the model for this value?) if the stainless steel scrap prices, which have been at a historically low level at least since 2018, had been measured with the actual value of the nickel in stainless steel scrap. We would like to note at this point that only role models can determine their own prices. And you can't look at the steel mills in need of subsidies in the EU as a role model, can you?

²⁴ <https://www.aperam.com/sites/default/files/documents/Aperam%20ESG%20presentation.pdf>

²⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852>

²⁶ <https://ec.europa.eu/sustainable-finance-taxonomy/activities/activity/154/view>

(50) According to media reports, stainless steel scrap discounts on LME nickel have been increasing more and more since 2016.

(51) "Stainless steel scrap discounts to LME nickel prices started to widen in July 2016, Outokumpu data show."²⁷

(52) "Discounts are reported to have been as wide as 35pc in some parts of Europe since late 2018 and traders said this was the widest for some years."²⁸

28. PRICE FIXING FOR STAINLESS STEEL SCRAP RELEVANT TO ANTITRUST LAW?

(53) This massive drop in prices was caused by the EU producers themselves, in which they had demanded and enforced ever higher discounts for the nickel content in scrap (and other ferrous alloys) since at least 2018. Among other things, this had led to repeated bottlenecks in the supply of scrap to mills.

(54) It might be interesting to see what the EU's antitrust watchdogs or OLAF might have to say about this - if they were allowed to say something.

29. EXAMPLES OF DISCOUNT CLAIMS FOR STAINLESS STEEL SCRAP AND FERROUS ALLOYS

(55) Outokumpu's demand for higher discounts on stainless steel scrap and ferro-nickel in order to compete with Asian competitors highlights the level playing field in the global stainless steel industry. Speaking at the 2019 Argus NiCoMo conference in London, Outokumpu's Antti Saarela stressed the need to reduce the input cost of raw materials in Europe in order to compete with Asian mills that mainly use Nickel Pig Iron (NPI).

²⁷ <https://www.argusmedia.com/en/news/1858808-lower-feedstock-prices-needed-in-europe-outokumpu>

²⁸ <https://www.argusmedia.com/en/news/1858808-lower-feedstock-prices-needed-in-europe-outokumpu>

30. "LOWER FEEDSTOCK PRICES NEEDED IN EUROPE: OUTOKUMPU"

- (56) "This is a message to our suppliers that we need better discounts in stainless steel scrap and ferro-nickel to compete with our Asian competitors," Finnish firm Outokumpu market intelligence manager Antti Saarela told delegates at the Argus NiCoMo conference in London last week.²⁹
- (57) Outokumpu said that the prices of stainless steel scrap and ferro-nickel in Europe are too high when compared with nickel pig iron (NPI), which is the main feedstock for Asian stainless steel mills.³⁰
- (58) In addition to low NPI prices, "there is also unfair state subsidy that is supporting the Chinese stainless steel industry. Unlike Europe, companies in Asia don't have to pay for their carbon emission," Saarela said.³¹
- (59) The criticism of the high prices of stainless steel scrap and ferro-nickel in Europe compared to NPI is an indication of the different cost structures that European mills have compared to their Asian counterparts. Saarela also pointed to government subsidies that support China's stainless steel industry and the fact that companies in Asia do not have to pay for their CO2 emissions – a clear competitive disadvantage for European companies.
- (60) However, the response to this statement could be just as harsh: since the introduction of the EU Emissions Trading System (EU ETS) in 2005, European steel and stainless steel mills have received significant amounts of CO2 allowances free of charge, effectively tantamount to subsidies. These allowances have allowed companies to offset their emissions at no additional cost, which could be interpreted as a hidden subsidy. At least we do!

²⁹ <https://www.argusmedia.com/en/news/1858808-lower-feedstock-prices-needed-in-europe-outokumpu>

³⁰ <https://www.argusmedia.com/en/news/1858808-lower-feedstock-prices-needed-in-europe-outokumpu>

³¹ <https://www.argusmedia.com/en/news/1858808-lower-feedstock-prices-needed-in-europe-outokumpu>

- (61) Criticism of Asian competitors for state subsidies and lack of CO2 costs could therefore be seen as hypocritical, considering that European companies have enjoyed similar benefits through the free allocation of emission allowances. This double standard undermines the credibility of the arguments of European mills who complain about unfair conditions of competition while they themselves benefit from government support measures. We ask whether the EC would not be well advised to question the obscure demands of EUROFER much more sharply from now on.

31. STAINLESS STEEL SCRAP MARKET IN THE WAKE OF THE UKRAINE CRISIS: PRICE COLLAPSE AND TRADE DILEMMAS

- (62) Russia's invasion of Ukraine has further exacerbated the already tense situation in the stainless steel scrap trade. The prices for stainless steel scrap collapsed as a result of the crisis and have since been trading well below their actual value³². The observed discounts on nickel content, which in some cases were as high as 73% and in some cases as high as 80%, reflect a dramatic undervaluation of this raw material. Even as a critical raw material as demanded by the European steel lobby.
- (63) This development³³ is particularly worrying as it exacerbates the already precarious situation of scrap dealers and undermines the profitability of the recycling industry. The collapse in scrap prices could have a long-term negative impact on the supply chain and sustainability of stainless steel production, as it reduces incentives for recycling and reusing materials.

³² <https://www.argusmedia.com/en/news/2376111-uncertain-future-for-europes-scrap-market-cronimet>

³³ <https://www.fastmarkets.com/insights/mb-stainless-helsinki-ferro-nickel-losing-competitiveness-against-stainless-scrap-npi>

- (64) The fact that stainless steel scrap³⁴ is trading below value also raises questions about market mechanisms and the role of speculation. It could be argued that such rebates are not only justified by market conditions but may also be influenced by manipulative practices or an unequal distribution of market power.
- (65) Thus, the crisis in Ukraine not only has far-reaching geopolitical consequences, but also a direct and tangible impact on the global trade in raw materials. The stainless steel industry faces the challenge of responding to these changing conditions and finding solutions that ensure fair pricing and the maintenance of a sustainable supply chain.

32. EUROFER COST OF PRODUCTION DOES NOT TAKE INTO ACCOUNT STAINLESS STEEL SCRAP DISCOUNTS

- (66) The production costs for 304 stainless steels published by EUROFER, which are quoted at EUR 3609 per tonne, seem to ignore significant discounts on stainless steel scrap. This omission raises questions as to whether the costs quoted reflect the reality of the industry or whether they may distort the financial situation of European stainless steel producers.
- (67) Our analyses suggest that the actual cost of production (COP) of EU producers could be at least 25-30% lower than the values assumed by EUROFER. This estimate is based on a comprehensive calculation method that takes into account the cost of raw materials, consumables, energy (including electricity, natural gas and EU ETS CO2 certificates – based on average prices from Finland, France, Italy and Spain), assumed losses in yield and wages for the various stages of production such as EAF, hot rolling, cold rolling and annealing. The data used come from publicly available sources and partly from official publications of the European Commission.
- (68) We also suspect that European production costs could be even lower than calculated. This assumption is based on the fact that we did not include

³⁴ <https://www.argusmedia.com/zh/news/2002968-stainless-steel-scrap-deviates-from-nickel-price-rally?amp=1>

volume discounts for the purchase of raw materials, except for stainless steel scrap, in the calculations. In addition, it is unclear to what extent additional negotiations could have led to further price reductions.

- (69) The fact that the Finnish group Outokumpu produces its own ferrochrome, and that Aperam³⁵ has expanded its influence in the market for ferrous, non-ferrous and stainless steel scrap with the acquisition of the German recycling company ELG³⁶, suggests that these companies could benefit from further cost advantages that are not apparent in the public data.
- (70) These findings call for a critical review of the production costs presented by EUROFER and a possible reassessment of the cost structures in the European stainless steel industry.

33. VALUE CREATION MISREPRESENTED IN THE PROCESS?

- (71) We are now referring to data used in a scientific paper and provided to the author by EUROFER. The data take a clear look at the actual value added in the EU steel industry, even if these appear to date back to 1990.
- (72) Unfortunately, we only have a source in fragments, which is why we cannot name the author exactly. However, since the excerpt was found in the archives of the University of Groningen and the data seems to come from EUROFER, we would still like to talk about it briefly. We've removed unnecessary data. We have the complete table³⁷.

³⁵ <https://www.aperam.com/sites/default/files/documents/Aperam%20ESG%20presentation.pdf>

³⁶ https://ec.europa.eu/competition/mergers/cases1/202209/M_10320_8196610_629_3.pdf

³⁷ Author and Title unknown, Chapter "3 The West European Steel Industry", Data likely from 1990, found in the archives of the University of Groningen

34. PRODUCTION COSTS ACCORDING TO EUROFER

Table 3.4 Production costs according to EUROFER

Product* or intermediate	costs in Euro/tonne	
	incl depreciation	excl depreciation
PRIMARY PRODUCTION		
liquid steel	155,0	144,1
continuous cast steel	173,8	159,7
hot rolled coil	207,1	186,6
hot rolled coil for sale *	217,1	196,6
cold rolled coil	257,6	227,4
cold rolled coil, annealed, tempered and finished	301,3	284,5
cold rolled coil, finished and packed*	319,3	284,5

Costs are at the bottom end of a wide range. A very limited number of world class facilities with low input prices will achieve these figures

- (73) Of course, this is the primary route, i.e., from BF/BOF > continuous casting > hot rolling > cold rolling > annealing, tempering, finishing > finished and packaged cold rolled coil. And no stainless steel either. However, with the exception of the EAF, the model can be transferred to the stainless steel value chain.

35. VALUE ADDED FROM HRC TO CRC AT MORE THAN 45%

- (74) And to cut a long story short, the jump from hot rolled coil to cold rolled coil excluding depreciation alone adds a value added of 22% to the CRC based on the available figures. If annealing, hardening and a surface are added, the added value from CRC to CRC annealed, tempered, and finished increases by another 25%. Overall, this results in a value added of more than 45% from HRC to CRC.
- (75) EUROFER's accusatory calculation of value added, which postulates only a marginal value added from SSHR to SSCR of less than 8%, raises serious questions. The figures presented by EUROFER contradict the data presented here, which suggest a significantly higher value add. This discrepancy leads to the conclusion that the calculations provided by EUROFER with this case may suggest that the added value of stainless steel is too low. Given the importance of such data for assessing the competitiveness and profitability of the steel industry, it is of the utmost importance that EUROFER clarifies these calculations and discloses the methodology in order to dispel any suspicion of deliberate undervaluation.

36. ON THE OTHER HAND, THE VALUE ADD OF THE EU STEEL INDUSTRY IS SIGNIFICANTLY HIGHER THAN CLAIMED BY EUROFER

- (76) No wonder that the EU steel industry is making such a secret about the production costs of CRC and SSCR - since the value add of the EU steel industry seems to be significantly higher than what is supposedly claimed here. And whether value add has declined so badly is rather questionable in view of the technological stagnation and the unwillingness of steel

manufacturers to adapt their production methods. We estimate that the value added of carbon steel is still likely to be at least 30 to 40%.

37. WHERE DOES THE DISPROPORTIONATE DISTORTION COME FROM?

(77) But why does steel supposedly have so much higher value add than, say, a 304 SSHR on a 304 SSCR? In particular, the expensive nickel and high-quality ferro-alloys, such as ferro-nickel and ferro-chrome, lead to a disproportionate distortion in the value chain. Because if you take nickel out of the equation, the added value of stainless steel jumps dramatically. Which would also explain why EUROFER focuses on austenitic stainless steel grade 304 and more or less ignores all other grades in its complaint.

38. ECJ: ZENTRALGENOSSENSCHAFT DES FLEISCHERGEWERBES E.G. (ZENTRAG), V. HAUPTZOLLAMT BOCHUM

(78) The European Court of Justice (ECJ) had held in Case 93/83, Zentralgenossenschaft des Fleischergewerbes e.G. (Zentrage), v. Hauptzollamt Bochum, 1984 ECR 1095³⁸ that a value added of less than 10% was not sufficient to change the origin.

(79) However, a minimum value added of 25% is still not necessary. Because this is the threshold above which circumvention proceedings would not be initiated in the first place.

(80) In the overall context, EUROFER therefore claims that the value added at 304 from SSHR to SSCR in this procedure would be around 8%. If we calculate back the added value based on the data provided by EUROFER (base 8%, 2023), the minimum value added (2019) for EU SSCR 304 was more than 12%.

38

<https://curia.europa.eu/juris/showPdf.jsf?text=&docid=92459&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1&cid=4639719>

- (81) Once again, it can be assumed that EUROFER's figures have deliberately obscured the stainless steel scrap discounts that are relevant and crucial to the pricing process. And also continue to disproportionately focus on the 304 austenitic stainless steel grade, while at the same time attacking all SSCR Tariff Codes from the original process.
- (82) Therefore, it can still be assumed that the added value of the 304 from SSHR to SSCR is higher than 12%. Probably even significantly higher.

39. UNION CUSTOMS CODE AND THE PRIMARY RULE

- (83) In the case (Reference for a preliminary ruling – Customs union – Regulation (EU) No 952/2013 – Union Customs Code – Article 60(2) – Acquisition of origin of goods – Delegated Regulation (EU) 2015/2446 – Article 32 – Goods the production of which involves more than one country or territory – Annex 22-01 – Primary rule applicable to goods under subheading 7304 41 of the Harmonised System – Concept of ‘hollow profile’ – Steel ‘tube blanks’ under subheading 7304 49 of the Harmonised System, obtained by hot-forming and enabling the production of steel tubes by cold forming, under subheading 7304 41 of the Harmonised System – Validity of the primary rule) decided by the European Court of Justice (ECJ) on 21 September 2023, clarifies once again how the primary rule and Annex 22-01 of Delegated Regulation 2015/2446 of the Union Customs Code should be applied.³⁹
- (84) Furthermore, the ECJ reiterated that the finding in the 33rd recital of Implementing Regulation 2017/2093 confirms that tubes undergo substantial working and processing because of their cold working.⁴⁰
- (85) Indeed, this finding is based on the observation that cold forming entails irreversible changes in the physical, mechanical, and metallurgical properties

³⁹

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=277633&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=79567>

⁴⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R2093>

of tubes. However, such changes may determine the origin of the goods, as is apparent from the case-law cited in paragraph 54 of the present judgment.

- (86) The ruling establishes beyond doubt that the country of origin of a hot-rolled stainless steel is changed when it is processed into a cold-rolled stainless steel. In other words, a decisive step is taken "in the last essential working or processing". This also makes the point. The point of "economically justified working or processing", which is misused in this procedure to divert attention from the Union Customs Code, has been adequately clarified.

40. EC: “DISRUPTIONS IN THE SUPPLY CHAIN CAUSED BY THE COVID-19 PANDEMIC ARE OF EXCEPTIONAL NATURE AND ARE NOT SPECIFIC TO THE SSCR SUPPLY CHAIN.”

- (87) The excessive increase in nickel prices in 2022 has opened the possibility of using a raw material that already contributes disproportionately to the value of the product to instrumentalise a vague EU rule that is suspected of not even being WTO-compliant and thus exclude unwelcome market participants.
- (88) And as the European Commission so appropriately writes in COMMISSION IMPLEMENTING REGULATION (EU) 2021/1483 of 15 September 2021 imposing a definitive anti-dumping duty on imports of stainless steel cold-rolled flat products originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council:
- (89) “(278) Disruptions in the supply chain caused by the COVID-19 pandemic are of exceptional nature and are not specific to the SSCR supply chain.”⁴¹

⁴¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R1483&from=EN>

- (90) Therefore, the massive increase in nickel prices caused by a speculative event unique in the history of the London Metal Exchange (LME) or the increased energy costs since the beginning of the Russian war of aggression on Ukraine, both events that coincidentally occurred shortly after each other in March 2022, cannot be used as a justification - since, like the COVID-19 pandemic, they are events of exceptional nature and are not specific to the SSCR supply chain. Right?

41. A MASKIROVKA WITH 300 STAINLESS STEEL GRADES

- (91) As we know, Indonesia exports almost exclusively the stainless steel grades of the 300 series, which are austenitic stainless steels. At the same time, however, the proceedings are being conducted against all stainless steel grades from Vietnam, Turkey, and Taiwan, including the 400 series, which EU stainless steel mills are extremely reluctant to produce.

42. 30% ADDED VALUE FOR FERRITIC STAINLESS STEELS

- (92) If, for example, the added value is calculated based on a ferritic, chromium-based stainless steel grade of the 400 series, an added value of up to 30% (or more) can be achieved in Europe, depending on the yield loss. As we have already pointed out, the raw material costs we used were probably still significantly too high and the real value add could therefore be much higher.

43. DISPROPORTIONALE: ALL TARIFF CODES AFFECTED

- (93) However, since this is not exclusively about the tariff codes for the 300 series, but all tariff codes in the SSCR segment are to be subject to the punitive tariffs from the AD and AS proceedings against Indonesia at the same time, disproportionality can be assumed here. The only conclusion of the procedure was to impose a severe penalty on EUROFER for the misuse of protective actions. Costs are deliberately incurred that have to be borne by the general public, i.e. the taxpayer.

44. INTERIM CONCLUSION - BUT NOT YET THE END

- (94) After we have revealed that the trade structure had already changed before the proceedings, that the value added for steel and stainless steel is significantly higher than the EUROFER had pretended, and with the defined changes in the tariff headings in Section XV BASE METALS AND ARTICLES OF BASE METAL CHAPTER 72 Iron and steel of the EC of 2022⁴², it should have been sufficiently and sustainably demonstrated by us that there is no circumvention in the sense of the EU Anti-Dumping or Anti-Subsidy Basis Regulation.

45. MANUFACTURING-PROCESS - THE DIRTY SECRET LIES BURIED IN THE EPDS

- (95) “The steel scrap is melted in an electric arc furnace to obtain a steel melt. The liquid steel is further refined (adjustment of sulphur, carbon and phosphorous) and alloyed to give the requested characteristics to the steel. The molten steel is then cast into semi-finished steel products like slabs or billets. The semi-finished steel products are hot rolled and then annealed and pickled and cold rolled into desired thickness. If required, they can also be patterned rolled or polished.”
- (96) This extract from the Environmental Product Declaration (EPD) for Cold Rolled Stainless Steel of the Finnish stainless steel manufacturer Outokumpu⁴³ Oyj dated 28 June 2011 should be sufficient proof that the anti-circumvention proceedings at hand are based on unfounded accusations, flimsy claims and false pretences.
- (97) That the European Commission and the Directorate-General for Trade did not scrutinise the case better in advance and fell for the hypocritical claims of EUROFER and the companies it represents in this case is not only disappointing, but also frightening. The whole process casts a dark shadow

⁴² https://taxation-customs.ec.europa.eu/system/files/2022-04/Section%20XV-ch72-83_HS2022.pdf

⁴³ Environmental Product Declaration, ECO-OUT-00020101-1106, Date of issue 28.06.2011

over the European Union and the supposed level playing field of fairness and a level playing field.

- (98) This was obviously deliberate and not only to the detriment of the non-European manufacturers and suppliers of cold-rolled stainless steel, who were hypocritically accused of intent by EUROFER, but in particular to the European Union as a whole, the European economy and ultimately the European citizen, once again under false pretences.
- (99) Apart from the artificial outrage that is likely to follow, this is probably not enough to convince everyone. So on with the text.
- (100) The MANUFACTURING process described by Outokumpu 2011 in its EPD for SSCR is only part of the declaration. If you look at the product stage (A1, A2, A3) in the Building assessment information section (x = included in LCA), this includes the points Raw Material Supply (A1), Transport (A2) and Manufacturing (A3).
- (101) So, if, as claimed by EUROFER, cold rolling and annealing, pickling and skin pass are only part of the assembly stage, why are they categorised in the EPD under A3 and not in the Construction Process Stage under Installation into building (A5)? In other words, the area that really contains the ASSEMBLY OPERATIONS stage.
- (102) If the word twisting, which has contributed significantly to this reprehensible case, is now to continue on the part of EUROFER, another look at the four EPDs published by Outokumpu Oyj in 2019 (Stainless Steel Long Products⁴⁴, Stainless Steel Rebar⁴⁵, Hot Rolled Stainless Steel⁴⁶ and Cold Rolled Stainless Steel⁴⁷) is enough to see that point A5 ASSEMBLY is to be understood. And due to the transport from the gate to the site (A4) is already outside the scope of Outokumpu's manufacturing process at this point in time.

⁴⁴ Outokumpu EPD-OTO-20190107-IBD1-EN, Issue date 19/09/2019

⁴⁵ Outokumpu EPD-OTO-20190108-IBC1-EN, Issue date 19/09/2019

⁴⁶ Outokumpu EPD-OTO20190003-IBD1-EN, Issue date 28.06.2019

⁴⁷ Outokumpu EPD-OTO20190002-IBD1-EN, Issue date 28/06/2019

- (103) These EDPs can be found e.g. on the website Ökobaudat⁴⁸ of the German Federal Ministry of Housing, Urban Development and Building⁴⁹, among others. And are published by the German Institut Bauen und Umwelt e.V.⁵⁰
- (104) In the 2011 EPDs for hot rolling and cold rolling, the manufacturing processes are clearly shown graphically. In the 2019 EPDs, the manufacturing processes are clearly assigned to the product stage from the Description of the system boundary in the graphics Hot rolled steel: Impact assessment - contributions in relation to A1-A3 and in Cold rolled stainless steel (A1-A3).
- (105) If the global warming potential (kg CO₂-Eq.) from the Outokumpu EPD for SSHR (2.740 kg CO₂-Eq./MT SSHR, 2019) is now subtracted from the global warming potential from the Outokumpu EPD for SSCR (3.390 kg CO₂-Eq./MT SSCR, 2019), 650 kg CO₂-Eq. remain as emissions for 1 MT SSCR. The fact that the emissions resulting from the burning of 1 MT of cement are referred to as assembly can no longer be regarded as an oversight or misunderstanding but requires intent.
- (106) These facts also confirm once again that the value add is much higher than absurdly claimed by the plaintiff.
- (107) Now, even a first semester student should be able to recognise that there is a huge difference between his home-made shelving unit from a well-known Swedish furniture store chain and the manufacturing process of stainless steel cold rolled coil.
- (108) And that cold rolling is not an assembly operation, but a MANUFACTURING PROCESS.

⁴⁸ <https://www.oekobaudat.de/>

⁴⁹ <https://www.bmwsb.bund.de>

⁵⁰ <https://ibu-epd.com/>

46. CONCLUSION: TERMINATE THE PROCEEDINGS IMMEDIATELY

(109) There can therefore be no other decision than to reject EUROFER's complaint immediately. Furthermore, it is imperative to examine whether the anti-circumvention action was filed against better judgement and what criminal offence this could constitute. It was in the least a deliberate distortion of the market.

(110) The entire procedure looks as if it had been agreed in advance and evokes unpleasant memories of the European Commission's proceedings (Case IV/35.814 - Alloy surcharge⁵¹) against the EU stainless steel cartel.

(111) We therefore also call for a reconsideration of whether antitrust investigations against the plaintiffs would be appropriate. We have indicated the reasons for this in our statement and are willing to support the investigative authorities.

⁵¹ <https://eur-lex.europa.eu/eli/dec/1998/247/oj>