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
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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 Gimeno 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

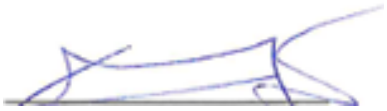
Identity (name, address, telephone, fax) of the company supporting the application

- 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

OPEN

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									
Ilta 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.									
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										
Ilta 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
Outokumpu Oy	Salmisaarenranta 11	00180	Helsinki	Finland						https://www.outokumpu.com/
Acciai Speciali Terni	Viale B. Brin 218	05100	Terni	Italy						https://www.acciaiterni.it/
Aperam Stainless France	6 Rue André Campra	93210	La Plaine Saint-Denis	France						https://www.aperam.com/
Acerinox Europa SAU	Calle Santiago de Compostela 100	28035	Madrid	Spain						https://www.acerinox.com/
Marcegaglia Specialties	via Bresciani, 16	46040	Gazoldo degli Ippoliti	Italy						https://www.marcegaglia.com/
Otelinox	16, Gaesti Street	130087	Targoviste, Dambovita	Romania						http://www.otelinox.com/
SIJ ACRONI	Cesta Boris Kidriča 44	4270	Jesenice	Slovenia						https://sij.acroni.si/

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 NICKELAND CHROME ALLOY										
PT SULAWESI MINING INVESTMENT INDONESIA										
PT EKASA YAD RESOURCES										
PT HANWA INDONESIA										
IMR METALLURGICAL RESOURCES AG										
PT BINTANGDELEPAN; 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/

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.tsiia.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
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
Turkish Steel Producers Association										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 7218 to 7223

in tonnes	2015	2016	2017	2018	2019	2020	2021	2022	'22 vs '15
Indonesia	55,481	82,683	690,194	1,938,656	2,270,480	2,920,475	4,780,511	4,685,534	8345%
China	2,937,246	3,416,169	3,414,701	3,369,826	3,008,972	2,827,993	3,866,285	3,928,422	34%
EU27	1,531,281	1,556,686	1,639,236	1,653,875	1,444,605	1,261,011	1,301,808	1,189,481	-22%
Taiwan	1,058,849	1,238,307	1,350,631	1,289,638	1,124,975	945,873	1,247,101	1,101,189	4%
South Korea	1,415,009	1,476,756	1,527,232	1,627,712	1,547,516	1,358,770	1,250,294	936,003	-34%
India	661,372	723,662	815,024	750,167	727,955	673,235	892,203	786,459	19%
Japan	872,824	867,448	823,681	797,661	687,606	591,752	701,838	594,505	-32%
United States	802,429	801,184	955,888	657,423	428,225	310,477	342,641	344,952	-57%
South Africa	315,920	422,159	405,392	353,160	307,551	243,807	267,584	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 form 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 exporter 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 consist 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 correspond 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 Vietnam[1] is essentially the same as used for Taiwan with the following differences:

1. *These 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.*

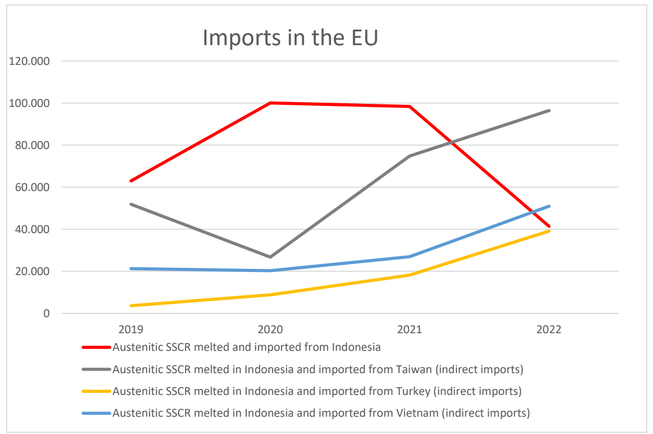
2. *In the absence of domestic melting capacities for stainless steel in that country (production of SSCR is exclusively from re-rolling SSHR), inputs from the production of SSCR are 100% imported. This means that the ratio to define the origin of the semi-products used as inputs in the production of SSCR is calculated solely by a comparison between imports from Indonesia and imports from another source.*

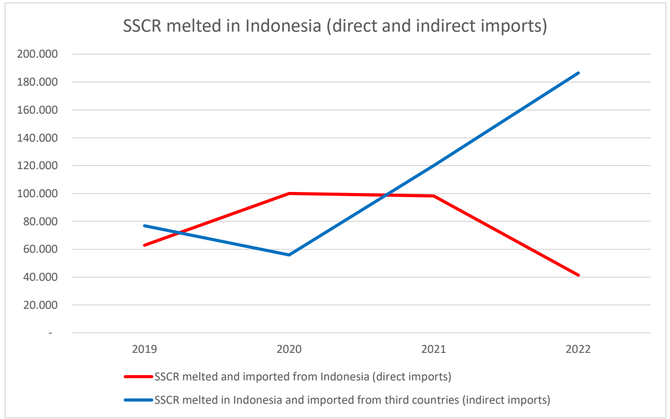
With regard to **Turkey**, whereas the principles are the same, additional factors are considered. First, as the Turkish custom statistics allow identifying the austenitic SSHR and SSCR, it is not necessary to rely on estimate to identify austenitic materials. Second, as imports of Indonesian slabs in 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] 1The 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	Indirect imports of Indonesian melted SSCR to the EU via third countries - Maximum 2022
Austenitic SSCR melted and imported from Indonesia	62.974	100.055	98.329	41.400	41.400
Austenitic SSCR melted in Indonesia and imported from Taiwan (indirect imports)	51.927	26.764	74.884	96.454	141.452
Austenitic SSCR melted in Indonesia and imported from Turkey (indirect imports)	3.667	8.842	18.199	39.142	89.678
Austenitic SSCR melted in Indonesia and imported from Vietnam (indirect imports)	21.305	20.310	26.976	50.983	75.044
Imports of SSCR melted in Indonesia (direct and indirect imports)	139.872	155.970	218.388	227.978	347.574
SSCR melted and imported from Indonesia (direct imports)	62.974	100.055	98.329	41.400	41.400
SSCR melted in Indonesia and imported from third countries (indirect imports)	76.898	55.915	120.059	186.578	306.174
Other SSCR imported from third countries	512.026	372.316	400.096	720.405	642.209
SSCR imports of austenitic (total)	651.898	528.286	618.484	948.383	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





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

In tonnes and %	2019	2020	2021	2022
Inputs from Indonesia	761.512	836.642	1.276.119	1.205.724
Index	***100***	***110***	***168***	***158***
Imports of SSCR in the EU	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***

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

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

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

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

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

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 des	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 C	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
Indonesia
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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
Taiwan
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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
Vietnam
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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

Metric tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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
Turkey
Eu 27

Euro/Tonne	Y 2019	Y 2020	Y 2021	Y 2022
Stainless C	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.

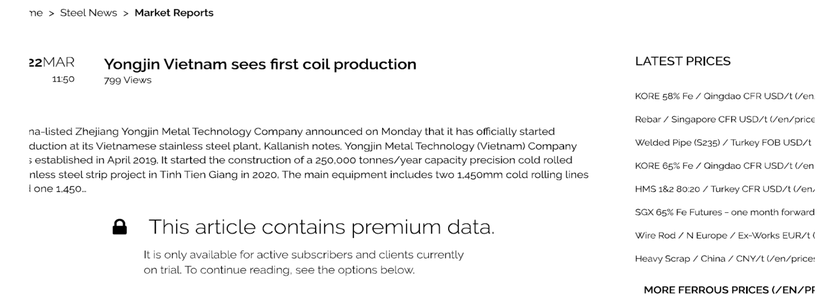
With a humble vision to become the most beloved and reliable supplier, the genuine Turkish corporation actively fulfills principles of excellence and devotion and exerts a great deal of effort to get growing while achieving customer advocacy.

Website

http://www.trinoxmetal.com

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/.



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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 s 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 l one 1,450...

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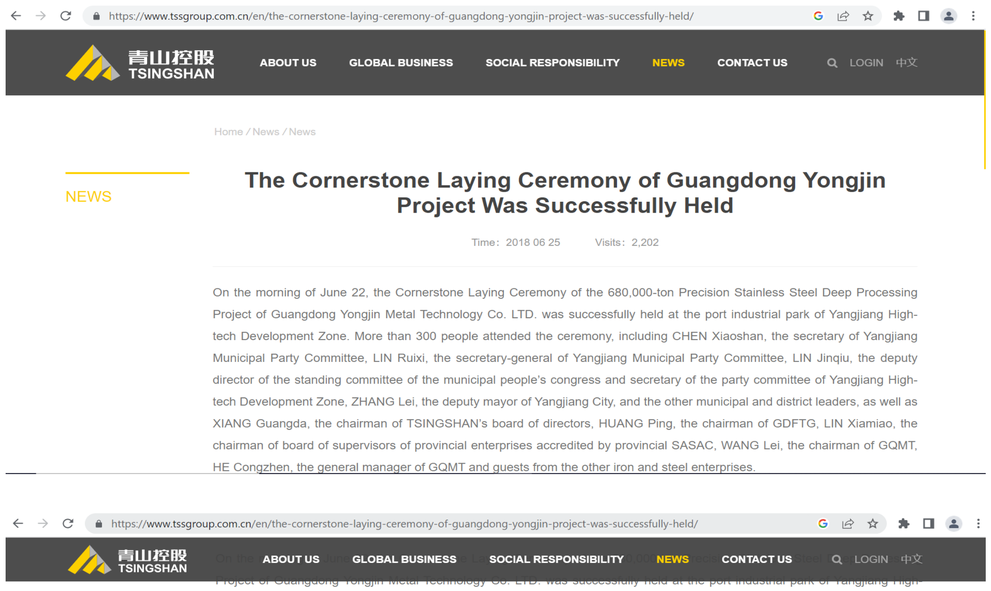

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NEWS

The Cornerstone Laying Ceremony of Guangdong Yongjin Project Was Successfully Held

Time：2018 06 25 Visits：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.tssgroup.com.cn/en/the-cornerstone-laying-ceremony-of-guangdong-yongjin-project-was-successfully-held/

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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.

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

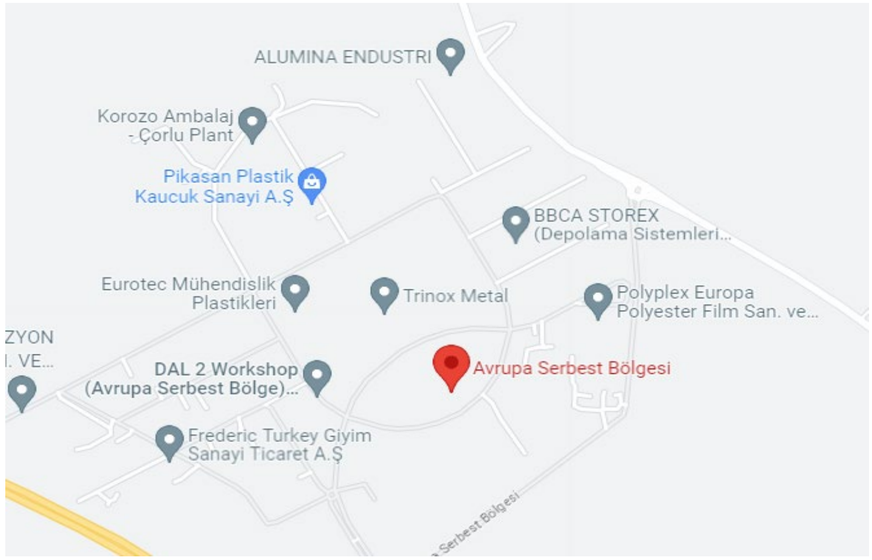
2022

	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 were a Indonesian inputs are used for the production of SSHR*
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 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 – TÜRKIYE
Ürünler	Soguk haddelenmis Paslanmaz Çelik Rulo
Siniflar	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	*Indonesian inputs susceptible to be used in re-rolling operation*
Relevant Inputs from Indonesia via third countries	35.000.000 - 45.000.000		*Indonesian inputs imported via countries with no production of SSHR or from countries were a Indonesian inputs are used for the production of SSHR*
Relevant Inputs from other sources	500.000.000 - 600.000.000		*Inputs susceptible to the used in re-rolling operation originating from other sources*
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:

Indonesian input value / (Indonesian input value + other input value - 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:

(Indonesian input value*(1+CVD duty rate)) / ((Indonesian input value*(1+CVD duty rate)) + other input value - 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
Index	**100**	**75**	**121**	**149**
Of which Indirect imports	76.898	55.915	120.059	186.578
Index	**100**	**73**	**156**	**243**
Imports from other countries (excluding China)	608.352	528.000	483.486	528.822
Index	***100***	***87***	***79***	***87***
Imports from China	10.212	13.992	34.524	308.400
Index	***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
	2022		**2022**		
Taiwan	96.454	2,4%	251.418	6,1%	*38,4%*
Turkey	39.142	1,0%	125.057	3,1%	*31,3%*
Vietnam	50.983	1,2%	86.720	2,1%	*58,8%*
Total	186.578	4,6%	463.195	11,3%	*40,3%*
SSCR EU Market (total)	4.088.315		4.088.315		

Austenitic SSCR

	Indirect imports only		Total imports of austenitic SSCR		Indirect imports share of total imports of austenitic SSCR
	2022		**2022**		
Taiwan	96.454	3,3%	141.452	4,8%	*68,2%*
Turkey	39.142	1,3%	89.678	3,1%	*43,6%*
Vietnam	50.983	1,7%	75.044	2,6%	*67,9%*
Total	186.578	6,4%	306.174	10,5%	*60,9%*
Austenitic SSCR EU Market	2.924.511		2.924.511		

Indirect imports of Indonesian melted SSCR to the EU via third countries - <u>Estimated</u>

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%

Indirect imports of Indonesian melted SSCR to the EU via third countries - <u>Maximum</u>

	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 Period	EU27 Market supply	Deliveries by EU mills	Third Countries out EU27	of which: 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

	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	*Cf annex volume of indirect imports*
Total imports	929.004	776.148	893.946	1.300.417	
of which austenitic	651.898	528.286	618.484	948.383	*Cf annex volume of indirect imports*
Imports of SSCR from Taiwan	185.614	125.070	218.792	251.418	*Cf annex volume of indirect imports*
Of which indirect imports	51.927	26.764	74.884	96.454	*Cf annex volume of indirect imports*
Imports of SSCR from Turkey	87.967	73.833	105.600	125.057	*Cf annex volume of indirect imports*
Of which indirect imports	3.667	8.842	18.199	39.142	*Cf annex volume of indirect imports*
Imports of SSCR from Vietnam	36.855	35.338	51.559	86.720	*Cf annex volume of indirect imports*
Of which indirect imports	21.305	20.310	26.976	50.983	*Cf annex volume of indirect imports*
Imports of SSCR from Indonesia	72.768	106.488	107.364	51.379	*Cf annex volume of indirect imports*
of wich austenitic SSCR	62.974	100.055	98.329	41.400	*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

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

increase by **84,4%**

EU COP for SSCR

2022	
3400-3700	EUR/ Tonnes

2019	
2100-2400	EUR/ Tonnes

Average COGS for the Applicant

increase by **54,8%**

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 tonnes	2022 Q1	Q2	Q3	Q4	2022 Fy	Share	Duty	Landed price 2022	Comparable EU price	UC
SSCR (total)	81.127	72.978	49.924	47.389	251.418	54,3%	6,80%	3.151	3.652	13,7%
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 euro/tonne	2022 Q1	Q2	Q3	Q4	2022 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

Turkey

EU Imports from Turkey tonnes	2022 Q1	Q2	Q3	Q4	2022 Fy	Share	Duty	Landed price 2022	Comparable EU price	UC
SSCR (total)	27.969	36.819	36.468	23.801	125.057	27,0%	0%	3.374	3.945	14,5%
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 euro/tonne	2022 Q1	Q2	Q3	Q4	2022 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

Vietnam

EU Imports from Vietnam tonnes	2022 Q1	Q2	Q3	Q4	2022 Fy	Share	Duty	Landed price 2022	Comparable EU price	UC
SSCR (total)	17.864	17.074	24.503	27.279	86.720	19%	0%	3.748	4.222	11,2%
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 euro/tonne	2022 Q1	Q2	Q3	Q4	2022 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

TOTAL UC 13,5%

Total imports 3 countries 463.195

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	*Cf. annex volume of indirect imports*
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%

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

in EUR/ tonne	**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

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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.

2. On November 30, 1998, through SECEX Circular nº 42, of November 27, 1998, an investigation was initiated to verify the existence of dumping in exports to Brazil of flat products, stainless steel, cold rolled, of thickness not exceeding three 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, and of damage to the domestic industry resulting from such practice.

3. Interministerial Ordinance No. 34, of May 24, 2000, published in the Official Gazette (DOU), of May 26, 2000, closed the investigation with the application of a definitive anti-dumping duty on imports of flat products, steel cold-rolled stainless steel, with a thickness not exceeding 3 mm, classified under subitems 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, originating in South Africa, Spain, France, Japan and Mexico, excluding refractory steels, including AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H and 347 steels and AISI 301L and DIN 1.4110 stainless steels, in the form of ad valorem rates, according to the table Next.

Anti-dumping duty applied through Interministerial Ordinance No. 34, of 2000		
Country	Producer/Exporter	Antidumping Law
South Africa	Columbus	6%
South Africa	Too much	16.4%
Spain	Acerinox and others	78.2%
France	Ugine and others	30.9%
Japan	Kawasaki, Nippon Yakin, Kogyo, Nisshin Steel, NipponMetal, Nippon Steel, Sumitomo, Metal and more	48.7%
Mexico	Mexinox and more	44.4%
Source: Interministerial Ordinance No. 34, of 2000.		
Elaboration: SDCOM.		

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

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

5. The review was initiated through SECEX Circular nº 31, of May 23, 2005, published in the DOU of May 25, 2005.

6. CAMEX Resolution No. 10, of May 2, 2006, published in the DOU of May 23, 2006, ended the review with the extension of the anti-dumping duty applied to Brazilian imports of stainless steel flat products, cold rolled, of thickness not exceeding 3 mm, excluding refractory steels, classified in AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H and 347 standards, AISI 301L and DIN 1411 stainless steels and flat steel product stainless steel, cold rolled, known commercially as stainless steel tape GIN-6 or 7C27MO2 or UHB716 with a thickness between 0.152 and 0.889 mm. The anti-dumping duty was extended in the form of a specific rate, for two years. Such application period was justified because it is a sensitive sector, whose prices were influenced by Asian demand and by uncertainties that permeated the international market and limited forecasts regarding the evolution of these prices. The rates applied are 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

Mexico	all companies	194.65
Source: CAMEX Resolution No. 10 of 2006.		
Elaboration: SDCOM.		

1.1.2 From the original anti-dumping investigation of 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 greater than 0.35 mm but less than 4 .75 mm (2011-2013)

7. On December 15, 2011, Aperam Inox América do Sul SA filed a petition to initiate a dumping investigation in exports of flat rolled austenitic stainless steel type 304 (304, 304L and 304H) and ferritic stainless steel type 430, cold-rolled, of a thickness of 0.35 mm or more but less than 4.75 mm, originating in South Africa, Germany, China, South Korea, the United States of America (USA), Finland, Chinese Taipei and Vietnam, and damage to domestic industry resulting from such practice.

8. The investigation was initiated through SECEX Circular No. 17, of April 12, 2012, published in the DOU of April 13, 2012.

9. Pursuant to item III of art. 41 of Decree No. 1602, of August 23, 1995, in force at the time, the investigation of dumping in exports from South Africa and the USA to Brazil was closed without the application of duties, since it was verified that the volume of imports of these origins was insignificant, as stated in SECEX Circular nº 35, of July 26, 2012, published in the DOU of July 27, 2012.

10. 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 equal to or 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 domestic industry resulting from such practice, pursuant to the provisions of art. 42 of Decree No. 1602, of 1995, the investigation was closed, through Resolution CAMEX No. 79, of October 3, 2013, published in the DOU of October 4, 2013, with the application of the definitive 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 Duty (US$/t)
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

Chinese Taipei	YI Shuenn Enterprise Co., Ltd.	673.18
Chinese Taipei	Yu Ting Industrial Co., Ltd.	673.18
Chinese Taipei	Yuan Long Stainless Steel Corp.	673.18
Chinese Taipei	Yue Seng Industrial Co., Ltd.	673.18
Chinese Taipei	Yuen Chang Stainless Steel Co., Ltd.	673.18
Chinese Taipei	Too much	705.61
Vietnam	Posco VST Co., Ltd.	568.27
Vietnam	Too much	568.27
Source: CAMEX Resolution No. 79 of 2013.		
Elaboration: SDCOM.		

1.1.3 End-of-period review of the anti-dumping measure of 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 greater than 0.35 mm , but less than 4.75 mm (2018-2019)

11. On April 27, 2018, Aperam Inox América do Sul SA filed, through the DECOM Digital System (SDD), a petition to initiate an end-of-period review in order to extend the anti-dumping duty applied to Brazilian imports of 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 greater than 0.35 mm, but less than 4.75 mm, hereinafter referred to as cold-rolled cold, 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 Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, pursuant to the provisions of art. . 106 of Decree No. 8058, of July 26, 2013, hereinafter also referred to as the Brazilian Regulation.

12. The review was initiated through SECEX Circular No. 41, of October 2, 2018, published in the DOU of October 3, 2018.

13. On October 2, 2019, the Special Secretariat for Foreign Trade and International Affairs (SECINT), published Ordinance No. 4,353, of October 1, 2019, in which it extended the application of the definitive anti-dumping duty, for a period of up to 5 (five) years, applied to Brazilian imports of 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 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 China and Chinese Taipei, to be collected under the form of specific rate fixed in US dollars per ton, in the amounts specified below,and it did not extend for the other origins (Germany, South Korea, Finland and Vietnam), through Circular Secex nº 58, of October 1, 2019.

Anti-dumping duty extended through SECINT Ordinance No. 4,353, of 2019		
Origin	Producer/Exporter	Definitive Antidumping Duty (in US$/t)
China	Shanxi Taigang Stainless Steel Co., Ltd., when exporting through exporting company Tisco Stainless Steel (HK) Limited	175.62
China	Shanxi Taigang Stainless Steel Co.,Ltd	218.37
China	Galaxy International Trade (Wuxi) Co., Ltd.	218.37
China	Henan Jianhui Construction Machinery Co., Ltd.	218.37
China	Hunan Bright Stainless Co., Ltd.	218.37
China	Jieyang Kailian Stainless Steel Co., Ltd.	218.37
China	Shanghai Stal Precision Stainless Steel Co., Ltd.	218.37
China	Wuxi Steel Co. Ltd.	218.37
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.	218.37
China	Foshan Shunhengli Import & Export Ltd.	629.44
China	Too much.	629.44
Chinese Taipei	CSSSC	93.36
Chinese Taipei	Chain Chon Industrial Co., Ltd.	93.36

Chinese Taipei	Datung Stainless Steel Co., Ltd.	93.36
Chinese Taipei	Froch Enterprise Co., Ltd.	93.36
Chinese Taipei	Genn-Hann Stainless Steel Enterprise Co., Ltd.	93.36
Chinese Taipei	Lien Kuo Metal Industrial Co., Ltd.	93.36
Chinese Taipei	Midson International Co., Ltd.	93.36
Chinese Taipei	S-More Steel Materials Co., Ltd.	93.36
Chinese Taipei	stanch stainless steel co.,ltd.	93.36
Chinese Taipei	TM Development Co., Ltd.	93.36
Chinese Taipei	Tang Eng Iron Works Co., Ltd.	93.36
Chinese Taipei	TSL Stainless Co.,Ltd	93.36
Chinese Taipei	YC Stainless Co., Ltd.	705.61
Chinese Taipei	Yuan Long Stainless Steel Corp. (YLSS)	93.36
Chinese Taipei	Yes Stainless International Co., Ltd.	93.36
Chinese Taipei	Yeun Chyang Industrial Co., Ltd.	93.36
Chinese Taipei	Yieh Corporation Limited	93.36
Chinese Taipei	Yieh Mau Corp.	93.36
Chinese Taipei	Yieh United Steel Corporation (YUSCO)	705.61
Chinese Taipei	Yue Seng Industrial Co., Ltd.	93.36
Chinese Taipei	Yu Ting Industrial Co., Ltd.	93.36
Chinese Taipei	Yuen Chang Stainlees Steel Co., Ltd.	93.36
Chinese Taipei	Too much	705.61

14. At this point, it should be noted that the anti-dumping duty extended by Ordinance SECINT No. 4.353, of 2019, applies to imports of flat-rolled products produced from austenitic stainless steel type 304 and ferritic stainless steel type 430, of differently from the current investigation, which covers only cold-rolled products made exclusively from austenitic stainless steel type 304 and its variations, such as 304L and 304H.

1.1.4 Anti-dumping investigation of type 304 stainless steel flat products initiated in 2020

15. On July 31, 2020, Aperam Inox América Do Sul SA, hereinafter Aperam, filed, through the SDD, a petition to initiate an investigation into the practice of dumping in exports of austenitic stainless steel flat products that meet the AISI standard 304 and similar, including variations thereof, such as 304L and 304H, cold-rolled, of a thickness equal to or greater than 0.35 mm but less than 4.75 mm, manufactured and marketed in various forms, such as, but not limited to to coils, plates and strips/tapes, hereinafter referred to as "cold rolled products 304", commonly classified under NCM sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90, originating in South Africa, Indonesia and Malaysia, pursuant to art. 37 of Decree No. 8058 of July 26, 2013.

16. After requesting and analyzing additional information by the investigating authority, as published in the DOU on February 25, 2021, through SECEX Circular No. 15, of February 24, 2021, the investigation of dumping in exports of 304 cold-rolled stainless steel products originating in South Africa

and Indonesia and damage to the domestic industry arising from this practice.

17. With regard to Malaysia, considering that all Brazilian imports of cold rolled products 304 with origin declared as Malaysia, in P5, were carried out by companies that had their origin disqualified by Secex in procedures of special procedures of verification of origin non-preferential, pursuant to Law No. 12,546, of December 14, 2011, with no significant volumes of imports from that origin remaining in that period for the purposes of analyzing dumping of exports to Brazil from Malaysia, it was concluded that the investigation was not opened in relation to that origin.

18. On November 4, 2021, SECEX Circular No. 75, of November 3, 2021, was published in the Federal Official Gazette, which closed said investigation, without judgment on the merits, "since the analysis of merit was impaired due to of the lack of accuracy and inadequacy of the information provided by the domestic industry".

1.1.5 Summary table of original investigations and end-of-period reviews involving rolled stainless steel products

19. Below is a table that consolidates all the commercial defense investigations on this product, including the present petition, described in item 1.2 below.

Trade Defense Investigations - Cold Rolled Products 304				
Type of investigation	Start date	Origins investigated	Product	Final decision
Original investigation - Antidumping	11/30/1998	South Africa, Germany, Spain, France, Italy,	Cold-rolled, of stainless steel, of a thickness not exceeding 3 mm	Interministerial Ordinance No. 34, of May 24, 2000. Application of definitive anti-dumping duty on imports originating in South Africa, Spain, France,
		Japan and Mexico		Japan and Mexico, in the form of *ad valorem rates*
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	CAMEX Resolution No. 10, of May 2, 2006. Extension of the definitive anti-dumping duty on imports originating in South Africa, Spain, France, Japan and
				Mexico, in the form of specific rates for two years
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,	CAMEX Resolution No. 79, of October 3, 2013. Application of definitive anti-dumping duty on imports from Germany, China, South Korea, Finland, Taipei
		America (USA), Finland, Chinese Taipei and Vietnam	with a thickness equal to or greater than 0.35 mm but less than 4.75 mm	Chinese and Vietnam, in the form of a specific rate
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	SECINT Ordinance No. 4,353, of 2019. Extension of the definitive anti-dumping duty on imports originating in China and Chinese Taipei, in the form of specific rates
			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,	SECEX Circular No. 75, of 2022. It closed the investigation without judgment on the merits, since the analysis of the merits was hampered due to the lack of accuracy and inadequacy of the

			cold-rolled products, with a thickness equal to or greater than 0.35 mm but less than 4.75 mm, manufactured and marketed in	information provided by domestic industry
			various forms such as, but not limited to, coils, sheets and strips/tapes	
Original investigation - anti-subsidies	present process	Indonesia	Austenitic stainless steel flat products that comply with AISI 304 and similar standards, including its variations, such as 304L and 304H,	present process
			cold-rolled products, with a thickness equal to or greater than 0.35 mm but less than 4.75 mm, manufactured and marketed in	
			various forms such as, but not limited to, coils, sheets and strips/tapes	

1.2 From the petition to the present investigation

20. The Company Aperam Inox América do Sul SA, hereinafter "Aperam or Petitioner", on July 31, 2020, four months after the end of the proposed damage investigation period as per item 6 of this document and concomitantly with the antidumping investigation petition of which deals with item 1.1.5 of this document, filed through its legal representative, in the Digital DECOM System (SDD), a petition for 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 7220.20.90 of the Mercosur Common Nomenclature - NCM, hereinafter referred to as "cold-rolled products", when originating in Indonesia, and damage to the domestic industry arising from such practice, pursuant to Decree No. 1751 , dated 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 the petitioner to provide 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 20, 2020, in response to the request for a deadline extension for additional information to the petition for investigation of subsidies that can be applied to imports of cold rolled products, sent through the Decom Digital System - SDD, on October 19, 2020, the deadline for responding to Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, of September 30, 2020, was extended to November 9, 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, and in accordance with the provisions of § 1 of art. 26 of Decree No. 1751 of 1995, SDCOM indicated that the analysis of the data presented demonstrated the need for new complementary information.

24. By means of Official Letter No. 43/2021/CGMC/SDCOM/SECEX, of January 18, 2021, in response to the request for an extension of the deadline for additional information to the petition for investigation of subsidies that can be used on imports of cold rolled products, sent through the Decom Digital System - SDD, on January 15, 2021, the deadline for responding to Official Letter No. 1.972/2020/CGMC/SDCOM/SECEX/2020, of December 21, 2020, was extended to February 2021.

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

26. After examining the set of documents filed and analyzing by this SDCOM the information provided until 02/08/2021, through Official Letter No. 217/2021/CGMC/SDCOM/SECEX, of March 22, 2021, the petitioner was informed that the evaluation of the information received led this Undersecretariat to consider the petition duly filed, pursuant to § 2 of art. 26 of Decree No. 1751 of December 19, 1995.

27. It should be noted that, on September 1 ' 2021, pursuant to SECEX Ordinance No. 103, of July 27, 2021, the documents filed in the Decom Digital System - SDD until August 31, 2021 in the SECEX Process No. 52272.004953/2020-01 were transferred to Process No. 19972.101391/2021-52 (Restricted) and to Process No. 19972.101392/2021-05 (Confidential) of the Electronic Information System of the Ministry of Economy - SEI/ME.

28. Interested parties were notified, through Circular Letter No. 120/2021/CGMC/SDCOM/SECEX and Letter No. 643/2021/CGMC/SDCOM/SECEX, both of August 9, 2021, about the migration and procedures necessary to access the SEI/ME.

1.3 Notification to the Government of the exporting country and consultations

29. In compliance with the provisions of art. 27 of Decree No. 1751, of 1995, on March 31, 2021, the Government of Indonesia was notified, through its Embassy in Brazil, through Official Letter No. 280/2021/CGMC/SDCOM/SECEX, of March 30 of 2021, of the existence of a duly prepared petition, filed in the DECOM Digital System (SDD) by Aperam Inox América do Sul SA on July 31, 2020, to investigate the practice of granting actionable subsidies on exports to Brazil of flat rolled products stainless steel 304, commonly classified under 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 Indonesia, object of SECEX/ME Process No. 52272.004953 /2020-01.

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

31. In accordance with the provisions of § 1 of art. 27 of the said Decree, in the same aforementioned communication, the Government of Indonesia was invited to carry out consultations with the aim of clarifying the situation regarding the matters dealt with in art. 25 of said legal provision and to obtain a mutually satisfactory solution. Furthermore, the Government of Indonesia was informed that, under the terms of the same article, the deadline for expressing interest in carrying out a consultation is ten days, which must be carried out within a period of thirty days counting from the acknowledgment of said communication.

32. With a view to providing the Government of Indonesia with information to carry out the consultation, the list of programs and the Internet address where the complete text of the restricted version of the referred petition was made available, including information complementary data, as well as a password to enable the extraction of this protected information. On that occasion, the date of April 19, 2021 at 9:00 am Brasília time (19:00 Jakarta time) was presented as a suggestion, via videoconference, to ensure compliance with the deadlines set forth in Decree No. 1,751 of 1995, and compliance with protective measures to face the public health emergency of international importance resulting from the coronavirus (COVID-19).

33. On April 12, 2021, through an electronic message from the Director of Trade Defense 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 Brasília time (19:00 Jakarta time) for the consultation.

34. On the agreed date, consultations were held via videoconference between representatives of SDCOM and representatives of the Government of Indonesia, represented by members of 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. On that occasion, the procedures provided for in Decree No. 1,751 of 1995 were complied with, and a deadline was announced for any written manifestations by the Government of Indonesia to be sent for consideration before SDCOM prepares its recommendation on the initiation of the investigation.

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

non-confidential records of the process. At the time, SDCOM informed the GOI of the deadline for sending any new written comments to be considered before the decision to initiate the investigation. Furthermore, the GOI was informed that, although at that moment their comments and supporting documents sent by email to SDCOM were being accepted, in the event of the beginning of the investigation, the forwarding of any documents to be considered, such as responses to questionnaires, should be carried out directly in the file of the process . The GOI filed its manifestations in a timely manner, which were considered and commented on in the Initial Opinion and will not be reproduced here.

1.4 Beginning of the investigation

36. Considering what was contained in SDCOM Opinion No. 23, of June 2, 2021, having observed sufficient evidence of the existence of actionable subsidies on exports of cold-rolled stainless steel 304 products from Indonesia to Brazil, and of damage to domestic industry resulting from such practice, it was recommended that the investigation be initiated.

37. Thus, based on the aforementioned opinion, the investigation was initiated through SECEX Circular No. 40, of June 2, 2021, published in the Federal Official Gazette in an extra edition of June 2, 2021, rectified on June 9 June 2021.

1.5 Notifications of initiation of investigation and request for information to the parties

38. In compliance with the provisions of § 2 and § 3 of art. 30 of Decree No. 1751 of 1995, were identified as interested parties and notified of the initiation of the investigation, on June 7, 2021, in addition to the petitioner, the Government of Indonesia, all known foreign producers/exporters and Brazilian importers of the product allegedly benefited from an actionable subsidy.

39. The Undersecretariat, through the detailed import data made available by the Special 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 same period were also identified using the same procedure.

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

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

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

44. On June 29, 2021, pursuant to the provisions of art. 37 of Decree No. 1751 of 1995, questionnaires were forwarded to the Government of Indonesia and to all identified producers/exporters. In addition, a period of forty days was informed, counting from the date of dispatch of the correspondence, to return 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 Stainless Steel Processors and Distributors - APRODINOX, submitted a request for qualification as an Interested Party. In compliance with the request of the aforementioned association, its representatives were qualified and granted access to the restricted records of the present investigation.

1.7 Receipt of the requested information

1.7.1 Domestic Industry

47. The petitioner presented her information in the petition initiating the present investigation and when presenting her supplementary information. As already described, in response to a request for information sent by DECOM, Aperam presented all the data required for the purpose of composing the domestic industry, as well as responding to the request for additional information sent later by the investigating authority.

48. On October 5, 2022, Aperam voluntarily submitted corrections to the data previously presented in the petition and its supplementary information. The rectifications referred to adjustments in the list of products, sales of the like product in the domestic market, sales of the like product in the foreign market, returns and operating expenses.

1.7.1.1 Statements prior to the Technical Note on domestic industry information and the investigation period

49. In a statement dated October 8, 2021, the company PT Indonesia Ruipu Nickel and Chrome Alloy (hereinafter also referred to as PT IRNC), adduced its considerations on what the petitioner would have considered "small corrections to the data previously presented in the petition and in its complementary information" according to the manifestation of October 5, 2021, in which various information related to the damage data of the domestic industry would have been resubmitted and changed.

50. Firstly, PT IRNC dealt with the context of changes in the damage data of the domestic industry, making references to the then concomitant anti-dumping investigation, and clarified that Aperam's manifestation would have been presented as a reflection of the investigations of the General Coordination of Anti-dumping, Safeguards and Support for Exporters - CGSA - in the context of the aforementioned anti-dumping investigation that concerns the same product, for the same origin (Indonesia) and the same period of analysis; highlighting that after two requests for additional information, 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 data between the dumping and subsidies investigations, so that Aperam had been defined as a domestic industry for the same scope and for the same period investigated; and he stressed that the aforementioned letter of evidence sent to Aperam allowed the petitioner to make changes to the data presented during the petition phase, provided that such changes were not significant.

52. The INRC stated that the aforementioned manifestation by Aperam would be an attempt by the petitioner to make significant changes, as understood by the CGSA, in the damage data of the present subsidy investigation.

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

54. Thirdly, IRNC argued that the changes proposed in Aperam's statement would be extemporaneous, arguing that the presentation of data by the petitioner would take place in three moments: when the initial petition (already consummated); when responding to any additional information letters (already completed); and when responding to the letter of evidence (stage, then, not yet consummated), admitting only minor corrections, noting that there is no provision in the legislation for changes other than those mentioned.

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

56. The IRNC presented as a new fact in the present investigation the closure of the aforementioned anti-dumping investigation, without resolution on the merits, by SECEX Circular No. 75, of November 3, 2021, which concluded by the "lack of reliability of the data contained in the petition from the 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 proposals in the context of the related anti-dumping investigation - for the same damage data, of the same domestic industry, of the same

product investigated and, finally, for the same period investigated, noting that the major change in the scope of the anti-dumping proceeding, which would concern operating expenses,was voluntarily and extemporaneously replicated in the investigation of subsidies by Aperam based on the comparison of the records of the two cases.

57. In this context, the IRNC understood that, as a matter of consistency in SDCOM's administrative action, the analyzes and conclusions of the CGMC, such as those drawn up by the CGSA, should point to the closure of the present investigation of subsidies, without resolution on the merits , for the same reasons set out in Technical Note No. 51.909/2021/CGSA/SDCOM/SECEX: the "lack of reliability of the data contained in the petition and the magnitude and timeliness of the changes".

58. Thirdly, the IRNC understood that the recognized lack of reliability of the domestic industry data by the CGSA would already constitute a fact per se sufficient to give rise to the closure of the present investigation of subsidies, emphasizing that the petitioner would have used all possible expedients in order not to follow the same path that the anti-dumping investigation would have taken, emphasizing that the petitioner would only have to support the thesis that the proposal to change the damage data presented in the manifestation of October 5, 2021 would be timely.

59. The IRNC notes that there are other alterations not narrated verbatim in the manifestation of 10/5/21 nor explained by the Petitioner regarding the Production Volume of the Domestic Similar Product based on the comparison of the file "Apendices_Restritos_Info_Complement" with the file "Annexo115_Base_Capacity_Restrito" and with the file "Apendices_Corrigidos_Restritos" and regarding the information on Other Inputs/Outputs of stocks, based on the comparison of the spreadsheet Appendices XI of the file "Appendices" of the petition with the respective spreadsheet of the file "Apendices_Corrigidos_Restritos", so that IRNC verified that the same occurred within the scope of the anti-dumping investigation, which undermined the transparency of the information brought to the file by Aperam.

60. In addition, the IRNC argued that the petitioner had not adequately made the restricted versions available, noting that the restricted version of the appendices submitted by the petitioner when providing additional information would be apparently incomplete, as shown step by step in the annex of this petition; emphasizing that the absence of restricted versions implies violation of the command of art. 51 of Decree No. 8,058/2013, a decree that would deal with the dumping investigation process, according to which the confidential and restricted versions should be submitted simultaneously for due compliance with procedural deadlines; emphasizing that the only appendix made available in a restricted version when responding to the complementary information would be "Appendix VIII (Installed Capacity)". In this frame, the IRNC added that since the other appendices filed in a confidential version were not properly and simultaneously filed in a restricted version, it is considered, under the terms of art. 51 of Decree No. 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/ME, of 11/11/2021, from the CGMC informed that the information provided by the petitioner in the petition and additional information would be verified, with the exception of specific adjustments that may be presented in minor corrections before the verification started, and there is no mention in that Official Letter of the verification of the "adjusted" data when Aperam's voluntary manifestation of October 5, 2021.

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

63. In view of the above, the IRNC requested the non-receipt of the changes to the damage data proposed in the Aperam statement of October 5, 2021 due to the extemporaneousness and lack of legal provision; the evaluation of the continuity of the investigation of subsidies, since rectifications would not be in the nature of minor corrections; and verification of the occurrence of an apparent procedural failure that

the restricted version of the appendices presented in response to Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX by Aperam would be incomplete, in breach of art. 51 of Decree No. 8.058/2013.

64. Aperam, in a statement dated December 17, 2021, highlighted that the changes made to the data originally presented in the petition would have been duly carried out and clarified. Furthermore, it emphasized that the complementary and detailed clarifications regarding the corrections made to the data presented would have been presented to SDCOM technicians during the on-site verification visit carried out on the petitioner, in which the veracity and validity of the data presented would have been analyzed and confirmed.

65. The petitioner addressed the constant questioning in a statement by the IRNC about the fact that the restricted version of the Appendices presented by the petitioner for additional information, on November 9, 2020, contained only Appendix VIII, although other appendices have been corrected . Aperam clarified, as would be detailed in the document presenting the aforementioned complementary information, that the need to correct the correlation of similar products with CODIP and that, as a result of such changes, "Appendices VII, XVIII and XIX were being resubmitted , with the necessary amendments.

66. Therefore, the corrections made would only impact adjustments in the classification in the CODIPs of similar products, not implying a change in the total reported sales and cost values. Considering that the restricted versions of the appendices presented in the petition do not present details by CODIP, being limited to the total values, despite the adjustments made in the confidential versions of the mentioned appendices VII, XVIII and XIX, such adjustments did not have the power to change the versions restrictions of such appendices presented in the petition, which remained valid. Therefore, IRNC's argument that the information presented by this petitioner is incomplete would not fit, since the corrected data would have been duly presented,

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

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

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

70. Aprodinox also highlighted how the request for the application of provisional law, in the context of a preliminary determination, requested by Aperam would be completely unjustified, since it would lack compliance with the legal requirements that would give rise to an eventual application.

71. Aprodinox reiterated the position of the IRNC, presented through the manifestations submitted on October 8 and November 22, 2021, regarding the loss of reliability of the data presented by the petitioner, understanding that the petitioner would have filed information under the justification of if they deal with significant adjustments at a later time than legally established, namely, the initial petition and the response to letters of supplementary information. It argued that after these periods, the petitioner would only be allowed to present minor adjustments, minor corrections, prior to carrying out the on-site verification or in response to the letter of evidence, to validate or eventually clarify any point indicated in the initiation petition that justified the opening of the present investigation.

72. In this context, Aprodinox highlighted that the data presented in the petitioner's statement of October 5, 2021 would have been inserted without adequate justifications why the adjustments should be admitted or, even, the reasons why they would have occurred; illustrating that referring to sales, for example, it was only alleged that there was "a lapse" in relation to the 17 invoices, emphasizing that a significant change was presented without any indication of justification, clarification or motivation; also emphasizing that they were presented at an inappropriate procedural moment, since voluntary input of data is not allowed without the prior manifestation of SDCOM, as is the case with complementary letters.

73. In these terms, Aprodinox emphasized that based on these untimely, substantial adjustments made without legal provision, which involved some of the main accounts and indicators that make up the damage analysis, such as operating expenses and costs, it was questioned the reliability of the total set of information provided by the petitioner.

74. Aprodinox pointed out that given the identity of the data presented in the present investigation of the practice of actionable subsidies and those of the dumping investigation, given that the petitioner represents the Domestic Industry in both investigation processes, which would consider the same period of analysis and the same origin for evaluation purposes, such changes would have already been considered significant by SDCOM itself, in the aforementioned dumping investigation.

75. Furthermore, Aprodinox added that the identity of the data, especially those related to the damage, would have been made explicit by the petitioner herself in her response to the Public Interest Questionnaire, even if for the scope of proceedings with different origins, in which, in addition to Indonesia was also being investigated in South Africa, and which deals with the analysis of another practice, the damage data would appear as a barely distinguishable whole, which would have had its reliability tainted, and this would be the understanding of SDCOM itself.

76. In these terms, Aprodinox emphasized that the accounts rectified by the petitioner in its statement would be exactly those questioned by SDCOM, in terms of investigation of dumping practices, at least as far as it would be possible for the interested parties to verify from the restricted records. In this context, among the identified data, there would be: i) list of products with CODPRODS erroneously categorized generating impact on costs; ii) 17 unreported invoices with various unreported impacts; and iii) Financial Expenses/Income, with very significant changes and cascading impact on several other accounts and indicators.

77. In this sense, Aprodinox highlighted that there would still be some other changes not reported by the petitioner, such as the production volume of the like product and stocks, which would also have been identified, in the context of an anti-dumping investigation by the interested parties and by the investigating authority , which would demonstrate the same identity of the data and the flaw in the petitioner's systematic analysis.

78. In this context, Aprodinox understood that SDCOM would have pointed out the inconsistencies and judged them as being significant and sufficiently forceful to close the dumping investigation, pursuant to item I of art. 74 of Decree no. 8,058 of 2013. And that after manifestations by the petitioner and the interested parties, even more inconsistencies and lack of transparency were found, such as those related to inventories. And in this way, through SECEX Circular No. 75, of November 3, 2021, pursuant to Technical Note No. 51909/2021/CGSA/SDCOM/SECEX. the closure of the dumping investigation would have been recommended due to the inconsistencies presented.

79. In this vein, Aprodinox emphasized that it would be inferred from Technical Note No. 51.909/2021/CGSA/SDCOM/SECEX that the data presented by Aperam in the investigation of dumping practices would have been considered untimely because they were considered substantial.

80. In this sense, Aprodinox pointed out that art. 5 of SECEX Normative Instruction No. 1, of August 17, 2020, would find an equivalent right in art. 9 of SECEX Normative Instruction No. 3, of October 22, 2021; explaining that he understands that such Normative Instructions would try to operationalize, during the pandemic, the norms and consolidated practices of the investigating authority regarding the data verification procedure and the acceptance of information during on-site investigations.

81. In these terms, Aprodinox understood that such data should not be accepted as minor corrections and that, considering the volume of information and its impact on the reliability of the analysis, this investigation of subsidies should be closed, following the understanding established in the seat of dumping investigation.

82. In a statement dated June 14, 2022, the IRNC argued that the period of damage analysis of the present subsidy investigation would be comprised between the months of April 2015 and March 2020, and since the investigation was initiated with the publication of the Opening Circular on June 2, 2021, there would be certain to be a lapse of at least a full 14 months between (i) the latest domestic industry injury data and (ii) and the initiation of the investigation.

83. In the understanding of the IRNC, such a circumstance would be extremely problematic in light of issues and precedents already faced by the Dispute Settlement Body (DSC) of the World Trade Organization (WTO), specifically in the dispute "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", since such a time lapse between the damage data and the beginning of the investigation would, in the opinion of the OSC, constitute a violation of the duty to base damage analyzes on "positive evidence", under the terms of Art. 15.1 of the Agreement on Subsidies and Countervailing Measures ("ASMC"),

84. For the IRNC, in addition to this time lapse, which affects the objectivity of this authority's analysis, as it encompasses remote and non-representative indicators of the contemporary situation of the domestic industry, other points of the precedent "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" will be collated; as well as the understanding espoused by the panel in the dispute "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)".

85. The IRNC asserted that the accumulation of this period of time (14 months) and other factors suggested by the WTO DSB would irremediably constitute a scenario of lack of objectivity and violation of the use of proof and positive evidence, and that "being of rigor" to update the investigated period of the present investigation, "under penalty of, by not doing so, incurring a violation of the ASMC".

86. The IRNC kept a record of the legal process of the investigation, from the filing of the petition that gave rise to the investigation, through requests for additional information, through the protocol of responses and such requests, until the day on which the petition was considered filed, on March 22, 021, 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 retrospective of the procedural steps, that what caused the observed 14-month time lapse was the very incompleteness of the petitioner's claim, since only after 2 requests for complementary information and almost After 8 months of analysis, the petition was considered instructed by SDCOM, and that if Aperam had presented a complete initial, not deficient, with the details that it was responsible for and that were already legally expected of it, since it was a petitioner, the time lapse would not be as long .

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

89. For the IRNC, the Dispute Settlement Body (DSC) of the WTO, in the dispute "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", would have been emphatic when considering that the 15-month lapse between the last data contained in the petition, specifically with regard to the damage, and the opening of the investigation, would constitute a violation of the duty of the trade defense authorities to be based on "positive evidence", as established in Art. 3.1 of the Antidumping Agreement and Art. 15.1 of the ASMC.

90. For the IRNC, transposing this consideration to the present investigation, it would not be heterodox to consider that a lapse of 14 months, that is, one month less, would be equally serious and would prevent the sole objective of imposing compensatory measures (or of any other trade defense remedies): neutralize the harmful effects to the domestic industry arising from the introduction of subsidized foreign products, as can be seen from Art. 10 of the ASMC and respective footnote no. 36.

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

92. For the IRNC, given that the purpose of trade defense remedies would be to re-establish level-playing from the neutralization of damage and the practice of commercial disloyalty, to determine and apply a compensatory measure based on remote evidence of damage is to penalize producers /exporters for past practices - and not equalizing current trade distortions.

93. The IRNC submitted the Appellate Body (AB) report on the panel's conclusions in the case "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", referring to article 3.1 of the Antidumping Agreement, to argue that the AB would come to agree that the damage determination is

based on positive evidence, so that evidence, which is not relevant or pertinent with respect to the issue to be decided, would not be positive evidence, pursuant to Article 3.1 of the Agreement Antidumping. Thus, the 15-month interval between the end of the investigation period and the opening of the investigation constituted a gap large enough to rule out the reliability of the damage data, as the OSC understands.

94. In this context, IRNC pointed out that the predictions about "positive evidence" contained in the Antidumping Agreement, for the purpose of determining damage, would find identical correspondence in Art. 15.1 of the ASMC, so that the considerations brought by the panel and confirmed by the AB would apply in full to the sphere of the ASMC and to the present investigation.

95. For the IRNC, this would be the case, since the damage data in the present investigation would be identical to those offered by the petitioner in the related anti-dumping investigation, closed by SECEX Circular No. 75, of November 3, 2021. Furthermore, for the IRNC, SDCOM itself, by Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX, would have requested that "damage data and other topics common to investigations of dumping and subsidies filed by Aperam" be attached to the present case file.

96. Thus, for the IRNC, if the 15-month interval between the end of the investigation period and the opening of the investigation constituted a gap large enough to remove the reliability of the damage data, as would be based on the understanding of the OSC, it does not would be facing evidence that would be considered "positive" and "objective", and for that reason, in the case of DS295, the OSC considered that the Mexican trade defense authority would have violated Art. 3.1 of the Antidumping Agreement.

97. For the IRNC, there would be an absolute identity between Art. 3.1 of the Antidumping Agreement and Art. 15.1 of the ASMC, with the case law of the OSC on antidumping being used as a reference in subsidy investigations; emphasizing that the "WTO Analytical Index - SCM Agreement - Article 15 (Jurisprudence)" and other judgments of the OSC would expressly recognize this correspondence.

98. Therefore, for the IRNC, it would be evident, therefore, the fragility of adopting such an outdated investigation period, as would have occurred in the present investigation.

99. The IRNC, noted that, considering the time course of the investigative procedure for subsidies under Brazilian law, of 12 months, any compensatory measure would be imposed on June 2, 2022, with a lag, in relation to the scenario damage, 26 months (2 years and 2 months); and considering that the present investigation would have been extended for an additional 6 months, according to SECEX Circular nº 22, of 5/31/2022 (DOU of 6/1/2022), the possibility of applying compensatory measures with a lag of almost 3 years (2 years and 8 months, or 32 months) in relation to the considered damage scenario.

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

101. In addition, for IRNC, AB's understanding in such a dispute would be recalled in the very recent decision of the panel in January 2021, within the scope of the dispute "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)"; so that, for the IRNC, in this judgment, when analyzing the requirements of Art. 3.1 of the Antidumping Agreement (corresponding to Art. 15.1 of the ASMC), the panel expressly links the concept of "current" or "current" positive evidence to an analysis of the time lapse between the investigated period and the final determination, since they had already after 31 months.

102. Based on its understanding of the AB's positions, the IRNC argued that in the present subsidy case, with the extension of the investigation for an additional 6 months, "the unacceptable lapse of 32 months between the end of the investigated period and the final determination", since a preliminary determination opinion has not yet been issued in the present investigation, as requested by the parties, and, respecting all legal deadlines for eventual final determination, it would be very likely that this investigation would reach the 32-month period date lag.

103. In this context, the IRNC argued that the aforementioned panel would also have brought other elements that would have been considered in its decision, and that would have been endorsed by the AB, "in addition to the recognition of violations of multilateral agreements by an administrative action

that, by base their damage analysis on time-lagged data, rely on non-positive evidence"; so that the IRNC stated that the circumstances of the specific case, "certainly", "contribute to a subjectivity incompatible with trade defense procedures and would also indicate the active role that should be played by the investigating authorities", so that the INRC pointed out that there would be five reasons set out in the WTO Appellate Body Report that would support this argument presented,

(i) the period of investigation chosen would have been proposed by the petitioner;

(ii) Mexico would not have established that the practical problem necessitated the particular investigation period;

(iii) it would not have been established that updating the information was not possible;

(iv) there was no attempt to update the information;

(v) Mexico has not provided a reason - other than the allegation that it would be Mexico's general practice to accept the investigation period submitted by the petitioner - why the most recent information was not sought.

104. The IRNC stated that "the period of investigation was chosen by the petitioner", however, the insert in the Report of the Appellate Body of the WTO states that the period of investigation chosen would have been proposed by the petitioner.

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

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

107. In addition, the IRNC stated that, "as it is presumed, there would also be no justification for this time delay in view of the provisions of article 35", of Decree No. 1,751/1995, but, however, presented the provisions of § 1 of art. 35, which provides that the investigation period for the existence of an actionable subsidy should comprise the closest possible twelve months prior to the date of opening of the investigation, and may retroact until the beginning of the beneficiary's accounting year, most recently ended and for which they are available reliable financial and other relevant data; emphasizing that, "eventually", there is an exception in the legislation to allow a delay in the investigated period with the ability to favor the accounting year of the investigated country, and, for the IRNC, SDCOM would not even have this excuse,

108. For the IRNC, the period was not updated at the opening and the records would not contain any reasons that would jeopardize that then possibility, so that for the IRNC, updating the damage indicators would be the natural way to overcome the problem now exposed and awarded by the OSC.

109.At this point, IRNC highlighted that in the case of another subsidy investigation, of aluminum laminates, now in progress, this same SDCOM was for good, already in the Opening Circular, Circular SECEX nº 43, of 6/18/2021 , recommend updating the investigated period, given the 17-month period between the end of the investigated period and the respective opening of the investigation, a conduct that was absolutely appropriate and taken ex officio by SDCOM.

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

111. For the IRNC, the authority would have the duty to examine, under the terms of Art. 11.3 of the ASMC and §1 of art. 28 of Decree No. 1,751/1995, the accuracy and adequacy of the evidence presented in the petition, so that if the evidence provided by Aperam in the petition is not related to subsidies,

damage and "current" causal link (respecting the ruling referring to the nearest possible previous twelve months), SDCOM could not have concluded that there were sufficient grounds in the petition to justify opening the investigation.

112. In this context, IRNC highlighted art. of Decree No. 1,751/1995, which provides that evidence of the existence of a subsidy and the damage caused by it will be considered, simultaneously, in the analysis for the purpose of determining the opening of the investigation; and its paragraph 1, which provides that, based on information from other readily available sources, the correction and adequacy of the evidence offered in the petition will be examined, with a view to determining the existence of sufficient reasons to justify the opening of the investigation .

113. In this context, for the IRNC, the understanding of the panel in the aforementioned dispute "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)" would not have been different, due to the identity between Art. 5.3 of the Antidumping Agreement and Article 11.3 of the ASMC, so that IRNC understands that the conclusions of that panel are fully applicable to subsidy investigations.

114. IRNC concluded that in order to avoid possible nullity of the present investigation, SDCOM should request to update the investigated period of the present subsidy investigation and ask interested parties to submit their data referring to the nearest possible previous twelve months to be determined by this authority.

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

116. The IRNC requests that the assessment of this fact be already analyzed in a preliminary opinion and argues for the non-application of provisional compensatory measures.

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

According to the Panel, although the Anti-Dumping Agreement does not contain any specific rules concerning the period to be used for data collection in an anti-dumping investigation, this does not mean that the investigating authority's discretion in using a certain period of investigation is boundless. [...]

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

The Committee notes that although the Agreement on Implementation of Article VI of GATT 1994 refers to the period of data collection for dumping investigations when it refers to the "period of investigation", it does not establish any specific period of investigation [footnote omitted], nor does it establish guidelines for determining an appropriate period of investigation, for the examination of either dumping or injury.

119. Therefore, in the absence of such guides in the Antidumping Agreement, the Committee, although not establishing rules, would have established recommendations for this:

The Committees consider that guidelines for determining what period or periods of data collection may be appropriate for the examination of dumping and of injury would be useful. The Committee also recognizes, however, that such guidelines do not preclude investigating authorities from taking account of the particular circumstances of a given investigation in setting the periods of data collection for both dumping and injury, to ensure that they are appropriate in each case.

120. Therefore, the Committee's recommendations would have established that:

In light of the foregoing considerations, the Committee recommends that with respect to original investigations to determine the existence of dumping and consequent injury:1. As a general rule:

(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, [footnote issued] ending as close to the date of initiation as is practicable;

(b) the period of data collection for investigating sales below cost [footnote issued], and the period of data collection for dumping investigations, normally should coincide in a particular investigation;

(c) the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation ;

(d) In all cases the investigating authorities should set and make known in advance to interested parties the periods of time covered by the data collection, and may also set certain dates for completing collection and/or submission of data. If such dates are set, they should be made known to interested parties.

2. In establishing the specific periods of data collection in a particular investigation, investigating authorities may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicality, and the existence of special order or customized sales.

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

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

122. In the case mentioned by the IRNC, concerning the DS295 case, as stated in the Report of the WTO Appellate Body, "[t]he investigation was initiated on 11 December 2000, 15 months after the end of the period of investigation." However, it would be essential to note that, in such a case, while the analysis period considered ended in August 1999, the petition was filed in June 2000. That is, when 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 in question. As stated in the case file and explicitly mentioned in item 1.2 of the Annex to SECEX Circular No. 40, of 2021, 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 would have filed the protocol at the end of the fourth month after the end of the analysis period considered, in in line with the procedure already adopted in Decree No. 8,058, of 2013.

124. Furthermore, considering the concomitant anti-dumping petition protocol, it would have been possible to carry out a joint assessment of the elements of dumping, actionable subsidies and damage, since they involve the same investigated product.

125. Therefore, as in all dumping investigation processes under the auspices of Decree No. 8058, of 2013, once the investigation begins, the analysis period considered in the petition is maintained. It should be noted that, in the present case, the anti-dumping investigation process was initiated on February 25, 2021, through SECEX Circular No. 15. However, in the case of the subsidy petition, the requirement to carry out an consultations with the government of the exporting country, pursuant to Article 13.1 of the Subsidies and Countervailing Measures Agreement (ASMC) of the World Trade Organization (WTO):

As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members of the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

126. Thus, as stated in item 1.3 of the Opening Circular, on March 31, 2021, the Government of Indonesia would have been notified of the existence of a duly filed petition, and such Government was, in the same communication, invited to carry out consultations , which were finally carried out on April 19, 2021. Considering all the elements presented in the petition and the information and clarifications presented by the Government of Indonesia, the present investigation of actionable subsidies was initiated on June 2, 2021, maintaining it if the same period of damage analysis of the anti-dumping investigation already started.

127. It should be noted that the Opening Circular would have indicated what would be the period of analysis to be considered in the process, with the information requested by the investigating authority in the questionnaires sent to interested parties also indicating the period considered for the purposes of presenting the data.

128. Despite this fact, the IRNC presented its response to the Questionnaire and, at no time, would it have questioned that such deadline would be out of date and/or that it would require updating in its understanding. Only after the end of the period originally foreseen for the conclusion of the process, the IRNC would have claimed that the analysis period should have been updated, attesting that, in fact, it would only be an attempt to avoid the use of the best information available to it, in the face of rejection of its response to the Producer/Exporter Questionnaire

129. Once the investigation is initiated and while it is being carried out, obviously the period of analysis becomes more delayed, as would be recognized by the same aforementioned Report of the WTO Appellate Body regarding the dispute "Mexico - Definitive Anti-dumping measures on beef and rice" (WT/DS295/AB/R):

Thus, for the Panel, it is necessary to base a determination of dumping causing injury on data that is pertinent or relevant with regard to the current situation, taking into account the "inevitable delay" caused by the practical need to conduct an investigation. [...] For the Panel, "the data considered concerning dumping, injury and the causal link should include, to the extent possible, the most recent information, taking into account the inevitable delay caused by the need for an investigation, as well as as 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 establish a period of investigation that covers a past period. We note that, contrary to what Mexico suggests, the Panel did not state that the Anti-Dumping Agreement requires a coincidence in time between the investigation and the data used therein. [footnote omitted] On the contrary, the Panel recognized that "it is well established that the data on the basis of which [the determination that dumped imports cause injury] is made may be 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. We agree with the Panel, however, that more recent data is likely to provide better indications about current injury. [footnote omitted]

157 Panel Report, para. 7.58. The Panel also added that "the inevitable delay caused by the need 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 2021, with an expected 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 attested in item 12 of the Opening Circular. On June 1 ' 2022, through SECEX Circular No. [22] , the deadline for completing this investigation was extended for up to six months, thus reaching a maximum of 18 (eighteen) months in total.

132. In this sense, it would be essential to highlight that such deadline is in line with what is determined by the WTO Agreement on Subsidies and Countervailing Measures, in its article 11.11:

Investigations shall, except in special circumstances, be concluded within one year, 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 opening of the investigation and its conclusion would be considered inherent to the conduct of the investigation itself, since it is not recommended to update the period of analysis during the conduct of the investigation.

134. As stated in the WTO Appellate Body Report of January 18, 2021 on the case "Pakistan - Anti-dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates" (WT/DS538/R):

It is true that an investigation takes time, leading to a gap between the end of the POI and the date of final determination.

135. In the aforementioned case, the damage analysis period would consider data up to June 2010, while the opening of the investigation would have occurred in April 2012, that is, a gap of 22 months. Regarding the question, the panel attested, at the outset, that:

[w]hile the temporal gap alone is not enough to conclude that the data did not provide evidence of current dumping causing injury, these gaps are quite considerable, ranging from slightly less to slightly more than two full years.

136. Confirming this understanding, the Report of the WTO Appellate Body regarding the dispute "Mexico - Definitive Anti-dumping measures on beef and rice" (WT/DS295/AB/R) would attest that:

We agree with Mexico that using a remote investigation period is not per se a violation of Article 3.1. [...]

137. It would be clear, therefore, that it would be expected that there would be a delay between the analysis period and the date of completion of the investigation, so that such a delay would not justify updating the analysis period during the conduct of the investigation nor the request updating the data already previously requested from interested parties, especially after such data have already been subject to a verification procedure by the investigating authority.

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

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

140. In view of all the above, it would remain clear that the period of analysis considered in the present investigation would be in line with the rules established by Decree No. 1,751 , of 1995, and by the WTO Agreement on Subsidies and Compensatory Measures.

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

142. Initially, it reiterated the existence of non-compliance with the damage data of the investigation in relation to multilateral precedents, since they are lagged (i) by 14 months in relation to the Opening Circular and, potentially, (ii) by approximately 31 months in relation to the final determination, to be taken no later than October 28, 22.

143. Such an understanding would have been based on two precedents of the Dispute Settlement Body (DSC) of the World Trade Organization (WTO): Mexico - Definitive Anti-dumping measures on beef and rice (DS295), and Pakistan - Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538).

144. According to the company, in both disputes, the OSC would have recognized that the trade defense authorities in question would not have complied with the duty of damage analysis based on positive evidence, in the strictness of art. 3.1 of the Antidumping Agreement and 15.1 of the Subsidies and Countervailing Measures Agreement (ASMC), when based on damage data lagged by 15 months in relation to the opening (DS 295) and by 31 months in relation to the final determination (DS 538) - without motivating or justifying such a gap.

145. The IRNC brought such precedents because it understood that the damage data adopted in the present investigation would be equally out of date - or at least with an almost identical lag: in relation to the opening, the time lapse would be 14.06 months and, in relation to final determination, expected for 10/28/2022, according to SECEX Circular No. 37/2022, the delay would be 30.92 months.

146. In this context, the IRNC mentioned that it would not be heterodox to consider these time lapses (14.06 and 30.92 months), since it would remove elementary qualities from the evidence and evidence that SDCOM should trust, objectivity and positivity, established in art. 15.1 of the ASMC. He also emphasized that this would not be his opinion, but the OSC's express understanding, in both disputes (DS 295 and DS 538).

147. The IRNC mentioned that it would agree with the quote from APERAM on this topic, in its manifestation of June 30, 2022, which mentioned that the AA and the ASMC did not have specific rules regarding the period investigated, adopted for data collection. But, according to her, that was precisely why this issue was taken to the OSC of the WTO.

148. He highlighted another point of APERAM's manifestation, which would have mentioned that SDCOM had duly complied with the aforementioned recommendations of the Antidumping Practices Committee. On this point, it expressed its disagreement for two reasons: 1) because the very wording of paragraph 1 of the "Recommendation concerning the periods of data collection for anti-dumping investigations", the period of investigation to be chosen must end as close as possible to the date of opening of the investigation; and 2) by the same Recommendation of item 1, in its paragraph 3, for cases in which the general rule of paragraph 1 is not complied with (as would be observed in the present investigation), it asserts that it is advisable for the authority to justify the choice of different or specific period, which would not have occurred.

149. Thus, he highlighted that by APERAM's own arguments it would be clear that the investigated period adopted for the present investigation would be in non-compliance with the Committee's recommendations, and would contradict clear precedents of the WTO DSB.

150. Still regarding APERAM's statements, specifically on the factors that caused the observed delay, the IRNC reiterated that it matters little who caused the time lapse. According to the company, what is relevant to the investigation would be solely and exclusively the use of data and evidence that 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 consultations with the Government investigated as another factor that would have contributed to the observed time lapse. However, it did not recognize that this procedure only took 2 months - while requests for additional information to the petition would have taken 8 months, as addressed in the IRNC manifestation of 06/14/2022.

152. The IRNC, in a statement dated September 9, 2022, reiterated that there would be non-compliance with the damage data of the present investigation, from April 2015 to March 2020, in relation to multilateral precedents since they are lagged (i) by 14 months in in relation to the Opening Circular, of 6/2/2021, and, potentially, (ii) in approximately 31 months in relation to the final determination, explaining that such understanding was based on two precedents of the Dispute Settlement Body (OSC) of the World Trade Organization (WTO), namely, disputes "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" and "Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538) "; noting that in both disputes, the OSC would have recognized that the trade defense authorities in question would not have complied with the duty of damage analysis based on positive evidence, cf. Articles 3.1 of the Antidumping Agreement and 15.1 of the Subsidies and Countervailing Measures Agreement (ASMC), as they are based on outdated damage data without motivating or justifying such a delay.

153. For the IRNC, it would not be heterodox to consider that such temporal lapses would have the power to remove elementary qualities from the proofs and evidences referring to objectivity and positivity, cf. art. 15.1 of the ASMC. In this context, IRNC mentioned the work "WTO - Trade Remedies", published by the Max Planck Institute for Comparative Public Law and International Law, specifically the excerpt that makes reference to the dispute "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)".

154. In this context, IRNC explained that it agrees with Aperam's claim that according to the AB Report of the dispute "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" there would be no specific rules in the AA (and also in the ASMC) regarding the period investigated for data collection and that this understanding was confirmed by the WTO Committee on Antidumping Practices in its 'Recommendation concerning the periods of data collection for anti-dumping investigations'"; emphasizing that for this reason the topic was taken to the OSC of the WTO, which stated that a delay of 15 months in the data in relation to the opening and 31 months in relation to the final determination would deconstruct the positive and objective character of the test, adding that these would be qualities required of the tests and exams under the terms of article 15.1 of the ASMC.

155. For IRNC, there would be a gap of 14.06 months, with the opening of this investigation not complying with the Recommendation that the investigation period to be chosen should end as close as possible to the date of opening of the investigation; moreover, because the same Recommendation recommends that the authority justify the choice of a different or specific period.

156. He argued that it would not matter who caused the time lapse; so that what is relevant to the investigation would be solely and exclusively the use of data and evidence that constitute, in the strictness of art. 15.1 of the ASMC, positive and objective evidence.

1.7.1.2 Statements after the Technical Note on domestic industry information and the investigation period

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

158. Thus, the GOI pointed out that in the present case the same information was presented, and a similar conduct of disregard should be taken in the analysis of positive evidence pursuant to Article 15 of the ASMC.

159. Aperam, in its final statement, pointed out that the IRNC presented its response to the Questionnaire without questioning that the investigation period would be out of date and/or that it would require updating. Only after the deadline originally foreseen for the completion of the process, the IRNC, in the opinion of the petitioner, due to the fact that the investigating authority notified the company that the conclusions about it would take into account the best information available, due to the non-submission due to the response to the Questionnaire sent by SDCOM, went on to claim that the analysis period should have been updated.

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

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

162. In this context, IRNC asserts that SDCOM highlighted and ignored the detailed elements and considerations brought, in which it could have found that the satisfaction of "other elements" in the present case is observed to an equal or greater degree than that of the case of DS 295.

163. For the IRNC, SDCOM's argument against the position of the IRNC is that the temporal analysis would not only be an objective and mathematical analysis in counting the months, but also needs to consider other factors. However, the IRNC adds that in the case of the DS 295 dispute, five other factors were postulated, as well as in the DS 538 other factors were also analyzed in addition to the time gap.

164. In this context, IRNC points out that it never related the time delay to a "simple" count of months and, thus, a per se violation of article 3.1 of the ADA or respective article 15.1 ASMC, having brought elements to correlate to the concrete case, also analyzing in detail the other factors brought by the Dispute Settlement Body of the WTO, demonstrating that these other factors also occurred in the present case; which, however, would not have been commented by SDCOM in the NTFE, although they were expressly included in the manifestations of the IRNC.

165. For the IRNC, firstly, SDCOM tries to dismiss the arguments about the mismatch of damage data under the pretext that the precedents DS 295 and DS 538 dealt with anti-dumping investigations, which the IRNC expresses its absolute disagreement, in the exact terms of what he exhaustively adduced in past manifestations.

166. Furthermore, the IRNC also recalls art. 3.1 of the ADA and art. 15.1 of the ASMC, to highlight, in its opinion, the absolute identity between the texts of the articles, so that it would be unlikely to have totally different decisions or interpretations, and reiterates that the content of its manifestation of 6/14/2022 is absolutely clear, of identity between Art. 3.1 of the Antidumping Agreement and Art. 15.1 of the ASMC, with the case law of the OSC on anti-dumping being used as a reference in investigations of subsidies, in the "WTO Analytical Index - SCM Agreement - Article 15 (Jurisprudence)", and in other judgments of the OSC, in which there is express recognition of this correspondence , to add that it would remain evident, the fragility of adopting such an outdated period of investigation, as occurs in the present investigation.

167. On the other hand, IRNC understands that SDCOM, in the NTFE, tries to demonstrate the potential problems that the pandemic would have caused both for data collection, as well as the potential damage scenario - in what it would consider justified the choice of a period of such an outdated investigation, satisfying the duty to justify a period that is not as close as possible, as taught by the 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 NTFE show that a scenario of a "new normal" was created where 25% of Aperam employees would be working from home, information that was not included in the file during the probationary period ; so that IRNC understands this fact as "curious", since no argument or factual circumstance of impossibility of obtaining data was provided or adduced after the opening of the investigation, and even in its pre-opening phase; so that in SECEX Circular nº 40, of June 1, 2021, published in the DOU on 06/02/2021, nothing is mentioned about any difficulties that consultants or companies might have experienced a year and a half after the initial period of 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 would be related to the problems that the pandemic could bring to the damage scenario due to its possible effects on the supply and demand of the investigated product; however, in the opinion of the IRNC, the citation to the DS 295 case made by SDCOM is correct, however its interpretation seems to be wrong. Furthermore, for IRNC, SDCOM also pertinently cites the case of DS 538, but forgets to comment on an essential part of its transcription, so that, similarly to the case of DS 295, the criticism of the OSC lies in the fact that the investigating authority : "made no attempt to update the investigated data and, during the process, did not provide any discussion of the choice of investigated period".

170. IRNC asserts that in the present investigation, SDCOM did not promote this debate throughout the investigation nor did it offer a justification at the time of opening the investigation to accept a period already lagged by 14 months, and would have tried, after the probation period, reinterpret and reframe the past, reaching a justification based on the pandemic that was never made known to the parties during the probationary period, as legally it would have to be; concluding in the NTFE that the time lapse of the data (lag) would be "fully justified and in accordance with national and multilateral legislation".

171. IRNC argues that the discussion to justify itself and accept a delayed investigation period should not be made only within the scope of the Technical Note, but when opening the investigation, so that the interested parties could take advantage of the contradictory and wide defense to comment on 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, particularly a current period, so the data must be available to the authority, even if it decides not to give important weight to its decision-making due to for whatever reason, and the authority cannot simply assume that the most current

data would be worse or would be riddled with negative effects for an analysis of damage and causality; since the objective of an investigating authority is not to reach a final positive determination as to the existence of damage, but to analyze the need to balance an eventual commercial disloyalty, not penalizing an exporter for a past practice, but rather to analyze a current practice and try to balance this situation.

173. Thus, for the IRNC, the pandemic should not in itself be a reason for not investigating data and facts.

174. However, IRNC itself agrees with SDCOM that the time gap does not per se create a violation of WTO rules, but, however, understands that there must also be other factors that effectively made it impossible for the investigating authority to update the investigated period for a current damage period.

175. IRNC alleges that SDCOM ended up not commenting on each of the 5 additional factors that the OSC of the WTO brought to analyze whether the period of the DS 295 case would have been properly stipulated.

176. In this vein, the IRNC understands that it has demonstrated that the circumstances of the concrete cases that gave rise to disputes in the cases of DS 295 and DS 538 are strictly observed in the present case; and reiterates that art. 35, § 1, of Decree No. 1,751/1995 provides for exceptionally adopting a lagged period, noting that, however, Indonesia's accounting year is from January to December and the investigated period is from April to March.

177. In this way, the IRNC lists the factors that demonstrate SDCOM's defect in the OSC's regulations and jurisprudence:

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

ii. Neither upon publicly initiating the investigation nor throughout the entire evidentiary period, would SDCOM have identified any practical problem with necessarily keeping this POI out of date;

iii. No argument, reason or proof was provided demonstrating that updating the data by the petitioner would be impossible;

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

v. SDCOM would not have given any reason as to why it did not attempt to obtain more up-to-date data throughout the probationary period and at any time prior to the Technical Note. As this would be a more procedural issue and not simply material, the authority could have addressed this discussion at the time of issuing the updated investigation deadlines, but even at that time of issuing a public document to all interested parties, SDCOM would have chosen to not to use the evidentiary period to discuss the option of not using current data and not assessing the existence of a current damage scenario.

178. The IRNC concludes that the characteristics of the present process fulfill all the other factors that led the WTO DSB to conclude, in those disputes, that the time lag also led to the legal defect of absence of positive evidence, which would be capable of allowing an analysis damage objective based on current data as well as enabling a causality analysis; in order to determine a right that would allow counterbalancing the possible existence, simultaneous and current, of unfair practices and damage suffered.

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

180. In addition, IRNC claims that the interested parties' right to contradictory and ample defense was not safeguarded when SDCOM justified the delayed period only after the end of the probationary period, in the NTFE, thus deciding a basic and very important issue of the present investigation (investigation period) when the interested parties can no longer add new evidence to the file.

1.7.1.3 SDCOM's comments on the domestic industry information

1.7.1.3.1 Regarding the protocol of October 5, 2021 and the request for closure of this investigation

181. With regard to the comments regarding the rectification of data filed by Aperam, it is noted that the company voluntarily filed on October 5, 2021 rectification of its data, possibly as a result of the verification procedure of evidence in the parallel antidumping process, based on § 2 of art. 37 of Decree No. 1751 of 1995.

182. SDCOM accepted these changes, as it considered that there was still enough time to analyze the information, which proved to be correct, since the on-site verification only took place 2 months later, on December 5, 2021. It should be noted that the protocol of October 5, 2021 was the subject of a specific item in said verification, and the company was asked to explain in detail what had happened.

183. During the on-site verification, SDCOM officials understood all the changes that had occurred, and it was proven that the main failure that occurred in the verification of evidence in the parallel anti-dumping investigation process - which occurred with production costs - was due to failure internal Aperam that led to a failure to send the required document for proof. As stated in the verification report of this SDCOM:

After the explanations were presented, the SDCOM servers were able to understand the nature of the data as presented on October 5, 2021, and these were the data considered in the verification, according to the verification script previously sent and arts. 36 and 37 of Decree No. 1751 of 1995.

(...)

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

composition of the CODIP [CONFIDENTIAL], which in fact reconciles with the data reported in the case file in the present investigation on October 5. Thus, the SDCOM team considered the situation of apparent divergence that occurred in the parallel investigation of dumping with regard to the cost of production within the scope of the verification of evidence procedure to be completely remedied. (emphasis in the original).

184. The changes in the company's other data, even though they changed the numbers to be considered in the analyzed damage, did not change the curves and trends of the damage indicators, not affecting the general conclusions of SDCOM contained in the opinion at the beginning of the investigation.

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

186. Thus, the claim for closure of the present investigation should not succeed due to "coherence of administrative action by SDCOM". However, the conclusion expressed in the parallel process considered the moment in the administrative process in which there was the change.

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

188. About the hypothetical analysis brought by PT IRNC, it is considered that it is configured as unacceptable, since each factual situation is analyzed concretely, according to the context in which it occurs. It should be noted that the investigating authority conducts the procedure objectively and impartially, in light of the legislation in force, so that the conjectures proposed by the protester are rejected.

189. Regarding the manifestation about the application of the provisional right that brought APRODINOX, it is considered that there was a loss of purpose, since there was no preliminary determination, a necessary requirement for the application of provisional rights. With regard to what was commented about the alterations being considered significant in the parallel investigation, as said, it is a question that involves the procedural moment in which said alteration was received, not being applicable in the present case.

1.7.1.3.2 Regarding the time course

190. With regard to the manifestations that the data would be out of date, as there would be a period of (i) in 14 months in relation to the Opening Circular and, potentially, (ii) in approximately 31 months in relation to the final determination, to be taken no later than October 28, 2022, SDCOM points out that an absolutely superficial analysis was carried out by the interested party of the OSC cases invoked - DS295 and DS538. Initially, it is pointed out that both cases cited deal with anti-dumping investigations, which are notoriously less complex for compiling evidence of subsidization made by the petitioner and for conducting the investigation by the investigating authority, which is also a fact not to be overlooked when such time lapse is analyzed and will be better treated later.

191. SDCOM points out that initially it strongly disagrees with PT IRNC's comment that SDCOM should have presented the responses on the period used before the end of the probative period. Initially, it does not even define Decree No. 1,751, of 1995, as a "probationary period", moreover, there is no doubt that it is a purely procedural matter, as the party itself pointed out, and there is no need to mention any evidence to be collected in the case file. whose absence would harm the contradictory. Thus, it is not surprising that neither PT IRNC pointed out what would be the crucial evidence that would impact this purely procedural discussion. In any case, the parties had ample space to present what they found relevant during the investigation. The contradiction was so much possible that the protester presented long manifestations during the process on the subject, and even a long final manifestation of 34 pages specific on the issue of the period considered. During the course of the investigation, not only PT IRNC, as well as the petitioner, debated the issue as they wished.

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

193. The initial opinion did not address this issue, as the intervals between the end of the damage period and the beginning of the investigation were shorter than the cases analyzed by the Dispute Settlement Body - OSC and all multilateral understandings and national legislation, it was a non-issue. Thus, SDCOM had no way of anticipating that PT IRNC would raise this point. However, once raised, it was answered at the first opportunity, that is, at the procedural moment foreseen for the elaboration of the technical note of essential facts by SDCOM. It is recalled that the Circular for the initiation of the anti-subsidy investigation of aluminum rolled products imported from China, SECEX Circular No. 43, of June 18, 2021, already included the decision to update the period,

194. SDCOM agrees with the protesters regarding the argument that the adoption of investigation periods cannot be allowed to be unjustified. As will be seen below, this was not what happened, with full reasons to justify the periods used.

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

149. (...) The Panel underlined that: during the investigation, no attempt was made by Economía to update any of the information obtained from the interested parties to reflect what had occurred in the 15 months between the end of the period of investigation in August 1999 and the start of the investigation in December 2000; Mexico did not argue that practical problems necessitated this particular period of investigation or that updating the information was not possible; and Mexico did not provide any explanation as to why more recent information was not sought

167. (...) The Panel arrived at this conclusion on the basis of several factors. The Panel attached to the existence of a 15-month gap between the end of the importance of the period of investigation and the initiation of the investigation, and a gap of almost three years between the end of the period of investigation and the imposition of final anti- dumping duties. However, these temporal gaps were not the only circumstances that the Panel took into account. The Panel, as trier of the facts, gave weight to other factors: (i) the period of investigation chosen by Economía was that proposed by the petitioner; (ii) Mexico did not establish that practical problems necessitated this particular period of 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 is Mexico's general practice to accept the period of investigation submitted by the petitioner—why more recent information was not sought.161 Thus, it is not only the remoteness of the period of investigation, but also these other circumstances that formed the basis for the Panel to conclude that a prima facie case was established. In the light of the general assessment of these other circumstances carried out by the Panel as trier of the facts, we accept that a gap of 15 months between the end of the period of investigation and the initiation of the investigation, and another gap of almost three years between the end of the period of investigation and the imposition of the final anti-dumping duties, may raise real doubts about the existence of a sufficiently relevant nexus between the data relating to the period of investigation and current injury. Therefore, we have no reason to disturb the Panel's assessment that a prima facie case of violation of Article 3.1 was made out.

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

i) the period of investigation chosen by Economía was that proposed by the petitioner;

ii) Mexico did not establish that practical problems necessitated this particular period of 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 is Mexico's general to accept the period of investigation practice submitted by the petitioner—why more recent information was not sought.

197. Contrary to what was stated by PT IRNC, in the present case, it was not the petitioner who chose the investigation period - quite the contrary, she only followed § 1 of art. 35 of Decree nº 1.751, of 1995. And here it is worth mentioning the decontextualized speech of PT IRNC in the final manifestation: item 6 of Official Letter nº 1.762/2020, of September 30, 2020, only asked the petitioner to expressly declare the periods considered. It should also be noted that SDCOM only made such a request so that the other parties would have easier access to such information, that is, in order to once again give prestige to the contradictory.

198. The decision to update or not the period is up to SDCOM and several aspects are considered - if SDCOM really wanted to question Aperam about the period, it would have asked an express question in that sense. Since this is a purely procedural point, it is also recalled that in the case of the investigation of aluminum laminates (process SEI/ME No. 19972.101384/2021-51) the petitioner's position regarding such update was not requested before the decision was taken. Therefore, PT IRNC's comment in the sense that Aperam "was even consulted on its choice" remains fallacious. It should be noted that there was no choice on the part of the petitioner, but strict compliance with a legal commandment.

199. There is also an evident practical problem involved in the present investigation, as PT IRNC seems to forget that the pandemic situation of COVID-19 has undermined not only this investigating authority, but also all companies, imposing restrictions in relation to human and financial resources and in general, horizontally to all companies in Brazil and perhaps in the world. Furthermore, it must be considered that the period of damage considered in the present investigation ended in March 2020, on the margins of the outbreak of the pandemic - in Brazil the state of public calamity was recognized by Legislative Decree No. de 2020. Thus, it must be recognized that even the data brought by the petitioner, updated until March 2020, already certainly imposed herculean work on her, who managed to adapt quickly to the "new normal" and filing a complete petition four months after the end of the investigation

period, on July 31, 2020. According to news at the time, 25% of Aperam employees had to be relocated to a home office, which demonstrates that, even in this scenario of profound organizational changes, the company was able to organize a complex and complete five-period anti-subsidy petition. It should also be remembered that petitioners in anti-subsidy investigations often need to collect evidence of subsidization in a language they do not know, unlike the investigated producers/exporters. Also from this point of view, any unnecessary update sought would impose an excessive burden on the petitioner. 25% of Aperam's employees had to be relocated to a home office, which demonstrates that, even in this scenario of profound organizational changes, the company was able to organize a complex and complete five-period anti-subsidy petition. It should also be remembered that petitioners in anti-subsidy investigations often need to collect evidence of subsidization in a language they do not know, unlike the investigated producers/exporters. Also from this point of view, any unnecessary update sought would impose an excessive burden on the petitioner. 25% of Aperam's employees had to be relocated to a home office, which demonstrates that, even in this scenario of profound organizational changes, the company was able to organize a complex and complete five-period anti-subsidy petition. It should also be remembered that petitioners in anti-subsidy investigations often need to collect evidence of subsidization in a language they do not know, unlike the investigated producers/exporters. Also from this point of view, any unnecessary update sought would impose an excessive burden on the petitioner. It should also be remembered that petitioners in anti-subsidy investigations often need to collect evidence of subsidization in a language they do not know, unlike the investigated producers/exporters. Also from this point of view, any unnecessary update sought would impose an excessive burden on the petitioner. It should also be remembered that petitioners in anti-subsidy investigations often need to collect evidence of subsidization in a language they do not know, unlike the investigated producers/exporters. Also from this point of view, any unnecessary update sought would impose an excessive burden on the petitioner.

200. Even disregarding the restrictions linked to the pandemic, which is done by epitrope, it is also mentioned that the unnecessary update still had, indirectly, a benefit: updating the period beyond March 2020 could misrepresent the damage analyzed , as it would advance the analyzed period to the pandemic period, in which demand and supply were affected in a way never seen before. As addressed in DS295 - "Thus, Mexico could have sought to show that the information relating to the period of investigation conveyed indications as to current injury and constituted an appropriate basis for determining whether there was current injury, regardless of its remoteness.", for this investigating authority, the period considered, in which the data are free of pandemic impact, is what best represents the real scenario of the company, as businesses are returning to pre-pandemic levels of economic activity. Furthermore, a three-month update of the investigation period, for example, would only include three months of seriously affected production, with supply and demand also being abruptly depressed. Finally, it should be noted that in the case analyzed in DS295, the authority only imposed measures almost three years after 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, made comments on the issue of the pandemic. Now, if the update were indeed necessary in line with multilateral understandings, SDCOM would have carried it out. Obviously, SDCOM would only have access to the data after P5 if it had performed the update - so it is also evident that the decision to update or not has nothing to do with whether or not there are distortions in updating. The comment above, misinterpreted by PT IRNC in the final statement, only sought to make it clear that, since the update was not required in accordance with multilateral jurisprudence, the fact that the update was not carried out still had the analytical advantage of avoiding distortions and bring the analysis as close as possible to reality, aiming to identify the impact of the duly documented unfair trade practice on the situation of the domestic industry. It is reiterated: if updating the period had been necessary under the terms of the legislation and jurisprudential understanding of the WTO, such update would have been made by SDCOM. Thus, the claim that the pandemic would have been a reason for not investigating data and facts is refuted, since SDCOM's ratio decidendi on the update does not take into account particularities of the post period to be updated, but whether it is necessary or not the update in the light of the legislation and its jurisprudential understanding. if updating the period had been necessary under the terms of the legislation and jurisprudential understanding of the WTO, such update would have been made by SDCOM. Thus, the claim that the pandemic would have been a reason for not investigating data and facts is refuted, since SDCOM's ratio decidendi on the update does not take into account particularities of the post period to be updated, but whether it is necessary or not the update in the light of the legislation and its jurisprudential understanding.

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202. With regard to Decree No. 1,751 of 1995, it should not be forgotten that, when the present investigation was initiated, the investigation of dumping in exports of cold-rolled stainless steel products 304, originating in Africa, was already underway South and Indonesia, initiated through SECEX Circular No. [15] , of February 24, 2021. In this context, considering that the anti-dumping investigation complied with the requirements of Decree No. 8,058, of 2013, and that the two petitions were filed simultaneously by Domestic Industry, it turned out that this anti-subsidy investigation required additional requests for further information, for a better understanding by the investigating authority of the alleged subsidy programs in light of multilateral legislation and WTO jurisprudence.

203. Thus, once the petition for the present anti-subsidy investigation was considered duly filed, even though additional time was required for analysis (fully justified), SDCOM did not see the need for an update at the beginning of the investigation, since the investigation was duly initiated within of the deadlines contained in WTO jurisprudence (according to DS 295). It should also not be forgotten that, in the event of a positive determination of dumping and subsidies practiced by Indonesia, it would be necessary to avoid the adoption of the so-called double remedy, an obligation provided for in Article VI of the GATT. Therefore, in addition to being unnecessary in the light of multilateral legislation, the mismatch of the investigation period of the two cases initiated against unfair trade practices practiced by Indonesia would introduce enormous complexity in the treatment of the double remedy. Furthermore, no authority is known to have carried out a double remedy calculation in periods of analysis of dumping and mismatched subsidies. Thus, in light of the circumstances mentioned, there was full compliance with the provisions of § 1 of Art. 35 of Decree nº 1.751, of 1995, which indicates the use of the "twelve months as close as possible" .

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

205. Regarding the lapse between the end of the investigation period and the eventual determination by application of measures, in which the protester invoked the DS538 case, it is pointed out 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 in DS538, a lapse of almost two years (22 months) between the end of the damage period and the beginning of the investigation, and the non-update tried to be justified by the foreign authority for already having data on the POI, which was refuted: "The selection of a POI that was almost two years old already at the time of initiation cannot be explained by the fact that the investigating authority already had on file data relating to that POI, and could therefore save some time in its investigation.".

207. Also in this case, the OSC carried out a context analysis that led the authority to have the time lapse between the end of the period of damage and the beginning of the investigation and imposition of measures - not being a mere numerical analysis, as did PT IRNC. From the dashboard report:

7.68. To assess whether data for such a POI were evidence of current dumping, we next turn to 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, it made no attempt to update it and, during the proceedings, it provided no discussion whatsoever of this choice. For these reasons, we find that in making its determination of dumping, the NTC failed to ascertain 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 by the DSB in DS538, which is why the arguments already set out are initially reiterated.

209. Furthermore, it should be emphasized that, during the course of the pandemic, this authority was forced to promote profound adaptations in its workflows - temporarily ceasing, for example, to carry out on-site verifications, and suspending the period of investigations based on art. 67 of Law No. 9,784 , of January 29, 1999, which invokes duly proven force majeure. This is a situation that has never happened before, duly justified and published in the Federal Official Gazette by SDCOM.

210. Against this background, conducting the present anti-subsidy investigation posed even more challenges. As usual, the authority endeavored as much as possible to collect and analyze information as robustly and accurately as possible, and on-site checks were carried out in person at Domestic Industry and also at the Government of Indonesia, which took time additional to verify the existence of safe conditions and authorization for the displacement and entry of technicians from the investigating authority. Furthermore, one cannot forget that, due to the results of the parallel anti-dumping investigation, an on-site verification was carried out in the Domestic Industry, which also took additional time from the team.

211. All the particularities of the case must also be considered, which deals with more than ten highly complex programs and about a completely new legislation for SDCOM, which required time from the investigating authority to analyze the facts and arguments brought to the file of the process and study of WTO jurisprudence concerning the new policies formulated and implemented by the GOI. A careful reading of item 4 of this document demonstrates that the time required to analyze the petition and prepare the initial opinion is justified, given the complexity and scope of the interventions promoted by the GOI in the steel sector since 2009, when the DMO began through of MEMR Regulation No. 34/2009, to March 2020, the end of the investigated period.

212. It cannot be forgotten that the unnecessary update would still impose the additional work of collating new data for the petitioner, and also the additional work of analyzing such new damage and subsidies data for SDCOM. It should be noted that, in anti-subsidy investigations, a minimum change of period can cause major impacts, much greater than in anti-dumping investigations. For example, as PT IRNC itself and the GOI brought, shortly after the end of the period of this investigation, MEMR Regulation Nº 11, of 2020, was edited, which would impact the analysis to be carried out in the iron ore supply program (and also the collection of the petitioner's data, who would have to restart the work). Thus, the update claimed by PT IRNC was not carried out as it was unnecessary.

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

214. It should also be noted that this authority is surprised that PT IRNC did not comment on the great negative impact caused by its lack of collaboration in this investigation, which greatly increased the workload of this authority. The protester also forgets that the intervals existing in the present investigation between the end of the damage period and the beginning/end of the investigation are lower than those that existed in the cases analyzed in the OSC.

215. Finally, it is reinforced that PT IRNC's analysis of case law focuses on elements about the possibility of obtaining data for updating and the effort to update, when the correct question is precedent: whether the update was really necessary - to which the answer is negative. Therefore, it is a biased reading of multilateral precedents, which forgets the real issue in the present case, skipping the antecedent (need to update) and going straight to the consequent (possibility of updating).

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

217. In short, this authority firmly concluded that the period used constitutes "positive evidence" as required by national and multilateral legislation, with the lapses between the end of the damage period, the beginning of the investigation and the eventual imposition of measures being fully justified. In view of the filing date of the petition by the petitioner and the work carried out by SDCOM in the context set out in this item, it is understood that the period of damage analysis adopted in this investigation was as close as possible, without any loss in relation to the analysis of damage and causal link undertaken, of an objective and impartial nature, as required by the investigating authority for trade defense.

1.7.2 From the Government of Indonesia

218. The Government of Indonesia, after having its request for an extension of time granted, timely submitted its response to the producer/exporter's questionnaire on 3 April 2022.

219. Faced with the need for further clarification, the investigating authority issued, on April 29, 2022, Official Letter No. SEI No. 125396/2022/ME requesting the submission of additional information. The response from the Government of Indonesia was timely received on May 17, 2022.

1.7.2.1 Use of the Facts Available to the Government of Indonesia

220. After analyzing the documents presented and based on the results of the on-site visit, it was found that there were gaps in the response of the Government of Indonesia, giving rise to the use of facts also available to the GOI in relation to such gaps, as provided for in art. . 79 of Decree No. 1751 of 1995.

221. The GOI was notified through Official Letter SEI No. 228693/2022/ME, of August 19, 2022, that it did not provide fully verifiable information in a timely manner, about general information about the stainless steel market, the way of attracting capital and on miners, and also on i) programs for the supply of nickel ore, coal and coke and land for less than adequate remuneration; ii) the preferential loan program; iii) fiscal programs; iv) the capital injection program; and v) failure to comply with SDCOM requirements regarding the acceptance of documents in a foreign language.

222. It should be noted that the GOI filed in response to such Letter of Use of Available Facts, and the manifestations were considered in item 4.2.1.1 and in each program individually, when applicable.

1.7.3 Importers

223. As informed in item 1.5 above, through Circular Letter No. 75/2021/CGMC/SDCOM/SECEX, of June 7, 2021, questionnaires were sent to all identified importers: Aço Cearense Industrial Ltda In Judicial Recovery; Acojota Comércio de Metais Ltda; ACZ Inox Comercial Ltda; Brasinox Stainless Steel Ltda; Comercial Parinox Ltda; Elinox Central de Aço Inoxidável Ltda; Hipermetal Metais Ltda; IMG Brasil - Indústria de Máquinas para Gastronomia Ltda; Inconel Industria e Comercio de Aços Ltda. Inox do Brasil Comercio de Aço Ltda; Inoxsteel Comercial de Aços Ltda; Inox-Tech Comércio de Aços Inoxidáveis Ltda; Intersteel Aços e Metais Ltda; Komlog Import Ltd. -in Judicial Recovery; Krominox Aços e Metais Eireli; Martinox Importação Comercio e Industria de Aço Inoxidável Ltda; Mebrafe Refrigeration Facilities and Equipment Ltd Meridian Distribuidora Ltda; Metalcasty Ltd; Metalúrgica Biasi Ltda; R2 Distribuidora Ltda; Refribrasil Ind. and with. Ltd; Retinox Importação e Exportação de Aços Inoxidáveis Ltda; Sianfer Ferro e Aço Ltda; Suprir Indústria de Metais Ltda; Timbro Distribuidora Ltda; Upper Trade Import and Export Eireli; Usina Metais Ltda; and Vinícola Angelo Luvison Ltda.

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

225. The company Empresa Sianfer Ferro e Aço Ltda., however, presented its information only in a confidential version, violating the provisions of paragraph 2 of article 38 of Decree No. 1,751, of 1995, according to which confidential information must be accompanied by restricted summaries with details that allow a reasonable understanding of the information provided, under penalty of disregarding confidential information; in the event that it is not possible to present the summary on screen, the interested party must justify this circumstance in writing, this justification being non-confidential. In the present case, no justification was presented and the company was notified, by means of OFFICIO SEI No. 117086/2022/ME, of April 19, 2022, that, under the terms established in the caput c/c § 1 of art. 37 of Decree No. 1,751 of 1995,

1.7.4 Producers/exporters

226. As already described, questionnaires were sent to all identified exporters/producers: Bahru Stainless SDN BHD, PT Indonesia Ruip Nickel and Chrome Allow, PT Indonesia Tsingshan Stainless Steel and PT Jindal Stainless Indonesia.

227. SDCOM received a reply from the company PT Indonesia Ruip Nickel and Chrome Allow, hereinafter referred to as "IRNC", belonging to the Tsingshan group, which also includes another identified producer/exporter, PT Indonesia Tsingshan Stainless Steel. As will be indicated in item 1.7.4.1, it was found that the company did not file the confidential version of the narrative part of the response to the producer/exporter's questionnaire, which made it impossible for this authority to analyze. Thus, IRNC's response was not considered as it was received incomplete, the company having been notified about the use of available facts.

228. The other companies did not respond to the questionnaire sent by SDCOM.

1.7.4.1 Use of Available Facts for PT Indonesia Ruipu Nickel and Chrome Alloy

229. Circular Letter No. 85/2021/CGMC/SDCOM/SECEX, established the deadline for a response of 40 (forty) days, counted from its issuance, in accordance with the caput of art. 37 of Decree No. 1,751, of 1995. On July 16, 2021, IRNC requested an extension of the response deadline, a request granted through Official Letter No. 576/2021/CGMC/DECOM/SECEX, of July 27, 2021, which extended the deadline for response to September 15, 2021.

230. Since the response was filed by the company on September 15, 2021, analysis by SDCOM concluded that, in breach of the provisions of §§ 1 and 5 of art. 79 Decree No. 1,751 of 1995, the company did not respond satisfactorily to the questionnaire, not having fully provided verifiable information in a timely 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 producer/exporter's questionnaire, which made it impossible for this authority to analyze. SDCOM still made efforts to use only the restricted version of its response to understand the information, which proved to be impossible.

231. The company was notified of this fact through Official Letter SEI No. 49146/2022/ME, of February 18, 2022, and was informed that the determination on granting subsidies to PT Indonesia Ruipu Nickel and Chrome Alloy and other companies of the Tsingshan group would take into account the available facts. It was also informed that the group would have until March 4, 2022 to file explanations on the issues covered by the letter.

232. On February 24, 2022, the IRNC filed a document called "additional information from the IRNC" and on March 4, 2022, the explanations regarding the facts reported in SEI Letter No. 49.146/2022/ME were filed.

233. In this context, after a brief inspection of the document called "additional information from IRNC" by SDCOM, it was shown that this was the response to the producer/exporter's questionnaire sent to the company on June 29, 2021. Thus, considering that the deadline The final extension for the company's response to the aforementioned questionnaire ended on September 15, 2021, such a response would be untimely, under the terms established in the caput c/c § 1 of art. 37 of Decree No. 1.751/95. Thus, through Official Letter SEI nº 74860/2022/ME, of March 15, 2022, the group was informed that, precisely because the document is the answer to the questionnaire, such document would not be configured as additional information to the questionnaire, situation dealt with in § 2 of art. 37 of Decree No. 1.751/95.

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

235.Through said Official Letter, the company was also informed that the manifestations of the missive that accompanied the response to the untimely questionnaire, filed on February 24, 2022, as well as the manifestation filed on March 4, 2022, would be considered in determination to be emanated in the context of this investigation. In addition, it was also emphasized that the interested party can always present any comments it deems relevant in the investigation records during its instruction.

236. It is pointed out that the company maintained in its statements, until the moment of the final statements to be considered for the Technical Note of Essential Facts (NT or NTFE), as confidential the names of the companies listed. This fact is particularly relevant as it unjustifiably hinders the due

adversarial process of the other parties interested in the investigation, as it is a public and well-known fact (from the IMIP report itself and the decision of the European Union authority) that the IRNC is related to several companies relevant to the investigation. research, such as PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Indonesia Tsinghan Stainless Steel, PT Indonesia Guang Ching Nickel and Stainless Steel Industry, PT Indonesia Morowali Industrial Park and PT Ekasa Yad Resources. Such companies together were herein named "

1.7.4.1.1 INRC's manifestations regarding the use of available facts

1.7.4.1.1.1 Manifestations prior to the Technical Note

237. In statements dated February 24, 2022, the IRNC argued that the non-receipt of its questionnaire by SDCOM was communicated to it only on February 18, 2022, through Official Letter No. 49.146/2022/ME, and the IRNC would have carried out, on September 15, 2021, the simultaneous protocol of a confidential version and a restricted version of its response to the producer/exporter questionnaire, in compliance with item 25 of the instructions contained in the body of the questionnaire.

238. In this context, the IRNC informed that the protocol would be based on the provisions of art. 36 and especially in art. 37, §2, of Decree No. 1,751/1995, so that the confidential information contained in the narrative part of its response to the producer/exporter's questionnaire would have been made available within a reasonable period of time for SDCOM's consideration, in order to there would not be characterized any obstacle to the regular continuation of the feat.

239. In this context, the IRNC added that the understanding of the Panel in the Dispute "United States — Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available" (DS 539), within the scope of the WTO Dispute Settlement System about art. 12.7 of the Agreement on Subsidies and Compensatory Measures - ASMC, it would be in the sense that the fact that information was provided after the expiration of the deadline ("time limit"), even if referring to the deadline for answering the questionnaire, would not mean that has been provided within a reasonable period of time for its use, being necessary to evaluate the specific circumstances of the concrete case.

240.In these terms, IRNC explained that having been notified in a letter dated February 18, 2022, 5 (five) months after the protocol of its response to the questionnaire, that the receipt of only the confidential version of the narrative had not been regularly carried out, and that SDCOM tried to understand the IRNC's responses using only the restricted version of the narrative, the company decided to make available, through the new manifestation, the entirety of the excerpts treated as confidential, emphasizing that such excerpts reflect in a systematic way the content of appendices and confidential annexes, especially with regard to the performance of related parties.

241. In addition, the IRNC understood that the procedure would be in the procedural phase that would allow the receipt of complementary or additional information, that there was no request issued to the Government of Indonesia or to the importers, in a situation in which all other annexes and appendices, pertaining both to IRNC and its related parties, as well as the restricted version of the narrative, had been 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 procedural deadlines.

242. Finally, the IRNC understood that the interpretation of art. 12.7 of the ASMC given in the case of the aforementioned Panel would be in line with the treatment given by SDCOM to the voluntary changes of a material nature presented by the petitioner in the data filed at the time of the petition and additional information, so that, in compliance with the principle of isonomy, impersonality and legality, art. 36 and art. 37, paragraph 2, of Decree No. 1751/1995, would support the receipt of complementary or additional information presented by exporters with regard to the narrative part of the producer/exporter questionnaire.

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

244. IRNC reiterated that, on July 16, 2021, through the DECOM Digital System (SDD), it would have timely submitted a request for an extension of the deadline for submitting its response to the producer/exporter's questionnaire, which was granted by the Official Letter No. 576/2021/CGMC/DECOM/SECEX, dated July 27, 2021, the date remaining extended until September 15,

2021, when the IRNC proceeded, in a timely manner, with the protocol of its response to the questionnaire of the producer/exporter, in their confidential and restricted versions, as evidenced by the receipts contained in the respective versions of the records.

245. The IRNC pointed out that the management of the Electronic Process in the Electronic Information System - SEI would have imposed difficulties on the IRNC protocol, since the files of its response to the producer/exporter's questionnaire, especially the confidential ones, added up to a much larger size than the 30 MB/file supported by SEI system. For this reason, IRNC would have had to resort to the guidelines of the Internal and External Guide of the Electronic Process in the Electronic Information System, making use, for the first time, of the "QuebrArquivos" tool of SDCOM to prepare the confidential annexes of its response to the questionnaire , with 75 files and over 284 MB.

246. The IRNC narrated that a failure was observed in the processing of the files, so that only the file in .PDF format of the narrative, in its confidential version, despite having been prepared by the company, did not make up the 9 .zip files generated with the use of the "QuebrArquivos" tool, and consequently, it was not added to the confidential file of the process. He indicated that in the confidential version of the IRNC questionnaire, all 75 documents prepared by the company and its related parties were presented, with the exception of the narrative part in a confidential version.

247. In this context, the IRNC claimed that there was instability in the SEI system on the day of the protocol of the response to the questionnaire from the producer/exporter of the IRNC, presenting as proof: i) the existence of duplicity in the questionnaire protocol, which would demonstrate the difficulties in achievement of uploading and sending files in the SEI system, as pointed out on page 2 of the IRNC manifestation of 09/16/2021, in which the IRNC requests the removal of the files filed in duplicate; ii) screenshots of other protocol attempts that did not succeed due to system instability that day; and iii) four printscreens captured in the attempt to protocol the confidential version of the response to the IRNC questionnaire.

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

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

250. The IRNC argued that it would have acted with its duty of loyalty and procedural good faith, under the terms of art. 4, item II, of Law nº 9.784/1999, and as proof of the company's good faith, it highlighted that the letter of submission of the IRNC questionnaire, in its confidential and restricted versions, would expressly state that the narrative part would compose the Doc. 1 of the annexes to the response, demonstrating that the company would not have had the intention of denying SDCOM access to the narrative part of the response or subtracting information of a confidential nature from SDCOM; and presented confidential screenshots of the .PDF file of the confidential narrative of the questionnaire that would demonstrate that this was effectively prepared by the company for submission and has not been changed since then.

251. The IRNC notes that in administrative law, once the administrator's good faith is demonstrated, the administrator must act according to certain precepts that lead and indicate conditions for the regularization of procedural acts to occur in a proportional and equitable manner, without the imposition of burdens excessive, according to the sole paragraph of art. 21 of the LINDB.

252. The IRNC recognized that SDCOM complied with the duty to expressly indicate the "legal and administrative consequences" by asserting, in Official Letter SEI nº 49.146/2022/ME, "that the determination on the granting of subsidies to PT Indonesia Ruipu Nickel and Chrome Alloy (...) will take into account the available facts", in compliance with the caput of art. 21 of LINDB; but that the provisions of the sole paragraph of the same art. 21, of the right to regularize the response to the IRNC producer/exporter's questionnaire, by not providing any possibility of regularizing the administrative act, in view of the concrete challenges of the case in question: (i) the transition phase from the SDD systems to the SEI ; (ii) the new and unprecedented tool "QuebrArquivos" to help divide heavy files; (iii) protocol complexity more than 75 files; and (iv) the instabilities presented by the SEI system on 09/15/2021.

253. The IRNC pointed out the absence of a legal provision that linked the fulfillment of deadlines and obligations provided for in the Brazilian regulation to the simultaneous filing of documents in their confidential and restricted versions, under penalty of complete disregard of the response and application of available facts, as seems to indicate the SDCOM in Official Letter SEI No. 49.146/2022/ME.

254. In addition, the IRNC asserted that Decree No. 1751/1995 would provide, in paragraph 2 of its art. 38, the ability to resubmit the justifications for confidentiality, when considered inappropriate by SDCOM, and the possibility of making information previously confidential as public, in order not to be disregarded.

255. In addition, the IRNC argued that Decree No. 1,751/1995, which "regulates the rules governing administrative procedures related to the application of compensatory measures", would not require simultaneous protocols of the confidential and restricted versions and, therefore, would not advocate the application of sanctions to those who did not do so. In this way, the regulatory SECEX Ordinances (at the time SECEX Ordinance No. 30, of June 7, 2018 and SECEX Ordinance No. 103, of July 27, 2021 were in force) do so, under penalty of usurpation of competence of the legislative activity and violation of the principle of legality (art. 5, item II of the Federal Constitution of 1988.

256. The IRNC argued that the formal question would have been, to some extent, overcome, from the moment the narrative part of the response to the questionnaire, in its restricted version, was analyzed by SDCOM, since it was the formal question provided for by law, there would be no room to argue to the contrary.

257. For the IRNC, the formal requirement that would be made in SEI Official Letter No. 49.146/2022/ME would not find foundation in the legislation, according to paragraph 16 of SEI Official Letter No. 49.146/2022/ME, and there would be no reason, nor would it show It would be legal for SDCOM to resort to the restricted version of the narrative to try to "understand the responses to the information requested in the producer/exporter questionnaire", a contradiction in relation to what would be alleged to disregard the entirety of the response to the IRNC questionnaire, of so that this fact would confirm his conception that the simultaneous protocol requirement of the confidential and restricted versions would be a matter of form.

258. The IRNC highlighted that the greater degree of flexibility of the norms of Decree nº 1.751/1995, of the use of the additional information of its § 2 of art. 37, would have been used to change data voluntarily submitted by the petitioner, on 10/5/2021, which were accepted and validated by SDCOM, cf. appears in paragraph 37 of the On-site Verification Report of Aperam Inox América do Sul SA

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

260. In this context, in addition to the prerogative brought by §2 of art. 37 of Decree nº 1.571/1995, § 5 of art. 79 of the same decree would allow the use of information that, although timely presented, has not been presented "adequately in all respects". In addition, transposing to the specific case of the IRNC, it would be absolutely plausible to support the analysis of this Undersecretariat and subsidize a first request for additional information that there was: consideration of the appendices and confidential annexes of the response to the IRNC questionnaire combined with the narrative part in a restricted version ; consideration of the additional information presented on 2/24/2022; or the consideration of the confidential narrative itself, now presented by the foundations of facts and law presented.

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

262.Within the scope of the end-of-period review of the anti-dumping duty on footwear, SDCOM, through the Letter of additional information to ABICALÇADOS' petition, Letter No. 1.932/2020/CGSA/DECOM/SECEX, would have given the petitioner the opportunity to present Appendix I,

which would have ceased to be presented when filing the petition, important for ensuring the representativeness of the domestic industry, noting that in this ABICALÇADOS case it was not just the filing of one of the versions of the referred appendix (confidential or restricted), but of both; so that if the same criterion that is now used for IRNC were adopted for ABICALÇADOS, in the strictness of paragraph 7 of art. 51 and Section I of Decree No. 8058/2013, the petition should have been rejected, for breach of form and for failing to meet the minimum admissibility requirements, in the case in question, proof that the petition was filed on behalf of the domestic industry, cf. provides the art. 37 of Decree No. 8058/2013, which governs the investigation of dumping, even for cases of fragmented industry, for which the minimum requirements are set out in paragraph 7 of the same article.

263. In the end-of-period review of the anti-dumping duty on garlic, upon notifying the Chinese producer/exporter Jining Greenway Foodstuffs Company, through supplementary information letter no. 3.334/2019/CGMC/DECOM/SECEX, SDCOM provided the company with the submission of relevant statements (of an accounting-financial nature and about the product produced by the company), which would be necessary not only for the understanding and analysis of its response, but even for the subsequent validation of the data in terms of on-site verification, the which, due to the opportunity of the original reply to the producer/exporter's questionnaire, had not been submitted.

264. IRNC argues that SDCOM granted the opportunity to file the documents, in a restricted version, so that the Indian company Bhilosa Industries Private Limited could comply with the formal requirement provided for in Decree No. 8,058/2013, which governs the investigation of dumping, before deciding to disregard documents and resort to the use of available information, which in the response to its producer/exporter questionnaire in the anti-dumping investigation of polyester yarns, failed to present the restricted version of a number of statements, more precisely 13 files, sent as confidential version only.

265. In this context, IRNC calls for due receipt of the confidential narrative of its questionnaire in light of multilateral precedents, cf. the art. 12.7 of the ASMC and the DS 539 panel, due to the submission on February 24, 2022 of the confidential excerpts of its confidential narrative to the producer/exporter's questionnaire, as additional information, cf. art. 37, §2.º, of Decree nº 1.571/1995, emphasizing that for an information to be disregarded by an authority, resorting to the application of available facts, it must be ensured that the general requirements of art. 12.7 are verified in the specific case, since in the interpretation of the said Panel, the simple fact that information was provided after the deadline expired, even if it refers to the deadline for answering the questionnaire,

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

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

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

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

SDCOM would have access to which IRNC related parties reported their information pertaining to capital goods, acquisition of inputs, land and financing, having provided the questionnaire response in its entirety for consideration of this Undersecretary.

270. In addition, IRNC argued that SDCOM could penalize the company only and only for that information whose access was not overcome by the combined reading of the restricted version of the narrative and the confidential and restricted versions of the appendices and annexes of its response to the questionnaire of the producer/exporter.

271. Accordingly, IRNC verified that there would be no confidential information pertaining to the following programs: Provision of goods at LTAR prices; Reduction of income tax for large investments; Exemption from import duties; Income tax facilities to certain industries (with the exception of IRNC); Tax and preferential tax regime in the area of industrial development; and Capital injection.

272. Therefore, for IRNC, from a material point of view, the company does not consider it fair, proportionate or reasonable that the company and its related parties are penalized with facts available in relation to said programs, since the confidential information of the narrative could be suppressed by requests for further information.

273. Finally, the IRNC alleges that, even though it was not presented "adequately in all respects", the information was filed in a timely manner and is fully subject to analysis by this authority, and pursuant to 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 complete disregard of the response to the producer/exporter's questionnaire, art. 21 of the LINDB would determine that the administrative authority should indicate conditions for regularization of the act, which would prevent the IRNC from being penalized promptly, disproportionately and excessively, through the application of available facts, similar treatment to companies that did not cooperate at all with the SDCOM. He added that the petitioner seemed to forget the content of Art. 21 of LINDB and reiterated that Law No. 13.665/2018 would privilege, in Public Law relations, the adoption of regularization measures by the Administration, preserving the general interests, to the detriment of the imposition of abnormal or excessive burdens on the Administrator.

275. Thus, since the administrative procedure governed by Decree No. 1751/1995 would not link the simultaneous filing of confidential and restricted versions of documents to compliance with the deadlines and obligations set forth therein, as does Decree No. 8058/2013 and the very recent Decree nº 10.839/2021, the complete invalidation of the response to the IRNC questionnaire, without any prior 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 would have already occurred in other investigative procedures conducted by SDCOM through the issuance of requests for additional information to the parties, since on more than one occasion, SDCOM effectively made it possible, after the end of the period, the resubmission of files that, despite being indicated by the parties in their protocols, were no longer presented to the Undersecretary, thus enabling the validation of both domestic industry petitions and exporter questionnaires; despite the legislation to verify the existence of dumping, Decree nº 8.058/2013, which is stricter and links the simultaneous protocol of confidential and restricted versions to the fulfillment of deadlines and obligations.

277. Thus, IRNC alleged that administrative practice would refute Aperam's assertion that it would not be up to SDCOM "to request the presentation of confidential information from an insufficient response presented in the restricted form, since it is not even possible to know the content of the response", adding that the missing documents whose resubmission was allowed to the parties by this Undersecretariat in other procedures had not even been filed in a restricted version, so that SDCOM had, in the case of the IRNC, access to the entire content of the response to the producer/exporter's questionnaire, with the exception of excerpts considered confidential by the company only in the narrative part.

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

tables made by the company and its related parties, as well as all statements, in their confidential version, would have been presented in a timely manner to SDCOM; not having a single index number in the narrative; verifying that the following information actually requested in the questionnaires sent by SDCOM was effectively made available in the confidential records, to IRNC and to each of its related parties, among others: Stages of production of the investigated product; Sales flowchart; List of products produced/sold; Ownership composition and management; 10 plans of accounts; 30 audited reports; More than 40 financial statements, including balance sheets and monthly P&L, and for the investigated period; VAT declarations for 5 companies and for 2 years; Total sales (Statement A.4.11) for 6 companies; and Information on acquisitions and loans (Exhibits B and G - Capital Goods, Annex C - Acquisitions of Nickel, Coal, Coke and Land, Annex F - Financing, Annex H - Direct Tax Benefit and Annex I - Indirect Tax Benefit) for 5 companies. 10 plans of accounts; 30 audited reports; More than 40 financial statements, including balance sheets and monthly P&L, and for the investigated period; VAT declarations for 5 companies and for 2 years; Total sales (Statement A.4.11) for 6 companies; and Information on acquisitions and loans (Exhibits B and G - Capital Goods, Annex C - Acquisitions of Nickel, Coal, Coke and Land, Annex F - Financing, Annex H - Direct Tax Benefit and Annex I - Indirect Tax Benefit) for 5 companies. 10 plans of accounts; 30 audited reports; More than 40 financial statements, including balance sheets and monthly P&L, and for the investigated period; VAT declarations for 5 companies and for 2 years; Total sales (Statement A.4.11) for 6 companies; and Information on acquisitions and loans (Exhibits B and G - Capital Goods, Annex C - Acquisitions of Nickel, Coal, Coke and Land, Annex F - Financing, Annex H - Direct Tax Benefit and Annex I - Indirect Tax Benefit) for 5 companies.

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

280. In this context, the IRNC asserted that most of the information with confidential stripes in the narrative would concern the identification of the respondent group, which would be remedied by the confidential annexes, or contain only explanations of a generic nature and that could be clarified in the context of additional information. The IRNC informed its indignation that the fact that occurred with 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 possibility of submitting additional information in a "reasonable period of time", the IRNC contested the petitioner's argument that, if this understanding was accepted, "all interested parties could submit their complete information a posteriori", and alleges that the petitioner, in her protocol of October 5, 2021, under the allegation that these were "minor rectifications", would have done the same; and SDCOM would have accepted additional information submitted in a "reasonable period of time" based on §2 of Art. 37 of Decree No. 1751/1995.

282. In this sense, for the IRNC, its timely protocol of additional information to the annexes and statements would be similar to that of the petitioner who changed its database prior to the on-site verification of this investigation of subsidies; emphasizing that this procedure would lead to the conclusion of the anti-dumping investigation, however, in this case, it was considered that additional information presented in a reasonable period of time for SDCOM's appreciation would be allowed to obtain a true understanding of the petitioner's data.

283. The IRNC alleged that the petitioner seemed to forget the content of §5 of Art. 79 of Decree nº 1.751/1995, which would determine the use of verifiable information presented in a timely manner even if it is not adequate in all aspects, when requesting that the decision entered in SEI Official Letter nº 49.146/2022/ME be confirmed; since such provision reinforces the claim of the IRNC that the complete disregard of its questionnaire would be a disproportionate and excessive measure, given the nature of the data and information made available in a confidential version.

284. In this vein, the IRNC highlighted that the application of facts available by the investigating authority would not be unlimited, as would be the understanding of the Appellate Body in the Dispute "Mexico - Anti-Dumping Measures on Rice" (DS295, §§293-295) , citing a long quote from this case, in which there would be consideration that recourse to available facts would not allow an investigating authority to use any information in any way it chooses, and would point out that the limitations of the use of 'available facts' by an investigating authority in investigations of countervailing duties would be supported by the similar and limited remedy to 'available facts' allowed in Annex II of the Anti-Dumping Agreement, arguing that it would be anomalous if Article 12.7 of the SCM Agreement allowed the use of 'available facts'in countervailing duty investigations in a markedly different way than in anti-dumping investigations.

285. In this context, the IRNC argued that, despite the fact that the WTO Agreement on Subsidies and Countervailing Measures does not contain an annex corresponding to the Antidumping Agreement regarding the best available information, its provisions were incorporated in Chapter III (On the use of information from secondary sources) of Decree nº 1.751/1995, context in which §§5, 6 and 8 of Art. 79 of Decree No. 1,751/1995, which provides that the determinations will take into account the verifiable information that has been presented in a timely manner and that can be used even if it is not adequate in all respects; and that if the explanations are not satisfactory, the reasons for refusal must be included in the records containing any decision or determination; and that if information from secondary sources is used,

286. For the IRNC, all statements, appendices and tables requested by the SDCOM Undersecretariat in the questionnaire were, in a confidential version, submitted in a timely manner, with acceptance of the response to the questionnaire by the producer/exporter being a necessary measure.

287. Aperam, in a statement dated March 15, 2022, highlighted that all interested parties would have faced the same change, and not only in the process in question, but in all ongoing processes and petitions, which was the subject of notification by SDCOM, with different presentations on this transition. In addition, even though the system may have presented instability, the fact is that IRNC was able to file its response to the Producer/Exporter Questionnaire. Such protocol would have occurred, in any case, without the presentation of the text of the response to said Questionnaire, therefore, such lack is not related to the transition of trade defense processes to the SEI.

288. It maintained that, although the legislation determines that the files presented attached to the electronically signed document be listed, so that they are validated, the opposite is not valid. That is, simply listing which files were being presented cannot be understood as validating them, if they are not, in fact, sent in a timely manner to the investigating authority.

289. It highlighted that the Questionnaires sent by SDCOM to the parties would have determined the simultaneous presentation of the confidential and restricted versions. Furthermore, even if the investigating authority could question confidentiality justifications or even the form of presentation of the restricted version, the opposite is not true, and SDCOM is not responsible for requesting the presentation of confidential information based on an insufficient response presented in the restricted form, since it is not even possible to know the content of the answer. If that were the case, an unacceptable precedent would 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 numbers, to be presented later, at their discretion. ,

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

291. In addition, he highlighted that § 3 of art. 37 of Decree No. 1751 of 1995 would establish that the information should be submitted within the deadlines determined by the investigating authority. Such 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 occasional supplementation of information, but rather a response in which several essential elements are missing for proper analysis by the investigating authority, thus not allowing SDCOM understand the answers to the information requested

in the producer/exporter's questionnaire sent to IRNC.

293. In view of all the above, it requested that the determination on the granting of subsidies to PT Indonesia Ruipu Nickel and Chrome Alloy and other companies of the group take into account the facts available, pursuant to § 3 of art. 37 together with § 1 of art. 79 of Decree No. 1751 of 1995.

294. On September 9, 2022, PT IRNC filed a statement in which it reiterated the complete content of its statement on March 4, 2022, arguing for the duty of the administration to provide the administrator with the opportunity to regularize the procedural act due to the particularities of the specific case, considering the good faith of the company and the lesser formality of the administrative process.

295. The company recalled that Art. 79 of Decree No. 1751 of 1995 would reflect the content of Art. 12.7 of the ASMC, and that even the application of available facts has limits, as already decided within the scope of the WTO in the case Mexico - Antidumping Measures on Rice (DS 295).

296. Thus, the company claimed that the authority should limit the facts available to those that can reasonably replace the information that the interested party failed to provide, and substitution cannot be made without parameters.

297. He also cited the case of China - GOES" (DS414), which differentiates the concepts of "facts available" (available facts) and "adverse inference", pointing out that non-cooperation does not justify determinations lacking any factual support and that "although SDCOM considers the IRNC as a non-cooperative party, this authority cannot make use of adverse inferences with the ability to bring an excessive punitive burden in its determinations related to the IRNC, but only make use of the facts available in the present case file to fill in the informational gap that is observed", under penalty of violation of art. 12.7.

298. The company ended its statement by providing, as the best information available, as secondary information, the subsidy margin determined in the subsidy investigation conducted by the European Union in the face of imports of cold-rolled stainless steel products originating in Indonesia . The company added that "the subsidy margin determined in the European subsidy investigation, as will be seen below, constitutes adequate secondary data as the best available information, reasonably supplying the information that the IRNC, in the view of the investigating authority Brazilian, failed to timely provide".

1.7.4.1.1.2 Manifestations after the Technical Note

299. PT IRNC, in its final statement, pointed out that it disagreed with the language of this SDCOM, which stated that no response was received to the questionnaire sent by the producer/exporter. For the company, the use of this language does not reliably reflect the facts that occurred in the present investigation. It adds that it agreed to review the confidentiality of the names of the related parties in the 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 and explanations in response to Official Letter SEI No. 49.146/2022/ME, and that he would have also demonstrated the intelligibility of the questionnaire as a whole based on the narrative in a restricted version combined with the annexes and confidential appendices, indicating schematically where the information was contained. He reiterated that, according to the Law of Introduction to the Norms of Brazilian Law, there would be a duty to provide opportunities for the regularization of the act, and that this would have occurred in other investigations. Even so, this SDCOM would have confirmed the application of the available facts, in which the company expressed its absolute disagreement.

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

de 2022. In it, the company would have proven that it effectively prepared and listed the confidential version of the narrative of its response to the producer/exporter's questionnaire. Screenshots would demonstrate that the missing document, in addition to being effectively prepared, would not have been altered since then.

302. It defended the lack of damage to the contradictory, as the restricted version would have been filed. He expressed his disagreement with SDCOM, when this authority in paragraph 260 of the NTFE pointed out that "It would also harm the other interested parties, given that SDCOM, having been prevented from analyzing the company's response [since it was not received], cannot even assess whether the

confidentiality proposed by the company was reasonable", with mention being made of the confidentiality of "the very composition of the group and the companies that are part of the IMIP (...), which is unacceptable, given that it is public information" . For PT IRNC, SDCOM could have requested a review of the confidentiality of the response, under the terms of § 2 of art. 38 of Decree No. 1,751/1995.

303. PT IRNC reiterated its thesis of the necessary search for the real truth by the Public Administration, pointing out that this would have been compromised not by the lack of information, but by the refusal to receive the information that the IRNC filed, which the IRNC would have tried to file in good faith and in a timely manner, just not having been able to do so for purely technological reasons.

304. In the company's opinion, there would have been illegality in SDCOM's reasonless refusal, prohibited by art. 6 of Law No. 9,784/99, the receipt of their documents and violation of the right to petition. This would not be a situation of preclusive term whose burden for any non-compliance would cause direct damage to the party and only to it, but rather the presentation of information that the company insists on providing, whose knowledge, analysis and taking into account would lend itself to the verification of the real truth in favor of decision-making by the Public Administration itself. In other words, it would be information whose knowledge is of interest, in the first analysis, to this Undersecretary.

305. About arts. 20 and 21 of the Law of Introduction to the Norms of Brazilian Law, pointed out that SDCOM would have pointed out in the NTFE that such provisions do not apply, and, at the same time, asserting that it complied with them, which would be remarkable. He accused SDCOM of having made a fallacious allegation, since what would be in this case would not only be the filing of a document by a private individual in the midst of an administrative proceeding, but a decision by the competent administrative authority regarding the receipt or not of that documentation, applying the provisions of LINDB

306. The prediction of the sole paragraph of art. 21 of the LINDB, which imposes on the administration the duty to provide opportunities for the regularization of the invalid act, would be the literal normative expression of rules that already appear in the Brazilian legal system. According to the prescribed formalism provided for in the Federal Administrative Procedure Law (Law No. 9.784/1999) or the instrumentality of forms, according to the Code of Civil Procedure. In the company's opinion - as there is no offense to the rights of those managed - in the present case, of the other interested parties - this Undersecretary should receive the confidential version of the narrative of the IRNC questionnaire.

307. Whereas in the NTFE it was clear that the disregard of the IRNC questionnaire would not be due to a mere question of form (simultaneous presentation of the questionnaire by VC and VR), but due to the alleged impossibility of SDCOM to understand the company's answer based solely on in the conjugation of the restricted narrative of the questionnaire with the appendices and confidential annexes of the answer, the IRNC added that it would be possible to present, as voluntary additional information, based on the permissive of art. 36 and especially of art. 37, §2 of Decree nº 1.751/1995, of the confidential excerpts of the confidential version of the narrative of its response to the producer/exporter's questionnaire.

308. Contrary to SDCOM's assertion, there would also be time to analyze the response - confidential information from the IRNC response was already in SDCOM's possession on February 24, 2022 - two weeks before the issuance of the first request for additional information to the Government of Indonesia, and only eight months later the NTFE was handed down.

309. Since the reasons invoked are false, the administrative decision could not survive, under the terms of art. 50, § 1, of the Federal Administrative Procedure Law.

310. He reiterated the precedents regarding Article 12.7 of the ASMC, which governs that the information must be submitted in a "reasonable period of time", which would have been fulfilled since the request for additional information to the GOI was only issued two weeks after receipt of the confidential excerpts. In this way, due to the duty to provide opportunities for the regularization of the procedural act, the moderate formalism of administrative processes and, especially, due to the principle of instrumentality of forms and the decision in DS539, the deadline for answering the questionnaire would not be peremptory. He also added that he disagrees that the case of DS539 is "sensibly different", since carrying out verification of the company would have nothing of relevance to what is now being discussed, what would matter would be the receipt of information within a reasonable period, even after a certain period. It also alleges that SDCOM would only have pointed out the timeliness of the response as the reason for not receiving it.

311. Finally, PT IRNC points out that it would never have received any information from this E. authority regarding the verification procedure with its Information Technology department, which would have been mentioned in the NTFE. Therefore, it requests, based on full defense and contradictory and the Access to Information Law (Law No. 12,527/2011), that it be granted access to any reports and documents related to the consultation of this E. Undersecretariat with its department from you.

1.7.4.1.2 SDCOM's comments on the use of available facts

312. Regarding IRNC's manifestation regarding the acceptance of its response to the questionnaire, SDCOM initially points out that the response to the questionnaire has a period of forty days defined in art. 37 of Decree No. 1751 of 1995, which may be extended for up to thirty days, pursuant to §1 of the same article.

313. In this specific case, it should also be emphasized that the company had deferred the maximum possible period to answer the questionnaire (forty days, plus thirty days of extension), so that it could not complain about the opportunity given by SDCOM to present the information needed. It is understood that such a total period of seventy days is peremptory, and the inadequacy of the documentation filed on September 15, 2021 remains irremediable. The alleged instability of the system on the day of filing the response to the IRNC producer/exporter's questionnaire (which was not pointed out by any other party) does not alter the composition of the .zip file, which was duly filed by the company with the confidential narrative part absent.

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

No question or section should be left unanswered. Clearly refer to the specific question being answered. Answer the questions in the order presented in this questionnaire. Tabulated information 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 filed 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. 1751 of 1995, the response to this questionnaire, in its restricted and confidential versions, must be filed with the SDD, 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 of the authority, given that it was the company that failed to provide a timely response to the authority, as the submitted documentation contained blemishes that were impossible to overcome, as explained in Official Letter SEI No. 49146/ 2022/ME:

Aware of the apparent gap in the company's response, this SDCOM also sought to carefully analyze the content of the restricted version of the narrative contained in the 2nd submission. It was evaluated whether it would be possible to understand the responses to the information requested in the producer/exporter's questionnaire 'sent to interested parties, using only the restricted version of the narrative in the protocol. However, such an attempt remained impracticable, given that several essential elements for proper analysis by this authority are absent in the restricted version of the response narrative. Thus, the filed response does not allow this SDCOM to understand basic and essential information for any analysis, such as the complete information of the responding companies,

316. Unlike the references to other cases made by the IRNC, the gap could not be filled by means of a supplementary information letter, precisely because it would not be supplementary information, but the response to the questionnaire itself. It is not up to the interested party to decide what is relevant or not to present, nor to indicate how the investigating authority should act to fill the gap resulting

from the failure of the interested party itself to provide a central part of the submitted questionnaire. It is reiterated that the interested party was warned about the need for cooperation and about the use of the facts available in the letter of notification of initiation of the investigation.

317. The situation of the IRNC differs from the situation of the petitioner in its October 5, 2021 submission of supplementary information, as the petitioner did in fact submit information that supplements or rectifies information previously provided in its petition. Thus, there is no basis for the allegation of lack of isonomic treatment.

318. Furthermore, the comparisons that IRNC makes with other cases demonstrate precisely that SDCOM seeks to be reasonable with the interested parties when there are gaps in the answers to the sent questionnaires. However, in none of the referred cases did the companies fail to provide the narrative response to the questionnaire, as the IRNC did. Obviously, if that had been the case, the parties would have been considered non-cooperative and would have received the same treatment as the IRNC in the present case.

319. Regarding the administrative procedural legislation and the LINDB commands, SDCOM asserts that the IRNC's accusations of disregarding the provisions of the sole paragraph of art. 21, and violation of the command of art. 21 of the LINDB, are unfounded, for the factual and legal reasons set out below.

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

321. The IRNC accusations constitute a material misunderstanding both in the interpretation of the rules contained in articles 20 and 21 of the LINDB and in the appropriateness of their impositions in the administrative process in question, in addition to a material misunderstanding regarding the legal nature of the Administrative Acts and the procedural acts , of believing to have produced an Administrative Act by carrying out an instrumental act within the scope of the administrative proceedings of the present trade defense investigation.

322. Articles 20 and 21 of Decree-Law No. 4,657, of September 4, 1942 (Law of Introduction to the Norms of Brazilian Law - LINDB), provide that:

Art. 20. In the administrative, controlling and judicial spheres, decisions will not be made based on abstract legal values without considering the practical consequences of the decision. (Included by Law No. 13,655 of 2018)

Single paragraph. The motivation will demonstrate the need and adequacy of the imposed measure or the invalidation of an act, contract, adjustment, process or administrative rule, including in view of the possible alternatives. (Included by Law No. 13,655 of 2018)

Art. 21. The decision that, in the administrative, controlling or judicial spheres, decrees the invalidity of an act, contract, adjustment, process or administrative rule must expressly indicate its legal and administrative consequences. (Included by Law No. 13,655 of 2018)

Single paragraph. The decision referred to in the caput of this article shall, when applicable, indicate the conditions for the regularization to occur in a proportional and equitable manner and without prejudice to the general interests, not being able to impose on the affected subjects any burdens or losses that, in depending on the peculiarities of the case, whether abnormal or excessive. (Included by Law No. 13,655 of 2018)

323. Contrary to what the IRNC states, that "Art. 21 of the Law of Introduction to the Norms of Brazilian Law ("LINDB") determines that conditions for regularization of the act be initiated by the administrative authority", art. 21 of the LINDB is only applicable for the invalidation of Administrative Acts issued by the Public Administration itself. In the present case, the non-acceptance of the documents

forwarded on September 15, 2021 by the company in response to the investigation producer/exporter's questionnaire - due to the absence of the confidential narrative of the forwarded questionnaire - and the disregard of the timely response filed on February 24, 2022 - who, in a disguised way, tried to present the complete response to the questionnaire as "additional information", whose period ended on September 15, 2021 - took place in the context of the absence of a timely instrumental act by the IRNC, and not the invalidation of Administrative Acts by the IRNC. It should be noted that the IRNC is a private entity that acts as an interested party that is investigated in the process in question, and has not received any delegation of administrative function in the present process, not having the competence to produce, within the scope of the investigation in question, any Administrative Act, which is exclusive to an agent performing an administrative function.

324. Also regarding the supposed right to opportunity for regularization, this is not only based on an inapplicable article, art. 21 of the LINDB, since the sole paragraph expressly delimits its applicability, but, considering the right in general, it is understood that, if granted, it would offend the rights of the other administered and excessive burden to this authority, since the entire schedule in detail planned could not be fulfilled with the response regularization 5 months after the deadline. It should also be noted that it would not be a matter of mere regularization, but of fully receiving the confidential version of the narrative of the PT IRNC questionnaire.

325. Even though the response to the questionnaire is obviously useful information for the authority, PT IRNC cannot invoke the principle of real truth or the other principles invoked in order to justify the acceptance of information filed at an absolutely late procedural moment, in disagreement with the express requirement of applicable law. There is no doubt that the lack of response to the questionnaire hindered the investigation, and such an absence was unwelcome for both the authority and the company. However, this is an unavoidable situation, since there was not enough time to analyze new data. It is not possible, with the justification of providing opportunities to remedy irregularities, to prevent the timely conclusion of the investigation.

326. In this context, in view of the timeliness of the document filed on February 24, 2022, according to the rule in the caput c/c § 1 of art. 37 of Decree nº 1.751/95, SDCOM expressly complied with the normative content of art. 20 of LINDB. It is clear that the IRNC's accusations are a material mistake both in the interpretation of the norms contained in articles 20 and 21 of the LINDB and the appropriateness of their impositions in the administrative process in question, as well as the legal nature of the Administrative Acts and the acts procedural, as it believes it has produced an Administrative Act by performing a mere instrumental act within the scope of the administrative processes of the present trade defense investigation.

327. SDCOM vehemently refutes PT IRNC's accusation that this authority would have made a fallacious allegation when considering that art. 21 of LINDB to the company's case "since the protocol of its response to the producer/export questionnaire would be a merely instructive act". It is reiterated: even if it is considered, as PT IRNC wants, that in this case there is "a decision by the competent administrative authority regarding the receipt or not of this documentation", art. 21 of the LINDB would have nothing to do with the question, since if it only applies when the "invalidation of an act, contract, adjustment, process or administrative rule" - in casu, there is no act of the administration invalidated, but an act of notification of 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: PT IRNC brings together arts. 20 and 21 of the LINDB as if they were applicable to the same types of decision - while art. 20 is applicable horizontally, in art. 21 there is express limitation to the "decision that (...) decrees the invalidity of an act, contract, adjustment, process or administrative rule (...)".

329. Thus, unlike what the IRNC alleges, what we have is compliance with a binding legal command on the part of SDCOM, the legal requirement of not receiving a document in view of the occurrence of the temporal limitation, a decision with duly decision-making content motivated and reasoned, strictly in accordance with the provisions of art. 20 of LINDB, since SDCOM duly informed IRNC, by means of OFFICIO SEI No. 74860/2022/ME, of March 15, 2022, of the impossibility of accepting its response.

330. It should be noted here that SDCOM only pointed out in paragraph 238 of the NTFE that it indicated "legal and administrative consequences (...) in compliance with the caput of article 21 of the LINDB", as this was a point of contention for PT IRNC. That is, even if such an article were applicable (which it is not, as already discussed), the provisions therein would have been fulfilled, emptying, in one way or another, the argument. It is regrettable that PT IRNC comes to incompletely read the position of this authority, as the reasons why it does not apply are abundantly explained later on. There is crystal clear levity when PT IRNC misrepresents SDCOM's understanding in order to have a completely different understanding from the above.

331. Thus, the IRNC's accusation of violation of art. 21 of LINDB by SDCOM.

332. With regard to the invoked right of petition, SDCOM emphasizes that the aforementioned constitutional provision guarantees the right of petition to the Public Powers in defense of rights or against illegality or abuse of power and not, necessarily, the granting of the claim.

333. In this context, SDCOM notes that art. 39 of Law No. 9,784/99, the law that regulates the administrative process within the scope of the Federal Public Administration, provides that:

Art. 39. When the provision of information or the presentation of evidence by interested parties or third parties is required, subpoenas will be issued for this purpose, mentioning the date, term, form and conditions of service.

Single paragraph. If the subpoena is not complied with, the competent body may, if it deems the matter relevant, make up for the omission ex officio, not exempting itself from issuing the decision. (our emphasis).

334. In addition, SDCOM is important to highlight the topology of the aforementioned art. 6 of Law nº 9784/99, which is inserted in chapter IV - "the beginning of the process". In this context, SDCOM points out that the sole paragraph of art. 50 of the same Law No. 9784/99 provides that administrative acts must be motivated, with an indication of the facts and legal grounds. In these terms, SDCOM refutes the IRNC's allegations of unjustified refusal, and emphasizes that it fully complied with the provisions of art. 50 of Law No. 9784/99 by informing IRNC in an "explicit, clear and congruent" manner, through Official Letter SEI No. 74860/2022/ME, of 3/15/2022, of the untimeliness of the document filed on 2/24 /2022, called "additional information from IRNC", which was, actually responding to the questionnaire whose deadline for the protocol was already closed, under the terms established in the caput c/c § 1 of art. 37 of Decree nº 1.751/95, not constituting, therefore, as additional information to the questionnaire, a situation treated in § 2 of the same article of Decree nº 1.751/95.

335. With regard to the so-called moderate formalism and the instrumentality of forms, SDCOM 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 essential to guaranteeing the rights of those under administration, and item XIII provides that administrative procedures shall observe, among others, the interpretation of administrative norm in the way that best guarantees the fulfillment of the public purpose to which it is directed, retroactive application of a new interpretation is forbidden.

336. In effect, Art. 2 of Law No. 9,784/1999 provides that the Public Administration shall obey, among others, the principles of legality, purpose, motivation, reasonableness, proportionality, morality, full 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 waiver of powers or competences being prohibited, unless authorized by law;

III - objectivity in serving the public interest, the personal promotion of agents or authorities being prohibited;

IV - acting according to ethical standards of probity, decorum and good faith;

V - official disclosure of administrative acts, subject to the hypotheses of secrecy provided for in the Constitution;

VI - adequacy between means and ends, prohibiting the imposition of obligations, restrictions and sanctions in excess of those strictly necessary to serve the public interest;

VII - indication of the assumptions of fact and law that determine the decision;

VIII - observance of essential formalities to guarantee the rights of those under administration;

IX - adoption of simple forms, sufficient to provide an adequate degree of certainty, security and respect for the rights of those administered;

X - guarantee of the right to communicate, to present final allegations, to produce evidence and to lodge appeals, in cases that may result in sanctions and in litigation situations;

XI - prohibition of collection of procedural expenses, with the exception of those provided for by law;

XII - ex officio impulsion of the administrative process, without prejudice to the performance of the interested parties;

XIII - interpretation of the administrative norm in the way that best guarantees the fulfillment of the public purpose to which it is directed, retroactive application of a new interpretation is forbidden.

337. In this regard, the IRNC cites the teaching of Marçal Justen Filho. However, SDCOM points out that, according to the same scholar, contrary to what was intended by the IRNC to legitimize its right due to the non-provision or partial provision of the required information due to the absence of the narrative part, in its confidential version, when the protocol fails from its response to the producer/exporter's questionnaire, it is precisely highlighted that:

(...) informalism cannot be used by the administration to fail to comply with the prescriptions that the legal order establishes regarding its mode of action, nor to evade compliance with the elementary rules of due process (gn).

338. SDCOM also points out that the principle of the instrumentality of the forms, of the civil judicial process, would only have a logical-legal sense if the documents in question were fungible, which does not occur in the present case. Furthermore, an invalid administrative act is only validated, and if the defect is curable.

339. Thus, there is no need to speak of a violation of the moderate formalism typical of administrative processes, given that there was no failure to observe a mere formality, but rather a total absence of relevant content for the authority's analysis. In this vein, considering the adage "pas de nullité sans grief", taking into account the investigation deadlines, the undeniable damage to the public interest in accepting a rectification or addendum to the response, as claimed by the company on February 24, 2022. There would also be damage to the other interested parties, given that SDCOM, having been prevented from analyzing the company's response, could not even assess whether the confidentiality proposed by the company was reasonable.

340. In its final statement, PT IRNC pointed out, regarding the confidentiality of the names of the group's companies, that it would supposedly be possible for SDCOM to request a review of the confidentiality of the response, under the terms of § 2 of art. 38 of Decree No. 1,751/1995. However, SDCOM is only in a position to know whether or not the confidentiality hidden in the restricted version is adequate if analyzed in comparison with the confidential version (with all the information disclosed). Therefore, it is reiterated: without the confidential version, it remains impossible for SDCOM to guess the confidential content and then request the resubmission of its restricted version, with obvious damage to the other interested parties in this fact. Confidentiality can only be raised for something confidential that has already been filed - otherwise it is untimely information improperly filed. Although this factor was not decisive for the results of the investigation, it is undeniable that the confidential treatment given to information of a notoriously public nature impaired the understanding of the other interested parties.

341. The protester tries to match her protocol with a new response to the questionnaire with information filed as additional information pursuant to art. 37, §2 of Decree No. 1751 of 1995. It is clear that the provision of this article is intended to fill gaps in the response, and not to allow an absolutely unprecedented response. It is impossible to talk about the instrumentality of forms, since the new protocol does not eliminate the fact that the company did not file its response within the required period.

342. Thus, PT IRNC cannot seek shelter in moderate formalism or in the instrumentality of forms to excuse itself from complying with the precepts of Decree No. 1.751 of 1995.

343. With regard to the claim that there would be no legal provision that links the fulfillment of deadlines and obligations set forth in the regulation (Decree No. 1,571/1995) to the simultaneous filing of documents in their confidential and restricted versions, such an argument offends any interpretation of the Regulation , being obvious that the authority needs the confidential version of the response to be able to analyze the completeness of the response, and the other interested parties need the restricted version of the response to make possible the contradictory. Therefore, the company's hypothesis is absurd, since both versions of the answers are necessary (as is even highlighted in the questionnaire itself, as already mentioned).

344. Here, it is reiterated, there is another confusion on the part of the company, when pointing out that there would have been a mere form failure, and not only was there a form failure, but a material absence of content in its response.

345. Even going beyond the jurisprudence of the country and the existence of peremptory administrative deadlines, it is still necessary to consider the jurisprudence of the WTO. In the case "United States — Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available" (DS 539), the Panel found that the US had acted inconsistently with Article 12.7 of the ASMC:

7.357 For the above reasons, we find that Korea has established that the USDOC acted inconsistently with Article 12.7 of the SCM Agreement because it rejected the information concerning the cross-owned affiliate input suppliers solely on the basis that it was provided after the time-limit imposed by the USDOC, without considering whether, in light of the specific facts and circumstances, the information submitted by POSCO was nonetheless submitted within a "reasonable period".

346.However, there was a significantly different situation here, given that in the case analyzed by the DSB, the company in question was verified, and the US authority did not indicate any other reason for disregarding the response other than non-compliance with the deadline. In the present case, the failure of PT IRNC prevented any analysis of the questionnaire, as well as SDCOM had the opportunity to explain to the company why it would not be possible to accept a new response, including in the meetings requested by the company to SDCOM. The interpretation of this decision by PT IRNC was, once again, biased.

347. Analyzing a questionnaire response is a task that takes months, even more so in an anti-subsidy investigation, which involves thousands of pages and dozens of pieces of legislation. SDCOM only managed to send the first request for additional information to the GOI on March 8, 2022, with dozens of questions being asked for the GOI.

348. Contrary to what was alleged, there was not enough time to accept a new response from PT IRNC, analyze such response, make any requests for additional information, organize the on-site verification and carry it out. The fact that the error in the response was only verified months after the response was filed in no way diminishes the company's guilt: the authority began analyzing the response within the deadline already established internally and in which there would be enough time to complete the investigation.

349. It should be noted that, in its final statement, PT IRNC once again claimed that there was sufficient time, for having filed its new response two weeks before the issuance of the first request for additional information to the Government of Indonesia. PT IRNC also adduced that, for these reasons, the invoked motives would be 'false'. Such a very serious allegation is so unreasonable that it goes beyond levity and borders on bad faith. As can be seen from the protester's arguments ("the SDCOM investigative file had just begun" or "the investigative procedure in relation to the Government of Indonesia, due to the first request for additional information, would only be issued, as mentioned, on 8 March 2022 - two weeks after protocol of confidential IRNC excerpts in sanitation to previous protocol."),

350. Well, the protester's intellectual fragility is such that it does not withstand the slightest scrutiny. On February 18, 2022, notification was sent about the problems with the IRNC response, and on March 8, 2022, the 1st request for Complementary Information was sent to the GOI. The GOI's response was received months before such submission, and extensive work was carried out by this SDCOM in the prior analysis of the response to the GOI - which, in its restricted version, has 77 attachments and almost 2,500

pages. It culminated in the sending of a request for additional information to the detained analysis of such response for months, with a search of hundreds of external sources and hundreds of hours of research by the team - as demonstrated in this lengthy Opinion.

351. At the same time as the analysis of the company's and GOI's response was being undertaken, the case team was undertaking various investigation activities of this and other processes, such as organizing verification in the domestic industry, the first verification since the stoppage due to the pandemic, with the need to prepare a script, organize procedures, etc.

352. The company also tries to bring the provisions of Article 12.7 of the ASMC, which governs that the information must be brought within a reasonable period. The device is considered absolutely inapplicable to the case at hand, as the new PT IRNC questionnaire was only filed on February 24, 2022, 5 months and 2 weeks or 162 days after the deadline for responding to the extended questionnaire - September 15 of 2021. At no time did PT IRNC explain why it itself did not act diligently and earlier verify the absence in its confidential response. Furthermore, the fact that SDCOM sent the Official Letter months later does not eliminate the fact that the party itself did not even carry out such verification. Evidently, the protocol 5 months after the original deadline expired is not a reasonable period.

353. It is also pointed out that the very process of investigating and confirming the absence of the central document in the response to the questionnaire (confidential narrative) took considerable time for the SDCOM team, as it was based on the assumption that the interested party, by submitting dozens of files on the system, he would not forget - or, for whatever reason unknown to this authority - to include precisely the most important element of his answer. Thus, the SDCOM team sought to make sure that the absence did not result from any internal error in the use of the IT tools used to download and reconstruct the "zipped" files contained in the SEI, as well as any internal failure of IT systems. Once it was confirmed internally that the failure could only be attributable to the interested party itself,

354. It is worth clarifying here about the work undertaken to verify that the failure was due to the company itself, and that it involved research in relation to information technology. Contrary to what was suggested by PT IRNC, which in its final statement indicated that it "never received any information from this E. authority regarding the aforementioned verification procedure with its Information Technology department", it is clarified here, so emphatically, that no consultation was made with the IT area of the Ministry of Economy about any failure in the SEI System or any issue related to this specific case, since the SDCOM team is absolutely sure that the absence of a response to the questionnaire (narrative confidential) arose from the company's own action, and not from any failure in the operation of the SEI,

355. The internal tests carried out by the SDCOM team to make sure that there was no failure of IT tools involved the analysis of the registered .zip files. Given that the response was filed in a compressed .zip file divided into nine parts, using the tool made available by SDCOM, the following were suggested: 1) whether the .zip files could have been modified in some way after submission by the party, and even so the reconstitution of the complete file is done successfully; 2) whether, in the reconstitution of the divided files, only the file with the narrative could have been excluded; 3) whether it would be possible that the reconstructed .zip file could contain the file with the narrative part, but somehow hidden.

356. To answer these questions, the case team itself sought the .zip format specification. The .zip format is based on PKZIP, and an ISO specification was also created to ensure interoperability (ISO/IEC 21320-1, Information Technology - Document Container File — Part 1: Core). In consultation with the specification, it is clear that all the possibilities mentioned in the previous paragraph are absolutely impossible. The .zip format specifies, for each file, the "Central Directory", which lists all files present 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 containing only an "end of central directory record" is considered an empty ZIP file. Files MAY be added or replaced within a ZIP file, or deleted.

A ZIP file MUST have only one "end of central directory record". Other records defined in this specification MAY be used as needed to support storage requirements for individual ZIP files.

4.3.2 Each file placed into a ZIP file MUST be preceded by a "local file header" record for that file. Each "local file header" MUST be accompanied by a corresponding "central directory header" record within 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 span multiple volumes or it MAY be split into user-defined segment sizes. All values MUST be stored in little-endian byte order unless otherwise specified in this document for a specific data element. (our emphasis)

357. The presence of such a "Central Directory" makes it impossible for there to be a 'hidden' file in the resulting .zip, and it is even assumed that there is an integrity check of the files that make up the .zip (by means of the CRC32 checksum). Thus, any changes to the file after submission would result in an error when trying to rebuild the file, which did not occur. Also, in the process of merging the .zip parts to rebuild the original .zip file, a check is carried out at the local file header, in order to make sure that there are no problems with the files. This is done automatically in any implementation of the .zip format. As the file was reconstructed and extracted without any error, it was confirmed to be impossible, therefore, any undetected modification in the submitted file.

358. The previous detailed technical analysis obviously required time from this authority. Added to this is the fact that PT IRNC filed absolutely all files submitted in duplicate, once again jeopardizing the scheduled progress of the investigation. Furthermore, SDCOM went so far as to check the .pdf files of the response one by one in order to verify that there was no error in the indication of the name of the files. SDCOM was also careful to calculate the CRC and MD5 hashes of the analyzed files, informing them in the notification letter of the use of available facts, so that PT IRNC would have ample opportunity to defend itself in the presentation of any technical allegations. Nothing was pointed out.

359. In conclusion on this point, SDCOM reaffirms that no consultation was made with the Ministry's IT area, as it was able to eliminate on its own any possibility that an internal failure had occurred in the Ministry's IT system during the submission, download or still rebuilding the submitted .zip files. That is, there was absolutely no technical doubt that, in fact, the non-submission of the file with the confidential narrative was exclusively the fault of PT IRNC.

360. In this context, SDCOM carefully complied with the provisions of the Brazilian Anti-subsidies Regulation and also with the WTO jurisprudence, and, as will be seen in section 4, below, available facts were used in a reasonable manner, not to punish, but to fill gaps, even in the face of the company's total lack of response and partial collaboration from the GOI. As will be better treated in the individual sections of each program, SDCOM used various elements such as available facts, always substantiated, which included the decision of the European authority, considering that such use was reasonable when 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 responses requested by the investigating authority in a timely manner, and it is not acceptable for the interested party to seek, due to a failure attributable solely and exclusively to itself, to try to impose its interpretation on how the investigating authority should act on the hypothesis of non-cooperation of the interested parties or on how to use available facts in light of the non-cooperation.

362. It should be noted here that once again PT IRNC was untruthful when stating that: "only on the alleged timeliness of the response to the questionnaire from the producer/exporter of the IRNC that SDCOM bases its rejection". It should also be noted that the document cited by PT IRNC in this section, Official Letter SEI No. 74860/2022/ME, referred exclusively to the document filed on February 24, 2022, called "additional information from IRNC" (received 5 months after the end of the deadline for response), and not the original response to the questionnaire filed by PT IRNC.

363. The rejection was extensively based on several factors, based on the untimeliness, the lack of time to analyze a new response given the state of the investigation and also considering the workload, the impossibility of using the restricted response to deduce information understandable, and the existence of sole fault on the part of the company. SDCOM used the term "untimely" as the adjective that best qualifies the answer in a short description, but as the company knows, several elements were brought to support the rejection, when there was an opportunity to discuss it.

364. Regarding the complaint about claiming that no response was received to the questionnaire, SDCOM, given the reported problems, disregarded the protocol response. Therefore, for all purposes, in fact, no response was received to the questionnaire, and this final determination extensively details what happened, allowing the reader to have full knowledge of the facts.

365. With regard to the company's alleged good faith, the March 4, 2022 filing only demonstrates that the company failed to comply with the requirement, not filing the required information - the screenshots show nothing, as dates can be freely defined. The company's alleged good faith would have been better demonstrated if it had expressly accepted its blunder in not filing the confidential narrative of its response and, thereafter, acted as possible. On the contrary, it came to protest using biased and even false arguments, such as claiming that SDCOM only pointed to untimeliness as a reason or claiming that SDCOM pointed out that it had carried out an investigation with its IT department, in a regrettable attempt to deviate from its failure .

1.7.4.1.1 SDCOM's conclusion regarding the use of available facts

366. SDCOM reiterates the use of the facts available to PT IRNC, due to the timeliness considering the applicable regulations, the lack of time to analyze the complement of response given the state of the investigation and the workload, the impossibility of using the Restricted response to deduce understandable information, the existence of exclusive fault on the part of the company in the non-protocol of the confidential version of the narrative of its response to the questionnaire, and even in the late attempt (5 months after the deadline) to protocol a new response. It also regrets, with regard to SDCOM's positions and the facts that occurred, the fact that the company misrepresented them, interpreted them in a biased manner and made serious false accusations, in an unfortunate attempt to divert the focus from its exclusive incompetence.

1.8 On-site checks

1.8.1 Verification in the domestic industry

367. Based on § 2 ^{of} art. 40 of Decree No. 1,751 of 1995, SDCOM technicians carried out on-site verification at Aperam's facilities, from December 6 to 10, 2021, with the aim of confirming and obtaining greater detail of the information provided by the company in the petition.

368. The procedures set out in the verification scripts, previously sent to the company, were complied with, with the data presented in the petition and in the supplementary information having been verified.

369. SDCOM considered the information provided by the companies throughout the investigation to be valid, after making the relevant corrections. The domestic industry indicators and 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 contained in the restricted case 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 technicians carried out on-the-spot checks at the premises of the Government of Indonesia, from May 23 to 27, 2022, with the aim of confirming and obtaining greater detail of the information provided by the Government in the course of the investigation ,

372. The procedures set out in the verification scripts, previously sent to the Government, were complied with, with the data presented in the answers to the questionnaires and in their supplementary information having been verified.

373. The restricted versions of the on-site verification reports are contained in the restricted case 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 whose presentation and verification by the Government of Indonesia would be fundamental for the due analysis of the process.

376. As for nickel ore, in addition to the information mentioned in item 3.2.1 of the aforementioned verification visit itinerary, it should be verified, in addition to the production and sales volumes of nickel ore in the domestic and foreign markets, the actual prices practiced in sales of such ore in the domestic market, since this is information available to the Government of Indonesia, as provided in the Decree of the Coordinating Minister for Maritime Affairs and Investment 108/2020, which establishes that the "Executor" of the HPM's supervision fits "supervising the sale and purchase of nickel ore made by mining business and processing and refining business, including: [...] Ensure the price used in the sale and purchase transaction of ore is in accordance with HPM".

377. Still with regard to nickel ore, as well as coal, it would be essential to present minutes of meetings and documents related to the negotiations between the said Government and the Indonesian Nickel Miners Association (APNI) and the Indonesia Coal Miners Association (APBI) on the production and sale of nickel ore and coal in the Indonesian domestic market.

378.In the case of bonded zones, it would be essential to clarify how imports of machinery and equipment used in the production of exportable goods are treated within the scope of this program, since such machinery and equipment do not refer to inputs consumed in the production process and nor are they themselves subject to re-export or domestic sale.

379. Aperam stressed that the Government of Indonesia should provide all information and legislation requested by the investigating authority, not just the "relevant parts" so classified by the Indonesian Government itself.

380. He added that the presentation of documents exclusively in Bahasa would not comply with the provisions of art. 433 of Ordinance Secex nº 172, of 2022, since they are not accompanied by their respective translations, as, for example, in the cases of Finance Regulation No. 131-PMK.04-2018, Government Regulation No 14 of 2015, Ministry of Trade Regulation No 32 of 2017, Presidential Regulation No 18 of 2020 RPJM 2020-2024, Ministry of Finance Regulation No 35 of 2018, Law No 7 of 2021, Ministry of Finance Regulation No 130 of 2020, Ministry of Trade Regulation No 102 of 2018, 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 2022, provided comments on the on-site verification report. He informed that Presidential Regulation No. 2, of 2015, concerns the National Medium-Term Development Plan 2015 - 2019, and that it was valid between 2015 - 2019, being replaced by the plan from 2020 to 2024, Presidential Regulation No. 18, of 2020 He stated that 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, established the HPM price as a reference price for sales, and not transaction prices. Transaction prices would be assumed to be higher than the reference price, which acts as a floor. He reiterated that prior to such regulation, the HPM price was used only to calculate royalties. Still in this context, it clarified the statement given during the verification - "as the smelters implemented the price set by the government", which would mean that the 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 established during the high-level economic dialogue between Indonesia and China - as the IMIP was established between private parties, namely the Tsingshan Group and the Bintang Delapan Group in 2013. The leaders of the GOI and the government of China would only have witnessed the signing, which would be very common and applied internationally. He informed that the GOI applies equal treatment to all investors, therefore all investors willing to invest and who have invested in Indonesia are obliged to comply with the laws and regulations in force in Indonesia.

384. He highlighted that the IMIP area has several uses, it would not only be a strategic industrial property, but would also be destined for agriculture, residential, fishing, etc., in accordance with Regional Space Regulation of Morowali nº 7/2019.

1.8.2.2 SDCOM Comments

385. Regarding Aperam's comments, SDCOM reiterates that during the on-site visit, the procedures that had been previously informed in the verification script were complied with and that the verification report was timely incorporated into the records of this review.

386. Regarding the comments by the GOI, it is pointed out that issues related to HPM and IMIP prices will be discussed in detail in section 4. It is pointed out, in summary, that there are elements that point out that the HPM was used not only for royalties, and that the fact that the IMIP area is intended, in theory, for other uses, does not change the conclusions reached by this authority based on the facts available in the process. As for the IMIP agreement having supposedly been established between private parties, the signing of the agreement on the IMIP having been witnessed by the presidents of the two countries only demonstrates the high level with which the project was considered by the parties - it should also be remembered that the lack collaboration between PT IRNC and GOI prevented SDCOM from obtaining further clarification on such signature.

387. The analyzes presented in this Opinion take into account the result of the on-site verification, including with regard to gaps in the GOI's collaboration during the visit and the GOI's comments on the visit, as will be addressed in each specific program.

1.9 Prolongation of the investigation

388. On June 24, 2022, all known interested parties were notified that, pursuant to item 2 of SECEX Circular No. 22, of May 31, 2022, published in the Official Gazette of June 1, 2022, the regulatory deadline for closing the investigation was extended for up to six months, pursuant to art. 49 of Decree No. 1751 of 1995.

1.10 Decision not to carry out a preliminary determination and disclosure of investigation deadlines

389. SECEX Circular No. 37, of August 19, 2022, published in the Federal Official Gazette on August 19, 2022, in addition to making public the facts that justified the decision not to prepare a preliminary determination on the existence of a practice of subsidies, damage to domestic industry and the causal link between them, made public the deadlines that would serve as a parameter for the remainder of this investigation.

Deadlines	Expected Dates
Closing of the period for consideration of manifestations for Technical Note	09/09/2022
Disclosure of the Technical Note containing the essential facts that are under analysis and that will be considered in the final determination	09/26/2022
Final hearing	09/29/2022
Closing of the period for submission of final statements by interested parties and closing of the investigation phase of the process	10/14/2022
Issuance, by SDCOM, of the final determination opinion	10/28/2022

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 1995, on August 29, 2022, all interested parties were summoned to the final hearing, as well as the Confederation of Agriculture and Livestock of Brazil - CNA, the National Confederation of Commerce - CNC, the National Confederation Industry - CNI and the Foreign Trade Association - AEB.

391.At that time, they were notified that the hearing would be held in a virtual environment on September 29, 2022 and that the Technical Note containing the essential facts under trial would be made available to interested parties on September 26, 2022, through the Electronic Information System under 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 to 9 am in order to allow the participation of representatives of the GOI direct from Jakarta.

393. The final hearing was held as scheduled, on September 29, 2022, in a virtual environment. On the occasion, in addition to SDCOM officials, representatives of the petitioner, the Indonesian government, the producing and exporting company PT IRNC and Aprodinox were present.

394. The hearing term and the attendance list of interested parties who attended the event are part of the restricted case file.

395. The manifestations presented during the hearing and timely reduced to term were duly considered in this Opinion in the respective themes.

1.12 From errata to technical note of essential facts

396. On October 10, 2022, an errata to SDCOM Technical Note No. 43660/2022/ME was published, as material errors were observed in some index numbers presented in section 6.1.7.1, table "Evolution of Costs (R$/ t)" and in the tables of section 7.2.6 "Export performance and production of other products". It should be noted that there was no error in the data presented in the confidential version of the technical note on essential facts, with a material error occurring exclusively in the preparation of the restricted version in some data from some tables.

397.It is also pointed out that, although no stain was found in the textual part of the restricted version, the conclusions expressed in Technical Note SDCOM No. 43660/2022/ME and other essential facts contained therein remained unchanged, in a conservative manner, to to guarantee the right to full defense and adversary proceedings specifically in relation to the present investigation and considering the IRNC manifestation, a new deadline was opened for manifestations regarding the provisions of the errata.

398. In this way, the interested parties had a period of fifteen days, which expired on October 25, 2022, to submit statements exclusively on the exercise of non-attribution (section 7.2.6 of the technical note), or on the evolution of costs (section 6.1.7.1.).

399. PT IRNC was the only interested party to present a statement in this context, and 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 aforementioned investigation ended (with the exception of the items mentioned in the previous section), in accordance with the provisions of §2 of art. 43 of Decree No. 1751 of 1995. On that date, 15 days were completed after the disclosure of the essential facts under judgment, embodied in the Technical Note, provided for in the caput of the aforementioned article, for the interested parties to present their final manifestations. As indicated in the previous item, due to the disclosure of the errata of the restricted version of the technical note on essential facts, the deadline for manifestations by interested parties exclusively regarding the exercise of non-attribution (section 7.2.6 of the technical note) and on the evolution of costs (section 6.1.7.1.) ended on October 25, 2022.

401. Within the regulatory period, the petitioner, the Indonesian government, the producing and exporting company PT IRNC and Aprodinox expressed their views on the aforementioned technical note. The comments of these interested parties on the essential facts under judgment are included in this 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 given the opportunity 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 items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the Mercosur Common Nomenclature - NCM.

404. The product under investigation includes austenitic stainless steel flat 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, 75mm, manufactured and marketed in various forms such as, but not limited to, coils, sheets and strips/tapes, originating in Indonesia, hereinafter simply 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% Cr. Other metallic elements, such as nickel (Ni), carbon (C), silicon (Si), manganese (Mn), phosphorus (P) and sulfur (S) can also be part of these alloys. In stainless steels, two elements must be highlighted: i) chromium (Cr), the most relevant of all, due to its important role in increasing corrosion resistance; and ii) nickel, which contributes to the improvement of mechanical properties.

406. In a simplified way, stainless steels can be divided into two large groups: i) those of the 300 series; and ii) those of the 400 series. Those of the 300 series, in which the product object of the claim falls under, are austenitic stainless steels, that is, non-magnetic stainless steels with a cubic structure with centered faces, basically Fe-Cr-Ni alloys.

407. In turn, those of the 400 series, which include ferritic stainless steels, are magnetic stainless steels with a body-centered cubic structure, basically Fe-Cr alloys, which can be subdivided into two groups: the ferritics themselves , which in general have a higher Cr and lower C content, and martensitics, in which a lower Cr and higher C content predominates, compared to ferritics.

408. Each series of stainless steels is divided into different types, according to the composition of the steel, which also usually implies different uses. Internationally, different nomenclatures are used, the most used being that of the American Iron and Steel Institute - AISI.

409. In Brazil, the Brazilian Association of Technical Standards - ABNT adopts the same nomenclature as AISI. There are, however, other international nomenclatures that specify the different types of stainless steel that can be used, depending on the region/country where the product is manufactured/marketed. In the petition, the petitioner also presents a table of equivalence of international nomenclatures, reproduced below, by way of example.

Equivalence of International Nomenclatures

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 wide variety of finishes, and the ASTM A-480 standard of the American Society for Testing and Materials - ASTM, which appears in Annex 2 of the petitioner's initial petition, defines, in a non-exhaustive manner, the most used finishes, which are as follows:

-No. 1: Hot rolled, annealed and pickled - the surface is a little rough and matte. It is a frequent finish on materials with a thickness of no less than 3.00 mm, intended for industrial applications. Often, in the manufacture of the final part, the material is subjected to other finishes, such as sanding, for example;

-No. 2D: Cold rolled, annealed and pickled - much less rough than the No. 1 finish, even so it has a matte surface, usually called "matt". This finish is not used, for example, on 430 steel, since during conformation these materials give rise to the appearance of Lüder lines;

-No. 2B: Cold-rolled, annealed and pickled followed by a slight lamination pass in a laminator with shiny cylinders (skin pass) - it has a higher gloss than the 2D finish and is the most used among the cold-rolling finishes. As the surface is smoother, polishing is easier than with #1 and #2D finishes;

-BA: Cold rolled with polished cylinders and annealed in an inert atmosphere furnace -Smooth, shiny and reflective surface, characteristics that are more evident as the thickness of the steel becomes thinner. The furnace atmosphere can be hydrogen or mixtures of hydrogen and nitrogen;

- No. 3: Material sanded in one direction - normally the sanding is done with grit abrasives (diamond grain size) of approximately 100 mesh;

-Nº 4: Material sanded in one direction with 120 to 150 mesh abrasives - it is a finish with less roughness than that of Nº 3;

-No. 6: Material with a No. 4 finish, then finished with cloths soaked in abrasive pastes and oils - matte, satin appearance, with lower reflectivity than the No. 4 finish. The finish is not given in a single direction and the appearance varies a little because it depends on the type of cloth used;

-No. 7: High-gloss finish - the surface is finally polished, but retains some polish lines. It is a material with a high degree of reflectivity obtained with progressively finer polishing;

-No. 8: Mirror finish - the surface is polished with increasingly fine abrasives until all polish lines disappear. It is the finest finish available and allows stainless steels to be used as mirrors. It is also used in reflectors; It is

-TR finish - finish obtained by cold rolling or cold rolling with annealing and pickling so that the material has special mechanical properties. Generally, the mechanical properties are higher than other finishes and its main use is in structural applications.

411. In this context, in the petition, the petitioner also informs that there are also other types of stainless steel finishes, which are not included in the ASTM A-480 standard:

-Nº 0: Hot rolled and annealed - shows the black color of the oxides produced during annealing. Pickling is not carried out. Sometimes thick sheets are sold this way, particularly refractory stainless steels that will be used at high temperatures;

-No. 5: Material from finish No. 4 subjected to a light lamination pass with shiny cylinders (skin pass) - it has a higher gloss than that of finish No. 4;

-RF (Rugged Finish) - obtained with sandpaper, with a grain between 60 and 100 mesh. The 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 220 to 320 mesh. It is a low roughness sanding, varying between 0.70 and 1.00 microsRa;

-ST (Satin Finish) - Scotch Brite finish, without the use of abrasive pastes. The material has a roughness that varies between 0.10 and 0.15 micros Ra, even if its appearance is matte;

-HL (Hair Line) - material finished in continuous lines, made with sandpaper with a grain of up to 80 mesh. It is also a high roughness finish (2.00 to 2.50 micron Ra); It is

-BB (Buffing Bright) - polishing made with grains ranging from 400 to 800 mesh. It is a very shiny material (ASTM A-480 No. 7). Roughness is less than 0.05 micron Ra.

412. Regarding the production process of cold rolled products 304, the main stages are reduction, melt shop, hot rolling and cold rolling.

413. In this context, with regard to the production process of the product object of this claim, according to information provided by Aperam within the scope of the Process of the concomitant investigation of dumping of cold-rolled stainless steel products 304, Indonesia adopts the integrated route, a process developed on an industrial scale by companies that produce NPI (Nickel PIG Iron) internally on 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 before the melt shop called RKEF (Rotary Kiln Electric Furnace). This unit initially receives the nickel ore and it then goes through the stages of drying, calcination and pre-reduction in rotary kilns and then goes to electric kilns where they are reduced, generating NPI with a composition of 10 to 11% NI, 1% Cr and 82% Fe. Then this molten NPI is directed to the AOD vessels of the steel shop. In the AOD, raw materials are also added that are heated with coal in a ladle, such as purchased or recirculated 304 steel scrap, nickel iron, electrolytic nickel, chromium iron, manganese iron, silicon iron, etc. So the basic difference between the traditional route and the integrated route is that most of the Nickel charge is via NPI already cast and not via 304 steel scrap or nickel iron that need to be preheated in an electric arc furnace. After continuous AOD/casting, 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/SDCOM/SECEX providing additional information to the initial petition of SECEX Process No. 52272.004953/2020- 01, the petitioner informed that the traditional route is heavily centered on the use of 304 steel scrap, with additions of nickel iron and chromium iron for load balance. Producers using the traditional route tend to purchase their raw materials (scrap, nickel iron, chrome iron) on the local market or via imports, and prices are largely quoted daily on exchanges such as LME and in international publications. In turn, in the integrated route or process, steel is produced from basic ores, such as nickel ore, chromium ore, coal, Nickel Pig Iron (NPI), chromium

iron (less common), electricity and other ferroalloys are produced internally at the mills. Thus, the differences between the traditional route and the integrated route occur until the melt shop phase. Until this stage, the use of different raw materials implies different production processes. In the case of the integrated route, for example, there is intensive use of electricity and coal, in addition to a greater need for access to ores. On the other hand, this process allows an optimization of the consumption of electric energy in the melt shop, since the raw materials are already melted, ready to be used in the following phases of the production process. However, due to the more intensive use of electricity and coal, this route also implies higher CO emissions. chromium iron (less common), electricity and other ferroalloys. Thus, the differences between the traditional route and the integrated route occur until the melt shop phase. 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On the other hand, this process allows an optimization of the consumption of electric energy in the melt shop, since the raw materials are already melted, ready to be used in the following phases of the production process. However, due to the more intensive use of electricity and coal, this route also implies higher CO emissions. the differences between the traditional route and the integrated route occur up to the steelmaking phase. Until this stage, the use of different raw materials implies different production processes. In the case of the integrated route, for example, there is intensive use of electricity and coal, in addition to a greater need for access to ores. On the other hand, this process allows an optimization of the consumption of electric energy in the melt shop, since the raw materials are already melted, ready to be used in the following phases of the production process. 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From the melt shop, there are no more process differences and any differences are more related to plant scales, which can lead to project variations in hot or cold rolling. The option for one or another route depends on several variables, being fundamental the conditions of availability of access (quantity and price) of the raw materials and inputs that can be used, such as scrap, iron ore, nickel, chromium, iron nickel, coal and electricity.

416. On February 8, 2021, in response to Official Letter No. 1.972/2020/CGMC/SDCOM/SECEX, providing additional information to the initial petition in this process, the petitioner informed that as of 2013, most companies would have adopted, by instead of blast furnaces, the processing of nickel ore via RKEF (Rotary Kiln Electric Furnaces).

417. With regard to the load balance, the petitioner explained that the load balance is an expression used in the steel industry to calculate the quantities of different components for the production of a given volume of steel in the melt shop and then make adjustments so that the composition of the various products, follow standard practices, for example, for the production of 1 ton of 304 LF steel, it is necessary to enter a load of around 1,156.95 kg of raw materials in the melt shop. This load is divided between iron, nickel, chromium and ferroalloys of manganese and silicon. Iron can come from carbon steel scrap and/or pig iron. Nickel can come from nickel iron, electrolytic nickel and/or 304 steel scrap. Chromium can come from chromium iron and/or 304 steel scrap. Initially, this material is completely heated in electric ovens, and then taken to an AOD vessel (Argon-Oxygen Decarburization). In the AOD vessel, samples of the product being manufactured are collected, in order to measure the contents of the different components, according to the standard practices in force, allowing the necessary adjustments to be made in the different elements that make up the steel. The load balance ends with the rigorous adjustment of the steel composition, be it 304 or any other.

418. In this context, the petitioner clarified that pig iron is a minor component in the composition of steel 304. Being a substitute for carbon steel scrap, it has the advantage of being already melted in the melt shop, saving electricity in the process. However, the most important factor in the load balance are the Ni and Cr adjustments, which are the main determinants of the competitiveness of the plants.

419. Furthermore, with regard to questions regarding the traditional route and the integrated route, the petitioner informed that the traditional route is heavily centered on the use of 304 steel scrap, with additions of nickel iron and chromium iron for the balance of load. Producers using the traditional route would tend to acquire raw materials (scrap, nickel iron, chrome iron) on the local market or via imports, and prices are largely quoted daily on exchanges such as LME and in international publications.

420. In this context, in the integrated route or process, steel is produced from basic ores, such as nickel ore, chromium ore, coal, with nickel pig iron (NPI), chromium iron (less common), electricity and other ferroalloys. The differences between the traditional route and the integrated route, therefore, occur up to the steelmaking phase. Until this stage, therefore, the use of different raw materials implies that the production processes are different. In the case of the integrated route, for example, there is intensive use of 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 allows an optimization of the consumption of electric energy in the melt shop, since the raw materials are already melted, ready to be used in the following phases of the production process. Due to the more intensive use of electricity and coal, this route also implies higher CO_2 emissions . On the other hand, in the traditional route, because 304 steel scrap is used as raw material, complemented with nickel iron and chromium iron, there is less intensive consumption of electricity and coal, with consequent lower CO 2 emissions . However, from the melt shop, there are no longer process differences and any differences are more linked to plant scales, which can lead to design variations in hot or cold rolling. Thus, the option for one or another route, therefore, depends on several variables, being fundamental the access availability conditions (quantity and price) of the raw materials and inputs that can be used, such as scrap, nickel ore, chromium, nickel iron, coal and electricity.

422. The petitioner explained that the CODIP suggestion presented in the initial dumping investigation petition complies with the provisions of art. 23 of Ordinance SECEX 41, of 2013, which provides for the information necessary for the preparation of petitions related to anti-dumping investigations, pursuant to art. 39 of Decree No. 8058, of July 26, 2013, represented by an alphanumeric combination of letters and numbers, ordered from left to right, in order of importance, using letter and numbers to identify each characteristic, reflecting the following attributes: type of steel, thickness, finish and width.

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

B02	Equal to or greater than 0.45 mm, but less than 0.50 mm
B03	Equal to or greater than 0.50 mm, but less than 0.60 mm
B04	Equal to or greater than 0.60 mm, but less than 0.70 mm
B05	Equal to or greater than 0.70 mm, but less than 0.80 mm
B06	Equal to or greater than 0.80 mm, but less than 0.90 mm
B07	Equal to or greater than 0.90 mm, but less than 1.00 mm
B08	Equal to or greater than 1.00 mm, but less than 1.20 mm
B09	Equal to or greater than 1.20 mm, but less than 1.50 mm
B10	Equal to or greater than 1.50 mm, but less than 2.00 mm
B11	Equal to or greater than 2.00 mm, but less than 4.75 mm
C attribute	Finishing
C01	2B - ASTM 480
C02	2D - ASTM 480
C03	NR3 - ASTM 480
C04	NR4 - ASTM 480
C05	NR6 - ASTM 480
C06	NR7 - ASTM 480
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 is not relevant information in the marketing of the product under analysis, normally only the thickness and width of the coil are informed. This is because when the customer acquires the coil, it will normally be placed in an uncoiler, being transformed, gradually, into sheets or strips, according to the demand at its factory or from customers, in the case of distributors, so that, in general, , length information is presented only when the product is marketed in sheets, it is not relevant when the product is marketed in coils, strips or ribbons. Anyway, the length of a cold-rolled coil can be estimated approximately from its weight, considering the following formula: P = A * B * X * 7.85, where: P = weight of the coil; A = coil width; B = coil thickness; X = coil length; and 7.85 = stainless steel density in t/m^3 .

424. The petitioner also explained that the product is not characterized by the existence of different models, and the observed variations are related to the specifications contained in the technical standards, such as, for example, the chemical composition, so that it does not apply to the product object of the research characterizations relating to potency or capacity.

425. With regard to the main uses and applications of the product, both the allegedly subsidized product and the similar national product have the same uses and applications, being used in the manufacture of towers, tubes, tanks, general, deep and/or precision stamping , with diverse applications, such as in the aeronautical, railway, shipbuilding, petrochemical, pulp and paper, textile, refrigerating, hospital, food, dairy, pharmaceutical, cosmetic, chemical, domestic utensils, cryogenic installations, distilleries, photography industries, among others.

426. With regard to distribution channels, the petitioner indicated that the product under investigation is mostly imported by distributors/resellers, but also directly by final consumer industries of the same, depending, normally, on the volumes and specifications demanded by each customer, in such a

way that the predominant forms of competition in this market are such that the object product is a product that follows an international standard, which defines the proportion of the Fe-Cr-Ni alloy, therefore, there is no differentiation between the product under investigation and the similar product manufactured in Brazil.

427. However, the petitioner clarifies that the distributors work both with the imported product and with the similar national product, so that the distribution network does not determine the choice between the imported or national product.

428. And with regard to advertising, the petitioner informed that it is not relevant in this segment, not determining the choice for the national or imported product in the market. Therefore, the main determinant in the consumer's choice is the price, so that the price is fundamental for the distributor, since he lives from the intermediation between the producer/exporter and the consumer client.

2.1.1 Classification and tariff treatment

429. The product under investigation is normally classified under tariff sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, which encompass different types of products. These sub-items are described below:

NCM	DESCRIPTION	TEC
72.19	Flat-rolled products of stainless steel, of a width of 600 mm or more	
7219.3	Simply cold rolled	
7219.32.00	Of a thickness of 3 mm or more but less than 4.75 mm	14%
7219.33.00	Of a thickness greater than 1 mm but less than 3 mm	14%
7219.34.00	Of a thickness of 0.5 mm or more but not more than 1 mm	14%
7219.35.00	Thickness less than 0.5 mm	14%
72.20	Flat-rolled products of stainless steel, less than 600 mm wide	
7220.20	Simply cold rolled	
7220.20.90	Others	14%
Source: NCM/TEC		
Elaboration: SDCOM		

430. With regard to the evolution of the import tax tariff of sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, for which the product object of the petition is classified, It is noted that the tariff remained unchanged at 14% during the damage analysis period, in accordance with CAMEX Resolution No. 94, of December 8, 2011, and CAMEX Resolution No. 125, of December 15, 2016.

431. However, it should be noted that there are Economic Complementation Agreements (ACE), Free Trade Agreements (ALC) and Tariff Preferences Agreements (APTR) entered into by Brazil, which reduce the rate of Import Tax levied on the like product. The following table presents, by country, the tariff 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%

Source: Tecweb System
Elaboration: SDCOM

2.2 The product manufactured in Brazil

432. The similar product manufactured in Brazil is defined as austenitic stainless steel flat 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 4.75mm, manufactured and marketed in various forms (coils, sheets and strips/tapes), hereinafter referred to simply as "cold-rolled products".

433. In this context, in a petition dated November 9, 2020, in response to Official Letter No. 1.762/2020/CGMC/SDCOM/SECEX. of additional information to the initial petition, the petitioner informed that the acronym DDQ stands for "deep drawing quality", that is, 304 steels with a differentiated formability property, which the customer can demand, depending on its application. She also pointed out that it is a product included in the scope of the investigation, being also produced by the domestic industry.

434. In addition, it should be noted that, based on the information provided by Aperam within the scope of the Proceeding of the current concomitant investigation of dumping of cold-rolled stainless steel products 304, Aperam manufactures the cold-rolled stainless steel flat products in question in the standard widths: 1,020mm, 1,040mm, 1,240mm, 1,220mm, 1,250mm 1,270mm, 1,295mm and 1,320mm, being possible to supply the product in the width demanded by the customer up to the limit of 1,320 mm.

435. In this context, the petitioner informs that it supplies the product in the following finishes:

-No. 2B: Cold-rolled annealed and pickled followed by a light rolling pass in a rolling mill with shiny cylinders (skin pass);

-No. 3: Material sanded in one direction;

-No. 4: Material sanded in one direction with 120 to 150 mesh abrasives;

-No. 6: The material finished No. 4, later finished with cloths soaked in abrasive pastes and oils;

-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 manufactured in Brazil are used in the same applications as imported cold-rolled products and that more information can be obtained at the website https://brasil.aperam.com/produtos/forcainox /technical-library/.

437. With regard to Aperam's production process, the petitioner explained that it is practically traditional, with the use of scrap, similar to European processes, the United States of America, Japan, etc. Thus, for Aperam, its process is not entirely traditional because the petitioner uses liquid pig iron to adjust its load balance, but in small quantities.

438. The petitioner indicated that the stainless steel production process begins with reduction, a stage in which the blast furnaces are fed with iron ore and reducer (charcoal in the case of Aperam), thus forming pig iron liquid. The liquid pig iron is placed in the torpedo car and transferred to the melt shop, a stage in which the pig iron undergoes a first pre-treatment, removing impurities from the pig iron, such as phosphorus, sulfur, carbon and nitrogen. This first stage is typical of integrated processes, but the participation of pig iron in the melt shop load is small. In the analyzed period, only about 90 kg of pig iron/t of cold-rolled steel were used, where the pig iron enters already melted directly into the AOD with the function of adjusting the iron balance. The rest of the load of raw materials used in the Aperam melt shop follows the traditional flow used in Europe, the United States, Japan and even in many Chinese steel mills. Nickel (in the form of electrolytic nickel, iron-nickel or type 304 stainless steel scrap), chromium (in the form of iron-chromium or type 304 stainless steel scrap) are added to electric arc furnaces (FEA) for melting. , iron in the form of carbon steel scrap, silicon iron, manganese iron, and one or another metal alloy for adjustments to some specific material property.

439. In this context, the petitioner reported that the next steps are common to all routes. The next stage consists of hot rolling (hot forming of the plates with a significant reduction in thickness). Rolling takes place as follows: first, the slabs are reheated in preparation for hot forming. Subsequently, a preliminary thickness adjustment is made, to then start rolling to the final thickness of the product in the rougher and steckel rolling mill in order to obtain hot coils, from 2 to 8 mm thick. Up to cold rolling, the stainless steel production line is shared with other products to a greater or lesser extent, in each of the main stages of the production process: reduction, melt shop and hot rolling. The hot rolled coils are then

440. Finally, it should be noted that the petitioner sells its products both to end users and to distributors.

2.3 Similarity

441. With regard to possible differences between the product under investigation and the similar product produced in Brazil, particularly with regard to: raw material(s), chemical composition, physical characteristics, standards and technical specifications, production process, uses and applications, degree of substitutability and distribution channels, the petitioner states in the initial petition that, taking into account the applications of each type of cold rolled, the similar product manufactured in Brazil and the imported one have the same characteristics , since differences related to the production process do not affect the final product and were informed previously, in a specific item.

442. Thus, based on the information provided by Aperam within the scope of the Proceeding of the current concurrent investigation into the dumping of 304 cold-rolled stainless steel products, the petitioner understands that once they meet the technical standards, grade 304 stainless steel manufactured in the Brazil and the imported ones do not present differences that prevent their substitution.

443. In this context, according to information obtained in the initial petition and manifestations of complementary information from the petitioner, the product object of investigation and the similar product produced in Brazil, in general, produced from the same raw materials, namely, nickel ore and ferroalloys.

444. According to customer demand, both the product under investigation and the product manufactured in Brazil follow the same international standards.

445. Despite the differences in the reduction stage, resulting from the use of mineral or charcoal, the production process of the similar product manufactured by the domestic industry is similar to the process of identified producers of the investigated origin.

446. With regard to the uses and applications of cold rolled products 304, there are no differences between the product under investigation and the one manufactured in Brazil, both being intended for the aforementioned purposes.

447. Considering the fact that both the product under investigation and the product 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 high number of customers of the domestic industry that are equal to customers of the importers of the analyzed product.

448. Finally, it was verified, in the import data provided by the RFB, that the analyzed product would be sold through the same distribution channels as the product manufactured in Brazil, namely: 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 of this document, it was concluded that flat austenitic stainless steel products that comply with AISI 304 and similar standards, 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, manufactured and marketed in various forms, such as, but not limited to, coils, sheets and strips/tapes, when originating in Indonesia.

450. As provided in the sole paragraph of art. 4 of Decree No. 1751 of 1995, the term "like product" shall be understood as an identical product, equal in all respects to the product being examined or, in the absence of such a product, another which, although not exactly equal in all aspects, present characteristics very close to those of the product under consideration.

451. Thus, in view of the information presented and the analysis contained in item 2.2 of this Opinion, SDCOM concluded that the product produced in Brazil is similar to the product under investigation, pursuant to the sole paragraph of art. 4 of Decree No. 1751 of 1995.

3 OF THE DOMESTIC INDUSTRY

452. According to art. 24 of Decree No. 1751 of 1995, the term "domestic industry" shall be understood as the totality of national producers of the like product, or as those, among them, whose joint production of the said product constitutes a significant portion of the total national production of the product.

453. Thus, as indicated in item 1.4 above, Aperam's 304 cold-rolled production line was defined as domestic industry, which represented 100% of the national production of 304 cold-rolled products in the damage investigation period.

4 OF THE PROGRAMS INVESTIGATED

454. The period from April 2019 to March 2020 was used as a subsidy investigation period in order to verify the existence of subsidies on exports to Brazil of cold-rolled stainless steel products originating in Indonesia.

4.1 Subsidy programs identified at the beginning of the investigation

455. The present investigation was initiated through SECEX Circular nº 40, of June 2, 2021, published in the Official Gazette of June 2, 2021, having been initiated with the objective of investigating 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; It is

7. Capital injection.

456. For all alleged programs in respect of which an investigation was initiated, evidence 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 that any of the interested parties denies access to the necessary information, fails to provide it within a specified period or creates obstacles to the investigation, determinations may be made based on the facts available, in accordance 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, upon notification of the start of the above investigation, questionnaires were sent to interested parties specifying, in detail, the information required and how this information should be structured in their responses. According to art. 79 of the aforementioned Decree, available facts could be used, including those contained in the petition to initiate the investigation, if the data and information requested, duly accompanied by the respective

evidence, were not provided, were provided partially or were provided outside the established deadlines, and, in these situations, the result could be less favorable to the interested party than it would be if it had cooperated.

459. It should be noted that, among the companies identified by SDCOM as producers/exporters of the product under investigation, considering what was mentioned in item 1.7.4.1, no response was received to the questionnaire sent by the producer/exporter, with SDCOM's determinations in this scope if used of available facts, as provided for in art. 79 of Decree No. 1751 of 1995.

460. The Government of Indonesia timely responded to the government's questionnaire sent by the Brazilian investigating authority, as well as the additional information requested in Official Letters SEI Nº 65523/2022/ME, of March 8, 2022, and SEI Nº 125396/2022/ME, of April 29, 2022. It should be noted that the results of the visit to the government carried out from May 23 to 27, 2022, as per item 1.8.2, are also considered here.

461. It should be noted, however, that there were gaps in the response of the Government of Indonesia and in the on-site visit, giving rise to the use of the facts also available to the GOI in relation to such gaps, as notified in Official Letter SEI No. 228693/2022/ME , of August 19, 2022, as described in item 1.7.2.1.

4.2.1.1 Manifestations regarding the use of available facts

462. In a statement dated September 1, 2022, the Government of Indonesia presented its comments on the application of "best available information" against the GOI, pursuant to Official Letter SEI No. 228693/2022/ME, of August 19, 2022 , and the specific manifestations about each program will be considered later, when analyzing them individually.

463. With regard to paragraph 13 of the Charter, the GOI clarified that it had made great efforts to translate all documents provided into English; as it was not possible to provide the English version of all documents completely on time, therefore requesting SDCOM to positively consider all documents that the GOI submitted during the investigation.

464. The Government of Indonesia understood that due to its sufficient cooperation with SDCOM in this investigation it would not see evidence that the Government would ever have refused access, or failed to provide the necessary information within a reasonable period, much less impeded the investigation.

465. The Government of Indonesia regretted that SDCOM did not consider the provisions of Annex II of the Antidumping Agreement which would establish strict rules and procedures for the investigating authority to be able to apply BIA.

466. The Government of Indonesia reminded SDCOM that in paragraph 228 of the Egypt - Steel Rebar case, the Panel would have considered that, in accordance with paragraphs 3 and 5 of Annex II, if read in conjunction with paragraph 286 of the decision in the case, Imperfect information should not be dismissed as unverifiable.

467. The Government of Indonesia asked SDCOM to exclude any possibility of using available 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 documents submitted to the authority. Precisely for this reason, the rules of Ordinance SECEX nº 172/2022 have already been applied to the present investigation, which made the acceptance more flexible and waived the presentation of sworn translations, as stated in the record added to the file of the case on March 16, 2022 (SEI 23248924) In this way, SDCOM understands to have facilitated the participation of all parties - national and foreign - in the case.

469. In this context, SDCOM stressed several times that the party itself should carry out the translations and certify for them. Evidently, as the GOI representatives are fluent in Bahasa, they have much better conditions to bring faithful translations to the records. In the Initial Opinion, it was explained that there was a document that was not accepted because it was only in Bahasa, and this fact was known to all parties since the beginning of the investigation and according to the instructions of the questionnaire and subsequent letters.

470. Thus, due to a legal limitation, the authority cannot accept documents that are not in Portuguese or in one of the three official languages of the WTO, and documents in Bahasa cannot be accepted. It should also be noted that the provision for dismissal of sworn translators can only occur in relation to public documents, in order to preserve the contradictory, and the fact that the GOI even requests that this SDCOM itself translate documents that are not even public, such as the RKAB , which is, for this reason too, absolutely unacceptable.

471. As described in this document, and also in others, such as the on-site visit report, the GOI prevented access to relevant documents, such as the nickel ore sales reports, or any tax documents from the companies, significantly hindering access the authority to important elements of the case, although it is recognized that the GOI also collaborated with the investigation in other aspects, which was duly considered and valued by the authority, when appropriate. This occurred, for example, when the GOI provided imperfect but still usable information, so that this authority claims to have acted in accordance with applicable multilateral and national rules.

4.2.2 SDCOM's Initial Comments on the Stainless Steel Cold Rolled Industry in Indonesia

472. SDCOM was able to confirm the petitioner's allegations, pursuant to item 4.1 of SECEX Circular No. 40, of June 2, 2021, which pointed out that the Government of Indonesia has been imposing a program to enhance its raw material reserves, inspired by the called "resource nationalism", with the aim of increasing the added value of Indonesian exports through the development of the downstream industries of Nickel ore and Mineral Coal, abundant in that country. This quest to increase added value was even reiterated several times by GOI representatives during the on-site visit.

473. Article 33(3) of the 1945 Constitution of the Republic of Indonesia provides that land, water and natural resources are controlled by the state and are used to maximize the prosperity of the people. In order to elaborate the objectives, the government of Indonesia, through Law 17/2007, established its long-term planning, National Long-Term Development Plan (RPJPN) 2005-2025.

474. To further detail the government plans, Indonesia has medium-term plans (National Medium Term Development Plan - RPJMN), and for the period of such RPJPN there are four plans:

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 regions (including Sulawesi) as one of the industries that the GOI wants to see strengthened and "downstream mining" is one of the 5 vectors expressly mentioned as part of the "structural transformation to enhance welfare" - with the government expressing its intent in "Increasing value-added mining that supports the development of downstream industries".

476. As described by the GOI in its response to the questionnaire: "(the RPJMN) is an elaboration of the President's vision, mission and programs whose preparation guided by the RPJPN, which contains national development strategies, general policies, Ministries/Agency programs and cross - Ministry/Agency, regional and cross territory, as well as a macroeconomic framework that includes a picture of the economy comprehensively including the direction of fiscal policy in the work plan in the form of a framework indicative regulatory and funding framework."

477. In this scenario, the elements of the process show that there is, in fact, a legislative framework created by the GOI to encourage such a transition from a nickel exporter to a stainless steel producer, through adjustments throughout the production chain, especially in the supply of Nickel, but also of other important inputs such as coal.

478. Law nº 3, of 2014, makes clear, already in its preamble, the intention of the GOI to promote industrial development in the country and the existence of strategic industries:

Considering (...)

The. that the development of an advanced Industry is realized through the strengthening of an independent, healthy and competitive Industrial structure namely by empowering resources optimally and efficiently as well as encouraging Industrial growth throughout Indonesia by way of maintaining a balance between advancement and unity of the national economy which is based on the principles of democracy, 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 which:

The. meet needs which are important for the welfare of the people or which control their life needs;

B. increase or produce added value to strategic natural resources; and/or

w. correlate with the interests of state defense and security.

479. The same Law establishes in its article 30 that the plan for the use of natural resources must follow the national industrial policy, and reiterates, in its arts. 31 and 32, the encouragement, by the GOI, of the development of an industry in order to increase the added value of its natural resources, being able to carry out export restriction policies for this purpose. In article 33, it is explained that the industrial policy of the GOI, regarding the use of natural resources, must be regulated according to the interest of the domestic industry.

480. Government Regulation No. 14/2015, relating to the National Industry Development Master Plan (Rencana Induk Pembangunan Nasional - hereinafter RIPIN 2015-2035, is based on the RPJPN, and details the GOI's intentions, explicitly indicating the steel sector and stainless steel as priorities.

481. According to official information from the document Facts and Figures, 2015, from the Indonesian Ministry of Industry, RIPIN details, among others, that in the first phase of the country's development plan (2015-2019), the objective is to increase the added value industry based on mineral natural resources. About RIPIN 2015-2035, he adds that there is the government's objective to develop a strategic industry, through equity capital, establishment of joint ventures and provision of facilities for such strategic industry. Another objective would be to increase the use of national products (called Peningkatan Penggunaan Produk Dalam Negeri), through advertising and providing incentives and price preference for industrial products with a qualified percentage of local content .

482. In the section of the document entitled "Construction of the National Industry", the government establishes a framework in which it points out the need to provide industrial infrastructure inside and outside industrial parks, the establishment of policies and regulations that support the favorable climate for the sector industrial and allocation and facility of competitive financing for the development of national industry. It also points out 10 key industries to be promoted. Among them is explicitly named the "Basic Metal and Non-Metallic Mineral Industry", which as an upstream industry produces raw materials and improvement of particular specifications used in the downstream industry, serving as a basis for the others. Within this priority industry, the document lists four specific types - a) iron and basic steel processing and refining industry; b) Non-ferrous base metal refinery and processing industry; c) Industry of precious metals, rare earths and nuclear fuel; and d) Non-metallic Mineral Industry.

483. The document also mentions incentives in the area of energy, land supply and tax and non-tax incentives. Among the tax incentives, mention is made of a tax exemption ("tax Holiday") for pioneering industries, created by Regulation of the Ministry of Finance (PMK) nº 192/2014, amendment to PMK nº 130/2011. For this exemption, it is mentioned that the base metal industry is included, as it is a pioneering industry. The document also mentions other tax exemptions.

484. Finally, the Indonesian Ministry of Industry lists the ferronickel industry sector and the steel industry sector in general as a sector to be encouraged, and is also explicitly mentioned as industries targeted by the government to have their development facilitated:

The development of industrial estate aims to support the achievement of regional industry development objectives as stated in the Master Plan of National Industry Development. Hence, the government facilitates the development of 14 industrial estates outside Java in the year 2015-2019:

(...)

<<IMAGE 1 HERE>>

485. The 2017 version of the document repeats all the indications transcribed above.

486. The government's intention is further reiterated in a statement by the Minister of Industry regarding the 2015-2019 plan, stating that "we do not want to continue to export our raw natural resources without processing", adding that the manufacturing industry has achieved significant results, including agricultural and mineral mining products such as palm oil derivatives, stainless steel and smartphone products. Still in Law nº 4/2009, which regulates the ore and coal sector, there is the intention to add value in the activity of the mining industry.

487. During the on-site visit, the BKPM representative also made clear the GOI's intention to attract foreign capital in this endeavor, according to the report: "The BKPM representative explained that the idea is not only to attract capital to mine nickel and export, but attract capital to smelters, increase added value."

488. In addition, there is a combination of restrictions on exports of inputs (Ni Wet Ore) and Coal (energy), setting lower domestic prices for these inputs and, at the same time, granting systematic exemptions from taxes and other duties to reduce costs. costs for cold-rolled stainless steel producers and the entire upstream chain, as will be explained in the following items.

489. It is also important to mention Regulation No. 25/2018, which establishes in its article 34 that the GOI can establish the sales price formulas for Minerals in accordance with the interests of the nation:

Article 34

(1)The Minister can stipulate the selling price formula of metallic Mineral for the nation's interests.

(2)The nation interests as referred to in paragraph(1) is based on the consideration:

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 and the HPB price of coal will be discussed below, which configures another significant element of GOI control over miners.

491. It was also found that the construction of smelters was encouraged, given that companies that own smelters would be facilitated to extend their mining licenses:

Policies intended to add value to nickel mining, such as the nickel ore export ban, have caused some firms to invest in smelting capacity, as previously discussed. In addition to the law supporting domestic nickel ore prices, another new law, passed in May, encourages downstream facility development by making it easier for firms with smelting capacity to extend mining licenses. The government has also listed smelters among its national strategic projects.

492. The government's intention to encourage the construction of smelters could even be proven in the on-site visit, when the GOI confirmed that the change in nickel export policy took place, among others, to increase cash flow of miners so that they could build smelters and also confirmed the link between the concession of the license and the obligation to increase the added value, in accordance with the objective of Law nº 4/2009. As will be seen in greater detail, the GOI created several elements that favor smelters in their relationship with miners, even with regard to surveyors, technicians who certify the content of ores.

493. There is also GOI control over the construction of smelters by miners, through RKABs, which must contain information on the status of construction. As stated by the GOI during the on-site visit, there was the government's intention to encourage miners to build smelters, increase added value in Indonesia and generate a multiplier effect for the population.

494. An emblematic case in this government project is the Morowali industrial park (Indonesia Morowali Industrial Park, hereinafter IMIP), in which the producer company PT Indonesia Tsingshan Stainless Steel operates. According to data from its 2017 annual report, 8% of all nickel in the world and

6.6% of all stainless steel in the world are produced there. In other words, this industrial park, created in October 2013, was already producing more stainless steel in 2017 than the United States considered as a whole.

495. It should also be noted that Tsingshan, controller of PT Indonesia Ruipu and Chrome Alloy (IRNC), producer of the product under investigation, is part, through Shanghai Decent Investment, of the group of shareholders of this pool of companies that form the IMIP. The IMIP annual report sheds light on government policy, and thus summarizes the government project:

Indonesia is one of countries that have the richest nickel resource in the world, whereas domestic nickel mining products were used to be exported. According to incomplete statistic, Indonesia's nickel ore export in 2013 reached 60 million ton. In order to increase added value of exported products, in 2009, the Indonesian government issued a new law, namely the Law No. 4 of 2009 concerning Mineral and Coal Mining, and since January 2014 raw material export was officially prohibited, at the same time, a strong policy encouraged and urged investment in smelter development in nickel mining areas, aimed at developing domestic smelting industry. (emphasis added)

496. IMIP has legally recognized importance and priority in Indonesia, being formally recognized as "National Vital Object" - Obvitnas (Objek Vital Nasional) and "National Strategic Project" - Proyek Strategis Nasional (PSN). Its creation agreement was signed at an event that was attended by the presidents of Indonesia and China, and the president of Indonesia was in direct contact with the CEO of Tsingshan, and soon after the policy of export restrictions was initiated:

In July, Indonesian President Joko Widodo held a meeting with Xiang and and other Chinese executives at a presidential palace. Xiang offered "several policy suggestions" on improving Indonesia's business environment and briefed the group on plans to expand Tsingshan's total investment in the country to $15 billion, including a plant making nickel chemicals for electric-car batteries, according to a press release from the company . Two months later, Indonesia announced it would bring forward a ban on nickel ore exports for two years.

497. The positive impacts for the Indonesian stainless steel chain of the government policy analyzed here are exposed in the same IMIP report (page 83), when it deals with PT Sulawesi Mining, an NPI smelter installed in the park:

The new Mining Law announced by the Indonesian government in 2009 prohibiting raw mining material export in 2014, which at the same time, encouraged investment in smelter development in nickel mining areas, and aimed at developing domestic smelting industry. As a positive response to the Indonesian government's policy, and based on a comprehensive economic analysis as well as trends of industrial trend combined with experience and community social relation collected gradually in the area, the two investors reached an understanding, in addition to the mining development , they at the same time also seriously prepared an NPI smelter project, namely the SMI'S NPI smelter having capacity of 300 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 and encouraging smelters:

IMIP Park not only fulfills the legal requirement No.4 of 2009 on mining of mineral and coal from Ministry of Energy, and Mineral Resources and Law No.3 of 2014 regarding Value-added to primary material from the Ministry of Industry, which requests the construction of smelter for nickel; it goes one step further in the chain to process the smelted product into an even more value-added product of stainless steel.

499. News at the time of implementation in Indonesia makes clear the effect of government policies to restrict exports. According to the Secretary General of the Stainless Steel Council of China Special Steel Enterprises Association:

The previously imported nickel ore often contained sediments and water, so the ban forces Chinese enterprise to build a plant there (in Indonesia). (emphasis added)

500. In this regard, SDCOM confirmed that, in the last Trade Policy Review - TPR of Indonesia, of 2020, it is explicitly cited as justification of export restriction policies "developing and accelerating certain downstream industrial sectors, including stainless steel production (emphasis added)".

501. With the publication of MEMR Regulation No. 11/2019, exports from 2020 are completely prohibited.

502. In short, from the elements brought to the file by the Petitioner and verified by SDCOM, it is noted that there is a legal framework related to nickel, coal and coke, which goes far beyond export restrictions per se. Even when some grades of nickel were allowed to be exported, it was under strict conditions. Not only do export restrictions exist, but the GOI is going further and actively instructing suppliers in the input chain to sell their products on the domestic market, as part of the government's plan to add value to the country's productive agenda, through its sanctions and policies applied in case of noncompliance. As detailed below, such policies have had consequences on the price of inputs used in the production of the product under investigation.

503. News from the official website of the GOI (nº 361.Pers/04/SJI/2021) summarizes the government's intent, in the words of the President of Indonesia, Joko Widodo:

Besides increasing mineral added value, the construction of smelter in the country is believed to strengthen downstream industries. The President said he would instruct miners, both private and state-owned, to carry out downstream activities so that mining commodities would deliver higher value.

504. In a recent interview with Bloomberg, President Joko Widodo reaffirms the intent of the GOI.

505. Finally, it is pointed out that Indonesia's export restrictions are being questioned by 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 2017 and December 2019, exports of nickel with a concentration of less than 1.7% were allowed under certain conditions; however, since January 2020, all exports of nickel ore, regardless of concentration, have been prohibited. It is also pointed out that the authorities of the European Union and India have already issued positive determinations regarding the subsidies granted by Indonesia to stainless steel producers, including the application of compensatory duties specifically on the producers investigated here.

506. Of solar clarity statement by the President of Indonesia, Mr. Joko Widodo, commenting on the aforementioned WTO dispute, leaves no doubt about Indonesia's deliberate plan to boost its stainless 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 built," said Jokowi, as the president is known.

4.2.3 Subsidy programs considered

507. For the purposes of this Opinion of final determination, the following programs were 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; It is

11. Capital injection.

508. It was decided to accept the GOI's suggestion of presentation and describe separately the Bonded Zones program, which is a program already included in the fiscal programs described in the Initiation Opinion of the investigation, in order to promote a better understanding of the programs considered in this final determination, thus preserving even more the contradictory on the part of the interested parties.

4.2.3.1 Program 1 - Supply of Nickel Ore for less than adequate remuneration

4.2.3.1.1 Facts found about the program

509. Nickel is an essential raw material for stainless steel, with two-thirds of the world's nickel production being consumed to produce stainless steel. Therefore, the direct impact of nickel on the production chain of the product under investigation is evident.

510. Considering the elements collected during the course of the investigation, Nickel is essential in the GOI's plans to increase the added value of mineral resources. Indonesia is the country with the world's largest nickel reserves, as well as the largest producer country in the world. In official GOI statements, it is stated that "One of the mining commodities in the spotlight is nickel". Such a preponderant role that the processing of nickel is even pointed out by the President as a way out of the current account deficit in the country:

So what's the point of importing LPG, importing huge volume of petrochemical, while we can actually develop nickel; current account deficit will be made up. I guarantee (deficit) will be made up in less than three years if we add one commodity, turn some attention to it, we'll be done with.

511. The National Industry Plan 2015-2019 foresees, in relation to the nickel industry, the restriction of nickel ore exports, with priority given to meeting domestic needs; the export restriction of NiPI, ferronickel and nickel-mate; the restriction on exploration of the nickel ore exploration capacity, according to the smelter's current processing capacity; guarantee on the absorption of NiPI, ferronickel and nickel-mate produced by the national steel and stainless steel industry; and facilitating the development of the stainless steel industry integrated with the upstream industry.

512. Smelters have different incentives from the GOI, ranging from the established price, as apparently minor, but also significant elements, such as the fact that miners have to use surveyors appointed by the GOI, while smelters can hire their own surveyors , which directly impacts the price of the nickel ore purchased, since the nickel content is a preponderant element in the price. As pointed out in the following news:

Nickel mining entrepreneurs stated that currently they have suffered a lot about the calculation of nickel content by smelter entrepreneurs.

Secretary General of the Indonesian Nickel Miners Association (APNI) Meidy Katrin Lengkey, said that local businessmen experienced injustice in the distribution of nickel metal content tests.

He said there were 11 surveyors in nickel mining, 10 surveyors on the upstream side but only one surveyor on the smelter side, the nickel smelter.

On the other hand, national entrepreneurs are burdened with various obligations but the same obligations do not apply to foreign entrepreneurs.

This injustice is evident when businessmen holding nickel mining business licenses are required to use surveyors appointed by the government, while smelters, which are foreign investments, may appoint their own surveyors

.

This is where the inequality comes from. According to Meidy, there are many problems regarding the discrepancy between the results of the nickel metal content test conducted by surveyors appointed by the government and those appointed by the buyer.

The results of nickel content analysis by buyer surveyors are often far below the results of mining surveyors.

Meidy described that the decline could be far, from 1.8% to 1.5% and even 1.3%.

As a result, entrepreneurs suffer losses because nickel content is very influential on prices. The higher the percentage content, the more expensive the nickel price.

"If we talk about grades, this is indeed the case because our data for this month is 5000 contracts, nickel ore, from 5 thousand, there is an extraordinary difference," he said. (emphasis added)

513. As will be seen below, a normative and non-normative framework was created to encourage the creation of smelters and favor the purchase of nickel ore by them, to the detriment of miners.

4.2.3.1.1.1 Export restrictions

514. There are a series of regulations from the Ministry of Energy and Mineral Resources (MEMR) and the Ministry of Commerce (MoT) that imposed successive export restrictions as of 2013, and in 2017, by MoT Regulation 1/2017, amended by the MEMR Regulations 11/2018 and 25/2018 allowed the export of processed lower grade Nickel ore (< 1.7% Ni) in a limited amount. In order for such exports to be approved, companies should have an installation and processing operation in Indonesia, or commit to installing local smelters within five years, that is, the construction and operation of NiPI foundries (smelters), benefiting the local industry stainless steel producer. In addition, there was an obligation to internally supply at least 30% of the ore needs of local smelters.

515. Regulation No. 25/2018 of the Ministry of Energy and Natural Resources imposes, in its article 44, items "e" and "f", that the company must obtain a recommendation from a representative of the MEMR and export approval, similar to a non-automatic export license, by the MoT, in addition to having to provide reports on export performance. In its article 53, it establishes that the export is only possible if the remaining nickel ore reserve of the company covers at least five years of operations of the foundry facilities and that the volumes that can be exported cannot exceed the input capacity of the facility of refining and export quantity within the framework of the work plan and budget presented by the government. Excerpts 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, letter b, letter c and letter d can only be done after obtaining the Export Approval from the Director General who organizes the government affairs in the field of foreign trade; and

f. Before obtaining the Export Approval as referred to in letter e, the holders of Special Mining Business License (IUPK) for Production Operation of metallic Mineral, Mining Business License (IUP) for Production Operation of metallic Mineral, Mining Business License (IUP) for Production Operation specifically for the processing and/or purification, and other parties that produce the anode change are 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 a, letter b, letter c, and letter d is determined based on the consideration:

The. Reserve estimation or guarantee of raw material supply to fulfill the needs of the facility of Purification;

B. Amount of sales abroad in the approval of Annual Work Plan and Budget (RKAB) of the current year; and

w. Input capacity of the facility of Purification.

(2) The Minister shall stipulate the guidelines on implementation of application, evaluation, and the approval of granting export recommendation

516. Finally, it is widely reported that since the beginning of 2020, through Regulation MEMR 11/2019, which amended Regulation MEMR 25/2018, all nickel ore exports from Indonesia are prohibited, which was also confirmed by an on-site visit.

517. MEMR Regulation 25/2018 also brings other serious export restrictions:

Ninety percent of the smelter's physical construction development plan should have been completed, calculated and verified by an independent verifier.

Sanctions on failure to meet the 90% smelter construction plan would be: (a) recommendation to revoke the export approval to the relevant authority and (b) a penalty of 20% of the export cumulative value.

Failure to pay such penalty would result in: (a) a temporary suspension of a certain part or all aspect of business activities for a maximum of 60 days and (b) a license revocation if no payment is received after the 60 days.

518. In addition, as argued by the petitioner and confirmed in the visit to the GOI, during the period from April 2015 to March 2020, when the GOI established a total ban on the export of nickel ore, there was still the possibility of exporting low-grade nickel ores. Exports that were possible to be carried out, however, were subject to an export tax of 10%, under the terms of article 2 of the Regulation of the Ministry of Finance (MoF) 13/2017.

519. In this context, the petitioner pointed out that the export reference price is a mix that takes into account the highest average prices in the international market and Indonesia's sales in the domestic and foreign markets, making the aforementioned reference price considerably higher than the actual export price in Indonesia, thus leading to an effective tax rate greater than the applicable 10%.

520. Decree No. 154 K/30/MEM/2019 was also issued, which deepened the control of the implementation of the construction or acquisition of smelters in Indonesia, establishing more details on how sanctions for delays in the construction of smelters would be imposed, in addition to clarify that the amount of fines payable by the mining company in question will be equivalent to 20% of the company's accumulated mineral export sales revenue during the last six months.

521. Also, pursuant to MEMR Decree No. 154/2019, if a company does not meet the target of 90% progress in the construction of the smelter, the MEMR (through the Director General of Minerals and Coal) issues a recommendation to suspend from export approval to the director general in charge of foreign trade affairs.

522. The company must, under said Regulation, pay the fines through a bank within one month and send proof of payment to the MEMR within three days after the payment is made. If the company fails to pay the penalties within one month, the MEMR will issue a recommendation to revoke the company's export approval.

523. MEMR Decree No. 154/2019 further stipulates that the payment of fines alone is not sufficient to allow exports to resume. Only the MEMR could issue a recommendation to lift the export suspension once there is a report from an independent verifier confirming that the company has met the 90% progress mark in building smelters over the past six months. That is, mining companies are also obliged to compensate for the delay in construction if they want to resume exports. In summary, MEMR Decree No. 154/2019 has the following requirements:

The progress for smelter establishment should be at least 90% of the smelter's physical construction development plan for every six-month period based on the report of an independent verifier.

Failure to satisfy this obligation would result in: (a) the issuance of temporary export suspension recommendation to the relevant government authorities in charge of international trade and (b) 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 certain part or entire business activities for a maximum of 60 days, (b) license revocation if no payment is received after 60 days of 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 progress and penalty payment, mining companies are required to deposit a surety bond of 5% of export volume for each shipping multiplied by the export benchmark price. A mining company will be entitled to withdraw the surety bond if it has completed at least 75% of the overall smelter construction plan. The government holds the rights to the surety bond if the mining company fails to meet its obligations.

524. Another requirement regarding exports of low grade nickel ore was the requirement to use letters of credit (Letters of Credit or L/C) for exports, pursuant to MoT Regulation No. 94/2018. The letter of credit requirement mechanism would be equivalent to imposing a minimum export price, by establishing several requirements that significantly impact the ability to export the product, such as:

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 (PEB);

d) the L/C would be subject to audit by the Ministry of Commerce; It is

e) exports that do not meet L/C requirements would not be permitted.

525. Indeed, the Indonesian government provides that the price stated in the L/C must not be lower than the global market price, despite the country's huge reserves, thus neutralizing the competitive advantage that local producers could have over their competitors foreigners in the international market, thus reducing commercial opportunities abroad and ensuring greater availability in the domestic market.

526. Therefore, through the obligation to export at a minimum price fixed at the level of the global price, under the risk of an export ban in case of non-compliance, in the petitioner's opinion, the regulation had a similar impact to that of the export ban and the of the export tax described above.

527. Until September 28, 2018, the Letter of Credit Requirement applied to a much larger list of products, including Processed Nickel products (NPI, other ferronickels, among others). However, considering the frequent changes in the list of products, the deletion of the NPI should be considered temporary.

528. Thus, as pointed out by the petitioner and established during the course of the investigation, although the formal ban on exports began in January 2020, during the last five years it was almost always present together with relaxation mechanisms and the possibility of partial exports.

4.2.3.1.1.2 Mandatory internal processing

529. As another instrument of the GOI in this incentive framework to increase the added value of nickel, there is also an obligation to process domestic minerals and coal, pursuant to articles 102 and 103 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-add of mineral and / or coal resources in the implementation of development, processing, and purification, as well as in the exploitation of minerals and coal.

Article 103

(1) The holder of a Production Operations IUP and an IUPK is obligated to undertake 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 the mine products of other IUP and IUPK holders.

(3) Further provisions concerning the increase of the value-add as stated in Article 102 and processing and purification as stated in paragraph (2) are to be regulated in Government Regulation. (our emphasis).

530. Likewise, the Ministry of Energy and Mineral Resources Regulation No. [11] of 2018 (and also the superseding regulation, MEMR Regulation No. 7/2020), explicitly links restrictions on exports, price controls and the obligation of domestic processing to supply nickel ore and coal in the domestic market:

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)

The holders of Mining Business License (IUP) and Special Mining Business License (IUPK) are entitled to:

The. Conduct the mining business activities at WIUP or WIUPK in accordance with the provisions of laws and regulations;

B. Have the mineral, including the associated mineral, or coal that have been produced after the fulfilling production dues, except for the radioactive mineral;

w. Apply for the temporary suspension of mining business activities in accordance with the provisions of laws and regulations;

d. Build the facilities and/or infrastructure supporting the mining business activities;

It is. Sell the mineral or coal, including selling overseas after the fulfillment of domestic needs and selling minerals or coal excavated in exploration activities or feasibility study activities in accordance with the provisions of legislation; and

f. Obtain the right to land in accordance with the provisions of legislation. paragraph 2

Obligations

Article 61

(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 and adhere to the control of production and sales;

k. To increase the added value of mineral or coal of mining products in the country 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 and/or purification in the country in accordance with the provisions of legislation;

Part Two

Rights, Obligations, and Prohibition of the Mining Business License (IUP) for

Production Operation specifically for Processing and/or Purification

paragraph 1

Right

Article 66

The holders of Mining Business License (IUP) for Production Operation specifically for processing and/or purification shall be entitled to:

The. Buy, sell, and transport the mining commodities which will and have been processed and/or refined;

paragraph 2

Obligations

Article 67

(1) The holders of Mining Business License (IUP) for Production Operation specifically for processing and/or purification shall:

[...]

It is. Fulfill the restriction of processing and/or purification to conduct the overseas sales in accordance with the provisions of legislation;

f. Comply with the benchmark price of mineral or coal sales in accordance with the provisions of legislation;

g. Prioritizing the fulfillment of mineral and coal needs in the country; (our emphasis)

531. Under such restrictions, the miner was forced to build smelters or sell the nickel ore internally for processing by another company, and, pursuant to art. 170 of the Mining law, a grace period of 5 years was granted for the mining company to be effectively obliged to carry out such processing.

4.2.3.1.1.3 HPM price

532. Central to this program is the Harga Patokan Mineral or Mineral Benchmark Price (HPM), established in MEMR Decree No. 2946 K/30/MEM/2017 and MEMR Regulation No. 7/2017, Chapter II Article 5 and 6:

CHAPTER II HPM LOGAM

Article 5 (1) HPM Logam is determined by the Director General on behalf of the Minister for each type of Metallic Mineral commodity. (2) HPM Logam as referred to in sub-article (1) may in the form of HPM Logam for the following commodities: a. nickel, may in the form of: 1. nickel ore; 2. ferronickel; 3. mixed hydroxyde presipitate; 4. mixed sulphide presipitate; 5. nickel metal shot; 6. nickel pig iron; 7. nickel ingot; and/or 8. nickel-matte.

Article 6 (1) Determining HPM Logam as referred to in Article 5 is decided based on HPM Logam formula. (2) HPM Logam formula as referred to in sub-article (1) is determined based on the following variables: a. value/content of Metallic Mineral; B. constant; w. HMA; d. Corrective factor; It is. treatment cost and refining charges, and/or f. payablemetal. (3) Value/content of Metallic Mineral as referred to in sub-article (2) letter is determined according to the certificate of analysis. (4) The size of HMA as referred to in sub-article (2) letter c is determined by the Director General on behalf of the Minister, every month. (5) The size of HMA as referred to in sub-article (4) is determined referring to Metallic Mineral price publication issued by among others: a. London Metal Exchange; B. London Bullion Market Association; w. Asian Metal; and/or d. Indonesian Commodity and Derivatives Exchange. (6) HPM Logam formula as referred to in sub-article (1) and sub-article (2) may be reviewed periodically every 6 (six) month or from time to time if necessary.

533. The HPM price respects the formula HPM = (T*HMA*FP), where T is the Nickel content in the Nickel ore, HMA is the reference price for Nickel based on international factors (London Metal Exchange , Asian metal etc); and FP is the correction factor, which varies in relation to the nickel content, increasing or decreasing 1% in relation to the increase/decrease in 0.1% in the nickel grade, and the moisture factor in 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 of international prices in the HMA, has applied a reducer determined by the GOI. As a result, the price of nickel in Indonesia is significantly lower than that applicable in other countries.

535. We then proceed to analyze the applicability of the HPM price, that is, if it is in fact followed 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 on-site visit, argued that the price was only used for charging royalties, and that it would only be used as a de facto reference from the April 2020 in MEMR Regulation No. 11/2020. The GOI also argued during the on-site visit that the obligation to follow the HPM in 2020 was given to increase the price received by miners, who were not being rewarded by smelters, and cited article 3 of Regulation MEMR nº 7/2017 .

537. In this area, SDCOM points out that, although the government has argued in this regard, it has not been able to present evidence to corroborate such a statement, despite being urged. From the results of the on-site visit, it was proven that the GOI has control over all transactions carried out in the nickel market, which must be reported to the government, at least through the RKAB / article 11(3) of Regulation MEMR nº 7/2017.

538. Although in fact article 3 of Regulation MEMR nº 7/2017 links the HPM price to royalties, as stated by the GOI, nothing is said in this article about the impossibility of other uses of the HPM price other than for calculating royalties. Quite the contrary, the immediately preceding article, in its section 2, already explicitly states that "Holders of Metal Mineral Production Operation IUP in selling Metallic Minerals or Coal (...) produced must be guided by the Metal HPM", and also that "Obligation to be guided by Metal HPM or the HPB as referred to in paragraph (1) also applies to (...) Operations in selling Metallic Minerals or Coal produced to its Affiliates".

539. Other official regulations reinforce the SDCOM understanding, which indicate that the HPM price is not only considered for royalties, such as i) Government Regulation nº 23/2010, whose article 85 expressly indicates that "exporting minerals and/or coal produced must be guided by the benchmark price", and that this is determined based on the market price or prevailing market price; and ii) Decree of the Coordinating Minister for Maritime Affairs and Investment No. 108/2020 which states that the HPM supervisory team must ensure that sales prices are in line with the HPM.

540. MEMR Regulation No. 25/2018, in its article 33, also points in the same direction. In this context, even though the GOI pointed out in its response to the questionnaire that paragraph 2 of that article mentions the HPM price as a reference for royalties, paragraph 1 also expressly indicates the HPM price as a reference price. Furthermore, Article 34 of that regulation is even clearer when it governs:

The Minister can stipulate the selling price formula of metallic Mineral for the nation

interest. (emphasis added).

541. Finally, there is evidence and statements by members of the government, even before the April 2020 amendment, which also indicate this, as for example in the following news from 2019:

Head of the Investment Coordinating Board (BKPM) Bahlil Lahadalia said the benchmark nickel mineral price (HPM) of US$30 per ton applies to nickel miners who will sell nickel ore to smelters with a grade of 1.65 percent to 1.7 percent because they don't want to sell nickel ore to smelters. export until the end of this year.

"So the price of US$30 per tonne is only valid until December 31. This is an emergency, the issue of domestic nickel prices later on January 1, 2020 will be discussed again," he said in a press conference at BKPM, Tuesday (12/11/2019) night.

According to him, the nickel price benchmark is not affected by the rising or falling world nickel prices. The nickel price benchmark for this smelter is in accordance with China's international price minus 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 country's nickel smelters. However, the ban on exports of low grade nickel will remain in effect on January 1, 2020. "This agreement between nickel, smelter and government entrepreneurs is in the form of a joint commitment, there is no SK (decree)," said Bahlil . (emphasis added)

542. It is also important to highlight the attitude of the government of partial cooperation during the visit, for not having informed the nickel transaction prices, even when requested, and only having partially provided the requested information about the nickel market on the last day of the verification, making it impossible for additional questions by SDCOM. Thus, at no time did SDCOM receive the HPM price list in force in the period, despite having requested it several times: in the first request for additional information, item 8.8, it was requested as follows:

Regarding specific question 10, please present in more detail how the establishment of the HPM reference price works, necessarily presenting the calculation performed in at least one HPM established in 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 prices, and informed that each company calculates HPM prices individually. During the on-site visit, SDCOM again provided the opportunity to present the current HPM. The GOI, however, only presented a graph with the evolution of the HPM.

544. Finally, the European Union authority, in an investigation that included on-the-spot checks and analysis of the companies' actual data, concluded as follows:

The fact that the HPM as transposed into legislation in April 2020 was a continuation of the 2017 mechanism has also been corroborated in the investigation. The main difference was that before MEMR 11/2020 entered into force, in the sale-purchase agreements for nickel ore the price of the nickel ore was stipulated as an absolute value. After the MEMR 11/2020 entered into force, the price of nickel ore in the sale-purchase agreements was set up as the government HPM. The empirical evidence collected in the investigation (ie purchases of nickel ore from the IRNC Group) confirmed that the prices during the IP before and after the entry into force of MEMR 11/2020 are substantially the same, that is in line with the HPM mechanism in its version pre- and post-April 2020.

545.In this context, also considering the absence of responses from the selected producing/exporting companies, SDCOM concludes, based on the facts available in the process, that the HPM price established by the GOI was, in fact, the price of transactions in the market even before of the 2020 amendment, which implies a significant advantage for producers in the downstream chain, given that the HPM is significantly lower than the international nickel price, as dealt with in this document.

4.2.3.1.1.4 Reports to be submitted by mining companies

546. Article 83 of MEMR Regulation No. 7/2020, which replaced MEMR Regulation No. 11/2018, establishes the content of the mandatory reports to be sent monthly and quarterly by license holders (Exploration IUP/Exploration IUPK) to the GOI:

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 and Coal Mining Safety.

547. The annual budget and work plans - RKAB (Rencana Kerja dan Anggaran Biaya / Annual working and budgeting plan) stand out in the list. As verified during the on-site visit, the RKABs, in accordance with MEMR Regulation No. 25/2018, contain operational, technical and environmental aspects, being confidential company information sent to the government. MEMR Regulation No. 7/2020 establishes that reports must be sent monthly and quarterly (art. 82).

548. The RKAB are documents that detail all aspects of the mining company. MEMR Decree No. 1806K/30/MEM/2018 establishes guidelines for the preparation, evaluation and approval of the RKAB. According to Annex 2 of such Decree, the following are required: aspects of exploration, construction and infrastructure (for example: construction of roads, including with regard to smelters); mining aspects (mining method, feasibility studies); financial (including sales); and social responsibility. Some of the 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;

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;

2.12.2. state aid - financial tax; It is

5-year strategic plan.

549. The RKAB also informs the exploration area desired by the company, which is then evaluated and approved annually by the GOI, as well as complete accounting information (profit and loss statement) and individualized information about the mining company's sales, including quantity and price practiced in its sales.

550. The RKAB is an extremely important document for the government, and its non-submission even leads to the cancellation of the mining company's exploration license, as happened recently for more than 1000 miners. According to art. 101 of Government Regulation No. 23 of 2010 must be submitted within 45 days before the end of each year. License holders may not build, mine, process, refine, transport or sell before approval of their annual RKAB. They are, therefore, yet another means by which the government controls miners, ensuring that their operation is in line with the government's objectives of encouraging 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 an IUPK whose shares are owned by foreigners is obligated to undertake a divestment of shares to the Government, the Regional Government, state-owned enterprises, regional-owned enterprises, or national private companies.

552. This obligation was regulated in Article 97 of Government Regulation No. 1/2017, which establishes a progressive divestment policy from the 5th year onwards so that most of the capital is in Indonesia. The obligation is detailed in MEMR Regulation nº 9/2017, article 2, which progressively establishes the percentage that must be held by Indonesian companies: in the 6th year, 20%, in the 7th 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 for the purchase of shares within the scope of the divestment policy: Government, provincial government, regional/city, state-owned company, national private entities. That is, the government has full priority if it wants to take control of any mining company in the country. Although the GOI explained that the government does not always choose to exercise its preference to buy the shares, there are elements in the file that indicate that the government 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 price of shares within the scope of the divestment policy must take into account fair market value. With Regulation MEMR nº 43/2018, a new divestment method was introduced - issuance of new shares, as well as other changes were implemented on the way of calculating the fair value.

555. Therefore, this is a way for the GOI to allow foreign investment, but at the same time ensure 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 (Bijih Nikel), being reduced to up to 1.5% for the different types of processed nickel.

557. Thus, the indications of the initial opinion remain confirmed that this would be one more of the elements "to encourage more miners to develop smelters", according to the words of an official government representative and confirmed in the answer 12 of the specific questions in the government questionnaire, as more processed nickel pays about 5 times less royalties than unprocessed nickel. Thus, it is necessary to recognize such an incentive for processing in the framework of incentives for the stainless steel industry.

4.2.3.1.1.7 Effects of measures

558. As widely accepted in economic analysis, the imposition of export restrictions creates advantages for the domestic industry, especially in the context of the steel industry, as the overall effect of export restrictions on raw materials is to raise global prices for raw materials . At the same time, by increasing the domestic supply of raw materials, these measures depress domestic prices. In this way, the restrictions provide the downstream domestic industries with very high bargaining power, sacrificing the profitability of miners to favor smelters.

559. As is known, the mere existence of export restrictions is not enough, by itself, to characterize a subsidy that can be used in the multilateral context. As decided in the report of the Appellate Body in DS-194 - United States - Measures treating export restraints as subsidies, one should bear in mind not the effects of the restriction, but the nature of that restriction. And, in this context, it is evident, considering what was found in the investigation, that the core of such measures is the GOI's desire to have a stainless steel industry developed in its country, in order to add value to its voluminous nickel reserves.

560. Therefore, the effect of these export restrictions was to create advantages for the Indonesian industry through an oversupply of raw material, available at a reduced price, a situation that totally distorts the price practiced in the domestic market. In a completely opposite situation, the inputs acquired by industries in other regions of the world and in Brazil are purchased at international market prices, in line with a market economy.

561. Such effect on the price is a notorious fact, as reiterated in the WTO jurisprudence, for example in the China - Raw Materials cases and the China - Rare Earths case:

Whereas export quotas may reduce foreign demand for Chinese rare earths, it seems likely to the Panel that they will also stimulate domestic consumption by effectively reserving a supply of low-price raw materials for use by domestic downstream industries" (emphasis added).

562. It is evident, considering the elements in the case file of the present investigation, that such a "perverse signal" to domestic consumers is also present in the context of nickel and coal in Indonesia. So much so that the GOI itself confirmed during the on-site visit that it received complaints from miners, who were being subjugated by smelters, holders of all the power in their acquisition of inputs.

563. These measures would also be harmful at the international level, as they restrict world supply, raising international prices, burdening industries around the world, as demonstrated in the study The Economic Impact of Export Restrictions on Raw Materials, by the Organization for Cooperation and Economic Development (OECD).

564. There are elements in the case file that prove that subsidies granted to the nickel transformation industry are "passed on" to the Indonesian stainless steel manufacturer, either because the recipient of the subsidy belongs to the manufacturer, or because, due to trade restrictions on exports and supply obligations in the domestic market, there is an overabundance of the product in the domestic market, resulting in lower prices in this market. All this is combined with the HPM reference price, established by the GOI, which was constantly below the international price in the investigated period.

565. All these measures caused an oversupply in the Indonesian market, and led to a depression in prices, with the smelters holding all the purchasing power, which caused the miners to repeatedly complain about the low prices charged for nickel ore, which was confirmed by the GOI during the on-site visit.

566. The ban on exports and other measures, combined with the forced maintenance of miners' production, resulted in a situation of such disproportion that it was recognized by the GOI itself. Even in this scenario of profound imbalance between supply and demand, the GOI maintained the ban on exports, in

order to wait for the construction of smelters:

THE MINISTRY of Energy and Mineral Resources (ESDM) notes that the production or supply of nickel ore in the country is still far higher than the input capacity of smelter plants currently in Indonesia

(...)

ESDM Ministry's Director of Mineral Development and Business Yunus Saefulhak said, this happened because there were still many nickel smelters that were not yet operational. From the target of 29 nickel smelters until 2022, there are only 11 smelters operating while the rest are still in the construction stage.

(...)

"This smelter can absorb up to about 30 million tons of input capacity. Then our production is around 60 million tons. Supply and demand are not balanced? Indeed,...

(...)

According to him, the smelter construction target by 2022 will increase input capacity, so that nickel ore processing can be accommodated domestically. Included with a smelter that can process low grade nickel ore with a content of 1.5%.

567. According to the GOI itself, it is planned to accelerate such an export ban policy, further increasing the processing requirements for exported nickel:

He said this was also the government's consideration to speed up the ban on the export of low grade nickel ore, which took effect on January 1, 2020. That way, nickel ore reserves and production will be Maintained to anticipate the need for input smelters which will be operational in 2022. "So the government indeed banned nickel exports in order to anticipate the capacity of the smelters that were being built," Yunus added. (emphasis added)

568. The effects of the policies addressed here were presented by the petitioner and can also be seen in other sources. For example, S&P Global Consulting brings a survey based on data from the Indonesian Nickel Miners Association, which indicates that the floors established by the GOI are not being respected, and that Indonesian smelters buy nickel at prices around 40% lower than market prices International:

The nickel ore miners are, therefore, either unable to sell their output or forced to sell to domestic smelters at lower prices than for export, depending on the ore grade. The government tried to compensate by putting a floor under nickel ore prices, starting May 14, but ore with a low nickel grade of 1.65% — formerly largely exported to China — cannot be sold to local smelters because they prefer higher-grade material. In addition, according to recent APNI data, domestic smelters buy 1.8% nickel ore for US$27 per wet metric tonne on a cost, insurance and freight basis. This is below the government floor of US$34/wmt CIF and well below the US$43-US$46/wmt CIF price for lower-grade 1.65% ore on the international market. (emphasis added)

569. Bearing in mind that, as already mentioned, the production of stainless steel consumes two thirds of the world's nickel, it is clear that policies that affect nickel will directly affect the production of stainless steel. BKPM presentation displays the effect of such measures, correlating them with the different 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 felt either directly by the producer of the product under investigation, when acquiring nickel ore for the production of NPI, or passed on to the industry producing the product under investigation by through its related or unrelated companies 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 is based on numerous laws, from all levels of government, among which the following stand out:

I. Law No. 4/2009, Mining law;

II. Law No. 3/2014;

III. Government Regulation No. 23/2010;

IV. Government Regulation No. 14/2015, National Industry Development Master Plan 2015 - 2035 (Rencana Induk Pembangunan Industri Nasional - RIPIN);

V. Government Regulation No. 81/2019, on royalties;

SAW. Presidential Regulation No. 2 of 2015, industrial policy plan 2015-2019;

VII. Presidential Regulation No. 2 of 2018, industrial policy plan 2015-2019;

VIII. MEMR Regulation No. 7/2017

IX. MEMR Regulation No. 25/2018, amended by MEMR Regulation No. 11/2019;

X. Ministry of Economy Regulation 13/2017;

XI. MoT Regulation No. 1/2017, amended by MoE Regulations 11/2018 and 25/2018;

XII. MoT Regulation No. 94/2018;

XIII. MEMR Decree No. 2946 K/30/MEM/2017;

XIV. MEMR Decree No. 154 K/30/MEM/2019;

4.2.3.1.3 Financial contribution

572. The financial contribution of the program resides in the verification that the producers of the product under investigation had access to nickel, an important input in the production of stainless steel, for less than adequate remuneration.

573. It is also necessary to analyze whether the financial contribution was granted by a public body or by a instructed or entrusted private entity, under the terms of the Brazilian Antisubsidies 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 jurisprudence in the case DS379 - US - Anti-dumping and Countervailing Duties on Certain Products from China, indicates that: "A public body within the meaning of Article 1.1. (a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority." (emphasis added).

575. Furthermore, it is also a fact that "The absence of an express statutory delegation of governmental authority does not necessarily preclude a finding that an entity is a public body.", according to 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", what would be a function "which would normally be the responsibility of the government" (according to Article 1.1(a)(1) (iv), of the SCM Agreement and Art. 4, II, d), of the Brazilian Regulation), according to the interpretation of the Appellate body in DS379. WTO jurisprudence has already pointed out that it may be relevant at this point to know whether the functions or conduct of a given entity are of a type normally classified as governmental in the legal order of the country under investigation.

577. That said, the focus in the "public body" analysis is the entity, not the conduct that allegedly generates the financial contribution. The focus is not on whether the conduct can logically be connected to a governmental function, but rather on the core characteristics and government links of the entity that performs that conduct. In this context, the fact that such conduct is a systematic and continuous practice is one of the types of evidence to be considered, as it potentially sheds light on such aspects of the entity.

578.Although the simple fact that the government owns a certain company, is a shareholder, even if it is a majority shareholder, or that there are other formal ties between them, is not, by itself, sufficient for a conclusive determination about the classification as a "public body ", such factors must be considered in the analysis of the authority.

579. Finally, the provisions of DS436 are highlighted, in the sense that it is not the burden of the investigating authority to seek or accept specific evidence about the existence of a public body that exceeds its obligation to base its determinations on reasoned and adequate explanations.

580. In order to comply with the provisions of the WTO jurisprudence, the framework of the framework created by the GOI will be analyzed according to the three prisms considered essential:

I. Exercise of governmental functions in a sustained and systematic manner - "evidence that "an entity is, in fact, exercising governmental functions", especially where such evidence "points to a sustained and systematic practice'";

II. The scope and content of the sector's policies - "evidence regarding "the scope and content of government policies relating to the sector in which the investigated entity operates"; and

III. Significant control over an entity and its conduct - "evidence that a government exercises "meaningful control over an entity and its conduct".

581. The second point above - "the scope and content of government policies" will not be explicitly mentioned here, as it is permeated in the other two points, and the broad framework created by the GOI in the pursuit of its industrial policies related to stainless steel laminates, in the context of the policy to increase the added value of the country's ores.

4.2.3.1.3.2 The authority of miners to exercise governmental functions

582. In this context, throughout the investigation, SDCOM acted diligently by requesting information from interested parties, and, as already mentioned, gaps in the response from the GOI and the lack of response from all identified producers/exporters were verified. Such lack of cooperation by the parties is a factor that was even considered in the aforementioned jurisprudence.

583. Thus, regarding miners, there is a clear governmental framework that gives them the authority to exercise governmental functions. According to Article 33(3) of the Constitution of Indonesia, "The land, the waters and the natural resources within shall be under the powers 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, the Mining Law, Law No. 4, of 2009, establishes in its preamble:

The. That mineral and coal in the mining jurisdiction of Indonesia which constitute non-renewable natural resources are endowed by God Almighty and play an important role in fulfilling the needs of people at large and therefore, the management of mineral and coal must be to give the real 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 outside geothermal oil and gas as well as the ground waiter play an important role in giving real added value to the national economic growth and sustainable regional development.

585. The granting of nickel, coal and other minerals mining licenses is regulated by the Mining Law and lower instruments. The Mining Law, in its 4th article establishes that "Mineral and coal as non-renewable natural resources constitute national wealth controlled by the state for the greatest benefit of the people's welfare.". There is also article 5, which establishes that the government can control the production and export of ores and coal to give priority to domestic interests, and the obligations to increase the added value, which are mandatory for the holder of exploration licenses, according to the article itself. GOI confirmed in the on-site visit, under penalty of revocation of the license, pursuant to Article 119 of the Mining Law. The GOI recently temporarily banned all coal exports after "

586. As discussed in the paragraphs above, and as discussed in the other sections of this document, there is a framework in Indonesia that establishes strong links between miners and the GOI in the performance of governmental functions, providing miners with governmental authority to carry out policies of Indonesia regarding the management of natural resources, based on the country's Constitution.

4.2.3.1.3.3 Designation of mining companies as "National Vital Objects"

587. According to Presidential Decree nº 63, of 2004, there is, in Indonesia, a special designation - "Obyek Vital Nasional / National Vital Objects" (also known as obvitnas), granted to certain companies considered strategic - "The National Vital Object is the area/location, building/installation and/or effort that concerns the lives of many people, the interests of the country and/or the country's strategic sources of income".

588. Such a designation grants them special protection from the country's security forces, ensuring top priority for the Indonesian police forces in the event of any threat or disruption to operations. It also has implications for other areas, such as the relationship with unions and even legal treatment distinct from any disturbances in the territory of companies with obvious status. In the words of a GOI representative, such enterprises holding such status must be protected as they are "fully supported by the state" (as stated in the following paragraph).

589. According to a statement by representatives of the GOI itself, the designation as obvitnas and the protection resulting from it is directly linked to the government's intention to encourage the increase in the added value of nickel:

KOLAKA - Commander of Military Command (Pangdam) XIV Hasanuddin Major General TNI Andi Muhammad Bausawasa Mappanyukki inspects the National Vital Objects (Obvitnas) and National Strategic Project Programs (PSN) for nickel processing and refining facilities (smelters) being built by PT Ceria Nugraha Indotama (CNI) Group in the Lapao-lapao block, Wolo District, Kolaka Regency, Southeast Sulawesi, Monday (8/15/2022).

This step is the TNI's commitment to ensure that the nickel downstream investment launched by President Joko Widodo (Jokowi) goes according to the target.

"Every time there is Obvitnas and PSN, it is indirectly the duty of the TNI to ensure its security stability. The TNI must always protect strategic national projects for the benefit of the people," said TNI Major General Andi Muhammad while in the CNI Group Mining Business Permit Area (WIUP).

According to Major General TNI Andi Muhammad, as a vital national asset, the nickel smelter project belonging to the CNI Group must be protected because this project is fully supported by the state. Moreover, CNI Group is the only Domestic Investment (PMDN) (...) (emphasis added)

590. GOI statements also highlight the importance of companies classified as obvious in national interests:

In addition, the purpose of the Commander in Chief visiting the Ministry of Energy and Mineral Resources is to further understand the activities of the Energy and Mineral Resources sector and strengthen the TNI's commitment to securing these vital national objects. "The TNI must provide full support, the TNI has the strength and ability, must be able to make a full contribution to the security of investors, In this ESDM there are various investors, many and large, we must protect them, once again, this is related to the dignity of the people's lives," said Moeldoko.

Regarding the existence of TNI personnel who may be involved in security disturbances, Moeldoko stated, "So far the TNI may have hesitated in taking action, for me, if it involves and interferes 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, about which mining companies in the aforementioned top 5 were classified as "National Vital Objects", to which the GOI expressly stated that "All of the companies mentioned above have never been designated as national vital objects so the question is not applicable".

592. During the on-site visit, the GOI corrected the information and informed that PT Antam and PT Vale hold such status. Therefore, contrary to what was initially stated by the GOI, there are elements that prove the designation of mining companies, as well as several companies in the chain of the product that is the object of the investigation, as "National Vital Objects".

593. MEMR Decree No. 77 K/90/MEMILIKI/2019, in its most current wording, designates 34 companies in the ores and coal sector as obvitnas. Even PT IMIP itself also holds such status, with a GOI representative stating that: "the presence of the TNI in PT IMIP's KI is not only to provide security support, but also to ensure that investments can run well" (emphasis added)) - TNI is the Indonesian Armed Forces (Tentara Nasional Indonesia). The representative's speech also reinforces that the designation as obvitnas involves not only consequences in relation to safety issues, but an entire prioritization of that investment.

594. Thus, the designation of several mining companies and companies in the stainless steel laminated chain as obvitnas is yet another element that reveals that the mining companies "possesses, exercise or are vested with governmental authority" (emphasis added), in terms of the aforementioned WTO jurisprudence in DS379.

595. Taken together, the aforementioned formal and non-formal elements, it is clear that there is a normative framework that means that mining companies do not operate under free conditions, but simply exercise governmental functions on behalf of the GOI in the scope of supplying nickel for remuneration less than adequate, which, as a mineral resource, is a good constitutionally controlled by the State.

4.2.3.1.3.4 Significant control by the GOI

596. With regard to control by the GOI ("meaningful control over an entity and its conduct"), both formal (shareholder) control and control through the regulatory framework will be analyzed.

4.2.3.1.3.5 GOI's shareholding in miners

597. Regarding the GOI's shareholding in the miners, the elements present in the case file also indicate that the GOI failed to provide a complete answer to SDCOM's questions about the companies in which it has a shareholding, as per question 4 of the original questionnaire. The GOI only reported the existence of PT Antam, and there are concrete elements in the file indicating the existence of other companies that should have been informed.

598. In item No. 3 of the second request for additional information, SDCOM requested information about the 5 largest nickel producers/distributors in Indonesia, with the GOI providing the 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 miner, but a mere distributor. It should be noted that, according to data verified in the on-site visit, there is a majority share (51%) of a company from the Tsinghsan group (to which the investigated producer/exporter PT IRNC belongs), and the lack of response from the group prevented the SDCOM to obtain more information about its operations.

600. PT GAG Nickel, a subsidiary of the state-owned company PT Antam, is a mining company that has not had its link with the GOI previously informed to SDCOM. As reported in the on-site visit report, the GOI did not provide the meeting minutes of the mining company PT GAG Nickel, even though it owns 25% of the company. Note that the GOI indicated that it did not have access to such minutes. Regarding PT Antam's minutes, no information was provided about the 2019 ordinary shareholders' meeting, but only about the extraordinary meeting for that year. In addition, the complete minutes of the PT meetings apparently were not provided, as the document submitted is called the "Summary of Minutes".

601. There is a stake in PT Vale by the company PT Indonesia Asahan Aluminum (Inalum), a 100% state-owned company. It is important to note that the elements indicate that the government's participation in PT Vale began within the scope of divestment policies, and this fact was not mentioned by the GOI at any time.

602. With regard to other companies outside the top 5 informed, SDCOM was also able to find in public sources, namely the Antam report for the year 2020, an indication that the GOI, together with the Tsingshan group (by through the company Strand Minerals Pte. Ltd), owns a nickel miner, PT Weda Bay Nickel. It should be noted that, despite being questioned, this relevant fact was not informed to SDCOM by any of the parties to the investigation, which prevented SDCOM from obtaining further information in this area as well.

603. It is clear that there was a significant lack of collaboration from the GOI regarding important information about miners in Indonesia. Faced with the lack of detailed information on nickel production in Indonesia, an attempt was made to fill this gap with the facts available in the process.

604. According to the investigating authority of the European Union, based on publicly available data, the companies in which the GOI holds a stake represent 27% of the total production in Indonesia, demonstrating that the GOI has direct influence over a significant portion of production in Indonesia. In addition, it was also verified, regarding PT Antam, that the GOI holds special "'Dwiwarna Ownership" shares,

which allow the GOI the exclusive right to appoint and replace Directors and members of the board of Commissioners, and that only one of its directors comes of the private sector. Regarding PT GAG Nickel, there is a Commissioner who previously held the position of Director of Mineral and Coal Revenue at MEMR and other members of the board (including the chairman), with previous experience at PT Antam and PT Inalum, a situation that also occurs at PT GAG Nickel. EN Vale.

605. Finally, it is pointed out that the State Owned Enterprises (SOE) have priority in obtaining the WIUPK - special mining permit area, and that a non-state company can only obtain the WIUPK if there is no interest from the SOEs (referenced in the legislation in bahasa by the acronym BUMN), or no SOE meets the necessary requirements, pursuant to MEMR Regulation No. 7/2020:

Article 27

The Minister offers BUMN and BUMD with:

priority way to get metal mineral WIUPK and/or coal WIUPK

(...)

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:

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 to in Article 27

606. Thus, according to the information available in the case file, companies that represent a significant portion of Indonesian nickel ore production are partially or wholly owned by GOI, and even though 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, despite relevant information, is not sufficient for classifying a given entity as a "public body". In this way, the instruments available to the GOI to establish the control of the conduct of entities in order to exercise the supply of nickel ore, according 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 the mining companies at its discretion, so that they perform the governmental functions that the GOI desires, among which 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 explained in item 4.2.3.1.1, 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 Procedures for Granting Areas for and Licensing and Reporting on Mineral and Coal Mining Business Activities, and also pursuant to the instrument superseded by it, MEMR Regulation No. 11, of 2020 , any changes in the ownership of shares in mining companies, including changes in control (acquisitions) must be reported to the MEMR for approval:

Article 64

(1) In the event that the holder Of an IIJP or IIJPK will changes in shares must first obtain approval from the Minister or governor in accordance with authority before being registered with the ministry which organizes government affairs in the field of law.

(2) Minister or governor in accordance with their authority can reject the application for change of shares as referred to in paragraph (1) if the holder Of IIJP or IUPK based on the evaluation results are not shows the good performance of mining business.

611. Such a request, as can be seen from item (2) of article 64, may even be rejected if the mining company's performance is not considered adequate, the criteria for such an assessment not being determined in the legislation.

612. Government Regulation No. 23, of 2010, also provides for limits regarding shareholding, in particular regarding foreign shareholding, as already explained in this document.

4.2.3.1.3.8 Approval of changes in Directors and/or Commissioners

613. Also pursuant to article 64 of MEMR Regulation No. 7 of 2020, the company holding a mining license is required to submit any change to the board of directors and/or commissioners to the GOI. Such a change will then be subject to the GOI's assessment.

Article 64

(...)

(3) IIJP or IIJPK holders Who have made changes to the board of directors and/or commissioners are obligated to submit a report to the Minister or governor in accordance with their authority no later than 14 (fourteen) working days after getting approval from the Ministry which organizes government affairs in the field of law.

614. The measures indicated here show the existence of strong GOI control over mining companies, which cannot perform their duties as a company would normally act in defense of its own interests.

4.2.3.1.3.9 Miners' instruction or trust

615. We now proceed to analyze the alternative of the GOI supplying nickel ore for remuneration lower than adequate through the performance of private entities instructed or entrusted by it, pursuant to art. 4, II, "d", of Decree No. 1.751, of 1995: "

d) the government makes payments to a fund mechanism, or instructs or entrusts the private entity to carry out one or more of the functions described in the previous paragraphs, which would normally be the responsibility of the government, and whose performance does not differ significantly from that of the practice customarily followed by governments.

616. WTO jurisprudence highlights three elements for the characterization of "trust" or "instruction" present in the Brazilian Regulation, or "entrust" and "direct", under the terms of Article 1.1(a)(1) (iv) of the Agreement SCM:

It follows from the ordinary meanings of the two words "entrust" and "direct" that the action of the government must contain a notion of delegation (in the case of entrustment) or command (in the case of direction). To our minds, both the act of entrusting and that of directing therefore necessarily carry with 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 "direct" comprise these elements - something is necessarily delegated, and it is necessarily delegated to someone; and, by the same token, someone is necessarily commanded, and he is necessarily commanded to do something. We therefore do not believe that either entrustment or direction could be said to have occurred until all of these three elements are present.

Having said that, it is clearly the first element - an explicit and affirmative action of delegation or command - that is determinative. The second and third elements - addressed to a particular party and of a particular task - are aspects of the first. Any assessment of whether delegation or command has occurred would necessarily be in reference to that which has been delegated or commanded and in reference to the one to whom it has been delegated or commanded. (emphasis added).

617. In the same case, it was also decided that there must be an "explicit and affirmative action of delegation or command", given that the mere intervention in the market by a government is not enough, nor is it enough that the supply under analysis is a "side effect" of lawful regulatory policies. Furthermore, in the DS296 case, the concept of "entrustment" and "direction" was refined, requiring "probative and compelling" evidence:

In short, we are of the view that, pursuant to paragraph (iv), "entrustment" occurs where a government gives responsibility to a private body, and "direction" refers to situations where the government exercises its authority over a private body. In both instances, the government uses a private body as proxy to effectuate one of the types of financial contributions listed in paragraphs (i) through (iii). It may be difficult to identify precisely, in the abstract, the types of government actions that constitute entrustment or direction and those that do not.

618. Thus, the question centers on the fact that the financial contribution, in the form of supplying nickel ore for less than adequate remuneration, can be attributed to the government or have been freely made by choice of private entities, after they have considered all market conditions, including regulatory constraints. It is also necessary to assess whether such a provision would normally be the responsibility of the government, and whether the performance of such entities did not significantly differ from the practice usually followed by the government, that is, whether there would be a difference between the way in which miners/producers acted with the way in which the GOI would act.

619. As already explained in this document, over the years, the GOI has created a normative and non-normative framework, which, taken together, constitutes an "explicit and affirmative" command in order to pursue the declared intention of increasing the added value of its natural resources, especially nickel ore, the main raw material for stainless steel, and encourage the construction of smelters in your country, implementing measures such as export restrictions, price controls, domestic processing obligations, among others, which involve, as well , the obligation to supply the ore in the domestic market under conditions imposed by the GOI.

620. Contrary to what was stated by the GOI, plans and policies such as RIPIN do have the element of enforcement for private parties, so much so that, for example, mining licenses can even be revoked if a given mining company does not follow the plans of construction of smelters as agreed.

621. Thus, the supply of nickel for less than adequate remuneration did not occur as a "side effect" of legitimate state action, but as the very objective of such policies. The miners were left with no alternative but to supply the nickel ore under the conditions determined by the GOI, since they could not export and could not even determine the sale prices, even if such action would be contrary to any decision of business logic, as obviously the miners would like to be able to access the international market and sell at higher prices. Failure to comply with such measures would lead to the suspension and even revocation of licenses. Although the GOI states that the HPM price guarantees fairness in prices, there are declarations in the records of members of both the APNI (Indonesian Nickel Miners Association - association of miners),

622. As mentioned in the previous section, the management and control of natural resources is a governmental function. Therefore, the miners acted as a mere proxy for the GOI, arms to implement 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 , in which, effectively, "the government exercises its authority over a private body", in line with WTO jurisprudence.

4.2.3.1.3.10 SDCOM Final Comments on this Topic

623. Considering the relevance of the topic discussed here, SDCOM's comments made in the Initial Opinion of this investigation are presented here, in order to summarize the understanding of this Undersecretariat.

624. It is a fact that export restrictions have already been analyzed by the Dispute Settlement Body and that it was decided that i) even though export restrictions affect the behavior of private agents, this only occurs as a by-product of state regulation , and the element of "instruction or trust" (entrust or direct) necessary in this situation to characterize a subsidy program that can be activated under the terms of the agreement may not be present, and even though ii) the price support covered by the SCM Agreement does not include movement prices as an indirect result of another form of government intervention.

625. Initially, it is pointed out that, in line with what has been repeatedly decided by the Dispute Settlement Body of the WTO, the analysis of this SDCOM will focus on the nature of the governmental action, and not on its effects. SDCOM agrees with the GOI that not all government measures that confer benefits can be considered to be subsidies.

626. That said, as is known, in order to configure an actionable subsidy program, under the terms of art. 4 of Decree No. 1751 of 1995, there must be any form of income or price support, or there must be a financial contribution by the government or public body or entity instructed or entrusted by it, and such financial contribution must generate a benefit recipients and the subsidy must be specific.

627. With regard to the financial contribution, as alleged in the petition and verified by this SDCOM, the present case deals with the hypothesis of instruction or trust to the private entity. In this context, the GOI stated that such element of "instruction or trust" had not been proven, and that the decision to sell the products and at what price the products would be sold would be made independently by the business management. SDCOM disagrees with the government's claim. There is robust evidence in the case file of the existence of a meticulously crafted legal framework to force mining companies to have to sell their production on the Indonesian domestic market, increasing the domestic supply of refined 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 No. 11, of 2018, only after fulfilling domestic obligations can the holder of a IUP or IUPK be able to export. In the same sense is the Decree of the Ministry of Energy and Mineral Resources No. 23, of 2018, which deals with DMO obligations for coal. Regulation No. 13/2017 of the Ministry of Economy eliminates any doubts by explaining that export controls and export taxes are due to "support the downstream program of domestic mineral products". With regard to Indonesian Government Regulation No. 23 of 2010, the preamble makes clear the context in which it is inserted: "Increase in added value in the undertaking of mineral and coal processing and refining/smelting domestically.".

629. MOMR Regulation No. 25/2018, which revoked MOMR Regulation No. 34/2009, is also part of this context:

Article 32

(1)The Minister shall perform the control of Mineral and Coal sales which aims to:

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 metallic Mineral for the nation's interests.

(2)The nation interests as referred to in paragraph(1) is based on the consideration:

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 an export recommendation from the MEMR, it must first submit a smelter construction plan. The MEMR will oversee the progress of smelter construction against this plan at least every six months. The mining company must provide the

MEMR with proof that it has achieved at least 90% of the planned progress for each semester. In other words, an additional requirement for the obligation to build smelters was added to the export restriction.

631. From all of the above, it cannot be said that such an effect on the chain was a mere by-product of government action, since, as demonstrated, the nature of government action was deliberately to instruct local private entities to build smelters or refineries to add value to local products and increase the local offer:

A spokesman at the ministry of energy and mineral resources says the government wants to ensure mining companies "add value" rather than just "exporting our earth". The government is willing to let companies start exporting again if they show they are "serious" about building smelters or refineries, he adds.

(...)

The Harita project and a new proposal by Oleg Deripaska's Rusal, the world's largest aluminum producer, to build another alumina refinery in West Kalimantan appear to suggest that the government's policy is working, forcing companies to invest in billion-dollar processing facilities that they otherwise would not build. (emphasis added)

632. Under the test required by DS194, SDCOM concluded that there was an explicit and affirmative action of instruction (command) by the government to local miners, which directed them to supply inputs in the domestic market at prices lower than those that would be possible to practice in sales in international markets if there were no restrictions and to make investments in smelters and refineries that, under normal conditions, they would not. In line with what was recently decided in DS533, there is a clear instruction to miners, obliging them to supply the Indonesian domestic market, as in the DMO of 25% supply to the domestic market applicable for coal.

633. In summary, through the export tax, export restrictions, and by enacting a myriad of legal acts requiring ore and coal producers to sell domestically in Indonesia, the GOI directed private entities to provide financial contribution to coal producers. steel in the form of sales of nickel ore and coal at less than adequate remuneration.

634. The nature of such actions is evidently within the scope of the plan to encourage the industry of the mining chain, as confirmed in the Declaration of the Minister of Energy and Natural Resources, which explained that the coal policy was intended to "maintain the competitiveness of domestic industries", or even the statement by the ministry that confirmed that the new ban on exports from 2020 was intended to "accelerate the establishment of domestic smelters while its nickel reserves are limited.". In the official document describing the 2015-2035 RIPIN, export control is mentioned as a development 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 the government or public body (such as, for example, through PT Antam) or, alternatively, financial contribution by private entities instructed or entrusted by it, under the terms of paragraphs " c" and "d", of item II, of art. 4 of Decree No. 1,751 of 1995, since the investigated companies now have additional resources, since the cost of acquiring nickel ore is lower than what they would have to incur if they obtained these inputs at 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 the companies in Indonesia that participated in this program during the investigation period, nor did it provide the transactions carried out in the nickel market. There was still a total absence of responses from the selected producers/exporters. Thus, as already pointed out in this document, pursuant to art. 79 of Decree No. 1,751, of 1995, the available facts, which indicate that the program is available and directed to stainless steel producers, given that this is notably the sector that consumes the most nickel in Indonesia, the target input of the program, according to statements GOI officials.

4.2.3.1.5 Result of the investigation

637. The GOI, in its response to the questionnaire, claimed that there is no such program to supply nickel at less than adequate remuneration. However, it recognizes the existence of a policy to add value to nickel ore in order to make better use of non-renewable resources and to encourage jobs in smelters, both with the aim of improving the Indonesian economy. This policy is carried out, among others, by its progressive policy of export restrictions that culminated in the total ban on exports. It should be noted, in this context, that the GOI also confirms the claim in the petition that there was a relaxation of the export restriction for nickel producers who were building smelters.

638. The GOI also highlighted that there is no price controlled by the government for transactions, which would only occur in relation to royalties. As discussed in section 4.2.3.1.1.3 above, such an argument is not supported by the elements present in the case file, which includes the results of the visit to the GOI.

639. It is important to note that the GOI did not provide transaction prices in the nickel market in Indonesia, despite having such information and having been repeatedly requested by SDCOM. In response to question 5 of subsection b.1 of the original questionnaire, which requested "Identify and explain the types of records kept by the governmental authority administering the program", the GOI provided an evasive answer and did not even inform the authority that it had the transaction prices, through the RKAB. Even in the second request for additional information, Official Letter SEI No. 125396/2022/ME, of April 29, 2022, when information on transactions in the nickel market was again expressly requested in the questions in the 3rd paragraph of the Official Letter, the GOI provided in bahasa the requested RKABs and production and sales reports, making it impossible for the authority to analyze them, which was forced to disregard such documents, due to non-compliance with the legal requirements for document acceptance. In full demonstration of the goodwill of this authority in relation to the GOI, during the on-site visit the government had its third chance to present the sales data, and it also did not proceed.

640. It is recalled that such sales information is data already provided regularly by the companies to the Minister of Energy and Mineral Resources, that is, the GOI's allegations in the sense that it is difficult to contact companies in order to obtain the information, or even of confidentiality that would 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. 228693/2022/ME, that it submitted the RKAB, as well as that it had submitted information about the volume produced on the first day of the on-site visit, as well as explaining the operation of the MOMS system. In addition, the GOI alleged that Article 3 of MEMR Regulation No. 7/2017 establishes the use of the HPM price for royalties only.

642. It added that "prior to the implementation of MEMR Regulation No 11 of

2020, the GOI did not require the nickel producer and nickel ore buyer or any other parties involved in mineral transaction to take HPM as the reference price for transaction purpose".

643. PT IRNC, in its manifestation of September 9, 2022, also claimed in the same sense, as it believes that "the normative texts and other elements contained in the restricted records corroborate the argument by the GOI that, during the period of investigation , the HPM would be mandatory only for the calculation of royalties", citing both the petition and the legislative change. He added that SDCOM had, during the on-site visit, mentioned a Decree on the HPM price monitoring team issued already under MEMR Regulation No. 11/2020, and not under the aegis of the previous Regulation.

644. PT IRNC added that "it shares the understanding of the GOI that, in the absence of a government price to be compared with a market price to determine the amount of benefits received, there is no need to talk about the supply of goods at prices less than adequate remuneration during the investigated period".

645. He also pointed out that, contrary to what is alleged by the petitioner, all of PT Antam's sales 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, given that there would be an extraterritorial effect of raising Philippine export prices due to the significant reduction in the international supply of this raw material, affecting the benchmark used. Thus, a more appropriate

benchmark would be the weighted average of the domestic price in Indonesia and the export price in the Philippines, weighted by the respective production volumes in 2019.

647. Aperam, in a statement dated September 9, 2022, argued that the Government of Indonesia had failed to provide several relevant information requested in the Questionnaire sent by SDCOM with the simple excuse that "the alleged scheme related to the provision of nickel ore for LTAR as it does not exist".

648. He reiterated what was stated in the petition, in particular, in item 7 of the supplementary information to the petition, presented on February 8, 2021, which would demonstrate that the Government of Indonesia would supply nickel ore, coal and stainless steel scrap for remuneration lower than the proper.

649. He pointed to excerpts from the Indonesian Government's responses to argue that there would be direct intervention in negotiations between buyers and sellers of nickel ore, given that the prices to be charged in such operations were lower than the appropriate remuneration.

650. He emphasized that the Decree of the Coordinating Minister for Maritime Affairs and Investment, dated August 2010, would prove that the Government of Indonesia had already determined the establishment and control of sales prices of nickel ore in the domestic market, seeking ways to increase the effectiveness of such control.

651. He also pointed to the verification report to conclude that, through the obligation imposed on miners for priority sales to the domestic market, the Government of Indonesia would guarantee an excess of supply in the domestic market, putting downward pressure on nickel ore prices, guaranteeing the supply of nickel ore to the downstream chain at prices below adequate remuneration.

652. In addition, he emphasized that the Government of Indonesia would not have presented the requested information regarding the prices and sales volumes of nickel in that country's domestic market and would not have responded to questions from the SDCOM team of technicians regarding the prices and sales volumes of nickel in the domestic market of that country; relating to the Morowali Memorandum of Understanding", 2013; relating to "stipulation of reference guideline for selling or renting plots and/or industrial buildings in Industrial Estates at the suggestion of the Industrial Estate Committee"; relating to the Cooperation team for the China-Indonesia integrated industrial estate; and relating to the Decree of the Minister of Industry of Republic of Indonesia Number 432/M-IND/Kep/7/2014. In these cases,

653. The GOI pointed out, in its statement regarding the use of available facts, that, contrary to what was stated by SDCOM, it would have provided the RKAB in the 2nd request for additional information, and on the first day of verification it would have provided the RKAB in a searchable version (OCR). He also informed that he had forwarded the requested production and sales reports, as well as environmental studies. Regarding the minutes of the meeting, he informed that he partially provided the information, and 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 creation of the IMIP, that it was signed by private entities, so it does not have access to the document. The GOI and the Government of China were only present during the signing, but did not receive copies. Finally, he pointed out that the report on external investments in the IMIP was provided within the agreed period on the fourth 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 verification and explained about the volume of nickel ore produced, as well as the MOMS collection system. He reiterated that the HPM, before the 2020 amendment, was used only for royalties, in accordance with applicable legislation, and an explanation was provided on the formula used, and such explanation should be considered.

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 nickel smelters in Indonesia are not necessarily linked to the Indonesian stainless steel industry, as smelters have the opportunity to sell their products worldwide. What is described in paragraph 412 of the Technical Note only describes the mechanism to ensure that export restrictions are in line with miners' commitments to establish smelters. In this way, such provisions do not put any additional burden on the miners, on the contrary, it gives them the opportunity to earn the necessary money to build the smelters.

658. The GOI also disagrees that the provisions on Letters of Credit constitute export restrictions. Data from the Indonesian statistical agency corroborate this fact, which indicate that exports of low grade nickel ore grew significantly from 2017 to 2019.

659. Comments were reiterated on the fact that the HPM price prior to MEMR Regulation 11, 2020, would only be used for the calculation of royalties, that this would be a floor price and that Article 2 of MEMR Regulation 7, 2017 , should be read in conjunction with Article 3. The provisions of Government Regulation No. 23 of 2020 would be regulated by MEMR Regulation 7 of 2017. He reiterated that the HPM is calculated by each company, with the HMA being determined every month.

660. He also considered that the comments of Mr. Bahlil Lahadalia brought up in the Technical Note took place in a context of mediation between miners and smelters, as at the end of 2019 a number of smelters would have been verified by the MEMR, which raised doubts about whether or not they could export "law grade nickel" (sic). In normal situations, the government does not interfere in transactions, and the price is freely established.

661. For the GOI, SDCOM failed to present solid evidence in the legislation, or from actions indicating the obligation to use the HPM as a transaction price, if miners and smelters use the HPM for the transaction, it does not necessarily indicate that the GOI interfered in this negotiation. He added that the GOI does not oblige miners to sell their products to stainless steel producers, they are free to process the nickel ore or cooperate with any other smelters.

662. He pointed out that the monitoring by the GOI of a sector that impacts the environment, such as mining, and the fact that companies in this sector must follow regulations, does not mean that such companies are a 'public body'. In addition, obligations with respect to nickel ore only require that ore be processed to a certain grade, not sold to stainless steel producers. The different royalties applied to nickel and processed ore are not incentives for smelters, but only a measure of fairness, considering that building a smelter requires considerable commitment and investment.

663. According to the GOI, in analyzing the effect of the measures, SDCOM highlighted the oversupply in the nickel ore market, and the effect of this on prices. However, for the GOI, no proper analysis was carried out or evidence was found about the existence of control over mining companies to sell 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 'public body', the passage "must be an entity that possesses, exercises or is vested with governmental authority" is fundamental, being necessary an examination of what exactly is the direction given by the GOI to the miners. The GOI only requires that the value of nickel ore be increased up to a certain grade, no obligations beyond that are established, for example, to supply the ore to the stainless steel industry. Miners would, according to the GOI, have full control over their decision to sell - there are no sanctions for miners who do not wish to sell due to price, which would be a strong indication that there is no 'public body' in this context.

665. There would be no instruction or mandate given by the GOI to the miners. The Indonesian Constitution gives the State the right to control the resources in its territory, and in the case of nickel ore there is only this processing and purification requirement.

666. Regarding the designation of sectors as National Vital Objects, it is a matter of establishing the "internal security system", in accordance with Article 4 of Presidential Decree No. 63 of 2004, which is also ensured by the Indonesian police. Therefore, this question has no implication in the analysis of the financial contribution.

667. The GOI further argued that:

publicly available information taken from PT ANTAM official website (https://antam.com/en/products/nickel) as excerpted below: "ANTAM conducts open pit mining method with a selective mining to produce high grade and low grade nickel ore. Nickel ore is used for feed for Pomalaa ferronickel plant as well as being sold to domestic market".

In addition, we also present a public available information taken from PT Vale Indonesia official website (http://www.vale.com/indonesia/EN/business/mining/nickel/nickelindonesia/Pages/default.aspx) as

follow: " At the Sorowako Block, PT Vale Indonesia produces nickel in matte at its integrated mining and processing facilities" (emphasis in original).

668. The GOI highlighted that although SDCOM pointed out that the GOI is responsible for 27 percent of nickel ore production in Indonesia, it is very doubtful that ANTAM and Vale Indonesia together have significant effects for the domestic market, considering that both companies have the capacity to process ores internally and are not dependent on the market.

669. Regarding the forecast for approval of corporate changes, the GOI argued that paragraph 2 of article 64 of MEMR Regulation No. 7, of 2020, provides that the GOI will conduct an assessment of the company's performance for the approval of changes in the corporate structure and approval in Directors and Commissioners, which is an objective criterion, which implies that this forecast does not have any government control over mining companies. The GOI also asserted that, as the management structure is closely related to the exploration right granted by the government, it is natural that the government needs to be aware of the composition of management in mining companies.

670. Accordingly, the investigation should be terminated for lack of financial contribution under the terms of the SCM Agreement.

671. With regard to SDCOM's claim regarding the creation of a normative and non-normative framework that, together, would constitute an explicit and affirmative command with the objective of achieving the state's intention to increase the value of the raw mineral, the GOI argued that MEMR Regulation No. 25 of 2018 provides explanations for the minimum level of purification of the raw mineral, such that after reaching the minimum level of purification, processed nickel products are eligible for the export market. It added that "SDCOM shall interpret Indonesian domestic processing obligation as the Indonesian support to the stainless steel industry.".

672. With regard to the specificity and SDCOM's allegation that the GOI did not provide a list by sector and region of companies that benefited from the program, the GOI asserted that it does not have legal instruments that would describe the existence of a supply program of nickel ore, and therefore, given the non-existence of the program, there would be no solid basis to provide any description of the nature, mechanism or any statistics related to it. The legislation would only oblige the minimum level of purification, nothing with regard to acquisition for less than adequate remuneration.

673. It added that access to Indonesian nickel ore in Indonesia is not something the GOI governs, as none of the factors required by Article 2.1(c) of the SCM Agreement exist. As decided in the case US - Countervailing Measures (China), the inherent characteristics of nickel ore cannot be used as a basis for establishing specificity.

674. It reiterated that it does not establish prices, and that the HPM, even after the 2020 Regulation, serves as a minimum price, not a maximum, and the transaction price may be higher.

675. The GOI concluded by reaffirming the DS 194 position that export restrictions do not constitute a financial contribution under the Agreement.

676. PT IRNC, in its final statement of October 14, 2022, pointed out that it disagrees with SDCOM's position for the reasons already explained in its statement of September 9, as well as in light of the explanations presented by the GOI in its final statement of 13 of October. In the opinion of PT IRNC, if the HPM was already constituted in the reference price of the transactions prior to the publication of MEMR Regulation nº 11/2020, there would be no need for the issuance of said regulation.

677. The company also added that the Decree of the Coordinating Minister for Maritime Affairs and Investment nº 108/2020, mentioned under paragraph 431 of the Technical Note, should not constitute the normative framework taken into account in the investigation, as it came into force after of the investigation period.

678. Regarding the proposed adjustment in the calculation of the benchmark, the IRNC clarified that its suggestion only aimed to capture the extraterritorial effect of rising export prices from the Philippines, according to the very logic exposed by the Petitioner. He also pointed out that he did not understand SDCOM's consideration regarding its alleged lack of cooperation when it suggested an adjustment in the benchmark (paragraph 560 of the Technical Note), as its manifestation would have been accompanied by all the data.

679. The petitioner, in her final statement of October 14, 2022, reiterated the terms and conclusions of SDCOM in the Technical Note on Essential Facts, and stated that no changes could be made to the calculated amounts.

4.2.3.1.8 Comments from SDCOM

680. Regarding the comments in response to letter SEI/ME No. 228693/2022/ME, it is noted that, during the on-site visit, only the MOMS system was displayed, and then, immediately afterwards, the SDCOM team requested to see the data source. As stated in the on-site visit report, paragraph 35:

"The SDCOM team recalled that it would be necessary not only to inform the total, but to explain how the total was calculated, presenting the calculation memory line by line (especially for the year 2019, in which the data came from the system and manual reports)".

681. Considering that the GOI was unable to present such calculation memory, which was possible, considering that it is information from the RKAB, the use of facts available in this area remains justified.

682. In addition, it is recalled, as reported in the on-site visit report, the serious gaps in the information provided, which prevented the proper verification of the data:

On the last day of the verification, the SDCOM team reminded the GOI that clarifications from the MRME on prices and volumes of nickel in the Indonesian domestic market had been pending since the 1st day of the verification. Furthermore, the team indicated that it would like to ask additional questions based on the documents presented. The GOI representative reported that he coordinated with the MRME and said that the MRME informed him that they were ready to provide the data, but not that day, perhaps the following Monday, the 30th, by which time the on-site verification would already be closed . The SDCOM team recalled that not only did it have to receive the information during the verification, but it also had to check the information, and, as informed on the 1st day,

683. Regarding the use of HPM in addition to royalties, the fact that the law provides that it is used for royalties does not mean, a contrario sensu, that it would not be used for transaction prices. Otherwise, the existence of strong evidence in this direction was demonstrated. Furthermore, Article 2 of MEMR Regulation No. 7/2017 expressly states that license holders must follow the HPM price.

684. Also on this point there was no cooperation from the GOI, which has sales information for each producer and could prove the price actually paid. Regarding the fact that SDCOM would have mentioned the Decree on the HPM price supervision team issued already within the scope of MEMR Regulation nº 11/2020 (therefore, outside the period of investigation), and not under the aegis of the previous Regulation, as already mentioned by this authority, the lack of collaboration by the GOI, which did not present any document from such a supervisory team, prevented the authority from assessing the context of the team's performance. It is reasonable to believe that, even though the team was formally created in a given month, it may have acted in past factual situations, within the investigation period, even more so considering that the GOI expressly pointed out during the on-site visit that complaints were received about the prices charged - obviously such complaints would be about past facts. It should be noted that such Decree is just one of several elements in the context, not being in itself decisive for SDCOM.

685. Despite GOI's claims that smelters are free to determine prices, there are several elements in the case file to the contrary. It is cited, for example, the existence of statements by employees of the GOI itself in this regard. It should be noted that such statements were not contested by the GOI in its final statement, but the GOI only brought the context in which they were said, which does not erode 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 (for example, through the RKABs), and could have provided them so that SDCOM would be able to analyze such allegations. By not doing so, SDCOM sought to fill in the gaps. The GOI cannot now claim that there is a lack of evidence that the way in which the HPM price is used as a transaction price or even claim that the edition of the regulation in 2020 would prove that previously the HPM prices were used only for royalties, and the GOI holds the evidence that would allow SDCOM to assess concretely - the GOI having chosen not to provide it.

687. Finally, it should be noted that the GOI states that the fact that miners and smelters use the HPM does not indicate that the GOI interfered in this negotiation, however it is reiterated that not only the GOI statements, as well as the legislation itself (article 2 of Regulation MEMR nº 7/2017) expressly states: "Holders of Metal Mineral Production Operation IUP in selling Metallic Minerals or Coal (...) produced must be guided by the Metal HPM". Furthermore, the GOI had several opportunities to present the evidence it considered useful in the matter, including during the visit. Relevant even though the GOI itself indicates the only alternatives for miners - either they process the ore or cooperate with other smelters - there is no other possibility.

688. Thus, given the lack of collaboration in this area, available facts were used for the purpose of final determination, and this authority has ample elements to indicate the use of the HPM price for nickel transactions, as indicated in item 4.2.3.1. 1.3, above. It should also be noted that the European Union, in an investigation into the same sector and with the same producers, also reached the same conclusion .

689. Regarding PT Antam's sales, it should be noted that this point was not decisive for the authority. Furthermore, it is established in the case file that PT Antam owns, together with the protester itself, a mining company, for which no information was provided, and its existence was not even revealed to this SDCOM.

690. With regard to the comments on the benchmark suggested by the petitioner, Philippine export price to China, it is noted that such benchmark was chosen based on available facts. This situation will be further examined in the next section of this document. SDCOM understood that prices in the Philippines are an adequate benchmark, considering that they represent real market prices for nickel ore, which reflect circumstances of a free market, and, for this same reason, also reflect the competitive pressures of other markets, such as the Indonesian market itself, where there is a ban on exports.

691. In this context, it has already been decided even within the scope of the WTO that the external prices of the investigated country used as a benchmark do not need to be free of 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 such that recourse to out-of-country prices is warranted. At the same time, the market from which the benchmark is selected need not be completely free of any government intervention. The Appellate Body has found that the concept of "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 determine whether a given benchmark adequately relates to conditions in the investigated market, as required by the ASMC, nothing in Article 14(d) indicates that the investigating authority should investigate the causes of the difference between the benchmark and the investigated financial contribution.

693. Furthermore, the methodology proposed by PT IRNC, weighted average between the domestic price in Indonesia and the export price in the Philippines, shows not only a lack of knowledge of WTO jurisprudence on the part of the protester, but also demonstrates an intrinsic lack of logic . As is known, the OSC has repeatedly stated that the use of benchmarks external to the investigated country is only authorized when it is assumed that domestic prices in the investigated country are distorted, pursuant to art. 14(d) to the ASMC. Thus, a benchmark that would combine prices in the investigated country and external prices defies logic, as a rule, it would only be appropriate to use external prices in a scenario of disrepute of internal prices.

694. Even disregarding such conditions, which is done by epitrope, PT IRNC's proposal remains materially and mathematically absurd to have 72% of the weight for Indonesian prices as a parameter to carry out a comparison with the Indonesian prices that are the object of the program . It should also be noted that a benchmark will always be a proxy, and that it must be reasonably adequate. It is important to point out that, although the IRNC released such comments, it did not quantify or in any way try to bring to the file any evidence that would prove its allegations, or even that would eventually enable the authority to adjust the chosen benchmark or even use another benchmark. And here it is worth clarifying, in response to the final manifestation of PT IRNC, that SDCOM understands that way because the company did not bring any concrete data capable of eroding the Philippines benchmark, nor did it bring any other minimally reasonable benchmark - considering that the benchmark proposed by PT IRNC is absolutely illogical

(average between prices in Indonesia and the Philippines) , by using distorted pricing elements. Thus, the company could have substantiatedly brought any other benchmark (not illogical) that it considered more appropriate, which was not done.

695. Thus, it is reiterated that PT IRNC's disapproval is not consistent with its lack of collaboration in this regard, even more so in the case of a benchmark that is normally only obtained in publications with restricted access, to which the authority does not have access . In this context, SDCOM used for the purposes of final determination the prices of exports from the Philippines to China, information brought to the file by the petitioner and considered adequate by the Brazilian authority and, coincidentally, also by the European authority.

696. Regarding the GOI's comments, it is pointed out that the RKAB provided in the 2nd supplementary information were received in the Bahasa language, in non-compliance with the requirements of the applicable legislation and as the GOI had already been alerted several times. Including, in the initial opinion itself, there was already disregard for the document because it was presented only in Bahasa. Regarding what was presented during the on-site visit, it should be noted that the presentation of the version with OCR is not sufficient to meet the legal requirements, in addition, the GOI did not file the documents with the SEI, as was orally warned and was expressly stated in the minutes of the visit. Thus, for all practical purposes of the investigation, the requested RKAB was not provided, which is another element (but not the only one) that led to the use of available facts.

697. With regard to production and sales reports and environmental studies, the same comment should be made regarding the legal requirements for data acceptance by this SDCOM. As for the minutes of the meeting, as the GOI stated, there was partial collaboration, not all the minutes were provided, and the minutes that were provided are called "summary of minutes", that is, they are apparently summaries. Regarding the reports of external investments in the IMIP, contrary to what was stated by the GOI, no additional deadline was agreed for the supply of such documents, and this fact was repeatedly informed by SDCOM to the GOI, as stated in the minutes of the meeting signed by both the parts.

698. Regarding the GOI's comments on the production volume of nickel ore, as the SDCOM team explained during the on-site visit, it is not enough to present the number, since in the validation process it is necessary for the party to explain the source of the data and prove the accuracy of the source, which the GOI was unable to accomplish. From the visit report:

The SDCOM team recalled that it would be necessary not only to inform the total, but to explain how the total was calculated, presenting the calculation memory line by line (especially for the year 2019, 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's comments have already been issued, not having been able to change the understanding of this authority. It should be noted that the GOI's explanations about the formula were used, as can be seen in this section. The fact that the HPM is calculated by each company has no impact on SDCOM's conclusions, given that the crucial "HMA" element of the formula is determined by the GOI. From the HMA, obtaining the HPM is a mere arithmetic operation.

700. Regarding the provisions on Letters of Credit, the fact that exports have supposedly increased (no link or concrete source of the data was presented) does not eliminate the requirements for 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 (PEB);

d) the L/C would be subject to audit by the Ministry of Commerce; It is

e) exports that do not meet L/C requirements would not be permitted.

701. Although it is normal to monitor companies and regulate sectors, as mentioned in this Opinion, the regulations and monitoring of the GOI go far beyond mere monitoring and regulation for the protection of the environment - but enable the GOI to determine the objectives of the mining companies and influence on business decisions (even on decisions that tend to go against the interest of the company itself). In this sense, the analysis carried out by SDCOM on the existence of control took into account several elements, as detailed in the relevant section, using all the verified information presented by the

parties in the case file and also taking into account the available facts, given the lack of cooperation of the parties. It cannot be said that companies have control over their decision to sell because there is no express sanction for miners who do not wish to sell due to the price, as this is a scenario of controlled prices and export restrictions - if companies that do not carry out the sale under the conditions imposed by the GOI, will end up perishing, as there is no other alternative. Thus, SDCOM reiterates its conclusion regarding the existence of control and the existence of a "public body" in the context of the supply of nickel ore. The issue of designation as National Vital Objects is yet another accessory to highlight the status of mining companies and the importance given to it by the GOI. On the approval of corporate changes, not only did the GOI not present any elements that would show that such a performance assessment would obey objective criteria, as well as, in any case, it is reiterated that the mere existence of a forecast approval of corporate changes, combined with the mandatory disinvestment and its order of priority are elements that show control by the GOI. The Government being aware of the composition of management is absolutely different from the fact that the Government needs to approve any changes.

702. GOI's consideration of royalties does not seem to make sense, as establishing a mining company and extracting nickel ore also requires commitment and considerable investment. Charging a lower royalty for processed product is a government policy choice that encourages nickel processing and increased value added, in line with the GOI's stated objectives.

703. Regarding the information brought from PT Antam and PT Vale, the GOI did not explain how the allegations brought would affect the analysis carried out, given that both companies mine nickel and are forced to process it internally due to the framework created by the GOI, contributing to the internal offer. The figure of 27 percent quoted by the GOI was obtained, as already mentioned, based on the best available information, as investigated by the European Union. In this context, it is reasonable to believe that this percentage represents a significant effect on the domestic market.

704. The GOI's allegations about MEMR Regulation No. 25 of 2018 have already been repeatedly answered, and this SDCOM points out that the GOI itself admitted support for the stainless steel industry in its final statement, in verbis, "SDCOM shall interpret Indonesian domestic processing obligation as the Indonesian support to the stainless steel industry.".

705. Regarding the fact that the GOI did not present a list by sector and region of the companies that benefited from the program, this was yet another element of the GOI's lack of collaboration within the scope of the program. Although the GOI argues that there is no program, and therefore supposedly there is no such list, in which this SDCOM frontally disagrees, as already mentioned in this Opinion, various other crucial information denied by the GOI was requested under this program, such as the RKABs, the information on transactions in the nickel market, information on sales volumes, etc.

706. Regarding the jurisprudence cited in the case US - Countervailing Measures (China): "Thus, for example, where a subsidy program operates in an economy made up of only a few industries, the fact that those industries may have been the main beneficiaries of a subsidy program may not necessarily demonstrate 'predominant use'.", SDCOM did not take its conclusion of predominant use at random, but 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 GOI members of the highest echelon, such as the president himself Mr. Joko Widodo:

Joko said that Indonesia can ensure the security of foreign investment, which is conducive to the development of Indonesia's economy. He thanked Chinese enterprises for building smelters and bringing smelting technology, which has greatly increased the added value of Indonesia's nickel industry. By processing nickel ore into ferronickel, the added value is increased by 14 times, and then processed into stainless steel, the added value is increased by 19 times. Joko also said that he believes that people around him can also benefit from the development of the industrial park and have access to job and business opportunities.

4.2.3.1.9 Conclusion

707. In short, SDCOM was able to confirm, with a view to final determination, the evidence presented at the beginning of the investigation.

708. It is reiterated that the lack of responses by the selected companies and the partial collaboration of the GOI in the aforementioned terms prevented the nickel market in the country from being evaluated, and consequently, that the nickel supply conditions were fully evaluated.

709. The various measures in relation to nickel, in particular the measures to restrict exports, control and encourage the construction of smelters, according to elements of the file, confirm the indications of support, on the part of the GOI, for the establishment of a steel industry stainless steel, effectively guaranteeing an artificial competitive advantage through the undue reduction of input costs, especially those investigated here, coal and nickel.

710. Therefore, in view of the already exposed lack of collaboration, based on the information contained in the case file, it was concluded that there is evidence indicating the existence of subsidies in the supply of nickel ore for remuneration lower than adequate.

711. Such an incentive is configured as a subsidy, since it involves a financial contribution by the government or public body or, alternatively, a financial contribution by private entities instructed or entrusted by it, under the terms of items "c" and "d", of item II, of art. 4 of Decree No. 1,751 of 1995, since the investigated companies now have additional resources, since the cost of acquiring nickel ore is lower than what they would have to incur if they obtained these inputs at market prices.

712. Considering that the evidence considered in this investigation expressly points out in the legislation the existence of policies related to nickel ore, in order to favor stainless steel producers, considered a priority in the government's plans, it is also configured as specific subsidy of law, pursuant to art. 6, caput, of the Brazilian Regulation, and therefore subject to the application of compensatory measures.

4.2.3.1.10 Calculation

713. With regard to the calculation, considering the complete lack of response from the producers/exporters and the gaps in the government's response, the facts available in the case file were used.

714. Regarding the amount of nickel ore involved, data from the 2017 IMIP report were used, which indicate a production of nickel ore (Ni ore) and pure nickel of, respectively, 3,082,000.0 tons and 32,069.38 tons, as well as an average concentration of Nickel ore content of 1.9%. Thus, a consumption of Ni 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 prices practiced in the purchases of the investigated companies and the benchmark for comparison.

716. Regarding the prices practiced, as already mentioned, these are controlled by the HPM for the entire Indonesian market, and it is reasonable to believe that this would be the primary source of the prices practiced. However, there was an absolute lack of cooperation from the parties in this context, which did not provide HPM prices for the period, despite being repeatedly urged, as described in section 4.2.3.1.1.3, above. Thus, based on reports from the company installed at IMIP, Nickel Mines, in particular its Quartely Activity Reports, an average cost of nickel ore practiced in Indonesia (that is, controlled by the 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 governs:

(d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of 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 must be considered. However, it is settled case law that the authority may seek benchmarks in other countries when it is believed that prices in the investigated country are distorted:

446. In short, we are of the view that an investigating authority may reject in-country private prices if it reaches the conclusion that these are too distorted due to the predominant participation of the government as a supplier in the market, thus rendering the comparison required under 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 allowing the rejection of in-country private prices as benchmarks through the application of a per se rule based on the role of the government as the predominant supplier of the goods. Rather, the Panel correctly interpreted Article 14(d) of the SCM Agreement as requiring that the issue of whether in-country private prices are distorted such that they cannot meaningfully be used as benchmarks is one that must be determined on a case-by- case basis, having considered evidence relating to other factors, even in situations where the government is the predominant supplier in the market. (emphasis added)

719. There are, in the Indonesian market, several elements that point to the distortion of domestic prices, as already extensively seen in this document: prices are controlled by the HPM factor, there is a ban on the export of nickel ore, as well as the obligation to processing to maintain mining licenses, royalty incentives, etc. This incentive framework, in the context of the added value increase policy, flooded the domestic nickel market with supply driven by GOI policies, which led to price depression, affecting the entire Indonesian domestic market.

720. Therefore, SDCOM considered the nickel ore market in Indonesia to be distorted, using an external benchmark. In this context, the Philippines, since the ban on exports of nickel ore in Indonesia, grew in production volume and exports to the main market in the world, which is China, becoming the main supplier of nickel ore imported from China. Moreover, it is also an Asian country not far from China, whose nickel ore has the same properties as Indonesian ore and similar concentration of nickel, in addition to being mined according to the same open pit process and having nickel ore with levels of similar humidity, as both countries have similar climates. For these reasons, this authority considered the use of Philippine prices to be reasonable and appropriate.

721. Once the benchmark country has been established, data from the publication Asian Metals point to the market cost (export from the Philippines to China) of nickel ore at $53.88/t for the period investigated.

722. Considering this difference in the amount of nickel used to produce the product under investigation, using the available facts, as informed by the petitioner, it was verified, through a pass-through system considered adequate by SDCOM, as stated in document submitted by Aperam in the case file 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 and SDCOM surveys.

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 at the beginning of this investigation, considering that all of the petitioner's arguments regarding program "J" of the petition - "Supply of electricity for less than adequate remuneration" - was based on in coal subsidies for electricity production - price caps and domestic market obligations (DMO), SDCOM opted to consolidate both programs into one. In this way, an attempt was made to simplify the logical presentation of information, facilitating the broad defense of the interests of all interested parties,

724. Thermal coal and metallurgical coal are fundamental and extremely relevant raw materials in all stages of NiPI production, that is, in energy generation, drying, calcination, pre-reduction and reduction of NiPI ore. Nickel. It is also noteworthy that the IMIP itself claims that coal is the source of its electricity (from the IMIP report, 2017, page 128: "Coal is the source of energy for IMIP Park"), which confirms the evidence used at the beginning of the investigation.

725. During the course of the investigation, the existence of policies regarding coal was also confirmed, most notably the domestic market supply policy - Domestic Market Obligation - DMO and the maximum price policy for electricity.

4.2.3.2.1.1 Domestic Market Obligation - DMO

726. Under the Domestic Market Obligation (DMO), it is also regulated by Government Regulation nº 23/2010 (art. 84) and nº 96/2021 (art. 157), which govern which coal companies must fill the internal quota before they can export:

Article 84

(1) Holders of Mining Business License (IUP) for Production Operation and Special Mining Business License (IUPK) for Production Operation must prioritize the needs of minerals and/or coal for domestic purposes.

(2) The Minister stipulates the domestic need for mineral and coal as referred to in paragraph (1) includes the need for the domestic processing industry and direct use.

(3) Holders of Mining Business License (IUP) for Production Operation and Special Mining Business License (IUPK) for Production Operation may export minerals or coal produced after the fulfillment of domestic mineral and coal needs as referred to in paragraph (1).

(4) Further provisions concerning the procedure for prioritizing mineral and coal needs for domestic purposes shall be regulated by a Ministerial Regulation.

727. At ministerial level, it was reproduced according to MEMR Regulation No. 25 of 2018, article 13: "Mineral and Coal Mining Business Entities are obliged to sell minerals or coal to fulfil the supply of mineral and coal for the domestic demands", and the MEMR Regulation No. 7/2020, in the same vein, would also reaffirm the DMO.

728. Therefore, coal producers can only export once the internal market is satisfied. This internal market, in turn, is divided into two elements: 1) coal as an industrial input; 2) coal as an input for energy production.

729. The GOI reported that, every year, the MEMR analyzes the internal demand for coal, considering, for example, demands from the PLN, the cement industry, etc. It is based on this analysis that the BMD level is established. MEMR Decree No. 261 of 2019 established the DMO at 25% (25% of the company's production has to be sold domestically).

730. During the on-site visit, the GOI informed that there is reconciliation of data from the company and the government between what was sold internally and production, through the reports received on a quarterly basis. For example, if the company has 1 million tons/year as established in its production plan, and there is a DMO of 25%, it means that the company must internally supply 250,000 tons/year, 62,5000 tons/quarter. The GOI then compares the report received quarterly with the production plan achievement target.

731. The GOI also reported that the DMO has been complied with by the companies and that, in cases where some coal companies did not comply with the DMO, domestic demand was already met.

4.2.3.2.1.2 Maximum coal price policy

732. During the course of the proceedings, the existence of a maximum price policy for coal sold for electricity was confirmed. This policy comes in particular from MEMR Decree No. 1395/k/30/MEM/2018 and Regulation 261/K/30/MEM/2019, and establishes the maximum price of coal when sold for use in public electricity (or electricity for public interest purposes, as will be seen later) at $70/t.

733. That said, considering the lack of cooperation from the companies investigated and the gaps in the information provided by the Indonesian government, as notified in Official Letter SEI No. 228693/2022/ME, in particular the absence of RKABs, which would allow the assessment of production volumes and transaction prices of coal, and the absence of information about domestic consumption, the authority had no alternative but to use the facts available in the process, pursuant to art. 79 of Decree No. 1751 of 1995.

734. The facts available in the process, confirmed in the on-site visit, indicate that Regulation MEMR nº 7/2017, most recently amended by Regulation MEMR nº 11/2020, establishes in its art. 2nd the obligation of companies holding charcoal production licenses to follow the Harga Patokan Batu Bara (charcoal reference price) - HPB in their sales of the product:

Article 2

(4) Holders of Metal Minerals Production Operation IUP, Coal Production Operations IUP, Production Operations Metal Minerals IUPK, and Coal Production Operation IUPK in selling Metal Minerals or Coal products must be guided by Metal HPM or HPB.

735. Such HPB price is determined by a formula established in the Decree of the Director General of Mineral and Coal No. 515.K/32/DJB/2011. Article 1 of that Decree also provides important definitions and Article 3 defines the variables involved:

Article 1

In This Regulation of Director General:

1. Coal Benchmark Price, hereinafter to be called as HPB, means Coal Benchmark Price for steam (thermal) coal and coking (metallurgical) coal.

2. Primary HPB (price marker) means Coal Benchmark Price for 8 (eight) primary coals.

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 from coal price index for previous month.

5. Steam (thermal) coal HBA means average price from steam coal price index (thermal) for relevant month calculated in equivalent coal quality of 6322 kkal/kg Gross as Received (GAR).

Article 3

(1) Formula for steam (thermal) Coal Benchmark Price as stated in Article 2 paragraph (1) shall be a benchmark in calculating steam (thermal) Coal Benchmark Price for primary coal and other coal types.

(2) Primary Coal Benchmark Price as referred to in paragraph (1) shall be determined using 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 MINERAL AND COAL

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]

K (i) = (100 - Coal Calorific Value (i)/ 6322 [Fraction]

A (i) = (100 — Coal Moisture Content (i) / (100 — 8) [Fraction]

B (i) = (Coal Sulfur Content (i) — 0.8) * 0.4 [USD/ton]U (i) = (Coal Ash Content (D - 15) * 0.4 [USD/ton]

(i) = 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]

Onde:

HPB Marker (i) = HPB from coal price marker 8 [USD/ton]

K (i) = Coal Calorific Value (i) / 6322 [Fraction]

A (i) = (100 - Coal Moisture Content (i) / (100 — 8/FKA(i)) [Fraction]

FKAG(i) = (((100,--3)/(100 - Coal Moisture Content(i)

Coal Moisture Content (i) + (100 — 8))/100 [Percent]

B (i) = (Coal Sulfur Content (i) — 0.8) * 4 [USD/ton]

U(i) = (Coal Ash Content (I, — 15) * 0.4 [USD/ton]

(4) = 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 the HPB formula. In the MEMR Regulation of director general of mineral and coal nº 480K/30/DJB/2014, the following formula is established for HPB:

1) Calorific value > 4200 kcal/ kg GAR

HPB FC/RC = FP* ((HBA*K*A) - (B + U))*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 £ 4200 kcal/ kg GAR

The. TM < 35%

HPB FC/RC = FP* ((HBA*K*A) - (B + U))*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)

4. K = calorific value of coal (fraction)

5. A = (100 - water content of coal)/ (100 - 8/FKA) (fraction)

6. FKA = (((100 - 8)/(100 - water content of coal))* water content of coal)+(100 - 8))/100 (USD/ ton)

7. B = (sulfur content of coal - 0.8)*PB (USD/ ton)

8. U = (ash content of coal - 15)*PU (USD/ ton)

9. PB = deduction of sulfur content (USD/ ton)

10. PU = deduction of ash content (USD/ ton)

11. PS = multiplication of Sodium content (fraction)

B. TM ^{3} 35%

HPB FC/RC = FP* (HBA*K*A)*PS (USD/ton) (Emphasis added)

739. Thus, it is noted that the most recent formula incorporates a 'deduction factor'.

740. From the foregoing, it appears that the Harga Batubara Acuan - HBA is one of the elements of the HPB. The HBA is published monthly by the GOI and is established using 4 different indices. For example, Ministerial Decision No. 2 K/30/MEM/2020 established the reference price for coal - HBA - for January 2020 at 65.93 USD/ton.

741.It is also pointed out that Government Regulation No. 8, of 2018, amended Government Regulation No. 23, of 2010, determining, in its Article 1, the inclusion of Article 85A:

Article I.

Article 85 a

The price set by the Minister is valid for the same coal specifications from coal providers for domestic interests.

Determination of a separate coal selling price by the minister with

pay attention to the public interest.

742. In view of the total absence of collaboration from the producers/exporters and the partial collaboration of the GOI, this SDCOM understands that prices for industrial use must always follow the HPB.

743. Thus, there are two aspects to prices for coal in Indonesia: 1) the price for public interest purposes, limited to 70 USD/t; 2) HPB prices, calculated by each company based on the HBA.

4.2.3.2.1.3 The framework of the IMIP

744. The lack of collaboration from the investigated company installed in the IMIP prevented the authority from having access to information and documents in the context of the program and the framework of the IMIP under the two aspects, in order to verify what would be, in fact, the price of purchase of coal purchased by IMIP. The lack of cooperation from the IMIP companies also did not allow the authority to have access to documents such as the Electric Power Supply Business Plan (RUPTL), which could also clarify this issue.

745. The GOI's own responses in this context also proved erratic. In the response to the questionnaire, at one time the government stated that the ceiling of 70 USD/t applied to "domestic power plants" (page 41 of the response to the GOI questionnaire), at another time it stated that it applied only to the PLN. Questioned about such inconsistency multiple times, the GOI always referred to the text of the Regulation, without presenting any other evidence that it demonstrably had in its possession (such as the coal transaction prices reported in the RKAB).

746. Thus, unable to verify such a condition both by the company and by the government, the facts available in the process were resorted to. SDCOM was able to find a statement from the GOI itself which points out that there would be a framework for the IMIP within the scope of energy for public purposes:

On the occasion, Wanhar also revealed the requirement for business area holders (wilus) to have an Electric Power Supply Business Plan (RUPTL). According to him, currently there are three wilus holders on the island of Sulawesi besides PT PLN (Persero), namely PT Indonesia Morowali Industrial Park (IMIP), PT Karampuang Multi Daya (KMD), and PT Sultra Energi Indonesia (SEI). Of the three wilus holders, only PT IMIP has an approved RUPTL.

"Two other wilus holders, namely PT KMD and PT SEI, must immediately prepare the RUPTL as the basis for implementing the business of providing electricity for the public interest," Wanhar asserted.

747. There are also two official GOI presentations · which list the IMIP as a producer of electricity for public interest purposes, as the IMIP, with the RUPTL document, is included in electricity for public purposes, as stated by the GOI itself:

<<IMAGE 5 HERE>>Figure 1 - Presentation on the energy sector for public purposes

748. The IMIP is classified as "pemegang wilayah usaha penyediaan tenaga listrik", "electricity supply business area holder", inserted in the national plan - note in figure 1, in the table on the right, that on the RUPTL it is expressly highlighted "PLN AND NON PLN", and also "Basic implementation of electricity supply business for the public interest" (emphasis added). In the same presentation, the GOI also clarifies certain obligations of the "electricity supply business area Holder", such as the IMIP: ""Electric power transmission businesses are obliged to open up opportunities for joint utilization of the electric power transmission network (lease mechanism/ power wheeling) for the public interest by taking into account the capacity of the transmission network and the Grid Code".

749. It cements once and for all the question about the framework of the IMIP in the context of energy for the public interest when consulting articles 10 and 11 of law nº 30/2009:

Article 10

(1) Public power supply business as intended by Article 9 item (a) shall include the following types of business:

The. power generation;

B. power transmission;

w. power distribution;

and/or d. power sale.

(2) Public power supply business as intended by section (1) may be conducted in an integrated manner.

(3) Public power supply business as intended by section (2) shall be conducted by 1 (one) entity within 1 (one) business area.

(4) Limited business areas as intended by section (3) shall also apply to public power supply 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 self-reliant communities engaged in the field of power supplies.

(2) State-owned entities as intended by section (1) shall receive first priority to conduct public power supply business.

(3) The competent Government or regional governments shall allow opportunities to region owned entities, private entities, or cooperatives to conduct integrated power supply business in areas where power service is not yet provided.

(4) Where no region-owned entities, private entities, or cooperatives are able to supply power in those areas, the Government must commission a state-owned entity(ies) to supply power. (emphasis added)

750. It is important to note that, in the original in Bahasa, the term for the public interest - "kepentingan umum", is used both in article 11 of Law 30/2009, and in Decree MEMR 1395K/30/MEM/2018, when it establishes the ceiling of 70 USD/t for coal, not proceeding with the GOI's interpretation that only the state-owned company PLN would fit this ceiling, given that Law No. 30/2009 itself explains that the list is much broader.

751. It is also clear that IMIP entered into an energy sale agreement with PLN, in further evidence that its energy is for the public interest. SDCOM regrets that the GOI did not provide such relevant information, which it certainly had:

Last year, IMIP signed a power purchase agreement with state electricity firm PLN that paved the way for the latter to buy excess electricity of 5 megawatts (MW) from IMIP's power plants at the Morowali industrial complex.

752.Thus, the elements in the records, both by legislation and by the documents of the GOI itself, that is, elements of fact and of law, are clear in the possibility of IMIP supplying energy within the scope of the public interest, and, therefore, if fit the ceiling of USD 70/t on its coal purchases.

753. The facts available in the process also indicate that producing companies within the IMIP would have access to coal as tabulated by the HPB, as explained in this document.

4.2.3.2.2 Elements of fact or law (Legal/documentary basis)

754. The program for supplying coal at less than adequate remuneration is based on numerous 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 Master Plan 2015 - 2035 (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 Nº 515.K/ 32/DJB/2011

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 producers of the product under investigation had access to coal, an important input in the production of stainless steel, for less than adequate remuneration, in the months in which the ceiling of 70 dollars per ton and the HPB price was higher than that amount. Thus, under the terms of lines "c" and "d", of item II, of art. 4 of Decree No. 1,751 of 1995, companies that participated in the program enjoy a clear benefit.

756. Regarding the classification as a "public body" or "instructed or entrusted" entity, SDCOM reinforces the understanding set out in sections 4.2.3.1.3.1 and 4.2.3.1.3.9, given that they also apply to coal miners, with slight adaptations, the measures explained there, which demonstrate the control for them to 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;

vi) approval of changes in the shareholding structure; It is

vii) approval of the exchange of directors/commissioners.

757. In this context, even though the export of coal was not prohibited in the analyzed period (recently there was a ban for a period), there was the obligation of domestic supply - DMO, in order to meet local demand. Thus, due to the fact that prices are set by the GOI, the same effect of misrepresentation in normal market conditions and of subversion of economic logic in relation to coal miners remains, in what was summarized as follows by an expert:

Imagine you are the owner of a coal mine in Indonesia, or a trader. If you are a rational economic actor motivated by profit, you would be crazy not to chase big margins on global markets and instead supply domestic power plants at an artificially low rate.

Looked at in this way, the export ban is the state's way of telling these companies they really have no choice but to leave those profits on the table and make sure the domestic market is supplied first, even if it goes against their own economic self- interest. They can chase exports later. And I guess they feel the message was delivered, because within a matter of days the export ban was partially lifted.

4.2.3.2.4 Specificity

758. It should be noted that GOI did not provide a list, by industry and by region, of the companies in Indonesia that participated in this program during the investigation period, nor did it provide the transactions carried out in the coal market in Indonesia. Furthermore, in view of the lack of responses to the requested information by the selected producers/exporters, as well as the gaps in the GOI's response, as already mentioned, they were used, pursuant to art. 79 of Decree No. 1751 of 1995, the available facts.

759. It is a fact that coal is an important input in the stainless steel industry, and it is also the main source of energy in the IMIP (according to IMIP data in its annual report). Furthermore, as already mentioned in the official presentation by the GOI, only 55 companies throughout Indonesia hold the role of "Electricity Supply Business Area", capable of purchasing coal at a price regulated by the GOI. It is also clear that of these 55 companies, IMIP is, by far, the largest energy producer (not considering the PLN), and, according to GOI data, IMIP produces 2,478 MW of energy, producing twice and half more energy than 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 indicate the government's intention to create a framework of incentives for the installation of companies in the steel sector in order to increase the added value of the country's mineral resources, in order to meet the disposed in the industrial policies of the country, the program treated here is configured as a specific subsidy in fact, under the terms of art. 6, §3, of the Brazilian Regulation, and therefore subject to the application of compensatory measures.

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 USD 70/t applies only to the purchase of coal by PLN (state electricity company). Thus, coal buyers other than PLN would not be eligible for the purchase of coal at the said limit price, and there would be no benefit to those investigated, a 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". However, although it presented production data for such a type of coal to the SDCOM team, the Government of Indonesia attested that these were compiled from data submitted by companies, and "companies can edit (update) the data later". Thus, the Government of Indonesia stated that "the data compiled by the MEMR are not revised once extracted from the system, so the information may be discrepant." It is concluded, therefore, that such information cannot be properly verified.

763. Aperam, in a statement dated September 9, 2022, argued that the Government of Indonesia would have confirmed, in its response to the questionnaire, that there would be an obligation to sell coal in the domestic market of that country.

764. In addition, Aperam argued that the subsidies granted resulting from the supply of coal at prices with lower than adequate remuneration would be transferred (pass-through) to stainless steel producers, including the product under investigation.

765. Reiterated that Decree 23 of 2018 would specifically address the determination that the minimum percentage of 25% of the total coal production be supplied to Indonesia's domestic market.

766. He added that Regulation of the Ministry of Mines and Energy No. 19, of 2018, would implement provisions and would have ratified the objective of supplying coal to the domestic market. Thus, it would remain clear that, in addition to the explicitly determined obligation to sell coal in the domestic market, such obligation would encompass all types of coal, regardless of use, including, but not limited to, use in the generation of public electricity, although particular concern is shown for such provision.

767. It argued that the analysis of Decree No. 261, of 2019, would demonstrate that, contrary to what was alleged by the Government of Indonesia, the obligation to supply coal in the domestic market would not be limited to the supply of public electricity. In this regard, it compared the provisions of Article 4, mentioned by the Government of Indonesia, with Article 2 of the same Decree. It would thus appear that the aforementioned articles deal with two distinct and complementary obligations: the obligation to supply coal on the internal market, regardless of use, on the one hand, and the obligation to comply with the supply of coal for energy public electricity established in the sales contract. It should even be noted that only article 2 makes reference to article 1,

768. Confirming this understanding, Articles 3 and 7 of the same Decree would establish sanctions on companies supplying coal that do not comply with the obligations set forth in Articles 1 and 4.

769. With regard to prices, he reiterated that Government Regulation No. 8, of 2018, amended Government Regulation No. 23, of 2010, determining, in Article 1, the inclusion of Article 85A in the latter Regulation, with the following wording:

85A In order to fulfill the need for coal for domestic interests as referred to in Article 84 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 explicitly refer to:

PROCEDURES FOR DETERMINING THE SELLING REFERENCE PRICE OF METALLIC MINERALS 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 determine 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 be conducted by taking into account the public purposes.

772. It would remain clear that the determination of establishing the sale price of coal in the domestic market would not be exclusive to the supply of public energy, applying to all sales of coal.

773. Likewise, Regulation of the Ministry of Energy and Mineral Resources No. 11, of 2020, would amend Regulation of the Ministry of Energy and Mineral Resources No. 7, of 2017, making it clear, at the outset, that it would be about price fixing reference sale to be practiced, not being a simple basis for calculating royalties.

774. The second article of the aforementioned Regulation would clearly determine that it is a matter of establishing prices to be practiced in coal sales operations in the domestic market.

775. Aperam maintained that there would be no limitation as to the type of use or purchaser of coal. Furthermore, it would be clear that coal sellers would be obliged to adopt the prices set by the Government of Indonesia in their sales operations. In this sense, it would be obvious that, if such prices were simply used for purposes of calculating the payment of royalties, there would be no need to oblige sellers to practice the price set by the Government, simply charging royalties on the amount defined by it.

776. It would appear that, in addition to being the sale price to be practiced in coal operations in the domestic market, such prices would also be considered for purposes of calculating the royalties to be paid for such sales.

777. It should be noted that the obligation to practice the prices set by the Government of Indonesia in coal sales operations in the internal market would be further reinforced by the establishment of sanctions on companies that do not practice such prices.

778. Finally, he mentioned that the MEMR Decree 1.395, of 2018, mentioned by the Government of Indonesia, regarding the prices of coal for electricity, would refer to the aforementioned article 8A of the MEMR Regulation 19, of 2018, which amended the MEMR Regulation 7 , of 2017, demonstrating that such Decree, although establishing coal sales prices for public electricity purposes, would not limit the establishment of coal sales prices to such operations.

779. It would remain clear, therefore, that such regulations would establish the obligation to sell coal in the domestic market (called "Domestic Market Obligation" - DMO), at prices controlled and determined by the Indonesian government, which would stipulate values below the market, implying remuneration lower than that which would be appropriate

780. It further noted that the Coal Price Reference (HBA) would be considered in the determination of the Benchmark Coal Price (HPB) and that the prices considered by the Government of Indonesia for the calculation of the Coal Price Reference (HBA) would be based on four different indices: Newcastle Coal Index, Global Coal Index, Platts and Indonesia Coal Index (ICI). The HBA price, therefore, would be in line with market prices.

781. In its statement on the use of available facts, the GOI pointed out that the representative of the MEMR participated in the verification, having provided sufficient information on the sources of the coal production data, which would be confirmed in paragraph 139 of the visit report. Regarding production data, the government informed that such data was never requested, only about coking coal. He also pointed out that coking coal is beyond the scope of the investigation, as it is imported, with no subsidy in this area.

4.2.3.4 Statements after the Technical Note about the program

782. The GOI pointed out in its final statement that exporters can export even without having fulfilled the requirements of the DMO. About the HPB, he added that the corrective factor is necessary to have a fair HPB according to the quality of a particular coal. He added that the HPB has a similar function to the HPM, and is only applicable to royalties, in accordance with MEMR Regulations Nos. 7/2017 and 25/2018 and that the price of 70 usd/t was set for a specific use, public power generation by PT PLN, in line with the regulation. In this context, added the GOI, SDCOM's understanding that the price for industrial use must follow the HPB is wrong, and "coal selling price" does not mean "HPB" - article 85 of Government Regulation No. 8 of 2018 uses a specific terminology.

783. The GOI also stated that, contrary to what was stated by SDCOM in paragraph 624, DMO coal is not solely intended for the generation of electricity, this being the primary objective of the DOM, but not exclusive. The GOI brought a publication that would prove, in its opinion, that the coal price ceiling is intended to meet the needs of the PLN.

784. He concluded the GOI by asking SDCOM to decide along the lines of the European Union, in which that authority pointed out that there was no benefit to Indonesian producers arising from the subsidy, 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 regarding the use of HPB only for royalties, regarding the electricity ceiling and regarding the use of the European Union decision.

786. In her final statement, the petitioner reaffirmed SDCOM's conclusions, and pointed out that no changes could be made to the amounts already calculated and presented in the Technical Note.

4.2.3.5 Comments from SDCOM

787. As explained in detail, there is strong evidence that IMIP (and, consequently, PT IRNC), had access to coal with the maximum prices established by the GOI, considering the Bahasa terms used in the applicable legislation and official documents of the GOI already described. Thus, considering the total lack of collaboration on the part of the company, the facts available in the process were used.

788.At this point, it is important to point out that, contrary to what is stated by the GOI, it is Indonesian legislation that equates "coal selling price" with "HPB", according to, for example, article 2 of Regulation 515.K/32 /DJB/2011, which is the specific Regulation on the HPB price:

Article 2

(1) Director General on behalf of Minster hereby determine Coal Benchmark Price for steam (thermal) and coking (metallurgical) coal on a monthly basis based on formula by taking into account the average coal price index under the prevailing market mechanism and/or according to price generally acceptable in international market.

(2) Coal Benchmark Price as referred to in paragraph (1) shall be used as coal benchmark price for the holder of Operation Production IUP and Operation Production IUPK and PKP2B for selling coal. (emphasis added).

789. Furthermore, one cannot forget that the use of available facts was due to the lack of collaboration from the interested parties, with SDCOM resorting to legislation precisely to fill the gaps imposed by the lack of collaboration.

790. SDCOM agrees with the petitioner that there is a price-fixing system for the sale of charcoal. However, this price practiced would be the HPB, and not the HBA, as the petitioner seems to add. Thus, even though the HBA has the international element, the same found with nickel and the HPM price applies to the HPB prices.

791. Regarding the conclusions of the European Union, this authority is not in a position to know the documentation analyzed by them. It is known that anti-subsidy investigations are notoriously complex and difficult to access documentation, especially when it comes to documentation in Bahasa, as in the present case. Thus, the conclusion expressed by the European authority is not capable of eroding the strong elements considered in the present case. Even if the GOI claims that there was full cooperation in that case, it should not be forgotten that a comparison was made with the benchmark considered for the investigation period, which may not have resulted in benefit in the case of the other authority.

792. Furthermore, it should be emphasized that the evidence collected in that case is not known - for example, obtaining an official presentation from the GOI that shows that electricity is produced at IMIP for public purposes was the result of extensive research by that SDCOM. Such official presentation of the GOI in bahasa, evidence of extreme difficulty to obtain by this authority, most probably was not analyzed by the authority of the European Union and contradicts the conclusion of that authority, expressly pointing the IMIP as a producer of energy for public purposes (classifying it in the number 50 in the list of "holders of electricity supply business area", in automatic translation):

<<IMAGE 6 HERE>>

793. For the purposes of final determination, this SDCOM was able to find, as mentioned above, another presentation by the GOI (more specifically, by the MEMR) in which the terms of the legislation are reaffirmed: "The business of providing electricity for the public interest is carried out by state-owned enterprises, regionally-owned enterprises, private enterprises, cooperatives, and non-governmental organizations operating in the field of electricity supply".

794. Even more serious is the fact that, even though this SDCOM was verified in loco by the government, the information that the IMIP supplied energy for public purposes was not provided to SDCOM at any time. SDCOM regrets that the collaboration of the GOI took place partially, since, as is now known, the MEMR had full conditions to appoint the IMIP as a producer of electricity for public purposes, which was not done.

795. The publication brought by the GOI only highlights that the main objective of the 70 dollar ceiling is to benefit the PLN, which does not indicate anything about the other energy producers for public purposes, as the IMIP demonstrably is - the GOI did not make any comment on said presentation and neither PT IRNC, a company of the IMIP group.

796. Regarding the GOI's comments, although the representative of the MEMR did indeed explain the source of the data, these were not evidenced (for example, through the presentation of the reports received by the GOI). It is reiterated that SDCOM always made it clear during the visit that it was not enough to verify the data in the system, the GOI would have to evidence the source of the reported data. Furthermore, as described in paragraph 139 of the visit report, invoked by the GOI, the government informed that it could not provide access to the data:

139. SDCOM staff requested that annual coking coal production volumes be presented. The GOI reported that companies are required to report to the government monthly and quarterly through the Minerba Online Monitoring System (https://moms.esdm.go.id/). The government presented a spreadsheet with the volume of some companies, which was verified in the system, with no discrepancies found. The SDCOM team then informed that it would be necessary to verify such reported data, with the GOI explaining that the information belongs to the companies themselves and that the government would not have access. (Emphasis added)

797. Thus, it is emphasized that the GOI already held the data whose proof was requested, for example, through the RKAB. In any case, as the GOI itself informed during the on-site visit, "companies can edit (update) the data later" and "the data compiled by the MEMR are not revised once extracted from the system, so the information may be discrepant .", that is, it appears that a fact check would only be possible in companies, and the MOMS system does not necessarily contain the actual data. Thus, what happened during the visit to the GOI is not the main determining factor for the use of available facts in relation to this point, but the total lack of collaboration on the part of the producing companies.

798. With regard to internal coal consumption data, it should be noted that coal has always been, since the beginning of the investigation, an investigated program, with a specific section of the on-site visit on the subject. It is also known that the team may request additional information during the visit, such information being essential for verifying the BMD, for example. As described in the minutes and report of the visit, the government did not provide the information requested by SDCOM on coal, point 8 of the documents requested during the visit, which would include domestic consumption (albeit by follow up question). In any case, it is pointed out that this was not the main point that led BIA to this program, but the set of gaps and lack of cooperation from the producers.

799. Regarding the GOI's comments on paragraph 624 of the Technical Note, this SDCOM points out that there was probably a problem in the translation carried out by the GOI, since paragraph 624 does not concern any position of this SDCOM, being a manifestation of APERAM. In any case, SDCOM agrees with GOI that coal from DMO is not exclusively used for electricity generation. On the use of HPB only for royalties and on the HPB remedial factor, the lack of cooperation by the parties led SDCOM to use the available facts, and these indicate that the use of HPB is not restricted to royalties and the remedial factor is an element of absolute discretion. It should also be noted that the GOI held the information capable of 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 file, the existence of subsidies granted through the supply of coal for remuneration lower than the adequate remuneration. Such an incentive is configured as a subsidy since it involves a financial contribution by the government or public body, under the terms of items "c" and "d", of item II, of art. 4 of Decree No. 1,751 of 1995, which benefits companies reached by the program in question, since such companies now have additional resources compared to those that do not participate in the program.

801. As already discussed, the program treated here is configured as a specific de facto subsidy, under the terms of art. 6, §3, of the Brazilian Regulation, and therefore subject to the application of compensatory measures, with regard to the market for consumption other than electricity, and specific by law, 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 based on the elements indicated, it is concluded that the domestic HPB prices for coal are distorted as they are for nickel and 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 response from the producers/exporters and the gaps in the government's response, the facts available in the case file were used.

804. As explained, it was verified the existence of a program both on the coal aspect for electricity (with a ceiling established by the GOI), and on the aspect of coal as an industrial input (where it was concluded, using the available facts, that HPB prices do not reflect market forces). In this context, this

authority understands that, given the total absence of a questionnaire response from the producer/exporter, and the partial collaboration of the GOI, the available facts indicate the granting of subsidies in both aspects, that is, both in the supply of charcoal to electricity and in the supply of coal other than that used for electricity production (coal as a steelmaking input), which must, according to legislation, follow the HPB.

805. In this context, the HPB formula is highly complex, even more complex than the HPM price for nickel, for example, and in the HPB formula even the brand of Coal used is considered, according to Annex II of Decree 515.K/32/DJB/2011. Thus, without the cooperation of any producer/exporter and the GOI, it was impossible for the authority to determine HPB prices suitable for use.

806. That said, in an extremely conservative manner, HBA prices were used as a benchmark, even though the authority is aware that such HBA prices, on an international basis, are not exactly those used in transactions in Indonesia. Comparison of HPB prices with prices under normal market conditions would result in even higher values, since HPB prices, used in current transactions in Indonesia, must be even more distorted, as they include a correction factor in their formula, in addition to reflecting the DMO and other GOI policies, which makes the HPB price a depressed price.

807. Thus, also in an absolutely conservative way, using the available facts, the ceiling of 70 dollars was also used in purchases of coal for use other than electricity, in order to calculate, even if in a minimal way, the subsidy perceived by companies in Indonesia.

808. There is an official GOI website where you can check all HBA reference prices. Considering that, as already mentioned, in the months when the HBA was above 70 dollars, the ceiling of 70 dollars was 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 paid for coal considering the ceiling was US$ 67.76/t, the average HBA price was US$71.65/t, resulting in a difference of US$ $3.89/t.

810. The petitioner estimated the consumption of electricity throughout the chain of the product under investigation (production of FeCr and FeSi and Steelmaking - hot rolling and cold rolling), segregating between what was produced internally (that is, where there was electricity has been consumed) and intermediate products in which electricity has not been consumed. Considering the energy expenditure to produce a ton of the product under investigation, the amount of benefit in the amount of US$ 3.63 per ton was reached. The Petitioner also brought the charcoal used in production, from the smelter to use in the reducer, appropriating for the final product the subsidy perceived in the intermediate stages, through a pass-through system considered adequate by SDCOM,

811. It should be noted that there was no comment from the other interested parties on the proposed calculation.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)

all companies	18.48	0.90

Source: Best available information - Petitioner's statement and SDCOM surveys.

Elaboration: SDCOM

4.2.3.6 Program 3 - Supply of stainless steel scrap and waste

4.2.3.7 Manifestations about the program

812. The GOI stated that it grants authorization for the export of scrap in all cases, and Aperam, in its statement of September 9, 2022, claimed that such claim by the GOI would not have been proven in the case file.

813. The petitioner, in her final statement, accepted the conclusion of this SDCOM due to the lack of a program for the supply of stainless steel scrap and waste for less than adequate remuneration.

4.2.3.8 Conclusion

814. Although there are restrictions on scrap exports verified in Regulation MoT No. 4/2018, amended by Regulation MoT No. 36/2019, taking into account the elements present in the case file, SDCOM considered that there was no benefit arising from the restrictions on the export of scrap metal to Indonesian producers/exporters of the product under investigation, given that there are not enough elements in the case file in this regard.

815. It should be noted that the petitioner did not bring new elements, in addition to the evidence that justified the initiation of the investigation. Nor was it possible for this authority to obtain evidence that the producers/exporters acquire scrap and waste used in the production of the investigated product. Thus, in line with the request contained in a statement presented by PT IRNC, SDCOM concludes that there is no actionable subsidy in relation to the alleged supply of scrap for less than adequate 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 current land regulations in Indonesia, it is necessary to go back to the pre-independence period, the "Dutch period", in which there were two systems: Eigendom (Dutch law) and Adat/Common law. The first was the right to own land during Dutch colonization before agrarian law existed. The second was established according to community custom within the region.

817. In 1960, the Agrarian Law No. 5/1960 was enacted in Indonesia, combining Adat and Eigendom. Since then there are 4 types of land rights:

a) Hak Milik/possession/property rights® the most "strong" and complete, to reside/live, no time limit, only for Indonesians;

b) Hak Guna Bangunan/to build®granted to use the land to build something, maximum term of 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 agriculture, 35 years, extendable for 25 years, large scale;

d) Hak Pakai/ to use®granted to use a land, 25 years, which may be extended to 20 years, for sawah, jagung (foreigners), the owner of which is the people.

818. The land of the type Tanah swapraja - inheritance of the Dutch occupation, colonial land - pemerintah hindia belanda (Dutch East Indies), became, from September 24, 1980, by Presidential Decree nº 32/1979 lands of the type tanah negara .

819. That said, we move on to the analysis of the IMIP land, where the investigated producer/exporter PT IRNC and other companies of the Tsingshan group are located.

820. It is known that, according to RIPIN 2015-2035, it is informed that the provision of land is also a concern of the government in the context of encouraging the industrialization of the country. From the Indonesian Ministry of Industry document Facts and Figures, 2015:

Infrastructure for Industry

Based on The Government Regulation No. 14 Year 2015 concerning Master Plan of National Industry Development Year 2015-2035, the major infrastructure required by industry, both within and outside of the industrial areas are the energy and land for industrial estates.

industrial land

The provision of industrial land is carried out through the development of industrial allotment and the development of industrial estates. The purpose of development and exploitation of industrial estates are:

The. providing convenience in obtaining ready to use of industrial land and/or ready to build,

B. guarantee the land rights that can be easily obtained,

w. the availability of infrastructure and facilities required by investors,

d. easiness in obtaining permissions.

(¼)

The program of provision of industrial estates and/or industrial allotment include:

The. coordination between ministries/related agencies in the solution of aspects associated with land issues;

B. the planning of industrial estate development, including feasibility analysis and providing master plan;

w. the establishment of institution and land bank regulation for the development of industrial estates;

d. coordination between the provincial/district/city governments and the ministries/related institutions for determining the location of industrial allotment within the Regional Spatial Plans;

It is. carrying out review to the development of industrial allotment;

f. the provision of land through the development of industrial allotment supported by the infrastructure both within and outside of industrial estates; and

g. provision of land through the development of industrial allotment and supported by the infrastructure both within and outside the industrial allotment.

821. With regard to the IMIP, it is installed in the district of Morowali. According to information obtained during the on-site visit, the oldest spatial plan for Morowali is Regional Regulation No. 10/2012, and before Morowali Regional Regulation No. 10/2012, the region was designated for agricultural use. After the Morowali Regional Regulation No. 10/2012, the region was designated for strategic industrial use ("National Strategic Project"). After the Regional Spatial Regulation of Morowali nº 7/2019, it continued to be for such use, only the possible use of the land was more detailed. In its post-verification statement, 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 of the IMIP would be right to build - Sertifikat hak guna bangunan - 'SHGB', dated 18 August 2015. Before the 2015 SHGB was issued through a certificate, was informed on the on-site visit to the GOI that the state of the land was tanah negara. According to the government, such status would indicate that the land is not owned but would be controlled by the government, owned by the people.

823. That is, the land where the IMIP is located had Swapraja status, under the Basic Agrarian Law, which were lands that, before Indonesia's independence, belonged to sultanates or kingdoms, with a certain independence. After independence, it became tanah negara land, still with a certain independence on the part of the communities that lived there.

824. It was also confirmed in the on-site visit that the IMIP started its construction before obtaining the required licenses, which was possible due to its status as a national strategic project.

825. However, the SHGB certificates were not displayed during the on-site visit, nor the acknowledgment letter (surat yg diterbitkan oleh kecamatan kepada masyrakat - SKPP) so that SDCOM was prevented from verifying the status of the IMIP land. Neither did the said contracts, which would

indicate that the land would not be owned by the government, prove anything in this sense. Most of the submitted contracts concerned transfers between the IMIP and the park companies, not helping to resolve this issue. [CONFIDENTIAL] contracts were provided between IMIP and the original occupants of the land, and such contracts confirm the tanah negara status of the land, as part of one of them: "[CONFIDENTIAL].".

826.In another passage, we have:

[CONFIDENTIAL]

827. That is, such a contract was signed based on a decision by the GOI, before a representative of the GOI (from the district of Bahodopi) and dealt with lands that were initially swapraja and later tanah negara.

828. It should be noted, however, that, having been requested to inspect the original of the contract submitted, the GOI was unable to provide it during the on-site visit.

829. Thus, regarding the status of the IMIP land and other aspects of the program, SDCOM used the facts available in the process.

830. Article 43 of the Agrarian Act 1960 stipulates that: "As regards land directly controlled by the State, the right of use may only be transferred to another party with the permission of the authorized official". Paragraph 3 of Article 1 of Government Regulation No. 24/1997 makes explicit that such "land directly controlled by the State" is tanah negara.

831. Generally speaking, the local communities living there were negatively affected by the arrival of the IMIP, and their livelihoods were threatened in various ways. Those who tried to stay on the land had their productivity significantly reduced due to deforestation, construction of roads and diversion of watercourses. That is, although in theory the land could have other uses, as stated by the GOI, in practice the communities were forced to transfer the right of use (with compensation), due to the fact that the environmental impact caused by the construction affected the productivity of the land. Earth. This issue was considered by the CEO of IMIP:

"When you are building a new house, do you bother to take a look at the trash bin? No, you don't. 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 as a fact available in the process, which also dealt with stainless steel laminates in a similar investigation period, in which the IMIP terrain was analyzed, in the context of which the authority described it as follows:

The investigation found that the GOID facilitated the necessary land to IMIP starting from 2013. The land in question was the property of the Indonesian State. IMIP agreed with the local authorities, and with the assistance of the Bahodopi district authorities, on a single average payment per square meters, as a compensation, for the individuals using the land at the time.

(...)

First, the GOID amended the spatial planning of the Morowali Area, changing the purpose of the land from farmland to industrial land, more specifically linked to a nickel project. Indeed, Article 28 of Morowali Regency Regulation No. 10 of 2012 designated as nickel mining area the Bahodopi district, ie, the 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'. More generally, the Morowali Regency identified a 'large industrial area in Bahodopi District' as a 'Regency strategic area from the point of utilization of natural resources' (Article 37). Finally, Article 9 of the same Morowali Regency Regulation identified Bahodopi district as the area where a special mining port terminal is located. This change of use left the villagers with no choice but to relinquish their right to occupy and use their land as they could no longer use it for farming activities.

Second, IMIP contacted the local authorities in the area, ie, the mayors of the villages located in the area, and agreed with them on a compensation to be provided to the people that the village heads identified as occupants of the plots of land in the area. In this process, three elements have to be highlighted: (i) IMIP agreed on the compensation with the village heads also with the assistance of GOID's officials of the Bahodopi district, because the contracts show that they later witnessed the transaction and

certified the use and the ensuing right to compensation of the villagers; (ii) the plots of land whose occupants were identified by the village heads have more or less all the same area (approx. 20 000 square meters each);

The evidence proved that the land purchase process undertaken by IMIP was actually a process where the State provides the land to the IMIP without any consideration, only with the requirement to pay the agreed compensation to the villagers.

833. The European Union authority also verified the existence of a document (Joint statement of March 2015, and Regulation nº 142, of 2015), which would indicate that the GOI would facilitate research and land acquisition for producers established in the IMIP.

834.Thus, using the facts available in the process, during the course of the investigation it was proved that: i) the IMIP land had status prior to its acquisition as tanah negara, at which time it became land with right to build status - object of a Sertifikat hak guna bangunan - 'SHGB'; ii) the government did not receive any amount when the land was transferred, as informed by the government itself, since the occupants would have received it; iii) the farmers occupying the land transferred the use rights they had over the land, through compensation, as they could no longer use it for their activities; and iv) such operation was arranged with the direct participation of the GOI.

835. Regarding the operations of PT INALUM, the evidence that appeared at the beginning of the investigation was confirmed. However, even though the operation exists, there are no elements in the records that indicate that there is a benefit to the investigated producers/exporters resulting from the 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 RIPIN, as well as Morowali Regional Regulations No. 10/2012, and No. 7/2019, as well as the Land Law of 1960.

4.2.3.9.3 Financial contribution

837. The program's financial contribution comes from the fact that IMIP was able to acquire its land 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 tanah negara status, directly granted the land to the IMIP.

839. Alternatively, the fact that there was participation of the leaders of the occupying communities is analysed. Even if one considers their participation in the supply of land, this fact only occurred because the GOI acted directly to promote the removal of these occupants from the land. The people from the community who were there were never the owners of the land, but mere occupants, and they transferred their use rights to IMIP in a concerted manner by the GOI, with the express consent of the latter, in accordance with article 43 of the Agrarian Law of 1960, and also with the direct participation of the government, according to elements analyzed in section 4.2.3.8.1. It is also recalled that this SDCOM did not have access to the complete documentation about the lands, one of the reasons why the facts available in the file were used.

840. Thus, analyzing the elements mentioned in item 4.2.3.1.3.9, it appears that the GOI issued an express command in order to instruct the farmers/village leaders to transfer the right to use the land, since otherwise they would not have survived. Such transfers were not a mere side product of the legislation enacted by the GOI, but one more piece in the puzzle of incentives promoted by the GOI. Thus, also 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 available for the creation of zones of industrial interest, designed for the IMIP, a project classified by the GOI as a "national strategic project", which imposes several advantages, in the context of the intention of the government in promoting the appearance of a stainless steel industry, as exposed in the previously mentioned government plans.

842. Considering that the government did not answer the questions that would allow SDCOM to assess the specificity of the program, it is clear that the context of encouraging the establishment of a steel industry in the country, according to the various plans already outlined here, point out, using the facts

available, due to the existence of a specificity of fact, according to art. 6, paragraph 3, of the Brazilian Regulation, arising from the fact that the program is aimed at stainless steel producers, such as IMIP producers, in the framework of incentives already discussed. There is also a regional specificity, according to art. 7 of Decree No. 1751 of 1995, as the program, by its nature, is limited to companies within the jurisdiction of the granting authority.

4.2.3.10 Manifestations prior to the Technical Note about the program

843. PT IRNC, in its statement of September 9, 2022, points out that, as the best information available, the subsidy margin for this program determined in the subsidy investigation conducted by the European Union should be used, of the order of 0 .83%.

844. Aperam, in a statement dated September 9, 2022, based on the verification report, argued that it would be verified that the land where the IMIP was built, contrary to what was alleged by the Government of Indonesia, had not been acquired from private parties , having been provided by the Government of Indonesia itself, as determined by the latter in its determination to establish the industry from nickel ore to stainless steel. It reiterated that Article 62 of Law Number 3 of 2014 would establish that:

Article 62

(1) The Government and Regional Governments ensure the provision of the Industrial infrastructure.

(2) The provision of the Industrial infrastructure is conducted both within and/or outside of 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 allocated zones; [¼]

846. As for Government Regulation No. 14 of 2015, which deals with the National Medium Term Development Plan from 2015 to 2019, the period of greatest development of the IMIP and the downstream nickel chain, until the production of the product under investigation, in the item that deals with 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 the provision of industrial facilities and infrastructure including:

B.Industrial Infrastructure

The infrastructure required by industry, both inside and/or outside the designated industrial area, includes energy and industrial area land.

1. Energy

847. With regard to the Government of Indonesia's determination to establish the downstream chain from nickel ore to stainless steel production, which is considered a strategic industry, the Government of Indonesia would have provided the land for the establishment of the IMIP and would have allowed its use without the requirement of formal legal requirements.

848. Furthermore, as stated in the Report of the visit carried out to the Government of Indonesia, it would therefore be clear that the assertion presented by the Government of Indonesia that the land acquisition by the IMIP would have occurred from private parties, without its interference, would not have demonstrated, it is a mere allegation.

849. The GOI, in its statement regarding the use of available facts, stated that "GOI presented the sample documents of land sales and purchase and a land certificate (SHGB) belongs to IMIP which are adequate to prove that IMIP sought the land under direct transaction with local people without GOI's intervention. As such, the GOI believes that it should be sufficient to assess the legality of the land ownership.". He added that the NJOP prices were explained by the representative of the GOI and that the originals of the requested documents could not be shown, but which the representative of the GOI informed that they were authentic.

4.2.3.11 Comments after the Technical Note about the program

850. The GOI, in its final statement, stated that it disagreed with the provisions of paragraphs 681 and 682 of the Technical Note, in which it is stated that the GOI is the owner of the land and would have directly granted the land to the Industrial Park Indonesia Morowali (IMIP) due to to the fact that IMIP was able to acquire its land at a reduced price when compared to market prices. He reiterated that individual ownership of land is recognized in Indonesia and that IMIP acquired land from local people through independent negotiation with previous landowners, who are private parties.

851. He also pointed out that the supply of land can be affected by the geographic factor and that the supply of land in remote areas can be abundant, with a much lower price compared to those in urban areas with high population.

852. He added that the GOI only provides administrative services in the formalization of land rights. The Nilai Jual Objek Pajak (NJOP) would only represent the land price reference for land tax collection purposes and cannot be used as a benchmark.

853. According to the GOI, RIPIN does not have the commanding element of the GOI for the private sector to pursue the vision of the GOI, RIPIN would not regulate land provisions in Indonesia (such as entitlements, transfer of land rights, etc.), but only the development of industrial development areas. Furthermore, the Morowali Regency Regional Regulation Number 10 of 2012 concerning the spatial plan of the Morowali Regency from 2012 to 2032 aims at realizing development across sectors, regions and communities, government, society and/or the business sector. There would not be a single article in the regional regulation that stipulates provisions regarding land, let alone obliges or commands the community or residents in Morowali to sell their land to the IMIP below the market price.

854. The GOI also pointed out that Morowali Regional Regulation No. 7/2019, also used as a basis for land subsidy claims, aims to direct productive, controlled, equitable and sustainable development to improve people's well-being, and it would not regulate the purchase and sale of land, land rights and transfer of land rights.

855. Thus, according to the GOI, SDCOM would not have been able to demonstrate the element of financial contribution and specificity in the provision of Land, and the investigation should be closed without measure.

856. PT IRNC, in its final statement, pondered that the European Union authority would have considered the cost of the land itself, as the benchmark used by the European investigating authority comprises the value of the HGB held by Jindal. In this way, the benchmark employed by the European Union does not only include "development costs", but the cost of the land itself, deducting only the amount of compensation paid by the IMIP. Thus, he reiterated the use of the percentage of the European Union.

857. In her final statement, the petitioner reiterated SDCOM's conclusions, and also pointed out that, by pleading with PT IRNC for the use of information from the European Union, it would have admitted the existence of the program, and that the defense of the percentage applied by the other authority would demonstrate that, "in fact, the facts contained in the case records lead to the calculation of an amount higher than that suggested by the IRNC".

858. PT IRNC requested, on October 13, 2022, access to the calculation log of the land supply program for less than adequate remuneration.

4.2.3.12 Comments by SDCOM

859. This SDCOM points out that, although the determination of the European Union in fact can be used as available facts (as indeed it was in other points of this document), this SDCOM considered that, with respect to the calculation, there is more adequate information available . The European Union authority itself expressed that: "the

Commission only considered the development costs incurred by IMIP to transform the

land purchased as forest and plantation into land ready for industrial use". That is, for reasons for which SDCOM has no way of knowing, since it does not know what information was analyzed by the other authority or does not even have access to the calculations performed, and according to comments further on, it is unclear how the European Union authority considered the cost of the land itself in its calculation and not just the development costs.

860. In this way, SDCOM's comment was misinterpreted by PT IRNC - and it is reiterated that apparently the European Union authority used development costs and not the cost of the land itself. As stated above, for calculation in this program, three elements are needed - 1) the price paid for the land; 2) the market price of land (benchmark); and 3) the affected area. The EU authority apparently used in point 2 (benchmark) the HGB price, and in point 1 the development costs:

(846) Then, IMIP's land development costs by square meter were compared to the value of the evaluation report adjusted to the corresponding year to obtain the benefit per square meter. This figure was then multiplied by the area of land that each of the companies in the IRNC Group was actually using, in order to allocate the total benefit for the group to each of the companies in the group. (emphasis added)

861. Thus, regarding PT IRNC's comments, SDCOM reiterates that even though HGB was used in the calculation, everything indicates that development costs were used as the price of land. In any case, SDCOM reinforces that the calculation brought by the petitioner, adjusted by SDCOM, constructed and explained in detail, constitutes better information available with regard to this program than the calculation of the European Union. SDCOM's calculation uses, for the purpose of establishing the land price, concrete elements of the considered location - NJOP of morowali (IMIP location) and actual IMIP contracts - SDCOM concluded that this information is more accurate than the other information in the case file. It is also reiterated that there was no manifestation of the interested parties to point out any blemish in the proposed calculation other than the generic criticism,

862. Regarding the GOI's comments, SDCOM points out that, as stated by the GOI itself, only samples of the documentation were presented, and that even such documents show that the transactions took place under the supervision of the GOI, which was present in the acts outlined by the contracts . Regarding NJOP prices, the representative's explanation was considered in the authority's decision. It turns out that the studies or any supporting documentation for the NJOP prices presented were not presented. As for documentation, the visit itinerary made it clear that original documents could be requested. It should be noted, however, that this point was only incidental to the other serious gaps in the information provided about the program. Regarding the GOI's comments about the NJOP not being adequate pricing information, SDCOM reiterates that it used the NJOP to fill in gaps, even knowing that this information is absolutely not 100% linked to the price, since there are statements from representatives of the GOI itself indicating that the NJOP is overestimated - three times the real price, in example given by the representative. In this context, even knowing that the use of the NJOP overestimated the price paid for the land (which reduces the calculated amount), it is more accurate information than development costs or other information in the file, such as the price reported by the petitioner. SDCOM still took care to find NJOP as accurate as possible, having used NJOP from Morowali. since there are statements by GOI representatives indicating that the NJOP is overestimated - three times the real price, in the example given by the representative. In this context, even knowing that the use of the NJOP overestimated the price paid for the land (which reduces the calculated amount), it is more accurate information than development costs or other information in the file, such as the price reported by the petitioner. SDCOM still took care to find NJOP as accurate as possible, having used NJOP from Morowali. since there are statements by GOI representatives indicating that the NJOP is overestimated - three times the real price, in the example given by the representative. In this context, even knowing that the use of the NJOP overestimated the price paid for the land (which reduces the calculated amount), it is more accurate information than development costs or other information in the file, such as the price reported by the petitioner. SDCOM still took care to find NJOP as accurate as possible, having used NJOP from Morowali.

863. Regarding the participation of the GOI in the transactions, the spatial regulation of Morowali, by changing the destination of the land, had a primordial participation in the decision to sell the previous occupants, and the participation of the GOI went far beyond mere administrative services, as already pointed out . The GOI did not comment on the status of the land as tanah had denied. Regarding RIPIN, the fact that it does not contain, as alleged by the GOI, expressly provisions on land rights or transfer of land rights does not exclude it from the legal framework considered in the program, since the allocation of the land was changed precisely in order to encourage the increase of the added value arising from the assembly of the IMIP.

864. Regarding the petitioner's comment, the fact that PT IRNC defended the application of the percentage calculated by the European Union is not, in itself, an element capable of justifying the application of a compensatory measure or even indicates that the calculation would be higher. On the

contrary, robust proof of the existence of the elements in accordance with national and multilateral legislation, and detailed calculation is required, which was done in this investigation.

865. The claim for supplying the calculation memory was denied through Official Letter SEI No. 274908/2022/ME, as the requested confidential calculation memory used confidential information provided by interested parties other than the protester (in casu, the government of Indonesia), making it impossible to present the requested calculation report. It was clarified that the authority was based on the calculation made by the petitioner filed on September 8, 2022. Based on this calculation, the price of land practiced by IMIP was changed exclusively to the value of US$11.60/$m^2$, based on on public information found by SDCOM and confidential information provided by the Government of Indonesia. No other changes were made to the calculation proposed by the petitioner, and this value was compared with the benchmark of US$179,

4.2.3.12.1 Conclusion

866. In view of the lack of collaboration already exposed, based on the information contained in the case file, it was concluded that there is evidence indicating the existence of subsidies granted through the supply of land for remuneration lower than the adequate remuneration. Such an incentive is configured as a subsidy since it involves a financial contribution by the government, under the terms of line "c" of item II, of art. 4 of Decree No. 1,751 of 1995, which benefits companies reached by the program in question, since such companies now have additional resources compared to those that do not participate in the program.

867. It was also concluded that the subsidy in question is specific in fact, under the terms of art. 6, paragraph 3, of Decree No. 1,751/1995, as it is limited, as interpreted by the GOI itself in the context of RIPIN 2015-2035, to companies belonging to industrial sectors designated as priorities by Indonesian industrial policies, including steel industry and its chain. Furthermore, the land concession operations analyzed here are specific due to their regionality, pursuant to art. 7 of Decree No. 1751/1995 because they are limited to companies located within a geographical region located within the jurisdiction of the granting authority. In this way, it is configured as a specific subsidy, under the terms of arts. 6 and 7 of the Brazilian Regulation, subject, therefore, to the application of compensatory measures.

4.2.3.12.2 Calculation

868. With regard to the calculation, considering the lack of responses from the producers/exporters and the gaps in the government's response, the facts available in the file were used, that is, the calculations brought by the petitioner adjusted by SDCOM.

869. For the calculation in this program, three elements are needed - i) the price paid for the 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 be noted, at this point, that, although as already commented, the government has not received any remuneration for the lands of the IMIP, it is considered that the benefit must be determined in relation to to the price paid by the IMIP to someone else for such land, even if not to the GOI, that is, the farmers instructed by the GOI.

871. In this context, the information available in the file was used, that is, the NJOP values, the samples of contracts provided and also a public source found by SDCOM that shows more NJOP values for Morowali. SDCOM considered such information to be more accurate than the price of the IMIP land presented by the petitioner based on a public source, as the information used reflects real transactions involving the IMIP land.

872. It should be noted that such a calculation is extremely conservative, given that: i) most of the contracts provided used in the calculation do not involve the original acquisition made by the IMIP from the original land holders, but rather acquisition contracts between the IMIP companies , which have much higher prices per m^2 (prices per m^2 referring to contracts between companies are approximately [CONFIDENTIAL] times more expensive than those between IMIP and farmers); ii) the public source used by SDCOM refers to prices for non-industrial use, which are more expensive than those for industrial use, iii) NJOP values are used by the GOI for land-related taxes, and it is reasonable to believe that they reflect the highest possible value region, for due tax collection. Including,

Makassar (Antaranews Sulsel) - Governor of South Sulawesi (Sulsel) Nurdin Abdullah hopes that the Sales Value of Tax Objects (NJOP) of land and buildings must be realistic. South Sulawesi Governor Nurdin Abdullah in Makassar, Sunday, said the high NJOP will cause the cost for land investment as the forerunner of property project development, will increase and will also affect property prices in the future.

"I think we have to be realistic about the NJOP. It doesn't matter if the house is finished. Why is the house price going up, it's because the land price is only Rp. 250 (thousand) per meter, the NJOP is Rp. 650 (thousand). You also need a house. Study realistically," he said at the opening of the 2019 South Sulawesi Real Estate Indonesia (REI) Regional Work Meeting (REI) in Makassar, Sunday

(¼)

"That's why the NJOP must be reviewed, I have been with Mr. Wali many times. In the midst of global economic conditions. People want to invest in this large NJOP, land investment alone is quite high," he said.

873. SDCOM used this methodology in order to favor the partial collaboration of the GOI.

874. With regard to the benchmark to be used in the calculation, another investigated company, PT Jindal, published in its 2020 annual report, valuation involving land worth 179.15 usd/m^2.

875. Regarding the area occupied by land, based on the IMIP map on page 8 of the 2017 IMIP report, the area occupied by each manufacturing element and each company of the group was calculated:

<<IMAGE 8 HERE>>

876. Thus, the amount arising from each of these manufacturing elements was transferred to the final product investigated, considering the amount of subsidies per m^2 calculated, through a pass-through system considered adequate by SDCOM, as stated in the document submitted by Aperam in the case file on September 8, 2022. Such value was appropriated for 30 years, the duration of an HGB in Indonesia, reaching the amount of subsidies of US$ 28.63/t. It should be noted that, even though PT Jindal's benchmark was used, considering the company's lack of collaboration, it cannot be ruled out that other lands held by the company were not the object of the program either, which is why the same applies to it. 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 and SDCOM surveys.

Elaboration: SDCOM

4.2.4 Program 5 - Income or price support programs

877. As stated in the opening opinion of the investigation, SDCOM encouraged interested parties to provide more information in order to clarify the framework of the financial contribution of programs related to nickel ore, coal and coke and stainless steel scrap and waste as programs supply of raw materials for remuneration lower than the appropriate, under the terms of line c, item II, of art. 4 of Decree nº 1.751, of 1995, or as support for rents and prices, under the terms of item I, of art. 4 of the same Decree.

878. Considering what appears in the case file, this SDCOM concluded that such programs fall 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 25, 2022 and September 9, 2022, alleged several financial contributions that would supposedly be included in such program, in an alleged total amount of subsidy actionable of 140.50 USD/t. In a later statement, on September 8, 2022, the petitioner reclassified such programs into program 11 - "capital injection", which was also considered by SDCOM as untimely, since, in fact, a perfunctory analysis of the alleged financial contributions showed that it was of new programs.

880. Thus, considering the time impossibility to proceed with the investigation of new programs in the present procedure, after carrying out an on-site visit to the GOI, SDCOM did not accept 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

881. PT IRNC, in its statement of September 9, 2022, points out that cumulative amounts (instead of alternatives) for the Programs to supply and sustain rents and prices alone could no longer prosper. It adds that the alleged acquisition of equipment under special conditions in the production flow of 304 steel would not fit the government measures investigated by Decree No. 1751/1995 and would not even find support in the concept of subsidies that can be used by the WTO ASMC. What the petitioner brought here would be an allegation of capital injection based on the findings of the investigating authority of the European Union and granting of transnational subsidies by the Chinese government, which could not be admitted.

4.2.4.2 Comments from SDCOM

882. As already pointed out, in fact this authority considers that what was brought by the petitioner would be more appropriately considered as new program(s), not having enough time to include it at the time of the investigation in which such claim was made. The petitioner, in the final manifestation, agreed with this understanding.

4.2.5 Program 6 - Preferred loans

4.2.5.1 Facts found in the investigation

883. With regard to preferential loans, the support to stainless steel producers by banks 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. 2/2009 that provides domestic export finance in the form of finance, security, insurance and consultation services and also loan guarantee. According to the LPEI, the purpose of providing national export finance is to accelerate Indonesia's foreign trade growth and increase the competitiveness of business agents and support government policies within the scope of encouraging the national export program, as seen in the presentation of the bank on its website (https://www.indonesiaeximbank.go.id/general-information).

885. As listed on its website, Eximbank is wholly owned (100%) by the Government of Indonesia, describing itself as a "financial institution under the Government of the Republic of Indonesia" and therefore under the direct control of the GOI. As its sole shareholder, the Indonesian government has complete autonomy to appoint the board of supervisors and ensure the effective direction of LPEI's activities.

886. The aforementioned Trade Policy Review of Indonesia, a document prepared by the WTO secretariat, discusses the functioning of the Eximbank as follows:

The entirely state-owned Indonesia Eximbank (Lembaga Pembiayaan Ekspor Indonesia), supervised by the MoF, remains the sole institution to support national export performance, increasing the added value and competitiveness of export commodities by providing financing, guarantees and local and overseas insurance and consultation services for exporters, as well as contributing to the development of export-oriented SMEs (Table 3.9). It provides finance for transactions or projects that cannot be financed by banks, but have the prospects to increase exports; and assists in overcoming barriers encountered by the banks or financial institutions in providing financing for exporters that have commercial potential and/or are important for the country's economic development.

887. In addition to the fact that the policy implemented by the LPEI is contingent on the performance of exports, the work of the Indonesian Eximbank is centered on specific sectors considered strategic by the government of that country. This fact is explicit, for example, in the bank's 2019 annual report, which lists the bank's focus sectors, which include mining:

Indonesia Eximbank's sharia financing strategy in 2020 will focus on direct exporters and indirect tier 1 exporters, particularly in the automotive, food & beverage, chemical, electronic, and textile and textile products industries. In addition to the industrial sector, sharia finance can also be given to the downstream industry, tourism, fisheries and marine products, pharmaceuticals, oil palm plantations, mining, and the paper industry. (emphasis added)

888. There is evidence in the case file of the bank's relevance and performance in the mining sector for several years, and the bank's desire to encourage the conversion of raw products into value-added products, in full compliance with the country's industrial policy as explained in item 4.1. This was

verified, for example, in the on-site visit to the GOI, and also on pages 132 and 133 of the Bank's 2018 Report:

In addition to this, Indonesia Eximbank also channeled financing to develop the Morowali Industrial zone. The presence of the downstream nickel industry within the Morowali Industrial zone that was backed by Indonesia Eximbank since 2015 participated in the Morowali region's economic growth in the last 3 years of 60% or 60 times the national economic growth. The Morowali Industrial Zone also backed the 2015-2019 National Medium-Term Plan (RPJMN) that seeks to build 14 industrial zones in Java. (¼]

2018 Performance

In the last 3 years, SME financing expansion was largely focused on the industrial sector that provided more significant impact because of the presence of the production process that converts raw material into value added products. (our emphasis)

889. Furthermore, the bank's annual reports for 2018 (on page 134) and 2019 (page 133) indicate that the mining sector is the second most relevant sector for the bank. Finally, in the 2018 (page 526) and 2019 (page 554) reports, there is an amount of around 2 trillion rupees in funding, therefore there is evidence that there was a financial contribution to the mining industry, both through direct loans, or through Eximbank's participation as a guarantor of loans from other banks.

890. The petitioner further added that in LPEI's 2019 annual report, it is made explicit that the bank provides preferential loans, including loans with interest rates as low as 0%, both in rupee and in foreign currencies. World Bank data indicate that commercial lending rates in Indonesia between 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 was also confirmed for Antam's ferronickel production expansion project (as per Antam's 2018 Financial Statements) and the implementation of a PT COR Industry Indonesia (CORII) smelter located in Morowali, Central Sulawesi.

892. With regard to banks with branches established in Indonesia, but with foreign headquarters, during the on-site visit, this SDCOM requested clarification on the conditions of participation, and the GOI informed that, according to the OJK (the Financial Services Authority) Regulation No. 12/2021, there is no discrimination between an Indonesian or a foreign commercial bank, both would follow the same requirements to get the license. However, when requesting more detail about this statement, the GOI was unable to comply with the request, according to the visit report:

156. On points b) and c), when asked about the national regulation applied to the operation of foreign banks in Indonesia and the procedure for a foreign bank to open a branch in Indonesia, the GOI replied that, according to the OJK (The Financial Services Authority) Regulation No. 12/2021, 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 if they could provide a written response to SDCOM staff's inquiries regarding the procedure for licensing a foreign and domestic bank and also the presentation of any differences in the treatment of foreign financial entities in compared to the national ones, to which the SDCOM team agreed.

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 financial institution whose objective is to offer credit to exporters. The SDCOM team also asked the OJK for legislative differences and any differences in treatment with respect to the Eximbank's treatment of other financial entities, and the representatives also requested a written submission to SDCOM by the end of the verification. It was mentioned that there is Law nº 2/2009 on the Eximbank, and even that there are operational differences as well.

159. By the end of the verification, such written explanations on these two points had not been received. (our emphasis).

893. During the visit, SDCOM was able to confirm that the GOI has detailed information on all capital taken by companies, given that there is a system of the financial authority in Indonesia, OJK - Otoritas Jasa Keuangan, which centralizes all credit operations and the existence of credits taken by

Indonesian companies (Credit Reporting System - SLIK).

894. However, with regard to private operations, verification by the authority was still prevented even during the on-site visit, as the GOI prevented complete access to the system, in order to enable SDCOM to verify the amounts, conditions and contracts related to financing operations . Verification of how the banking sector works in general, in particular the conditions necessary for a foreign bank to start operating in Indonesia, was also prevented, as the GOI did not provide the information requested in this regard.

895. Thus, also considering that no identified producer/exporter responded to the questionnaire, the authority was prevented from assessing the GOI's allegations, as well as any characteristics about the loans.

896. Thus, it is necessary to resort to the facts available in the process, pursuant to art. 79 of Decree No. 1,751 of 1995. In this context, the facts available in the process indicate the existence of bank loans to Indonesian producers/exporters, as well as the performance of the GOI in order for such loans to occur, according to the verification report:

81. It was also asked whether they were addressed in discussions between governments about the flow of capital from China, as these are large amounts. The GOI reported that the meetings usually discuss outstanding issues between the countries, for example, under the LCS China did not give permission to the Indonesian bank to operate in China, and China asked Indonesia to open branches of two more Chinese banks in Indonesia. The main theme in the last meetings was the pandemic and vaccines, with the issue of opening banks in the respective counterpart countries having been resolved. (Emphasis added)

897. The GOI and IRNC point out that there was a loan from Exibank to IMIP.

898. Furthermore, the European Union authority concluded that there is an actionable subsidy program in relation to preferential loans with the participation of branches established in Indonesia.

899.Thus, according to the elements in the file, there are banks in Indonesia that grant loans to stainless steel producers/exporters and their related companies, such as mining companies and smelters that produce essential raw materials for production 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 described in this document, notably RIPIN and RPJMN. Furthermore, also relevant to the program are Law No. 2/2009, and those on agreements and MoUs signed within the scope of the creation of the IMIP, as well as Government Regulation No. 142 of 2015, when prescribing the instruments of control of the GOI over the Industrial Estates. It should be noted that the lack of collaboration by the GOI within the scope of this program, in particular by the OJK (The Financial Services Authority) prevented this authority from obtaining further information about the legal elements of the program, which is why the facts available in the process.

4.2.5.3 Specificity

901. Taking into account that the Government of Indonesia did not provide the necessary information to assess eligibility for the program, for the purposes of this document were used, pursuant to art. 79 of Decree No. 1751 of 1995, the available facts. In this context, considering what is foreseen in Indonesia's industrial policies, due to the privilege given to the stainless steel sector, considered a priority, as pointed out in this document, it was considered that there was specificity in the program, pursuant to art. . 6, paragraph 3, of the Regulation. Additionally, considering the fact that the program involves Eximbank, and therefore linked to exports according to the bank's own mission, it presumably makes it specific under 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 charged in the market.

903. Considering the total lack of collaboration by the GOI and the companies investigated in important inquiries carried out by this SDCOM, using the facts available in the case file, in particular the manifestations in the case file, as well as the decision of the European Union authority, we have that said

financial contribution was provided indirectly by the GOI, through banks instructed or entrusted by it or by public bodies.

904. It is reiterated that the GOI and the investigated companies did not provide essential information about the loans, a factor already recognized by the OSC as crucial, as pointed out in the DS379 case: "Moreover, the AB has also given importance to the fact that the government in question failed to cooperate during the investigation.". When listing the information not provided, it was expressly quoted: "(iv) the fact that 'during [that] investigation the [USDOC] did not receive the evidence necessary to document in a comprehensive manner the process by which loans were requested, granted and evaluated to the paper industry.". (emphasis added).

4.2.5.5 Statements prior to the Technical Note on preferential loans

905. Aperam, in a statement dated September 9, 2022, alleged the Indonesian Government's policy of granting preferential loans and various incentives to companies in the chain from nickel ore to the production of stainless steel.

906. Even so, it is worth noting again that Law Number 3 of 2014 on Industrial Affairs establishes, in its article 44, that:

Provision of Sources of Financing

Article 44

The Government shall facilitate the provision of competitive financing for Industrial development.

The financing as referred to in section (1) may derive from the Government, the Regional Government, enterprises and/or individuals.

Financing which is derived from the Government and/or the Regional Government as referred to in section (2) may only be granted to the Industrial Company in the form of state-owned enterprises and regionally-owned enterprises.

The financing as referred to in section (3) shall be granted in the form of:

The. loan;

B. grant; and/or

w. capital participation.

Article 45

(1) The Government may allocate financing and/or grant financing facilities to private Industrial Companies.

(2) The allocation of financing and/or the granting of facilities as referred to in section (1) are 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 facilities to private Industrial 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 of the LPEI, already attached to the case file, the bank would provide preferential loans, including loans with interest rates as low as 0%, in both rupee and foreign currencies. It is not understood, therefore, how an entity supposedly oriented by profitability would provide loans at zero interest rates.

908. Thus, the data would demonstrate that the Indonesian Eximbank is providing financing to companies in the nickel ore chain up to the production of stainless steel installed in the IMIP, representing a subsidy, equivalent to the difference between the amount of loans provided by Eximbank and the amount

that would have been paid under market conditions.

909. The IRNC pointed out on 9 September 2020, based on the GOI's response, "that no loans have been extended by Indonesia Eximbank to IRNC nor its related parties [CONFIDENTIAL], only to IMIP". IRNC also pointed out that the USD 50 million loan to SMI was not confirmed by the GOI, since the news published in the media did not materialize. He added that "the amounts calculated by Aperam are absolutely overestimated and lack any factual backing, as Aperam adopts the absurd presumption that all IRNC investments and their related parts of financed capital would come from resources obtained with preferential loans from IMIP with to the Indonesia Eximbank".

910. Finally, PT IRNC asked that the amount applied by the European Union in a similar case be used as the best available information, in the amount of 1.18%.

911. The GOI, in its statement regarding the use of available facts, stated that the EXHIBIT-GOI-ADD-20 already provides the required information regarding the transaction between Eximbank and PT Antam. He added that, in response to item 10.f of the BIA letter, the response to item 5.2 of the 2nd request for additional information provides information on the work of the PKLN - Pinjaman Komersial Luar Negeri team, and that such team does not have the competence for private loans foreigners.

4.2.5.6 Comments after the Technical Note on the program

912. The GOI stated, in its final statement, that it would have been proven during the on-site verification, including in the system, that none of the producers applied for or received financial services from Eximbank Indonesia, with no benefit.

913. In addition, SDCOM would not have presented information in the Technical Note regarding the analysis of the pass-through of the IMIP benefit to stainless steel producers (pass-through). It highlighted paragraph 718 of the Technical Note, which mentioned that the operations of Eximbank Indonesia would be focused on specific sectors considered strategic by the government of that country, such as mining - at this point, the GOI stated that the operations of Eximbank Indonesia are not focused only on specific sectors, but almost all sectors include the operations of Indonesia's Eximbank, and there is no specificity in the program. He added that although the bank's annual reports indicate that the mining sector is the second most relevant sector for the Bank, SDCOM would not have provided any details on the beneficiaries of the loans. Like this,

914. He concluded the GOI by stating that, even though it was stated in paragraphs 724 and 725 that the GOI denied complete access to the OJK system, the Eximbank would have provided all the information. Therefore, as PT Indonesia Ruipu Nickel and Chrome and PT Jindal Stainless Steel Indonesia did not apply for financial services from Eximbank, the investigation should be terminated without application.

915. The petitioner, in her final statement, highlighted that "in her statements dated July 25 and September 8, 2022, all sources, methodologies and calculations related to the preferred loans granted in the analysis period were detailed, including with regard to the benchmarks, so that the values calculated there, equivalent to US$ 195.81/t or 9.58% of the FOB value, should be considered as the best information available for the purposes of calculating the amount of subsidies that can be used granted by the Government of Indonesia through preferential loans".

4.2.5.7 SDCOM comments

916. SDCOM reiterates that the inadequate concealment of the names of the related companies by the IRNC, despite not having caused any damage with respect to the treatment of their manifestations by the SDCOM, prevented the due adversarial process from the other parties interested in the investigation. It should be noted that PT IRNC only brought in its final manifestations the names of the companies in restricted headquarters, being a public and notorious fact, according to the 2007 IMIP report and the decision of the European authority that the IRNC is related to several companies relevant to the investigation , such as PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia, PT Indonesia Guang Ching Nickel and Stainless Steel Industry, PT Indonesia Morowali Industrial Park and PT Ekasa Yad Resources.

917. It is also pointed out that the verification carried out at the GOI in relation to this program was not complete, due to the GOI's refusal to provide the requested information. Therefore, GOI's allegation that all information had been provided is not valid. Although Eximbank provided access to its system, OJK denied information and even prevented full access to the system, as well as BKPM also failed to provide crucial information, according to the on-site verification report:

150. Still on the law in question, item "c" of article 15 was shown, which says that the company must prepare a quarterly report on the activities carried out and submit it to the BKPM for analysis ("Report on investment activities"). The report is mandatory and failure to send it may ultimately lead to the revocation of the company's operating license. This device is applied to both domestic and foreign investors.

151. Government representatives were asked whether the capital invested in the IMIP also went through the same procedure described above, and the answer was affirmative. The SDCOM team then asked the BKPM for a copy of the reports from PT IMIP, PT IRNC (Ruipu) and their related companies for the years 2016, 2017 and 2020. The GOI informed that it did not have the reports at the moment because the representatives of BKPM, present at that time in the on-site visit meeting, they were from another sector, and the sector responsible for the reports was not present.

(...)

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 financial institution whose objective is to offer credit to exporters. The SDCOM team also asked the OJK for legislative differences and any differences in treatment with respect to the Eximbank's treatment of other financial entities, and the representatives also requested a written submission to SDCOM by the end of the verification. It was mentioned that there is Law nº 2/2009 on the Eximbank, and even that there are operational differences as well.

159. By the end of the verification, such written explanations on these two points had not been received.

918. Thus, it was impossible to verify whether, in fact, there would be no participation of Eximbank Indonesia through other banks. Furthermore, even if the GOI's cooperation had been full, this would have allowed SDCOM only a partial verification of the facts, since a complete and adequate verification would only be possible with a verification of the investigated companies, which was also not possible in the absence of responses. to the producer/exporter's questionnaire in the present case. In general, verification by the government does not have the power to fully verify the amounts involved in assistance within the scope of the programs, given that, in general, any accounting verification is not possible solely based on the visit to the government, and there may be amounts that would only be captured in a check at the company receiving the assistance.

919. That said, SDCOM decided to use the European Union's decision as the best available information, in line with what was suggested by the IRNC, as described in the section below. And it was because the information from the European Union was fully used that no calculation was carried out on pass-through, as pointed out by the GOI, as the calculation by the other authority has already done so.

920. Regarding the GOI's comments, the displayed exhibit shows very little information about the operation, and SDCOM would need the contract to be able to adequately verify the financing conditions. With regard to what is expressed in item 10.f of the BIA letter, the GOI failed to provide several required information, as expressed in the visit script previously forwarded:

5.1. Explain how the interministerial team/working group works Tim

Pinjaman Komersial Luar Negeri, 'PKLN', pursuant to Presidential Decree No. 39 of 1991, necessarily explaining what kind of decisions the PKLN takes and what its scope of action is, detailing in 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 the investigated companies and their related companies, necessarily including the approval process and monitoring of the loans;

5.3. Indicate the banks with presence in Indonesia involved in said operations of

financing;

5.4. Indicate the amounts involved in the operations referred to in the previous paragraph;

It is

5.5. It should be noted that the questions in items 5.1 to 5.4 refer to the period since the beginning of the project negotiations that led to the construction of the IMIP.

921. However, none of the points above was answered by the GOI.

922. Finally, it should be noted that it makes no sense to talk about external private loans. As informed by the GOI, in particular by the BKPM and OJK, all foreign financing to enter Indonesia has to go through an Indonesian bank, at which time it passes through all the control of the GOI. From the on-site visit report:

Asked about the flow of capital, it leaves the foreign country, enters through a bank in Indonesia and goes to a specific project, he also informed that the system integrates all the ministries necessary to facilitate the investment.

923. Regarding the specificity, not only is it a presumably specific subsidy because it is linked to exports (according to the Eximbank mission), as well as, in view of the lack of collaboration and within the scope of the use of available facts, the fact that the mining sector being the 2nd sector of the bank's flow, as well as being a well-known fact that the bank provides support to nickel mining and smelting, and also taking into account the investigation of the European Union, concluded SDCOM for the existence of specificity as already pointed out. The GOI cannot claim that SDCOM has not adduced anything about the beneficiaries, when the GOI itself has not provided the required information - no one can benefit from its own lack of cooperation.

924. Regarding the petitioner's comments, SDCOM remains convinced that, for this program, the most appropriate information possible was used in the Technical Note, and reiterates, in the context of the Final Determination, the conclusion already presented, with the petitioner not presenting any argument 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 about the program, as well as the absence of a response from the investigated companies, made the investigation of the authority extremely difficult, making use of the facts available in the case file, in accordance with the art. 79 of Decree No. 1751 of 1995.

926. It was concluded, in this context, that the "Preferential Loans" program constitutes a financial contribution by the Government of Indonesia - under the terms of paragraphs "a" and "d" of item II of art. 4 of Decree No. 1,751 of 1995, since the practice implies direct transfer of funds, or potential transfers of funds or obligations through Eximbank, enabling the investigated companies to access loans with preferential conditions.

927. Considering the elements available in the case file, Eximbank is the SOE and public body that implements industrial policies of the Government of Indonesia, as well as the knowledge on the part of 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 was a financial contribution and benefit, since the cost of financing the companies involved is lower than what they would have to incur if they obtained resources at normal commercial interest rates , allowing greater availability for the receiving company.

929. With regard to specificity, as stated there is a clear focus on certain sectors, as explained in the previous item, fitting into § 3 of art. 6 of Decree No. 1,751 of 1995, and, decisively, considering that the bank's activities are clearly linked to exports and it is in this context that the loans are granted, there is evidence that it is configured as a prohibited subsidy because it is linked to exports , therefore presumably specific, pursuant to art. 8, item I, of the Brazilian Regulation, and subject to the application of compensatory measures.

4.2.5.9 Calculation

930. Considering the lack of responses from the producers/exporters and the government's lack of collaboration in responding to SDCOM's questions, the facts available in the case file were used.

931. In this context, considering that the existence of preferential loans has been proven, with the gap remaining about the amounts involved, after weighing the information available in the file, the calculation of the European Union authority in the aforementioned case was used as the best available information, in which the amount of 1.84% was calculated in this program. This SDCOM is not convinced that, for this specific program, the calculation proposed by the petitioner reasonably fills the present gaps.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
All Companies	37.60	1.84%

Source: Best available information - European Union authority decision.

Elaboration: SDCOM

4.2.6 Program 7 - Bonded zones

4.2.6.1 Facts found about the program

932. As verified by SDCOM during the course of the process, especially during the on-site visit, the bonded zones are areas controlled by Indonesian customs, in which companies can operate for the purpose of producing and selling the processed product, either to Indonesia or for export. In short, they would function as a kind of processing zone - material is imported, processed and sold (either for export or domestically).

933. Regarding the functioning of the program, according to Article 20 of MOF Regulation 131/2018, the bonded zone program is a legal framework that gives access to other tax suspension programs, which in the Regulation is known as PDRI (tax in the framework of imports). Once the company has the bonded zone license, it has an incentive through the suspension of payment of import duties, VAT (10%) on imports and income tax on imports (2.5%). This income tax on imports, managed by customs, is different from the corporate income tax, dealt with in this Opinion in program 8, as it works as a credit that is included in the calculation of the corporate income tax. Tax incentives within the scope of bonded zones occur from the construction of the plant, with the suspension of the VAT that would be collected, which also occurs once it starts operating.

934. Articles 3, 4 and 16 establish the following requirements: (1) be an Indonesian company; (2) be established in an industrial bonded zone in Indonesia; (3) to carry out production activities in the customs zone or be a factory in the customs zone; (4) import raw materials or products for further processing; (5) export the final goods produced with the imported goods. Thus, if the good is exported or remains permanently within the bonded zone, no tax is payable either.

935. The GOI informed SDCOM that PT IRNC and its related companies PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia and PT Indonesia Guang Ching Nickel and Stainless Steel Industry are within a bonded zone. However, when the bonded zone licenses for such companies were requested, the GOI informed that it could only provide the license for PT IRNC (Ruipu), and not for the others, which, according to the GOI, would not be investigated companies.

936. The GOI also did not cooperate with regard to the amounts involved, given that during the on-site visit it was informed that it was not possible, for confidentiality reasons, to verify the amounts reported 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 previously was regulated by MOF Regulation 147/2011. In addition, the implementation regulation of the aforementioned MoF regulation, whose number is Regulation 2/BC/2019, of the Director General for customs and excise, is also applicable.

4.2.6.1.2 Financial contribution

938. The program's financial contribution lies in the fact that companies that had access to 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 the liquidity of companies, which

now have additional resources arising from the non-payment, by the Government of Indonesia, of due revenues, pursuant to art. 4, II, "b", of Decree No. 1.751/95.

4.2.6.1.3 Specificity

939. Bearing in mind that the evidence presented points to the express limitation of granting the financial contribution to companies located within a geographic region located within the jurisdiction of the granting authority, pursuant to art. 7 of Decree No. 1751 of 1995. The facts available in the process also indicate, depending on Indonesia's industrial policy and intentions set forth by the Indonesian government, a direction towards the stainless steel sector and the IMIP in particular, under the terms of art. 6th, § 3rd , of the Brazilian Regulation, also constituting a de facto specific subsidy, and therefore subject to the application of compensatory measures. There is, in this context, evidence from the decision of the European authority, which indicates that the GOI exercises discretion in granting the bonded zone license, even for companies that are theoretically within the special zone. Finally, there is also evidence that the program is linked to exports, presumably being specific.

4.2.6.1.4 Manifestations prior to the Technical Note on the program

940. The GOI stated in its response to the questionnaire that "there is strict customs enforcement" and that "since the Customs Zone is a neutral customs territory, where import duties and taxes cannot be collected, this program does not constitute a financial contribution to companies that operate as bonded zone".

941. The GOI also stated that the program would apply to all industry sectors and regions 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 the reasons why 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 fully imported goods. Please see Article 2 MOF Regulation No 147 of 2011 concerning Bonded Zone where Bonded Zone is defined as a custom are and is completely under the supervision of the Directorate General of Customs and Excise. By this understanding, Customs cannot collect import duty, income tax, value-added tax (VAT), luxury tax, and excise upon the goods as long as they are located inside the Bonded Zone. In light of goods inside the Bonded Zone, they are not subject to taxes and customs until they leave the Bonded Zone, hence there is no revenue forgone in the sense of the difference between the import duty on import and the income tax and import duty paid on imports.

Indonesian Customs Authority also implements a very strict control on the movement of goods in the Bonded Zone area through the presence of Customs office in each Bonded Zone through an integrated electronic system fully operated. This allows full control of Customs to companies having Bonded Zone status and as such no excess of duty or tax exemption including for import duty of machinery in the Bonded Zone. Therefore, programs in Bonded Zone are not countervailable and no investigation should be established upon the program.

943. Aperam, in manifestations on July 25, 2022 and September 8, 2022, given the difficulties caused by the lack of cooperation on the part of the government and Indonesian producing/exporting companies in the present proceeding, presented methodology and simulation of calculations subsidies granted by the Government of Indonesia to the producers/exporters of the product under investigation, seeking to fill in the information that was not presented by the Indonesian parties, which would allow the investigating authority to analyze, in the most complete and appropriate way possible, the granting of 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 thus by nature entails own facilities" and that "IRNC never benefits from facilities under Industrial Estate and no downstream producer in Industrial Estate." However, as it would be analyzed in relation to previous programs, both IRNC and other companies of the same Group, in fact, would use subsidies granted in such programs.

945. He added that, in its response to the request for additional information on the Questionnaire sent by SDCOM, the Government of Indonesia had changed its information, indicating that "PT Sulawesi Mining Investment was granted a Bonded Zone status on 26 September 2018", which the "PT Guang Ching

Nickel and Stainless Steel Alloy was granted a Bonded Zone status on 27 September 2018", that "PT Indonesia Tsinghan Stainless Steel was granted a Bonded Zone status on 4 September 2018" and that "PT Tsinghan Steel Indonesia was granted a Bonded Zone status on 27 September 2018". Therefore, in addition to IRNC, the four companies mentioned obtained, practically simultaneously, the status of bonded zone.

946. During the verification visit carried out at the Government of Indonesia, as stated in the respective report, "[I] was informed that PT IRNC and its related companies PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia and PT Indonesia Guang Ching Nickel and Stainless Steel Industry are within a bonded zone." However, when asked by the SDCOM team to provide the bonded zone licenses for such companies, "the GOI would have informed that it could only provide the license for PT IRNC (Ruipu), and not for the others, which were not being investigated."

947. Even with regard only to IRNC data, as stated in the Report of the verification visit to the Government of Indonesia, it would only have shown the SDCOM team a table with amounts that would refer to PT IRNC, however, relating only to two years, and having informed that it would not be possible to verify the data in such a table.

948. The petitioner concluded that it was clear, therefore, that the failure to provide the information and documents requested by SDCOM would simply demonstrate the deliberate lack of cooperation on the part of the Government of Indonesia in this investigation, undermining the proper 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 a "bonded zone" are not considered fully imported, therefore, import tax, income tax, value added tax (VAT), 'luxury tax' ' and etc. The "bonded zones" are internationally recognized and are consistent with multilateral rules, being strictly supervised by customs, as seen in the on-site visit. Being a neutral territory, there is no financial contribution. Furthermore, the "bonded zone" program applies to companies from all sectors and regions, with no specificity.

950. The petitioner, in her final statement, reaffirmed SDCOM's conclusions about the program.

4.2.6.1.6 SDCOM comments on the manifestations

951. Regarding the allegations that the program does not confer benefits and regarding the inspection of bonded zones, despite being provided for in the regulation, the GOI was not able to provide evidence of the inspection carried out. When asked during the on-site visit for a bonded zone monitoring report, the GOI was not able to provide it. Thus, the authority had no way of determining whether or not there was proper control or even the excess refund of suspended taxes, and there is evidence that, at least in the past, the program has already been used incorrectly. The arguments brought by the GOI in the final manifestation brought nothing new, and the alleged supervision cannot be bought during the visit, as already mentioned.

952. Regarding the alleged lack of specificity of the program, the GOI did not satisfactorily answer questions 12 and 13 of the questionnaire that would allow SDCOM to assess the specificity of the program, which is why the available facts were used, which indicate, depending on the industrial policy of Indonesia and intentions exposed by the Indonesian government, a direction towards the stainless steel sector and the IMIP in particular. It should be noted that the GOI reiterated the argument for the alleged lack of specificity in the final statement, but did not comment on the fact that it did not answer the questions as requested, preventing SDCOM from correctly evaluating this point. Thus, the conclusion about this program is reiterated.

4.2.6.1.7 Conclusion

953. SDCOM concluded that the bonded zones program is an incentive that is configured as a subsidy, since it involves a financial contribution by the government or public body, under the terms of line "b", of item II, of art. 4 of Decree No. 1,751 of 1995, since it stopped the GOI from collecting public revenue due.

954. With regard to specificity, in view of the absence of a complete response to the questionnaire in the relevant items, as noted above, and considering that the evidence presented up to the date considered in this document points to the direction of the program in the context of the policies that

privilege stainless steel producers, a sector considered a priority in the government's plans, the program is configured as a specific subsidy in fact, under the terms of art. 6, § 3, of the Brazilian Regulation, and therefore subject to the application of compensatory measures. There is also regional specificity, according to art. 7 of Decree No. 1751 of 1995, and evidence that the program is linked to exports, presumably being specific.

4.2.6.1.8 Calculation

955. As available facts for this program, the decision of the European Union authority, whose investigation deals with products and producers equivalent to those dealt with here, was used. In said investigation, the authority calculated the amount of 1.18% for the bonded zones program.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
All Companies	24.11	1.18%

Source: Best available information - European Union authority decision.

Elaboration: SDCOM

4.2.7 Program 8 - Direct tax incentives

956. With regard to fiscal programs, it is pointed out that the GOI, during the on-site visit, did not provide any documentation about the qualification, evaluation of the concession and the effective concession of the amounts involved in the programs or even about any monitoring carried out, claiming that deal with confidential tax information, and which should be requested from the companies that 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 modified for the first time on August 14, 2015 by Ordinance of the Minister of Finance - MoF - No. 159/2015, and partially modified for the second time on June 27, 2016 by MoF Regulation No. 103/2016, renewed for the second time on April 4, 2018 by MoF Regulation No. 35/2018 and renewed for the third time on November 27, 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 companies classified as "pioneer industry" that undertake a new equity investment of at least Indonesian Rupiah 100 billion (Rp or 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 a period between 5 and 20 years after the start of commercial production, and the greater the investment, the longer the duration 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 tax reductions or exemptions, the Regulation provides for a 50% reduction in the CIT for investments equal to or greater than 500 billion rupees and 25% for investments between 100 and 500 billion rupees. According to the translation submitted by the GOI:

Article 2

(1) Corporate Taxpayers making new investments in Pioneer Industry may obtain Corporate 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 at least be Rp100,000,000,000.00 (one hundred billion rupiah).

(3) Corporate Income Tax deduction as referred to in paragraph (1) shall be as follows

The. 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); and

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 maximum less than Rp500,000,000,000.00 (five hundred billion rupiah).

(4) The term of Corporate Income Tax deduction as described in paragraph (3) point a shall be given based on the following provisions:

The. for five (5) fiscal years for new investment and the planned investment 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 of at least Rp1,000,000,000,000.00 (one trillion rupiah) and less than Rp.5,000,000,000,000.00 (five trillion rupiah);

w. for 10 (ten) fiscal years for new investment with planned investment of 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 of at least 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 investment of at least Rp30,000,000,000,000.00 (thirty trillion rupiah).

(5) The term of Corporate Income Tax deduction as described in paragraph (3) point b shall be given for five (5) fiscal years.

(6) After the expiration of the term of provision of Corporate Income Tax deduction as referred to in paragraph (4) or paragraph (5), taxpayers shall be given of Corporate Income Tax deduction as follows:

The. 50% (fifty percent) of the Corporate Withholding Tax payable for the next two (2) years for new investment as referred to in paragraph (3) point a; or

B. 25% (twenty five percent) of the Corporate Withholding Tax payable for the next two (2) years for new investments as referred to in paragraph (3) point b.

961. Article 3 of Indonesian Regulation 150/2018 provides a list of industries considered to be pioneers, including the upstream base metal industry (iron, steel and non-steel):

Article 3 (1) In order to obtain Corporate Income Tax deduction as referred to in Article 2 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 the granting or notification 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); and

It is. it meets the provision of debt and capital ratio as referred to in the Regulation of Minister of Finance concerning the determination of the company's debt and capital ratio for the purpose of calculating withholding tax.

(2) Pioneer Industry as referred to in paragraph (1) a includes:

The. upstream base metal industry:

1. steel; or

2. non-steel, without or with its integrated derivatives; (¼) (emphasis added)

962. In short, companies need to meet five conditions to be eligible to receive the exemption:

be an Industry Pioneer;

be a company established in Indonesia;

be a new investment, for which a decision on the reduction of corporate income tax has not yet been issued;

the investment amount must be at least Rp 100 billion; It is

the company must meet the legal requirements of a 4/1 debt-to-equity ratio.

963. It should be noted that, although they may belong to international groups, the investigated stainless steel producers in Indonesia were incorporated as Indonesian legal entities and are therefore eligible for income tax relief. In accordance with this Regulation, and given the limited investment required to benefit from the tax reduction, for the purposes of final determination, according to the file, all Indonesian stainless steel producers, whether integrated or not, are eligible for this subsidy scheme.

964. Furthermore, the request for support within the scope of the program is received by the BKPM through the OSS system, an entity that then prepares a letter of recommendation to the MoF attesting whether the grant is recommended or not. The MoF is the body responsible for conducting and monitoring the program.

965. The GOI pointed out in its response to the questionnaire that the company PT IRNC participated in the program, and that no other company in its group was granted assistance. However, such information cannot be proven, as the GOI informed, during the on-site visit, that it could not even provide any documentation regarding the qualification and use of the program, as this is confidential and should be requested directly from the company PT IRNC (PT Ruipu). The GOI also did not answer the questions that would allow SDCOM to assess the distribution of assistance under the program among the sectors 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 facts, namely, the 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 that had access to 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 the liquidity of companies, which now have additional resources arising from the non-payment, by the Government of Indonesia, of 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 belonging to the "pioneer industry" sectors and that make an investment of at least 100 billion. In this way, the specificity of the program's law has been configured, pursuant to art. 6, caput, of Decree nº 1.751/1995, since the regulations limit the program to certain pioneering companies, among which companies in the steel chain.

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 was the only company, as alleged by the GOI, that benefited from the Tax Holiday granted in said program, so that its related parties were not benefited .

971. It also states that "the audited reports of the other related parties ([CONFIDENTIAL]) show no tax holiday deducted from income tax, as this verifying authority can verify". It suggests as the best available information the percentage of 1.65% calculated by the investigating authority of the European

Union, which would, in its opinion, be consistent with the information actually provided by the GOI and by the IRNC, since, in its opinion, the calculation brought by the petitioner "includes subsidies received in the income tax by its related parties without any factual basis".

972. Aperam, in a statement dated September 9, 2022, reiterated its previous statements in the petition and its complementary information, in particular with regard to Government Regulation 18 of 2015, Ministry of Finance Regulation 89 of 2015 and Government Regulation 9 of 2016.

973. He also highlighted that the Ministry of Finance Regulation 35 of 2018 would have established a 100% reduction in the Corporate Income Tax (CIT) rate for companies that make a new capital investment of at least 500 billion of Indonesian Rupees (Rp). Such Regulation, however, would have been replaced by Regulation of the Ministry of Economy 150, of 2018, which would have maintained the same 100% reduction, however, only for companies whose new investment was at least Rp 500 billion.

974. As it turns out, the mentioned Regulation would also establish a 50% reduction in the Corporate Income Tax rate for new investments between Rp 100 billion and Rp 500 billion.

975. He argued that in all cases, the established subsidies would confer a benefit equal to the amount of revenue foregone by the government and entitlements not collected by the government.

976. He highlighted that Nickel Mines, in its partnership with the Tsingshan Group, would have obtained a 100% reduction in the amount of Income Tax, based on the aforementioned Regulation of the Ministry of Economy 35/2018, for the Hengjaya Nickel project, as per informed on its website and already presented in the petition. Furthermore, Nickel Mines would have obtained the same financial concessions in relation to its Ranger Nickel project, also in partnership with the Tsingshan Group, as stated on its website and presented in the petition.

977. These tax reductions would therefore qualify as a financial contribution by a government in the form of government revenue that is otherwise forgiven or not collected, pursuant to item b) of item II of 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 response to the Questionnaire sent by SDCOM, would have confirmed that the Tax Holiday program is in effect and that it was granted to the company IRNC. He added that, between 2018 and March 2020, industries in the "Upstream Metal Industry" sector would have represented 9 of the 19 concessions of the Tax Holiday benefit. In relation to the Central Sulawesi region, this would have represented, in the same period, 8 of the 18 reported concessions of such a benefit.

979. Also, as stated in the Verification Visit Report in the Government of Indonesia, there would be programs related to benefits arising from accelerated depreciation. In this case, the Ministry of Finance Regulation would present, in its appendix 2, a list of sectors and regions to which the benefit is intended, with number 26 referring to "nickel mining" and the program would be available to all regions 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 are considered the "parameter" for verifying information submitted by the exporter to the authority, precisely because they are issued by an independent third party, the external auditors. audited reports, as a rule, do not have the probative force of mere indications, but constitute, on the contrary, the "parameter" of comparison for the other information of an accounting-financial nature contributed by the investigated company". Thus, PT IRNC commented that it understands that there is no way to attribute greater probative force to the calculation proposed by the Petitioner, who considers that the group companies received the Tax Holiday 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 nº 1.751, of 1995: "when formulating the determinations, verifiable information that has been presented in a timely manner and that, therefore, can be used even if it is not adequate in all respects, will be taken into account. ". There is an essential requirement found in the use of "verifiable information".

982. In this context, the presentation of audited reports is not enough to overcome this requirement and be able to use it in the case, which requires not only mere indications, but evidence of what is alleged. In the present case, this is not verifiable information, since the absence of a response to the questionnaire by PT IRNC prevented any verification (bearing in mind that the GOI refused to provide specific evidence for each company, claiming confidentiality) for the proper verification of such program, verification of the tax returns of the companies involved by this SDCOM is indispensable.

983. Furthermore, one cannot forget, as PT IRNC did in its final statement, that said reports are not public, and are not freely accessible either for this authority or for the other interested parties to exercise the contradictory. Even if they were freely available, it would still be essential to verify the data contained therein. Otherwise, on-site verification of accounting data would never be necessary, it would be enough for the authority to read the audited reports in all investigations. It should also not be forgotten that in other investigations SDCOM has discovered inaccuracies (intentional or not) in audited reports. Therefore, PT IRNC's argument is unfounded.

984. Thus, considering the facts available in the case file, SDCOM understands that the content of the applicable legislation, the best information available in the case file is that brought by the petitioner, given that: i) the protester did not directly point out any blemish in the calculation performed , just refuted it generally; ii) the text of the European Union authority's decision is too succinct, and as SDCOM did not have access to the documentation that the authority had access to, there is no way of knowing which documentation was analyzed in this specific program.

985. Regarding the argument brought in the final statement on the European Union, it should be noted that it is not known what documentation was analyzed in this specific program - even in the present investigation there is a full example of how the authority of the European Union may not have had access to certain documents (in casu, the official documentation found by SDCOM on the framework of the IMIP in the electricity supply program, apparently not analyzed by the EU). And here it is also worth noting that PT IRNC's suggestion would be equivalent to simply transplanting decisions of other authorities without any critical sense, which could lead to the suggestion - as a last resort - of not even investigating and only applying the same amount of other authorities to all Software. When appropriate, this SDCOM applied the calculation by the European Union, even when the petitioner had suggested a higher calculation - for example, in the preferential loan program the petitioner had suggested an amount of US$ 195.81/t or 9.58%, and the Federal Government's calculation was used as the best available information European, of 1.84% or US$ 37.60/t. In terms of using available facts, this authority obviously does not take into account the amount to be applied, but what information best fills in the gaps left by the parties' lack of cooperation.

986. Also worthy of note is the fact that PT IRNC continued without attacking any point in the calculation carried out, even though the calculation was detailed in detail which would be the revenue and profit values of the companies of the Tsingshan group (based on the information available). Now, if, as alleged, there was no participation of certain companies of the group in the program, PT IRNC had ample opportunity to counter-argument in the sense of the lack of profit and participation in the program. It is also reiterated that SDCOM only sought the available facts in view of the total lack of cooperation on the part of the producers/exporters, who did not respond to the questionnaire, as already pointed out, and the Government of Indonesia, which refused to provide any concrete data about the use by companies of this and all other programs.

987. SDCOM also pointed out in the Technical Note that it was surprised by the confidentiality of the names of its related companies brought by PT IRNC in its statement prior to the Technical Note, as such information is notoriously public knowledge, as present in the 2017 IMIP report itself or in the decision of the authority of the European Union. By hiding such names, it made it extremely difficult for the other interested parties to contradict, who did not even have the conditions to know the name of the companies and verify whether the information expressed in the manifestation is correct. Although this fact is not decisive for the rejection of the attached documentation, it is an element that cannot be disregarded. It should be noted that, for the purposes of final manifestation, PT IRNC lifted the secrecy of the names.

4.2.7.1.6 Conclusion

988. SDCOM concluded that the income tax reduction/exemption program for large investments is an incentive that is configured as a subsidy, since it involves a financial contribution by the government or public body, under the terms of item "b", of item II, of art. 4 of Decree No. 1,751 of 1995, since

it stopped the GOI from collecting public revenue due.

989. With regard to specificity, in view of the lack of a complete response to the questionnaire in the relevant items, as noted above, and considering that the evidence in the file expressly points to the existence of policies in order to privilege stainless steel producers, sector considered a priority in the government's plans, the program is also configured as a specific legal subsidy, under the terms of art. 6, caput, of the Brazilian Regulation, and therefore subject to the application of compensatory measures.

4.2.7.1.7 Calculation

990. The calculation of the benefit took into account the available facts, pursuant to art. 79 of Decree No. 1751 of 1995.

991.In this context, SDCOM considered the calculation presented by the petitioner to be reasonable, which, despite being available in the records since July 2022, did not raise any criticisms from the other interested parties - not being the mere generic criticism about the alleged lack of factual basis able to discredit the use of the calculation presented by the petitioner - given that the protester herself, if she had collaborated with the investigation, could have provided all the evidence that SDCOM would need for the most accurate calculation possible without forcing the use of available facts.

992. Thus, based on the data presented by the petitioner, who reasonably constructed revenue and profit of the companies involved in the Tsingshan group, and calculated the amount for the product under investigation, through a pass-through system considered adequate by SDCOM, as per appears in a document submitted by Aperam in the case file on September 8, 2022, also considering a 100% exemption, which is compatible with the applicable legislation and the amounts involved, the amount of 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 regulations no. 76/2012 and 188/2015, companies involved in industries producing goods and/or services may be exempt from import duties on machinery, goods and materials.

995. This exemption is normally granted for a maximum period of two years from the decision on exemption from import duties. The objective of this Regulation is to support the national industry, as stated in MoF Regulation nº 176/2009 (translation submitted by the GOI): "in order to increase domestic investment to strengthen the national economy which faces the global competition, it is necessary to grant an exemption from import duty on the imports of machines, goods and materials for the establishment or development of industry in the frame of investment".

996. According to article 1 of MoF Regulation No. 176/2009, the machines in question are those used to build or develop industries, while "goods and materials" cover all goods or materials, regardless of their type and composition, used as materials or components for the production of finished goods.

997. According to the Regulation, there is a limitation to receiving assistance within the scope of service providers, limited to a list of seven industries, which are listed in the annex to MoF Regulation No. 176/2009: "1. Tourism and culture 2. Transportation (for public transportation services) 3. Public health services 4. Mining 5. Construction 6. Telecommunication 7. Port" (emphasis added). The legislation does not establish limitations to the producers of goods.

998. As stated by the petitioner, considered the best information available in the file, the import tax rates on machines classified in chapters 84 and 85 of the Harmonized System vary around 5%.

999. During the on-site visit, when the GOI was questioned about the program, the SDCOM servers were informed that the BKPM team responsible for the program was not available for explanations. As reported in the visit report:

When asked about Regulations MOF 72/2012 and MOF 188/2015, which also deal with tax exemption, it was explained that it is a temporary incentive in the context of investment in construction, with such a program being managed by the BKPM, as it concerns import investments of machines, for example, realized, and not on the products in a bonded zone. It is important within the scope of the program to know whether the exemption occurs before or after construction, as once 2 years have passed, the company can apply for a bonded zone. It was also highlighted that, in the end, the company has the same exemption under both programs, and there would be no excess receipt. Asked if BKPM staff were available to explain how the program works, it was said that BKPM staff believed their participation would end on Wednesday, to which the SDCOM servers replied that letters d) and e) of the VAT exemptions section were postponed to Friday. The GOI responded that it would check the possibility of attending an online video conference, and the check was closed without the BKPM team having participated on Friday.

1000. Thus, pursuant to art. 79 of the Brazilian Regulation, the facts available in the process.

1001. Nor could the GOI's claims about surveillance and monitoring of the program be evaluated.

4.2.7.2.2 Elements of fact or law (Legal/documentary basis)

1002. The program is regulated by MoF Regulation No. 176/2009, as amended later, the last 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 had access to 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 the liquidity of companies, which now have additional resources arising from the non-payment, by the Government of Indonesia, 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 accessible to all companies producing goods and 7 service sectors, including mining.

1005. It is pointed out that, taking into account that the GOI did not provide the requested information necessary to evaluate the companies that actually obtained assistance under the program, according to the questions in the questionnaire, and that SDCOM was unable to verify the response to the questionnaire to this program during the on-site visit, as will be detailed in the following section, for the purposes of Final Determination were used, pursuant to art. 79 of Decree No. 1751 of 1995, the available facts.

1006. In this context, as the lack of collaboration by the GOI in this program prevented the authority from assessing how the government distributes or exercises its discretion in approving exemptions, in view of the government policies expressed in RIPIN 2015-2035, as already described, the elements of the processes point to the existence of a de facto specificity in relation to the cold-rolled producers investigated, pursuant to § 3 of art. 6 of Decree nº 1.751/1995, in addition to the legal specificity, pursuant to art. 6 , caput, of Decree No. 1,751/1995 in relation to mining companies, which are in 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 would serve to attract and accelerate development and that, according to MoF Regulation No. 176/2009, the program is open to all companies, and for that reason, it would not be specific. The IRNC pointed out that it shares the understanding of the GOI that such benefit would be general for any company producing goods ("goods"), not being specific, but requests, in any case, that the calculation made by the European Union.

1008. Aperam, in a statement dated September 9, 2022, stated that the petition and its supplementary information analyzed the determinations established by Regulation 176/2009 of the Ministry of Finance of Indonesia, amended by regulations 76/2012 and 188/2015, according to which companies involved in industries producing goods and/or services are entitled to exemption from import duties on machinery, goods and materials.

1009. He also stated that contrary to what was alleged by the Government of Indonesia, in the Annex to the Ministry of Finance Regulation no. 176/2009 contains the list of service-generating industries (not service providers) that are entitled to exemption from import duties on machinery, goods and materials, indicating, in item 4, mining.

1010. It also highlighted that in its response to the Questionnaire sent by SDCOM and to the request for additional information to the Questionnaire, the Government of Indonesia stated that "[n]one of producers or exporters of product under investigation participated in and accrued benefit from this program" and that "[n]one of IRNC affiliated companies in Indonesia obtained benefit from Exemption from Import Duties." However, during the verification visit, the Government of Indonesia attested that the companies of the IRNC group did indeed use such a program, as attested in the On-site Visit Report. However, despite holding all the aforementioned data, the Government of Indonesia did not provide the information and documentation requested by SDCOM.

1011. Finally, he mentioned that the Government of Indonesia confirmed that "[t]his program still exsist. (sic)"

4.2.7.2.4 Statements after the Technical Note about the program

1012. The petitioner, in her final statement, reaffirmed SDCOM's conclusions about the program. She also added that the calculations would be conservative, since they were calculated on prices charged at lower than adequate remuneration, and not, as it should be, on comparable prices of similar products carried out at market prices.

4.2.7.2.5 SDCOM comments

1013. This SDCOM emphasizes, once again, the character of promoting industrial development in the GOI's policies related to incentives, as expressed in the government's manifestation. It is pointed out 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 unaccompanied by probative elements, not even the GOI having responded to SDCOM's questions that would allow assessing any specificity of the program arising, for example, from the way in which the GOI exercises its discretion in the scope of the program. Furthermore, the program's legislation expressly restricts its application to just a few service sectors, including mining, which attests to the existence of specificity.

1015. Regarding the petitioner's final comments, SDCOM points out that programs for the acquisition of machines allegedly at lower than adequate remuneration were not investigated. Thus, even though the petitioner may present a future claim in this regard, if she deems it to be the case, so that the alleged program is investigated, there are no elements in the file that would allow SDCOM to agree with the statement.

4.2.7.2.6 Conclusion

1016. SDCOM concluded that the import duty exemption program is an incentive that is configured as a subsidy, since it involves a financial contribution by the government or public body, under the terms of item "b", item II, of art. 4 of Decree No. 1,751 of 1995, since it stopped the GOI from collecting public revenue due.

1017. With regard to specificity, in view of the lack of a complete response to the questionnaire in the relevant items, as noted above, and considering that the evidence presented up to the date considered in this Determination indicate that the program is inserted in the context of incentives to stainless steel producers, it is concluded that there is a de facto specificity in relation to the investigated producers, pursuant to § 3 ^{of} art. 6th - of Decree No. 1,751/1995, and therefore subject to the application of

compensatory measures. Furthermore, the mining sector is expressly included in the list of service sectors with access to the program, also constituting a specific legal subsidy, under the terms of art. 6, caput, of the Brazilian Regulation, and therefore subject to the application of compensatory measures.

4.2.7.2.7 Calculation

1018. SDCOM considered the calculation brought by the petitioner to be reasonable, in this sense, the petitioner brought a methodology that estimated the costs involved with the acquisition of machinery by the companies of the Tsingshan group. SDCOM changed the import tax considered exempt on such imports, as Regulation MoF (Ministry of Finance) No. 6, of 2017, indicates a percentage of 5.0% applicable to most such imports of machinery, instead of the percentage used by the petitioner. Thus, considering such exemption from import tax, and also considering an average useful life of 15 years (according to the questionnaire sent), when appropriating the benefit received to the product under investigation, through a pass-through system deemed appropriate by SDCOM,

1019. It should also be noted that the methodology brought by the petitioner was not subject to any comments from the other interested parties.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
all companies	4.36	0.21

Source: Best Information Available - Petitioner's Manifestation

Elaboration: SDCOM

4.2.7.3 Program 8.3 - VAT reductions and exemptions on machinery and equipment

1021. According to Law no · 8/1983, on VAT of Goods and Services and Tax of Luxury Goods Sale, the GOI established that for productive activities in certain sectors, the purchase and importation of certain taxable goods may be exempt from value added tax (IVA). Value Added Tax - VAT), subject to new stipulations provided for in government regulations. A limited list of these strategic goods is provided for in Article 1 of Law 8/1983 and includes factory machinery and equipment that are used directly in the production process of taxable goods (excluding spare parts). As such, this exemption is provided for the import and purchase of machinery and equipment for mining activities, including 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 terms "in order to further encourage national development, through the granting of tax incentives in the form of Exemption from Application of Tax on Added Value on the import and/or acquisition of Certain Taxable Goods that are of a strategic nature in certain business sectors", determines that certain imported or acquired strategic taxable goods are exempt from VAT, according to article 1:

Article 1

(1) Certain taxable goods that are of a strategic nature, the importation of which are exempt from the application of Value Added Tax, include:

The. factory machinery and equipment that constitute a unit, installed or dismantled, that are used directly in the production process of Taxable Goods by the Tax Entrepreneur that produces them, excluding spare parts;

(...)

(2) Certain Taxable Goods of a strategic nature that, upon delivery, are exempt from the collection of Value Added Tax are:

The. factory machinery and equipment that constitute a unit, installed or dismantled, that are used directly in the production process of Taxable Goods by the Tax Entrepreneur that produces them, excluding spare parts;

4.2.7.3.1 Elements determined about the program

1024.Notwithstanding the foregoing, even in the face of such legal provision and the lack of collaboration from the investigated companies, using the facts available in the case file, SDCOM considered that there are no elements available capable of transposing the mere evidence collected for the purposes beginning of the investigation. Thus, in line with the manifestations of the GOI and PT IRNC, SDCOM concluded that there is no actionable subsidy program with regard to VAT reductions and exemptions on machinery and equipment.

4.2.7.3.2 Comments after the Technical Note on the program

1025. The petitioner argued, in her final statement, that there would be elements in the file that confirm the granting of subsidies in this program. The protester stated that she presented all the sources, methodologies and calculations, and that the GOI would have admitted the use of the program.

4.2.7.3.3 SDCOM comments

1026. The petitioner only reaffirmed arguments already aired, which are not able to convince this authority about the existence of a subsidy program with regard to VAT reductions and exemptions.

4.2.8 Program 9 - Income Tax facilities to certain industries

4.2.8.1 Facts found about the program

1027. Government Regulation No. 18/2015, in force since May 6, 2015, establishes tax incentives in terms of income tax ("Income Tax facilities") by the Indonesian government to certain industries, which have been regulated by the MoF Regulation No. 89/2015 and Government Regulation No. 9/2016. Such regulations deal with four incentives:

a) Reduction of net taxable income of up to 30% of the amount invested in the form of qualifying fixed assets (including land), prorated at 5% for six years, and provided that the invested assets are not being misused or transferred within a certain period (whichever is longer than six years from the start of commercial production or the useful life of the asset based on accelerated depreciation/amortization);

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 fulfillment of certain criteria is defined as a condition for obtaining the listed financial concessions, including, in item "a", the existence of a high investment or export value:

Article 3

Any Taxpayer making Investment as referred to in Article 2 paragraph (1) may be provided with Income Tax facilities as referred to in Article 2 paragraph (2) to the extent they meet the following criteria:

The. have a high investment value or for export;

B. have a high rate of labor absorption; or

w. have a high local content.

1029. Government Regulation No. 18/2015 establishes financial contributions by the Indonesian 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, in the form of New Capital Investment and expansion from there is business, on:

The. 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.

1030. In Annex I mentioned in item 1.a. of article 2 are included as qualified sectors, in items 3, 31, 32 and 50, "Coal gasification at the mining site", "basic iron and steel industry" (including "iron and/or alloy steel (stainless steel slab and/ or stainless steel billet)"), "Non-ferrous basic metal manufacturing industry" (including "nickel alloy (ferrous nickel)") and "Mining machinery industry, excavation and construction", respectively. And even though, in relation to item 3 (coal), the requirements for obtaining financial contributions would state that it is specifically to meet domestic demands. In turn, in Annex II mentioned in item 1.b of article 2, items 18, 26, 71 and 73 would include the coal mining sectors, nickel ore mining, steel rolling industry (including cold rolled) and base metal production industry (including nickel alloy). Furthermore, it should be noted that, in items 18 (coal), 71 (rolling steel) and 73 (nickel alloys), obtaining financial concessions is limited to specifically determined regions/provinces. In the case of nickel ore (item 26), the requirement stipulated by the Indonesian government for the granting of tax benefits would be that the operations are related to "new developments and expansion of smelters". obtaining financial concessions is limited to specifically determined regions/provinces. In the case of nickel ore (item 26), the requirement stipulated by the Indonesian government for the granting of tax benefits would be that the operations are related to "new developments and expansion of smelters". obtaining financial concessions is limited to specifically determined regions/provinces. In the case of nickel ore (item 26), the requirement stipulated by the Indonesian government for the granting of tax benefits would be that the operations are related to "new developments and expansion of smelters".

1031. As will be seen below, Article 2 of Government Regulation No. 18/2015 defines the four incentives. Each of them will be presented separately, in order to facilitate the characterization 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. 18/2015 deals with the reduction of net taxable income. This occurs in the form of a reduction of up to 30% of the amount invested in the form of qualified fixed assets (including land), prorated at 5% for six years, and provided that the invested assets are not being misused or transferred within a certain period. (whichever is longer between six years from the start of commercial production or the useful life of the asset based on accelerated depreciation/amortization):

Article 2

(¼)

(2) Income Tax facilities as referred to in paragraph (1) above shall be as follows:

The. reduction of net income by 30% (thirty percent) of the total Investment in the form of tangible fixed assets, including any land used for the business main activities, shall be charged for 6 (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 18/2015 deals with accelerated depreciation and amortization:

Article 2

(¼)

(2) Income Tax facilities as referred to in paragraph (1) above shall be as follows:

(¼)

B. accelerated depreciation on tangible assets and amortization on intangible assets acquired in the framework of new Investment and/or business expansion, with the useful lives and depreciation rates as well as amortization rates as follows:

1. for the Accelerated depreciation of tangible fixed asset:

<<IMAGE 9 HERE>>

2. for the Accelerated Amortization of intangible fixed asset:

<<IMAGE 10 HERE>>

1034. As can be seen from the tables above, the Indonesian government generally allows qualifying companies to amortize or depreciate twice as fast as in the absence of the program. Accelerated depreciation and amortization allow for early accounting of deductible charges in the calculation of taxable income, thus reducing the amount of taxes to be paid by beneficiaries.

1035. Item "c" of item 2 of article 2 of Government Regulation No. 18/2015 deals with the withholding of taxes on dividends paid to non-residents at a maximum of 10%, which may be lower if there is an applicable double taxation agreement:

Article 2

(¼)

(2) Income Tax facilities as referred to in paragraph (1) above shall be as follows:

(¼)

w. the imposition of Income Tax on dividends paid to any Non-resident Taxpayer other than a permanent establishment in Indonesia of 10% (ten percent) or lower tariffs in accordance with any applicable double taxation treaty; and

1036. Item "d" of item 2 of article 2 of Government Regulation No. 18/2015 deals with the extension of the period for transposing tax losses beyond the five years normally granted, with a maximum of 10 years:

Article 2

(¼)

(2) Income Tax facilities as referred to in paragraph (1) above shall be as follows:

(¼)

d. Loss compensation for more than 5 (five) years but not more than 10 (ten) years with the following provisions as follows:

1. 1 year extra: in case the New Capital Investment in business field stipulated in paragraph (1) 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 issued of the cost for the economic and/or social infrastructure in business location at the least of Rp10,000,000,000.00 (ten billion rupiah);

3. 1 year extra: in case it uses materials and/or domestic products result component at least 70% (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 work forces for 5 (five) consecutive years; or

b) 2 (two) year extra in case it hires at least 1000 (one thousand) Indonesian work forces for 5 (five) consecutive years;

5. 2 years extra: in case issued of cost of domestic research and development in order to product development or production efficiency at least 5% (five percent) from the total Capital investment for 5 (five) years period;

6. 2 years extra: in case the Capital Investment this is expansion from there is business in the Certain Business Fields and/or Certain Regions which regulated in the paragraph (1) letter a and/or letter b of the financing source parts coming from earning after tax the Taxpayer in the one of tax year before 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) from the sales total value, for the Capital Investment in the business fields which regulated in paragraph (1) letter a which carry out in the outside of bonded zone.

1037. With regard to Government Regulation No. 18, of 2015, this SDCOM was able to find in public sources summaries of the legislation made by PWC and KPMG consultancies that confirm the general functioning of the four incentives presented by the petitioner and Government Regulation No. 89/2015, and the documents also make it clear that there is an incentive to build smelters for mining products, and in the basic metal manufacturing and coal and metal mining sectors, which fits in with the government's general intention as already explained in item 4.1.

1038. Government Regulation No. 18 of 2015 was replaced by Government Regulation 78/2019, and the core of the program did not change. According to KPMG: "The required qualification requirements and tax benefits remain the same under PP-78, which also provides some additional clarifications". The new regulation also includes the "Basic metals manufacturing" and mining sectors.

1039. As pointed out in the logo in article 1, item 3, of both Regulations, the incentives target sectors with high priority for the country: "Certain Business Fields shall be business fields in the sector of economic activity with high priority on the national scale ".

1040. According to the petitioner, this program increases the company's cash flow and allows for better financial and tax planning. Furthermore, the carrying of losses and the consequent reduction of the calculation base, and, ultimately, of the tax due, is obviously beneficial to the company.

1041. It should be noted that such a program has been known by SDCOM for a long time. In the 2014 decision in the case of investigation of actionable subsidies on exports from the Republic of Indonesia to Brazil of yarns with a predominance of acrylic fibers, Circular SECEX nº 37, of June 20, 2014, the program was identified and concluded by if it is an actionable subsidy, although in that case the participation of the 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 Government Regulation 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 that had access to 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 the liquidity of companies, which now have additional resources arising from the non-payment, by the Government of Indonesia, of due 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 necessary to evaluate the companies that actually obtained assistance under the program, according to the questions in the questionnaire, for the purposes of this document, they were used, pursuant to art. 79 of Decree No. 1751 of 1995, the available facts. Such facts indicate that the subsidies in question are specific to law under the terms of art. 6, caput, of Decree nº 1.751/1995, since it is limited to certain companies, among which mining 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) would have benefited from such an incentive. PT IRNC pointed out that such information would be correct, and that "the audited reports of the IRNC as well as the other related parties ([CONFIDENTIAL]) do not present any tax allowance facility deducted from income tax, as this verifying authority can verify.". He suggested as the best available information the percentage of 0.06% calculated by the European Union authority.

1046. Aperam, in a statement dated September 9, 2022, reiterated everything already exposed in the petition and its complementary information, as well as throughout the process. He stated that although the GOI has all the documentation and information regarding the use of such a program, the Government of Indonesia has not provided the information requested by SDCOM. Therefore, according to the petitioner, it would be possible to consider that other companies installed in the IMIP have used the subsidies granted through this program, and not just PT Sulawesi Mining Investment.

4.2.8.5 Comments after the Technical Note on the program

1047. The petitioner argued, in her final statement, that she disagreed with SDCOM's position in not considering the contribution related to dividends to be actionable. She added that the evidence that such a fact occurred would have to be verified with the producers/exporters in Indonesia, which did not happen due to lack of cooperation by the aforementioned parties. Thus, the calculations prepared and presented by the petitioner should be considered as the best information available

4.2.8.6 SDCOM comments

1048. With regard to what was alleged by PT IRNC, it is pointed out that this SDCOM strongly disagrees with the statement "as this verifying authority can verify". Quite the contrary, as described in the on-site visit report, the GOI denied access to specific information about the assistance provided under the program.

1049. Regarding the calculations, even in the absence of any direct objection to the calculation presented by the petitioner, other than a mere generic criticism, due to the fact that the calculation presented by the petitioner deals only with dividends, this authority considered it more appropriate to use the calculation as the best available information of the authority of the European Union.

1050. With regard to Government Regulation No. 18/2015, this SDCOM was able to find in public sources summaries of the legislation made by PWC and KPMG consultancies that confirm the general functioning of the four incentives presented by the petitioner and Government Regulation No. 89/2015, and the documents also make it clear that there is an incentive to build smelters for mining products, and in the sectors of basic metal manufacturing and coal and metal mining, which fits the government's general intention as already explained in item 4.1.

1051. Although not raised by the petitioner or by the GOI, SDCOM was able to find evidence that indicates that the Regulation suggested in the petition (Government Regulation No. 18/2015), was replaced by Government Regulation 78/2019. The new regulation also includes the "Basic metals manufacturing" and mining sectors, with the conclusions remaining unchanged.

1052. As pointed out in the logo in article 1, item 3, of both Regulations, the incentives target sectors with high priority for the country: "Certain Business Fields shall be business fields in the sector of economic activity with high priority on the national scale ".

1053. Regarding the petitioner's comments, it is pointed out that the use of available information does not authorize the authority to freely conclude for the use of a certain program. Even in this scenario, it is necessary to collect reasonable elements that indicate the use of the program, as the petitioner herself brought up in several of the programs analyzed here. In this sense, the calculation brought by the petitioner, although mathematically correct, is not able to overcome this barrier - unlike the calculation of other programs, in which the calculation itself is already an important element that evidences the use, for example, the existence of profit. For this reason, the absence of comments from the other parties is not, for this specific program, a relevant element.

1054. Thus, although SDCOM regrets the lack of cooperation from PT IRNC, it reaffirms that it considers that the dividends, in this specific case, cannot be considered actionable subsidies.

4.2.8.7 Conclusion

1055. Considering the lack of collaboration and the use of the elements of the file, this SDCOM concluded that there is evidence about the non-payment of taxes due with: i) reduction of taxable income; ii) accelerated depreciation and amortization; iii) 10% withholding tax on dividends paid to non-residents; and iv) extension of the period for transposing tax losses. However, this SDCOM considers that the elements in the file do not authorize the existence of a financial contribution under the terms of the ASMC regarding the withholding of taxes on dividends paid to non-residents.

1056.In this context, although it is a fact that the company's dividend recipients have greater availability of capital for new investments in the controlled company, in addition to a potentially greater initial propensity to invest when, in the absence of the benefit, they would not have done so, the petitioner was not able to bring to the file evidence that this actually occurred in the present case.

1057. Bearing in mind that the elements presented also point out that the subsidies in question are specific to law under the terms of art. 6, caput, of Decree nº 1.751/1995, since it is limited to certain companies, among which mining companies and producers of metal products, it is therefore subject to the

application of compensatory measures.

4.2.8.8 Calculation

1058. In order to calculate the benefit of the program, given the lack of cooperation from the companies and the GOI, the available facts were used, pursuant to art. 79 of Decree No. 1,751 of 1995. In this context, considering that the calculation brought by the petitioner only covers dividends, which, as seen, were not considered by this authority as actionable, this authority appealed to the decision by the European Union authority, in line with PT IRNC's request, in which a subsidy amount of 0.06% was calculated. 1059.

Producer/Exporter	Effective Benefit (USD/t)	Effective Benefit (% FOB)
all companies	1.23	0.06

Source: Best information available - European Union authority decision

Elaboration: SDCOM

4.2.9 Program 10 - Tax and preferential tax regime in the area of industrial development

4.2.9.1 Facts found about the program

1060. Government Regulation No. 142/2015, the GOI provides for the creation of "Industrial Development Areas", which refer to certain areas in which companies benefit from specific investment facilities, being eligible for certain benefits, notably in terms of concerns tax exemptions and facilitated purchases of electricity. The regulation thus governs:

CHAPTER VIII

INDUSTRIAL PARK FACILITIES

Article 41

(1) Industrial Park Management Companies and Industrial Companies located in Industrial Parks receive tax incentives.

(2) The tax incentives as referred to in paragraph (1) are granted based on WPI (Industrial Development Area) grouping.

(3) In the case of granting tax incentives, there is a change in the grouping of WPI, regulated by means of the Regulation of the Minister in charge of government affairs in the financial sector, through the recommendation of the Minister.

(4) Other provisions relating to tax incentives, as referred to in paragraphs (1) and (2), are regulated through Regulations of the Minister in Charge of Government Affairs in the Financial Sector

Article 42

(1) The Industrial Park Management Companies have facilities for the construction and management of electricity for their needs and the needs of the industrialists in the Industrial Parks.

(2) Other provisions relating to installations to facilitate the development and management 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 within Industrial Parks may 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 Ministry of Finance, in these industrial development areas, various levels of tax exemptions are granted, depending on the region where they are located. It is also noteworthy that in the preamble of the Regulation there is relevant evidence:

Considering:

B. that the Regulation of the Minister of Finance regarding Tax and Customs Incentives for Industrial Companies in Industrial Parks and Management Companies of Industrial Parks referred to in paragraph (a) is specific to Industrial Parks, which is different from the Regulation of the Minister of Finance Finance relating to the tax and customs regime in general; (our emphasis)

1062. The first article of the regulation provides the definitions:

Article 1

In this Regulation of the Minister, what is meant by:

1. Industrial Park is the area where Industrial activities are concentrated, equipped with facilities and support infrastructure developed and managed by an Industrial Park Management Company.

(...)

5. The Industrial Development Area, hereinafter abbreviated as WPI, is a grouping of the territory of the Unitary State of the Republic of Indonesia on the basis of backwards and forwards of its resources and support facilities, and which pays attention to the scope of influence of industry construction activities.

1063. Pursuant to Article 2 of Chapter 2 of the Regulations, regions are classified into four categories depending on their level of economic development: Advanced WPI (WPI Maju), Mature WPI (WPI Berkembang), WPI Potential I (WPI Potensial I) and WPI Potential II (WPI Potential II). Industrial areas in the WPI Potential II zone will thus receive more benefits than those located in the Mature WPI zone. It should be noted that the Advanced WPI (Java), in turn, does not grant specific tax incentives. This article also details the types of incentives involved:

(3) Tax and/or Customs Incentives as referred to in paragraph (1) may take the form of:

The. Income Tax Incentives, namely:

1. Income Tax tax incentives for capital investment in certain lines of business and/or in certain regions; or

2. Incentives in the form of reduced Income Tax for companies;

B. Value Added Tax exemption incentives on the import and/or delivery of machinery and equipment that are considered as a unit, whether installed or dismantled, used directly in the production process of Taxable Goods by a Businessperson Subject to the Incidence of Tax that produces the said Taxable Goods, excluding spare parts; and/or

w. Tax exemption incentives for the importation of machinery and goods and materials carried out by Industrial Companies in Industrial Parks and Management Companies of Industrial Parks that carry out business activities in the industrial sector of production of goods and / or services.

(4) Exemption from import duties on machinery and materials as referred to in paragraph (3) letter (c) may be granted for machinery and goods and materials originating in Free Ports and Free Zones, Special Economic Zones or Bonded Storage Areas.

1064. The following articles 3, 4, 5 and 6 detail the incentives granted in the industrial areas of WPI Advanced, WPI Mature, WPI I and WPI II, respectively. WPI's Mature industrial development areas are located in South Sulawesi, East Kalimantan, North Sumatra excluding Batam, Bintang and Karimun and South Sumatra. In these areas, income tax incentives are granted: net income tax reductions of 5% per year over six years, in addition to allowing depreciation and amortization at a faster rate, a reduction in the 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 areas of WPI also benefit from a VAT exemption provided for in Government Regulation 81/2015 on imports and purchases of machinery and equipment (excluding spare parts) that are used directly to produce goods subject to VAT. During the development phases, they can also benefit from an exemption on import duties for machinery for up to two years (a period that can be extended to up to the duration of the development phase), as well as an exemption on import of goods and materials for up to three years (extendable for another year). The import duty exemption can be extended for another year if certain domestic content limits (30%) are met,

1066. WPI Potential I industrial development areas are located in North Sulawesi, West Kalimantan, Bali and Nusa Tenggara. Like the Mature WPI, in these areas established companies are granted a net income tax reduction of 5% per year over six years, as well as accelerated depreciation and amortization of assets and a 10% reduction in the rate on dividends . However, possible compensation for losses is extended to a period of ten years.

1067. Companies located in Type I industrial development areas of the WPI also benefit from a VAT exemption on machinery and equipment, as provided for in Public Regulation 81/2015, and an exemption from import duties on machinery and goods. The duration of the exemption for goods is, however, four years, extendable for one year. The same provisions as mentioned for domestic content apply.

1068. WPI Potential II covers the regions of Papua and West Papua. Companies located in the industrial development areas of these WPI are entitled to an income tax reduction of 10% to 100% for a period of 5 to 15 years. The regime has strong similarities with the tax exemption provided prior to its 2018 amendment64, being accessible only to legal entities registered after August 15, 2015.

1069. Companies installed in the WPI Potencial II industrial development areas also benefit from a VAT exemption on machinery and equipment, as provided for in Government Regulation No. 81 of 2015, and from the exemption of import duties on machinery and goods. The duration of the exemption for goods is, however, limited to five years, renewable for one year. Likewise, the provisions relating to household contents also apply.

1070. The document entitled "A brief guide to investment in the industrial states", by the Indonesia Investment Coordinating Board (BKPM), details which areas of the country are included in each of the industrial development areas (WPI), as reproduced below:

The exact amount of the tax incentives will depend on the classification of the industrial estate. In this regulation, there are four categories of Industrial Estates Development (WPI), namely Advance WPI (located on Java Island), Developing WPI (South Sulawesi, East Kalimantan, North Sumatera, except Batam, Bintan, and Karimun, and South Sumatera) , Potential I WPI (North Sulawesi, West Kalimantan, Bali, and Nusa Tenggara), and Potential II WPI (Papua and West Papua).

1071. In addition to IMIP, located in Morowali District, Central Sulawesi, PT. VDNI, would be located in Sulawesi Tenggara, while PT OSS (Obsidian Stainless Steel), would be located in Southeast Sulawesi. There is evidence of operation in the Bantaeng industrial area in Sulawesi Selatan (South Sulawesi) by at least two companies, PT Huadi Nickel Alloy Indonesia and PT Titan Mineral Utama. Indonesia's mmIndustry portal informs the list of companies that signed an agreement to supply energy to Industrial Park Bantaeng:

The companies that signed the deal with ENMP were PT Huadi Nickel Alloy, PT Titan Mineral Utama, PT Bantaeng Central Asia Steel, PT Sinar Deli Bantaeng, PT Intim Perkasa Energi, PT Multi Kilang Pratama, PT Sergion Techno and Inensunan Mills Indonesia.

1072. The following table presents the stainless steel and nickel companies related to such areas of industrial development:

WPI type	Industrial Development Area	Company Name	company activity (real and ongoing)
WPI Potential I (WPI 3)	Morowali (IMIP) Sulawesi Tengah	PT. Sulawesi Mining Investment*	NPI
		PT. Indonesia Guang Ching Nickel and Stainless Steel Industry*	NPI, Stainless steel sheets and coils
		Indonesia Tsingshan Stainless Steel*	NPI, Stainless steel sheets and coils
		PT C*	Stainless steel coils, Ferrochrome, Coke.
		EN Broly Nickel Industry	Nickel oxide, Pure nickel, Coke

			Electric power plant
	Konawe (VDNIP) Sulawesi Tenggara	PT. VDNI	NPI
		PT OSS (Obsidian Stainless Steel)	NPI, Stainless Steel
			Electric power plant
WPI Mature (WPI 4)	bantaeng Sulawesi Selatan	EN Huadi Nickel Alloy Indonesia	NPI
		EN Titan Mineral Utama	NPI
		EN Bantaeng Central Asia Steel	ferronickel
		EN Sinar Deli Group	NPI
		EN Belt Jaya	NPI
			Electric power plant

(*) Companies located in the IMIP industrial park and linked to the Chinese company Tsingshan

4.2.9.2 Statements prior to the Technical Note on the program

1073. PT IRNC and GOI pointed out that it would not be necessary to calculate a separate subsidy amount for this program, since any existing Indonesian government incentives were split into other programs and have their own regulations.

1074. Aperam, in a statement dated September 9, 2022, The tax and preferential tax regime in the area of industrial development has already been broadly and in detail presented in the petition and its supplementary information, as well as throughout the process and in this document. Within the scope of that program, the petitioner pointed out that the Government of Indonesia claimed that "IMIP is created by private sectors". In Aperam's opinion, everything exposed in the process and widely reiterated in this document demonstrates that, in fact, the creation of the IMIP was conceived, implemented and administered by the Government of Indonesia. Aperam also stated that the Government of Indonesia claimed that "as for Industrial Estate, normally the GOI builds general infrastructure in the surrounding areas to improve the livelihood of the area", stating that, in the IMIP,

1075. Aperam continued stating that, regarding such program, the Government of Indonesia stated that "PT IRNC resides in Indonesia Morowali Industrial Park (IMIP) as Industrial Estate", but that "PT IRNC has not received any benefit of taxes incentives under Industrial Estate." However, although it claims to have all the documentation and information related to such a program, the Government of Indonesia 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 facts available in the process are not sufficient to lead this authority to conclude that what is described in this program is no longer included in other programs. Therefore, this authority concluded that there is no specific actionable subsidy for this program separately. However, the Industrial Estates legislation is still absolutely relevant in the investigation, in particular Government Regulation No. 142/2015, which is yet another element in 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 Company must regularly submit reports to the GOI:

(5) Industrial Estate Companies that already have Principle Permits, IUKI, and/or Industrial Estate Expansion Permits are required to submit Industrial Estate Data periodically to the Minister, governors, 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. However, the elements available in the case file do not indicate that there was any benefit to the investigated stainless steel producers arising from such an operation. Therefore, this SDCOM concluded that there is no actionable subsidy for this program.

4.2.10.1 Manifestations prior to the Technical Note on the program

1079. Aperam, in a statement on September 9, 2022, stated that in addition to the already widely demonstrated capital injection through the transfer of PT Antam shares free of charge from the Government of Indonesia to the company Inalum, the company understands that the acquisition of machines and equipment by companies installed in the IMIP at prices lower than the appropriate remuneration is configured as a capital injection, thus fitting into Program 7 under analysis in this process.

1080. According to Article 1.1(a)(1) of the ASMC, a subsidy exists "if there is a financial contribution by a government". The Government of Indonesia proactively induced Chinese companies to settle in Indonesia for the creation and development of the stainless steel industry in Morowali Park.

1081. As already demonstrated in the case file, in April 2005, a meeting was held between the President of Indonesia and the President of China, during which a Joint Declaration of Strategic Partnership was signed, establishing that both parties would "enhance investment cooperation by increasing mutual understanding and networking among investment authorities, including the private sectors, and by creating more conducive eco-socio-political and legal climates for the flow of investments". In June 2005, during his visit to Beijing, the Indonesian Minister of Economy proposed to the Deputy Prime Minister of China investment prospects in 4 sectors of the Indonesian economy, including natural resources, and stated that "[h]e also hoped more Chinese businesses could go to Indonesia for investment,

1082. The Indonesian government, through the Indonesian Investment Coordinating Board (BKPM) expressly requested, in May 2011, China to invest in nickel processing in Southeast Sulawesi, where the Morowali Park is established: "[t]he Investment Coordinating Board (BKPM) directs potential investors from China to invest in processing mining product. [...] In addition, BKPM also asked China to invest in nickel processing in Southeast Sulawesi".

1083. As already demonstrated in the process, the Chairman of BKPM also stated, regarding IRNC, that "the parent company in China has nine joint venture companies in Indonesia including smelter industry and power plant in Morowali" and that "[t]he investment made is quite important, because it is the only company in Indonesia that processes ferronickel into 'stainless steel'", demonstrating the Indonesian Government's intention to support IMIP investments and develop stainless steel production.

1084. In this context, Aperam added that the Government of Indonesia encouraged Chinese companies to participate in improving Indonesia's industrial capacity and pledged to continue to create an attractive environment for foreign investments, including those from China. More specifically, the Government of Indonesia said it expected Chinese companies to "invest more in Indonesia's mining industry" and "briefed China on its efforts to improve the management of its mining resources". Finally, both governments agreed to "gear up efforts to further solidify and expand cooperation in [...] mining". Such statements would prove that Indonesia sought, in these agreements, to implement its preferential domestic policies, notably in order to strengthen the downstream capacity of the industry in Indonesia.

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 Number 3 of 2014 on Industrial Affairs, in its article 45.

1086. In this context, Aperam highlighted the cooperation established between the BKPM and the Credit Insurance Corporation (Sinosure), from China, for the provision of loan guarantees, in addition to direct negotiation with foreign suppliers/investors.

1087. With regard to the IMIP, it is worth remembering that, as established in art. 5 of Act Number 3 of 2014 relating to industry, as a form of State responsibility for the well-being of the population, the government has the authority to organize public affairs in the industrial sector, including aspects of regulation, direction and development of industry. Furthermore, art. 33 of Government Regulation Number 142 of 2015, relating to Industrial Estates, certifies that their management is the responsibility of Industrial Estate Management. Therefore, the authority of the Government of Indonesia in the industrial sector, 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 of the Industrial Estate the authority to implement its industrial policies. In this sense, PT IMIP, as manager of the Morowali Industrial Park, is attributed the governmental power to implement the nickel policy, especially in the sense of

creating the entire downstream chain, up to the production of stainless steel, including the product object of the investigation.

1089. The Government of Indonesia is also directly involved in the supervision of Industrial Estates through the creation of the Industrial Estate Committee, a government body responsible for the growth, monitoring and promotion of industrial estates in Indonesia. As set out in Government Regulation No. 142/2015, the committee is composed, among others, by the central government and by the regional governments.

1090. In this way, both through the performance of PT IMIP and through the BKPM, the Government of Indonesia grants guarantees, pursuant to item II.a of art. 4 of Decree nº 1.751, of 1995, in the acquisition of machinery and equipment by the companies installed in the IMIP, obtaining, for such companies, preferential prices in such acquisition operations.

1091.It is thus verified that, as a result of the guarantees granted by the Government of Indonesia, the equipment and machinery acquired by the companies of the IRNC Group in the IMIP were carried out at prices lower than those practiced under normal market conditions, thus conferring a benefit to the companies of the aforementioned Group, pursuant to art. 4 of Decree No. 1,751 of 1995. The amount of such benefit is equivalent to the difference between the prices effectively charged in such acquisitions and comparable market prices for similar machinery and equipment used in the stainless steel production chain, allocated to the product under investigation .

1092. In this sense, Aperam concluded by saying that, given the lack of information presented and proven by the Indonesian producers/exporters and by the Government of Indonesia, it made its best 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 values of similar products purchased at appropriate market prices, according to documents attached to the case file of the present proceeding. He also pointed out that the calculation of the amounts of subsidies granted by the Government of Indonesia resulting from preferential tax reductions (income, imports, VAT, etc.)

4.2.10.2 Manifestations after the Technical Note on the program

1093. The petitioner argued, in her final statement, that the capital injection presented in relation to the acquisition of machinery and equipment with less than adequate remuneration is independent of 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 Law Number 3 of 2014 on Industrial Affairs, in its article 45.

1095. He concluded by pointing out that it made its best efforts to present estimates of the amounts effectively spent on the acquisition of machinery and equipment by the companies part of the production chain of the investigated product installed at IMIP, as well as the values of similar products purchased at appropriate market prices , having presented a calculation of amounts related to the acquisition of machinery and equipment for less than adequate remuneration, equivalent to US$ 140.50/t or 6.9% of the FOB price.

4.2.10.3 SDCOM Comments

1096. Although Aperam's comments are potentially relevant, SDCOM considers that there was 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 mere description of the alleged incentives, this is a new program, which must follow a procedure that allows for proper understanding and contradiction by the other interested parties, which would not be preserved with 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 analysis by the Dispute Settlement Body and that it was decided that i) even though export restrictions affect the behavior of private agents, this occurs only as a by-product of state regulation , not being present the element of "instruction or trust" (entrust or direct) necessary in this situation to characterize a subsidy program that can

be activated under the terms of the agreement, and even though ii) the support of prices covered by the SCM Agreement does not include movement of prices as an indirect result of another form of government intervention.

1098. Aperam's final comments reinforce the untimeliness of the claim - the petitioner herself calls the "capital injection" the "acquisition of machinery and equipment with less than adequate remuneration" and brings a legal basis that is absolutely different from that considered in this program. It is clear that this is not a capital injection, but a belated supply program. Thus, it is reiterated that, even though the petitioner may present a future claim, if she deems it to be the case, for the alleged program to be investigated, there are no elements in the file that allow SDCOM to apply any amount in relation to this new program.

4.3 General comments on subsidy programs

1099. Aperam Inox América do Sul SA, in a statement dated March 31, 2022, highlighted that SDCOM had notified the Indonesian producer/exporter PT Indonesia Ruipu Nickel and Chrome Alloy (IRNC) that the determination on the granting of subsidies to such company and other companies of the group that could be identified by the Undersecretariat based on the information available in the process would take into account the facts available, pursuant to § 3 of art. 37 together with § 1 of art. 79 of Decree No. 1,751, of 1995, in view of the non-presentation of the text of the response to the Producer/Exporter Questionnaire in the process on screen.

1100. In addition, the report on the verification visit to the Government of Indonesia would demonstrate that various information relevant to the analysis and calculation of the subsidies granted by that government to the producers of the product under investigation would not have been properly presented, thus jeopardizing the analysis of the facts by the investigating authority.

1101. Thus, in view of the lack of cooperation on the part of the government and the Indonesian producing/exporting companies in the present case, the petitioner presented a methodology and 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 that was no longer presented by the Indonesian parties, allowing the investigating authority to analyze, in the most complete and appropriate way possible, the granting of subsidies under analysis in the process in question. All the sources of information used, the methodologies adopted and the calculations performed were presented in detail in annex to the petitioner's manifestation and will be presented in the items related to each investigated program.

1102. Aperam, in a manifestation of May 17, 2022, reiterated its manifestation of February 23, 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 Opinion of Initially, the Indonesian producers/exporters of the product under investigation would also have received, during the analysis period, indirect subsidies, granted by the Government of China, but recognized and adopted by the Government of Indonesia as their own, which should also be subject to measures compensation.

1103. He highlighted that the Government of China should also be asked for information regarding the financial system in that country, including information on the banking system and financing, export guarantees and insurance granted in the context of the IMIP and the Overseas Trade and Cooperation Zones. In this context, on a collaborative basis, it highlighted, in a non-exhaustive manner, 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 would provide preferential financing to Chinese cold-rolled stainless steel producers established in Indonesia through policy banks and state-owned commercial banks. These banks would act as public bodies, granting loans in line with 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 sought, recognized and adopted Chinese financing through a bilateral cooperation system to encourage Chinese companies, which previously smelted nickel in China, to develop their activities in Indonesia. In this sense, he argued that the

Chinese government should be asked, for example, to present information on the alleged government control of banks/financial institutions in China and the alleged state intervention that would distort the financial market in the country.

1106. Furthermore, in relation to the Morowali Industrial Park (IMIP), which would be a special economic zone essentially managed by Chinese companies, the Government of China would have exerted pressure on the Government of Indonesia to support Chinese companies, which previously smelted nickel in China , to develop its activities in Indonesia. In this sense, we understand that the Chinese government should be asked, for example, for documents related to this agreement, in addition to explanations on the role and functioning of the China-ASEAN Investment Cooperation Fund (CAF) in the context of Chinese foreign investment.

1107. The IRNC, in a statement dated June 14, 2022, presented its comments in relation to the request of the petitioner Aperam for notification of the Government of China by SDCOM, in the context of the present investigative procedure, to provide information regarding the so-called transnational subsidy programs, which allegedly would benefit Indonesian producers/exporters of the investigated product and should be subject to compensatory measures.

1108. The IRNC understood that it was impossible to proceed with the analysis, at the current procedural stage, of the possible granting of subsidies that could be actioned by the Chinese government, supposedly "endorsed", "recognised" or "adopted" by the Government of Indonesia as if they were their own.

1109. For the IRNC, the petitioner would allege that the indirect subsidies in question were the result of actions by the Government of Indonesia - GOI with the aim of taking advantage of its nickel resources to secure preferential financing from China for the development of the entire production chain of nickel, which includes, in the downstream chain, the productive segment of the product object of this investigation.

1110. In this regard, the IRNC argued that the petitioner would rely on the thesis that the conduct of the Government of China, in granting preferential loans, should be attributed to the Government of Indonesia as providing such subsidies indirectly via the foreign Government; so that such a hypothesis would find support in the maxim that the Government of Indonesia would have actively sought to recognize and adopt as its own the preferential financing granted by the Government of China, which would be demonstrated by the history of bilateral cooperation between the referred governments, so that the Government of Indonesia could be considered as grantor of Chinese financial contributions, pursuant to art. 1.1(a) of the Subsidies and Countervailing Measures Agreement.

1111. The IRNC then noted that the Government of Indonesia had clarified that the IMIP would not be a representative of the Government, nor would it be jointly managed by the Governments of China and Indonesia.

1112. Aprodinox, in a statement dated September 9, 2022, argued that there would not be, at the moment, the possibility of instruction to investigate transnational subsidies and the impossibility of applying transnational subsidies in light of Brazilian legislation and the WTO Agreement on Subsidies and Compensatory 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 beneficiary who manufactures the product in question outside the territory of the granting government. In other words, it would occur when a government subsidizes a company that would not be under its jurisdiction. As would be known, its application would be controversial. Article 1.1(a) of the Agreement on Subsidies and Countervailing Measures (ASMC) would comment that the financial contribution should be within the territory of a member.

1114. He exemplified that China would have already manifested itself in the sense of recognizing as actionable subsidies only those that comply with the principle of territoriality. That is, financial support from a government to a third party beneficiary located in another country would not be considered as an actionable subsidy, since the concession by countries to beneficiaries, in their own territories, would be a condition for the existence of these subsidies according to the rules of the World Health Organization. Trade (WTO).

1115. He also argued that the case of glass fiber filaments from Egypt, which would be an example of recognition and application by the European Union of this class of subsidies, would be pragmatic for the EU, given that the interpretation used by the European Commission, with support in the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, would not have gone without internal and academic questioning. The application of the compensatory measures would even have implied the action of the Court of Justice of the European Union by the Egyptian exporters, case still without resolution on the merits.

1116. He added that US legislation, in turn, since 1980, would state that transnational subsidies, whether provided by other countries or by international institutions, as a rule, are considered non-existent before the investigating authority.

1117. It held that, in the words of the WTO Expert Group on Trade Financing (EGTF): "it is not entirely clear whether or not the [ASMC] applies when the entity granting the subsidies is not located in the territory of the Member whose assets are allegedly subsidized".

1118. He argued that in view of the elements listed, it would be clear that this is an extremely controversial topic, whose understanding as to application is not pacific, as this authority would already know. By the way, he showed that not even in the European Union, there would be a mature understanding, as demonstrated by the contestation of the glass fiber filaments case. He reinforced, therefore, the need for a higher standard than that applied to other subsidy programs for the investigation and application of these subsidies, as explicit in current Brazilian legislation.

1119. He pointed out that only in the first supplementary information letter (SEI Letter No. 65523/2022/ME) did SDCOM request some information on "the existence of an industrialization plan between the Government of Indonesia and the Government of China in the sector steel industry, embodied in the creation of the Indonesia Morowali Industrial Park (IMIP)". It would be important to remember that the conducts analyzed in the investigations of subsidies would be government practices, so that the opportunity to grant participation in a timely manner to the government of China (deadline for consultations prior to the opening of the investigation, response to the questionnaire, additional information, eventual verification in loco, etc.) would be critical to any determination of actionable subsidies "granted" by that government, even though they are alleged to have been "

1120. He added that China's actions were being evaluated as alleged transnational financial support, therefore, its rights of adversary and ample defense should be preserved. The government of China should have the right to comment on the alleged subsidies, since, according to article 9, item II, of the LPA, they are legitimized as interested parties in the administrative process: "those who, without having initiated the process, have rights or interests that may be affected by the decision to be adopted".

1121. If SDCOM had also wanted to investigate the Chinese government's policies, even if applied in another territory, it should have given the People's Republic of China time for its proper qualification in the process, time for it to understand the allegations made and opportunity for that party to eventually interested party manifests itself, so that the basic principles of the process are satisfied, namely due process of law, full defense and contradictory.

1122. He also recalled that Decree No. 1,751/1995, in its Article 27, would prioritize the attempt to reach an agreement between the parties before a possible dispute, which would not have occurred in the investigation, in case it was decided to activate the alleged Chinese subsidies in Indonesian territory. For all the above, it understood that the most prudent thing, at this procedural moment, would be the decision not to apply the said subsidies.

1123. He argued that, as the present investigation would be governed by Decree No. 1.751/1995, pursuant to art. 192 of Decree No. 10.839/2021, there would be no provision or legal process in the old statute for the investigation of transnational subsidies. As a result, there would be legal uncertainties incompatible with the predictability that trade defense procedures must have with the interested parties and with the government whose practices are investigated.

1124. The appropriate procedural moment for indicating transnational subsidies, according to the rules in force, would be in the initial petition. This prediction indicates the concern to ensure the complete investigative course (on the side of the authority) and the dialectical course (by the other interested

parties). The lack of specific legislation on transnational subsidies in Decree No. 1751/1995 would attract and make applicable the provisions of art. 112 on this matter of SECEX Ordinance No. 172/2022, making it clear that the Petitioner's statements are not in conformity.

1125. It also argued that the public consultation for the new subsidy legislation regulations (SECEX Circular No. 38, of May 31, 2021) would have been published in the Federal Official Gazette on June 1, 2021, that is, long before the APERAM protocol of February 23, 2022 — at which point the petitioner could already be aware of the legislator's intention regarding transnational subsidies.

1126. It maintained that the indication of alleged indications of such subsidies more than a year after the filing of the petition and the request for them to be investigated immediately, as the petitioner does, would be a clear affront to the logic established in SECEX Ordinance No. 172/2022 .

1127. It argued that the investigation of transnational subsidies and, consequently, the triggering and application of compensatory measures would not be provided for in the regulatory decree of the present investigation, that is, Decree No. 1,751, of December 19, 1995. The investigation of these alleged granted programs by Chinese entities to Indonesian firms would therefore lack a domestic legal basis.

1128. In Brazilian legislation, only with the advent of Portaria SECEX nº 172, of February 14, 2022, the possibility of carrying out investigations related to transnational subsidies would have been foreseen. Decree No. 10,839, of October 18, 2021, entered into force after the beginning of this investigation and it would not regulate SECEX Ordinance No. 172/2022.

1129. He emphasized that it could not be argued that such a device would only have consolidated SDCOM's practice on the subject, as would be the case for other devices of the aforementioned ordinance. As far as Aprodinox is aware, the investigation of transnational or indirect subsidies, as the petitioner calls it, would be a novelty for the Brazilian authority, never being tested until 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 observed in the following excerpt from Portaria Secex No. 172, of February 14, 2022:

Art. 112. As a rule, the Undersecretariat for Commercial Defense and Public Interest will not consider as actionable subsidies granted by the government of a country other than the one in which the investigated company is located, nor subsidies granted by an international lending or development institution, with the following conditions exceptions:

1131. It also argued that the scrutiny for these subsidy programs, granted by one State, but attributed to another, to be verified and actionable should be higher than that of other cases, due to their 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, in a clear and explicit way, endorses, recognizes or adopts the granting of subsidies by the other government as if such measures were part of its own policy of granting subsidies

1132. It would therefore be forced to conclude that the application of the best available information would not be adequate to configure such programs as actionable. Clear evidence of the practices would be required, at least for acts of endorsement, recognition and adoption. In the event of reasonable doubt by the authority, the rule of not activating the referred programs should be applied. The elements previously present in the case file would not, therefore, be sufficient to characterize them, being only evidence of the normal strengthening of bilateral trade diplomatic relations between Indonesia and 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 contributions that generate benefits to a firm (or firms) outside the territory of the granting state (transnational subsidies), do not exist according to art. 1 of the ASMC. A clear reading of the provision of the agreement is that, for a subsidy to exist, for purposes of applying compensatory measures, both the granting member and the beneficiary must be in the same territory. A financial contribution granted by one member to another outside its territory would therefore not be covered. In principle, therefore, the application of compensatory measures to this class of subsidies would be inconsistent with WTO agreements and, consequently, with federal legislation.

1134. Such an interpretation is even adequate with the historical reconstruction of the ASMC negotiating process, a supplementary source of interpretation according to art. 32 of the Vienna Convention on the Law of Treaties (1969). As some scholars point out, the US did not want, at the time, to allow the possibility that financial aid granted in order to guarantee development or humanitarian aid could be the target of compensatory measures. Thus, they inserted the territorial clauses in the agreements. Some examples raised in these studies are: World Bank loans to Brazil, Marshall Plan aid and war reparations from Japan to Korea. The existence of specific legislation in the USA that limits the application of transnational subsidies is further evidence of this process.

1135. Another complementary element of interpretation is Part V of the SCM agreement itself, where only the participation of exporters and the authorities of the exporting member is evidenced, consolidating an idea of territorial unity between the entities, as can be seen. A divergent interpretation, however, points to a difference between the Member that grants the benefit to that beneficiary of the financial contribution, implying the possibility of the existence of transnational subsidies. Although this is not the best interpretation, it should be noted that such an interpretation guarantees that they exist and, no, that there would be the possibility of triggering them. To be actionable, such subsidies must also be specific. Specificity, on the other hand,

1136. In this case, there is no other interpretation for the term "jurisdiction" than "territory" of the granting authority. According to the current configuration of the international order as well as Public International Law, the principle of territoriality of jurisdiction still prevails. Even those punctual phenomena of extraterritoriality of the jurisdiction essentially depend on execution/collaboration mechanisms for the order to be executed. Jurisdiction therefore remains confined to the territory of the WTO member. As if all the evidence presented for the territorial limitation of compensatory measures were not enough, there is 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 overall rate of subsidization exceeds 5 per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's (63) sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted. (64) (¼)

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 to a firm within its own territory can be actionable under the SMC Agreement.

1138. In her claim, the petitioner used art. 11 of the Draft Articles on International Liability of States for Unlawful Acts as a criterion for attributing the conduct of Chinese benefits to Indonesia. Such an argument was also used in the case of the European Union. The use of that article, in the present case, would have the objective of circumventing the discussion of the interpretation of the WTO Agreements. Its use would, of course, be inadequate as there are specific criteria for attributing conduct in the WTO ASMC, as previously mentioned, the use of general international custom being unreasonable. If the use of general international custom is possible to interpret the agreements, according to CVDT rules, so too are the historical circumstances of their formation. In this way, the true meaning of the provisions of the agreement would remain clear.

1139. Another relevant point to be addressed would be that, even considering the existence of these programs, they would be, for all legal purposes, financial concessions between developing countries to support development. The application of the Draft Articles on the International Liability of States for Unlawful Acts would therefore be inappropriate.

1140. Activation of transnational subsidies would therefore, in addition to being unconventional and controversial, be a possible instrument to undermine the performance of developing countries in their 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 on several occasions in order to reach a determination on a point. In this context, the calculations brought by the petitioner were one more element to be evaluated - when it was considered that it sufficiently and more adequately filled in the gaps, it was used.

1142. Regarding the so-called "indirect subsidies, granted by the Government of China, but recognized and adopted by the Government of Indonesia as their own", it is pointed out that, although the relationship between the GOI and the Government of China permeates several of the programs, and has already been proven and exhaustively discussed in this document, this was not the main element of the present investigation.

1143. In this area, contrary to what was stated by PT IRNC, there is ample documentation in order to prove the role of the IMIP in the plans of the GOI and the arrangement between the GOI and the Government of China for its achievement, and the fact that the IMIP being a private company in no way alters that conclusion. It is not surprising that this was also the conclusion of the authorities of the European Union and India.

1144. Regarding the comments by Aprodinox and the IRNC on transnational subsidies, it is pointed out that they remain empty in view of the non-application of this authority of any remedy on possible transnational subsidies in the present case, and therefore no further comments will be made on the subject. Even so, it should be noted that SECEX Ordinance No. 172, of February 14, 2022, contains provisions that deal with the investigation of transnational subsidies, and that there is no prohibition in multilateral regulations regarding the possibility of framing transnational subsidies as actionable subsidies . However, in the present investigation, the provisions of this Ordinance do not specifically apply, and it was considered that the petitioner presented the matter at an advanced procedural stage, which made it impossible to deal with the claim,

4.5 Summary of subsidy programs

1145. The following table summarizes the findings regarding the programs for which this SDCOM investigated the existence of actionable subsidy programs by the Government of Indonesia, as analyzed in the previous sections:

Summary about grant programs

Program number and name	Type of Financial Contribution - Decree 1751/1995	granting authority	specificity	Calculated amount (US$/t)	Calculated amount (% FOB)
Program 1 - Supply of nickel ore for remuneration lower than adequate	Art. 4th, II, c) c/cd)	GOI, Direct and Indiret.	By law - art. 6th, *head*	216.98	10.62%
Program 2 - Supply of Coal and Coke for less than adequate remuneration	Art. 4th, II, c) c/cd)	GOI, Direct and Indiret.	By law - art. 6, *caput* In fact - art. 6th, §3rd	18.48	0.90%
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	28.63	1.40%
Program 5 - Income or price support programs					
Program 6 - Preferred Loans	Art. 4th, II, a) with c/cd)	GOI, Direct and Indiret.	Indeed - art. 6, §3 Presumed - art. 8th, I	37.60	1.84%
Program 7 - *Bonded Zones*	Art. 4th, II, b)	GOI	Indeed - art. 6th, 3rd Regional - art. 7th	24.11	1.18%
Program 8.1 - Direct tax incentives - Income tax reduction for large investments	Art. 4th, II, b)	GOI	By law - art. 6th, *head*	69.37	3.39%
Program 8.2 - Direct tax incentives - Exemption from import duties	Art. 4th, II, b)	GOI	By law - art. 6, *caput* In fact - art. 6th, §3rd	4.36	0.21%
Program 8.3 - Direct tax incentives - VAT reductions and exemptions on machinery and equipment					

Program 9 - Income Tax facilities to certain industries	Art. 4th, II, b)	GOI	By law - art. 6th, *head*	1.23	0.06%
Program 10 - Tax and preferential tax regime in the area of industrial development					
Program 11 - Capital injection					
TOTAL				400.76	19.60

4.6 Conclusion about subsidy programs

1146. From all of the above, SDCOM concluded that there is a deliberate framework of incentives through actionable subsidies for the stainless steel industry, which are already subject to compensatory measures applied, including, by other investigating authorities. The subsidy programs identified in the summary table of item 4.5 with the respective subsidy amounts determined are configured as actionable subsidies, under the terms of art. 5 of Decree No. [1751] of 1995, and therefore subject to the application of compensatory measures, as provided for in the ASMC.

1147. Furthermore, it was observed that the calculated margins of actionable subsidies were not characterized as de minimis, under the terms of §9 of art. 21 of Decree No. 1751 of 1995.

5 IMPORTS AND THE BRAZILIAN MARKET

1148. This item will analyze Brazilian imports and the Brazilian market for flat cold rolled products 304.

1149. The period of analysis must correspond to the period considered for the purpose of investigating damage to the domestic industry in accordance with the provisions of § 2 of art. 35 of Decree No. 1,751 of 1995, which, as explained in item 1.2 above, was indicated by the petitioner as the period for analysis of damage and causal link encompassing the months of April 2015 to March 2020; being the period of analysis of actionable subsidies of the petition the months of April 2019 to March 2020.

1150. Thus, the period from April 2015 to March 2020 was considered, 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.

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, 7219.33.00, 7219.34.00, 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 of different grades from 304, such as 430, and thicknesses outside the scope of the investigation, are classified in these NCM subitems, in addition to other products.

1153. For this reason, a purification of the imports contained in these data was carried out, in order to obtain information referring exclusively to flat cold-rolled products of austenitic stainless steel type 304 (304, 304L and 304H), cold-rolled, with thickness equal to or greater than 0.35 mm, but less than 4.75 mm. The methodology for purifying the data consisted of excluding those products that did not comply with the parameters described in this item.

1154. The following were not considered to be the product under investigation: flat cold-rolled products 304 of different degrees from 304 and/or with a thickness of less than 0.35 mm or equal to or greater than 4.75 mm, perforated sheets, wear, friction plates, profiles, plates, transfer plates, undercut plates, sealing tapes, tiles, exhaust accessories, steel cable strap, stainless steel strap, tubes, among others.

1155. Despite the methodology adopted, there were still imports whose descriptions in the data made available by the RFB did not allow concluding whether the imported product corresponded to cold rolled flat products 304 within the specifications described above.

1156. In this context, the volumes and values of imports of flat cold rolled products 304 in whose description it was not possible to identify complete information about the grade and thickness were considered as imports of the product under investigation.

5.1.1 The volume of imports

1157. The following table presents the volumes (in tonnes) of total imports of flat cold rolled products 304 in the investigation period of injury to the domestic industry.

Total Imports (t)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Indonesia	100	138.44	126.41	687.22	3,146.99	
Total (under review)	100	138.44	126.41	687.22	3,146.99	
Variation	-	38.5%	(8.7%)	443.7%	357.9%	+ 3,047.1%
U.S	100	56.61	170.07	173.98	163.46	
South Africa	100	120.52	143.13	118.49	84.32	
Malaysia (1)	100	182.67	269.32	292.34	264.96	
Malaysia (2)	100	-	14.13	-	-	
Other countries (3)	100	49.03	64.01	66.11	60.01	
Total (except under analysis)	100	79.46	121.97	115.99	98.60	
Variation	-	(20.5%)	53.5%	(4.9%)	(15.0%)	(1.4%)
Grand total	100	80.92	122.08	130.12	174.01	
Variation	-	(19.1%)	50.9%	6.6%	33.7%	+ 74.0%
1 - Operations carried out by exporting companies whose origin was disqualified by Secex. 2 - Operations carried out by exporting companies whose origin was not disqualified by Secex. 3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Spain, Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (Holland), Poland, Portugal, United 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 304 from the investigated origin increased 38.5% from P1 to P2 and decreased 8.7% from P2 to P3. In subsequent 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 indicator of Brazilian 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 cold rolled flat rolled products 304 from other origins (the total except the investigated origin) over the period of analysis, there was a reduction of 20.5% between P1 and P2, while from P2 to P3 it was possible to detect an increase of 53.5%. From P3 to P4 there was a reduction of 4.9%, and between P4 and P5 the indicator fell by 15.0%. When considering the entire analyzed series, the indicator of volume of Brazilian imports of the product 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 an increase of 50.9% was found between P2 and P3, growth of 6.6% from P3 to P4, and between P4 and P5 the indicator showed an increase of 33.7%. Analyzing the entire period, Brazilian imports from all origins expanded by around 74%, considering P5 in relation to P1.

1161. According to § 4 of art. 21 of Decree No. 1751 of 1995, the imports considered here did not occur in an insignificant volume, as they were greater than four percent of total imports of the like product.

5.1.2 Value and price of imports

1162. Aiming to make the analysis of the value of imports more uniform, considering that freight and insurance, depending on the considered origin, have a relevant impact on the competitive price between products entering the Brazilian market, the analysis was carried out on a CIF basis.

1163. The tables below show the evolution of the total value and CIF price of total imports of flat cold rolled products 304 in the period of analysis of the damage to the domestic industry. [RESTRICTED]

Value of Total Imports (in CIF USD x1,000)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Indonesia	100	101.46	99.46	579.30	2,302.46	
Total (under review)	100	101.46	99.46	579.30	2,302.46	
Variation	-	1.5%	(2.0%)	482.5%	297.5%	+ 2,202.4%
U.S	100	54.70	160.64	184.85	161.20	
South Africa	100	98.85	142.15	125.14	81.11	
Malaysia (1)	100	153.60	278.23	298.85	239.50	
Malaysia (2)	100	#VALUE!	11.84	#VALUE!	#VALUE!	
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 disqualified by Secex.

2 - Operations carried out by exporting companies whose origin was not disqualified by Secex.

3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Spain, Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (Holland), Poland, Portugal, 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 products 304 from the investigated origin (Thousand US$ CIF) increased by 1.5% from P1 to P2 and decreased by 2.0% from P2 to P3. In subsequent periods, there was a significant increase of 482.5% between P3 and P4, and from P4 to P5 there was a 297.5% increase. When considering the entire period of analysis, the indicator of the value of Brazilian imports from the investigated origin indicated a notable positive variation of 2,202.4%, considering P5 in relation to P1.

1165. Regarding the variation in the value of Brazilian imports of cold rolled flat rolled products 304 from other origins (the total except the investigated origin) (Thousand US$ CIF) over the period of analysis, there was a reduction of 34.9% between P1 and P2, while from P2 to P3 it was possible to detect an increase of 77.0%. From P3 to P4 there was an increase of 2.6%, and between P4 and P5 the indicator fell by 21.7%. When considering the entire analyzed series, the indicator for the value of Brazilian imports of the 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 of flat cold rolled products 304 (Thousand US$ CIF) in the analyzed period, there was a decrease of 33.9% between P1 and P2, but an increase of 73.5% between P2 and P3, growth of 14.4% from P3 to P4, and between P4 and P5 the indicator showed an increase of 18.4%. Analyzing the entire period, total Brazilian imports of flat cold-rolled products 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

Indonesia	100	73.28	78.68	84.29	73.16	
Total (under review)	100	73.28	78.68	84.29	73.16	
Variation	-	(26.7%)	7.4%	7.1%	(13.2%)	(26.8%)
U.S	100	96.63	94.45	106.24	98.62	
South Africa	100	82.02	99.31	105.61	96.19	
Malaysia (1)	100	84.08	103.31	102.23	90.39	
Malaysia (2)	100	-	83.72	-	-	
Other countries (3)	100	81.46	93.80	98.63	90.20	
Total (except under review)	100	81.91	94.43	101.85	93.75	
Variation	-	(18.1%)	15.3%	7.9%	(8.0%)	(6.2%)
Grand total	100	81.72	93.98	100.89	89.33	
Variation	-	(18.3%)	15.0%	7.4%	(11.5%)	(10.7%)

1 - Operations carried out by exporting companies whose origin was disqualified by Secex.

2 - Operations carried out by exporting companies whose origin was not disqualified by Secex.

3 - Other countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Spain, Finland, France, Hong Kong, India, Italy, Japan, Mexico, Netherlands (Holland), Poland, Portugal, United Kingdom, Romania, Sweden, Thailand, Taiwan (Taiwan), Turkey and Uruguay.

Source: RFB.

Elaboration: SDCOM.

1167. The average CIF price indicator per weighted ton of Brazilian imports of cold rolled flat rolled products 304 from the investigated origin decreased by 26.7% from P1 to P2 and increased by 7.4% from P2 to P3. In subsequent periods, there was an increase of 7.1% between P3 and P4, and a decrease of 13.2%, considering the interval between P4 and P5. When considering the entire analysis period, 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 Brazilian imports of cold-rolled flat-rolled products 304 from other origins (the total except for the origin investigated) over the period of analysis, there was a reduction of 18.1% between P1 and P2, while from P2 to P3 it was possible to detect a magnification of 15.3%. From P3 to P4 there was an increase of 7.9%, and between P4 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 presented a contraction of 6.2%, considering P5 in relation to P1.

1169. Observing the variation in the average CIF price per weighted ton of total Brazilian imports of cold-rolled flat-rolled products 304 in the analyzed period, there was a decrease of 18.3% between P1 and P2, but an increase of 15 .0% between P2 and P3 and growth of 7.4% from P3 to P4. Between P4 and P5, the indicator showed a retraction of 11.5%. Analyzing the entire period, the average price (CIF US$/t) of total Brazilian imports of flat cold rolled products 304 from all origins showed a contraction of around 10.7%, 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 national 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 considered, previously presented. It should be noted that domestic industry sales only include sales of own manufacturing.

The Brazilian Market and the Evolution of Imports (t)
[RESTRICTED]

	P1	P2	P3	P4	P5	P1 - P5
Brazilian Market {A+B+C}	100	116.33	124.14	131.54	131.02	
Variation	-	16.3%	6.7%	6.0%	(0.4%)	+ 31.0%
A. Internal Sales - Domestic Industry	100	127.65	124.80	131.99	117.27	
B. Internal Sales - Other Companies	-	-	-	-	-	-
Variation	-	27.7%	(2.2%)	5.8%	(11.2%)	+ 17.3%
C. Total Imports	100	80.92	122.08	130.12	174.01	
C1. Imports - Origins under Analysis	100	138.44	126.41	687.22	3,146.99	
Variation	-	38.5%	(8.7%)	443.7%	357.9%	+ 3,047.1%
C2. Imports - Other Origins	100	79.46	121.97	115.99	98.60	
Variation	-	(20.5%)	53.5%	(4.9%)	(15.0%)	(1.4%)

Source: RFB and petitioner.

Elaboration: SDCOM

1172. The Brazilian market (in tons) of flat cold rolled products 304 showed increases of 16.3% from P1 to P2 and 6.7% from P2 to P3. In subsequent periods, there was an increase of 6.0% between P3 and P4, and a decrease of 0.4% considering the interval between P4 and P5. When considering the entire analysis period, the indicator for the Brazilian market of cold rolled products 304 showed a positive variation of 31.0%, considering P5 in relation to P1.

1173. Regarding the variation of the indicator of Brazilian imports (in tons) of flat cold rolled products 304 from the origin investigated throughout the period of analysis, there was an increase of 38.5% between P1 and P2, while from P2 to P3 it was possible to detect a reduction of 8.7%. From P3 to P4 there was a significant increase of 443.7%, and between P4 and P5 the indicator suffered revealed a positive variation of 357.9%. When considering the entire analyzed series, the indicator of Brazilian imports 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 flat products 304 from other sources showed a decrease of 20.5% from P1 to P2 and an increase of 53.5% from P2 to P3. In subsequent periods, there were decreases of 4.9% between P3 and P4 and 15.0% considering the interval between P4 and P5. When considering the entire analysis period, the indicator of Brazilian imports 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) from the investigated origin in the Brazilian market (in tons) of cold rolled flat rolled products 304.

Participation in the Brazilian Market [RESTRICTED]						
	P1	P2	P3	P4	P5	P1-P5
Brazilian market {A+B+C}	100	116.33	124.14	131.54	131.02	
Share of Total Imports {C/(A+B+C)}	100	69.83	98.35	99.17	133.06	
Share of Imports - Origins under Analysis {C1/(A+B+C)}	100	116.67	100.00	516.67	2,400.00	
Share of Imports - Other Origins {C2/(A+B+C)}	100	68.22	98.31	88.14	75.42	

Source: RFB and petitioner.

Elaboration: SDCOM

1176. With regard to the evolution of the percentage share of imports (in tons) originating in Indonesia in the Brazilian market (in tons), there was an increase from P1 to P2 ([RESTRICTED] pp) and a reduction from P2 to P3 ([RESTRICTED] pp). In subsequent periods, there was a positive variation in the evolution of the participation of imports from the investigated origin in the Brazilian market from

[RESTRICTED] pp from P3 to P4 and from [RESTRICTED] pp from P4 to P5. Considering the entire period, the evolution of the percentage share of imports from Indonesia in the Brazilian market showed a positive variation of [RESTRICTED] pp, considering P5 in relation to P1.

1177. With regard to the evolution of the percentage share of imports (in tons) originating from other origins in the Brazilian market (in tons), there was a decrease in the evolution of the share of these imports of [RESTRICTED] pp from P1 to P2, followed by an increment of [RESTRICTED] pp from P2 to P3. In the subsequent periods there was a sequence of negative variations in the evolution of the participation of imports from other origins of [RESTRICTED] pp from P3 to P4 and [RESTRICTED] pp from P4 to P5. Considering the entire period, the evolution of the percentage share of imports from other origins in the Brazilian market revealed a negative variation of [RESTRICTED] pp, considering P5 in relation to P1.

5.3.2 The relationship between imports and national production

1178. The following table shows the relationship between Brazilian imports (in tons) of flat cold rolled products 304 from the investigated origin and the national production (in tons) of the domestic similar product.

Imports from the investigated origin and national production (t)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
National Production (A)	100	97.54	94.10	84.78	73.26	
Imports - Origins under Analysis (B)	100	138.44	126.41	687.22	3,146.99	
Relationship with the National Production Volume (B/A)	100	150.00	150.00	875.00	4,700.00	
Variation	[RESTRICTED]	*[RESTRICTED]*	*[RESTRICTED]*	*[RESTRICTED]*	*[RESTRICTED]*	*[RESTRICTED]*

Source: RFB and petitioner.

Elaboration: SDCOM

1179. It was observed that the relationship between the volume of imports (in tons) of cold rolled products 304 from the investigated origin and the volume of domestic production (in tons) of the domestic like product increased [RESTRICTED] pp from P1 to P2, and from P2 to P3 did not change. In subsequent periods, there was an increase of [RESTRICTED] pp between P3 and P4, and growth of [RESTRICTED] 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 [RESTRICTED] pp, considering P5 in relation to P1.

5.4 Conclusion regarding imports

1180. During the damage investigation period, the volume of imports (in tonnes) of flat 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 [RESTRICTED] t in P1 to [RESTRICTED] t in P5, an increase of [RESTRICTED] 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 an insignificant volume, since they exceeded four percent of total imports of the like product, under the terms of § 4 of art. 21 of Decree No. 1751 of 1995.

1183. Regarding the Brazilian market (in tons), the share of imports (in tons) of cold rolled products 304 from the investigated origin went from [RESTRICTED] %, in P1 to [RESTRICTED] % in P5, revealing a positive evolution of participation of these imports of the order of magnitude of [RESTRICTED] pp, considering P5 in relation to P1.

1184. Regarding the domestic production (in tons) of the domestic like product, the volume of imports (in tons) of cold rolled products 304 from the investigated origin represented [RESTRICTED] % of national production in P1 and represented [RESTRICTED] % in P5 , revealing a positive variation of [RESTRICTED] pp, considering P5 in relation to P1.

6 DAMAGE

6.1 Domestic industry indicators

1185. Pursuant to the provisions of art. 24 of Decree No. 1751 of 1995, the domestic industry was defined as the production line of flat cold-rolled stainless steel products 304 of the company Aperam Inox América do Sul SA, which, as shown in item 3 of this opinion, under the terms dealt with in item 1.4, was responsible for 100% of the national production of the similar cold-rolled product 304 in the damage investigation period, from April 2015 to March 2020.

1186. Thus, the indicators considered in this document reflect the results achieved by the aforementioned production line.

1187. For an adequate evaluation of the evolution of the data in national currency presented by the domestic industry, the current values were updated based on the Broad Producer Price Index - Origin (IPA-OG-PI), from the Getúlio Vargas Foundation, [RESTRICTED] .

1188. According to the applied methodology, the values in current reais for each period were divided by the average price index for the period, multiplying the result by the average price index of P5. 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 cold-rolled products industry manufactured by the Company, destined for the domestic and foreign markets, net of returns.

Domestic Industry Sales (t)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Total Domestic Industry Sales	100.0	99.4	95.2	85.5	72.5	[REST.]
Variation	-	(0.6%)	(4.2%)	(10.2%)	(15.2%)	(27.5%)
TO 1. Domestic Market Sales	100.0	127.7	124.8	132	117.3	[REST.]
Variation	-	27.7%	(2.2%)	5.8%	(11.2%)	+ 17.3%
A2. Foreign Market Sales	100.0	63.7	57.7	26.6	15.8	[REST.]
Variation	-	(36.3%)	(9.3%)	(54.0%)	(40.6%)	(84.2%)
Representativeness of Sales						
Domestic market share in Total Sales {A1/A}	100.0	128.4	131.0	154.3	161.7	
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 internal market grew 27.7% from P1 to P2 and decreased 2.2% from P2 to P3. In subsequent periods, sales increased by 5.8% from P3 to P4 and decreased by 11.2% from P4 to P5. When considering the entire period of analysis, the sales volume (in tons) of the domestic industry for the domestic market grew 17.3%, considering P5 in relation to P1.

1192. Regarding sales (in tons) to the foreign market, there were consecutive reductions 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 volume (in tons) of the domestic industry to the foreign market presented an accumulated decrease of 84.2%, considering P5 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 product throughout the damage investigation period , reaching its lowest level in P5, with a participation of [RESTRICTED] %.

1194. On the other hand, total sales (in tons) of the domestic industry showed a similar behavior to sales (in tons) on the foreign market, showing consecutive reductions throughout the analyzed period, from 0.6% from P1 to P2, from 4, 2% from P2 to P3, from 10.2% from P3 to P4, and from 15.2% from P4 to P5. When considering the entire damage investigation period, the total sales volume (in tons) of the domestic industry decreased by 27.5%, considering P5 in relation to P1.

6.1.2 Share of sales volume in the Brazilian market

1195. The following table shows the share of domestic industry sales in the Brazilian market.

Share of Domestic Industry Sales in the Brazilian Market						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Sales in the Domestic Market	100.0	127.7	124.8	132.0	117.3	[REST.]
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
B. Brazilian Market	100.0	116.3	124.1	131.5	131	[REST.]
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Share in the Brazilian Market {A/B}	100.0	116.3	124.1	131.5	131	
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1196. The evolution of the domestic industry's share of sales in the Brazilian cold rolled products market 304 grew from P1 to P2 in [RESTRICTED] pp From then on, the evolution of this share decreased by [RESTRICTED] pp from P2 to P3, reduced [RESTRICTED] pp from P3 to P4, and showed a decrease of [RESTRICTED] pp from P4 to P5. Considering the entire period of analysis, there was a decrease of [RESTRICTED] pp in the evolution of the domestic industry's share of sales in the domestic market, 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 production of the similar cold-rolled product of the domestic industry takes place at the Aperam plant located in Timóteo (MG).

1198. To calculate the nominal capacity, the company calculated the average productivity of each of the cold rolling mills used in the production of the like product ([CONFIDENTIAL]). The weighted average productivity of each rolling mill was then multiplied by the number of available hours in a year (24 hours x 365 days). The sum of the capacity of the three rolling mills reflected the company's nominal capacity.

1199. To calculate the effective capacity, the nominal capacity of each rolling mill was multiplied by the annual operating index of each rolling mill. This operating index reflects the expected effectiveness of the equipment, taking into account operational downtime, such as setup and preventive and corrective maintenance, and the number of working days in each year. In addition, stoppages related to major maintenance (RCO - Return to Original Conditions) and productive investments were discounted.

Production (t), Installed Capacity (t) and Degree of Occupancy						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Production Volume - Similar Product	100.0	97.5	94.1	84.8	73.3	[REST.]
Variation	-	(2.5%)	(3.5%)	(9.9%)	(13.6%)	(26.7%)
B. Production Volume - Other Products	100.0	101.6	103.1	100.3	91.4	[REST.]
Variation	-	1.6%	1.5%	(2.7%)	(8.8%)	(8.6%)
C. Effective Installed Capacity	100.0	103.6	99.6	94.6	100	[REST.]
Variation	-	3.6%	(3.9%)	(5.0%)	5.7%	+0.0%
D. Degree of Occupation {(A+B)/C}	100.0	96.8	100.7	100.8	85.7	-
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboration: SDCOM						

Source: RFB and Domestic Industry

1200. The production volume of the similar cold-rolled product of the domestic industry showed constant decreases in all periods analyzed, from 2.5% from P1 to P2, from 3.5% from P2 to P3, from 9.9% from P3 to P4 and 13.6% from P4 to P5. Considering the entire period of analysis, a decrease of 26.7% was observed in the production volume of the similar cold-rolled product of the domestic industry, considering P5 in relation to P1.

1201. The production of other products registered an increase of 1.6% from P1 to P2 and growth of 1.5% from P2 to P3. In subsequent periods, the production of other products showed a decrease of 2.7% from P3 to P4 and a decrease of 8.8% from P4 to P5. Considering the entire period of analysis, the production of other products decreased by 8.6%, considering P5 in relation to P1.

1202. Effective installed capacity grew by 3.6% between P1 and P2, followed by two reductions of 3.9% between P2 and P3 and 5.0% between P3 and P4; growing again by 5.7% between P4 and P5. When considering the entire analysis period, the effective installed capacity remained practically stable, having increased by [RESTRICTED] tons in P5 compared to P1, which represents a growth of less than 0.1%.

1203. With regard to the evolution of the degree of occupancy of the installed capacity, it was observed that there was a decrease of [RESTRICTED] pp from P1 to P2, an increase of [RESTRICTED] pp 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 evolution of the degree of occupancy of the installed capacity registered a decrease, reducing by [RESTRICTED] pp, considering P5 in relation to P1.

6.1.4 Stocks

1204. The following table indicates the accumulated stock of the production of the similar product of cold rolled products of the domestic industry, in tons, at the end of each investigated period, considering the initial stock in P1 of [RESTRICTED] t. It should be noted that sales in the domestic and foreign markets are already net of returns.

Stocks (t)						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Production Volume - Similar Product	100.0	97.5	94.1	84.8	73.3	[REST.]
Variation	-	*(2.5%)*	*(3.5%)*	*(9.9%)*	*(13.6%)*	*(26.7%)*
Domestic Market Sales	100.0	127.7	124.8	132	117.3	[REST.]
Variation	-	*27.7%*	(2.2%)	5.8%	(11.2%)	+ 17.3%
Foreign Market Sales	100.0	63.7	57.7	26.6	15.8	[REST.]
Variation	-	(36.3%)	(9.3%)	(54.0%)	(40.6%)	(84.2%)
Other Inputs/Outputs	-100.0	27.3	-16.3	-269	-325.8	
Final storage	100.0	85.5	82.5	59.7	60.9	[REST.]
Variation	-	*(14.5%)*	*(3.5%)*	*(27.6%)*	*2.0%*	*(39.1%)*
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, and from 27.6% from 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 series, the final stock volume of the domestic industry's similar cold-rolled product, in tons, decreased by 39.1%, considering P5 in relation to P1.

1206. The following table presents the relationship between the domestic industry's accumulated stock of the like cold-rolled product, in tonnes, and the production of the domestic industry's like cold-rolled product, in tonnes, in each analysis period.

Final Stock/Production Ratio

[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Production Volume - Similar Product (A)	100.0	97.5	94.1	84.8	73.3	[REST.]
Variation	-	*(2.5%)*	*(3.5%)*	*(9.9%)*	*(13.6%)*	*(26.7%)*
Ending Stock (B)	100.0	85.5	82.5	59.7	60.9	[REST.]
Variation	-	*(14.5%)*	*(3.5%)*	*(27.6%)*	*2.0%*	*(39.1%)*
Relationship between Inventory and Production Volume (B/A)	100.0	86.7	86.7	68.9	82.2	-
Variation	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1207. The evolution of the final stock/production ratio of the domestic cold-rolled like product, in tons, showed a reduction of [RESTRICTED] pp between P1 and P2, followed by stability between P2 and P3. Between P3 and P4, the evolution of the final stock/production ratio of the similar cold-rolled product of the domestic industry showed a decrease of [RESTRICTED] pp Finally, the evolution of the final stock/production ratio of the similar cold-rolled product of the domestic industry showed an increase of [RESTRICTED] pp between P4 and P5. Considering the extremes of the series, the evolution of the final stock/production ratio of the domestic cold-rolled like product showed a decrease of [RESTRICTED] pp, considering P5 in relation to P1.

6.1.5 Employment, productivity and wage bill

1208. The following tables present the number of employees, productivity and wage bill related to the production/sale of the similar product of domestic cold rolled products.

1209. For apportionment of the number of employees for the similar domestic cold-rolled product, the criterion used was the labor cost of cold-rolled stainless steel 304 over the total labor cost contained in Aperam's COGS.

1210. The allocation of the wage bill for the similar domestic cold-rolled product was based on the same apportionment criterion used for the number of employees.

	P1	P2	P3	P4	P5	P1-P5
Number of Employees - Total	100.0	100.3	99.4	94.0	83.3	[REST.]
Variation	-	0.3%	(0.9%)	(5.4%)	(11.3%)	(16.7%)
Number of Employees - Production	100.0	100.0	99.0	93.7	83.1	[REST.]
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	[REST.]
Variation	-	7.7%	-	(7.1%)	(12.3%)	(12.3%)

Elaboration: SDCOM

Source: RFB and Domestic Industry

1211. It was verified that the number of employees who work in the production line of the similar product of domestic cold rolled products remained unchanged from P1 to P2. In subsequent periods, this 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, considering P5 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 reduction of 7.1% and from P4 to P5 there was a decrease of 12.3%. Considering the entire analysis period, there was a drop in the number of employees in the Administration and Sales area of 12.3%, considering P5 in relation to P1.

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, from 5.4% from P3 to P4, and 11.3% from P4 to P5. When considering the total period of analysis, there was a reduction in the total

number of employees of 16.7%, considering P5 in relation to P1.

1214. The following table presents the productivity per employee working in the domestic cold-rolled like product production line in each analysis period.

Productivity per Employee linked to Production						
[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Number of Employees - Production (A)	100.0	100.0	99.0	93.7	83.1	[REST.]
Variation	-	*(0.0%)*	*(1.0%)*	*(5.4%)*	*(11.3%)*	*(16.9%)*
Production Volume - Similar Product (B)	100.0	97.5	94.1	84.8	73.3	[REST.]
Variation	-	(2.5%)	*(3.5%)*	*(9.9%)*	*(13.6%)*	*(26.7%)*
Productivity per Employee {B/A}	100.0	97.6	95	90.5	88.1	-
Variation	-	*(2.4%)*	*(2.6%)*	*(4.8%)*	*(2.6%)*	*(11.9%)*
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1215. Productivity per employee linked to the production of a similar domestic cold-rolled product showed consecutive falls over the period analyzed, from 2.4% from P1 to P2, from 2.6% from P2 to P3, from 4.8 % from P3 to P4, and from 2.6% from P4 to P5. Considering the entire period of damage analysis, the productivity per employee linked to the production of the similar domestic cold-rolled product fell by 11.9%, considering P5 in relation to P1.

1216. Information on the wage bill related to the production/sale of the domestic industry's 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	
Variation	-	(15.8%)	6.4%	(11.5%)	(18.9%)	(35.7%)
Payroll - Production	100.0	84.7	89.7	78.8	64.1	
Variation	-	(15.3%)	5.9%	(12.1%)	(18.6%)	(35.9%)
Payroll - Adm. and Sales	100.0	79.9	88.4	82.8	65.4	
Variation	-	(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 15.3% from P1 to P2 and an increase of 5.9% from P2 to P3. In subsequent periods, there were successive drops of 12.1% from P3 to P4, and 18.6% from P4 to P5. In the analysis of the extremes of the series, 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 like product, there was a decrease of 20.1% from P1 to P2 followed by a growth of 10.6% from P2 to P3. 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 the 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 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 salary mass 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

1220. The domestic industry's net revenue refers to net sales of cold rolled flat rolled products produced in-house, after deducting rebates, discounts, taxes and returns, as well as domestic freight expenses. Net Revenue from Domestic Industry Sales

1221. The following table presents the net revenues obtained by the domestic industry with the sale of the similar domestic product in the internal and external markets in thousands of updated Reais, deducted of the values of freights incurred on these sales.

Net Revenue (in thousand reais and in index number)						
[CONFIDENTIAL]/[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
Total Net Revenue (A)	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Domestic Market Net Revenue (B)	100.0	113.1	119.1	136.5	115.3	[REST.]
Variation		13.1%	5.3%	14.6%	(15.5%)	+ 15.3%
Participation {B/A}	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Foreign Market Net Revenue (C)	100.0	50.6	51.0	27.5	15.9	
Variation		(49.4%)	0.7%	(46.1%)	(42.3%)	(84.1%)
Participation {C/A}	[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 products in the domestic market, in updated thousands of Reais, fluctuated over the analyzed period, with continuous growth of 13.1% from P1 to P2, from 5, 3% from P2 to P3, and new growth of 14.6% from P3 to P4; having then presented a decline of 15.5% from P4 to P5. When considering the extremes of the series, the net revenue referring to sales of cold rolled flat rolled products manufactured by the company in the domestic market 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 flat cold rolled products manufactured in-house in the foreign market, it showed a continuous decrease throughout the period analyzed, from 49.4% from P1 to P2, from 0.7% from P2 to P3, 46.1% P3 to P4; and 42.3% from P4 to P5. When considering the extremes of the series, the net revenue referring to sales of flat cold rolled products manufactured in-house in the foreign market presented an accumulated decrease of 84.18%, considering P5 in relation to P1.

6.1.6.2 Weighted average prices

1224. The following table presents the weighted average selling prices of cold rolled flat rolled products manufactured by the company in the domestic market, in Reais restated per ton, obtained by the ratio between net revenues and the respective quantities sold of cold rolled products 304, net of return, 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 product of cold rolled flat rolled products manufactured in-house in the domestic market, in updated Reais per ton, showed fluctuations 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 price indicator

declined by 4.9% from P4 to P5. When considering the extremes of the series, the indicator of weighted average sales price of the similar product of flat cold rolled products manufactured in-house in the domestic market, in updated Reais per ton, presented a negative variation of 1.7%, considering P5 in relative to P1.

1226. The indicator of weighted average sales price of the similar product of cold rolled flat rolled products manufactured in the foreign market, in updated Reais per ton, showed fluctuations over the analyzed period, with a decline of 20.5% from P1 to P2, followed by 11.0% growth from P2 to P3 and a new growth of 17.2% from P3 to P4. In the following period, this weighted average price indicator declined by 2.9% from P4 to P5. When considering the entire period of analysis, the weighted average sales price indicator of the similar product of flat cold rolled products manufactured by the Company in the foreign market, in updated Reais per ton, presented a positive variation of 0.5%, considering P5 in relation to P1.

6.1.6.3 Results and margins

1227. The table below presents the domestic industry's income statement obtained from the sale of the similar product of cold rolled flat rolled products manufactured by the company in the domestic market, as informed by the domestic industry.

Income Statement for the Domestic Market (in thousand Reais) and Profitability Margins (%)						
[CONFIDENTIAL]/[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Domestic Market Net Revenue	100.0	113.1	119.1	136.5	115.3	
Variation		13.1%	5.3%	14.6%	(15.5%)	+ 15.3%
B. Cost of Goods Sold - COGS	100.0	110.7	118.8	138.5	122.8	
Variation		10.7%	7.3%	16.6%	(11.4%)	+ 22.8%
C. Gross Profit {AB}	100.0	121.1	120.1	129.4	89.6	
Variation		21.1%	(0.8%)	7.8%	(30.8%)	(10.4%)
D. Operating Expenses	100.0	117.5	149.8	131.8	115.0	
Variation		17.5%	27.5%	(12.0%)	(12.8%)	+ 15.0%
D1. General and Administrative Expenses	100.0	113.2	112.6	108.7	101.1	
D2. Selling Expenses	100.0	105.7	111.2	117.1	90.1	
D3. Financial Result (FR)	100.0	115.7	123.2	135.0	125.5	
D4. Other Operating Expenses (Revenues) (OD)	100.0	199.0	826.5	249.5	111.0	
E. Operating Result {CD}	100.0	123.0	104.1	128.2	76.0	
Variation		23.0%	(15.3%)	23.1%	(40.7%)	(24.0%)
F. Operating Result (except RF) {C-D1-D2-D4}	100.0	121.2	108.8	129.8	88.2	
Variation		21.2%	(10.2%)	19.4%	(32.1%)	(11.8%)
G. Operating Result (except RF and OD) {C-D1-D2}	100.0	122.5	121.2	131.9	88.5	
Variation		22.5%	(1.1%)	8.9%	(32.9%)	(11.5%)
H. Gross Margin {C/A}	100.0	107.1	100.9	95.1	77.9	
Variation		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
I. Operating Margin {E/A}	100.0	108.8	87.8	93.9	66.0	
Variation		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
J. Operating Margin (except RF) {F/A}	100.0	107.2	91.3	95.4	76.4	
Variation		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
K. Operating Margin (except RF and OD) {G/A}	100.0	108.0	101.5	96.5	76.9	
Variation		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1228. Operating income and expenses were calculated based on apportionment, based on the representativeness of the net sales of the similar national product in relation to the company's total sales.

1229. With regard to other expenses, Aperam informed that they were the following items, among others: [CONFIDENTIAL] .

1230. The gross result 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$, showed fluctuations over the analyzed period, with growth of 21.1% of P1 to P2 followed by a decline of 0.8% from P2 to P3. In the following periods, there was a growth of 7.8% from P3 to P4 and a decline of 30.8% from P4 to P5. When considering the extremes of the series, the gross result of the domestic industry with the sale of the similar product of flat cold rolled products manufactured by the company in the domestic market, in thousands of restated R$, presented a negative variation of 10.4%, considering P5 in relation to P1.

1231. The operating result 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$, showed fluctuations over the analyzed period, with growth of 23.0% of P1 to P2 followed by a 15.3% decline from P2 to P3. In the following periods, there was a growth of 23.1% from P3 to P4 and a decline of 40.7% from P4 to P5. When considering the extremes of the series, the operating result of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market, in updated thousands of R$, presented a negative variation of 24.0%, considering P5 in relation to P1.

1232. The operating result, except 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, in thousands of restated R$, showed fluctuations over the period analyzed, with a growth of 21 .2% from P1 to P2 followed by a 10.2% decline from P2 to P3. In the following periods, there was a 19.4% increase from P3 to P4 and a 32.1% decline from P4 to P5. When considering the extremes of the series, the operating result, excluding the financial result, of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in thousands of restated R$, presented a negative variation of 11.8 %, considering P5 in relation to P1.

1233. The operating result, except the financial result and other expenses, 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$, also showed fluctuations over the analyzed period, with growth of 22.5% from P1 to P2 followed by a decline of 1.1% from P2 to P3. In the following periods, there was an increase of 8.9% from P3 to P4 and a decline of 32.9% from P4 to P5. When considering the extremes of the series, the operating result, excluding the financial result and other expenses, of the domestic industry with the sale of a similar product of flat cold rolled products manufactured in-house in the domestic market, in updated thousands of R$, showed a negative variation of 11.5%, 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, of [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 the 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 analyzed period, 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 succeeded [CONFIDENTIAL] pp decline 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, 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$, presented a negative variation of [CONFIDENTIAL] pp, considering P5 in relation to P1.

1237. The operating margin, excluding the financial result and other expenses, 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$, increased by [CONFIDENTIAL] pp from P1 to P2. In the following periods, there were consecutive declines of [CONFIDENTIAL]pp from P2 to P3, of [CONFIDENTIAL]pp from P3 to P4, and of [CONFIDENTIAL]pp from P4 to P5. When considering the extremes of the series, the operating margin, excluding the financial result and other expenses, of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in thousands of restated R$, presented a negative variation of [CONFIDENTIAL] pp, considering P5 in relation to P1.

1238. The table below presents the domestic industry's income statement obtained from the sale of the similar product of flat cold rolled products manufactured by the company in the domestic market, calculated per ton sold, as informed by the domestic industry.

Statement of Income in the Domestic Market by Unit (BRL/(t) and ind. num.)						
[CONFIDENTIAL] / [RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Domestic Market Net Revenue	100.0	88.6	95.4	103.4	98.3	
Variation		(11.4%)	7.7%	8.4%	(4.9%)	(1.7%)
B. Cost of Goods Sold COGS	100.0	86.7	95.2	105.0	104.7	
Variation		(13.3%)	9.7%	10.3%	(0.2%)	+ 4.7%
C. Gross Profit {AB}	100.0	94.8	96.2	98.1	76.4	
Variation		(5.2%)	1.4%	1.9%	(22.1%)	(23.6%)
D. Operating Expenses	100.0	92.0	120.1	99.9	98.0	
Variation		(8.0%)	30.5%	(16.8%)	(1.9%)	(2.0%)
D1. General and Administrative Expenses	100.0	88.7	90.2	82.3	86.2	
D2. Selling Expenses	100.0	82.8	89.1	88.7	76.8	
D3. Financial Result (FR)	100.0	90.6	98.7	102.3	107.0	
D4. Other Operating Expenses (Revenues) (OD)	100.0	155.9	662.2	189.0	94.7	
E. Operating Result {CD}	100.0	96.3	83.4	97.1	64.8	
Variation		(3.7%)	(13.4%)	16.4%	(33.2%)	(35.2%)
F. Operating Result (except RF) {C-D1-D2-D4}	100.0	94.9	87.2	98.4	75.2	
Variation		(5.1%)	(8.2%)	12.9%	(23.6%)	(24.8%)
G. Operating Result (except RF and OD) {C-D1-D2}	100.0	96.0	97.1	99.9	75.5	
Variation		(4.0%)	1.1%	2.9%	(24.4%)	(24.5%)
Elaboration: SDCOM						
Source: RFB and Domestic Industry						

1239. The unit COGS of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated R$ per ton, showed a decline of 13.3% from P1 to P2. In the following periods, there were consecutive increases of 9.7% from P2 to P3 and 10.3% from P3 to P4. Afterwards, there was a decline of 0.2% from P4 to P5. When considering the extremes of the series, the unit COGS of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated R$ per ton, presented a positive variation of 4.7%, considering P5 in relation to P1.

1240. The gross unitary result of the domestic industry with the sale of the similar product of flat cold rolled products manufactured by the company in the domestic market, in updated 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 decline of 22.1% from P4 to

P5. When considering the extremes of the series, the gross unitary result of the domestic industry with the sale of the similar product of flat cold rolled products manufactured by the company in the domestic market, in restated R$ per ton, presented a negative variation of 23.6%, considering if P5 in relation to P1.

1241. The unit operating result of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated R$ per ton, showed fluctuations over the analyzed period, with declines of 3.7% from P1 to P2 and 13.4% from P2 to P3. In the following periods, there was a growth of 16.4% from P3 to P4 and a significant decline of 33.2% from P4 to P5. When considering the extremes of the series, the unit operating result of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated R$ per ton, presented a significant negative variation of 35.2%, considering P5 in relation to P1.

1242. The unit operating result, except financial result, of the domestic industry with the sale of the similar product of cold rolled flat rolled products manufactured in-house in the domestic market, in restated R$ per ton, showed consecutive declines of 5.1% from P1 to P2 and 8.2% from P2 to P3. In the following periods, there were oscillations with growth of 12.9% from P3 to P4 followed by a decline of 23.6% from P4 to P5. When considering the extremes of the series, the unit operating result, except for 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, in restated R$ per ton, showed a negative variation of 24.8%, considering P5 in relation to P1.

1243. In turn, the unit operating result, excluding the financial result and other expenses, of the domestic industry showed reductions of 4.0% from P1 to P2 and 24.4% from P4 to P5, while in the other periods there was a slight increase of 1.1% from P2 to P3 and 2.9% from P3 to P4. When considering the extremes of the series, the unit operating result, excluding the financial result and other expenses, of the domestic industry with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in updated R$ per ton, showed a negative variation of 24.5%, considering P5 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 be possible to present the production cost segregated by CODIP, since the costing is assigned in the material code (CODPROD), and, considering that these codes determine a thickness range and width, and that only at the time of sale is that information on the specific characteristics of width and thickness of the product sold is generated in the company's accounting system, it would not be possible to fit the codes of the materials produced in the characteristics of CODIP .

1245. Additionally, Aperam clarified that the material code determines a range of thickness and width, so that the same material code could be classified in more than one CODIP, depending on the specific thickness and width of the product sold . Likewise, the same CODIP could be related to different material codes.

1246. In this context, data referring to the cost of the product sold (COGS) was used to construct the cost of production, since the use of the COGS would not affect the analysis of the evolution of costs, since the company produces to order, the values related to production and sales would be very close, with only one-off inventories referring to sales that have not yet been dispatched. Thus, it was considered that the unit cost of the product sold would be similar to its production cost and would allow identification by CODIP.

1247. Thus, the following table was prepared, which presents the evolution of unit costs 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	P5	P1 - P5
Production Cost (in R$/(t)) [A + B]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variation		(12.1%)	9.2%	11.8%	(0.8%)	+ 6.5%

A. Variable Costs	100.0	87.1	94.9	109.0	107.2	
TO 1. Raw Material[1]	100.0	88.6	98.5	115.5	101.0	
A2. Other Inputs[2]	100.0	79.4	81.5	97.3	126.2	
A3. Utilities[3]	100.0	97.4	99.5	101.4	106.0	
A4. Other Variable Costs [4]	100.0	82.8	111.2	84.1	90.3	
B. Fixed Costs	100.0	93.9	104.2	95.5	101.3	
B1. Direct labor	100.0	86.1	92.1	83.6	81.8	
B2. Direct Depreciation	100.0	89.5	93.5	92.7	109.2	
B3. Operating Depreciation	100.0	99.7	101.4	101.1	106.9	
B4. Maintenance	100.0	106.9	114.9	89.7	100.9	
B5. Operational Indirect	100.0	87.7	105.6	105.7	108.1	
Elaboration: SDCOM						
Source: RFB and Domestic Industry [1] Note: The heading "raw material" includes stainless steel alloys, other alloys, other raw materials, fluxes, reducers and ores. [2] Note: The heading "other inputs" includes refractories and other inputs. [3] Note: The heading "utilities" includes electricity and other utilities. [4] Note: The heading "other variable costs" includes services.						

1248. It was verified that the unit cost of production of the similar product of flat cold rolled products manufactured by the domestic industry, in updated R$ per ton, showed a decline of 12.1% from P1 to P2. In the following periods, there were consecutive increases of 9.2% from P2 to P3 and 11.8% from P3 to P4. Afterwards, there was a new decline of 0.8% from P4 to P5. When considering the extremes of the 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%, considering P5 in relation to P1.

6.1.7.2 Cost/price ratio

1249. The following table shows the relationship between the unit cost of production of the domestic industry's own cold-rolled flat-rolled similar product, in restated R$ per ton, and the domestic industry's selling price on the domestic market, in R$ restated per ton, thus indicating the participation of this cost in the domestic industry's selling price, in the domestic market, over the period of damage investigation.

Costs and Cost/Price Ratio						
[CONFIDENTIAL]/[RESTRICTED]						
	P1	P2	P3	P4	P5	P1 - P5
A. Unit Production Cost	100	87.90	96.01	107.34	106.47	
Variation		(12.1%)	9.2%	11.8%	(0.8%)	+ 6.5%
B. Price in the Domestic Market	100.0	88.6	95.4	103.4	98.3	[REST.]
Variation		(11.4%)	7.7%	8.4%	(4.9%)	(1.7%)
C. Cost / Price Ratio {A/B}	100.00	99.21	100.66	103.81	108.27	
Variation	[CONF.]	[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 with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated 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 evolution of the participation of the cost in the domestic industry's selling price with the sale of the similar product of flat cold rolled products manufactured in-house in the domestic market, in restated R$ per ton, showed 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 national similar

1251. The effect of imports at prices with actionable subsidies on domestic industry prices must be evaluated from three aspects, as provided for in § 5 of art. 21 of Decree No. 1751 of 1995. Initially, the existence of significant undercutting of the price of the imported product at prices with evidence of actionable subsidies in relation to the similar product in Brazil must be verified, that is, if the internal price of the investigated product is lower to the price of the Brazilian product. Next, an eventual price depression is examined, that is, whether the price of the imported product had the effect of significantly lowering the price of the domestic industry. The last aspect to be analyzed is price suppression. This occurs when the investigated imports significantly prevent price increases, due to increased costs,

1252. In order to compare the price of cold rolled products 304 imported from the investigated origin with the domestic industry's average sales price in the domestic market, the CIF internal price of imported products from the investigated origin in the Brazilian market was calculated. The sale price of the domestic industry on the domestic market was obtained by the ratio between net revenue, in updated reais, and the quantity sold, in tons, on the domestic market during the damage investigation period.

1253. To calculate the internal prices of the product imported into Brazil from the investigated origin, the total import values of the product under investigation were considered, under CIF conditions, in reais, obtained from Brazilian import data provided by the RFB. To these amounts were added: a) the Import Tax (II), considering the amounts actually collected; b) the Additional Freight for Renewal of the Merchant Marine (AFRMM); and c) hospitalization expenses, estimated at 3.2% of the CIF value, based on importer questionnaires received in this investigation.

1254. It should be noted that the unit value of the AFRMM was calculated by applying the percentage of 25% on the value of international freight referring to each of the import operations contained in the RFB data, when applicable. It should be noted that it was taken into account that the AFRMM is not levied on certain import operations, such as, for example, those via air transport, those destined for the Manaus Free Trade Zone and those carried out under the protection of the special drawback regime.

1255. Finally, each total value mentioned above was divided by the total volume of imports under investigation, in order to obtain the value per ton of each of these items. The unitary items were summed, arriving at the CIF internal price of the investigated imports.

1256. It should be noted that the characteristics of the product (CODIP) and the distribution channel (industrial user/final consumer and distributors) were considered, and the characteristics of the product (CODIP) were identified through the detailed description of each one of the import declarations contained in the RFB import data and also in the information contained in the responses to the importer's questionnaire. It is noteworthy that, in comparison with the data presented at the beginning of the investigation, 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 goods in the official data, making it possible to identify, for most imports, the CODIP up to the third characteristic 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 undercutting presented in this final determination incorporates a greater level of detail compared to that previously presented at the beginning of the investigation.

1258. The internal prices of the product from the investigated origin, thus obtained, were updated based on the IPA-OG-Industrial Products, in order to obtain updated values in reais and compare them with the prices of the domestic industry.

1259. The following table shows the calculations made and the undercutting values obtained 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	106.6
AFRMM (BRL/t)		100.0	191.8	277.5	183.6	235.3

Expenses of (BRL/t)	100.0	73.9	75.3	97.8	92.2
CIF Admitted (updated BRL/t) (a)	100.0	70.7	71.1	83.3	73.9
Domestic industry price (updated R$/t) (b)	100.0	88.2	95.9	102.6	96.9
Undercutting (updated R$/kg) (ba)	-100.0	-0.6	28.4	-6.1	18.0
Source: Domestic industry and RFB.					
Elaboration: SDCOM.					

1260. From the analysis of the previous table, it was found that the weighted average price of the product imported from the investigated origin, interned in Brazil, was undercut in relation to the price of the domestic industry in P5 and P3.

1261. With regard to average domestic industry sales prices, there was a reduction of 11.4% from P1 to P2, increases of 7.7% from P2 to P3 and 8.4% from P3 to P4, followed by a reduction of 4.9% from P4 to P5. When analyzing the extremes of the series, there was a reduction of 1.7% from P1 to P5 in the average selling prices of the domestic industry.

1262. There was, therefore, a depression in the price of the domestic industry, represented by the fall in prices, over the period analyzed, but with positive variations from P2 to P3 and from P3 to P4.

1263. Finally, there was a suppression of prices from P2 to P3 and from P3 to P4, since there was an increase in unit production costs at a higher level than the price increase, as well as considering the extremes of the period, since there was an increase in production costs accompanied by a reduction in the average unit sales price of the domestic industry in the domestic market. It was found that the ratio between production cost and selling price recorded continuous increases from P2 to P5: [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 prices were suppressed, the average selling price of the similar product decreased by 1.7% and the total cost grew by 6.4%, generating an increase of [CONFIDENTIAL]pp

6.1.8 Cash flow

1264. The following table shows the cash flow presented by the domestic industry. In view of the impossibility of the company presenting complete and exclusive cash flows for the production line of cold rolled products 304, the cash flow analysis was carried out based on the data related to all of 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 activities, initially negative in P1, increased by 102.1%, becoming positive in P2. Then, it showed an increase of 4,486.1% between P2 and P3, a reduction of 47.4% between P3 and P4 and a new increase between P4 and P5, of 274.2%. When considering the extremes of the series (from P1 to P5), there was an improvement of 286.0% in the cash flow generated by the company.

6.1.9 Return on investments

1266. The following table presents the return on investments, considering the division of net profit values of the domestic industry by the total assets values of each period, contained in the financial statements of the companies. That is, the calculation refers to the profits and assets of the petitioner 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

Net Income (A)	(100.0)	(339.2)	(340.7)	1,200.8	619.5	
Total Assets (B)	100.0	99.1	102.5	109.3	111.1	
Return on Investment Total (ROI) {A/B}	(100.0)	(342.1)	(332.4)	1,099.0	557.6	
Variation		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]

Source: Domestic industry and RFB.

Elaboration: SDCOM.

1267. The rate of return on investments of the domestic industry, negative up to P3, decreased [CONFIDENTIAL] pp from P1 to P2, increased [CONFIDENTIAL] pp from P2 to P3 and [CONFIDENTIAL] pp from P3 to P4, falling again [CONFIDENTIAL] pp from P4 to P5. Considering the extremes of the damage analysis period, there was an increase of [CONFIDENTIAL] pp of the indicator in question.

6.1.10 The ability to raise funds or investments

1268. In order to assess the ability to raise funds, general and current liquidity indices were calculated based on data relating to all domestic industry businesses, as data exclusively relating to the production of the like product were not available. The data presented here were calculated based on the balance sheets referring to the company's financial statements related to the period of continuation/resumption of damage.

1269. The general liquidity ratio indicates the ability to pay short-term and long-term obligations 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 2.7% between P2 and P3. Then, it presented an increase of 5.6% between P3 and P4, remaining stable between P4 and P5. When considering the entire analysis period, from P1 to P5, this indicator increased by 1.4%.

1271. The current liquidity index, in turn, behaved as follows: growth of 7.5% between P1 and P2, 4.1% between P2 and P3 and 5.0% between P3 and P4, followed by a decrease of 5.9% between P4 and P5. The aforementioned indicator presented an accumulated growth of 10.6% between P1 and P5.

6.1.11 The growth of the domestic industry

1272. The domestic industry's sales volume to the domestic market in P5 was lower than the sales volume recorded in P4 (11.2%), but higher than that recorded in P1 (17.3%). Considering that the growth of the domestic industry is characterized by an increase in the volume of sales in the domestic market, it can be seen that the domestic industry grew, in absolute terms, during the investigation period.

1273. On the other hand, when the extremes of the series are analyzed, it can be seen that the 17.3% rise in domestic industry sales volume on the domestic market was accompanied by a 31.0% growth, from P1 to P5, of the Brazilian market. Thus, the domestic industry reduced its share in the Brazilian market ([RESTRICTED] pp) throughout the damage investigation period.

1274. From P4 to P5, the 11.2% reduction in sales volume was accompanied by a 0.4% contraction in the Brazilian market over the same period. In this sense, the domestic industry showed a relative reduction in its sales, having reduced its share in the Brazilian market by [RESTRICTED] pp in the period in question.

6.2 Statements after the Technical Note regarding the damage

1275. The GOI adduced in its final statement that, in disagreement with the provisions of Art. 15.4 of the ASMC, SDCOM failed to highlight several important elements. For the GOI, according to paragraph 966 of the NT, despite the retraction of total sales of the Brazilian domestic industry, the reduction was mainly due to the negative trend of export sales instead of sales in the domestic market, since from P1 to P5 the export sales were reduced, while domestic sales remained positive, in such a way that the real pressure would have come from export sales, with the imposition of trade defense measures by third countries possibly having caused this reduction.

1276. In this context, for the GOI, total sales would have been dominated by sales in the domestic market without a significant share of export sales. The GOI claimed that the Brazilian domestic industry intended to change its focus from market to the domestic market - achieving the trade defense measure, to avoid foreign competition, would be a preferable means to seeking alternative markets to boost exports.

1277. The participation of the domestic industry in the market would still be preponderant, not having to talk about material damage, and the gradual reduction in production from P1 to P5 is due to the foreign market. In any case, the percentage of production would still be at safe levels. Furthermore, what is reported in paragraph 1011 of the NT shows a contradiction, as it points out that goods in stock are being shipped, instead of remaining in stock.

1278. Other factors that worsened, such as employment, are due, in the opinion of the GOI, to exports. For the GOI, paragraph 1028 of the NTFE hides the growth of net revenue of the Brazilian domestic industry, which from P1 to P5 managed to increase, which corresponds to the capacity of the Brazilian industry to maintain the price as expressed in paragraph 1032 of the NTFE, once that from P1 to P5 the price sold by the Brazilian domestic industry fell only slightly. He also added that there was an increase in cash flow and an increase in the Cost of goods sold by [RESTRICTED] %, while operating expenses grew by [RESTRICTED] %, which would not be related to imports. There would also be an improvement in the return on investment and in the ability to raise funds.

1279. The GOI added that even though paragraph 1055 of the NTFE shows that the cost of inputs was crucial in increasing the COGS, this would be the real challenge for the domestic industry, rather than the challenges arising from the investigated imports.

1280. Aperam, in its final statement, highlighted that the evolution of the indicators clearly demonstrates the existence of damage to the domestic industry. He also refuted Aprodinox's comment which, 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 attest whether the cause of such damage would be the object imports of the investigation. For Aperam, such an interpretation 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 unduly and unfairly from the distortedly low prices practiced on imports, before it seeks to adopt the appropriate measures and legal to defend against unfair practices adopted by other players in the Brazilian market. Thus, the petitioner sought the adoption of appropriate compensatory measures in view of the subsidies, as permitted by Brazilian regulations. It terminated Aperam by reiterating SDCOM's conclusions expressed in the NTFE, for the existence of harm and causation.

1281. PT IRNC, in its manifestations regarding the errata to the Technical Note, pointed out an alleged material error in the table "Income Statement in the Domestic Market by Unit", since the COGS, of P1 and P2, drops 13.3% and the Revenue Net MI drops 11.4% - negative change less than the cost. Despite this correlation, the gross result between P1 and P2 deteriorated by 5.2% - which, in the company's opinion, would not make sense when there is a drop in costs greater than the drop in prices. From P2 to P3, similarly, the COGS has a positive variation greater than the price, and the gross result has a positive variation, which would be counterintuitive in a scenario of rising costs at a level higher than the price. Regarding the calculation of the operating result, the index number of line E is fully equivalent to the operating result except RF, line F,

6.3 SDCOM's comments

1282. Regarding the elements of the damage analysis, although there was a punctual improvement in some indicators, the fact is that, as already shown, there was a worsening in most indicators, such as a decrease in the share of domestic industry sales in the Brazilian market, falls in the gross result, gross margin, operating margin and in the worsening of the cost/price ratio, as already

extensively presented. Thus, considering the overall situation of the domestic industry, SDCOM concludes that material damage exists. It is also pointed out that, according to item 7.2.6, below, a scenario was carried out that analyzed the issue of exports brought up in the GOI manifestation, and even so, the existence of material damage was verified after the separation and distinction of the effects of this other factor.

1283. Regarding the comments made by PT IRNC, even though they do not deal with the amended item in the errata, but with the item "Results and margins", in order to honor the party's initiative, SDCOM points out that the table "Demonstrative of Results in the Internal Market by Unit", both in its confidential and restricted versions. It is recalled that the percentage of decrease (or increase) of an indicator being greater than that of another does not necessarily mean that, compared the magnitudes, the absolute decrease (or increase) will accompany such percentages. Regarding the operating result, line E is fully correct, and the variations of line F are also correct, the index numbers were inadvertently copied, and are correctly included in this document.

6.4 Conclusion on domestic industry indicators

1284. Based on the analysis of the exposed indicators, it was found that, during the damage investigation period:

a) domestic industry sales in the domestic market increased by 17.3% in the comparison between P1 and P5, but with a decrease of 11.2% between P4 and P5. This evolution, however, was accompanied by the deterioration of operating results if the extremes of the series are considered, registering, from P1 to P5: decreases of 24.0% in the operating result (fall of 40.7% from P4 to P5), of 11 .8% of the operating result excluding the financial result (32.1% decrease from P4 to P5) and 11.5% 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, as evidenced in the previous item, there was a decrease in the share of sales by the domestic industry in the Brazilian market (reduction of [RESTRICTED] pp from P1 to P5 and of [RESTRICTED] pp from P4 to P5), which, in turn, presented an increase of 31.0% when comparing P1 with P5;

c) the domestic industry's production of cold rolled 304 products showed a decline over the investigation period, decreasing by 26.7% from P1 to P5 and by 13.6% from P4 to P5. This reduction was accompanied by stability in installed capacity, which led to a decrease in the degree of occupancy of installed capacity from P1 to P5 ([RESTRICTED] pp) and from P4 to P5 ([RESTRICTED] pp). The reduction in the occupancy rate also seemed to have been influenced by the drop in sales to the foreign market 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 an increase of 2.0%;

e) the number of employees linked to production decreased over the investigation period. Indeed, from P1 to P5 the indicator recorded a fall of 16.9%, while from P4 to P5 there was a reduction of 11.3%. Productivity per employee showed a similar behavior, recording a decrease of 11.9% from P1 to P5 and 2.6% from P4 to P5;

f) the net revenue obtained by the domestic industry in the domestic market increased by 15.3% from P1 to P5, driven by the growth in domestic industry sales in the period (in absolute terms), especially between P1 and P4. Between P4 and P5, there was a decline of 15.5%. It is worth mentioning, however, that the growth in sales was lower than the growth in domestic demand, which led to a loss of market share by the domestic industry;

g) despite the growth in net revenue, the gross result decreased by 10.4% from P1 to P5, and 30.8% from P4 to P5, while the gross margin presented a negative evolution of [CONFIDENTIAL] pp from P1 to P5, and from [CONFIDENTIAL] pp from P4 to P5. The operating result, as previously seen, was reduced by 24.0% between P1 and P5, and by 40.7% between P4 and P5. In the same sense, the operating margin 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 internal market of 1.7% between P1 and P5, and of 4.9% between P4 and P5. In turn, the cost of production increased by 6.5% between P1 and P5, while between P4 and P5 there was a reduction of 0.8%. Such evolutions resulted in the

growth of the cost/price ratio from P1 to P5 ([CONFIDENTIAL]pp) and from P4 to P5 ([CONFIDENTIAL] pp).

1285. In view of the above, there was a deterioration in most domestic industry indicators in the damage investigation period, especially between P4 and P5.

7 CAUSALITY

1286. Art. 22 of Decree No. 1751 of 1995 establishes the need to demonstrate the causal link between imports of the allegedly subsidized product and damage to the domestic industry. Such a demonstration of causation must be based on an examination of relevant evidence and other known factors, in addition to allegedly subsidized imports that may have caused harm to the domestic industry at the same time.

7.1 Impact of imports with evidence of actionable subsidies on domestic industry

1287. Pursuant to the provisions of art. 22 of Decree No. 1751 of 1995, it is necessary to demonstrate that imports of the subsidized product contributed significantly to the damage experienced by the domestic industry.

1288. From the data presented in items 5 and 6 of this document, it was observed that over the period of damage analysis there was an increase in the volume of imports of cold rolled products 304 originating in Indonesia, with an increase of [RESTRICTED] %, from P1 to P5, with emphasis on the period from P4 to P5, when there was an increase of [RESTRICTED] % in the volume imported from these origins.

1289. Regarding the participation of imports of cold rolled products 304 in the Brazilian market, it was found that in P1 imports from the investigated origin were responsible for [RESTRICTED] % of the Brazilian market and imports from other origins accounted for [RESTRICTED] % of that market. After the increase in imports from Indonesia in the damage analysis period, the share of these imports reached [RESTRICTED] %, in P5, and only in the period from P4 to P5 did the share of these origins practically quintuple, when it went from [RESTRICTED] % to [RESTRICTED] %. On the other hand, the participation of imports from other origins decreased to [RESTRICTED] %, in P5.

1290. It was assessed that the increase in the volume of imports originating in Indonesia led to market gains to the detriment, mainly, of the share of domestic industry sales which, in P1, corresponded to [RESTRICTED] % and, in the last period, represented [RESTRICTED] %. In this same comparison, imports from the investigated origin increased their share in the Brazilian market, from P1 to P5, in [RESTRICTED] pp, while the domestic industry lost [RESTRICTED] pp and imports from other origins retracted in [RESTRICTED] pp , in the same period.

1291. The following table details the distribution of the Brazilian market for cold rolled products 304, considering the portions that fell to sales by the domestic industry of own manufacturing, as well as those related to imports from the investigated origin and from other origins.

Brazilian market share [RESTRICTED]			
	domestic industry sales	Investigated origin imports	Imports from other origins
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 period, as shown in item 6.1.7.3, occurred in P3. In P1, P2 and P4 there was no occurrence of undercutting. However, in P5 there is undercutting, as a result of the decrease in the price of the product from the origin investigated in an intensity greater than the decrease in the price registered by the domestic industry. It should be noted that it was in P5 that the largest volume of the analyzed period was imported.

1293. Analyzing the period in which imports from the investigated origin reached the peak during the period under investigation (P5), it is noted that the volume of domestic sales of the domestic industry registered the most expressive fall ([RESTRICTED] % in relation to to P4), combined with the decrease in the production of cold rolled products 304 ([RESTRICTED] % compared to P4). This scenario led to an increase in idleness in the domestic industry's installed capacity, whose occupancy rate fell [RESTRICTED] pp in relation to P4, registering the lowest level of occupancy in all periods analyzed.

1294. Allied to these factors, there is an increase in production costs from P1 to P5 (6.4%), despite the reduction of 0.8% from P4 to P5, with no margin for the domestic industry to pass on such costs to the practiced price, even observing the price reduction of 1.7% in relation to P1 and 4.9% compared to P4, due to the loss of market share for imports from the investigated origin. Thus, there was deterioration in the cost/price ratio of the domestic industry from [CONFIDENTIAL] pp from P4 to P5, and from [CONFIDENTIAL] pp, considering P5 in relation to P1.

1295. Taken together, these factors led to the deterioration of the domestic industry's financial indicators, mainly in the P4 to P5 interval, when declines were recorded in net revenue ([CONFIDENTIAL]%), gross income ([CONFIDENTIAL]%), operating ([CONFIDENTIAL]%) and operating margins except financial income and other expenses ([CONFIDENTIAL]%), and in the respective gross margins ([CONFIDENTIAL] pp), operating margins ([CONFIDENTIAL] pp) and operating margins except financial income and other expenses ([CONFIDENTIAL] pp).

1296. In view of the indicated analyses, it was verified that there was an impact of imports at prices with evidence of actionable subsidies on the indicators of the domestic industry throughout 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 products 304, it was found that imports from other sources fluctuated over the damage analysis period (- 20.5% from P1 to P2, + 53.5 % from P2 to P3, - 4.9% from P3 to P4, - 15.0% from P4 to P5, and - 1.4% from P1 to P5).

1298. In this sense, imports from other origins, except those from the investigated origin, gained share in the Brazilian market only in period P3 ([RESTRICTED] pp). When considering the entire damage analysis period, the share of these imports in the Brazilian market decreased by [RESTRICTED] pp

1299. On the other hand, imports from the investigated origin showed growth in the analyzed period, especially in P5 (increase of 357.9% in relation to P4), which coincides with the period of greatest deterioration of domestic industry indicators.

1300. It should also be noted that the average CIF price in US dollars per ton of imports from other sources was higher than the price of imports from the investigated source in all periods, except P1. It was also observed that in no period did imports from other origins enter the Brazilian market at average prices that were undercut in relation to the price of the domestic industry, that is, in all periods it was found that the average CIF internal price of non-subsidized imports were higher than the price practiced by the domestic industry in the Brazilian market, as shown in the table below.

Interned CIF average price and undercutting - Other origins [RESTRICTED]					
	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.					

1301. Thus, when analyzed jointly, there were no elements that indicate that imports from other sources have contributed to the deterioration of domestic industry indicators regarding imports that are not allegedly subsidized. It should also be noted that the comparison made in the previous table did not take CODIPs or product types into account.

7.2.2 Impact of possible import liberalization processes on domestic prices

1302. As pointed out in item 2.1.1 of this opinion, the import tax tariff for sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM remained unchanged at 14% throughout the damage analysis period.

1303. Additionally, the tariff preference agreements signed by Brazil had no impact on the evolution of Brazilian imports of laminates 304, considering the list of countries with which these agreements were signed and the evolution of their import volumes.

1304. Thus, no impact was observed on domestic prices that could be attributed to eventual import liberalization processes.

7.2.3 Contraction of demand or changes in consumption patterns

1305. As pointed out in item 5.2 of this document, the Brazilian market for cold rolled products 304 showed successive growth from P1 to P4, showing a retraction only from P4 to P5 (-0.6%). When considering the entire damage analysis period, the Brazilian cold rolled 304 market grew 30.7%, considering P5 in relation to P1.

1306. Thus, there was no contraction in demand for cold rolled products 304 during the damage analysis period.

1307. In addition, during the analyzed period, no changes were observed in the consumption pattern of the Brazilian market.

7.2.4 Trade restrictive practices by domestic and foreign producers and competition between them

1308. Restrictive practices to the trade of cold rolled products 304 were not identified, either by the domestic industry or by foreign producers, nor factors that affected competition between them.

7.2.5 Technological progress

1309. Neither was the adoption of technological developments that could result in the preference of imported products over national ones being identified. The cold rolled products under investigation and those manufactured in Brazil compete with each other, as indicated in item 2.4.

7.2.6 Export performance and production of other products

1310. As presented in item 6.1 of this document, the sales volume of cold rolled products 304 to the foreign market by the domestic industry showed a retraction in all periods of the investigation, resulting in a decrease of 84.2%, considering P5 in relation to to P1.

1311. When analyzing the period-by-period behavior, it is observed that, from P1 to P2, in absolute terms, the retraction reached [RESTRICTED] t, the highest volume between two consecutive periods. However, the domestic industry began to present in period P2, in relation to the immediately previous period, an improvement in the volume of internal sales, in an amount close to the loss in sales in the external market (+ 27.6% and [RESTRICTED] t), and in the financial indicators related to these sales. Thus, there was no deterioration in domestic industry indicators that could be attributed to its export performance in this period.

1312. That notwithstanding, after a relatively smaller fall from P2 to P3 (-9.3%), in periods P4 and P5 there were new sharp falls in sales to the foreign market of the similar product produced by the domestic industry, both in absolute terms as in relative terms. Considering the immediately previous period (P3), these decreases corresponded to 54.0% and [RESTRICTED] t in P4, and 72.7% and [RESTRICTED] t in P5, in relation to the export volumes of P3. It can be inferred that these drops, also taking the P3 period as a reference (the only one in which there was not such a relatively expressive drop in the volume of sales to the foreign market and which, still, did not show growth in the equivalent volume of sales in the domestic market , unlike P2), influenced the decrease in the production of the domestic similar product, with reductions of 9,

1313. With regard to such declines in the volume exported by the domestic industry, it cannot be ruled out that the very existence of subsidies that can be used in the stainless steel segment has affected the competitiveness of the Brazilian domestic industry on the international scene. It is a fact that from the moment that Indonesia was able to export large volumes, with the entry into operation of the IMIP park, in which the investigated producing/exporting company PT IRNC is located, all world markets suffered great pressure. By way of example, according to data from the European Union investigation, EU imports of the like product originating in Indonesia go from around 100 tons in 2017 to at least 68,000 tons in the investigated period (July 2019 - June 2020, from 0% to 2.4% of the share). According to data from the investigation by the Indian authority, that country's imports of the similar product originating in Indonesia increased from 93 tons in P1, to 76,102 tons from April 2018 to March 2019 (from 0% to 17% of the share). In this sense, contrary to other investigations, we have a new player that causes worldwide pressure in the sector.

1314. With regard to another observed factor, it can be seen that, also in relation to the P3 period, declines in the production of other products produced by the domestic industry in the P4 (2.7%) and P5 (11.3%) periods. Note that P3 was the second period with the highest total production volume - in a volume approximately equal to that of P2 - and with the highest production volume of other products produced by domestic industry. With this, consequently, the total production of the domestic industry also presented its biggest retractions in periods P4 (-4.9%) and P5 (-14.5%), when considering the P3 period as a reference.

1315. Given that, in these two periods (P4 and P5), the domestic industry showed deterioration, among others, in its gross margin and in its operating margin excluding the financial result and other operating expenses/revenues, in addition to presenting a worsening in its cost ratio of production/price, related to the similar product it produces and sells in the Brazilian market, we sought to assess to what extent the worsening of its export performance and the drop in the production volume of other products produced by it may have impacted its scenario of observed damage.

1316. In this sense, even considering that the very existence of Indonesian subsidies may have contributed to the worsening of the export performance of the domestic industry, as already mentioned, a scenario analysis was carried out to separate and distinguish the effects of the drop in exports and the reduction in the production of other products, with the objective of estimating the combined impact of these two factors on the damage observed in the financial indicators of the domestic industry in P4 and P5. The non-attribution exercise considered the following assumptions:

a) exports of the like product produced by the domestic industry would not have fallen, 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 produced by the domestic industry in these periods. Obtaining the production volume of the adjusted domestic similar product considered the difference in foreign sales in the previous table. Bearing in mind that the ending stock of the domestic industry was lower in periods P4 and P5, no adjustment was deemed pertinent 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

Source: Petitioner.

Elaboration: SDCOM.

c) the production of other products would not have fallen, remaining identical to that seen in P3.

[RESTRICTED]

Other products	P3	P4	P5
Effective production (t) (a)	100.0	97.3	88.7
Adjusted production (t) (a)	100.0	100.0	100.0
Difference in production (ba)		100.0	415.1

Source: Petitioner.

Elaboration: SDCOM.

d) the combination of the incremental volumes indicated in items (b) and (c) above would result in a higher total production volume in periods P4 and P5.

[RESTRICTED]

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 installed capacity, as presented in item 6.1.3. It was verified, however, that the simulated total production volume would not exceed the effective installed capacity.

f) the unitary variable costs would remain unchanged, as incurred by the petitioner, while the unitary fixed costs were recalculated, in order to reflect the dilution of the total fixed costs that would be 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$/t)	P3	P4	P5
Effective variable unit costs	100.0	114.9	113.0
Adjusted fixed unit costs	100.0	78.8	76.2
Total unit cost of production (fixed + variable) adjusted (R$/t)	100.0	110.1	108.1
Variation in total unit cost (Effective x Adjusted)	-	100.0	163.8

Source: Petitioner and previous tables.

Elaboration: SDCOM.

g) the COGS would vary in line with changes in the recalculated total production cost in each period. Thus, for simulation purposes, the same percentage reductions observed in the total adjusted production cost presented in item (f) were applied to the effective COGS, in P4 and P5.

[CONFIDENTIAL]

COGS	P3	P4	P5
Effective COGS (BRL/t)	100.0	110.3	110.0
Adjusted effective COGS (BRL/t)	100.0	108.6	107.2

Source: Petitioner and previous tables.

Elaboration: SDCOM.

h) unit selling expenses would not vary with the increase in sales (assumed as variable expenses, for the purposes of the year), but there would be an impact on general and administrative expenses, the financial result and other expenses or revenues (assumed as of fixed expenses, for the purposes of the year). Accordingly, adjusted expenses are the result of expenses incurred weighted by the variation in the actual sales volume and the adjusted sales volume. However, it should be remembered that the Statement of Income for the Year is being reconstructed for sales of a similar product produced by the industry in the Brazilian market to assess the impact on its financial indicators arising from its export performance and the drop in production of other products. Even though the proposed scenario does not change the domestic industry's sales volume in the domestic market and, therefore, there is no change in its net operating revenue, operating expenses showed variations. This occurs because the domestic industry distributed these expenses taking into account the share of the net operating revenue obtained with the similar product by type of market (domestic or foreign) in relation to its total net operating revenue. Given that the increase in the volume of foreign sales led to an increase in the net operating revenue associated with it in the proposed scenario, there was, as a consequence, an increase in the amount of the total 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

Effective IM share (%)	100.0	95.4	86.1
Adjusted MI share (%)	100.0	92.9	83.0

Source: Petitioner and previous tables.

Elaboration: SDCOM.

Domestic Industry Unit Operating Expenses adjusted to separate and distinguish the effects of the drop in exports and the reduction in the production of other products (updated R$/t - in index number) [1]

	P3	P4	P5
Adjusted Operating Expenses	100.0	81	79
Adjusted general and administrative expenses [1]	100.0	89	92
Effective sales expenses	100.0	100	86
Adjusted financial result [1]	100.0	101	105
Other adjusted operating expenses (income) [1]	100.0	28	14

1 Methodology: total amount of each type of expenditure actually calculated multiplied by the "Adjusted MI Participation" obtained in the previous table.

Source: Domestic industry.

Elaboration: SDCOM.

1317. Based on the assumptions described above, it is possible to analyze the impact of the retraction of sales to the foreign market and the reduction in the production of other products on the margins and financial results of the domestic industry, simulating an adjusted income statement, based on the data collected above.

Income Statement for the Simulated Year (adjusted in P4 and P5 to separate and distinguish the effects of the drop in exports and the reduction in the production of other products) - Domestic Market Sales

	P1	P2	P3	P4*	P5*	P1-P5*	P4-P5*
Raw score	100	121.1	120.1	136.7	100.2		
Variation		21.1%	-0.8%	13.8%	-26.7%	0.2%	-26.7%
Gross Margin (%)	100	107.1	100.8	100.1	86.9		
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Operational result	100	123.0	104.1	140.9	94.2	[CONF.]	[CONF.]
Variation		23.0%	-15.3%	35.3%	-33.1%	-5.8%	-33.1%
Operating margin (%)	100	108.8	87.4	103.2	81.7		
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Operating Result (Except RF [1])	100	121.2	108.8	138.6	100.8	[CONF.]	[CONF.]
Variation		21.2%	-10.2%	27.4%	-27.3%	0.8%	-27.3%
Operating Margin (Except RF) (%)	100	107.2	91.4	101.5	87.4		
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Operating Income (except RF and OD) (%)	100	122.5	121.2	140.4	100.9	[CONF.]	[CONF.]
Variation		22.5%	-1.1%	15.9%	-28.1%	0.9%	-28.1%
Operating Margin (except RF and OD)(%)	100	108.4	101.8	102.9	87.5		
Variation		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]

[1] Financial Result.

[2] Other operating income or expenses.

* Results and margins for the period adjusted according to the assumptions above.

Source: Domestic industry.

Elaboration: SDCOM.

1318.According to the indicators obtained with the constructed scenario, it was found that, even by separating and distinguishing the impacts caused by the drop in sales in the foreign market and by the reduction in the production of other products in the financial indicators, the gross, operating, operational except financial result and operational except financial result and other operating expenses and revenues would still show significant deterioration in P5, both in relation to P1 and, in particular, P4, the period immediately prior to the highest volume growth observed for the investigated imports.

1319. Thus, 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 and the effects on price and profitability of the domestic industry.

7.2.7 Domestic industry productivity

1320. The productivity of the domestic industry, calculated as the quotient between the quantity produced and the number of employees involved in production in the period, decreased by 12.3% and 2.6% in P5, in relation to P1 and P4, respectively.

1321. This fact, however, stems from the drop in the number of employees on the production line at a slower pace than that observed in the drop in the production volume of the like product. While the number of production line employees was reduced by 16.7% from P1 to P5, and by 11.2% from P4 to P5, and the production volume of the like product decreased by 27.1% from P1 to P5 and 13.6% from P4 to P5.

1322. Thus, there is no deterioration in domestic industry indicators that can be attributed to its productivity.

7.2.8 Captive consumption

1323. There was no captive consumption by the domestic industry during the damage analysis 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 product imported by 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 investigation of dumping practices in exports from Indonesia and South Africa was closed, without analysis of the merits, since it was concluded by the lack of reliability of the data contained in the petition for initiation and the magnitude and timeliness of the alterations, in the aggregate, presented in terms of evidence, with the proof of the existence of damage to the domestic industry being impaired, under the terms of item I of art. 74 of Decree No. 8058 of 2013.

1326. Thus, the damage to the domestic industry cannot be attributed to the alleged practice of dumping.

7.3 Statements prior to the Technical Note regarding the causal relationship

1327. Initially, the IRNC mentioned that there was no sufficiently clear causal relationship between the damage perceived by the domestic industry - especially in P5 - and the volume of imports investigated in order to justify the application of compensatory measures.

1328. According to the investigation data, APERAM performed well in the periods from P1 to P4, with improvements in all its indicators. Exception only in P5, when there is a drop in the volume of sales in the domestic market concomitant with an increase in the volume of imports investigated, according to the conclusion of SDCOM in the Opening Opinion.

1329. It would be exactly during this period that a drop in the profitability of the domestic industry is observed, which, in the understanding of the IRNC, originates from the increase in its costs not accompanied by the price. However, it would not be possible to carry out a more refined analysis on profitability, since P5, specifically, is configured as a period mixed with other factors, such as a drop in exports and sales of other products by the domestic industry.

1330. In this context, IRNC recalled the non-attribution exercise carried out by SDCOM to exclude such effects from the damage analysis, specifically with regard to deterioration, in P4 and P5. IRNC tried to redo the SDCOM calculations, but was unsuccessful, as it encountered some discrepancies: 1) variable unit costs: according to the company, the numbers shown in the table would not reflect the variable costs nor the fixed costs shown in the table on page 200 of the Opening Opinion. The calculation was redone considering the P3 amounts as a parameter (as the base), as was done in the SDCOM segregation and non-attribution analysis. Thus, the variation in unitary variable costs would indicate a scenario of 15% increase in P4 in relation to P3, and 13% in P5 in relation to P3. That way, the decline between P4 and P5 would be negligible and the number presented by SDCOM would be wrong, which would indicate a unitary variable cost 1.7% lower in P5 compared to P3; 2) fixed unit costs: following the same methodology as in item 1, the variation in unit fixed costs would indicate a scenario of 8% drop in P4 compared to P3, and 3% in P5 compared to P3. Thus, the data presented by SDCOM would not be correct; 3) IRNC emphasizes that the same analyzes and differences found above would occur for the COGS, as well as for the adjusted calculation of general, administrative and financial expenses; and 4) formula error in the construction of the table on page 222 of the Opening Opinion, which simulates the income statement for the non-attribution exercise. When observing the values that indicate the variation of the headings, IRNC found that the calculated changes were not measuring the difference between a period and its immediate predecessor - from P1/P2, P2/P3, P3/P4 and P4/P5, only in relation to P1. Thus, the hypothesis that the same error had been committed with the variation indicators that received confidential treatment was put on the agenda.

1331. In light of this scenario, with regard to the considerations regarding the non-attribution exercise, within the scope of the causality and damage analysis, the IRNC requires that the calculations of the Adjusted Income Statement be reviewed, in the terms indicated in the present manifestation.

1332. Aprodinox, in statements on December 23, 2021 and June 14, 2022, which referred to the possible impacts on the petitioner resulting from the imports, explained that the imports from the investigated origin would have proved to be negligible throughout the entire year 2021, incapable of causing harm to the petitioner.

1333. He highlighted that in the Opening Opinion that supported the initiation of the present 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 in index numbers, it would not be possible to identify the representativeness of imports from Indonesia in the total imported in NCMs 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90; and in this context, although there is some growth in the import volume, 76% of this import volume in P5 would still come from other sources.

1334. Thus, for Aprodinox, even with all the increase in the volume of imports from Indonesia, it would be verified that 2/3 of that total imported would still come from other origins, considering here the application of anti-dumping measures for origins China and Chinese Taipei.

1335. Furthermore, Aprodinox noted that domestic industry sales would have grown at the same pace as the market between P1 and P4; so that only in P5, the growth of the market would not have been accompanied by the sales of the domestic industry.

1336. Furthermore, for Aprodinox, the average price of the domestic industry, duly updated, would have remained practically the same, in the comparison between P1 and P5, indicating that it would have varied at the same pace as inflation; so that this fact would indicate that all the increase in inflation in the period would have been passed on to prices, and that the only periods in which there was a reduction in updated prices were P2 and P3, years in which imports from Indonesia would be negligible, unable to have any effect on the domestic industry.

1337. In this table, Aprodinox, considering the evolution of domestic sales with the updated prices practiced by Aperam, noted that the updated revenues from sales in the Domestic Market would have increased by 15% in P5 when compared to P1; so that 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 would represent supposed subsidies granted by the Indonesian government and that would exist, stress- if at least since 2014.

1338. In this context, for Aprodinox, there was no change in such programs from 2019 that would explain or justify the greater effect on the domestic industry in P5; so what actually happened would have been the beginning of the migration of Aperam's large exclusive distributors to the condition of non-exclusive as of 2019, as informed in more detail in the public interest assessment process.

1339. Thus, for Aprodinox, this change in the customer's purchasing pattern would take place in the face of the recognition of Aperam's inefficiencies and its inability to adequately serve the market, added to the practice of excessively high prices.

1340. In this scenario, Aprodinox argued that, given the existence of anti-dumping measures against imports from China and Chinese Taipei, distributors would have started to resort to products from other origins, among which Indonesia stands out; this being the real factor that motivated the increase in imports from Indonesia to Brazil and not the subsidy programs, in force for years, in Indonesia.

1341. Furthermore, Aprodinox observed that, with greater competition from imports, especially in P5, it would not have been possible for the petitioner to transfer, for the first time in the analyzed period, the full cost increases to prices; and for this reason, there was a worsening in Aperam's performance indicators specifically in P5.

1342. With regard to the undercutting obtained in P3 and P5, Aprodinox observed that in P3 imports from Indonesia would be minimal, bearing no relation to any possibility of damage to the domestic industry; and in P4, the first period of large increase in imports from the investigated origin, undercutting would not be observed.

1343. Thus, Aprodinox understood that everything indicates that the result obtained in P5 would be the result of an increase in domestic industry prices in a scenario of falling international prices; since the domestic industry was exercising its market power, charging higher prices than the imported product.

1344. In this context, Aprodinox emphasized the inefficiency of the company Aperam, which would have operated with negative net profits between P1 and P3; and in periods of increased imports from Indonesia, the petitioner had positive net profits, which is a sign of the irrelevance of imports from Indonesia on Aperam's results.

1345. Thus, for Aprodinox, there would be no elements that substantiate the causal link between 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, protected by a series of anti-dumping measures and by relations with competing distributors of the imported product, having little incentive to remain efficient; and from 2019 Aperam would have verified that its exclusive distributors would have passed to the condition of non-exclusive, so that this movement would have motivated the increase in imports and non-practices of alleged subsidies by exporting countries.

1347. The IRNC, in a statement dated September 9, 2022, understood that there was no 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 periods P1 to P4, with improvements in all its indicators; with the exception of P5, with a drop in the domestic industry's sales volume on the domestic market concomitant with an increase in the volume of investigated imports; concomitant with a drop in the profitability of the domestic industry which, in the understanding 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 a drop in exports and a drop in the sales volume of other products of the domestic industry. On the other hand, the calculations of the exercise of non-attribution made by SDCOM would present divergences and would postulate correction in the Technical Note of Essential Facts. For IRNC, SDCOM would have adopted, in summary, the following assumptions: 1. kept fixed sales to the ME from P3 onwards; 2 maintained the volumes of foreign sales of the similar product produced by the domestic industry, from P3 onwards and its consequent increase in production volume; 3 kept the production of other products constant from P3 onwards, so that the combination of incremental volumes indicated in items "b)" (sales in ME) + "c)"

(production of other products) would result in a higher total production volume in P4 and P5; 4 the total new production volume (with the increase in production volumes of a similar product for the ME + volume of other products) would be limited to the effective installed capacity.

1350. Thus, SDCOM would have verified that the new total production volume would not exceed that mark; the unitary variable costs would remain as incurred by the petitioner, while the unitary fixed costs were recalculated, in order to reflect the dilution of the total fixed costs that would be incurred as a result of the higher simulated total production volume; the COGS varies in line with changes in the recalculated total production cost in each period.

1351. IRNC redid all the calculations and found what it understood to be potential inconsistencies, for which it requires verification by SDCOM. First, IRNC found that the numbers shown in the table would not reflect the variable costs nor the fixed costs shown in the table on pg. 200 of the Opening Opinion, noting that it is possible to notice that the variation between periods seems to occur in different degrees in the images, even though in the second case the parameter for designing the index number was P1.

1352. IRNC redid the calculation considering the P3 amounts as a parameter, as was done in the SDCOM segregation and non-attribution analysis. For IRNC, the variation in unitary variable costs would indicate a scenario of 15% increase in P4 in relation to P3 and 13% in P5 in relation to P3; with an almost negligible decline between P4 and P5; the unitary variable cost in P5 being even higher than in P3, so that the numbers presented by SDCOM would be wrong.

1353. For IRNC, fixed unit costs seem not to be those presented by SDCOM, whose variation indicates a drop of 8.4% between P3 and P4 and a subsequent increase of 15.7% of P5 in relation to P4.

1354. For the IRNC, the same analyzes and differences found seem to occur for the COGS, as well as for the adjusted calculation of general, administrative and financial expenses.

1355. For IRNC, if the adjusted production had created a scenario of greater dilution of fixed costs and expenses in both P4 and P5, it would not be logical that P5 could have an adjusted unit expense greater than its effective one, which is why the variation of unit fixed costs, when considering P3 as a benchmark, follows the pattern of decrease in P4 and increase in P5, but without this value exceeding that reached in P3.

1356. In addition, IRNC pointed to a possible formula error in the construction of the table on page. 222 of the Opening Opinion, which would simulate the income statement of the non-attribution exercise, having found that the calculated variations were not measuring the difference between a period 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 compromise the objective and positive character of the proofs and evidence for the determination of damage, in a conduct that goes against the multilateral precedents addressed. The IRNC requested closure of the present investigation without resolution of the merits and requested that the Adjusted Income Statement calculations be revised.

1358. Aprodinox, in a statement dated September 9, 2022, reiterated that there would be no elements that substantiate the causal link between the alleged subsidy programs of the Indonesian government and the results of the domestic industry. The reasons that justify such a statement are demonstrated below. Domestic industry sales grew at the same pace as the market between P1 and P4. Only in P5, market growth was not accompanied by domestic industry sales, which is explained not by the subsidies under discussion, but by the movement of the main distributors of APERAM products from the condition of exclusive distributors, with no possibility of importing products) to that of non-exclusive 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 would represent supposed subsidies granted by the Indonesian government that exist, supposedly, at least since 2014. This greater effect on domestic industry in P5 would not be related to alleged subsidy programs.

1360. It reiterated that since 2019 Aperam would have started to verify that its exclusive distributors would have passed to the condition of non-exclusive. This movement would have motivated the increase in imports and non-practices of alleged subsidies by exporting countries. In this scenario, given the existence of antidumping measures against imports from China and Taiwan, distributors began to resort to products from other origins, among which Indonesia stands out. This would have been the real factor that would have motivated the increase in imports from Indonesia to Brazil and not the subsidy programs, in force for years, in Indonesia.

1361. From the APERAM income statement it would be observed that in P3 imports from Indonesia would be minimal, bearing no relation with any possibility of damage to the domestic industry. In P4, the first period of large increase in imports from the investigated origin, undercutting would not be observed. Thus, the increase in exports from Indonesia to Brazil, in P4, would not reflect any impact on domestic industry indicators. Thus, everything indicates that the result obtained in P5 would be the result of an increase in domestic industry prices in a scenario of falling international prices.

1362. In other words, the domestic industry was exercising its market power, charging higher prices than the imported product. What would make this behavior possible was the guarantee that the exclusive distributors would maintain their purchase volumes, even with such price increases. Therefore, despite the increase in exports from Indonesia to Brazil, in P4 and P5, these imports would have represented a small percentage of total imports, and would deal with a volume incapable of generating the alleged damage.

1363. One last aspect to be emphasized would be related to the inefficiency of the company Aperam, which would have operated with negative net profits between P1 and P3. Precisely in periods of increased imports from Indonesia, the company would have had positive net profits. This would be a sign of the irrelevance of imports from Indonesia on the results of Aperam — a company that needs low incentives to remain efficient, since it would be a monopolist in the Brazilian market, being protected by a series of antidumping measures and by relationships with distributors competition from the imported product.

1364. It would be clear that there is no causal link between the investigated programs and the damage to the domestic industry, therefore there is no motivation for applying compensatory 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 imports was due to the reaction of the main Brazilian distributors to the anti-competitive practices of the petitioner. It added that, in response to what was exposed in the Technical Note, the increase in general total imports between P4 and P5, of the order of 35%, began to occur when the exclusive distributors transitioned as a result of the petitioner's practices; in such a way that this increase was initially concentrated in Indonesia due to the application of anti-dumping duties in force for other origins, applied to Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, under the terms of CAMEX Resolution No. 79, of 2013 ; considering that the extinction of rights for Germany, South Korea, Finland and Vietnam only occurred on 10/3/2019, by SECINT Ordinance No. 4.

1366. Aprodinox argued that during practically the entire period of damage analysis, the importers had as regular and established suppliers, effectively, the exporters located in the United States of America, in South Africa and in Malaysia; with Indonesia, the 2nd largest exporter of the product, and with a substantially positive trade balance in the period, it was available to export to the Brazilian market in the period.

1367. In this sense, for Aprodinox, there are no elements that support the causal link between the alleged Indonesian government subsidy programs and the results of the domestic industry; since domestic industry sales grew at practically the same pace as the market between P1 and P4, and the drop in P3 offsets the fact that domestic industry sales grew at a faster pace than the Brazilian market in P2; so that 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 the same in the comparison between P1 and P5, varying with inflation; which indicates that the entire increase in inflation was passed on to prices.

1369. However, Aprodinox understands that the only periods in which there was a reduction in updated prices were P2 and P5; since in P2 there was a negligible volume of imports from Indonesia, incapable of generating any effect on the domestic industry, with the most accentuated increase occurring in P4, when imports from Indonesia became more significant.

1370. Aprodinox notes that updated domestic sales revenues with updated Aperam Domestic Market prices increased by 15% in P5 compared to P1.

1371. Thus, for Aprodinox, the reduction in P5 in the pace of growth of domestic industry sales, with loss of share for imports is not related to the programs that would represent supposed subsidies granted by the Indonesian government; since as of 2019 Aperam's exclusive distributors (DIA) became non-exclusive (DRA), and given the existence of anti-dumping measures against imports from China and Chinese Taipei, distributors began to resort to products from other origins, such as Indonesia.

1372. Aprodinox observes that in P3 imports from Indonesia are minimal, bearing no relation to the damage to the domestic industry, no undercutting being observed in P4, the first period of large increase in imports from the investigated origin, so that the increase in exports of Indonesia at P4 does not reflect any impact on domestic industry indicators.

1373. Thus, for Aprodinox, everything indicates that in P5 there was a relative increase in domestic industry prices with a drop in international prices; since the domestic industry was exercising its market power, with prices higher than those of the imported product.

1374. Thus, Aprodinox understands that, despite the increase in Indonesian exports in P4 and P5, imports would not have the power to harm the domestic industry.

1375. Aprodinox emphasizes the inefficiency of Aperam, which operated with negative net profits between P1 and P3, and that in periods of increased imports from Indonesia, the company had positive net profits.

1376. Aprodinox notes that there are significant imports from the investigated origin only in P5 (and a little in P4), a period in which the company obtains a positive return on assets, in a way that is not possible, based on the indicators of the domestic industry , establish any relationship between subsidies and damage; since the increase in imports was not motivated by the beginning of subsidies, but by the migration of distributors to the DRA condition (non-exclusive), it is possible to observe some worsening in the indicators of the domestic industry only in P5.

1377. For Aprodinox, the objective of working with 5 (five) years/60 (sixty) months to determine the damage involves the need to verify a consistent movement for some periods of worsening in the results of the domestic industry motivated by the constant increase in subsidized imports.

1378. In this scenario, Aprodinox understands that in the present case there is only one period in which one can talk about some damage to the domestic industry, with no causal link between the subsidy and the damage to the domestic industry, concentrated in P5 and related to others factors other than the subsidy.

1379. The GOI questioned in its final statement the existence of substantial pressure from imports, since the first indicator affected would have been domestic sales. However, in contradiction, the increase in sales during the investigation period shows the resilience of the Brazilian national industry. The impact of other origins, whose participation varies from [RESTRICTED] % in the period, would still be being forgotten. Thus, SDCOM's analysis would only have focused on Indonesia, without taking into account other origins or explaining the increase in domestic sales.

1380. PT IRNC, in its statement regarding the errata to NTFE, pointed out that the exercise of non-attribution carried out regarding the decrease in exports and the production of other products resulted in the existence of any damage would be a very tenuous damage, although this should be substantial and very clearly demonstrated by the domestic industry, in the strictness of Decree nº 1.751/1995.

1381. For PT IRNC, the damage, if eventually existing and quantifiable, boils down to a drop in prices greater than the drop in costs. However, when performing the non-attribution analysis, it would be verified that all the damage suffered by Aperam boils down to the -4.93% price drop. When considering, therefore, the elimination of the harmful effect of the decrease in its exports and the decrease in its

production of other products, the adjusted COGS would have declined by -1.01%, between P4 and P5. The company questions whether this difference would be significant, sufficient and strongly relevant to impose a trade defense measure for 5 years against Indonesian exporters, especially in a markedly monopolized market.

1382. In addition, in the analyzed scenario, the profitability of the domestic industry would remain practically intact when excluding the harmful effects of the decrease in exports and the production of other APERAM products, the operating result (except RF and OD), there is a drop of 0 .3% between P1 and P5, demonstrating, in the opinion of PT IRNC, that the increase in imports and the influence of imports, adjusted by the non-attribution exercise, would not be sufficient to cause a drop in profitability, in the absence of any causal relationship.

7.5 From SDCOM's comments

1383. Regarding the allegation that the damage to the domestic industry would be a consequence of the migration of Aperam's large exclusive distributors to the non-exclusive condition, in 2019, which was also reiterated in the final statements, it is important to emphasize that such migration would enable distributors to seek suppliers in any foreign market; however, it was observed that imports originating from other origins decreased by 1.4%, from P1 to P5, while imports from the investigated origin increased by 3,047.1%, in the same comparison. It is not surprising, for the reasons already mentioned, the increase in total imports cited by Aprodinox, concentrated on imports from Indonesia.

1384. Regarding the analysis of other factors and non-attribution, contrary to what was stated by the GOI, imports from other sources were duly analyzed, as indicated in item 7.2.1 above. It turns out that these did not present undercutting in any period and, still, decreased in participation in the analyzed period. With regard to the analysis of the GOI on sales by the domestic industry, even though the GOI believes that the Brazilian national industry is resilient, it nevertheless verified the existence of material damage and a causal link between the investigated imports and the aforementioned damage, since that there was a relative deterioration of several indicators of the domestic industry, as pointed out in items 6.4 and 7.1 of this final determination.

1385. Aprodinox's statement is also unfounded when it points out that the result obtained in P5 is the result of a relative increase in prices in the domestic industry, given that the price of ID fell [RESTRICTED] % from P4 to P5, and even so it was verified undercutting the price of the investigated product in relation to the price of the domestic industry. It should also be noted that from P4 to P5 the price per ton of imports fell [RESTRICTED] %. In this scenario, what was observed was the Domestic Industry's attempt to compete with subsidized imports - so much so that there was a generalized worsening in the indicators from P4 to P5.

1386. Pursuant to § 2 of art. 21 of Decree No. 1751 of 1995, the volume of imports of the subsidized product must be evaluated with the objective of assessing whether this volume is not insignificant and whether there has been a substantial increase in imports, both in absolute terms and in relation to production or for consumption in Brazil.

1387. As informed in item 5.4 of this document, the volume of imports of cold rolled products 304 originating in Indonesia increased [RESTRICTED] tons in absolute terms, from P1 to P5. Moreover, in relative terms, the participation of these imports in the Brazilian market went from [RESTRICTED] %, in P1 to [RESTRICTED] % in P5, revealing a positive evolution of the participation of these imports of the order of magnitude of [RESTRICTED] pp In relation to national production the volume of imports (in tons) of cold rolled products 304 from the investigated origin represented [RESTRICTED] % of national production in P1 and started to represent [RESTRICTED] % in P5, revealing a positive variation of [RESTRICTED] pp Such analyzes point to the growth of imports investigated in the damage analysis period, as provided for in the Brazilian Regulation.

1388. Furthermore, under the terms of art. 22 of Decree nº 1.751, of 1995, for the application of compensatory measures, it is necessary to demonstrate a causal link between imports of the subsidized product and the damage to the domestic industry based on the examination of:

I - relevant evidence; It is

II - other known factors, in addition to imports of the subsidized product, which may be causing damage to the domestic industry at the same time, and such damages, caused by reasons other than those imported, will not be imputed to those imports.

1389. Thus, SDCOM concluded that the growth seen in imports of flat rolled steel 304, from P1 to P5, was due to the subsidy policy granted by the Government of Indonesia.

1390. In addition, the investigations into actionable subsidies granted by the Government of Indonesia for 304 steels, conducted by the European Union and India, respectively initiated on February 17, 2021 and October 18, 2019 and closed on March 15, 2022 and 15 January 2021, resulted in the application of compensatory measures, respectively at 21.4% and 24%. In both investigations it was concluded that there was a causal link between the increase in imports originating in Indonesia and the damage to the domestic industry in those markets, which indicates that the practice of granting subsidies to Indonesian exporters of stainless steel rolled products is harming production of the similar product not only in Brazil.

1391. Thus, Aprodinox's comments pointing out that it would have been Indonesia's willingness to export these products and not the alleged subsidy programs, existing since 2014, that determined the choice of importers for imports from Indonesia are detached from reality. As extensively discussed in this Opinion, despite Indonesia's intention to encourage exports with higher added value dating back some years, it is no coincidence that imports gradually increased until IMIP had full conditions to export, enabling the explosion of Brazilian imports of subsidized Indonesian product in P4 and, especially, in P5.

1392. With regard to the comments on the non-attribution analysis, it should be noted that the causal link analysis comprises both the assessment of the impact of subsidized imports on domestic industry (positive analysis) and the separation and distinction of the effects of other factors (negative analysis), which cannot be attributed to the imports under investigation. In the present case, with regard to the positive part of the analysis, there was an increase in the volume of subsidized imports, in absolute terms and in relation to the Brazilian market; the effect on the price of the domestic industry was observed and the consequent impact of such imports on the domestic industry was clearly and objectively pointed out. With regard to the negative part of the analysis (non-attribution), it appears that,

1393. It should be noted that the calculations were updated for the purpose of final determination, to reflect the adjustments in the domestic industry indicators and the results of the on-site verification and to correct typing errors when publishing the Technical Note. The table "Adjusted Domestic Industry Unit Operating Expenses" was changed to, in fact, present values in reais per ton, and not total values. Such alterations had an impact on some tables, without, however, changing the conclusions, and the deterioration of the indicators, especially the profit margins, is still present, even in the constructed scenario.

1394. IRNC tries to reproduce the non-attribution exercises carried out by SDCOM in the opening opinion and alleges that the investigating authority made material errors. SDCOM's first comment on this point is that the logic of the exercise adopted is relatively simple, as this type of counterfactual analysis has already been carried out by SDCOM on several occasions. However, trying to reproduce the exercise without having access to confidential data is a practically impossible task, so that, even if the party has correctly pointed out elements to be corrected (due to the incorrect use of index numbers in the restricted version), it is not you can expect it to be able to match the results obtained by SDCOM, found based on the use of confidential data.

1395. All the assumptions of the exercise were explained repeatedly. It should be noted that unitary variable costs were not adjusted in the proposed counterfactual exercise, precisely because of the premise that such costs grow linearly with production volume, keeping the ratio (variable cost divided by production) unchanged. Fixed unit costs, however, can be diluted due to increased production, which is the basic premise of the year. Therefore, everything else constant, the increase in production volume leads to a reduction in unit fixed cost. Thus, the effect of the counterfactual exercise is the dilution of production costs through the dilution of fixed costs, which are apportioned by a production hypothetically greater than the production actually occurred in the period object of the adjustment. It should also be noted that the non-attribution exercise presented is just one more tool for SDCOM to separate and distinguish the effects of other factors, which cannot be attributed to the investigated imports. However, this aspect is not the cornerstone of the entire causality analysis carried out by SDCOM since the beginning of the investigation, as PT IRNC made it appear in its manifestations.

1396. Still on the exercise carried out - it is an effort by the authority to separate and distinguish the effects in relation to the export performance and the production of other products, in which the existence of damage was proven even in this scenario, as already explained. With regard to the protester's comments about a "markedly monopolized market", this SDCOM clarifies that the allegations must be sent to other forums, as they are not the object of analysis to determine the existence of actionable subsidies, damage to the domestic industry and causal link , required by the ASMC.

1397. In this context, PT IRNC's comment on the lack of "significant" damage does not take into account the generalized worsening of the indicators, in addition to P1 to P5, but from P3 to P5 and P4 to P5, even in the hypothetical scenario, period in which that imports increased [RESTRICTED] and [RESTRICTED] , respectively.

1398. Regarding PT IRNC's comment on the Operating Result (except RF and OD), in the comparison of P1 to P5, it can be seen that there was growth in sales from P1 to P5 (albeit with loss of participation), of [RESTRICTED] to [RESTRICTED] t, which reflected the growth of the Brazilian market in the period. Thus, with the growth in sales volume over the period of damage, there is a small increase in gross and operating results (except RF and other expenses) adjusted even in the context of deterioration in the cost/price ratio. However, what is most relevant is the fact that all profit margins for the year in item 7.2.6 worsened in the period, and even the adjusted operating result worsened in all periods other than P1, when compared to P5.

1399. It should also be noted that the proposed exercise has a great deal of conservatism in maximizing export performance in a remotely possible way, as it assumes that Aperam would be able to compete in the international market and maintain its foreign sales at the same level as was possible before Indonesia starts to be able to supply the similar product to the whole world. It is absolutely reasonable to believe that a similar movement of representative and intense growth of subsidized imports caused by the entry into operation of PT IRNC that occurred in the Brazilian market also occurred in other countries of the world. And this caveat is reinforced by the fact that the European Union and India have applied anti-subsidy measures against Indonesia and against the same producers/exporters investigated here and have also verified a vertiginous growth in the volume of imports. Even with such a conservative exercise, which assumes exports in volume practically [RESTRICTED] times greater than the real one, material damage was still found in the indicators of the domestic industry attributable to the investigated imports.

1400. Therefore, PT IRNC's allegation about the alleged damage being reduced to "a drop in prices greater than the drop in costs", as extensively demonstrated by the indicators analyzed, remains unreasonable.

1401. Regardless of the interested party's disagreement about the criteria adopted in this attribution exercise, that is, when choosing the adjustment parameters, it should be noted that: i) the period of greater production of the domestic industry, considering both the similar product like other products that share the installed capacity, it was P2, in which the volume reached [RESTRICTED] t; ii) the adjustments adopted by SDCOM led to a hypothetical production, in P5, of [RESTRICTED] t; iii) the difference between the hypothetical production of P5 and the highest production of the period, in P2, is less than 1%, considered, therefore, immaterial. Therefore, in view of the purpose of the adopted counterfactual exercise, which is to assess the impact of reducing the production volume on the dilution of fixed costs and consequent impact on the profitability of the domestic industry,

1402. Regarding IRNC's claim that the fall in profitability of the domestic industry is due to an increase in costs not accompanied by an increase in prices, it should be noted that there was no increase in costs from P4 to P5, but a reduction in the average unit cost in this period (-0.8%). As for the average selling price in the domestic market, there was a reduction of 4.9% from P4 to P5, which led to a deterioration in the cost/price ratio of the domestic industry, with repercussions on its profitability. The only factor known in the case file that may have led to the depression of prices from P4 to P5 was the increase in subsidized and undercut imports in this interval, which grew in absolute and relative terms in the Brazilian market, to the detriment of sales by the domestic industry. Soon,

1403. Regarding the repetition of the arguments, by the IRNC, about the alleged excessive lag of the domestic industry data and the impairment of the objective and positive nature of the evidence for the determination of damage, this SDCOM refers to item 1.7.1.3.2. supra, where these comments have already been addressed.

1404. Regarding the allegations of inefficiency of the domestic industry, it would be important for the causal link analysis to demonstrate that the domestic industry would have suffered damage as a result of the relative increase in its inefficiency during the investigation period. However, mere conjectures were presented by Aprodinox, reiterated in a final statement, which could not be accepted as positive evidence by this investigating authority. What was observed as a source of variation that could impact the situation of the domestic industry, throughout this period of investigation, was the vertiginous increase of the imports object of investigation, as previously indicated.

1405. Still on Aprodinox's comments, it is pointed out that the investigation period considered ended in March 2020, that is, it is unreasonable to point out a significant effect of the pandemic on the data analyzed here.

7.6 Conclusion on causality

1406. Over the period of damage analysis, there was growth in the domestic industry's sales volume in the domestic market (16.9%) and in the net revenue associated with these sales (14.9%). However, these increases were accompanied by the deterioration of all other indicators.

1407. There was a decrease in the share of sales by the domestic industry in the Brazilian market (reduction of [RESTRICTED] pp from P1 to P5), this in a scenario in which the Brazilian market presented an increase of 30.7%, considering P5 in relation to P1. Thus, even if sales have increased in absolute numbers, as pointed out by the GOI, it is undeniable that their share has fallen, an element that was disregarded by the GOI in its manifestation.

1408. In addition, with regard to the other financial indicators of the domestic industry, it was observed, in this period, as a result of the decrease in its selling price and the increase in its production 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 and other expenses, as well as all associated margins.

1409. Also during the damage analysis period, as shown in this document, there was a continuous growth in the volume of imports of cold rolled products 304 originating in Indonesia, with an increase of [RESTRICTED] %, considering P5 in relation to P1; highlighting the period from P4 to P5, when there was an increase of [RESTRICTED] % in the volume imported from that origin. It should be noted that this increase resulted in the evolution of the share of these imports in the Brazilian market, which reached [RESTRICTED] in P5, and only in the period from P4 to P5 did the share of these origins practically quintuple.

1410. Additionally, it should be noted that the weighted average price of the product imported from the investigated origin, interned in Brazil, was undercut in relation to the price of the domestic industry in P3 and P5. It was observed, in the same period, a drop in sales prices in the domestic market of the similar product produced by the domestic industry, throughout the analyzed period, indicating depression of this price. Furthermore, there was suppression of prices from P1 to P5, reflecting the deterioration in the relationship between production cost and selling price.

1411. In addition to the deteriorating scenario of the domestic industry's indicators, the decline in its production of cold rolled products 304 over the investigation period, reducing by 27.1%, considering P5 in relation to to P1. It should be noted that this reduction was accompanied by stability in installed capacity, which led to a decrease in the degree of occupancy of installed capacity, from [RESTRICTED] % in P1 to [RESTRICTED] % in P5.

1412. It should be recalled, at this point, as explained in item 7.2.6 of this opinion, that the sales volume of cold rolled products 304 to the foreign market by the domestic industry decreased in all periods of investigation, resulting in a decrease of 84 .2%, considering P5 in relation to P1. In addition, taking period P3 as a reference (the only one in which there was not such a relatively significant drop in the volume of sales to the foreign market and which, still, did not show growth in the equivalent volume of sales in the domestic market, unlike P2) , it can be inferred that these declines also impacted the production of 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, also in relation to the P3 period (period of greater total production volume - in a volume approximately equal to that of P2 - and also of greater production volume of other products produced by domestic industry), declines in the production

of other products produced by domestic industry in periods P4 (-2.5%) and P5 (-8.8%). With this, consequently, the total production of the domestic industry also presented its biggest retractions in periods P4 (-4.9%) and P5 (-14.5%), when considering the P3 period as a reference.

1414. In this sense, given the need to separate and distinguish the effects of the drop in exports and the reduction in the production of other products, a hypothetical scenario analysis was carried out with the objective of estimating the combined impact of these two factors on the damage observed in the financial indicators of the domestic industry in P4 and P5. According to the indicators obtained with the scenario built in that item 7.2.6, it was found that, even by separating and distinguishing the effects of the drop in sales in the foreign market and those caused by the reduction in the production of other products, the gross margins, operational, operational except financial result and operational except financial result and other expenses would still show significant deterioration in P5, both in relation to P1, and in particular, P4, period immediately prior to the highest absolute volume growth observed for the investigated imports. When analyzing the evolution from P4 to P5 of all 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 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 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. 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 analysis of the factors provided for in art. 22 of Decree No. 1751 of 1995, it was verified that imports from the investigated origin with evidence of actionable subsidies contributed significantly to the deterioration of most indicators of the domestic industry in the damage investigation period, found in item 6.2 of this document, especially 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 11, 2021, pointed out that, when the investigation began, there was evidence of the practice of actionable subsidies and damage resulting from such practice. He added that the investigating authority already had enough data and information to make a preliminary positive determination of the existence of actionable subsidies, damage and causality.

1417. Aperam drew attention to the significant growth in the volume imported from Indonesia, from P3 to P4 and, especially, from P4 to P5. Thus, from P4 to P5, the operating result decreased, operating excluding financial results and operating excluding financial results and other income and expenses. Likewise, all profit margins deteriorated. Thus, not even the decrease in average sales prices in P5 would have been sufficient to contain the effect on the volume of sales in the domestic market, which decreased. For these reasons, Aperam requested the application of provisional rights, in order to prevent the damage in the course of the investigation.

1418. Aperam Inox América do Sul SA, in a statement dated March 31, 2022, in addition to its statement dated November 11, 2021, reported what would be the current situation of the stainless steel segment in the world and in Brazil, marked by instability and unpredictability, largely caused by the actions of the Tsingshan Holding Group.

1419. The petitioner alleged that the chemical element nickel is an essential raw material for the production of austenitic stainless steel, a category that includes the product that is the subject of this investigation. Being one of the main metallic commodities in the world, the producers of such metal would condition their sales prices to the quotations of the same on the London Metals Exchange (LME). In this way, the cost of the product under analysis, whether from Aperam or any other producer, would depend on the prices of ferronickel, electrolytic nickel and austenitic steel scrap, which, in turn, would be linked to the prices quoted on the LME, since that nickel suppliers would carry out negotiations based on discounts or additions to the daily quotations of such exchange. She also claimed that some steel companies would have verticalized production (raw materials and steel), as would be the case for the Tsingshan Group. However, the reference in the world market for the sale of steel would continue to be linked to the LME, while, on the cost side, the industrial, tax and financial subsidies provided by the Indonesian government would be observed, already recognized in a Union decision European Union, and in the process of evaluation in the present investigation.

1420. He emphasized that, as reported in information vehicles around the world, the price of nickel on the LME would have started to show significant appreciation from the end of 2021. A large part of this phenomenon would be attributed to operations carried out by the founder of the Group Tsingshan. Added to this scenario, the beginning of the Russia-Ukraine war would have added uncertainties about the supply of nickel due to Russia's relevant participation in the world market (which would be greater than 10%). He claimed that, in early March 2022, the quotation value on the LME had increased to US$ 25,450.00/t, a value that would have practically doubled between the 4th and 7th. On March 8th, this movement would have intensified even more more, with the price of nickel surpassing US$ 100,000.00/t.

1421. The LME would then have decided to suspend quotations until further notice, which would have paralyzed the market. There would be no confirmation of the extent of the negotiation made by the Chinese Group. As reported by the press, however, such a position would involve at least 100 thousand tons of nickel.

1422. This sudden upward movement in price would represent the biggest crisis in the history of the LME, created 145 years ago. Once negotiations resumed on March 16, the nickel price would remain at around US$ 33,000.00/t, far from normality, and conditioned to a new negotiation rule, which would have already been revised several times throughout the month . As a result of this serious situation, Aperam, as well as several other producers around the world, would have suspended the sale of austenitic stainless steels including the product under analysis for a few days, in view of having become impossible to price it. Differently, the companies of the Tsingshan Group in Indonesia, which base their production on locally supplied NPI (Pink-Nickel) at subsidized prices, would continue to market their austenitic stainless steels,

1423. According to the petitioner, it was clear that the companies of the Tsingshan Group would ignore the LME crisis, since, unlike companies that would follow the rules of an open and competitive market economy, such as Aperam, the subsidies received from the Indonesian government, such as demonstrated in the present investigation, would support its predatory and speculative strategy. It should be noted that LME contracts could be physically settled with metals that are stored in warehouses stretching from the Netherlands to Malaysia. In order to protect their inventories from sudden movements in the price of nickel, stainless steel producers would use financial hedging tools, thus allowing the maintenance of a regular flow of purchases and sales of the metal. In the case of this petitioner, the LME crisis would strongly affect its financial results.

1424. It would remain clear that the presented scenario, with interference by the Tsingshan Group itself in the world market, with direct consequences in the Brazilian market, would aggravate the distortions caused by the concession of subsidies by the Indonesian government to the producers/exporters of the product object of the present investigation, corroborating and ratifying the urgent need to apply provisional countervailing duties, as requested by this petitioner filed on November 11, 2021.

1425. In a statement dated March 17, 2022, reiterated later, the IRNC requested that the application of provisional compensatory measures not be recommended in the preliminary determination to be issued by that Undersecretariat within the scope of this investigative procedure. In this context, IRNC requested the continuation of the investigation without recommending the application of provisional compensatory measures, even if SDCOM preliminarily concludes that there are actionable subsidies granted to Indonesian producers/exporters of cold rolled stainless steel 304, and the occurrence of damage to the domestic industry resulting from such a practice, in order to avoid a situation of uncertainty regarding the eventual determination of the individual margin of subsidies to the IRNC,

1426. APRODINOX, in a statement on December 23, 2021, reinforced on June 14, 2022, stated that, pursuant to art. 62 of Decree No. 10,839, of October 18, 2021, the preliminary compensatory measures claimed by the domestic industry would depend on the existence of a positive preliminary determination of subsidy, damage to the domestic industry and a causal link between both, and the understanding that such interim measures would be necessary to stop the damage; therefore, such requirements could not be verified in the present case, explaining that it would not be possible to establish the causal relationship to indicate the existence of damage, since the petitioner would rely on operating results and operating margins,

1427. Thus, for APRODINOX, the application of provisional compensatory measures would not seem to be appropriate given the lack of reliability in relation to the damage data presented, which would imply doubt as to its own damage.

1428. He reinforced that the application of a provisional measure would be necessary to prevent damage from occurring during the investigation, however, in this context, for Aprodinox, it would be observed that since the opening of the investigation there has been no significant increase in the volume of imports of the product similar originating from the investigated origin indicating the need to prevent the occurrence of damage during investigation. In view of the above, Aprodinox requested the non-recommendation of the application of the provisional right in a preliminary determination, since the requirements to justify such a measure are absent.

1429. Aprodinox, in a statement dated June 14, 2022 regarding the volatility of the nickel price alleged by the petitioner, explained that there was a conjunctural variation that would have been observed in metals in general, and not just in nickel.

1430. With regard to nickel, specifically, Aprodinox noted that there was an appreciation movement in line with the trend of other metals, before the outbreak of the Ukraine x Russia conflict; there would be a return to normality, with the alignment of expectations.

1431. In this context, for Aprodinox, considering that nickel represents 33% of the nickel price, (8% of the physical composition of 304 steel), there would be pressure for a 3% increase, without considering the existence of a mechanism of Aperam hedge; so there was a variation due to consideration 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 Subsidies and Compensatory Measures has a specific provision establishing, as a general recommendation, the application of the lesser right rule for situations in which it is possible to neutralize the damage with amounts lower than those established, pursuant to Article 19.2 and Article 55 of Decree No. 1751 of 1995. Thus, in line with footnote 50 of the ASMC, requests that any rights be marked out by the undercutting margins found for P5.

1433. Aperam, in its final statement, requests the closure of the investigation with the application of compensatory measures for five years. He also adduced that, in the case of granting government subsidies, and considering the use of the best information available both for producers/exporters and for

the Government of Indonesia, the total amount of subsidies calculated should be applied, not analysis of the undercutting margin for this purpose.

1434. Aperam added that any right is applied in the form of an ad valorem rate, due to the fact that a significant part of the subsidies that can be used relate to nickel ore, the price of which may vary significantly.

8.3 SDCOM comments

1435. Regarding the comments on the Preliminary Determination, it should be noted initially that Decree No. 1,751, of 1995, does not bring the obligation to issue a preliminary determination. In this context, according to Circular SECEX nº 37, of August 19, 2022, published in the Official Gazette of August 19, 2022, no preliminary determination was made within the scope of this investigation, taking into account that the pandemic period brought additional difficulties unforeseen that directly impacted the evolution of the work of the investigating authority with regard to the various demands related to the topic of trade defense. It should also be noted that there were positive cases of contamination by COVID-19 on the staff of SDCOM, not inconsiderably harming the progress of the work in the investigation in question.

1436. In addition, the context of easing the measures to combat COVID-19 and the return to a certain normality of pre-pandemic times brought an exceptional workload to the team due to the accumulation of activities to be carried out this year, in particular , the resumption of on-site checks, which could not be carried out in 2021, pursuant to SECEX Normative Instruction No. 3, of October 22, 2021.

1437. The comments on damage were considered in the analysis made in the relevant section. With regard to the other comments by the petitioner and Aprodinox about the price of nickel and the war in Ukraine, these seem to go beyond what is analyzed in this investigation.

1438. With regard to Aprodinox's comments on the use of undercutting as a guideline for recommended rights, this SDCOM points out that, as correctly pointed out by the protester, the practice of what is known as a lesser right in anti-subsidy investigations is not mandatory, and there is currently no if there is no element that justifies its application.

1439. On Aperam's comment, SDCOM recommended application in an ad valorem amount.

9 Calculation of compensatory measures

9.1 The amount of actionable subsidies

1440. The calculations developed indicated the existence of actionable subsidies on exports 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 subsidies that can be used by the companies investigated exceeded what is considered de minimis, in the terms provided for in §9 of art. 21 of Decree No. 1751 of 1995.

10 OF THE RECOMMENDATION

1442. Based on the foregoing analysis, it was determined that there were actionable subsidies on exports of cold-rolled stainless steel 304 products from Indonesia to Brazil, and damage to the domestic industry resulting from such practice. Thus, it is proposed to apply compensatory measures, for a period of up to five years, in the form of ad valorem rates, set as a percentage to be applied on the customs value of the product, on a Cost, Insurance & Freight - CIF basis, calculated pursuant to the legislation, in the amounts specified below.

Recommended Compensatory Measure

Country	Producer/Exporter	Compensatory measure ***ad valorem,*** **CIF basis (%)**

Indonesia	all producers	18.79

Source: previous frames

Elaboration: SDCOM.

ANNEX II

1. REPORT

This document presents the final conclusions arising from the public interest assessment process regarding the possibility of applying a compensatory measure on Brazilian imports of cold-rolled 304 stainless steel products, 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), when originating in Indonesia.

This assessment is carried out within the scope of processes nº 19972.100974/2021-66 (public) and nº 19972.100976/2021-55 (confidential), in progress in the Electronic Information System (SEI) of the Ministry of Economy, started on June 9, 2021 , through publication in the Federal Official Gazette (DOU) of Circular Secex nº 40, of June 1, 2021, which also determined the beginning of the investigation of actionable subsidies in reference. Pursuant to Ordinance Secint No. 13/2020, art. 5, the assessment of public interest is mandatory in cases of original investigation of dumping or subsidies, through the act of the Foreign Trade Secretariat (Secex) that initiates the respective trade defense investigation.

Specifically, the public interest assessment seeks to answer the following question: does the imposition of the trade defense measure impact the supply of the product under analysis in the domestic market (from both domestic producers and imports), in a way that significantly harms the dynamics of the national market (including upstream and downstream links and the industry itself), in terms of price, quantity, quality and variety, among others?

It is important to mention that Decrees nº 9.679, of January 2, 2019, and nº 9.745/2019, of April 8, 2019, changed the regulatory structure of the Ministry of Economy, until then exercised by the Secretariat of International Affairs of the Ministry of Finance (SAIN). More specifically, art. 96, XVIII, of Decree No. 9,745/2019 provides for proposing the suspension or amendment of the application of anti-dumping or compensatory measures due to public interest.

1.1 Public interest questionnaires

On June 2, 2021, Circular Secex nº 40, of June 1, 2021, was published in the DOU, initiating the investigation of actionable subsidies on exports from Indonesia to Brazil of cold-rolled stainless steel products 304, commonly classified in subitems 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, and damage to the domestic industry resulting from such practice. According to art. 13 of said Circular, a public interest assessment was also initiated on the possible application of the anti-dumping measure in question, pursuant to art. 4, of Ordinance Secex No. 13, of January 29, 2020. Art. 13 of Circular Secex nº 46/2020 also established that the interested parties had, for the submission of the response to the public interest questionnaire,

Before the original deadline for submitting the public interest questionnaire expired, the following interested parties submitted a request for an extension of the deadline, with the extension to August 19, 2021 being granted to all of them: Administrative Council for Economic Defense (CADE), Aperam Inox América do Sul SA (Aperam), Brazilian Association of Stainless Steel Processors and Distributors (Aprodinox), Inconel Comércio Importação e Exportação de Produtos Siderúrgicos Ltda. (Inconel), Inoxplasma Comércio de Metais Ltda. (Inoxplasma), Usinas Metais Ltda. (Usinas Metais) and Jati - Serviços Comércio e Importação de Aços Ltda. (Jati).

With regard to CADE, it should be remembered that the competition authority is a permanent guest member of GECEX, therefore, with legitimacy to present considerations about public interest assessments with respect to the evidentiary phase of the process, as well as to subsidize 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 Metais duly submitted the public interest questionnaire before the deadline established, in order to be considered in the preliminary conclusions, pursuant to art. 5, §2, of Secex Ordinance No. 13/2020.

Although Jati submitted the public interest questionnaire within the established period, the company did not regularize its legal representation within the period granted by the investigating authority, and it is not possible to consider its questionnaire for the purposes of this public interest assessment, pursuant to §§ 4 º and 7º of article 5º of Ordinance SECEX nº 13/2020.

The arguments presented by the parties were distributed in this document according to the thematic relevance of the public interest evaluation criteria, some of which are briefly and generally presented below.

1.1.1 Operate

Aperam, the only national producer of cold rolled 304, provided, in summary, the following arguments in the case file:

- the production process in Brazil follows the traditional route, with the difference that liquid pig iron is used to adjust the load balance, although it is used in small quantities. The main raw material used in this route is stainless steel scrap;

- in applications such as the capital goods segment, there would be no substitute products for cold-rolled products 304. However, in some segments, such as civil construction (vats, sinks and elevators) there may be competition with other products, even if they present lower performance. Also, in the domestic utilities segment, cutlery would have substitute products;

- the Brazilian stainless steel market would be made up of two large groups, namely large industrial customers and distributors. Aperam would have differentiated relationship models with distributors: Aperam Integrated Distributor (DIA), Aperam Regular Distributor (DRA) and independent distributors. Both DIA and DRA distributors would have a contract with Aperam, with the requirement of minimum monthly purchases, with no barriers to migration between relationship models. Independent distributors would have no commitment to Aperam. There would be no price differentiation criteria between distributor segments, with the exception of purchased volume;

- domestic stainless steel prices would adjust to international prices, in order to maintain a long-term equilibrium relationship;

- Aperam would not be able to exercise market power, given that the Brazilian market would be open to imports and would have few barriers to entry, with the price of the domestic industry being defined based on international prices. Thus, there would be no ability to control prices and/or volume offered;

- the comparison between the import tax rates applied by Brazil and the average of the WTO member countries would not be adequate, since the tariffs applied in countries that do not produce cold rolled products 304 would tend to be lower or, even, reset;

- there would be no difficulties or absence of meeting domestic demand in Brazil, even if the requested anti-dumping measure were to be implemented, since it would have sufficient effective installed capacity to serve the entire Brazilian market, if necessary;

- the domestic industry would be technologically updated in its production process and portfolio, competing under similar technological and quality conditions with imported products, regardless of origin.

1.1.2 Aprodinox, Inconel, Inoxplasma, Metal Plants

Aprodinox, an entity that represents stainless steel processors and distributors, and the companies Inconel, Inoxplasma, Jati and Usinas Metais, importers of cold rolled products 304 provided, in summary, the following arguments in the case file:

- stainless steel would have specific applications, thus there are no products considered substitutes from the point of view of demand. From the perspective of supply, there would also be no manufacturers of other products with the capacity to start manufacturing cold rolled 304 in the short term with low investment;

- Aperam Serviços, a related party of Aperam, would have possible preferences in serving its chain in relation to other distributors served by Aperam;

- the Brazilian market for cold rolled products 304 would be highly concentrated, with imports acting as the only element capable of regulating the prices practiced by the domestic industry;

- Aperam would adopt anticompetitive conduct in order to ensure that its customers and distributors do not choose to import 304 cold rolled products;

- the main alternative origins of the product were the target of anti-dumping measures by the Brazilian government;

- the relevant participation of the origin investigated in the total imported by Brazil would be caused by the reduced range of origins available for the acquisition of the product in the international market;

- Brazil would have faced a shortage of steel products and delays, including stainless steel, to supply domestic demand since the second half of 2020;

- the price of the domestic industry would have recorded variations higher than inflation, measured by the IPCA and the IGP-DI, throughout 2018 and 2019, which would have represented real growth in product prices;

- the domestic industry would not produce certain widths and finishes of cold rolled 304 and there would be possible quality problems in the product.

1.1.3 CADE

CADE, competition authority and permanent guest member of Gecex, provided, in summary, the following arguments in the case file:

- no products were identified as substitutes for cold-rolled products 304, the imported product being "fundamental to balance the Brazilian market";

- in proceedings that have already passed through CADE (AC nº 08012.005092/2000-89 and PA nº 08700.010789/2012-73) regarding this relevant market, concern was expressed with the behavior of the national industry in relation to imports and the need to maintain the open market to offset potential exercise of market power;

- Aperam would hold most of the Brazilian market share, and the growth of imports proved to be an important response to the balanced functioning of the market and the pursuit of economic well-being; It is

- there would be potential competition concerns regarding the effects of a countervailing measure regarding international competition in the sector.

1.2 Procedural instruction

On June 9, 2021, a notification was sent to the members of the Executive Management Committee of the Foreign Trade Chamber (Gecex), through Circular Letter SEI nº 2.187/2021/ME. From the sending of such correspondence, the bodies were invited to participate in the ongoing public interest assessment as interested parties, providing information related to their spheres of action. So far, only CADE has manifested itself, through Official Letter No. 7306/2021, as reported in item 1.1 of this document.

On February 7, 2022, an official letter was sent to Jati - Serviços Comércio e Importação de Aços Ltda. (Jati), to present documentation that would allow the regularization of the condition of the appointed legal representative. The company did not present the necessary documentation for the regularization of the legal representative. Thus, the response to the company's public interest questionnaire was not considered for the purposes of this assessment since the due regularization of the stakeholder 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 of public interest, the information provided by October 20, 2022, the deadline for submitting expressions of public interest, as informed in Dispatch SEI-ME 28695303, was considered.

On May 31, 2022, Aperam filed a statement regarding the arguments brought by the parties in response to the public interest questionnaire. On July 7, 2022, Aprodinox filed a statement in which it presented new information regarding the elements presented by Aperam. It should be noted that, pursuant to art. 5, §§ 2 and 7, of Ordinance Secex No. 13/2020, such information was not included in the preliminary determination of this public interest assessment, being incorporated in this final assessment.

After analyzing the information presented in the responses to the Public Interest Questionnaire and the elements presented within the scope of the original investigation process of subsidies that can be used on imports of cold rolled products 304 originating in Indonesia, it was verified, preliminarily, the existence of preliminary indications of that the national demand for the product will continue to be adequately met in terms of international and national supply in case of application of the measure, even though such elements need to be further studied, especially with regard to the product's production chain, substitutability, market concentration Brazilian market, restrictions on the national offer in terms of price, quality and variety, in addition to discriminatory practices between customers.

Pursuant to Article 5, § 1, of Ordinance Secex No. 13/2020, Circular Secex No. 37, of August 19, 2022, was published on August 19, 2022, making public the preliminary conclusions of the public interest assessment and also the facts that justified the decision not to prepare a preliminary determination on the existence of subsidies, damage to the domestic industry and a causal link between them. The said Circular also decided to make public the deadlines that would serve as a parameter for the rest of the said investigation.

On September 9, 2022, Aprodinox added its final manifestations in the evidentiary phase to the records of this public interest assessment. In turn, Aperam filed a statement on October 3, presenting considerations for the process in question. On October 20, 2022, Aperam, in turn, filed a final statement, reiterating its arguments for the absence of elements of public interest that lead to the suspension or reduction of compensatory measures to imports of the product under analysis, as well as presenting in the annex letters support from 3 entities and a technical note prepared by Consultoria Tendências, referring to an economic analysis carried out for the case. Also on October 20, 2022, Aprodinox filed a final statement reiterating its arguments for the application of a compensatory measure

It should be noted that, for the purposes of the final evaluation of public interest, the final manifestations brought until October 20, 2022 - final phase of procedural instruction, as provided in art. 5, § 7, of Secex Ordinance No. 13/2020.

The additional arguments and evidence brought along the procedural instruction presented by the parties were distributed in this document according to the thematic relevance of the public interest evaluation criteria.

1.3 History of dumping investigations

1.3.1 From the original investigation of cold rolled products not exceeding 3 mm thick (1998/2000) - South Africa, Spain, France, Japan and Mexico

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.

On November 30, 1998, through Circular Secex nº 42, of November 27, 1998, an investigation was initiated to verify the existence of dumping in exports to Brazil of flat products, of stainless steel, cold rolled, of thickness not exceeding 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, and damage to industry household resulting from such practice.

Interministerial Ordinance No. 34, of May 24, 2000, published in the Federal Official Gazette of 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 in sub-items 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, originating in South Africa, Spain, France, Japan and Mexico, excluding refractory steels, among which are classified AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H and 347 stainless steels and AISI 301L and DIN 1.4110 stainless steels, in the form of ad valorem rates, for a period of five years.

1.3.2 End-of-period review of cold-rolled products not exceeding 3 mm thick (2005/2006) - South Africa, Spain, France, Japan and Mexico

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

The review was initiated through Circular Secex nº 31, of May 23, 2005, published in the DOU of May 25, 2005.

Camex Resolution No. 10, of May 2, 2006, published in the DOU of May 23, 2006, ended the review with the extension of the anti-dumping duty applied to Brazilian imports of stainless steel flat products, cold-rolled, of thickness not greater than 3 mm, excluding refractory steels, classified in AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H and 347 standards, AISI 301L and DIN 1411 stainless steels and flat stainless steel products, cold-rolled, known commercially as stainless steel tape GIN-6 or 7C27MO2 or UHB716 with a thickness between 0.152 and 0.889 mm.

The anti-dumping duty was extended in the form of a specific rate, for two years, pursuant to art. 57 of Decree No. 1,602, of August 23, 1995. Such reduced application period was justified because it is a sensitive sector, whose prices were influenced by Asian demand and by uncertainties that permeated the international market and limited forecasts regarding the evolution of these prices. There are no public elements in the DOU that signal the legal basis for changing the duration of the trade defense measure, whether for reasons of public interest or not.

1.3.3 From the original investigation of 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 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 a petition to initiate a dumping investigation in exports of flat rolled austenitic stainless steel type 304 (304, 304L and 304H) and stainless steel type 430 ferritics, cold-rolled, of a thickness of 0.35 mm or more but less than 4.75 mm, originating in South Africa, Germany, China, South Korea, the United States of America (USA), Finland, Chinese Taipei and Vietnam, and damage to domestic industry resulting from such practice.

The investigation was initiated through Circular Secex nº 17, of April 12, 2012, published in the DOU of April 13, 2012.

Pursuant to item III of art. 41 of Decree No. 1602, of August 23, 1995, in force at the time, the investigation of dumping in exports from South Africa and the USA to Brazil was closed without the application of duties, since it was verified that the volume of imports of these origins was insignificant, as 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 equal to or greater than 0.35 mm, but less to 4.75 mm, originating in Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, and damage to the domestic industry resulting from such practice, pursuant to the provisions of art. 42 of Decree No. 1602, of 1995, the investigation was closed, through CAMEX Resolution No. 79, of October 3, 2013, published in the DOU of October 4, 2013, with the application of the definitive 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, 304L and 304H) and ferritic stainless steel type 430, cold-rolled, with a thickness equal to or greater than 0.35 mm, but less to 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 the DECOM Digital System (SDD), a petition to initiate an end-of-period review in order to extend the anti-dumping duty applied to Brazilian imports of flat rolled products austenitic stainless steel type 304 (304, 304L 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, commonly classified under sub-items 7219.32.00 , 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of NCM, originating in Germany, China, South Korea, Finland, Chinese Taipei and Vietnam, pursuant to the provisions of art. 106 of Decree No. 8058 of July 26, 2013.

The investigation was initiated through Circular Secex nº 41, of October 2, 2018, published in the DOU of October 3, 2018.

On October 2, 2019, the Special Secretariat for Foreign Trade and International Affairs (Secint), published Ordinance No. 4,353, of October 1, 2019, in which it extended the application of the definitive anti-dumping duty, for a period of up to 5 (five) years, applied to Brazilian imports of 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 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 China and Chinese Taipei, to be collected in the form of specific rate, and thus not extending to other origins, namely Germany, South Korea, Finland and Vietnam.

1.3.5 From the original investigation of austenitic stainless steel flat products that meet the AISI 304 standard and similar ones, 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 (2020/2021) - South Africa, Indonesia and Malaysia

On July 31, 2020, Aperam filed, through the DECOM Digital System (SDD), a petition to initiate an investigation into the practice of dumping in exports of austenitic stainless steel flat products that comply with AISI 304 and similar standards, 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, manufactured and marketed in various forms, such as, but not limited to, coils, sheets and Strips/Strips, hereinafter referred to as "Cold Rolled 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 verification of non-preferential origin with the disqualification of the Malaysian origin for cold-rolled product 304 and 430, classified in sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of NCM, declared to be produced by Excel Metal Industries Sdn Bhd., Yankong Stainless Sdn. Bhd. E Bahru Stainless Sdn. Bhd.

Bearing in mind that all Brazilian imports of cold rolled 304 products from Malaysia, in P5, were carried out by companies that had their origin disqualified by Secex in such procedures, with no significant volumes of imports remaining from that origin in this period for the purposes of analysis of dumping of exports to Brazil originating in Malaysia, it was concluded that the anti-dumping investigation in relation to this origin was not opened.

On February 18, 2021, in compliance with the provisions of art. 47 of Decree No. 8,058, of 2013, the governments of South Africa and Indonesia were notified, through Official Letters, of the existence of a duly prepared petition, with a view to initiating a dumping investigation referred to in this proceeding.

Based on what was contained in Opinion No. 3/2021, since sufficient evidence of dumping was found in exports of cold rolled products 304 from South Africa and Indonesia to Brazil, and of damage to the domestic industry resulting therefrom, the Circular Secex nº 15/2021, in the DOU of February 25, 2021, initiating the investigation of dumping on screen.

Already on November 4, 2021, based on the Technical Note, of October 29, 2021, Circular Secex nº 75, of November 3, 2021, was published, which closed, without judgment on the merits, the referred investigation, since which was concluded by the lack of reliability of the data contained in the petition and by the magnitude and timeliness of the alterations, in the aggregate, presented in the context of evidence, leaving the proof of the existence of damage to the domestic industry in the scope of the present 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 table consolidates all trade defense measures in force applied to Brazilian imports of cold rolled products 304:

Trade Defense Measures in force

Origin	Producer/Exporter	Definitive Antidumping Duty (in US$/t)
China	Shanxi Taigang Stainless Steel Co., Ltd. ., when exporting through the exporting company Tisco Stainless Steel (HK) Limited	175.62

China	Shanxi Taigang Stainless Steel Co.,Ltd	218.37
China	Galaxy International Trade (Wuxi) Co., Ltd.	218.37
China	Henan Jianhui Construction Machinery Co., Ltd.	218.37
China	Hunan Bright Stainless Co., Ltd.	218.37
China	Jieyang Kailian Stainless Steel Co., Ltd.	218.37
China	Shanghai Stal Precision Stainless Steel Co., Ltd.	218.37
China	Wuxi Steel Co. Ltd.	218.37
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.	218.37
China	Foshan Shunhengli Import & Export Ltd.	629.44
China	Too much.	629.44
Chinese Taipei	CSSSC	93.36
Chinese Taipei	Chain Chon Industrial Co., Ltd.	93.36
Chinese Taipei	Datung Stainless Steel Co., Ltd.	93.36
Chinese Taipei	Froch Enterprise Co., Ltd.	93.36
Chinese Taipei	Genn-Hann Stainless Steel Enterprise Co., Ltd.	93.36
Chinese Taipei	Lien Kuo Metal Industrial Co., Ltd.	93.36
Chinese Taipei	Midson International Co., Ltd.	93.36
Chinese Taipei	S-More Steel Materials Co., Ltd.	93.36
Chinese Taipei	stanch stainless steel co.,ltd.	93.36
Chinese Taipei	TM Development Co., Ltd.	93.36
Chinese Taipei	Tang Eng Iron Works Co., Ltd.	93.36
Chinese Taipei	TSL Stainless Co.,Ltd	93.36
Chinese Taipei	YC Stainless Co., Ltd.	705.61
Chinese Taipei	Yuan Long Stainless Steel Corp. (YLSS)	93.36
Chinese Taipei	Yes Stainless International Co., Ltd.	93.36
Chinese Taipei	Yeun Chyang Industrial Co., Ltd.	93.36
Chinese Taipei	Yieh Corporation Limited	93.36
Chinese Taipei	Yieh Mau Corp.	93.36
Chinese Taipei	Yieh United Steel Corporation (YUSCO)	705.61
Chinese Taipei	Yue Seng Industrial Co., Ltd.	93.36
Chinese Taipei	Yu Ting Industrial Co., Ltd.	93.36
Chinese Taipei	Yuen Chang Stainlees Steel Co., Ltd.	93.36
Chinese Taipei	Too much	705.61

Thus, it appears that trade defense measures are in force on Brazilian imports of cold rolled products 304, applied on two origins, namely, China and Chinese Taipei.

1.4 History of public interest assessments

On February 25, 2021, the Ministry of Economy's Secex published Circular No. 15, of February 24, 2021, which initiated the investigation of the practice of dumping in exports of austenitic stainless steel flat products that meet the AISI standard 304 and similar, including variations thereof, such as 304L and 304H, cold-rolled, of a thickness equal to or greater than 0.35 mm but less than 4.75 mm, manufactured and marketed in various forms, such as, but not limited to a, coils, plates and strips/tapes, commonly classified under NCM subitems 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90, originating in South Africa and Indonesia. Said Circular also determined the start of the public interest assessment, referring to the possible application of an anti-dumping measure on the imports in question.

However, Circular Secex nº 75/2021, of November 3, 2021, published in the DOU of November 4, 2021, ended the assessment of public interest due to its loss of purpose, since it was closed without analysis of merit the investigation of the practice of dumping initiated through Circular Secex nº 15/2021.

1.5 From the current investigation into subsidies subject to Indonesia's countervailing measures

Based on Secex Circular nº 40, of June 1, 2021, an investigation was initiated to verify the existence of subsidies subject to compensatory measures granted to Indonesian producers who exported to Brazil 304 cold-rolled stainless steel products, commonly classified in sub-items 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the MERCOSUR Common Nomenclature - NCM, and damage to the domestic industry resulting from such practice, object of SEI-ME Proceedings No. 19972.101391/2021-52 (restricted) and nº 19972.101392/2021-05 (confidential).

It should be noted that, pursuant to art. 4 of Ordinance SECEX No. 13, of 2020, the public interest assessment was also initiated regarding the possible application of a compensatory measure on Brazilian imports of cold-rolled products, commonly 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 Indonesia, as a result of Processes SEI-ME No. 19972.101391/2021-52 (restricted) and No. 19972.101392/2021-05 (confidential).

On August 19, 2022, Circular Secex nº 37, of August 19, 2022, was published, which made public the facts that justified the decision not to prepare a preliminary determination on the existence of subsidies, damage to domestic industry and the causal link between them. On September 28, 2022, Technical Note SEI nº 43660/2022/ME was issued, which presented the essential facts that were under analysis and that would form the basis for the Undersecretariat for Commercial Defense and Public Interest 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 elements are considered: 1) characteristics of the product, production chain and market of the product under analysis; 2) international offer of the product under analysis; 3) national offer of the product under analysis; and 4) impacts of the trade defense measure on the dynamics of the domestic market, as shown below:

The harm analysis period in the original investigation of actionable subsidies, to be used as a 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 validated in an on-site verification procedure:

2.1 Characteristics of the product, the production chain and the market of the product under 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 includes austenitic stainless steel flat products that meet the AISI 304 standard and similar ones, 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,

manufactured and marketed in various forms, such as, but not limited to, coils, sheets and strips/tapes, originating in Indonesia, commonly classified under sub-items 7219.32.00, 7219.33.00, 7219.34.00 , 7219.35.00 and 7220.20.90 of NCM, hereinafter referred to as cold rolled 304.

Stainless steel flat products are alloys of iron (Fe) and chromium (Cr), with a minimum of 10.5% Cr. Other metallic elements are also part of these alloys, such as nickel (Ni), carbon one, silicon (Si), manganese (Mn), phosphorus (P) and sulfur (S).

Two elements stand out in the composition of stainless steel: chromium, always present, for its important role in corrosion resistance, and nickel, for its contribution to improving mechanical properties.

Simply put, stainless steels can be divided into two large groups, namely the 300 series and the 400 series. The 300 series products are austenitic stainless steels, that is, they are non-magnetic steels with a cubic structure of faces centered, basically Fe-Cr-Ni alloys. On the other hand, the 400 series products are ferritic stainless steels, which are magnetic steels with a body-centered cubic structure, basically Fe-Cr alloys.

Each series of stainless steels is divided into different types, according to the specific composition, which also normally implies different uses. Internationally, different nomenclatures are used to define the different types of stainless steel, the most used nomenclature being that of the American Iron and Steel Institute - AISI. In Brazil, the Brazilian Association of Technical Standards - ABNT adopts the same nomenclature as AISI. There are, however, other international nomenclatures that specify the different types of stainless steel that can be used, depending on the region/country where the product is manufactured/marketed.

Stainless steels are manufactured and marketed with a wide variety of finishes. The finishes most used in stainless steels are listed in the ASTM A-480 standard, which is not exhaustive. These finishes are mentioned below:

- Nº 1: Hot rolled, annealed and pickled. The surface is a little rough and matte. It is a frequent finish on materials with a thickness of no less than 3.00 mm, intended for industrial applications. Often, in the manufacture of the final part, the material is subjected to other finishes, such as sanding, for example;

- Nº 2D: Cold rolled, annealed and pickled. Much less rough than finishing No. 1, but still has a matte surface, popularly called matte. This finish is not used, for example, on 430 steel, since with this finish, during conformation, these materials give rise to the appearance of Luder lines;

- Nº 2B: Cold rolled annealed and pickled followed by a light rolling pass in a rolling mill with shiny cylinders (skin pass). It has a higher gloss than the No. 2D finish and is the most used cold lamination finish. As the surface is smoother, polishing is easier than with finishes No. 1 and No. 2D;

- BA: Cold rolled with polished cylinders and annealed in an inert atmosphere furnace. Smooth, shiny and reflective surface, features that are more evident as the thickness is thinner. The furnace atmosphere can be hydrogen or mixtures of hydrogen and nitrogen;

- No. 3: Material sanded in one direction. Normally, sanding is done with grit abrasives (diamond grain size) of approximately 100 mesh;

- No. 4: Material sanded in one direction with 120 to 150 mesh abrasives. It is a finish with less roughness than that of Nº 3;

- No. 6: Material with No. 4 finish, finished with cloths soaked in abrasive pastes and oils. The appearance is matte, satin, with lower reflectivity than the No. 4 finish. The finish is not given in a single direction and the appearance varies depending on the type of cloth used;

- No. 7: High-gloss finish. The surface is finely polished, but retains some polishing lines. It is a 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 all polish lines disappear. It is the finest finish available and allows stainless steels to be used as mirrors. It is also used in reflectors; It is

- TR Finish: Finish obtained by cold rolling or cold rolling with annealing and pickling so that the material has special mechanical properties. Generally, the mechanical properties are higher than other finishes and the main use is in structural applications.

There are also other types of stainless steel finishes not included in the ASTM A-480 standard, including:

- Nº 0: Hot rolled and annealed. It shows the black color of the oxides produced during annealing. Pickling is not carried out. Sometimes very thick plates are sold this way, particularly refractory stainless steels, which will be used at high temperatures;

- Nº 5: Finishing material Nº 4 subjected to a light lamination pass with shiny cylinders (skin pass). Has a higher gloss than #4 finish;

- RF (Rugged Finish): Obtained with sandpaper, with a grain between 60 and 100 mesh. The appearance is of a sanding with high roughness. Roughness ranges from 2.00 to 2.50 microns Ra;

- SF (Super Finish): Finishing the material with sandpaper with a grain of 220 to 320 mesh. It is a low roughness sanding, ranging between 0.70 and 1.00 microns Ra;

- ST (Satin Finish): Scotch Brite finish, without the use of abrasive pastes. The material has a roughness that varies between 0.10 and 0.15 microns Ra, even if its appearance is matte;

- HL (Hair Line): Material finished in continuous lines, made with sandpaper with a grain of up to 80 mesh. It is also a high roughness sanding (2.00 to 2.50 microns Ra); It is

- BB (Buffing Bright): Polishing made with grains ranging between 400 and 800 mesh. It's a very shiny material. Roughness is less than 0.05 micron Ra.

Aperam manufactures 304 cold rolled products in standard widths of 1,020 mm, 1,040 mm, 1,220 mm, 1,240 mm, 1,250 mm, 1,270 mm, 1,295 mm and 1,320 mm, however it is possible to supply the product in any width the customer requires , up to the limit of 1,320 mm. The 304 cold laminates are manufactured by the company with the following finishes: nº 2B, nº 3, nº 4, nº 6, TR Finish, BB (Buffing Bright), RF (Rugged Finish), SF (Super Finish) and HL (Hair Line).

304 cold rolled products are used in the manufacture of towers, tubes, tanks, general, deep and precision stamping, with diverse applications, such as domestic utensils, cryogenic installations, distilleries, photography, as well as in the aeronautical, railway, shipbuilding, petrochemical, pulp and paper, textile, meatpacking, hospital, food, dairy, pharmaceutical, cosmetic, chemical, among others.

Thus, it is concluded that cold rolled 304 are characterized as inputs, with application in various sectors such as: automotive, civil construction, chemical and petrochemical, domestic utensils, machinery 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 includes the stages of reduction, melt shop, hot rolling and cold rolling.

Reduction is the stage in which the blast furnaces are fed with iron ore and charcoal to obtain liquid pig iron. It should be noted that foreign producers use coke as a reducer in blast furnaces instead of the charcoal used by Aperam.

In the next stage, the liquid pig iron is placed in the torpedo car and transferred to the melt shop, where it undergoes a first pre-treatment, removing impurities such as phosphorus, sulfur, carbon and nitrogen. Afterwards, nickel (in the form of electrolytic nickel, iron-nickel or 304 stainless steel scrap), chromium (in the form of iron-chromium or scrap of 304 stainless steels), iron (in the form of carbon steel scrap), ferrosilicon, ferromanganese, and some other metal alloy to make adjustments to some specific material property. This molten load is then transferred to the AOD (Argon-Oxygen Decarburization) where it is added to the pig iron from the blast furnaces for final temperature and composition adjustments and for degassing.

The next step is hot rolling, which consists of hot forming the plates with a significant reduction in thickness. First, the plates are reheated. Subsequently, the preliminary adjustment of the thickness is carried out, to then start rolling in the Rougher and Steckel rolling mills in order to obtain hot coils, from 2 to 8 mm thick.

The coils obtained in the hot rolling stage are then sent to the cold rolling mill, where they pass through coil preparation machines, annealing and pickling lines, cold rolling mills and auxiliary equipment, in order to reach the 304 cold rolled products with thicknesses between 0.35 mm and 4.75 mm.

According to Aperam, the production process in Brazil follows the traditional route, which is similar to the routes adopted by traditional stainless steel producers in the world, such as the countries of the European Union, the USA, Japan, among others. The main raw material used in the traditional route is stainless steel scrap, which, together with other raw materials, such as chromium iron, nickel iron, carbon scrap, silicon iron, manganese iron, pig iron and electrolytic nickel , are taken to electric arc furnaces in the melt shop. The production process adopted by Aperam is considered traditional, with the difference that liquid pig iron is used to adjust the load balance, although it is used in small quantities.

However, some companies, as in the case of producers in Indonesia, adopt the integrated route, which differs from the traditional route by using most of the nickel load with the NPI (Nickel Pig Iron) produced internally, which has a composition of 10 % to 11% Ni, 1% Cr and 82% Fe. The molten NPI is introduced directly into the AOD vessels of the melt shop, along with other raw materials that are heated with coal in a ladle, such as 304 steel scrap, nickel iron, electrolytic nickel, chromium iron, manganese iron, silicon iron, etc. After the step that takes place in the AOD vessels, the integrated route is identical to the traditional route, described above.

With regard to the Brazilian market, Aperam informed, in its public interest questionnaire, that the main segments served by 304 cold rolled products would be: white goods (stoves, refrigerators, washing machines, electric ovens, among others, with participation of [CONFIDENTIAL]%), housewares (cutlery, pans, among others, with participation of [CONFIDENTIAL]%), civil construction (sinks, vats, elevators, facades and finishes in general, with participation of [CONFIDENTIAL]%), health and food (hospitals, restaurants and catering in general, with participation of [CONFIDENTIAL]%), stainless steel tubes (decorative and standardized tubes, with participation of [CONFIDENTIAL]%), automotive industry (vehicle systems, with participation of [CONFIDENTIAL]%), transport (truck tanks, applications in subway trains, among others,with participation of [CONFIDENTIAL]%), capital goods (oil and gas projects, pulp and paper, beverages, agribusiness, mining, purchases for equipment maintenance, among others, with participation of [CONFIDENTIAL]%) and resales (companies commercials that buy from distributors and resell to small customers, with participation of [CONFIDENTIAL]%).

According to the company, both the white line and the automotive industry are concentrated in large steel consuming companies, especially carbon and alloy steel, with cold rolled 304 being little demanded. In the case of capital goods, despite demanding [CONFIDENTIAL]% of all product consumption, the investment value related to cold rolled 304, from [CONFIDENTIAL], becomes little relevant in the context of the segment, a fact that, according to Aperam, reinforces the thesis of low participation of stainless steel in most manufactured products.

In addition, he argued that segments such as civil construction, health and food have many players, being more relevant sectors for cold rolled products 304. He also informed that the same happens with product resellers, which are present in practically all cities medium and large and that serve small locksmiths and designers/assemblers of small artifacts of commercial utility. In this sense, he claimed that the production chain of 304 cold rolled products is complex, comprising around 5,000 companies that work not only with the product, but also with other types of stainless steel, in addition to carbon steel, copper, aluminum, etc.

In addition, he informed that the Brazilian stainless steel market is made up of two large groups: large industrial customers, who are supplied directly from the mills on the domestic market, or through imports, and distributors. According to the company, the following stand out among industrial customers: large cutlery shops, manufacturers of white goods and articles for civil construction, in addition to the capital goods segment. The distributors, on the other hand, would supply the product to a market made up of "small and medium-sized customers from the most diverse segments, as well as resellers". In this segment, sales would be made in smaller quantities and in a pulverized manner, since the end customer would not be interested in keeping high inventories in their plant.

The party pointed out that the Brazilian market for cold rolled products 304 reached a volume of 78.8 thousand tons in P5, with 24.8 thousand tons related to direct purchases from the final consumer and 54.0 thousand tons via distribution, with channels such as: Aperam Integrated Distributor (DIA), Aperam Regular Distributor (DRA) and independent distributors.

Aprodinox informed, in its public interest questionnaire, that it would be difficult to reduce the application of the product under analysis to a few links in the chain, given its wide use in various sectors of the economy. In this sense, he informed that the main sectors served by Aperam would be: white goods, UD tableware and cutlery, automotive, architecture and civil construction, sugar and alcohol, oil and gas, capital goods, tubes and food. The segments served by distributors of cold rolled products 304 would be: capital goods, civil construction, UD tableware and cutlery, sugar and alcohol, automotive and white goods. The party also indicated that Aperam sells its products to large customers in the market and through distributors, with emphasis on Aperam Serviços, which would be vertically related to the company.

Finally, Inconel and Usina Metais, in their public interest questionnaires, cited the manufacture of tanks, tubes and equipment for refrigerators as examples of applications for cold rolled 304. of food products, sugar and alcohol, oil and gas, pharmaceuticals, pulp and paper, mining, among others.

Thus, it is concluded that 304 cold rolled products are part of the production chain of several products, in segments such as housewares, civil construction, capital goods, among others. In the upstream chain, there are companies that produce ferronickel, ferrochrome, ferrosilicon, ferromanganese, among other alloys, and recycling 304 stainless steel scrap, verticalized or not in relation to cold-rolled producers 304.

In turn, the downstream chain of 304 cold-rolled products is made up of a large number of companies, representing different segments (white goods, housewares, civil construction, health and food, stainless steel tubes, the automotive industry, transport, capital, among others) that use it as an input.

2.1.3 Substitutability of the product under analysis

In this section, the objective is to verify if there are other substitute products 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 demand, Aperam, in its public interest questionnaire, stated that, in applications such as the capital goods segment, cold rolled 304 are considered essential, with no substitutes, in view of its characteristics of resistance to corrosion and good formability. However, according to the company, in some segments, such as civil construction (vats, sinks and elevators) there may be competition with other products, even if they present inferior performance. Furthermore, he indicated that, in the domestic utilities segment, cutlery has substitute products, such as glass, aluminum, copper, plastic, which can replace more expensive products.

In addition, he argued, through the analysis carried out by Tendências, that cold rolled 304 products compete with other materials, such as carbon steel, stones (marble, granite, among others), non-ferrous products (aluminum, silver, bronze, brass, among others). others), glass and plastic. According to the company, the choice of material does not depend only on price, considering, for example, the useful life of the material, in the case of heat exchangers in sugar mills, and architectural aspects, in the case of buildings and elevators.

He also argued that 304 cold rolled steel can be replaced by other types of steel, such as the 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 conductivity of this type of steel. According to Tendências, the 400 series steels are composed of iron and chromium alloys, with no nickel in their composition. With the replacement of nickel by other alloys, it would be possible to reduce 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 up of alloys composed of iron, chromium and nickel (low content compared to the 304 cold rolled steel, varying between 1.8% and 4.0%), could also replace the product object of analysis, although little used, in view of the possibility of inappropriate substitutions. Finally, he informed that steels that are not stainless may be replaced, although there are disadvantages in certain attributes such as useful life, thickness and weight.

According to Aprodinox, in its public interest questionnaire, stainless steel has specific applications, therefore, there are no products that can be considered substitutes from the point of view of demand. In this sense, he informed that he was unaware of differences between the product manufactured in Brazil and the imported one, with the exception of some finishes and widths that would not be manufactured in the domestic market. In view of this, he argued that the national product can only be replaced by the imported product with the same specifications.

With regard to the perspective of supply, Aprodinox stated that it does not know of manufacturers of other products with the capacity to start manufacturing cold rolled 304 in the short term (less than one year) and with low investment.

Furthermore, the association stated, in a statement filed on July 7, 2022, that cold-rolled stainless steel products have corrosion resistance, adequate mechanical strength, ease of cleaning/low surface roughness, hygienic appearance, ease of conformation, resistance to high temperatures, resistance to cryogenic temperatures (below 0°C), resistance to sudden variations in temperature, surface finishes and varied shapes, strong visual appeal (modernity, lightness and prestige), excellent cost/benefit ratio, low maintenance cost and is a recyclable material, so that the product would be widely used in industrial processes and represent an essential input to production for various sectors of the Brazilian economy.

In this sense, he argued that it is an essential product for Brazilian consumers, so that there would be no substitutes: "industry segments such as food, beverage and chemical, cannot replace their machinery made of stainless steel, by machinery produced with another kind of steel".

Finally, CADE highlighted, in its public interest questionnaire, the lack of substitutes for cold-rolled products 304. In this sense, it indicated that domestic and imported products are similar. Thus, it claimed that the only form of substitutability for the product would be between domestic and imported laminates. In a statement filed by Aprodinox on October 20, 2022, it corroborates what was reported by CADE

In a statement filed on October 3, 2022, Aperam reaffirmed that the product under analysis could be replaced by other types of stainless steel or by aluminum, stone, glass, ceramics, among others, depending on the choice of material for the application of the product, the its technical-economic viability,

Thus, it is concluded, based on the manifestations of the interested parties, that the substitutability of cold rolled 304 from the point of view of supply appears to be unlikely in the short term. Furthermore, from the perspective of demand, the elements attached to the public interest assessment records did not allow for a glimpse of substitutability between the product under analysis and another type 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 assess the intensity with which the eventual application of the trade defense measure can influence the relationship between market structure and competition.

Regarding the subject, CADE stated, in its public interest questionnaire, that the Brazilian cold rolled 304 market is formed by only one national producer, Aperam, responsible for 100% of its production.

In its response to the public interest questionnaire, Aprodinox argued that Aperam is the only stainless steel manufacturer in Brazil and that the company adopts anticompetitive conduct "aimed at ensuring that its customers and distributors do not choose to import the product". According to the association, as there are no substitute products from the point of view of demand or supply, the product supply structure in the Brazilian market would be restricted to that produced by Aperam and imports. Furthermore, it alleged that the Brazilian market is highly concentrated, with imports acting as the only element capable of regulating the prices practiced by the domestic industry. In view of this, it argued that the application of the anti-dumping measure on imports from South Africa and Indonesia would eliminate the only disciplining factor of domestic prices, given the existence of an anti-dumping duty in force on imports originating in China, the main manufacturer of cold rolled products 304 in the world. It should be noted, however, that the anti-dumping investigation in relation to imports from South Africa and Indonesia was closed through Secex Circular No. 75, of November 3, 2021.

On the other hand, Aperam claimed, in its public interest questionnaire, that there is no market power on the part of any player in the product market under analysis, thus not having the ability to control prices and/or volume offered. According to the company, this fact would be corroborated by the verification of the existence of damage resulting from imports of cold rolled 304 originating in Indonesia.

In this context, Aperam, through the analysis carried out by Tendências, argued 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 entry barriers; It is

- based on an open market, the pricing adopted by Aperam would not show evidence of market power, since it follows the values practiced in the world context.

According to Tendências, imports of 304 cold rolled products in Brazil have been uninterrupted, growing and from different sources, which alternate in the participation of the imported volume over time, characteristics of a competitive market with few barriers to entry. Tendências indicated that, as of 2005, products from 45 different origins were imported, and, in the period from 2016 to 2020, Brazil would have annually imported, on average, stainless steel from 25 different countries.

He also informed that, in addition to the growth in the imported volume - going from 16.4 thousand tons in 2005 to 77.1 thousand tons in 2020, the most relevant origins would alternate with certain frequency: Germany, from 2005 to 2008, followed by Chinese Taipei in the following four years, being overtaken by South Africa, which would have occupied the post until 2018, and then by China, in 2019, and by Indonesia, in 2020. He also argued that other evidence that imported products could enter in the Brazilian market without many barriers would be in the assessment of the C4 index: "between 2005 and 2020, it fluctuated downwards, from 82% in 2005 to 68% in 2020 and passing through a minimum of 51% in 2013".

Thus, it claimed that an analysis based only on Aperam's market share would lead to the conclusion of a potentially uncompetitive market, "when in fact it presents characteristics of low barriers to entry and ease of changing the origin for importing the product" .

In response to this argument, Aprodinox, in a statement filed on July 7, 2022, argued that the import volumes brought by the company Tendências would cover other types of stainless steel, overestimating such volumes, so that the analysis does not "appear to be adequate ".

On September 9, 2022, Aprodinox presented a statement in which it reiterates 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 of companies, expressed in the ability to charge prices in excess of costs, providing greater profits at the expense of the consumer and, consequently, a decrease in the well-being of the economy.

In this context, the Herfindahl-Hirschman Index (HHI) can be used to calculate the degree of market concentration. This index is obtained by summing the square of the market share of all companies in a given market. The HHI can reach up to 10,000 points, a value at which there is a monopoly, that is, there is a single company with 100% of the market.

According to the Horizontal Concentration Analysis Guide, issued by CADE, markets are classified as follows:

- Not concentrated: HHI below 1500 points;

- Moderately concentrated: HHI between 1,500 and 2,500 points; It is

- Highly concentrated: HHI above 2,500.

For the purposes of this final assessment of public interest, the market share values of recorded origins and other countries exporting the product were calculated in aggregate, without segmentation by company, in the period between P1 and P5, according to the data provided in the dumping investigation and in the import statistics of the RFB. The analysis of the composition of the Brazilian 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 much	HHI
P1	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5880
P2	80-70	0-10	0-10	0-10	0-10	0-10	0-10	0-10	6996
P3	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5948
P4	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5891
P5	60-70	10-20	0-10	0-10	0-10	0-10	0-10	0-10	4854

In the analysis of the extremes of the series, it is observed that the HHI shows a downward trajectory from P1 to P5. The interval from P1 to P2 is the only one that registers growth in the HHI, of 18.9%, followed by successive reductions in the following intervals - 14.9%, from P2 to P3, 0.9%, from P3 to P4, and 17.6%, from P4 to P5. From P1 to P5, the market concentration index decreased by 17.4%, going from 5,887 to 4,863 HHI points. Thus, the HHI of the Brazilian market for cold rolled products 304 remained at highly concentrated levels throughout the analysis period, from P1 to P5.

It should be noted that the increase in market concentration recorded between P1 and P2 seems to be, in part, explained by the increase in Aperam's market share, which went from [CONFIDENTIAL] % in P1 to [CONFIDENTIAL] % in P2, to the detriment of of imports from non-investigated sources, which went from [CONFIDENTIAL] % share of the Brazilian market in P1 to [CONFIDENTIAL] % in P2.

In turn, the drop in market concentration observed between P2 and P5 seems to be, in part, justified by the increase in the share of imports in the Brazilian market, which rose from [CONFIDENTIAL] % in P2 to [CONFIDENTIAL]% in P5. We highlight the increase in the share of imports from the investigated origin, which went from [CONFIDENTIAL] % share in P2 to [CONFIDENTIAL] % in P5, which corresponded to most of the growth in imports recorded in the period.

Furthermore, the drop in concentration observed in the period seems to have been impacted by the reduction in the share of domestic industry sales in the domestic market, reaching [CONFIDENTIAL] % in P5, that is, a reduction of [CONFIDENTIAL] pp between P1 and P5.

Aperam informed, in a statement filed on October 20, 2022, that analysis such as HHI or C4, when observed separately, show high numbers that would point to a concentrated market, so it is suggested to consider the specificities of each case.

With regard to concentration acts in the affected sector, CADE identified the Economic Concentration Act No. 08012.005092/2000-89, referring to the acquisition of the assets of the company Amorim SA Aços Inoxidáveis, in addition to the shareholding in the companies Tubos Inoxidáveis Ltda. and Inoxtubos SA, by Acesita SA In the process, the relevant market was delimited to the processing and distribution of cold and hot rolled stainless steel with thicknesses from 0.15 mm (series 3XX and 4XX), a scope that includes products not addressed in this analysis.

According to the agency, the operation was approved without restrictions, with emphasis, however, on the risks and effects of vertical integration when carried out between horizontally concentrated economic agents. CADE informed that the leading vote registered two main recommendations and determined three items of abstention, addressed to Acesita and "unanimously endorsed by the plenary":

"(..) Acesita, which, due to its dominant position in the Brazilian special steel market, must, under penalty of infringing the economic order and incurring the penalties of Le1) practice in the sale of its products, for all distributors, price and payment on equal terms with Amorim, including credit and terms.

2) respect the retrospective and evolutionary volumes of each distributor in the market, in the quantification and qualification of the distributors' purchase programs; other Service/Distribution Centers. In addition, Acesita must refrain from d1) creating any obstacle for steel distributors, whether of Acesita products or not, to import products without any restriction, even if these products compete with Acesita's products,2) create any consignment sales system for Amorim that is not extended to other Acesita distributors; 3) privilege Amorim with a special supply in a continuous and direct flow of any product, or give it an advantage that does not extend to its other Service/Distribution Centres."

Furthermore, CADE identified Administrative Proceeding No. 08700.010789/2012-73, in which there were allegations of non-compliance with the guidelines expressed by the agency in relation to anticompetitive practices in the stainless steel segment, within the scope of Economic Concentration Act No. 08012.005092/2000-89 . According to the agency, one of the practices denounced was the imposition of anti-dumping duties, which would prove to be an additional barrier, thus reinforcing Acesita/Aperam's dominant position in the Brazilian market.

According to CADE, Technical Note from the General Secretariat (SG) 254/2013 suggested the opening of an administrative process, pointing out concern with Aperam's pricing practice: "as the prices charged by the company were above the market price, there would be a tendency of imports". However, according to the agency, imports would be limited by means of a contractual obligation imposed by

Aperam with regard to minimum purchase volumes, "conferring almost a tacit exclusivity to enable the purchase of Aperam's product with higher prices ". CADE presented the position of the General Secretariat in the Technical Note:

"It is worth noting that questions relating to the occurrence or not of dumping in the market in question are the responsibility of SECEX, and Cade is not responsible for judging the merits of the petition filed by APERAM with the body of the Ministry of Development, Industry and Commerce Abroad (M"IC"). However, the factual scope of this process also includes the movement of Aper-m - through anti-dumping actions, requests for an increase in the TEC and, possibly, the contractual provisions analyzed herein - to seek to prevent the advance of imports in the country".

In addition, it indicated that the General Superintendence, through Technical Note No. 12/2015/CGAA3/SGA1/SG/CAD, pointed out that potential evidence of anti-competitive conduct was identified with regard, above all, to the following points of Aperam's commercial policy at the time:

- Privileged treatment of distributors who were part of the APERAM group and the Aperam distributor network (RAD);

- Creation of difficulties for the importation of laminated flat steel; It is

- Limitation of access to Aperam products.

The body also argued that the SG understood that the policy "discounts to distributors according to the percentage of the purchase volume that is dedicated to the represented, without any adherence to the absolute volume of effective purchases" constituted a form of discount not linear. Thus, he stated that such a discount policy could have the scope of "restricting competition from imports, without efficiency considerations for the represented company that eventually justifies the legitimacy of the practice".

Administrative Proceeding No. 08700.010789/2012-73 was terminated in April 2015, through a Cessation Commitment Term, in which Aperam undertook to:

- "not to practice any non-linear discount to distributors whose purpose or effect is to induce the exclusive acquisition of products from the Buyer";

- "refrain from adopting a clause that has the object or effect of restricting the importation of stainless steel"; It is

- "refrain from imposing any change in commercial policies due to any decision to import or purchase a competing product by distributors".

Thus, CADE argued that the potential practice of restrictions on imports was considered "clear and serious in the Administrative Proceedings". In addition, the TCC provided for the payment of a pecuniary contribution in the amount of BRL 5,574,075.21, based on the position of the General Superintendence at the time:

"62. As can be seen from the precedents indicated, this investigation is distinguished by the following facts: (i) the Compromise proposed an agreement proposal shortly after the opening of the process; (ii) the duration of the process, from the complaint to the proposed agreement, was less than 2 (two) years: (iii) although there is no precision as to the duration of the conduct, there are indications that it was less than the two aforementioned precedents.63. warned by Cade, within the scope of Merger Act No. 08012.005092/2000-89, not to adopt discriminatory conduct. Therefore, in the opinion of the SG, the need for reprimand via pecuniary contribution ". "In calculating its value, however, the contribution seems adequate, in view of the cited precedents."

The body pointed out, however, that the execution of the TCC did not constitute an analysis of merit regarding the object of the aforementioned Administrative Proceeding. In the same way, Aperam, its managers and representatives did not make a "confession regarding the matter of fact nor acknowledgment of guilt, illegality or any irregularity of conduct, and, on the part of CADE, it does not generate precedent on the matter" .

According to Technical Note No. 12/2015, CADE reported that, "in cases of unilateral conduct in which, in most cases, the illegality of the practice depends on a detailed assessment of the market structure, its pattern of competition and also the justifications for the practice in relation to its possible

anticompetitive effects, it is not mandatory, in all cases, to recognize the offense when signing the TCC". In this way, the TCC can be entered into without a final understanding by the authority regarding the occurrence or not of the violation of the economic order.

Finally, CADE identified Preparatory Procedure No. 8700.000841/2021-74, in which Aprodinox presented a report explaining the alleged anti-competitive conduct that would be being practiced by Aperam:

- "Price practices by Aperam Serviços incompatible with the market - practice of prices below costs, harming the profit margins of the other distributors in the market (margin squeeze);

- Discriminatory rule between DIA Distributors (Integrated Aperam Distributor) and DRA (Regular Aperam Distributor);

- Changes in the volume range criteria;

- Changes in Aperam's pricing policy; It is

- Procedures to limit and discourage the import option".

According to CADE, Aprodinox alleged in such proceedings that "Aperam's production inefficiency in a competitive international market is the main reason for Aperam's anti-competitive conduct in the domestic market. The lack of investment by the monopolist to keep up with the international market, made Aperam focus on two protectionist strategies: the recurrent use of trade defense mechanisms and the creation of anti-competitive conditions to the benefit of its vertically integrated distributor". In addition, 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 08012.005092/2000-89, Aprodinox informed, in its public interest questionnaire, that, at the time, Acesita SA was the only company manufacturing special steels in Brazil, and that said acquisition resulted in the vertical integration between Acesita SA and Amorim SA (currently Aperam Usina and Aperam Inox Serviços Brasil Ltda., according to the association). Thus, according to the association, there was vertical integration between:

- the production of special steels (performed by Aperam, the only producer of these types of steel at the time and currently) and the distribution of such products (distribution would be carried out by Amorim SA, currently Aperam Inox Serviços Brasil Ltda.); It is

- the production of special steels and special steel tubes (according to Aprodinox, Inoxtubos 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 stainless steel buyers, restricting imports and favoring the distributor of the same economic group as Aperam" . This process was initiated based on representations from the company Inox-Tech and the National Union of the Iron Metal Drawing and Lamination Industry, hereinafter referred to as "SICETEL".

In this sense, he summarized the conduct denounced by Inox-Tech within the scope of this administrative process:

- Aperam would be discouraging, via price pressure, imports made by the largest Brazilian 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 presented 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's products, imposing the obligation of "RAD" distributors to acquire 75% of their demand directly from Aperam;

- creation of a mechanism called "Virtual Import", through which distributors would receive discounts if they did not import products competing with those of the Buyer and would lose such discounts gradually as they started to import such products;

- antidumping measures used to burden the import of competing products, with the aim of closing the market and "preventing distributors from gaining enough market power to operate solely on the basis of imports".

In addition, according to the association, SICETEL alleged in Administrative Process No. 08700.010789/2012-73 that Aperam was taking advantage of its dominant position in the Brazilian market to "impose abusive sales conditions on its distributors, such as limiting imports under penalty of expulsion from the accredited network and favoring the own verticalized distributor".

Administrative Proceeding No. 08700.010789/2012-73, as previously seen, was terminated by means of a Term of Cessation Commitment. In addition to what was highlighted by CADE, Aprodinox argued that Aperam also committed itself not to offer any commercial advantage to the distributor of its economic group that is not extended to the other distributors: "the Promiseee assumes the obligation to abstain from [...] grant any advantage to the distributor of its group, especially regarding price, payment and supply conditions, which is not extended to other distributors, whenever acquisitions are made under equal conditions".

Furthermore, the party informed that, through the TCC, Aperam proposed the creation of the Força Inox Aperam program, which created the current models of relationship with distributors, objects of analysis in item 2.3.4 of this opinion. At the TCC, according to the association, Aperam would have committed to practicing the same prices and payment terms for DIA and DRA distributors, when identical volumes are purchased, in addition to equivalent registration and credit conditions. Finally, he indicated that the term established in the TCC was five years, a period that ended in April 2020. However, the effects must remain indefinitely, according to an excerpt from the TCC brought by the party:

"8. TERM OF TERM

8.1. The Agreement will remain in force for a period of 5 (five) years, counted from the signature of this TCC, without prejudice to the fulfillment of the

definitive obligations, in order to ensure the conditions of competition in the Brazilian market 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 survives even after the expiration of the period provided for in item 8.1,

except for the eventual hypothesis of modification of the antitrust legislation that expressly authorizes these conducts."

It should be noted that the practices and conduct in the competitive analysis are presented in a 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 the origin under analysis, combined with the fall in the share of the domestic industry, contributed to the deconcentration movement of the Brazilian market for cold rolled products 304 between P1 and P5, even though this was highly 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 products similar to the product under investigation. To this end, the existence of suppliers of the same or substitute product in other sources not investigated by the practice of actionable subsidies is verified. In this sense, it is also necessary to consider the hospitalization costs and the existence of barriers to imports from these origins, 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 capacity of cold rolled products by country, extracted from the CRU Monitor Steel report, of May 2019. It is worth mentioning that these data include other cold rolled products, in addition to the product subject to present 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 2023, with actual data from 2015 to 2018 and estimates from 2019 to 2023.

Cold rolled steel production capacity by country. 2015-2023 (in thousand tons).									
Origin	2015	2016	2017	2018	2019	2020	2021	2022	2023
China	14,175	15,305	16,155	16,990	17,895	19,135	19,585	19,885	19,885
India	2,236	2,236	2,336	2,646	3,546	3,946	3,946	3,946	3,946
USA	2,595	2,390	2,475	2,755	2,755	2,755	2,755	2,755	2,755
South Korea	1986	1986	1986	1986	1986	1986	1986	1986	1986
Japan	1877	1877	1877	1877	1877	1877	1877	1877	1877
Chinese Taipei	1,668	1,668	1,768	1,768	1,768	1,768	1,768	1,768	1,768
Indonesia	150	150	150	350	550	850	850	850	850
France	850	850	850	850	850	850	850	850	850
Italy	775	775	843	843	843	843	843	843	843
Finland	750	750	750	750	750	750	750	750	750
Other Origins	4,775	4,645	4,675	4,795	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	40,304	40,304

Thus, China, the origin encumbered by the antidumping measure applied through Ordinance No. 4,353, of 2019, would be the country with the largest production capacity of cold rolled products in the world, representing 47.7% of the production capacity of said product in 2018, having shown an increase of 19.9% between 2015 and 2018 and 17.0% between 2018 and 2023, period of data estimated by the publication. Then come the USA and India, with shares of 7.7% and 7.4% in the world's production capacity of the product in 2018, respectively.

Furthermore, Chinese Taipei, another origin affected by the anti-dumping measure, appears as the sixth country with the highest production capacity in 2018, representing 5.0% of world capacity. Finally, Indonesia, the origin object of this public interest assessment, is the fifteenth most representative country in terms of production capacity of the product in question, with a share of 1.0% in the same year.

It is worth noting, in the case of Indonesia, that the data for 2018 do not seem to include the growth in installed capacity observed in the following years. It should be noted, therefore, that the estimates presented for the year 2020 already show that Indonesia would be the seventh origin with the largest installed capacity in the world, with a share of 2.1%.

Thus, in 2018, origins not recorded or not investigated were responsible for 46.3% of the global production capacity of cold rolled products, while recorded or investigated origins accounted for 53.7% of capacity, according to data presented by Aperam .

The company also presented estimates of world production, based on the same report, whose data are consolidated below:

Production of cold rolled products by country/bloc. 2015-2023 (in thousand tons).									
Origins	2015	2016	2017	2018	2019	2020	2021	2022	2023
China	10,883	12,381	13,380	14,269	14,466	15,208	15,810	16,592	17,285
India	1734	1854	1943	2,112	2,217	2,410	2,579	2,782	2,972
USA	1,460	1,513	1,631	1,686	1737	1805	1853	1889	1903
Japan	1,369	1,358	1,463	1,460	1,439	1,444	1,498	1,536	1,574
Chinese Taipei	1,051	1,270	1,306	1,252	1,168	1,217	1,268	1,309	1,345
South Korea	1,186	1,219	1,263	1,223	1,238	1,284	1,344	1,388	1,430
Finland	740	770	753	718	728	715	709	723	738
Italy	612	612	630	631	693	686	702	724	737
France	505	498	509	544	562	586	591	608	619
Belgium	465	474	481	485	470	554	579	580	600
too many origins	2,738	2,772	2,892	3,158	3,369	3,474	3,658	3,802	3,923
Total	22,743	24,723	26,250	27,538	28,086	29,382	30,591	31,933	33,125

With regard to the world production of cold rolled products, China was the most relevant source, accounting for a share of 47.9% of production in 2015 and reaching 51.8% in 2018. During this period, Chinese production grew 31 .1%, while the growth forecast between 2018 and 2023 reaches 21.1%. Then

come India and the USA, with shares of 7.6% and 6.4% in world production of the product in 2018, respectively. Once again, Chinese Taipei appears in a relevant position, being the fifth largest producer of cold rolled products in the period.

Indonesia, the origin investigated, had a small share in the world production of the product, being the seventeenth largest producer in the world. It is worth mentioning, however, that the data for 2018 do not seem to include the growth in production observed in the following years. It should be noted, therefore, that the estimates presented for the year 2020 show that Indonesia would be the eleventh origin with the highest global production, with a share of 1.9%.

Thus, in 2018, origins not recorded or not investigated accounted for 42.6% of the global production of cold rolled products, while origins recorded or investigated accounted for 57.4%, according to data presented by Aperam.

In addition, Aprodinox, in its public interest questionnaire, presented data on the production of cold rolled products by country, extracted from the International Stainless Steel Forum (ISSF) report, referring to the year 2020. The Association highlighted that these data refer to all types of stainless steel and that cold rolled 304 would correspond to around 25.97% of the total.

The world production data of the 5 (five) largest stainless steel producers are consolidated in the table below, considering the period from 2015 to 2019. Only the 5 largest were considered, considering that some origins were presented in aggregate form, such as , for example, Finland, Sweden and the United Kingdom. It should also be noted that relevant origins did not have their data disaggregated for the year 2019, being allocated in the "Other Origins" line. In view of this and considering that the actual data presented by Aperam refer to the year 2018, the year 2018 was used as a comparison parameter.

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	3,933
Japan	3,175	3,328	3,061	3,093	3,168	3,283	2,963
USA	2030	2,389	2,346	2,481	2,754	2,808	2,593
South Korea	2,143	2038	2,231	2,276	2,383	2,407	AT*
Other Origins	9,285	9,379	9,287	9,665	10,516	11,785	13,328
Total	38,506	41,686	41,548	45,778	48,081	50,730	52,218

As seen in the data provided by Aperam, China was the most relevant source, accounting for a share of 49.3% of world production in 2013 and reaching 52.6% in 2018. During this period, Chinese production grew by 40, 7%. Then come India and Japan, with shares of 7.4% and 6.5% in world production of the product in 2018, respectively.

In this context, Indonesia and Chinese Taipei appear in relevant positions, accounting for 4.3% and 2.3% of world production of stainless steel in the period, respectively. Thus, in 2018, origins not recorded or not investigated accounted for 40.7% of the global production of stainless steel, while origins recorded or investigated accounted for 59.3%, according to data presented by Aprodinox.

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 world's largest exporters of products classified under codes 7219.32, 7219.33, 7219.34, 7219.35 and 7220.20 of the Harmonized System (HS), as shown in the following table. It should be noted that, as it is not possible to debug international statistics in a disaggregated manner, given the lack of detailing of the products included in the identified volumes, the export data in question may include products classified under 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%

4	Italy	524,971.00	8.3%
5	South Korea	478,629.61	7.6%
6	Netherlands	442,447.98	7.0%
7	Belgium	333,513.83	5.3%
8	France	319,618.09	5.1%
9	Germany	302,115.81	4.8%
10	Spain	260,632.26	4.1%
11	Japan	244,175.04	3.9%
12	USA	179,908.02	2.8%
13	South Africa	142,951.86	2.3%
14	Malaysia	131,899.20	2.1%
15	Sweden	101,315.01	1.6%
	Other Origins	671,207.90	10.6%
	Total	6,318,545.33	100.0%

Based on export data available in the United Nations (UN) Comtrade tool, in tons, it is observed that China was the world's largest exporter of the product classified in the reference tariff codes in 2020, with 15.2% of world exports. In second place appears Indonesia, investigated origin, with 9.9% of participation, in third Chinese Taipei, with 9.5%. According to Comtrade data, 62 (sixty-two) countries/territories exported products classified in the reference codes in 2020. extension took place through Ordinance No. 4,353, of 2019.

In terms of origins not investigated or encumbered by anti-dumping measures, the main world exporting origin was Italy, responsible for 8.3% of the total exported volume, followed by South Korea (7.6%), Netherlands (7.0 %), Belgium (5.3%) and France (5.1%), which occupy a relevant position in terms of world exports.

In summary, it is observed that origins not recorded or not investigated are responsible for 65.4% of global exports of cold rolled products 304, while origins recorded or investigated are responsible for 34.6% of exports of the referred product.

In this sense, Aprodinox pointed out that the main alternative origins of the product were the target of anti-dumping measures by the Brazilian government, and, until October 2019, anti-dumping duties were in force against imports of cold rolled products 304 originating in China, Taipei Chinese, Germany, South Korea, Finland and Vietnam. Only anti-dumping measures applied to imports from China and Chinese Taipei have been extended until 2024.

On the other hand, Aperam highlighted the export potential of the investigated origin, represented by the exportable surplus from Indonesia, calculated by the company. The party calculated, based on the international publication CRU Monitor Steel of August 2017, the exportable surplus as a difference between the installed capacity of origin and sales to the domestic and international market, between P1 and P3, and as the difference between the capacity and exports from origin to P4 and P5. According to Aperam, as the data in the publication only presents estimates for P4 and P5, it was necessary to use export data obtained from the TradeMap platform. However, this methodology disregards eventual captive consumption of the product, in addition to not considering domestic sales between P4 and P5.

Still, the international scenario can be analyzed from the perspective of the average price practiced. Based on the data provided by Comtrade, the average price practiced by the main exporters listed above for the product classified under the HS codes in question was identified, considering the year 2020. The identified values are shown in the table and in the dispersion graph at follow:

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

Netherlands	2,389.92
Belgium	2,571.83
France	2,847.24
Germany	3,610.43
Spain	2,314.11
Japan	3,345.10
USA	3,087.15
South Africa	1,701.55
Malaysia	1924.14
Sweden	4,739.38
Other Origins	4,636.56
Total Average	2,657.85

It should be noted that the average price practiced by Indonesia (US$ 1,745.29/t) was the second lowest among all the most relevant origins, being 34.3% lower than the general price average. Furthermore, the average prices of possible alternative origins South Africa (lowest price practiced among all origins), Italy, South Korea, Holland and Belgium were below the total average price, while the average price for France was above average.

2.2.1.3 Trade balance of the product under analysis

In order to assess the profile of the largest exporters listed above, we also sought to reference imports from such origins based on their net exports (balance of exports minus imports) of the product, in tons, classified under codes 7219.32, 7219.33, 7219.34 , 7219.35 and 7220.20 of the Harmonized System (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 transactions, thus being a net exporter.

Among the countries with high export potential, few origins not investigated or not recorded by trade defense measure obtained trade surpluses, which can, in principle, be characterized as origins with an export profile based on the composition of exports and trade flow. In this context, South Korea, Belgium, 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 observe the recent profile of Brazilian imports. Thus, the table below shows the volume of Brazilian imports of cold rolled products 304 by origin, during the period of damage analysis of the dumping investigation, according to the clearance

carried out within the scope of Processes SEI-ME nº 19972.101391/2021-52 (restricted) and No. 19972.101392/2021-05 (confidential). The data shown do not consider imports of cold-rolled products of different grades than 304 and/or with a thickness of less than 0.35 mm or equal to or greater than 4.75 mm, perforated plates, wear plates, friction plates, profiles, plates, pressed transfer plates, sealing tapes, roof tiles, exhaust accessories, steel cable straps, stainless steel straps, tubes, among others.

Total imports (in ton index number) [CONFIDENTIAL]					
Origin	P1	P2	P3	P4	P5
Indonesia	100.0	138.4	126.4	687.2	3,147.0
Total under analysis	100.0	138.4	126.4	687.2	3,147.0
South Africa	100.0	120.5	143.1	118.5	84.3
U.S	100.0	56.6	170.1	174.0	163.5
Malaysia	100.0	158.4	235.3	253.4	229.7
China	100.0	35.6	50.6	94.7	53.9
Italy	100.0	74.5	94.4	80.9	372.1
Chinese Taipei	100.0	-	-	187.1	992.3
Finland	100.0	-	-	142.9	1,338.1
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 products 304 over the analyzed period. From P1 to P5, the total volume of Brazilian imports, in tons, grew by 74.0%. This increase is mainly caused by imports from Indonesia, which grew 3,047% from P1 to P5, and from the USA, which registered an increase of 63.5% in the period. The period of greatest increase in imports from Indonesia 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), which, in view of the origin disqualification procedure carried out by this Secex,

The result of these movements was a 1.4% decline in non-investigated imports between P1 and P5. The growth of imports from the USA was counterbalanced by the reduction of 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 enacted with the renewal of the anti-dumping measure carried out through Ordinance No. 4,353, of 2019, imports from that country showed a reduction of 46.1% between P1 and P5, reaching [CONFIDENTIAL] tons in P5. Imports from Chinese Taipei, another source 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 (Germany, South Korea, Finland and Vietnam), it is possible to notice that there was no relevant increase in the volume imported by Brazil: the highest increase observed refers to the imports from Finland, which grew [CONFIDENTIAL] tons. It is worth mentioning, however, the short period of time for assessing the growth of such imports, since the tariff reduction occurred on October 2, 2019 and the P5 data cover the period from April 2019 to March 2020.

Additionally, it is important to analyze the share of origins in Brazilian imports of cold rolled 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]

South Africa	[30-40]	[30-40]	[30-40]	[30-40]	[10-20]
U.S	[20-30]	[10-20]	[30-40]	[20-30]	[20-30]
Malaysia	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
China	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Italy	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Chinese Taipei	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Finland	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
South Korea	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Germany	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Other countries [1]	[20-30]	[10-20]	[10-20]	[10-20]	[0-10]
Total (except under analysis)	[90-100]	[90-100]	[90-100]	[90-100]	[50-60]
Grand total	100.0	100.0	100.0	100.0	100.0

During the analyzed period, Indonesia increased its share of Brazilian imports by [CONFIDENTIAL] pp, reaching [CONFIDENTIAL] % share of the total volume imported by Brazil at P5. China and Chinese Taipei, origins recorded as a trade defense measure, were jointly responsible for [CONFIDENTIAL] % of the volume imported by Brazil in P5.

Among the origins not investigated, the USA stands out, which, despite the loss of [CONFIDENTIAL] pp in the share of Brazilian imports, was responsible for [CONFIDENTIAL] % of the volume imported by Brazil in P5. Also noteworthy is South Africa which, despite having lost [CONFIDENTIAL] pp of participation, represented [CONFIDENTIAL] % of the total imports of cold rolled products by Brazil 304 in P5.

In this sense, Aprodinox highlighted, in its public interest questionnaire, the relevant participation of the origin investigated in the volume imported by Brazil. The association claimed that this participation was not caused by the practice of dumping, but rather by the reduced range of origins available for purchasing the product on the international market. He also highlighted that Indonesia started 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 potential competition concerns regarding the effects of a countervailing measure regarding international challenge in the sector. In the organ's view, there would apparently be five possible alternative origins, being China and Chinese Taipei, both origins recorded by trade defense measure, Indonesia, the origin object of analysis, USA and South Africa. In the case of South Africa, it is worth remembering that the anti-dumping investigation in relation to origin was closed without judgment on the merits. He further argued that imports from Malaysia, another possible alternative origin, "are also prohibited on grounds of non-compliance with rules of origin".

That said, there is a relevant increase in imports of cold rolled products 304 (74.0%) over the period analyzed, with most of this increase due to the growth in imports from Indonesia and the USA. In the case of South Africa, despite the reduction in the volume imported over the period, it is concluded that this origin remains one of the main origins of Brazilian imports of cold rolled products 304. existence of two possible alternative sources relevant in terms of volume imported by Brazil, namely, the USA and South Africa, with shares of [CONFIDENTIAL], respectively, in Brazilian imports of the product. Also noteworthy is the elimination of the origins of Germany, South Korea, Finland and Vietnam as of October 2019,

2.2.1.5 Price of Brazilian imports of the product under analysis

To deepen the examination of the existence of possible alternative sources of the product, it is also important to verify the evolution of prices charged by the main origins of Brazilian imports. According to the commercial defense investigation, the analysis was carried out on a CIF basis in order to make the analysis of the value of imports more uniform, considering that freight and insurance, depending on the origin considered, have a relevant impact on the price of competition between the products entering the Brazilian market.

Average price of imports (in index number of US$ CIF/ton)

[CONFIDENTIAL]

	P1	P2	P3	P4	P5
Indonesia	100.0	73.3	78.7	84.3	73.2
Total under analysis	100.0	73.3	78.7	84.3	73.2
South Africa	100.0	82.0	99.3	105.6	96.2
U.S	100.0	96.6	94.5	106.2	98.6
Malaysia	100.0	81.7	100.3	99.3	87.8
China	100.0	79.3	107.1	95.0	88.3
Italy	100.0	86.3	82.2	130.8	101.6
Chinese Taipei	100.0	-	-	143.4	123.0
Finland	100.0	-	-	80.0	74.6
South Korea	100.0	47.2	-	-	39.5
Germany	100.0	91.9	91.8	1,142.5	204.8
Other Countries [1]	100.0	81.0	91.5	99.9	89.7
Uninvestigated origins	100.0	81.9	94.4	101.9	93.8
Grand total	100.0	81.7	94.0	100.9	89.3

It is observed that the average price of total imports of cold rolled products 304 was [CONFIDENTIAL], registering a reduction of 10.7% between P1 and P5.

The average price of imports from Indonesia was [CONFIDENTIAL] in P5, having suffered a reduction of 26.8% between P1 and P5. In turn, the average price of imports from other sources was [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 drop of 3.8% compared to P1. The average price of the product imported from Indonesia was [CONFIDENTIAL] in P5, registering a decline of 26.8% in relation to P1. The USA, the most relevant uninvestigated origin in terms of volume imported by Brazil, charged an average price of [CONFIDENTIAL] in P5, a value 15.5% higher than that practiced by the investigated origin in the period.

It should be noted, in this sense, that the average price practiced by Indonesia was lower than that practiced by other origins in all periods. Among the non-investigated origins, the average import price from South Africa was lower than that of Indonesia between P1 and P4, while the US charged prices higher than those 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 concluding this public interest assessment, the following is observed:

- with regard to installed capacity and world production for 304 cold rolled products, it is estimated that Indonesia would be unrepresentative in terms of participation, reaching 1.0% of capacity and 1.9% of world production in 2018. Bear in mind, however, that such data do not include Indonesia's production and installed capacity growth in the following years, until reaching 2.1% of participation in the world's installed capacity in 2020, according to data presented by Aperam. It is worth remembering, moreover, that China and Chinese Taipei, recorded origins, are countries with relevant participation in terms of production capacity and world production of cold rolled 304, with China being the most relevant country. In this sense, according to data from the publication CRU Monitor Steel, the origins recorded or investigated would account for 53,

- on exports of the product, Indonesia accounted for 9.9% of the world exported volume in 2020, being the second most relevant country in terms of exported volume. Again, China and Chinese Taipei, recorded origins, account for a relevant share of world trade in cold rolled products 304, with a joint participation of 24.6%. Possible alternative origins, with emphasis on Italy, South Korea, Holland, Belgium, 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 all relevant origins, being 34.3% lower than the general price average. relevant origins, being 36.0% lower than the overall average. Furthermore, the average prices of the other possible alternative sources Italy (US$

2,434.13/t), South Korea (US$ 1,961.55/t), Netherlands (US$ 2,389.92/t) and Belgium (US$ 2,571 .83/t) were below the total price average, while the average price in France (US$ 2,847.24/t) and the USA (US$ 3,087.15/t) were above average;

- in terms of the trade balance, in 2020, Indonesia had a trade surplus in cold-rolled transactions 304. Of the origins with high export potential, it is observed that the origins not investigated USA, South Korea, Belgium and France had trade surpluses , which may, in principle, be characterized as origins with an export profile based on the composition of exports and trade flow;

- with regard to the evolution of imports, there is a relevant increase in imports of cold rolled products 304, of 74.0% over the period analyzed, with most of this increase due to the growth of imports from Indonesia and the USA, which recorded increases of 3,047.0% and 63.5%, respectively, in the period. It can thus be seen that the USA is the main alternative origin, with a share of [CONFIDENTIAL] % in the volume imported by Brazil in P5, followed by South Africa, with a share of [CONFIDENTIAL] % in the period; It is

- in relation to import prices, it is noted that Indonesia practiced lower average prices than other origins, with the lowest price in P5. South Africa, another relevant alternative origin in terms of imported volume, practiced lower prices than Indonesia between P1 and P4. The US, the most relevant alternative source, charged an average price 15.5% higher than the average price of imports investigated in P5.

Thus, evidence was observed that characterize Indonesia as a prominent origin in global terms, especially when considering its position in terms of world exports, being the second most relevant country. In addition, this origin has prospects for growth in production capacity and production of cold rolled 304, making the country more relevant in terms of world trade. There is evidence of an export profile in terms of the trade balance for the origin.

It should also be noted that China and Chinese Taipei, relevant world producers, are subject to anti-dumping measures. Thus, engraved or investigated origins account for more than half of the world production and production capacity of laminates.

On the other hand, there are elements that indicate that South Africa is not among the main origins for the supply of cold rolled products 304 in the world, since there are no indications of relevant participation in terms of productive capacity, production or world export volume. However, this origin, despite the reduction in the volume imported over the period, remained one of the main origins of Brazilian imports of cold rolled products 304, being the second most relevant origin not recorded or investigated, with the participation of [CONFIDENTIAL] % in the total volume imported by Brazil in P5. It should also be noted that the origin practiced prices lower than those practiced by Indonesia between P1 and P4, being the most relevant alternative origin in terms of penetration of imports throughout P1 to P5.

In addition, the US also stands out as a relevant alternative origin, with a share of [CONFIDENTIAL] % in the volume imported by Brazil in P5, although with an average price 15.5% higher than that practiced in imports from the investigated origin. Although other important producers such as Italy, Belgium, South Korea, Holland and France also sell the product in the Brazilian market, the volumes exported by these origins are currently much lower than those from Indonesia. Furthermore, among such 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 imported volume and price, being the second most relevant origin in Brazilian imports of the product. Likewise, the USA has also consolidated itself as a possible alternative origin in terms of production available for export to Brazil, in addition to being the most relevant alternative origin for Brazilian imports of the product in P5, 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 under analysis recorded with trade defense measures by Brazil and even if there are cases of application by other countries of trade defense measures for the same product. With this, considerations on the feasibility of alternative sources are deepened and evidence of the frequency of dumping practices and actionable subsidies in the market in question is obtained.

As shown in item 1.1, 304 cold rolled products, commonly classified under NCM codes 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM, are subject to trade defense measures by Brazil when imported from China and Chinese Taipei, according to Ordinance No. 4,353, of 2019.

In consultation with the Integrated Trade Intelligence Portal (I-TIP) of the World Trade Organization (WTO) for codes 7219.32, 7219.33, 7219.34, 7219.35 and 7220.20 of the Harmonized System (SH), it was found that there are trade defense measures applied by other countries on the product, as shown in the table below:

Trade defense measures on imports of cold rolled products 304

Trade Defense Measure	applying member	partner affected	Date of first application
anti-dumping	European Union	China	06/26/2014
anti-dumping	European Union	Chinese Taipei	06/26/2014
anti-dumping	India	China	04/22/2009
anti-dumping	India	Chinese Taipei	04/22/2009
anti-dumping	India	thailand	04/22/2009
anti-dumping	India	USA	04/22/2009
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 related to the tariff codes in question were in force, of which 29 (twenty-nine) were anti-dumping duties and 4 (four) countervailing measures. It should be noted that Indonesia is the target of an anti-dumping measure, applied by Vietnam.

The I-TIP database informs, moreover, the existence of dumping investigations by the investigating authority of India, in relation to imports of cold rolled products, when originating from China, European Union, Indonesia, Japan, South Korea, Malaysia, Mexico, Singapore, South Africa, Chinese Taipei,

Thailand UAE, USA and Vietnam. It should also be mentioned that Indonesia is reportedly conducting a dumping investigation in relation to imports originating in China and Malaysia. Finally, a dumping investigation was initiated by Mexico in relation to imports from China and Chinese Taipei.

Aperam and Aprodinox, in their public interest questionnaires, also mentioned the adoption of Section 232 by the USA, implementing surcharges on the country's imports of steel and aluminum. The parties also stated that these tariffs affect most of the US trading partners, including the investigated source.

Finally, the companies claimed that cold rolled 304 would be within the scope of the safeguard measures applied by the European Union on February 1, 2019, "in the amount of 25%, to be levied on the volume that exceeds the simple average of the volume of imports from the years 2015 to 2017". However, such a measure was not found in the I-TIP database.

2.2.2.2 Import tariff

In order to assess the country's tariff conditions at the level of the product in relation to international competition, an attempt was made to compare the Brazilian import tariff with the average tariffs of other countries.

Cold rolled 304 are normally classified under tariff sub-items 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 and 7220.20.90 of the NCM. The import tax tariff for these sub-items remained unchanged at 14% during the analysis period, according to Camex Resolution No. 94, of December 8, 2011, and Camex Resolution No. 125, of December 15, 2016.

In order to compare the Brazilian tariff with the international scenario, it is necessary to adopt more aggregate levels of tariff codes, corresponding to the 6 (six) digit nomenclature of the HS. In order to compare the Brazilian tariff of 14% for the product under assessment in P5, the simple average of Most Favored Nation tariffs reported by WTO member countries, excluding Brazil (totaling 131 countries), between 2015 and 2020 was calculated. , in relation to Harmonized System (HS) codes 7219.32, 7219.33, 7219.34, 7219.35 and 7220.20. The results of this comparison have been compiled in the chart below.

It can be seen that the average international tariff for the product is 4.03%, a level lower than that charged by Brazil. Furthermore, the Brazilian tariff of 14% is above the level practiced by 94.7% of the countries that reported their rates to the WTO. Only the countries Algeria, Cameroon, Central African Republic, Chad, Comoros, Gabon and Tonga practice import rates higher than the Brazilian one. In comparison with the five largest exporters of the product in 2020, the Brazilian II is higher than the average import tariffs practiced by China (7.3%), Indonesia (9.5%), Chinese Taipei (0%) and South Korea South (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 comparison between the II rates applied by Brazil and the average of the WTO member countries would not be adequate, since the tariffs applied in countries that do not produce rolled cold 304 would tend to be lower or even zero. However, it should be noted, as seen above, that the Brazilian rate is higher than 94.7% of the countries, with the 304 most relevant countries producing cold rolled products in world trade practicing average tariffs lower than the II in Brazil between 2015 and 2020.

It should be noted that, in November 2021, GECEX Resolution No. 269/2021 was published, granting a temporary reduction of around 10% in import tariffs applied to 87% of the codes that make up the NCM, including the product under analysis, in force until December 31, 2022. On May 23, 2022, GECEX Resolution No. 353 increased the previously applied temporary tariff reduction to 20%, so that the import rate applicable to the codes related to cold rolled products 304 increased to 11, two%.

On July 20, 2022, Mercosur announced, at the last Presidential Summit meeting, that Brazil, 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 permanently increased to 12.6%.

2.2.2.3 Tariff preferences

The sub-items referring to 304 cold rolled products have the following tariff preferences, granted in agreements by Brazil/Mercosur:

Tariff Preferences

Country	Agreement	Entry into Force of the Agreement	Preference
Argentina	ACE 18 - Mercosur	November 21, 1991	100%
Paraguay	ACE 18 - Mercosur	November 21, 1991	100%
Uruguay	ACE 18 - Mercosur	November 21, 1991	100%
ch-le	ACE 35 - Mercosur-Chile	November 19, 1996	100%
Bolivia	ACE 36 - Mercosur-Bolivia	May 28, 1997	100%
P-ru	ACE 58 - Mercosur-Peru	December 30, 2005	100%
equa-or	ACE 59 - Mercosur-Ecuador	February 1, 2005	69%
Israel	FTA - Mercosur-Israel	April 28, 2010	100%
venezu-la	ACE 69 - Brazil-Venezuela	October 07, 2014	100%
Colombia	ACE 72 - Mercosur-Colombia	December 07, 2017	100%
Egypt	FTA - Mercosur-Egypt	September 01, 2017	40%*

Among the countries that were granted tariff preferences from P1 to P5, none became a relevant source of Brazilian imports of cold rolled products 304. The countries that already had tariff preferences also do not stand out in the list of largest exporters of the product to the Brazilian market . Uruguay, a country that has 100% tariff preference for the product since the implementation of Mercosur, is the most relevant preferential partner, being the 17th (seventeenth) most important origin of Brazilian imports of cold rolled products 304 in P5, with only [CONFIDENTIAL] % of the total volume imported.

2.2.2.4 Temporary product protection

Brazilian imports of cold rolled 304 products originating in Indonesia are not currently taxed as a trade defense measure.

It should be noted, however, that the product under analysis, when originating in China and Chinese Taipei, has been enacted by a definitive trade defense measure since October 2013, based on Camex Resolution No. 79/2013, and remains in force until today. current regulations, extended by Ordinance SECINT No. 4,353, of 2019, in line with what is presented in item 1.1., totaling in this sense approximately 8 years with antidumping duty applied. Germany, South Korea, Finland and Vietnam 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 other countries related to codes 7219.32, 7219.33, 7219.34, 7219.35 and 7220.20 of the SH were found. For international comparison purposes, 474 non-tariff barriers were found by another 65 countries in relation to these Harmonized System codes.

In its public interest questionnaire, Aperam informed that, internationally, different nomenclatures are used to define the different types of stainless steel, the most used nomenclature being that of the American Iron and Steel Institute - AISI. In Brazil, according to the company, the Brazilian Association of Technical Standards - ABNT adopts the same nomenclature as AISI. He also informed that there are other international nomenclatures that specify the different types of stainless steel that can be used, depending on the region/country in which the product is manufactured/marketed. Aprodinox, in its public interest questionnaire, presented the same information.

Therefore, no non-tariff barriers imposed by Brazil on cold rolled products were identified 304.

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 understanding the behavior 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 and imports represent in the Brazilian product market. Thus, the Brazilian market for cold rolled 304 is described, based on data provided by the domestic industry and RFB statistics.

As explained in Circular Secex nº 40/2021, there was no captive consumption by the domestic industry, so that the apparent national consumption (CNA) and the Brazilian market are equivalent. With the objective of dimensioning the Brazilian market of cold rolled products 304, the quantities manufactured and sold net of domestic industry returns in the domestic market and the total imported volume calculated based on official data from the Special Secretariat of the Federal Revenue of Brazil (RFB).

The domestic industry (ID) in the benchmark subsidy investigation was defined as Aperam's cold-rolled 304 production line, which represented 100% of the national production of the product in the analysis period.

Brazilian market (in index number of tons) [CONFIDENTIAL]							
	Domestic Industry Sales		Investigated Origin Imports		Imports Other Origins		Brazilian market
P1	100.0	[70-80]	100.0	[0-10]%	100.0	[20-30]%	100.0
P2	127.7	[80-90]	138.4	[0-10]%	79.5	[10-20]%	116.3
P3	124.8	[70-80]	126.4	[0-10]%	122.0	[20-30]%	124.1
P4	132.0	[70-80]	687.2	[0-10]%	116.0	[20-30]%	131.5
P5	117.3	[60-70]	3,147.0	[10-20]%	98.6	[10-20]%	131.0

According to the data presented, the Brazilian market for cold rolled 304 rolled products grew 31.0% from P1 to P5, going from [CONFIDENTIAL] tons to [CONFIDENTIAL] tons. Along the intervals, it showed increases of 16.3%, from P1 to P2, 6.7%, from P2 to P3 and 6.0%, between P3 and P4. Then, 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 of the domestic industry also registered an increase, of 17.3% between P1 and P5. It was observed that the sales volume destined to the internal market grew 27.7%% from P1 to P2 and decreased 2.2%%, from P2 to P3. In subsequent periods, 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 the investigated origin: 3,047.0% considering the period between P1 and P5. Imports from other sources, on the other hand, presented a retraction of 1.4% between P1 and P5.

The domestic industry had its greatest share in the Brazilian market in P2, with [CONFIDENTIAL] % of the total volume traded. Since then, continuous reductions have been recorded, losing [CONFIDENTIAL] pp from the market from P2 to P5, when it reaches its lowest share in the Brazilian market, of [CONFIDENTIAL] %. The space lost by domestic industry sales was occupied by imports from the investigated origin, which grew [CONFIDENTIAL] percentage points in the Brazilian market from P1 to P5.

Aperam, through the analysis carried out by Tendências, informed that the commercialization of the product takes place through sales made directly to the industry or to distributors who, in turn, commercialize with the industry. Aperam's share of direct sales, according to Tendências, would depend on factors such as: the technical assistance offered, the exposure of the steel in question to changes in the price of nickel, the size of industrial clients, the industry segment, among others. According to the consultancy, the share of sales to distributors started from [CONFIDENTIAL] % of the total sold by the company in P1, reaching [CONFIDENTIAL] % in P5, which would reveal the relevance of distribution in the commercialization of this product.

Therefore, it is noted that the Brazilian market for cold rolled 304 rolled products grew at a greater rate than domestic industry sales, causing the domestic industry to lose market share over the analyzed period. The same occurred with imports from non-investigated sources. Losses of participation in 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 by the domestic industry, in the event of application of the trade defense measure. The production data of the domestic industry is analyzed in relation to the installed capacity and the idle capacity of cold rolled 304 of the domestic industry so that they can be compared with the data of the Brazilian market of the product.

It is noteworthy that the production line is shared with other types of laminates, whose representation is on average [CONFIDENTIAL] % of total production (other products and product under analysis) of the analysis period.

Installed Capacity, Production and Degree of Occupancy (in index number of tons) [CONFIDENTIAL]						
	Effective Installed Capacity (t)	Production (Product under analysis) (t)	Production (Other Products) (t)	Total Production (t)	Brazilian Market (t)	Degree of occupancy (%)
P1	100.0	100.0	100.0	100.0	100.0	[70-80]
P2	103.6	97.5	101.6	100.3	116.3	[70-80]
P3	99.6	94.1	103.1	100.2	124.1	[70-80]
P4	94.6	84.8	100.3	95.4	131.5	[70-80]
P5	100.0	73.3	91.4	85.7	131.0	[60-70]

Between the extremes of the analyzed series - from P1 to P5 -, there is stability in the effective installed capacity of the domestic industry, despite small variations over the intervals, the most relevant being between P4 and P5, with growth of 5.7% .

On the other hand, the production volume of cold rolled 304 showed constant decreases throughout the periods analyzed: 2.5% from P1 to P2, 3.5% from P2 to P3, 9.9% from P3 to P4 and 13 .6% from P4 to P5. Considering the entire analysis period, the volume produced declined by 26.7%. The production of 304 cold rolled products was higher than the Brazilian market between P1 and P3, reversing this trend from P4 onwards. Product production was, on average, equivalent to [CONFIDENTIAL] % of the Brazilian market from P1 to P5. The production of other products, in turn, also recorded a decrease over the period of analysis, reducing by 8.6% between P1 and P5. As a result, the degree of occupancy of the installed capacity showed a reduction of [CONFIDENTIAL] pp from P1 to P5, when it reached [CONFIDENTIAL] %.

From the data presented, it appears that the effective production capacity of the domestic industry is, on average, [CONFIDENTIAL] times higher than the Brazilian market in P5. However, it should be noted that the production line of the similar national product is shared with other products, whose production volume from P1 to P5 is, on average, [CONFIDENTIAL] times higher than that of cold rolled products 304.

Regarding this point, in a statement filed on October 20, 2022, Aperam informed that this fact is common in integrated plants, representing, instead of risk, a guarantee of production scale and sustainability in all aspects for the producing companies. Aprodinox, in a statement filed on the same date, accused negative impacts caused by the prioritization of more profitable product lines, but stated that it withdrew its demand for shortages due to the possibility of maintaining a supply flow with international suppliers due to the decrease in the values of freight and insurance, the cooling of the paninimation and the unital decrease of the TEC.

The degree of occupancy of the 304 cold-rolled production line remained at levels considered low throughout the period of analysis, ranging from [CONFIDENTIAL] % at its highest rate (P4) to [CONFIDENTIAL] % at the lowest occupancy period (P5), which demonstrates relevant available capacity to increase the production of the product. The nominal idleness of the domestic industry at P5 (about [CONFIDENTIAL] tons), would allow the domestic industry to still serve [CONFIDENTIAL] % of the Brazilian market in the same period.

In this regard, Aprodinox and Inoxplasma claimed, in their public interest questionnaires, that Brazil has faced a shortage of steel products, including stainless steel, to supply domestic demand since 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]. They also informed that [CONFIDENTIAL]. In this sense, they claimed that [CONFIDENTIAL].

On the other hand, Aperam, in its public interest questionnaire, argued that there are no difficulties or lack of meeting domestic demand, even if the requested anti-dumping measure is implemented. Thus, it indicated that it has sufficient effective installed capacity to serve the entire Brazilian market, if necessary.

In addition, he stated, in a statement filed on May 31, 2022, that he made investments that involve the modernization of the plant, reduction of its production costs, elimination of bottlenecks, development and research of new products and technology, so that the results of such investments would be demonstrated in the "competitive production costs of the company and, also, in the development of products according to the specific demand of each client, contributing to the continuous improvement of the quality not only of the product under analysis, but also of the final product produced by industries in the downstream chain". In this regard, he also indicated that he will invest R$ 588 million in the coming years, with a focus on "continuous modernization of the plant and sustainability in the production of green steel,

Regarding the arguments of Inconel and Usina Metais, Aperam argued that the risk of restrictions in the supply of the domestic product would be lower than that of the imported product, "Aperam's lead time being much lower than that alleged by the mentioned companies". He also claimed that there was no history of production problems as indicated by the companies. In the view of the party, the Brazilian market is supplied both by the national product and by the imported product, so that the application of a compensatory measure would only aim to "correct the distortion caused by the granting of subsidies by the Indonesian government and guarantee fair competition between several players in the Brazilian market".

Furthermore, Aprodinox, in a statement filed on July 7, 2022, alleged delays in the delivery of products by the petitioner. In response to the allegation made, Aperam, in its manifestation filed on October 3, 2022, informed that during the context of the pandemic, the domestic industry guaranteed the supply of the Brazilian market and, once the supply via imports was regularized, the distributors again began to opt for these to the detriment of acquisitions from the domestic industry.

With regard to sharing the production line with other products, Aperam, in its statement filed on October 10, 2022, claimed that it is common in integrated plants to guarantee scale and sustainability of production in all its aspects to the producing companies. In this context, he also reiterated that, basically, no foreign producer/exporter works with a line exclusively for the similar product, which does not make sense for the Brazilian producer.

In view of the above, there is evidence that the effective installed capacity of the domestic industry was superior to the Brazilian market in all periods analyzed and that there is available capacity to significantly expand the production of cold rolled products 304.

In addition, arguments were presented relating to delays in the supply of the product by consumers of cold rolled products 304, but without supporting evidence. The domestic industry, in turn, claimed to have guaranteed domestic supply in a period of import restriction during the Covid-19 pandemic. In this sense, even if the occurrence of delays in supply is admitted, the manifestations of the parties throughout the process did not allow to evidence quantitative restrictions of supply by the domestic industry.

Furthermore, as the domestic industry has sales in the foreign market, it should also be noted whether there is the possibility of prioritizing such operations, which could lead to a risk of shortages in the Brazilian market. To this end, the characteristics of all domestic industry operations (sales to the 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

It is observed that, in all periods, domestic industry sales were greater than sales to the foreign market. Domestic market sales represented, on average, [CONFIDENTIAL] % of total operations, ranging from [CONFIDENTIAL] % in P1 to [CONFIDENTIAL] % in P5. Sales in the foreign market represented, on average, [CONFIDENTIAL] % of total operations, ranging from [CONFIDENTIAL] % in P1 to [CONFIDENTIAL] % in P5. These facts show the relevant reduction in sales by the domestic industry to the foreign market, which fell by 84.2% between P1 and P5.

Thus, there is a significant reduction in the relevance of sales by the domestic industry to the foreign market. Therefore, it is not possible to indicate possible prioritization of markets for this product in relation to export operations.

2.3.3 Risk of restrictions on national supply in terms of price, quality and variety

2.3.3.1 Risk of restrictions on domestic supply in terms of price

In this section, an attempt is made to assess any risk of restrictions to the national supply in terms of price, quality and variety. With regard to price analysis, the existence of elements that may indicate possible exercise of market power by the domestic industry is verified.

Regarding the risk of restricting domestic supply in terms of price, available information on the price of cold rolled 304 sold by the domestic industry and its production cost, updated based on P5, is analyzed in order to identify possible restrictions to the product offer, as shown in the table and graph 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)	Ratio (A)/(B) (%)
P1	100.0	100	[70-80]
P2	87.9	88.6	[70-80]
P3	96.0	95.4	[70-80]
P4	107.3	103.4	[70-80]
P5	106.5	98.3	[80-90

Note that the ratio of production costs to prices charged by the domestic industry was, 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 6.5% increase in production costs and cold rolled 304, combined with a 1.7% decrease in the product's domestic sales price over the period analyzed. Therefore, it can be noted that the ratio between production cost and domestic sales price showed successive increases, with deterioration of this ratio over the period of analysis, that is, with loss of profitability in the cost-price ratio.

Complementarily, the behavior of nominal prices of the domestic industry was compared with the evolution of indices associated with the weightings of groups and individual products of the Broad Producer Price Index, according to the sectors of origin (IPA-OG-DI). The objective is to understand how the price of the domestic industry product varied in relation to other industrial product prices. The average of the monthly price index for industrial products for each period was considered. Furthermore, domestic industry prices and indicators have been transformed into index numbers based on P1 for ease of comparison.

It should be noted that, considering the whole period analyzed, the price of the domestic industrial product increased by 25.2%, while the industrial products index increased by 27.4%. The price and the index followed, roughly speaking, the same growth trend, with the exception of P2, in which the price of the domestic industry suffered a nominal reduction, while the price index registered growth. Considering the extremes of the series, it can be concluded that domestic industry prices recorded lower growth than that observed in the index of industrial products.

Still regarding the evolution of prices, it is worth comparing the trajectory of the price of the domestic producer with the price of Brazilian imports of cold rolled products from P1 to P5, both updated based on P5. In the table below, imports from the analyzed origin and the average of imports from other origins are used as a basis for comparison, in CIF reais per ton based on the exchange rate of actual operations, according to RFB import statistics.

Comparison of domestic industry prices and imports (in index number of BRL CIF/t) [CONFIDENTIAL]			
Periods	Domestic Industry	Origin in Analysis	Other Origins
P1	100	100	100
P2	88.6	73.9	73.0
P3	95.4	75.3	80.9
P4	103.4	97.8	93.3
P5	98.3	92.2	87.8

It is noted that the domestic industry's sales price was higher than the price of the imported product (calculated under the CIF condition) from the investigated origin and from other origins in all periods. Furthermore, it is observed that the price of the investigated origin declined 7.8% from P1 to P5, while the prices of the domestic industry and other origins dropped 1.7% and 12.2%, respectively, in the period. On average for the analyzed period, the price practiced by the domestic industry is [CONFIDENTIAL]% higher than the price of cold rolled 304 imported from Indonesia and [CONFIDENTIAL] % higher than that imported from other sources.

In this context, Aprodinox, in its public interest questionnaire, claimed that the price of the domestic industry recorded variations greater than inflation, measured by the IPCA and the IGP-DI, throughout 2018 and 2019, which represented real growth in prices of the product.

It is worth noting, however, as previously shown, that the growth in prices practiced by the domestic industry throughout 2018 and 2019 offset the drop that occurred in 2017, causing the industrial price index to increase more than that observed in Aperam's domestic prices , when considering the entire period of analysis.

It also presented a comparison between the sale price of the product by the domestic industry and the cost of nickel, in index numbers based on January 2017. For domestic industry prices, data referring to gauges 0.49 were used. ~ 0.40 and 4.00 ~ 2.00, products with higher volumes and higher discount percentage, according to Aprodinox. The association did not disclose the source of the nickel cost data. The data is shown in the following graph:

However, based on the data provided by the association, it was not possible to replicate the evolution of nickel costs, as presented. In the graph shown, the average cost of nickel in March 2020 appears to be lower than that recorded in January 2017, while the data provided show a 31.2% growth in the period, based on the monthly average of daily closing prices, or that is, with growth higher than that registered in domestic industry prices.

Aperam, through the analysis carried out by the Tendências consultancy, carried out cointegration tests to verify the long-term relationship between the domestic prices practiced by the domestic industry and the prices practiced in the international market, and estimated an error correction vector (VEC), used to corroborate the results obtained based on the cointegration test. To this end, it used the monthly prices of 304 stainless steel charged by Aperam for its customers as a domestic industry price parameter and, as an international price parameter, adopted the monthly price of Cold-rolled Grade 304 (2mm) China Export FOB from the data provided by CRU Group. Tendências carried out the analysis considering data between January 2011 and December 2020. Shipping and internalization costs were 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 were used to assess the existence of a long-term relationship between domestic and foreign prices of stainless steel, considering the following variable cost composition:

- International price of nickel ([CONFIDENTIAL] %);

- International Chrome Price ([CONFIDENTIAL] %);

- International price of iron ore ([CONFIDENTIAL] %);

- Electricity price paid by Aperam ([CONFIDENTIAL] %);

Based on this data, Tendências presented the graph below, which shows the series of stainless steel prices in the domestic and foreign markets and the cost vector.

According to the consultancy, analysis of the graph would demonstrate similarities in the dynamics of domestic and foreign prices, which would denote the possible long-term relationship between these variables.

In view of the study carried out, Tendências concluded that stainless steel prices in the domestic market adjust to international prices, in order to maintain a long-term equilibrium relationship. According to the consultancy, these results "indicate the disciplining power that international prices have on domestic prices, evidence compatible with the fact that Aperam follows the dynamics of international prices". In this sense, it claimed that the company is not able to exercise market power, thus not having the ability to control prices and/or volume offered. Thus, he argued that the adoption of trade defense measures against countries that do not determine international prices is only capable of realigning "the internalized prices of imports from these origins to the market prices of the product,

In response to the test carried out by the company Tendências, Aprodinox argued, in a statement filed on July 7, 2022, that such an exercise would have a limitation in the sense of not verifying the differences between the price levels practiced by the domestic industry and the imported product . According to the association, Aperam could, over the period evaluated, be exercising its market power and charging prices well above those of the imported product: "its prices would follow the dynamics of international prices, but with a high margin of comfort. the opposite could also be happening. Thus, the tests carried out would not be sufficient to conclude that the prices of imported products would discipline the company's prices, "

In its manifestations of October 3, 2022, reiterated by the final manifestations of October 20, 2022, Aperam defends that domestic industry prices followed international market prices On September 9, 2022, Aprodinox presented a manifestation in which it reiterates the information previously presented and in its final manifestations of October 20, 2022, Aprodinox criticized the Tendências opinion regarding the fact that there was no finding that prices in Indonesia and South Africa would be benchmarks for prices in the domestic industry.

In view of the above, there is evidence that the nominal domestic sales price of the domestic industry behaved similarly to the industrial price index, having even recorded a lower increase in the analyzed period. It should also be noted that, in real terms, the price of the domestic industry contracted between P1 and P5, while there was a real increase in the cost of production, thus generating an increase in 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 adjust to international prices, thus not having the market power of the domestic industry to control prices. . Both based on official import statistics and on the cointegration test presented by Aperam, it appears that the variation in domestic industry prices follows the prices charged by other origins. However, it should be noted that the prices practiced by the domestic industry were higher than the analyzed origin and the average of the 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 variety, Aprodinox, Inoxplasma, Inconel, Jati and Usinas Metais argued that the domestic industry does not produce certain widths and finishes of cold rolled products 304. information contained in Processes SEI-ME nº 19972.100974/2021-66 (public) and nº 19972.100976/2021-55 (confidential), Aperam manufactures cold rolled 304 in standard widths of 1,020 mm, 1,040 mm, 1,220 mm, 1,240 mm , 1,250 mm, 1,270 mm, 1,295 mm and 1,320 mm, it being possible, however, to supply the product in the width that the customer

requires, up to the limit of 1,320 mm. The 304 cold laminates are manufactured by the company with the following finishes: nº 2B, nº 3, nº 4, nº 6, TR Finish, BB (Buffing Bright), RF (Rugged Finish), SF (Super Finish) and HL (Hair Line).

Regarding the risk of restrictions on the national supply in terms of quality, Inoxplasma claimed that [CONFIDENTIAL]. It should be noted, however, that such measures are not included in the scope of the measure under analysis. He also argued that [CONFIDENTIAL].

In this regard, Aperam stated, in its public interest questionnaire, that flat rolled stainless steel manufactured in-house are subject to the same technical regulations as imported products, and there is no differentiation between them.

He also informed that he made investments involving the maintenance and reduction of the production plant, reduction of production costs, elimination of bottlenecks, development and research of new products and technology. According to the company, the results of such investments would be demonstrated in the "competitive production costs" and in the development of products according to the specific demand of each customer, a fact that contributes to the continuous improvement of the quality of cold rolled 304 and final products produced in the downstream chain. Thus, he pointed out that the domestic industry would be technologically up-to-date in its production process and portfolio, competing under similar technological conditions with imported products, regardless of origin.

Furthermore, the company claimed, in a statement filed on May 31, 2022, that it manufactures 304 cold rolled products with different finishing standards. In the case of the BA finish, which would not be produced by the domestic industry, Aperam argued that it produces the product with a 2B finish, "which also provides a reflective and shiny effect, the difference between these types being imperceptible to the naked eye". In the view of the party, the products under analysis would follow international standards, so that there would be no differences in quality between the domestic and imported product.

In this sense, he cited Camex Resolution No. 79/2013, which applied anti-dumping duties on Brazilian imports of cold-rolled stainless steel (grades 304 and 430), originating in Germany, China, South Korea, Finland, from Chinese Taipei and Vietnam:

"Similarly, finishes, even if processed differently via chemical or physical action on the steel 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 reiterated, reaffirming that the product manufactured in Brazil has the same physical characteristics, chemical composition and serves the same uses as the imported product. Both compete in the same market, and there is no type of use of cold rolled stainless steel in which it is impossible to replace the imported product with the domestic one. [...]."

Similarly, he cited Ordinance Secint No. 4.353/2019, which extended the said right for imports from China and Chinese Taipei:

"It should be noted that possible differences in the quality of the product do not affect the conclusions regarding similarity. There is information in the file that contradicts the allegations made by 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 characteristics and surface quality obtained through the BA-type finish, it should be clarified, in spite of the similarity between the product manufactured by the domestic industry and the imported product, differences of finishing, mainly when they involve additional productive stages that are considered for purposes of fair comparison".

With regard to 304 cold rolled products with widths greater than 1,500mm, the company indicated that the product with a width of less than 1,500mm could "perfectly be used for the same applications as flat laminates with a width greater than 1,500 mm, therefore , replaceable products". In this regard, he again cited Camex Resolution No. 79/2013:

"With regard to claims for the exclusion of types of products due to the lack of national 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.

The product manufactured in Brazil has the same physical characteristics, chemical composition and serves the same purposes as the imported product. This means that the national and imported product compete in the same market. There is no type of use of cold rolled stainless steel in which it is impossible to replace the imported product with the domestic one.

Specifically with regard to "ultra-wide" steels, it is a fact that the cuts in a coil can be made longitudinally or transversely, depending on the interest of the product user. Therefore, a larger or smaller coil width will not determine different markets for its use.

[...]

Thus, the position set out in DECOM Technical Note n 43 of 2013 is reiterated, reaffirming that the product manufactured in Brazil has the same physical characteristics, chemical composition and serves the same uses as the imported product. Both compete in the same market, and there is no type of use of cold rolled stainless steel in which it is impossible to replace the imported product with the domestic one. Furthermore, it is stated again that a greater or lesser width of the product will not determine distinct markets for its use."

Thus, the party argued that there were no differences in quality or variety between the domestic and imported product, an argument reiterated in its final manifestations of October 20, 2022.

Regarding product quality, Aprodinox states in its final statements of October 20, 2022, 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, it is understood that no elements were presented that indicate quality restrictions in relation to the product supplied by the domestic industry. With regard to the variety of the national offer, despite the recognition by the domestic industry that it would not produce the product with a thickness greater than 1,320 mm and with some finishes, no elements were provided in the process that indicate the distinct use and the essentiality of this product variety for the downstream chain, nor on the availability of such a variety among producers/exporters of the origin under analysis. In this sense, it was not possible to reach a conclusion 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 discriminatory practices between customers

With regard to the risk of restrictions on national supply in terms of discriminatory practices between clients, CADE cited, in its public interest questionnaire, the Economic Concentration Act No. and effects of a vertical integration when carried out between horizontally concentrated economic agents.

Furthermore, CADE cited Administrative Proceeding No. 08700.010789/2012-73, in which there were allegations of non-compliance with the guidelines expressed by the agency in relation to anticompetitive practices in the stainless steel segment, within the scope of Economic Concentration Act No. 08012.005092/2000-89 . Within the scope of this Administrative Proceeding, the body informed that, at the time, potential indications of anti-competitive conduct were identified with regard to the privileged treatment of distributors who were part of the Aperam group and the Aperam distributor network (RAD) and the limitation access to the company's products.

The body also argued that the policy of "discounts for distributors according to the percentage of the purchase volume that is dedicated to the represented company, without any adherence to the absolute purchase volume" carried out "configured a form of non-linear discount. Thus, it stated that such a discount policy could have as its scope "restricting the competition of imports, without efficiency counterparts for the represented company that eventually justifies the legitimacy"of the practice".

The Administrative Proceeding in question was terminated by means of a Cessation Commitment Term signed in April 2015, in which the company undertook to:

- not to offer any commercial advantage to the distributor of its economic group that is not extended to the other distributors: "the Promise Party undertakes the obligation to abstain [...] from granting any advantage to the distributor of its group, especially regarding price, terms of payment and supply, which is not extended to other distributors, whenever purchases are made under equal conditions";

- "not to practice any non-linear discount to distributors whose purpose or effect is to induce the exclusive acquisition of products from the Buyer";

- "refrain from adopting a clause that has the object or effect of restricting the importation of stainless steel"; It is

- "refrain from imposing any change in commercial policies due to any decision to import or purchase a competing product by distributors".

CADE claimed, in this sense, that the conclusion of the TCC did not constitute an analysis of the merits regarding the object of the aforementioned Administrative Proceeding by the body. In the same way, Aperam, its managers and agents, did not configure "confession regarding the matter of fact nor acknowledgment of guilt, illegality or any irregularity of conduct, and, on the part of Cade, it does not generate precedent on the matter" .

He also informed that "in cases of unilateral conduct in which, in most cases, the unlawfulness of the practice depends on a detailed assessment of the market structure, its pattern of competition and also the justifications for the practice in relation to its possible anticompetitive effects, it is not mandatory, in all cases, to recognize the offense when signing the TCC". In this way, the TCC could be entered into without a final understanding by the authority regarding the occurrence or not of the violation of the economic order.

CADE finally cited Preparatory Procedure No. 8700.000841/2021-74, in which Aprodinox presented a report explaining alleged anti-competitive conduct that would be being practiced by Aperam:

- "Price practices by Aperam Serviços incompatible with the market - practice of prices below costs, harming the profit margins of the other distributors in the market (margin squeeze);

- Discriminatory rule between DIA Distributors (Integrated Aperam Distributor) and DRA (Regular Aperam Distributor);

- Changes in the volume range criteria;

- Changes in Aperam's pricing policy; It is

- Procedures to limit and discourage the import option".

However, CADE informed that the process is in the investigation phase, and no decision on the merits has been issued by the authority when completing the public interest questionnaire.

Aprodinox, in turn, also highlighted Administrative Proceeding No. 08700.010789/2012-73, to the detriment of Aperam due to "anti-competitive practices that consisted of discriminating against stainless steel buyers, restricting imports and favoring the distributor of the same economic group from Aperam". As seen previously, according to the association, the economic study presented by Inox-Tech within the scope of the aforementioned Administrative Proceeding indicated the following mechanisms adopted by Aperam:

- creation of "RAD", a distribution network for the Promise Party's products, imposing the obligation of "RAD" distributors to acquire 75% of their demand directly from Aperam;

- creation of a mechanism called "Virtual Import", through which distributors would receive discounts if they did not import products competing with those of the Buyer and would lose such discounts gradually as they started to import such products;

- antidumping measures used to burden the import of competing products, with the aim of "closing the market" and "preventing distributors from gaining enough market power to operate solely on the basis of imports".

In addition, according to the association, SICETEL alleged, in the Administrative Proceeding, that Aperam would be taking advantage of its dominant position in the Brazilian market to "impose abusive sales conditions on its distributors, such as limiting imports under penalty of expulsion from the accredited network and favoring the own verticalized distributor".

The TCC that ended the Administrative Proceeding in question also instituted the Força Inox Aperam program, in which the current models of relationship with distributors were created: Aperam Integrated Distributor (DIA), Aperam Regular Distributor (DRA) and independent distributors.

Aprodinox indicated that DIA distributors exclusively market products from the domestic industry, with the exception of products not manufactured by the company. According to the association, the main advantages of this category would be:

- Access to investments by Aperam in marketing, sales, joint development and innovation;

- Right to use the Aperam brand;

- Full access to corrective, preventive and differentiated technical assistance;

- Access to the material available on equal terms with other DIA distributors and with priority over DRA distributors; It is

- order scheduling two months in advance.

With regard to DRA distributors, Aprodinox informed that they do not have an exclusive contract with Aperam. He also informed that orders must be placed three months in advance, "by offering at least 2 (two) firm and unalterable purchase orders in volume and line, for the months ahead". According to the association, this category includes the following advantages:

- Access to some investments by Aperam in marketing, sales, joint development and innovation;

- Full access to corrective, preventive and differentiated technical assistance; It is

- Access to material available on equal terms with other DRA distributors.

Finally, independent distributors, referred to as "Spot Buyer" by Aprodinox, would not be subject to any regular purchase obligation from Aperam. According to the association, there is no price difference between independent distributors, but the values would be higher than those practiced for DIA and DRA distributors. It also stated that purchases in this category would only be made via auction and corrective technical assistance would be limited to products supplied by Aperam.

Furthermore, Aprodinox stated that the prices practiced for DIA and DRA distributors only depend on the volume purchased, with no differentiation between these categories. For additional orders, the price practiced for the independent distributors category would be used. However, it alleged that, over the past few years, there has been a significant migration of DIA distributors to the condition of DRA.

Furthermore, the association claimed that Aperam, "in clear abuse of its position of market dominance, has repeatedly adopted anti-competitive conduct in order to ensure that its customers and distributors do not choose to import the product". In this context, he claimed to have filed a Complaint with CADE against Aperam for abuse of a dominant position, in line with the information presented by the body.

CADE produced a technical note in which it decided to initiate an Administrative Inquiry to Investigate Violations of the Economic Order. In the Technical Note for the instruction of the fact, it was informed that the Board must adopt the following measures, without prejudice to others that may prove necessary: dispatch of letters to market distributors for data collection and better understanding of how each one is affected for the denounced practices; evaluation of how to change exchange rates to price the product; detailed analysis of Aperam discount tables and their amendments; and data collection for better understanding of the MD system.

In addition, in a statement filed on July 7, 2022, the association stated that the migration from the DIA condition to the DRA would imply the loss of a series of advantages: "if the migration to DRA allows the importation of the product by distributors, at the same time it ends up making the company operate in a range with lower discounts or even making spot purchases, which takes away much of the competitiveness of this distributor in the market, given that the differences between spot prices and those of the highest discount ranges can exceed 10%".

In this sense, he stated that the three largest distributors of cold rolled 304 decided to migrate from the DIA category to the DRA between 2019 and 2020, leaving only the company Aperam Serviços and two more "small companies" in the DIA category. The association presented a chart showing the evolution of distributors allocated in each category. According to the data, there was a reduction in the total number of distributors from 19 to 17 and the migration of DIA distributors to the DRA condition. DRA distributors represented 63% of the total in June 2016 (12 out of 19) and now represent more than 76% (13 out of 17), depending on the association.

According to Aprodinox, "in order not to lose import volume - in January 2021, Aperam implemented a new commercial policy, with a new pricing model. This model linked [CONFIDENTIAL], a practice that clearly distorted the spirit of the TCC". The association argued that the new discount policy

practiced by Aperam established that six periods would be taken into account to calculate the average purchase volume of each customer, with the following differentiation between DIA and DRA:

Aprodinox also informed that a discount would have been created for oscillations in purchased volumes, according to the following criteria:

- For volume variations of up to 5%, the discount would be 3.8%;

- From 5.01% to 10%, discount would be 3%;

- Between 10.01% and 15%, 1.6% discount;

- Between 15.01% and 20%, the discount of 0.8%; It is

- Variation greater than 20%, without discount.

Thus, the party claimed that the incentives created by the new policy would have been implemented to ensure that distributors, whether DIA or DRA, keep their purchases from Aperam always at the same level, preventing them from "concentrating their purchases through imports in a few months, in which the purchases with Aperam would be smaller". Therefore, incentives for distributors to import the product under analysis would be eliminated, impacting, above all, smaller distributors in situations of reduced demand.

On September 9, 2022, Aprodinox filed a statement in which it reiterates the information previously presented.

Regarding the subject, Aperam informed, in its public interest questionnaire, that DIA distributors have a closer relationship with the company and undertake not to import products manufactured by it. DRA distributors, on the other hand, could import any product, without an exclusive contract with Aperam. Both DIA and DRA distributors have a contract with Aperam and undertake to make minimum monthly purchases, with no barriers to migration between relationship models. Finally, independent distributors have no commitment to Aperam and are usually supplied through imports. Aperam informed that there is only one price differentiation criterion in the supply to distributors, that is, the volume purchased.

Furthermore, the company argued, in a statement filed on May 31, 2022, that Preparatory Procedure No. 8700.000841/2021-74 would have the purpose of determining whether the conduct under analysis is a matter within the competence of CADE or if it concerns only a dispute private, outside the competence of the Council. Thus, according to the party, there would not be enough evidence for the establishment of an "investigative procedure of an inquisitorial nature (called the Administrative Inquiry), much less for the opening of an administrative process to impose administrative sanctions for infractions of the economic order (called of Administrative Process)".

With regard to the Term of Cessation Commitment signed in April 2015, the company claimed that the monitoring carried out by CADE would have been "rigorous and intense" and that, during its term, Aprodinox would not have presented to CADE any fact or allegation of its possible non-compliance. In this sense, according to Aperam, the representation presented by Aprodinox to CADE would not present new facts: "all data and information presented by Aprodinox to CADE refer to the period in which the TCC was in force and in which CADE monitored and supervised intensely the performance of the company". Finally, the party indicated that it had not practiced any type of discrimination between distributors, "strictly applying the same commercial policy to all customers, including Aperam Serviços,

Having reported the manifestations, it is pointed out that, from the point of view of the public interest analysis, it was not possible to conclude whether the distribution policy practiced by Aperam would be configured as a restriction to the national offer. Distribution among exclusive distributors (DIA), non-exclusive with volume discounts (DRA) and spot purchases was subject to CADE's agreement and is also observed in the supply of several other products. That said, the alleged anti-competitive practices pointed out by the party, as reported in this document, are currently being analyzed by the competition authority, through Preparatory Procedure No. 8700.000841/2021-74, and must be forwarded 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:

- the Brazilian cold rolled 304 market grew 31.0% from P1 to P5, going from [CONFIDENTIAL] tons to [CONFIDENTIAL] tons. In the same period, domestic industry sales increased by 17.3% from P1 to P5, causing Aperam to lose [CONFIDENTIAL] pp of market share. The space lost by domestic industry sales was mainly occupied by imports from the investigated origin, which grew by 3,047.0% between P1 and P5, registering [CONFIDENTIAL] % of participation in the Brazilian market in P5, and by imports from from the US, which grew 63.5% in the period, reaching [CONFIDENTIAL] % share in P5;

- the effective production capacity of the domestic industry is, on average, [CONFIDENTIAL] times higher than the Brazilian market in the respective period. It is also noteworthy that the degree of occupation of the domestic industry remained at low levels throughout the analyzed period, reaching [CONFIDENTIAL] % in P5. Despite the production line of the similar national product being shared with other products, the nominal idleness in P5 would allow the domestic industry to still serve [CONFIDENTIAL] % of the Brazilian market in the same period;

- in terms of domestic industry operations, there is an increase in the importance of domestic industry sales in the domestic market, which corresponded, on average, to [CONFIDENTIAL] % of total operations from P1 to P5, ranging from [CONFIDENTIAL] % in P1 to [CONFIDENTIAL]% in P5. Therefore, it is not possible to indicate possible prioritization of markets in this product in relation to export operations;

- with regard to the risk of restrictions in terms of price, it is noted that the ratio of cost to production price showed continuous increases over the period analyzed, reaching its highest level in P5, when it reached [CONFIDENTIAL] %. This movement was the result of the increase in the cost of production 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 price of the domestic industrial product increased by 25.2%, while the industrial products index increased by 27.4%. The price and the index followed, roughly speaking, the same growth trend, with the exception of P2, in which the price of the domestic industry suffered a nominal reduction, while the price index registered growth. Thus, the price of the domestic industrial product recorded a lower increase than that observed in the index of industrial products over the analyzed period;

- in terms of comparing the price of the domestic industry and imports, the sale price of the domestic industry was higher than the price of the imported product (calculated in the CIF condition) 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 and other origins dropped 1.7% and 12.2%, respectively, in the period;

- no elements were presented that indicate quality restrictions in relation to the product supplied by the domestic industry. With regard to the variety of the national offer, there was disagreement between the parties, without providing elements that indicate different use and the essentiality of varieties not commercialized by the domestic industry, nor about the availability of these products among the producers/exporters of the origin under review; It is

- in relation to the restrictions on the national offer in terms of discriminatory practices between customers, the elements presented by the interested parties were not sufficient to reach a definitive conclusion.

Thus, it was identified that the domestic industry has sufficient production capacity to fully serve the Brazilian market of cold rolled products 304 and that there was no prioritization of export operations by the domestic industry in relation to domestic sales.

With regard to prices, it was verified that, even with the application of anti-dumping duties in relation to several origins in the analyzed period, the domestic industry was not able to increase its profitability, having presented the lowest gross profit margin in P5, and modified its prices at levels lower than the industrial products index. On the other hand, the price of the domestic product is, as a rule, higher than the price of imported products from the origin analyzed and the average price from other origins, with the exception that such comparison is affected by the difference in the basket of products sold by each origin.

Finally, the arguments presented regarding delays in supply, lack of national supply of certain varieties and discriminatory practices between customers do not allow for a conclusion in the sense of restricting the national supply. The variety restriction arguments lack elements that address the essentiality

of the demand for the indicated types and supply alternatives, while the allegations of delays have not been properly substantiated. The allegations about anticompetitive practices of discrimination between clients are under analysis by CADE, which is the competent authority on the matter.

2.1 Impacts of the trade defense measure on the dynamics of the Brazilian market

In the final assessment of public interest in trade defense measures, the aim is to assess the impacts of the trade defense measure on the dynamics of the domestic market. In the present case, it is necessary to analyze the possible effects arising from the imposition of the anti-dumping duty and forecasts of the impacts on the product's market dynamics in view of the conclusions reached in trade defense, according to SEI-ME Processes No. 19972.101391/2021-52 (restricted) and No. 19972.101392/2021-05 (confidential).

As one of the ways of estimating the effects of the trade defense measure, a simulation based on the Partial Equilibrium Model is used. Said methodology is foreseen in the Consolidated Guide of Public Interest in Commercial Defense, which describes the system of equations used and the way of obtaining the variation of welfare of interest, available to the parties in public access.

Despite its limitations, the partial equilibrium model has support in the literature for use in the context of the repercussions of trade defense measures on the economy and, probably for this reason, it is also adopted, for example, by trade defense authorities in the scope of assessments similar to the public interest, as in New Zealand and the United Kingdom, which reinforces the adequacy of its use in line with the best international practices. In any case, it is emphasized that the parties are not bound by the use of this model, as clarified in the Consolidated Public Interest Guide.

Such a partial equilibrium model departs from the Armington framework, in which products from different origins are treated as imperfect substitutes and, given the constant elasticity of substitution (CES) structure, the substitutability between products can be governed by the elasticity of substitution (s), known as the Armington elasticity. The structure of the presented model followed the work of Francois (2009), with the only difference being that it considered the perspective of a single country, while Francois considers a global model with "n" countries importing and exporting.

Considering the absence of estimates for the Brazilian market in relation to the price elasticity of 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 product "cold-rolled flat steel products" were used to define the parameter, which includes several products classified under codes 7209.15, 7209.16, 7209.17, 7209.18, 7209.25, 7209.26, 7209.27, 7209.28, 7209.90 , 7210.70, 7211.23, 7211.29, 7211.90, 7212.40, 7225.50, 7225.99 and 7226.92 of the SH (investigation regarding imports from China and 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 cold-rolled flat steel products include other goods other than the cold-rolled 304 under analysis, despite maintaining the 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 parameters to reduce the limitations of the available data. According to the USITC, the elasticity of the American domestic supply is between 4 and 8. Thus, an intermediate value of 6 was adopted for the Brazilian domestic supply, assuming that the Brazilian producer behaves similarly to the American producer. For the elasticities of supply from other sources, a value of 99 was adopted,

Regarding the price elasticity of demand (h), also estimated for the US market by the USITC in the case of "cold-rolled flat steel products", the value of -0.5 was adopted, based on the average of the estimated value for the range of -0.75 and -0.25. For the elasticity of substitution, it was the average value between 3 and 5, that is, 4. The value used is consistent with the estimates commonly made in studies of the specialized economic literature. In any case, a sensitivity analysis was carried out in order to establish maximum and minimum limits based on the range of elasticity parameters.

The market configuration in P5 (April 2019 to March 2020), the dumping analysis period, was used as the base scenario for carrying out the simulations. Information provided by the domestic industry 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.

In turn, the average effective rate of the antidumping duty that may be imposed on Brazilian imports of cold rolled products 304 originating in Indonesia was determined, on a CIF basis, at [CONFIDENTIAL] %, based on the amounts calculated in the final determination of the antidumping investigation , according to Processes SEI-ME No. 19972.101391/2021-52 (restricted) and No. 19972.101392/2021-05 (confidential).

The results presented are submitted to a sensitivity analysis, in order to verify possible differences in the conclusions presented with the variation of the elasticity parameters in bands.

2.4.1 Impacts on the domestic industry

In the analysis of possible impacts of the application of the trade defense measure in the domestic industry, qualitative and quantitative elements are considered that can elucidate the expected effects in the sector responsible for the similar national product.

The table below describes data on the evolution of the number of employees in the domestic industry over the period of analysis (P1 to P5), separating employees linked to the production line and employees in the administration and sales sectors.

Number of employees (in index number) [CONFIDENTIAL]					
	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 employees working in the production line remained constant from P1 to P2, showing consecutive declines afterwards: 1.0% from P2 to P3, 5.3% from P3 for P4 and 11.2% of P4 for P5. When considering the entire analysis period, the number of employees who work in the production line revealed a negative variation of 16.7% in P5, compared to P1.

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 maintenance of the level between P2 and P3. In the other periods, there were reductions of 7.1% between P3 and P4 and 15.4% between P4 and P5. When considering the entire analyzed series, the indicator for the number of employees working in administration and sales declined by 15.4%.

When evaluating the variation in the total number of employees in the analyzed period, between P1 and P2 there is an increase of 0.3%. It is also possible to verify, in the other periods, consecutive falls: 0.9% between P2 and P3, 5.4% between P3 and P4 and 11.4% between P4 and P5. Analyzing the entire period, the total number of employees presented a contraction of around 16.7%, considered P5 in relation to P1.

Next, the results obtained for the cold rolled 304 business in the domestic market of the domestic industry are described, considering the period from P1 to P5. The values obtained in current reais in the reference process were updated by the IPA-OG, from Fundação Getúlio Vargas, industrial products.

Evolution of results in sales of cold rolled products 304 by the domestic industry in the domestic market (in index number of thousand updated reais) [CONFIDENTIAL]					
	P1	P2	P3	P4	P5
Net Revenue	100.0	113.1	119.1	136.5	115.3
Raw score	100.0	121.1	120.1	129.4	89.6
Operational result	100.0	123.0	104.1	128.2	76.0
Operating income (except RF and OD)	100.0	122.5	121.2	131.9	88.5

It was observed that the net revenue indicator, in updated thousand reais, referring to sales in the domestic market showed increases of 13.1% from P1 to P2, from 5.3% from P2 to P3 and from 14.6% from P3 for P4. Between P4 and P5, the indicator suffers a reduction of 15.5%. When considering the entire period of analysis, the net revenue indicator referring to sales in the domestic market revealed a positive variation of 15.3% in P5, compared to P1.

With regard to the variation in the gross result of the domestic industry, oscillations were registered throughout the period under analysis: increase of 21.1% between P1 and P2, reduction of 0.8% between P2 and P3, increase of 7.8% between P3 and P4 and a decrease of 30.8% between P4 and P5. When considering the entire analyzed series, the indicator of gross result of the domestic industry registered a decline of 10.4%, considered P5 in relation to the beginning of the evaluated period (P1).

Similarly, the operating result fluctuated over the analyzed period: an increase of 23.0% between P1 and P2, a reduction of 15.3% between P2 and P3, an increase of 23.1% between P3 and P4 and a decrease of 40 .7% between P4 and P5. Analyzing the entire period, the operating result showed a reduction of around 24.0%, considered P5 in relation to P1.

Regarding the variation in the operating result, excluding the financial result and other expenses, there were also fluctuations over the period: an increase of 22.5% between P1 and P2, a reduction of 1.1% between P2 and P3, an increase of 8 .9% between P3 and P4 and a decrease of 32.9% between P4 and P5. Thus, when considering the entire analyzed series, the operating result indicator, excluding the financial result and other expenses, presented a contraction of 11.5%.

In its response to the Public Interest Questionnaire, Aperam presented an economic study, in which it carried out an analysis based on the Partial Equilibrium Model. The results have been compiled in the following table:

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 industry and in the domestic price were expected, since the application of compensatory measures causes imports from the investigated sources to resume market prices against the national product, which would lead the claimants of the cold-rolled stainless steel 304 to import less to the detriment of national production, which leads to an increase in the quantity produced by the domestic industry. Considering the effect on all agents, the net welfare result would be positive, that is, "losses for consumers with the possible insertion of antidumping and compensatory measures would be more than offset by gains for producers and the government".

In its final statement, Aperam refuted Aprodinox and CADE's allegations regarding the fact that the national manufacturer is the only producer of 304 cold rolled products in the Brazilian market and, in this condition, Aperam would be able to exercise market power and price control. For the national producer, the economic study that it presented on the occasion of the response to the Public Interest Questionnaire and the verification of the existence of damage resulting from imports of cold rolled 304 originating in Indonesia corroborate the argument that its prices follow international prices of the said product. Furthermore, Aperam reiterated its allegations that there is no difficulty or lack of meeting domestic demand, nor any risk that this may occur, even with the application of the requested compensatory measure.

Aprodinox, in a statement filed on July 7, 2022, argued that the elasticities estimated by Tendências do not exactly refer to the product under investigation. In the case of the USA, "the elasticities refer to cold-rolled steel flat products and in the case of Brazil, they refer to a basket of products. Therefore, in neither case are the elasticities shown to be adequate ". Thus, he argued, "considering a more restricted classification of products (as is the case of this investigation) and the existence of some substitutes (even if imperfect)", that the price elasticities of demand would tend to be even greater than those of more aggregate product ratings. He claimed, therefore, that the results for the case under analysis would tend to generate negative net well-being. Furthermore,

Already on September 9, 2022 and in its final statement of October 20, 2022, Aprodinox reiterated the information and arguments presented in its response to the Public Interest Questionnaire and in subsequent statements.

With regard to the effects of the trade defense measure on the domestic industry, the results obtained in the simulation of the Partial Equilibrium Model for the application of the anti-dumping duty as per the final recommendation in Processes SEI-ME nº 19972.101391/2021- 52 (restricted) and nº 19972.101392/2021-05 (confidential), within the conditions in force in the baseline scenario.

Changes in consumer surplus, producer surplus, revenue, and welfare [CONFIDENTIAL]	
Component	Variation (in millions of US$)
consumer surplus	-4.79
producer surplus	1.16
Collection	1.75
Liquid well-being (A)	-1.88
Brazilian Market (B)	[CONFIDENTIAL]
Net well-being (%) (A)/(B)	[CONFIDENTIAL]

The Partial Equilibrium Model predicts a negative variation of US$ 1.88 million in the net well-being of the Brazilian economy from the application of the recommended anti-dumping duty, which represents [CONFIDENTIAL] % of the Brazilian market for cold rolled products 304. The balance results from a negative variation of US$ 4.79 million in consumer surplus and positive variations of US$ 1.16 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 prices and quantities of cold-rolled 304 sold by the domestic producer were also estimated, as shown in the following table.

According to the simulation, it is observed that the quantity sold by the domestic industry would grow 4.83% with the imposition of the measure. Likewise, domestic product prices would increase by 0.79%.

Observing the ranges of elasticities considered, it is possible to estimate the expected final shares for the domestic producer and for imports in the Brazilian cold rolled 304 market, in terms of minimum and maximum values.

Thus, the simulation of the Partial Equilibrium Model predicts that the application of the anti-dumping duty would reduce the share of imports originating in Indonesia in the Brazilian market to the range of [CONFIDENTIAL]% to [CONFIDENTIAL]%. On the other hand, the domestic producer would have its share increased to a range between [CONFIDENTIAL]% and [CONFIDENTIAL]%. Likewise, imports from the rest of the world would grow in relative terms, ranging from [CONFIDENTIAL]% to [CONFIDENTIAL]% share 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 eventual application of an anti-dumping duty to cold-rolled 304 imported from Indonesia would not be enough to remove this product from the Brazilian market or make its presence insignificant. However, the complementary character of imports from other sources is reinforced, with emphasis on the USA and South Africa, respectively 12th and 13th largest global net exporters of the product under analysis, in terms of possible expansion.

In the considered limit scenario (minimum share of imports from the origins under analysis), 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 their share in relation to the percentage observed in the base scenario, representing at least [CONFIDENTIAL]% of the Brazilian market.

2.4.2 Impacts on the upstream chain

None of the parties presented a statement regarding possible impacts on the upstream chain resulting from the possible application of compensatory measures. Thus, in this public interest assessment, no elements were obtained that could help to estimate, specifically, the impact of the measure on the upstream chain.

2.4.3 Impacts on the downstream chain

In its response to the Public Interest Questionnaire, CADE gave a brief description of the downstream chain, in which it highlighted that Aperam would sell its products to different types of customers in the market, in addition to selling through distributors, one of which is vertically related with the company (Aperam Serviços). CADE also asserted that the Brazilian market can also be supplied via imports and, in the event of approval of a compensatory measure, imports would no longer induce competition since importers would be taxed, making the imported product more expensive in relation to to the national product. For CADE, this scenario will directly impact the automobile, capital goods, home appliances (white line), cutlery, civil construction, aeronautics, railway, shipbuilding, petrochemical, pulp and paper, textile, meatpacking, dairy, pharmaceutical, cosmetic, chemical, domestic utensils, etc. CADE also argued that the eventual imposition of the compensatory measure would have the effect of reducing the contestation of the market power of imports, due to the existence of anti-dumping duties against Brazilian imports of cold rolled products 304 originating in China and Chinese Taipei. Finally, CADE alleged that a company in the downstream market would have pointed out conduct by Aperam, highlighted in case No. 08700.010789/2012-73, previously reported in the case file of the present case, considered potentially as an abuse of economic power. CADE added statements in response to the interested party's reports in the following terms: "

Regarding the impacts of imposing the measure on the downstream chain, Aperam presented an economic study, in which it carried out a General Equilibrium analysis - based on the Input-Output model -, and estimated "variations in production from a change in final demand, composed of investments, government consumption, household consumption, exports and changes in inventories". According to the company, the model is configured as a general equilibrium one, as it absorbs the effects of sectoral changes throughout the economy, so that the results can be extended to many economic aggregates, such as added value, production, indirect taxes, jobs and income.

The simulation results have been compiled in the following tables. In the view of the party, the positive effects on the productive link of the steel industry more than compensate for the possible negative impacts downstream. Thus, the company claimed that the adoption of compensatory measures for imports from the investigated origin would generate gains in economic activity, in the form of increases in production, added value, income, indirect taxes and jobs: "even if the consumers of the product are harmed with an eventual increase in price, this effect would be more than offset by the gain of the other market agents.Also, the repercussions on the links in the chain indicate that the positive impacts of the steel industry are more representative in relation to the effects on the downstream links.

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

In view of the study presented by the company Tendências, Aprodinox, in a statement filed on July 7, 2022, argued that estimated elasticities do not specifically refer to the product under analysis, encompassing other products.

Furthermore, the association alleged that, in Brazil, the use of stainless steel is still very low due to the high cost of manufactured products, resulting from the "concentration of production in a single producer and initiatives that extend over more than two decades of closure of the market through the application of trade defense measures" and the imported product, which would have a "very high" value, thus inhibiting its consumption. In this sense, he indicated that downstream companies in the production chain depend on a single domestic supplier to purchase cold rolled products 304, and "potential foreign supply sources that would increase competition for the only national producer, several origins are recorded with anti-dumping measure".

On September 9, 2022, Aprodinox presented a statement in which it reiterated the information previously presented.

In its final statement, Aperam highlighted the possibility of using substitute products for cold rolled 304 such as: carbon steel, stones (marble, granite, among others), non-ferrous products (aluminum, silver, bronze, brass, among others).), glass and plastic, in addition to other types of stainless steel. For the national manufacturer, the existence of substitute products in the consumer goods segments would have the power to limit the effects of possible price increases of the product under analysis.

Aprodinox, in its final statement, argued that there is great practical difficulty in replacing the product under analysis, due to the characteristics of corrosion resistance and good formability, combined with economic and even regulatory restrictions for the application of other materials. Additionally, the aforementioned association cited CADE's conclusion on the irreplaceability of cold-rolled products to infer that "there is no other product that fulfills the same function as cold-rolled 304 stainless steel in both the domestic and international markets". Aprodinox also reiterated the argument that there would have been a shortage of stainless steel, including cold-rolled steel, by the industry for its distributors. The main consequence of this would have been the lack of the product in several industrial applications, leading to negative short- and long-term impacts for the industry and the entire economy. For Aprodinox, the reason for the alleged shortage would have been the prioritization by the domestic industry of other product lines - supposedly more profitable - in the investigated period and immediately afterwards, despite the losses resulting from this commercial decision. Finally, regarding the analysis of the economic opinion presented by Aperam, Aprodinox reiterated the comments already brought in previous manifestations. despite the losses resulting from this commercial decision. Finally, regarding the analysis of the economic opinion presented by Aperam, Aprodinox reiterated the comments already brought in previous manifestations. despite the losses resulting from this commercial decision. Finally, regarding the analysis of the economic opinion presented by Aperam, Aprodinox reiterated the comments already brought in previous manifestations.

Having considered the parts in question, as a way of measuring general impacts on the downstream chain, the projections for the variation of price indices and marketed quantity in the Brazilian market of cold rolled products 304 are presented in the table below, based on the results obtained in the Partial Equilibrium Model for the application of the recommended antidumping duty, within the conditions 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 on Brazilian imports of cold rolled products originating in Indonesia would increase the price index of the product in the Brazilian 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 naturally has the power to increase domestic prices at the same time as it reduces the quantity sold on the domestic market, which may lead to loss of well-being. Given this context, it is necessary to remember that the

exceptional intervention in the public interest is carried out when the impact of the imposition of the antidumping and compensatory measure on the economic agents as a whole proves to be potentially more harmful when compared to the positive effects of the application of the trade defense measure.

Finally, it is emphasized that the estimation of the effects of the trade defense measure through economic models is just one of several other criteria to be considered in an assessment of public interest. As stated in art. 3, § 3, of SECEX Ordinance No. 13/2020, none of the analyzed criteria, alone or together, will be peremptorily able to provide decisive indication on the need or not to intervene in the trade defense measure.

3. FINAL CONSIDERATIONS ABOUT THE PUBLIC INTEREST ASSESSMENT

After analyzing the elements presented and collected throughout the public interest assessment, carried out within the scope of the investigation of actionable subsidies in exports of cold rolled 304 from Indonesia to Brazil, the following can be noted:

- 304 cold rolled products are characterized as inputs, with application in sectors such as automotive, civil construction, chemical and petrochemical, domestic utensils, machinery and equipment, among many others;

- the substitutability of cold-rolled 304 from the perspective of supply appears unlikely in the short term. Furthermore, from the perspective of demand, the elements attached to the public interest assessment records did not allow for a glimpse of substitutability between the product under analysis and another type of product;

- the Brazilian market remained at highly concentrated levels throughout the period analyzed (above 2,500 points of the HHI), even though the increase in the share of imports has reduced its 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 304 in the world, while South Africa would be a less relevant origin in terms of production capacity, production and volume exported worldwide. In turn, China and Chinese Taipei, relevant world producers, do not constitute feasible alternative origins, since they are encumbered by an anti-dumping measure. Thus, recorded and investigated origins account for more than half of world production and production capacity and for 34.6% of world exports of the product. In this sense, the origins USA, Italy, Belgium, South Korea, Holland and France stand out as possible alternative origins, which together represent 36.1% of world exports. Among such origins, only the USA, Belgium,

- the average export price practiced by Indonesia to all its destinations was the second lowest among all relevant origins, being 34.3% lower than the general price average. It should also be noted that South Africa had the lowest price among the relevant origins, 36.0% lower than the overall average. Furthermore, the average prices of the other possible alternative origins Italy, South Korea, Holland and Belgium were below the total price average, while the average price of France and the USA were above average;

- with regard to the evolution of imports, there is a relevant increase in imports of cold rolled products 304, of 74.0% over the period analyzed, with most of this increase due to the growth of imports from Indonesia and the USA, which recorded increases of 3,047.0% and 63.5%, respectively, in the period. It appears that the USA is the main alternative origin, with a participation of [CONFIDENTIAL]% in the volume imported by Brazil in P5, followed by South Africa, with a participation of [CONFIDENTIAL]% in the period.

- Indonesia practiced average prices lower than the other origins of Brazilian imports, with the lowest price in P5. South Africa, another relevant alternative origin in terms of imported volume, practiced lower prices than Indonesia between P1 and P4. The US, the most relevant alternative source, charged 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 in force worldwide related to the tariff codes corresponding to cold-rolled products 304, of which 29 (twenty-nine) were anti-dumping duties and 4 (four) compensatory measures. Indonesia is the target of an anti-dumping measure, applied by Vietnam;

- the product under analysis, when originating in China and Chinese Taipei, has been encumbered by a definitive antidumping measure since October 2013. Germany, South Korea, Finland and Vietnam had their antidumping rights terminated by SECINT Ordinance No. 4,353, of 2019, after a period of 6 years;

- the average international tariff for the product is 4.03%. The Brazilian tariff of 14%, corresponding to the analysis period of the reference investigation, is higher than that practiced by 94.7% of the countries that reported their rates to the WTO. It should be noted that, on July 20, 2022, Mercosur decided to permanently reduce the TEC by 10%, causing the rate for cold rolled 304 to be permanently reduced to 12.6%;

- among the countries to which tariff preferences from P1 to P5 were granted, none became a relevant source of Brazilian imports of cold rolled products 304. The countries that already had tariff preferences also do not stand out in the list of largest exporters of the product to the market Brazilian;

- according to the WTO's "i-TIP" database, Brazil would not adopt non-tariff barriers on the import of tariff codes corresponding to cold-rolled 304;

- the Brazilian cold rolled 304 market grew 31.0% from P1 to P5, going from [CONFIDENTIAL] tons to [CONFIDENTIAL] tons. In the same period, domestic industry sales increased 16.9% from P1 to P5, causing Aperam to lose [CONFIDENTIAL] pp of market share;

- the space lost by domestic industry sales was occupied, above all, by imports from the investigated origin, which grew by 3,047.0% between P1 and P5, registering an increase of [CONFIDENTIAL] pp of participation in the Brazilian market in the period, and by imports originating in the USA, which grew 63.5% in the period, showing an increase of [CONFIDENTIAL] percentage points in the period;

- the domestic industry has sufficient production capacity to fully serve the Brazilian cold-rolled market 304. It should be noted, in this regard, that the degree of occupancy of the domestic industry remained at low levels throughout the analyzed period, reaching [CONFIDENTIAL] % in P5. The nominal idleness of the production line in P5 would allow the domestic industry to still serve [CONFIDENTIAL]% of the Brazilian market in the same period;

- there was an increase in the importance of domestic industry sales in the domestic market, which corresponded, on average, to [CONFIDENTIAL]% of total operations from P1 to P5. Therefore, it is not possible to indicate possible prioritization of markets in this product in relation to export operations;

- the ratio of cost to production price showed continuous increases throughout the analyzed period, reaching its highest level in P5, when it reached [CONFIDENTIAL]%. This movement was the result of the increase in the cost of production of cold rolled 304, combined with the reduction in the domestic sale price of the product;

- the price of the domestic industrial product increased by 25.2%, while the industrial products index increased by 27.4%. The price and the index followed, roughly speaking, the same growth trend, with the exception of P2, in which the price of the domestic industry suffered a nominal reduction, while the price index registered growth. Thus, the price of the domestic industrial product recorded a lower increase 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 imported product (calculated in the CIF condition) 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 and other origins dropped 1.7% and 12.2%, respectively, in the period;

- no elements were presented that indicate quality restrictions in relation to the product supplied by the domestic industry. With regard to the variety of the national offer, there was disagreement between the parties, without providing elements that indicate different use and the essentiality of varieties not commercialized by the domestic industry, nor about the availability of these products among the producers/exporters of the origin under review;

- it was not possible to conclude whether the distribution policy practiced by Aperam would be configured as a restriction to the national supply. The alleged anti-competitive practices pointed out by the interested parties are currently being analyzed by the competition authority, through Preparatory

Procedure No. 8700.000841/2021-74, and must be forwarded by the competent authority in the event of anti-competitive conduct being investigated;

- in terms of effects on domestic industry, the total number of employees in domestic industry decreased by 16.7% from P1 to P5. On the other hand, the gross result of the domestic industry decreased over the analyzed period (10.4%). Similarly, the operating result registered a contraction between P1 and P5, of 24.0%; It is

- the simulations carried out based on the Partial Equilibrium Model estimated a negative effect of US$ 1.88 million on the well-being of the Brazilian economy, resulting from the eventual application of the compensatory measure, which represents - [CONFIDENTIAL]% of the Brazilian market of cold rolled products 304. An increase of 0.79% in the price of the domestic industry is also estimated, a growth of 2.27% in the average price of the product in the Brazilian market and a decrease of 1.12% in the consumed quantity of product, as opposed to a positive variation of 4.83% in the quantity offered by the domestic industry; It is

- the simulation of the Partial Equilibrium Model predicts that the application of the anti-dumping duty would reduce the share of imports originating in Indonesia in the Brazilian market to the range of [CONFIDENTIAL]% to [CONFIDENTIAL]%. On the other hand, the domestic producer would have its share increased to a range between [CONFIDENTIAL]% and [CONFIDENTIAL]%. Likewise, imports from the rest of the world would grow in relative terms, ranging from [CONFIDENTIAL]% to [CONFIDENTIAL]% share of the Brazilian market.

In this way, relevant alternative sources were identified with regard to world production and productive capacity, world exports and to Brazil, in addition to the trade balance, namely, South Africa and the USA. Other important producers such as Italy, Belgium, South Korea, the Netherlands and France export to Brazil in smaller volumes in the analyzed period, but have relevant production capacity and a large share in world exports of the product under analysis - 33% of the total exported by all origins in 2020.

South Africa proved capable of rivaling the origin under analysis in terms of imported volume and price, being the second most relevant origin in Brazilian imports of the product (P1 to P5). It should also be noted that the US has also consolidated itself as a possible alternative source in terms of production available for export to Brazil, in addition to being the most relevant source for Brazilian imports of the product, although with an average price higher than that practiced by Indonesia.

It should also be remembered that Germany, South Korea, Finland and Vietnam were encumbered by anti-dumping duties until mid-P5 - ended by SECINT Ordinance No. 4,353, of 2019 - and 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 relevant production 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 idle capacity would be enough to serve the Brazilian market [CONFIDENTIAL] times. With regard to prices, it was identified that the price of the domestic industry is, as a rule, higher than the average of imports, but that it presented variation in the analyzed period consistent with international prices and lower than the price index of industrial products.

Regarding the impact simulation, it is considered that the application of compensatory measures naturally has the power to increase domestic prices at the same time as it reduces the quantity sold on the domestic market, which may lead to a loss of well-being in about [CONFIDENTIAL]% of 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 recommendation in the subsidy investigation process, would decrease the share of origin from [CONFIDENTIAL]% to a range between [CONFIDENTIAL]% and [CONFIDENTIAL]%, which would be insufficient to remove the origin of the Brazilian market for cold rolled products 304 or make its participation insignificant.

In this sense, it appears that the possible application of the compensatory measure 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 interest assessment indicate that the national demand for the product will continue to be adequately served in terms of international and national offer.

Therefore, it is recommended that the present assessment of public interest be closed, without identifying reasons of public interest that may justify the suspension of compensatory measures on Brazilian imports of cold rolled products 304, when originating in Indonesia, under the terms recommended in the scope of the trade defense investigation.

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RESOLUÇÃO GECEX Nº 421, DE 1º DE DEZEMBRO DE 2022

Aplica direito compensatório definitivo, por um prazo de até cinco anos, às importações brasileiras de produtos laminados planos de aços inoxidáveis austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304L e 304H, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da República da Indonésia.

O COMITÊ-EXECUTIVO DE GESTÃO DA CÂMARA DE COMÉRCIO EXTERIOR, no uso das atribuições que lhe confere o art. 7º, inciso VI, do Decreto nº 10.044, de 4 de outubro de 2019, e considerando as informações, as razões e os fundamentos presentes nos Anexos I e II da presente Resolução, e o deliberado em sua 200ª reunião, ocorrida no dia 23 de novembro de 2022, resolve:

Art. 1º Encerrar a investigação com aplicação de direito compensatório definitivo, por um prazo de até cinco anos, às importações brasileiras de produtos laminados planos de aços inoxidáveis austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304L e 304H, 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 República da Indonésia, a ser recolhido sob a forma de alíquota ad valorem, fixada em percentual a ser aplicado sobre o valor aduaneiro do produto, em base Cost, Insurance & Freight - CIF, 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 da Circular Secex nº 40, de 2 de junho de 2021, publicada no Diário Oficial da União de 2 de junho de 2021, retificada em 9 de junho de 2021.

Art. 3º Tornar públicos os fatos que justificaram as decisões contidas nesta resolução, conforme consta dos Anexos I e II.

Art. 4º Esta Resolução entra em vigor na data de sua publicação.

MARCELO PACHECO DOS GUARANYS
Presidente do Comitê-Executivo Substituto

ANEXO I

1 DA INVESTIGAÇÃO

1.1 Do histórico das investigações antidumping

1.1.1 Da investigação antidumping original de laminados a frio, de espessura não superior a 3 mm (1998-2000)

1. Em 10 de agosto de 1998, foi protocolada, pela empresa Cia. Aços Especiais Itabira - Acesita, petição de início de investigação de dumping nas exportações para o Brasil de produtos planos, laminados a frio, de aço inoxidável, de espessura não superior a 3 mm, classificadas nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originárias da África do Sul, Alemanha, Itália, Japão e México. A partir de dados contidos na petição, foram constatadas importações originárias da França e da Espanha em volumes relevantes do produto em questão. Por conseguinte, tais países foram incorporados às origens investigadas para fins de início da investigação.

2. Em 30 de novembro de 1998, por meio da Circular SECEX nº 42, de 27 de novembro de 1998, foi iniciada investigação para averiguar a existência de dumping nas exportações para o Brasil de produtos planos, de aço inoxidável, laminados a frio, de espessura não superior a três mm, classificadas nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originárias da África do Sul, Alemanha, Espanha, França, Itália, Japão e México, e de dano à indústria doméstica decorrente de tal prática.

3. A Portaria Interministerial nº 34, de 24 de maio de 2000, publicada no Diário Oficial da União (DOU), de 26 de maio de 2000, encerrou a investigação com aplicação de direito antidumping definitivo sobre as importações de produtos planos, de aço inoxidável, laminados a frio, de espessura não superior a 3 mm, classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originárias da África do Sul, Espanha, França, Japão e México, exclusive os aços refratários, entre os quais se classificam os aços AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H e 347 e os aços inoxidáveis AISI 301L e DIN 1.4110, na forma de alíquotas ad valorem, conforme quadro a seguir.

Direito antidumping aplicado por meio da Portaria Interministerial Nº 34, de 2000		
País	Produtor/Exportador	Direito Antidumping
África do Sul	Columbus	6%
África do Sul	Demais	16,4%
Espanha	Acerinox e demais	78,2%
França	Ugine e outros	30,9%
Japão	Kawasaki, Nippon Yakin, Kogyo, Nisshin Steel, NipponMetal, Nippon Steel, Sumitomo, Metal e demais	48,7%
México	Mexinox e demais	44,4%
Fonte: Portaria Interministerial Nº 34, de 2000.		
Elaboração: SDCOM.		

1.1.1 Da revisão de final de período da medida antidumping de laminados a frio, de espessura não superior a 3 mm (2005-2006)

4. Em 25 de fevereiro de 2005, a empresa Acesita protocolou petição de revisão de final de período com o fim de prorrogar o direito antidumping aplicado às importações brasileiras de produtos planos, laminados a frio, de aço inoxidável, de espessura não superior a 3 mm, originárias da África do Sul, Espanha, França, Japão e México.

5. A revisão foi iniciada por meio da Circular SECEX nº 31, de 23 de maio de 2005, publicada no DOU de 25 de maio de 2005.

6. A Resolução CAMEX nº 10, de 2 de maio de 2006, publicada no DOU de 23 de maio de 2006, encerrou a revisão com a prorrogação do direito antidumping aplicado às importações brasileiras de produtos planos de aço inoxidável, laminados a frio, de espessura não superior a 3 mm, exclusive os aços refratários, classificados nas normas AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H e 347, os aços inoxidáveis AISI 301L e DIN 1.411 e o produto plano de aço inox, laminado a frio, denominado comercialmente como fita de aço inoxidável GIN-6 ou 7C27MO2 ou UHB716 de espessura entre 0,152 e 0,889 mm. O direito antidumping foi prorrogado na forma de alíquota específica, por dois anos. Tal prazo de aplicação foi justificado por se tratar de setor sensível, cujos preços tiveram comportamento influenciado pela demanda asiática e por incertezas que permeavam o mercado internacional e limitavam previsões quanto à evolução desses preços. As alíquotas aplicadas estão detalhadas a seguir.

Direito antidumping aplicado por meio da Resolução CAMEX nº 10, de 2006		
País	Produtor/Exportador	Direito Antidumping (US$/t)
África do Sul	Columbus	92,49
África do Sul	Demais	245,17
Espanha	Todas as empresas	1.425,76
França	Todas as empresas	642,97
Japão	Todas as empresas	755,39

México	Todas as empresas	194,65
Fonte: Resolução CAMEX Nº 10, de 2006.		
Elaboração: SDCOM.		

1.1.2 Da investigação antidumping original de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm (2011-2013)

7. Em 15 de dezembro de 2011, foi protocolada, pela Aperam Inox América do Sul S.A., petição de início de investigação de dumping nas exportações de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da África do Sul, da Alemanha, da China, da Coreia do Sul, dos Estados Unidos da América (EUA), da Finlândia, de Taipé Chinês e do Vietnã, e de dano à indústria doméstica decorrente de tal prática.

8. A investigação foi iniciada por meio da Circular SECEX nº 17, de 12 de abril de 2012, publicada no DOU de 13 de abril de 2012.

9. Nos termos do inciso III do art. 41 do Decreto nº 1.602, de 23 de agosto de 1995, vigente à época, a investigação de dumping nas exportações da África do Sul e dos EUA para o Brasil foi encerrada sem a aplicação de direitos, uma vez constatado que o volume de importações dessas origens foi insignificante, conforme consta da Circular SECEX nº 35, de 26 de julho de 2012, publicada no DOU de 27 de julho de 2012.

10. Tendo sido verificada a existência de dumping nas exportações de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, e de dano à indústria doméstica decorrente de tal prática, conforme o disposto no art. 42 do Decreto nº 1.602, de 1995, a investigação foi encerrada, por meio da Resolução CAMEX nº 79, de 3 de outubro de 2013, publicada no DOU de 4 de outubro de 2013, com a aplicação do direito antidumping definitivo, na forma de alíquota específica, conforme a seguir.

Direito antidumping aplicado por meio da Resolução CAMEX nº 79, de 2013		
País	Produtor/Exportador	Direito Antidumping (US$/t)
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

Taipé Chinês	Tung Mung Development Co., Ltd.	673,18
Taipé Chinês	Yes Stainless International Co., Ltd.	673,18
Taipé Chinês	YI Shuenn Enterprise Co., Ltd.	673,18
Taipé Chinês	Yu Ting Industrial Co., Ltd.	673,18
Taipé Chinês	Yuan Long Stainless Steel Corp.	673,18
Taipé Chinês	Yue Seng Industrial Co., Ltd.	673,18
Taipé Chinês	Yuen Chang Stainless Steel Co., Ltd.	673,18
Taipé Chinês	Demais	705,61
Vietnã	Posco VST Co., Ltd.	568,27
Vietnã	Demais	568,27
Fonte: Resolução CAMEX Nº 79, de 2013.		
Elaboração: SDCOM.		

1.1.3 Da revisão de final de período da medida antidumping de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm (2018-2019)

11. Em 27 de abril de 2018, a Aperam Inox América do Sul S.A protocolou, por meio do Sistema DECOM Digital (SDD), petição para início de revisão de final de período com o fim de prorrogar o direito antidumping aplicado às importações brasileiras de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, doravante denominados laminados a frio, comumente classificadas nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, consoante o disposto no art. 106 do Decreto nº 8.058, de 26 de julho de 2013, doravante também denominado Regulamento Brasileiro.

12. A revisão foi iniciada por meio da Circular SECEX nº 41, de 02 de outubro de 2018, publicada no DOU de 03 de outubro de 2018.

13. Em 2 de outubro de 2019, a Secretaria Especial de Comércio Exterior e Assuntos Internacionais (SECINT), publicou a Portaria nº 4.353, de 1º de outubro de 2019, na qual prorrogou a aplicação do direito antidumping definitivo, por um prazo de até 5 (cinco) anos, aplicado às importações brasileiras de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços 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 China e Taipé Chinês, a ser recolhido sob a forma de alíquota específica fixada em dólares estadunidenses por tonelada, nos montantes abaixo especificados, e não prorrogou para as demais origens (Alemanha, 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	Direito Antidumping Definitivo (em US$/t)
China	Shanxi Taigang Stainless Steel Co., Ltd., quando exportar por meio da empresa exportadora Tisco Stainless Steel (H.K.) Limited	175,62
China	Shanxi Taigang Stainless Steel Co., Ltd	218,37
China	Galaxy International Trade (Wuxi) Co., Ltd.	218,37
China	Henan Jianhui Construction Machinery Co., Ltd.	218,37
China	Hunan Bright Stainless Co., Ltd.	218,37
China	Jieyang Kailian Stainless Steel Co., Ltd.	218,37
China	Shanghai Stal Precision Stainless Steel Co., Ltd.	218,37
China	Wuxi Steel Co. Ltd.	218,37
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.	218,37
China	Foshan Shunhengli Import & Export Ltd.	629,44
China	Demais.	629,44

Taipé Chinês	C.S.S.S.C	93,36
Taipé Chinês	Chain Chon Industrial Co., Ltd.	93,36
Taipé Chinês	Datung Stainless Steel Co., Ltd.	93,36
Taipé Chinês	Froch Enterprise Co., Ltd.	93,36
Taipé Chinês	Genn-Hann Stainless Steel Enterprise Co., Ltd.	93,36
Taipé Chinês	Lien Kuo Metal Industrial Co., Ltd.	93,36
Taipé Chinês	Midson International Co., Ltd.	93,36
Taipé Chinês	S-More Steel Materials Co., Ltd.	93,36
Taipé Chinês	Stanch Stainless Steel Co., Ltd.	93,36
Taipé Chinês	T.M. Development Co., Ltd.	93,36
Taipé Chinês	Tang Eng Iron Works Co., Ltd.	93,36
Taipé Chinês	TSL Stainless Co., Ltd	93,36
Taipé Chinês	Y C Inox Co., Ltd.	705,61
Taipé Chinês	Yuan Long Stainless Steel Corp. (YLSS)	93,36
Taipé Chinês	Yes Stainless International Co., Ltd.	93,36
Taipé Chinês	Yeun Chyang Industrial Co., Ltd.	93,36
Taipé Chinês	Yieh Corporation Limited	93,36
Taipé Chinês	Yieh Mau Corp.	93,36
Taipé Chinês	Yieh United Steel Corporation (YUSCO)	705,61
Taipé Chinês	Yue Seng Industrial Co., Ltd.	93,36
Taipé Chinês	Yu Ting Industrial Co., Ltd.	93,36
Taipé Chinês	Yuen Chang Stainlees Steel Co., Ltd.	93,36
Taipé Chinês	Demais	705,61

14. Neste ponto, frisa-se que o direito antidumping prorrogado por meio da Portaria SECINT Nº 4.353, de 2019, incide sobre as importações de produtos laminados planos produzidos a partir de aços inoxidáveis austeníticos tipo 304 e de aços inoxidáveis ferríticos tipo 430, de maneira diversa da atual investigação, que abarca somente os laminados a frio elaborados exclusivamente a partir de aços inoxidáveis austeníticos tipo 304 e suas variações, tais como 304L e 304H.

1.1.4 Da investigação antidumping de produtos planos de aços inoxidáveis tipo 304 iniciada em 2020

15. Em 31 de julho de 2020, a Aperam Inox América Do Sul S.A., doravante Aperam, protocolou, por meio do SDD, petição para início de investigação da prática de dumping nas exportações de produtos planos de aços 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, doravante denominados "laminados a frio 304", comumente classificados nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originários da África do Sul, da Indonésia e da Malásia, consoante o disposto no art. 37 do Decreto nº 8.058, de 26 de julho de 2013.

16. Após a solicitação e análise de informações complementares pela autoridade investigadora, conforme publicação no D.O.U em 25 de fevereiro de 2021, por meio da Circular SECEX n º 15, de 24 de fevereiro de 2021, foi iniciada a investigação de dumping nas exportações de produtos de aço inoxidável laminados a frio 304, originárias da África do Sul e da Indonésia, e de dano à indústria doméstica decorrente dessa prática.

17. Em relação à Malásia, considerando que a totalidade das importações brasileiras de laminados a frio 304 com origem declarada como sendo a Malásia, em P5, foi realizada por empresas que tiveram sua origem desqualificada pela Secex em procedimentos de procedimentos especiais de verificação de origem não preferencial, nos termos da Lei nº 12.546, de 14 de dezembro de 2011, não restando volumes significativos de importações dessa origem nesse período para efeitos de análise de dumping de exportações ao Brasil originárias da Malásia, concluiu-se pela não abertura da investigação em relação a essa origem.

18. Em 4 de novembro de 2021 foi publicada no Diário Oficial da União a Circular SECEX nº 75, de 3 de novembro de 2021, que encerrou dita investigação, sem julgamento de mérito, "uma vez que a análise de mérito foi prejudicada em razão da falta de acurácia e inadequação das informações prestadas pela indústria doméstica".

1.1.5 Quadro resumo das investigações originais e revisões de final de período envolvendo produtos laminados de aços inoxidáveis

19. Apresenta-se abaixo tabela que consolida todas as investigações de defesa comercial sobre 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	Decisão final
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	Portaria Interministerial nº 34, de 24 de maio de 2000. Aplicação de direito antidumping definitivo sobre as importações originárias da África do Sul, Espanha, França,
		Japão e México		Japão e México, na forma de alíquotas*ad valorem*
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	Resolução CAMEX nº 10, de 2 de maio de 2006. Prorrogação do direito antidumping definitivo sobre as importações originárias da África do Sul, Espanha, França, Japão e
				México, na forma de alíquotas específicas por dois anos
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,	Resolução CAMEX nº 79, de 3 de outubro de 2013. Aplicação de direito antidumping definitivo sobre as importações originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé
		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	Chinês e Vietnã, na forma de alíquota específica

Revisão de final de período	03/10/2018	Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã	Laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou	Portaria SECINT Nº 4.353, de 2019. Prorrogação do direito antidumping definitivo sobre as importações originárias da China e Taipé Chinês, na forma de alíquotas específicas
			superior a 0,35 mm, mas inferior a 4,75 mm	
Investigação original - Antidumping	25/02/2021	África do Sul e Indonésia	Produtos planos de aços inoxidáveis austeníticos que atendam à norma AISI 304 e similares, incluindo suas variações, tais como 304L e 304H,	Circular SECEX nº 75, de 2022. Encerrou a investigação sem julgamento de mérito, uma vez que a análise de mérito foi prejudicada em razão da falta de acurácia e inadequação das
			laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, fabricados e comercializados em	informações prestadas pela indústria doméstica
			diversas formas, tais como, mas não limitadas a bobinas, chapas e tiras/fitas	
Investigação original - antissubsídios	Presente processo	Indonésia	Produtos planos de aços inoxidáveis austeníticos que atendam à norma AISI 304 e similares, incluindo suas variações, tais como 304L e 304H,	Presente processo
			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 ou peticionária", em 31 de julho de 2020, quatro meses após o fim do período de investigação de dano proposto conforme item 6 deste documento e concomitantemente à petição de investigação antidumping de que trata o item 1.1.5 deste documento, protocolou por meio de seu representante legal, no Sistema DECOM Digital (SDD), petição de abertura de investigação de subsídios acionáveis nas importações brasileiras de produtos laminados a frio, comumente classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, doravante denominados "produtos laminados a frio", quando originárias da Indonésia, e de dano à indústria doméstica decorrente de tal prática, consoante o Decreto nº 1.751, de 19 de dezembro de 1995, doravante também denominado Regulamento Brasileiro.

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 à peticionária 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 20 de outubro de 2020, em atendimento à solicitação de prorrogação de prazo para as informações adicionais à petição de investigação de subsídios acionáveis às importações de laminados a frio, enviada por meio do Sistema Decom Digital - SDD, em 19 de outubro de 2020, o prazo para resposta ao Ofício nº 1.762/2020/CGMC/SDCOM/SECEX, de 30 de setembro de 2020, foi prorrogado para o dia 09 de novembro de 2020.

23. Por meio do Ofício nº 1.972/2020/CGMC/SDCOM/SECEX, de 21 de dezembro de 2020, com relação à petição e à resposta ao Ofício nº 1.762/2020/CGMC/SDCOM, e em conformidade com o disposto no § 1º do art. 26 do Decreto nº 1.751, de 1995, a SDCOM indicou que a análise dos dados apresentados demonstrou a necessidade de novas informações complementares.

24. Por meio do Ofício nº 43/2021/CGMC/SDCOM/SECEX, de 18 de janeiro de 2021, em atendimento à solicitação de prorrogação de prazo para as informações adicionais à petição de investigação de subsídios acionáveis às importações de laminados a frio, enviada por meio do Sistema Decom Digital - SDD, em 15 de janeiro de 2021, o prazo para resposta ao Ofício nº 1.972/2020/CGMC/SDCOM/SECEX/2020, de 21 de dezembro de 2020, foi prorrogado para o dia 8 de fevereiro de 2021.

25. As respostas foram protocoladas tempestivamente junto ao Sistema DECOM Digital (SDD) no dia 8 de fevereiro de 2021.

26. Após o exame do conjunto dos documentos protocolados e analisadas por esta SDCOM as informações fornecidas até 08/02/2021, por meio do Ofício nº 217/2021/CGMC/SDCOM/SECEX, de 22 de março de 2021, a peticionária foi informada que a avaliação das informações recebidas levou esta Subsecretaria a considerar a petição devidamente instruída, nos termos previstos no § 2º do art. 26 do Decreto nº 1.751, de 19 de dezembro de 1995.

27. Ressalte-se que, em 1 º de setembro de 2021, nos termos da Portaria SECEX nº 103, de 27 de julho de 2021, os documentos protocolados no Sistema Decom Digital - SDD até o dia 31 de agosto de 2021 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 (Confidencial) do Sistema Eletrônico de Informações do Ministério da Economia - SEI/ME.

28. As partes interessadas foram notificadas, por meio do Ofício Circular nº 120/2021/CGMC/SDCOM/SECEX e do Ofício nº 643/2021/CGMC/SDCOM/SECEX, ambos de 9 de agosto de 2021, acerca da migração e dos procedimentos necessários para acessar o SEI/ME.

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 1995, em 31 de março de 2021, o Governo da Indonésia foi notificado, por intermédio de sua Embaixada no Brasil, por meio do Ofício nº 280/2021/CGMC/SDCOM/SECEX, de 30 de março de 2021, da existência de petição devidamente instruída, protocolada no Sistema DECOM Digital (SDD) pela Aperam Inox América do Sul S.A. em 31 de julho de 2020, de investigação da prática de concessão de subsídios acionáveis nas exportações para o Brasil de produtos planos laminados a frio de aço inoxidável 304, comumente classificado nos itens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - 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 a avaliação do conjunto das informações recebidas levou a SDCOM a considerar a petição devidamente instruída, nos termos previstos no art. 26 do Decreto nº 1.751, de 19 de dezembro de 1995. A notificação foi encaminhada por meio de correio eletrônico, de acordo com a Portaria SECEX nº 21, de 30 de março de 2020.

31. Em conformidade com o contido no § 1º do art. 27 do citado Decreto, na mesma comunicação supramencionada, o Governo da Indonésia foi convidado à realização de consultas com o objetivo de esclarecer a situação relativa às matérias tratadas no art. 25 do referido dispositivo legal e 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 na realização de consulta, que deverá ser realizada no período de trinta dias contados a partir da ciência da referida comunicação.

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 e o endereço da Internet onde foi disponibilizado o texto completo da versão restrita da referida petição, incluindo informações complementares, bem como senha para possibilitar a extração dessas informações protegidas. Na ocasião, foi apresentada como sugestão a data de 19 de abril de 2021 às 9h no horário de Brasília (19h no horário de Jacarta), por meio de videoconferência, para garantir o cumprimento dos prazos previstos no Decreto nº 1.751, de 1995, e o cumprimento das medidas de proteção ao enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus (COVID-19).

33. Em 12 de abril de 2021, por meio de mensagem eletrônica da Diretora de Defesa Comercial da Diretoria Geral de Comércio Exterior do Ministério do Comércio Exterior da Indonésia, o Governo da Indonésia tempestivamente aceitou a data sugerida de 19 de abril de 2021, às 9h no horário de Brasília (19h no horário de Jacarta), para a realização da referida consulta.

34. Na data acordada realizaram-se as consultas por meio de videoconferência entre representantes da SDCOM e representantes do Governo da Indonésia, representado por integrantes da Diretoria de Defesa Comercial da Diretoria Geral de Comércio Exterior do Ministério do Comércio Exterior da Indonésia, por integrantes da Embaixada da Indonésia no Brasil e Conselheiro Legal. Na ocasião, cumpriram-se os procedimentos previstos no Decreto nº 1.751, de 1995, tendo sido informado prazo para que quaisquer manifestações por escrito do Governo da Indonésia fossem enviadas para serem consideradas antes de a SDCOM elaborar sua recomendação sobre o início da investigação.

35. Em 20 de abril de 2021, o Governo da Indonésia, por meio de mensagem eletrônica da Diretora de Defesa Comercial da Diretoria Geral de Comércio Exterior do Ministério do Comércio Exterior da Indonésia, enviou os seus comentários por escrito e forneceu a lista de participantes de sua parte. No mesmo dia, via correio eletrônico, a SDCOM enviou comunicação ao Governo da Indonésia agradecendo o envio dos seus comentários por escrito e o fornecimento da lista de participantes de sua parte para que pudesse ser preparado o Aide Mémoire a ser arquivado nos autos não confidenciais do processo. Na ocasião, a SDCOM informou ao GOI o prazo para envio de eventuais novos comentários escritos para serem considerados antes da decisão de iniciar a investigação. Outrossim, foi informado ao GOI que, apesar de naquele momento estarem sendo aceitos seus comentários e documentos comprobatórios enviados por e-mail à SDCOM, na hipótese de início da investigação, o encaminhamento de quaisquer documentos a serem considerados, tais como respostas a questionários, deveria ser realizado diretamente nos autos do processo. O GOI protocolou tempestivamente suas manifestações, que foram consideradas e comentadas no Parecer de início e não serão aqui reproduzidas.

1.4 Do início da investigação

36. Considerando o que constava do Parecer SDCOM nº 23, de 2 de junho de 2021, tendo sido observados indícios suficientes da existência de subsídios acionáveis nas exportações de produtos de aço inoxidável 304 laminados a frio da Indonésia para o Brasil, e de dano à indústria doméstica decorrente de tal prática, foi recomendado o início da investigação.

37. Dessa forma, com base no parecer supramencionado, a investigação foi iniciada por meio da Circular SECEX nº 40, de 2 de junho de 2021, publicada no Diário Oficial da União em edição extra de 2 de junho de 2021, retificada em 9 de junho de 2021.

1.5 Das notificações de início de investigação e da solicitação de informações às partes

38. Em atendimento ao disposto nos § 2º e §3º do art. 30 do Decreto nº 1.751, de 1995, foram identificados como partes interessadas e notificados do início da investigação, no dia 7 de junho de 2021, além da peticionária, o Governo da Indonésia, todos produtores/exportadores estrangeiros conhecidos e os importadores brasileiros do produto alegadamente beneficiado por subsídio acionável.

39. A Subsecretaria, por meio dos dados detalhados de importação disponibilizados pela Secretaria Especial da Receita Federal do Brasil (RFB) do Ministério da Economia, identificou as empresas produtoras/exportadoras do produto alegadamente beneficiado por subsídio acionável durante o período de análise.

40. Foram identificados, também, pelo mesmo procedimento, os importadores brasileiros que adquiriram o referido produto durante o mesmo período.

41. Em atenção ao § 4º do art. 30 do Regulamento Brasileiro, foi disponibilizada ainda, na notificação aos produtores/exportadores e ao governo da Indonésia, por meio de endereço eletrônico, cópia do texto completo não confidencial da petição que deu origem à investigação, bem como das respectivas informações complementares.

42. Foi dada oportunidade ao GOI de se manifestar com o objetivo de esclarecer se as empresas listadas eram exportadoras, trading companies ou produtoras do produto objeto da investigação.

43. As partes foram ainda informadas que o arquivo eletrônico contendo o questionário do Governo da Indonésia, bem como o questionário do produtor/exportador a ser preenchido pelos produtores da Indonésia, seria encaminhado posteriormente, por meio de nova notificação. Foi informado que a contagem de prazos apenas teria início quando da expedição de notificação do questionário.

44. Em 29 de junho de 2021, conforme o disposto no art. 37 do Decreto nº 1.751, de 1995, foram encaminhados os questionários para o Governo da Indonésia e para todos os produtores/exportadores identificados. Ademais, foi informado o prazo de quarenta dias, contado da data de expedição da correspondência, para restituição do questionário, que expirou em 16 de agosto de 2021.

45. [RESTRITO]

1.6 Dos pedidos de habilitação

46. Em solicitação datada de 21/6/2021, a Associação Brasileira dos Processadores e Distribuidores de Aços Inoxidáveis - APRODINOX, apresentou pedido de habilitação como Parte Interessada. Em atendimento ao pedido da referida associação, seus representantes foram habilitados e lhes foi concedido acesso aos autos restrito da presente investigação.

1.7 Do recebimento das informações solicitadas

1.7.1 Da Indústria Doméstica

47. A peticionária apresentou suas informações na petição de início da presente investigação e quando da apresentação de suas informações complementares. Conforme já descrito, em resposta a pedido de informações encaminhado pelo DECOM, a Aperam apresentou a totalidade dos dados requeridos com a finalidade de compor a indústria doméstica, bem como respondeu ao pedido de informações complementares encaminhado posteriormente pela autoridade investigadora.

48. Em 5 de outubro de 2022, a Aperam apresentou, voluntariamente, retificações nos dados anteriormente apresentados na petição e em suas informações complementares. As retificações se referiram a ajustes na lista de produtos, vendas do produto similar no mercado interno, vendas do produto similar no mercado externo, devoluções e despesas operacionais.

1.7.1.1 Das manifestações prévias à Nota Técnica sobre as informações da indústria doméstica e o período de investigação

49. Em manifestação datada de 8 de outubro de 2021, a empresa PT Indonesia Ruipu Nickel and Chrome Alloy (doravante também denominada PT IRNC), aduziu suas considerações sobre o que a peticionária teria considerado "pequenas retificações nos dados anteriormente apresentados na petição e em suas informações complementares" consoante a manifestação de 05 de outubro de 2021, pela qual teriam sido reapresentadas e alteradas diversas informações atinentes aos dados de dano da indústria doméstica.

50. Em primeiro lugar, a PT IRNC tratou do contexto das alterações nos dados de dano da indústria doméstica, fazendo remissões à então concomitante investigação antidumping, e esclareceu que a manifestação da Aperam teria sido apresentada reflexamente às apurações da Coordenação-Geral de Antidumping, Salvaguardas e Apoio ao Exportador - CGSA - no bojo da referida investigação antidumping que recai sobre o mesmo produto, para uma mesma origem (Indonésia) e o mesmo período de análise; destacando que após dois pedidos de informações complementares, a peticionária teria sido instada pela CGSA a apresentar elementos de prova dos dados aportados.

51. Nesse contexto, a empresa destacou a identidade dos dados de dano entre as investigações de dumping e de subsídios, de sorte que a Aperam havia sido definida como indústria doméstica para o mesmo escopo e para o mesmo período investigado; e ressaltou que o referido ofício de elementos de prova enviado à Aperam oportunizou a realização de alterações pela peticionária em relação aos dados apresentados quando da fase da petição, desde que tais alterações não fossem significativas.

52. A INRC expôs que a referida manifestação da Aperam seria uma tentativa da peticionária em proceder em alterações significativas, como assim entendidas pela CGSA, nos dados de dano da presente investigação de subsídios.

53. Em segundo lugar, a IRNC reafirmou que as alterações propostas pela Aperam em sua manifestação não seriam meras minor corrections; apontando as razões pela caracterização de alterações substanciais sobre os dados de dano, a respeito de Vendas do produto similar no mercado interno e Despesas operacionais, para que a perda de confiabilidade dos dados de dano da petição inicial e das respostas aos ofícios de informações complementares fosse avaliada pela SDCOM.

54. Em terceiro lugar, a IRNC argumentou que as alterações propostas na manifestação da Aperam seriam extemporâneas, arguindo que a apresentação de dados pela peticionária se daria em três momentos: quando da petição inicial (já consumado); quando da resposta aos eventuais ofícios de informações complementares (já consumados); e quando da resposta ao ofício de elementos de provas (etapa, então, ainda não consumada), admitindo-se tão somente minor corrections, destacando não existir na legislação, previsão para outras alterações que não as mencionadas.

55. Em manifestação datada de 22 de novembro de 2021, IRNC, reiterou os pedidos de sua manifestação de 8 de outubro de 2021, bem como comunicou fato novo que, no entender da empresa, justificaria o encerramento da presente investigação de subsídios sem resolução de mérito.

56. A IRNC apresentou como fato novo na presente investigação o encerramento da citada investigação antidumping, sem resolução de mérito, pela Circular SECEX nº 75, de 3 de novembro de 2021, pela qual se concluiu pela "falta de confiabilidade dos dados constantes da petição de início e pela magnitude e intempestividade das alterações", pontuando que as alterações propostas pela Aperam na presente investigação de subsídios seriam as mesmas propostas no âmbito da investigação antidumping correlata - para os mesmos dados de dano, da mesma indústria doméstica, do mesmo produto investigado e, por fim, para o mesmo período investigado, anotando que a alteração de maior magnitude no âmbito do processo antidumping, que diria respeito às despesas operacionais, foi voluntaria e extemporaneamente replicada na investigação de subsídios pela Aperam a partir da comparação dos autos dos dois processos.

57. Nesse contexto, a IRNC entendeu que, por uma questão de coerência de atuação administrativa da SDCOM, deveriam as análises e conclusões da CGMC, tal qual àquelas exaradas pela CGSA, apontar para o encerramento da presente investigação de subsídios, sem resolução de mérito, pelas mesmas razões constantes da Nota Técnica nº 51.909/2021/CGSA/SDCOM/SECEX: pela "falta de confiabilidade dos dados constantes da petição de início e pela magnitude e intempestividade das alterações".

58. Em terceiro lugar, a IRNC entendeu que a reconhecida falta de confiabilidade dos dados da indústria doméstica pela CGSA já constituiria fato per se suficiente a ensejar o encerramento da presente investigação de subsídios, destacando que a peticionária teria se valido de todos os expedientes possíveis para não trilhar o mesmo caminho que teria levado a investigação antidumping, ressaltando que somente restaria à peticionária sustentar a tese de que seria tempestiva a proposta de alteração dos dados de dano apresentada na manifestação de 5 de outubro de 2021.

59. A IRNC anota haver outras alterações não narradas textualmente na manifestação de 5/10/21 nem explicadas pela Peticionária quanto ao Volume de Produção do Produto Similar Doméstico a partir da comparação do arquivo "Apendices_Restritos_Info_Complement" com o arquivo "Anexo115_Base_Capacidade_Restrito" e com o arquivo "Apendices_Corrigidos_Restritos" e quanto às informações de Outras Entradas/Saídas dos estoques, a partir da comparação da planilha Apêndices XI do arquivo "Apendices" da petição com a respectiva planilha do arquivo "Apendices_Corrigidos_Restritos", de forma que a IRNC verificou que o mesmo ocorreu no âmbito da investigação antidumping, o que prejudicou a transparência das informações trazidas aos autos pela Aperam.

60. Ademais, a IRNC arguiu que a peticionária não teria disponibilizado de forma adequada as versões restritas, anotando que a versão restrita dos apêndices submetidos pela peticionária quando das informações complementares estaria aparentemente incompleta, conforme passo a passo apresentado anexo da presente petição; destacando que a ausência de versões restritas importa violação do comando do art. 51 do Decreto nº 8.058/2013, decreto que trataria do processo de investigação de dumping, de acordo com o qual as versões confidenciais e restritas deveriam ser apresentadas simultaneamente para o devido cumprimento dos prazos processuais; salientando que o único apêndice disponibilizado em versão restrita quando da resposta às informações complementares seria o "Apêndice VIII (Capacidade Instalada)". Nesse quadro, a IRNC aduziu que uma vez que os demais apêndices protocolados em versão confidencial

não foram adequadamente e simultaneamente protocolados em versão restrita, considera-se, nos termos do art. 51 do Decreto n.º 8.058/2013, que a versão confidencial seja passível de desconsideração por esta autoridade.

61. A IRNC argumentou que o Ofício SEI nº 299872/2021/ME, de 11/11/2021, da CGMC informou que seriam verificadas as informações fornecidas pela peticionária em sede de petição e informações complementares, à exceção de ajustes pontuais que podem ser apresentados em sede de minor corrections antes de iniciada à verificação, não havendo nesse Ofício nenhuma menção à verificação dos dados "ajustados" quando da manifestação voluntária da Aperam de 5 de outubro de 2021.

62. Nesse contexto, a IRNC propôs uma análise hipotética caso a Aperam fosse um produtor/exportador que carreasse voluntariamente, sem qualquer pedido adicional de informações complementares, alterações substanciais de seus dados, após o prazo da resposta ao questionário e aos ofícios de informações complementares. Nesse quadro, a IRNC asseverou que a prática da SDCOM seria a de receber informações referentes às exportações das partes estrangeiras investigadas na medida que elas sejam solicitadas (questionário original ou informações complementares e, às vezes, um segundo pedido de informações complementares) sendo, posteriormente, validadas mediante procedimento de verificação, ressalvada a apresentação de pequenas correções; ressaltando que informações voluntárias relativas aos questionários de exportador não costumariam ser aceitas se não inscritas em uma dessas oportunidades, posto que os protocolos seriam considerados intempestivos por esta autoridade, destacando que a questão seria de tratamento isonômico às partes.

63. Ante o exposto, a IRNC requereu o não recebimento das alterações dos dados de dano propostas na manifestação da Aperam de 5 de outubro de 2021 em razão da extemporaneidade e ausência de previsão legal; a avalição da continuidade da investigação de subsídios, uma vez que retificações não teriam natureza de minor corrections; e verificação da ocorrência de aparente falha procedimental de que a versão restrita dos apêndices apresentados em resposta ao Ofício nº 1.762/2020/CGMC/SDCOM/SECEX pela Aperam estaria incompleta, em descumprimento do art. 51 do Decreto nº 8.058/2013.

64. A Aperam, em manifestação de 17 de dezembro de 2021, destacou que as alterações realizadas nos dados apresentados originalmente na petição teriam sido devidamente realizadas e esclarecidas. Ademais, ressaltou que os esclarecimentos complementares e detalhados relativos às correções realizadas nos dados apresentados teriam sido apresentados aos técnicos da SDCOM na visita de verificação in loco realizada na peticionária, na qual a veracidade e validade dos dados apresentados teria sido analisada e confirmada.

65. A peticionário abordou o questionamento constante em manifestação da IRNC sobre o fato de constar, na versão restrita dos Apêndices apresentados pela peticionária em sede de informações complementares, em 9 de novembro de 2020, apenas o Apêndice VIII, embora outros apêndices tenham sido corrigidos. A Aperam esclareceu, conforme estaria detalhado no documento de apresentação das mencionadas informações complementares, que a necessidade de correção da correlação dos produtos similares com o CODIP e que, em decorrência de tais alterações, estavam sendo reapresentados os "os Apêndices VII, XVIII e XIX, com as devidas retificações.

66. Portanto, as correções realizadas impactariam apenas em ajustes na classificação nos CODIPs dos produtos similares, não implicando em alteração nos valores totais de vendas e de custo reportados. Considerando que as versões restritas dos apêndices apresentadas na petição não apresentam detalhamento por CODIP, limitando-se aos valores totais, a despeito dos ajustes realizados nas versões confidenciais dos mencionados apêndices VII, XVIII e XIX, tais ajustes não tiveram o condão de alterar as versões restritas de tais apêndices apresentados na petição, as quais permaneceram válidas. Dessa forma, não caberia a argumentação da IRNC no sentido de que a informação apresentada por esta peticionária estaria incompleta, uma vez que os dados corrigidos teriam sido devidamente apresentados, mantendo-se válidas as informações que não foram objeto de correção, conforme teria sido verificado pela autoridade investigadora.

67. Em manifestação datada de 23 de dezembro de 2021, a Aprodinox, apoiou as manifestações da IRNC, no que se referem à alegada perda de confiança dos dados que buscariam sustentar o alegado dano da peticionária.

68. A Aprodinox explicou que o conjunto de dados apresentados pela peticionária e que estão sob discussão, teria sido objeto de avaliação e fundamento para o encerramento do processo de análise de prática de dumping e do alegado dano decorrente de tal prática em processo de investigação iniciado no começo do ano 2021.

69. Sobre o tema, a Aprodinox informou que apresenta evidências da identidade dos dados ora em análise como os dados objeto de referido processo antidumping e de como neste processo, tais dados foram considerados intempestivos na mesma fase processual, posto que não se caracterizarem pequenos ajustes atemporais, como alegado pela peticionária.

70. A Aprodinox colocou em evidência, também, como o pedido de aplicação de direito provisório, em sede de determinação preliminar, solicitado pela Aperam seria completamente injustificado, posto que careceria do cumprimento dos requisitos legais que ensejariam eventual aplicação.

71. A Aprodinox reiterou a posição da IRNC, apresentada por meio das manifestações submetidas nos dias 8 de outubro e 22 de novembro de 2021, quanto à perda da confiabilidade dos dados apresentados pela peticionária, entendendo que a peticionária teria protocolado informações sob a justificativa de se tratarem de ajustes significativos em momento posterior ao legalmente estabelecido, quais sejam, o peticionamento inicial e a resposta a ofícios de informação complementar. Defendeu que após esses períodos seria facultada à peticionária tão somente a apresentação de ajustes não significativos, as minor corrections, em momento anterior a realização da verificação in loco ou na resposta ao ofício de elementos de prova, para validar ou eventualmente esclarecer algum ponto indicado na petição de início que fundamentou a abertura da presente investigação.

72. Nesse contexto, a Aprodinox destacou que os dados apresentados na manifestação da peticionária de 5 de outubro de 2021 teriam sido inseridos sem as adequadas justificativas pelas quais os ajustes deveriam ser admitidos ou, ainda, das razões pelas quais haveriam ocorrido; ilustrando que referente a vendas, por exemplo, apenas alegou-se que houve "um lapso" em relação às 17 notas fiscais, ressaltando que houve a apresentação de uma alteração significativa sem haver a indicação de qualquer justificativa, esclarecimento ou motivação; destacando também que foram apresentados em momento processual inadequado, uma vez que não se admite aporte de dados de maneira voluntária sem a prévia manifestação da SDCOM, como é o caso dos ofícios complementares.

73. Nesses termos, a Aprodinox ressaltou que a partir desses ajustes intempestivos, substanciais e feitos sem previsão legal, que envolveram algumas das principais contas e indicadores que compõem a análise do dano, a exemplo de despesas operacionais e custos, colocou-se em questão a confiabilidade quanto ao conjunto total de informações fornecido pela peticionária.

74. A Aprodinox apontou que em face da identidade dos dados apresentados na presente investigação da prática de subsídios acionáveis e os da investigação de dumping, dado que a peticionária representa a Indústria Doméstica em ambos os processos de investigação, que considerariam o mesmo período de análise e a mesma origem para fins de avaliação, tais alterações já teriam sido consideradas significativas pela própria SDCOM, na referida investigação de dumping.

75. Ademais, a Aprodinox aduziu que a identidade dos dados, especialmente daqueles relacionados ao dano, teria sido explicitada pela própria peticionária em sua resposta ao Questionário de Interesse Público, mesmo que para o âmbito de processo com origens diversas, no qual além da Indonésia também estava sendo investigada a África do Sul, e que trata de análise do outra prática, os dados de dano apresentar-se-iam como um todo pouco distinguível, o qual teria tido sua confiabilidade maculada, e esse seria o entendimento da própria SDCOM.

76. Nesses termos, a Aprodinox ressaltou que as contas retificadas pela peticionária na sua manifestação seriam exatamente aquelas questionadas pela SDCOM, em sede de investigação de prática de dumping, ao menos naquilo que seria possível às partes interessadas verificar a partir dos autos restritos. Nesse contexto, dentre os dados identificados, constariam: i) lista de produtos com CODPRODS erroneamente categorizados gerando impactados nos custos; ii) 17 notas fiscais não reportadas com vários impactos não reportados; e iii) Despesas/Receitas financeiras, com alterações muito significativas e impacto em cascata em várias outras contas e indicadores.

77. Nesse sentido, a Aprodinox destacou que ainda existiriam algumas outras alterações não reportadas pela peticionária, como o volume de produção do produto similar e os estoques, os quais também teriam sido identificadas, em sede de investigação antidumping pelas partes interessadas e pela autoridade investigadora, o que demonstraria a mesma identidade dos dados e a falha na análise sistemática da peticionária.

78. Nesse quadro, a Aprodinox entendeu que a SDCOM teria apontado as inconsistências e as julgado como sendo significativas e suficientemente contundentes para encerrar a investigação de dumping, nos termos do inciso I do art. 74 do Decreto n. 8.058 de 2013. E que após manifestações da peticionária e das partes interessadas teriam sido constatadas ainda mais inconsistências e falta de transparência, como aquelas relacionadas aos estoques. E dessa maneira, por meio da Circular SECEX n.º 75, de 3 de novembro de 2021, nos termos da Nota Técnica n.º 51909/2021/CGSA/SDCOM/SECEX. teria sido recomendada o encerramento da investigação de dumping pelas inconsistências apresentadas.

79. Nesse diapasão, a Aprodinox ressaltou que se depreenderia da Nota Técnica nº 51.909/2021/CGSA/SDCOM/SECEX que os dados apresentados pela Aperam em sede de investigação de prática de dumping teriam sido considerados intempestivos porque foram considerados substanciais.

80. Nesse sentido, a Aprodinox apontou que o art. 5º da instrução Normativa SECEX nº 1, de 17 de agosto de 2020, encontraria equivalente direito no art. 9º da Instrução Normativa SECEX nº 3, de 22 de outubro de 2021; expondo que entende que tais Instruções Normativas viriam tentando operacionalizar, durante a pandemia, as normas e práticas consolidadas da autoridade investigadora quanto ao procedimento de verificação de dados e o aceite de informações durante as investigações in loco.

81. Nesses termos, a Aprodinox entendeu que tais dados não deveriam ser aceitos como minor corrections e que, considerando o volume das informações e seu impacto na confiabilidade da análise, deve-se encerrar esta investigação de subsídios, seguindo o entendimento estabelecido em sede de investigação de dumping.

82. Em manifestação de 14 de junho de 2022, a IRNC argumentou que o período de análise de dano da presente investigação de subsídios seria compreendido entre os meses de abril de 2015 e março de 2020, e tendo a investigação sido iniciada com a publicação da Circular de Abertura em 2 de junho de 2021, seria certo haver um decurso de pelo menos 14 meses completos entre (i) os últimos dados de dano da indústria doméstica e (ii) e o início da investigação.

83. No entender da IRNC, tal circunstância seria extremamente problemática à luz de questões e precedentes já enfrentados pelo Órgão de Solução de Controvérsias (OSC) da Organização Mundial do Comércio (OMC), especificamente na disputa "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", uma vez que tal lapso temporal entre os dados de dano e o início da investigação, configuraria, no entendimento do próprio OSC, violação ao dever de basear as análises de dano em "evidências positivas", nos termos do Art. 15.1 do Agreement on Subsidies and Countervailing Measures ("ASMC"),

84. Para a IRNC, para além desse lapso temporal, que afeta a objetividade das análises desta autoridade, porquanto faz abarcar indicadores remotos e não representativos da situação contemporânea da indústria doméstica, outros pontos do precedente "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" serão cotejados; assim como o entendimento esposado pelo painel na disputa "Pakistan Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)".

85. A IRNC asseverou que a cumulação desse lapso temporal (de 14 meses) e de outros fatores alvitrados pelo OSC da OMC, irremediavelmente, constituiriam um cenário de falta de objetividade e de violação ao uso de provas e evidências positivas, e que "sendo de rigor" a atualização do período investigado da presente investigação, "sob pena de, ao não o fazer, incorrer em violação ao ASMC".

86. A IRNC fez um histórico do trâmite legal da investigação, desde o protocolo da petição que deu origem à investigação, passando pelas solicitações de informações complementares, pelo protocolo das respostas e tais pedidos, até o dia em que a petição foi considerada instruída, em 22 de março de 021, apontando que teriam transcorrido quase 8 meses após o protocolo da Petição.

87. A IRNC esclarece que buscou demonstrar com a retrospectiva histórica dos trâmites processuais, que o que deu causa ao lapso temporal de 14 meses que se observa foi a própria incompletude do pleito da peticionária, já que somente após 2 pedidos de informações complementares e

quase 8 meses de análise a petição foi dada por instruída pela SDCOM, e que tivesse a Aperam apresentado uma inicial completa, não deficiente, com os detalhamentos que lhe incumbiam e que já lhe eram legalmente esperados, posto que peticionária, o transcurso temporal não seria tamanho.

88. A IRNC reconheceu a dificuldade no levantamento de informações e evidências para se instruir adequadamente uma petição para investigação de subsídios. Não obstante, destaca que saltaria aos olhos a magnitude das informações complementares solicitadas pela SDCOM à Aperam, abrangendo tanto aspectos de forma de apresentação das informações como de conteúdo.

89. Para a IRNC, o Órgão de Solução de Controvérsias (OSC) da OMC, na disputa "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", teria sido enfático ao considerar que o decurso de 15 meses entre os últimos dados constantes da petição, especificamente no que se refere ao dano, e a abertura da investigação, configuraria violação ao dever das autoridades de defesa comercial em se pautar em "evidências positivas", como estatui o Art. 3.1 da Acordo Antidumping e o Art. 15.1 do ASMC.

90. Para a IRNC, transpondo-se tal consideração à presente investigação, não seria heterodoxo considerar que um lapso de 14 meses, isto é, de um mês a menos, seria igualmente grave e impediria o objetivo único da imposição de medida compensatórias (ou de quaisquer outros remédios de defesa comercial): neutralizar os efeitos danosos à indústria doméstica oriundos da introdução de produtos estrangeiros subsidiados, conforme se depreende do Art. 10 do ASMC e respectiva nota de rodapé nº 36.

91. Para a IRNC, dessa forma, pautar-se em dados de dano defasados em 14 meses seria, e a despeito de quem deu causa a tal circunstância, "violar o dever de orientação segundo provas positivas e objetivas, porque se estaria analisando e considerando indicadores de dano não-correntes e excessivamente defasados".

92. Para a IRNC, dado que o propósito dos remédios de defesa comercial seria restabelecer o level-playing a partir da neutralização do dano e da prática de deslealdade comercial, apurar e aplicar uma medida compensatória com base em evidências de dano remotas é penalizar produtores/exportadores por práticas pretéritas - e não equalizar as distorções comerciais correntes.

93. A IRNC apresentou o relato do Órgão de Apelação (Appellate Body - AB) acerca das conclusões do painel no caso "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", referente ao artigo 3.1 do Acordo Antidumping, para arguir que o AB viria a concordar que a determinação do dano seja baseada em evidência positiva, de forma que a evidência, que não seja relevante ou pertinente com respeito à questão a ser decidida, não seria evidência positiva, nos termos do artigo 3.1 do Acordo Antidumping. Dessa forma, o intervalo de 15 meses entre o final do período de investigação e a abertura da investigação constituiu um hiato suficientemente grande para afastar a confiabilidade dos dados de dano, como assenta o entendimento da OSC.

94. Nesse contexto, a IRNC destacou que as previsões acerca de "provas positivas" constantes do Acordo Antidumping, para fins de determinação de dano, encontrariam idêntica correspondência no Art. 15.1 do ASMC, de sorte que as considerações trazidas pelo painel e confirmadas pelo AB se aplicariam no 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 seriam idênticos àqueles oferecidos pela peticionária na investigação antidumping correlata, encerrada pela Circular SECEX nº 75, de 3 de novembro de 2021. Ademais, para a IRNC, a própria SDCOM, pelo Ofício nº 1.762/2020/CGMC/SDCOM/SECEX, teria requerido que fossem juntados aos presente autos os "dados de dano e demais tópicos comuns às investigações de dumping e de subsídios protocoladas pela Aperam".

96. Dessa forma, para a IRNC, se o intervalo de 15 meses entre o final do período de investigação e a abertura da investigação constituiu um hiato suficientemente grande para afastar a confiabilidade dos dados de dano, como assentaria o entendimento da OSC, não se estaria diante de uma prova que seria considerada "positiva" e "objetiva", e por essa razão, no caso da DS295, o OSC considerou que a autoridade mexicana de defesa comercial teria violado o Art. 3.1 do Acordo Antidumping.

97. Para a IRNC, haveria uma a 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 como referência nas investigações de subsídios; destacando que do "WTO Analytical Index - SCM Agreement - Article 15 (Jurisprudence)" e de outros julgados do OSC haveria o expresso reconhecimento dessa correspondência.

98. Assim sendo, para a IRNC restaria evidente, pois, a fragilidade de se adotar um período de investigação tão defasado, tal qual teria ocorrido na presente investigação.

99. A IRNC, ressalvou que, considerando-se ainda o decurso de tempo próprio do procedimento investigatório de subsídios pela legislação brasileira, de 12 meses, eventual medida compensatória seria imposta em 2 de junho de 2022, com uma defasagem, em relação ao cenário de dano, de 26 meses (2 anos e 2 meses); e tendo em vista que a presente investigação teria ainda sido prorrogada por 6 meses adicionais, conforme a Circular SECEX nº 22, de 31/5/2022 (D.O.U. de 1/6/2022), incorre-se na possibilidade de aplicar medidas compensatórias com uma defasagem de quase 3 anos (2 anos e 8 meses, ou 32 meses) em relação ao cenário de dano considerado.

100. Para a IRNC, a esse respeito, o AB, referendando o entendimento do panel "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)", em análise das circunstâncias relevantes do caso concreto, confirmou que não só o hiato de 15 meses entre o período investigado e a abertura, como também o hiato de quase 3 anos entre o fim do período de investigação e a imposição dos direitos finais antidumping, tinham "o condão de 'levantar dúvidas sobre a existência suficiente de nexo entre os dados relacionados ao período investigado e o atual cenário de dano".

101. Ademais, para a IRNC, o entendimento do AB em tal disputa seria rememorado na recentíssima decisão do painel de janeiro de 2021, no âmbito da disputa "Pakistan Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)"; de forma que, para a IRNC, nesse julgado, ao analisar os requisitos do Art. 3.1 do Acordo Antidumping (correlato ao Art. 15.1 do ASMC), o painel expressamente atrela o conceito de provas positivas "correntes" ou "atuais" a uma análise do lapso temporal decorrido entre o período investigado e a determinação final, posto que já haviam decorrido 31 meses.

102. A partir desse seu entendimento das posições do AB, a IRNC arguiu que no presente caso de subsídios, com a extensão da investigação por 6 meses adicionais, poderia se concretizar "o lapso inaceitável de 32 meses entre o fim do período investigado e a determinação final", uma vez visto que um parecer de determinação preliminar ainda não emitido na presente investigação, assim como solicitado pelas partes, e, respeitando todos os prazos legais de eventual determinação final, seria muito provável que essa investigação atingisse o lapso de 32 meses de defasagem de datas.

103. Nesse contexto, a IRNC argumentou que o referido painel também teria trazido outros elementos que teriam sido considerados em sua decisão, e que teriam sido referendados pelo AB, "para além do reconhecimento de violações a acordos multilaterais por uma atuação administrativa que, ao basear suas análises de dano em dados temporalmente defasados, vale-se de provas não-positivas"; de forma que a IRNC afirmou que as circunstâncias do caso concreto, "de certo", "contribuem para uma subjetividade incompatível com procedimentos de defesa comercial e indicariam, ainda, o papel ativo que deveria vestir as autoridades investigadoras", de forma que a INRC apontou que haveria cinco razões colocadas no Relatório do Órgão de Apelação da OMC que sustentariam essa argumentação apresentada, além das questões de hiato temporal anteriormente apresentadas, as quais não seriam as únicas circunstâncias levadas em conta pelo referido painel:

(i) o período de investigação escolhida teria sido proposto pela peticionária;

(ii) o México não teria estabelecido que o problema prático necessitava do período de investigação particular;

(iii) não teria sido estabelecido que a atualização das informações não era possível;

(iv) não houve tentativa de atualizar as informações;

(v) o México não forneceu razão - fora a alegação de que isso seria a prática geral do México de aceitar o período de investigação submetida pela peticionária - qual a mais recente informação não foi buscada.

104. A IRNC afirmou que "o período de investigação foi escolhido pela peticionária", entretanto, o enxerto do Relatório do Órgão de Apelação da OMC informa que o período de investigação escolhida teria sido proposto pela peticionária.

105. Nesse contexto, a IRNC afirmou que, possivelmente, o que se deduziria dessa assertiva seria que poderia haver, pela escolha partir de um polo, um interesse subjetivo naquele período. E, para a IRNC, tal cenário, se verdadeiro, contrariaria o dever de análise objetiva de provas positivas. Assim, para a IRNC, no presente caso, igualmente ao destacado pelo AB, teria sido a Aperam que sugeriu o período analisado e não determinado pela SDCOM.

106. No que concerne aos outros itens do enxerto do Relatório do Órgão de Apelação da OMC, para a IRNC, a autoridade não teria apresentado razões para que o período defasado fosse aceitável, e para a IRNC, tal qual ocorre no presente caso, pelo menos até o presente momento, inexistiria uma justificativa da SDCOM que atestasse, motivadamente, o cabimento do período de investigação indicado pela peticionária, especialmente quando defasado quando da abertura da investigação e, mais ainda, quando do encerramento do caso.

107. Ademais, a IRNC afirmou que, "ao que se presume, tampouco haveria justificativas para essa defasagem temporal em conta do disposto no art. 35", do Decreto nº 1.751/1995, mas, no entanto, apresentou o disposto no § 1º do art. 35, que dispõe que o período de investigação de existência de subsídio acionável deverá compreender os doze meses mais próximos possíveis anteriores à data da abertura da investigação, podendo retroagir até o início do ano contábil do beneficiário, mais recentemente encerrado e para o qual estejam disponíveis dados financeiros e outros dados relevantes confiáveis; destacando que, "eventualmente", há uma exceção na legislação para permitir uma defasagem do período investigado com o condão de privilegiar o ano contábil do país investigado, e, para a IRNC, sequer essa escusa teria a SDCOM, posto que o ano contábil da Indonésia seria de janeiro a dezembro e o período investigado não foi alterado para corresponder com o ano calendário da Indonésia, permanecendo desatualizado e abarcando cinco períodos de abril a março.

108. Para a IRNC, o período não foi atualizado quando da abertura e não constariam dos autos quaisquer razões que prejudicassem aquela então possibilidade, de forma que para a IRNC, a atualização dos indicadores de dano seria o caminho natural para superação do problema ora exposto e adjudicado pela OSC.

109. Neste ponto, a IRNC destacou que no caso de outra investigação de subsídios, de laminados de alumínio, ora em curso, esta mesma SDCOM houve por bem, já na Circular de Abertura, Circular SECEX nº 43, de 18/6/2021, recomendar a atualização do período investigado, posto o transcurso de 17 meses entre o final do período investigado e a respectiva abertura da investigação, conduta esta que foi absolutamente apropriada e tomada de ofício pela SDCOM.

110. Para a IRNC, tanto no âmbito da investigação de laminados de alumínio, como na presente investigação, foram apresentados pleitos paralelos para a investigação da prática de dumping como de subsídios, de forma que a apresentação de um pedido conexo de investigação antidumping tampouco poderia ser uma justificativa para a SDCOM deixar de solicitar a atualização de período na investigação de subsídios.

111. Para a IRNC, a autoridade teria o dever de examinar, nos termos do Art. 11.3 do ASMC e do §1º do art. 28 do Decreto nº 1.751/1995, a acurácia e adequação dos elementos de prova apresentadas na petição, de forma que se os elementos de prova fornecidos pela Aperam na petição não se relacionam a subsídios, dano e nexo causal "correntes" (respeitando o ditame legal referente aos doze meses mais próximos possíveis anteriores), não poderia ter a SDCOM concluído pela existência de motivos suficientes na petição para justificar a abertura da investigação.

112. Nesse contexto, a IRNC destacou o art. do Decreto nº 1.751/1995, que dispõe que os elementos de prova da existência de subsídio e de dano por ele causado serão considerados, simultaneamente, na análise para fins de determinação da abertura da investigação; e o seu § 1º, que dispõe que serão examinadas, com base nas informações de outras fontes prontamente disponíveis, a correção e a adequação dos elementos de prova oferecidos na petição, com vistas a determinar a existência de motivos suficientes que justifiquem a abertura da investigação.

113. Nesse contexto, para a IRNC não teria sido outro o entendimento do painel na já citada disputa "Pakistan Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)", devido à identidade entre o Art. 5.3 do Acordo Antidumping e o Artigo 11.3 do ASMC, de forma que a IRNC entende que as conclusões desse referido painel são plenamente aplicáveis às investigações de subsídios.

114. A IRNC concluiu que para evitar eventual nulidade da presente investigação, a SDCOM deveria requerer a atualização do período investigado da presente investigação de subsídios e solicitar que as partes interessadas apresentem seus dados referentes aos doze meses mais próximos possíveis anteriores a ser determinado por essa autoridade.

115. Ademais, a IRNC arguiu que, se não for nem tentada pela autoridade, a nulidade do procedimento seria patente, em função de um precedente de um caso de investigação antidumping, ressalvando que, caso a SDCOM opte por não solicitar a atualização do período e ficar em sintonia com a legislação e jurisprudência multilaterais, não sobrariam alternativas à IRNC a de solicitar o encerramento da presente investigação, sem resolução de mérito.

116. A IRNC solicita que a apreciação desse fato já seja analisada em parecer preliminar e pugna-se pela não aplicação de medidas compensatórias provisórias.

117. A Aperam, em manifestação de 30 de junho, tratou de rebater as manifestações da IRNC e da APRODINOX. Primeiramente, destacou que, como constaria no Relatório do Órgão de Apelação da OMC relativo ao caso mencionado (WT/DS295/AB/R):

According to the Panel, although the Anti-Dumping Agreement does not contain any specific rules concerning the period to be used for data collection in an anti-dumping investigation, this does not mean that the investigating authority's discretion in using a certain period of investigation is boundless. [...]

118. Esse entendimento seria confirmado pelo Comitê de Práticas sobre Antidumping da OMC em sua "Recommendation concerning the periods of data collection for anti-dumping investigations", adotado em 5 de maio de 2000 (G/ADP/6):

The Committee notes that although the Agreement on Implementation of Article VI of GATT 1994 refers to the period of data collection for dumping investigations when it refers to the "period of investigation", it does not establish any specific period of investigation [nota de rodapé omitida], nor does it establish guidelines for determining an appropriate period of investigation, for the examination of either dumping or injury.

119. Assim sendo, não havendo tais guias no Acordo Antidumping, o Comitê, ainda que não fixando regras, teria estabelecido recomendações para tal:

The Committee considers that guidelines for determining what period or periods of data collection may be appropriate for the examination of dumping and of injury would be useful. The Committee also recognizes, however, that such guidelines do not preclude investigating authorities from taking account of the particular circumstances of a given investigation in setting the periods 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 que:

In light of the foregoing considerations, the Committee recommends that with respect to original investigations to determine the existence of dumping and consequent injury:1. As a general rule:

(a) the period of data collection for dumping investigations normally should be twelve months, and in any case no less than six months, [nota de rodapé emitida] ending as close to the date of initiation as is practicable;

(b) the period of data collection for investigating sales below cost [nota de rodapé emitida], and the period of data collection for dumping investigations, normally should coincide in a particular investigation;

(c) the period of data collection for injury investigations normally should be at least three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the dumping investigation;

(d) In all cases the investigating authorities should set and make known in advance to interested parties the periods of time covered by the data collection, and may also set dates certain for completing collection and/or submission of data. If such dates are set, they should be made known to interested parties.

2. In establishing the specific periods of data collection in a particular investigation, investigating authorities may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicality, and the existence of special order or customized sales.

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

121. Portanto, embora não houvesse regras específicas relativamente a qual período deveria ser considerado para fins de análise de dano e de dumping, tal fato não significa permissão para a adoção de períodos de forma injustificada. Nesse sentido, verificar-se-ia, no presente processo, que a SDCOM teria atendido devidamente às recomendações mencionadas do Comitê de Práticas sobre Antidumping.

122. No caso mencionado pela IRNC, relativo ao processo DS295, como consta no Relatório do Órgão de Apelação da OMC, "[t]he investigation was initiated on 11 December 2000, 15 months after the end of the period of investigation." Entretanto, seria fundamental notar que, em tal caso, enquanto o período de análise considerado terminava em agosto de 1999, a petição foi protocolada em junho de 2000. Ou seja, quando do protocolo da petição, o período de análise estava defasado em 10 meses.

123. Tal situação seria totalmente distinta daquela do processo em tela. Como consta nos autos do processo e explicitamente mencionado no item 1.2 do Anexo à Circular SECEX nº 40, de 2021, relativo à abertura da presente investigação. Ou seja, ainda que o Decreto nº 1.751, de 1995, não estabeleça prazo para protocolo da petição em relação ao período de análise de dano, a peticionária teria realizado o protocolo ao final do quarto mês após o fim do período de análise considerado, em consonância com o procedimento já adotado no Decreto nº 8.058, de 2013.

124. Ademais, considerando o protocolo concomitante de petição antidumping, teria sido possível realizar a avaliação conjunta dos elementos de dumping, de subsídios acionáveis e de dano, uma vez que envolvem o mesmo produto investigado.

125. Assim sendo, como em todos os processos de investigação de dumping sob a égide do Decreto no 8.058, de 2013, uma vez iniciada a investigação, mantém-se o período de análise considerado na petição. Ressalte-se que, no caso em tela, o processo de investigação antidumping foi iniciado em 25 de fevereiro de 2021, por meio da Circular SECEX nº 15. Entretanto, no caso da petição de subsídios, há que se cumprir a exigência de realização de consultas com o governo do país exportador, nos termos do Artigo 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, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

126. Dessa forma, como consta no item 1.3 da Circular de Abertura, em 31 de março de 2021, o Governo da Indonésia teria sido notificado da existência de petição devidamente instruída, tendo sido tal Governo, na mesma comunicação, convidado à realização de consultas, as quais foram, enfim, realizadas em 19 de abril de 2021. Considerando todos os elementos apresentados na petição e as informações e esclarecimentos apresentados pelo Governo da Indonésia, foi iniciada a presente investigação de subsídios acionáveis em 2 de junho de 2021, mantendo-se o mesmo período de análise de dano da investigação antidumping então já iniciada.

127. Cabe destacar que a Circular de Abertura teria indicado qual seria o período de análise a ser considerado no processo, tendo as informações solicitadas pela autoridade investigadora nos questionários enviados às partes interessadas igualmente indicado o período considerado para fins de apresentação dos dados.

128. A despeito de tal fato, a IRNC apresentou sua resposta ao Questionário e, em nenhum momento, teria questionado que tal prazo estaria defasado e/ou que demandaria atualização em seu entendimento. Apenas após findo o prazo originalmente previsto para a conclusão do processo, a IRNC

teria alegado que o período de análise deveria ter sido atualizado, atestando que, de fato, se trataria apenas de tentativa de evitar a utilização das melhores informações disponíveis para a mesma, diante do indeferimento de sua resposta ao Questionário do Produtor/Exportador

129. Uma vez iniciada a investigação e enquanto esta seria realizada, obviamente o período de análise se torna mais defasado, como seria reconhecido pelo mesmo já citado Relatório do Órgão de Apelação da OMC relativo à disputa "Mexico - Definitive Anti-dumping measures on beef and rice" (WT/DS295/AB/R):

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

130. O mesmo Relatório do Órgão de Apelação da OMC novamente destacaria que:

This, of course, does not imply that investigating authorities are not allowed to establish a period of investigation that covers a past period. We note that, contrary to what Mexico suggests, the Panel did not state that the Anti-Dumping Agreement requires a coincidence in time between the investigation and the data used therein. [nota de rodapé omitida] On the contrary, the Panel recognized that "it is well established that the data on the basis of which [the determination that dumped imports cause injury] is made may be 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. We agree with the Panel, however, that more recent data is likely to provide better indications about current injury. [nota de rodapé omitida]

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

131. No presente caso, a investigação teria sido iniciada em junho de 2021, com prazo previsto de um ano para conclusão, contado da data de início, "salvo se, em circunstâncias excepcionais, for necessária a prorrogação, quando o prazo poderá ser de até dezoito meses", como atestado no item 12 da Circular de Abertura. Em 1 º de junho de 2022, por meio da Circular SECEX n º 22, o prazo para conclusão da presente investigação foi prorrogado por até seis meses, atingindo, assim, um máximo de 18 (dezoito) meses no total.

132. Nesse sentido, seria fundamental destacar que tal prazo está em consonância com o determinado pelo Acordo de Subsídios e Medidas Compensatórias da OMC, em seu artigo 11.11:

Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

133. Restaria claro, portanto, que a defasagem de 18 meses desde a abertura da investigação e sua conclusão seria considerada inerente à própria condução da investigação, uma vez que não se preconiza a atualização do período de análise durante a condução da investigação.

134. Como constaria no Relatório do Órgão de Apelação da OMC, de 18 de janeiro de 2021, sobre o caso "Pakistan - Anti-dumping Measures on Biaxially Oriented Polypropylene Filme from the United Arab Emirates" (WT/DS538/R):

It is true that an investigation takes time, leading to a gap between the end of the POI and the date of final determination.

135. No caso acima citado, o período de análise de dano consideraria dados até junho de 2010, enquanto que a abertura da investigação teria ocorrido em abril de 2012, ou seja, um gap de 22 meses. Quanto à questão, o painel atestou, de início, que:

[w]hile the temporal gap alone is not enough to conclude that the data did not provide evidence of current dumping causing injury, these gaps are quite considerable, ranging from slightly less to slightly more than two full years.

136. Confirmando tal entendimento, o Relatório do Órgão de Apelação da OMC relativo à disputa "Mexico - Definitive Anti-dumping measures on beef and rice" (WT/DS295/AB/R) atestaria que:

We agree with Mexico that using a remote investigation period is not per se a violation of Article 3.1. [...]

137. Restaria claro, portanto, que já seria esperado que houvesse a defasagem entre o período de análise e a data de conclusão da investigação, de forma que tal defasagem não justificaria a atualização do período de análise durante a condução da investigação e nem a solicitação de atualização dos dados já anteriormente solicitados às partes interessadas, especialmente após tais dados já terem sido objeto de procedimento de verificação pela autoridade investigadora.

138. Caso novas informações atualizadas fossem demandadas pela autoridade investigadora no curso da investigação, novos procedimentos de verificação de dados seriam necessários, novas análises de dano, de prática desleal e de nexo causal seriam necessárias, o que demandaria tempo inexistente para tal procedimento, que, legalmente, tem prazo para ser concluído, conforme discutido anteriormente.

139. Nesse sentido, valeria destacar a inconsistência da argumentação apresentada pela IRNC, que, ao mesmo tempo em que afirmou em sua mencionada manifestação que seria possível, no presente procedimento, solicitar a todas as partes interessadas novas informações para um novo período de análise atualizado, afirmou, em sua outra manifestação datada de 14 de junho de 2022, que não haveria tempo hábil para solicitar informações ao governo da China sobre possíveis subsídios transnacionais.

140. Diante de todo o exposto, restaria claro que o período de análise considerado na presente investigação estaria em consonância com as regras estabelecidas pelo Decreto n º 1.751, de 1995, e pelo Acordo de Subsídios e Medidas Compensatórias da OMC.

141. Em 09 de setembro de 2022, a empresa IRNC apresentou manifestação referente às considerações feitas pela APERAM sobre sua manifestação apresentada no dia 14 de junho de 2022.

142. Inicialmente, reiterou a existência de desconformidade dos dados de dano da investigação em relação a precedentes multilaterais, posto que defasados (i) em 14 meses em relação à Circular de Abertura e, potencialmente, (ii) em aproximadamente 31 meses em relação à determinação final, a ser tomada no prazo máximo de 28 de outubro de 22.

143. Tal entendimento teria sido pautado em dois precedentes do Órgão de Solução de Controvérsias (OSC) da Organização Mundial do Comércio (OMC): Mexico - Definitive Anti-dumping measures on beef and rice (DS295), e Pakistan - Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538).

144. Segundo a empresa, em ambas as disputas, o OSC teria reconhecido que as autoridades de defesa comercial em questão não teriam cumprido com o dever de análise de dano pautada em provas positivas, no rigor do art. 3.1 do Acordo Antidumping e do 15.1 do Acordo de Subsídios e Medidas Compensatórias (ASMC), ao se pautarem em dados de dano defasados em 15 meses em relação à abertura (DS 295) e em 31 meses em relação à determinação final (DS 538) - sem que motivassem ou justificassem tamanha defasagem.

145. A IRNC trouxe tais precedentes por entender que os dados de dano adotados na presente investigação seriam igualmente defasados - ou pelo menos com uma defasagem quase idêntica: em relação à abertura, o lapso temporal seria de 14,06 meses e, em relação a determinação final, esperada para o dia 28/10/2022, conforme a Circular SECEX nº 37/2022, a defasagem seria de 30,92 meses.

146. Nesse contexto, a IRNC mencionou que não seria heterodoxo considerar esses lapsos temporais (14,06 e 30,92 meses), uma vez que afastaria qualidades elementares às provas e evidências que a SDCOM deveria fiar-se, a objetividade e positividade, estatuídas no art. 15.1 do ASMC. Ressaltou também que esta não seria sua opinião, mas o entendimento expresso do OSC, em ambas as disputas (DS 295 e DS 538).

147. A IRNC mencionou que concordaria com a citação da APERAM sobre esse tema, em sua manifestação de 30 de junho de 2022, que citou que inexistiria no AA e no ASMC regras específicas a respeito do período investigado, adotado para coleta de dados. Mas, segundo ela, foi justamente por isso que essa questão foi levada ao OSC da OMC.

148. Destacou outro ponto da manifestação da APERAM, que teria citado que a SDCOM teria atendido devidamente às recomendações mencionadas do Comitê de Práticas sobre Antidumping. Sobre esse ponto, expressou sua discordância por duas razões: 1) porque pela própria redação do parágrafo 1º da "Recommendation concerning the periods of data collection for anti-dumping investigations", o período de investigação a ser escolhido deve terminar o mais próximo possível da data da abertura da investigação; e 2) pela mesma Recomendação do item 1, em seu parágrafo 3º, para as hipóteses em que se dê o descumprimento da regra geral do parágrafo 1º (tal qual se observaria na presente investigação), assevera ser recomendável à autoridade que justifique a escolha de período diverso ou específico, o que não teria ocorrido.

149. Assim, destacou que pelos próprios argumentos da APERAM ficaria claro que o período investigado adotado para a presente investigação estaria em desconformidade com as recomendações do Comitê, e contrariaria claros precedentes do OSC da OMC.

150. Ainda a respeito das colocações da APERAM, especificamente sobre os fatores que deram causa à defasagem que se observa, a IRNC reiterou que pouco importa quem deu causa ao lapso temporal. Segundo a empresa, o que tem relevo à investigação seria única e exclusivamente o uso de dados e provas que constituam, no rigor do art. 15.1 do ASMC, evidências positivas e objetivas.

151. Citou também que a APERAM teria indicado que a fase de consultas ao Governo investigado como outro fator que teria contribuído para o lapso temporal que se observa. No entanto, não reconheceu que esse procedimento só tomou 2 meses - enquanto os pedidos de informações complementares à petição teriam tomado 8 meses, como abordado na manifestação da IRNC de 14/06/2022.

152. A IRNC, em manifestação de 9 de setembro de 2022, reiterou que haveria desconformidade dos dados de dano da presente investigação, de abril de 2015 a março de 2020, em relação a precedentes multilaterais posto que defasados (i) em 14 meses em relação à Circular de Abertura, de 2/6/2021, e, potencialmente, (ii) em aproximadamente 31 meses em relação à determinação final, explicando que tal entendimento pautou-se em dois precedentes do Órgão de Solução de Controvérsias (OSC) da Organização Mundial do Comércio (OMC), quais sejam, disputas "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" e "Pakistan Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (DS 538)"; destacando que em ambas as disputas, o OSC teria reconhecido que as autoridades de defesa comercial em questão não teriam cumprido com o dever de análise de dano pautada em provas positivas, cf. os artigos 3.1 do Acordo Antidumping e 15.1 do Acordo de Subsídios e Medidas Compensatórias (ASMC), ao se pautarem em dados de dano defasados sem que motivassem ou justificassem tamanha defasagem.

153. Para a IRNC não seria heterodoxo considerar que tais lapsos temporais teriam o condão de afastar qualidades elementares às provas e evidências referentes à objetividade e positividade, cf. art. 15.1 do ASMC. Nesse contexto, a IRNC fez menção à obra "WTO - Trade Remedies", publicada pelo Max Planck Institute for Comparative Public Law and International Law, especificamente de excerto que faz referência à disputa "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)".

154. Nesse quadro, a IRNC expôs que concorda com a alegação da Aperam que segundo o próprio AB Report da disputa "Mexico - Definitive Anti-dumping measures on beef and rice (DS295)" inexistiria no AA (e também no ASMC) regras específicas a respeito do período investigado adotado para coleta de dados e que esse entendimento foi confirmado pelo Comitê de Práticas sobre Antidumping 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 consignou que uma defasagem dos dados de 15 meses em relação à abertura e de 31 meses em relação à determinação final desconstituiria o caráter positivo e objetivo da prova, acrescentando que essas seriam qualidades exigidas 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 presente investigação em desconformidade a Recomendação de que o período de investigação a ser escolhido deve terminar o mais próximo possível da data da abertura da investigação; ademais, porque a mesma Recomendação recomenda à autoridade que justifique a escolha de período diverso ou específico.

156. Argumentou que pouco importaria quem teria dado causa ao lapso temporal; de forma que o que tem relevo à investigação seria única e exclusivamente o uso de dados e provas que constituam, no rigor do art. 15.1 do ASMC, evidências positivas e objetivas.

1.7.1.2 Das manifestações posteriores à Nota Técnica sobre as informações da indústria doméstica e o período de investigação

157. O GOI, em sua manifestação final, fez referência à investigação antidumping encerrada pela Circular SECEX nº 75, de 3 de novembro de 2021. Segundo o GOI, nos termos do Ofício nº 727/2021/CGSA/SDCOM/SECEX, com relação às informações fornecidas pela peticionária, concluiu-se que, pela sua dimensão e/ou natureza, (i) foram consideradas intempestivas, (ii) representaram ajustes significativos nos dados e (iii) prejudicaram a comprovação da existência de dano à indústria doméstica.

158. Deste modo, o GOI salientou que no presente caso foram apresentadas as mesmas informações, devendo ser tomada conduta similar de desconsideração, na análise de positive evidence consoante Artigo 15 do ASMC.

159. A Aperam, em sua manifestação final, pontuou que a IRNC apresentou sua resposta ao Questionário sem questionar que o período da investigação estaria defasado e/ou que demandaria atualização. Apenas após findo o prazo originalmente previsto para a conclusão do processo, a IRNC, na opinião da peticionária, pelo fato de a autoridade investigadora ter notificado a empresa de que as conclusões sobre a mesma levariam em consideração as melhores informações disponíveis, devido à não apresentação devida da resposta ao Questionário enviado pela SDCOM, passou a alegar que o período de análise deveria ter sido atualizado.

160. Acrescentou a peticionária que não escolheu o período de análise, assim como o fez na petição antidumping. Acrescentou a situação atípica da presente investigação, que foi conduzida sob o contexto da pandemia e que incorreu em grande esforço na organização da petição inicial da presente investigação. Ao final, expressa concordar com o entendimento da SDCOM.

161. Em suas manifestações finais, a IRNC aduz que no bojo da presente investigação, a SDCOM não atendeu às regras e à jurisprudência do Órgão de Solução de Controvérsias (OSC) da Organização Mundial do Comércio (OMC) de exame objetivo e pautado em provas positivas do cenário de dano que necessita de dados correntes, e não houve justificativa clara e devidamente motivada para exceção poder ser feita para relevar tal regra; assim como não houve nenhuma tentativa por parte da autoridade em atualizar o período de investigação, tampouco uma discussão sobre a impossibilidade de se atualizar os dados.

162. Nesse quadro, a IRNC assevera que que a SDCOM relevou e ignorou os detalhados elementos e considerações trazidos, nos quais poderia ter constatado que a satisfação de "outros elementos" no presente caso se observa em igual ou maior grau que aquele do caso do DS 295.

163. Para a IRNC, o argumento da SDCOM contrário ao posicionamento da IRNC é que a análise temporal não seria somente uma análise objetiva e matemática na contagem dos meses, mas também precisa considerar outros fatores. Entretanto, a IRNC aduz que no caso da disputa DS 295, cinco outros fatores foram postulados, assim como no DS 538 outros fatores também foram analisados além do hiato temporal.

164. Nesse contexto, a IRNC destaca que nunca relacionou a defasagem temporal a uma "simples" contagem dos meses e, assim, uma violação per se do artigo 3.1 do ADA ou respectivo artigo 15.1 ASMC, tendo trazido elementos para correlacionar ao caso concreto, analisando em detalhes também os outros fatores trazidos pelo Órgão de Solução de Controvérsia da OMC, demonstrando que esses outros fatores também ocorreram no presente caso; os quais, porém, não teriam sido comentados pela SDCOM na NTFE, embora constassem expressamente das manifestações da IRNC.

165. Para a IRNC, primeiramente, a SDCOM tenta afastar os argumentos sobre a defasagem dos dados de dano sob o pretexto de que os precedentes DS 295 e DS 538 tratavam de investigações antidumping, o que a IRNC manifesta sua absoluta discordância, nos exatos termos daquilo que exaustivamente aduziu em manifestações pretéritas.

166. Ademais, a IRNC relembra também o art. 3.1 do ADA e o art. 15.1 do ASMC, para destacar, no seu entender, a absoluta identidade entre os textos dos artigos, de modo que seria improvável existir decisões ou interpretações totalmente díspares, e repisa que o conteúdo da sua manifestação de 14/6/2022 é absolutamente claro, de identidade entre o Art. 3.1 do Acordo Antidumping e o Art. 15.1 do ASMC, sendo a jurisprudência do OSC em antidumping utilizada como referência nas investigações de subsídios, no "WTO Analytical Index - SCM Agreement - Article 15 (Jurisprudence)", e em outros julgados do

OSC, em que há o expresso reconhecimento dessa correspondência, para aduzir que restaria evidente, a fragilidade de se adotar um período de investigação tão defasado, tal qual ocorre na presente investigação.

167. Por outro lado, a IRNC entende que a SDCOM, na NTFE, tenta demonstrar os potenciais problemas que a pandemia teria causado tanto para a coleta dos dados, assim como potencial cenário de dano - no que consideraria justificada a escolha de um período de investigação tão defasado, satisfazendo-se o dever de justificar um período que não o mais próximo possível, como ensinam os precedentes do DS 295 e DS 538 do OSC da OMC.

168. Para a IRNC, os argumentos trazidos pela SDCOM a esse respeito na NTFE mostram que se criou um cenário de um "novo normal" onde 25% dos funcionários da Aperam estariam em home office, informação que não constava dos autos durante o período probatório; de forma que a IRNC entende tal fato como "curioso", uma vez que nenhum argumento ou circunstância fática de impossibilidade de obter dados foi fornecida ou aduzida após a abertura da investigação, e mesmo na sua fase pré-abertura; de forma que na Circular SECEX nº 40, de 1º de junho de 2021, publicada no D.O.U em 02/06/2021, nada consta sobre eventuais dificuldades que os consultores ou as empresas pudessem ter passado um ano e meio após o período inicial da pandemia, e que poderiam servir de motivação ao uso de um período defasado.

169. Noutro giro, para a IRNC, outro argumento bastante pertinente trazido pela SDCOM seria referente aos problemas que a pandemia poderia trazer ao cenário de dano por conta de seus possíveis efeitos na oferta e demanda do produto investigado; no entanto, no entender da IRNC, a citação ao caso do DS 295 feita pela SDCOM, está correta, porém sua interpretação parece equivocada. Ademais, para a IRNC, a SDCOM também cita de forma pertinente o caso do DS 538, mas esquece de comentar parte essencial de sua transcrição, de forma que igualmente ao caso do DS 295, a crítica do OSC reside no fato que a autoridade investigadora: "não fez nenhuma tentativa para atualizar os dados investigados e, durante o processo, não forneceu qualquer discussão sobre a escolha do período investigado".

170. A IRNC assevera que na presente investigação, a SDCOM não promoveu esse debate ao longo da investigação nem ofereceu uma justificativa no momento da abertura da investigação para aceitar um período já defasado em 14 meses, e teria tentado, em momento pós prazo probatório, reinterpretar e ressignificar o passado, alcançando uma justificativa baseada na pandemia nunca levada ao conhecimento das partes no curso do período probatório, como legalmente haveria de ser; concluindo na NTFE que o lapso temporal dos dados (defasagem) estaria "plenamente justificado e conforme a legislação pátria e multilateral".

171. A IRNC aduz que a discussão para se justificar e aceitar um período de investigação defasado não deve ser feita apenas no bojo da Nota Técnica, mas quando da abertura da investigação, de sorte que as partes interessadas pudessem valer-se do contraditório e ampla defesa para comentar tal justificativa, podendo produzir todas as provas que lhe são legalmente asseguradas.

172. Para a IRNC, uma autoridade de defesa comercial não pode simplesmente ignorar um período, principalmente um período corrente, de forma que os dados devem estar disponíveis para a autoridade, mesmo que ela decida não dar um peso importante para sua tomada de decisão por qualquer motivo que fosse, não podendo a autoridade simplesmente presumir que os dados mais correntes seriam piores ou estariam eivados de efeitos negativos para uma análise de dano e nexo de causalidade; uma vez que o objetivo de uma autoridade investigadora não é atingir uma determinação final positiva quanto à existência de dano, mas analisar a necessidade de equilibrar uma eventual deslealdade comercial, não penalizando um exportador por uma prática passada, mas sim analisar uma prática corrente e tentar equilibrar tal situação.

173. Dessa forma, para a IRNC, a pandemia não deveria em si ser um motivador para não se apurar dados e fatos.

174. No entanto, a própria IRNC concorda com a SDCOM de que o hiato temporal não cria per se uma violação ao regramento da OMC, mas, no entanto, entende que devem existir também outros fatores que efetivamente tenham impossibilitado a autoridade investigadora de atualizar o período investigado para um período corrente de dano.

175. A IRNC aduz que a SDCOM acabou por não comentar cada um dos 5 fatores adicionais que o OSC da OMC trouxe para analisar se o período do caso do DS 295 teria sido adequadamente estipulado.

176. Nesse diapasão, a IRNC entende que demonstrou as circunstâncias dos casos concretos que deram origem às disputas dos casos do DS 295 e do DS 538 são rigorosamente observadas no presente caso; e repisa que o art. 35, § 1º, do Decreto nº 1.751/1995 dispõe a respeito da excepcionalmente de se adotar um período defasado, ressalvando que, no entanto, o ano contábil da Indonésia é de janeiro a dezembro e o período investigado de abril a março.

177. Desta forma, a IRNC elenca os fatores a evidenciar o vício da SDCOM perante a normativa e jurisprudência do OSC:

i. O período da investigação teria sido definido pela peticionária, chancelado e aceito pela SDCOM no momento da abertura da investigação em junho de 2021 e em todos os meses seguintes até a expedição da Nota Técnica.

ii. Nem ao iniciar publicamente a investigação nem ao longo de todo o prazo probatório, a SDCOM teria identificado qualquer problema prático para necessariamente manter esse POI desatualizado;

iii. Não teria sido aportado nenhum argumento, razão ou prova demonstrando que atualizar os dados por parte da peticionária seria impossível;

iv. Não teria existido, por parte da autoridade investigadora, nenhuma tentativa no sentido de se atualizar o período investigado;

v. A SDCOM não teria concedido nenhuma razão no sentido de explicar o porquê não tentou obter dados mais atualizados ao longo de todo o período probatório e em nenhum momento anterior à Nota técnica. Como esse seria um tema mais procedimental e não simplesmente material, a autoridade poderia ter abordado essa discussão no momento da expedição dos prazos atualizados da investigação, mas mesmo nesse momento de expedição de um documento público a todas as partes interessadas, a SDCOM teria optado por não se valer do prazo probatório para discutir a opção por não se utilizar de dados atuais e não avaliar a existência de um cenário de dano corrente.

178. A IRNC conclui que as características do presente processo preenchem todos os demais fatores que levaram o OSC da OMC a concluir, naquelas disputas, que a defasagem temporal levou também ao vício legal de ausência de provas positivas, que fossem capazes de permitir uma análise objetiva de dano com base em dados correntes bem como possibilitar uma análise de causalidade; com o intuito de se apurar um direito que permitisse contrabalancear a eventual existência, simultânea e atual, de práticas desleais e dano sofrido.

179. Dessa forma, a IRNC assevera que há no presente processo vício insanável, criando a necessidade de a SDCOM determinar o encerramento do caso sem a recomendação de imposição de medidas compensatórias ou tentar atualizar o período para que possa estar em conformidade com o regramento e jurisprudência multilateral, para o que claramente não haveria mais tempo hábil, não no curso da presente investigação.

180. Ademais, a IRNC alega que o direito de contraditório e ampla defesa das partes interessadas não foi resguardado quando a SDCOM justificou o período defasado tão somente após o final do prazo probatório, na NTFE, vindo a decidir questão basilar e importantíssima da presente investigação (período de investigação) quando as partes interessadas não podem mais aportar novas provas aos autos.

1.7.1.3 Dos comentários da SDCOM sobre as informações da indústria doméstica

1.7.1.3.1 Com relação ao protocolo de 5 de outubro de 2021 e o pedido de encerramento desta investigação

181. Com relação aos comentários acerca da retificação aos dados protocolada pela Aperam, pontua-se que a empresa voluntariamente protocolou em 5 de outubro de 2021 retificação em seus dados, possivelmente como resultado do procedimento de verificação de elementos de prova no processo antidumping paralelo, com base no § 2º do art. 37 do Decreto nº 1.751, de 1995.

182. A SDCOM aceitou tais alterações, pois considerou ainda haver tempo hábil para a análise das informações, o que se mostrou acertado, uma vez que a verificação in loco só ocorreu 2 meses depois, em 5 de dezembro de 2021. Ressalta-se que o protocolo de 5 de outubro de 2021 foi objeto de item específico em dita verificação, e a empresa foi instada a explicar detalhadamente o que ocorrera.

183. Os servidores da SDCOM entenderam na verificação in loco todas as mudanças ocorridas, tendo ficado comprovado que a principal falha ocorrida em sede de verificação de elementos de prova no processo paralelo de investigação antidumping - ocorrida com os custos de produção - se deu por falha interna da Aperam que levou à uma falha no envio do documento requerido para comprovação. Conforme consta do relatório de verificação desta SDCOM:

Apresentadas as explicações, os servidores da SDCOM puderam entender a natureza dos dados conforme apresentados em 5 de outubro de 2021, tendo sido estes os dados considerados na verificação, conforme roteiro de verificação previamente encaminhado e os arts. 36 e 37 do Decreto nº 1.751, de 1995.

(...)

A equipe de verificação pode confirmar as informações relatadas, bem como a real

composição do CODIP [CONFIDENCIAL], que de fato concilia com os dados reportados nos autos do processo na presente investigação em 5 de outubro. Assim, a equipe da SDCOM considerou totalmente sanada a situação de aparente divergência que ocorreu na investigação paralela de dumping no que tange ao custo de produção no âmbito do procedimento de verificação de elementos de prova. (grifos no original).

184. As alterações nos demais dados da empresa, muito embora tenham alterado os números a serem considerados no dano analisado, não alteraram as curvas e tendências dos indicadores de dano, não afetando as conclusões gerais da SDCOM constantes do parecer de início da investigação.

185. Observe-se ainda que as alterações foram consideradas significativas na investigação paralela de dumping em face do contexto em que foram apresentadas para a equipe responsável pela investigação: somente foram apontadas durante o procedimento de verificação de elementos de prova. Também naquele caso, a Aperam tentou protocolar intempestivamente correções aos dados apresentados, em desconformidade com o § 1º do art. 7º da Instrução Normativa da Secretaria de Comércio Exterior nº 1, de 6 de julho de 2021. Tal situação é absolutamente distinta do ocorrido no presente processo, em que esta autoridade teve amplo tempo de análise previamente à verificação in loco. Ao final, corrobora para tal conclusão o fato de que os dados da Aperam foram totalmente validados no procedimento de verificação in loco, sem que a empresa tivesse apresentado sequer pedido de minor corrections - perfazendo positive evidence para todos os fins da investigação.

186. Deste modo, não deve prosperar o pleito de encerramento da presente investigação por "coerência de atuação administrativa da SDCOM". Ora, a conclusão expressa no processo paralelo considerou o momento no processo administrativo em que houve a alteração.

187. Sobre o Ofício SEI nº 299872/2021/ME, a SDCOM devidamente notificou que seriam verificadas as informações trazidas pela peticionária em sede de petição e informações complementares, o que inclui o trazido em 5 de outubro de 2021. Pontua-se também que a SDCOM considerou suficientemente explicadas, em sede restrita, as alterações promovidas, tanto é que a manifestante foi capaz de se insurgir contra elas, reputando-as "significativas". Sobre a questão da suposta ausência de apêndices - conforme explicado pela peticionária, os anexos em que não houve alteração na versão restrita não foram reapresentados.

188. Sobre a análise hipotética trazida pela PT IRNC, considera-se que se configura incabível, pois cada situação fática é analisada concretamente, de acordo com o contexto em que ela ocorre. Ressalte-se que a autoridade investigadora conduz o procedimento de forma objetiva e imparcial, à luz da legislação em vigor, de modo que são rechaçadas as conjecturas propostas pela manifestante.

189. Sobre a manifestação acerca da aplicação de direito provisório que trouxe a APRODINOX, considera-se ter havido perda de objeto, já que não houve determinação preliminar, requisito necessário para a aplicação de direitos provisórios. Com relação ao comentado acerca das alterações terem sido consideradas significativas na investigação paralela, como dito, trata-se de uma questão que envolve o momento processual em que dita alteração foi recebida, não sendo cabível no presente caso.

1.7.1.3.2 Com relação ao decurso temporal

190. Com relação às manifestações de que os dados estariam defasados, pois haveria o decurso de (i) em 14 meses em relação à Circular de Abertura e, potencialmente, (ii) em aproximadamente 31 meses em relação à determinação final, a ser tomada no prazo máximo de 28 de outubro de 2022, a SDCOM pontua que foi realizada análise absolutamente superficial pela parte interessada dos casos do OSC invocados - DS295 e DS538. Pontua-se, inicialmente, que ambos os casos citados tratam de investigações antidumping, notoriamente menos complexas para a compilação de evidências de subsidização feita pela peticionária e para a condução da investigação da autoridade investigadora, o que também é um fato a não ser desprezado quando se analisa tal lapso temporal e que será melhor tratado adiante.

191. A SDCOM pontua inicialmente discordar frontalmente do comentário da PT IRNC de que a SDCOM deveria ter apresentado antes do fim do prazo probatório as respostas sobre o período utilizado. Inicialmente, sequer define o Decreto nº 1.751, de 1995 um "período probatório", ademais, não há dúvidas de que se trata de questão meramente processual, como a própria parte apontou, não havendo que se falar em qualquer evidência a ser colacionada nos autos cuja ausência prejudicaria o contraditório. Assim, não é de se surpreender que tampouco a PT IRNC tenha apontado qual seria a evidência crucial que impactaria nesta discussão meramente processual. De toda forma, as partes tiveram amplo espaço para apresentar o que acharam relevante durante a investigação. Tanto foi possível o contraditório que a manifestante apresentou longas manifestações durante o processo sobre o tema, e ainda uma longa manifestação final de 34 páginas específica sobre a questão do período considerado. No decurso da investigação, não só a PT IRNC, bem como também a peticionária, debateram a questão como quiseram.

192. A manifestante põe um peso indevido no momento processual em que as considerações da SDCOM foram vertidas - ora, sendo a determinação preliminar opcional sob a égide do Decreto nº 1.751, de 1995, foi abordada a questão tão cedo quanto possível, no âmbito da Nota Técnica de fatos essenciais emitida pela SDCOM, conforme previsto no Artigo 12.8 do ASMC. Assim, esse ponto menor, em que grande parte das alegações da PT IRNC se baseia, é absolutamente improcedente.

193. O parecer de início nada trouxe sobre esta questão, pois, sendo os intervalos entre o fim do período de dano e o início da investigação menores do que os casos analisados no Órgão de Solução de Controvérsias - OSC e respeitados todos os entendimentos multilaterais e legislação pátria, tratava-se de uma non-issue. Assim, a SDCOM não tinha como antecipar que a PT IRNC levantaria esse ponto. Contudo, uma vez levantado, foi respondido na primeira oportunidade, ou seja, no momento processual previsto para elaboração da nota técnica de fatos essenciais pela SDCOM. Relembra-se que a Circular de início da investigação antissubsídios de produtos de laminados de alumínio importados da China, Circular SECEX nº 43, de 18 de junho de 2021, já trouxe a decisão de atualização do período, pois o início daquela investigação tinha se dado com decurso maior do que os 15 meses considerados no DS295, o que não ocorreu no presente caso.

194. A SDCOM concorda com as manifestantes no que tange ao argumento de que não se pode permitir a adoção de períodos de investigação de forma injustificada. Como se verá adiante, não foi isto o que ocorreu, havendo plenos motivos a justificar os períodos utilizados.

195. Com relação ao caso DS295 - Mexico Definitive Anti-Dumping Measures on Beef and Rice, pontua-se inicialmente que tanto o Painel, quanto o Órgão de Apelação (AB) deixaram claro que usar um período de investigação remoto não é uma violação per se: "We agree with Mexico that using a remote investigation period is not per se a violation of Article 3.1". Isto posto, o AB deixa claro que para que fosse alcançada tal conclusão, analisou-se vários fatores:

149. (...)The Panel underlined that: during the investigation, no attempt was made by Economía to update any of the information obtained from the interested parties to reflect what had occurred in the 15 months between the end of the period of investigation in August 1999 and the start of the investigation in December 2000; Mexico did not argue that practical problems necessitated this particular period of investigation or that updating the information was not possible; and Mexico did not provide any explanation as to why more recent information was not sought

167. (...) The Panel arrived at this conclusion on the basis of several factors. The Panel attached importance to the existence of a 15-month gap between the end of the period of investigation and the initiation of the investigation, and a gap of almost three years between the end of the period of investigation and the imposition of final anti-dumping duties. However, these temporal gaps were not the

only circumstances that the Panel took into account. The Panel, as trier of the facts, gave weight to other factors: (i) the period of investigation chosen by Economía was that proposed by the petitioner; (ii) Mexico did not establish that practical problems necessitated this particular period of 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 is Mexico's general practice to accept the period of investigation submitted by the petitioner why more recent information was not sought.161 Thus, it is not only the remoteness of the period of investigation, but also these other circumstances that formed the basis for the Panel to conclude that a prima facie case was established. In the light of the general assessment of these other circumstances carried out by the Panel as trier of the facts, we accept that a gap of 15 months between the end of the period of investigation and the initiation of the investigation, and another gap of almost three years between the end of the period of investigation and the imposition of the final anti-dumping duties, may raise real doubts about the existence of a sufficiently relevant nexus between the data relating to the period of investigation and current injury. Therefore, we have no reason to disturb the Panel's assessment that a prima facie case of violation of Article 3.1 was made out.

196. Ou seja, uma análise rasa, que considera somente o decurso temporal, é justamente o que o AB expressamente refutou. Há de serem analisados os demais elementos, conforme listados pelo AB:

i) the period of investigation chosen by Economía was that proposed by the petitioner;

ii) Mexico did not establish that practical problems necessitated this particular period of 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 is Mexico's general practice to accept the period of investigation submitted by the petitioner why more recent information was not sought.

197. Ao contrário do afirmado pela PT IRNC, no presente caso, não foi a peticionária que escolheu o período de investigação - muito pelo contrário, esta somente seguiu o § 1º do art. 35 do Decreto nº 1.751, de 1995. E aqui cumpre ressaltar a fala descontextualizada da PT IRNC em sede de manifestação final: o item 6 do Ofício nº 1.762/2020, de 30 de setembro de 2020, apenas pediu para que a peticionária declarasse expressamente os períodos considerados. Ressalte-se, ainda, que a SDCOM só fez tal pedido para que as demais partes tivessem acesso mais fácil a tal informação, ou seja, de modo a mais uma vez prestigiar o contraditório.

198. A decisão por atualizar ou não o período cabe à SDCOM e são considerados diversos aspectos - se a SDCOM quisesse de fato questionar a Aperam acerca do período, teria feito pergunta expressa nesse sentido. Sendo este um ponto meramente processual, relembra-se ainda que no caso da investigação de laminados de alumínio (processo SEI/ME nº 19972.101384/2021-51) não foi solicitada a posição da peticionária acerca de tal atualização antes da tomada de decisão. Resta, portanto, falacioso o comentário da PT IRNC no sentido de que a Aperam "chegou a ser consultada sobre sua escolha". Repise-se que não houve escolha por parte da peticionária, mas sim o estrito cumprimento de mandamento legal.

199. Há, ainda, evidente problema prático envolvido na presente investigação, pois a PT IRNC parece olvidar que a situação pandêmica do COVID-19 solapou não só esta autoridade investigadora, mas como todas as empresas, impondo restrições em relação aos recursos humanos, financeiros e de modo geral, horizontalmente a todas as empresas no Brasil e quiçá, no mundo. Ademais, há que se considerar que o período de dano considerado na presente investigação terminou em março de 2020, às margens do estopim da pandemia - no Brasil o estado de calamidade pública foi reconhecido pelo Decreto Legislativo nº 6, de 2020, de 18 de março de 2020. Deste modo, há que se reconhecer que mesmo os dados trazidos pela peticionária, atualizados até março de 2020, já certamente impuseram trabalho hercúleo desta, que logrou se adaptar rapidamente ao "novo normal" e protocolar quatro meses depois de findo o período de investigação uma petição completa, em 31 de julho de 2020. Conforme notícias da época, 25% dos funcionários da Aperam tiveram que ser reposicionados em home office, o que demonstra que, mesmo nesse cenário de profunda mudanças organizacionais, a empresa conseguiu organizar uma complexa e completa petição antissubsídios de cinco períodos. Lembra-se ainda que os peticionários de investigações

antissubsídios muitas vezes precisam coletar evidências de subsidização em uma língua que desconhecem, diferentemente dos produtores/exportadores investigados. Também por este vértice, a eventual desnecessária atualização pleiteada imporia ônus excessivo à peticionária.

200. Mesmo desconsiderando as restrições ligadas à pandemia, o que se faz por epítrope, cita-se ainda que a desnecessidade de atualização ainda teve, indiretamente, um benefício: atualizar o período para além de março de 2020 é que poderia deturpar o dano analisado, pois avançaria o período analisado para o período pandêmico, em que demanda e oferta foram afetados de maneira nunca antes vista. Como abordado no DS295 - "Thus, Mexico could have sought to show that the information relating to the period of investigation conveyed indications as to current injury and constituted an appropriate basis for determining whether there was current injury, in spite of its remoteness.", para esta autoridade investigadora, o período considerado, em que se tem os dados livres de impacto pandêmico, é que melhor representa o real cenário da empresa, já que as empresas estão retornando aos níveis de atividade econômica pré-pandemia. Ademais, uma atualização por três meses do período de investigação, por exemplo, só incluiria três meses de produção seriamente afetada, sendo oferta e demanda também abruptamente deprimidas. Ressalta-se, por fim, que no caso analisado no DS295, a autoridade somente impôs medidas após praticamente três anos do fim do período de dano, o que também não é o que ocorre no presente caso.

201. Neste ponto, cumpre ressaltar que a PT IRNC, em sede de manifestação final, teceu comentários sobre a questão da pandemia. Ora, se a atualização fosse de fato necessária na linha dos entendimentos multilaterais, a SDCOM a teria realizado. Como é óbvio, SDCOM só teria acesso aos dados após o P5 se tivesse procedido à atualização - sendo assim, também é evidente que a decisão por atualizar ou não nada tem a ver com o fato de haver ou não distorções em se atualizando. O comentário acima, mal interpretado pela PT IRNC em sede de manifestação final, só buscou deixar claro que, em não sendo a atualização requerida conforme entendimentos da jurisprudência multilateral, o fato de não ter se procedido à atualização ainda teve a vantagem analítica de se evitar distorções e trazer à análise o mais próximo possível da realidade, objetivando identificar o impacto da prática desleal de comércio, devidamente documentada, sobre a situação da indústria doméstica. Reitera-se: caso a atualização do período fosse necessária nos termos da legislação e do entendimento jurisprudencial da OMC, tal atualização teria sido feita pela SDCOM. Assim, refuta-se a afirmação de que a pandemia teria sido um motivador para não se apurar dados e fatos, pois a ratio decidendi da SDCOM sobre a atualização não leva em conta particularidades do pós período a ser atualizado, mas sim se é necessária ou não a atualização à luz da legislação e de seu entendimento jurisprudencial.

202. Sobre o apontado acerca do Decreto nº 1.751, de 1995, não se pode esquecer que, quando a presente investigação foi iniciada, já estava em curso a investigação de dumping nas exportações de produtos de aço inoxidável laminados a frio 304, originárias da África do Sul e da Indonésia, iniciada por meio da Circular SECEX n º 15, de 24 de fevereiro de 2021. Neste contexto, considerando que a investigação antidumping cumpria os requisitos do Decreto nº 8.058, de 2013, e que as duas petições foram apresentadas simultaneamente pela Indústria Doméstica, ocorreu que esta investigação antissubsídios requereu pedidos adicionais de informações complementares, para melhor entendimento da autoridade investigadora sobre os alegados programas de subsídios à luz da legislação multilateral e da jurisprudência da OMC.

203. Assim, uma vez considerada devidamente instruída a petição da presente investigação antissubsídios, mesmo tendo sido necessário tempo adicional para análise (plenamente justificado), a SDCOM não vislumbrou necessidade de atualização no início da investigação, uma vez que a investigação foi devidamente iniciada dentro dos prazos limites constantes da jurisprudência da OMC (conforme DS 295). Não se pode ainda esquecer que, em caso de determinação positiva de dumping e subsídios praticados pela Indonésia, seria necessário evitar a adoção de chamado duplo remédio (double remedy), obrigação prevista pelo Artigo VI do GATT. Assim sendo, além de desnecessário à luz da legislação multilateral, o descasamento do período de investigação dos dois processos iniciados contra práticas desleais de comércio praticadas pela Indonésia introduziria uma enorme complexidade no tratamento do double remedy. Inclusive, se desconhece qualquer autoridade que tenha realizado cálculo de double remedy em períodos de análise de dumping e de subsídios descasados. Assim, à luz das circunstâncias apontadas, houve pleno cumprimento do preceituado no § 1º do Art. 35 do Decreto nº 1.751, de 1995, que indica a utilização dos "doze meses mais próximos possíveis" .

204. Deste modo, a autoridade considera o lapso entre o período considerado para o dano e o início da investigação plenamente justificado, conforme a legislação pátria e o decidido na OMC.

205. Sobre o lapso entre o final do período de investigação e eventual determinação por aplicação de medidas, em que a manifestante invocou o caso DS538, pontua-se, que, mais uma vez, a manifestante fez uma análise enviesada da jurisprudência.

206. Inicialmente, ressalte-se que houve, no caso analisado no DS538, lapso de quase dois anos (22 meses) entre o fim do período de dano e o início da investigação, sendo que a não atualização tentou ser justificada pela autoridade estrangeira por já terem dados sobre o POI, o que foi refutado: "The selection of a POI that was almost two years old already at the time of initiation cannot be explained by the fact that the investigating authority already had on file data relating to that POI, and could therefore save some time in its investigation.".

207. Também neste caso o OSC realizou uma análise do contexto que levou a autoridade a ter o lapso temporal entre o fim do período de dano e o início da investigação e imposição de medidas - não se tratando de mera análise numérica, como fez a PT IRNC. Do relatório do painel:

7.68. To assess whether data for such a POI were evidence of current dumping, we next turn to 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, it made no attempt to update it and, during the proceedings, it provided no discussion whatsoever of this choice. For these reasons, we find that in making its determination of dumping, the NTC failed to ascertain 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 OSC no DS538, motivo pelo qual inicialmente se reiteram os argumentos já expostos.

209. Ademais, convém enfatizar que, no decurso da pandemia, esta autoridade foi forçada a promover profundas adaptações em seus fluxos de trabalho - deixando temporariamente, por exemplo, de realizar verificações in loco, e suspendendo o prazo de investigações com base no art. 67 da Lei n º 9.784, de 29 de janeiro de 1999, que invoca motivo de força maior devidamente comprovado. Trata-se de situação nunca antes ocorrida, devidamente justificada e publicizada no Diário Oficial da União pela SDCOM.

210. Neste cenário, a condução da presente investigação antissubsídios impôs ainda mais desafios. Como de praxe, a autoridade empenhou-se tanto quanto possível para que fossem coletadas e analisadas as informações da forma mais robusta e precisa possível, sendo que foram realizadas verificações in loco presencialmente na Indústria Doméstica e também no Governo da Indonésia, o que demandou tempo adicional para que se verificasse a existência de condições seguras e autorização para deslocamento e entrada dos técnicos da autoridade investigadora. Ademais, não se pode esquecer que, devido aos resultados da investigação antidumping paralela, fez-se verificação in loco na Indústria Doméstica, o que ocorreu também demandou tempo adicional da equipe.

211. Devem ainda ser consideradas todas as particularidades do caso, que versa sobre mais de dez programas de elevada complexidade e acerca de uma legislação completamente inédita para a SDCOM, o que requereu da autoridade investigadora tempo para análise dos fatos e argumentos trazidos aos autos do processo e estudo da jurisprudência da OMC acerca das novas políticas formuladas e implementadas pelo GOI. A leitura atenta do item 4 deste documento demonstra que o tempo requerido para análise da petição e elaboração do parecer de início se justifica, dada a complexidade e a abrangência das intervenções promovidas pelo GOI no setor siderúrgico desde 2009, quando se iniciou a DMO por meio da MEMR Regulation nº 34/2009, a março de 2020, fim do período investigado.

212. Não se pode olvidar que a desnecessária atualização ainda imporia o trabalho adicional de colacionar dados novos para a peticionária, e também o trabalho adicional de se analisar tais dados novos de dano e de subsídios para a SDCOM. Salienta-se que, em investigações antissubsídios, mudança mínima de período pode ocasionar grandes impactos, muito maiores do que em investigações antidumping. Por exemplo, como a própria PT IRNC e o GOI trouxeram, logo após o fim do período desta investigação, foi

editada a MEMR Regulation Nº 11, de 2020, o que impactaria a análise a ser feita no programa de fornecimento de minério de ferro (e também a coleta dos dados da peticionária, que teria que recomeçar o trabalho). Deste modo, a atualização pleiteada pela PT IRNC não foi realizada por ser desnecessária.

213. A ausência de resposta ao questionário por parte dos produtores/exportadores investigados é também um complicador no caso, haja visto que eliminou a possibilidade de se obter diretamente destas partes interessadas maiores esclarecimentos sobre a participação em determinado programa, além de impor à autoridade a busca de parâmetros a serem utilizados nas conclusões para os programas investigados e a análise dos cálculos apresentados pela Indústria Doméstica em planilha com milhares de linhas, que, inclusive, envolvem cálculos econométricos e utilizaram dezenas de diferentes fontes que também tiveram de ser verificadas pela autoridade. Neste contexto, apesar de tal ausência de resposta ao questionário e da limitada cooperação dos produtores/exportadores indonésios, há intensa participação das partes interessadas no processo, inclusive dos produtores/exportadores, já tendo sido protocoladas milhares de páginas de manifestações e documentos e centenas de anexos para análise da equipe, tanto das partes interessadas estrangeiras, quanto da Indústria Doméstica e importadores.

214. Ressalta-se ainda que surpreende esta autoridade a PT IRNC não ter comentado o grande impacto negativo ocasionado por sua falta de colaboração nesta investigação, que aumentou sobremaneira a carga de trabalho desta autoridade. A manifestante também se esquece que os intervalos existentes na presente investigação entre o fim do período de dano e o início/fim da investigação são inferiores aos que existiram nos casos analisados no OSC.

215. Por fim, reforça-se que a análise da PT IRNC sobre a jurisprudência centra-se sobre elementos acerca da possibilidade de se obter dados para atualização e do esforço para se atualizar, quando a pergunta correta é precedente: se a atualização era mesmo necessária - à qual a resposta é negativa. Por isso, trata-se de uma leitura enviesada dos precedentes multilaterais, que se esquece da real questão no presente caso, pulando-se o antecedente (necessidade de atualização) e indo direto ao consequente (possibilidade de se atualizar).

216. Neste contexto, insta reforçar que mesmo considerados todos os elementos supra, em especial as dificuldades não previstas introduzidas pela pandemia do COVID-19, salienta-se que os prazos publicados por esta autoridade respeitam integralmente tanto a legislação pátria, quanto os preceitos multilaterais, tendo sido devidamente tratados todos os "several factors" trazidos nos casos do OSC ventilados.

217. Em suma, esta autoridade firmemente concluiu que o período utilizado constitui "positive evidence" conforme requerido pela legislação pátria e multilateral, sendo os lapsos entre o fim do período de dano, o início da investigação e eventual imposição de medidas plenamente justificados. Tendo em vista a data de protocolo da petição pela peticionária e os trabalhos desenvolvidos pela SDCOM no contexto exposto neste item, entende-se que o período de análise de dano adotado nesta investigação foi o mais próximo possível, sem que tenha havido qualquer prejuízo com relação à análise de dano e nexo de causalidade empreendida, de natureza objetiva e imparcial, conforme obrigação da autoridade investigadora de defesa comercial.

1.7.2 Do Governo da Indonésia

218. O Governo da Indonésia, após ter sua solicitação de dilação de prazo deferida, apresentou tempestivamente sua resposta ao questionário do produtor/exportador em 3 de abril de 2022.

219. Diante da necessidade de esclarecimentos adicionais, a autoridade investigadora emitiu, em 29 de abril de 2022, o Ofício nº SEI Nº 125396/2022/ME de solicitação de apresentação de informações complementares. A resposta do Governo da Indonésia foi tempestivamente recebida, em 17 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 resultados da visita in loco, constatou-se que houve lacunas na resposta do Governo da Indonésia, ensejando o uso dos fatos disponíveis também ao GOI no que atine a tais lacunas, conforme previsto no art. 79 do Decreto nº 1.751, de 1995.

221. O GOI foi notificado por meio do Ofício SEI Nº 228693/2022/ME, de 19 de agosto de 2022 que não forneceu integralmente informações verificáveis de forma tempestiva, acerca das informações gerais sobre o mercado de aço inoxidável, a forma de atração de capital e sobre os mineradores, e ainda acerca i) dos programas de fornecimento de Minério de Níquel, carvão e coque e terrenos por remuneração inferior à adequada; ii) do programa de empréstimos preferenciais; iii) dos programas fiscais; iv) do programa de injeção de capital; e v) descumprimento dos requisitos da SDCOM com relação à aceitação de documentos em idioma estrangeiro.

222. Salienta-se que o GOI protocolou em resposta a tal Ofício de uso dos fatos disponíveis, sendo que as manifestações foram consideradas no item 4.2.1.1 e em cada programa individualmente, quando aplicável.

1.7.3 Dos importadores

223. Conforme informado no item 1.5, acima, por intermédio do Ofício Circular nº 75/2021/CGMC/SDCOM/SECEX, de 7 de junho de 2021, foram enviados questionários para todos os importadores identificados: Aço Cearense Industrial Ltda Em Recuperação Judicial; Acojota Comércio de Metais Ltda; ACZ Inox Comercial Ltda; Brasinox Aço Inoxidável Ltda; Comercial Parinox Ltda; Elinox Central de Aço Inoxidável Ltda; Hipermetal Metais Ltda; IMG Brasil - Indústria de Máquinas para Gastronomia Ltda; Inconel Industria e Comercio de Aços Ltda.Inox do Brasil Comercio de Aço Ltda; Inoxsteel Comercial de Aços Ltda; Inox-Tech Comércio de Aços Inoxidáveis Ltda; Intersteel Aços e Metais Ltda; Komlog Importação Ltda. -em Recuperação Judicial; Krominox Aços e Metais Eireli; Martinox Importação Comercio e Industria de Aço Inoxidável Ltda; Mebrafe Instalações e Equipamentos Frigoríficos Ltda Meridian Distribuidora Ltda; Metalcasty Ltda; Metalúrgica Biasi Ltda; R2 Distribuidora Ltda; Refribrasil Ind. e Com. Ltda; Retinox Importação e Exportação de Aços Inoxidáveis Ltda; Sianfer Ferro e Aço Ltda; Suprir Indústria de Metais Ltda; Timbro Distribuidora Ltda; Upper Trade Importação e Exportação Eireli; Usina Metais Ltda; e Vinícola Angelo Luvison Ltda.

224. Apenas quatro empresas importadores apresentaram resposta ao questionário do 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 suas informações unicamente em versão confidencial, violando o disposto no do § 2º do artigo 38 do Decreto nº 1.751, de 1995, segundo o qual as informações confidenciais deverão estar acompanhadas de resumos restritos com detalhes que permitam compreensão razoável da informação fornecida, sob pena de ser desconsiderada a informação confidencial; no caso que não seja possível a apresentação do resumo em tela, a parte interessada deve justificar por escrito tal circunstância, sendo essa justificativa não confidencial. No caso em tela, não foi apresentada justificativa e a empresa foi notificada, por meio do OFÍCIO SEI Nº 117086/2022/ME, de 19 de abril de 2022, que, nos termos estabelecidos no caput c/c § 1º do art. 37 do Decreto nº 1.751, de 1995, sua resposta ao questionário do importador não seria considerada nas determinações a serem emanadas pela SDCOM.

1.7.4 Dos produtores/exportadores

226. Conforme já descrito, foram enviados questionários para todos os produtores/exportadores identificados: Bahru Stainless SDN BHD, PT Indonesia Ruip Nickel and Chrome Allow, PT Indonesia Tsingshan Stainless Steel e PT Jindal Stainless Indonesia.

227. A SDCOM recebeu resposta da empresa PT Indonesia Ruip Nickel and Chrome Allow, doravante denominada "IRNC", pertencente ao grupo Tsingshan, do qual também faz parte outro produtor/exportador identificado, PT Indonesia Tsingshan Stainless Steel. Como será indicado no item 1.7.4.1 verificou-se que a empresa não protocolou a versão confidencial da parte narrativa da resposta ao questionário do produtor/exportador, o que impossibilitou a análise desta autoridade. Deste modo, a resposta da IRNC não foi considerada por ter sido recebida incompleta, tendo sido a empresa notificada sobre o uso dos fatos disponíveis.

228. As demais empresas não responderam ao questionário encaminhado pela SDCOM.

1.7.4.1 Do uso dos Fatos Disponíveis para a PT Indonesia Ruipu Nickel and Chrome Alloy

229. O Ofício Circular nº 85/2021/CGMC/SDCOM/SECEX, estabeleceu o prazo para resposta de 40 (quarenta) dias, contado de sua expedição, em conformidade com o caput do art. 37 do Decreto nº 1.751, de 1995. Em 16 de julho de 2021, a IRNC solicitou prorrogação do prazo de resposta, pedido deferido por meio do Ofício nº 576/2021/CGMC/DECOM/SECEX, de 27 de julho de 2021, que prorrogou o prazo para resposta até o dia 15 de setembro de 2021.

230. Tendo sido a resposta protocolada pela empresa no dia 15 de setembro de 2021, análise por parte da SDCOM concluiu que, em desconformidade com o disposto nos §§ 1º e 5º do art. 79 Decreto nº 1.751, de 1995, a empresa não respondeu satisfatoriamente ao questionário, não tendo fornecido integralmente informações verificáveis de forma tempestiva. Em resumo, conforme explicado detalhadamente no ofício supracitado, verificou-se que a empresa não protocolou a versão confidencial da parte narrativa da resposta ao questionário do produtor/exportador, o que impossibilitou a análise desta autoridade. A SDCOM ainda fez esforços para utilizar somente a versão restrita de sua resposta para compreensão do informado, o que se mostrou impossível.

231. A empresa foi notificada de tal fato por meio do Ofício SEI nº 49146/2022/ME, de 18 de fevereiro de 2022, tendo sido informada que a determinação sobre a concessão de subsídios à PT Indonesia Ruipu Nickel and Chrome Alloy e demais empresas do grupo Tsingshan levaria em consideração os fatos disponíveis. Foi ainda informado que o grupo teria até o dia 4 de março de 2022 para protocolar explicações sobre as questões objeto do referido ofício.

232. Em 24 de fevereiro de 2022, a IRNC protocolou documento denominado "informação adicional da IRNC" e em 4 de março de 2022 foram protocoladas as explicações acerca dos fatos relatados no Ofício SEI nº 49.146/2022/ME.

233. Neste contexto, após breve inspeção do documento denominado "informação adicional da IRNC" por parte da SDCOM evidenciou que este se tratava da resposta ao questionário do produtor/exportador encaminhado à empresa em 29 de junho de 2021. Assim, considerando que o prazo final prorrogado para resposta da empresa ao referido questionário encerrou-se no dia 15 de setembro de 2021, tal resposta seria intempestiva, nos termos estabelecidos no caput c/c § 1º do art. 37 do Decreto nº 1.751/95. Deste modo, por intermédio do Ofício SEI nº 74860/2022/ME, de 15 de março de 2022, o grupo foi informado que, justamente por ser o documento a resposta ao questionário, não se configuraria tal documento como informação adicional ao questionário, situação tratada no § 2º do art. 37 do Decreto nº 1.751/95.

234. Assim, a empresa foi notificada que, considerando os prazos da investigação, tal resposta intempestiva não seria considerada nas determinações a serem emanadas por esta SDCOM, consoante o art. 79 do Decreto nº 1.751/1995.

235. Por meio da referido Ofício a empresa também foi informada que que as manifestações da missiva que acompanhavam a resposta ao questionário intempestivo, protocoladas em 24 de fevereiro de 2022, bem como a manifestação protocolada em 4 de março de 2022, seriam consideradas em determinação a ser emanada no âmbito da presente investigação. Ademais, foi ainda ressaltado que a parte interessada pode sempre apresentar quaisquer comentários que julgar pertinentes nos autos da investigação durante a sua instrução.

236. Pontua-se que a empresa manteve em suas manifestações, até o momento das manifestações finais a serem consideradas para a Nota Técnica de Fatos Essenciais (NT ou NTFE), como confidenciais os nomes das empresas relacionadas. Tal fato tem especial relevo pois obstaculiza injustificadamente o devido contraditório das demais partes interessadas na investigação, sendo fato público e notório (advindo do próprio relatório do IMIP e da decisão da autoridade da União Europeia) que a IRNC é relacionada a várias empresas relevantes para a investigação, como as empresas PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Indonesia Tsinghan Stainless Steel, PT Indonesia Guang Ching Nickel and Stainless Steel Industry, PT Indonesia Morowali Industrial Park e PT Ekasa Yad Resources. Tais empresas em conjunto foram aqui denominadas "Grupo Tsingshan". Em suas manifestações pós 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

237. Em manifestações datadas de 24 de fevereiro de 2022, a IRNC arguiu que o não recebimento de seu questionário pela SDCOM lhe foi comunicado apenas no dia 18 de fevereiro de 2022, por meio do Ofício nº 49.146/2022/ME, sendo que a IRNC teria realizado no dia 15 de setembro de 2021 o protocolo simultâneo de uma versão confidencial e uma versão restrita de sua resposta ao questionário do produtor/exportador, em atendimento ao item 25 das instruções constantes do corpo do questionário.

238. Nesse contexto, a IRNC informou que o protocolo teria fundamento no disposto no art. 36 e, especialmente, no art. 37, §2º, do Decreto nº 1.751/1995, de modo que teriam sido disponibilizadas em período de tempo razoável para a consideração da SDCOM as informações de cunho confidencial constantes da parte narrativa de sua resposta ao questionário do produtor/exportador, de forma a não restaria caracterizado qualquer óbice ao regular prosseguimento do feito.

239. Nesse quadro, a IRNC aduziu que o entendimento do Painel na Disputa "United States Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available" (DS 539), no âmbito do Sistema de Solução de Controvérsias da OMC acerca do art. 12.7 do Acordo sobre Subsídios e Medidas Compensatórias - ASMC, seria no sentido de que o fato de uma informação ter sido fornecida após a expiração do prazo ("time limit"), mesmo que referente ao prazo para resposta ao questionário, não significaria que não tenha sido fornecida dentro um período razoável de tempo para sua utilização, sendo necessário avaliar as circunstâncias específicas do caso concreto.

240. Nesses termos, a IRNC expôs que tendo sido notificada em Ofício datado do dia 18 de fevereiro de 2022, 5 (cinco) meses após o protocolo de sua resposta ao questionário, de que o recebimento somente da versão confidencial da narrativa não havia sido regularmente realizado, e de que a SDCOM intentou compreender as respostas da IRNC utilizando somente a versão restrita da narrativa, a empresa houve por bem disponibilizar por meio da nova manifestação a integralidade dos trechos tratados como confidenciais, destacando que tais excertos refletem de forma sistematizada o conteúdo dos apêndices e anexos confidenciais, mormente no que tange à atuação das partes relacionadas.

241. Ademais, a IRNC entendeu que o procedimento encontrar-se-ia em fase processual que permitiria o recebimento de informações complementares ou adicionais, que não houve solicitação emitida ao Governo da Indonésia nem aos importadores, em uma situação em que todos os demais anexos e apêndices, pertinentes tanto à IRNC como a suas partes relacionadas, bem como a versão restrita da narrativa, haviam sido devida e tempestivamente recebidos pela SDCOM, de forma que a aceitação pela SDCOM das presentes informações adicionais não impediria o bom andamento da investigação e o cumprimento dos demais prazos processuais.

242. Por fim, a IRNC entendeu que a interpretação do art. 12.7 do ASMC dada no caso do referido Panel estaria em linha com o tratamento conferido pela SDCOM às alterações voluntárias de cunho material apresentadas pela peticionária nos dados protocolados quando da petição e informações complementares, de modo que, em atendimento ao princípio da isonomia, da impessoalidade e da legalidade, o art. 36 e o art. 37, §2º, do Decreto nº 1.751/1995, respaldariam o recebimento de informações complementares ou adicionais apresentadas pelos exportadores no que tange à parte narrativa do questionário do produtor/exportador.

243. Em manifestação datada de 4 de março de 2022, a IRNC apresentou suas explicações acerca dos fatos relatados no Ofício SEI nº 49.146/2022/ME, de 18 de fevereiro de 2022, que decidiu pela aplicação de fatos disponíveis à IRNC

244. A IRNC reiterou que teria, em 16 de julho de 2021, ainda pelo Sistema DECOM Digital (SDD), tempestivamente submetido pedido de prorrogação de prazo para apresentação de sua resposta ao questionário do produtor/exportador, o que lhe foi concedido pelo Ofício nº 576/2021/CGMC/DECOM/SECEX, datado de 27 de julho de 2021, restando a data prorrogada até o dia 15 de setembro de 2021, ocasião em que a IRNC procedeu, tempestivamente, com o protocolo de sua resposta ao questionário do produtor/exportador, em suas versões confidencial e restrita, como atestariam os recibos constantes das versões respectivas dos autos.

245. A IRNC destacou que o manejo do Processo Eletrônico no Sistema Eletrônico de Informações - SEI teria imposto dificuldades ao protocolo da IRNC, uma vez que os arquivos de sua resposta ao questionário do produtor/exportador, especialmente os confidenciais, somavam tamanho muito superior aos 30 MB/arquivo suportados pelo sistema SEI. Por essa razão, a IRNC teria tido que

recorrer às orientações do Guia Interno e Externo do Processo Eletrônico no Sistema Eletrônico de Informações, fazendo uso, pela primeira vez, da ferramenta "QuebrArquivos" da SDCOM para preparar os anexos confidenciais de sua resposta ao questionário, com 75 arquivos e mais de 284 MB.

246. A IRNC narrou que se observou uma falha no processamento dos arquivos, de modo que somente o arquivo em formato .PDF da narrativa, em sua versão confidencial, em que pese ter sido preparado pela empresa, não compôs os 9 arquivos .zip gerados com o uso da ferramenta "QuebrArquivos", não tendo sido, consequentemente, juntado aos autos confidenciais do processo. Indicou que na versão confidencial do questionário da IRNC foram apresentados todos os 75 documentos preparados pela empresa e suas partes relacionadas, à exceção da parte narrativa em versão confidencial.

247. Nesse quadro, a IRNC alegou que houve instabilidade do sistema SEI no dia do protocolo da resposta ao questionário do produtor/exportador da IRNC, apresentando como prova: i) a existência de duplicidade do protocolo do questionário, o que demonstraria as dificuldades na consecução do upload e envio dos arquivos no sistema SEI, como apontado à fl. 2 da manifestação da IRNC de 16/09/2021, em que a IRNC solicita o desentranhamento dos arquivos protocolados em duplicidade; ii) as capturas de tela de outras tentativas de protocolo que não sucederam em razão da instabilidade do sistema naquele dia; e iii) quatro printscreens capturados na tentativa de protocolo da versão confidencial da resposta ao questionário da IRNC.

248. A IRNC alegou que o recebimento de sua resposta ao questionário do produtor/exportador faz-se mister à luz da exegese da legislação brasileira, do Decreto nº 1.751/1995, da legislação processual administrativa e dos comandos da Lei de Introdução às Normas do Direito Brasileiro - LINDB.

249. A IRNC arguiu que o recebimento do seu questionário do produtor/exportador pela SDCOM não imporia às demais partes interessadas qualquer prejuízo em termos de garantias ao contraditório e ampla defesa, estatuídos no art. 2º, caput, da Lei nº 9.784/1999, uma vez que as demais partes interessadas teriam acesso à versão restrita do questionário do produtor/exportador da IRNC, único exportador colaborativo.

250. A IRNC argumentou que teria agido com seu dever de lealdade e boa-fé processual, nos termos do art. 4º, inciso II, da Lei nº 9.784/1999, e como prova da boa-fé da empresa destacou que constaria expressamente da carta de encaminhamento do questionário da IRNC, em suas versões confidencial e restrita, que a parte narrativa comporia o Doc. 1 dos anexos à resposta, demonstrando que a empresa não teria tido a intenção de negar o acesso à SDCOM à parte narrativa da resposta ou subtrair a informação de natureza confidencial da SDCOM; e apresentou as capturas de tela confidenciais do arquivo .PDF da narrativa confidencial do questionário que demonstrariam que esta foi efetivamente preparada pela empresa para submissão e não foi alterada desde então.

251. A IRNC anota que no direito administrativo, sendo demonstrada a boa-fé do administrado, deve o administrador agir segundo certos preceitos que levem e indiquem condições para que a regularização dos atos processuais ocorra de modo proporcional e equânime, sem a imposição de ônus excessivos, conforme parágrafo único do art. 21 da LINDB.

252. A IRNC reconheceu que a 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 concessão de subsídios à PT Indonesia Ruipu Nickel and Chrome Alloy (...) levará em consideração os fatos disponíveis", em atendimento ao caput do art. 21 da LINDB; mas que teriam sido desconsideradas as previsões do parágrafo único do mesmo art. 21, do direito à regularização da resposta ao questionário do produtor/exportador da IRNC, ao não oportunizar qualquer possibilidade de regularização do ato administrativo, em face dos desafios concretos do caso em tela: (i) a fase de transição dos sistemas SDD ao SEI; (ii) da nova e inédita ferramenta "QuebrArquivos" para auxiliar a divisão de arquivos pesados; (iii) a complexidade do protocolo mais de 75 arquivos; e (iv) as instabilidades apresentadas pelo sistema SEI na data de 15/09/2021.

253. A IRNC apontou ausência de previsão legal que atrelasse o cumprimento de prazos e obrigações previstos no regulamento brasileiro ao protocolo simultâneo de documentos nas suas versões confidencial e restrita, sob pena de desconsideração integral da resposta e aplicação de fatos disponíveis, como parece indicar a SDCOM no Ofício SEI nº 49.146/2022/ME.

254. Ademais, a IRNC asseverou que o Decreto nº 1.751/1995 preveria, no parágrafo 2º de seu art. 38, a faculdade de se reapresentar as justificativas de confidencialidade, quando consideradas inadequadas pela SDCOM, e a possibilidade de tornar as informações até então confidenciais como públicas, a fim de não serem desconsideradas.

255. Ademais, a IRNC argumentou que o Decreto nº 1.751/1995, que "regulamenta as normas que disciplinam os procedimentos administrativos relativos à aplicação de medidas compensatórias", não traria exigência de protocolos simultâneos das versões confidencial e restrita e, assim, não preconizaria a aplicação de sanções a quem assim não procedesse. Deste modo, não poderiam as Portarias regulamentares da SECEX (à época estavam em vigor a Portaria SECEX nº 30, de 7 de junho de 2018 e a Portaria SECEX nº 103, de 27 de julho de 2021) assim o fazer, sob pena de usurpação de competência da atividade legiferante e violação ao princípio da legalidade (art. 5º, inciso II da Constituição Federal de 1988.

256. A IRNC arguiu que a questão formal teria sido, em alguma medida, superada, a partir do momento em que a parte narrativa da resposta ao questionário, em sua versão restrita, foi analisada pela SDCOM, uma vez que fosse a questão de forma prevista em lei não restaria qualquer espaço para arguir em sentido contrário.

257. Para a IRNC, a exigência de forma que seria feita no Ofício SEI nº 49.146/2022/ME não encontraria fundamento na legislação, conforme parágrafo 16 do Ofício SEI nº 49.146/2022/ME, e não haveria por que, e tampouco mostrar-se-ia legal, a SDCOM recorrer à versão restrita da narrativa para tentar "compreender as respostas às informações solicitadas no questionário do produtor/exportador", uma contradição frente aquilo que seria alegado para desconsiderar a totalidade da resposta do questionário da IRNC, de forma que tal fato faria confirmar sua concepção de que a exigência de protocolo simultâneo das versões confidencial e restrita seria uma questão de forma.

258. A IRNC destacou que o maior grau de flexibilidade das normas do Decreto nº 1.751/1995, do uso das informações adicionais do seu § 2º do art. 37, teria sido empregado para alteração de dados voluntariamente apresentados pela peticionária, em 5/10/2021, que foram acolhidos e validados pela SDCOM, cf. consta do parágrafo 37 do Relatório de Verificação in loco da Aperam Inox América do Sul S.A.

259. Dessa forma, a IRNC clamou por isonomia do tratamento das partes de que trata o caput do art. 5º da Constituição Federal de 1988, alegando que apresentou em 24/2/2022 informações adicionais à parte narrativa de sua resposta ao questionário do produtor/exportador, as quais, no seu entender, foram apresentadas em "período de tempo razoável para a consideração desta Subsecretaria", em linha com os precedentes multilaterais do Órgão de Solução de Controvérsias (OSC) da Organização Mundial do Comércio (OMC) sobre o art. 12.7 Acordo sobre Subsídios e Medidas Compensatórias (ASMC).

260. Nesse contexto, além da prerrogativa trazida pelo §2º do art. 37 do Decreto nº 1.571/1995, o § 5º do art. 79 do mesmo decreto permitiria o uso de informações que, embora tempestivamente apresentadas, não tenham sido apresentadas "de forma adequada sob todos os aspectos". Ademais, transpondo-se ao caso concreto da IRNC, seria absolutamente plausível para fundamentar a análise desta Subsecretaria e subsidiar um primeiro pedido de informações complementares que houvesse: consideração dos apêndices e anexos confidenciais da resposta ao questionário da IRNC conjugados à parte narrativa em versão restrita; consideração das informações adicionais apresentadas em 24/2/2022; ou a consideração da própria narrativa confidencial, ora apresentada pelos fundamentos de fatos e de direito apresentados.

261. Além do exposto, a IRNC alegou que seu inconformismo com a total desconsideração de sua resposta ao questionário do produtor/exportador, mediante a aplicação de fatos disponíveis por ausência de protocolo simultâneo de versões confidencial e restrita da narrativa, encontraria amparo em precedentes da SDCOM.

262. No âmbito da revisão de final de período do direito antidumping de calçados, a SDCOM, por meio do Ofício de informações complementares à petição da ABICALÇADOS, Ofício nº 1.932/2020/CGSA/DECOM/SECEX, teria oportunizado à peticionária a apresentação do Apêndice I, que teria deixado de ser apresentado quando do protocolo da petição, importante por assegurar a representatividade da indústria doméstica, destacando que nesse caso da ABICALÇADOS tratou-se não só do protocolo de uma das versões do referido apêndice (confidencial ou restrita), mas de ambas; de forma que se o mesmo critério que ora se emprega à IRNC fosse adotado para com a ABICALÇADOS, no rigor do parágrafo 7º do art. 51 e da Seção I do Decreto nº 8.058/2013, a petição deveria ter sido indeferida, por

descumprimento de forma e por não cumprir com os requisitos mínimos de admissibilidade, no caso em questão, a comprovação de que a petição foi apresentada em nome da indústria doméstica, cf. dispõe o art. 37 do Decreto nº 8.058/2013, que disciplina a investigação de dumping, ainda que para casos de indústria fragmentada, para qual os requisitos mínimos estão dispostos no parágrafo 7º do mesmo artigo.

263. Na revisão de final de período do direito antidumping de alho, ao oficiar o produtor/exportador chinês Jining Greenway Foodstuffs Company, por meio do ofício de informações complementares de nº 3.334/2019/CGMC/DECOM/SECEX, a SDCOM oportunizou à empresa a submissão de demonstrativos relevantes (de cunho contábil-financeiro e sobre o produto produzido pela empresa), que seriam necessários não somente para compreensão e análise de sua resposta, mas até mesmo para a posterior validação dos dados em sede de verificação in loco, os quais, por oportunidade da resposta original ao questionário do produtor/exportador, não haviam sido apresentados.

264. A IRNC argui que a SDCOM concedeu oportunidade para protocolo dos documentos, em versão restrita, para que a empresa indiana Bhilosa Industries Private Limited pudesse cumprir com o requisito de forma previsto no Decreto nº 8.058/2013, que disciplina a investigação de dumping, antes de decidir por desconsiderar documentos e recorrer ao uso de informações disponíveis, que na resposta de seu questionário de produtor/exportador da investigação antidumping de fios de poliéster, deixou de apresentar a versão restrita de uma diversos demonstrativos, mais precisamente 13 arquivos, enviados tão somente em versão confidencial.

265. Nesse contexto, a IRNC clama pelo devido recebimento da narrativa confidencial do seu questionário à luz de precedentes multilaterais, cf. o art. 12.7 do ASMC e o painel da DS 539, em função da apresentação em 24 de fevereiro de 2022 dos excertos reputados confidenciais de sua narrativa confidencial ao questionário do produtor/exportador, na qualidade de informações adicionais, cf. art. 37, §2.º, do Decreto nº 1.571/1995, destacando que para que uma informação seja desconsiderada por uma autoridade, recorrendo-se à aplicação de fatos disponíveis, deve-se assegurar que os requisitos gerais do art. 12.7 se verifiquem no caso concreto, uma vez que na interpretação do referido Painel, o simples fato de uma informação ter sido fornecida após a expiração do prazo, ainda que se refira ao prazo para resposta ao questionário, não significa que não tenha sido fornecida dentro um período razoável de tempo para sua utilização, sendo necessário avaliar as circunstâncias específicas do caso concreto.

266. Nesse quadro, a empresa alega que pedidos de informações complementares podem fazer referência à parte narrativa da resposta ao questionário, principalmente numa situação em que todos os anexos e apêndices foram tempestivamente recebidos pela SDCOM, de forma que a aceitação por esta autoridade das informações adicionais apresentadas em 24/2/2022 não impediria o bom andamento da investigação e o cumprimento dos demais prazos do processo.

267. Por outro lado, a IRNC entendeu que seria plausível e inteligível a compreensão da resposta da empresa ao questionário com base na versão restrita da narrativa conjugada às versões confidenciais dos apêndices e anexos devidamente recebidos pela SDCOM, e forneceu um Anexo com informações dos demonstrativos e dos apêndices da versão confidencial da resposta ao questionário, no qual cada excerto tachado como confidencial na narrativa seria correlacionado às informações fornecidas nos demonstrativos e nos apêndices da versão confidencial da resposta ao questionário, e que poderia instruir um pedido de informações complementares da SDCOM relativo às seções pertinentes. Como se trata de um procedimento original de investigação de subsídios que pode ser prorrogado para até 18 meses, poderiam inclusive ser solicitadas pela SDCOM mais rodadas de informações complementares para esclarecer tantos pontos quantos fossem necessários.

268. Nesse contexto, ao contrário do que consignou a SDCOM no Ofício, a IRNC discordou da conclusão de que "diversos elementos imprescindíveis à devida análise por parte desta autoridade estão ausentes na versão restrita da narrativa da resposta", posto que poderiam ser supridos pelo conteúdo dos anexos e dos apêndices confidenciais, como demonstrado pela IRNC no referido Anexo.

269. Nesse sentido, a IRNC explicou que acerca dos dois excertos da versão restrita da narrativa reproduzidos no ofício, entende que o Demonstrativo A.3C.1 - Production Stages of the PUI e o Demonstrativo B-2.1 Sales Flowchart, permitiriam, ainda que de modo limitado, a compreensão da estrutura do grupo respondente. Igualmente, da análise das planilhas e apêndices em Excel apresentados,

a SDCOM teria acesso a quais partes relacionadas da IRNC reportaram suas informações pertinentes a bens de capital, aquisição de insumos, terrenos e financiamentos, tendo fornecido a resposta do questionário em sua integralidade para apreciação desta Subsecretaria.

270. Ademais, a IRNC defendeu que a SDCOM poderia penalizar a empresa apenas e tão somente para aquelas informações cujo acesso não fosse superado pela leitura conjugada da versão restrita da narrativa e das versões confidencial e restrita dos apêndices e anexos de sua resposta ao questionário do produtor/exportador.

271. Dessa forma, a IRNC verificou que não haveria quaisquer informações confidenciais pertinentes aos seguintes programas: Fornecimento de bens a preços LTAR; Redução do imposto de renda para grandes investimentos; Isenção de direitos de importação; Income tax facilities a determinadas indústrias (à exceção da IRNC); Regime tributário e tributário preferencial na área de desenvolvimento industrial; e Injeção de capital.

272. Assim sendo, para a IRNC, do ponto de vista material, a empresa não considera justo, proporcional nem razoável que a empresa e suas partes relacionadas sejam penalizadas com fatos disponíveis com relação aos referidos programas, uma vez as informações confidenciais da narrativa poderiam ser suprimidas por pedidos de informações complementares.

273. Por fim, a IRNC aduz que, ainda que não tenham sido apresentadas "de forma adequada sob todos os aspectos", as informações foram tempestivamente protocoladas e são plenamente passíveis de análise por esta autoridade, e conforme dispõe o art. 79, § 5.º, do Decreto nº 1.751/1995, não poderiam ser integralmente desconsideradas.

274. Em manifestação datada de 17 de março de 2022, a IRNC defendeu que, ao contrário da completa desconsideração da resposta ao questionário do produtor/exportador, o art. 21 da LINDB determinaria que fossem indicadas pela autoridade administrativa condições para regularização do ato, o que impediria que a IRNC fosse penalizada de pronto, desproporcional e excessivamente, por meio da aplicação dos fatos disponíveis, tratamento similar às empresas que não cooperaram em absoluto com a SDCOM. Acrescentou que a peticionária parecia esquecer o teor do Art. 21 da LINDB e reiterou que a Lei nº 13.665/2018 privilegiaria, nas relações de Direito Público, a adoção de medidas de regularização pela Administração, preservados os interesses gerais, em detrimento da imposição de ônus anormais ou excessivos ao Administrado.

275. Desta forma, uma vez que o procedimento administrativo regido pelo Decreto nº 1.751/1995 não atrelaria o protocolo simultâneo de versões confidenciais e restritas dos documentos ao cumprimento dos prazos e obrigações nele previstos, assim como o faz o Decreto nº 8.058/2013 e o recentíssimo Decreto nº 10.839/2021, a invalidação completa da resposta ao questionário da IRNC, sem qualquer oportunidade prévia de regularização, iria de encontro ao comando do Art. 21 da LINDB.

276. Nesse contexto, a IRNC aduziu que essa possibilidade de regularização já teria ocorrido em outros procedimentos investigatórios conduzidos pela SDCOM por meio da emissão de pedidos de informações complementares às partes, uma vez que em mais de uma oportunidade, a SDCOM efetivamente possibilitou, após o término do prazo, a reapresentação de arquivos que, não obstante indicados pelas partes em seus protocolos, deixaram de ser apresentados à Subsecretaria, possibilitando assim a validação seja de petições da indústria doméstica seja de questionários de exportadores; a despeito de legislação para averiguar a existência de dumping, Decreto nº 8.058/2013, mais rígida que atrela o protocolo simultâneo de versões confidenciais e restritas ao cumprimento de prazos e obrigações.

277. Dessa forma, a IRNC alegou que a prática administrativa refutaria a afirmação da Aperam de que não caberia à SDCOM "solicitar a apresentação de informações confidenciais a partir de uma resposta insuficiente apresentada sob a forma restrita, uma vez que nem mesmo é possível saber o teor da resposta", aduzindo que os documentos faltantes cuja reapresentação foi facultada às partes por esta Subsecretaria em outros procedimentos não haviam sido nem mesmo protocolados em versão restrita, de forma que a SDCOM teve, no caso da IRNC, acesso ao inteiro teor da resposta ao questionário do produtor/exportador, à exceção dos excertos reputados confidenciais pela empresa somente na parte narrativa.

278. No que concerne à suposta abertura de precedente inaceitável em que as partes poderiam apresentar versões restritas com textos incompletos e dados em número-índice, para apresentar posteriormente, a seu critério, as informações de fato solicitadas nos Questionários enviados pela SDCOM, a IRNC aduziu que tal receio seria absolutamente descabido em face desse caso concreto, uma vez que todos os apêndices e tabelas confeccionados pela empresa e suas partes relacionadas, bem como todos os demonstrativos, em sua versão confidencial, teriam sido apresentados tempestivamente para a SDCOM; não havendo um único número-índice na narrativa; verificando que foram efetivamente disponibilizados nos autos confidenciais, para IRNC e para cada uma de suas partes relacionadas, as seguintes informações de fato solicitadas nos questionários enviados pela SDCOM, dentre outras: Etapas da produção do produto investigado; Fluxograma de vendas; Lista dos produtos produzidos/vendidos; Composição acionária e diretoria; 10 planos de contas; 30 relatórios auditados; Mais de 40 demonstrações financeiras, dentre balancetes e P&L mensais, e para o período investigado; Declarações referentes ao VAT para 5 empresas e referentes a 2 anos; Totalização de vendas (Demonstrativo A.4.11) para 6 empresas; e Informações sobre aquisições e empréstimos (Anexos B e G - Bens de Capital, Anexo C - Aquisições de Níquel, Carvão, Coque e Terrenos, Anexo F - Financiamentos, Anexo H - Benefício Tributário Direto e Anexo I - Benefício Tributário Indireto) para 5 empresas.

279. Nesse quadro, a IRNC questionou se seria razoável ou legal invalidar todos os anexos da IRNC, se a empresa simplesmente preenche os apêndices e tabelas seguindo as instruções próprias da SDCOM? se sem a versão confidencial da narrativa, as instruções da SDCOM tornar-se-iam desconhecidas dessa Subsecretaria; se sem a versão confidencial da narrativa, as instruções da SDCOM tornar-se-iam desconhecidas dessa Subsecretaria a ponto de não se conseguir identificar nem compreender a que se referem aqueles dados? se os dados específicos capazes de quantificar o quantum de subsídios concedidos seriam menos importantes do que informações genéricas que reproduzem o conteúdo dos relatórios auditados ou do que as legislações indonésias?

280. Nesse contexto, a IRNC asseverou que a maior parte das informações com tarjas confidenciais na narrativa diriam respeito à identificação do grupo respondente, o que seria sanado pelos anexos confidenciais, ou contém somente explanações de cunho genérico e que poderiam ser esclarecidas em sede de informações complementares. A IRNC informou sua indignação de que o fato ocorrido com a empresa possa dar ensejo a tão absurdo receio por parte da peticionária.

281. No que concerne à interpretação do Art. 12.7 do ASMC e sobre a possibilidade de apresentação de informações adicionais em "período razoável de tempo", a IRNC contestou a argumentação da peticionária de que, caso aceito tal entendimento, "todas as partes interessadas poderiam apresentar suas informações completas a posteriori", e alega que a peticionária, em seu protocolo de 5 de outubro de 2021, sob a alegação de se tratar de "pequenas retificações" teria feito o mesmo; e a SDCOM teria aceitado informações adicionais apresentadas em "período razoável de tempo" com base no §2º do Art. 37 do Decreto nº 1.751/1995.

282. Nesse sentido, para a IRNC seriam semelhantes o seu protocolo tempestivo de informações complementares aos anexos e demonstrativos e o da peticionária que alterou sua base de dados previamente à verificação in loco dessa investigação de subsídios; ressaltando que esse procedimento levaria ao término a investigação antidumping, porém nesta considerou-se que informações adicionais apresentadas em período razoável de tempo para apreciação da SDCOM seriam permitidas para se obter o real entendimento dos dados da peticionária.

283. A IRNC alegou que a peticionária parecia se esquecer do teor do §5º do Art. 79 do Decreto nº 1.751/1995, que determinaria a utilização de informações verificáveis apresentadas tempestivamente ainda que não estejam de forma adequada sob todos os aspectos, ao solicitar que a decisão exarada no Ofício SEI nº 49.146/2022/ME seja confirmada; posto que tal dispositivo reforça o pleito da IRNC de que a completa desconsideração de seu questionário seria medida desproporcional e excessiva, dada a natureza dos dados e informações disponibilizados em versão confidencial.

284. Nesse diapasão, a IRNC destacou que a aplicação de fatos disponíveis pela autoridade investigadora não seria ilimitada, conforme seria o entendimento do Órgão de Apelação na Disputa "Mexico - Anti-Dumping Measures on Rice" (DS295, §§293-295), trazendo longa citação desse caso, na qual haveria consideração de que o recurso aos fatos disponíveis não permitiria que uma autoridade investigadora usasse qualquer informação da maneira que escolher, e apontaria que as limitações do uso

de 'fatos disponíveis' por uma autoridade investigadora em investigações de direitos compensatórios seria apoiada pelo recurso semelhante e limitado a 'fatos disponíveis' permitido no Anexo II do Acordo Anti-Dumping, arguindo que seria anômalo se o Artigo 12.7 do Acordo SCM permitisse o uso de 'fatos disponíveis' em investigações de direitos compensatórios de uma maneira marcadamente diferente daquela em investigações antidumping.

285. Nesse quadro, a IRNC aduziu que, em que pese o Acordo Sobre Subsídios e Medidas Compensatórias da OMC não conter um anexo correlato ao do Acordo Antidumping relativo à melhor informação disponível, suas disposições foram incorporadas no Capítulo III (Da utilização de informações de fontes secundárias) do Decreto nº 1.751/1995, contexto em que se inserem os §§5º, 6º e 8º do Art. 79 do Decreto nº 1.751/1995, que dispõe que as determinações levarão em conta as informações verificáveis que tenham sido apresentadas tempestivamente e que possam ser utilizadas ainda que não estejam de forma adequada sob todos os aspectos; e que caso as explicações não sejam satisfatórias, as razões de recusa deverão constar dos autos que contenham qualquer decisão ou determinação; e que caso sejam utilizadas informações de fontes secundárias, inclusive aquelas fornecidas na petição, buscar-se-á compará-las com informações de fontes independentes ou com aquelas provenientes de outras partes.

286. Para a IRNC, todos os demonstrativos, apêndices e tabelas solicitados pela SDCOM Subsecretaria no questionário foram, em versão confidencial, submetidos tempestivamente, sendo a aceitação da resposta ao questionário do produtor/exportador medida que se impõe.

287. A Aperam, em manifestação de 15 de março de 2022, destacou que todas as partes interessadas teriam enfrentado a mesma mudança, e não apenas no processo em tela, mas em todos os processos e petições em andamento, a qual foi objeto de notificação anterior pela SDCOM, com apresentações diversas sobre tal transição. Além disso, ainda que o sistema possa ter apresentado instabilidade, fato é que a IRNC logrou protocolar sua resposta ao Questionário do Produtor/Exportador. Tal protocolo teria ocorrido, de qualquer forma, sem a apresentação do texto da resposta a tal Questionário, não estando, portanto, tal falta, relacionada à transição dos processos de defesa comercial para o SEI.

288. Sustentou que, embora a legislação determine que sejam listados os arquivos apresentados anexos ao documento assinado eletronicamente, para que estes sejam validados, o oposto não é válido. Ou seja, simplesmente listar que arquivos estariam sendo apresentados não pode ser entendido como validação dos mesmos, se estes não são, de fato, enviados tempestivamente à autoridade investigadora.

289. Destacou que os Questionários enviados pela SDCOM às partes teriam determinado apresentação simultânea das versões confidencial e restrita. Ademais, ainda que a autoridade investigadora pudesse questionar justificativas de confidencialidade ou mesmo a forma da apresentação da versão restrita, o oposto não é verdadeiro, não cabendo à SDCOM solicitar a apresentação de informações confidenciais a partir de uma resposta insuficiente apresentada sob a forma restrita, uma vez que nem mesmo é possível saber o teor da resposta. Se assim o fosse, abrir-se-ia um precedente inaceitável, em que as partes poderiam apresentar, nos prazos determinados pela autoridade investigadora, apenas supostas versões restritas, com textos incompletos e dados em números-índice, para apresentar posteriormente, a seu critério, as informações de fato solicitadas nos Questionários enviados pela SDCOM.

290. Da mesma forma, não haveria que se falar que a apresentação da narrativa confidencial da resposta ao Questionário do Produtor/Exportador pela IRNC apenas após o envio do mencionado Ofício pela SDCOM teria sido realizada em período de tempo razoável para ser considerada pela autoridade investigadora. Sendo aceito tal entendimento, perde-se-ia o sentido e validade dos prazos estabelecidos pela autoridade investigadora para apresentação das respostas ao Questionário, uma vez que todas as partes interessadas poderiam apresentar suas informações completas a posteriori, com base em tal entendimento.

291. Ademais, destacou que o § 3º do art. 37 do Decreto nº 1.751, de 1995, estabeleceria que as informações deveriam ser apresentadas nos prazos determinados pela autoridade investigadora. Tal entendimento seria ratificado no § 1º do art. 79 do mesmo Decreto.

292. Cabe destacar que o presente caso não se trata de correções ou complementação pontual de informações, mas, sim, de resposta na qual estão ausentes diversos elementos imprescindíveis à devida análise por parte da autoridade investigadora, não permitindo, dessa forma, que a SDCOM compreendesse as respostas às informações solicitadas no questionário do produtor/exportador encaminhado à IRNC.

293. Diante de todo o exposto, solicitou que a determinação sobre a concessão de subsídios à PT Indonesia Ruipu Nickel and Chrome Alloy e demais empresas do grupo leve em consideração os fatos disponíveis, nos termos do § 3º do art. 37 c/c § 1º do art. 79 do Decreto nº 1.751, de 1995.

294. No dia 09 de setembro de 2022, a PT IRNC protocolou manifestação em que reiterou o completo teor de sua manifestação de 4 de março de 2022, pugnando pelo dever da administração em oportunizar ao administrado a regularização do ato processual em função de particularidades do caso concreto, considerando a boa-fé da empresa e a menor formalidade do processo administrativo.

295. Relembrou a empresa que o Art. 79 do Decreto nº 1.751, de 1995 refletiria o teor do Art. 12.7 do ASMC, e que mesmo a aplicação dos fatos disponíveis encontra limites, conforme já decidido no âmbito da OMC no caso Mexico - Antidumping Measures on Rice (DS 295).

296. Assim, a empresa alegou que deve a autoridade limitar os fatos disponíveis àqueles que possam substituir razoavelmente a informação que a parte interessada falhou em fornecer, não podendo ser feita substituição sem parâmetros.

297. Citou ainda o caso China - GOES" (DS414), que diferencia os conceitos de "facts available" (fatos disponíveis) e "adverse inference", pontuando que não cooperação não justifica determinações ausentes de qualquer esteio factual e que "ainda que a SDCOM considere a IRNC como parte não cooperativa, não pode esta autoridade valer-se de inferências adversas com condão de trazer uma carga punitiva demasiada em suas determinações relativas à IRNC, mas tão somente valer-se de fatos disponíveis nos presente autos para preencher o gap informacional que se observa", sob pena de violação 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 apurada na investigação de subsídios conduzida pela União Europeia em face das importações de produtos de aço inoxidável laminados a frio originárias da Indonésia. Acrescentou a empresa que "a margem de subsídios apurada na investigação de subsídios europeia, como será visto abaixo, constitui-se em dado secundário adequado a título de melhor informação disponível, suprindo de modo razoável as informações que a IRNC, na visão da 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 linguajar desta SDCOM, que afirmou não ter sido recebida nenhuma resposta ao questionário do produtor/exportador encaminhado. Para a empresa, o emprego dessa linguagem não reflete, de modo fidedigno, os fatos ocorridos na presente investigação. Acrescenta ainda que concordou em revisar a confidencialidade dos nomes das partes relacionadas na manifestação final, notando que não houve qualquer pedido da Aperam neste sentido.

300. Pontuou ainda que em 04 de março de 2022 trouxe comentários e explicações em resposta ao Ofício SEI nº 49.146/2022/ME, e que teria ainda demonstrado a inteligibilidade do questionário como um todo a partir da narrativa em versão restrita conjugada aos anexos e apêndices confidenciais, indicando esquematicamente o local onde as informações constavam. Reiterou que, conforme a Lei de Introdução às Normas do Direito Brasileiro, haveria o dever de oportunizar a regularização do ato, e que tal teria ocorrido em outras investigações. Ainda assim, esta SDCOM teria confirmado a aplicação dos fatos disponíveis, no que a empresa expressou sua absoluta discordância.

301. Reiterou a existência de boa-fé, o que teria sido boa-fé foi detalhadamente demonstrada no item B.II da Seção B da manifestação de 04 de março

de 2022. Nela, a empresa teria comprovado que efetivamente preparou e listou a versão confidencial da narrativa de sua resposta ao questionário do produtor/exportador. As capturas de tela demonstrariam que o documento faltante, além de efetivamente preparado, não teria sido alterado desde então.

302. Defendeu a inexistência de prejuízo ao contraditório, pois teria sido protocolada a versão restrita. Expressou discordar da SDCOM, quanto esta autoridade no parágrafo 260 da NTFE apontou que "Haveria também prejuízo às demais partes interessadas, haja visto que a SDCOM, ao ter sido impedida de analisar a resposta da empresa [dado que não recebida], não pode sequer avaliar se era razoável a confidencialidade proposta pela empresa", sendo ainda mencionada a confidencialidade da "própria composição do grupo e as empresas que fazem parte do IMIP (...), o que é inaceitável, haja visto que se trata de informação pública". Para a PT IRNC, a SDCOM poderia ter requerido a revisão da confidencialidade da resposta, nos termos do § 2º do art. 38 do Decreto nº 1.751/1995.

303. A PT IRNC repisou a sua tese da necessária busca pela verdade real pela Administração Pública, apontando que esta teria sido comprometida não pela inexistência de informações, mas pela recusa no recebimento das informações que a IRNC protocolou, as quais a IRNC teria tentado protocolar de boa fé e tempestivamente, só não tendo logrado fazê-lo por questões meramente tecnológicas.

304. No entender da empresa, teria havido ilegalidade na recusa imotivada da SDCOM, vedada pelo art. 6º da Lei nº 9.784/99, do recebimento de seus documentos e violação do direito de petição. Não se estaria diante de situação de prazo preclusivo cujo ônus por eventual descumprimento acarretaria diretos prejuízos à parte e só a ela, mas, sim, da apresentação de informações que a empresa insiste em fornecer, cujo conhecimento, análise e tomada em consideração se prestariam à apuração da verdade real em prol da tomada de decisão da própria Administração Pública. Em outras palavras, tratar-se-ia de informações cujo conhecimento interessa, em primeira análise, a esta própria Subsecretaria.

305. Acerca dos arts. 20 e 21 da Lei de Introdução às Normas do Direito Brasileiro, pontuou que a SDCOM teria apontado na NTFE que não se aplicam tais disposições, e, ao mesmo tempo, asseverando que as cumpriu, o que seria notável. Acusou, a SDCOM de ter feito uma alegação falaciosa, pois o que se teria neste caso não seria unicamente o protocolo de um documento por um particular no bojo de um processo administrativo, mas uma decisão da autoridade administrativa competente a respeito do recebimento ou não dessa documentação, aplicando-se as disposições da LINDB

306. A previsão do parágrafo único do art. 21 da LINDB, que impõe à administração o dever de oportunização da regularização do ato inválido, seria a expressão normativa literal de regras que já constam do ordenamento jurídico brasileiro. Conforme o formalismo preceituado previsto na Lei do Processo Administrativo Federal (Lei nº 9.784/1999) ou a instrumentalidade das formas, conforme Código de Processo Civil. No entender da empresa - inexistindo ofensa aos direitos dos administrados - no presente caso, das outras partes interessadas - esta E. Subsecretaria deveria receber a versão confidencial da narrativa do questionário da IRNC.

307. Considerando que na NTFE restou claro que a desconsideração do questionário da IRNC não decorreria apenas de uma mera questão de forma (apresentação simultânea de VC e VR do questionário), mas pela alegada impossibilidade da SDCOM de compreender a resposta da empresa apenas com base na conjugação da narrativa restrita do questionário com os apêndices e anexos confidenciais da resposta, acrescentou a IRNC que seria possível apresentação, a título de informações adicionais voluntárias, com fulcro no permissivo do art. 36 e especialmente do art. 37, §2º do Decreto nº 1.751/1995, dos trechos confidenciais da versão confidencial da narrativa de sua resposta ao questionário do produtor/exportador.

308. Haveria também, ao contrário do afirmado pela SDCOM, tempo hábil para análise da resposta - as informações confidenciais da resposta da IRNC já estavam em posse da SDCOM em 24 de fevereiro de 2022 - duas semanas antes da emissão do primeiro pedido de informações complementares 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 não poderia subsistir, nos termos do art. 50, § 1º, da Lei do Processo Administrativo Federal.

310. Reiterou os precedentes acerca do Artigo 12.7 do ASMC, que rege que as informações devem ser apresentadas em "período razoável de tempo", o que teria sido cumprido pois o pedido de informações complementares ao GOI só foi emitido duas semanas depois do recebimento dos excertos confidenciais. Deste modo, pelo dever de oportunização à regularização do ato processual, ao formalismo moderado dos processos administrativos e, especialmente, pelo princípio da instrumentalidade das formas e o decidido no DS539, o prazo de resposta ao questionário não seria peremptório. Aduziu ainda que discorda que o caso do DS539 seja "sensivelmente distinto", pois a realização de verificação da

empresa em nada teria de relevo ao que ora se discute, o que importaria seria o recebimento de informações em período razoável, ainda que após um determinado prazo. Alega ainda que a SDCOM só teria apontado como razão para o não recebimento a intempestividade da resposta.

311. Por fim, a PT IRNC aponta que nunca teria recebido qualquer informação por parte desta E. autoridade a respeito de procedimento de apuração junto ao seu departamento de Tecnologia da Informação, que teria sido mencionado na NTFE. Deste modo, solicita, com base na ampla defesa e no contraditório e na Lei de Acesso à Informação (Lei nº 12.527/2011), que lhe seja franqueado o acesso aos eventuais relatórios e documentos relativos à consulta desta E. Subsecretaria junto ao seu departamento de TI.

1.7.4.1.2 Dos comentários da SDCOM acerca do uso dos fatos disponíveis

312. Com relação à manifestação da IRNC acerca da aceitação de sua resposta ao questionário, a SDCOM pontua inicialmente que a resposta ao questionário tem seu prazo de quarenta dias definido no art. 37 do Decreto nº 1.751, de 1995, podendo ser prorrogado por até trinta dias, a teor do §1º do mesmo artigo.

313. No caso concreto, há de se enfatizar também que a empresa teve deferido o prazo máximo possível para responder o questionário (quarenta dias, mais trinta dias de prorrogação), de modo que não poderia reclamar da oportunidade conferida pela SDCOM para apresentação das informações necessárias. Tem-se que tal prazo total de setenta dias é peremptório, sendo que a inadequação da documentação protocolada no dia 15 de setembro de 2021 resta insanável. A alegada instabilidade do sistema no dia do protocolo da resposta ao questionário do produtor/exportador da IRNC (o que não foi apontado por nenhuma outra parte) em nada altera a composição do arquivo .zip que foi devidamente protocolado pela empresa com a parte narrativa confidencial ausente.

314. Restou ausente na resposta protocolada o elemento central do questionário encaminhado pela SDCOM, que é o documento contendo a resposta a todas as perguntas feitas no questionário em sua versão confidencial, elemento base que serviria para instruir toda a análise da SDCOM. O questionário indica, em suas orientações de preenchimento, que a empresa deve apresentar resposta a todas a perguntas:

Nenhuma pergunta ou seção deve ser deixada sem resposta. Refira-se claramente à questão específica que está sendo respondida. Responda às questões na ordem apresentada neste questionário. Informações tabuladas devem ser fornecidas de acordo com os formatos solicitados e devem ser claramente rotuladas.

(....)

Deverão ser protocoladas no Sistema Decom Digital - SDD, ou sistema que o substitua, 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 1995, a resposta a este questionário, em suas versões restrita e confidencial, deve ser protocolada no SDD, no prazo de 40 (quarenta) dias contados a partir da data da transmissão do questionário.

315. Não há que se falar em falta de razoabilidade ou proporcionalidade da autoridade, haja visto que foi a empresa que falhou em fornecer resposta tempestiva à autoridade, pois a documentação submetida continha máculas impossíveis de serem superadas, como explicitado no Ofício SEI Nº 49146/2022/ME:

Ciente da aparente lacuna da resposta da empresa, esta SDCOM buscou ainda analisar, de forma criteriosa, o conteúdo da versão restrita da narrativa constante da 2ª submissão. Avaliou-se se seria possível compreender as respostas às informações solicitadas no questionário do produtor/exportador 'encaminhado às partes interessadas utilizando-se somente a versão restrita protocolada da narrativa. Entretanto, restou impraticável tal intento, haja visto que diversos elementos imprescindíveis à devida análise por parte desta autoridade estão ausentes na versão restrita da narrativa da resposta. Assim, a resposta protocolada não permite à esta SDCOM compreender informações básicas e imprescindíveis para qualquer análise, como as informações completas das empresas respondentes, bem como a estrutura do grupo e a operacionalização de programas nas empresas (...)

316. Diferentemente das referências a outros casos feitas pela IRNC, a lacuna não poderia ser preenchida por meio de ofício de informações complementares, justamente pois não seriam informações complementares, mas a própria resposta ao questionário. Não compete à parte interessada decidir o que é relevante ou não apresentar, tampouco indicar como a autoridade investigadora deveria atuar para suprir a lacuna decorrente da falha da própria parte interessada em fornecer uma peça central do questionário encaminhado. Reitera-se que a parte interessada foi alertada sobre a necessidade de cooperação e sobre o uso dos fatos disponíveis no ofício de notificação de início da investigação.

317. A situação da IRNC difere da situação da peticionária em sua submissão de informações complementares de 5 de outubro de 2021, uma vez que a peticionária de fato apresentou informações que complementam ou retificam informações anteriormente fornecidas em sua petição. Desse modo, não há base para a alegação de ausência de tratamento isonômico.

318. Ademais, as comparações que IRNC faz com outros casos demonstram justamente que a SDCOM busca ser razoável com as partes interessadas quando ocorrem lacunas nas respostas aos questionários encaminhados. Contudo, em nenhum dos casos referidos as empresas deixaram de fornecer a resposta narrativa ao questionário, como fez a IRNC. Obviamente, se tivesse sido tal o caso, as partes seriam consideradas não cooperativas e teriam recebido o mesmo tratamento que a IRNC no caso em tela.

319. Em relação à legislação processual administrativa e aos comandos da LINDB, a SDCOM assevera que as acusações da IRNC de desconsideração das previsões do parágrafo único do art. 21, e de violação do comando do art. 21 da LINDB, são improcedentes, pelas razões de fato e de direito que expõe a seguir.

320. Deve-se, primeiramente, observar que o art. 21 da LINDB não é aplicável ao caso em tela, como será explanado a seguir. Contudo, ainda que, em tese, tal artigo fosse aplicável, se observaria que a SDCOM informou às partes interessadas, de forma clara e objetiva, todas as consequências previstas na legislação em decorrência da não aceitação dos arquivos submetidos pela empresa em resposta ao questionário do produtor/exportador da investigação. Cabe destacar que a própria IRNC reconhece que a 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 concessão de subsídios à PT Indonesia Ruipu Nickel and Chrome Alloy (...) levará em consideração os fatos disponíveis".

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 imposições no processo administrativo em tela, além de equívoco material quanto à própria natureza jurídica do Atos Administrativos e dos atos procedimentais, de acreditar ter produzido um Ato Administrativo ao realizar ato instrumental no âmbito no âmbito dos processos administrativos da presente investigação de defesa comercial.

322. Os arts. 20 e 21 do Decreto-Lei nº 4.657, de 4 de setembro de 1942 (Lei de Introdução às Normas do Direito Brasileiro - LINDB), dispõem que:

> Art. 20. Nas esferas administrativa, controladora e judicial, não se decidirá com base em valores jurídicos abstratos 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 medida imposta ou da invalidação de ato, contrato, ajuste, processo ou norma administrativa, inclusive em face das possíveis alternativas. (Incluído pela Lei nº 13.655, de 2018)
>
> Art. 21. A decisão que, nas esferas administrativa, controladora ou judicial, decretar a invalidação de ato, contrato, ajuste, processo ou norma administrativa deverá indicar de modo expresso suas 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, quando for o caso, indicar as condições para que a regularização ocorra de modo proporcional e equânime e sem prejuízo aos interesses gerais, não se podendo impor aos sujeitos atingidos ônus ou perdas que, em função das peculiaridades do caso, sejam anormais ou excessivos. (Incluído pela Lei nº 13.655, de 2018)

323. Diferentemente do que afirma a IRNC, que o "Art. 21 da Lei de Introdução às Normas do Direito Brasileiro ("LINDB") determina que seja iniciadas pela autoridade administrativa condições para regularização do ato", o art. 21 da LINDB só é cabível para a invalidação de Atos Administrativos emanados da própria Administração Pública. No caso em tela, a não aceitação dos documentos encaminhados na data de 15 de setembro de 2021 pela empresa em resposta ao questionário do produtor/exportador da investigação - em função da ausência da narrativa confidencial do questionário encaminhado - e a desconsideração da resposta intempestiva protocolada em 24 de fevereiro de 2022 - que, de forma dissimulada, tentou apresentar como uma "informação adicional" a própria resposta completa ao questionário, cujo prazo se encerrou em 15 de setembro de 2021 - se deram no contexto de ausência de ato instrumental tempestivo da IRNC, e não da invalidação de Atos Administrativos da IRNC. Ressalte-se que a IRNC é entidade privada que atua como parte interessada que é investigada no processo em tela, e não recebeu delegação alguma de função administrativa no presente processo, não tendo competência para produzir no âmbito da investigação em tela nenhum Ato Administrativo, que é privativo de agente no desempenho de função administrativa.

324. Também sobre o suposto direito à oportunização de regularização, este não apenas se baseia em artigo inaplicável, o art. 21 da LINDB, já que o parágrafo único expressamente delimita sua aplicabilidade, mas, considerando o direito de modo geral, tem-se que, se concedido, geraria ofensa aos direitos dos demais administrados e ônus excessivo à esta autoridade, pois todo o cronograma detalhamente planejado não poderia ser cumprido com a regularização de resposta 5 meses depois do prazo. Salienta-se, ainda, que não se trataria de mera regularização, mas sim de receber integralmente a versão confidencial da narrativa do questionário da PT IRNC.

325. Ainda que a resposta ao questionário seja informação evidentemente útil à autoridade, não pode a PT IRNC invocar o princípio da verdade real ou os outros princípios invocados para querer justificar o aceite de informações protocoladas em momento processual absolutamente tardio, em desencontro a expresso requisito da legislação aplicável. É indubitável que a falta de resposta ao questionário atravancou a investigação, tendo sido tal ausência indesejada tanto para a autoridade, quanto para a empresa. Entretanto, trata-se de situação incontornável, já que não havia tempo hábil para análise de novos dados. Não se pode, com a justificativa de oportunizar sanar irregularidades, impedir a conclusão tempestiva da investigação.

326. Nesse contexto, em face da intempestividade do documento protocolado em 24 de fevereiro de 2022, conforme a regra do caput c/c § 1º do art. 37 do Decreto nº 1.751/95, a SDCOM cumpriu expressamente com o conteúdo normativo do art. 20 da LINDB. Tem-se patente que as acusações da IRNC tratam-se de equívoco material tanto da interpretação das normas contidas nos artigos 20 e 21 da LINDB e do cabimento das suas imposições no processo administrativo em tela, quanto da natureza jurídica do Atos Administrativos e dos atos procedimentais, por esta acreditar ter produzido um Ato Administrativo ao realizar mero ato instrumental no âmbito dos processos administrativos da presente investigação de defesa comercial.

327. A SDCOM rebate veementemente a acusação da PT IRNC de que esta autoridade teria feito alegação falaciosa ao considerar não ser aplicável o art. 21 da LINDB ao caso da empresa "já que o protocolo de sua resposta ao questionário do produtor/exportar seria ato meramente instrutório". Reitera-se: ainda que se considere, como quer a PT IRNC, que se tem no caso "uma decisão da autoridade administrativa competente a respeito do recebimento ou não dessa documentação", o art. 21 da LINDB nada teria a ver com a questão, já que se apenas se aplica quando da "invalidação de ato, contrato, ajuste, processo ou norma administrativa" - in casu, não há nenhum ato da administração invalidado, mas sim um ato de notificação de decisão pela não aceitação de documentação. Ao insistir em tal questão, a PT IRNC demonstra cristalina leviandade.

328. Repise-se mais uma vez para que a manifestante tenha em mente: a PT IRNC aglutina os arts. 20 e 21 da LINDB como se fossem aplicáveis aos mesmos tipos de decisão - enquanto o art. 20 é aplicável de forma horizontal, no art. 21 há expressa delimitação à "decisão que (...) decretar a invalidação de ato, contrato, ajuste, processo ou norma administrativa (...)".

329. Assim, diferentemente do que alega a IRNC, o que se tem é o cumprimento de um comando legal vinculado por parte da SDCOM, de exigência legal de não recebimento de um documento em face da ocorrência da preclusão temporal, decisão com conteúdo decisório devidamente motivado e

fundamentado, estritamente de acordo com o disposto na norma do art. 20 da LINDB, uma vez que a SDCOM informou de forma motivada à IRNC, por meio do OFÍCIO SEI Nº 74860/2022/ME, de 15 de março 2022, da impossibilidade de aceitação de sua resposta.

330. Cabe aqui sublinhar que a SDCOM somente pontuou no parágrafo 238 da NTFE que indicou "consequências jurídicas e administrativas (...) em atendimento ao caput do art. 21 da LINDB", pois este era um ponto de contenda da PT IRNC. Ou seja, ainda que tal artigo fosse aplicável (o que não é, como já tratado), teria sido cumprido o nele disposto, esvaziando, por uma via ou por outra, o argumento. Lamentável que a PT IRNC venha fazer leitura incompleta do posicionamento desta autoridade, pois logo adiante é abundantemente explicado os motivos pelos quais não se aplica. Tem-se cristalina leviandade quando a PT IRNC vem, com isso, deturpar o entendimento da SDCOM de modo a se ter um entendimento completamente diferente do exposado.

331. Dessa forma, resta demonstrada a improcedência da acusação da IRNC de violação do art. 21 da LINDB pela SDCOM.

332. Com relação ao invocado direito de petição, a SDCOM ressalta que o referido dispositivo constitucional assegura o de direito de petição aos Poderes Públicos em defesa de direitos ou contra ilegalidade ou abuso de poder e não, necessariamente, o deferimento do pleito.

333. Nesse diapasão, a SDCOM anota que o art. 39 da Lei nº 9.784/99, lei que regula o processo administrativo no âmbito da Administração Pública Federal, dispõe que:

Art. 39. Quando for necessária a prestação de informações ou a apresentação de provas pelos interessados ou terceiros, serão expedidas intimações para esse fim, mencionando-se data, prazo, forma e condições de atendimento.

Parágrafo único. Não sendo atendida a intimação, poderá o órgão competente, se entender relevante a matéria, suprir de ofício a omissão, não se eximindo de proferir a decisão. (grifos nossos).

334. Ademais, a SDCOM importante destacar a topologia do referido art. 6º da Lei nº 9784/99, que está inserido capítulo IV - "do início do processo". Nesse quadro, a SDCOM ressalta que o parágrafo único do art. 50 da mesma Lei nº 9784/99 dispõe que os atos administrativos deverão ser motivados, com indicação dos fatos e dos fundamentos jurídicos. Nesses termos, a SDCOM refuta as alegações da IRNC de 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 Ofício SEI Nº 74860/2022/ME, de 15/3/2022, da intempestividade do documento protocolado em 24/2/2022, denominado "informação adicional da IRNC", que se tratava, na realidade de resposta ao questionário cujo prazo para o protocolo já se encontrava encerrado, nos termos estabelecidos no caput c/c § 1º do art. 37 do Decreto nº 1.751/95, não se configurando, portanto, como informação adicional ao questionário, situação tratada no § 2º do mesmo artigo do Decreto nº 1.751/95.

335. No que concerne ao chamado formalismo moderado e à instrumentalidade das formas, a SDCOM ressalta que, o inciso VIII do parágrafo único do art. 2º da Lei nº 9.784/1999 dispõe que nos processos administrativos serão observados, entre outros, os critérios de observância das formalidades essenciais à garantia dos direitos dos administrados, e o inciso XIII dispõe que nos processos administrativos serão observados, entre outros, a interpretação da norma administrativa da forma que melhor garanta o atendimento do fim público a que se dirige, vedada aplicação retroativa de nova interpretação.

336. Com efeito, o Art. 2º da Lei nº 9.784/1999 dispõe que a Administração Pública obedecerá, dentre outros, aos princípios da legalidade, finalidade, motivação, razoabilidade, proporcionalidade, moralidade, ampla defesa, contraditório, segurança jurídica, interesse público e eficiência; com o seu parágrafo único dispondo que nos processos administrativos serão observados, entre outros, os critérios de:

I - atuação conforme a lei e o Direito;

II - atendimento a fins de interesse geral, vedada a renúncia total ou parcial de poderes ou competências, salvo autorização em lei;

III - objetividade no atendimento do interesse público, vedada a promoção pessoal de agentes ou autoridades;

IV - atuação segundo padrões éticos de probidade, decoro e boa-fé;

V - divulgação oficial dos atos administrativos, ressalvadas as hipóteses de sigilo previstas na Constituição;

VI - adequação entre meios e fins, vedada a imposição de obrigações, restrições e sanções em medida superior àquelas estritamente necessárias ao atendimento do interesse público;

VII - indicação dos pressupostos de fato e de direito que determinarem a decisão;

VIII - observância das formalidades essenciais à garantia dos direitos dos administrados;

IX - adoção de formas simples, suficientes para propiciar adequado grau de certeza, segurança e respeito aos direitos dos administrados;

X - garantia dos direitos à comunicação, à apresentação de alegações finais, à produção de provas e à interposição de recursos, nos processos de que possam resultar sanções e nas situações de litígio;

XI - proibição de cobrança de despesas processuais, ressalvadas as previstas em lei;

XII - impulsão, de ofício, do processo administrativo, sem prejuízo da atuação dos interessados;

XIII - interpretação da norma administrativa da forma que melhor garanta o atendimento do fim público a que se dirige, vedada aplicação retroativa de nova interpretação.

337. A esse respeito, a IRNC traz citação do magistério de Marçal Justen Filho. Entretanto, a SDCOM ressalta que, conforme o mesmo doutrinador, contrariamente ao pretendido pela IRNC para legitimar seu direito em razão do não fornecimento ou fornecimento parcial da informação requerida em decorrência da ausência da parte narrativa, em sua versão confidencial, quando da falha do protocolo de sua resposta ao questionário do produtor/exportador, destaca-se justamente que:

(...) informalismo não pode ser empregado pela administração para deixar de cumprir as prescrições que a ordem jurídica estabelece relativamente a seu modo de atuação, nem para elidir o cumprimento das regras elementares do devido processo (g.n).

338. A SDCOM ressalva ainda que o princípio da instrumentalidade das formas, do processo civil judicial, só teria sentido lógico-jurídico se os documentos em questão fossem fungíveis, o que não ocorre no pressente caso. Ademais, só se convalida ato administrativo inválido, e se o vício for sanável.

339. Assim, não há que se falar em violação ao formalismo moderado típico dos processos administrativos, haja visto que não ocorreu inobservância de mera formalidade, mas sim uma total ausência de conteúdo relevante para a análise da autoridade. Neste diapasão, considerando o brocardo "pas de nullité sans grief", tendo-se em conta os prazos da investigação, inegável o prejuízo do interesse público na aceitação de retificação ou de documento aditivo à resposta, como pleiteou a empresa em 24 de fevereiro de 2022. Haveria também prejuízo às demais partes interessadas, haja visto que a SDCOM, ao ter sido impedida de analisar a resposta da empresa, não pode sequer avaliar se era razoável a confidencialidade proposta pela empresa. A SDCOM chegou a apontar que a empresa considerou confidencial a própria composição do grupo e as empresas que fazem parte do IMIP (e surpreendentemente continuou a fazê-lo até mesmo em sua manifestação do dia 09 de setembro de 2022), o que é inaceitável, haja visto que se trata de informação pública, e inegavelmente prejudica o contraditório das outras partes.

340. Em sua manifestação final a PT IRNC apontou, acerca da confidencialidade dos nomes das empresas do grupo, que supostamente seria possível para a SDCOM requerer a revisão da confidencialidade da resposta, nos termos do § 2º do art. 38 do Decreto nº 1.751/1995. Ora, a SDCOM só tem condições de saber se as confidencialidades ocultas na versão restrita estão ou não adequadas se analisadas em cotejo com a versão confidencial (com todas as informações reveladas). Portanto, reitera-se: ausente a versão confidencial, resta impossível para a SDCOM adivinhar o conteúdo confidencial para então requerer a reapresentação de sua versão restrita, havendo evidente prejuízo para as demais partes interessadas neste fato. Só pode ser levantada confidencialidade de algo confidencial já protocolado - caso contrário se trata de informação intempestiva protocolada indevidamente. Muito embora tal fator não

tenha sido determinante para os resultados da investigação, é inegável que o tratamento confidencial dado a informações de natureza notoriamente pública prejudicou o entendimento das demais partes interessadas.

341. A manifestante tenta igualar seu protocolo com nova resposta ao questionário com informações protocoladas a título de informações adicionais consoante art. 37, §2º do Decreto nº 1.751, de 1995. Resta evidente que a previsão deste artigo se presta a colmatar lacunas na resposta, e não para permitir uma resposta absolutamente inédita. Impossível se falar em instrumentalidade das formas, eis que o novo protocolo não elimina o fato de a empresa não ter protocolado sua resposta no prazo requerido.

342. Deste modo, não pode a PT IRNC buscar se albergar no formalismo moderado ou na instrumentalidade das formas para se escusar de cumprir os preceitos do Decreto nº 1.751, de 1995.

343. Com relação à alegação de que haveria ausência de previsão legal que atrele o cumprimento de prazos e obrigações previstos no regulamento (Decreto nº 1.571/1995) ao protocolo simultâneo de documentos nas suas versões confidencial e restrita, tal argumento ofende qualquer interpretação do Regulamento, sendo óbvio que a autoridade necessita da versão confidencial da resposta para poder analisar a completude da resposta, e as demais partes interessadas necessitam da versão restrita da resposta para tornar possível o contraditório. Sendo assim, é absurda a hipótese da empresa, pois ambas versões das respostas são necessárias (como, inclusive, é ressaltado no próprio questionário encaminhado, conforme já dito).

344. Há aqui, reitera-se, uma outra confusão da empresa, ao apontar que teria havido falha meramente de forma, sendo que não apenas houve falha de forma, mas sim uma ausência material de conteúdo em sua resposta.

345. Mesmo indo além da jurisprudência pátria e a existência de prazos administrativos peremptórios, cabe, ainda, considerar a jurisprudência da OMC. No caso "United States Anti-Dumping and Countervailing Duties on Certain Products and the Use of Facts Available" (DS 539), o Painel considerou que os EUA agiram de forma inconsistente com o Artigo 12.7 do ASMC:

7.357For the above reasons, we find that Korea has established that the USDOC acted inconsistently with Article 12.7 of the SCM Agreement because it rejected the information concerning the cross-owned affiliate input suppliers solely on the basis that it was provided after the time-limit imposed by the USDOC, without considering whether, in light of the specific facts and circumstances, the information submitted by POSCO was nonetheless submitted within a "reasonable period".

346. Entretanto, houve aqui situação sensivelmente distinta, haja visto que no caso analisado pelo OSC, chegou a haver verificação da empresa em questão, bem como a autoridade estadunidense não apontou nenhuma razão outra para a desconsideração da resposta que não o descumprimento do prazo. No presente caso, a falha da PT IRNC impediu qualquer análise do questionário, bem como a SDCOM teve a oportunidade de explicar para a empresa por quais motivos não seria possível aceitação de nova resposta, inclusive nas reuniões solicitadas pela empresa à SDCOM. A interpretação desta decisão pela PT IRNC foi, mais uma vez, enviesada.

347. A análise de uma resposta ao questionário é tarefa que demora meses, ainda mais em uma investigação antissubsídios, que envolve milhares de páginas e dezenas de legislações. A SDCOM só logrou enviar o primeiro pedido de informações complementares ao GOI no dia 8 de março de 2022, tendo sido formuladas dezenas de perguntas para o GOI.

348. Ao contrário do alegado, não havia tempo hábil para aceitar nova resposta da PT IRNC, analisar tal resposta, fazer os eventuais pedidos de informação complementar, organizar a verificação in loco e realizá-la. O fato de a falha na resposta só ter sido verificada meses depois de protocolada a resposta em nada diminui a culpa da empresa: a autoridade iniciou a análise da resposta no prazo já 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 haver tempo hábil, por ter 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 esses motivos seriam 'falsos os motivos invocados'. Tal gravíssima alegação é tão descabida que ultrapassa a leviandade e beira a má-fé. Conforme se depreende da argumentação da manifestante ("o expediente investigatório da SDCOM havia acabado de começar" ou "o procedimento investigatório em relação ao Governo da Indonésia, pelo

primeiro pedido de informações complementares, só viria a ser emitido, como mencionado, em 8 de março de 2022 - duas semanas depois do protocolo dos excertos confidenciais da IRNC em saneamento ao protocolo anterior."), esta parece crer que a SDCOM só teria analisado a resposta do GOI por duas semanas ou pouco mais que isso.

350. Ora, a fragilidade intelectual da manifestante é tamanha que não resiste ao mais leve escrutínio. Em 18 de fevereiro de 2022 foi enviada a notificação acerca dos problemas na resposta da IRNC, e em 08 de março de 2022 o 1º pedido de Informações Complementares para o GOI. A resposta do GOI foi recebida meses antes de tal envio, tendo ocorrido extenso trabalho por parte desta SDCOM na análise prévia da resposta ao GOI - que, em sua versão restrita, continua 77 anexos e quase 2.500 páginas. Culminou com o envio o pedido de informações complementares a detida análise de tal resposta por meses, com busca de centenas de fontes externas e centenas de horas de pesquisa por parte da equipe - conforme demonstra este longo Parecer.

351. Ao mesmo tempo em que eram feitas a análise da resposta da empresa e do GOI, a equipe do caso estava a empreender diversas atividades de investigação deste processo e de outros processos, como organizar a verificação na indústria doméstica, a primeira verificação desde a paralisação devido à pandemia, com necessidade de elaboração de roteiro, organização dos procedimentos e etc.

352. A empresa tenta ainda trazer o preceituado no Artigo 12.7 do ASMC, que rege que as informações devem ser trazidas dentro de período razoável. Considera-se absolutamente inaplicável o dispositivo ao caso em tela, pois o novo questionário da PT IRNC só foi protocolado no dia 24 de fevereiro de 2022, 5 meses e 2 semanas ou 162 dias depois do prazo de resposta ao questionário prorrogado - 15 de setembro de 2021. Em nenhum momento a PT IRNC explicou por qual motivo ela mesmo não atuou diligentemente e verificou mais cedo a ausência em sua resposta confidencial. Ademais, o fato de a SDCOM ter enviado o Ofício meses depois não elimina o fato de que a própria parte sequer efetuou tal verificação. Evidentemente, não se trata de prazo razoável o protocolo 5 meses depois de vencido o prazo original.

353. Pontua-se ainda que o próprio processo de averiguação e confirmação da ausência do documento central da resposta ao questionário (narrativa confidencial) tomou tempo considerável da equipe da SDCOM, pois se partiu do pressuposto de que a parte interessada, ao submeter dezenas de arquivos no sistema, não se olvidaria - ou, por qualquer motivo desconhecido por desta autoridade - de incluir justamente o elemento mais importante de sua resposta. Assim, a equipe da SDCOM buscou se certificar de que a ausência não decorria de algum erro interno no uso das ferramentas de TI empregadas para fazer o download e a reconstrução dos arquivos "zipados" constantes do SEI, bem como a qualquer à falha interna de sistemas de TI. Uma vez que se confirmou internamente que a falha só poderia ser atribuível à própria parte interessada, a autoridade avaliou a possibilidade de depreender algo aproveitável da resposta, analisando a versão restrita da narrativa e a documentação encaminhada, o que também demandou tempo até que finalmente fosse expedido o ofício notificando a PT IRNC sobre o uso dos fatos disponíveis, o que ocorreu em 18 de fevereiro de 2022.

354. Cabe aqui um esclarecimento acerca do trabalho empreendido para se verificar que a falha se deu devido à própria empresa, e que envolveu pesquisa com relação à tecnologia da informação. Ao contrário do sugerido pela PT IRNC, que em sua manifestação final indicou que "nunca recebeu qualquer informação por parte desta E. autoridade a respeito do mencionado procedimento de apuração junto ao seu departamento de Tecnologia da Informação", esclarece-se aqui, de forma taxativa, que nenhuma consulta foi feita junto à área de TI do Ministério da Economia sobre qualquer falha no Sistema SEI ou qualquer questão relativa a este caso específico, uma vez que a equipe da SDCOM tem segurança absoluta que a ausência da resposta ao questionário (narrativa confidencial) decorreu da própria ação da empresa, e não de qualquer falha na operação do SEI, que é utilizado pelo Poder Executivo Federal de forma ampla para a tramitação de processos administrativos.

355. Os testes internos realizados pela equipe da SDCOM para se certificar de que não houve falha de ferramentas de TI envolveram a análise dos arquivos .zip protocolados. Dado que foi protocolada a resposta em arquivo compactado .zip dividido em nove partes, com uso da ferramenta disponibilizada pela SDCOM, aventou-se: 1) se poderiam terem sido os arquivos .zip modificados, de alguma forma, após submissão pela parte, e ainda assim a reconstituição do arquivo completo ser feita com sucesso; 2) se

poderia ter, na reconstituição dos arquivos divididos, sido excluído somente o arquivo com a narrativa; 3) se seria possível que o arquivo .zip reconstruído pudesse conter o arquivo com a parte narrativa, mas de alguma forma oculto.

356. Para responder a tais perguntas, a própria equipe do caso buscou a especificação do formato .zip. O formato .zip tem como base o PKZIP, tendo sido ainda criada especificação ISO para garantir interoperabilidade (ISO/IEC 21320-1, Information Technology - Document Container File Part 1: Core). Em consulta à especificação, tem-se que todas as possibilidades apontadas no parágrafo anterior são absolutamente impossíveis. O formato .zip especifica, para cada arquivo, o "Central Directory", que lista todos os arquivos presentes no .zip resultante:

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 containing only an "end of central directory record" is considered an empty ZIP file. Files MAY be added or replaced within a ZIP file, or deleted.

A ZIP file MUST have only one "end of central directory record". Other records defined in this specification MAY be used as needed to support storage requirements for individual ZIP files.

4.3.2 Each file placed into a ZIP file MUST be preceded by a "local file header" record for that file. Each "local file header" MUST be accompanied by a corresponding "central directory header" record within 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 span multiple volumes or it MAY be split into user-defined segment sizes. All values MUST be stored in little-endian byte order unless otherwise specified in this document for a specific data element. (grifos nossos)

357. A presença de tal "Central Directory" torna impossível que haja arquivo 'oculto' no .zip resultante, e ainda tem-se que há uma verificação da integridade dos arquivos que compõem o .zip (por meio do CRC32 checksum). Assim, qualquer alteração no arquivo após submetido resultaria em erro ao se tentar reconstruir o arquivo, o que não ocorreu. Ainda, no processo de união das partes .zip para se reconstruir o arquivo .zip original, é efetuada verificação no local file header, de modo a se certificar que não há nenhum problema nos arquivos. Isso é feito automaticamente em qualquer implementação do formato .zip. Como o arquivo foi reconstruído e extraído sem qualquer erro, confirmou-se ser impossível, portanto, qualquer modificação não detectada no arquivo submetido.

358. A análise técnica detalhada anterior, obviamente, requereu tempo desta autoridade. Soma-se a isso o fato de a PT IRNC ter protocolado absolutamente todos os arquivos submetidos em duplicidade, mais vez prejudicando o andamento programado da investigação. Ademais, a SDCOM chegou a conferir um a um os arquivos .pdf da resposta a fim de verificar se não teria havido erro na indicação no nome dos arquivos. A SDCOM teve ainda o cuidado de calcular os hashes CRC e MD5 dos arquivos analisados, informando-os no ofício de notificação do uso dos fatos disponíveis, para que a PT IRNC tivesse ampla oportunidade de defesa na apresentação de quaisquer alegações técnicas. Nada foi apontado.

359. Em conclusão sobre este ponto, a SDCOM reafirma que não foi feita nenhuma consulta à área de TI do Ministério, pois pôde eliminar por conta própria qualquer possibilidade de ter ocorrido falha interna no sistema de TI do Ministério quando da submissão, do download ou ainda da reconstituição dos arquivos .zip submetidos. Ou seja, não restou absolutamente nenhuma dúvida técnica que, de fato, a não submissão do arquivo com a narrativa confidencial se deu exclusivamente por culpa da PT IRNC.

360. Neste contexto, a SDCOM cumpriu atentamente ao disposto no Regulamento Antissubsídios Brasileiro e também na jurisprudência da OMC, sendo que, conforme será visto na seção 4, adiante, foram utilizados os fatos disponíveis de forma razoável, não para punir, mas para preencher lacunas, mesmo ante a total ausência de resposta da empresa e parcial colaboração do GOI. Como será mais bem tratado nas seções individuais de cada programa, a SDCOM utilizou-se de vários elementos como fatos disponíveis, sempre fundamentadamente, o que incluiu a decisão da autoridade europeia, por considerar razoável tal utilização quando cabível (o que é, inclusive, consagrado na Portaria SECEX nº 172, de 14 de fevereiro de 2022).

361. A empresa falhou gravemente em seu dever de apresentar as respostas solicitadas pela autoridade investigadora tempestivamente, e não é aceitável que a parte interessada busque, em função de falha atribuível única e exclusivamente a si mesma, tente impor sua interpretação sobre como a autoridade investigadora deve atuar na hipótese de não cooperação das partes interessadas ou sobre como devem ser utilizados os fatos disponíveis à luz da falta de cooperação.

362. Cumpre aqui ressaltar que mais uma vez a PT IRNC faltou com a verdade ao afirmar que: "unicamente sobre a suposta intempestividade da resposta do questionário do produtor/exportador da IRNC que a SDCOM fundamenta sua rejeição". Salutar ainda ressaltar que o documento citado pela PT IRNC nesse trecho, o Ofício SEI Nº 74860/2022/ME dizia respeito exclusivamente ao documento protocolado em 24 de fevereiro de 2022, denominado "informação adicional da IRNC" (recebida 5 meses depois de findado o prazo para resposta), e não à resposta original ao questionário protocolada pela PT IRNC.

363. A rejeição foi extensivamente fundamentada em diversos fatores, com base na intempestividade, na ausência de tempo hábil para se analisar nova resposta ante ao estado da investigação e considerando ainda a carga de trabalho, na impossibilidade de aproveitamento da resposta restrita para se depreender informações compreensíveis, e na existência de culpa exclusiva por parte da empresa. A SDCOM usou o termo "intempestiva" como adjetivo que melhor qualifica a resposta em uma descrição curta, mas como sabido pela empresa, foram trazidos vários elementos para fundamentar a rejeição, quando se teve a oportunidade de discorrer sobre ela.

364. Sobre a reclamação acerca de se afirmar que não foi recebida resposta ao questionário, a SDCOM, dados os problemas relatados, desconsiderou a resposta protocolada. Assim sendo, para todos os fins, de fato não foi recebida resposta ao questionário, sendo que esta determinação final extensivamente 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 março de 2022 somente demonstra que a empresa falhou em cumprir com o requerido, não protocolando as informações requeridas - as capturas de tela nada demonstram, já que datas podem ser livremente definidas. A alegada boa-fé da empresa teria sido melhor demonstrada caso esta tivesse expressamente aceito seu erro crasso em não protocolar a narrativa confidencial de sua resposta e, a partir daí, atuado conforme possível. Ao contrário, veio se insurgir usando argumentos enviesados e até mesmo falsos, como afirmar que a SDCOM somente apontou a intempestividade como motivo ou alegar que a SDCOM apontou ter feito apuração junto a seu departamento de TI, em uma lamentável tentativa de desviar de sua falha.

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, devido à intempestividade considerando o normativo aplicável, à ausência de tempo hábil para se analisar complemento de resposta ante ao estado da investigação e à carga de trabalho, à impossibilidade de aproveitamento da resposta restrita para se depreender informações compreensíveis, à existência de culpa exclusiva por parte da empresa no não protocolo da versão confidencial da narrativa de sua resposta ao questionário, e ainda na tentativa tardia (5 meses após o prazo) de protocolar nova resposta. Lamenta, ainda, com relação aos posicionamentos da SDCOM e fatos ocorridos, o fato de a empresa os ter deturpado, interpretado de forma enviesada e feito graves falsas acusações, em infeliz tentativa de desviar o foco de sua exclusiva incompetência.

1.8 Das verificações in loco

1.8.1 Da verificação na indústria doméstica

367. Com base no § 2 º do art. 40 do Decreto nº 1.751, de 1995, técnicos da SDCOM realizaram verificação in loco nas instalações da Aperam, no período de 6 a 10 de dezembro de 2021, com o objetivo de confirmar e obter maior detalhamento das informações prestadas pela empresa na petição.

368. Foram cumpridos os procedimentos previstos nos roteiros de verificação, encaminhados previamente à empresa, tendo sido verificados os dados apresentados na petição e nas informações complementares.

369. A SDCOM considerou válidas as informações fornecidas pelas empresas ao longo da investigação, depois de realizadas as correções pertinentes. Os indicadores da indústria doméstica e os dados dos produtores/exportadores constantes deste documento incorporam os resultados da verificação in loco.

370. As versões restritas dos relatórios de verificação in loco constam dos autos restritos do processo e os documentos comprobatórios foram recebidos em bases confidenciais.

1.8.2 Da verificação no Governo da Indonésia

371. Com base no § 1º do art. 40 do Decreto nº 1.751, de 1995, técnicos do DECOM realizaram verificações in loco nas instalações do Governo da Indonésia, de 23 a 27 de maio de 2022, com o objetivo de confirmar e obter maior detalhamento das informações prestadas pelo Governo no curso da investigação,

372. Foram cumpridos os procedimentos previstos nos roteiros de verificação, encaminhados previamente ao Governo, tendo sido verificados os dados apresentados nas respostas aos questionários e em suas informações complementares.

373. As versões restritas dos relatórios de verificações in loco constam dos autos restritos do processo e os documentos comprobatórios foram recebidos em bases restritas e confidenciais.

374. As análises constantes deste Parecer de Determinação Final levam em consideração 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, destacou alguns pontos cuja apresentação e comprovação pelo Governo da Indonésia seriam fundamentais para a devida análise do processo.

376. Quanto ao minério de níquel, ademais das informações mencionadas no item 3.2.1 do citado roteiro da visita de verificação, deveriam ser verificados, além dos volumes de produção e de vendas de minério de níquel nos mercados interno e externo, os preços efetivamente praticados nas vendas de tal minério no mercado interno, uma vez que se trata de informação disponível ao Governo da Indonésia, conforme disposto no Decree of the Coordinating Minister for Maritime Affairs and Investment 108/2020, que estabelece que ao "Executor" da equipe de supervisão do HPM cabe "supervising the sale and purchase of nickel ore made by mining business and processing and refining business, including: [...] Ensure the price used in the sale and purchase transaction of ore is in accordance with HPM".

377. Ainda com relação ao minério de níquel, assim como ao carvão, seria fundamental a apresentação de atas de reunião e documentos relacionados às tratativas de tal Governo com as associações Indonesian Nickel Miners Association (APNI) e a Indonesia Coal Miners Association (APBI) sobre a produção e comercialização do minério de níquel e de carvão no mercado interno da Indonésia.

378. No caso das bonded zones, seria fundamental que fosse esclarecido como as importações de máquinas e equipamentos utilizados na produção de bens exportáveis são tratadas no âmbito desse programa, uma vez que tais máquinas e equipamentos não se referem a insumos consumidos no processo produtivo e nem são sujeitos em si à reexportação ou venda no mercado interno.

379. A Aperam ressaltou que o Governo da Indonésia deveria fornecer todas as informações e legislações solicitadas pela autoridade investigadora, e não apenas as "partes relevantes" assim classificadas pelo próprio Governo indonésio.

380. Acrescentou que a apresentação dos documentos exclusivamente em Bahasa não atenderiam ao determinado no art. 433 da Portaria Secex nº 172, de 2022, uma vez que não estão acompanhados de suas respectivas traduções, como, por exemplo, nos casos de Finance Regulation No. 131-PMK.04-2018, Government Regulation No 14 of 2015, Ministry of Trade Regulation No 32 of 2017, Presidential Regulation No 18 of 2020 RPJM 2020-2024, Ministry of Finance Regulation No 35 of 2018, Law No 7 of 2021, Ministry of Finance Regulation No 130 of 2020, Ministry of Trade Regulation No 102 of 2018, Ministry of Trade Regulation No 39 of 2014 e Ministry of Trade Regulation No 95 of 2018.

381. O Governo da Indonésia, em manifestação de 29 de julho de 2022, apresentou comentários sobre o relatório de verificação in loco. Informou que o Regulamento Presidencial nº 2, de 2015, diz respeito ao Plano Nacional de Desenvolvimento de Médio Prazo 2015 - 2019, e que foi válido entre 2015 - 2019, sendo substituído pelo plano de 2020 a 2024, Regulamento Presidencial nº 18, de 2020. Afirmou que o Regulamento Presidencial n.º 2 de 2018 refere-se à Política Nacional Industrial de 2015 - 2019.

382. Afirmou ainda o GOI que a MEMR Regulation Nº 11, de 2020, estabeleceu o preço HPM como preço de referência para as vendas, e não preços de transação. Seria suposto que os preços de transação sejam superiores ao preço de referência, que atua como um piso. Reiterou que antes de tal regulação o preço HPM era usado apenas para cálculo dos royalties. Ainda nesse contexto, esclareceu afirmação dada durante a verificação - "as the smelters implemented the price set by the government", que significaria que os smelters simplesmente cumpriram com o preço HPM como piso.

383. O GOI fez ainda questão de salientar que o IMIP não teria sido estabelecido durante o diálogo económico de alto nível entre a Indonésia e a China - uma vez que o IMIP foi estabelecido entre partes privadas, nomeadamente o Grupo Tsingshan e o Grupo Bintang Delapan em 2013. Os líderes do GOI e do governo da China teriam apenas testemunhado a assinatura, o que seria muito comum e aplicado internacionalmente. Informou que o GOI aplica tratamento igual a todos os investidores, pelo que todos os investidores dispostos a investir e que investiram na Indonésia são obrigados a cumprir as leis e regulamentos vigentes na Indonésia.

384. Destacou que a área do IMIP tem vários usos, não seria apenas uma propriedade estratégica industrial, mas também seria destinada à agricultura, residencial, pesca etc, conforme 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 durante a visita in loco foram cumpridos os procedimentos que haviam sido previamente informados no roteiro de verificação e que o relatório da verificação foi tempestivamente incorporado aos autos desta revisão.

386. Sobre os comentários do GOI, pontua-se que as questões relacionadas aos preços HPM e do IMIP serão discutidas em detalhes na seção 4. Pontua-se, resumidamente, que há elementos que apontam que o HPM era utilizado não somente para royalties, e que o fato de a área do IMIP ser destinada, em tese, para outros usos, não altera as conclusões a que chegou esta autoridade com base nos fatos disponíveis no processo. Sobre o acordo do IMIP ter sido supostamente estabelecido entre partes privadas, a assinatura do acordo sobre o IMIP ter sido testemunhada pelos presidentes dos dois países somente evidencia o alto nível com o qual o projeto foi considerado pelas partes - lembra-se ainda que a falta de colaboração da PT IRNC e do GOI impediu à SDCOM de obter maiores esclarecimentos sobre tal assinatura.

387. As análises apresentadas neste Parecer levam em consideração o resultado da verificação in loco, inclusive no concernente às lacunas na colaboração do GOI durante a visita e os comentários do 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 conhecidas foram notificadas de que, nos termos do item 2 da Circular SECEX nº 22, de 31 de maio de 2022, publicada no Diário Oficial da União de 1º de junho de 2022, o prazo regulamentar para o encerramento da investigação fora prorrogado 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 divulgação dos prazos da investigação

389. A Circular SECEX nº 37, de 19 de agosto de 2022, publicada no Diário Oficial da União de 19 de agosto de 2022, além de tornar públicos os fatos que justificaram a decisão de não se elaborar uma determinação preliminar sobre a existência de prática de subsídios, de dano à indústria doméstica e de nexo causal entre eles, tornou públicos os prazos que serviriam de parâmetro para o restante da presente investigação.

Prazos	Datas Previstas

Encerramento do prazo para consideração de manifestações para Nota Técnica	09/09/2022
Divulgação da Nota Técnica contendo os fatos essenciais que se encontram em análise e que serão considerados na determinação final	26/09/2022
Realização de audiência final	29/09/2022
Encerramento do prazo para apresentação das manifestações finais pelas partes interessadas e encerramento da fase de instrução do processo	14/10/2022
Expedição, pela SDCOM, do parecer de determinação final	28/10/2022

Fonte e elaboração: SDCOM

1.11 Da convocação e realização da audiência final

390. Em atenção ao que dispõe o art. 43 do Decreto nº 1.751, de 1995, em 29 de agosto de 2022 todas as partes interessadas foram convocadas para a audiência final, assim como a Confederação da Agricultura e Pecuária do Brasil - CNA, a Confederação Nacional do Comércio - CNC, a Confederação Nacional da Indústria - CNI e a Associação de Comércio Exterior - AEB.

391. Naquela oportunidade, foram notificadas de que a audiência seria realizada em ambiente virtual no dia 29 de setembro de 2022 e que a Nota Técnica contendo os fatos essenciais sob julgamento seria disponibilizada às partes interessadas no dia 26 de setembro de 2022, por meio do Sistema Eletrônico de Informações no âmbito do processo SEI/ME nº 19972.101391/2021-52 (Restrito).

392. Atendendo a pedido do GOI, em 23 de setembro de 2022, o horário da audiência foi alterado para as 9 da manhã, de modo a possibilitar a participação dos representantes do GOI direto de Jacarta.

393. A audiência final foi realizada conforme previsto, no dia 29 de setembro de 2022, em ambiente virtual. Na ocasião, estiveram presentes, além de servidores da SDCOM, representantes da peticionária, do governo da Indonésia, da empresa produtora e exportadora PT IRNC e da Aprodinox.

394. O termo de audiência e a lista de presença das partes interessadas que compareceram ao evento integram os autos restritos do processo.

395. As manifestações apresentadas durante a realização da audiência e reduzidas tempestivamente a termo foram devidamente consideradas neste Parecer nos temas respectivos.

1.12 Da errata à Nota Técnica de fatos essenciais

396. No dia 10 de outubro de 2022, foi divulgada errata à Nota Técnica SDCOM Nº 43660/2022/ME, pois se observou erros materiais em alguns números-índices apresentados na seção 6.1.7.1, tabela "Evolução dos Custos (R$/t)" e nas tabelas da seção 7.2.6 "Desempenho exportador e da produção de outros produtos". Ressalta-se que não foi verificada incorreção nos dados apresentados na versão confidencial da nota técnica de fatos essenciais, tendo ocorrido erro material exclusivamente na preparação da versão restrita em alguns dados de algumas tabelas.

397. Pontua-se ainda que, embora não tenha sido verificada nenhuma mácula na parte textual da versão restrita, tendo permanecido inalteradas as conclusões expressas na Nota Técnica SDCOM Nº 43660/2022/ME e demais fatos essenciais nela contidos, de forma conservadora, para garantir o direito à ampla defesa e ao contraditório especificamente com relação à presente investigação e considerando a manifestação da IRNC, foi aberto novo prazo para manifestações acerca do disposto na errata.

398. Dessa forma, as partes interessadas dispuseram do prazo de quinze dias, que venceu em 25 de outubro de 2022, para apresentar manifestações exclusivamente acerca do exercício de não atribuição (seção 7.2.6 da nota técnica), ou sobre a evolução dos custos (seção 6.1.7.1.).

399. A PT IRNC foi a única parte interessada a apresentar manifestação neste contexto, sendo que os comentários da parte interessada foram considerados neste Parecer, como será tratado adiante.

1.13 Do encerramento da fase de instrução

400. Deste modo, encerrou-se, no dia 14 de outubro de 2022, o prazo de instrução da investigação em epígrafe (com exceção dos itens pontuados na seção anterior), de acordo com o estabelecido no §2º do art. 43 do Decreto no 1.751, de 1995. Naquela data, completaram-se os 15 dias após a divulgação dos fatos essenciais sob julgamento, consubstanciados na Nota Técnica, previstos no caput do referido artigo, para que as partes interessadas apresentassem suas manifestações finais. Como

indicado no item anterior, em função da divulgação da errata da versão restrita da nota técnica de fatos essenciais, o prazo para manifestações das partes interessadas exclusivamente acerca do exercício de não atribuição (seção 7.2.6 da nota técnica) e sobre a evolução dos custos (seção 6.1.7.1.) se encerrou em 25 de outubro de 2022.

401. No prazo regulamentar, a peticionária, o governo da Indonésia, a empresa produtora e exportadora PT IRNC e a Aprodinox se manifestaram sobre a referida nota técnica. Os comentários dessas partes interessadas acerca dos fatos essenciais sob julgamento constam deste documento, de acordo com cada tema abordado.

402. Deve-se ressaltar que, no decorrer da investigação, as partes interessadas tiveram acesso a todas as informações não confidenciais constantes do processo, tendo sido dada oportunidade para que defendessem amplamente seus interesses.

2 DO PRODUTO E DA SIMILARIDADE

2.1 Do produto objeto da investigação

403. O produto objeto desta investigação é comumente classificado nos itens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM.

404. O produto objeto da investigação contempla os produtos planos de aços inoxidáveis austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304L e 304H, laminados a frio, com espessura igual ou superior a 0,35mm, mas inferior a 4,75mm, fabricados e comercializados em diversas formas tais como, mas não limitadas a bobinas, chapas e tiras/fitas, originários da Indonésia, doravante denominados simplesmente "laminados a frio", produzidos na Indonésia.

405. Aços inoxidáveis são ligas de ferro (Fe) e cromo (Cr), com um mínimo de 10,5% de Cr. Outros elementos metálicos, tais como níquel (Ni), carbono (C), silício (Si), manganês (Mn), fósforo (P) e enxofre (S) também podem integrar essas ligas. Nos aços inoxidáveis, dois elementos devem ser destacados: i) o cromo (Cr), mais relevante de todos, por seu importante papel em elevar a resistência à corrosão; e ii) o níquel, que contribui para a melhoria das propriedades mecânicas.

406. De forma simplificada, os aços inoxidáveis podem ser divididos em dois grandes grupos: i) os da série 300; e ii) os da série 400. Os da série 300, na qual se enquadra o produto objeto do pleito, são aços inoxidáveis austeníticos, ou seja, aços inoxidáveis não magnéticos com estrutura cúbica de faces centradas, basicamente ligas Fe-Cr-Ni.

407. Por sua vez, os da série 400, nos quais se incluem os aços inoxidáveis ferríticos, são aços inoxidáveis magnéticos com estrutura cúbica de corpo centrado, basicamente ligas Fe-Cr, os quais podem ser subdivididos em dois grupos: os ferríticos propriamente ditos, que em geral apresentam teor de Cr mais elevado e de C mais baixo, e os martensíticos, nos quais predomina teor de Cr mais baixo e de C mais elevado, em comparação com os ferríticos.

408. Cada série de aços inoxidáveis é dividida em diferentes tipos, conforme a composição do aço, o que implica, também, usualmente, em diferentes utilizações. Internacionalmente, são utilizadas diferentes nomenclaturas, sendo a mais utilizada a do American Iron and Steel Institute - AISI.

409. No Brasil, a Associação Brasileira de Normas Técnicas - ABNT adota a mesma nomenclatura do AISI. Existem, contudo, outras nomenclaturas internacionais que especificam os diferentes tipos de aços inoxidáveis que podem ser utilizadas, a depender da região/país no qual o produto é fabricado/comercializado. Na petição, a peticionária também apresenta tabela de equivalência 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

Fonte: Petição inicial

410. Nesse sentido, os aços inoxidáveis são fabricados e comercializados com uma grande variedade de acabamentos, e a norma ASTM A-480, da American Society for Testing and Materials - ASTM, que consta do Anexo 2 da petição inicial da peticionária, define, de forma não exaustiva, os acabamentos mais utilizados, os quais são os que seguem:

-Nº 1: Laminado a quente, recozido e decapado - a superfície é um pouco rugosa e fosca. É um acabamento frequente nos materiais com espessuras não inferiores a 3,00 mm, destinados às aplicações industriais. Muitas vezes, na fabricação da peça final, o material é submetido a outros acabamentos, como o lixado, por exemplo;

-Nº 2D: Laminado a frio, recozido e decapado - muito menos rugoso que o acabamento Nº 1, mesmo assim apresenta uma superfície fosca, usualmente denominada como "mate". Este acabamento não é utilizado, por exemplo, no aço 430, uma vez que durante a conformação esses materiais dão lugar ao aparecimento de linhas de Lüder;

-Nº 2B: Laminado a frio, recozido e decapado seguido de ligeiro passe de laminação em laminador com cilindros brilhantes (skin pass) - apresenta um brilho superior ao acabamento 2D e é o mais utilizado dentre os acabamentos da laminação a frio. Como a superfície é mais lisa, o polimento resulta mais fácil do que nos acabamentos nº 1 e Nº 2D;

-BA: Laminado a frio com cilindros polidos e recozido em forno de atmosfera inerte -superfície lisa, brilhante e refletiva, características que são mais evidentes à medida em que a espessura do aço é mais fina. 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 abrasivos de grana (tamanho do grão de diamante) de aproximadamente 100 mesh;

-Nº 4: Material lixado em uma direção com abrasivos de grana de 120 a 150 mesh - é um acabamento com rugosidade menor que a do Nº 3;

-Nº 6: Material com acabamento Nº 4, acabado depois com panos embebidos em pastas abrasivas e óleos - aspecto fosco, satinado, com refletividade inferior à do acabamento Nº 4. O acabamento não é dado em uma única direção e o aspecto varia um pouco porque depende do tipo de pano utilizado;

-Nº 7: Acabamento com alto brilho - a superfície é finalmente polida, mas conserva algumas linhas de polido. É um material com alto grau de refletividade obtido com polimentos progressivos cada vez mais finos;

-Nº 8: Acabamento espelho - a superfície é polida com abrasivos cada vez mais finos até que todas as linhas de polimento desapareçam. É o acabamento mais fino que existe e permite que os aços inoxidáveis sejam usados como espelhos. Também é utilizado em refletores; e

-Acabamento TR - acabamento obtido por laminação a frio ou por laminação a frio com recozimento e decapagem de maneira que o material tenha propriedades mecânicas especiais. Geralmente as propriedades mecânicas são mais elevadas que a dos outros acabamentos e sua principal utilização é em aplicações estruturais.

411. Nesse contexto, na petição, a peticionária ainda informa que existem, também, outros tipos de acabamentos de aços inoxidáveis, os quais não estão incluídos na norma ASTM A-480:

-Nº 0: Laminado a quente e recozido - apresenta a cor preta dos óxidos produzidos durante o recozimento. Não é realizada decapagem. Às vezes são vendidas desta forma chapas de grande espessura e, particularmente, aços inoxidáveis refratários que serão utilizados em altas temperaturas;

-Nº 5: Material do acabamento Nº 4 submetido a um ligeiro passe de laminação com cilindros 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 mesh. A aparência é de um 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 de 220 a 320 mesh. É um lixamento de baixa rugosidade, variando entre 0,70 e 1,00 micros Ra;

-ST (Satin Finish) - acabamento com Scotch Brite, sem uso de pastas abrasivas. O material possui uma rugosidade que varia entre 0,10 e 0,15 micros Ra, mesmo que sua aparência seja fosca;

-HL (Hair Line) - material com acabamento em linhas contínuas, realizado com lixas com grana de até 80 mesh. É também um acabamento de alta rugosidade (2,00 a 2,50 micros Ra); e

-BB (Buffing Bright) - polimento feito com granas que variam de 400 a 800 mesh. É um material muito brilhante (o Nº 7 da norma ASTM A-480). A rugosidade é inferior a 0,05 micros Ra.

412. Acerca do processo produtivo dos laminados a frio 304, as principais etapas são a redução, a aciaria, a laminação a quente e a laminação a frio.

413. Nesse contexto, no que concerne ao processo produtivo do produto objeto deste pleito, conforme informações fornecidas pela Aperam no âmbito do Processo da concomitante investigação de dumping de produtos de aço inoxidável laminados a frio 304, a Indonésia adota a rota integrada, processo desenvolvido em escala industrial por empresas que produzem internamente o NPI (Níquel PIG Iron) nas suas dependências e o introduzem diretamente no AOD da aciaria já fundidos.

414. No processo inicial, o denominado NPI seria produzido numa unidade anterior à aciaria denominada RKEF (Rotary Kiln Eletric Furnace). Esta unidade recebe inicialmente o minério de níquel e ele em seguida passa pelas etapas de secagem, calcinação e pré-redução em fornos rotativos e em seguida se direcionam para fornos elétricos onde são reduzidos, gerando NPI com composição de 10 a 11% de NI, 1% de Cr e 82% de Fe. Em seguida este NPI fundido é direcionado para os vasos AOD da aciaria. No AOD também são adicionadas matérias-primas que são aquecidas com carvão em panela, tais como sucata de aço 304 comprada ou recirculada, ferro níquel, níquel eletrolítico, ferro cromo, ferro manganês, ferro silício, etc. De forma que a diferença básica entre a rota tradicional e a integrada é que a maior parte da carga de Níquel é via NPI já fundido e não via sucata de aço 304 ou ferro níquel que precisam ser preaquecidos em forno elétrico a arco. Após o AOD/lingotamento contínuo, a rota integrada é idêntica à tradicional.

415. No que concerne às diferenças entre a rota tradicional e rota integrada, em 9 de novembro de 2020, na resposta ao Ofício nº 1.762/2020/CGMC/SDCOM/SECEX de informações complementares à petição inicial do Processo SECEX nº 52272.004953/2020-01, a peticionária informou que a rota tradicional é fortemente centrada na utilização de sucata de aço 304, com complementações de ferro níquel e de ferro cromo para o balanço de carga. As produtoras que utilizam a rota tradicional tendem a adquirir as matérias-primas (sucata, ferro níquel, ferro cromo) no mercado local ou via importação e os preços são em grande parte cotados diariamente em bolsas como LME e em publicações internacionais. Por sua vez, na rota ou processo integrado o aço é produzido a partir de minérios básicos, como minério de níquel, minério de cromo, carvão, sendo produzidos internamente nas usinas o Níquel Pig Iron (NPI), 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 matérias-primas distintas implica processos produtivos distintos. No caso da rota integrada, por exemplo, há utilização intensiva de energia elétrica e de carvão, além de haver maior necessidade de acesso a minérios. Por outro lado, tal processo permite uma otimização do consumo de energia elétrica na aciaria, uma vez que as matérias-primas já estão fundidas, prontas para utilização nas fases seguintes do processo produtivo. No entanto, devido à utilização mais intensiva de energia elétrica e de carvão, tal rota também implica maior emissão de CO_2. Na rota tradicional, por se utilizar como matéria-prima as sucatas de aço 304, complementadas com ferro níquel e ferro cromo, há consumo menos intensivo de energia elétrica e de carvão, com consequente menor emissão de CO_2. A partir da aciaria não há mais diferenças de processo e eventuais diferenças são mais ligadas a escalas da planta, o que pode levar a variações de projeto nas laminações a quente ou a frio. A opção por uma ou outra rota depende de variáveis diversas, sendo fundamentais as condições de disponibilidade de acesso (quantidade e preço) das matérias-primas e insumos que podem ser utilizados, como sucata, minério de ferro, níquel, cromo, ferro níquel, carvão e energia elétrica.

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 peticionária informou que a partir de 2013, a maioria das empresas teria adotado, ao invés de altos fornos, o processamento de minério de níquel via RKEF (Rotary Kiln Electric Furnaces).

417. No que concerne ao balanço de carga, a peticionária explicou que o balanço de carga é uma expressão utilizada na siderurgia para calcular as quantidades dos diversos componentes para a produção de um determinado volume de aço na aciaria e depois fazer ajustes para que a composição dos

diversos produtos siga as práticas padrão, como por exemplo, para a produção de 1 tonelada de aço 304 LF é necessário entrar com uma carga em torno de 1.156,95 Kg de matérias primas na aciaria. Esta carga é dividida entre ferro, níquel, cromo e ferro ligas de manganês e silício. O ferro pode ser oriundo de sucatas de aço carbono e/ou ferro gusa. O níquel pode ser oriundo do ferro níquel, do níquel eletrolítico e/ou da sucata de aço 304. Já o cromo pode ser oriundo do ferro cromo e/ou da sucata de aço 304. Inicialmente este material é todo aquecido em fornos elétricos, sendo, depois, levados a um vaso AOD (Argon-Oxygen Decarburization). No vaso AOD, são coletadas amostras do produto em fabricação, de forma a medir os teores dos diversos componentes, conforme as práticas padrão em vigor, permitindo que sejam realizados os ajustes necessários nos diversos elementos que compõem o aço. O balanço de carga termina com o ajuste rigoroso da composição do aço, seja ele 304 ou um outro qualquer.

418. Nesse contexto, a peticionária esclareceu que o ferro gusa é um componente menor na composição do aço 304. Sendo um substituto de sucata de aço carbono e tem a vantagem de entrar já fundido na aciaria, economizando energia elétrica no processo. Todavia, o mais importante no balanço de carga são os ajustes de Ni e Cr que são os grandes definidores de competitividade das usinas.

419. No mais, no que concerne às questões a respeito da rota tradicional e da rota integrada, a peticionária informou que a rota tradicional é fortemente centrada na utilização de sucata de aço 304, com complementações de ferro níquel e de ferro cromo para o balanço de carga. As produtoras que utilizam a rota tradicional tenderiam a adquirir as matérias-primas (sucata, ferro níquel, ferro cromo) no mercado local ou via importação e os preços são em grande parte cotados diariamente em bolsas como LME e em publicações internacionais.

420. Nesse contexto, na rota ou processo integrado o aço é produzido a partir de minérios básicos, como minério de níquel, minério de cromo, carvão, sendo produzidos internamente nas usinas o Níquel Pig Iron (NPI), o ferro cromo (menos comum), a energia elétrica e outros ferros ligas. As diferenças entre a rota tradicional e a rota integrada, portanto, ocorrem até a fase de aciaria. Até essa fase, portanto, a utilização de matérias-primas distintas implica em os processos produtivos são distintos. No caso da rota integrada, por exemplo, há utilização intensiva de energia elétrica e de carvão além de haver maior necessidade de acesso a minérios.

421. Por outro lado, a peticionária esclarece que tal processo permite uma otimização do consumo de energia elétrica na aciaria, uma vez que as matérias-primas já estão fundidas, prontas para utilização 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 CO_2. Já na rota tradicional, por se utilizar como matéria-prima as sucatas de aço 304, complementadas com ferro níquel e ferro cromo, há consumo menos intensivo de energia elétrica e de carvão, com consequente menor emissão de CO_2. No entanto, a partir da aciaria não há mais diferenças de processo e eventuais diferenças são mais ligadas a escalas da planta, o que pode levar a variações de projeto nas laminações a quente ou a frio. Assim, a opção por uma ou outra rota, portanto, depende de variáveis diversas, sendo fundamentais as condições de disponibilidade de acesso (quantidade e preço) das matérias-primas e insumos que podem ser utilizados, como sucata, minério de níquel, cromo, ferro níquel, carvão e energia elétrica.

422. A peticionária explicou que a sugestão de CODIP apresentada na petição inicial de investigação de dumping atende ao determinado no art. 23 da Portaria SECEX 41, de 2013, que dispõe sobre as informações necessárias para a elaboração de petições relativas a investigações antidumping, conforme o art. 39 do Decreto nº 8.058, de 26 de julho de 2013, representado por uma combinação alfanumérica de letras e números, ordenados da esquerda para a direita, em ordem de importância, sendo utilizados letra e números para identificar cada característica, refletindo os seguintes atributos: tipo do aço, 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

B02	Igual ou superior a 0,45 mm, mas inferior a 0,50 mm
B03	Igual ou superior a 0,50 mm, mas inferior a 0,60 mm
B04	Igual ou superior a 0,60 mm, mas inferior a 0,70 mm
B05	Igual ou superior a 0,70 mm, mas inferior a 0,80 mm
B06	Igual ou superior a 0,80 mm, mas inferior a 0,90 mm
B07	Igual ou superior a 0,90 mm, mas inferior a 1,00 mm
B08	Igual ou superior a 1,00 mm, mas inferior a 1,20 mm
B09	Igual ou superior a 1,20 mm, mas inferior a 1,50 mm
B10	Igual ou superior a 1,50 mm, mas inferior a 2,00 mm
B11	Igual ou superior a 2,00 mm, mas inferior a 4,75 mm
Atributo C	Acabamento
C01	2B - ASTM 480
C02	2D - ASTM 480
C03	NR3 - ASTM 480
C04	NR4 - ASTM 480
C05	NR6 - ASTM 480
C06	NR7 - ASTM 480
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 não é uma informação relevante na comercialização do produto sob análise, sendo informados, normalmente, apenas a espessura e a largura da bobina. Isso porque quando o cliente adquire a bobina, esta normalmente será colocada em uma desbobinadeira, sendo transformada, paulatinamente, em chapas ou tiras, de acordo com a demanda em sua fábrica ou dos clientes, no caso de distribuidores, de forma que, em geral, a informação do comprimento é apresentada apenas quando o produto é comercializado em chapas, não sendo relevante quando o produto é comercializado em bobina, tiras ou fitas. De qualquer forma, o comprimento de uma bobina laminada a frio pode ser estimado aproximadamente a partir de seu peso, considerando a seguinte fórmula: P = A * B * X * 7,85, onde: P = peso da bobina; A = largura da bobina; B = espessura da bobina; X = comprimento da bobina; e 7,85 = densidade do aço inox em t/m^3 .

424. A peticionária explicou ainda que o produto não é caracterizado pela existência de modelos distintos, sendo as variações observadas relativas às especificações que constam nas normas técnicas, como, por exemplo, a composição química, de forma que não se aplica ao produto objeto da investigação caracterizações relativas à potência ou capacidade.

425. No que concerne aos principais usos e aplicações do produto, tanto o produto alegadamente subsidiado como o produto similar nacional têm os mesmos usos e aplicações, sendo utilizados na fabricação de torres, tubos, tanques, estampagem geral, profunda e/ou de precisão, com aplicações diversas, como nas indústrias aeronáutica, ferroviária, naval, petroquímica, de papel e celulose, têxtil, frigorífica, hospitalar, alimentícia, laticínios, farmacêutica, cosmética, química, utensílios domésticos, instalações criogênicas, destilarias, fotografia, dentre outras.

426. No que diz respeito aos canais de distribuição, a peticionária indicou que o produto objeto da investigação é importado majoritariamente por distribuidores/revendedores, mas, também, diretamente, por indústrias consumidoras finais do mesmo, dependendo, normalmente, dos volumes e especificações demandados por cada cliente, de forma tal que as formas de concorrência predominantes neste mercado são tais que o produto objeto é um produto de segue norma internacional, a qual define a proporção da liga de Fe-Cr-Ni, não havendo, portanto, diferenciação entre o produto objeto da investigação e o produto similar fabricado no Brasil.

427. Entretanto, a peticionária esclarece que os distribuidores trabalham tanto com o produto importado como com o similar nacional, de forma, que a rede de distribuição não determina a escolha entre o produto importado ou nacional.

428. E no que diz respeito à propaganda, a peticionária informou que esta não é relevante neste segmento, não determinando a escolha pelo produto nacional ou importado não mercado. Portanto, o principal determinante na escolha do consumidor é o preço, de forma tal que o preço é fundamental para o distribuidor, já que ele vive da intermediação entre o produtor/exportador e o cliente consumidor.

2.1.1 Da classificação e do tratamento tarifário

429. O produto objeto da investigação é normalmente classificado nos subitens tarifários 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, que englobam diversos tipos de produtos. Os referidos subitens encontram-se a seguir descritos:

NCM	DESCRIÇÃO	TEC
72.19	Produtos laminados planos de aço inoxidável, de largura igual ou superior a 600 mm	
7219.3	Simplesmente laminados a frio	
7219.32.00	De espessura igual ou superior a 3 mm, mas inferior a 4,75 mm	14%
7219.33.00	De espessura superior a 1 mm, mas inferior a 3 mm	14%
7219.34.00	De espessura igual ou superior a 0,5 mm, mas não superior a 1 mm	14%
7219.35.00	De espessura inferior a 0,5 mm	14%
72.20	Produtos laminados planos de aço inoxidável, de largura inferior a 600 mm	
7220.20	Simplesmente laminados a frio	
7220.20.90	Outros	14%
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 classifica o produto objeto da petição, tem-se que a tarifa se manteve inalterada em 14% durante o período de análise de dano, conforme Resolução CAMEX nº 94, de 8 de dezembro de 2011, e Resolução CAMEX nº 125, de 15 de dezembro de 2016.

431. Não obstante, deve-se ressaltar que há Acordos de Complementação Econômica (ACE), de Livre Comércio (ALC) e de Preferências Tarifárias (APTR) celebrados pelo Brasil, que reduzem a alíquota do Imposto de Importação incidente sobre o produto similar. A tabela a seguir apresenta, por país, 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%

Peru	ACE 58 - Mercosul - Peru	100%
Uruguai	ACE 18 - Mercosul	100%
Venezuela	ACE 69 - Brasil - Venezuela	100%
Fonte: Sistema Tecweb Elaboração: SDCOM		

2.2 Do produto fabricado no Brasil

432. O produto similar fabricado no Brasil é definido como produtos planos de aços inoxidáveis austeníticos de norma AISI 304 e similares, incluindo suas variações, como 304L e 304H, laminados a frio, com espessura igual ou superior a 0,35mm, mas inferior a 4,75mm, fabricados e comercializados em diversas formas (bobinas, chapas e tiras/fitas), doravante denominados simplesmente "laminados a frio".

433. Nesse contexto, em petição de 9 de novembro de 2020, de resposta ao Ofício nº 1.762/2020/CGMC/SDCOM/SECEX. de informações complementares à petição inicial, a peticionária informou que a sigla DDQ significa "deep drawing quality", ou seja, aços 304 com uma propriedade de estampabilidade diferenciada, a qual o cliente pode demandar, a depender de sua aplicação. Salientou ainda que se trata de produto incluído no escopo da investigação, sendo, também, produzido pela indústria doméstica.

434. Ademais, importa destacar que, com base nas informações fornecidas pela Aperam no âmbito do Processo da concomitante atual investigação de dumping de produtos de aço inoxidável laminados a frio 304, a Aperam fabrica os produtos planos de aços inoxidáveis laminados a frio em questão nas larguras padrão: 1.020mm, 1.040mm, 1.240mm, 1.220mm, 1.250mm 1.270mm, 1.295mm e 1.320mm, sendo possível fornecer o produto na largura demandada pelo cliente até o limite de 1.320 mm.

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 passe de laminação 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 150 mesh;

-Nº 6: O material com acabamento Nº 4, posteriormente acabado com panos embebidos em 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 fabricados no Brasil são utilizados nas mesmas aplicações que os laminados a frio importados e que mais informações podem ser obtidas no sítio eletrônico https://brasil.aperam.com/produtos/forcainox/biblioteca-tecnica/.

437. No que concerne ao processo produtivo da Aperam, a peticionária explicou que este é praticamente tradicional, com a utilização de sucata, de forma semelhante aos processos europeus, dos Estados Unidos da América, Japão etc. Assim, para a Aperam, o seu processo só não é totalmente tradicional porque a peticionária utiliza gusa líquido para ajustar seu balanço de carga, mas em pequena quantidade.

438. A peticionária indicou que o processo produtivo dos aços inoxidáveis tem início com a redução, etapa em que os altos-fornos são alimentados com minério de ferro e redutor (carvão vegetal no caso da Aperam), formando, assim, o ferro-gusa líquido. O ferro-gusa líquido é colocado no carro torpedo e transferido para a aciaria, etapa em que o ferro- gusa sofre um primeiro pré-tratamento, sendo removidas as impurezas do ferro-gusa, como fósforo, enxofre, carbono e nitrogênio. Esta primeira etapa é típica de processos integrados, mas a participação do ferro gusa na carga da aciaria é pequena. No período analisado foram utilizados apenas cerca de 90 Kg de ferro gusa/t de aço laminado a frio, onde o ferro gusa entra já fundido diretamente no AOD com a função de ajustar o balanço de ferro. O restante da carga

de matérias primas utilizadas na aciaria da Aperam segue o fluxo tradicional utilizado na Europa, Estados Unidos, Japão e mesmo em muitas siderúrgicas chinesas. São adicionados nos fornos elétricos a arco (FEA) para serem fundidos o níquel (na forma de níquel eletrolítico, ferro-níquel ou sucata de aços inoxidáveis tipo 304), cromo (na forma de ferro-cromo ou sucata de aços inoxidáveis tipo 304), o ferro na forma de sucata de aço carbono, o ferro silício, o ferro manganês, e uma ou outra liga metálica para ajustes de alguma propriedade específica do material. Esta carga fundida é então transferida para o AOD e se junta ao ferro gusa proveniente dos altos fornos (no caso da Aperam) para ajustes finais de temperatura/composição/degaseificação e em seguida a carga é transferida para o lingotamento contínuo onde é solidificada na forma de placa de aços 304.

439. Nesse contexto, a peticionária informou que as próximas etapas são comuns a toda as rotas. A etapa seguinte consiste na laminação a quente (conformação a quente das placas com redução significativa de espessura). A laminação ocorre da seguinte forma: primeiro, as placas são reaquecidas para a preparação para a conformação a quente. Posteriormente, é feito o ajuste preliminar de espessura, para, então, iniciar a laminação para a espessura final do produto no laminador rougher e steckel a fim de obter bobinas a quente, de 2 a 8 mm de espessura. Até a laminação a frio, a linha de produção de aços inoxidáveis é compartilhada com outros produtos em maior ou menor escala, em cada uma das principais etapas do processo de produção: redução, aciaria a laminação a quente. As bobinas laminadas a quente são, então, direcionadas para a laminação de tiras a frio, passando seguidamente pelas preparadoras de bobinas, linhas de recozimento e decapagem, laminadores a frio e equipamentos auxiliares, de modo a se 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 para usuários finais e 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(s)-prima(s), composição química, características físicas, normas e especificações técnicas, processo produtivo, usos e aplicações, grau de substitutibilidade e canais de distribuição, a peticionária expõe na petição inicial que levando-se em conta as aplicações de cada tipo de laminado a frio, o produto similar fabricado no Brasil e o importado apresentam as mesmas características, uma vez que diferenças relacionadas ao processo produtivo não afetam o produto final e foram informadas anteriormente, em item específico.

442. Assim, com base nas informações fornecidas pela Aperam no âmbito do Processo da concomitante atual investigação de dumping de produtos de aço inoxidável laminados a frio 304, a peticionária entende que uma vez que atendam às normas técnicas, os aços inoxidáveis grau 304 fabricados no Brasil e os importados não apresentam diferenças que impeçam sua substituição.

443. Nesse contexto, conforme informações obtidas na petição inicial e manifestações de informações complementares da peticionária, o produto objeto da investigação e o produto similar produzido no Brasil, em geral, produzidos a partir das mesmas matérias-primas, quais sejam, minério de níquel e ferro-ligas.

444. Conforme demanda dos clientes, tanto o produto objeto da investigação como o produto fabricado no Brasil seguem as mesmas normas internacionais.

445. Em que pesem as diferenças na etapa da redução, decorrentes da utilização de carvão mineral ou vegetal, o processo de produção do produto similar fabricado pela indústria doméstica é semelhante ao processo de produtores identificados da origem investigada.

446. No que se refere aos usos e aplicações de laminados a frio 304, não há diferenças entre o produto objeto da investigação e aquele fabricado no Brasil, sendo ambos destinados às finalidades anteriormente citadas.

447. Considerando-se o fato de tanto o produto objeto da investigação quanto o produto fabricado no Brasil estarem sujeitos a normas técnicas que definem suas principais características, há elevado grau de substituição entre esses produtos, o que é corroborado pelo elevado número de clientes da indústria doméstica que são iguais a clientes dos importadores do produto analisado.

448. Por fim, verificou-se, nos dados de importação fornecidos pela RFB, que o produto analisado seria vendido por intermédio dos mesmos canais de distribuição que o produto fabricado no Brasil, quais sejam: vendas diretas para as indústrias e consumidores finais ou por meio de distribuidores.

2.4 Da conclusão a respeito do produto e da similaridade

449. Tendo-se em conta a descrição detalhada contida no item 2.1 deste documento, concluiu-se que se consideram como produto objeto da investigação os produtos planos de aços 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, quando originários da Indonésia.

450. Conforme dispõe o parágrafo único do art. 4º do Decreto nº 1.751, de 1995, o termo "produto similar" será entendido como o produto idêntico, igual sob todos os aspectos ao produto que se está examinando ou, na ausência de tal produto, outro que, embora não exatamente igual sob todos os aspectos, apresente características muito próximas às do produto em consideração.

451. Dessa forma, diante das informações apresentadas e da análise constante no item 2.2 deste Parecer, a SDCOM concluiu que o produto produzido no Brasil é similar ao produto objeto da investigação, nos termos do parágrafo único do art. 4º do Decreto nº 1.751, de 1995.

3 DA INDÚSTRIA DOMÉSTICA

452. De acordo com o art. 24 do Decreto nº 1.751, de 1995, o termo "indústria doméstica" será entendido como a totalidade dos produtores nacionais do produto similar, ou como aqueles, dentre eles, cuja produção conjunta do mencionado produto constitua parcela significativa da produção nacional total do produto.

453. Assim, conforme indicado no item 1.4 acima, definiu-se como indústria doméstica a linha de produção de laminados a frio 304 da Aperam, que representou 100% da produção nacional 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 investigação de subsídios a fim de se verificar a existência de concessão de subsídios às exportações para o Brasil 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 40, de 2 de junho de 2021, publicada no Diário Oficial da União de 2 de junho de 2021, tendo sido iniciada com o objetivo de 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 industrial; e

7. Injeção de capital.

456. Para todos os alegados programas a respeito dos quais foi iniciada investigação foram apresentados indícios sobre a existência dos subsídios, dos benefícios auferidos e da especificidade.

4.2 Dos fatos essenciais para os fins de determinação final

4.2.1 Da utilização dos fatos disponíveis para fins de determinação final

457. Nos termos do § 3º do art. 37 do Decreto nº 1.751, de 1995, no caso de qualquer das partes interessadas negar acesso à informação necessária, não a fornecer dentro de prazo determinado ou criar obstáculos à investigação, as determinações poderão ser elaboradas com base nos fatos disponíveis, de acordo com o disposto no art. 79 do Decreto nº 1.751, de 1995.

458. Nos termos dos arts. 36 e 37 do Decreto nº 1.751, de 1995, por ocasião da notificação de início da investigação em epígrafe, encaminharam-se às partes interessadas questionários especificando, pormenorizadamente, as informações requeridas e a forma como essas informações deveriam estar estruturadas em suas respostas. De acordo com o art. 79 do Decreto em menção, poder-se-ia utilizar dos fatos disponíveis, incluídos aqueles contidos na petição de início da investigação, caso os dados e as informações solicitadas, devidamente acompanhados dos respectivos elementos de prova, não fossem fornecidos, fossem fornecidos parcialmente ou fossem fornecidos fora dos prazos estabelecidos, sendo que, nestas situações, o resultado poderia ser menos favorável à parte interessada do que seria caso tivesse cooperado.

459. Ressalte-se que, dentre as empresas identificadas pela SDCOM como produtoras/exportadoras do produto objeto da investigação, considerando o pontuado no item 1.7.4.1 não foi recebida nenhuma resposta ao questionário do produtor/exportador encaminhado, tendo as determinações da SDCOM neste âmbito se utilizado dos fatos disponíveis, conforme previsto no art. 79 do Decreto nº 1.751, de 1995.

460. O Governo da Indonésia tempestivamente respondeu ao questionário do governo encaminhado pela autoridade investigadora brasileira, bem como as informações complementares solicitada nos Ofícios SEI Nº 65523/2022/ME, de 8 de março de 2022, e SEI Nº 125396/2022/ME, de 29 de abril de 2022. Salienta-se que estão também aqui consideradas os resultados da visita ao governo 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 e na visita in loco, ensejando o uso dos fatos disponíveis também ao GOI no que atine a tais lacunas, conforme notificado no Ofício SEI Nº 228693/2022/ME, de 19 de agosto de 2022, conforme descrito no item 1.7.2.1.

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 os seus comentários sobre a aplicação das "melhores informações disponíveis" contra o GOI, nos termos do Ofício SEI Nº 228693/2022/ME, de 19 de agosto de 2022, sendo que as manifestações pontuais acerca de cada programa vão ser consideradas mais adiante, quando da análise individual destes.

463. Em relação ao parágrafo 13 da Carta, o GOI esclareceu que fez um grande esforço para traduzir todos os documentos fornecidos para o inglês; não tendo sido possível fornecer a versão em inglês de todos os documentos completamente no prazo, de forma que solicita que a SDCOM considere positivamente todos os documentos que o GOI apresentou durante a investigação.

464. O Governo da Indonésia entendeu que devido à sua suficiente cooperação com a SDCOM nesta investigação não veria provas de que o Governo alguma vez teria recusado o acesso, ou não fornecido as informações necessárias dentro de um período razoável, muito menos impedido a investigação.

465. O Governo da Indonésia lamentou que a SDCOM não tenha considerado as disposições do Anexo II do Acordo Antidumping que estabeleceriam regras e procedimentos estritos para que a autoridade de investigação fosse capaz de aplicar BIA.

466. O Governo da Indonésia lembrou à SDCOM que no parágrafo 228 do caso Egypt - Steel Rebar, o Painel teria considerado que, de acordo com os parágrafos 3 e 5 do Anexo II, se lido em conjunto com parágrafo 286 do decidido no caso, informações imperfeitas não deveriam ser descartadas como não

verificáveis.

467. O Governo da Indonésia solicitou à SDCOM que excluísse qualquer possibilidade de usar os fatos disponíveis nesta investigação sobre a Indonésia.

4.2.1.2 Dos comentários da SDCOM acerca da utilização dos fatos disponíveis

468. A SDCOM está ciente das dificuldades relacionadas ao idioma dos documentos submetidos à autoridade. Exatamente por tal motivo, já foram aplicadas à presente investigação as regras da Portaria SECEX nº 172/2022, que flexibilizaram a aceitação e dispensaram a apresentação de traduções juramentadas, conforme consta do registro aportado aos autos do processo em 16 de março de 2022 (SEI 23248924) Deste modo, a SDCOM entende ter facilitado a participação de todas as partes - nacionais e estrangeiras - no caso.

469. Neste contexto, a SDCOM ressaltou várias vezes que a própria parte deveria realizar as traduções e se certificar por elas. Evidentemente, sendo os representantes do GOI fluentes em bahasa, estes detêm muito melhores condições de trazer aos autos traduções fiéis. Já no Parecer de Início foi explicitado que houve documento não aceito por estar somente em bahasa, sendo tal fato de conhecimento de todas as partes desde o início da investigação e conforme instruções do questionário e ofícios subsequentes.

470. Desta forma, por uma limitação legal, a autoridade não tem como aceitar documentos que não estejam em português ou em uma das três línguas oficiais da OMC, sendo que documentos em bahasa não têm como serem aceitos. Ressalta-se também que a previsão da dispensa de tradutores juramentados só pode ocorrer com relação a documentos públicos, de modo a preservar o contraditório, sendo fato que o GOI solicita até mesmo que esta própria SDCOM traduza documentos que sequer são públicos, como os RKAB, o que é, também por este motivo, absolutamente inaceitável.

471. Como descrito neste documento, e também em outros, como o relatório da visita in loco, o GOI impediu o acesso a documentos relevantes, como os relatórios de venda de minério de níquel, ou quaisquer documentos fiscais das empresas, significativamente dificultando o acesso à autoridade a elementos importantes do caso, muito embora se reconheça que o GOI também tenha colaborado com a investigação em outros aspectos, o que foi devidamente ponderado e valorizado pela autoridade, quando cabível. Tal ocorreu, por exemplo, quando o GOI forneceu informação imperfeita, mas ainda utilizável, de modo que esta autoridade assegura ter agido conforme as regras multilaterais e pátria aplicáveis.

4.2.2 Comentários iniciais da SDCOM sobre o setor de laminados a frio de aço inoxidável na Indonésia

472. A SDCOM pôde confirmar as alegações da peticionária, conforme item 4.1 da Circular SECEX nº 40, de 2 de junho de 2021, que apontou que o Governo da Indonésia vem impondo um programa de valorização de suas reservas de matérias-primas, inspirado no denominado "nacionalismo de recursos", com o objetivo de aumentar o valor agregado das exportações indonésias através do desenvolvimento das indústrias a jusante do minério de Níquel e do Carvão Mineral, abundantes naquele país. Tal busca por aumento do valor agregado foi, inclusive, reiterado várias vezes pelos representantes do GOI na visita in loco.

473. O artigo 33 (3) da Constituição de 1945 da República da Indonésia, estabelece que a terra, a água e os recursos naturais são controlados pelo Estado e são usados para maximizar a prosperidade do povo. A fim de elaborar os objetivos, o governo da Indonésia, por meio da Lei no 17/2007 estabeleceu seu planejamento de longo prazo, National Long-Term Development Plan (RPJPN) 2005-2025.

474. Para detalhar ainda mais os planos governamentais, há na Indonésia os planos de médio prazo (National Medium Term Development Plan - RPJMN), sendo que para o período de tal RPJPN 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.

475. No RPJMN IV 2020-2024, o níquel é citado por diversas regiões (inclusive Sulawesi) como uma das indústrias que o GOI deseja ver fortalecido e "downstream mining" é um dos 5 vetores expressamente citados como parte das "structural transformation to enhance welfare" - sendo que o governo expressa seu intento em "Increasing value-added mining that supports the development of downstream industries".

476. Conforme descrito pelo GOI em sua resposta ao questionário: "(the RPJMN) is an elaboration of the President's vision, mission and programs whose preparation guided by the RPJPN, which contains national development strategies, general policies, Ministries/Agency programs and cross-Ministry/Agency, regional and cross territory, as well as a macroeconomic framework that includes a picture of the economy comprehensively including the direction of fiscal policy in the work plan in the form of a framework indicative regulatory and funding framework."

477. Neste cenário os elementos do processo evidenciam que há, de fato, arcabouço legislativo criado pelo GOI para incentivar tal transição de exportador de níquel para um produtor de aço inoxidável, por meio de ajustes em toda a cadeia de produção, em especial no fornecimento do Níquel, mas também de outros insumos importantes como o carvão.

478. A Lei nº 3, de 2014, deixa claro, já em seu preâmbulo, a intenção do GOI de fomentar o desenvolvimento industrial no país e a existência de indústrias estratégicas:

Considering (...)

a. that the development of an advanced Industry is realized through the strengthening of an independent, healthy and competitive Industrial structure namely by empowering resources optimally and efficiently as well as encouraging Industrial growth throughout Indonesia by way of maintaining a balance between advancement and unity of the national economy which is based on the principles of democracy, 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 which:

a. meet needs which are important for the welfare of the people or which control their life necessities;

b. increase or produce added value to strategic natural resources; and/or

c. correlate with the interests of state defense and security.

479. A mesma Lei estabelece em seu artigo 30 que o plano de utilização de recursos naturais deve seguir a política industrial nacional, e reitera, em seus arts. 31 e 32, o encorajamento, por parte do GOI, do desenvolvimento de uma indústria a fim de aumentar o valor agregado de seus recursos naturais, podendo levar a cabo políticas de restrição às exportações para tal fim. No artigo 33 é explicitado que a política industrial do GOI, no que tange à utilização dos recursos naturais, deve ser regulada de acordo com o interesse da indústria doméstica.

480. O Regulamento do Governo nº 14/2015, relativo ao Plano Diretor de Desenvolvimento da Indústria Nacional (Rencana Induk Pembangunan Nasional - doravante RIPIN 2015-2035, tem base no RPJPN, e detalha as intenções do GOI, explicitamente indicando o setor de aço e aço inoxidável como prioritários. O RIPIN foi assim descrito pelo GOI: "RIPIN is basically a guidance for the government (central government and/or local governments) to make necessary measures to develop the industrial sectors and is implemented across the country".

481. Segundo informações oficiais do documento Facts and Figures, 2015, do Ministério da Indústria da Indonésia, o RIPIN detalha, dentre outros, que na primeira fase do plano de desenvolvimento do país (2015-2019), o objetivo é aumentar o valor agregado da indústria baseada em recursos naturais minerais. Sobre o RIPIN 2015-2035, acrescenta ainda que há o objetivo do governo em desenvolver uma indústria estratégica, por meio de capital equity, estabelecimento de joint ventures e fornecimento de instalações para tal indústria estratégica. Outro objetivo seria aumentar a utilização de produtos nacionais (chamado de Peningkatan Penggunaan Produk Dalam Negeri), mediante propagandas e proporcionando incentivos e preferência de preço para produtos industriais com porcentagem de conteúdo local qualificada .

482. Na seção do documento intitulada "Construção da Indústria Nacional", o governo estabelece um framework em que aponta a necessidade de fornecimento de infraestrutura industrial dentro e fora de parques industriais, o estabelecimento de políticas e regulamentos que apoiem o clima propício para o setor industrial e alocação e facilidade de financiamento competitivo para o desenvolvimento da indústria nacional. Aponta também 10 indústrias chave a serem fomentadas. Entre elas é explicitamente nomeada a indústria "de Metal Básico e Mineral Não Metálico" ("Basic Metal And Non-Metallic Mineral Industry), que como indústria a montante produz matéria-prima e melhoria de especificações particulares usadas na indústria a jusante, servindo de base para as demais. Dentro dessa indústria prioritária, o documento lista quatro tipos específicos - a) Indústria de processamento e refinamento de ferro e aço básico; b) Indústria de refinaria e processamento de metais básicos não-ferrosos; c) Indústria de metais preciosos, terras raras e combustível nuclear; e d) Indústria Mineral Não Metálicos.

483. O documento cita ainda incentivos na área de energia, fornecimento de terras e de incentivos fiscais e não fiscais. Dentre os incentivos fiscais, é mencionada uma isenção de impostos ("tax Holiday") para indústrias pioneiras, criada pelo Regulamento do Ministério das Fazenda (PMK) nº 192/2014, emenda ao PMK nº 130/2011. Para tal isenção é mencionado que a indústria de metal básico está incluída, por ser indústria pioneira. O documento cita ainda outras isenções fiscais.

484. Por fim, o Ministério da Indústria da Indonésia lista o setor da indústria ferroníquel e setor de indústria siderúrgica em geral como setor a ser incentivado, sendo ainda explicitamente citadas como indústrias focadas pelo governo para ter seu desenvolvimento facilitado:

The development of industrial estate aims to support the achievement of regional industry development objectives as stated in the Master Plan of National Industry Development. Hence, the government facilitates the development of 14 industrial estates outside Java in the year 2015-2019:

(...)

<<IMAGEM 1 AQUI>>

485. A versão 2017 do documento repete todas as indicações transcritas acima.

486. A intenção do governo é ainda reiterada em declaração do Ministro da Indústria acerca do plano 2015-2019, sendo afirmado que "não queremos continuar a exportar nossos recursos naturais brutos sem processamento", acrescentando que a indústria de manufatura alcançou resultados significativos, incluindo produtos agrícolas e mineração mineral, como derivados de óleo de palma, aço inoxidável e produtos para smartphones. Ainda na Lei nº 4/2009, que regula o setor de minério e carvão, há o intento de se adicionar valor na atividade da indústria de mineração.

487. Na visita in loco, o representante do BKPM deixou claro também a intenção do GOI em atrair capital estrangeiro nessa empreitada, conforme relatório: "O representante do BKPM explicou que a ideia não é só atrair capital para minerar o níquel e exportar, mas atrair capital para smelters, aumentar o valor agregado."

488. Ademais, há uma combinação de restrições às exportações dos insumos (Ni Wet Ore) e Carvão (energia), estabelecimento de preços internos mais baixos destes insumos e, ao mesmo tempo, concessão de isenções sistemáticas de impostos e outros direitos para reduzir os custos para os produtores de aço inoxidável laminados a frio e toda a cadeia a montante, conforme será explicado nos itens a seguir.

489. Importante ainda citar o Regulamento nº 25/2018, que estabelece em seu artigo 34 que o GOI pode estabelecer as fórmulas de preços de venda dos Minerais de acordo com os interesses da nação:

Article 34

(1)The Minister can stipulate the selling price formula of metallic Mineral for the nation interests.

(2)The nation interests as referred to in paragraph(1) is based on the consideration:

a.Sustainability of mining business activities; and

b.Domestic Enhancement of Added Values of Mineral.

490. Isso ocorre com diversos elementos, sendo que adiante se tratará do preço HPM do níquel e do preço HPB do carvão, o que configura outro elemento de controle significativo do GOI sobre os mineradores.

491. Foi ainda constatado o encorajamento à construção de smelters, haja visto que empresas que detêm fundidores teriam facilitação de extensão de suas licenças de mineração:

Policies intended to add value to nickel mining, such as the nickel ore export ban, have caused some firms to invest in smelting capacity, as previously discussed. In addition to the law supporting domestic nickel ore prices, another new law, passed in May, encourages downstream facility development by making it easier for firms with smelting capacity to extend mining licenses. The government has also listed smelters among its national strategic projects.

492. O intuito governamental de incentivo à construção de smelters, pôde, inclusive, ser comprovado na visita in loco, ocasião em que o GOI confirmou que a mudança de política das exportações do níquel se deu, dentre outros, para aumentar o fluxo de caixa dos mineradores para que estes pudessem construir smelters e confirmou também a vinculação entre a concessão da licença com a obrigação de aumentar o valor agregado, de acordo com o objetivo da Lei nº 4/2009. Como se verá em maiores detalhes, o GOI criou diversos elementos que favorecem os smelters na sua relação com os mineradores, até mesmo com relação aos surveyors, técnicos que atestam o teor dos minérios.

493. Há, ainda, o controle do GOI sob a construção dos smelters pelos mineradores, por meio dos RKABs, no qual deve constar informação do status da construção. Conforme declaração do GOI na visita in loco, havia a intenção governamental para que se levasse os mineradores a construírem smelters, aumentar o valor agregado na Indonésia e gerar o efeito multiplicador disso para a população.

494. Um caso emblemático nesse projeto governamental é o parque industrial Morowali (Indonesia Morowali Industrial Park, doravante IMIP), no qual opera a empresa produtora PT Indonesia Tsingshan Stainless Steel. Segundo dados de seu relatório anual 2017, 8% de todo o níquel do mundo e 6,6% de todo o aço inoxidável mundial são ali produzidos. Ou seja, sozinho esse parque industrial, criado em outubro de 2013, já produzia em 2017 mais aço inoxidável do que os Estados Unidos considerados como um todo.

495. Ressalta-se ainda que a Tsingshan, controladora da PT Indonesia Ruipu and Chrome Alloy (IRNC), produtora do produto objeto da investigação, faz parte, por meio do Shanghai Decent Investment, do grupo de acionistas desse pool de empresas que forma o IMIP. O relatório anual do IMIP traz luz à política do governo, e assim resume o projeto governamental:

Indonesia is one of countries that have the richest nickel resource in the world, whereas nickel mining domestic products were used to be exported. According to incomplete statistic, Indonesia's nickel ore export in 2013 reached 60 million ton. In order to increase added value of exported products, in 2009, the Indonesian government issued a new law, namely the Law No. 4 of 2009 concerning Mineral and Coal Mining, and since January 2014 raw material export was officially prohibited, at the same time, a strong policy encouraged and urged investment in smelter development in nickel mining areas, aimed at developing domestic smelting industry. (grifo nosso)

496. O IMIP tem importância e prioridade reconhecidas legalmente na Indonésia, sendo formalmente reconhecido como "Objeto Vital Nacional" - Obvitnas (Objek Vital Nasional) e "Projeto estratégico nacional" - Proyek Strategis Nasional (PSN). Seu acordo de criação foi assinado em evento que contou com a presença dos presidentes da Indonésia e da China, sendo que o presidente da Indonésia esteve em contato diretamente com o CEO da Tsingshan, e logo após foi iniciada a política de restrições à exportação:

In July, Indonesian President Joko Widodo held a meeting with Xiang and and other Chinese executives at a presidential palace. Xiang offered "several policy suggestions" on improving Indonesia's business environment and briefed the group on plans to expand Tsingshan's total investment in the country to $15 billion, including a plant making nickel chemicals for electric-car batteries, according to a press release from the company. Two months later, Indonesia announced it would bring forward a ban on nickel ore exports by two years.

497. Os impactos positivos para a cadeia indonésia de aço inoxidável da política governamental aqui analisada são expostos no mesmo relatório do IMIP (página 83), quando este trata da PT Sulawesi Mining, uma fundidora de NPI instalada no parque:

The new Mining Law announced by the Indonesian government in 2009 prohibiting raw mining material export in 2014, which at the same time, encouraged investment in smelter development in nickel mining areas, and aimed at developing domestic smelting industry. As a positive response to the Indonesian government's policy, and based on a comprehensive economic analysis as well as tendency of industrial trend combined with experience and community social relation collected gradually in the area, the two investors reached an understanding, in addition to the mining development, they at the same time also seriously prepared an NPI smelter project, namely the SMI'S NPI smelter having capacity of 300 thousand ton of NPI per year and power plant 2x65 MW (Project SMI).

498. O relatório deixa ainda claro o intuito de se obter produtos de valor agregado e se incentivar os smelters:

IMIP Park not only fulfils the legal requirement No.4 of 2009 on mining of mineral and coal from Ministry of Energy, and Mineral Resources and Law No.3 of 2014 regarding Value-added to primary material from the Ministry of Industry, which requests the construction of smelter for nickel; it goes one step further in the chain to process the smelted product into an even more value-added product of stainless steel.

499. Notícia à época da implantação na Indonésia deixa claro o efeito das políticas governamentais de restrição da exportação. Segundo o secretário-geral da Stainless Steel Council of China Special Steel Enterprises Association:

The previously imported nickel ore often contained sediments and water, so the ban forces Chinese enterprise to build a plant there (in Indonesia). (grifo nosso)

500. Neste sentido, a SDCOM confirmou que, no último Trade Policy Review - TPR da Indonésia, de 2020, é explicitamente citado como justificativa das políticas de restrição à exportação "desenvolver e acelerar certos setores industriais downstream, incluindo produção de aço inoxidável (grifo nosso)".

501. Com a edição do Regulamento MEMR nº 11/2019, as exportações a partir de 2020 estão totalmente proibidas.

502. Em suma, dos elementos trazidos aos autos pela Peticionária e apurados pela SDCOM, nota-se que há um arcabouço legal relacionado ao níquel, carvão e coque, que vai muito além de restrições à exportação per se. Mesmo quando a exportação era permitida para alguns tipos de níquel, esta ocorria sob severas condições. Não apenas as restrições à exportação existem, mas o GOI está indo além e ativamente instruindo os fornecedores da cadeia de insumos a venderem seus produtos no mercado interno, no bojo do plano governamental de adicionar valor à pauta produtiva do país, por meio de suas sanções e políticas aplicadas em caso de descumprimento. Conforme se detalhará adiante, tais políticas têm tido consequências sobre o preço de insumos utilizados na produção do produto objeto da investigação.

503. Notícia do site oficial do GOI (nº 361.Pers/04/SJI/2021) resume o intento do governo, nas palavras do Presidente da Indonésia, Joko Widodo:

Besides increasing mineral added value, the construction of smelter in the country is believed to strengthen downstream industries. The President said he would instruct miners, both private and state-owned, to carry out downstream activities so that mining commodities would deliver higher value.

504. Em recente entrevista à Bloomberg, o Presidente Joko Widodo reafirma o intuito do GOI.

505. Por fim, pontua-se que as restrições à exportação da Indonésia estão sendo questionadas pela União Europeia no âmbito da OMC no DS592. O questionamento leva em consideração que a Indonésia tem restrições à exportação de minério de níquel desde, pelo menos 2014, sendo que, entre janeiro de 2017 a dezembro de 2019, as exportações de níquel com concentração inferior a 1,7% foram permitidas sob certas condições; contudo, desde janeiro de 2020, todas as exportações de minério de níquel, independente da concentração, foram proibidas. Pontua-se, ainda, que as autoridades da União Europeia e da Índia já exararam determinações positivas acerca dos subsídios concedidos pela Indonésia aos produtores de aço inoxidável, inclusive aplicando direitos compensatórios especificamente sobre os produtores aqui investigados.

506. De clareza solar declaração do Presidente da Indonésia, Sr. Joko Widodo, em comentário sobre a já citada disputa na OMC, não deixando quaisquer dúvidas acerca do deliberado plano da Indonésia em fomentar sua indústria de aço inoxidável. O presidente assim disse em setembro de 2022:

"It looks like we will lose at the WTO, but it's fine, the industry is already built," said Jokowi, as the president is known.

4.2.3 Dos programas de subsídios considerados

507. Para os fins deste Parecer de determinação final, foram considerados os seguintes programas:

1. Fornecimento de minério de níquel por remuneração inferior à adequada;

2. Fornecimento de Carvão e Coque por remuneração inferior à adequada;

3. Fornecimento de Sucatas e Resíduos por remuneração inferior à adequada;

4. Fornecimento de terrenos por remuneração inferior à adequada;

5. Programas de sustentação de renda ou de preços;

6. Empréstimos preferenciais;

7. Bonded Zones;

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 desenvolvimento industrial; e

11. Injeção de capital.

508. Optou-se por aceitar a sugestão de forma de apresentação do GOI e descrever em separado o programa Bonded Zones, que é um programa já incluído nos programas fiscais descritos no Parecer de Início da investigação, de modo a promover melhor entendimento dos programas considerados nesta determinação final, preservando ainda mais, assim, o contraditório por parte das partes interessadas.

4.2.3.1 Programa 1 - Fornecimento de Minério de Níquel por remuneração inferior à adequada

4.2.3.1.1 Fatos apurados sobre o programa

509. O níquel é insumo essencial para o aço inoxidável, sendo que dois terços da produção mundial de níquel são consumidos para produzir aço inoxidável. É evidente, portanto, o impacto direto do níquel na cadeia produtiva do produto objeto da investigação.

510. Considerando os elementos coletados no decurso da investigação, tem-se que o Níquel é essencial nos planos do GOI de aumento do valor agregado dos recursos minerais. A Indonésia é o país com as maiores reservas mundiais de níquel, bem como o maior país produtor do mundo. Em declarações oficiais do GOI, é afirmado que "One of the mining commodities in the spotlight is nickel". Papel tão preponderante, que o processamento do níquel é inclusive apontado pelo Presidente como uma saída para o déficit nas transações correntes do país:

So what's the point of importing LPG, importing huge volume of petrochemical, while we can actually develop nickel; current account deficit will be made up. I guarantee (deficit) will be made up in less than three years if we add one commodity, turn some attention to it, we'll be done with.

511. O Plano Nacional da Indústria 2015-2019 prevê, em relação à indústria do níquel, a restrição de exportação de minério de níquel, com prioridade para atender às necessidades domésticas; a restrição de exportação de NiPI, ferroníquel e níquel-mate; a restrição à exploração da capacidade de exploração de minério de níquel, de acordo com a capacidade de processamento atual do smelter; garantia sobre a absorção de NiPI, ferroníquel e níquel-mate produzido pela indústria nacional de aço e aço inoxidável; e facilitação no desenvolvimento da indústria de aço inoxidável integrada à indústria a montante.

512. Os smelters têm incentivos diversos por parte do GOI, indo desde o preço estabelecido, como elementos aparentemente menores, mas também significativos, como o fato de que os mineradores têm que usar surveyors apontados pelo GOI, enquanto os smelters podem contratar seus próprios surveyors, o que impacta diretamente o preço do minério de níquel comprado, já que o teor do níquel é elemento preponderante no preço. Como apontado na notícia a seguir:

Nickel mining entrepreneurs stated that currently they have suffered a lot about the calculation of nickel content by smelter entrepreneurs.

Secretary General of the Indonesian Nickel Miners Association (APNI) Meidy Katrin Lengkey, said that local businessmen experienced injustice in the distribution of nickel metal content tests.

He said there were 11 surveyors in nickel mining, 10 surveyors on the upstream side but only one surveyor on the smelter side, the nickel smelter.

On the other hand, national entrepreneurs are burdened with various obligations but the same obligations do not apply to foreign entrepreneurs.

This injustice is evident when businessmen holding nickel mining business licenses are required to use surveyors appointed by the government, while smelters, which are foreign investments, may appoint their own surveyors

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This is where the inequality comes from. According to Meidy, there are many problems regarding the discrepancy between the results of the nickel metal content test conducted by surveyors appointed by the government and those appointed by the buyer.

The results of nickel content analysis by buyer surveyors are often far below the results of mining surveyors.

Meidy described that the decline could be far, from 1.8% to 1.5% and even 1.3%.

As a result, entrepreneurs suffer losses because nickel content is very influential on prices. The higher the percentage content, the more expensive the nickel price.

"If we talk about grades, this is indeed the case because our data for this month is 5000 contracts, nickel ore, from 5 thousand, there is an extraordinary difference," he said. (grifo nosso)

513. Como se verá a seguir, houve a criação de um arcabouço normativo e não normativo de incentivo de criação de smelters e favorecimento à compra de minério de níquel por parte destes, em 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 (MEMR) e do Ministério do Comércio (MoT) que impuseram seguidas restrições à exportação a partir de 2013, sendo que em 2017, pelo Regulamento MoT 1/2017, alterado pelos Regulamentos MEMR 11/2018 e 25/2018, foi permitida a exportação de minério de Níquel de níveis mais baixos (< 1,7% de Ni) processado, em montante limitado. Para que fossem aprovadas tais exportações, as empresas deveriam ter instalação e operação de processamento na Indonésia, ou se comprometer a instalar fundidores locais em até cinco anos, ou seja, a construção e operação de fundições (smelters) de NiPI, beneficiando a indústria local produtora de aço inoxidável. Além disso, havia a obrigatoriedade de fornecer internamente ao menos 30% da necessidade de minério dos fundidores locais.

515. O Regulamento nº 25/2018 do Ministério da Energia e Recursos Naturais impõe, em seu artigo 44, alíneas "e" e "f", que a empresa deve obter uma recomendação de um representante do MEMR e aprovação de exportação, semelhante a uma licença de exportação não automática, pelo MoT, além de ter que fornecer relatórios sobre o desempenho das exportações. Em seu artigo 53, estabelece que a exportação só é possível se a reserva remanescente de minério de níquel da empresa cobrir pelo menos cinco anos de operações das instalações de fundição e que os volumes que podem ser exportados não podem exceder a capacidade de entrada da instalação de refino e a quantidade de exportação no âmbito do plano de trabalho e do orçamento apresentado pelo governo. Os trechos do referido regulamento estão reproduzidos a seguir:

Article 44

At the time this Ministerial Regulation comes into force:

(...)

e. The sales abroad in the specific amount as referred to in letter a, letter b, letter c and letter d only can be done after obtaining the Export Approval from the Director General who organize the government affairs in the field of foreign trade; and

f. Before obtaining the Export Approval as referred to in letter e, the holders of Special Mining Business License (IUPK) for Production Operation of metallic Mineral, Mining Business License (IUP) for Production Operation of metallic Mineral, Mining Business License (IUP) for Production Operation specifically for the processing and/or purification, and other parties that produce the anode mud are 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 a, letter b, letter c, and letter d is determined based on the consideration:

a. Reserve estimation or guarantee of raw material supply to fulfill the needs of the facility of Purification;

b. Amount of sales abroad in the approval of Annual Work Plan and Budget (RKAB) of the current year; and

c. Input capacity of the facility of Purification.

(2) The Minister shall stipulate the guidelines on implementation of application, evaluation, and the approval of granting export recommendation

516. Por fim, é amplamente noticiado que, desde o início de 2020, por meio do Regulamento 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 à exportação:

Ninety percent of the smelter's physical construction development plan should have been completed, calculated and verified by an independent verifier.

Sanctions on failure to meet the 90% smelter construction plan would be: (a) recommendation to revoke the export approval to the relevant authority and (b) a penalty of 20% of the export cumulative value.

Failure to pay such penalty would result in: (a) a temporary suspension of a certain part or all aspect of business activities for maximum 60 days and (b) a license revocation if no payment is received after the 60 days.

518. Além disso, conforme argumentado pela peticionária e confirmado na visita ao GOI, durante o período de abril 2015 a março de 2020, quando foi estabelecida, pelo GOI, a proibição total de exportação de minério de Níquel, ainda havia a possibilidade de exportação de minérios de níquel de baixo teor. As exportações que eram possíveis de serem realizadas, entretanto, estavam sujeitas a um imposto de exportação de 10%, nos termos do artigo 2º do Regulamento do Ministério da Fazenda (MoF) 13/2017.

519. Neste contexto, a peticionária pontuou que o preço de referência de exportação é um mix que leva em conta nos preços médios mais altos no mercado internacional e nas vendas da Indonésia nos mercados interno e externo, fazendo com que o mencionado preço de referência seja consideravelmente maior do que o preço real de exportação na Indonésia, levando, assim, a uma taxa de imposto efetiva superior aos 10% aplicáveis.

520. Foi ainda editado o Decreto nº 154 K/30/MEM/2019, que aprofundou o controle da implementação da construção ou aquisição de smelters na Indonésia, estabelecendo mais detalhes sobre como seriam impostas as sanções por atrasos na construção de smelters, além de esclarecer que o valor das multas pagáveis pela empresa de mineração em questão será equivalente a 20% da receita acumulada de vendas de exportação de minerais da empresa durante os últimos seis meses.

521. Ainda, nos termos do Decreto MEMR nº 154/2019, se uma empresa não cumprir a meta de 90% de progresso na construção do smelter, o MEMR (por meio do Diretor-Geral de Minerais e Carvão) emite uma recomendação de suspensão da aprovação de exportação ao diretor-geral encarregado de assuntos de comércio exterior.

522. A empresa deve, nos termos de dito Regulamento, pagar as multas por meio de um banco no prazo de um mês e enviar a prova de pagamento ao MEMR dentro de três dias após o pagamento ser feito. Se a empresa deixar de pagar as penalidades no prazo de um mês, o MEMR emitirá uma recomendação para revogar a aprovação de exportação da empresa.

523. O Decreto MEMR nº 154/2019 estipula ainda que o pagamento de multas por si só não é suficiente para permitir a retomada das exportações. Somente o MEMR poderia emitir uma recomendação de revogar a suspensão de exportação, uma vez que haja um relatório de um verificador independente confirmando que a empresa cumpriu a marca de 90% de avanço na construção do smelters nos últimos seis meses. Ou seja, as mineradoras também são obrigadas a compensar o atraso na construção se quiserem retomar as exportações. Em resumo, o Decreto MEMR Nº 154/2019 traz os seguintes requisitos:

The progress for smelter establishment should be at least 90% of the smelter's physical construction development plan for every six-month period based on the report of an independent verifier.

Failure to satisfy this obligation would result in: (a) the issuance of temporary export suspension recommendation to the relevant government authorities in charge of international trade and (b) 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 certain part or entire business activities for maximum 60 days, (b) license revocation if no payment is received after 60 days of 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 progress and penalty payment, mining companies are required to deposit a surety bond of 5% of export volume for each shipping multiplied by the export benchmark price. A mining company will be entitled to withdraw the surety bond if it has completed at least 75% of the overall smelter construction plan. The government holds the rights to the surety bond if the mining company fails to meet its obligations.

524. Outro requisito com relação às exportações de minério de níquel de baixo teor era a exigência de utilização de cartas de crédito (Letters of Credit ou L/C) para exportações, nos termos do Regulamento MoT nº 94/2018. O mecanismo de exigência de cartas de crédito equivaleria à imposição de um preço mínimo de exportação, ao estabelecer vários requisitos que impactam significativamente 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 (PEB);

d) a L/C estaria sujeita à auditoria pelo Ministério do Comércio; e

e) não seriam permitidas exportações que não atendam aos requisitos de L/C.

525. Efetivamente, o governo da Indonésia dispõe que o preço declarado na L/C não deve ser inferior ao preço de mercado global, apesar das enormes reservas do país, neutralizando, assim, a vantagem competitiva que os produtores locais poderiam ter sobre seus concorrentes estrangeiros no mercado internacional, reduzindo, desta forma, as oportunidades comerciais no exterior e garantindo uma maior disponibilidade no mercado interno.

526. Portanto, através da obrigação de exportar a um preço mínimo fixado ao nível do preço global, sob o risco de proibição da exportação em caso de descumprimento, na opinião da peticionária, o regulamento tinha um impacto semelhante ao da proibição de exportação e ao do imposto de exportação acima descritos.

527. Até 28 de setembro de 2018, a Carta de exigência de crédito aplicava-se a uma lista muito mais importante de produtos, incluindo produtos de Níquel processado (NPI, outros ferroníqueis, entre outros). No entanto, considerando as frequentes alterações na lista de produtos, a exclusão do NPI deve

ser considerada temporária.

528. Assim, conforme apontado pela peticionária e apurado no decurso da investigação, embora a proibição formal das exportações tenha se iniciado a partir de janeiro de 2020, durante os últimos cinco anos ela esteve quase sempre presente em conjunto com mecanismos de relaxamento e possibilidade de exportações parciais.

4.2.3.1.1.2 Da obrigatoriedade de processamento interno

529. Como outro instrumento do GOI nesse arcabouço de incentivo ao aumento do valor agregado do níquel existe ainda a obrigação de processamento doméstico de minérios e do carvão, conforme artigos 102 e 103 da Mining Law (Lei nº 4, de 2009):

Article 102

The holder of an IUP and an IUPK are obligated to increase the value-add of mineral and / or coal resources in the implementation of development, processing, and purification, as well as in the exploitation of minerals and coal.

Article 103

(1) The holder of a Production Operations IUP and an IUPK is obligated to undertake 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 the mine products of other IUP and IUPK holders.

(3) Further provisions concerning the increase of the value-add as stated in Article 102 and processing and purification as stated in paragraph (2) are to be regulated in Government Regulation. (grifos nossos).

530. Da mesma forma, o Regulamento do Ministério da Energia e Recursos Minerais n º 11, de 2018, (e também o regulamento que o superou, MEMR Regulation nº 7/2020), explicitamente vincula as restrições às exportações, o controle de preços e a obrigatoriedade de processamento doméstico ao fornecimento do minério de níquel e de carvão no mercado interno:

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)

The holders of Mining Business License (IUP) and Special Mining Business License (IUPK) are entitled to:

a. Conduct the mining business activities at WIUP or WIUPK in accordance with the provisions of laws and regulations;

b. Have the mineral, including the associated mineral, or coal that have been produced after the fulfilling production dues, except for the radioactive mineral;

c. Apply for the temporary suspension of mining business activities in accordance with the provisions of laws and regulations;

d. Build the facilities and/or infrastructure supporting the mining business activities;

e. Sell the mineral or coal, including selling overseas after the fulfillment of domestic needs and selling minerals or coal excavated in exploration activities or feasibility study activities in accordance with the provisions of legislation; and

f. Obtain the right to land in accordance with the provisions of legislation. Paragraph 2

Obligations

Article 61

(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 and adhere to the control of production and sales;

k. To increase the added value of mineral or coal of mining products in the country 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:

a. Sell the products of mining proceeds abroad before processing and/or purification in the country in accordance with the provisions of legislation;

Part Two

Rights, Obligations, and Prohibition of the Mining Business License (IUP) for

Production Operation specifically for Processing and/or Purification

Paragraph 1

Right

Article 66

The holders of Mining Business License (IUP) for Production Operation specifically for processing and/or purification shall be entitled to:

a. Buy, sell, and transport the mining commodities which will and have been processed and/or refined;

Paragraph 2

Obligations

Article 67

(1) The holders of Mining Business License (IUP) for Production Operation specifically for processing and/or purification shall:

[...]

e. Fulfill the restriction of processing and/or purification to conduct the overseas sales in accordance with the provisions of legislation;

f. Comply with the benchmark price of mineral or coal sales in accordance with the provisions of legislation;

g. Prioritizing the fulfillment of mineral and coal needs in the country; (grifos nossos)

531. Sob tais restrições, o minerador restou forçado a construir smelters ou a vender internamente o minério de níquel para processamento por outra empresa, sendo que, por força do art. 170 da Mining law, concedeu-se um período de graça de 5 anos para que a empresa mineradora fosse 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 Mineral Benchmark Price (HPM), estabelecido no Decreto MEMR Nº 2946 K/30/MEM/2017 e MEMR Regulation nº 7/2017, Capítulo II artigo 5º e 6º:

CHAPTER II HPM LOGAM

Article 5 (1) HPM Logam is determined by the Director General on behalf of the Minister for each type of Metallic Mineral commodity. (2) HPM Logam as referred to in sub-article (1) may in the form of HPM Logam for the following commodities: a. nickel, may in the form of: 1. nickel ore; 2. ferronickel; 3. mixed hidroxyde presipitate; 4. mixed sulfide presipitate; 5. nickel metal shot; 6. nickel pig iron; 7. nickel ingot; and/or 8. nickel-matte.

Article 6 (1) Determining HPM Logam as referred to in Article 5 is decided based on HPM Logam formula. (2) HPM Logam formula as referred to in sub-article (1) is determined based on the following variables: a. value/content of Metallic Mineral; b. constant; c. HMA; d. Corrective factor; e. treatment cost and refining charges, and/or f. payable metal. (3) Value/content of Metallic Mineral as referred to in sub-article (2) letter is determined according to the certificate of analysis. (4) The size of HMA as referred to in sub-article (2) letter c is determined by the Director General on behalf of the Minister, every month. (5) The size of HMA as referred to in sub-article (4) is determined referring to Metallic Mineral price publication issued by among others: a. London Metal Exchange; b. London Bullion Market Association; c. Asian Metal; and/or d. Indonesian Commodity and Derivatives Exchange. (6) HPM Logam formula as referred to in sub-article (1) and subarticle (2) may be reviewed periodically every 6 (six) month or from time to time if necessary.

533. Tem-se que o preço HPM respeita a fórmula HPM = (T*HMA*FP), onde T é teor do Níquel no minério de Níquel, HMA é preço de referência para o Níquel com base em fatores internacionais (London Metal Exchange, Asian metal etc); e FP é o fator de correção, que varia com relação ao teor do níquel, aumentando ou diminuindo 1% com relação ao aumento/diminuição em 0,1% no grau do níquel, sendo que são ainda considerados também o fator de umidade no níquel e outros elementos, conforme legislação supra.

534. Assim, resta comprovado que o preço HPM, apesar de ter no HMA elementos de preços internacionais, tem aplicado um redutor determinado pelo GOI. Disso resulta que o preço do níquel na Indonésia é sensivelmente inferior ao aplicável nos outros países.

535. Passa-se então a analisar a aplicabilidade do preço HPM, ou seja, se ele é de fato seguido pelas empresas na Indonésia, ou se trata de mera referência.

536. Neste contexto, o GOI, tanto em sua resposta por escrita, como na visita in loco, argumentou ser o preço apenas utilizado para a cobrança de royalties, e que só seria utilizado como uma referência de fato a partir da alteração de abril de 2020 na MEMR Regulation nº 11/2020. O GOI argumentou também durante a visita in loco que tal a obrigatoriedade de se seguir o HPM em 2020 se deu para aumentar o preço recebido pelos mineradores, que não estavam sendo recompensados pelos smelters, e citou o artigo 3 do Regulation MEMR nº 7/2017.

537. Nesta seara, a SDCOM pontua que, muito embora tenha o governo argumentado em tal sentido, não logrou apresentar evidências que corroborassem tal afirmação, apesar de instado. Dos resultados da visita in loco, ficou comprovado que o GOI tem o controle sobre todas as transações realizadas no mercado de níquel, que devem obrigatoriamente ser informadas ao governo, no mínimo por 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 vincule o preço HPM aos royalties, como afirmou o GOI, nada é dito neste artigo acerca da impossibilidade de outros usos do preço HPM que não para apuração dos royalties. Muito pelo contrário, o artigo imediatamente anterior, em sua seção 2, já explicitamente estabelece que "Holders of Metal Mineral Production Operation IUP in selling Metallic Minerals or Coal (...) produced must be guided by the Metal HPM", e também que "Obligation to be guided by Metal HPM or the HPB as referred to in paragraph (1) also applies to (...) Operations in selling Metallic Minerals or Coal produced to its Affiliates".

539. Outros regulamentos oficiais reforçam o entendimento SDCOM, que indicam ser o preço HPM não apenas considerado para os royalties, como i) a Government Regulation nº 23/2010, cujo artigo 85 expressamente indica que "exporting minerals and/or coal produced must be guided by the benchmark price", e que este seja determinado com base no preço de mercado ou preço de mercado predominante; e ii) o Decreto of the Coordinating Minister for Maritime Affairs and Investment nº 108/2020 que diz que a equipe de supervisão do HPM deve se certificar que os preços de vendas estão de acordo com o HPM.

540. Também a MEMR Regulation nº 25/2018, em seu artigo 33, indica no mesmo sentido. Neste contexto, muito embora o GOI tenha apontado em sua resposta ao questionário que o parágrafo 2º de tal artigo faça menção ao preço HPM como referência para os royalties, o parágrafo 1º também expressamente indica o preço HPM como preço de referência. Ademais, o artigo 34 de tal regulamento é ainda mais claro quando rege:

The Minister can stipulate the selling price formula of metallic Mineral for the nation

interest. (grifo nosso).

541. Por fim, há evidências e declarações de membros do governo, mesmo antes da alteração de abril de 2020, que também assim indicam, como por exemplo na seguinte notícia de 2019:

Head of the Investment Coordinating Board (BKPM) Bahlil Lahadalia said the benchmark nickel mineral price (HPM) of US$30 per ton applies to nickel miners who will sell nickel ore to smelters with a grade of 1.65 percent to 1.7 percent because they don't want to sell nickel ore to smelters. export until the end of this year.

"So the price of US$30 per tonne is only valid until December 31. This is an emergency, the issue of domestic nickel prices later on January 1, 2020 will be discussed again," he said in a press conference at BKPM, Tuesday (12/11/2019) night.

According to him, the nickel price benchmark is not affected by the rising or falling world nickel prices. The nickel price benchmark for this smelter is in accordance with China's international price minus transhipment 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 country's nickel smelters. However, the ban on exports of low grade nickel will remain in effect on January 1, 2020. "This agreement between nickel, smelter and government entrepreneurs is in the form of a joint commitment, there is no SK (decree)," said Bahlil. (grifos nosso)

542. Importante ressaltar, ainda, a atitude do governo de colaboração parcial durante a visita, por não ter informado os preços de transação do níquel, mesmo quando instado, e apenas ter fornecido parcialmente as informações solicitadas sobre o mercado de níquel no último dia da verificação, impossibilitando perguntas adicionais por parte da SDCOM. Assim, em nenhum momento a SDCOM recebeu a lista de preços HPM vigente no período, apesar de ter demandado várias vezes: no primeiro pedido de informações complementares, item 8.8, foi assim requerido:

Com relação à pergunta específica 10, apresente em maiores detalhes como funciona o estabelecimento do preço de referência HPM, necessariamente apresentando o cálculo realizado em ao menos um HPM estabelecido no período de investigação de dano. Liste todos os HPM vigentes no período de investigação de dano.

543. Em resposta, o GOI apenas apresentou gráfico com os preços HMA, e informou que cada empresa calcula os preços HPM individualmente. Na visita in loco, a SDCOM novamente oportunizou que fossem apresentados os HPM vigentes. O GOI, contudo, somente apresentou gráfico com a evolução do HPM.

544. Por fim, a autoridade da União Europeia, em investigação que contou com verificações in loco e análise dos reais dados das empresas, assim concluiu:

The fact that the HPM as transposed into legislation in April 2020 was a continuation of the 2017 mechanism has also been corroborated in the investigation. The main difference was that before MEMR 11/2020 entered into force, in the sale-purchase agreements for nickel ore the price of the nickel ore was stipulated as an absolute value. After the MEMR 11/2020 entered into force, the price of nickel ore in the sale-purchase agreements was set up as the government HPM. The empirical evidence collected in the investigation (i.e. purchases of nickel ore of the IRNC Group) confirmed that the prices during the IP before and after the entry into force of MEMR 11/2020 are substantially the same, that is in line with the HPM mechanism in its version pre- and post-April 2020.

545. Neste contexto, considerando ainda a ausência de respostas das empresas produtoras/exportadoras selecionadas, a SDCOM conclui, com base nos fatos disponíveis no processo, que o preço HPM estabelecido pelo GOI era, de fato, o preço das transações no mercado antes mesmo da

alteração de 2020, o que implica em uma significativa vantagem para os produtores na cadeia a jusante, haja visto que o HPM é sensivelmente menor do que o preço internacional do níquel, como tratado neste documento.

4.2.3.1.1.4 Dos relatórios a serem submetidos pelas mineradoras

546. O artigo 83 da MEMR Regulation nº 7/2020, que substituiu a MEMR Regulation nº 11/2018, estabelece o conteúdo dos relatórios obrigatórios a serem enviados mensalmente e trimestralmente pelos detentores de licenças (Exploration IUP/Exploration IUPK) ao GOI:

a) RKAB annual;

b) mining waste water quality report;

c) mine accident and incident statistics report;

d) labor disease statistics reports;

e) Report on implementation of reclamation; e

f) Internal report on Management System implementation on Mineral and Coal Mining Safety.

547. Destacam-se na lista os planos anuais de orçamento e trabalho - RKAB (Rencana Kerja dan Anggaran Biaya / Annual working and budgeting plan). Conforme verificado na visita in loco, tem-se que os RKABs, conforme o Regulamento MEMR nº 25/2018, contêm aspectos operacionais, técnicos e ambientais, tratando-se de informação confidencial da empresa enviada ao governo. A Regulation MEMR nº 7/2020, estabelece que os relatórios devem ser enviados mensalmente e trimestralmente (art. 82).

548. Os RKAB são documentos que detalham todos os aspectos da mineradora. O Decreto MEMR nº 1806K/30/MEM/2018 estabelece guidelines para confecção, avaliação e aprovação do RKAB. Conforme Anexo 2 de tal Decreto, são requeridos: aspectos de exploração, construção e infraestrutura (por exemplo: construção de estradas, inclusive no que tange aos smelters); aspectos de mineração (método de mineração, estudos de viabilidade); financeiros (incluindo vendas); e responsabilidade social. Algumas 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;

2.12.2. state aid - financial tax; e

Plano estratégico de 5 anos.

549. No RKAB ainda é informada a área de exploração desejada pela empresa, que é então é avaliada e aprovada anualmente pelo GOI, bem como há também informações contábeis completas (profit and loss statement) e informações individualizadas acerca das vendas da mineradora, incluindo quantidade e preço praticado em suas vendas.

550. O RKAB é um documento de extrema importância, ao governo, sendo que sua não submissão enseja, inclusive, o cancelamento da licença de exploração da mineradora, como ocorreu recentemente para mais de 1000 mineradores. De acordo com o art. 101 da Government Regulation nº 23, de 2010, devem ser submetidos em até 45 dias antes do fim de cada ano. Os detentores de licença não podem construir, minerar, processar, refinar, transportar ou vender antes da aprovação de seus RKAB anuais. Constituem, portanto, mais um meio com o qual o governo controla os mineradores, assegurando-se que sua operação está de acordo com os objetivos do governo de incentivar os produtores de aço inoxidável.

4.2.3.1.1.5 Da obrigação de desinvestimento

551. A Mining Law estabelece em seu artigo 112 que:

After 5 (five) years of production, the company holding an IUP and an IUPK whose shares are owned by foreigners is obligated to undertake a divestment of shares to the Government, the Regional Government, state-owned enterprises, regional-owned enterprises, or national private companies.

552. Tal obrigação foi regulada no Artigo 97 da Government Regulation nº 1/2017, que estabelece uma política progressiva de desinvestimento a partir do 5º ano para que a maior parte do capital esteja na Indonésia. A obrigação é detalhada na MEMR Regulation nº 9/2017, artigo 2, que estabelece progressivamente o percentual que deve ser detido por empresas da Indonésia: no 6º ano, 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 compra de ações no âmbito da política de desinvestimento: Government, provincial government, regional/city, state-owned company, national private entities. Ou seja, o governo detém total prioridade caso queira passar a controlar qualquer mineradora do país. Muito embora tenha o GOI explicado que nem sempre o governo opta por exercer sua preferência de comprar as ações, há elementos nos autos que indicam que o governo de fato exerce tal preferência, como no caso da PT Vale.

554. Conforme artigos 5 e 14 MEMR Regulation nº 9/2017, o preço das ações no âmbito da política de desinvestimento devem levar em conta valor justo de mercado. Com a Regulation MEMR nº 43/2018, foi introduzido um novo método de desinvestimento - emissão de novas ações, bem como foram 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 o investimento estrangeiro, mas, ao mesmo tempo assegurar que, havendo o interesse do GOI, este poderá controlar a mineradora.

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, o anexo 1 da Government Regulation nº 81/2019 estabelece os percentuais de royalties aplicáveis, sendo este 10% para o minério de níquel bruto (Bijih Nikel), sendo reduzido para até 1,5% para os diferentes tipos de níquel processado.

557. Assim, restam confirmados os indícios do parecer de início de que seria este mais um dos elementos "para incentivar mais mineradores a desenvolver fundidores", segundo palavras de representante oficial do governo e confirmado na resposta 12 das perguntas específicas no questionário do governo, já que o níquel mais processado paga cerca de 5 vezes menos royalties do que o níquel não processado. Assim, forçoso reconhecer tal incentivo ao processamento no arcabouço de incentivos para a indústria de aço inoxidável.

4.2.3.1.1.7 Dos efeitos das medidas

558. Conforme largamente aceito na análise econômica, a imposição de restrições à exportação cria vantagens para a indústria nacional, especialmente no contexto da indústria siderúrgica, pois o efeito global das restrições à exportação sobre matérias-primas é elevar os preços globais das matérias-primas. Ao mesmo tempo, ao aumentar a oferta doméstica das matérias-primas, essas medidas deprimem os preços domésticos. Dessa forma, as restrições proporcionam às indústrias domésticas a jusante um poder de barganha muito alto, sacrificando a rentabilidade das mineradoras para favorecer os smelters.

559. Como se sabe, a mera existência de restrições à exportação não é suficiente, por si só, para se caracterizar um subsídio acionável no contexto multilateral. Conforme decidido no relatório do Órgão de Apelação no caso DS-194 - United States - Measures treating export restraints as subsidies, deve-se ter em mente não os efeitos da restrição, mas sim a natureza daquela restrição. E, neste contexto, resta evidente, considerando o apurado na investigação, que o cerne de tais medidas é o desejo do GOI em ter desenvolvida em seu país uma indústria de aço inoxidável, de modo a agregar valor às suas volumosas reservas de níquel.

560. Portanto, o efeito destas restrições à exportação foi a criação de vantagens para a indústria indonésia através de uma sobreoferta de matéria-prima, disponível a um preço reduzido, situação que distorce totalmente o preço praticado no mercado interno. Em situação totalmente contrária, os insumos adquiridos pelas indústrias em outras regiões do mundo e no Brasil são comprados a preços de mercado internacional, em linha com uma economia de mercado.

561. Tal efeito sobre o preço é fato notório, conforme reiterada jurisprudência da OMC, por exemplo nos casos China - Raw Materials e o caso China - Rare Earths:

Whereas export quotas may reduce foreign demand for Chinese rare earths, it seems likely to the Panel that they will also stimulate domestic consumption by effectively reserving a supply of low-price raw materials for use by domestic downstream industries" (grifo nosso).

562. Evidente, considerando os elementos nos autos da presente investigação, que tal "sinal perverso" aos consumidores domésticos também está presente no contexto do níquel e do carvão da Indonésia. Tanto assim é que o próprio GOI confirmou na visita in loco que recebia reclamações dos mineradores, que estariam sendo subjugados pelos smelters, detentores de todo o poder nas suas aquisições de insumos.

563. Estas medidas também seriam danosas no âmbito internacional, pois restringem a oferta mundial, elevando os preços internacionais, onerando as indústrias ao redor do mundo, conforme demonstrado no estudo The Economic Impact of Export Restrictions on Raw Materials, da Organização para a Cooperação e Desenvolvimento Econômico (OCDE).

564. Há elementos nos autos que comprovam que os subsídios concedidos à indústria de transformação do níquel são "repassados" ao fabricante indonésio de aço inoxidável, seja porque o destinatário do subsídio é de propriedade do fabricante, seja porque, devido às restrições comerciais às exportações e às obrigações de fornecimento no mercado interno, gera-se uma superabundância do produto no mercado interno, implicando em preços menores neste mercado. Tudo isso é conjugado com o preço de referência HPM, estabelecido pelo GOI, que esteve constantemente abaixo do preço internacional no período investigado.

565. Todas essas medidas ocasionaram uma sobreoferta no mercado indonésio, e acarretaram depressão dos preços, com os smelters detendo todo o poder de compra, o que fez com que os mineradores reiteradamente reclamassem dos baixos preços praticados no minério de níquel, o que foi confirmado pelo GOI na visita in loco.

566. A proibição das exportações e as demais medidas, combinada com a forçada manutenção da produção dos mineradores, ocorreu uma situação de tamanho descompasso que foi reconhecido pelo próprio GOI. Mesmo nesse cenário de profundo desequilíbrio entre oferta e demanda, manteve o GOI a proibição às exportações, de modo a aguardar a construção de smelters:

THE MINISTRY of Energy and Mineral Resources (ESDM) notes that the production or supply of nickel ore in the country is still far higher than the input capacity of smelter plants currently in Indonesia

(...)

ESDM Ministry's Director of Mineral Development and Business Yunus Saefulhak said, this happened because there were still many nickel smelters that were not yet operational. From the target of 29 nickel smelters until 2022, there are only 11 smelters operating while the rest are still in the construction stage.

(...)

"This smelter can absorb up to about 30 million tons of input capacity. Then our production is around 60 million tons. Supply and demand are not balanced? Indeed,...

(...)

According to him, the smelter construction target by 2022 will increase input capacity, so that nickel ore processing can be accommodated domestically. Included with a smelter that can process low grade nickel ore with a content of 1.5%.

567. Segundo o próprio GOI, planeja-se acelerar tal política de proibição às exportações, incrementando ainda mais os requisitos de processamento para o níquel exportado:

He said this was also the government's consideration to speed up the ban on the export of low grade nickel ore, which took effect on January 1, 2020. That way, nickel ore reserves and production will be maintained to anticipate the need for input smelters which will be operational in 2022. "So the government indeed banned nickel exports in order to anticipate the capacity of the smelters that were being built," Yunus added. (grifo nosso)

568. Os efeitos das políticas aqui tratadas foram apresentados pela peticionária e podem ser vistos também em outras fontes. Por exemplo, a Consultoria S&P Global traz levantamento com base em dados da Indonesian Nickel Miners Association, que indicam que os pisos estabelecidos pelo GOI não estariam sendo respeitados, e que os smelters indonésios compram níquel a preços cerca de 40% inferior aos preços do mercado internacional:

The nickel ore miners are, therefore, either unable to sell their output or forced to sell to domestic smelters at lower prices than for export, depending on the ore grade. The government tried to compensate by putting a floor under nickel ore prices, starting May 14, but ore with a low nickel grade of 1.65% formerly largely exported to China cannot be sold to local smelters because they prefer higher-grade material. In addition, according to recent APNI data, domestic smelters buy 1.8% nickel ore for US$27 per wet metric tonne on a cost, insurance and freight basis. This is below the government floor of US$34/wmt CIF and well below the US$43-US$46/wmt CIF price for lower-grade 1.65% ore on the international market. (grifo nosso)

569. Tendo-se em mente que, como já dito, a produção de aço inoxidável consome dois terços do níquel em nível mundial, resta evidente que políticas que afetam o níquel vão afetar diretamente a produção de aço inoxidável. Apresentação do BKPM exibe o efeito de tais medidas, correlacionando-as 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 do GOI podem ser sentidos tanto diretamente pela produtora do produto objeto da investigação, ao adquirir minério de níquel para a produção de NPI, ou repassado à indústria produtora do produto objeto da investigação por meio de suas 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 à adequada baseia-se em 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 Master Plan 2015 - 2035 (Rencana Induk Pembangunan Industri Nasional - RIPIN);

V. Government Regulation nº 81/2019, sobre royalties;

VI. Presidential Regulation nº 2 de 2015, plano de política industrial 2015-2019;

VII. Presidential Regulation nº 2 de 2018, plano de política industrial 2015-2019;

VIII. MEMR Regulation nº 7/2017

IX. MEMR Regulation nº 25/2018, alterado pelo Regulamento MEMR nº 11/2019;

X. Ministry of Economy Regulation 13/2017;

XI. MoT Regulation nº 1/2017, alterado pelos Regulamentos MoE 11/2018 e 25/2018;

XII. MoT Regulation nº 94/2018;

XIII. Decreto MEMR Nº 2946 K/30/MEM/2017;

XIV. Decreto MEMR nº 154 K/30/MEM/2019;

4.2.3.1.3 Da contribuição financeira

572. A contribuição financeira do programa reside na constatação de que os produtores do produto objeto da investigação tiveram acesso ao níquel, importante insumo na produção do aço inoxidável, por remuneração inferior à adequada.

573. Faz-se também necessária análise acerca da contribuição financeira ter sido concedida por órgão público ou por entidade privada instruída ou confiada, nos termos do Regulamento Antissubsídios 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", a jurisprudência da OMC no caso DS379 - US - Anti-dumping and Countervailing Duties on Certain Products from China, indica que: "A public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority." (grifo nosso).

575. Ademais, é também fato que "The absence of an express statutory delegation of governmental authority does not necessarily preclude a finding that an entity is a public body.", conforme DS437 - US - Countervailing Duty Measures on Certain Products from China.

576. Também importante saber-se no enquadramento de entidade em "órgão público" o que seria uma função "as quais seriam normalmente incumbência do governo" (conforme Artigo 1.1(a)(1)(iv), do Acordo SCM e Art. 4º, II, d), do Regulamento brasileiro), segundo interpretação do órgão de Apelação no DS379. A jurisprudência da OMC já apontou que pode ser relevante neste ponto saber se as funções ou a conduta de determinada entidade são de um tipo normalmente classificadas como governamentais na ordem legal do país investigado.

577. Isto posto, o foco na análise de "órgão público" é a entidade, e não a conduta que alegadamente gera a contribuição financeira. O foco não é se a conduta pode ser logicamente conectada a uma função governamental, mas sim acerca das características nucleares e ligações com o governo da entidade que faz aquela conduta. Neste contexto, o fato de tal conduta ser prática sistemática e contínua é um dos tipos de evidência a serem considerados, por potencialmente trazer luz sobre tais aspectos da entidade.

578. Muito embora o simples fato de que o governo detenha certa empresa, seja acionista, ainda que majoritário, ou que existam outros vínculos formais entre eles, não seja, por si só, suficiente para uma determinação conclusiva acerca do enquadramento como "órgão público", tais fatores devem ser considerados na análise da autoridade.

579. Por fim, salienta-se o estabelecido no DS436, no sentido de que não é ônus da autoridade investigadora procurar ou aceitar provas específicas sobre a existência de um órgão público que exorbitem da sua obrigação de fundamentar suas determinações em explicações fundamentadas e adequadas.

580. De modo a atender ao preceituado na jurisprudência da OMC, analisar-se-á o enquadramento do arcabouço criado pelo GOI conforme os três prismas considerados essenciais:

I. Exercício de funções governamentais de forma sustentada e sistemática - "evidence that "an entity is, in fact, exercising governmental functions", especially where such evidence "points to a sustained and systematic practice'";

II. A abrangência e conteúdo das políticas do setor - "evidence regarding "the scope and content of government policies relating to the sector in which the investigated entity operates"; e

III. Controle significativo de uma entidade e sua conduta - "evidence that a government exercises "meaningful control over an entity and its conduct".

581. O segundo ponto acima - "the scope and content of government policies" não será explicitamente pontuado aqui, por estar permeado nos outros dois pontos, e já ter sido exaustivamente abordado o amplo arcabouço criado pelo GOI na consecução de suas políticas industriais relativas aos laminados de aço inoxidável, no contexto da política de aumento do valor agregado dos minérios do país.

4.2.3.1.3.2 Da autoridade dos mineradores para o exercício de funções governamentais

582. Neste contexto, em toda a investigação a SDCOM atuou diligentemente solicitando informações das partes interessadas, sendo que, como já dito, foram verificadas as lacunas na resposta do GOI e a ausência de resposta de todos os produtores/exportadores identificados. Tal falta de colaboração das partes é fator que, inclusive, foi considerada na jurisprudência supramencionada.

583. Assim, acerca dos mineradores, há claro arcabouço governamental que os dota de 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 powers of the State and shall be used to the greatest benefit of the people.".

584. Conforme destacado pelo próprio GOI em sua resposta ao questionário, a Mining Law, Lei nº 4, de 2009, assim estabelece em seu preâmbulo:

a. That mineral and coal in the mining jurisdiction of Indonesia which constitute non-renewable natural resources are endowed by God Almighty and play an important role in fulfilling the needs of people at large and therefore, the management of mineral and coal must be to give the real added value to the national economy in pursuit of people's welfare and prosperity;

b. That mineral and coal mining business which constitute mining business outside geothermal oil and gas as well as the ground waiter play an important role in giving real added value to the national economic growth and sustainable regional development.

585. A concessão das licenças de mineração de níquel, carvão e demais minérios 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 greatest benefit of the people's welfare.". Há ainda o artigo 5º, que estabelece que o governo pode controlar a produção e exportação de minérios e carvão para dar prioridade aos interesses domésticos, e as obrigações de aumentar o valor agregado, que são obrigatórias ao detentor de licenças de exploração, conforme o próprio GOI confirmou na visita in loco, sob pena de revogação da licença, nos termos do artigo 119 da Mining Law. O GOI recentemente proibiu temporariamente todas as exportações de carvão, após "avisar diversas vezes os mineradores" para preencherem suas obrigações de fornecimento interno, com base no artigo 5(2) da Mining Law.

586. Conforme tratado nos parágrafos acima, e conforme analisado nas demais seções deste documento, há um arcabouço na Indonésia que estabelece fortes vínculos entre os mineradores e o GOI no desempenho de funções governamentais, dotando os mineradores de autoridade governamental para levar a cabo as políticas da Indonésia no que concerne ao gerenciamento dos recursos naturais, com base 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, uma designação especial - "Obyek Vital Nasional / National Vital Objects" (também conhecida como obvitnas), concedida a determinadas empresas consideradas estratégicas - "The National Vital Object is the area/location, building/installation and/or effort that concerns the lives of many people, the interests of the country and/or the country's strategic sources of income".

588. Tal designação as garante proteção especial das forças de segurança do país, assegurando prioridade máxima das forças policiais da Indonésia no caso de qualquer ameaça ou distúrbio às operações. Tem, ainda, implicações ou outras áreas, como relacionamento com sindicatos e até tratamento legal distinto de quaisquer distúrbios no território das empresas com status obvitnas. Nas palavras de representante do GOI, tais empreendimentos detentores de tal status devem ser protegidos por serem "fully supported by the state" (conforme declaração no parágrafo a seguir).

589. Segundo declaração de representantes do próprio GOI, a designação como obvitnas e a proteção dela decorrente está diretamente ligada ao intento de governo de incentivar o aumento do valor agregado do níquel:

KOLAKA - Commander of Military Command (Pangdam) XIV Hasanuddin Major General TNI Andi Muhammad Bausawasa Mappanyukki inspects the National Vital Objects (Obvitnas) and National Strategic Project Programs (PSN) for nickel processing and refining facilities (smelters) being built by PT Ceria Nugraha Indotama (CNI) Group in the Lapao-lapao block, Wolo District, Kolaka Regency, Southeast Sulawesi, Monday (15/8/2022).

This step is the TNI's commitment to ensure that the nickel downstream investment launched by President Joko Widodo (Jokowi) goes according to the target.

"Every time there is Obvitnas and PSN, it is indirectly the duty of the TNI to ensure its security stability. The TNI must always protect strategic national projects for the benefit of the people," said TNI Major General Andi Muhammad while in the CNI Group Mining Business Permit Area (WIUP).

According to Major General TNI Andi Muhammad, as a vital national asset, the nickel smelter project belonging to the CNI Group must be protected because this project is fully supported by the state. Moreover, CNI Group is the only Domestic Investment (PMDN) (...) (grifo nosso)

590. Declarações do GOI também ressaltam a importância das empresas classificadas como obvitnas nos interesses nacionais:

In addition, the purpose of the Commander in Chief visiting the Ministry of Energy and Mineral Resources is to further understand the activities of the Energy and Mineral Resources sector and strengthen the TNI's commitment to securing these vital national objects. "The TNI must provide full support, the TNI has the strength and ability, must be able to make a full contribution to the security of investors, In this ESDM there are various investors, many and large, we must protect them, once again, this is related to the dignity of the people's lives," said Moeldoko.

Regarding the existence of TNI personnel who may be involved in security disturbances, Moeldoko stated, "So far the TNI may have hesitated in taking action, for me, if it involves and interferes with national interests, I don't care, I will send troops". (grifo nosso)

591. A SDCOM questionou ao GOI, em seu segundo pedido de informações complementares, acerca de quais as mineradoras do já citado top 5 eram classificadas como "National Vital Objects", ao que o GOI expressamente afirmou que "All of the companies mentioned above has never 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 PT Antam e PT Vale detêm tal status. Tem-se, portanto, que ao contrário do afirmado pelo GOI inicialmente, há elementos que comprovam a designação de mineradoras, bem como de várias empresas na cadeia do produto objeto da investigação, como "National Vital Objects".

593. O MEMR Decree nº 77 K/90/MEMILIKI/2019, em sua mais atual redação, designa 34 empresas do setor de minérios e carvão como obvitnas. Inclusive, a própria PT IMIP também detém tal status, sendo que representante do GOI afirmou que: "the presence of the TNI in PT IMIP's KI is not only to provide security support, but also to ensure that investments can run well"(grifo nosso) - TNI são as Forças Armadas da Indonésia (Tentara Nasional Indonesia). A fala do representante também reforça que a designação como obvitnas envolve não só consequências com relação às questões de segurança, mas toda uma priorização daquele investimento.

594. Assim, tem-se que a designação de várias mineradoras e empresas da cadeia de laminados de aço inoxidável como obvitnas é mais um elemento que revela que as mineradoras "possesses, exercise or are vested with governamental authority" (grifo nosso), nos termos da já citada jurisprudência da OMC no

DS379.

595. Tomados em conjunto os elementos formais e não formais citados, resta evidente a existência de um arcabouço normativo que faz com que as mineradoras não operem em livres condições, mas simplesmente exerçam funções governamentais em nome do GOI no âmbito do fornecimento de níquel por remuneração inferior à adequada, que, como recurso mineral, é um bem constitucionalmente controlado pelo Estado.

4.2.3.1.3.4 Do controle significativo por parte do GOI

596. Com relação ao controle por parte do GOI ("meaningful control over an entity and its conduct"), analisar-se-á tanto o controle formal (acionário), quanto o controle por meio do arcabouço normativo.

4.2.3.1.3.5 Da participação acionária do GOI nos mineradores

597. Sobre a participação acionária do GOI nos mineradores, os elementos presentes nos autos indicam também que o GOI falhou em fornecer resposta completa aos questionamentos da SDCOM acerca das empresas em que tenha participação acionária, conforme pergunta 4 do questionário original. O GOI apenas informou a existência da PT Antam, sendo que há elementos concretos nos autos indicando a existência de outras empresas que deveriam ter sido informadas.

598. No item nº 3 do segundo pedido de informações complementares, a SDCOM solicitou informações acerca dos 5 maiores produtores/distribuidores de níquel da Indonésia, sendo que 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, mas mero distribuidor. Salienta-se que, conforme dados verificados na visita in loco, há nela participação majoritária (51%) de empresa do grupo Tsinghsan (ao qual pertence o produtor/exportador investigado PT IRNC), sendo que a ausência de resposta do grupo impediu a SDCOM de obter maiores informações acerca de suas operações.

600. A PT GAG Nickel, empresa subsidiária da empresa estatal PT Antam, é uma mineradora que não teve seu vínculo com o GOI previamente informado à SDCOM. Conforme relatado no relatório da visita in loco, o GOI não forneceu as atas de reunião da empresa mineradora PT GAG Nickel, muito embora detenha 25% da empresa. Observe-se que o GOI indicou não possuir acesso a tais atas. Sobre as atas da PT Antam, não foram fornecidas quaisquer informações acerca da reunião ordinária de acionistas de 2019, mas apenas acerca da reunião extraordinária para tal ano. Além disso, aparentemente não foram fornecidas as atas completas das reuniões da PT, pois o documento submetido é denominado "Summary of Minutes".

601. Há participação na PT Vale por parte da empresa PT Indonesia Asahan Aluminium (Inalum), empresa 100% estatal. Importante ressaltar que os elementos indicam que a participação do governo na PT Vale iniciou-se no âmbito das políticas de divestment, sendo que tal fato também não foi mencionado pelo GOI em nenhum momento.

602. Com relação a outras empresas fora do top 5 informado, a SDCOM logrou, ainda, encontrar em fontes públicas, qual seja, o relatório da Antam do ano de 2020, indicação de que o GOI, em conjunto com o grupo Tsingshan (por meio da empresa Strand Minerals Pte. Ltd), detém uma mineradora de níquel, a PT Weda Bay Nickel. Salienta-se que, apesar de questionado, tal relevante fato não foi informado à SDCOM por qualquer das partes da investigação, o que impediu que a SDCOM obtivesse maiores informações também neste âmbito.

603. Resta claro que houve importante falta de colaboração do GOI no que atine a importantes informações acerca dos mineradores na Indonésia. Ante a falta de informações detalhadas sobre a produção de níquel na Indonésia, buscou-se preencher tal lacuna com os fatos disponíveis no processo.

604. Segundo a autoridade investigadora da União Europeia, com base em dados publicamente disponíveis, as empresas nas quais o GOI detém participação representam 27% da produção total na Indonésia, demonstrando que o GOI tem influência direta sobre parcela significativa da produção na Indonésia. Ademais, foi ainda verificado, sobre a PT Antam, que o GOI detém ações especiais "'Dwiwarna Ownership", que permitem ao GOI o direito exclusivo de nomear e substituir Diretores e membros do board of Commissioners, e que apenas um de seus diretores vem do setor privado. Sobre a PT GAG Nickel, há um Commissioner que anteriormente detinha o cargo de Director of Mineral and Coal Revenue no MEMR e ainda outros membros do board (inclusive o presidente), com experiências anteriores na PT Antam e PT Inalum, situação que também ocorre na PT Vale.

605. Pontua-se, por fim, que as State Owned Entreprises (SOE) possuem prioridade na obtenção das WIUPK - special mining permit area, e que uma empresa não estatal apenas pode obter a WIUPK se não houver interesse das SOEs (referenciadas na legislação em bahasa pela sigla BUMN), ou nenhuma SOE atender aos requisitos necessários, por força da MEMR Regulation nº 7/2020:

Article 27

The Minister offers BUMN and BUMD with:

priority way to get metal mineral WIUPK and/or coal WIUPK

(...)

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 to in Article 27

606. Assim, de acordo com as informações disponíveis nos autos, tem-se que empresas que representam parcela significativa da produção na Indonésia de minério de níquel são parcial ou totalmente de propriedade do GOI, e ainda que tais empresas são gerenciadas e/ou controladas pelo GOI.

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 de relevante informação, não é suficiente para o enquadramento de determinada entidade como "órgão público". Deste modo, passam a ser analisados os instrumentos de que dispõe o GOI para estabelecer o controle da conduta das entidades de modo a exercer o fornecimento de minério de níquel, conforme art. 4º, II, "c", do Decreto nº 1.751, de 1995.

608. Neste contexto, o GOI dispõe de uma série de instrumentos por meio dos quais ele controla as empresas mineradoras a seu alvitre, para que estas desempenhem as funções governamentais 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 explicados no item 4.2.3.1.1, acima, os demais itens serão tratados a seguir.

4.2.3.1.3.7 Da aprovação de alterações no quadro acionário

610. Segundo artigo 64 da MEMR Regulation nº 7, de 2020, on the Procedures for Granting Areas for and Licensing and Reporting on Mineral and Coal Mining Business Activities, e também conforme o instrumento por ela superado, a MEMR Regulation nº 11, de 2020, quaisquer alterações do possuidor de ações de mineradoras, inclusive mudanças de controle (aquisições) devem ser informadas ao MEMR para aprovação:

Article 64

(1) In the event that the holder Of an IIJP or IIJPK will changes in shares must first obtain approval from the Minister or governor in accordance with authority before being registered with the ministry which organizes government affairs in the field of law.

(2) Minister or governor in accordance with their authority can reject the application for change of shares as referred to in paragraph (1) if the holder Of IIJP or IUPK based on the evaluation results are not shows the good performance of mining business.

611. Tal pedido, como se depreende do item (2) do artigo 64 pode ser inclusive rejeitado caso a performance da mineradora não seja considerada adequada, não sendo determinado na legislação os critérios para tal avaliação.

612. A Government Regulation nº 23, de 2010, prevê ainda limites com relação à participação acionária, em especial acerca da participação acionária estrangeira, como já explicado neste documento.

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 2020, é requerido da empresa detentora de licença de mineração que seja submetida ao GOI qualquer mudança no board of directors 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 directors and/or commissioners are obligated to submit a report to the Minister or governor in accordance with their authority no later than 14 (fourteen) working days after getting approval from the Ministry which organize affairs government in the field of law.

614. As medidas aqui apontadas evidenciam a existência de um forte controle do GOI nas mineradoras, que não podem exercer suas funções conforme uma empresa normalmente agiria na defesa 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 minério de níquel por remuneração inferior à adequada por meio da atuação de entidades privadas por ele instruídas ou confiadas, conforme art. 4º, II, "d", do Decreto nº 1.751, de 1995: "

d) o governo faça pagamentos a um mecanismo de fundo, ou instrua ou confie à entidade privada a realizar uma ou mais das funções descritas nas alíneas anteriores, as quais seriam normalmente incumbência do governo, e cuja atuação não difira, de modo significativo, da prática habitualmente seguida pelos governos.".

616. A jurisprudência da OMC ressalta três elementos para a caracterização do "confie" ou "instrua" presentes no Regulamento brasileiro, ou "entrust" e "direct", nos termos do Artigo 1.1(a)(1)(iv) do Acordo SCM:

It follows from the ordinary meanings of the two words "entrust" and "direct" that the action of the government must contain a notion of delegation (in the case of entrustment) or command (in the case of direction). To our minds, both the act of entrusting and that of directing therefore necessarily carry with 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 "direct" comprise these elements - something is necessarily delegated, and it is necessarily delegated to someone; and, by the same token, someone is necessarily commanded, and he is necessarily commanded to do something. We therefore do not believe that either entrustment or direction could be said to have occurred until all of these three elements are present.

Having said that, it is clearly the first element - an explicit and affirmative action of delegation or command - that is determinative. The second and third elements - addressed to a particular party and of a particular task - are aspects of the first. Any assessment of whether delegation or command has occurred would necessarily be in reference to that which has been delegated or commanded and in reference to the one to whom it has been delegated or commanded. (grifo nosso).

617. No mesmo caso, foi também decidido que é necessário que haja uma ""explicit and affirmative action of delegation or command", haja visto que a mera intervenção no mercado por parte de um governo não é suficiente e tampouco é suficiente que o fornecimento em análise seja um "side effect" de políticas regulatórias lícitas. Ademais, no caso DS296, refinou-se o conceito de "entrustment" e "direction", sendo necessária evidência "probative and compelling":

In sum, we are of the view that, pursuant to paragraph (iv), "entrustment" occurs where a government gives responsibility to a private body, and "direction" refers to situations where the government exercises its authority over a private body. In both instances, the government uses a private body as proxy to effectuate one of the types of financial contributions listed in paragraphs (i) through (iii). It may be difficult to identify precisely, in the abstract, the types of government actions that constitute entrustment or direction and those that do not.

618. Assim, a questão centra-se no fato de a contribuição financeira, na forma de fornecimento de minério de níquel por remuneração inferior à adequada, poder ser atribuída ao governo ou ter sido livremente feita por escolha das entidades privadas, após estas terem considerado todas as condições do mercado, o que inclui as restrições regulatórias. Necessário também avaliar se tal provisão seria normalmente incumbência do governo, e se a atuação de tais entidade não diferiu, de modo significativo, da prática habitualmente seguida pelo governo, ou seja, se haveria diferença entre o modo pelo qual os mineradores/produtores agiram com o modo em que o GOI agiria.

619. Conforme já explicitado neste documento, no decorrer dos anos, o GOI criou um arcabouço normativo e não normativo, que, considerado em conjunto constitui um comando "explicit and affirmative" de modo a perseguir o declarado intuito de aumentar o valor agregado de seus recursos naturais, em especial o minério de níquel, principal insumo do aço inoxidável, e incentivar a construção de smelters em seu país, implantando medidas como as restrições à exportação, controle de preços, obrigações de processamento doméstico, entre outros, que envolvem, assim, a obrigação de fornecimento do minério no mercado interno sob condições impostas pelo GOI.

620. Ao contrário do afirmado pelo GOI, planos e políticas como o RIPIN possuem sim o elemento de enforcement às partes privadas, tanto é que, por exemplo, as licenças de mineração podem, inclusive, serem revogadas caso determinada mineradora não siga os planos de construção de smelters conforme acordado.

621. Deste modo, o fornecimento de níquel por remuneração inferior à adequada não ocorreu como "side effect" da legítima atuação estatal, mas como próprio objetivo de tais políticas. Aos mineradores não restou nenhuma alternativa a não ser fornecer o minério de níquel nas condições determinadas pelo GOI, já que não poderiam exportar e sequer poderiam determinar os preços de venda, ainda que tal atuação fosse contrária a qualquer decisão de lógica empresarial, pois obviamente os mineradores gostariam de poder acessar o mercado internacional e vender a preços mais elevados. Descumprimento de tais medidas levaria à suspensão e até cassação das licenças. Muito embora o GOI afirme que o preço HPM garante a justiça nos preços, há nos autos declaração de membros tanto da APNI (Indonesian Nickel Miners Association - associação dos mineradores), quanto da AP3I (Processing and Smelting Companies Association - associação dos smelters), ainda que menos preponderante, mostrando descontentamento com o estabelecimento de preços pelo GOI, já que o preço do níquel flutua diariamente.

622. Como já dito na seção anterior, o gerenciamento e controle dos recursos naturais é função governamental. Atuaram, portanto, os mineradores como meros proxy do GOI, braços a implementar a política do governo de incentivo ao setor de aço inoxidável por meio do fornecimento de minério de níquel por remuneração inferior à adequada, instruídos a tal por meio do arcabouço criado pelo GOI, em que, efetivamente, "the government exercises its authority over a private body", em linha com a jurisprudência da OMC.

4.2.3.1.3.10 Comentários finais da SDCOM sobre este tópico

623. Considerando a relevância do tópico que aqui se discute, são aqui trazidos os comentários da SDCOM tecidos no Parecer de Início desta investigação, de modo a sumarizar o entendimento desta Subsecretaria.

624. É fato que as restrições à exportação já foram objeto de análise pelo Órgão de Solução de Controvérsias e que foi decidido que i) muito embora restrições à exportação afetem o comportamento de agentes privados, isto ocorre apenas como by-product de uma regulação estatal, podendo não estar presente o elemento de "instrução ou confiança" (entrust or direct) necessário nessa situação para se caracterizar um programa de subsídio acionável nos termos do acordo, e ainda que ii) a sustentação de preços abarcada pelo Acordo SCM não inclui movimento de preços como resultado indireto de outra forma de intervenção governamental.

625. Inicialmente, pontua-se que, na linha do reiteradamente decidido pelo Órgão de Solução de Controvérsias da OMC, a análise desta SDCOM centrar-se-á na natureza da ação governamental, e não em seus efeitos. A SDCOM concorda com o GOI no sentido de que nem todas as medidas governamentais que conferem benefícios podem ser consideradas serem subsídios.

626. Isto posto, como se sabe, para se ter configurado um programa de subsídios acionável, nos termos do art. 4º do Decreto nº 1.751, de 1995, deve-se haver qualquer forma de sustentação de renda ou de preços, ou existir uma contribuição financeira por governo ou órgão público ou entidade por ele instruída ou confiada, sendo que tal contribuição financeira deve gerar um benefício aos receptores e o subsídio deve ser específico.

627. Com relação à contribuição financeira, conforme alegado na petição e apurado por esta SDCOM, o presente caso trata da hipótese de instrução ou confiança à entidade privada. Neste contexto, o GOI afirmou não ter sido comprovado tal elemento da "instrução ou confiança", e que a decisão de vender os produtos e a que preço os produtos estariam sendo vendidos seria feita de forma independente pela gestão empresarial. A SDCOM discorda da afirmação do governo. Há evidências robustas nos autos do processo sobre a existência de um arcabouço legal meticulosamente engendrado para forçar as empresas mineradoras a terem que vender sua produção no mercado interno da indonésia, aumentando a oferta interna de produtos refinados e consequentemente abaixando o preço, como se analisará a seguir. Ou seja, as políticas implementadas pelo GOI vão além da imposição de restrições à exportação per se.

628. Como rege o Regulamento do Ministério da Energia e Recursos Minerais nº 11, de 2018, apenas depois de cumprir as obrigações domésticas é que o detentor de uma IUP ou IUPK pode exportar. No mesmo sentido está o Decreto do Ministério de Energia e Recursos Minerais nº 23, de 2018, que trata das obrigações DMO para o carvão. O Regulamento nº 13/2017 do Ministério da Economia elimina quaisquer dúvidas ao explicitar que o controle de exportações e o imposto de exportação se devem para "support the downstream program of domestic mineral products". Com relação ao Regulamento do Governo da Indonésia nº 23, de 2010, o preâmbulo deixa claro o contexto em que ele se insere: "Increase in added value in the undertaking of mineral and coal processing and refining/smelting domestically.".

629. O Regulamento MOMR nº 25/2018, que revogou o Regulamento MOMR nº 34/2009, também se insere neste contexto:

Article 32

(1)The Minister shall perform the control of Mineral and Coal sales which aims to:

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 metallic Mineral for the nation interests.

(2)The nation interests as referred to in paragraph(1) is based on the consideration:

a.Sustainability of mining business activities; and

b.Domestic Enhancement of Added Values of Mineral.

630. De acordo com esse regulamento, se uma empresa de mineração deseja obter uma recomendação de exportação do MEMR, ela deve primeiro apresentar um plano de construção de smelter. O MEMR supervisionará o andamento da construção do smelter em relação a esse plano no mínimo a cada seis meses. A mineradora deve apresentar ao MEMR comprovante de que alcançou pelo menos 90% do progresso planejado para cada semestre. Ou seja, a à restrição à exportação foi adicionado um requerimento adicional de obrigação de construção de smelters.

631. De todo o exposto, não se pode falar que tal efeito sobre a cadeia foi mero subproduto da ação governamental, eis que, conforme demonstrado, a natureza da ação governamental era deliberadamente instruir os entes privados locais a construírem smelters ou refinarias para adicionar valor aos produtos locais e aumentar a oferta local:

A spokesman at the ministry of energy and mineral resources says the government wants to ensure mining companies "add value" rather than just "exporting our earth". The government is willing to let companies start exporting again if they show they are "serious" about building smelters or refineries, he adds.

(...)

The Harita project and a new proposal by Oleg Deripaska's Rusal, the world's largest aluminium producer, to build another alumina refinery in West Kalimantan appear to suggest that the government's policy is working, forcing companies to invest in billion-dollar processing facilities that they otherwise would not build. (grifo nosso)

632. Nos termos do teste exigido pelo DS194, a SDCOM concluiu que houve uma ação explícita e afirmativa de instrução (comando) do governo aos mineradores locais, que os direcionou a fornecer insumos no mercado doméstico a preços inferiores aos que seria possível praticar nas vendas nos mercados internacionais caso não houvesse restrição e a fazer investimentos em smelters e refinarias que, em condições normais, não fariam. Na linha do recentemente decidido no DS533, tem-se uma clara instrução aos mineradores, obrigando-os a fornecer no mercado interno indonésio, como na DMO de 25% de fornecimento ao mercado interno aplicável para o carvão.

633. Em resumo, por meio do imposto de exportação, restrições à exportação e ao promulgar uma miríade de atos jurídicos exigindo que os produtores de minério e carvão vendam no mercado interno na Indonésia, o GOI direcionou entidades privadas a fornecer contribuição financeira aos produtores de aço na forma de venda de minério de níquel e carvão com remuneração inferior à adequada.

634. A natureza de tais ações dá-se, evidentemente, no âmbito do plano de fomentar a indústria da cadeia mineradora, como foi confirmado em Declaração do Ministro de Energia e Recursos Naturais, que explicitou ser a política do carvão destinada a "manter a competitividade das indústrias domésticas", ou ainda a declaração do ministério que confirmou ter a nova proibição de exportações a partir de 2020 o objetivo de "accelerate the establishment of domestic smelters while its nickel reserves are limited.". No documento oficial que descreve o RIPIN 2015-2035, é citado como estratégia de desenvolvimento 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 por governo ou órgão público (como por exemplo, por meio da PT Antam) ou, alternativamente, contribuição financeira por entidades privadas por ele instruídas ou confiadas, nos termos das alíneas "c" e "d", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que as empresas investigadas passam a contar com recursos adicionais, uma vez que o custo de aquisição do minério de níquel é inferior ao que estas teriam que incorrer caso obtivessem estes insumos a preços de mercado.

4.2.3.1.4 Especificidade

636. Salienta-se que GOI não apresentou lista, por indústria e por região, das empresas na Indonésia que participaram deste programa durante o período de investigação, e tampouco forneceu as transações efetuadas no mercado de níquel. Houve ainda total ausência de respostas dos produtores/exportadores selecionados. Assim, conforme já apontado neste documento, foram utilizados, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis, que indicam que o programa é disponível e direcionado aos produtores de aço inoxidável, haja visto que este é notadamente o setor que mais consome níquel na Indonésia, insumo alvo do programa, conforme declarações oficiais do GOI.

4.2.3.1.5 Resultado da investigação

637. O GOI, em sua resposta ao questionário, alegou não existir tal programa de fornecimento de níquel a remuneração inferior à adequada. Entretanto, reconhece a existência da política de agregar valor ao minério de níquel a fim de melhor aproveitar os recursos não renováveis e fomentar empregos nos smelters, ambos com o fito de melhorar a economia da Indonésia. Tal política é realizada, dentre outros, por sua progressiva política de restrições à exportação que culminou com a total proibição de exportações. Ressalta-se, neste contexto, que o GOI também confirma o alegado na petição de que houve o relaxamento à restrição de exportação para os produtores de níquel que estavam a construir smelters.

638. O GOI ressaltou ainda que não há preço controlado pelo governo para as transações, o que somente ocorreria com relação aos royalties. Como já tratado na seção 4.2.3.1.1.3, acima, tal argumentação não encontra esteio ante aos elementos presentes nos autos, o que inclui os resultados da visita ao GOI.

639. Importante ressaltar que o GOI não forneceu os preços de transações no mercado de níquel na Indonésia, apesar de dispor de tal informação e de ter sido reiteradamente solicitado pela SDCOM. Em resposta à pergunta 5 da subseção b.1 do questionário original, que solicitava "Identifique e explique os tipos de registros mantidos pela autoridade governamental administradora do programa", o GOI forneceu resposta evasiva e sequer informou à autoridade que dispunha dos preços de transação, por meio dos RKAB. Mesmo no segundo pedido de informação complementar, Ofício SEI Nº 125396/2022/ME, de 29 de abril de 2022,, quando foi novamente expressamente solicitada informação sobre as transações no mercado de níquel nas perguntas do 3º parágrafo do Ofício, o GOI forneceu em bahasa os RKABs e os relatórios de produção e venda solicitados, impossibilitando qualquer análise destes por parte da autoridade, que foi forçada a desconsiderar tais documentos, por descumprimento dos requisitos legais de aceitação de documentos. Em plena demonstração da boa vontade desta autoridade com relação ao GOI, durante a visita in loco o governo teve sua terceira chance de apresentar os dados de venda, sendo que também assim não procedeu.

640. Relembra-se que tais informações de venda são dados já fornecidos regularmente pelas empresas ao Minister of Energy and Mineral Resources, ou seja, não procedem as alegações do GOI no sentido de haver dificuldade de contatar as empresas a fim de conseguir a informação, ou ainda de 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/ME, que submeteu os RKAB, bem como que havia submetido as informações acerca do volume produzido no primeiro dia da visita in loco, bem como explicado o funcionamento do sistema MOMS. Além disso, o GOI alegou que o artigo 3 da MEMR Regulation nº 7/2017 estabelece a utilização do preço HPM somente para royalties.

642. Acrescentou que "prior to the implementation of MEMR Regulation No 11 of

2020, the GOI did not require the nickel producer and nickel ore buyer or any other parties involved in mineral transaction to take HPM as the reference price for transaction purpose".

643. A PT IRNC, em sua manifestação de 09 de setembro de 2022, também alegou no mesmo sentido, pois acredita que "os textos normativos e demais elementos constantes dos autos restritos corroboram o quanto argumentado pelo GOI de que, durante o período de investigação, o HPM seria obrigatório tão somente para o cálculo dos royalties", citando tanto a petição quanto a mudança legislativa. Acrescentou que a SDCOM teria, na visita in loco, mencionado um Decreto sobre a equipe de monitoramento do preço HPM emitido já no âmbito da MEMR Regulation nº 11/2020, e não sob a égide do Regulamento anterior.

644. A PT IRNC acrescentou que "compartilha o entendimento do GOI de que, na ausência de um preço de governo a ser comparado com um preço de mercado para apuração do montante de benefícios recebidos, não há que se falar no fornecimento de bens a valores inferiores à remuneração adequada durante o período investigado".

645. Pontuou ainda que, ao contrário do alegado pela peticionária, todas as vendas da PT Antam de ferroníquel se dão para exportação, citando o relatório anual da PT Antam como evidência de tal fato.

646. Afirmou que a SDCOM não poderia utilizar os preços da Filipinas para a China, haja visto que haveria um efeito extraterritorial de elevação dos preços de exportação das Filipinas decorrente da redução sensível na oferta internacional desta matéria-prima, afetando o benchmark utilizado. Assim, um benchmark mais adequado seria a média ponderada entre o preço doméstico na Indonésia e o preço de exportação das Filipinas, ponderados pelos respectivos volumes de produção em 2019.

647. A Aperam, em manifestação de 9 de setembro de 2022, argumentou que o Governo da Indonésia teria deixado de apresentar diversas informações relevantes solicitadas no Questionário enviado pela SDCOM com a simples desculpa de que "the alleged scheme related to the provision of nickel ore for LTAR as it does not exist".

648. Reiterou o exposto na petição em, especial, no item 7 das informações complementares à petição, apresentadas em 8 de fevereiro de 2021, que demonstraria que o Governo da Indonésia forneceria minério de níquel, carvão e sucata de aços inoxidáveis por remuneração inferior à adequada.

649. Apontou para trechos das repostas do Governo da Indonésia para sustentar que o haveria intervenção direta nas negociações entre compradores e vendedores de minério de níquel, determinado que os preços a serem praticados em tais operações fossem inferiores à remuneração adequada.

650. Ressaltou que o Decreto do Coordinating Minister for Maritime Affairs and Investment, datado de agosto de 2010, comprovaria que o Governo da Indonésia já havia determinado o estabelecimento e o controle dos preços de venda de minério de níquel no mercado interno, buscando formas de aumentar a eficácia de tal controle.

651. Apontou ainda o relatório de verificação para concluir que por meio da obrigação imposta aos mineradores para venda prioritária ao mercado doméstico, o Governo da Indonésia garantiria um excesso de oferta no mercado interno, pressionando os preços do minério de níquel para baixo, garantindo o fornecimento de minério de níquel à cadeia a jusante a preços inferiores à remuneração adequada.

652. Ademais, ressaltou que o Governo da Indonésia não teria apresentado as informações solicitadas relativas aos preços e volumes de venda de níquel no mercado interno daquele país e não teria respondido a questionamentos da equipe de técnicos da SDCOM relativas aos preços e volumes de venda de níquel no mercado interno daquele país; relativas ao Morowali Memorandum of Understanding", de 2013; relativas a "stipulation of reference guideline for selling or renting plots and/or industrial buildings in Industrial Estates at the suggestion of the Industrial Estate Committee"; relativas ao Cooperation team for the China-Indonesia integrated industrial estate; e relativas ao Decree of Minister of Industry of Republic of Indonesia Number 432/M-IND/Kep/7/2014. Nestes casos, teria se limitado a afirmar que os instrumentos referidos não teriam sido implementados.

653. O GOI pontuou, em sua manifestação acerca do uso dos fatos disponíveis, que, ao contrário do afirmado pela SDCOM, teria sim fornecido os RKAB no 2º pedido de informações complementares, e no primeiro dia da verificação teria fornecido os RKAB em versão pesquisável (OCR). Informou também que encaminhou os relatórios de produção e vendas solicitados, bem como estudos ambientais. Sobre as atas de reunião, informou que forneceu parcialmente a informação, e rogou para que seja utilizado o site oficial da PT Antam como fonte de dados adicionais.

654. O GOI afirmou ainda que, sobre o MoU assinado no contexto da criação do IMIP, que este foi assinado por entes privados, por isso não tem acesso ao documento. O GOI e o Governo da China apenas estavam presentes durante a assinatura, mas não receberam cópias. Por fim, pontuou que o relatório sobre investimentos externos no IMIP foi fornecido no prazo acordado no quarto dia da verificação, tendo sido os documentos fornecidos no dia 3 de junho de 2022.

655. Por tais motivos, o GOI solicitou que não sejam usados os fatos disponíveis.

656. O GOI acrescentou ainda que o representante do MEMR esteve presente na verificação e explicou acerca do volume de minério de níquel produzido, bem como sobre o sistema de coleta MOMS. Reiterou que o HPM, antes da alteração de 2020, era utilizado somente para royalties, conforme legislação aplicável, tendo sido fornecida explicação sobre a fórmula utilizada, devendo ser tal explicação considerada.

4.2.3.1.7 Manifestações posteriores à Nota Técnica acerca do programa

657. Em 13 de outubro de 2022, o GOI protocolou manifestação em que aduziu que os fundidores de níquel da Indonésia não estão necessariamente ligados à indústria indonésia de aço inoxidável, pois os smelters têm oportunidade de vender seus produtos por todo mundo. O descrito no parágrafo 412 da Nota Técnica somente descreve o mecanismo para garantir que as restrições à exportação estejam em linha com os compromissos dos mineradores em estabelecer os smelters. Desta forma, tais provisões não colocam nenhum peso adicional aos mineradores, ao contrário, dá a eles oportunidade de ganhar o dinheiro necessário para construir os fundidores.

658. O GOI também discorda que as provisões sobre Letras de Crédito constituam restrições à exportação. Corrobora para tal fato os dados da agência estatística da Indonésia, que apontam que as exportações de minério de níquel de baixo teor cresceram significativamente de 2017 a 2019.

659. Foram reiterados os comentários sobre o fato de que o preço HPM antes da MEMR Regulation 11, de 2020, só serviria para o cálculo dos royalties, que este seria um preço de piso e que o artigo 2 da MEMR Regulation 7, de 2017, deve ser lido em conjunto com o artigo 3. O expresso pela Government Regulation nº 23, de 2020 seria regulado pela MEMR Regulation 7, de 2017. Reiterou que o HPM é calculado por cada empresa, sendo o HMA determinado todo mês.

660. Ponderou ainda que os comentários do Sr. Bahlil Lahadalia trazidos na Nota Técnica se deram em um contexto de mediação entre mineradores e fundidores, pois no final de 2019 um número de smelters teriam sido verificados pelo MEMR, o que causou dúvidas acerca se eles poderiam exportar ou não "law grade nickel" (sic). Em situações normais o governo não interfere nas transações, e o preço é livremente estabelecido.

661. Para o GOI, a SDCOM falhou em apresentar evidências sólidas na legislação, ou de ações indicando a obrigatoriedade de se utilizar o HPM como preço de transação, se mineradores e fundidores usam o HPM para a transação, não necessariamente indica que o GOI interferiu nesta negociação. Acrescentou que o GOI não obriga os mineradores a vender seus produtos aos produtores de aço inoxidável, eles são livres para processar o minério de níquel ou cooperar com quaisquer outros smelters.

662. Pontuou que o monitoramento por parte do GOI de um setor que impacta o meio ambiente, como o de mineração, e o fato de que as empresas deste setor devam seguir as regulações, não significa que tais empresas sejam 'public body'. Além disso, as obrigações com relação ao minério de níquel só obrigam que o minério seja processado até certo teor, e não que sejam vendidos aos produtores de aço inoxidável. Os diferentes royalties aplicados ao minério de níquel e processados não são incentivos aos smelters, mas tão somente uma medida de justiça, considerando que construir um smelter exige um compromisso e investimento considerável.

663. Segundo o GOI, na análise do efeito das medidas, a SDCOM destacou o excesso de oferta no mercado de minério de níquel, e o efeito disto nos preços. Entretanto, para o GOI, não foi realizada devida análise ou encontrada evidência sobre a existência de controle sobre as empresas de mineração para vender minério de níquel para smelters ligados à indústria de aço inoxidável da Indonésia.

664. Para o GOI, no contexto do DS379 trazido, na definição de 'public body', é fundamental o trecho "must be an entity that possesses, exercises or is vested with governmental authority", sendo necessário um exame de qual exatamente é a direção dada pelo GOI aos mineradores. O GOI apenas obriga que seja aumentado o valor do minério de níquel até um certo teor, nenhuma obrigação além disso é estabelecida, por exemplo, fornecer o minério à indústria de aço inoxidável. Os mineradores teriam, segundo o GOI, total controle com relação à sua decisão de venda - não há nenhuma sanção aos mineradores que não desejem vender devido ao preço, o que seria um forte indício de que não há 'public body' nesse contexto.

665. Não haveria instrução ou mandato dado pelo GOI aos mineradores. A Constituição da Indonésia dá o direito ao Estado de controlar os recursos em seu território, sendo que no caso do minério de níquel apenas há esse requerimento de processamento e purificação.

666. Sobre a designação de setores como National Vital Objects, trata-se de uma questão de estabelecimento do "internal security system", conforme artigo 4 do Presidential Decree nº 63, de 2004, o que é também assegurado pela polícia da Indonésia. Deste modo, tal questão não tem nenhuma implicação na análise da contribuição financeira.

667. O GOI argumentou ainda que:

publicly available information taken from PT ANTAM official website (https://antam.com/en/products/nickel) as excerpted below: "ANTAM conducts open pit mining method with a selective mining to produce high grade and low grade nickel ore. Nickel ore is used for feed for Pomalaa ferronickel plant as well as being sold to domestic market".

In addition, we also present a public available information taken from PT Vale Indonesia official website (http://www.vale.com/indonesia/EN/business/mining/nickel/nickelindonesia/Pages/default.aspx) as follow: "At the Sorowako Block, PT Vale Indonesia produces nickel in matte at its integrated mining and processing facilities" (grifos no original).

668. O GOI destacou que embora a SDCOM tenha apontado que o GOI é responsável por 27 porcento da produção de minério de níquel na Indonésia, é muito duvidoso que a ANTAM e a Vale Indonésia em conjunto apresentam efeitos significativos para o mercado doméstico, considerando que ambas as empresas têm a capacidade de processar os minérios internamente e não dependem do mercado.

669. Sobre a previsão de aprovação de mudanças societárias, o GOI arguiu que o parágrafo 2º do artigo 64 do Regulamento MEMR nº 7, de 2020, dispõe que o GOI conduzirá avaliação do desempenho da empresa para a aprovação de mudanças na estrutura societária e aprovação em Diretores e Comissários, o que é um critério objetivo, o que implica em não haver nesta previsão nenhum controle governamental nas mineradoras. O GOI asseverou ainda que, como a estrutura de gestão está intimamente relacionada com o direito de exploração concedido pelo governo, é natural que o governo precise estar ciente da composição da gestão nas empresas de mineração.

670. Deste modo, a investigação deveria ser terminada pela ausência de contribuição financeira nos termos do Acordo SCM.

671. No que diz respeito à alegação da SDCOM sobre a criação de um quadro normativo e não normativo que, em conjunto, constituiria um comando explícito e afirmativo com o objetivo de se atingir a intenção estatal de aumentar o valor do mineral bruto, o GOI arguiu que o Regulamento MEMR nº 25 de 2018 fornece explicações sobre o nível mínimo de purificação do mineral bruto, de forma tal que, após atingir o nível mínimo de purificação, os produtos processados de níquel são elegíveis para o mercado de exportação. Acrescentou que "SDCOM shall interpret Indonesian domestic processing obligation as the Indonesian support to the stainless steel industry.".

672. No que diz respeito à especificidade e à alegação da SDCOM de que o GOI não forneceu a lista por setor e região das empresas que se beneficiaram do programa, o GOI asseverou que não possui instrumentos legais que descreveriam a existência de um programa de fornecimento de minério de níquel, e dessa forma, ante a não existência do programa, não haveria base sólida para fornecer qualquer descrição sobre a natureza, o mecanismo ou quaisquer estatísticas relacionadas ao mesmo. A legislação apenas obrigaria o nível mínimo de purificação, nada com relação a aquisição por remuneração inferior à adequada.

673. Acrescentou que o acesso ao minério de níquel indonésio na Indonésia não é algo que o GOI governa, não havendo nenhum dos fatores exigidos pelo Artigo 2.1(c) do Acordo SCM. De acordo com o decidido no caso US - Countervailing Measures (China), as características inerentes ao minério de níquel não podem ser utilizadas como base para estabelecer a especificidade.

674. Reiterou que não estabelece preços, e que o HPM, mesmo após o Regulamento de 2020, serve como preço mínimo, e não máximo, sendo que o preço de transação pode ser superior.

675. Concluiu o GOI reafirmando a posição do caso DS 194, de que restrições à exportação não constituem uma contribuição financeira nos termos do Acordo.

676. A PT IRNC, em sua manifestação final de 14 de outubro de 2022 pontuou que discorda do posicionamento da SDCOM pelas razões já expostas em sua manifestação de 09 de setembro, bem como à luz das explicações apresentadas pelo GOI em sua manifestação final de 13 de outubro. No entender da PT IRNC, se o HPM já se constituísse no preço de referência das transações anteriormente à edição do MEMR Regulation nº 11/2020, não haveria necessidade da emissão de dito normativo.

677. A empresa aduziu ainda que o Decree of the Coordinating Minister for Maritime Affairs and Investment nº 108/2020, mencionado sob o parágrafo 431 da Nota Técnica, não deveria constituir o arcabouço normativo levado em conta na investigação, eis que passou a viger depois do período de investigação.

678. Já sobre o ajuste proposto no cálculo do benchmark, a IRNC esclareceu que sua sugestão visava tão somente capturar o efeito extraterritorial de elevação dos preços de exportação das Filipinas, conforme a própria lógica exposta pela Peticionária. Pontuou ainda que não compreendeu a consideração da SDCOM no que tange à sua suposta falta de cooperação quando sugeriu um ajuste no benchmark (parágrafo 560 da Nota Técnica), pois sua manifestação teria sido acompanhada de todos os dados.

679. A peticionária, em sua manifestação final de 14 de outubro de 2022, reiterou os termos e conclusões da SDCOM da Nota Técnica de fatos essenciais, e afirmou que não caberia nenhuma alteração nos montantes apurados.

4.2.3.1.8 Comentários da SDCOM

680. Com relação aos comentários em resposta ao ofício SEI/ME nº 228693/2022/ME, pontua-se que, durante a visita in loco, apenas foi exibido o sistema MOMS, e então, ato contínuo, a equipe da SDCOM solicitou ver a fonte dos dados. Conforme consta do relatório da visita in loco, parágrafo 35:

"A equipe da SDCOM relembrou que seria necessário não apenas informar o total, mas explicar como o total foi calculado, apresentando memória de cálculo linha por linha (em especial para o ano de 2019, em que os dados vinham do sistema e dos relatórios manuais)".

681. Considerando que o GOI não logrou apresentar tal memória de cálculo, o que era possível, considerando que se trata de informação do RKAB, resta justificada a utilização de fatos disponíveis nesta seara.

682. Ademais, relembra-se, conforme relatado no relatório da visita in loco, as graves lacunas na informação prestada, que impediram a devida verificação dos dados:

No último dia da verificação, a equipe da SDCOM relembrou ao GOI que estava pendente desde o 1º dia da verificação os esclarecimentos do MRME sobre os preços e volumes de níquel no mercado interno da Indonésia. Ademais, a equipe informou que gostaria de fazer perguntas adicionais a partir dos documentos apresentados. O representante do GOI relatou que coordenou com o MRME e disse que o MRME o informou que estavam prontos a fornecer os dados, mas não naquele dia, talvez na segunda-feira seguinte, dia 30, momento em que a verificação in loco já estaria encerrada. A equipe do SDCOM relembrou que não apenas tem que receber a informação durante a verificação, mas também tem que checar a informação, e, como informado no 1º dia, aquelas informações eram aguardadas pela SDCOM 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 prever que este é utilizado para royalties não significa, a contrario sensu, que este não seria utilizado para os preços de transação. De outro modo, foi demonstrada a existência de fortes evidências nessa direção. Ademais, o artigo 2 da MEMR Regulation nº 7/2017 expressamente indica que os detentores de licença devem seguir o preço HPM.

684. Também neste ponto não houve colaboração do GOI, que dispõe das informações de vendas de cada produtor e poderia comprovar o preço efetivamente pago. Com relação ao fato de que a SDCOM teria mencionado Decreto sobre a equipe de supervisão do preço HPM emitido já no âmbito da MEMR Regulation nº 11/2020 (portanto, fora do período da investigação), e não sob a égide do Regulamento anterior, como já dito por esta autoridade, a falta de colaboração do GOI, que não apresentou nenhum documento de tal equipe de supervisão, impediu a autoridade de avaliar o contexto da atuação da equipe. É razoável acreditar que, muito embora a equipe tenha sido criada formalmente em um

determinado mês, possa ter atuado em situações fáticas pretéritas, dentro do período da investigação, ainda mais considerando que o GOI expressamente pontuou na visita in loco que eram recebidas reclamações sobre os preços praticados - obviamente tais reclamações versariam sobre fatos pretéritos. Ressalte-se que tal Decreto é apenas mais um dos diversos elementos no contexto, não sendo por si só determinante para a SDCOM.

685. Apesar das alegações do GOI de que os smelters são livres para determinar os preços, há vários elementos nos autos em sentido contrário. Cita-se, por exemplo, a existência de declarações de funcionários do próprio GOI neste sentido. Ressalte-se que tais declarações não foram contestadas pelo GOI em sua manifestação final, mas apenas trouxe o GOI o contexto em que foram ditas, o que não erode a existência de um declarações que apontavam a determinação de preços por meio do HPM.

686. Também é fato que o GOI detém o controle sobre todos os preços transacionados (por exemplo, por meio dos RKABs), e poderia tê-los fornecido para que a SDCOM tivesse condição de analisar tais alegações. Ao não o fazer, a SDCOM buscou preencher as lacunas. Não pode o GOI agora alegar que faltam evidências de que da forma de utilização do preço HPM como preço de transação ou ainda se alegar que a edição do normativo em 2020 provaria que anteriormente os preços HPM eram utilizados apenas para os royalties, sendo que o próprio GOI detém as evidências que permitiriam à SDCOM avaliar concretamente - tendo o GOI optado por não as fornecer.

687. Ressalte-se, por fim, que o GOI afirma que o fato de os mineradores e fundidores usarem o HPM não indica que o GOI interferiu nesta negociação, entretanto reitera-se que não só as declarações do GOI, bem como a própria legislação (artigo 2 do Regulation MEMR nº 7/2017) expressamente indica: "Holders of Metal Mineral Production Operation IUP in selling Metallic Minerals or Coal (...) produced must be guided by the Metal HPM". Ademais, o GOI teve diversas oportunidades para apresentar as evidências que considerasse úteis na questão, inclusive durante a visita. Relevante ainda que o próprio GOI indica as únicas alternativas dos mineradores - ou eles processam o minério ou cooperam com outros smelters - não há outra possibilidade.

688. Assim, ante a falta de colaboração nesta seara, foram utilizados os fatos disponíveis para fins de determinação final, sendo que esta autoridade tem amplos elementos a indicar a utilização do preço HPM para transações do níquel, como indicado no item 4.2.3.1.1.3, acima. Ressalte-se ainda que a União Europeia, em investigação sobre o mesmo setor e com os mesmos produtores, também alcançou a mesma conclusão .

689. Sobre as vendas da PT Antam, cabe ressaltar que tal ponto não foi determinante para a autoridade. Ademais, é fato estabelecido nos autos de que a PT Antam detêm, em conjunto com a própria manifestante, uma mineradora, para a qual não se foi fornecida nenhuma informação, e sequer revelada sua existência para esta SDCOM.

690. Com relação aos comentários sobre o benchmark sugerido pela peticionária, preço de exportação das Filipinas para a China, pontua-se que tal benchmark foi escolhido com base nos fatos disponíveis. Essa situação que será melhor examinada na seção seguinte deste documento. A SDCOM entendeu que os preços na Filipinas são um benchmark adequado, considerando que representam preços reais de mercado de minério de níquel, que refletem circunstâncias de um mercado livre, e, por este mesmo motivo, refletem também as pressões concorrenciais de outros mercados, como o próprio mercado Indonésio, em que há a proibição de exportações.

691. Neste contexto, já foi decidido até mesmo no âmbito da OMC que os preços externos ao país investigado utilizado como benchmark não precisa estar livre de intervenções governamentais:

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 such that recourse to out-of-country prices is warranted. At the same time, the market from which the benchmark is selected need not be completely free of any government intervention. The Appellate Body has found that the concept of "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 apuração se um determinado benchmark adequadamente se relaciona às condições no mercado investigado, conforme requisito do ASMC, nada no Artigo 14(d) indica que a autoridade investigadora deve investigar as causas da diferença entre o benchmark e a contribuição financeira investigada.

693. Ademais, a metodologia proposta pela PT IRNC, média ponderada entre o preço doméstico na Indonésia e o preço de exportação das Filipinas, evidencia não apenas um desconhecimento da jurisprudência da OMC por parte da manifestante, como uma também demonstra uma falta de lógica intrínseca. Como se sabe, o OSC reiteradamente afirmou que o uso de benchmarks externos ao país investigado só é autorizado quando se têm que os preços internos no país investigados estão distorcidos, por força do art. 14(d) ao ASMC. Assim, desafia a lógica um benchmark que combinaria preços no país investigado e preços externos, em regra, só seria cabível a utilização de preços externos em um cenário de descréditos dos preços internos.

694. Mesmo desconsiderando tal condições, o que se faz por epítrope, resta material e matematicamente absurda a proposta da PT IRNC em se ter 72% do peso para os preços indonésios como parâmetro para se realizar uma comparação com os próprios preços indonésios objeto do programa. Salienta-se, também, que um benchmark sempre será uma proxy, e que deve ser razoavelmente adequado. É forçoso ressaltar que, muito embora a IRNC tenha lançado tais comentários, não quantificou ou de qualquer forma tentou trazer aos autos quaisquer evidências que comprovassem suas alegações, ou ainda que eventualmente possibilitassem à autoridade ajustar o benchmark escolhido ou mesmo utilizar outro benchmark. E aqui cabe esclarecer, em resposta à manifestação final da PT IRNC, que a SDCOM assim entende pois a empresa não trouxe qualquer dado concreto apto a erodir o benchmark das Filipinas e tampouco trouxe qualquer outro benchmark minimamente razoável - considerando que é absolutamente ilógico o benchmark proposto pela PT IRNC (média entre preços da Indonésia e das Filipinas), por utilizar elementos de preços distorcidos. Assim, a empresa poderia ter trazido fundamentadamente qualquer outro benchmark (não ilógico) que considerasse mais adequado, o que não foi feito.

695. Assim reitera-se que a irresignação da PT IRNC não se coaduna com sua falta de colaboração também nesse sentido, ainda mais em se tratando de um benchmark que normalmente só é obtido em publicações de acesso restrito, aos quais a autoridade não tem acesso. Nesse contexto, a SDCOM utilizou para os fins de determinação final os preços das exportações das Filipinas para a China, informação trazida aos autos pela peticionária e considerada adequada pela autoridade brasileira e, coincidentemente, também pela autoridade europeia.

696. Sobre os comentários do GOI, pontua-se que os RKAB fornecidos em sede da 2ª informação complementar foram recebidos no idioma bahasa, em desconformidade com os requisitos da legislação aplicável e conforme o GOI já tinha sido alertado diversas vezes. Inclusive, no próprio parecer de início já houve desconsideração de documento por ter sido apresentado somente em bahasa. Sobre o apresentado na visita in loco, cabe ressaltar que a apresentação da versão com OCR não é suficiente para preencher os requisitos legais, ademais, o GOI tampouco protocolou os documentos no SEI, conforme foi alertado oralmente e constava expressamente da ata da visita. Deste modo, para todos os fins práticos da investigação, tem-se que não foram fornecidos os RKAB solicitados, sendo este mais um elemento (mas não o único) que levou ao uso dos fatos disponíveis.

697. Sobre os relatórios de produção e vendas e os estudos ambientais, cabe o mesmo comentário acerca dos requisitos legais de aceitação de dados por parte desta SDCOM. Quanto às atas de reunião, como o GOI afirmou, houve colaboração parcial, sendo que não foram fornecidas todas as atas, e as atas que foram fornecidas são denominadas "summary of minutes", ou seja, trata-se aparentemente de resumos. Sobre os relatórios de investimentos externos no IMIP, ao contrário do afirmado pelo GOI, não foi acordado nenhum prazo adicional para fornecimento de tais documentos, sendo que tal fato foi reiteradamente informado pela SDCOM ao GOI, conforme consta inclusive na ata de reunião assinada por ambas as partes.

698. Sobre os comentários do GOI acerca do volume de produção de minério de níquel, como a equipe da SDCOM explicou durante a visita in loco, não basta que seja apresentado o número, pois no processo de validação é necessário que a parte explique a fonte dos dados e comprove a exatidão da fonte, o que o GOI não logrou realizar. Do relatório da visita:

A equipe da SDCOM relembrou que seria necessário não apenas informar o total, mas explicar como o total foi calculado, apresentando memória de cálculo linha por linha (em especial para o ano de 2019, em que os dados vinham do sistema e dos relatórios manuais).

699. Com relação ao uso do preço HPM para royalties, os comentários da SDCOM já foram vertidos, não tendo sido a manifestação apta a mudar o entendimento desta autoridade. Convém ressaltar que as explicações do GOI sobre a fórmula foram utilizadas, conforme se depreende desta seção. O fato de o HPM ser calculado por cada empresa em nada impacta nas conclusões da SDCOM, haja visto que o elemento crucial "HMA" da fórmula é determinado pelo GOI. A partir do HMA a obtenção do HPM trata-se de mera operação aritmética.

700. Sobre as disposições sobre Letras de Crédito, o fato de as exportações terem supostamente aumentado (não foi apresentado link ou fonte concreta dos dados) não elimina as exigências para as Letras de Crédito já expostas:

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 (PEB);

d) a L/C estaria sujeita à auditoria pelo Ministério do Comércio; e

e) não seriam permitidas exportações que não atendam aos requisitos de L/C.

701. Muito embora seja normal o monitoramento de empresas e a regulação de setores, como trazido neste Parecer, as regulações e monitoramento do GOI vão muito além do mero monitoramento e regulação para proteção do meio ambiente - mas possibilitam ao GOI a determinação dos objetivos das mineradoras e influência nas decisões comerciais (até mesmo em decisões que tendem a contrariar o interesse da própria empresa). Neste sentido, a análise feita pela SDCOM sobre a existência de controle levou em consideração diversos elementos, como detalhado na seção concernente, tendo sido utilizadas todas as informações verificadas apresentadas pelas partes nos autos e ainda em conta os fatos disponíveis, ante a falta de colaboração das partes. Não se pode falar que as empresas têm controle sobre sua decisão de venda pelo fato de não haver qualquer sanção expressa aos mineradores que não desejem vender devido ao preço, pois trata-se de um cenário de preços controlados e de restrições à exportação - se as empresas não realizarem a venda nas condições impostas pelo GOI, terminarão por perecer, pois não há nenhuma outra alternativa. Assim, a SDCOM reitera sua conclusão pela existência de controle e existência de "public body" no âmbito do fornecimento de minério de níquel. A questão da designação como National Vital Objects é mais um elemento acessório a evidenciar o status das mineradoras e a importância dada pelo GOI a ela. Sobre a aprovação de mudanças societárias, não apenas o GOI não apresentou quaisquer elementos que evidenciariam que tal avaliação do desempenho obedeceria a critérios objetivos, bem como, de todo modo, reitera-se que a mera existência previsão de aprovação de mudanças societárias, combinada com a obrigatoriedade de desinvestimento e sua ordem de prioridade são elementos que evidenciam controle por parte do GOI. O Governo estar ciente da composição da gestão é absolutamente distinto do fato de o governo necessitar de aprovar quaisquer alterações.

702. A consideração do GOI sobre os royalties não parece fazer sentido, pois também para se estabelecer uma mineradora e extrair o minério de níquel é necessário compromisso e investimento considerável. A cobrança de um royalty inferior para o produto processado é uma escolha de política do governo que incentiva o processamento do níquel e aumento do valor agregado, em linha com os objetivos declarados do GOI.

703. Sobre as informações trazidas da PT Antam e PT Vale, o GOI não explicou em que as alegações trazidas afetariam a análise realizada, sendo fato que ambas as empresas mineram níquel e são forçadas a o processar internamente devido ao arcabouço criado pelo GOI, contribuindo para a oferta interna. O número de 27 porcento citado pelo GOI foi obtido, como já dito, com base na melhor informação disponível, conforme investigado pela União Europeia. Neste contexto, é razoável crer que tal porcentagem representa efeito significativo no mercado doméstico.

704. As alegações do GOI sobre o Regulamento MEMR nº 25 de 2018 já foram reiteradamente respondidas, sendo que esta SDCOM ressalta que o próprio GOI admitiu o suporte à indústria de aço inoxidável em sua manifestação final, in verbis, "SDCOM shall interpret Indonesian domestic processing obligation as the Indonesian support to the stainless steel industry.".

705. Sobre o fato de o GOI não ter apresentado a lista por setor e região das empresas que se beneficiaram do programa, este foi mais um elemento de falta de colaboração do GOI no âmbito do programa. Ainda que o GOI argumente não existir programa, e por isso supostamente não existir tal lista, no que esta SDCOM discorda frontalmente, como já citado neste Parecer foram solicitadas no âmbito deste programa várias outras informações cruciais negadas pelo GOI, como os RKABs, as informações sobre as transações no mercado do níquel, informações sobre os volumes de venda e etc.

706. Sobre a jurisprudência citada no caso US - Countervailing Measures (China): "Thus, for example, where a subsidy programme operates in an economy made up of only a few industries, the fact that those industries may have been the main beneficiaries of a subsidy programme may not necessarily demonstrate 'predominant use'.", a SDCOM não tomou sua conclusão de uso predominante aleatoriamente, mas sim pelo intuito comprovado do governo da Indonésia em criar uma indústria de aço inoxidável no país para aumentar o valor agregado das exportações, como foi dito reiteradas vezes por integrantes do GOI do mais alto escalão, como o próprio presidente Sr. Joko Widodo:

Joko said that Indonesia can ensure the security of foreign investment, which is conducive to the development of Indonesia's economy. He thanked Chinese enterprises for building smelters and bringing smelting technology, which has greatly increased the added value of Indonesia's nickel industry. By processing nickel ore into ferronickel, the added value is increased by 14 times, and then processed into stainless steel, the added value is increased by 19 times. Joko also said that he believes that people around him can also benefit from the development of the industrial park and have access to job and business opportunities.

4.2.3.1.9 Conclusão

707. Em suma, a SDCOM logrou confirmar, com vistas à determinação final, os indícios apresentados no início da investigação.

708. Reitera-se que a ausência de respostas por parte das empresas selecionadas e a parcial colaboração do GOI nos termos acima mencionados impediram que o mercado de níquel no país fosse avaliado, e consequente, que fossem avaliadas plenamente as condições de fornecimento de níquel.

709. As diversas medidas com relação ao níquel, em especial as medidas de restrição à exportação, controle e incentivo à construção de smelters, conforme elementos dos autos, confirmam os indícios de apoio, por parte do GOI, ao estabelecimento de uma indústria de aço inoxidável, garantindo efetivamente uma vantagem competitiva artificial através da redução indevida dos custos de insumos, em especial os aqui investigados, carvão e níquel.

710. Assim sendo, diante da falta de colaboração já exposta, com base nas informações contidas nos autos, concluiu-se que há elementos de prova indicando a existência de subsídios no fornecimento de minério de níquel por remuneração inferior à adequada.

711. Tal incentivo se configura em subsídio, já que envolve uma contribuição financeira por governo ou órgão público ou, alternativamente, uma contribuição financeira por entidades privadas por ele instruídas ou confiadas, nos termos das alíneas "c" e "d", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que as empresas investigadas passam a contar com recursos adicionais, uma vez que o custo de aquisição do minério de níquel é inferior ao que estas teriam que incorrer caso obtivessem estes insumos a preços de mercado.

712. Tendo em vista que os elementos de prova considerados nesta investigação apontam expressamente na legislação a existência de políticas relacionadas ao minério de níquel, de modo a privilegiar os produtores de aço inoxidável, tido como prioritário nos planos do governo, configura-se também como subsídio específico de direito, nos termos do art. 6º, caput, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas compensatórias.

4.2.3.1.10 Cálculo

713. No que atine ao cálculo, considerando a completa ausência de resposta de respostas por parte dos produtores/exportadores e as lacunas na resposta do governo, foram utilizados os fatos disponíveis nos autos.

714. Com relação à quantidade de minério de níquel envolvida, foram utilizados os dados do relatório do IMIP de 2017, que indicam uma produção de minério de níquel (Ni ore) e de níquel puro de, respectivamente, 3.082.000,0 toneladas e 32.069,38 toneladas, bem como uma concentração média do teor do Nickel ore de 1,9%. Assim, apurou-se um consumo de Ni ore por NPI a 1,8% de 101,44 t/t NiPI.

715. No que atine ao preço do minério de níquel, tem-se serem necessários dois elementos: os preços praticados nas compras das empresas investigadas e o benchmark para comparação.

716. Com relação aos preços praticados, como já dito, estes são controlados pelo HPM para todo o mercado indonésio, sendo razoável crer que esta seria a fonte primária dos preços praticados. Entretanto, houve absoluta falta de colaboração das partes neste contexto, que não forneceram os preços HPM para o período, apesar de instadas reiteradamente, conforme descrito na seção 4.2.3.1.1.3, acima. Desse modo, a partir de relatórios da empresa instalada no IMIP, Nickel Mines, em especial seus Quartely Activity Reports, apurou-se um custo médio do minério de níquel praticado na Indonésia (ou seja, controlado pelo preço HPM, como já indicado) no período investigado de 28.27 $/t.

717. Com relação ao benchmark a ser utilizado, o art. 14(d) do ASMC assim rege:

(d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of 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 mercado do país investigado. Entretanto, é jurisprudência pacífica que a autoridade pode buscar benchmark 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 reject in-country private prices if it reaches the conclusion that these are too distorted due to the predominant participation of the government as a supplier in the market, thus rendering the comparison required under 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 benchmarks through the application of a per se rule based on the role of the government as the predominant supplier of the goods. Rather, the Panel correctly interpreted Article 14(d) of the SCM Agreement as requiring that the issue of whether in-country private prices are distorted such that they cannot meaningfully be used as benchmarks is one that must be determined on a case-by-case basis, having considered evidence relating to other factors, even in situations where the government is the predominant supplier in the market. (grifo nosso)

719. Há, no mercado da Indonésia, diversos elementos que apontam para a distorção dos preços internos, como já visto extensivamente neste documento: os preços são controlados pelo fator HPM, há a proibição de exportação do minério do níquel, bem como a obrigação de processamento para manutenção das licenças de mineração, os incentivos com royalties etc. Este arcabouço de incentivo, no contexto da política de aumento de valor agregado, inundou o mercado doméstico do níquel com oferta direcionada pelas políticas do GOI, o que levou à depressão de preços, afetando todo o mercado doméstico da Indonésia.

720. Dessa forma, a SDCOM considerou o mercado de minério de níquel na Indonésia distorcido, recorrendo-se a benchmark externo. Neste contexto, as Filipinas, desde a proibição de exportações de minério de níquel na Indonésia, cresceram em volume de produção e exportações para o principal mercado do mundo, que é a China, se tornando o principal fornecedor do minério de níquel importado da China. Ademais, também é um país Asiático não distante da China, cujo minério de níquel tem as mesmas propriedades do minério Indonésio e concentração similar de níquel, além de serem extraídos de acordo com o mesmo processo a céu aberto e ter o minério de níquel com níveis de umidade similares, por serem ambos os países de clima similar. Por tais motivos, esta autoridade considerou razoável e adequada a utilização dos preços da Filipinas.

721. Estabelecido o país de benchmark, dados da publicação Asian Metals apontam o custo de mercado (exportação das Filipinas para a China) do minério de níquel de 53.88 $/t para o período investigado.

722. Considerando tal diferença no montante de níquel utilizado para produção do produto objeto da investigação, utilizando-se os fatos disponíveis, conforme informado pela peticionária, apurou-se, por meio de sistemática de pass-through considerada adequada pela SDCOM, conforme consta de documento submetido pela Aperam nos autos do processo em 08 de setembro de 2022, um montante de subsídios de 216,98 USD/t.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	216,98	10,62

Fonte: Melhor informação disponível - manifestação da peticionária, resposta do GOI e pesquisas da SDCOM.

Elaboração: SDCOM

4.2.3.2 Programa 2 - Fornecimento de carvão e coque por remuneração inferior à adequada

4.2.3.2.1 Fatos apurados sobre o programa

723. Inicialmente, pontua-se que, como já feito no Parecer de início desta investigação, considerando que toda a argumentação da peticionária a respeito do programa "J" da petição - "Fornecimento de eletricidade por remuneração inferior à adequada" - baseou-se em subsídios ao carvão para produção de eletricidade - preços máximos e obrigações do mercado interno (DMO), a SDCOM optou por consolidar ambos os programas em um só. Desse modo, buscou-se simplificar a apresentação lógica das informações, facilitando a ampla defesa dos interesses de todas as partes interessadas,

724. O carvão térmico e o carvão metalúrgico são matérias-primas fundamentais e extremamente relevantes em todas as fases de produção do NiPI, ou seja, na geração de energia, na secagem, na calcinação, na pré-redução e na redução do minério do Níquel. Destaca-se ainda que o próprio IMIP afirma ser o carvão a fonte de sua eletricidade (do relatório do IMIP, 2017, página 128: "Coal is the source of energy for IMIP Park"), o que confirma os indícios utilizados no início da investigação.

725. Confirmou-se também no decurso da investigação a existência de políticas com relação ao carvão, das quais se destacam a política de fornecimento no mercado interno - Domestic Market 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 regulada pelas Government Regulation nº 23/2010 (art. 84) e nº 96/2021 (art. 157), que regem que empresas de carvão devem preencher a quota interna antes de poderem exportar:

Article 84

(1) Holders of Mining Business License (IUP) for Production Operation and Special Mining Business License (IUPK) for Production Operation must prioritize the needs of minerals and/or coal for domestic purposes.

(2) The Minister stipulates the domestic need for mineral and coal as referred to in paragraph (1) includes the need for the domestic processing industry and direct use.

(3) Holders of Mining Business License (IUP) for Production Operation and Special Mining Business License (IUPK) for Production Operation may export minerals or coal produced after the fulfillment of domestic mineral and coal needs as referred to in paragraph (1).

(4) Further provisions concerning the procedure for prioritizing mineral and coal needs for domestic purposes shall be regulated by a Ministerial Regulation.

727. Em nível ministerial, foi reproduzido conforme MEMR Regulation nº 25 de 2018, artigo 13: "Mineral and Coal Mining Business Entities are obliged to sell minerals or coal to fulfil the supply of mineral and coal for the domestic demands", sendo que a MEMR Regulation nº 7/2020, na mesma linha, também reafirmaria a DMO.

728. Tem-se, portanto, que os produtores de carvão só podem exportar uma vez satisfeito o mercado interno. Tal mercado interno, por sua vez, é dividido em dois elementos: 1) carvão como insumo industrial; 2) carvão como insumo para produção de energia.

729. O GOI informou que, a cada ano, o MEMR faz a análise da demanda interna de carvão, considerando por exemplo, demandas da PLN, da indústria de cimento etc. É com base nesta análise que o nível da DMO é estabelecido. O Decreto MEMR nº 261, de 2019, estabeleceu a DMO em 25% (25% da produção da empresa tem que ser vendida domesticamente).

730. Na visita in loco, o GOI informou que há a reconciliação de dados da empresa e do governo entre o que foi vendido internamente e a produção, por meio dos relatórios recebidos trimestralmente. Por exemplo, se a empresa tem 1 milhão de toneladas/ano como estabelecido em seu plano de produção, e tem-se uma DMO de 25%, tem-se que a empresa deve fornecer internamente 250.000 toneladas/ano, 62.5000 toneladas/trimestre. O GOI então compara o relatório recebido trimestralmente com a meta de realização do plano de produção.

731. O GOI também informou que a DMO tem sido cumprida pelas empresas e que, nos casos em que algumas empresas de carvão não cumpriram o DMO, a demanda interna já estava atendida.

4.2.3.2.1.2 Da política de preços máximos do carvão

732. Confirmou-se no decurso do processo a existência de política de preços máximos do carvão vendido para a eletricidade. Tal política é advinda em especial do Decreto MEMR nº 1395/k/30/MEM/2018 e a Regulation 261/K/30/MEM/2019, e estabelece o preço máximo do carvão quando da venda para uso em eletricidade pública (ou eletricidade para os fins de interesse público, como se verá mais adiante) em $70/t.

733. Isto posto, considerando a falta de colaboração das empresas investigadas e as lacunas nas informações prestadas pelo governo da Indonésia, conforme notificado no Ofício SEI Nº 228693/2022/ME, em especial a ausência dos RKABs, que permitiriam avaliar os volumes de produção e preços de transação do carvão, e a ausência de informações acerca do consumo interno, não restou outra alternativa à autoridade senão utilizar os fatos disponíveis no processo, a teor do art. 79 do Decreto nº 1.751, de 1995.

734. Os fatos disponíveis no processo, confirmados na visita in loco, indicam que a Regulation MEMR nº 7/2017, mais recentemente emendada pela Regulation MEMR nº 11/2020, estabelece em seu art. 2º a obrigatoriedade das empresas detentoras de licença de produção de carvão seguirem o Harga 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 IUP, Production Operations Metal Minerals IUPK, and Coal Production Operation IUPK in selling Metal Minerals or Coal products must be guided by Metal HPM or HPB.

735. Tal preço HPB é determinado por uma fórmula estabelecida no Decree of Director General of Mineral and Coal Nº 515.K/ 32/DJB/2011. O artigo 1º de tal Decreto traz ainda importantes definições e 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 Coal Benchmark Price for steam (thermal) coal and coking (metallurgical) coal.

2. Primary HPB (price marker) means Coal Benchmark Price for 8 (eight) primary coals.

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 from coal price index for previous month.

5. Steam (thermal) coal HBA means average price from steam coal price index (thermal) for relevant month calculated in equivalent coal quality of 6322 kkal/kg Gross as Received (GAR).

Article 3

(1) Formula for steam (thermal) Coal Benchmark Price as stated in Article 2 paragraph (1) shall be a benchmark in calculating steam (thermal) Coal Benchmark Price for primary coal and other coal types.

(2) Primary Coal Benchmark Price as referred to in paragraph (1) shall be determined using formula with the following variables:

a. Steam (thermal) Coal Benchmark Price - HBA;

b. Coal Calorific Value;

c. Moisture Content;

d. Sulfur Content; and

e. Ash Content.

(3) Other Coal Benchmark Price as referred to in paragraph (1)

shall be determined using formula with the following

variables:

a. Primary HPB (price marker);

b. Coal Calorific Value;

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 MINERAL AND COAL

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 - Coal Calorific Value (i)/ 6322 [Fraction]

A (i) = (100 Coal Moisture Content (i) / (100 8) [Fraction]

B (i) = (Coal Sulfur Content (i) 0.8) * 0,4 [USD/ton]U (i) = (Coal Ash Content (D - 15) * 0.4 [USD/ton]

(i) = 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) = Coal Calorific Value (i) / 6322 [Fraction]

A (i) = (100 - Coal Moisture Content (i) / (100 8/FKA(i)) [Fraction]

FKAG(i) = (((100,--3)/(100 - Coal Moisture Content(i)

Coal Moisture Content (i) + (100 8))/100 [Percent]

B (i) = (Coal Sulfur Content (i) 0.8) * 4 [USD/ton]

U (i) = (Coal Ash Content (I, 15) * 0.4 [USD/ton]

(4) = price marker 8 [USD/ton]

737. No original em Bahasa:

<<IMAGEM 4 AQUI>>

738. A SDCOM logrou encontrar documento mais recente que faz menção à formula do HPB. No MEMR Regulation of director general of mineral and coal nº 480K/30/DJB/2014, é estabelecida a seguinte fórmula para o HPB:

1) Calorific value > 4200 kcal/ kg GAR

HPB FC/RC = FP* ((HBA*K*A) - (B + U))*PS (USD/ ton)

Note:

a. HPB FC/RC = HPB fine coal and/ or reject coal (USD/ ton)

b. HBA = Reference Price of Coal (USD/ ton)

c. FP = factor of deduction (fraction)

d. K = calorific value of coal (fraction)

e. 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 £ 4200 kcal/ kg GAR

a. TM < 35%

HPB FC/RC = FP* ((HBA*K*A) - (B + U))*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)

4. K = calorific value of coal (fraction)

5. A = (100 - water content of coal)/ (100 - 8/FKA) (fraction)

6. FKA = (((100 - 8)/(100 - water content of coal))* water content of coal)+(100 - 8))/100 (USD/ ton)

7. B = (sulfur content of coal - 0.8)*PB (USD/ ton)

8. U = (ash content of coal - 15)*PU (USD/ ton)

9. PB = deduction of sulfur content (USD/ ton)

10. PU = deduction of ash content (USD/ ton)

11. PS = multiplication of Sodium content (fraction)

b. TM ^{3} 35%

HPB FC/RC = FP* (HBA*K*A)*PS (USD/ ton) (Grifo nosso)

739. Assim, nota-se que a fórmula mais recente incorpora um 'fator de dedução'.

740. Do exposto, tem-se que o Harga Batubara Acuan - HBA é um dos elementos do HPB. O HBA é publicado mensalmente pelo GOI e é estabelecido utilizando-se 4 diferentes índices. Por exemplo, a Ministerial Decision nº 2 K/30/MEM/2020, estabeleceu o preço de referência para o carvão - HBA - para janeiro 2020 em 65,93 USD/ton.

741. Pontua-se também que o Government Regulation nº 8, de 2018, alterou o Government Regulation nº 23, de 2010, determinando, em seu artigo 1, a inclusão do Artigo 85A:

Article I.

Article 85 a

The price set by the Minister is valid for the same coal specifications from coal providers for domestic interests.

Determination of a separate coal selling price by the minister with

pay attention to the public interest.

742. Ante a total ausência de colaboração dos produtores/exportadores e a parcial colaboração do GOI, esta SDCOM entende que também os preços para uso industrial devem sempre seguir o HPB.

743. Assim, há duas vertentes sobre os preços para o carvão na Indonésia: 1), o preço para fins de interesse público, limitado a 70 USD/t; 2) Os preços HPB, calculados por cada empresa a partir dos HBA.

4.2.3.2.1.3 Do enquadramento do IMIP

744. A ausência de colaboração da empresa investigada instalada no IMIP impediu a autoridade de ter acesso a informações e documentos no contexto do programa e o enquadramento do IMIP sob as duas vertentes, a fim de se verificar qual seria, de fato, o preço de compra do carvão adquirido pelo IMIP. A falta de colaboração das empresas do IMIP tampouco permitiu à autoridade ter acesso a documentos como o Electric Power Supply Business Plan (RUPTL), o que também poderia elucidar tal questão.

745. As próprias respostas do GOI neste contexto também se mostraram erráticas. Na resposta ao questionário, hora o governo afirmou que o teto de 70 USD/t aplicava-se a "domestic power plants" (página 41 da resposta ao questionário do GOI), hora afirmou que se aplicava somente à PLN. Questionado acerca de tal inconsistência múltiplas vezes, o GOI sempre referenciou ao texto da Regulation, sem apresentar quaisquer outros elementos de prova dos quais comprovadamente dispunha (como os preços de transação de carvão reportados nos RKAB).

746. Assim, impossibilitado de se verificar tal condição tanto por parte da empresa, quanto pelo governo, recorreu-se aos fatos disponíveis no processo. A SDCOM logrou encontrar declaração do próprio GOI que aponta que haveria enquadramento do IMIP no âmbito da energia para fins públicos:

On the occasion, Wanhar also revealed the requirement for business area holders (wilus) to have an Electric Power Supply Business Plan (RUPTL). According to him, currently there are three wilus holders on the island of Sulawesi besides PT PLN (Persero), namely PT Indonesia Morowali Industrial Park (IMIP), PT Karampuang Multi Daya (KMD), and PT Sultra Energi Indonesia (SEI). Of the three wilus holders, only PT IMIP has an approved RUPTL.

"Two other wilus holders, namely PT KMD and PT SEI, must immediately prepare the RUPTL as the basis for implementing the business of providing electricity for the public interest," Wanhar asserted.

747. Há ainda duas apresentações oficiais do GOI · que listam o IMIP como produtor de eletricidade para os fins de interesse público, pois o IMIP, com o documento RUPTL está inserido na eletricidade para fins públicos, como afirma o próprio GOI:

<<IMAGEM 5 AQUI>>Figura 1 - Apresentação sobre o setor de energia para fins públicos

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 quadro à direita, que sobre o RUPTL é expressamente ressaltado "PLN AND NON PLN", e ainda "Basic implementation of electricity supply business for the public interest" (grifo nosso). Na mesma apresentação, o GOI ainda deixa claro certas obrigações dos "electricity supply business area Holder", como o IMIP: ""Electric power transmission businesses are obliged to open up opportunities for joint utilization of the electric power transmission network (lease mechanism/ power wheeling) for the public interest by taking into account the capacity of the transmission network and the Grid Code".

749. Cimenta de vez a questão acerca do enquadramento do IMIP no contexto da energia para o 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 include the following types of business:

a. power generation;

b. power transmission;

c. power distribution;

and/or d. power sale.

(2) Public power supply business as intended by section (1) may be conducted in an integrated manner.

(3) Public power supply business as intended by section (2) shall be conducted by 1 (one) entity within 1 (one) business area.

(4) Limited business areas as intended by section (3) shall also apply to public power supply 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 self-reliant communities engaged in the field of power supplies.

(2) State-owned entities as intended by section (1) shall receive first priority to conduct public power supply business.

(3) The competent Government or regional governments shall allow opportunities to region owned entities, private entities, or cooperatives to conduct integrated power supply business in areas where power service is not yet provided.

(4) Where no region-owned entities, private entities, or cooperatives are able to supply power in those areas, the Government must commission a state-own entity(ies) to supply power. (grifo nosso)

750. Importante notar que, no original em bahasa, o termo para o interesse público - "kepentingan umum", é usado tanto no artigo 11 da Lei 30/2009, quanto no Decreto MEMR 1395K/30/MEM/2018, quando este estabelece o teto de 70 USD/t para o carvão, não procedendo a interpretação do GOI de que somente a empresa estatal PLN se enquadraria em tal teto, haja visto que 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 para a PLN, em mais uma evidência de que sua energia é para o interesse público. A SDCOM lamenta que o GOI não tenha fornecido tais relevantes informações, das quais certamente dispunha:

Last year, IMIP signed a power purchase agreement with state electricity firm PLN that paved the way for the latter to buy excess electricity of 5 megawatts (MW) from IMIP's power plants at the Morowali industrial complex.

752. Assim, os elementos nos autos, tanto pela legislação, quanto pelos documentos do próprio GOI, ou seja, elementos de fato e de direito, são claros na possibilidade de o IMIP fornecer energia no âmbito do interesse público, e, portanto, se enquadrar no teto de 70 USD/t em suas compras de carvão.

753. Os fatos disponíveis no processo também indicam que as empresas produtoras dentro do IMIP teriam acesso ao carvão conforme tabelado pelo HPB, conforme explicado neste documento.

4.2.3.2.2 Elementos de fato ou de direito (Base legal/documental)

754. O programa de fornecimento de carvão a remuneração inferior à adequada baseia-se 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;

V. Government Regulation nº 14/2015, National Industry Development Master Plan 2015 - 2035 (Rencana Induk Pembangunan Industri Nasional - RIPIN);

VI. Government Regulation nº 81/2019, sobre royalties;

VII. Presidential Regulation nº 2 de 2015, plano de política industrial 2015-2019;

VIII. Presidential Regulation nº 2 de 2018, plano de política industrial 2015-2019;

IX. Decreto MEMR nº 1395/k/30/MEM/2018

X. Decree of Director General of Mineral and Coal Nº 515.K/ 32/DJB/2011

XI. MEMR Regulation nº 25 de 2018;

4.2.3.2.3 Contribuição financeira

755. A contribuição financeira do programa reside na constatação de que os produtores do produto objeto da investigação tiveram acesso ao carvão, importante insumo na produção do aço inoxidável, por remuneração inferior à adequada, nos meses em que se aplicou o teto de 70 dólares por tonelada e o preço HPB era superior a tal montante. Assim, nos termos das alíneas "c" e "d", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, as empresas que participaram do programa dispõem de evidente benefício.

756. Acerca da enquadramento como "órgão público" ou entidade "instruída ou confiada", a SDCOM reforça o entendimento exposado nas seções 4.2.3.1.3.1 e 4.2.3.1.3.9, haja visto que também se aplicam aos mineradores de carvão, com leves adaptações, as medidas ali explicadas, que evidenciam o controle para que estas desempenhem as funções governamentais que o GOI deseja:

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 proibida no período analisado (recentemente houve proibição por um período), havia a obrigatoriedade de fornecimento doméstico - DMO, a fim de se preencher a demanda local. Assim, pelo fato de os preços serem tabelados pelo GOI, subsiste o mesmo efeito de deturpação nas condições normais de mercado e de subversão da lógica econômica com relação aos mineradores de carvão, no que foi assim resumido por um expert:

Imagine you are the owner of a coal mine in Indonesia, or a trader. If you are a rational economic actor motivated by profit, you would be crazy not to chase big margins on global markets and instead supply domestic power plants at an artificially low rate.

Looked at in this way, the export ban is the state's way of telling these companies they really have no choice but to leave those profits on the table and make sure the domestic market is supplied first, even if it goes against their own economic self-interest. They can chase exports later. And I guess they feel the message was delivered, because within a matter of days the export ban was partially lifted.

4.2.3.2.4 Especificidade

758. Salienta-se que GOI não apresentou lista, por indústria e por região, das empresas na Indonésia que participaram deste programa durante o período de investigação, e tampouco forneceu as transações efetuadas no mercado de carvão na Indonésia. Ademais, ante à ausência de respostas às informações solicitadas por parte dos produtores/exportadores selecionados, bem como as lacunas na resposta do GOI, conforme já apontado, foram utilizados, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis.

759. É fato que o carvão é importante insumo na indústria de aço inoxidável, sendo que ademais, é a fonte primordial de energia no IMIP (conforme dados do IMIP em seu relatório anual). Tem-se ainda que, conforme já citada apresentação oficial do GOI, apenas 55 empresas em toda a Indonésia detêm o papel de "Electricity supply business Area", aptas a comprar carvão com preço regulado pelo GOI. Salta também aos olhos, que destas 55 empresas, o IMIP é, de longe, o maior produtor de energia (não se considerando a PLN), sendo que, conforme dados do GOI, o IMIP produz 2,478 MW de energia, produzindo duas vezes e meia mais energia que o 2º colocado, e quase cinco vezes mais energia do que o 3º colocado.

760. Assim, tendo em vista os fatos disponíveis nos autos, que indicam o intuito governamental na criação de um arcabouço de incentivos à instalação de empresas do setor siderúrgico de modo a aumentar o valor agregado dos recursos minerais do país, de forma a atender ao disposto nas políticas industriais do país, configura-se o programa aqui tratado como subsídio específico de fato, nos termos do art. 6º, §3º, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas compensatórias.

4.2.3.3 Manifestações prévias à Nota Técnica acerca do programa

761. O GOI e a PT IRNC afirmam que o preço máximo do carvão de USD 70/t aplica-se somente à aquisição de carvão pela PLN (empresa estatal de eletricidade). Assim, os compradores de carvão que não sejam a PLN não seriam elegíveis para a aquisição de carvão ao referido preço limite, e não existiria qualquer benefício aos investigados, conclusão que também fora alcançada pela autoridade da União Europeia.

762. A Aperam afirmou, com relação ao carvão de coqueria, que o Governo da Indonésia afirmou que a maior parte é exportada, sendo que "apenas pequena parcela é utilizada no mercado interno". Entretanto, embora tenha apresentado dados de produção de tal tipo de carvão à equipe da SDCOM, o Governo da Indonésia atestou que estes foram compilados de dados apresentados pelas empresas, sendo que "as empresas podem editar (atualizar) os dados posteriormente". Assim, o Governo da Indonésia afirmou que "os dados compilados pelo MEMR não são revisados uma vez extraídos do sistema, por isso pode a informação estar discrepante." Conclui-se, portanto, que tais informações não podem ser verificadas devidamente.

763. A Aperam, em manifestação de 9 de setembro de 2022, argumentou que o Governo da Indonésia teria confirmado, em sua resposta ao questionário, que haveria a obrigação de venda de carvão no mercado interno daquele país.

764. Ademais, a Aperam defendeu que os subsídios concedidos decorrentes do fornecimento de carvão a preços com remuneração inferior à adequada seriam transferidos (pass-through) aos produtores de aços inoxidáveis, incluindo o produto objeto da investigação.

765. Reiterou que o Decreto 23, de 2018, trataria especificamente da determinação para que o percentual mínimo de 25% da produção total de carvão fosse fornecido ao mercado interno da Indonésia.

766. Acrescentou que o Regulamento do Ministério das Minas e Energia nº 19, de 2018, implementaria provisões e teria ratificado o objetivo de fornecimento de carvão para o mercado interno. Assim, restaria claro que, além de explicitamente determinada a obrigação de venda de carvão no mercado interno, tal obrigação englobaria todo tipo de carvão, independentemente de utilização, incluindo, mas não se limitando, para a utilização na geração de energia elétrica pública, embora seja demonstrada uma preocupação em especial com tal fornecimento.

767. Defendeu que, a análise do Decreto Nº 261, de 2019, demonstraria que, contrariamente ao alegado pelo Governo da Indonésia, a obrigação de fornecimento de carvão no mercado interno não estaria limitada ao fornecimento de energia elétrica pública. Nesse sentido, comparou o determinado no artigo 4, mencionado pelo Governo da Indonésia, com o artigo 2 do mesmo Decreto. Verificar-se-ia, dessa forma, que os mencionados artigos tratariam de duas obrigações distintas e complementares: a obrigação de fornecimento de carvão no mercado interno, independentemente de utilização, por um lado, e a obrigação de cumprir o fornecimento de carvão para energia elétrica pública estabelecidos em contrato de venda. Notar-se-ia, inclusive, que apenas o artigo 2 faria referência ao artigo 1, que determinaria a obrigação de fornecimento de 25% do volume de produção para vendas no mercado interno de carvão, também de maneira geral, não se limitando a nenhum tipo de aplicação específica.

768. Confirmando tal entendimento, os artigos 3 e 7 do mesmo Decreto estabeleceriam sanções às empresas fornecedoras de carvão que não cumprirem com as obrigações determinadas nos artigos 1 e 4.

769. No que diz respeito aos preços, reiterou que o Regulamento do Governo nº 8, de 2018, alterou o Regulamento do Governo nº 23, de 2010, determinando, em seu artigo 1, a inclusão do Artigo 85A neste último Regulamento, com a seguinte redação:

85A In order to fulfill the need for coal for domestic interests as referred to in Article 84 paragraph (1), the Minister shall set a separate selling price for coal

770. Paralelamente, notou que o Regulamento 19, de 2018, se referiria explicitamente a:

PROCEDURES FOR DETERMINING THE SELLING REFERENCE PRICE OF METALLIC MINERALS AND COAL.

771. Assim, tal Regulamento incluiria, no Regulamento do Ministério de Energia e Recursos Minerais nº 7, de 2017, o artigo 8A, com a seguinte determinação:

Article 8A

(1) In order to meet the needs of coal for domestic purposes, the Minister shall determine 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 be conducted by taking into account the public purposes.

772. Restaria claro que a determinação de se estabelecer o preço de venda do carvão no mercado interno não seria exclusiva para fins de fornecimento de energia pública, aplicando-se a todas as vendas de carvão.

773. Da mesma forma, o Regulamento do Ministério de Energia e Recursos Minerais nº 11, de 2020, alteraria o Regulamento do Ministério de Energia e Recursos Minerais nº 7, de 2017, deixando claro, de início, que se trataria de fixação de preço de venda de referência a ser praticado, não se tratando de simples base para cálculo de royalties.

774. O artigo segundo do mencionado Regulamento claramente determinaria que se trata de estabelecimento de preços a serem praticados nas operações de venda de carvão no mercado interno.

775. A Aperam sustentou que não haveria limitação quanto ao tipo de utilização ou adquirente do carvão. Ademais, restaria claro que os vendedores de carvão seriam obrigados a adotar os preços fixados pelo Governo da Indonésia em suas operações de venda. Nesse sentido, seria óbvio que, caso tais preços fossem simplesmente utilizados para fins de cálculo de pagamento de royalties, não haveria necessidade de obrigar os vendedores a praticar o preço fixado pelo Governo, bastando cobrar os royalties sobre o valor definido por ele.

776. Verificar-se-ia que, além de se tratar do preço de venda a ser praticado nas operações de carvão no mercado interno, tais preços também seriam considerados para fins de cálculo dos royalties a serem pagos por tais vendas.

777. Cabe destacar que a obrigação de praticar os preços fixados pelo Governo da Indonésia nas operações de venda de carvão no mercado interno ainda seria reforçada pelo estabelecimento de sanções às empresas que não praticarem tais preços.

778. Por fim, citou que o Decreto MEMR 1.395, de 2018, mencionado pelo Governo da Indonésia, relativamente aos preços do carvão para energia elétrica faria referência ao já mencionado artigo 8A do Regulamento MEMR 19, de 2018, que alterou o Regulamento MEMR 7, de 2017, demonstrando que tal Decreto, embora estabeleça preços de venda de carvão para fins de energia elétrica pública, não limitaria 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), a preços controlados e determinados pelo governo da Indonésia, que estipularia valores abaixo do mercado, implicando em remuneração inferior àquela que seria adequada

780. Notou ainda que o Coal Price Reference (HBA) seria considerado na determinação do Benchmark Coal Price (HPB) e que os preços considerados pelo Governo da Indonésia para o cálculo do Coal Price Reference (HBA) seriam baseados em quatro índices distintos: Newcastle Coal Index, Global Coal Index, Platts and Indonesia Coal Index (ICI). O preço do HBA, portanto, estaria alinhado com preços de mercado.

781. Em sua manifestação acerca do uso dos fatos disponíveis, o GOI pontuou que o representante do MEMR participou da verificação, tendo prestado informações suficientes sobre as fontes dos dados de produção de carvão, o que seria confirmado no parágrafo 139 do relatório da visita. Sobre os dados de produção, o governo informou que nunca foi solicitado tal dado, apenas sobre coking coal. Pontuou ainda que coking coal está além do escopo da investigação, pois é importado, não havendo subsídio nesse âmbito.

4.2.3.4 Manifestações posteriores à Nota Técnica acerca do programa

782. O GOI pontuou em sua manifestação final que os exportadores podem exportar mesmo sem ter preenchido os requisitos da DMO. Sobre o HPB, aduziu que o fator corretivo é necessário para se ter um HPB justo de acordo com a qualidade de um carvão particular. Acrescentou que o HPB tem função similar ao HPM, e somente é aplicável aos royalties, de acordo com as Regulations MEMR Nos. 7/2017 e 25/2018 e que o preço de 70 usd/t foi fixado para um uso específico, geração de energia pública pela PT PLN, em linha com o regulamento. Neste contexto, aduziu o GOI, o entendimento da SDCOM de que o preço para uso industrial deve seguir o HPB é errado, e "coal selling price" não significa "HPB" - o artigo 85 da Government Regulation nº 8, de 2018 usa uma terminologia específica.

783. Afirmou ainda o GOI que, ao contrário do afirmado pela SDCOM no parágrafo 624, o carvão DMO não é unicamente destinado à geração de eletricidade, sendo este o objetivo primário da DOM, mas não exclusivo. Trouxe o GOI publicação que comprovaria, em seu entender, que o teto de preços do carvão é destinado ao cumprimento das necessidades da PLN.

784. Finalizou o GOI rogando à SDCOM que decida na linha da União Europeia, em que aquela autoridade apontou não haver benefício aos produtores indonésios advindo do subsídio, em investigação com cooperação dos produtores e do GOI.

785. A PT IRNC reiterou em sua manifestação final as posições do GOI acerca do uso do HPB somente para royalties, acerca do teto da eletricidade e sobre o uso da decisão da União Europeia.

786. A peticionária reafirmou em sua manifestação final as conclusões da SDCOM, e pontuou que não caberia nenhuma alteração nos montantes já apurados e apresentados na Nota Técnica.

4.2.3.5 Comentários da SDCOM

787. Conforme detalhadamente exposto, há fortes evidências de que o IMIP (e, por consequência, a PT IRNC), teve acesso ao carvão com os preços máximos estabelecidos pelo GOI, considerando os próprios termos em bahasa utilizados na legislação aplicável e documentos oficiais do GOI já descritos. Assim, considerando a ausência total de colaboração por parte da empresa, utilizou-se os fatos disponíveis no processo.

788. Neste ponto, importante salientar que, ao contrário do afirmado pelo GOI, é a própria legislação da Indonésia que iguala "coal selling price" com o "HPB", conforme, por exemplo, o artigo 2 da Regulation 515.K/32/DJB/2011, que é a Regulation específica sobre o preço HPB:

Article 2

(1) Director General on behalf of Minster hereby determine Coal Benchmark Price for steam (thermal) and coking (metallurgical) coal on a monthly basis based on formula by taking into account the average coal price index under the prevailing market mechanism and/or according to price generally acceptable in international market.

(2) Coal Benchmark Price as referred to in paragraph (1) shall be used as coal benchmark price for the holder of Operation Production IUP and Operation Production IUPK and PKP2B for selling coal. (grifo nosso).

789. Ademais, não se pode esquecer que o uso dos fatos disponíveis se deu pela falta de colaboração das partes interessadas, tendo a SDCOM recorrido à legislação justamente para preencher as lacunas impostas pela falta de colaboração.

790. A SDCOM concorda com a peticionária de que há tabelamento dos preços internos praticados na venda do carvão. Entretanto, este preço praticado seria o HPB, e não o HBA, como parece aduzir a peticionária. Assim, muito embora o HBA tenha o elemento internacional, o mesmo constatado com o níquel e o preço HPM se aplica aos preços HPB.

791. Com relação às conclusões da União Europeia, esta autoridade não tem condições de saber a documentação por eles analisada. Sabe-se que as investigações antissubsídios são notoriamente complexas e de difícil acesso à documentação, em especial quando se trata de documentação em bahasa, como no presente caso. Assim, a conclusão expressa pela autoridade europeia não é apta a erodir os fortes elementos considerados no presente caso. Mesmo que o GOI alegue ter havido plena cooperação naquele caso, não se pode esquecer que foi realizada comparação com o benchmark considerado para o período da investigação, o que pode não ter resultado em benefício no caso da outra autoridade.

792. Ademais, repisa-se ainda que não se sabe a evidência coletada naquele caso - por exemplo, a obtenção de apresentação oficial do GOI que evidencia que no IMIP se produz eletricidade para fins públicos foi fruto de extensa pesquisa por parte dessa SDCOM. Tal apresentação oficial do GOI em bahasa, evidência de dificílima obtenção por parte desta autoridade, muito provavelmente não foi analisada pela autoridade da União Europeia e contradiz a conclusão daquela autoridade, expressamente apontando o IMIP como produtor de energia para fins públicos (classificando-o no número 50 na lista de "holders of electricity supply business area", em tradução automática):

<<IMAGEM 6 AQUI>>

793. Para os fins de determinação final, esta SDCOM logrou encontrar, como já dito acima, outra apresentação do GOI (mais especificamente, do MEMR) em que é reafirmado os termos da legislação: "The business of providing electricity for the public interest is carried out by state-owned enterprises, regionally-owned enterprises, private enterprises, cooperatives, and non-governmental organizations operating in the field of electricity supply".

794. Ainda mais grave é o fato de que, mesmo tendo ocorrido verificação in loco desta SDCOM no governo, a informação de que o IMIP fornecia energia para fins públicos não foi fornecida à SDCOM em nenhum momento. A SDCOM lamenta que a colaboração do GOI se deu parcialmente, pois, como é notório agora, o MEMR tinha plenas condições de apontar o IMIP como produtor de eletricidade para fins públicos, o que não foi feito.

795. A publicação trazida pelo GOI somente destaca que o objetivo principal do teto de 70 dólares é beneficiar a PLN, o que nada indica sobre os demais produtores de energia para fins públicos, como o IMIP comprovadamente o é - o GOI não teceu nenhum comentário sobre dita apresentação e tampouco a PT IRNC, empresa do grupo do IMIP.

796. Sobre os comentários do GOI, muito embora o representante do MEMR tenha de fato explicado a fonte dos dados, estes não foram evidenciados (como por exemplo, por meio da apresentação dos relatórios recebidos pelo GOI). Reitera-se que a SDCOM sempre deixou claro durante a visita que não bastava verificar os dados no sistema, o GOI teria que evidenciar a fonte dos dados reportados. Ademais, como está descrito no próprio parágrafo 139 do relatório da visita, invocado pelo GOI, o governo informou que não poderia fornecer acesso aos dados:

139. A equipe da SDCOM solicitou que fossem apresentados os volumes anuais de produção de coking coal. O GOI informou que as empresas são obrigadas a informar o governo mensal e trimestralmente por meio do sistema Minerba Online Monitoring System (https://moms.esdm.go.id/). O governo apresentou planilha com volume de algumas empresas, o que foi verificado no sistema, não tendo sido encontradas divergências. A equipe da SDCOM então informou que seria necessário verificar tais dados reportados, tendo o GOI explicado que a informação é das próprias empresas e que o governo não teria acesso. (Grifo nosso)

797. Assim, ressalta-se que o GOI já detinha os dados cuja comprovação foi solicitada, por exemplo, por meio dos RKAB. De todo modo, como o próprio GOI informou durante a visita in loco, "as empresas podem editar (atualizar) os dados posteriormente" e "os dados compilados pelo MEMR não são

revisados uma vez extraídos do sistema, por isso pode a informação estar discrepante.", ou seja, depreende-se que uma verificação de fato só seria possível nas empresas, e o sistema MOMS não necessariamente contém os dados efetivos. Assim, o ocorrido durante a visita ao GOI não é o principal fator determinante para o uso dos fatos disponíveis com relação a tal ponto, mas sim a total falta de colaboração por parte das empresas produtoras.

798. Com relação aos dados de consumo interno do carvão, ressalta-se que o carvão sempre foi, desde o início da investigação, um programa investigado, havendo seção específica da visita in loco acerca do tema. Sabe-se ainda que a equipe pode solicitar informações adicionais durante a visita, sendo tal informação essencial para a verificação da DMO, por exemplo. Como descrito na ata e relatório da visita, o governo não forneceu as informações solicitadas pela SDCOM sobre o carvão, ponto 8 dos documentos solicitados durante a visita, o que incluiria o consumo interno (ainda que por follow up question). De todo modo, pontua-se que não foi tal ponto o principal que levou a BIA nesse programa, mas sim o conjunto de lacunas e falta de colaboração dos produtores.

799. Sobre os comentários do GOI sobre o parágrafo 624 da Nota Técnica, esta SDCOM aponta que houve provavelmente um problema na tradução efetuada pelo GOI, pois o parágrafo 624 não diz respeito a qualquer posicionamento desta SDCOM, tratando-se de manifestação da APERAM. De todo modo, a SDCOM concorda com o GOI de que o carvão da DMO não é exclusivamente utilizado para geração de eletricidade. Sobre o uso do HPB apenas para royalties e sobre o fator corretivo do HPB, a falta de colaboração das partes levou à SDCOM a utilizar os fatos disponíveis, e estes indicam que o uso do HPB não é adstrito aos royalties e o fator corretivo é elemento de absoluta discricionariedade. Ressalte-se ainda que o GOI detinha as informações capazes de dirimir quaisquer dúvidas nesse sentido - que intencionalmente não foram apresentadas.

4.2.3.5.1 Conclusão

800. A SDCOM concluiu, com base nas informações contidas nos autos, a existência de subsídios concedidos por meio do fornecimento de carvão por remuneração inferior à remuneração adequada. Tal incentivo se configura em subsídio já que envolve uma contribuição financeira por governo ou órgão público, nos termos das alíneas "c" e "d", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, o que confere benefício às empresas alcançadas pelo programa em questão, uma vez que tais empresas passam a contar com recursos adicionais em relação àquelas que não participam do programa.

801. Como já tratado, configura-se o programa aqui tratado como subsídio específico de fato, nos termos do art. 6º, §3º, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas compensatórias, no que tange ao mercado para o consumo que não para eletricidade, e específico de direito, nos termos do art. 6º, caput, do Regulamento Brasileiro, com relação ao carvão para eletricidade.

802. Ainda, diante da falta de colaboração já exposta e com base nos elementos indicados, conclui-se que os preços internos HPB para o carvão encontram-se distorcidos como o estão para o níquel e o 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 de respostas por parte dos produtores/exportadores e as lacunas na resposta do governo, foram utilizados os fatos disponíveis nos autos.

804. Como exposto, constatou-se a existência de um programa tanto sobre a vertente do carvão para a eletricidade (com teto estabelecido pelo GOI), quanto pela vertente do carvão como insumo industrial (onde concluiu-se, com uso dos fatos disponíveis, que os preços HPB não refletem forças de mercado). Neste contexto, esta autoridade entende que, ante a total ausência de resposta de questionário do produtor/exportador, e a parcial colaboração do GOI, os fatos disponíveis indicam a concessão de subsídios em ambas as vertentes, ou seja, tanto no fornecimento de carvão para a eletricidade como no fornecimento de carvão que não o empregado para produção de eletricidade (carvão como insumo siderúrgico), que deve, conforme legislação, seguir o HPB.

805. Nesse contexto, tem-se que a fórmula do HPB é altamente complexa, inclusive mais complexa do que a do preço HPM para o níquel, por exemplo, sendo que na fórmula do HPB considera-se até mesmo a marca do Carvão empregado, conforme Anexo II do Decreto 515.K/32/DJB/2011. Assim,

ausente a colaboração de algum produtor/exportador e do GOI, restou impossível para a autoridade a determinação de preços HPB aptos a serem utilizados.

806. Isto posto, de forma extremamente conservadora, utilizou-se os preços HBA como benchmark, mesmo a autoridade estando ciente que tais preços HBA, de vertente internacional, não são os exatamente os empregados nas transações na Indonésia. A comparação dos preços HPB com preços em condições normais de mercado resultaria em valores ainda superiores, uma vez que os preços HPB, empregados nas transações correntes da Indonésia, devem estar ainda mais distorcidos, pois incluem fator de correção em sua fórmula, além de refletirem a DMO e demais políticas do GOI, o que faz com que o preço HPB seja um preço deprimido.

807. Assim, também de forma absolutamente conservadora, com uso dos fatos disponíveis, empregou-se o teto de 70 dólares também nas compras de carvão para uso que não o de eletricidade, de modo a calcular, ainda que de forma mínima, o subsídio percebido pelas empresas na Indonésia.

808. Há site oficial do GOI em que se pode verificar todos os preços de referência HBA. Considerando que, como já dito, nos meses em que o HBA estava acima de 70 dólares, foi aplicado ao carvão adquirido o teto de 70 dólares, tem-se a seguinte situação:

Mês	Preço com o teto	Preço HBA
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 no carvão considerando-se o teto foi de US$ 67,76/t, o preço médio HBA foi de US$71,65/t, resultando em uma diferença de US$3,89/t.

810. A peticionária estimou o consumo de eletricidade em toda a cadeia do produto objeto da investigação (produção de FeCr e FeSi e Aciaria - laminação a quente e laminação a frio), segregando entre o que era produzido internamente (ou seja, em que havia sido consumida energia elétrica) e os produtos intermediários em que não havia sido consumida energia elétrica. Considerando-se o gasto energético para se produzir uma tonelada do produto objeto da investigação, alcançou-se o montante de benefício no valor de US$ 3,63 por tonelada. A Peticionária trouxe ainda o carvão empregado na produção, desde o smelter até uso no redutor, apropriando-se para o produto final o subsídio percebido nas etapas intermediárias, por meio de sistemática de pass-through considerada adequada pela SDCOM, conforme consta de documento submetido pela Aperam nos autos do processo em 08 de setembro de 2022.

811. Salienta-se que não houve comentário das demais partes interessadas acerca do cálculo 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 pesquisas da SDCOM.

Elaboração: SDCOM

4.2.3.6 Programa 3 - Fornecimento de sucatas e resíduos de aço inoxidável

4.2.3.7 Manifestações sobre o programa

812. O GOI afirmou que concede autorização para exportação de sucatas em todos os casos, sendo que a Aperam, em sua manifestação de 9 de setembro de 2022, alegou que tal alegação do GOI não teria sido comprovada nos autos do processo.

813. A peticionária, em sua manifestação final, acatou a conclusão desta SDCOM pela inexistência de programa de fornecimento de sucatas e resíduos de aço inoxidável por remuneração inferior à adequada.

4.2.3.8 Conclusão

814. Muito embora existam restrições a exportações de sucata verificadas na Regulation MoT No. 4/2018, emendado pela Regulation MoT No. 36/2019, tendo em conta os elementos presentes nos autos, a SDCOM considerou que não houve benefício decorrente das restrições à exportação de sucatas aos produtores/exportadores indonésios do produto objeto da investigação, haja visto que não há elementos suficientes nos autos nesse sentido.

815. Observe-se que a peticionária não trouxe novos elementos, além dos indícios que justificaram o início da investigação. Tampouco foi possível a esta autoridade obter evidências de que os produtores/exportadores adquirem sucatas e resíduos empregados na produção do produto investigado. Desse modo, na linha do pedido constante em manifestação apresentada pela PT IRNC, a SDCOM conclui não haver subsídio acionável com relação ao alegado fornecimento de sucatas por remuneração inferior à adequada.

4.2.3.9 Programa 4 - Fornecimento de terrenos por remuneração inferior à adequada

4.2.3.9.1 Fatos apurados sobre o programa

816. Conforme apurado na visita in loco e em pesquisas da SDCOM, para se entender o regramento atual sobre terras na Indonésia, é preciso regressar ao período antes da independência, no "período holandês", em que havia dois sistemas: Eigendom (lei holandesa) e Adat/Direito consuetudinário. O primeiro era o direito de possuir a terra durante a colonização holandesa antes da existência do direito agrário. Já o segundo era estabelecido conforme o costume comunidade dentro da região.

817. Em 1960, foi promulgada na Indonésia a Lei agrária nº 5/1960 que combina Adat e Eigendom. Desde então há 4 tipos de direitos de terra:

a) Hak Milik/direitos de posse/propriedade®os mais "fortes" e completos, para residir/viver, sem limite de tempo, apenas para indonésios;

b) Hak Guna Bangunan/para construir®concedido para utilizar o terreno para construir algo, prazo máximo de 30 anos, podendo ser prorrogado por 20 anos, para empresas ou indústrias;

c) Hak Guna Usaha/para cultivar®concedido apenas a pessoa/entidade para agricultura, 35 anos, podendo ser prorrogado por 25 anos, grande escala;

d) Hak Pakai/ para usar®concedido para utilizar uma terra, 25 anos, podendo ser prorrogados 20 anos, para sawah, jagung (estrangeiros), sendo que o proprietário é o povo.

818. A terra do tipo Tanah swapraja - herança da ocupação holandesa, terra colonial - pemerintah hindia belanda (Dutch East Indies), se tornou, a partir de 24 de setembro de 1980, pelo Decreto Presidencial nº 32/1979 terras do tipo tanah negara.

819. Isto posto, passa-se à análise do terreno do IMIP, em que está instalada a produtora/exportadora investigada PT IRNC e demais empresas do grupo Tsingshan.

820. Sabe-se que, conforme o RIPIN 2015-2035, é informado que a provisão de terras é também uma preocupação do governo no contexto do incentivo à industrialização do país. Do documento Facts and Figures, 2015, do Ministério da Indústria da Indonesia:

Infrastructure for Industry

Based on The Government Regulation No. 14 Year 2015 concerning Master Plan of National Industry Development Year 2015-2035, the major infrastructure required by industry, both within and outside of the industrial areas are the energy and land for industrial estates.

Industrial Land

The provision of industrial land is carried out through the development of industrial allotment and the development of industrial estates. The purpose of development and exploitation of industrial estates are:

a. providing convenience in obtaining ready to use of industrial land and/or ready to build,

b. guarantee the land rights that can be easily obtained,

c. the availability of infrastructure and facilities required by investors,

d. easiness in obtaining permissions.

(¼)

The program of provision of industrial estates and/or industrial allotment include:

a. coordination between ministries/related agencies in the solution of aspects associated with land issues;

b. the planning of industrial estate development, including feasibility analysis and providing master plan;

c. the establishment of institution and land bank regulation for the development of industrial estates;

d. coordination between the provincial/district/city governments and the ministries/related institutions for determining the location of industrial allotment within the Regional Spatial Plans;

e. carrying out review to the development of industrial allotment;

f. the provision of land through the development of industrial allotment supported by the infrastructure both within and outside of industrial estates; and

g. provision of land through the development of industrial allotment and supported by the infrastructure both within and outside the industrial allotment.

821. Com relação ao IMIP, este está instalado no distrito de Morowali. Conforme informações obtidas na visita in loco, o plano espacial mais antigo de Morowali é o Regulamento Regional nº 10/2012, sendo que antes do Regulamento Regional de Morowali nº 10/2012, a região era designada para uso agrário. Depois do Regulamento Regional de Morowali nº 10/2012, a região foi designada para uso industrial estratégico ("National Strategic Project"). Depois do Regulamento Regional Espacial de Morowali nº 7/2019, continuou sendo para tal uso, só que mais foi mais detalhado o uso possível da terra. Em sua manifestação pós-verificação, o GOI informou que a terra poderia ter também outros usos.

822. Segundo informado na visita in loco do GOI, o atual status da terra do IMIP seria o right to build - Sertifikat hak guna bangunan - 'SHGB', datado de 18 de agosto de 2015. Antes do SHGB de 2015 ser emitido através de um certificado, foi informado na visita in loco ao GOI que o estado da terra era tanah negara. Segundo o governo, tal status indicaria que o terreno não é de propriedade, mas seria controlada pelo governo, de propriedade do povo.

823. Ou seja, a terra onde está o IMIP tinha status Swapraja, sob a Basic Agrarian Law, que eram terras que, antes da independência da Indonésia, pertenciam a sultanatos ou reinos, com uma certa independência. Após a independência, se tornou terra tanah negara, ainda com certa independência por parte das comunidades que lá viviam.

824. Foi também confirmado na visita in loco que o IMIP iniciou sua construção antes de obter as licenças requeridas, o que foi possível devido a seu status de projeto estratégico nacional.

825. Entretanto, não foram exibidos na visita in loco os certificados SHGB, e tampouco os acknowledgment letter (surat yg diterbitkan oleh kecamatan kepada masyrakat - SKPP) de modo que a SDCOM restou impedida de verificar o status do terreno do IMIP. Tampouco os ditos contratos, que indicariam que a propriedade do terreno não seria do governo, comprovaram algo neste sentido. A maioria

dos contratos submetidos dizia respeito a transferências entre o IMIP e as empresas do parque, não ajudando a dirimir tal questão. Foram fornecidos [CONFIDENCIAL] contratos entre o IMIP e os ocupantes originais da terra, sendo que tais contratos confirmam o status tanah negara da terra, conforme trecho de um deles: "[CONFIDENCIAL].".

826. Em outro trecho, tem-se:

[CONFIDENCIAL]

827. Ou seja, tal contrato foi assinado baseado em uma decisão do GOI, perante um representante do GOI (do distrito de Bahodopi) e versava sobre terras que eram inicialmente swapraja e posteriormente tanah negara.

828. Ressalta-se, entretanto, que, tendo sido solicitada a inspeção do original do contrato submetido, o GOI não logrou fornecê-lo na visita in loco.

829. Assim, com relação ao status da terra do IMIP e acerca de outros aspectos do programa, a SDCOM utilizou-se dos fatos disponíveis no processo.

830. O artigo 43 da Lei Agrária de 1960 estipula que: "No que diz respeito à terra diretamente controlada pelo Estado, o direito de uso só pode ser transferido para outra parte com a permissão do funcionário autorizado". O parágrafo 3º do artigo 1º da Government Regulation nº 24/1997 explicita que tal "terra diretamente controlada pelo Estado" é a tanah negara.

831. De modo geral, as comunidades locais que lá vivam foram afetadas negativamente pela chegada do IMIP, e tiveram sua subsistência ameaçada de diversos modos. Os que tentaram permanecer na terra tiveram a produtividade reduzida sensivelmente devido ao desflorestamento, construção de estradas e desvio dos cursos d'agua. Ou seja, ainda que em tese a terra pudesse ter outras destinações, como afirmou o GOI, na prática as comunidades foram forçadas a transferir o direito de uso (mediante compensação), pelo fato de o impacto ambiental causado pela construção ter afetado a produtividade da 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 trash bin? No, you don't. You will handle it properly later after the development is fully completed," Barus said.

832. Também foi utilizado como fato disponível no processo o resultado de investigação da União Europeia que também versava sobre laminados de aço inoxidável em período de investigação semelhante, em que foi analisado o terreno do IMIP, no âmbito da qual a autoridade assim descreveu:

The investigation found that the GOID facilitated the necessary land to IMIP starting from 2013. The land in question was the property of the Indonesian State. IMIP agreed with the local authorities, and with the assistance of the Bahodopi district authorities, on a single average payment per square meters, as a compensation, for the individuals using the land at the time.

(...)

First, the GOID amended the spatial planning of the Morowali Area, changing the purpose of the land from farmland to industrial land, more specifically linked to a nickel project. Indeed, Article 28 of Morowali Regency Regulation No. 10 of 2012 designated as nickel mining area the Bahodopi district, i.e., the 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'. More generally, the Morowali Regency identified a 'large industrial area in Bahodopi District' as a 'Regency strategic area from the point of utilization of natural resources' (Article 37). Finally, Article 9 of the same Morowali Regency Regulation identified Bahodopi district as the area where a special mining port terminal is located. This change of use left the villagers with no choice but to relinquish their right to occupy and use their land as they could no longer use it for farming activities.

Second, IMIP contacted the local authorities in the area, i.e., the mayors of the villages located in the area, and agreed with them on a compensation to be provided to the people that the village heads identified as occupants of the plots of land in the area. In this process, three elements have to be highlighted: (i) IMIP agreed on the compensation with the village heads also with the assistance of GOID's officials of the Bahodopi district, because the contracts show that they later witnessed the transaction and certified the use and the ensuing right to compensation of the villagers; (ii) the plots of land whose occupants were identified by the village heads have more or less all the same area (approx. 20 000 square

metres each); and (iii) the compensations in the contracts is actually a single average price per square metre and it is not defined with the Indonesian word for 'price' (Harga), but with the Indonesian word for 'compensation' (Ganti rugi).

The evidence proved that the land purchase process undertaken by IMIP was actually a process where the State provides the land to the IMIP without any consideration, only with the requirement to pay the agreed compensation to the villagers.

833. A autoridade da União Européia também verificou a existência de um documento (Joint statement of March 2015, e a Regulation nº 142, de 2015), que indicaria que o GOI facilitaria a pesquisa e aquisição de terra para os produtores estabelecidos no IMIP.

834. Assim, utilizando-se os fatos disponíveis no processo, no decurso da investigação comprovou-se que: i) a terra do IMIP tinha status previamente à sua aquisição como tanah negara, ocasião em que se tornou terra com status right to build - objeto de um Sertifikat hak guna bangunan - 'SHGB'; ii) o governo não recebeu nenhum montante quando da transmissão das terras, conforme informado pelo próprio governo, pois quem teria recebido seriam as pessoas ocupantes; iii) os fazendeiros ocupantes da terra transferiram os direitos de uso que tinham sobre a terra, mediante compensação, pois não mais poderiam utilizá-la para suas atividades; e iv) tal operação foi concertada com participação direta do GOI.

835. Com relação às operações da PT INALUM, se confirmou a evidência que constava no início da investigação. Entretanto, muito embora existente a operação, não se verifica a presença de elementos nos autos que indicam haver benefício aos produtores/exportadores investigados decorrente das 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 especial o RIPIN, e também nos Regulamentos Regionais de Morowali nº 10/2012, e nº 7/2019, além da Lei Agrária de 1960.

4.2.3.9.3 Contribuição financeira

837. A contribuição financeira do programa advém do fato que o IMIP pôde adquirir suas terras a preço reduzido quando comparado aos preços do mercado.

838. Tem-se ainda que o GOI, como é por lei o proprietário de terras com o status tanah negara, diretamente concedeu as terras ao IMIP.

839. Analisa-se, alternativamente o fato de que houve participação dos líderes das comunidades ocupantes. Mesmo que se considere as participações destes nesse fornecimento de terrenos, tal fato só se deu pois o GOI atuou diretamente para promover a saída destes ocupantes da terra. As pessoas da comunidade que lá estavam nunca foram os proprietários das terras, mas sim meros ocupantes, e transferiram seus direitos de uso ao IMIP de forma concertada pelo GOI, com a expressa anuência deste, conforme artigo 43 da Lei Agrária de 1960, e ainda com a participação direta do governo, conforme elementos analisados na seção 4.2.3.8.1. Relembra-se, ainda, que esta SDCOM não teve acesso à integralidade da documentação acerca das terras, um dos motivos pelo qual foram utilizados os fatos disponíveis nos autos.

840. Assim, analisando-se os elementos pontuados no item 4.2.3.1.3.9, tem-se que o GOI exarou um comando expresso de modo a instruir os fazendeiros/líderes dos vilarejos a transferirem o direito de uso das terras, já que de forma diversa não teriam como sobreviver. Tais transferências não foram mero side product da legislação exarada pelo GOI, mas mais uma peça no quebra cabeça de incentivos promovidos pelo GOI. Assim, também por este prisma, se verifica uma contribuição financeira nos termos do ASMC.

4.2.3.9.4 Especificidade

841. De acordo com os elementos disponíveis nos autos, o programa esteve disponível para a criação de zonas de interesse industrial, desenhado para o IMIP, projeto classificado pelo GOI como "projeto estratégico nacional", o que impõe várias vantagens, no contexto do intuito do governo em fomentar surgimento de uma indústria de aço inoxidável, como exposto nos planos governamentais já comentados.

842. Considerando que o governo não respondeu às perguntas que permitiriam à SDCOM avaliar a especificidade do programa, tem-se que o contexto de incentivo ao estabelecimento de uma indústria siderúrgica no país, conforme os diversos planos já aqui delineados, apontam, utilizando-se os fatos disponíveis, pela existência de uma especificidade de fato, consoante art. 6º, §3º, do Regulamento Brasileiro, advinda do fato de estar o programa direcionado aos produtores de aço inoxidável, como os produtores do IMIP, no arcabouço de incentivos já tratado. Existe ainda uma especificidade regional, a teor do art. 7º do Decreto nº 1.751, de 1995, pois o programa, por sua natureza, é limitado às empresas que se encontram no interior da jurisdição da autoridade outorgante.

4.2.3.10 Manifestações prévias à Nota Técnica acerca do programa

843. A PT IRNC, em sua manifestação de 09 de setembro de 2022, aponta que, na qualidade de melhor informação disponível, deveria ser utilizada a margem de subsídios para este programa apurada na investigação de subsídios conduzida pela União Europeia, da ordem de 0,83%.

844. A Aperam, em manifestação de 9 de setembro de 2022, tendo como base o relatório de verificação, defendeu que se verificaria que a terra onde foi construído o IMIP, contrariamente ao alegado pelo Governo da Indonésia, não teria sido adquirida de partes privadas, tendo sido fornecida pelo próprio Governo da Indonésia, tal como determinado por este em sua determinação para estabelecimento da indústria do minério de níquel até os aços inoxidáveis. Reiterou que o artigo 62 da Law Number 3 of 2014 estabeleceria que:

Article 62

(1) The Government and Regional Governments ensure the provision of the Industrial infrastructure.

(2) The provision of the Industrial infrastructure is conducted both within and/or outside of 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 allocated zones; [¼]

846. Já o Government Regulation Nº 14 de 2015, que trata do National Medium Term Development Plan de 2015 a 2019, período de maior desenvolvimento do IMIP e da cadeia a jusante do níquel, até a produção do produto objeto da investigação, no item que trata do "Development of 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 the provision of industrial facilities and infrastructure including:

B. Industrial Infrastructure

The infrastructure required by industry, both inside and/or outside the designated industrial area, includes energy and industrial area land.

1. Energy

847. Em se tratando da determinação do Governo da Indonésia de estabelecer a cadeia a jusante do minério de níquel, até a produção de aços inoxidáveis, considerada como indústria estratégica, o Governo da Indonésia teria fornecido a terra para o estabelecimento do IMIP e teria permitido seu uso sem a exigência dos requisitos legais formais.

848. Ademais, como constaria no Relatório da visita realizada no Governo da Indonésia, restaria claro, portanto, que a afirmação apresentada pelo Governo da Indonésia de que a aquisição de terra pelo IMIP teria ocorrido de partes privadas, sem a sua interferência, não teria sido demonstrada, tratando-se de mera alegação.

849. O GOI, em sua manifestação acerca do uso dos fatos disponíveis, afirmou que "GOI presented the sample documents of land sales and purchase and a land certificate (SHGB) belongs to IMIP which are adequate to prove that IMIP procured the land under direct transaction with local people without GOI's intervention. As such, the GOI believes that it should be sufficient to assess the legality of the land

ownership.". Acrescentou que os preços NJOP foram explicados pelo representante do GOI e que não poderiam ser exibidos os originais dos documentos solicitados, mas que o representante do GOI informou serem autênticos.

4.2.3.11 Manifestações posteriores à Nota Técnica acerca do programa

850. O GOI, em sua manifestação final, afirmou discordar do exposto nos parágrafos 681 e 682 da Nota Técnica, em que é afirmado que o GOI é o proprietário de terras e teria concedido diretamente as terras ao Parque Industrial Indonésia Morowali (IMIP) devido ao fato de que o IMIP conseguiu adquirir seu terreno a preço reduzido quando em relação aos preços de mercado. Reiterou que a propriedade individual da terra é reconhecida na Indonésia e que o IMIP adquiriu os terrenos da população local por meio de negociação independente com os proprietários de terras anteriores, que são partes privadas.

851. Pontuou ainda que a oferta de terras pode ser afetada pelo fator geográfico e que a oferta de terras em áreas remotas pode ser abundante, com preço muito mais baixo em comparação com aqueles em áreas urbanas com alta população.

852. Acrescentou que o GOI apenas presta serviços administrativos na formalização dos direitos sobre a terra. O Nilai Jual Objek Pajak (NJOP) representaria apenas a referência do preço da terra para fins de arrecadação de impostos sobre a terra, não podendo ser utilizado como benchmark.

853. Segundo o GOI, o RIPIN não tem o elemento de comando do GOI para o setor privado buscar a visão do GOI, o RIPIN não regulamentaria as disposições sobre terras na Indonésia (como direitos, transferência de direitos fundiários, etc.), mas apenas o desenvolvimento de áreas de desenvolvimento industrial. Além disso, o Regulamento Regional da Regência de Morowali Número 10 de 2012 relativo ao plano espacial da Regência de Morowali de 2012 a 2032 visa realizar desenvolvimento entre setores, regiões e comunidades, governo, sociedade e/ou o setor empresarial. Não haveria um único artigo no regulamento regional que estipule disposições relativas à terra, muito menos que obrigue ou comande a comunidade ou os residentes em Morowali a vender suas terras para o IMIP abaixo do preço de mercado.

854. O GOI também pontuou que o Regulamento Regional de Morowali nº 7/2019, também utilizado como base para alegações de subsídios sobre terrenos, visa direcionar o desenvolvimento produtivo, controlado, equitativo e sustentável para para melhorar o bem-estar das pessoas, e não regularia a compra e venda de terras, direitos fundiários e transferência de direitos fundiários.

855. Deste modo, segundo o GOI, a SDCOM não teria conseguido demonstrar o elemento de contribuição financeira e especificidade na provisão de Terrenos, devendo ser a investigação encerrada sem medida.

856. A PT IRNC, em sua manifestação final, ponderou que a autoridade da União Europeia teria considerado o custo do terreno em si, pois o benchmark utilizado pela autoridade investigadora europeia compreende o valor do HGB detido pela Jindal. Desta forma, o benchmark empregado pela União Europeia, não compreende somente os "development costs", mas o custo do terreno em si, deduzindo-se somente o montante da compensação paga pelo IMIP. Assim, reiterou pela utilização do percentual da União Europeia.

857. A peticionária em sua manifestação final reiterou as conclusões da SDCOM, e pontuou ainda que, ao pleitear a PT IRNC pelo uso da informação da União Europeia, teria admitido a existência do programa, e que a defesa do percentual aplicado pela outra autoridade demonstraria que, "de fato, os fatos constantes nos autos do processo levam a cálculo de montante superior ao sugerido pela IRNC".

858. A PT IRNC solicitou, em 13 de outubro de 2022, acesso à memória de cálculo do programa 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 de fato possa ser utilizada como fatos disponíveis (como de fato o foi em outros pontos deste documento), esta SDCOM considerou que, com relação ao cálculo, há informação mais adequada disponível. A própria autoridade da União Europeia expressou que: "the

Commission considered only the development costs incurred by IMIP to transform the

land purchased as forest and plantation into land ready for industrial use". Ou seja, por motivos pelos quais a SDCOM não tem como saber, já que não sabe quais as informações analisadas pela outra autoridade ou sequer tem acesso aos cálculos realizados, e conforme comentários adiante, tem-se não estar claro o modo como a autoridade da União Europeia considerou em seu cálculo o custo do terreno em si e não somente os development costs.

860. Desta forma, o comentário da SDCOM foi mal interpretado pela PT IRNC - e reitera-se que aparentemente a autoridade da União Europeia utilizou os development costs e não o custo do terreno em si. Como dito acima, para o cálculo neste programa, são necessários três elementos - 1) o preço pago pela terra; 2) o preço de mercado da terra (benchmark); e 3) a área afetada. A autoridade da UE aparentemente utilizou no ponto 2 (benchmark) o preço HGB, e no ponto 1 os development costs:

(846) Then, IMIP's land development costs by square meter were compared to the value of the evaluation report adjusted to the corresponding year to obtain the benefit per square meter. This figure was then multiplied by the area of land that each of the companies in the IRNC Group was actually using, in order to allocate the total benefit for the group to each of the companies in the group. (grifo nosso)

861. Assim, sobre os comentários da PT IRNC, a SDCOM reitera que ainda que tenha sido utilizado no cálculo os HGB, tudo indica terem sido empregados os development costs como preço da terra. De todo modo, a SDCOM reforça que o cálculo trazido pela peticionária, ajustado pela SDCOM, detalhadamente construído e explicado, constitui melhor informação disponível no que concerne a este programa do que o cálculo da União Europeia. O cálculo da SDCOM utiliza para fins de se estabelecer o preço da terra elementos concretos do local considerado - NJOP de morowali (local do IMIP) e contratos reais do IMIP - a SDCOM concluiu serem estas informações mais precisas do que as demais informações nos autos. Reitera-se também que não houve qualquer manifestação das partes interessadas a apontar qualquer mácula no cálculo proposto que não a crítica genérica, mesmo em sede de manifestações finais, muito embora a documentação esteja disponível nos autos para comentários das partes interessadas desde julho de 2022.

862. Sobre os comentários do GOI, a SDCOM ressalta que, como dito pelo próprio GOI, apenas foram apresentadas amostras da documentação, e que mesmo tais documentos evidenciam que as transações ocorreram sob a supervisão do GOI, que estava presente nos atos delineados pelos contratos. Sobre os preços NJOP, a explicação do representante foi considerada na decisão da autoridade. Ocorre que não foram apresentados os estudos ou qualquer documentação de suporte para os preços NJOP apresentados. Quanto à documentação, o roteiro da visita deixava claro que poderiam ser solicitados os originais dos documentos. Ressalta-se, entretanto, que tal ponto foi apenas acessório ante as demais sérias lacunas nas informações prestadas sobre o programa. Com relação aos comentários do GOI sobre o NJOP não ser informação adequada de preço, a SDCOM reitera que utilizou os NJOP para preencher lacunas, mesmo sabendo que este não é absolutamente a informação 100% vinculada ao preço, já que há declarações de representantes do próprio GOI a indicar que o NJOP é superestimado - três vezes o preço real, no exemplo dado pelo representante. Neste contexto, mesmo sabendo que o uso do NJOP superestimou o preço pago pela terra (o que diminui o montante apurado), é informação mais precisa do que development costs ou demais informações dos autos, como o preço informado pela peticionária. A SDCOM ainda tomou o cuidado de encontrar NJOP o mais preciso possível, tendo sido utilizado NJOP de Morowali.

863. Sobre a participação do GOI nas transações, o regulamento espacial de Morowali, ao mudar a destinação da terra, teve participação primordial na decisão de venda dos ocupantes prévios, e a participação do GOI foi muito além de meros serviços administrativos, como já pontuado. O GOI nada comentou sobre o status da terra como tanah negara. Sobre o RIPIN, o fato de este não conter, como alegado pelo GOI expressamente disposições sobre direitos fundiários ou transferência de direitos fundiários não o exclui do arcabouço legal considerado no programa, já que a destinação da terra foi alterada justamente no intuito de fomentar o aumento do valor agregado advindo da montagem do IMIP.

864. Sobre o comentário da peticionária, o fato de a PT IRNC ter defendido a aplicação do percentual calculado pela União Europeia não, é por si só, elemento apto a justificar a aplicação de medida compensatória ou ainda indicaria que o cálculo seria superior. Pelo contrário, é necessária robusta comprovação da existência dos elementos conforme legislação pátria e multilateral, e cálculo pormenorizado, o que foi feito nesta investigação.

865. O pleito de fornecimento à memória de cálculo foi negado por meio do Ofício SEI Nº 274908/2022/ME, pois a memória de cálculo confidencial solicitada utilizou informações confidenciais fornecidas por outras partes interessadas que não a manifestante (in casu, o governo da Indonésia), restando impossibilitada a apresentação de memória de cálculo solicitada. Foi esclarecido que a autoridade teve como base o cálculo realizado pela peticionária protocolado em 08 de setembro de 2022. A partir de tal cálculo, foi alterado exclusivamente o preço da terra praticado pelo IMIP para o valor de US$11,60/m², com base em informações públicas encontradas pela SDCOM e confidenciais fornecidas pelo Governo da Indonésia. Nenhuma outra alteração foi realizada no cálculo proposto pela peticionária, sendo que tal valor foi comparado com o benchmark de US$179,15/m² e calculado o montante final por meio de sistemática de pass-through considerada adequada pela SDCOM.

4.2.3.12.1 Conclusão

866. Diante da falta de colaboração já exposta, com base nas informações contidas nos autos, concluiu-se que há elementos de prova indicando a existência de subsídios concedidos por meio do fornecimento de terra por remuneração inferior à remuneração adequada. Tal incentivo se configura em subsídio já que envolve uma contribuição financeira por governo, nos termos da alínea "c" do inciso II, do art. 4º do Decreto nº 1.751, de 1995, o que confere benefício às empresas alcançadas pelo programa em questão, uma vez que tais empresas passam a contar com recursos adicionais em relação àquelas que não participam do programa.

867. Concluiu-se ainda que o subsídio em questão é específico de fato, nos termos do art. 6º, parágrafo 3º, do Decreto nº 1.751/1995, por ser limitado, conforme interpretação do próprio GOI no contexto do RIPIN 2015-2035, a empresas pertencentes a setores industriais designados como prioritários pelas políticas industriais da indonésia, entre os quais se incluem a indústria siderúrgica e sua cadeia. Ademais, as operações de concessão de terrenos aqui analisados são específicas por sua regionalidade, nos termos do art. 7º do Decreto nº 1.751/1995 porque limitados a empresas localizadas dentro de região geográfica situada no interior da jurisdição da autoridade outorgante. Dessa forma, se configura como subsídio específico, nos termos dos arts. 6º e 7º do Regulamento Brasileiro, sujeito, portanto, à aplicação de medidas compensatórias.

4.2.3.12.2 Cálculo

868. Com relação ao cálculo, considerando a ausência de resposta de respostas por parte dos produtores/exportadores e as lacunas na resposta do governo, foram utilizados os fatos disponíveis nos autos, qual seja, os cálculos trazidos pela peticionária ajustados pela SDCOM.

869. Para o cálculo neste programa, são necessários três elementos - i) o preço pago pela terra; ii) o preço de mercado da terra (benchmark); e iii) a área afetada.

870. Com relação ao preço pago pelo IMIP em suas terras, salienta-se, neste ponto, que, embora como já comentado, o governo não tenha recebido qualquer remuneração pelas terras do IMIP, considera-se que o benefício deve ser apurado com relação ao preço pago pelo IMIP a alguém por tais terras, ainda que não ao GOI, qual seja, os fazendeiros instruídos pelo GOI.

871. Neste contexto, foram utilizadas as informações disponíveis nos autos, qual seja, os valores NJOP, as amostras de contratos fornecidas e ainda também uma fonte pública encontrada pela SDCOM que mostra mais valores NJOP de Morowali. A SDCOM considerou tal informação mais precisa do que o preço da terra do IMIP apresentado pela peticionária com base em fonte pública, eis que a informação utilizada reflete transações reais envolvendo a terra do IMIP.

872. Ressalta-se que tal cálculo é extremamente conservador, haja visto que: i) a maioria dos contratos fornecidos utilizados no cálculo não envolvem a aquisição original feita pelo IMIP aos detentores originais da terra, mas sim contratos de aquisição entre as empresas do IMIP, que têm preços por m² muito mais elevados (os preços por m² referentes aos contratos entre empresas são aproximadamente [CONFIDENCIAL]vezes mais caros do que os entre o IMIP e os fazendeiros); ii) a fonte pública utilizada pela SDCOM se refere a preços para uso não industrial, mais caros do que os de uso industrial, iii) os valores NJOP são utilizados pelo GOI para tributos relacionados à terra, sendo razoável acreditar que reflitam o maior valor possível daquela região, para devida arrecadação tributária. Inclusive, representante do próprio GOI - governador de South Sulawesi) já deu declaração de que o NJOP é tão superestimado (quase três vezes o preço real, no exemplo dado) que até inibe investimentos:

Makassar (Antaranews Sulsel) - Governor of South Sulawesi (Sulsel) Nurdin Abdullah hopes that the Sales Value of Tax Objects (NJOP) of land and buildings must be realistic. South Sulawesi Governor Nurdin Abdullah in Makassar, Sunday, said the high NJOP will cause the cost for land investment as the forerunner of property project development, will increase and will also affect property prices in the future.

"I think we have to be realistic about the NJOP. It doesn't matter if the house is finished. Why is the house price going up, it's because the land price is only Rp. 250 (thousand) per meter, the NJOP is Rp. 650 (thousand). You also need a house. Study realistically," he said at the opening of the 2019 South Sulawesi Real Estate Indonesia (REI) Regional Work Meeting (REI) in Makassar, Sunday

(¼)

"That's why the NJOP must be reviewed, I have been with Mr. Wali many times. In the midst of global economic conditions. People want to invest in this large NJOP, land investment alone is quite high," he said.

873. A SDCOM utilizou tal metodologia de modo a privilegiar a colaboração parcial do GOI.

874. Já com relação ao benchmark a ser utilizado no cálculo, tem-se que outra empresa investigada, a PT Jindal, publicou em seu relatório anual 2020, valuation envolvendo terras no valor de 179,15 usd/m^2.

875. Acerca da área ocupada pela terra, com base no mapa do IMIP presente à página 8 do relatório IMIP 2017, foi calculada a área ocupada por cada elemento fabril e cada empresa do grupo:

<<IMAGEM 8 AQUI>>

876. Assim, foi repassado ao produto final investigado o montante advindo de cada um desses elementos fabris, considerando o montante de subsídios por m^2 calculado, por meio de sistemática de pass-through considerada adequada pela SDCOM, conforme consta de documento submetido pela Aperam nos autos do processo em 08 de setembro de 2022. Tal valor foi apropriado por 30 anos, a duração de um HGB na indonésia, alcançando-se o montante de subsídios de US$ 28,63/t. Ressalta-se que, muito embora tenha sido utilizado benchmark da PT Jindal, considerando a falta de colaboração da empresa, não se pode descartar que outras terras detidas pela empresa também não tenham sido objeto 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 peticionária, resposta do GOI e 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 SDCOM incentivou as partes interessadas a fornecerem maiores informações de forma a esclarecer o enquadramento da contribuição financeira dos programas relacionados ao minério de níquel, carvão e coque e sucatas e resíduos de aço inoxidável como programas de fornecimento de matérias-primas por remuneração inferior à adequada, nos termos da alínea c, do inciso II, do art. 4º do Decreto nº 1.751, de 1995, ou como sustentação de rendas e preços, nos termos do inciso I, do art. 4º do mesmo Decreto.

878. Considerando o que consta nos autos, esta SDCOM concluiu que tais programas se enquadram na hipótese de fornecimento de matérias primas por remuneração inferior à adequada.

879. Ressalta-se que a peticionária, em sua manifestação de 25 de julho de 2022 e do dia 9 de setembro de 2022 alegou diversas contribuições financeiras que supostamente seriam enquadradas em tal programa, em um alegado montante total de subsídio acionável de 140,50 USD/t. Em manifestação posterior, de 08 de setembro de 2022, a peticionária reclassificou tais programas no programa 11 - "injeção de capital", o que também foi considerado pela SDCOM como intempestivo, pois, em realidade, análise perfunctória das alegadas contribuições financeiras evidenciou se tratar de novos programas.

880. Assim, considerando a impossibilidade temporal para proceder à investigação de novos programas no presente procedimento, após a realização de visita in loco ao GOI, a SDCOM não albergou o pleito da peticionária, indeferindo a inclusão de tais novos programas na presente investigação.

4.2.4.1 Manifestações prévias à Nota Técnica acerca do programa

881. A PT IRNC, em sua manifestação de 09 de setembro de 2022, aponta que montantes cumulativos (ao invés de alternativos) para os Programas de fornecimento e de sustentação de rendas e preços por si só já não poderiam prosperar. Acrescenta que a suposta aquisição de equipamentos em condições especiais no fluxo de produção do aço 304, não se enquadraria nas medidas governamentais investigadas pelo Decreto nº 1.751/1995 e sequer encontraria respaldo no conceito de subsídios acionáveis pelo ASMC da OMC. Seria o aqui trazido pela peticionária uma alegação de injeção de capital com base nas conclusões da autoridade investigadora da União Europeia e concessão de subsídios transnacionais pelo governo chinês, o que não poderia ser admitido.

4.2.4.2 Comentários da SDCOM

882. Como já pontuado, de fato esta autoridade considera que o trazido pela peticionária seria mais apropriadamente considerado como novo(s) programa(s), não havendo tempo hábil para a inclusão no momento da investigação em que houve tal pleito. A peticionária em sede de manifestação final concordou com tal entendimento.

4.2.5 Programa 6 - Empréstimos preferenciais

4.2.5.1 Fatos apurados na investigação

883. Com relação aos empréstimos preferenciais, restou comprovado no decurso da investigação o apoio aos produtores de aço inoxidável por parte dos bancos estabelecidos na Indonésia.

884. Um dos bancos envolvidos neste programa é o Eximbank Indonesia (Lembaga Pembiayaan Ekspor Indonesia - LPEI), que é um banco de política governamental criado pela Lei nº 2/2009 que fornece financiamento nacional à exportação na forma de financiamento, segurança, seguros e serviços de consulta e também garantia de empréstimos. De acordo com o LPEI, o propósito de fornecer o financiamento nacional à exportação é acelerar o crescimento do comércio exterior da Indonésia e aumentar a competitividade dos agentes empresariais e apoiar as políticas governamentais no âmbito do incentivo ao programa nacional de exportação, conforme se verifica na apresentação do banco em seu sítio eletrônico (https://www.indonesiaeximbank.go.id/general-information).

885. Conforme lista em seu sítio, o Eximbank é totalmente propriedade (100%) do Governo da Indonésia, descrevendo-se como uma "instituição financeira sob o Governo da República da Indonésia", estando, portanto, sob o controle direto do GOI. Como seu único acionista, o governo da Indonésia tem total autonomia para nomear o conselho de supervisores e garantir a direção efetiva das atividades do LPEI.

886. O já citado Trade Policy Review da Indonésia, documento feito pelo secretariado da 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 performance, increasing the added value and competitiveness of export commodities by providing financing, guarantees and local and overseas insurance and consultation services for exporters, as well as contributing to the development of export-orientated SMEs (Table 3.9). It provides finance for transactions or projects that cannot be financed by banks, but have the prospects to increase exports; and assists in overcoming barriers encountered by the banks or financial institutions in providing financing for exporters that have commercial potential and/or are important for the country's economic development.

887. Além de a política implementada pelo LPEI ser contingente de fato ao desempenho das exportações, a atuação do Eximbank da Indonésia é centrada em setores específicos considerados estratégicos pelo governo daquele país. Tal fato está explícito, por exemplo no relatório anual 2019 do banco, em que são listados setores de foco do banco, que incluem a mineração:

Indonesia Eximbank's sharia financing strategy in 2020 will focus on direct exporters and indirect tier 1 exporters, particularly in the automotive, food & beverage, chemical, electronic, and textile and textile products industries. In addition to the industrial sector, sharia finance can also be given to the

downstream industry, tourism, fisheries and marine products, pharmaceuticals, oil palm plantations, mining, and the paper industry. (grifo nosso)

888. Há nos autos evidência da relevância e atuação do banco no setor de mineração há vários anos, e o desejo do banco em incentivar a conversão de produtos brutos em produtos de valor agregado, em plena consonância com a política industrial do país conforme explicado no item 4.1. Tal se verificou, por exemplo, na visita in loco ao GOI, e ainda às páginas 132 e 133 do Relatório do banco de 2018:

In addition to this, Indonesia Eximbank also channelled financing to develop the Morowali Industrial zone. The presence of the downstream nickel industry within the Morowali Industrial zone that was backed by Indonesia Eximbank since 2015 participated in the Morowali region's economic growth in the last 3 years of 60% or 60 times the national economic growth. The Morowali Industrial Zone also backed the 2015-2019 National Medium-Term Plan (RPJMN) that seeks to build 14 industrial zones in Java. (¼]

2018 Performance

In the last 3 years, SME financing expansion was largely focused on the industrial sector that provided more significant impact because of the presence of the production process that converts raw material into value added products. (grifos nossos)

889. Ademais, os relatórios anuais do banco de 2018 (em sua página 134) e de 2019 (página 133) indicam que o setor de mineração é o segundo setor mais relevante para o banco. Consta, por fim, nos relatórios de 2018 (página 526) e 2019 (página 554) um montante de cerca de 2 trilhões de rúpias de financiamento, havendo, portanto, evidências de que houve contribuição financeira à indústria de mineração, tanto por meio de empréstimos diretos, ou pela participação do Eximbank como garantidor de empréstimos de outros bancos.

890. A peticionária acrescentou, ainda, que no relatório anual de 2019 do LPEI, explicita-se que o banco fornece empréstimos preferenciais, incluindo empréstimos com taxas de juros tão baixas quanto 0%, tanto em rupia quanto em moedas estrangeiras. Os dados do Banco Mundial indicam que as taxas de empréstimos comerciais na Indonésia entre 2009 e 2019 não foram inferiores a 10,4%, tendo atingido 14,5% em 2009.

891. Foram também confirmados no decurso da investigação o financiamento de US$ 160.000.000 para projeto de expansão da produção de ferroníquel da Antam (conforme Demonstrações Financeiras da Antam de 2018) e a implementação de fundição da PT COR Industry Indonésia (CORII) localizada em Morowali, Centro de Sulawesi.

892. Com relação aos bancos com branches estabelecidos na Indonésia, mas com matriz estrangeira, durante a visita in loco, esta SDCOM solicitou esclarecimentos acerca das condições de participação, tendo o GOI informado que, de acordo com a OJK (the Financial Services Authority) Regulation nº 12/2021, não há discriminação entre um banco comercial da Indonésia ou estrangeiro, ambos seguiriam os mesmos requisitos para conseguir a licença. Entretanto, ao solicitar maior detalhamento acerca de tal afirmação, o GOI não logrou atender ao solicitado, conforme relatório da visita:

156. Sobre os pontos b) e c), Perguntados sobre o regulamento nacional aplicado ao funcionamento de bancos estrangeiros na Indonésia e o procedimento para que um banco estrangeiro abrisse um branch na Indonésia, o GOI respondeu que, de acordo com a OJK (The Financial Services Authority) Regulation nº 12/2021, não há discriminação entre um banco comercial da Indonésia ou estrangeiro, ambos seguem os mesmos requisitos para conseguir a licença.

157. Os representantes da autoridade reguladora financeira, OJK, solicitaram se poderiam apresentar por escrito a resposta aos questionamentos da equipe da SDCOM sobre o procedimento de licenciamento de um banco estrangeiro e doméstico e também a apresentação de quaisquer diferenças no tratamento de entidades financeiras estrangeiras em comparação às nacionais, ao que a equipe da SDCOM anuiu.

158. Questionados sobre o Eximbank, os representantes da OJK explicaram que o Eximbank não é classificado em banco comercial propriamente dito, sendo considerado um "non-bank", uma instituição financeira especial que tem por objetivo oferecer crédito para exportadores. A equipe da SDCOM solicitou também ao OJK as diferenças legislativas e qualquer diferença de tratamento com relação ao tratamento

do Eximbank com relação às demais entidades financeiras, e os representantes solicitaram também a apresentação por escrito à SDCOM até o final da verificação. Foi citado que há a Lei nº 2/2009 sobre o Eximbank, e ainda que existem diferenças operacionais também.

159. Até o final da verificação, tais explicações por escrito sobre esses dois pontos não foram recebidas. (grifos nossos).

893. Durante a visita a SDCOM pode confirmar que o GOI possui informações detalhadas de todo capital tomado pelas empresas, haja visto haver sistema da autoridade financeira da Indonésia, OJK - Otoritas Jasa Keuangan, que centraliza todas as operações de crédito a existência de créditos tomados pelas empresas da Indonésia (Credit Reporting System - SLIK).

894. Entretanto, com relação às operações particulares, restou impedida a verificação da autoridade mesmo na visita in loco, pois o GOI impediu o acesso completo ao sistema, de modo a possibilitar à SDCOM verificar os montantes, condições e contratos relacionados às operações de financiamento. Também restou impedida a verificação de como se dá o funcionamento em geral do setor bancário, em especial as condições necessárias para um banco estrangeiro passar a operar na Indonésia, pois o GOI não forneceu as informações solicitadas nesse sentido.

895. Deste modo, considerando também que nenhum produtor/exportador identificado respondeu ao questionário, restou impedida a autoridade de avaliar as alegações do GOI, bem como quaisquer características acerca dos empréstimos.

896. Assim, faz-se necessário o recurso aos fatos disponíveis no processo, a teor do art. 79 do Decreto nº 1.751, de 1995. Neste âmbito, os fatos disponíveis no processo indicam a existência de empréstimos bancários aos produtores/exportadores Indonésio, bem como a atuação do GOI a fim de que tais empréstimos ocorressem, conforme relatório de verificação:

81. Foi ainda perguntado se foram tratadas nas discussões entre governos acerca do fluxo de capital que vem da China, por se tratar de montantes elevados. O GOI informou que nas reuniões geralmente se discutem questões pendentes entre os países, por exemplo, no âmbito do LCS a China não deu permissão ao banco da Indonésia operar na China, e a China solicitou à Indonésia que fossem abertos branches de mais dois bancos chineses na Indonésia. O tema principal nas últimas reuniões foi a pandemia e vacinas, tendo sido resolvida essa questão de abertura dos bancos nos respectivos países contraparte. (Grifo nosso)

897. O GOI e a IRNC pontuam que houve empréstimo do Exibank ao IMIP.

898. E ainda, a autoridade da união europeia, concluiu existir programa de subsídio acionável com relação aos empréstimos preferenciais com participação de branches estabelecidos na Indonésia.

899. Assim, tem-se, de acordo com os elementos nos autos, que há bancos na Indonésia que concedem empréstimos aos produtores/exportadores de aço inoxidável e suas relacionadas, como a empresas de mineração e fundidores que produzem matérias-primas essenciais à produção 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, como descrito neste documento, dentre os quais se destaca o RIPIN e o RPJMN. Ademais, também relevante para o programa são a Lei nº 2/2009, e os sobre acordos e MoUs assinados no âmbito da criação do IMIP, bem como a Government Regulation No. 142 of 2015, ao prescrever os instrumentos de controle do GOI sobre os Industrial Estates. Ressalta-se, que a falta de colaboração do GOI no âmbito deste programa, em especial da OJK (The Financial Services Authority) impediu esta autoridade de obter maiores informações acerca dos elementos de direito do programa, motivo pelo qual foram aplicados os fatos disponíveis no processo.

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, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis. Neste contexto, considerando o previsto nas políticas industriais da Indonésia, tem-se que, devido ao privilégio ao setor de aço inoxidável, tido como prioritário, conforme apontado neste documento, considerou-se que haver especificidade de fato no programa, nos

termos do art. 6º, §3º, do Regulamento. Adicionalmente, considerando-se o fato de o programa envolver o Eximbank, e, portanto, vinculado às exportações conforme a própria missão do banco, o torna presumidamente específico nos termos do Inciso I do art. 8º do Decreto nº 1.751, de 1995.

4.2.5.4 Contribuição financeira

902. A contribuição financeira do programa advém do fato que as empresas produtoras/exportadoras de aço inoxidável têm acesso a capital em que são aplicadas taxas menores que as cobradas no mercado.

903. Considerando a total falta de colaboração do GOI e das empresas investigadas em importantes questionamentos realizados por esta SDCOM, utilizando-se os fatos disponíveis nos autos, em especial as manifestações nos autos, bem como a decisão da autoridade da União Europeia, têm-se que dita contribuição financeira foi fornecida indiretamente pelo GOI, por meio de bancos por ele instruídos ou confiados ou ainda por órgãos públicos.

904. Reitera-se que o GOI e as empresas investigadas não forneceram informações essenciais acerca dos empréstimos, fator já reconhecido pelo OSC como crucial, como apontado no caso DS379: "Moreover, the AB has also given importance to the fact that the government in question failed to cooperate during the investigation.". Ao listar as informações não fornecidas, citou-se expressamente: " (iv) the fact that 'during [that] investigation the [USDOC] did not receive the evidence necessary to document in a comprehensive manner the process by which loans were requested, granted and evaluated to the paper industry.". (grifo nosso).

4.2.5.5 Das manifestações prévias à Nota Técnica sobre os empréstimos preferenciais

905. A Aperam, em manifestação de 9 de setembro de 2022, alegou que política do Governo da Indonésia de conceder empréstimos preferenciais e incentivos diversos às empresas da cadeia do minério de níquel até a produção de aços inoxidáveis.

906. Ainda assim, vale destacar novamente que a Law Number 3 of 2014 on Industrial Affairs, estabelece, em seu artigo 44, que:

Provision of Sources of Financing

Article 44

The Government shall facilitate the provision of competitive financing for Industrial development.

The financing as referred to in section (1) may derive from the Government, the Regional Government, enterprises and/or individuals.

Financing which is derived from the Government and/or the Regional Government as referred to in section (2) may only be granted to the Industrial Company in the form of state-owned enterprises and 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 facilities to private Industrial Companies.

(2) The allocation of financing and/or the granting of facilities as referred to in section (1) are 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

e. granting of machineries and equipment.

The allocation of financing and/or the granting of financing facilities to private Industrial Companies as referred to in section (2) shall be imposed upon the State Budget.

907. Reiterou que, como se verificaria no relatório anual de 2019 do LPEI, já acostado aos autos do processo, o banco forneceria empréstimos preferenciais, incluindo empréstimos com taxas de juros tão baixas quanto 0%, tanto em rupia quanto em moedas estrangeiras. Não se compreende, dessa forma, como uma entidade supostamente orientada pela lucratividade forneceria empréstimos a taxas zero de juros.

908. Deste modo, os dados demonstrariam que o Eximbank indonésio está fornecendo financiamento para as empresas da cadeia do minério de níquel até a produção de aços inoxidáveis instaladas no IMIP, representando um subsídio, equivalente à diferença entre o montante dos empréstimos fornecidos pelo Eximbank e o montante que teria sido pago em condições de mercado.

909. A IRNC apontou em 09 de setembro de 2020, com base na resposta do GOI, "que não foram concedidos empréstimos pelo Indonesia Eximbank à IRNC nem a suas partes relacionadas [CONFIDENCIAL], somente ao IMIP". A IRNC apontou ainda que o empréstimo de USD 50 milhões à SMI não foi confirmado pelo GOI, posto que a notícia veiculada na mídia não se concretizou. Acrescentou que "os montantes calculados pela Aperam estão absolutamente superestimados e carecem de qualquer lastro fático, pois a Aperam adota a presunção absurda de que todos os investimentos da IRNC e suas partes relacionadas com capital financiado seriam oriundos de recursos obtidos com empréstimos preferenciais do IMIP junto ao Indonesia Eximbank".

910. Por fim, a PT IRNC pediu para que fosse utilizado como melhor informação disponível o 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 EXHIBIT-GOI-ADD-20 já fornece as informações requeridas acerca da operação entre Eximbank e PT Antam. Acrescentou que, em resposta ao item 10.f do ofício de BIA, a resposta ao item 5.2 do 2º pedido de informações complementares provê informação sobre o trabalho da equipe PKLN - Pinjaman Komersial Luar Negeri, e que tal equipe não tem como competência empréstimos privados estrangeiros.

4.2.5.6 Das manifestações posteriores à Nota Técnica sobre o programa

912. O GOI afirmou, em sua manifestação final, que teria sido comprovado durante a verificação in loco, inclusive no sistema, que nenhum dos produtores se pleiteou ou recebeu serviços financeiros do Eximbank Indonesia, não havendo benefício.

913. Além disso, a SDCOM não teria apresentado informações na Nota Técnica a respeito da análise do repasse do benefício do IMIP aos produtores de aço inoxidável (pass-through). Ressaltou o parágrafo 718 da Nota Técnica, que citava que as operações do Eximbank Indonesia estariam focadas em setores específicos considerados estratégicos pelo governo daquele país, como a mineração - neste ponto, o GOI afirmou que as operações do Eximbank da Indonésia não se concentram apenas em setores específicos, mas quase todos os setores incluem as operações do Eximbank da Indonésia, não havendo especificidade no programa. Complementou que apesar de os relatórios anuais do banco indicarem que o setor de mineração é o segundo setor mais relevante para o Banco, a SDCOM não teria fornecido quaisquer detalhes sobre os beneficiários dos empréstimos. Assim, o GOI afirmou que esta informação não seria suficiente para determinar a existência de aporte financeiro do EximBank aos produtores investigados.

914. Finalizou o GOI afirmando que, muito embora tenha sido afirmado nos parágrafos 724 e 725 que o GOI negou acesso completo ao sistema da OJK, o Eximbank teria fornecido todas as informações. Assim, como a PT Indonesia Ruipu Nickel and Chrome and PT Jindal Stainless Steel Indonesia não solicitaram serviços financeiros do Eximbank, a investigação deve ser terminada sem aplicação.

915. A peticionária, em sua manifestação final, destacou que "foram detalhadas, em suas manifestações datadas de 25 de julho e de 8 de setembro de 2022, todas as fontes, metodologias e cálculos relativamente aos empréstimos preferenciais concedidos no período de análise, inclusive no que diz respeito aos benchmarks, de forma que os valores ali apurados, equivalentes a US$ 195,81/t ou 9,58%

sobre o valor FOB, devem ser considerados como melhor informação disponível para fins de cálculo do montante de subsídios acionáveis concedido pelo Governo da Indonésia por meio de empréstimos preferenciais".

4.2.5.7 Dos comentários da SDCOM

916. A SDCOM reitera que a inadequada ocultação dos nomes das empresas relacionadas por parte da IRNC, apesar de não ter causado nenhum prejuízo com respeito ao tratamento de suas manifestações por parte da SDCOM, impediu o devido contraditório das demais partes interessadas na investigação. Ressalta-se que a PT IRNC somente trouxe em suas manifestações finais o nome das empresas em sede restrita, sendo fato público e notório, conforme relatório 2007 do IMIP e a decisão da autoridade europeia que a IRNC é relacionada a várias empresas relevantes para a investigação, como as empresas PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia, PT Indonesia Guang Ching Nickel and Stainless Steel Industry, PT Indonesia Morowali Industrial Park e PT Ekasa Yad Resources.

917. Pontua-se também que a verificação realizada no GOI com relação a este programa não foi completa, em razão da negativa do GOI em fornecer informações solicitadas. Desta forma, não procede a alegação do GOI de que teriam sido fornecidas todas as informações. Muito embora o Eximbank tenha fornecido acesso a seu sistema, a OJK negou informações e ainda impediu o acesso integral do sistema, bem como o BKPM também falhou ao não fornecer informações cruciais, conforme relatório de verificação in loco:

150. Ainda sobre a lei em questão, foi mostrado a alínea "c" do artigo 15 que diz que a empresa deve elaborar relatório trimestral a respeito das atividades realizadas e submeter ao BKPM para análise ("Report on investment activities"). O relatório é obrigatório e o não envio pode acarretar, em última instância, cassação da licença de funcionamento da empresa. Tal dispositivo é aplicado tanto a investidores nacionais quanto estrangeiros.

151. Foi perguntado aos representantes do governo se o capital investido no IMIP também passou pelo mesmo procedimento descrito acima, tendo sido respondido afirmativamente. A equipe da SDCOM solicitou ao BKPM então cópia dos relatórios da PT IMIP, PT IRNC (Ruipu) e suas relacionadas para os anos de 2016, 2017 e 2020. O GOI informou que não tinha os relatórios no momento porque os representantes da BKPM, presentes naquele momento na reunião de visita in loco, eram de outro setor, sendo que o setor responsável pelos relatórios não estava presente.

(...)

158. Questionados sobre o Eximbank, os representantes da OJK explicaram que o Eximbank não é classificado em banco comercial propriamente dito, sendo considerado um "non-bank", uma instituição financeira especial que tem por objetivo oferecer crédito para exportadores. A equipe da SDCOM solicitou também ao OJK as diferenças legislativas e qualquer diferença de tratamento com relação ao tratamento do Eximbank com relação às demais entidades financeiras, e os representantes solicitaram também a apresentação por escrito à SDCOM até o final da verificação. Foi citado que há a Lei nº 2/2009 sobre o Eximbank, e ainda que existem diferenças operacionais também.

159. Até o final da verificação, tais explicações por escrito sobre esses dois pontos não foram recebidas.

918. Deste modo, restou impedida a verificação se, de fato, não haveria participação do Eximbank Indonesia por meio de outros bancos. Ademais, mesmo que a cooperação do GOI tivesse sido plena, isso teria permitido à SDCOM apenas verificação parcial dos fatos, pois a verificação completa e adequada somente seria possível com uma verificação nas empresas investigadas, o que também não foi possível ante a ausência de respostas ao questionário do produtor/exportador no caso em tela. Em geral, a verificação no governo não tem o condão de verificar por completo os montantes envolvidos de assistência no âmbito dos programas, haja visto que, em geral, qualquer verificação contábil não é possível tão somente com base na visita no governo, podendo haver montantes que seriam somente capturados em uma verificação na empresa recebedora da assistência.

919. Isto posto, a SDCOM decidiu por utilizar como melhor informação disponível a decisão da União Europeia, na linha do sugerido pela IRNC, conforme descrito em seção adiante. E foi por utilizar integralmente a informação da União Europeia que não foi realizada qualquer apuração sobre pass-

through, como pontuado pelo GOI, pois o cálculo da outra autoridade já o fez.

920. Sobre os comentários do GOI, o exhibit informado exibe pouquíssimas informações acerca da operação, sendo que a SDCOM necessitaria do contrato para poder adequadamente verificar as condições do financiamento. Com relação ao expresso no item 10.f do ofício de BIA, tem-se que o GOI deixou de prestar várias informações requeridas, conforme expresso no roteiro da visita encaminhado previamente:

5.1. Explique como se dá a atuação da equipe/grupo de trabalho interministerial Tim

Pinjaman Komersial Luar Negeri, 'PKLN', nos termos do Decreto Presidencial N. 39 de 1991, necessariamente explicitando que tipo de decisões a PKLN toma e qual seu escopo de atuação, detalhando em quais questões ela está inserida;

5.2. Apresente os resultados do trabalho da PKLN com relação aos empréstimos

relacionados ao Indonesia Morowali Industrial Park - IMIP ou quaisquer empréstimos concedidos às empresas investigadas e suas relacionadas, incluindo necessariamente o processo de aprovação e monitoramento dos empréstimos;

5.3. Indique os bancos com presença na Indonésia envolvidos em ditas operações de

financiamento;

5.4. Aponte os montantes envolvidos nas operações a que alude o parágrafo anterior;

e

5.5. Ressalta-se que as questões dos itens 5.1 a 5.4 referem-se ao período desde o início das 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 empréstimos privados externos. Conforme informado pelo GOI, em especial pelo BKPM e OJK, todo o financiamento estrangeiro para entrar na Indonésia tem que passar por banco indonésio, ocasião em que passa por todo o controle do GOI. Do relatório da visita in loco:

Perguntados sobre o fluxo de capital, este sai do país estrangeiro, entra por um banco na Indonésia e vai para um projeto específico, informou ainda que o sistema integra todos os ministérios necessários para facilitar o investimento.

923. Sobre a especificidade, não apenas se trata de subsídio presumidamente específico por ser vinculado às exportações (conforme missão do Eximbank), bem como, ante a falta de colaboração e no âmbito do uso dos fatos disponíveis, o fato de o setor de mineração ser o 2º setor de fluxo do banco, bem com ser fato notório que o banco provê suporte à mineração e fundição de níquel, e tendo em conta ainda a investigação da União europeia, concluiu a SDCOM pela existência de especificidade como já pontuado. Não pode o GOI alegar que a SDCOM nada aduziu sobre os beneficiários, quando o próprio GOI não forneceu as informações requeridas - ninguém pode se beneficiar de sua própria falta de colaboração.

924. Com relação aos comentários da peticionária, a SDCOM resta convencida que, para este programa, foi utilizada na Nota Técnica a informação mais adequada possível, e reitera, em sede de Determinação Final, a conclusão já apresentada, não tendo a peticionária apresentado nenhum argumento apto a alterá-la.

4.2.5.8 Conclusão

925. Salienta-se que a recusa do GOI em fornecer todas as informações solicitadas acerca do programa, bem como a ausência da resposta das empresas investigadas, dificultou sobremaneira a investigação da autoridade, fazendo-se uso dos fatos disponíveis nos autos, a teor do art. 79 do Decreto nº 1.751, de 1995.

926. Concluiu-se, neste contexto, que o programa "Empréstimos Preferenciais" constitui uma contribuição financeira por parte do Governo da Indonésia - nos termos das alíneas "a" e "d" do inciso II do art. 4º do Decreto nº 1.751, de 1995, uma vez que a prática implica transferência direta de fundos, ou potenciais transferências de fundos ou obrigações por meio do Eximbank, possibilitando às empresas investigadas o acesso a empréstimos com condições preferenciais.

927. Considerando os elementos disponíveis nos autos, tem-se o Eximbank como SOE e órgão público que implementa políticas industriais do Governo da Indonésia, bem como restou patente o conhecimento por parte do GOI (BKPM) de todo o capital investido no IMIP e demais empresas da Indonésia.

928. Com base nos elementos apresentados, verifica-se a existência de evidências de que houve contribuição financeira e benefício, uma vez que o custo de financiamento das empresas envolvidas é inferior ao que estas teriam que incorrer caso obtivessem recursos a taxa de juros comerciais normais, permitindo maior disponibilidade para a empresa receptora.

929. Com relação à especificidade, como dito há um claro foco em determinados setores, como explicado no item anterior, enquadrando-se no § 3º do art. 6º do Decreto nº 1.751, de 1995, e, de forma decisiva, considerando que a atuação do banco está declaradamente vinculada às exportações e é nesse contexto que são os empréstimos concedidos, há evidências de que se configura como subsídio proibido por ser vinculado às exportações, portanto presumidamente específico, nos termos do art. 8º, inciso I, do Regulamento Brasileiro, e sujeito à aplicação de medidas compensatórias.

4.2.5.9 Cálculo

930. Considerando a ausência de resposta de respostas por parte dos produtores/exportadores e falta de colaboração do governo em responder aos questionamentos da SDCOM, foram utilizados os fatos disponíveis nos autos.

931. Neste contexto, considerando que restou provada a existência de empréstimos preferenciais, restando a lacuna acerca dos montantes envolvidos, após sopesar as informações disponíveis nos autos, utilizou-se como melhor informação disponível o cálculo da autoridade da União Europeia no já citado caso, em que foi calculado o montante de 1,84% neste programa. Esta SDCOM não foi convencida de que, para este específico programa, o cálculo proposto pela peticionária razoavelmente 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 Europeia.

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 especial na visita in loco, as bonded zones são áreas controladas pela alfândega da Indonésia, na qual as empresas podem operar com 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 importado, processado e vendido (para exportação ou internamente).

933. Sobre o funcionamento do programa, conforme Artigo 20 da MOF Regulation 131/2018, o programa bonded zone é um arcabouço legal que dá acesso aos outros programa de suspensão de impostos, o que no Regulamento se conhece como PDRI (tax in the framework of imports). Uma vez que a empresa tem a licença de bonded zone, esta tem incentivo por meio da suspensão do pagamento de direitos de importação, de IVA (10%) nas importações e de income tax nas importações (2,5%). Esse income tax nas importações, gerenciado pelo customs é diferente do corporate income tax, tratado neste Parecer no programa 8, pois funciona como um crédito que entra no cálculo do corporate income tax. Os incentivos fiscais no âmbito das bonded zones ocorrem desde a construção da planta, com a suspensão do IVA que seria recolhido, o que também ocorre uma vez que ela passa a operar.

934. Os artigos 3.º, 4.º e 16.º estabelecem os seguintes requisitos: (1) ser uma empresa indonésia; (2) ser estabelecido em uma zona industrial alfandegada na Indonésia; (3) para realizar a produção atividades na zona alfandegada ou ser usina na zona alfandegada; (4) importar matérias-primas ou produtos para posterior processamento; (5) exportar os bens finais produzidos com os bens importados. Desta forma, se o bem é exportado ou resta permanentemente dentro da bonded zone, também não é devido imposto.

935. O GOI informou à SDCOM que a PT IRNC e suas relacionadas PT Sulawesi Mining Investment, PT Tsinghan Steel Indonesia, PT Tsinghan Stainless Steel Indonesia e PT Indonesia Guang Ching Nickel and Stainless Steel Industry estão dentro de uma bonded zone. Entretanto, quando solicitadas as licenças de bonded zone para tais empresas, o GOI informou que só poderia fornecer a licença da PT IRNC (Ruipu), e não das demais, que, segundo o GOI não seriam empresas investigadas.

936. O GOI também não cooperou com relação aos montantes envolvidos, haja visto que durante a visita in loco informou não ser possível, por questões de confidencialidade, verificar os montantes por ele reportados para o programa.

4.2.6.1.1 Elementos de fato ou de direito (Base legal/documental)

937. O programa é regulado pela MOF Regulation 131/2018, e anteriormente o foi pela MOF Regulation 147/2011. Além disso, aplicável também o regulamento de implementação do citado normativo do MoF, cujo número é Regulation 2/BC/2019, do Director general for customs and excise.

4.2.6.1.2 Contribuição financeira

938. A contribuição financeira do programa reside no fato de que as empresas que tiveram acesso ao programa passaram a contar com recursos adicionais, não disponíveis para empresas não participantes do programa. A referida contribuição financeira gera benefícios a seus receptores, já que aumenta a liquidez das empresas, que passavam a contar com recursos adicionais oriundos do não recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme art. 4º, II, "b", do Decreto nº 1.751/95.

4.2.6.1.3 Especificidade

939. Tendo em vista que os elementos de prova apresentados apontam a expressa limitação da concessão da contribuição financeira a empresas localizadas dentro de uma região geográfica situada no interior da jurisdição da autoridade outorgante, consoante art. 7º do Decreto nº 1.751, de 1995. Os fatos disponíveis no processo indicam ainda, consoante a política industrial da Indonésia e intenções expostas pelo governo da Indonésia, um direcionamento ao setor de aço inoxidável e ao IMIP em particular, nos termos do art. 6º, § 3 º , do Regulamento Brasileiro, configurando-se também como subsídio específico de fato, e, portanto, sujeito à aplicação de medidas compensatórias. Há, neste contexto, evidência advinda da decisão da autoridade europeia, que indica que o GOI exerce discricionaridade na concessão da licença de bonded zone, mesmo para as empresas que estão teoricamente dentro da zona especial. Por fim, tem-se ainda evidências de que o programa é vinculado às exportações, sendo presumidamente específico.

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 fiscalização rigorosa da aduana" e que "como a Zona Alfandegada é território alfandegário neutro, onde os direitos e impostos de importação não podem ser arrecadados, este programa não constitui contribuição financeira para empresas que operam como bonded zone".

941. Também afirmou o GOI que o programa aplicar-se-ia a todos os setores da indústria e regiões sem limitação, e que, como tal, este programa não seria específico.

942. Instado no pedido de informações complementares a explicar com maiores detalhes os motivos pelos quais o GOI acredita que o programa não confere benefícios, o GOI afirmou que:

At the outset, goods entering a Bonded Zone are not yet considered as fully imported goods. Please see Para Article 2 MOF Regulation No 147 of 2011 concerning Bonded Zone where Bonded Zone is defined as a custom are and is completely under the supervision of the Directorate General of Customs and Excise. By this understanding, Customs cannot collect import duty, income tax, value-added tax (VAT), luxury tax, and excise upon the goods as long as they are located inside the Bonded Zone. In light of goods inside the Bonded Zone, they are not subject to taxes and customs duties until they leave the Bonded Zone, hence there is no revenue forgone in the sense of the difference between the import duty on import and the income tax and import duty paid on imports.

Indonesian Customs Authority also implements a very strict control on the movement of goods in the Bonded Zone area through the presence of Customs office in each Bonded Zone whereby an integrated electronic system fully operated. This allows full control of Customs to companies having

Bonded Zone status and as such no excess of duty or tax exemption including for import duty of machinery in the Bonded Zone. Therefore, programs in Bonded Zone are not countervailable and no investigation should be established upon the program.

943. A Aperam, em manifestações de 25 de julho de 2022 e de 8 de setembro de 2022, diante das dificuldades causadas pela falta de cooperação por parte do governo e das empresas produtoras/exportadoras indonésias no presente processo, apresentou metodologia e simulação de cálculos dos subsídios concedidos pelo Governo da Indonésia aos produtores/exportadores do produto objeto da investigação, buscando suprir as informações que deixaram de ser apresentadas pelas partes indonésias, o que permitiria à autoridade investigadora analisar, da forma mais completa e apropriada possível, a concessão dos subsídios sob análise no processo em tela.

944. A Aperam, em manifestação de 9 de setembro de 2022, sustentou que o Governo da Indonésia teria afirmado que "IRNC has established itself as Bonded Zone and thus by nature entails own facilities" e que "IRNC never benefits from facilities under Industrial Estate and no downstream producer in Industrial Estate." Entretanto, conforme seria analisado em relação a programas anteriores, tanto a IRNC como outras empresas do mesmo Grupo, de fato, se utilizariam de subsídios concedidos em tais programas.

945. Acrescentou que, em sua resposta ao pedido de informações complementares ao Questionário enviado pela SDCOM, o Governo da Indonésia teria alterado sua informação, indicando que a "PT Sulawesi Mining Investment was granted a Bonded Zone status on 26 September 2018", que a "PT Guang Ching Nickel and Stainless Steel Alloy was granted a Bonded Zone status on 27 September 2018", que a "PT Indonesia Tsinghan Stainless Steel was granted a Bonded Zone status on 4 September 2018" e que a "PT Tsinghan Steel Indonesia was granted a Bonded Zone status on 27 September 2018". Portanto, além da IRNC, as quatro empresas mencionadas obtiveram, praticamente de forma simultânea, o status de bonded zone.

946. Durante a visita de verificação realizada no Governo da Indonésia, como constaria no 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 Guang Ching Nickel and Stainless Steel Industry estão dentro de uma bonded zone." Entretanto, instado pela equipe da SDCOM a fornecer as licenças de bonded zones de tais empresas, "o GOI teria informado que só poderia fornecer 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, como constaria no Relatório da visita de verificação no Governo da Indonésia, este apenas teria exibido à equipe da SDCOM tabela com montantes que se refeririam à PT IRNC, porém, relativa apenas a dois anos, e tendo informado que não seria possível a comprovação dos dados de tal tabela.

948. A peticionária concluiu que restaria claro, portanto, que o não-fornecimento das informações e documentos solicitados pela SDCOM, simplesmente demonstraria a falta deliberada de colaboração por parte do Governo da Indonésia nessa investigação, prejudicando a devida análise dos fatos pela autoridade investigadora.

4.2.6.1.5 Manifestações posteriores à Nota Técnica sobre o programa

949. O GOI afirmou em sua manifestação final que mercadorias que entram em uma "bonded zone" não são consideradas totalmente importadas, assim, não podem ser recolhidos imposto de importação, imposto de renda, imposto sobre valor agregado (IVA), 'luxury tax' e etc. As "bonded zone" são internacionalmente reconhecidas e são consistentes com as regras multilaterais, sendo supervisionadas estritamente pela alfândega, como visto na visita in loco. Sendo um território neutro, não há contribuição financeira. Ademais, o programa de "bonded zone" se aplica a empresas de todos os setores e regiões, não havendo especificidade.

950. A peticionária, em sua manifestação final, reafirmou as conclusões da SDCOM sobre o programa.

4.2.6.1.6 Comentários da SDCOM sobre as manifestações

951. Com relação às alegações de que o programa não confere benefícios e acerca da fiscalização das bonded zones, apesar de previsto no regulamento, o GOI não foi capaz de fornecer evidências da fiscalização realizada. Ao ter sido solicitado durante a visita in loco um relatório de monitoramento de bonded zone, o GOI não foi capaz de fornecê-lo. Deste modo, a autoridade não teve como apurar se há ou não o devido controle ou ainda a devolução em excesso dos impostos suspensos, sendo que há evidências de que, ao menos no passado, o programa já foi utilizado incorretamente. Os argumentos trazidos pelo GOI em sede de manifestação final nada trouxeram de novo, e a alegada supervisão não pode ser comprada na visita, como já dito.

952. Acerca da alegada falta de especificidade do programa, o GOI não respondeu a contento às perguntas 12 e 13 do questionário que permitiriam à SDCOM avaliar a especificidade do programa, motivo pelo qual se utilizou os fatos disponíveis, que indicam, consoante a política industrial da Indonésia e intenções expostas pelo governo da Indonésia, um direcionamento ao setor de aço inoxidável e ao IMIP em particular. Salienta-se que o GOI reiterou o argumento pela alegada falta de especificidade em sede de manifestação final, mas nada comentou acerca do fato de não ter respondido as perguntas conforme solicitado, impedindo a SDCOM de corretamente avaliar tal ponto. Deste modo, reitera-se a conclusão acerca desse programa.

4.2.6.1.7 Conclusão

953. A SDCOM concluiu que o programa bonded zones trata-se de incentivo que se configura em subsídio, já que envolve uma contribuição financeira por governo ou órgão público, nos termos da alínea "b", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que deixou o GOI de recolher receitas públicas devidas.

954. Com relação à especificidade, tendo em vista a ausência de resposta completa ao questionário nos itens pertinentes, como apontado acima, e considerando que os elementos de prova apresentados até a data considerada neste documento apontam o direcionamento do programa no contexto das políticas que privilegiam os produtores de aço inoxidável, setor tido como prioritário nos planos do governo, tem-se que o programa configura-se como subsídio específico de fato, nos termos do art. 6º, § 3º, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas compensatórias. Há ainda especificidade regional, a teor do art. 7º do Decreto nº 1.751, de 1995, e evidências de que 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 autoridade da União Europeia, cuja investigação versa sobre produtos e produtores equivalentes aos aqui tratados. Em dita 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 visita in loco, não forneceu qualquer documentação acerca da habilitação, avaliação da concessão e da efetiva concessão dos montantes envolvidos nos programas ou ainda acerca de qualquer monitoramento realizado, alegando se tratar de informação fiscal confidencial, e que deveria ser solicitada às empresas que receberam.

4.2.7.1 Programa 8.1 - Redução do imposto de renda para grandes investimentos

4.2.7.1.1 Fatos apurados acerca do programa

957. O programa foi estabelecido em 15 de agosto de 2011, renovado e modificado pela primeira vez em 14 de agosto de 2015 pela Portaria do Minister of Finance - MoF - nº 159/2015, e parcialmente modificado pela segunda vez em 27 de junho, 2016 pelo Regulamento do MoF n.º 103/2016, renovado pela segunda vez em 4 de abril de 2018 pelo Regulamento do MoF n.º 35/2018 e renovado pela terceira vez em 27 de novembro de 2018 pelo Regulamento do MoF nº 150/2018.

958. Na redação mais atual para o programa, conforme do Regulamento MoF nº 150/2018, é estabelecida uma redução de até 100% na alíquota do Imposto de Renda das Empresas (Corporate Income Tax) para as empresas de classificação "pioneer industry" que realizarem um novo investimento de capital de, pelo menos, 100 bilhões de rúpias da Indonésia (Rp ou IDR). Nos termos do artigo 2º do citado regulamento:

Investimentos (Rupias da Indonésia)	Percentual de Isenção Fiscal
De pelo menos 500 bilhões	100%
Entre 100 bilhões e 500 bilhões (exclusive)	50%

959. Com relação ao período, o parágrafo 4º do artigo 2º estabelece um período entre 5 e 20 anos após o início da produção comercial, sendo que, quanto maior o investimento, maior a duração da isenção ou redução fiscal, conforme tabela a seguir:

Investimentos (Rupias Indonésia)	Período de Isenção Fiscal
De 500 bilhões a 1 trilhão	5 anos
De 1 trilhão a 5 trilhões	7 anos
De 5 trilhões a 15 trilhões	10 anos
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 ou isenções fiscais acima citadas, o Regulamento estabelece uma redução de 50% no CIT para os investimentos iguais ou superiores a 500 bilhões de rúpias e de 25% para os investimentos entre 100 e 500 bilhões de rúpias. Conforme tradução submetida pelo GOI:

Article 2

(1) Corporate Taxpayers making new investments in Pioneer Industry may obtain Corporate 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 at least be Rp100.000.000.000,00 (one hundred billion rupiah).

(3) Corporate Income Tax deduction as referred to in paragraph (1) shall be as follows

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); and

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 maximum less than Rp500.000.000.000,00 (five hundred billion rupiah).

(4) The term of Corporate Income Tax deduction as described in paragraph (3) point a shall be given based on the following provisions:

a. for five (5) fiscal years for new investment and the planned investment 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 of at least Rp1.000.000.000.000.00 (one trillion rupiah) and less than Rp.5.000.000.000.000.00 (five trillion rupiah);

c. for 10 (ten) fiscal years for new investment with planned investment of 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 of 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 of at least Rp30.000.000.000.000,00 (thirty trillion rupiah).

(5) The term of Corporate Income Tax deduction as described in paragraph (3) point b shall be given for five (5) fiscal years.

(6) After the expiry of the term of provision of Corporate Income Tax deduction as referred to in paragraph (4) or paragraph (5), taxpayers shall be given of Corporate Income Tax deduction as follows:

a. 50% (fifty percent) of the Corporate Withholding Tax payable for the next two (2) years for new investment as referred to in paragraph (3) point a; or

b. 25% (twenty five percent) of the Corporate Withholding Tax payable for the next two (2) years for new investments as referred to in paragraph (3) point b.

961. O artigo 3º do Regulamento 150/2018 da Indonésia fornece uma lista de indústrias consideradas pioneiras, incluindo a indústria de base metálica a montante (ferro, aço e não aço):

Article 3 (1) In order to obtain Corporate Income Tax deduction as referred to in Article 2 paragraph (1) corporate Taxpayers must meet the following criteria:

a. it is a Pioneer Industry;

b. it is an Indonesia's corporation;

c. it is a new investment to which it has not been issued a decision on the granting or notification 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); and

e. it meets the provision of debt and capital ratio as referred to in the Regulation of Minister of Finance concerning the determination of the company's debt and capital ratio for the purpose of 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 serem elegíveis 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 decisão sobre a redução do 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, de 4/1.

963. Cabe notar que, embora possam pertencer a grupos internacionais, os produtores de aço inoxidável na Indonésia investigados foram incorporados como entidades jurídicas indonésias, sendo elegíveis, portanto, à redução do imposto de renda. De acordo com o presente Regulamento, e dado o investimento limitado necessário para se beneficiar da redução de impostos, para os fins de determinação final, conforme elementos dos autos tem-se que todos os produtores de aço inoxidável indonésios, integrados ou não, são elegíveis para este regime de subsídios.

964. Tem-se, ainda, que a solicitação de apoio no âmbito do programa é recebida pelo BKPM pelo sistema OSS, entidade que então elabora uma carta de recomendação ao MoF atestando se é recomendada a concessão ou não. O MoF é o órgão responsável pela condução e acompanhamento do programa.

965. O GOI apontou em sua resposta ao questionário que a empresa PT IRNC participou do programa, e que nenhuma outra empresa de seu grupo teve concedida assistência. Entretanto, tal informação não pode ser comprovada, pois o GOI informou, na visita in loco, que não poderia fornecer sequer qualquer documentação referente à habilitação e uso do programa, pois esta tem caráter

confidencial e deveria ser demandada diretamente à empresa PT IRNC (PT Ruipu). O GOI tampouco respondeu às perguntas que permitiriam à SDCOM avaliar a distribuição da assistência no âmbito do programa entre os setores contemplados.

966. Considerando ainda que a SDCOM não recebeu qualquer resposta ao questionário do produtor/exportador, foram utilizados, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis, quais sejam, as informações que constam dos autos.

4.2.7.1.2 Elementos de fato ou de direito (Base legal/documental)

967. O programa é regulado pelo Regulamento do MoF nº 150, de 2018.

4.2.7.1.1 Contribuição financeira

968. A contribuição financeira do programa reside no fato de que as empresas que tiveram acesso ao programa passaram a contar com recursos adicionais, não disponíveis para empresas não participantes do programa. A referida contribuição financeira gera benefícios a seus receptores, já que aumenta a liquidez das empresas, que passavam a contar com recursos adicionais oriundos do não recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme art. 4º, II, "b", do Decreto nº 1.751/95.

4.2.7.1.2 Especificidade

969. São elegíveis as empresas conforme estabelecido pelo Regulamento, em especial as pertencentes aos setores de "pioneer industry" e que realizem um investimento de no mínimo 100 bilhões. Deste modo, tem-se configurada a especificidade de direito do programa, nos termos do art. 6º, caput, do Decreto nº 1.751/1995, uma vez que o normativo limita o programa a determinadas empresas pioneiras, dentre 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, afirmou que a IRNC foi a única empresa, como alegado pelo GOI, que se beneficiou do Tax Holiday conferido em referido programa, de modo que suas partes relacionadas não foram beneficiadas.

971. Afirma ainda que "os relatórios auditados das demais partes relacionadas ([CONFIDENCIAL]) apresentam nenhum tax holiday deduzido do imposto de renda, como essa autoridade verificadora pode constatar". Sugere como melhor informação disponível o percentual de 1,65% calculado pela autoridade investigadora da União Europeia, o qual seria, na sua opinião, consistente com as informações de fato prestadas pelo GOI e pela IRNC, já que, na sua opinião, o cálculo trazido pela peticionária "engloba subsídios recebidos no imposto de renda por suas partes relacionadas sem qualquer embasamento fático".

972. A Aperam, em manifestação de 9 de setembro de 2022, reiterou suas exposições anteriores na petição e suas informações complementares, em especial no que diz respeito aos Government Regulation 18 of 2015, Ministry of Finance Regulation 89 of 2015 e Government Regulation 9 of 2016.

973. Destacou, ainda, que o Ministry of Finance Regulation 35 of 2018 teria estabelecido uma redução de 100% na alíquota do Imposto de Renda das Empresas (CIT) para as empresas que realizarem um novo investimento de capital de, pelo menos, 500 bilhões de rúpias da Indonésia (Rp). Tal Regulamento, entretanto, teria sido substituído pelo Regulamento do Ministério da Economia 150, de 2018, que teria mantido a mesma redução de 100%, porém, apenas a empresas cujo novo investimento fosse de, ao menos, Rp 500 bilhões.

974. Como se verificaria, o mencionado Regulamento estabeleceria, também, uma redução de 50% na alíquota do Imposto de Renda das Empresas para novos investimentos entre Rp 100 bilhões e Rp 500 bilhões.

975. Defendeu que em todos os casos, os subsídios estabelecidos confeririam um benefício igual ao montante da receita abdicada pelo governo e dos direitos não recolhidos pelo governo.

976. Destacou que a Nickel Mines, em sua parceria com o Grupo Tsingshan, teria obtido a redução de 100% do valor do Imposto de Renda, com base no mencionado Regulamento do Ministério da Economia 35/2018, para o projeto Hengjaya Nickel, conforme informado em seu sítio eletrônico e já

apresentado na petição. Ademais, a Nickel Mines teria obtido as mesmas concessões financeiras em relação a seu projeto Ranger Nickel, também em parceria com o Grupo Tsingshan, conforme informa em seu sítio eletrônico e apresentado na petição.

977. Essas reduções de impostos se qualificariam, portanto, como uma contribuição financeira por parte de um governo sob a forma de uma receita governamental que, de outra forma, é perdoada ou não recolhida, nos termos do item b) do inciso II do art.4º do Decreto 1.751/95 e do Artigo 1.1(a)(1)(ii) do Acordo SMC.

978. Destacou também que o Governo da Indonésia, em sua resposta ao Questionário enviado pela SDCOM, teria confirmado que o programa Tax Holiday está em vigor e que foi concedido à empresa IRNC. Acrescentou que, entre 2018 e março de 2020, as indústrias no setor de "Upstream Metal Industry" teriam representado 9 das 19 concessões do benefício do Tax Holiday. Em relação à região Central Sulawesi, esta teria representado, no mesmo período, 8 das 18 concessões reportadas de tal benefício.

979. Ainda, conforme constaria no Relatório da Visita de Verificação no Governo da Indonésia, haveria programas relacionados a benefícios oriundos de depreciação acelerada. Nesse caso, o Ministry of Finance Regulation apresentaria, em seu apêndice 2, lista de setores e regiões aos quais se destina o benefício, sendo que o número 26 diz respeito ao "nickel mining" e o programa estaria disponível para todas as regiões com a exclusão de algumas, tendo sido verificado que está disponível para Morowali.

4.2.7.1.4 Manifestações posteriores à Nota Técnica acerca do programa

980. A PT IRNC, em sua manifestação final, aduziu que "normalmente relatórios auditados são considerados o "parâmetro" de verificação de informações submetidas pelo exportador para a autoridade, justamente por serem emitidos por um terceiro independente, os auditores externos. Deste modo, os relatórios auditados, via de regra, não possuem força probante de meros indícios, mas constituem-se, pelo contrário, no "parâmetro" de comparação para as demais informações de cunho contábil-financeiro aportadas pela empresa investigada". Assim, a PT IRNC comentou que entende não haver como se atribuir força probante maior ao cálculo proposto pela Peticionária, que considera que as empresas do grupo receberam o benefício do Tax Holiday, em detrimento do que é afirmado pelos relatórios auditados, que 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 formular as determinações levar-se-ão em conta as informações verificáveis que tenham sido apresentadas tempestivamente e que, portanto, possam ser utilizadas ainda que não estejam de forma adequada sob todos os aspectos.". Tem-se aí um requisito imprescindível encontrado no uso de "informações verificáveis".

982. Neste contexto, a apresentação de relatórios auditados não é suficiente para trespassar tal requisito e ser possível a utilização no caso, que exige não apenas meros indícios, mas evidências do que se alega. No presente caso não se trata de informação verificável, já que a ausência de resposta ao questionário por parte da PT IRNC impediu qualquer verificação (lembrando ainda que o GOI se recusou a fornecer comprovações específicas de cada empresa, alegando confidencialidade) para a adequada verificação de tal programa, indispensável a verificação dos tax returns das empresas envolvidas por parte desta SDCOM.

983. Ademais, não se pode esquecer, como o fez a PT IRNC em sua manifestação final, que ditos relatórios não são públicos, e não estão livremente acessíveis nem para esta autoridade, nem para as demais partes interessadas exercerem o contraditório. Ainda que estivessem disponíveis livremente, de todo modo seria imprescindível a verificação dos dados neles contidos. Caso contrário nunca seria necessária verificação in loco de dados contáveis, bastaria a autoridade ler os relatórios auditados em todas as investigações. Não se pode olvidar, ainda, que já ocorreu em outras investigações de a SDCOM ter descoberto incorreções (intencionais ou não) em relatórios auditados. Não procede, portanto, o argumento da PT IRNC.

984. Deste modo, considerando os fatos disponíveis nos autos, a SDCOM entende que a teor da legislação aplicável, a melhor informação disponível nos autos é o trazido pela peticionária, haja visto que: i) a manifestante não apontou diretamente nenhuma mácula no cálculo realizado, apenas o refutou

genericamente; ii) o texto da decisão da autoridade da União Europeia é demasiadamente sucinto, e como a SDCOM não teve acesso à documentação a qual teve acesso a autoridade, não há como saber qual foi a documentação analisada neste programa específico.

985. Sobre o argumento trazido na manifestação final sobre a União Europeia, repise-se que não se sabe qual foi a documentação analisada neste programa específico - inclusive na presente investigação tem-se exemplo cabal de como pode ter a autoridade da União Europeia não ter tido acesso a certos documentos (in casu, a documentação oficial encontrada pela SDCOM sobre o enquadramento do IMIP no programa de fornecimento de eletricidade, aparentemente não analisada pela EU). E aqui também cabe ressaltar que a sugestão da PT IRNC equivaleria a simplesmente transplantar decisões de outras autoridades sem qualquer senso crítico, o que poderia levar à sugestão - em último caso - de sequer investigar e somente aplicar o mesmo montante de outras autoridades para todos os programas. Quando adequado esta SDCOM aplicou o calculado pela União Europeia, inclusive quando a peticionária havia sugerido um cálculo mais elevado - por exemplo, no programa de empréstimos preferenciais a peticionária tinha sugerido um montante de US$ 195,81/t ou 9,58%, e foi utilizado como melhor informação disponível o cálculo da União Europeia, de 1,84% ou US$ 37,60/t. Em sede de uso dos fatos disponíveis, esta autoridade obviamente não leva em consideração o montante a ser aplicado, mas sim qual é a informação que melhor preenche as lacunas deixadas pela falta de colaboração das partes.

986. Digno de destaque, ainda, é o fato de que a PT IRNC continuou sem atacar nenhum ponto do cálculo realizado, muito embora tenha sido detalhadamente apurado no cálculo quais seriam os valores de receita e lucro das empresas do grupo Tsingshan (com base nas informações disponíveis). Ora, se como alegado não houve participação de certas empresas do grupo no programa, a PT IRNC teve ampla oportunidade de contra-argumentar no sentido da falta de lucro e de participação no programa. Reitera-se ainda que a SDCOM somente buscou os fatos disponíveis ante a total falta de colaboração por parte dos produtores/exportadores, que não responderam ao questionário, conforme já pontuado, e do Governo da Indonésia, que se negou a fornecer quaisquer dados concretos acerca da utilização, por parte das empresas, deste e de todos os outros programas.

987. A SDCOM pontuou ainda na Nota Técnica estar surpresa com a confidencialidade dos nomes de suas empresas relacionadas trazida pela PT IRNC em sua manifestação prévia à Nota Técnica, por ser tal informação de notório conhecimento público, como presente no próprio relatório 2017 do IMIP ou na decisão da autoridade da União Europeia. Ao ocultar tais nomes, dificultou sobremaneira o contraditório das demais partes interessadas, que sequer tinham condição de saber qual o nome das empresas e verificar se procede a informação expressa na manifestação. Ainda que tal fato não seja determinante para a rejeição da documentação acostada, é elemento que não pode ser desconsiderado. Ressalta-se que, para os fins de manifestação final, a PT IRNC levantou o sigilo dos nomes. Ainda que as outras partes não tenham tido tempo hábil de considerar o levantamento (já que a manifestação da PT IRNC só foi protocolada no fim do prazo), a própria SDCOM já o tinha levantado a partir da Nota Técnica.

4.2.7.1.6 Conclusão

988. A SDCOM concluiu que o programa de redução/isenção do imposto de renda para grandes investimentos trata-se de incentivo que se configura em subsídio, já que envolve uma contribuição financeira por governo ou órgão público, nos termos da alínea "b", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que deixou o GOI de recolher receitas públicas devidas.

989. Com relação à especificidade, tendo em vista a ausência de resposta completa ao questionaria nos itens pertinentes, como apontado acima, e considerando que os elementos de prova dos autos apontam expressamente a existência de políticas de modo a privilegiar os produtores de aço inoxidável, setor tido como prioritário nos planos do governo, tem-se que o programa configura-se também como subsídio específico de direito, nos termos do art. 6º, caput, do Regulamento Brasileiro, e, portanto, sujeito à aplicação de medidas compensatórias.

4.2.7.1.7 Cálculo

990. O cálculo do benefício levou em consideração os fatos disponíveis, nos termos do art. 79 do Decreto nº 1.751, de 1995.

991. Neste contexto, a SDCOM considerou razoável o cálculo apresentado pela peticionária, que, apesar de disponível nos autos desde julho de 2022, não levantou quaisquer críticas das demais partes interessadas - não sendo a mera crítica genérica sobre suposta ausência de embasamento fático apta a desacreditar o uso do cálculo apresentado pela peticionária - haja visto que a própria manifestante, se houvesse colaborado com a investigação, poderia ter fornecido todas as evidências de que necessitaria a SDCOM para o cálculo mais preciso possível sem forçar o uso dos fatos disponíveis.

992. Assim, com base nos dados apresentados pela peticionária, que razoavelmente construiu receita e lucro das empresas envolvidas do grupo Tsingshan, e apurou o montante para o produto objeto da investigação, por meio de sistemática de pass-through considerada adequada pela SDCOM, conforme consta de documento submetido pela Aperam nos autos do processo em 08 de setembro de 2022, considerando ainda uma isenção de 100%, o que é compatível com a legislação aplicável e os montantes envolvidos, alcançou-se para tal programa o montante de 69,37 USD/t.

993.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	69,37	3,39

Fonte: Melhor informação disponível - Manifestação da peticionária

Elaboração: SDCOM

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 pelos regulamentos nos. 76/2012 e 188/2015, as empresas envolvidas em indústrias produtoras de bens e/ou serviços podem ser isentas de direitos de importação sobre máquinas, bens e materiais.

995. Esta isenção é normalmente concedida por um período máximo de dois anos a partir da decisão sobre isenção de direitos de importação. O objetivo deste Regulamento é apoiar a indústria nacional, como afirma o Regulamento nº 176/2009 do MoF (tradução submetida pelo GOI): "in order to increase domestic investment to strengthen the national economy which faces the global competition, it is necessary to grant an exemption from import duty on the imports of machines, goods and materials for the establishment or development of industry in the frame of investment".

996. De acordo com o artigo 1º do Regulamento MoF nº 176/2009, as máquinas em questão são aquelas utilizadas para construir ou desenvolver indústrias, enquanto que "bens e materiais" abrangem todos os bens ou materiais, independentemente do seu tipo e composição, utilizados como materiais ou componentes para a produção de bens acabados.

997. De acordo com o Regulamento, há limitação ao recebimento de assistência no âmbito dos prestadores de serviços, limitando-se a uma lista de sete indústrias, que estão elencadas no anexo do Regulamento MoF nº 176/2009: "1. Tourism and culture 2. Transportation (for public transportation services) 3. Public health services 4. Mining 5. Construction 6. Telecommunication 7. Port" (grifo nosso). A legislação não estabelece limitação aos produtores de bens.

998. Segundo afirmado pela peticionária, considerada a melhor informação disponível nos autos, as alíquotas do imposto de importação relativas às máquinas classificadas nos capítulos 84 e 85 do Sistema Harmonizado variam em torno de 5%.

999. Durante a visita in loco, ao ser questionado o GOI acerca do programa, os servidores da SDCOM foram informados que a equipe do BKPM responsável pelo programa não estava disponível para explicações. Conforme relatado no relatório da visita:

Perguntados sobre as Regulations MOF 72/2012 e MOF 188/2015, que também tratam de isenção de impostos, foi explicado que se trata de incentivo temporário no âmbito de investimento para construção sendo tal programa gerenciado pelo BKPM, pois diz respeito aos investimentos de importação de máquinas, por exemplo, realizados, e não sobre os produtos em uma bonded zone. É importante no âmbito do programa saber se a isenção ocorre antes ou depois da construção, pois uma vez passados 2 anos, a empresa pode aplicar para uma bonded zone. Foi ainda ressaltado que, ao final, a empresa tem a

mesma isenção sob os dois programas, e não haveria recebimento em excesso. Perguntados se a equipe do BKPM estava disponível para explicar o funcionamento do programa, foi dito que a equipe do BKPM acreditava que sua participação encerraria na quarta-feira, ao que os servidores da SDCOM responderam que as letras d) e e) da seção VAT exemptions foram postergadas para sexta-feira. O GOI respondeu que iria verificar a possibilidade de comparecerem em vídeo conferência online, sendo que a verificação foi encerrada sem que a equipe do BKPM tenha participado na sexta-feira.

1000. Assim, foram utilizados, nos termos do art. 79 do Regulamento brasileiro, os fatos disponíveis no processo.

1001. Tampouco puderam ser avaliadas as alegações do GOI acerca da vigilância e monitoramento do programa.

4.2.7.2.2 Elementos de fato ou de direito (Base legal/documental)

1002. O programa é regulado pelo Regulamento MoF nº 176/2009, conforme alterações posteriores, tendo sido a última realizada pelo Regulamento MoF nº 188/2015.

4.2.7.2.1 Contribuição financeira

1003. A contribuição financeira do programa reside no fato de que as empresas que tiveram acesso ao programa passaram a contar com recursos adicionais, não disponíveis para empresas não participantes do programa. A referida contribuição financeira gera benefícios a seus receptores, já que aumenta a liquidez das empresas, que passavam a contar com recursos adicionais oriundos do não recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme art. 4º, II, "b", do Decreto nº 1.751/95.

4.2.7.2.2 Especificidade

1004. De acordo com o Regulamento MoF nº188/2015, o programa é acessível a todas as empresas produtoras de bens e 7 setores de serviços, dentre os quais o da mineração.

1005. Pontua-se que, tendo em conta que o GOI não forneceu as informações solicitadas necessárias para avaliar as empresas que de fato obtiveram assistência no âmbito do programa, conforme perguntas do questionário, e que não logrou a SDCOM verificar a resposta ao questionário para este programa quando da visita in loco, conforme será detalhado na seção seguinte, para fins de Determinação Final foram utilizados, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis.

1006. Neste contexto, tendo a ausência de colaboração do GOI neste programa impedido a avaliação da autoridade forma como o governo distribui ou exerce sua discricionariedade na aprovação das isenções, ante as políticas governamentais expressas na RIPIN 2015-2035 conforme já descrito, os elementos do processos apontam para a existência de uma especificidade de fato com relação às produtoras investigadas de laminados a frio, nos termos do § 3 º do art. 6 º do Decreto nº 1.751/1995, além da especificidade de direito, nos termos do art. 6 º , caput, do Decreto nº 1.751/1995 com relação às mineradoras, que estão na cadeia a montante do produto objeto de investigação.

4.2.7.2.3 Manifestações prévias à Nota Técnica acerca do programa

1007. Em sua resposta ao questionário, o GOI afirmou que o programa serviria para atrair e acelerar o desenvolvimento e que, conforme Regulamento MoF nº 176/2009, o programa está aberto para todas as companhias, e por tal motivo, não seria específico. A IRNC pontuou que compartilha o entendimento do GOI de que tal benefício teria caráter geral para qualquer empresa produtora de mercadorias ("goods"), não sendo específico, mas solicita, de todo modo, que seja utilizado como melhor informação disponível o cálculo realizado pela União Europeia.

1008. A Aperam, em manifestação de 9 de setembro de 2022, afirmou que na petição e suas informações complementares estão analisadas as determinações estabelecidas pelo Regulamento 176/2009 do Ministério da Fazenda da Indonésia, alterado pelos regulamentos 76/2012 e 188/2015, segundo os quais as empresas envolvidas em indústrias produtoras de bens e/ou serviços têm direito à isenção de direitos de importação sobre máquinas, bens e materiais.

1009. Afirmou ainda que contrariamente ao alegado pelo Governo da Indonésia, no Anexo ao Ministry of Finance Regulation no. 176/2009 consta a lista de indústrias geradoras de serviços (não prestadoras de serviços) que têm direito à isenção dos direitos de importação de máquinas, bens e

materiais, indicando, no item 4, a mineração.

1010. Destacou também que em sua resposta ao Questionário enviado pela SDCOM e ao pedido de informações complementares ao Questionário, o Governo da Indonésia afirmou que "[n]one of producers or exporters of product under investigation participated in and accrued benefit from this program" e que "[n]one of IRNC affilated companies in Indonesia obtained benefit from Exemption from Import Duties." Entretanto, durante a visita de verificação, o Governo da Indonésia atestou que as empresas do grupo IRNC se utilizaram, sim, de tal programa, conforme atestado no Relatório de Visita In Loco. Entretanto, a despeito de deter todos os dados mencionados, o Governo da Indonésia não apresentou as informações e documentação solicitada pela SDCOM.

1011. Por fim, mencionou que o Governo da Indonésia confirmou que "[t]his program still exsist. (sic)"

4.2.7.2.4 Manifestações posteriores à Nota Técnica acerca do programa

1012. A peticionária, em sua manifestação final, reafirmou as conclusões da SDCOM sobre o programa. Acrescentou ainda que os cálculos seriam conservadores, uma vez que foram calculados sobre os preços praticados a remuneração inferior à adequada, e não, como deveria ser, aos preços comparáveis de produtos similares realizadas a preços de mercado.

4.2.7.2.5 Dos comentários da SDCOM

1013. Esta SDCOM ressalta, mais uma vez, o caráter de promoção do desenvolvimento industrial nas políticas do GOI relacionado aos incentivos, como expressado na manifestação do governo. Pontua-se que nenhuma das manifestações teceu quaisquer comentários sobre o cálculo trazido pela peticionária, que foi considerado melhor informação disponível.

1014. Com relação à especificidade, as afirmações do GOI foram desacompanhadas de elementos probatórios, não tendo sequer o GOI respondido às perguntas da SDCOM que permitiriam avaliar eventual especificidade de fato do programa advinda, por exemplo, da maneira como o GOI exerce sua discricionariedade no âmbito do programa. Ademais, a legislação do programa expressamente restringe sua aplicação a apenas alguns setores de serviços, incluindo mineração, o que atesta a existência de especificidade.

1015. Sobre os comentários finais da peticionária, a SDCOM pontua que não foram investigados programas de aquisição das máquinas supostamente a remuneração inferior à adequada. Assim, ainda que possa a peticionária apresentar pleito futuro neste sentido, caso entenda ser o caso, para que alegado programa seja investigado, não há nos autos elementos que permitam à SDCOM concordar com o afirmado.

4.2.7.2.6 Conclusão

1016. A SDCOM concluiu que o programa de isenções dos direitos à importação trata-se de incentivo que se configura em subsídio, já que envolve uma contribuição financeira por governo ou órgão público, nos termos da alínea "b", do inciso II, do art. 4º do Decreto nº 1.751, de 1995, posto que deixou o GOI de recolher receitas públicas devidas.

1017. Com relação à especificidade, tendo em vista a ausência de resposta completa ao questionário nos itens pertinentes, como apontado acima, e considerando que os elementos de prova apresentados até a data considerada nesta Determinação apontam que o programa está inserido no contexto de incentivos aos produtores de aço inoxidável, conclui-se pela existência de uma especificidade de fato com relação às produtoras investigadas, nos termos do § 3 º do art. 6 º do Decreto nº 1.751/1995, e, portanto, sujeito à aplicação de medidas compensatórias. Ademais, o setor de mineração está expressamente incluído na lista de setores de serviço com acesso ao programa, configurando-se também como subsídio específico de direito, nos termos do art. 6º, caput, do Regulamento Brasileiro, e portanto, sujeito à aplicação de medidas compensatórias.

4.2.7.2.7 Cálculo

1018. A SDCOM considerou razoável o cálculo trazido pela peticionária, neste sentido, a peticionária trouxe metodologia que estimou os custos envolvidos com as aquisições de maquinário por parte das empresas do grupo Tsingshan. A SDCOM alterou o imposto de importação considerado isento em tais importações, pois a Regulation MoF (Ministério da Fazenda) nº 6, de 2017, indica um percentual de

5,0% aplicável à maioria de tais importações de maquinário, ao invés do percentual utilizado pela peticionária. Assim, considerando-se tal isenção do imposto de importação, e considerando-se ainda uma vida útil média de 15 anos (conforme questionário encaminhado), ao se apropriar ao produto objeto da investigação o benefício recebido, por meio de sistemática de pass-through considerada adequada pela SDCOM, conforme consta de documento submetido pela Aperam nos autos do processo em 08 de setembro de 2022, apurou-se um montante de benefício de US$ 4,36/t.

1019. Ressalta-se ainda que a metodologia trazida pela peticionária não foi objeto de quaisquer comentários das demais partes interessadas.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	4,36	0,21

Fonte: Melhor informação disponível - Manifestação da peticionária

Elaboração: SDCOM

4.2.7.3 Programa 8.3 - Reduções e isenções de IVA sobre máquinas e equipamentos

1021. De acordo com a Lei n º 8/1983, on VAT of Goods and Services and Tax of Luxury Goods Sale, o GOI estabeleceu que para atividades produtivas em determinados setores, a compra e importação de determinados bens tributáveis poderá ser isenta do imposto sobre o valor agregado (IVA, em inglês Value Added Tax - VAT), sujeita a novas estipulações previstas nas normas governamentais. Uma lista limitada desses bens estratégicos está prevista no artigo 1º da Lei 8/1983 e inclui máquinas e equipamentos de fábrica que são utilizados diretamente no processo de produção de bens tributáveis (excluindo peças de reposição). Como tal, essa isenção é prevista na importação e compra de máquinas e equipamentos para atividades de mineração, incluindo as cadeias a montante e a jusante, abarcando, portanto, as máquinas envolvidas no processo de produção de aço inoxidável.

1022. Neste contexto, tem-se que o Regulamento MoF nº 176/2009, assim como o Regulamento Governamental n º 81/2015, respectivamente, delimitam certos bens tributáveis estratégicos importados ou transferidos que são isentos do IVA.

1023. Por sua vez, o Regulamento do Governo n º 81, de 2015, em seus próprios termos "a fim de incentivar ainda mais o desenvolvimento nacional, por meio da concessão de incentivos fiscais de tributação na forma de Isenção da Aplicação de Imposto sobre Valor Agregado na importação e/ou aquisição de Determinadas Mercadorias Tributáveis que são de natureza estratégica em determinados setores de negócios", determina que certos bens tributáveis estratégicos importados ou adquiridos são isentos do IVA, conforme artigo 1:

Artigo 1

(1) Determinadas mercadorias tributáveis que são de natureza estratégica, cuja importação estão isentas da aplicação do Imposto sobre o Valor Agregado, incluem:

a. máquinas e equipamentos de fábrica que constituam uma unidade, instalada ou desmontada, 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, no momento da entrega, estão isentos da cobrança do Imposto sobre o Valor Agregado são:

a. máquinas e equipamentos fabris que constituam uma unidade, instalada ou desmontada, 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 ausência de colaboração das empresas investigadas, utilizando-se os fatos disponíveis nos autos, a SDCOM considerou que não se tem elementos disponíveis aptos a transpor os meros indícios colacionados para os fins de início da

investigação. Assim, na linha das manifestações do GOI e da PT IRNC, a SDCOM concluiu não haver programa de subsídio acionável no que tange às reduções e isenções de IVA sobre máquinas e equipamentos.

4.2.7.3.2 Manifestações posteriores à Nota Técnica sobre o programa

1025. A peticionária argumentou, em sua manifestação final, que haveria nos autos elementos que confirmam a concessão de subsídios nesse programa. A manifestante afirmou que apresentou todas as fontes, metodologias e cálculos, e que o GOI teria admitido a utilização do programa.

4.2.7.3.3 Dos comentários da SDCOM

1026. A peticionária apenas reafirmou argumentos já ventilados, não sendo estes aptos a convencer esta autoridade sobre a existência de programa de subsídios no que tange a reduções e isenções do IVA.

4.2.8 Programa 9 - Income Tax facilities a determinadas indústrias

4.2.8.1 Fatos apurados sobre o programa

1027. O Regulamento Governamental nº 18/2015, em vigor desde 6 de maio de 2015, estabelece incentivos fiscais em matéria de imposto de renda ("Income Tax facilities") por parte do governo da Indonésia a determinadas indústrias, tendo estes sido regulamentados pelo Regulamento MoF nº 89/2015 e pelo Regulamento Governamental nº 9/2016. Tais regulamentos versam sobre quatro incentivos:

a) Redução do lucro tributável líquido de até 30% do valor investido na forma de ativos fixos qualificados (incluindo terras), rateados em 5% por seis anos, e desde que os ativos investidos não estejam sendo mal utilizados ou transferidos dentro de um determinado período (o que for mais longo entre seis anos a partir do início da produção comercial ou a vida útil do ativo com base na depreciação/amortização acelerada);

b) Depreciação e amortização aceleradas;

c) Retenção de impostos sobre dividendos pagos a não residentes em 10%; e

d) Um período de perdão do pagamento estendido de cinco anos para um máximo de dez anos.

1028. Conforme o artigo 3 do mesmo Regulamento do Governo, delimita-se como condicionante para a obtenção das concessões financeiras listadas o atendimento a certos critérios, 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) may be provided with Income Tax facilities as referred to in Article 2 paragraph (2) to the extent they meet the following criteria:

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 financeiras por parte do governo da Indonésia a determinadas indústrias, conforme explicitado no item 1 do artigo 2 do mencionado regulamento:

Article 2

1. To the Taxpayer of domestic agencies which carry out of the capital investment, in the form of New 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.

1030. No Anexo I mencionado no item 1.a. do artigo 2 estão incluídos como setores qualificados, nos itens 3, 31, 32 e 50, "Coal gasification at the mining site", "basic iron and steel industry" (incluindo "iron and/or alloy steel (stainless steel slab and/or stainless steel billet)"), "Non-ferrous basic metal manufacturing industry" (incluindo "nickel alloy (ferrous nickel)") e "Mining machinery industry, excavation and construction", respectivamente. E ainda que, em relação ao item 3 (carvão), nos requisitos para a obtenção das contribuições financeiras constaria que é especificamente para atendimento de demandas domésticas. Por sua vez, no Anexo II mencionado no item 1.b do artigo 2, estariam incluídos, nos itens 18, 26, 71 e 73 os setores de mineração de carvão, mineração de minério de níquel, indústria de laminação de aço (incluindo laminados a frio) e indústria de produção de metais básicos (incluindo liga de níquel). Mais ainda, cabe destacar que, nos itens 18 (carvão), 71 (laminação de aço) e 73 (ligas de níquel), a obtenção das concessões financeiras está limitada a regiões/províncias especificamente determinadas. No caso do minério de níquel (item 26), o requisito estipulado pelo governo da Indonésia para a concessão dos benefícios fiscais seria que as operações estejam relacionadas a "novos desenvolvimentos e expansão de fundições".

1031. Como se verá a seguir, o artigo 2 do Regulamento do Governo nº 18/2015 define os quatro incentivos. Cada um deles será apresentado separadamente, de modo a facilitar a caracterização de cada incentivo:

a) Redução do lucro tributável líquido;

b) Depreciação e amortização aceleradas;

c) Retenção de impostos sobre dividendos pagos a não residentes em 10%;

d) Extensão do período de transposição de prejuízos fiscais.

1032. O item "a" do item 2 do artigo 2 do Regulamento do Governo nº 18/2015 versa sobre a redução do lucro tributável líquido. Esta ocorre na forma de redução de até 30% do valor investido na forma de ativos fixos qualificados (incluindo terras), rateados em 5% por seis anos, e desde que os ativos investidos não estejam sendo mal utilizados ou transferidos dentro de um determinado período (o que for mais longo entre seis anos a partir do início da produção comercial ou a vida útil do ativo com base na depreciação/amortização acelerada):

Article 2

(¼)

(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 the form of tangible fixed assets, including any land used for the business main activities, shall be charged for 6 (six) years, respectively of 5% (five percent) per year calculated from the commencement of commercial production.

1033. O item "b" do item 2 do artigo 2 do Regulamento do Governo 18/2015 versa sobre a depreciação e amortização aceleradas:

Article 2

(¼)

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:

(¼)

b. accelerated depreciation on tangible assets and amortization on intangible assets acquired in the framework of new Investment and/or business expansion, with the useful lives and depreciation rates 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>>

1034. Como se depreende das tabelas acima, de forma geral o governo da Indonésia permite às empresas qualificadas uma amortização ou depreciação duas vezes mais rápida do que na ausência do programa. A depreciação e amortização aceleradas permitem a contabilização antecipadas de encargos dedutíveis na apuração do resultado tributável, reduzindo, portanto, o valor dos impostos a serem pagos pelos beneficiários.

1035. O item "c" do item 2 do artigo 2 do Regulamento do Governo nº 18/2015 versa sobre a retenção de impostos sobre dividendos pagos a não residentes a no máximo 10%, podendo ser menor se houver acordo de dupla taxação aplicável:

Article 2

(¼)

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:

(¼)

c. the imposition of Income Tax on dividends paid to any Non-resident Taxpayer other than a permanent establishment in Indonesia of 10% (ten percent) or lower tariffs in accordance with any applicable double taxation treaty; and

1036. O item "d" do item 2 do artigo 2 do Regulamento do Governo nº 18/2015 versa sobre a extensão do período de transposição de prejuízos fiscais para além dos cinco anos normalmente concedidos, com um máximo de 10 anos:

Article 2

(¼)

(2) Income Tax facilities as referred in paragraph (1) above shall be as follows:

(¼)

d. Loss compensation for more than 5 (five) years but not more than 10 (ten) years with the following provisions as follows:

1. 1 year extra: in case the New Capital Investment in business field stipulated in paragraph (1) 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 issued of the cost for the economic and/or social infrastructure in business location at the least of Rp10,000,000,000.00 (ten billion rupiah);

3. 1 year extra: in case it uses materials and/or domestic products result component at least 70% (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 work forces for 5 (five) consecutive years; or

b) 2 (two) year extra in case it hires at least 1000 (one thousand) Indonesian work forces for 5 (five) consecutive years;

5. 2 years extra: in case issued of cost of domestic research and development in order to product development or production efficiency at least 5% (five percent) from the total Capital investment for 5 (five) years period;

6. 2 years extra: in case the Capital Investment this is expansion from there is business in the Certain Business Fields and/or Certain Regions which regulated in the paragraph (1) letter a and/or letter b of the financing source parts coming from earning after tax the Taxpayer in the one of tax year before 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) from the sales total value, for the Capital Investment in the business fields which regulated in paragraph (1) letter a which carry out in the outside of bonded zone.

1037. Sobre o Regulamento Governamental nº 18, de 2015, esta SDCOM logrou encontrar em fontes públicas resumos da legislação feitos pelas consultorias PWC e KPMG que confirmam o funcionamento geral dos quatro incentivos apresentado pela peticionária e do Regulamento Governamental nº 89/2015, sendo que os documentos também deixam claro que há incentivo à construção de fundidores para produtos de mineração, e nos setores de manufatura básica de metal e de mineração de carvão e de metais, o que se encaixa no intuito geral do governo conforme já explicado no item 4.1.

1038. A Government Regulation nº 18, de 2015, foi substituída pelo Government Regulation 78/2019, sendo que não se alterou o cerne do programa. Segundo a KPMG: "The required qualification requirements and tax benefits remain the same under PP-78, which also provides some additional clarifications". No novo regulamento, também constam os setores "Basic metals manufacturing" e da mineração.

1039. Como pontuado no logo no artigo 1º, item 3, de ambos os Regulamentos, os incentivos visam setores com alta prioridade para o país: "Certain Business Fields shall be business fields in the sector of economic activity with high priority on the national scale".

1040. Segundo a peticionária, tal programa aumenta o fluxo de caixa da empresa e permite melhor planejamento financeiro e tributário. Ademais, o carregamento de perdas e a consequente redução da base de cálculo, e, em última análise, do imposto devido, é, evidentemente benéfico à empresa.

1041. Salienta-se que tal programa é de conhecimento por parte da SDCOM de longa data. Já na decisão de 2014 no caso de investigação de subsídios acionáveis nas exportações da República da Indonésia para o Brasil de fios com predominância de fibras acrílicas, a Circular SECEX nº 37, de 20 de junho de 2014, o programa foi identificado e se concluiu por se tratar de subsídio acionável, muito embora naquele caso não tenha sido verificada a participação das empresas investigadas.

4.2.8.2 Elementos de fato ou de direito (Base legal/documental)

1042. O programa é regulado pelo Regulamento MoF nº 89, de 2015, e pela Government 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 as empresas que tiveram acesso ao programa passaram a contar com recursos adicionais, não disponíveis para empresas não participantes do programa. A referida contribuição financeira gera benefícios a seus receptores, já que aumenta a liquidez das empresas, que passam a contar com recursos adicionais oriundos do não recolhimento, por parte do Governo da Indonésia, de receitas devidas, conforme art. 4º, II, "b", do Decreto nº 1.751/95.

4.2.8.3.1 Especificidade

1044. Considerando-se que o GOI não forneceu as informações solicitadas necessárias para avaliar as empresas que de fato obtiveram assistência no âmbito do programa, conforme perguntas do questionário, para fins deste documento foram utilizados, nos termos do art. 79 do Decreto nº 1.751, de 1995, os fatos disponíveis. Tais fatos indicam que os subsídios em questão são específicos de direito nos termos do art. 6º, caput, do Decreto nº 1.751/1995, uma vez que se limita a determinadas empresas, dentre 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) teria sido beneficiada por tal incentivo. A PT IRNC pontuou que tal informação seria correta, e que "os relatórios auditados da IRNC bem como das demais partes relacionadas ([CONFIDENCIAL]) não apresentam nenhum tax allowance facility deduzido do imposto de renda, como essa autoridade verificadora pode constatar.". Sugeriu como melhor informação disponível o percentual de 0,06% calculado pela autoridade da União Europeia.

1046. A Aperam, em manifestação de 9 de setembro de 2022, reiterou todo o já exposto na petição e suas informações complementares, bem como ao longo do processo. Afirmou que embora o GOI tenha toda a documentação e informações relativas à utilização de tal programa, o Governo da Indonésia

não demonstrou as informações solicitadas pela SDCOM. Assim sendo, segundo a peticionária, seria possível considerar que outras empresas instaladas no IMIP tenham se utilizado dos subsídios concedidos por meio desse programa, e não apenas a PT Sulawesi Mining Investiment.

4.2.8.5 Manifestações posteriores à Nota Técnica sobre o programa

1047. A peticionária argumentou, em sua manifestação final, discordar da posição da SDCOM ao não considerar acionáveis a contribuição relativa aos dividendos. Acrescentou que a evidência de que tal fato ocorreu teria que ser verificada junto às produtoras/exportadoras na Indonésia, o que não ocorreu devido à falta de cooperação pelas partes mencionadas. Assim, os cálculos elaborados e apresentados pela peticionária deveriam ser considerados como melhor informação disponível

4.2.8.6 Dos comentários da SDCOM

1048. Com relação ao alegado pela PT IRNC, pontua-se que esta SDCOM discorda frontalmente da afirmação "como essa autoridade verificadora pode constatar". Muito pelo contrário, como descrito no relatório da visita in loco, o GOI negou acesso a informações específicas acerca da assistência prestada no âmbito do programa.

1049. Sobre os cálculos, mesmo ausente qualquer objeção direta ao cálculo apresentado pela peticionária, que não a mera crítica genérica, pelo fato de o cálculo apresentado pela peticionária versar somente sobre os dividendos, esta autoridade considerou mais adequado utilizar como melhor informação disponível o cálculo da autoridade da União Europeia.

1050. Sobre o Regulamento Governamental nº 18/2015, esta SDCOM logrou encontrar em fontes públicas resumos da legislação feitos pelas consultorias PWC e KPMG que confirmam o funcionamento geral dos quatro incentivos apresentado pela peticionária e do Regulamento Governamental nº 89/2015, sendo que os documentos também deixam claro que há incentivo à construção de fundidores para produtos de mineração, e nos setores de manufatura básica de metal e de mineração de carvão e de metais, o que se encaixa no intuito geral do governo conforme já explicado no item 4.1.

1051. Apesar de não levantado pela peticionária ou pelo GOI, SDCOM logrou encontrar evidências que indicam que o Regulamentado aventado na petição (Regulamento Governamental no 18/2015), foi substituído pelo Regulamento Governamental 78/2019. No novo regulamento, também constam os setores "Basic metals manufacturing" e da mineração, restando inalteradas as conclusões.

1052. Como pontuado no logo no artigo 1º, item 3, de ambos os Regulamentos, os incentivos visam setores com alta prioridade para o país: "Certain Business Fields shall be business fields in the sector of economic activity with high priority on the national scale".

1053. Sobre os comentários da peticionária, pontua-se que o uso da informação disponível não autoriza a autoridade a livremente concluir pelo uso de certo programa. Há, mesmo neste cenário, que se colacionar elementos razoáveis que indiquem a utilização do programa, como trouxe a própria peticionária em vários dos programas aqui analisados. Neste sentido, o cálculo trazido pela peticionária, ainda que matematicamente correto, não é apto a transpor essa barreira - ao contrário do cálculo de outros programas, em que o próprio cálculo já é importante elemento que evidencia a utilização, por exemplo, a existência de lucro. Por este fator, a ausência de comentário das demais partes não é, para este programa específico, elemento de relevo.

1054. Assim, muito embora a SDCOM lamente a falta de colaboração da PT IRNC, reafirma considerar que os dividendos, neste caso concreto, não podem ser considerados subsídios acionáveis.

4.2.8.7 Conclusão

1055. Considerando a falta de colaboração e o recurso aos elementos dos autos, esta SDCOM concluiu que há evidências acerca do não recolhimento de tributos devidos com a: i) redução do lucro tributável; ii) depreciação e amortização aceleradas; iii) retenção de impostos sobre dividendos pagos a não residentes em 10%; e iv) extensão do período de transposição de prejuízos fiscais. Entretanto, esta SDCOM considera que os elementos nos autos não autorizam a existência de contribuição financeira nos termos do ASMC no que tange à retenção de impostos sobre dividendos pagos a não residentes.

1056. Neste contexto, muito embora ser fato que os recebedores de dividendos da empresa ficam com maior disponibilidade de capital para novos investimentos na empresa controlada, além de potencialmente maior propensão inicial a investir quando na ausência do benefício não o fariam, a peticionária não logrou trazer aos autos evidências de que tal de fato ocorreu no presente caso.

1057. Tendo em vista que os elementos apresentados também apontam que os subsídios em questão são específicos de direito nos termos do art. 6º, caput, do Decreto nº 1.751/1995, uma vez que se limita a determinadas empresas, dentre as quais as empresas mineradoras e produtoras de produtos de metal, tem-se, portanto, que está sujeito à aplicação de medidas compensatórias.

4.2.8.8 Cálculo

1058. Para o cálculo do benefício do programa, ante a falta de colaboração das empresas e do GOI, utilizou-se os fatos disponíveis, nos termos do art. 79 do Decreto nº 1.751, de 1995. Neste contexto, considerando que o cálculo trazido pela peticionária apenas abarca os dividendos, os quais, como visto, não foram considerados por esta autoridade como acionáveis, recorreu esta autoridade ao decidido pela autoridade da União Europeia, em linha com o pleito da PT IRNC, em que foi apurado montante de subsídios de 0,06%. 1059.

Produtor/Exportador	Benefício Efetivo (USD/t)	Benefício Efetivo (% FOB)
Todas as empresas	1,23	0,06

Fonte: Melhor informação disponível - Decisão da autoridade da União Europeia

Elaboração: SDCOM

4.2.9 Programa 10 - Regime tributário e tributário preferencial na área de desenvolvimento industrial

4.2.9.1 Fatos apurados sobre o programa

1060. O Regulamento Governamental nº 142/2015, o GOI prevê a criação de "Áreas de Desenvolvimento Industrial", que se referem a áreas determinadas nas quais as empresas se beneficiam de instalações específicas de investimento, sendo elegíveis a certos benefícios, notadamente no que diz respeito a isenções fiscais e a compras facilitadas de eletricidade. O regulamento assim rege:

CAPÍTULO VIII

INSTALAÇÕES DE PARQUE INDUSTRIAL

Artigo 41

(1) As Empresas de Gestão de Parque Industrial e as Empresas Industriais que estiverem em Parques Industriais recebem incentivos fiscais.

(2) Os incentivos fiscais conforme referido no parágrafo (1) são concedidos com base no agrupamento de WPI (Área de Desenvolvimento Industrial).

(3) No caso de concessão de incentivos fiscais, verifica-se a alteração de agrupamento de WPI, regulamentado por meio de Regulamento de Ministro encarregado pelos assuntos governamentais no setor financeiro por meio de recomendação do Ministro.

(4) Outras disposições relativas aos incentivos fiscais, conforme referido nos parágrafos (1) e (2), são regulamentadas por meio de Regulamento de Ministro encarregado de assuntos governamentais no setor financeiro

Artigo 42

(1) As Empresas de Gestão de Parque Industrial dispõem de instalações para a construção e gestão de energia elétrica para as suas necessidades e necessidades das industriais nos Parques Industriais.

(2) Outras disposições relativas às instalações para facilitar o desenvolvimento e gestão de energia elétrica, conforme referido no parágrafo (1), são regulamentadas por meio de Regulamento de Ministro encarregado pelos assuntos governamentais no setor de energia e recursos minerais.

Artigo 43

(1) Empresaa de Gestão de Parque Industrial e Empresas Industriais dentro de Parques Industriais podem receber incentivos regionais.

(2) As disposições relativas aos regulamentos sobre os incentivos regionais, conforme referido no parágrafo (1), são estabelecidas de acordo com as disposições legais.

1061. Conforme estabelecido no Regulamento nº 105/2016 do Ministério da Fazenda da Indonésia, nessas áreas de desenvolvimento industrial, são concedidos vários níveis de isenções fiscais, dependendo da região onde estão situadas. Destaca-se ainda que no preâmbulo do Regulamento tem-se evidência relevante:

Considerando:

b. que o Regulamento do Ministro das Finanças relativo às Incentivos Fiscais e Aduaneiros para Empresas Industriais em Parque Industrial e Empresas de Gestão de Parque Industrial a que se refere a alínea (a) é específico para Parques Industriais, o qual é distinto do Regulamento do Ministro das Finanças relativo ao regime fiscal e aduaneiro em geral; (grifos nossos)

1062. O primeiro artigo do regulamento traz as definições:

Artigo 1

Neste Regulamento do Ministro, o que se entende por:

1. Parque Industrial é a área onde se concentram as atividades Industriais, dotadas de instalações e infraestruturas de apoio desenvolvidas e geridas por uma Empresa de Gestão de Parque Industrial.

(...)

5. A Área de Desenvolvimento Industrial, doravante abreviada como WPI, é um agrupamento do território do Estado Unitário da República da Indonésia com base em anteriores (backward) e posteriores (forward) de seus recursos e instalações de apoio, e que se atenta ao alcance da influência das atividades de construção da indústria.

1063. Conforme o Artigo 2 do Capítulo 2 do Regulamento, regiões são classificadas em quatro categorias, dependendo de seu nível de desenvolvimento econômico: Advanced WPI (WPI Maju), Mature WPI (WPI Berkembang), WPI Potential I (WPI Potensial I) e WPI Potential II (WPI Potensial II). As áreas industriais na zona WPI Potential II receberão, assim, mais benefícios do que aquelas localizadas na zona de Mature WPI. Cabe notar que o Advanced WPI (Java), por sua vez, não concede incentivos fiscais específicos. Tal artigo ainda detalha os tipos de incentivos envolvidos:

(3) Os Incentivos Fiscais e / ou Aduaneiros conforme referidas no parágrafo (1) podem assumir a forma de:

a. Incentivos Fiscais de Imposto de Renda, a saber:

1. Incentivos fiscais de Imposto de Renda para investimento de capital em certos ramos de negócios e / ou em determinadas regiões; ou

2. Incentivos na forma de redução do Imposto de Renda para empresas;

b. Incentivos de isenção do Imposto sobre o Valor Agregado na importação e / ou entrega de máquinas e equipamentos que são consideradas como uma unidade, quer instaladas ou desmontadas, utilizadas diretamente no processo de produção de Bens Tributáveis por Empresário Sujeito à Incidência de Imposto que produz os referidos Bens Tributáveis, excluindo peças sobressalentes; e / ou

c. Incentivos de isenção do imposto para a importação de máquinas e bens e materiais realizada por Empresas Industriais em Parque Industrial e Empresas de Gestão de Parque Industrial que exerçam atividades de negócios no setor industrial de produção de bens e / ou serviços.

(4) A isenção de impostos de importação sobre máquinas e materiais conforme referidos no parágrafo (3) alínea (c) pode ser concedida para máquinas e bens e materiais originários de Portos Francos e Zonas Francas, Zonas Econômicas Especiais ou Áreas de Armazenamento Alfandegado.

1064. Os seguintes artigos 3, 4, 5 e 6 detalham os incentivos concedidos nas áreas industriais de WPI Advanced, WPI Mature, WPI I e WPI II, respectivamente. As áreas de desenvolvimento industrial Mature do WPI estão localizadas em Sulawesi do Sul, Kalimantan Oriental, Sumatra do Norte, excluindo Batam, Bintang e Karimun e Sumatra do Sul. Nestas áreas, são concedidas incentivos em matéria de imposto de renda: reduções líquidas de imposto de renda de 5% ao ano ao longo de seis anos, além de serem permitidas depreciação e amortização a uma taxa mais rápida, uma redução da alíquota sobre dividendos em 10%, e a possibilidade de levar adiante perdas por até oito anos.

1065. As empresas instaladas nas áreas de desenvolvimento industrial Mature do WPI se beneficiam, ainda, de uma isenção de IVA prevista no Regulamento Governamental 81/2015 sobre importações e compras de máquinas e equipamentos (excluindo peças de reposição) que são utilizadas diretamente para produzir bens sujeitos ao IVA. Durante as fases de desenvolvimento, eles também podem se beneficiar de uma isenção sobre os direitos de importação de máquinas por até dois anos (período que pode ser estendido para até enquanto durar a fase de desenvolvimento), bem como de uma isenção sobre os direitos de importação de bens e materiais por até três anos (prorrogáveis por mais um ano). A isenção dos direitos de importação pode ser prorrogada por mais um ano se determinados limites de conteúdo doméstico (30%) forem cumpridos, tanto para máquinas quanto para bens e materiais.

1066. As áreas de desenvolvimento industrial do WPI Potential I estão localizadas em Sulawesi do Norte, Kalimantan Ocidental, Bali e Nusa Tenggara. Assim como o Mature WPI, nessas áreas são concedidas às empresas instaladas uma redução do imposto de renda líquido de 5% ao ano ao longo de seis anos, bem como uma depreciação acelerada e amortização dos ativos e uma redução de 10% na alíquota sobre dividendos. No entanto, a possível compensação das perdas é estendida para um prazo de dez anos.

1067. As empresas instaladas nas áreas de desenvolvimento industrial do Tipo I do WPI também se beneficiam de uma isenção de IVA sobre máquinas e equipamentos, conforme previsto no Regulamento Público 81/2015, e de uma isenção de direitos de importação sobre máquinas e mercadorias. A duração da isenção para bens é, no entanto, de quatro anos, prorrogável por um ano. Aplicam-se as mesmas disposições citadas relativas ao conteúdo doméstico.

1068. O WPI Potential II abrange as regiões de Papua e Papua Ocidental. As empresas localizadas nas áreas de desenvolvimento industrial dessas WPI têm direito a uma redução do imposto de renda de 10% a 100% por um período de 5 a 15 anos. O regime apresenta fortes semelhanças com a isenção fiscal prevista anteriormente à sua alteração de 201864, sendo acessível apenas a pessoas jurídicas registradas após 15 de agosto de 2015.

1069. As empresas instaladas nas áreas de desenvolvimento industrial WPI Potencial II também se beneficiam de uma isenção de IVA sobre máquinas e equipamentos, conforme previsto no Regulamento Governamental nº 81 de 2015, e da isenção de direitos de importação sobre máquinas e mercadorias. A duração da isenção para bens é, no entanto, limitada a cinco anos, prorrogáveis por um ano. Da mesma forma, as disposições relativas ao conteúdo doméstico também se aplicam.

1070. O documento entitulado "A brief guide to investment in the industrial states", do Indonesia Investment Coordinating Board (BKPM), detalha quais áreas do país estão incluídas em cada uma das áreas de desenvolvimento industrial (WPI), conforme reproduzido a seguir:

The exact amount of the tax incentives will depend on the classification of the industrial estate. In this regulation, there are four categories of Industrial Estates Development (WPI), namely Advance WPI (located on Java Island), Developing WPI (South Sulawesi, East Kalimantan, North Sumatera, except Batam, Bintan, and Karimun, and South Sumatera), Potential I WPI (North Sulawesi, West Kalimantan, Bali, and Nusa Tenggara), and Potential II WPI (Papua and West Papua).

1071. Além do IMIP, localizado em Morowali District, Central Sulawesi, a empresa PT. VDNI, estaria situada em Sulawesi Tenggara, enquanto a PT OSS (Obsidian Stainless Steel), estaria situada em Southeast Sulawesi. Há evidências de operação na área industrial Bantaeng, em Sulawesi Selatan (South Sulawesi), de ao menos duas empresas, a PT Huadi Nickel Alloy Indonesia e a PT Titan Mineral Utama. Já o portal mmIndustry da Indonésia, informa a lista de empresas que firmaram acordo para fornecimento de energia para o Industrial Park Bantaeng:

The companies that signed the deal with ENMP were PT Huadi Nickel Alloy, PT Titan Mineral Utama, PT Bantaeng Central Asia Steel, PT Sinar Deli Bantaeng, PT Intim Perkasa Energi, PT Multi Kilang Pratama, PT Sergion Techno and Inensunan Mills Indonesia.

1072. Apresenta-se, na tabela a seguir, as empresas de aço inoxidável e níquel relacionadas com tais áreas de desenvolvimento industrial:

Tipo de WPI	Área de Desenvolvimento Industrial	Nome da empresa	Atividade da empresa (real e em andamento)
WPI Potential I (WPI 3)	Morowali (IMIP) Sulawesi Tengah	PT. Sulawesi Mining Investment*	NPI
		PT. Indonesia Guang Ching Nickel and Stainless Steel Industry*	NPI, Placas e bobinas de aço inoxidável
		Indonesia Tsingshan Stainless Steel*	NPI, Placas e bobinas de aço inoxidável
		PT C*	Bobinas de aço inoxidável, Ferrocromo, Coque.
		PT Broly Nickel Industry	Óxido de níquel, Níquel puro, Coque
			Usina elétrica
	Konawe (VDNIP) Sulawesi Tenggara	PT. VDNI	NPI
		PT OSS (Obsidian Stainless Steel)	NPI, Stainless Steel
			Usina elétrica
WPI Mature (WPI 4)	Bantaeng Sulawesi Selatan	PT Huadi Nickel Alloy Indonesia	NPI
		PT Titan Mineral Utama	NPI
		PT Bantaeng Central Asia Steel	Ferroníquel
		PT Sinar Deli Group	NPI
		PT Cinta Jaya	NPI
			Usina elétrica

(*) Empresas situadas no parque industrial IMIP e ligadas à empresa chinesa Tsingshan

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 um montante de subsídios em separado para este programa, posto que os eventuais incentivos do governo indonésio existentes foram desmembrados em outros programas e possuem regulamentos próprios.

1074. A Aperam, em manifestação de 9 de setembro de 2022, O regime tributário e tributário preferencial na área de desenvolvimento industrial já foi ampla e detalhadamente apresentado na petição e suas informações complementares, bem como ao longo do processo e no presente documento. No âmbito desse programa, a peticionária pontuou que o Governo da Indonésia alegou que o "IMIP is created by private sectors". Na opinião da Aperam, todo o exposto no processo e amplamente repisado no presente documento demonstra que, de fato, a criação do IMIP foi idealizada, implementada e administrada pelo Governo da Indonésia. Afirmou ainda a Aperam que o Governo da Indonésia alegou que "as for Industrial Estate, normally the GOI builds general infrastructure in the surrounding areas to improve the livelihood of area", afirmando que, no IMIP, se limitou a fornecer uma instituição educacional e residências de baixo custo.

1075. Continuou a Aperam afirmando que, quanto a tal programa, o Governo da Indonésia afirmou que "PT IRNC resides in Indonesia Morowali Industrial Park (IMIP) as Industrial Estate", mas que "PT IRNC has not received any benefit of taxes incentives under Industrial Estate." Entretanto, embora informe dispor de toda a documentação e informações relativas a tal programa, o Governo da Indonésia não as teria demonstrado aos servidores da SDCOM.

4.2.9.3 Conclusão

1076. A SDCOM concluiu que, em linha com trazido pelo o GOI a PT IRNC, os fatos disponíveis no processo não são suficientes para levar esta autoridade a concluir que o descrito neste programa já não esteja englobado em outros programas. Assim, esta autoridade concluiu não haver subsídio acionável em específico para este programa separadamente. Entretanto, ainda assim é de absoluta relevância na investigação a legislação das Industrial Estates, em especial o Regulamento Governamental nº 142/2015, sendo este mais um elemento no arcabouço de incentivos proposto pelo GOI aos setores por ele considerados prioritários.

1077. Por exemplo, tal regulamento dispõe que uma Industrial Estate Company deve regularmente submeter relatórios ao GOI:

(5) Industrial Estate Companies that already have Principle Permits, IUKI, and/or Industrial Estate Expansion Permits are required to submit Industrial Estate Data periodically to the Minister, governors, 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 do GOI na Inalum. Entretanto os elementos disponíveis nos autos não indicam que tenha havido qualquer benefício aos produtores investigados de aço inoxidável advindo de tal operação. Deste modo, esta SDCOM concluiu não haver 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, afirmou que além da já amplamente demonstrada injeção de capital por meio da transferência de ações da PT Antam gratuitamente do Governo da Indonésia para a empresa Inalum, entende a empresa que a aquisição de máquinas e equipamentos pelas empresas instaladas no IMIP a preços inferiores à remuneração adequada se configura como injeção de capital, enquadrando-se, dessa forma, no Programa 7 sob análise nesse processo.

1080. De acordo com o Artigo 1.1(a)(1) do ASMC, um subsídio existe "if there is a financial contribution by a government". O Governo da Indonésia proativamente teria induzido as empresas chinesas a se instalarem na Indonésia para a criação e desenvolvimento da indústria de aços inoxidáveis no Parque Morowali.

1081. Conforme já demonstrado nos autos do processo, em abril de 2005, foi realizado encontro entre o Presidente da Indonésia e o Presidente da China, durante o qual foi assinada uma Declaração Conjunta de Parceria Estratégica estabelecendo que ambas as partes iriam "enhance investment cooperation by increasing mutual understanding and networking among investment authorities, including the private sectors, and by creating more conducive eco-socio-political and legal climates for the flow of investments". Em junho de 2005, durante sua visita a Beijing, o Ministro da Economia da Indonésia propôs ao Vice-Primeiro Ministro da China prospectos de investimento em 4 setores da economia indonésia, incluindo recursos naturais, e afirmou que "[h]e also hoped more Chinese businesses could go to Indonesia for investment, saying that the Indonesian government would create a favorable environment to facilitate Chinese investors". Nesse contexto, o Vice-Primeiro-Ministro da China solicitou à Indonésia a garantia de que os investimentos chineses naquele país seriam lucrativos, condição esta aceita pelo então Ministro da Economia da Indonésia.

1082. O governo da Indonésia, por meio do Indonesian Investment Coordinating Board (BKPM) expressamente solicitou, em maio de 2011, à China que investisse no processamento de níquel no Sudeste de Sulawesi, onde o Parque Morowali está estabelecido: "[t]he Investment Coordinating Board (BKPM) directs potential investors from China to invest in processing mining product. [...] In addition, BKPM also asked China to invest in nickel processing in Southeast Sulawesi".

1083. Como já demonstrado no processo, o Chairman do BKPM ainda afirmou, sobre a IRNC, que "the parent company in China has nine joint venture companies in Indonesia including smelter industry and power plant in Morowali" e que "[t]he investment made is quite important, because it is the only company in Indonesia that processes ferronickel into 'stainless steel'", demonstrando a intenção do Governo da Indonésia de apoiar os investimentos do IMIP e desenvolver a produção de aços inoxidáveis.

1084. Nesse contexto, a Aperam acrescentou que o Governo da Indonésia encorajou as empresas chinesas a participarem da melhoria da capacidade industrial da Indonésia e prometeu continuar a criar um ambiente atrativo para os investimentos estrangeiros, incluindo aqueles da China. Mais especificamente, o Governo da Indonésia afirmou esperar que as empresas chinesas iriam "invest more in Indonesia's mining industry" e "briefed China on its efforts to improve the management of its mining resources". Por fim, ambos os governos concordaram em "gear up efforts to further solidify and expand cooperation in [...] mining". Tais declarações comprovariam que a Indonésia buscava, nesses acordos, implementar suas políticas preferenciais domésticas, notadamente a fim de fortalecer a capacidade a jusante da indústria na Indonésia.

1085. A injeção de capital por meio de aquisição de máquinas e equipamentos a preço inferior à remuneração adequada estaria explicitamente determinada na Law Number 3 of 2014 on Industrial Affairs, em seu artigo 45.

1086. Nesse contexto, ressaltou a Aperam a cooperação estabelecida entre o BKPM e a Credit Insurance Corporation (Sinosure), da China, para o fornecimento de garantias em empréstimos, além de negociação direta com fornecedores/investidores estrangeiros.

1087. No que diz respeito ao IMIP, vale lembrar que, conforme estabelecido no art. 5 do Act Number 3 of 2014, relativo à indústria, como forma de responsabilidade do Estado pelo bem-estar da população, o governo tem a autoridade para organizar as questões públicas no setor industrial, incluindo aspectos de regulação, direção e desenvolvimento da indústria. Ademais, o art. 33 do Government Regulation Number 142 of 2015, relativo aos Industrial Estates, atesta que a administração dos mesmos cabe ao Industrial Estate Management. Portanto, a autoridade do Governo da Indonésia no setor industrial, 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 Industrial Estate a autoridade para implementar suas políticas industriais. Nesse sentido, à PT IMIP, como administradora do Parque Industrial de Morowali, é atribuído o poder governamental de implementar a política do níquel, especialmente no sentido de criar toda a cadeia a jusante, até a produção dos aços inoxidáveis, incluindo o produto objeto da investigação.

1089. O Governo da Indonésia também está diretamente envolvido na supervisão 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. Conforme estabelecido no Government Regulation No. 142/2015, o comitê é composto, dentre outros, pelo Governo central e pelos governos regionais.

1090. Dessa forma, tanto por meio da atuação da PT IMIP como por meio do BKPM, o Governo da Indonésia concede garantias, nos termos do inciso II.a do art. 4o do Decreto nº 1.751, de 1995, nas aquisições de máquinas e equipamentos pelas empresas instaladas no IMIP, obtendo, para tais empresas, preços preferenciais em tais operações de aquisição.

1091. Verifica-se, assim, que, em decorrência das garantias concedidas pelo Governo da Indonésia, os equipamentos e máquinas adquiridos pelas empresas do Grupo IRNC no IMIP foram realizadas a preços inferiores àqueles praticados em condições normais de mercado, conferindo, consequentemente, benefício às empresas do mencionado Grupo, nos termos do art. 4º do Decreto nº 1.751, de 1995. O montante de tal benefício equivale à diferença entre os preços efetivamente praticados em tais aquisições e os preços comparáveis de mercado para máquinas e equipamentos similares utilizados na cadeia produtiva dos aços inoxidáveis, alocado ao produto objeto da investigação.

1092. Nesse sentido, concluiu a Aperam dizendo que, diante da ausência de informações apresentadas e comprovadas pelos produtores/exportadores indonésios e pelo Governo da Indonésia, envidou os melhores esforços para apresentar estimativas dos valores efetivamente despendidos na aquisição de máquinas e equipamentos pelas empresas parte da cadeia de produção do produto

investigado instaladas no IMIP, bem como os valores de produtos similares adquiridos a preços adequados de mercado, conforme documentos acostados aos autos do presente processo. Destacou ainda que o cálculo dos montantes de subsídios concedidos pelo Governo da Indonésia decorrentes das reduções preferenciais de impostos (de renda, de importação, IVA etc) na importação das máquinas e equipamentos pelas empresas do IMIP, conforme apresentado por esta peticionária no processo, são conservadores, uma vez que foram calculados sobre os preços praticados a remuneração inferior à adequada, e não, como deveria ser, aos preços comparáveis de produtos similares realizadas a preços de mercado.

4.2.10.2 Manifestações posteriores à Nota Técnica sobre o programa

1093. A peticionária argumentou, em sua manifestação final, que a injeção de capital apresentada relativamente à aquisição de máquinas e equipamentos com remuneração inferior à adequada independe da questão de subsídios transnacionais, estando relacionadas diretamente ao Governo da Indonésia.

1094. Destacou ainda que a injeção de capital por meio de aquisição de máquinas e equipamentos a preço inferior à remuneração adequada está explicitamente determinada na Law Number 3 of 2014 on Industrial Affairs, em seu artigo 45.

1095. Finalizou pontuando que esta envidou os melhores esforços para apresentar estimativas dos valores efetivamente despendidos na aquisição de máquinas e equipamentos pelas empresas parte da cadeia de produção do produto investigado instaladas no IMIP, bem como os valores de produtos similares adquiridos a preços adequados de mercado, tendo apresentado cálculo de montantes relacionados à aquisição de máquinas e equipamentos por remuneração inferior à adequada, equivalentes 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, considera a SDCOM que houve a apresentação intempestiva de tais alegados incentivos governamentais relacionados à aquisição de máquinas e equipamentos a preço inferior à remuneração adequada. Como se depreende da mera descrição dos alegados incentivos, trata-se de um novo programa, que deve seguir um trâmite que permita a devida compreensão e contraditório pelas demais partes interessadas, o que não seria 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 pelo Órgão de Solução de Controvérsias e que foi decidido que i) muito embora restrições à exportação afetem o comportamento de agentes privados, isto ocorre apenas como by-product de uma regulação estatal, não estando presente o elemento de "instrução ou confiança" (entrust or direct) necessário nessa situação para se caracterizar um programa de subsídio acionável nos termos do acordo, e ainda que ii) a sustentação de preços abarcada pelo Acordo SCM não inclui movimento de preços como resultado indireto de outra forma de intervenção governamental.

1098. Os comentários finais da Aperam reforçam a intempestividade do pleito - a própria peticionária nomeia a "injeção de capital" de "aquisição de máquinas e equipamentos com remuneração inferior à adequada" e traz base legal absolutamente distinta da considerada neste programa. Resta evidente que não se trata de uma injeção de capital, mas de um programa de fornecimento tardiamente apresentado. Deste modo reitera-se que, ainda que possa a peticionária apresentar pleito futuro, caso entenda ser o caso, para que alegado programa seja investigado, não há nos autos elementos que permitam 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 março de 2022, destacou que a SDCOM teria notificado a produtora/exportadora indonésia PT Indonésia Ruipu Nickel and Chrome Alloy (IRNC) que a determinação sobre a concessão de subsídios a tal empresa e demais empresas do grupo que poderiam ser identificadas pela Subsecretaria com base nas informações disponíveis do processo levaria em consideração os fatos disponíveis, nos termos do § 3º do art. 37 c/c § 1º do art. 79 do Decreto nº 1.751, de 1995, tendo em vista a não apresentação do texto da resposta ao Questionário do Produtor/Exportador no processo em tela.

1100. Além disso, o relatório relativo à visita de verificação ao Governo da Indonésia demonstraria que diversas informações relevantes para a análise e cálculo dos subsídios concedidos por aquele governo aos produtores do produto objeto da investigação não teriam sido devidamente apresentados, prejudicando, consequentemente, a análise dos fatos por parte da autoridade investigadora.

1101. Assim, diante da falta de cooperação por parte do governo e das empresas produtoras/exportadoras indonésias no presente processo, a peticionária, apresentou metodologia e simulação de cálculos dos subsídios concedidos pelo Governo da Indonésia aos produtores/exportadores do produto objeto da investigação, buscando suprir as informações que deixaram de ser apresentadas pelas partes indonésias, permitindo à autoridade investigadora analisar, da forma mais completa e apropriada possível, a concessão dos subsídios sob análise no processo em tela. Todos as fontes das informações utilizadas, as metodologias adotadas e os cálculos realizados foram apresentados detalhadamente em anexo à manifestação da peticionária e serão apresentados nos itens relativos a cada programa investigado.

1102. A Aperam, em manifestação de 17 de maio de 2022, reiterou sua manifestação de 23 de fevereiro de 2022, por meio da qual defendeu que, além dos subsídios concedidos diretamente pelo Governo da Indonésia e já analisados por esta Subsecretaria no mencionado Parecer de Início, os produtores/exportadores indonésios do produto objeto da investigação também teriam recebido, no período de análise, subsídios indiretos, concedidos pelo Governo da China, mas reconhecidos e adotados pelo Governo da Indonésia como seus próprios, os quais também deveriam ser objeto de medidas compensatórias.

1103. Destacou que ao Governo da China também deveriam ser solicitadas informações relativas ao sistema financeiro naquele país, incluindo informações sobre o sistema bancário e os financiamentos, garantias à exportação e seguro concedidos no contexto do IMIP e das Overseas Trade and Cooperation Zones. Nesse contexto, a título colaborativo, destacou, de forma não exaustiva, informações e documentos cujo fornecimento sugeriu que fossem demandados ao Governo da China.

1104. Em relação aos empréstimos preferenciais, o Governo da China forneceria financiamento preferencial aos produtores chineses de aço inoxidável laminado a frio estabelecidos na Indonésia através de policy banks e bancos comerciais estatais. Esses bancos atuariam como órgãos públicos, concedendo empréstimos de acordo com as políticas do Estado, e não com base na solvência ou em outros fatores baseados no mercado.

1105. Ademais, o Governo da Indonésia teria buscado, reconhecido e adotado ativamente o financiamento chinês por meio de um sistema de cooperação bilateral para incentivar empresas chinesas, que anteriormente fundiam níquel na China, a desenvolver suas atividades na Indonésia. Nesse sentido, defendeu que deveria ser solicitado ao governo da China, por exemplo, apresentação de informações sobre o alegado controle governamental dos bancos/instituições financeiras na China e a alegada intervenção do Estado que distorceria o mercado financeiro no país.

1106. Ademais, em relação ao Parque Industrial de Morowali (IMIP), que seria uma zona econômica especial gerida essencialmente por empresas chinesas, o Governo da China teria exercido pressão sobre o Governo da Indonésia para apoiar empresas chinesas, que anteriormente fundiam níquel na China, a desenvolver suas atividades na Indonésia. Nesse sentido, entendemos que deveria ser solicitado ao governo da China, por exemplo, documentos relacionados a este acordo, além de explicações sobre o papel e o funcionamento do China-ASEAN Investment Cooperation Fund (CAF) no contexto do investimento externo chinês.

1107. A IRNC, em manifestação de 14 de junho de 2022 apresentou seus comentários em relação à solicitação da peticionária Aperam de notificação do Governo da China pela SDCOM, no bojo do presente procedimento investigatório, para fornecer informações acerca dos chamados programas de subsídios transnacionais, os quais supostamente beneficiariam os produtores/exportadores indonésios do produto investigado e deveriam ser objeto de medidas compensatórias.

1108. A IRNC entendeu pela impossibilidade de se proceder à análise, no atual estágio processual, da eventual concessão de subsídios acionáveis pelo governo chinês, supostamente "endossados", "reconhecidos" ou "adotados" pelo Governo da Indonésia como se seus próprios fossem.

1109. Para a IRNC, a peticionária alegaria que os subsídios indiretos em questão seriam resultado das ações do Governo da Indonésia - GOI com o objetivo de se aproveitar de seus recursos de níquel para assegurar financiamentos preferenciais da China para o desenvolvimento de toda a cadeia produtiva do níquel, que contempla, na cadeia a jusante, o segmento produtivo do produto objeto da presente investigação.

1110. Nesse sentido, a IRNC arguiu que a peticionária se apoiaria na tese de que a conduta do Governo da China, ao conceder empréstimos preferenciais, deveria ser atribuída ao Governo da Indonésia como fornecendo tais subsídios indiretamente via Governo estrangeiro; de forma que tal hipótese encontraria respaldo na máxima de que o Governo da Indonésia ativamente teria buscado reconhecer e adotar como seus próprios os financiamentos preferenciais concedidos pelo Governo da China, o que seria demonstrado pelo histórico da cooperação bilateral entre os referidos governos, de sorte o Governo da Indonésia poderia ser considerado como concedente das contribuições financeiras chinesas, nos termos do art. 1.1(a) do Acordo de Subsídios e Medidas Compensatórias.

1111. Em seguida, a IRNC ressaltou que o Governo da Indonésia teria esclarecido que o IMIP não seria representante do Governo, sendo tampouco gerido de modo conjunto pelos governos da China e da Indonésia.

1112. A Aprodinox, em manifestação de 9 de setembro de 2022, argumentou que não haveria, no momento, possibilidade de instrução para investigar subsídios transnacionais e impossibilidade de aplicação dos subsídios transnacionais frente a legislação brasileira e o Acordo de Subsídios e Medidas Compensatórias da OMC, além de sustentar ausência de nexo de causalidade.

1113. Argumentou que "subsídio transnacional" poderia ser definido como um subsídio concedido a um beneficiário que fabrica o produto em questão fora do território do governo que o concede. Em outras palavras, ocorreria quando um governo subsidia uma empresa que não estaria sob sua jurisdição. Como seria sabido, sua aplicação seria controversa. O artigo 1.1 (a) do Acordo sobre Subsídios e Medidas Compensatórias (ASMC) comentaria que a contribuição financeira deveria estar dentro do território de um membro.

1114. Exemplificou que a China já teria se manifestado no sentido de reconhecer como subsídios acionáveis apenas aqueles que atenderem ao princípio da territorialidade. Ou seja, não se consideraria o apoio financeiro de um governo a um terceiro beneficiário localizado em outro país como subsídio acionável, pois a concessão por países a beneficiários, em seus próprios territórios, seria condição de existência desses subsídios segundo as regras da Organização Mundial do Comércio (OMC).

1115. Argumentou ainda que o caso de filamentos de fibras de vidro do Egito, que seria exemplo do reconhecimento e de aplicação, pela União Europeia dessa classe de subsídios, seria pragmático para a UE, dado que a interpretação utilizada pela Comissão Europeia, com amparo no Projeto de Artigos sobre a Responsabilidade dos Estados por Atos Internacionalmente Ilícitos, não teria ficado sem questionamento interno e acadêmico. A aplicação das medidas compensatórias teria implicado, inclusive, no acionamento do Tribunal de Justiça da União Europeia pelos exportadores egípcios, caso ainda sem resolução de mérito.

1116. Acrescentou que a legislação dos EUA, por sua vez, desde 1980, afirmaria que subsídios transnacionais, sejam eles fornecidos por outros países ou por instituições internacionais, em regra, são dados por inexistentes perante a autoridade investigadora.

1117. Sustentou que, nas palavras do WTO Expert Group on Trade Financing (EGTF): "não é inteiramente claro se o [ASMC] se aplica ou não quando a entidade que concede os subsídios não se encontra no território do Membro cujos bens estão alegadamente subsidiados".

1118. Argumentou que diante dos elementos elencados, ficaria claro que se trata de um tema extremamente controverso, cuja entendimento quanto à aplicação não é pacífico, como já seria de conhecimento desta autoridade. Por oportuno, evidenciou que nem mesmo na União Europeia, haveria um entendimento maduro, como demonstrado pela contestação do caso filamentos de fibras de vidro. Reforçou, portanto, a necessidade de um standard maior do que o aplicado para outros programas de subsídio para a investigação e aplicação desses subsídios, conforme explicita a legislação brasileira atual.

1119. Apontou que apenas no primeiro ofício de informações complementares (Ofício SEI nº 65523/2022/ME) é que a SDCOM teria requerido algumas informações sobre "a existência de um plano de industrialização entre o Governo da Indonésia e o Governo da China no setor siderúrgico, consubstanciado na criação do Indonesia Morowali Industrial Park (IMIP)". Seria mister lembrar que as condutas analisadas nas investigações de subsídios seriam práticas governamentais, de modo que a oportunidade de conceder participação em tempo hábil ao governo da China (prazo para consultas prévias à abertura da investigação, resposta ao questionário, informações complementares, eventual verificação in loco, etc.) seria imprescindível para qualquer determinação de subsídios acionáveis "concedidos" por esse governo, ainda que se alegue terem sido "endossados", "reconhecidos" ou "adotados" pelo governo da Indonésia. A APRODINOX entendeu que a aplicação de subsídios transnacionais sem se oficiar o Governo da China seria irrazoável e violaria princípios processuais e materiais.

1120. Acrescentou que os atos da China estariam sendo avaliados como suposto suporte financeiro transnacional, logo, seus direitos de contraditório e ampla defesa deveriam ser preservados. O governo da China deveria possuir o direito de se manifestar sobre os alegados subsídios, pois conforme o artigo 9, inciso II, da LPA, são legitimados como interessados no processo administrativo: "aqueles que, sem terem iniciado o processo, têm direitos ou interesses que possam ser afetados pela decisão a ser adotada".

1121. Caso a SDCOM quisesse investigar também as políticas do governo chinês, mesmo que aplicadas em outro território, deveria ter oportunizado tempo à República Popular da China para sua devida habilitação no processo, tempo para que compreenda as alegações feitas e oportunidade para que essa parte eventualmente interessada se manifeste, para que fossem satisfeitos os princípios basilares do processo quais sejam devido processo legal, ampla defesa e contraditório.

1122. Relembrou também, que o Decreto nº 1.751/1995, em seu artigo 27, primaria pela tentativa de acordo entre as partes antes de uma possível contenda, o que não teria ocorrido na investigação, caso se decida pelo acionamento dos supostos subsídios chineses em território indonésio. Por todo o exposto, entendeu que o mais prudente, nesse momento processual, seria a decisão pela não aplicação dos referidos subsídios.

1123. Defendeu que, como a presente investigação seria regida pelo Decreto nº 1.751/1995, nos termos do art. 192 do Decreto nº 10.839/2021, inexistiria, no diploma antigo, previsão ou processo legal para investigação de subsídios transnacionais. Com isso, haveria incertezas jurídicas incompatíveis com a previsibilidade que devem ter os procedimentos de defesa comercial para com as partes interessadas e com o governo cujas práticas são investigadas.

1124. O momento processual adequado para indicação de subsídios transnacionais, de acordo com as regras vigentes, seria na petição inicial. Essa previsão indica a preocupação em assegurar o completo curso investigatório (pelo lado da autoridade) e o curso dialético (pelas demais partes 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 da Portaria SECEX nº 172/2022, ficando evidente a desconformidade das afirmações da Peticionária.

1125. Argumentou ainda que a consulta pública para a nova normativa da legislação de subsídios (Circular SECEX nº 38, de 31 de maio de 2021) teria sido publicada no Diário Oficial da União em 01 de junho de 2021, ou seja, muito antes do protocolo da APERAM de 23 de fevereiro de 2022 momento em que a peticionária já poderia ter ciência da intenção do legislador quanto aos subsídios transnacionais.

1126. Sustentou que a indicação de supostos indícios de tais subsídios mais de um ano depois do protocolo da petição e o requerimento para que fossem investigados imediatamente, como o faz a peticionária, seria uma clara afronta à lógica estabelecida na Portaria SECEX nº 172/2022.

1127. Defendeu que a investigação de subsídios transnacionais e, consequentemente, acionamento e aplicação de medidas compensatórias não estaria prevista no decreto regulamentador da presente investigação, ou seja, o Decreto nº 1.751, de 19 de dezembro de 1995. A investigação desses alegados programas concedidos por entidades chinesas a firmas indonésias careceria, portanto, de base legal interna.

1128. Na legislação brasileira, somente com o advento da Portaria SECEX nº 172, de 14 de fevereiro de 2022, teria sido prevista a possibilidade de serem realizadas investigações relacionadas a subsídios transnacionais. O Decreto nº 10.839, de 18 de outubro de 2021, entrou em vigor após o início da presente investigação e por ele não seria regulada a Portaria SECEX nº 172/2022.

1129. Ressaltou que não se poderia argumentar que tal dispositivo apenas teria consolidado uma prática da SDCOM sobre o tema, como seria o caso para outros dispositivos da referida portaria. Pelo conhecimento da Aprodinox, a investigação de subsídios transnacionais ou indiretos, como chama a peticionária, seria uma novidade para a autoridade brasileira, nunca sendo testada até então. Sua aplicação nesta investigação seria, portanto, irregular e atípica.

1130. Por fim, como regra, a não acionabilidade desse tipo de subsídio poderia ser observado no seguinte trecho da Portaria Secex nº 172, de 14 de fevereiro de 2022:

Art. 112. Em regra, a Subsecretaria de Defesa Comercial e Interesse Público não considerará como acionáveis os subsídios concedidos por governo de país que não aquele em que a empresa investigada esteja localizada, nem os subsídios concedidos por instituição internacional de empréstimo ou desenvolvimento, com as seguintes exceções:

1131. Argumentou ainda que o crivo para que esses programas de subsídios, concedidos por um Estado, mas atribuídos a outro, fossem verificados e acionáveis deveria ser superior ao de outros casos, por força da sua excepcionalidade, conforme texto da Portaria abaixo no inciso II do art. 112.

II - se o governo do país da empresa investigada, de modo claro e explícito, endossar, reconhecer ou adotar a concessão de subsídios por parte do outro governo como se tais medidas fossem parte de sua própria política de concessão de subsídios

1132. Seria forçoso, portanto, concluir que a aplicação da melhor informação disponível não seria adequada para configurar tais programas como acionáveis. Seriam necessários elementos de prova inequívocos das práticas, ao menos, quanto aos atos de endosso, reconhecimento e adoção. Existindo dúvida razoável pela autoridade dever-se-ia aplicar a regra de não acionamento dos referidos programas. Os elementos até então presentes nos autos não seriam, portanto, suficientes para caracterizá-los, tratando-se apenas de evidências do estreitamento normal das relações diplomáticas comerciais bilaterais entre Indonésia e China. Do mesmo modo, os programas não estariam, assim, claramente definidos e comprovados a fim de serem acionáveis.

1133. Deve-se compreender, inicialmente, que a concessão de contribuições financeiras que gerem benefício a uma firma (ou firmas) fora do território do estado concedente (subsídios transnacionais), não existem segundo o art. 1 do ASMC. Uma leitura clara do dispositivo do acordo é que, para um subsídio existir, para fins de aplicação de medidas compensatórias, tanto o membro concessor quanto o beneficiário devem estar no mesmo território. Uma contribuição financeira concedida por um membro a outro fora de seu território não estaria, portanto, abarcada. A princípio, desse modo, a aplicação de medidas compensatórias a essa classe de subsídios seria inconsistente com os acordos da OMC e, consequentemente, com a legislação federal.

1134. Tal interpretação está, inclusive, adequada com a reconstrução histórica do processo negociador do ASMC, fonte suplementar de interpretação segundo o art. 32 da Convenção de Viena sobre o Direito dos Tratados (1969). Conforme apontam alguns estudiosos, os EUA não queriam, à época, permitir a possibilidade para que ajudas financeiras concedidas, a fim de garantir o desenvolvimento ou ajuda humanitária pudessem ser alvo de medidas compensatórias. Desse modo, inseriram as cláusulas territoriais nos acordos. Alguns exemplos, levantados nesses estudos, são: os empréstimos do Banco Mundial ao Brasil, as ajudas do Plano Marshall e as reparações de guerra do Japão à Coreia. A existência de uma legislação específica nos EUA que limita a aplicação de subsídios transnacionais é mais uma evidência desse processo.

1135. Outro elemento complementar de interpretação é a própria Parte V do acordo SCM, onde apenas se evidencia a participação de exportadores e das autoridades do membro exportador, consubstanciando uma ideia de unidade territorial entre os entes, conforme pode ser observado. Uma interpretação divergente, contudo, aponta para uma diferença entre o Membro que concede o benefício para aquele beneficiário da contribuição financeira, implicando na possibilidade de existência dos subsídios transnacionais. Ainda que essa não seja a melhor interpretação, deve-se ressaltar que tal

intepretação garante que eles existam e, não, que haveria possibilidade de acionamento. Para que sejam acionáveis, tais subsídios devem ser, também, específicos. A especificidade, por sua vez, guarda uma clara relação de unidade territorial entre a autoridade concedente do benefício e o beneficiário, conforme pode ser conferido abaixo.

1136. Não há, nesse caso, outra interpretação para o termo "jurisdição" do que "território" da autoridade concedente. Segundo a atual configuração da ordem internacional bem como do Direito Internacional Público, ainda prevalece o princípio territorialidade da jurisdição. Mesmo aqueles fenômenos pontuais de extraterritorialidade da jurisdição dependem, essencialmente, de mecanismos de execução/colaboração para que a ordem seja executada. A jurisdição permanece, portanto, circunscrita ao território do membro da OMC. Como se não bastassem todas as evidências apresentadas para a limitação territorial das medidas compensatórias há, ainda, a nota de rodapé 63 do Anexo IV do ASMC, esclarecendo e reafirmando tal limitação:

2. Except as provided in paragraphs 3 through 5, in determining whether the overall rate of subsidization exceeds 5 per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's (63) sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted. (64) (¼)

63. The recipient firm is a firm in the territory of the subsidizing Member.

1137. Resta claro, portanto, que somente podem ser acionáveis, segundo o Acordo SMC, aqueles 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 Artigos sobre Responsabilidade Internacional dos Estados por Ato Ilícito como critério de atribuição da conduta dos benefícios chineses à Indonésia. Tal argumentação foi igualmente utilizada no caso da União Europeia. O uso desse artigo, no presente caso, teria como objetivo contornar a discussão da interpretação dos Acordos da OMC. A sua utilização seria, de plano, inadequada por existirem critérios específicos de atribuição de conduta no ASMC da OMC, conforme apontado anteriormente, sendo irrazoável o uso do costume internacional geral. Se o uso do costume internacional geral é possível para interpretar os acordos, conforme regras da CVDT, igualmente o é as circunstâncias históricas da sua formação. Desse modo, restaria claro o verdadeiro sentido dos dispositivos do acordo.

1139. Outro ponto relevante a ser tratado seria que, mesmo considerando a existência desses programas, eles seriam para todos os fins lícitos, concessões financeiras entre países em desenvolvimento para suporte ao desenvolvimento. A aplicação dos Projeto de Artigos sobre Responsabilidade Internacional dos Estados por Ato Ilícito seria, portanto, inadequado.

1140. O acionamento dos subsídios transnacionais seria, portanto, para além de inconvencional e controverso, um possível instrumento para minar a atuação dos países em desenvolvimento em seus 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 diversas ocasiões os fatos disponíveis a fim de se alcançar uma determinação sobre um ponto. Nesse contexto, os cálculos trazidos pela peticionária foram mais um elemento a ser avaliado - quando se considerou que este de forma suficiente e mais adequada preenchia as lacunas, fez-se dele uso.

1142. Sobre os ditos "subsídios indiretos, concedidos pelo Governo da China, mas reconhecidos e adotados pelo Governo da Indonésia como seus próprios", pontua-se que, muito embora a relação entre o GOI e o Governo da China permeie vários dos programas, e já tenha sido comprovada e exaustivamente debatida neste documento, não foi este o elemento principal da presente investigação.

1143. Nesta seara, ao contrário do afirmado pela PT IRNC, há ampla documentação de modo a comprovar o papel do IMIP nos planos do GOI e o arranjo entre o GOI e o Governo da China para sua consecução, sendo que o fato de o IMIP ser uma empresa privada em nada altera tal conclusão. Não é de se surpreender que também tenha sido neste sentido a conclusão das autoridades da União Europeia e da Índia.

1144. Sobre os comentários da Aprodinox e da IRNC sobre subsídios transnacionais, pontua-se restarem esvaziados ante a não aplicação desta autoridade de nenhum remédio sobre eventual subsídio transnacional no presente caso, e por isso não serão tecidos maiores comentários acerca do tema. Ainda assim, ressalte-se que a Portaria SECEX nº 172, de 14 de fevereiro de 2022, contém disposições que tratam sobre a investigação de subsídios transnacionais, e que não há vedação na normativa multilateral acerca da possibilidade de enquadramento de subsídios transnacionais como subsídios acionáveis. Contudo, na investigação em tela não se aplicam especificamente as disposições dessa Portaria, e considerou-se que a peticionária apresentou a questão em momento processual avançado, o que impossibilitou o tratamento do pleito, uma vez que necessariamente envolveria diligências desta SDCOM perante outro governo.

4.5 Do resumo acerca dos programas de subsídios

1145. A tabela a seguir resume as conclusões acerca dos programas para os quais esta SDCOM investigou a existência de programas de subsídios acionáveis por parte do Governo da Indonésia, conforme analisado nas seções anteriores:

Resumo acerca dos programas de subsídios

Número e nome do Programa	Tipo de Contribuição Financeira - Decreto 1.751/1995	Autoridade concedente	Especificidade	Montante apurado (US$/t)	Montante apurado (% FOB)
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,*caput*	216,98	10,62%
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,*caput*De fato - art. 6º, §3º	18,48	0,90%
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	28,63	1,40%
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	37,60	1,84%
Programa 7 -*Bonded Zones*	Art. 4º, II, b)	GOI	De fato - art. 6º, 3º Regional - art. 7º	24,11	1,18%
Programa 8.1 - Incentivos fiscais diretos - Redução do imposto de renda para grandes investimentos	Art. 4º, II, b)	GOI	De direito - art. 6º,*caput*	69,37	3,39%
Programa 8.2 - Incentivos fiscais diretos - Isenção de direitos de importação	Art. 4º, II, b)	GOI	De direito - art. 6º,*caput*De fato - art. 6º, §3º	4,36	0,21%
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,*caput*	1,23	0,06%
Programa 10 - Regime tributário e tributário preferencial na área de desenvolvimento industrial					
Programa 11 - Injeção de capital					

TOTAL				400,76	19,60

4.6 Da conclusão acerca dos programas de subsídios

1146. De todo o exposto acima, a SDCOM concluiu pela existência de um arcabouço deliberado de incentivos por meio de subsídios acionáveis para a indústria de aço inoxidável, que já são objeto de medidas compensatórias aplicadas, inclusive, por outras autoridades investigadoras. Os programas de subsídios identificados na tabela resumo do item 4.5 com os respectivos montantes de subsídios apurados configuram-se como subsídios acionáveis, nos termos do art. 5º do Decreto n º 1.751, de 1995, sendo passíveis, portanto, de aplicação de medidas compensatórias, conforme previsto no ASMC.

1147. Outrossim, observou-se que as margens de subsídios acionáveis apuradas não se caracterizaram como de minimis, nos termos do §9º do art. 21 do Decreto nº 1.751, de 1995.

5 DAS IMPORTAÇÕES E DO MERCADO BRASILEIRO

1148. Neste item serão analisadas as importações brasileiras e o mercado brasileiro de produtos laminados planos a frio 304.

1149. O período de análise deve corresponder ao período considerado para fins de investigação de dano à indústria doméstica de acordo com o disposto no § 2º do art. 35 do Decreto nº 1.751, de 1995, que conforme exposto no item 1.2 anterior, foi indicado pela peticionária como sendo o período de análise de dano e nexo de causalidade englobando os meses de abril de 2015 a março de 2020; sendo o período de análise de subsídios acionáveis da petição os meses de abril de 2019 a março de 2020.

1150. Assim, considerou-se o período de abril de 2015 a março de 2020, dividido da forma seguinte:

P1 - abril de 2015 a março de 2016;

P2 - abril de 2016 a março de 2017;

P3 - abril de 2017 a março de 2018;

P4 - abril de 2018 a março de 2019; e

P5 - abril de 2019 a março de 2020.

5.1 Das importações

1151. Para fins de apuração dos valores e das quantidades de produtos laminados planos a frio 304 importados pelo Brasil em cada período, foram utilizados os dados de importação referentes aos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, fornecidos pela RFB.

1152. São classificados nesses subitens da NCM, além dos produtos laminados planos a frio 304, os laminados a frio de graus diversos do 304, tal como o 430, e de espessuras fora do escopo da investigação, além de outros produtos.

1153. Por esse motivo, realizou-se depuração das importações constantes desses dados, a fim de se obterem as informações referentes exclusivamente a produtos laminados planos a frio de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H), laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm. A metodologia para depurar os dados consistiu em excluir aqueles produtos que não estavam em conformidade com os parâmetros descritos neste item.

1154. Não foram considerados como sendo o produto objeto da investigação: produtos laminados planos a frio 304 de graus diversos do 304 e/ou com espessura inferior a 0,35 mm ou igual ou superior a 4,75 mm, chapas perfuradas, placas de desgaste, placas de fricção, perfis, pratos, chapas de transferência, chapas recalçadas, fitas de vedação, telhas, acessórios para escapamentos, alça de cabo de aço, cinta em aço inoxidável, tubos, dentre outros.

1155. Em que pese a metodologia adotada, ainda restaram importações cujas descrições nos dados disponibilizados pela RFB não permitiram concluir se o produto importado correspondia aos produtos laminados planos a frio 304 dentro das especificações anteriormente descritas.

1156. Nesse contexto, os volumes e os valores das importações de produtos laminados planos a frio 304 em cuja descrição não foi possível se identificar as informações completas acerca do grau e da espessura foram considerados como importações de produto objeto da investigação.

5.1.1 Do volume das importações

1157. A tabela seguinte apresenta os volumes (em toneladas) de importações totais de produtos laminados planos a frio 304 no período de investigação de dano à indústria doméstica.

Importações Totais (t)						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Indonésia	100	138,44	126,41	687,22	3.146,99	
Total (sob análise)	100	138,44	126,41	687,22	3.146,99	
Variação	-	38,5%	(8,7%)	443,7%	357,9%	+ 3.047,1%
Estados Unidos	100	56,61	170,07	173,98	163,46	
África do Sul	100	120,52	143,13	118,49	84,32	
Malásia (1)	100	182,67	269,32	292,34	264,96	
Malásia (2)	100	-	14,13	-	-	
Demais países (3)	100	49,03	64,01	66,11	60,01	
Total (exceto sob análise)	100	79,46	121,97	115,99	98,60	
Variação	-	(20,5%)	53,5%	(4,9%)	(15,0%)	(1,4%)
Total Geral	100	80,92	122,08	130,12	174,01	
Variação	-	(19,1%)	50,9%	6,6%	33,7%	+ 74,0%
1 - Operações realizadas por empresas exportadoras cuja origem foi desqualificada pela Secex. 2 - Operações realizadas por empresas exportadoras cuja origem não foi desqualificada pela Secex. 3 - Demais países: Alemanha, Argentina, Áustria, Bélgica, Canadá, China, Coréia do Sul, Dinamarca, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México, Países Baixos (Holanda), Polônia, 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 de produtos laminados planos a frio 304 da origem investigada cresceu 38,5% de P1 para P2 e diminuiu 8,7% de P2 para P3. Nos períodos subsequentes, houve aumento expressivo de 443,7% entre P3 e P4, e de P4 a P5 houve 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 positiva de 3.047,1%, considerando-se P5 em relação a P1.

1159. Com relação à variação de volume (em toneladas) das importações brasileiras de produtos laminados planos a frio 304 das outras origens (o total exceto a origem investigada) ao longo do período da análise, houve redução de 20,5% entre P1 e P2, ao passo que de P2 para P3 foi possível detectar ampliação de 53,5%. De P3 para P4 houve redução de 4,9%, e entre P4 e P5 o indicador sofreu queda 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 (em toneladas) de produtos laminados planos a frio 304 no período analisado, verificou-se diminuição de 19,1% entre P1 e P2, mas apurou-se elevação de 50,9% entre P2 e P3, crescimento de 6,6% de P3 para P4, e entre P4 e P5 o indicador mostrou ampliação de 33,7%. Analisando-se todo o período, as importações brasileiras de todas as 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 aqui consideradas não ocorreram em volume insignificante, eis que superiores a quatro porcento 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, considerando que o frete e o seguro, dependendo da origem considerada, têm impacto relevante sobre o preço de concorrência entre os produtos ingressados no mercado brasileiro, a análise foi realizada em base CIF.

1163. Os quadros a seguir apresentam a evolução do valor total e do preço CIF das importações totais de produtos laminados planos a frio 304 no período de análise do dano à indústria doméstica. [RESTRITO]

Valor das Importações Totais (em CIF USD x1.000)						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Indonésia	100	101,46	99,46	579,30	2.302,46	
Total (sob análise)	100	101,46	99,46	579,30	2.302,46	
Variação	-	1,5%	(2,0%)	482,5%	297,5%	+ 2.202,4%
Estados Unidos	100	54,70	160,64	184,85	161,20	
África do Sul	100	98,85	142,15	125,14	81,11	
Malásia (1)	100	153,60	278,23	298,85	239,50	
Malásia (2)	100	#VALOR!	11,84	#VALOR!	#VALOR!	
Demais países (3)	100	39,94	60,05	65,20	54,12	
Total (exceto sob análise)	100	65,09	115,18	118,13	92,44	
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 desqualificada pela Secex.

2 - Operações realizadas por empresas exportadoras cuja origem não foi desqualificada pela Secex.

3 - Demais países: Alemanha, Argentina, Áustria, Bélgica, Canadá, China, Coréia do Sul, Dinamarca, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México, Países Baixos (Holanda), Polônia, Portugal, Reino Unido, Romênia, Suécia, Tailândia, Taiwan (Formosa), Turquia e Uruguai.

Fonte: RFB.

Elaboração: SDCOM.

1164. O indicador do valor das importações brasileiras de produtos laminados planos a frio 304 da origem investigada (Mil US$ CIF) cresceu 1,5% de P1 para P2 e diminuiu 2,0% de P2 para P3. Nos períodos subsequentes, houve aumento expressivo de 482,5% entre P3 e P4, e de P4 a P5 houve crescimento de 297,5%. Ao se considerar todo o período de análise, o indicador do valor das importações brasileiras da origem investigada indicou uma notável variação positiva de 2.202,4%, considerando-se P5 em relação a P1.

1165. Com relação à variação do valor das importações brasileiras de produtos laminados planos a frio 304 das outras origens (o total exceto o da origem investigada) (Mil US$ CIF) ao longo do período da análise, houve redução de 34,9% entre P1 e P2, ao passo que de P2 para P3 foi possível detectar ampliação de 77,0%. De P3 a P4 houve aumento de 2,6%, e entre P4 e P5 o indicador sofreu queda de 21,7%. Ao se considerar toda a série analisada, o indicador do valor das importações brasileiras do produto das outras origens apresentou redução de 7,6%, considerando-se P5 em relação a P1.

1166. Observando-se a variação do valor das importações brasileiras totais de produtos laminados planos a frio 304 (Mil US$ CIF) no período analisado, verificou-se diminuição de 33,9% entre P1 e P2, mas apurou-se elevação de 73,5% entre P2 e P3, crescimento de 14,4% de P3 para P4, e entre P4 e P5 o indicador mostrou ampliação de 18,4%. Analisando-se todo o período, as importações brasileiras totais de produtos laminados planos a frio 304 de todas as origens apresentaram expansão da ordem de 55,4%, 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	

Total (sob análise)	100	73,28	78,68	84,29	73,16	
Variação	-	(26,7%)	7,4%	7,1%	(13,2%)	(26,8%)
Estados Unidos	100	96,63	94,45	106,24	98,62	
África do Sul	100	82,02	99,31	105,61	96,19	
Malásia (1)	100	84,08	103,31	102,23	90,39	
Malásia (2)	100	-	83,72	-	-	
Demais países (3)	100	81,46	93,80	98,63	90,20	
Total (exceto sob análise)	100	81,91	94,43	101,85	93,75	
Variação	-	(18,1%)	15,3%	7,9%	(8,0%)	(6,2%)
Total Geral	100	81,72	93,98	100,89	89,33	
Variação	-	(18,3%)	15,0%	7,4%	(11,5%)	(10,7%)

1 - Operações realizadas por empresas exportadoras cuja origem foi desqualificada pela Secex.

2 - Operações realizadas por empresas exportadoras cuja origem não foi desqualificada pela Secex.

3 - Demais países: Alemanha, Argentina, Áustria, Bélgica, Canadá, China, Coréia do Sul, Dinamarca, Espanha, Finlândia, França, Hong Kong, Índia, Itália, Japão, México, Países Baixos (Holanda), Polônia, Portugal, Reino Unido, Romênia, Suécia, Tailândia, Taiwan (Formosa), Turquia e Uruguai.

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 aumentou 7,4% de P2 para P3. Nos períodos subsequentes, houve aumento de 7,1% entre P3 e P4, e diminuição de 13,2%, considerando-se o intervalo entre P4 e P5. Ao se considerar todo o período de análise, o indicador de preço médio (CIF US$/t) das importações brasileiras de laminados a frio 304 da origem investigada revelou variação negativa 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 (o total exceto o da origem investigada) ao longo do período da análise, houve redução de 18,1% entre P1 e P2, ao passo que de P2 para P3 foi possível detectar ampliação de 15,3%. De P3 a P4 houve aumento de 7,9%, e entre P4 e P5 o indicador sofreu queda de 8,0%. Ao se considerar toda a série analisada, o indicador de preço médio (CIF US$/t) das importações brasileiras de laminados a frio 304 das outras origens apresentou contração 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, verificou-se diminuição de 18,3% entre P1 e P2, mas apurou-se elevação de 15,0% entre P2 e P3 e crescimento de 7,4% de P3 para P4. Entre P4 e P5 o indicador mostrou retração de 11,5%. Analisando-se todo o período, o preço médio (CIF US$/t) das importações brasileiras totais de produtos laminados planos a frio 304 de todas as origens 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 equivale ao consumo nacional 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, líquidas de devoluções da indústria doméstica e as quantidades totais importadas, apuradas com base nos dados oficiais da RFB, apresentadas previamente. Frisa-se que as vendas internas da indústria doméstica incluem apenas as vendas de fabricação própria.

Do Mercado Brasileiro e da Evolução das Importações (t)

[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Mercado Brasileiro {A+B+C}	100	116,33	124,14	131,54	131,02	
Variação	-	16,3%	6,7%	6,0%	(0,4%)	+ 31,0%
A. Vendas Internas - Indústria Doméstica	100	127,65	124,80	131,99	117,27	
B. Vendas Internas - Outras Empresas	-	-	-	-	-	-
Variação	-	27,7%	(2,2%)	5,8%	(11,2%)	+ 17,3%
C. Importações Totais	100	80,92	122,08	130,12	174,01	
C1. Importações - Origens sob Análise	100	138,44	126,41	687,22	3.146,99	
Variação	-	38,5%	(8,7%)	443,7%	357,9%	+ 3.047,1%
C2. Importações - Outras Origens	100	79,46	121,97	115,99	98,60	
Variação	-	(20,5%)	53,5%	(4,9%)	(15,0%)	(1,4%)

Fonte: RFB e peticionária.

Elaboração: SDCOM

1172. O mercado brasileiro (em toneladas) de produtos laminados planos a frio 304 apresentou aumentos de 16,3% de P1 para P2 e de 6,7% de P2 para P3. Nos períodos subsequentes, houve aumento de 6,0% entre P3 e P4, e diminuição de 0,4% considerando-se o intervalo entre P4 e P5. Ao se considerar todo o período de análise, o indicador do mercado brasileiro de laminados a frio 304 revelou variação positiva de 31,0%, considerando-se P5 em relação a P1.

1173. Com relação à variação do indicador das importações brasileiras (em toneladas) de produtos laminados planos a frio 304 da origem investigada ao longo do período da análise, houve aumento de 38,5% entre P1 e P2, ao passo que de P2 para P3 foi possível detectar redução de 8,7%. De P3 a P4 houve um expressivo aumento de 443,7%, e entre P4 e P5 o indicador sofreu revelou variação positiva de 357,9%. Ao se considerar toda a série analisada, o indicador das importações brasileiras de laminados 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 aumento de 53,5% de P2 para P3. Nos períodos subsequentes, houve diminuições de 4,9% entre P3 e P4 e de 15,0% considerando-se o intervalo 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 variação negativa de 1,4%, 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 (em toneladas) da origem investigada no mercado brasileiro (em toneladas) de produtos laminados planos a frio 304.

Participação no Mercado Brasileiro [RESTRITO]						
	P1	P2	P3	P4	P5	P1-P5
Mercado Brasileiro {A+B+C}	100	116,33	124,14	131,54	131,02	
Participação das Importações Totais {C/(A+B+C)}	100	69,83	98,35	99,17	133,06	
Participação das Importações - Origens sob Análise {C1/(A+B+C)}	100	116,67	100,00	516,67	2.400,00	
Participação das Importações - Outras Origens {C2/(A+B+C)}	100	68,22	98,31	88,14	75,42	

Fonte: RFB e peticionária.

Elaboração: SDCOM

1176. No que concerne à evolução da participação percentual das importações (em toneladas) originárias da Indonésia no mercado brasileiro (em toneladas), houve incremento de P1 a P2 ([RESTRITO] p.p.) e redução de P2 a P3 ([RESTRITO] p.p.). Nos períodos subsequentes houve variação positiva na evolução da participação das importações da origem investigada no mercado brasileiro de [RESTRITO] p.p. de P3 a P4 e de [RESTRITO] p.p. de P4 a P5. Considerando-se todo o período, a evolução da participação percentual das importações originárias da Indonésia no mercado brasileiro apresentou variação positiva de [RESTRITO] p.p., considerando-se P5 em relação a P1.

1177. No que se refere à evolução da participação percentual das importações (em toneladas) originárias das outras origens no mercado brasileiro (em toneladas), verificou-se uma diminuição na evolução da participação dessas importações de [RESTRITO] p.p. de P1 a P2, seguida de um incremento de [RESTRITO] p.p. de P2 a P3. Nos períodos subsequentes houve uma sequência de variações negativas na evolução da participação das importações das outras origens de [RESTRITO] p.p. de P3 a P4 e de [RESTRITO] p.p. de P4 a P5. Considerando-se todo o período, a evolução da participação percentual das importações originárias das outras origens no mercado brasileiro revelou variação negativa de [RESTRITO] p.p., considerando-se P5 em relação a P1.

5.3.2 Da relação entre as importações e a produção nacional

1178. A tabela a seguir apresenta a relação entre as importações brasileiras (em toneladas) de produtos laminados planos a frio 304 da origem investigada e a produção nacional (em toneladas) do produto similar doméstico.

Importações da origem investigada e produção nacional (t)						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Produção Nacional (A)	100	97,54	94,10	84,78	73,26	
Importações - Origens sob Análise (B)	100	138,44	126,41	687,22	3.146,99	
Relação com o Volume de Produção Nacional (B/A)	100	150,00	150,00	875,00	4.700,00	
Variação	[RESTRITO]	*[RESTRITO]*	*[RESTRITO]*	*[RESTRITO]*	*[RESTRITO]*	*[RESTRITO]*

Fonte: RFB e peticionária.

Elaboração: SDCOM

1179. Observou-se que a relação entre o volume das importações (em toneladas) de laminados a frio 304 da origem investigada e o volume da produção nacional (em toneladas) do produto similar doméstico cresceu [RESTRITO] p.p. de P1 para P2, e de P2 a P3 não se alterou. Nos períodos subsequentes, houve aumento de [RESTRITO] p.p. entre P3 e P4, e crescimento de [RESTRITO] p.p. entre P4 e P5. Ao se considerar todo o período de análise, a relação entre o volume das importações de laminados a frio 304 da origem investigada e o volume da produção nacional revelou expressiva variação positiva de [RESTRITO] 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 (em toneladas) de produtos laminados planos a frio 304 da origem investigada aumentou de forma notável.

1181. Em termos absolutos, o volume das importações (em toneladas) de laminados a frio 304 da origem investigada passou de [RESTRITO] t em P1 para [RESTRITO] t em P5, um aumento de [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 ocorreram em volume insignificante, eis que superiores a quatro porcento das importações totais do produto similar, nos termos do § 4º do art. 21 do Decreto nº 1.751, de 1995.

1183. Em relação ao mercado brasileiro (em toneladas), a participação das importações (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 da ordem de grandeza de [RESTRITO] p.p., considerando-se P5 em relação a P1.

1184. Em relação à produção nacional (em toneladas) do produto similar doméstico, o volume das importações (em toneladas) de laminados a frio 304 da origem investigada representava [RESTRITO] % da produção nacional em P1 e representava [RESTRITO] % em P5, revelando uma variação positiva de [RESTRITO] p.p., considerando-se P5 em relação a P1.

6 DO DANO

6.1 Dos indicadores da indústria doméstica

1185. De acordo com o previsto no art. 24 do Decreto nº 1.751, de 1995, a indústria doméstica foi definida como a linha de produção de produtos de aço inoxidável laminados planos a frio 304 da empresa Aperam Inox América do Sul S.A., que, como demonstrado no item 3 deste parecer, nos termos tratados no item 1.4, foi responsável por 100% da produção nacional do produto similar de laminados a frio 304 no período de investigação de dano, de abril de 2015 a março de 2020.

1186. Dessa forma, os indicadores considerados neste documento refletem os resultados alcançados pela citada linha de produção.

1187. Para uma adequada avaliação da evolução dos dados em moeda nacional apresentados pela indústria doméstica, atualizaram-se os valores correntes com base no Índice de Preços ao Produtor Amplo - Origem (IPA-OG-PI), da Fundação Getúlio Vargas, [RESTRITO] .

1188. De acordo com a metodologia aplicada, os valores em reais correntes de cada período foram divididos pelo índice de preços médio do período, multiplicando-se o resultado pelo índice de preços médio de P5. Essa metodologia foi aplicada a todos os valores monetários em reais apresentados.

6.1.1 Do volume de vendas

1190. A tabela a seguir apresenta as vendas (em toneladas) da indústria doméstica de laminados a frio de fabricação própria, destinadas ao mercado interno e ao mercado externo, líquidas de devoluções.

Vendas da Indústria Doméstica (t)						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Vendas Totais da Indústria Doméstica	100,0	99,4	95,2	85,5	72,5	[REST.]
Variação	-	(0,6%)	(4,2%)	(10,2%)	(15,2%)	(27,5%)
A1. Vendas no Mercado Interno	100,0	127,7	124,8	132	117,3	[REST.]
Variação	-	27,7%	(2,2%)	5,8%	(11,2%)	+ 17,3%
A2. Vendas no Mercado Externo	100,0	63,7	57,7	26,6	15,8	[REST.]
Variação	-	(36,3%)	(9,3%)	(54,0%)	(40,6%)	(84,2%)
Representatividade das Vendas						
Participação no mercado interno nas Vendas Totais {A1/A}	100,0	128,4	131,0	154,3	161,7	
Participação no mercado externo nas vendas totais {A2/A}	100,0	63,9	60,5	31,1	21,8	
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, as vendas apresentaram aumento de 5,8% de P3 a P4 e redução de 11,2% de P4 a P5. Ao se considerar todo o período de análise, o volume de vendas (em toneladas) da indústria doméstica para o mercado interno cresceu 17,3%, considerando-se P5 em relação a P1.

1192. Com relação às vendas (em toneladas) ao mercado externo, houve reduções consecutivas em todo o período analisado, de 36,3% de P1 a P2, de 9,3% de P2 a P3, de 54,0% de P3 a P4, e de 40,6% 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%, considerando-se P5 em relação a P1.

1193. Ressalte-se, nesse ponto, que as vendas externas (em toneladas) da indústria doméstica representaram, no máximo, [RESTRITO] % da totalidade de vendas (em toneladas) do produto de fabricação própria ao longo do período de investigação de dano, atingindo seu menor patamar em P5, com

participação de [RESTRITO] %.

1194. Já as vendas totais (em toneladas) da indústria doméstica apresentaram comportamento similar ao das vendas (em toneladas) realizadas no mercado externo, apresentando reduções consecutivas em todo o período analisado, de 0,6% de P1 a P2, de 4,2% de P2 a P3, de 10,2% de P3 a P4, e de 15,2% de P4 a P5. Ao se considerar todo o período de investigação de dano, o volume de vendas totais (em toneladas) da indústria doméstica apresentou retração de 27,5%, considerando-se P5 em relação a P1.

6.1.2 Da participação do volume de vendas no mercado brasileiro

1195. Na tabela seguinte apresenta-se a participação das vendas da indústria doméstica no mercado brasileiro.

Participação das Vendas da Indústria Doméstica no Mercado Brasileiro						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Vendas no Mercado Interno	100,0	127,7	124,8	132,0	117,3	[REST.]
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
B. Mercado Brasileiro	100,0	116,3	124,1	131,5	131	[REST.]
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Participação no Mercado Brasileiro {A/B}	100,0	116,3	124,1	131,5	131	
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1196. A evolução da participação das vendas da indústria doméstica no mercado brasileiro de laminados a frio 304 cresceu de P1 a P2 em [RESTRITO] p.p. A partir de então, a evolução dessa participação diminuiu em [RESTRITO] p.p. de P2 a P3, reduziu-se em [RESTRITO] p.p. de P3 a P4, e apresentou queda de [RESTRITO] p.p. de P4 a P5. Considerando-se todo o período inteiro de análise, observou-se decréscimo de [RESTRITO] p.p. na evolução da participação das vendas 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 peticionária, a produção do produto similar de laminados a frio da indústria doméstica ocorre na planta da Aperam localizada em Timóteo (MG).

1198. Para o cálculo da capacidade nominal, a empresa apurou a produtividade média de cada um dos laminadores a frio utilizados na produção do produto similar ([CONFIDENCIAL]). A produtividade média ponderada de cada laminador foi, então, multiplicada pela quantidade de horas disponíveis em um 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 de cada laminador foi multiplicada pelo índice anual de funcionamento de cada laminador. Esse índice de funcionamento reflete a efetividade esperada dos equipamentos, levando em consideração as paradas operacionais, como setup e manutenções preventivas e corretivas, e a quantidade de dias úteis em cada ano. Além disso, foram descontadas as paradas relativas a grandes manutenções (RCO - Retorno às Condições Originais) e a investimentos produtivos.

Produção (t), Capacidade Instalada (t) e Grau de Ocupação						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Volume de Produção - Produto Similar	100,0	97,5	94,1	84,8	73,3	[REST.]
Variação	-	(2,5%)	(3,5%)	(9,9%)	(13,6%)	(26,7%)
B. Volume de Produção - Outros Produtos	100,0	101,6	103,1	100,3	91,4	[REST.]
Variação	-	1,6%	1,5%	(2,7%)	(8,8%)	(8,6%)
C. Capacidade Instalada Efetiva	100,0	103,6	99,6	94,6	100	[REST.]
Variação	-	3,6%	(3,9%)	(5,0%)	5,7%	+ 0,0%

D. Grau de Ocupação {(A+B)/C}	100,0	96,8	100,7	100,8	85,7	-
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1200. O volume de produção do produto similar de laminados a frio da indústria doméstica apresentou decréscimos constantes em todos os períodos analisados, de 2,5% de P1 a P2, de 3,5% de P2 a P3, de 9,9% de P3 a P4 e de 13,6% de P4 a P5. Considerando-se todo o período inteiro de análise, observou-se decréscimo de 26,7% no volume de produção do produto similar de laminados a frio da indústria doméstica, considerando-se P5 em relação a P1.

1201. A produção de outros produtos registrou aumentou 1,6% de P1 a P2 e crescimento de 1,5% de P2 a P3. Nos períodos subsequentes, a produção de outros produtos apresentou decréscimo 2,7% de P3 a P4 e diminuição de 8,8% de P4 a P5. Considerando-se todo o período inteiro de análise, a produção de outros produtos registrou decréscimo reduzindo-se em 8,6%, considerando-se P5 em relação a P1.

1202. A capacidade instalada efetiva apresentou crescimento de 3,6% entre P1 e P2, seguida de duas reduções de 3,9% entre P2 e P3 e de 5,0% entre P3 e P4; voltando a crescer 5,7% entre P4 e P5. Ao se considerar todo o período de análise, a capacidade instalada efetiva permaneceu praticamente estável, tendo se elevado em [RESTRITO] toneladas em P5 comparativamente a P1, o que representa um crescimento inferior a 0,1%.

1203. No que concerne à evolução do grau de ocupação da capacidade instalada, observou-se que houve diminuição de [RESTRITO] p.p. de P1 a P2, aumento de [RESTRITO] p.p. de P2 a P3, e crescimento de [RESTRITO] p.p. de P3 a P4. Após, observou-se diminuição de [RESTRITO] p.p. de P4 a P5. Considerando-se todo o período inteiro de análise, a evolução do grau de ocupação da capacidade instalada registrou decréscimo reduzindo-se em [RESTRITO] p.p., considerando-se P5 em relação a P1.

6.1.4 Dos estoques

1204. A tabela a seguir indica o estoque acumulado da produção do produto similar de laminados a frio da indústria doméstica, em toneladas, no final de cada período investigado, considerando-se o estoque inicial em P1 de [RESTRITO] t. Registre-se que as vendas no mercado interno e no mercado externo já estão líquidas de devoluções.

Estoques (t)						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Volume de Produção - Produto Similar	100,0	97,5	94,1	84,8	73,3	[REST.]
Variação	-	(2,5%)	*(3,5%)*	*(9,9%)*	*(13,6%)*	*(26,7%)*
Vendas no Mercado Interno	100,0	127,7	124,8	132	117,3	[REST.]
Variação	-	*27,7%*	(2,2%)	5,8%	(11,2%)	+ 17,3%
Vendas no Mercado Externo	100,0	63,7	*57,7*	26,6	15,8	[REST.]
Variação	-	(36,3%)	(9,3%)	(54,0%)	(40,6%)	(84,2%)
Outras Entradas/Saídas	-100,0	27,3	-16,3	-269	-325,8	
Estoque Final	100,0	85,5	82,5	59,7	60,9	[REST.]
Variação	-	*(14,5%)*	*(3,5%)*	*(27,6%)*	*2,0%*	*(39,1%)*
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1205. O volume do estoque final do produto similar de laminados a frio da indústria doméstica, em toneladas, apresentou diminuições sucessivas de 14,5% de P1 a P2, de 3,5% de P2 a P3, e de 27,6% 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 da série, o volume do estoque final do produto similar de laminados a frio da indústria doméstica, em toneladas, apresentou diminuição de 39,1%, considerando-se P5 em relação a P1.

1206. A tabela a seguir apresenta a relação entre o estoque acumulado do produto similar de laminados a frio da indústria doméstica, em toneladas, e a produção do produto similar de laminados a frio da indústria doméstica, em toneladas, em cada período de análise.

Relação Estoque Final/Produção						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Volume de Produção - Produto Similar (A)	100,0	97,5	94,1	84,8	73,3	[REST.]
Variação	-	(2,5%)	*(3,5%)*	*(9,9%)*	*(13,6%)*	*(26,7%)*
Estoque Final (B)	100,0	85,5	82,5	59,7	60,9	[REST.]
Variação	-	*(14,5%)*	*(3,5%)*	*(27,6%)*	*2,0%*	*(39,1%)*
Relação entre Estoque e Volume de Produção {B/A}	100,0	86,7	86,7	68,9	82,2	-
Variação	-	[REST.]	[REST.]	[REST.]	[REST.]	[REST.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1207. A evolução da relação estoque final/produção do produto similar de laminados a frio da indústria doméstica, em toneladas, apresentou redução de [RESTRITO] p.p. entre P1 e P2, seguida de estabilidade entre P2 e P3. Entre P3 e P4 a evolução da relação estoque final/produção do produto similar de laminados a frio da indústria doméstica apresentou decréscimo de [RESTRITO] p.p. Por fim, a evolução da relação estoque final/produção do produto similar de laminados a frio da indústria doméstica apresentou elevação de [RESTRITO] p.p. entre P4 e P5. Considerando-se os extremos da série, a evolução da relação estoque final/produção do produto similar de laminados a frio da indústria doméstica 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, a produtividade e a massa salarial relacionados à produção/venda do produto similar de laminados a frio doméstico.

1209. Para o rateio do número de empregados para o produto similar de laminados a frio doméstico, o critério utilizado foi o custo de mão de obra dos aços inoxidáveis laminados a frio 304 sobre o custo de mão de obra total constante do CPV da Aperam.

1210. A alocação da massa salarial para o produto similar de laminados a frio doméstico foi realizada com base no mesmo critério de rateio utilizado para o número de empregados.

	P1	P2	P3	P4	P5	P1-P5
Qtde de Empregados - Total	100,0	100,3	99,4	94,0	83,3	[REST.]
Variação	-	0,3%	(0,9%)	(5,4%)	(11,3%)	(16,7%)
Qtde de Empregados - Produção	100,0	100,0	99,0	93,7	83,1	[REST.]
Variação	-	(0,0%)	(1,0%)	(5,4%)	(11,3%)	(16,9%)
Qtde de Empregados - Adm. e Vendas	100,0	107,7	107,7	100,0	87,7	[REST.]
Variação	-	7,7%	-	(7,1%)	(12,3%)	(12,3%)

Elaboração: SDCOM

Fonte: RFB e Indústria Doméstica

1211. Verificou-se que o número de empregados que atuam na linha de produção do produto similar de laminados a frio doméstico manteve-se inalterado de P1 a P2. Nos períodos subsequentes esse número apresentou reduções sucessivas de 1,0% de P2 a P3, de 5,4% de P3 a P4, e de 11,3% de P4 para P5. Considerando-se o período inteiro de análise, observou-se decréscimo no número de empregados que atuam na linha de produção do produto similar de laminados a frio doméstico de 16,9%, considerando-se P5 em relação a P1.

1212. Quanto ao número de empregados na área de Administração e Vendas, observou-se aumento de 7,7% de P1 a P2 e estabilidade de P2 a P3. De P3 a P4 houve redução de 7,1% e de P4 a P5 observou-se diminuição de 12,3%. Considerando-se o período inteiro de análise, observou-se queda no

número de empregados na área de Administração e Vendas de 12,3%, considerando-se P5 em relação a P1.

1213. Com relação ao número total de empregados, houve elevação de 0,3% de P1 a P2, seguida de reduções sucessivas nos períodos subsequentes, de 0,9% de P2 a P3, de 5,4% de P3 a P4, e de 11,3% de P4 a P5. Ao se considerar o período total de análise, observou-se redução do número total de empregados de 16,7%, considerando-se P5 em relação a P1.

1214. A tabela a seguir apresenta a produtividade por empregado que atua na linha de produção do produto similar de laminados a frio doméstico em cada período de análise.

Produtividade por Empregado ligado à Produção						
[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Qtde de Empregados - Produção (A)	100,0	100,0	99,0	93,7	83,1	[REST.]
Variação	-	*(0,0%)*	*(1,0%)*	*(5,4%)*	*(11,3%)*	*(16,9%)*
Volume de Produção - Produto Similar (B)	100,0	97,5	94,1	84,8	73,3	[REST.]
Variação	-	(2,5%)	*(3,5%)*	*(9,9%)*	*(13,6%)*	*(26,7%)*
Produtividade por Empregado {B/A}	100,0	97,6	95	90,5	88,1	-
Variação	-	*(2,4%)*	*(2,6%)*	*(4,8%)*	*(2,6%)*	*(11,9%)*
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1215. A produtividade por empregado ligado à produção do produto similar de laminados a frio doméstico apresentou quedas consecutivas ao longo do período analisado, de 2,4 % de P1 a P2, de 2,6% de P2 a P3, de 4,8% de P3 a P4, e de 2,6% de P4 a P5. Considerando-se todo o período de análise de dano, a produtividade por empregado ligado à produção do produto similar de laminados a frio doméstico apresentou queda de 11,9%, considerando-se P5 em relação a P1.

1216. As informações sobre a massa salarial relacionadas à produção/venda do produto similar de laminados a frio doméstico da indústria doméstica encontram-se sumarizadas na tabela a seguir.

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	
Variação	-	(15,8%)	6,4%	(11,5%)	(18,9%)	(35,7%)
Massa Salarial - Produção	100,0	84,7	89,7	78,8	64,1	
Variação	-	(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	
Variação	-	(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 da linha de produção, observou-se queda de 15,3% de P1 a P2 e aumento de 5,9% de P2 a P3. Nos períodos subsequentes, houve quedas sucessivas de 12,1% de P3 a P4, e de 18,6% de P4 a P5. Na análise dos extremos da série, 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 dos empregados ligados à administração e às vendas do produto similar apresentou queda de 34,6%, considerando-se P5 em relação a P1.

1219. Com relação à massa salarial total, observou-se retração de 15,8% de P1 a P2, seguida de crescimento de 6,4% de P2 a P3. Nos períodos subsequentes, houve reduções sucessivas de 11,5% de P3 a P4, e de 18,9% de P4 a P5. Considerando-se todo o período de análise de dano, a massa salarial total dos empregados do produto similar apresentou declínio de 35,7%, considerando-se P5 em relação a P1.

6.1.6 Da demonstração de resultado

6.1.6.1 Da receita líquida

1220. A receita líquida da indústria doméstica refere-se às vendas líquidas de laminados planos a frio de produção própria, já deduzidos os abatimentos, descontos, tributos e devoluções, bem como as despesas de frete interno. Receita Líquida das Vendas da Indústria Doméstica

1221. A tabela a seguir apresenta as receitas líquidas obtidas pela indústria doméstica com a venda do produto similar doméstico nos mercados interno e externo em milhares de Reais atualizados, deduzidas dos valores de fretes incorridos sobre essas vendas.

Receita Líquida (em Mil Reais reais e em número índice)						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
Receita Líquida Total (A)	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Receita Líquida Mercado Interno (B)	100,0	113,1	119,1	136,5	115,3	[REST.]
Variação		13,1%	5,3%	14,6%	(15,5%)	+ 15,3%
Participação {B/A}	[CONF.]	[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%)	(84,1%)
Participação {C/A}	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1222. A receita líquida referente às vendas de laminados planos a frio de fabricação própria no mercado interno, em milhares de Reais atualizados, apresentou oscilação ao longo do período analisado, 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 considerados os extremos da série, 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 de todo o período analisado, 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 84,18%, considerando-se P5 em relação a P1.

6.1.6.2 Dos preços médios ponderados

1224. A tabela a seguir apresenta os preços médios ponderados de venda de laminados planos a frio de fabricação própria no mercado interno, em Reais atualizados por tonelada, obtidos pela razão entre as receitas líquidas e as respectivas quantidades vendidas de laminados a frio 304, líquidas de devolução, conforme apresentado anteriormente, respectivamente, nos itens 6.1.7 e 6.1.1 deste parecer.

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%

Elaboração: SDCOM
Fonte: RFB e Indústria Doméstica

1225. O indicador de preço médio ponderado de venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em Reais atualizados por tonelada, apresentou oscilações ao longo do período analisado, com declínio de 11,4% de P1 a P2, sucedido de crescimento 7,7% de P2 a P3 e de novo crescimento de 8,4% de P3 a P4. No período seguinte, esse indicador de preço médio ponderado apresentou declínio 4,9% de P4 a P5. Quando considerados os extremos da série, o indicador de preço médio ponderado de venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, em Reais atualizados por tonelada, apresentou variação negativa de 1,7%, considerando-se P5 em relação a P1.

1226. Já o indicador de preço médio ponderado de venda do produto similar de laminados planos a frio de fabricação própria no mercado externo, em Reais atualizados por tonelada, apresentou oscilações ao longo do período analisado, com declínio de 20,5% de P1 a P2, sucedido de crescimento 11,0% de P2 a P3 e de novo crescimento de 17,2% de P3 a P4. No período seguinte, esse indicador de preço médio ponderado apresentou declínio 2,9% de P4 a P5. Ao se considerar todo o período de análise, o indicador de preço médio ponderado de venda do produto similar de laminados planos a frio de fabricação própria no mercado externo, em Reais atualizados por tonelada, apresentou variação positiva 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 indústria doméstica obtido com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, conforme informado pela indústria doméstica.

Demonstrativo de Resultado no Mercado Interno (em Mil Reais) e Margens de Rentabilidade (%)						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Receita Líquida Mercado Interno	100,0	113,1	119,1	136,5	115,3	
Variação		13,1%	5,3%	14,6%	(15,5%)	+ 15,3%
B. Custo do Produto Vendido - CPV	100,0	110,7	118,8	138,5	122,8	
Variação		10,7%	7,3%	16,6%	(11,4%)	+ 22,8%
C. Resultado Bruto {A-B}	100,0	121,1	120,1	129,4	89,6	
Variação		21,1%	(0,8%)	7,8%	(30,8%)	(10,4%)
D. Despesas Operacionais	100,0	117,5	149,8	131,8	115,0	
Variação		17,5%	27,5%	(12,0%)	(12,8%)	+ 15,0%
D1. Despesas Gerais e Administrativas	100,0	113,2	112,6	108,7	101,1	
D2. Despesas com Vendas	100,0	105,7	111,2	117,1	90,1	
D3. Resultado Financeiro (RF)	100,0	115,7	123,2	135,0	125,5	
D4. Outras Despesas (Receitas) Operacionais (OD)	100,0	199,0	826,5	249,5	111,0	
E. Resultado Operacional {C-D}	100,0	123,0	104,1	128,2	76,0	
Variação		23,0%	(15,3%)	23,1%	(40,7%)	(24,0%)
F. Resultado Operacional (exceto RF) {C-D1-D2-D4}	100,0	121,2	108,8	129,8	88,2	
Variação		21,2%	(10,2%)	19,4%	(32,1%)	(11,8%)
G. Resultado Operacional (exceto RF e OD) {C-D1-D2}	100,0	122,5	121,2	131,9	88,5	
Variação		22,5%	(1,1%)	8,9%	(32,9%)	(11,5%)
H. Margem Bruta {C/A}	100,0	107,1	100,9	95,1	77,9	
Variação		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
I. Margem Operacional {E/A}	100,0	108,8	87,8	93,9	66,0	
Variação		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
J. Margem Operacional (exceto RF) {F/A}	100,0	107,2	91,3	95,4	76,4	
Variação		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]
K. Margem Operacional (exceto RF e OD) {G/A}	100,0	108,0	101,5	96,5	76,9	
Variação		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]

Elaboração: SDCOM
Fonte: RFB e Indústria Doméstica

1228. As receitas e despesas operacionais foram calculadas com base em rateio, pela representatividade do faturamento líquido do produto similar nacional em relação ao faturamento total da empresa.

1229. Com relação às outras despesas, a Aperam informou tratarem-se das seguintes rubricas, dentre outras: [CONFIDENCIAL] .

1230. O resultado bruto 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 21,1% de P1 a P2 sucedido de declínio de 0,8% de P2 a P3. Nos períodos seguintes, houve crescimento de 7,8% de P3 a P4 e declínio 30,8% de P4 a P5. Quando considerados os extremos da série, o resultado bruto 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 10,4%, considerando-se P5 em relação a P1.

1231. O resultado operacional 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 23,0% de P1 a P2 sucedido de declínio de 15,3% de P2 a P3. Nos períodos seguintes, houve crescimento de 23,1% de P3 a P4 e declínio 40,7% de P4 a P5. Quando considerados os extremos da série, o resultado operacional 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%, considerando-se P5 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 21,2% de P1 a P2 sucedido de declínio de 10,2% de P2 a P3. Nos períodos seguintes, houve crescimento de 19,4% de P3 a P4 e declínio 32,1% 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 [CONFIDENCIAL] p.p. 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 [CONFIDENCIAL]p.p., 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 oscilações ao longo do período analisado, com crescimento de [CONFIDENCIAL] p.p. de P1 a P2 sucedido de declínio de [CONFIDENCIAL] p.p. de P2 a P3. Nos períodos seguintes, houve crescimento de [CONFIDENCIAL] p.p. 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 [CONFIDENCIAL]p.p., considerando-se P5 em relação a P1.

1236. A margem operacional, exceto resultado financeiro, da indústria doméstica com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno apresentou oscilações ao longo do período analisado, com crescimento de [CONFIDENCIAL] p.p. de P1 a P2 sucedido de declínio de [CONFIDENCIAL] p.p. de P2 a P3. Nos períodos seguintes, houve crescimento de [CONFIDENCIAL] p.p. de P3 a P4, e declínio de [CONFIDENCIAL]p.p. de P4 a P5. Quando considerados os extremos da série, a margem 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 [CONFIDENCIAL] p.p., considerando-se P5 em relação a P1.

1237. A margem 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 crescimento de [CONFIDENCIAL] p.p. 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 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 [CONFIDENCIAL] p.p., considerando-se P5 em relação a P1.

1238. O quadro a seguir apresenta o demonstrativo de resultados da indústria doméstica obtido com a venda do produto similar de laminados planos a frio de fabricação própria no mercado interno, apurado por tonelada vendida, conforme informado pela indústria doméstica.

Demonstrativo de Resultado no Mercado Interno por Unidade (R$/(t) e num. índ.)						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Receita Líquida Mercado Interno	100,0	88,6	95,4	103,4	98,3	
Variação		(11,4%)	7,7%	8,4%	(4,9%)	(1,7%)
B. Custo do Produto Vendido CPV	100,0	86,7	95,2	105,0	104,7	
Variação		(13,3%)	9,7%	10,3%	(0,2%)	+ 4,7%
C. Resultado Bruto {A-B}	100,0	94,8	96,2	98,1	76,4	
Variação		(5,2%)	1,4%	1,9%	(22,1%)	(23,6%)
D. Despesas Operacionais	100,0	92,0	120,1	99,9	98,0	
Variação		(8,0%)	30,5%	(16,8%)	(1,9%)	(2,0%)
D1. Despesas Gerais e Administrativas	100,0	88,7	90,2	82,3	86,2	
D2. Despesas com Vendas	100,0	82,8	89,1	88,7	76,8	
D3. Resultado Financeiro (RF)	100,0	90,6	98,7	102,3	107,0	
D4. Outras Despesas (Receitas) Operacionais (OD)	100,0	155,9	662,2	189,0	94,7	
E. Resultado Operacional {C-D}	100,0	96,3	83,4	97,1	64,8	
Variação		(3,7%)	(13,4%)	16,4%	(33,2%)	(35,2%)
F. Resultado Operacional (exceto RF) {C-D1-D2-D4}	100,0	94,9	87,2	98,4	75,2	
Variação		(5,1%)	(8,2%)	12,9%	(23,6%)	(24,8%)
G. Resultado Operacional (exceto RF e OD) {C-D1-D2}	100,0	96,0	97,1	99,9	75,5	
Variação		(4,0%)	1,1%	2,9%	(24,4%)	(24,5%)
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1239. O CPV unitário 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 de declínio de 13,3% de P1 a P2. Nos períodos seguintes, houve crescimentos consecutivos de 9,7% de P2 a P3 e de 10,3% de P3 a P4. Após, houve declínio de 0,2% de P4 a P5. Quando considerados os extremos da

série, o CPV unitário 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 positiva de 4,7%, considerando-se P5 em relação a P1.

1240. O resultado bruto unitário 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 de declínio de 5,2% de P1 a P2. Nos períodos seguintes, houve crescimentos consecutivos de 1,4% de P2 a P3 e de 1,9% de P3 a P4. Após, houve expressivo declínio de 22,1% de P4 a P5. Quando considerados os extremos da série, o resultado bruto unitário 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 negativa de 23,6%, considerando-se P5 em relação a P1.

1241. O resultado operacional unitário 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 oscilações ao longo do período analisado, com declínios de 3,7% de P1 a P2 e de 13,4% de P2 a P3. Nos períodos seguintes, houve crescimento de 16,4% de P3 a P4 e expressivo declínio 33,2% de P4 a P5. Quando considerados os extremos da série, o resultado operacional unitário 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 expressiva variação negativa de 35,2%, considerando-se P5 em relação a P1.

1242. O resultado operacional unitário, exceto resultado 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 declínios consecutivos de 5,1% de P1 a P2 e de 8,2% de P2 a P3. Nos períodos seguintes, houve oscilações com crescimento de 12,9% de P3 a P4 seguido de declínio de 23,6% de P4 a P5. Quando considerados os extremos da série, o resultado operacional unitário, exceto resultado 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 negativa de 24,8%, considerando-se P5 em relação a P1.

1243. Por sua vez, o resultado operacional unitário, exceto resultado financeiro e outras despesas, da indústria doméstica apresentou reduções de 4,0% de P1 a P2 e de 24,4% P4 a P5, enquanto nos demais períodos houve tímido crescimento de 1,1% de P2 a P3 e de 2,9% de P3 a P4. Quando considerados os extremos da série, o resultado operacional unitário, 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 R$ atualizados por tonelada, apresentou variação negativa de 24,5%, 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 apresentar o custo de produção segregado por CODIP, uma vez que o custeio é atribuído no código do material (CODPROD), e, tendo em vista que esses códigos determinam uma faixa de espessura e de largura, e que somente no momento da venda é que são geradas, no sistema contábil da empresa, as informações sobre as características específicas de largura e de espessura do produto vendido, não seria possível enquadrar os códigos dos materiais produzidos nas características do CODIP.

1245. Adicionalmente, a Aperam esclareceu que o código de material determina uma faixa de espessura e de largura, de forma tal que um mesmo código de material poderia ser classificado em mais de um CODIP, a depender da espessura e da largura específica do produto vendido. Da mesma forma, um mesmo CODIP poderia estar relacionado a diferentes códigos de material.

1246. Nesse contexto, utilizou-se os dados referentes ao custo do produto vendido (CPV) para a construção do custo de produção, pois a utilização do CPV não prejudicaria a análise da evolução dos custos, uma vez que a empresa produz contra pedido, os valores relativos à produção e à venda seriam muito próximos, sendo os estoques apenas pontuais, referentes a vendas ainda não despachadas. Assim, considerou-se que o custo unitário do produto vendido seria semelhante ao seu custo de produção e permitiria a identificação por CODIP.

1247. Dessa forma, foi elaborada a tabela seguinte que apresenta a evolução dos custos unitários da indústria doméstica com base em seu CPV. Para tanto, foram consideradas as quantidades vendidas para o mercado interno e externo, líquidas de devoluções.

Evolução dos Custos (em número índice)						
[CONFIDENCIAL]						
	P1	P2	P3	P4	P5	P1 - P5
Custo de Produção (em R$/(t)) {A + B}	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Variação		(12,1%)	9,2%	11,8%	(0,8%)	+ 6,5%
A. Custos Variáveis	100,0	87,1	94,9	109,0	107,2	
A1. Matéria Prima[1]	100,0	88,6	98,5	115,5	101,0	
A2. Outros Insumos[2]	100,0	79,4	81,5	97,3	126,2	
A3. Utilidades[3]	100,0	97,4	99,5	101,4	106,0	
A4. Outros Custos Variáveis [4]	100,0	82,8	111,2	84,1	90,3	
B. Custos Fixos	100,0	93,9	104,2	95,5	101,3	
B1. Mão de obra direta	100,0	86,1	92,1	83,6	81,8	
B2. Depreciação Direta	100,0	89,5	93,5	92,7	109,2	
B3. Depreciação Operacional	100,0	99,7	101,4	101,1	106,9	
B4. Manutenção	100,0	106,9	114,9	89,7	100,9	
B5. Indireta Operacional	100,0	87,7	105,6	105,7	108,1	
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica [1] Nota: A rubrica "matéria-prima" inclui ligas de inox, outras ligas, outras matérias-primas, fundentes, 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 de laminados planos a frio de fabricação própria da indústria doméstica, em R$ atualizados por tonelada, apresentou declínio de 12,1% de P1 a P2. Nos períodos seguintes, houve crescimentos consecutivos de 9,2% de P2 a P3 e de 11,8% de P3 a P4. Após, houve novo declínio de 0,8% de P4 a P5. Quando considerados os extremos da série, 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 6,5%, considerando-se P5 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, no mercado interno, ao longo do período de investigação de dano.

Dos Custos e da Relação Custo/Preço						
[CONFIDENCIAL]/[RESTRITO]						
	P1	P2	P3	P4	P5	P1 - P5
A. Custo de Produção Unitário	100	87,90	96,01	107,34	106,47	
Variação		(12,1%)	9,2%	11,8%	(0,8%)	+ 6,5%
B. Preço no Mercado Interno	100,0	88,6	95,4	103,4	98,3	[REST.]
Variação		(11,4%)	7,7%	8,4%	(4,9%)	(1,7%)
C. Relação Custo / Preço {A/B}	100,00	99,21	100,66	103,81	108,27	
Variação	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Elaboração: SDCOM						
Fonte: RFB e Indústria Doméstica						

1250. A evolução da participação do custo no preço de venda 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, somente apresentou declínio de [CONFIDENCIAL] p.p. de P1 a P2. Nos períodos seguintes, houve crescimentos 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 evolução da participação do custo no preço de venda 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 positiva de [CONFIDENCIAL] p.p., considerando-se P5 em relação a P1.

6.1.7.3 Da comparação entre o preço do produto sob investigação e o similar nacional

1251. O efeito das importações a preços com subsídios acionáveis sobre os preços da indústria doméstica deve ser avaliado sob três aspectos, conforme disposto no § 5º do art. 21 do Decreto nº 1.751, de 1995. Inicialmente deve ser verificada a existência de subcotação significativa do preço do produto importado a preços com evidências de subsídios acionáveis em relação ao produto similar no Brasil, ou seja, se o preço internado do produto investigado é inferior ao preço do produto brasileiro. Em seguida, examina-se eventual depressão de preço, isto é, se o preço do produto importado teve o efeito de rebaixar significativamente o preço da indústria doméstica. O último aspecto a ser analisado é a supressão de preço. Esta ocorre quando as importações investigadas impedem, de forma relevante, o aumento de preços, devido ao aumento de custos, que teria ocorrido na ausência de tais importações.

1252. A fim de se comparar o preço de laminados a frio 304 importados da origem investigada com o preço médio de venda da indústria doméstica no mercado interno, procedeu-se ao cálculo do preço CIF internado dos produtos importados da origem investigada no mercado brasileiro. Já o preço de venda da indústria doméstica no mercado interno foi obtido pela razão entre a receita líquida, em reais atualizados, e a quantidade vendida, em toneladas, no mercado interno durante o período de investigação de dano.

1253. Para o cálculo dos preços internados do produto importado no Brasil da origem investigada, foram considerados os valores totais de importação do produto objeto da investigação, na condição CIF, em reais, obtidos dos dados brasileiros de importação, fornecidos pela RFB. A esses valores foram somados: a) o Imposto de Importação (II), considerando-se os valores efetivamente recolhidos; b) o Adicional de Frete para Renovação da Marinha Mercante (AFRMM); e c) as despesas de internação, estimadas em 3,2% sobre o valor CIF, com base nos questionários de importador recebidos na presente investigação.

1254. Destaque-se que o valor unitário do AFRMM foi calculado aplicando-se o percentual de 25% sobre o valor do frete internacional referente a cada uma das operações de importação constantes dos dados da RFB, quando pertinente. Cumpre registrar que foi levado em consideração que o AFRMM não incide sobre determinadas operações de importação, como, por exemplo, aquelas via transporte aéreo, as destinadas à Zona Franca de Manaus e as realizadas ao amparo do regime especial de drawback.

1255. Por fim, dividiu-se cada valor total supramencionado pelo volume total de importações objeto da investigação, a fim de se obter o valor por tonelada de cada uma dessas rubricas. Realizou-se o somatório das rubricas unitárias, chegando-se ao preço CIF internado das importações investigadas.

1256. Destaca-se que foram consideradas as características do produto (CODIP) e o canal de distribuição (usuário industrial/consumidor final e distribuidores), sendo que as características do produto (CODIP) foram identificadas por meio da descrição detalhada de cada uma das declarações de importações constantes dos dados de importação da RFB e também das informações constantes das respostas ao questionário do importador. Destaca-se que, em comparação com o dado apresentado no 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 descrição da mercadoria nos dados oficiais, sendo possível identificar, para a maior parte das importações, o CODIP até a terceira característica do produto importado (acabamento). Ressalta-se que, para aqueles CODIPs em que não foi possível identificar todas tais características, foram utilizadas as características mais próximas possíveis. Dessa forma, a subcotação apresentada nesta determinação final incorpora maior nível de detalhamento em comparação com a apresentada anteriormente no início da investigação.

1258. Os preços internados do produto da origem investigada, assim obtidos, foram atualizados com base no IPA-OG-Produtos Industriais, a fim de se obterem os valores em reais atualizados e compará-los com os preços da indústria doméstica.

1259. A tabela a seguir demonstra os cálculos efetuados e os valores de subcotação obtidos para cada período de investigação de dano.

Preço médio CIF internado e subcotação - Origem investigada [RESTRITO]						
	P1	P2	P3	P4	P5	
Preço CIF (R$/t)		100,0	73,9	75,3	97,8	92,2
Imposto de importação (R$/t)		100,0	85,5	87,2	113,2	106,6
AFRMM (R$/t)		100,0	191,8	277,5	183,6	235,3
Despesas de (R$/t)		100,0	73,9	75,3	97,8	92,2
CIF Internado (R$ atualizados/t) (a)		100,0	70,7	71,1	83,3	73,9
Preço da indústria doméstica (R$ atualizados/t) (b)		100,0	88,2	95,9	102,6	96,9
Subcotação (R$ atualizados/kg) (b-a)		-100,0	-0,6	28,4	-6,1	18,0
Fonte: Indústria doméstica e RFB.						
Elaboração: SDCOM.						

1260. Da análise da tabela anterior, constatou-se que o preço médio ponderado do produto importado da origem investigada, internado no Brasil, esteve subcotado em relação ao preço da indústria doméstica em P5 e P3.

1261. Em relação aos preços médios de venda da indústria doméstica, houve redução de 11,4% de P1 para P2, aumentos de 7,7% de P2 para P3 e de 8,4% de P3 para P4, seguido de redução de 4,9% de P4 para P5. Ao analisar os extremos da série, verificou-se redução de 1,7% de P1 para P5 nos preços médios de venda da indústria doméstica.

1262. Observou-se, portanto, depressão do preço da indústria doméstica, representada pela queda dos preços, ao longo do período analisado, porém com variações positivas de P2 para P3 e de P3 para P4.

1263. Por fim, verificou-se supressão de preços de P2 para P3 e de P3 para P4, uma vez que houve aumento nos custos de produção unitários em nível superior ao aumento de preços, bem como considerando os extremos do período, uma vez que houve aumento de custo de produção acompanhado de redução do preço médio unitário de venda da indústria doméstica no mercado interno. Verificou-se que a relação entre custo de produção e preço de venda registrou elevações contínuas de P2 até P5: [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 que se verificou a supressão de preços, o preço médio de venda do produto similar diminuiu 1,7% e o custo total cresceu 6,4%, gerando 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. Tendo em vista a impossibilidade de a empresa apresentar fluxos de caixa completos e exclusivos para a linha de produção de laminados a frio 304, a análise do fluxo de caixa foi realizada em função dos dados relativos à 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.						

1265. Observou-se que o caixa líquido total gerado nas atividades da indústria doméstica, inicialmente negativo em P1, aumentou 102,1%, passando a ser positivo em P2. Em seguida, apresentou elevação de 4.486,1% entre P2 e P3, redução de 47,4% entre P3 e P4 e nova elevação entre P4 e P5, de 274,2%. Quando considerados os extremos da série (de P1 para P5), constatou-se melhora de 286,0% no fluxo de caixa gerado pela empresa.

6.1.9 Do retorno sobre os investimentos

1266. Apresenta-se, na tabela seguinte, o retorno sobre investimentos, considerando a divisão dos valores dos lucros líquidos da indústria doméstica pelos valores do ativo total de cada período, constantes das demonstrações financeiras das empresas. Ou seja, o cálculo refere-se aos lucros e ativo da peticionária como um todo, e não somente os relacionados ao produto similar.

Do Retorno sobre Investimentos (Em número índice)						
[CONFIDENCIAL]						
	P1	P2	P3	P4	P5	P1 - P5
Lucro Líquido (A)	(100,0)	(339,2)	(340,7)	1.200,8	619,5	
Ativo Total (B)	100,0	99,1	102,5	109,3	111,1	
Retorno sobre Investimento Total (ROI) [A/B]	(100,0)	(342,1)	(332,4)	1.099,0	557,6	
Variação		*[CONF.]*	[CONF.]	[CONF.]	[CONF.]	[CONF.]

Fonte: Indústria doméstica e RFB.

Elaboração: SDCOM.

1267. A taxa de retorno sobre investimentos da indústria doméstica, negativa até P3, diminuiu [CONFIDENCIAL] p.p. de P1 para P2, aumentou [CONFIDENCIAL] p.p. de P2 para P3 e [CONFIDENCIAL] p.p. de P3 para P4, voltando a cair [CONFIDENCIAL] p.p. de P4 para P5. Considerando os extremos do período de análise de dano, houve aumento de [CONFIDENCIAL] p.p. do indicador em questão.

6.1.10 Da capacidade de captar recursos ou investimentos

1268. Para avaliar a capacidade de captar recursos, foram calculados os índices de liquidez geral e corrente a partir dos dados relativos à totalidade dos negócios da indústria doméstica, visto não estarem disponíveis os dados exclusivamente relativos à produção do produto similar. Os dados aqui 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 curto e de longo prazo e o índice de liquidez corrente, a capacidade de pagamento das obrigações de curto prazo.

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 e de 2,7% entre P2 e P3. Em seguida, apresentou aumento de 5,6% de entre P3 e P4, mantendo-se estável entre P4 e P5. Ao se considerar 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 da seguinte maneira: crescimentos de 7,5% entre P1 e P2, de 4,1% entre P2 e P3 e de 5,0% entre P3 e P4, seguidos de um decréscimo de 5,9% entre P4 e P5. O referido indicador apresentou crescimento acumulado de 10,6% entre P1 e P5.

6.1.11 Do crescimento da indústria doméstica

1272. O volume de vendas da indústria doméstica para o mercado interno em P5 foi inferior ao volume de vendas registrado em P4 (11,2%), porém superior ao registrado em P1 (17,3%). Considerando que o crescimento da indústria doméstica se caracteriza pelo aumento do seu volume de vendas no mercado interno, pode-se constatar que a indústria doméstica cresceu, em termos absolutos, no período de investigação.

1273. Por outro lado, quando analisados os extremos da série, verifica-se que a elevação de 17,3% do volume de vendas da indústria doméstica no mercado interno foi acompanhada pelo crescimento de 31,0%, de P1 a P5, do mercado brasileiro. Dessa forma, a indústria doméstica reduziu sua participação no mercado brasileiro ([RESTRITO] p.p.) ao longo do período de investigação de dano.

1274. Já de P4 para P5, a redução de 11,2% do volume de vendas foi acompanhada de contração de 0,4% do mercado brasileiro no mesmo intervalo. Nesse sentido, a indústria doméstica apresentou redução relativa de suas vendas, tendo reduzido sua participação no mercado brasileiro em [RESTRITO] p.p. no período em questão.

6.2 Das manifestações posteriores à Nota Técnica referentes ao dano

1275. O GOI aduziu em sua manifestação final que, em desacordo com o preceituado no Art. 15.4 do ASMC, a SDCOM não sublinhou vários elementos importantes. Para o GOI, conforme o parágrafo 966 da NT, apesar da retração das vendas totais da indústria doméstica brasileira, a redução se deveu principalmente à tendência negativa das vendas de exportação ao invés das vendas no mercado interno, uma vez que de P1 a P5 as vendas de exportação se reduziram, enquanto as vendas internas se mantiveram positivas, de forma tal que a pressão real teria sido derivada das vendas de exportação, podendo a imposição de medidas de defesa comercial por terceiros países ter causado essa redução.

1276. Nesse contexto, para o GOI, as vendas totais teriam sido dominadas por vendas no mercado interno sem uma participação significativa das vendas de exportação. O GOI alegou que a indústria doméstica brasileira pretendeu alterar seu foco de mercado para o mercado interno - alcançar a medida de defesa comercial, para evitar a concorrência estrangeira, seria um meio preferível a buscar mercados alternativos para impulsionar as exportações.

1277. A participação da indústria doméstica no mercado ainda seria preponderante, não havendo que se falar em dano material, e a gradual redução de produção de P1 a P5 se deve ao mercado externo. De todo modo, o percentual de produção ainda estaria em níveis seguros. Ademais, o relatado no parágrafo 1011 da NT mostra contradição, pois aponta que mercadorias em estoque estejam saindo, ao invés de restarem em estoque.

1278. Outros fatores que pioraram, como o emprego, se devem, no entender do GOI, às exportações. Para o GOI, o parágrafo 1028 da NTFE oculta o crescimento da receita líquida da indústria doméstica brasileira, que de P1 a P5 conseguiu aumentar, o que corresponde à capacidade da indústria brasileira de manter o preço conforme expresso no parágrafo 1032 da NTFE, uma vez que de P1 a P5 o preço vendido pela indústria doméstica brasileira caiu apenas levemente. Acrescentou ainda ter havido incremento do fluxo de caixa e ainda aumento do Cost of goods sold em [RESTRITO] %, enquanto as despesas operacionais cresceram em [RESTRITO] %, o que não seria relacionado com as importações. 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 que o custo dos insumos foi crucial no aumento do COGS, seria esse o real desafio da indústria doméstica, ao invés dos desafios advindos das importações investigadas.

1280. A Aperam, em sua manifestação final, destacou que evolução dos indicadores demonstra, de forma cabal, a existência de dano à indústria doméstica. Rebateu, ainda, comentário da Aprodinox que, na audiência final do processo em tela, afirmou que o dano à indústria doméstica teria sido verificado apenas em P5 e que, dessa forma, não seria possível atestar se a causa de tal dano seriam as importações objeto da investigação. Para a Aperam, tal interpretação seria inconcebível, pois demonstraria que a entidade entende que a indústria doméstica deve sofrer dano por vários anos, enquanto os importadores se beneficiariam indevida e deslealmente dos preços distorcidamente baixos praticados nas importações, antes que busque adotar as medidas cabíveis e legais para se defender das práticas desleais adotadas

pelos demais players no mercado brasileiro. Assim, a peticionária buscou a adoção de medidas compensatórias cabíveis ante aos subsídios, conforme permitido pelo normativo brasileiro. Terminou a Aperam por reiterar as conclusões da SDCOM expressas na NTFE, pela existência de dano e causalidade.

1281. A PT IRNC, em suas manifestações acerca da errata à Nota Técnica, apontou suposto erro material na tabela "Demonstrativo de Resultado no Mercado Interno por Unidade", pois o CPV, de P1 e P2, cai 13,3% e a Receita Líquida MI cai 11,4% - variação negativa menor que o custo. Apesar dessa correlação, o resultado bruto entre P1 e P2 deteriorou em 5,2% - o que, no entender da empresa, não faria sentido quando se tem uma queda de custos superior à queda de preços. De P2 a P3, similarmente, o CPV tem variação positiva maior que o preço, e o resultado bruto tem variação positiva, o que seria um contrassenso em cenário de alta de custo em patamar superior ao preço. Com relação ao cálculo do resultado operacional, o número índice da linha E é totalmente equivalente ao resultado operacional exceto RF, linha F, mas apresenta variações díspares entre estes.

6.3 Dos comentários da SDCOM

1282. Sobre os elementos da análise de dano, ainda que tenha havido melhora pontual em alguns indicadores, o fato é que, como já apresentado, houve piora na maioria dos indicadores, como queda da participação das vendas da indústria doméstica no mercado brasileiro, quedas no resultado bruto, margem bruta, margem operacional e na piora da relação custo/preço, como extensivamente já apresentado. Assim, considerada a situação global da indústria doméstica, a SDCOM conclui pela existência de dano material. Pontua-se ainda, que, consoante item 7.2.6, abaixo, foi realizado cenário que analisou a questão das exportações trazida na manifestação do GOI, tendo, mesmo assim se verificado a existência de dano material após a separação e distinção dos efeitos desse outro fator.

1283. Sobre os comentários da PT IRNC, muito embora não versem sobre o item alterado na errata, mas sim no item "Dos resultados e margens", de modo a prestigiar a iniciativa da parte, a SDCOM pontua estar integralmente correta a tabela "Demonstrativo de Resultado no Mercado Interno por Unidade", tanto em sua versão confidencial, quanto na restrita. Relembra-se que o percentual de queda (ou elevação) de um indicador ser maior do que o de outro não necessariamente quer dizer que, comparadas as magnitudes, a queda (ou subida) absoluta acompanhará tais percentuais. Com relação ao resultado operacional, a linha E está integralmente correta, e as variações da linha F também, os números índices 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 que, durante o período de investigação de dano:

a) as vendas da indústria doméstica no mercado interno aumentaram 17,3% na comparação entre P1 e P5, porém com queda de 11,2% entre P4 e P5. Tal evolução, contudo, foi acompanhada pela deterioração dos resultados operacionais se considerados os extremos da série, registrando, de P1 a P5: decréscimos de 24,0% do resultado operacional (queda de 40,7% de P4 a P5), de 11,8% do resultado operacional exceto o resultado financeiro (redução de 32,1% de P4 a P5) e de 11,5% 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 no mercado interno, 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), que por sua vez, apresentou aumento de 31,0% quando comparados P1 com P5;

c) a produção de laminados a frio 304 da indústria doméstica apresentou declínio ao longo do período de investigação, reduzindo-se em 26,7% de P1 a P5 e em 13,6% de P4 a P5. Essa redução foi acompanhada de estabilidade na capacidade instalada, o que gerou a diminuição do grau de ocupação da capacidade instalada de P1 para P5 ([RESTRITO] p.p.) e de P4 a P5 ([RESTRITO] p.p.). A redução do grau de ocupação também pareceu ter sido influenciada pela queda nas vendas ao mercado externo no período 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 aumento de 2,0%;

e) o número de empregados ligados à produção decresceu ao longo do período de investigação. Com efeito, de P1 a P5 o indicador registrou uma queda de 16,9%, enquanto de P4 a P5 foi registrada redução de 11,3%. A produtividade por empregado apresentou comportamento semelhante, registrando um decréscimo de 11,9% de P1 para P5 e de 2,6% de P4 a P5;

f) a receita líquida obtida pela indústria doméstica no mercado interno aumentou 15,3% de P1 para P5, motivada pelo crescimento das vendas da indústria doméstica no período (em termos absolutos), sobretudo entre P1 e P4. Já entre P4 e P5, houve declínio de 15,5%. Vale ressaltar, contudo, que o crescimento das vendas foi inferior ao crescimento da demanda interna, o que gerou perda de participação de mercado pela indústria doméstica;

g) a despeito do crescimento da receita líquida, o resultado bruto diminuiu 10,4% de P1 a P5, e 30,8% de P4 a P5, enquanto a margem bruta apresentou evolução negativa de [CONFIDENCIAL] p.p. de P1 a P5, e de [CONFIDENCIAL] p.p. de P4 a P5. O resultado operacional, conforme visto anteriormente, reduziu-se em 24,0% entre P1 e P5, e em 40,7% entre P4 e P5. No mesmo sentido, a margem operacional apresentou declínio de [CONFIDENCIAL] p.p. de P1 para P5, e de [CONFIDENCIAL]p.p. de P4 a P5;

h) observou-se queda no preço praticado pela indústria doméstica no mercado interno de 1,7% entre P1 e P5, e de 4,9% entre P4 e P5. Por sua vez, o custo de produção registrou elevação de 6,5% entre P1 e P5, enquanto entre P4 e P5 houve redução de 0,8%. Tais evoluções resultaram no crescimento da 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 dos indicadores 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 demonstrar o nexo causal entre as importações do produto alegadamente subsidiado e o dano à indústria doméstica. Essa demonstração de nexo causal deve basear-se no exame de elementos de prova pertinentes e outros fatores conhecidos, além das importações alegadamente subsidiadas que possam ter causado dano à indústria doméstica na mesma ocasião.

7.1 Do impacto das importações com evidências de subsídios acionáveis sobre a indústria doméstica

1287. Consoante o disposto no art. 22 do Decreto nº 1.751, de 1.995, é necessário demonstrar que as importações do produto subsidiado contribuíram significativamente para o dano experimentado pela indústria doméstica.

1288. A partir dos dados apresentados nos itens 5 e 6 deste documento, observou-se que ao longo do período de análise de dano houve crescimento no volume das importações de laminados a frio 304 originárias da Indonésia, apurando-se aumento de [RESTRITO] %, de P1 a P5, com destaque para o período de P4 a P5, quando houve incremento de [RESTRITO] % no volume importado dessas origens.

1289. Em relação à participação das importações de laminados a frio 304 no mercado brasileiro, verificou-se que em P1 as importações da origem investigada eram responsáveis por [RESTRITO] % do mercado brasileiro e as importações das demais origens contavam com [RESTRITO] % desse mercado. Após o aumento das importações da Indonésia no período de análise de dano, a participação dessas importações alcançou [RESTRITO] %, em P5, sendo que somente no período de P4 a P5 a participação dessas origens praticamente quintuplicou, quando passou de [RESTRITO] % para [RESTRITO] %. Por outro lado, a participação das importações das demais origens recuou para [RESTRITO] %, em P5.

1290. Avaliou-se que o aumento do volume das importações originárias da Indonésia ocasionou o ganho de mercado em detrimento, principalmente, da participação das vendas da indústria doméstica que, em P1, correspondia a [RESTRITO] % e, no último período, representou [RESTRITO] %. Nessa mesma comparação, as importações da origem investigada aumentaram a participação no mercado brasileiro, de P1 a P5, em [RESTRITO] p.p., enquanto a indústria doméstica perdeu [RESTRITO] p.p. e as importações das 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 304, consideradas as parcelas que couberam às vendas da indústria doméstica de fabricação própria, bem como as pertinentes às importações da origem investigada e das demais origens.

Participação no mercado brasileiro [RESTRITO]			
	Vendas indústria doméstica	Importações origem investigada	Importações outras origens
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
Fonte: Peticionária e RFB; tabelas anteriores. Elaboração: SDCOM.			

1292. O maior valor de subcotação para o período de investigação de dano, como apresentado no item 6.1.7.3, deu-se em P3. Em P1, P2 e P4 não se verificou a ocorrência de subcotação. Contudo, em P5 registra-se subcotação, em consequência da diminuição do preço do produto da origem investigada em intensidade maior do que a diminuição do preço registrada pela indústria doméstica. Destaque-se que foi em P5 que foi importado o maior volume do período analisado.

1293. Analisando-se o período no qual as importações da origem investigada atingiram o ápice durante o período sob investigação (P5), nota-se que o volume das vendas internas da indústria doméstica registrou a queda mais expressiva ([RESTRITO] % em relação a P4), aliada à diminuição da produção dos laminados a frio 304 ([RESTRITO] % comparado a P4). Tal cenário ocasionou o aumento da ociosidade da capacidade instalada da indústria doméstica, cujo grau de ocupação caiu [RESTRITO] p.p. em relação a P4, registrando o menor nível de ocupação em todos os períodos analisados.

1294. Aliado a esses fatores, registra-se o aumento dos custos de produção de P1 a P5 (6,4%), a despeito da redução de 0,8% de P4 a P5, sem que houvesse margem para que a indústria doméstica repassasse tais custos para o preço praticado, inclusive observando-se a redução do preço de 1,7% em relação a P1 e de 4,9% comparado a P4, em decorrência da perda de participação de mercado para as importações da origem investigada. Assim, houve deterioração da relação custo/preço da indústria doméstica de [CONFIDENCIAL] p.p. de P4 a P5, e de [CONFIDENCIAL] p.p., considerando-se P5 em relação a P1.

1295. Em conjunto, tais fatores geraram a deterioração dos indicadores financeiros da indústria doméstica, principalmente no intervalo de P4 a P5, quando foram registradas quedas na receita líquida ([CONFIDENCIAL]%), nos resultados bruto ([CONFIDENCIAL]%), operacional ([CONFIDENCIAL]%) e operacional exceto receitas financeiras e outras despesas ([CONFIDENCIAL]%), e nas respectivas margens bruta ([CONFIDENCIAL] p.p.), operacional ([CONFIDENCIAL] p.p.) e operacional exceto receitas financeiras e outras despesas ([CONFIDENCIAL] p.p.).

1296. Diante das análises indicadas, verificou-se ter havido impacto das importações a preços com evidências de subsídios acionáveis sobre os indicadores da indústria doméstica ao longo do 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 (- 20,5% de P1 para P2, + 53,5% de P2 para P3, - 4,9% de P3 para P4, - 15,0% de P4 para P5, e - 1,4% de P1 a P5).

1298. Nesse sentido, as importações das demais origens, exceto aquelas da origem investigada, ganharam participação no mercado brasileiro apenas no período P3 ([RESTRITO] p.p.). Ao se considerar todo o período de análise de dano, a participação no mercado brasileiro dessas importações apresentou retração de [RESTRITO] p.p.

1299. Por outro lado, as importações oriundas da origem investigada apresentaram crescimento no período analisado, sobretudo em P5 (elevação de 357,9% em relação a P4), o que coincide com o período de maior deterioração dos indicadores da indústria doméstica.

1300. Ressalte-se, ademais, que o preço médio CIF em dólares estadunidenses por tonelada das importações oriundas das outras origens foi superior ao preço das importações provenientes da origem investigada em todos os períodos, exceto P1. Observou-se ainda que em nenhum período, as importações das outras origens entraram no mercado brasileiro a preços médios subcotados em relação ao preço da indústria doméstica, ou seja, em todos os períodos verificou-se que o preço médio CIF internado das importações não subsidiadas foram superiores ao preço praticado pela indústria doméstica no mercado brasileiro, conforme tabela abaixo.

Preço médio CIF internado e subcotação - Demais origens [RESTRITO]					
	P1	P2	P3	P4	P5
Preço CIF (R$/t)	100,0	106,6	96,7	113,0	104,0
Imposto de importação (R$/t)	100,0	105,0	100,9	113,0	103,0
AFRMM (R$/t)	100,0	105,7	112,2	97,3	102,7
Despesas de internação (R$/t)	100,0	106,6	96,7	113,0	104,0
CIF Internado (R$/t)	100,0	106,4	97,2	112,9	103,9
CIF Internado (R$ atualizados/t) (a)	100,0	99,5	89,4	94,3	81,6
Preço da indústria doméstica (R$ atualizados/t) (b)	100,0	88,6	95,4	103,4	98,3
Subcotação (R$ atualizados/t) (b-a)	-100,0	-114,5	-81,2	-82,0	-58,8
Fonte: Indústria doméstica e RFB.					
Elaboração: SDCOM.					

1301. Assim, quando analisadas conjuntamente, não se verificaram elementos que apontam que as importações das demais origens tenham contribuído para a deterioração de indicadores da indústria doméstica às importações não alegadamente subsidiadas. Ressalve-se, ainda, que a comparação realizada no quadro anterior não levou em consideração os CODIPs ou tipos de produto.

7.2.2 Impacto de eventuais processos de liberalização das importações sobre os preços domésticos

1302. Conforme apontado no item 2.1.1 deste parecer, a 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 manteve-se inalterada em 14% durante todo o período de análise de dano.

1303. Adicionalmente, os acordos de preferência tarifária celebrados pelo Brasil não tiveram impacto sobre a evolução das importações brasileiras de laminados 304, tendo em vista o rol de países 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 preços domésticos que se 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 laminados a frio 304 apresentou crescimentos sucessivos de P1 até P4, apresentando retração apenas de P4 para P5 (-0,6%). Quando considerado todo o período de análise de dano, o mercado brasileiro de laminados a frio 304 cresceu 30,7%, considerando-se P5 em relação a P1.

1306. Dessa forma, não foi observada contração da demanda de laminados a frio 304 no período de análise de dano.

1307. Além disso, durante o período analisado não foram constatadas mudanças no padrão de consumo do mercado brasileiro.

7.2.4 Práticas restritivas ao comércio de produtores domésticos e estrangeiros e a concorrência entre eles

1308. Não foram identificadas práticas restritivas ao comércio de laminados a frio 304, pela indústria doméstica ou pelos produtores estrangeiros, tampouco fatores que afetassem a concorrência entre eles.

7.2.5 Progresso tecnológico

1309. Tampouco foi identificada a adoção de evoluções tecnológicas que pudessem resultar na preferência do produto importado ao nacional. Os laminados a frio objeto da investigação e os fabricados no Brasil são concorrentes entre si, conforme indicado no item 2.4.

7.2.6 Desempenho exportador e da produção de outros produtos

1310. Como apresentado no item 6.1 deste documento, o volume de vendas de laminados a frio 304 ao mercado externo pela indústria doméstica apresentou retração em todos os períodos da investigação, resultando em um decréscimo de 84,2%, considerando-se P5 em relação a P1.

1311. Ao se analisar o comportamento período a período observa-se que, de P1 a P2, em termos absolutos, a retração alcançou [RESTRITO] t, o maior volume entre dois períodos consecutivos. Contudo, a indústria doméstica passou a apresentar no período P2, em relação ao período imediatamente anterior, melhora no volume de vendas internas, em quantidade aproximada à da perda nas vendas do mercado externo (+ 27,6% e [RESTRITO] t), e nos indicadores financeiros relacionadas a essas vendas. Dessa forma, não houve deterioração de indicadores da indústria doméstica que possa ser atribuída ao seu desempenho exportador nesse período.

1312. Isso não obstante, após queda relativamente menor de P2 a P3 (- 9,3%), nos períodos P4 e P5 observaram-se novas quedas acentuadas nas vendas ao mercado externo do produto similar produzido pela indústria doméstica, tanto em termos absolutos quanto em termos relativos. Considerando-se o período imediatamente anterior (P3), essas quedas corresponderam a 54,0% e [RESTRITO] t em P4, e 72,7% e [RESTRITO] t em P5, em relação aos volumes de exportação de P3. Pode-se inferir que essas quedas, também tomando-se o período P3 como referência (único em que não houve queda relativamente tão expressiva no volume de vendas ao mercado externo e que, ainda, não apresentou crescimento de volume equivalente de vendas no mercado interno, diferentemente de P2), influenciaram a diminuição na produção do produto similar doméstico, com reduções de 9,9% em P4 e de 22,1% em P5, ambas em relação a P3.

1313. Sobre tais quedas do volume exportado pela indústria doméstica, não se pode descartar que a própria existência dos subsídios acionáveis no segmento de aço inoxidável tenha afetado a competitividade da indústria doméstica brasileira no cenário internacional. É fato que a partir do momento que a Indonésia esteve em condições de exportar grandes volumes, com a entrada em operação do parque IMIP, no qual se localiza a empresa produtora/exportadora investigada PT IRNC, todas os mercados mundiais sofreram grande pressão. A título de exemplo, de acordo com os dados da investigação da União Europeia, as importações da UE do produto similar originário da Indonésia saem de cerca de 100 toneladas em 2017, para no mínimo 68.000 toneladas no período investigado (julho 2019 - junho 2020, de 0% a 2,4% do share). Conforme dados da investigação da autoridade da Índia, as importações daquele país do produto similar originário da Indonésia saem de 93 toneladas no P1, para 76.102 toneladas de abril 2018 a março 2019 (de 0% para 17% do share). Neste sentido, ao contrário de outras investigações, tem-se aqui um novo player que causa pressão mundial no setor.

1314. Com relação a outro fator observado, tem-se que, também em relação ao período P3, quedas na produção de outros produtos produzidos pela indústria doméstica nos períodos P4 (2,7%) e P5 (11,3%). Observe-se que P3 foi o segundo período de maior volume de produção total - em volume aproximadamente igual ao de P2 - e de maior volume de produção de outros produtos produzidos pela indústria doméstica. Com isso, consequentemente, a produção total da indústria doméstica também apresentou as suas maiores retrações nos períodos P4 (- 4,9%) e P5 (- 14,5%), quando considerado o período P3 como referência.

1315. Dado que, nesses dois períodos (P4 e P5), a indústria doméstica apresentou deterioração, entre outros, em sua margem bruta e em sua margem operacional exceto resultado financeiro e outras despesas/receitas operacionais, além de apresentar piora em sua relação custo de produção/preço, relacionados ao produto similar por ela produzido e vendido no mercado brasileiro, buscou-se avaliar em que medida a piora no seu desempenho exportador e a queda no volume de produção dos outros produtos por ela produzidos podem ter impactado o seu cenário de dano observado.

1316. Nesse sentido, mesmo considerando que a própria existência dos subsídios indonésios possa ter contribuído para a piora do desempenho exportador da indústria doméstica, como já dito, procedeu-se à análise de cenário para separar e distinguir os efeitos da queda nas exportações e da

redução da produção de outros produtos, com o objetivo de estimar o impacto combinado desses dois fatores no dano observado nos indicadores financeiros da indústria doméstica em P4 e P5. O exercício de não atribuição considerou as seguintes premissas:

a) as exportações do produto similar produzido pela indústria doméstica não teriam caído, mantendo-se idênticas ao volume verificado em P3.

[RESTRITO]

Produto similar	P3	P4	P5
Vendas externas efetivas (t) (a)	100	46,0	27,3
Vendas externas ajustadas (t) (b)	100	100	100
Diferença nas vendas externas (b-a)	-	100	134,6

Fonte: Peticionária.

Elaboração: SDCOM.

b) a manutenção do volume das vendas externas do produto similar produzido pela indústria doméstica nos períodos P4 e P5 implicaria no aumento na produção do produto similar produzido pela indústria doméstica nesses períodos. A obtenção do volume de produção do produto similar doméstico ajustado considerou a diferença as vendas externas do quadro anterior. Tendo em vista que o estoque final da indústria doméstica foi menor nos períodos P4 e P5, não se julgou ser pertinente nenhum ajuste no sentido de descontar a variação de estoques em decorrência de menor volume de vendas.

[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 verificada em P3.

[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) supra resultaria em 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.

e) o aumento de produção simulado estaria limitado à capacidade instalada efetiva, conforme apresentada no item 6.1.3. Verificou-se, contudo, que o volume de produção total simulado não superaria a capacidade instalada efetiva.

f) os custos variáveis unitários permaneceriam inalterados, conforme o incorrido pela peticionária, enquanto os custos fixos unitários foram recalculados, de forma a refletir a diluição dos custos fixos totais que seria incorrida em decorrência do maior volume de produção total simulado.

[CONFIDENCIAL]

Custo de Produção Efetivo (R$/t)	P3	P4	P5
Custos unitários variáveis efetivos	100,0	114,9	113,0
Custos unitários fixos efetivos	100,0	91,6	97,2
Custo unitário de produção total (fixo + variável) efetivo	100,0	111,8	110,9

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

[CONFIDENCIAL]

Custo de Produção Ajustado (R$/t)	P3	P4	P5
Custos unitários variáveis efetivos	100,0	114,9	113,0
Custos unitários fixos ajustados	100,0	78,8	76,2
Custo unitário de produção total (fixo + variável) ajustado (R$/t)	100,0	110,1	108,1
Variação do custo unitário total (Efetivo x Ajustado)	-	100,0	163,8

Fonte: Peticionária e tabelas anteriores.

Elaboração: SDCOM.

g) o CPV variaria em consonância com as alterações no custo de produção total recalculado em cada período. Assim, para efeitos da simulação, foram aplicadas no CPV efetivo, em P4 e P5, as mesmas reduções percentuais observadas no custo total de produção ajustado apresentadas no item (f).

[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 das vendas (assumidas em caráter de despesas variáveis, para fins do exercício), mas haveria impacto nas despesas gerais e administrativas, no resultado financeiro e nas outras despesas ou receitas (tomadas em caráter de despesas fixas, para fins do exercício). Desse modo, as despesas ajustadas são o resultado das despesas incorridas ponderadas pela variação no volume de vendas efetivamente praticado e o volume de vendas ajustado. Contudo, recorde-se que se está reconstruindo a Demonstração do Resultado do Exercício para as vendas do produto similar produzido pela indústria no mercado brasileiro para avaliar o impacto nos seus indicadores financeiros decorrente do seu desempenho exportador e da queda na produção dos outros produtos. Ainda que o cenário proposto não apresente alteração no volume de vendas da indústria doméstica no mercado interno e, assim, não haja alteração na sua receita operacional líquida, as despesas operacionais exibiram variações. Isso ocorre porque a indústria doméstica realizou a distribuição dessas despesas levando-se em consideração a participação da receita operacional líquida obtida com o produto similar por tipo de mercado (interno ou externo) em relação à sua receita operacional líquida total. Dado que o aumento do volume de vendas externas ocasionou crescimento da receita operacional líquida a ele associada no cenário proposto, verificou-se em consequência, aumento no montante da receita

operacional líquida total da APERAM. Abaixo, apresenta-se tabela contendo a variação na receita operacional líquida obtida no mercado brasileiro e aquela obtida com as vendas externas e as respectivas variações de suas participações, decorrentes do cenário proposto, frente à receita operacional líquida total da APERAM, tanto efetiva quanto à ajustada.

[RESTRITO]/[CONFIDENCIAL]

Vendas no Mercado Externo	P3	P4	P5
Volume efetivo (t)	100,0	46,0	27,3
Volume ajustado (t)	100,0	100,0	100,0
Preço (R$/t)	100,0	117,2	113,8
ROL efetiva (mil R$)	100,0	53,9	31,1
ROL ajustada (mil R$)	100,0	117,2	113,8
Diferença ROL ME (mil R$)		100,0	130,8

Fonte: Peticionária.

Elaboração: SDCOM.

[CONFIDENCIAL]

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 para separar e distinguir os efeitos da queda nas exportações e da redução da produção de outros produtos (R$ atualizados/t - em 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 apurado multiplicado pela "Participação MI ajustada" obtida na tabela anterior.

Fonte: Indústria doméstica.

Elaboração: SDCOM.

1317. A partir dos pressupostos descritos acima, é possível analisar o impacto da retração das vendas para o mercado externo e da redução da produção de outros produtos nas margens e nos resultados financeiros da indústria doméstica, simulando um demonstrativo de resultados ajustado, com base nos dados supra levantados.

Demonstrativo de Resultados do Exercício Simulado (ajustado em P4 e P5 para separar e distinguir os efeitos da queda nas exportações e da redução da produção de outros produtos) - Vendas no Mercado Interno

	P1	P2	P3	P4*	P5*	P1-P5*	P4-P5*
Resultado Bruto	100	121,1	120,1	136,7	100,2		
Variação		21,1%	-0,8%	13,8%	-26,7%	0,2%	-26,7%
Margem Bruta (%)	100	107,1	100,8	100,1	86,9		
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Resultado Operacional	100	123,0	104,1	140,9	94,2	[CONF.]	[CONF.]
Variação		23,0%	-15,3%	35,3%	-33,1%	-5,8%	-33,1%
Margem Operacional (%)	100	108,8	87,4	103,2	81,7		
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Resultado Operacional (Exceto RF [1])	100	121,2	108,8	138,6	100,8	[CONF.]	[CONF.]
Variação		21,2%	-10,2%	27,4%	-27,3%	0,8%	-27,3%
Margem Operacional (Exceto RF) (%)	100	107,2	91,4	101,5	87,4		
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]
Resultado Operacional (exceto RF e OD) (%)	100	122,5	121,2	140,4	100,9	[CONF.]	[CONF.]
Variação		22,5%	-1,1%	15,9%	-28,1%	0,9%	-28,1%
Margem Operacional (exceto RF e OD)(%)	100	108,4	101,8	102,9	87,5		
Variação		[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]	[CONF.]

[1] Resultado Financeiro.

[2] Outras despesas ou receitas operacionais.

[*] Resultados e margens do período ajustados de acordo com as premissas expostas.

Fonte: Indústria doméstica.

Elaboração: SDCOM.

1318. Conforme os indicadores obtidos com o cenário construído, constatou-se que, mesmo mediante a separação e distinção dos impactos causados pela queda nas vendas no mercado externo e pela redução na produção de outros produtos nos indicadores financeiros, as margens bruta, operacional, operacional exceto resultado financeiro e operacional exceto resultado financeiro e outras despesas e receitas operacionais ainda apresentariam significativa deterioração em P5, tanto em relação a P1, quanto a, em especial, P4, período imediatamente anterior ao maior crescimento de volume observado para as importações investigadas.

1319. Dessa forma, a concorrência da queda do volume exportado e da queda no volume de produção de outros produtos para o dano à indústria doméstica não afasta a materialidade do dano causado pelas importações investigadas, considerando tanto os efeitos sobre volume como os efeitos 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 quantidade produzida e o número de empregados envolvidos na produção no período, diminuiu 12,3% e 2,6% em P5, em relação a P1 e P4, respectivamente.

1321. Este fato, porém, decorre da queda no número de empregados da linha de produção em um ritmo menor do que aquele observado na queda do volume de produção do produto similar. Ao passo que o número de empregados da linha de produção foi reduzido em 16,7% de P1 para P5, e em 11,2% de P4 a P5, e o volume de produção do produto similar decresceu 27,1% de P1 para P5 e 13,6% de P4 a P5.

1322. Dessa forma, não há deterioração de indicadores da indústria doméstica que possa ser atribuída a sua produtividade.

7.2.8 Consumo cativo

1323. Não houve consumo cativo pela indústria doméstica ao longo do período de análise de dano.

7.2.9 Importações ou a revenda do produto importado pela indústria doméstica

1324. Cumpre notar que não houve importações ou revenda do produto importado pela indústria doméstica no período de análise de dano.

7.2.10 Da prática de dumping nas exportações da Indonésia

1325. Destaque-se que, como apontado no item 7.2.1, acima, a investigação de prática de dumping nas exportações da Indonésia e da África do Sul foi encerrada, sem análise de mérito, uma vez que se concluiu pela falta de confiabilidade dos dados constantes da petição de início e pela magnitude e intempestividade das alterações, no conjunto agregado, apresentadas em sede de elementos de prova, restando prejudicada a comprovação da existência de dano à indústria doméstica, nos termos do inciso I do art. 74 do Decreto nº 8.058, de 2013.

1326. Deste modo, não se pode atribuir o dano à indústria doméstica à alegada prática de dumping.

7.3 Das manifestações prévias à Nota Técnica referentes à relação de causalidade

1327. Inicialmente, a IRNC mencionou inexistir relação de causalidade suficientemente clara entre o dano percebido pela indústria doméstica - especialmente em P5 - e o volume das importações investigadas a fim de justificar a aplicação de medidas compensatórias.

1328. Conforme os dados da investigação, a APERAM teve bom desempenho nos períodos de P1 a P4, com melhoras em todos seus indicadores. Exceção apenas em P5, quando há uma queda no volume de vendas no mercado interno concomitante a um incremento no volume das importações investigadas, segundo a conclusão da SDCOM no Parecer de Abertura.

1329. Seria exatamente nesse período que se observa uma queda na lucratividade da indústria doméstica que, ao entender da IRNC, origina-se do incremento de seus custos não acompanhado do preço. Entretanto, não seria possível fazer uma análise mais depurada sobre a rentabilidade, pois P5, especificamente, configura-se como um período imiscuído de outros fatores, como queda das exportações e das vendas de outros produtos da indústria doméstica.

1330. Nesse contexto, a IRNC rememorou o exercício de não-atribuição feita pela SDCOM para excluir tais efeitos da análise de dano, especificamente no que se refere a deterioração, em P4 e P5. A IRNC buscou refazer os cálculos da SDCOM, mas não obteve sucesso, visto que se deparou com algumas divergências: 1) custos variáveis unitários: segundo a empresa, os números exibidos na tabela não refletiriam os custos variáveis e tampouco os custo fixos apresentados na tabela da página 200 do Parecer de Abertura. O cálculo foi refeito considerando os montantes de P3 como parâmetro (como a base), assim como foi feito na análise de segregação e não-atribuição da SDCOM. Assim, a variação dos custos variáveis unitários indicaria um cenário de 15% de aumento de P4 em relação a P3, e de 13% em P5 em relação a P3. Dessa forma, o declínio entre P4 e P5 seria irrisório e o número apresentado pela SDCOM estaria equivocado, que indicaria um custo variável unitário 1,7% inferior em P5 em relação a P3; 2) custos fixos unitários: seguindo a mesma metodologia do item 1, a variação dos custos fixos unitários indicaria um cenário de 8% de queda de P4 em relação a P3, e de 3% em P5 em relação a P3. Assim, os dados apresentados pela SDCOM não estariam corretos; 3) A IRNC frisa que as mesmas análises e diferenças encontradas acima ocorreriam para o CPV, assim como para o cálculo ajustado das despesas gerais, administrativas e financeiras; e 4) erro de fórmula na construção da tabela constante da página 222 do Parecer de Abertura, que simula o demonstrativo de resultados do exercício de não-atribuição. Ao observar os valores que indicam a variação das rubricas, a IRNC constatou que as variações calculadas não estavam medindo a diferença entre um período e seu antecessor imediato - de P1/P2, P2/P3, P3/P4 e P4/P5, apenas em relação a P1. Dessa forma, colocou-se em pauta a hipótese desse mesmo erro ter sido cometido com os indicadores de variação que obtiveram tratamento confidencial.

1331. À luz desse cenário, no que diz respeito às ponderações com relação ao exercício de não-atribuição, no bojo das análises de nexo de causalidade e dano, a IRNC requer que sejam revisados os cálculos do Demonstrativo de Resultados Ajustado, nos termos indicados na presente manifestação.

1332. A Aprodinox, em manifestações de 23 de dezembro de 2021 e de 14 de junho de 2022, que se referiu aos possíveis impactos para a peticionária resultantes das importações, expôs que as importações da origem investigada teriam se mostrado pífias ao longo de todo a ano de 2021, incapazes de ocasionar dano à peticionária.

1333. Destacou que no Parecer de Abertura que subsidiou a instauração do presente processo, a autoridade investigadora informou que houve incremento considerável nas importações provenientes da origem investigada. No entanto, a Aprodinox arguiu que, como os dados foram apresentados em números-índices não seria possível identificar a representatividade das importações provenientes da Indonésia no total importado nas NCMs 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90; e nesse quadro, embora se observe algum crescimento do volume de importação, 76% desse volume de importação em P5 ainda seria proveniente de outras origens.

1334. Dessa forma, para a Aprodinox, mesmo com todo o aumento do volume de importações provenientes da Indonésia, verificar-se-ia que 2/3 desse total importado ainda seria proveniente de outras origens, considerada aqui a aplicação de medidas antidumping para as origens China e Taipé Chinês.

1335. Ademais, a Aprodinox observou que as vendas da indústria doméstica teriam crescido, no mesmo ritmo do mercado entre P1 e P4; de forma que somente em P5, o crescimento do mercado não teria sido acompanhado pelas vendas da indústria doméstica.

1336. Além disso, para a Aprodinox, o preço médio da indústria doméstica, devidamente atualizado, teria se mantido praticamente o mesmo, na comparação entre P1 e P5, indicando que teria variado no mesmo ritmo da inflação; de forma que esse fato indicaria que todo o incremento na inflação do período teria sido repassado aos preços, e que os únicos períodos nos quais houve redução nos preços atualizados foram P2 e P3, anos nos quais as importações provenientes da Indonésia seriam irrisórias, incapazes de gerar qualquer efeito sobre a indústria doméstica.

1337. Nesse quadro, a Aprodinox, considerando as evoluções das vendas domésticas com os preços atualizados praticados pela Aperam, anotou que as receitas atualizadas das vendas no Mercado Interno teriam se elevado 15% em P5 quando comparadas com P1; de forma que o fato de em P5 ter havido redução no ritmo de crescimento das vendas da indústria doméstica, com perda de share para as importações, não guardaria relação com os programas que representariam supostos subsídios concedidos pelo governo da Indonésia e que existiriam, frise-se, pelo menos desde 2014.

1338. Nesse contexto, para a Aprodinox, não houve qualquer alteração em tais programas a partir de 2019 que explicariam ou justificariam o efeito maior sobre a indústria doméstica em P5; de forma que o ocorreu de fato teria sido o início da migração dos distribuidores exclusivos de grande porte da Aperam para a condição de não exclusivos a partir de 2019, conforme teria informado em mais detalhes no processo de avaliação de interesse público.

1339. Dessa forma, para a Aprodinox, esta mudança de padrão de compra do cliente se daria ante o reconhecimento das ineficiências da Aperam e sua incapacidade de atender adequadamente o mercado, somada à prática de preços excessivamente elevados.

1340. Neste cenário, a Aprodinox arguiu que, dada a existência de medidas antidumping contra as importações da China e de Taipé Chinês, os distribuidores teriam passado a recorrer a produtos de outras origens, dentre as quais destaca-se a Indonésia; tendo sido este o real fator que motivou o incremento das importações da Indonésia para o Brasil e não os programas de subsídio, vigentes há anos, na Indonésia.

1341. Ademais, a Aprodinox observou que, com a maior concorrência das importações, em especial em P5, não teria sido possível que a peticionária repassasse, pela primeira vez no período analisado, integralmente os incrementos de custos aos preços; e por esta razão, houve piora nos indicadores de desempenho da Aperam especificamente em P5.

1342. No que se refere à subcotação obtida em P3 e P5, a Aprodinox observou que em P3 as importações da Indonésia seriam mínimas, não guardando qualquer relação com qualquer possibilidade de dano à indústria doméstica; e em P4, primeiro período de grande incremento nas importações da origem investigada, não se observaria subcotação.

1343. Dessa forma, a Aprodinox entendeu que tudo indica que o resultado obtido em P5 seria resultado de incremento nos preços da indústria doméstica em um cenário de queda nos preços internacionais; uma vez que a indústria doméstica estava exercendo seu poder de mercado, realizando preços superiores ao do produto importado internado.

1344. Nesse quadro, a Aprodinox enfatizou a ineficiência da empresa Aperam, que teria operado com lucros líquidos negativos entre P1 e P3; e nos períodos de incremento das importações da Indonésia, a peticionária teve lucros líquidos positivos, sendo este um sinal da irrelevância das importações da Indonésia sobre os resultados da Aperam.

1345. Dessa forma, para a Aprodinox, não haveria elementos que fundamentem o nexo de causalidade entre os alegados programas de subsídio do governo da Indonésia e os resultados da indústria doméstica.

1346. Acrescentou que a Aperam seria monopolista no mercado brasileiro, protegida por uma série de medidas antidumping e pelas relações com os distribuidores da concorrência do produto importado, possuindo baixo incentivo para se manter eficiente; e a partir de 2019 a Aperam teria verificado que seus distribuidores exclusivos teriam passado para a condição de não exclusivos, de forma que este movimento teria motivado o aumento nas importações e não práticas dos alegados subsídios pelos países exportadores.

1347. A IRNC, em manifestação de 9 de setembro de 2022, entendeu que inexistiria relação de causalidade suficientemente clara entre o dano percebido pela indústria doméstica e o volume das importações investigadas que possam justificar a aplicação de medidas compensatórias.

1348. Aduziu que a Aperam teria tido bom desempenho nos períodos de P1 a P4, com melhoras em todos seus indicadores; com a exceção em P5, com queda no volume de vendas da indústria doméstica no mercado interno concomitante a um incremento no volume das importações investigadas; concomitante a uma queda na lucratividade da indústria doméstica que, ao entender da IRNC, origina-se do incremento de seus custos não acompanhado do preço.

1349. Entretanto, P5 configura-se como um período imiscuído de outros fatores, como queda das exportações e queda do volume de venda de outros produtos da indústria doméstica. Por outro lado, os cálculos do exercício de não atribuição feito pela SDCOM apresentariam divergências e postulariam correção em sede de Nota Técnica de Fatos Essenciais. Para a IRNC, a SDCOM teria adotado, resumidamente, os seguintes pressupostos: 1.manteve fixas as vendas ao ME de P3 em diante; 2 manteve os volumes das vendas externas do produto similar produzido pela indústria doméstica, de P3 em diante e seu consequente aumento em volume de produção; 3 manteve a produção de outros produtos constante de P3 em diante, de forma que a combinação dos volumes incrementais indicados nos itens "b)" (vendas no ME) + "c)" (produção outros produtos) resultaria em um volume de produção total mais elevado em P4 e P5; 4 o volume de produção total novo (com o incremento de volumes de produção de produto similar para o ME + volume de outros produtos) seria limitado à capacidade instalada efetiva.

1350. Assim, a SDCOM teria verificado que o novo volume de produção total não superaria essa marca; os custos variáveis unitários permaneceriam conforme o incorrido pela peticionária, enquanto os custos fixos unitários foram recalculados, de forma a refletir a diluição dos custos fixos totais que seriam incorridas em decorrência do maior volume de produção total simulado; o CPV varia em consonância com as alterações no custo de produção total recalculado em cada período.

1351. A IRNC refez todos os cálculos e apurou aquilo que entendeu serem potenciais inconsistências, para as quais requer sejam verificados pela SDCOM. Em primeiro lugar, a IRNC constatou que os números exibidos na tabela não refletiriam os custos variáveis e tampouco os custos fixos apresentados na tabela da pág. 200 do Parecer de Abertura, destacando ser possível se notar que a variação entre períodos parece acontecer em graus diferentes nas imagens, ainda que no segundo caso o parâmetro para desígnio do número-índice tenha sido P1.

1352. A IRNC refez o cálculo considerando os montantes de P3 como parâmetro, como foi feito na análise de segregação e não atribuição da SDCOM. Para a IRNC, a variação dos custos variáveis unitários, indicariam um cenário de 15% de aumento de P4 em relação a P3 e 13% de P5 em relação a P3; com declínio quase irrisório entre P4 e P5; sendo o custo variável unitário em P5 ainda maior do que em P3, de forma que os números apresentados pela SDCOM estariam equivocados.

1353. Para a IRNC, os custos fixos unitários parecem não ser aqueles apresentados pela SDCOM, cuja variação indica uma queda de 8,4% entre P3 e P4 e posterior aumento de 15,7% de P5 em relação a P4.

1354. Para a IRNC, as mesmas análises e diferenças encontradas parecem ocorrer para o CPV, assim como para o cálculo ajustado das despesas gerais, administrativas e financeiras.

1355. Para a IRNC, se a produção ajustada tivesse criado um cenário de maior diluição de custos fixos e despesas tanto em P4 como em P5, não seria lógico que P5 pudesse ter uma despesa unitária ajustada maior do que sua efetiva, razão pela qual a variação dos custos fixos unitários, ao considerarmos P3 como balizador, segue o padrão de queda em P4 e aumento em P5, mas sem que este valor ultrapasse aquele alcançado em P3.

1356. Ademais, a IRNC apontou para eventual erro de fórmula na construção da tabela constante da pág. 222 do Parecer de Abertura, que simularia o demonstrativo de resultados do exercício de não- atribuição, tendo constatado que as variações calculadas não estavam medindo a diferença entre 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 comprometeria o caráter objetivo e positivo das provas e evidências para a determinação de dano, em conduta que vai de encontro aos precedentes multilaterais abordados. A IRNC solicitou o encerramento da presente investigação sem resolução de mérito e requereu que fossem revisados os cálculos do Demonstrativo de Resultados Ajustado.

1358. A Aprodinox, em manifestação de 9 de setembro de 2022, reiterou que não haveria elementos que fundamentem o nexo de causalidade entre os alegados programas de subsídio do governo da Indonésia e os resultados da indústria doméstica. As razões que justificam tal afirmação são demonstradas a seguir. As vendas da indústria doméstica cresceram, no mesmo ritmo do mercado entre P1 e P4. Somente em P5, o crescimento do mercado não foi acompanhado pelas vendas da indústria doméstica, o que é explicado não pelos subsídios em discussão, mas pelo movimento dos principais distribuidores dos produtos da APERAM da condição de distribuidores exclusivos, sem possibilidade de importar produtos) para a de distribuidores não exclusivos.

1359. O fato de em P5 ter havido redução no ritmo de crescimento das vendas da indústria doméstica, com perda de share para as importações, não guardaria relação com os programas que representariam supostos subsídios concedidos pelo governo da Indonésia que existem, supostamente, pelo menos desde 2014. Esse maior efeito sobre a indústria doméstica em P5 não se relacionaria com programas de supostos subsídios.

1360. Reiterou que dede 2019 a Aperam teria passado a verificar que seus distribuidores exclusivos teriam passado para a condição de não exclusivos. Este movimento teria motivado o aumento nas importações e não práticas dos alegados subsídios pelos países exportadores. Neste cenário, dada a existência de medidas antidumping contra as importações da China e de Taiwan, os distribuidores passaram a recorrer a produtos de outras origens, dentre as quais destaca-se a Indonésia. Este teria sido o real fator que teria motivado o incremento das importações da Indonésia para o Brasil e não os programas de subsídio, vigentes há anos, na Indonésia.

1361. A partir do demonstrativo de resultados da APERAM se observaria que em P3 as importações da Indonésia seriam mínimas, não guardando qualquer relação com qualquer possibilidade de dano à indústria doméstica. Em P4, primeiro período de grande incremento nas importações da origem investigada, não se observaria subcotação. Assim, o aumento das exportações da Indonésia para o Brasil, em P4, não refletiria qualquer impacto sobre os indicadores da indústria doméstica. Dessa forma, tudo indica que o resultado obtido em P5 seria resultado de incremento nos preços da indústria doméstica em um cenário de queda nos preços internacionais.

1362. Ou seja, a indústria doméstica estava exercendo seu poder de mercado, realizando preços superiores ao do produto importado internado. O que possibilitaria este comportamento era a garantia de que os distribuidores exclusivos manteriam seus volumes de compras, mesmo com tais incrementos nos preços. Logo, apesar do aumento das exportações da Indonésia para o Brasil, em P4 e P5, essas importações teriam representado reduzido percentual no total de importações, e tratariam de volume incapaz de gerar o dano alegado.

1363. Um último aspecto a se enfatizar estaria relacionado à ineficiência da empresa Aperam que teria operado com lucros líquidos negativos entre P1 e P3. Exatamente nos períodos de incremento das importações da Indonésia, a empresa teria tido lucros líquidos positivos. Este seria um sinal da irrelevância das importações da Indonésia sobre os resultados da Aperam uma empresa que necessita de baixos incentivos para se manter eficiente, já que seria monopolista no mercado brasileiro, sendo protegida por uma série de medidas antidumping e pelas relações com os distribuidores da concorrência do produto importado.

1364. Ficaria clara a inexistência do nexo de causalidade entre os programas investigados e o dano da indústria doméstica, não havendo, portanto, motivação para a aplicação de medidas compensatórias nas importações indonésias.

7.4 Das manifestações posteriores à Nota Técnica referentes à relação de causalidade

1365. A Aprodinox, em sua manifestação final, pontuou que o aumento das importações se deveu à reação dos principais distribuidores brasileiros face as práticas anticompetitivas da peticionária. Acrescentou que, em resposta ao exposto na Nota Técnica, o incremento das importações totais gerais entre P4 e P5, da ordem de 35%, passou a ocorrer quando da transição dos distribuidores exclusivos em consequência das práticas da peticionária; de forma tal que esse incremento se concentrou inicialmente na Indonésia em função da aplicação dos direitos antidumping vigentes para outras origens, aplicados para Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, nos termos da Resolução CAMEX nº 79, de 2013; tendo-se que a extinção dos direitos para Alemanha, Coreia do Sul, Finlândia 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 de dano, os importadores possuíam como fornecedores regulares e estabelecidos, efetivamente, os exportadores localizados nos Estados Unidos da América, na África do Sul e na Malásia; com a Indonésia, 2ª maior exportadora do produto, e com saldo comercial substancialmente positivo no período, teve disponibilidade para exportar para o mercado brasileiro no período.

1367. Nesse sentido, para a Aprodinox, não há elementos que fundamentem o nexo de causalidade entre os alegados programas de subsídio do governo da Indonésia e os resultados da indústria doméstica; uma vez que as vendas da indústria doméstica cresceram praticamente no mesmo ritmo do mercado entre P1 e P4, e a queda em P3 compensa o fato das vendas da indústria doméstica terem crescido em ritmo mais acelerado que o mercado brasileiro em P2; de forma que somente em P5 o crescimento do mercado não foi acompanhado pelas vendas da indústria doméstica.

1368. Ademais, a Aprodinox aduziu que o preço se manteve praticamente o mesmo na comparação entre P1 e P5, variando com a inflação; o que indica que todo o incremento na inflação foi repassado aos preços.

1369. No entanto, a Aprodinox entende que os únicos períodos nos quais houve redução nos preços atualizados foram P2 e P5; uma vez que em P2 havia volume irrisório de importações provenientes da Indonésia, incapazes de gerar qualquer efeito sobre a indústria doméstica, com o incremento mais acentuado ocorrendo em P4, quando as importações da Indonésia passaram a ser mais significativas.

1370. A Aprodinox anota que as receitas atualizadas das vendas domésticas com os preços atualizados da Aperam no Mercado Interno se elevaram 15% em P5 quando comparadas com P1.

1371. Dessa forma, para a Aprodinox, a redução em P5 no ritmo de crescimento das vendas da indústria doméstica, com perda de share para as importações não guarda relação com os programas que representariam supostos subsídios concedidos pelo governo da Indonésia; uma vez que a partir de 2019 os distribuidores exclusivos (DIA) da Aperam passaram para a condição de não exclusivos (DRA), e dada a existência de medidas antidumping contra as importações da China e de Taipé Chinês, os distribuidores passaram a recorrer a produtos de outras origens, como a Indonésia.

1372. A Aprodinox observa que em P3 as importações da Indonésia são mínimas, não guardando relação com o dano à indústria doméstica, não se observando subcotação em P4, primeiro período de grande incremento nas importações da origem investigada, de forma que o aumento das exportações da Indonésia em P4 não reflete qualquer impacto sobre os indicadores da indústria doméstica.

1373. Dessa forma, para a Aprodinox, tudo indica que em P5 houve incremento relativo nos preços da indústria doméstica com queda nos preços internacionais; uma vez que a indústria doméstica estava exercendo seu poder de mercado, com preços superiores ao do produto importado internado.

1374. Assim, a Aprodinox entende que, a despeito do aumento das exportações da Indonésia em P4 e P5, as importações não teriam o condão de gerar dano à indústria doméstica.

1375. A Aprodinox enfatiza a ineficiência da Aperam que operou com lucros líquidos negativos entre P1 e P3, e que nos períodos de incremento das importações da Indonésia, a empresa teve lucros líquidos positivos.

1376. A Aprodinox anota que há importações significativas da origem investigada apenas em P5 (e um pouco em P4), período no qual a empresa obtém retorno sobre o ativo positivo, de forma tal que não é possível, a partir dos indicadores da indústria doméstica, estabelecer qualquer relação entre os subsídios e o dano; uma vez que o incremento nas importações não foi motivado pelo início dos subsídios, mas pela migração dos distribuidores para a condição DRA (não-exclusivos), sendo possível se observar alguma piora nos indicadores da indústria doméstica somente em P5.

1377. Para a Aprodinox, o objetivo de se trabalhar com 5 (cinco) anos/60(sessenta) meses para a apuração do dano envolve a necessidade de que se verifique um movimento consistente por alguns períodos de piora nos resultados da indústria doméstica motivado pelo constante incremento das importações subsidiadas.

1378. Nesse cenário, a Aprodinox entende que no presente caso há apenas um período no qual se pode falar sobre algum dano à indústria doméstica, não havendo nexo de causalidade entre o subsídio e o dano à indústria doméstica, concentrado em P5 e relacionado a outros fatores que não o subsídio.

1379. O GOI questionou em sua manifestação final a existência de uma substancial pressão das importações, uma vez que o primeiro indicador afetado teria sido o de vendas internas. No entanto, em contradição, o aumento de vendas durante o período de investigação mostra a resiliência da indústria nacional brasileira. Estaria ainda sendo esquecido o impacto das outras origens, cuja participação varia de [RESTRITO] % no período. Deste modo, a análise da SDCOM só teria focado na Indonésia, sem contar com as outras origens ou explicar o aumento nas vendas internas.

1380. A PT IRNC, em sua manifestação acerca da errata à NTFE, pontuou que o exercício de não atribuição realizado acerca da diminuição das exportações e da produção de outros produtos teve como resultado que a existência de eventual dano teria um dano muito tênue, embora devesse este ser substancial e muito claramente demonstrado pela indústria doméstica, no rigor do Decreto nº 1.751/1995.

1381. Para a PT IRNC o dano, se eventualmente existente e quantificável, resume-se a uma queda nos preços maior do que a queda nos custos. Porém, quando performada a análise de não atribuição verificar-se-ia que todo o dano sofrido pela Aperam, resume-se à queda de preço de -4,93%. Quando se considera, então, a eliminação do efeito danoso da diminuição de suas exportações e diminuição de sua produção de outros produtos, o CPV ajustado teria declinado em -1,01%, entre P4 e P5. Questiona a empresa se essa diferença seria significativa, suficiente e taxativamente relevante para impor uma medida de defesa comercial por 5 anos contra os exportadores indonésios, especialmente em um mercado marcadamente monopolizado.

1382. Ademais, no cenário analisado, a lucratividade da indústria doméstica restaria praticamente intacta quando se excluem os efeitos danosos da diminuição das exportações e da produção de outros produtos da APERAM, o resultado operacional (exceto RF e OD), há uma queda de 0,3% entre P1 e P5, demonstrando, no entender da PT IRNC, que o aumento das importações e influência dos importados, ajustado pelo exercício de não atribuição, não seria suficiente para causar uma queda de lucratividade, inexistindo qualquer relação de causalidade.

7.5 Dos comentários da SDCOM

1383. Em relação à alegação de que o dano à indústria doméstica seria consequência da migração dos distribuidores exclusivos de grande porte da Aperam para a condição de não exclusivos, em 2019, o que foi também reiterado em sede de manifestações finais, importa ressaltar que tal migração possibilitaria que os distribuidores buscassem fornecedores em qualquer mercado externo; contudo, observou-se que as importações originárias de outras origens retrocederam 1,4%, de P1 para P5, ao passo que as importações da origem investigada aumentaram 3.047,1%, na mesma comparação. Não é surpresa, pelos motivos já indicados, o incremento das importações totais citado pela Aprodinox, concentrado nas importações da Indonésia.

1384. Sobre a análise de outros fatores e não atribuição, ao contrário do afirmado pelo GOI, as importações das outras origens foram devidamente analisadas, como indicado o item 7.2.1 supra. Ocorre que estas não apresentaram subcotação em nenhum período e, ainda, decresceram em participação no período analisado. No que tange à análise do GOI sobre as vendas da Indústria doméstica, ainda que o GOI acredite haver resiliência da indústria nacional brasileira, de todo modo verificou-se existência de dano material e nexo causal entre as importações investigadas e o referido dano, uma vez que houve uma deterioração relativa de diversos indicadores da indústria doméstica, como apontado nos itens 6.4 e 7.1 desta determinação final.

1385. É improcedente também a manifestação da Aprodinox quando aponta que o resultado obtido em P5 é resultado de incremento relativo nos preços da indústria doméstica, haja visto que o preço da ID caiu [RESTRITO] % de P4 para P5, e mesmo assim foi verificada subcotação do preço do produto investigado em relação ao preço da indústria doméstica. Ressalte-se, ainda, que também de P4 para P5 o preço por tonelada das importações caiu [RESTRITO] %. Neste cenário, o que se observou foi a tentativa da Indústria Doméstica de competir com as importações subsidiadas - tanto é que houve a piora generalizada nos indicadores de P4 para P5.

1386. Nos termos do, § 2˚ do art. 21 do Decreto nº 1.751, de 1995, o volume de importações do produto subsidiado deve ser avaliado com o objetivo de se avaliar se este volume não é insignificante e se houve aumento substancial das importações, tanto em termos absolutos, quanto em relação à produção ou ao consumo no Brasil.

1387. Como informado no item 5.4 deste documento, o volume das importações de laminados a frio 304 originárias da Indonésia aumentou [RESTRITO] toneladas em termos absolutos, de P1 para P5. Ademais, em termos relativos, a participação destas importações no mercado brasileiro passou de [RESTRITO] %, em P1 para [RESTRITO] % em P5, revelando uma evolução positiva da participação dessas importações da ordem de grandeza de [RESTRITO] p.p. Em relação à produção nacional o volume das importações (em toneladas) de laminados a frio 304 da origem investigada representava [RESTRITO] % da produção nacional em P1 e passou a representar [RESTRITO] % em P5, revelando uma variação positiva de [RESTRITO] p.p. Tais análises apontam para o crescimento das importações investigadas no período de análise de dano, conforme previsto no Regulamento Brasileiro.

1388. Ademais, nos termos do art. 22 do Decreto nº 1.751, de 1995, para aplicação de medidas compensatórias, é necessária a demonstração de nexo causal entre as importações do produto subsidiado 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 subsidiado, que possam estar causando dano à indústria doméstica na mesma ocasião, e tais danos, provocados por motivos alheios, não 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 subsídios concedidos pelo Governo da Indonésia.

1390. Ademais, as investigações sobre subsídios acionáveis concedidos pelo Governo da Indonésia para aços 304, conduzidas pela União Europeia e pela Índia, iniciadas respectivamente em 17 de fevereiro de 2021 e 18 de outubro de 2019 e encerradas em 15 de março de 2022 e 15 de janeiro de 2021, resultaram na aplicação de medidas compensatórias, respectivamente em 21,4% e 24%. Em ambas as investigações se concluiu que havia nexo de causalidade entre o aumento das importações originárias da

Indonésia e o dano à indústria doméstica daqueles mercados, o que indica que a prática de concessão de subsídios aos exportadores indonésios de laminados de aço inoxidável está prejudicando a produção do produto similar não apenas no Brasil.

1391. Desta forma, os comentários da Aprodinox apontando que teria sido a disponibilidade da Indonésia para exportação desses produtos e não os alegados programas de subsídios, existentes desde 2014, que determinou a escolha dos importadores pelas importações da Indonésia são descolados da realidade. Como extensivamente debatido neste Parecer, apesar de o intuito da Indonésia em fomentar suas exportações de maior valor agregado já datar de alguns anos, não é coincidência o fato de as importações terem aumentado gradualmente até que o IMIP tivesse plenas condições de exportar, possibilitando a explosão de importações brasileiras de produto indonésio subsidiado em P4 e, especialmente, em P5.

1392. No que tange aos comentários sobre a análise de não atribuição, deve-se observar que análise de nexo de causalidade é composta tanto pela avaliação do impacto das importações subsidiadas sobre a indústria doméstica (análise positiva) como pela separação e distinção dos efeitos de outros fatores (análise negativa), que não podem ser atribuídos às importações objeto de investigação. No caso em tela, no que diz respeito à parte positiva da análise, verificou-se o aumento do volume das importações subsidiadas, em termos absolutos e relativamente ao mercado brasileiro; observou-se o efeito sobre o preço da indústria doméstica e apontou-se, de forma clara e objetiva, o consequente impacto de tais importações sobre a indústria doméstica. No que tange à parte negativa da análise (não atribuição), verifica-se que, uma vez feita a separação e distinção dos outros fatores, como indicado no item 7.2.6, conclui-se que o dano à indústria doméstica atribuível às importações investigadas é material.

1393. Ressalte-se que os cálculos foram atualizados para fins de determinação final, para refletir os ajustes nos indicadores da indústria doméstica e os resultados da verificação in loco e para corrigir erros de digitação quando da divulgação da Nota Técnica. A tabela "Despesas Operacionais Unitárias da Indústria Doméstica ajustadas" foi alterada para, de fato, apresentar os valores em reais por tonelada, e não valores totais. Tais alterações causaram impacto em algumas tabelas, sem, contudo, alterar as conclusões, sendo que continua presente a deterioração dos indicadores, em especial das margens de lucro, mesmo no cenário construído.

1394. A IRNC tenta reproduzir os exercícios de não atribuição efetuados pela SDCOM no parecer de início e alega que a autoridade investigadora teria cometido erros materiais. O primeiro comentário da SDCOM sobre tal ponto é que a lógica do exercício adotado é relativamente simples, já tendo sido realizado esse tipo de análise contrafactual pela SDCOM em diversas ocasiões. Contudo, buscar reproduzir o exercício sem ter acesso aos dados confidenciais é tarefa praticamente impossível, de modo que, mesmo que a parte tenha corretamente apontado elementos a serem corrigidos (em função da incorreção na utilização de números-índices na versão restrita), não se pode esperar que esta seja capaz de encontrar os resultados obtidos pela SDCOM, encontrados com base na utilização de dados confidenciais.

1395. Todas as premissas do exercício foram repetidamente explicadas. Ressalta-se que os custos variáveis unitários não foram ajustados no exercício de contrafactual proposto, justamente pela premissa de que tais custos crescem de forma linear com o volume de produção, mantendo-se a razão (custo variável dividido pela produção) inalterada. Os custos fixos unitários, contudo, podem ser diluídos em função do aumento da produção, sendo essa a premissa básica do exercício. Logo, tudo o mais constante, o aumento do volume de produção leva à redução do custo fixo unitário. Assim, o efeito do exercício contrafactual é a diluição de custos de produção por meio da diluição de custos fixos, que são rateados por uma produção hipoteticamente maior do que a produção de fato ocorrida no período objeto do ajuste. Ressalte-se ainda que o exercício de não atribuição apresentado é apenas mais uma ferramenta para a SDCOM separar e distinguir os efeitos de outros fatores, que não podem ser atribuídos às importações investigadas. Contudo, esse aspecto não é a pedra angular de toda a análise de causalidade feita pela SDCOM desde o início da investigação, como o fez parecer a PT IRNC em suas manifestações.

1396. Ainda sobre o exercício realizado - trata-se de um esforço da autoridade para separar e distinguir os efeitos com relação ao desempenho exportador e da produção de outros produtos, no qual foi comprovada a existência de dano mesmo neste cenário, como já exposto. No que tange aos comentários

da manifestante sobre "mercado marcadamente monopolizado", esta SDCOM esclarece que as alegações devem ser destinadas a outros fóruns, pois não são objeto de análise para determinação de existência de subsídios acionáveis, de dano à indústria doméstica e de nexo causal, requeridos pelo ASMC.

1397. Neste contexto, o comentário da PT IRNC sobre inexistência de dano "significativo" não leva em conta a piora generalizada dos indicadores, além de P1 para P5, mas de P3 para P5 e P4 para P5, mesmo no cenário hipotético, período em que as importações aumentaram [RESTRITO] e [RESTRITO] , respectivamente.

1398. Sobre o comentário da PT IRNC acerca do Resultado Operacional (exceto RF e OD), na comparação de P1 a P5, tem-se que houve crescimento das vendas de P1 a P5 (ainda que com perda da participação), de [RESTRITO] para [RESTRITO] t, o que refletiu o crescimento do mercado brasileiro no período. Assim, com o crescimento do volume de vendas ao longo do período de dano, ocorre pequeno aumento nos resultados bruto e operacional (exceto RF e outras despesas) ajustado mesmo no contexto de deterioração da relação custo/preço. Contudo, o mais relevante é o fato de que todas as margens de lucro do exercício no item 7.2.6 apresentaram piora no período, e mesmo o resultado operacional ajustado apresenta piora em todos os períodos que não P1, quando comparados com P5. Ao se analisar a evolução de P4 para P5 de todos os indicadores financeiros ajustados do exercício apresentado no item 7.2.6, período de maior crescimento absoluto das importações investigadas, observa-se que mesmo os resultados bruto e operacionais (exceto RF e outras despesas) indicam piora de 26,7% e 28,1%, respectivamente.

1399. Salienta-se ainda que o exercício proposto possui grande dose de conservadorismo ao maximizar o desempenho exportador de forma remotamente possível, pois supõe que a Aperam tivesse condições de competir no mercado internacional e manter suas vendas externas no mesmo nível que era possível antes de a Indonésia começar a ter condições de fornecer o produto similar para todo o mundo. É absolutamente razoável crer que movimento similar de representativo e intenso crescimento de importações subsidiadas causadas pela entrada de operação da PT IRNC que ocorreu no mercado brasileiro tenha ocorrido também em outros países do mundo. E tal ressalva é reforçada pelo fato de a União Europeia e a Índia terem aplicado medidas antissubsídios contra a Indonésia e contra os mesmos produtores/exportadores aqui investigados e também terem verificado um crescimento vertiginoso no volume de importações. Mesmo com tal exercício conservador, que supõe exportações em volume praticamente [RESTRITO] vezes maior do que o real, ainda foi constatado dano material nos indicadores da indústria doméstica atribuível às importações investigadas.

1400. Resta assim descabido a alegação da PT IRNC sobre supostamente o dano resumir-se a "uma queda nos preços maior do que a queda nos custos", conforme extensivamente demonstram os indicadores analisados.

1401. Independentemente da discordância da parte interessada sobre os critérios adotados nesse exercício de atribuição, ou seja, quando à escolha dos parâmetros de ajuste, deve-se observar que: i) o período de maior produção da indústria doméstica, considerando tanto o produto similar como outros produtos que compartilham a capacidade instalada, foi P2, em que o volume atingiu [RESTRITO] t; ii) os ajustes adotados pela SDCOM levaram a uma produção hipotética, em P5, de [RESTRITO] t; iii) a diferença entre a produção hipotética de P5 e a maior produção do período, em P2, é inferior a 1%, considerada, portanto, imaterial. Logo, tendo em vista o propósito do exercício contrafactual adotado, que é avaliar o impacto da redução do volume de produção sobre a diluição de custos fixos e consequente impacto sobre a rentabilidade da indústria doméstica, não haveria fundamento para ajustes nos exercícios efetuados por esta SDCOM.

1402. Sobre a alegação da IRNC de que a queda de lucratividade da indústria doméstica decorre de incremento de custos não acompanhado do incremento de preços, deve se observar que não houve aumento de custos de P4 para P5, mas sim uma redução do custo unitário médio nesse período (-0,8%). Já quanto ao preço médio de venda no mercado interno, observou-se uma redução de 4,9% de P4 para P5, o que levou à deterioração da relação custo/preço da indústria doméstica, com reflexos sobre a sua rentabilidade. O único fator conhecido nos autos do processo que possa ter levado à depressão de preços de P4 para P5 foi o aumento das importações subsidiadas e subcotadas nesse intervalo, que

cresceram em termos absolutos e relativos no mercado brasileiro, em detrimento das vendas da indústria doméstica. Logo, resta evidente o nexo de causalidade entre as importações subsidiadas e o dano à indústria doméstica nesse intervalo.

1403. Quanto à repetição dos argumentos, pela IRNC, sobre suposta defasagem excessiva dos dados da indústria doméstica e o comprometimento do caráter objetivo e positivo das provas e evidências para a determinação de dano, esta SDCOM remete ao item 1.7.1.3.2. supra, em que já foram endereçados esses comentários.

1404. Sobre as alegações de ineficiência da indústria doméstica, importaria para a análise de nexo de causalidade a demonstração de que a indústria doméstica teria passado a sofrer dano em decorrência do aumento relativo de sua ineficiência durante o período de investigação. Contudo, foram apresentadas meras conjecturas pela Aprodinox, reiteradas em manifestação final, que não poderiam ser acatadas como evidência positiva por esta autoridade investigadora. O que se observou como fonte de variação que pudesse impactar a situação da indústria doméstica, ao longo desse período de investigação, foi o aumento vertiginoso das importações objeto de investigação, conforme indicado anteriormente.

1405. Ainda sobre os comentários da Aprodinox, pontua-se que o período de investigação considerado se encerrou em março de 2020, ou seja, não é razoável apontar efeito significativo da pandemia nos dados aqui analisados.

7.6 Da conclusão sobre a causalidade

1406. Ao longo do período de análise de dano, observou-se crescimento no volume de vendas da indústria doméstica no mercado interno (16,9%) e na receita líquida associada a essas vendas (14,9%). Contudo, esses crescimentos foram acompanhados pela deterioração de todos os demais indicadores.

1407. Observou-se queda da participação das vendas da indústria doméstica no mercado brasileiro (redução de [RESTRITO] p.p. de P1 para P5), isso em um cenário em que o mercado brasileiro apresentou aumento de 30,7%, considerando-se P5 em relação a P1. Assim, mesmo que tenham as vendas aumentado em números absolutos, como apontou o GOI, é inegável que a participação destas caiu, elemento que foi desconsiderado pelo GOI em sua manifestação.

1408. Além disso, no que concerne aos demais indicadores financeiros da indústria doméstica, foram observados, nesse período, como decorrência da diminuição de seu preço de venda e do aumento em seu custo de produção e em seu custo do produto vendido, decréscimos no resultado bruto, no resultado operacional, no resultado operacional exceto o resultado financeiro e no resultado operacional exceto o resultado financeiro e outras despesas, assim como em todas as margens a eles associadas.

1409. Também no período de análise de dano, conforme exposto neste documento, observou-se crescimento contínuo no volume das importações de laminados a frio 304 originários da Indonésia, apurando-se aumento de [RESTRITO] %, considerando-se P5 em relação a P1; com destaque para o período de P4 a P5, quando houve incremento de [RESTRITO] % no volume importado dessa origem. Destaca-se que esse aumento redundou em evolução da participação dessas importações no mercado brasileiro, que alcançou [RESTRITO] em P5, sendo que somente no período de P4 a P5 a participação dessas origens praticamente quintuplicou.

1410. Adicionalmente, realce-se que o preço médio ponderado do produto importado da origem investigada, internado no Brasil, esteve subcotado em relação ao preço da indústria doméstica em P3 e P5. Observou-se, nesse mesmo período, queda dos preços de venda no mercado interno do produto similar produzido pela indústria doméstica, ao longo do período analisado, indicando depressão desse preço. Outrossim, verificou-se supressão de preços de P1 a P5, refletindo a deterioração da relação entre custo de produção e preço de venda.

1411. Some-se, ainda, ao cenário de deterioração dos indicadores da indústria doméstica, o declínio na sua produção de laminados a frio 304 ao longo do período de investigação, reduzindo-se em 27,1%, considerando-se P5 em relação a P1. Destacando-se que essa redução foi acompanhada de estabilidade na capacidade instalada, o que gerou a diminuição do grau de ocupação da capacidade instalada, de [RESTRITO] % em P1 para [RESTRITO] % em P5.

1412. Recorde-se, nesse ponto, consoante exposto no item 7.2.6 deste parecer, que o volume de vendas de laminados a frio 304 ao mercado externo pela indústria doméstica apresentou retração em todos os períodos da investigação, resultando em um decréscimo de 84,2%, considerando-se P5 em relação a P1. Para além disso, tomando-se o período P3 como referência (único em que não houve queda relativamente tão expressiva no volume de vendas ao mercado externo e que, ainda, não apresentou crescimento de volume equivalente de vendas no mercado interno, diferentemente de P2), pode-se inferir que essas quedas também impactaram a produção do produto similar doméstico, que teve diminuição em patamares de 10,3% em P4 e de 13,6% em P5.

1413. Ademais, conforme exposto no mesmo item 7.2.6, foram observadas, também em relação ao período P3 (período de maior volume de produção total - em volume aproximadamente igual ao de P2 - e também de maior volume de produção de outros produtos produzidos pela indústria doméstica), quedas na produção de outros produtos produzidos pela indústria doméstica nos períodos P4 (- 2,5%) e P5 (- 8,8%). Com isso, consequentemente, a produção total da indústria doméstica também apresentou as suas maiores retrações nos períodos P4 (- 4,9%) e P5 (- 14,5%), quando considerado o período P3 como referência.

1414. Nesse sentido, dada a necessidade de separar e distinguir os efeitos da queda nas exportações e da redução da produção de outros produtos, procedeu-se à análise de cenário hipotético com o objetivo de estimar o impacto combinado desses dois fatores no dano observado nos indicadores financeiros da indústria doméstica em P4 e P5. Conforme os indicadores obtidos com o cenário construído nesse referido item 7.2.6, constatou-se que, mesmo mediante a separação e distinção dos efeitos da queda nas vendas no mercado externo e os causados pela redução na produção de outros produtos, as margens bruta, operacional, operacional exceto resultado financeiro e operacional exceto resultado financeiro e outras despesas ainda apresentariam significativa deterioração em P5, tanto em relação a P1, quanto a, em especial, P4, período imediatamente anterior ao maior crescimento absoluto de volume observado para as importações investigadas. Ao se analisar a evolução de P4 para P5 de todos os indicadores financeiros ajustados do exercício apresentado no item 7.2.6, período de maior crescimento absoluto das importações investigadas, observa-se que mesmo os resultados bruto e operacional (exceto RF e outras despesas) indicam piora de 26,7% e 28,1%, respectivamente. Dessa forma, a concorrência da queda do volume exportado e da queda no volume de produção de outros produtos para o dano à indústria doméstica não afasta a materialidade do dano causado pelas importações investigadas, considerando tanto os efeitos sobre volume como os efeitos sobre preço e lucratividade da indústria doméstica.

1415. Nesse sentido, para fins de Determinação Final, considerando-se a análise dos fatores previstos no art. 22 do Decreto nº 1.751, de 1995, verificou-se que as importações da origem investigada com evidências de subsídios acionáveis contribuíram significativamente para deterioração na maioria dos indicadores da indústria doméstica no período de investigação de dano, constatada no item 6.2 deste 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 2021, ressaltou que, quando do início da investigação, havia sido constatada a existência de indícios da prática de subsídios acionáveis e de dano decorrente de tal prática. Acrescentou que a autoridade investigadora já disporia de dados e informações suficientes para proceder a uma determinação preliminar positiva da existência de subsídios acionáveis, de dano e de relação de causalidade.

1417. A Aperam chamou atenção para o significativo crescimento do volume importado da Indonésia, de P3 para P4 e, especialmente, de P4 para P5. Assim, de P4 para P5, diminuíram o resultado operacional, operacional exclusive resultados financeiros e operacional exclusive resultados financeiros e outras receitas e despesas. Da mesma forma, todas as margens de resultado se deterioraram. Assim, nem mesmo a diminuição da média dos preços de venda em P5 teria sido suficiente para conter o efeito sobre o volume de vendas no mercado interno, que diminuiu. Por essas razões, a Aperam solicitou aplicação de direitos provisórios, a fim de impedir o dano no curso da investigação.

1418. A Aperam Inox América do Sul S.A., em manifestação de 31 de março de 2022, em complemento a sua manifestação datada de 11 de novembro de 2021, relatou o que seria a atual situação do segmento de aços inoxidáveis no mundo e no Brasil, marcada por instabilidade e imprevisibilidade, provocadas, em grande parte, pela atuação do Tsingshan Holding Group.

1419. A peticionária alegou que o elemento químico níquel seria uma matéria-prima imprescindível para a produção do aço inoxidável austenítico, categoria que inclui o produto objeto da presente investigação. Sendo uma das principais commodities metálicas do mundo, os produtores de tal metal condicionariam seus preços de venda às cotações do mesmo na bolsa London Metals Exchange (LME). Desta forma, o custo do produto sob análise, seja da Aperam ou de qualquer outro produtor, dependeria dos preços de ferro-níquel, níquel eletrolítico e sucata de aço austenítico, que, por sua vez, seriam atrelados aos preços cotados na LME, visto que os fornecedores de níquel efetivariam negociações a partir de descontos ou adicionais sobre as cotações diárias de tal bolsa. Alegou ainda que algumas siderúrgicas deteriam produção verticalizada (matérias-primas e aço), como seria o caso do Grupo Tsingshan. Entretanto, a referência no mercado mundial para a venda do aço continuaria atrelada à LME, ao passo que, pelo lado do custo, observar-se-iam os subsídios industriais, tributários e financeiros fornecidos pelo governo da Indonésia, já reconhecidos em decisão da União Europeia, e em processo de avaliação na presente investigação.

1420. Ressaltou que, conforme teria sido relatado em veículos de informação por todo o mundo, o preço do níquel na LME teria passado a apresentar valorização significativa a partir do final de 2021. Grande parte deste fenômeno seria atribuída a operações realizadas pelo fundador do Grupo Tsingshan. Adicionado a esse cenário, o início da guerra Rússia-Ucrânia teria acrescentado incertezas sobre o fornecimento de níquel devido à participação relevante da Rússia no mercado mundial (que seria superior a 10%). Alegou que, no início de março de 2022, o valor da cotação na LME havia aumentado para US$ 25.450,00/t, valor que teria praticamente dobrado entre os dias 4 e 7. Em 8 de março, esse movimento 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 segunda ordem, o que teria paralisado o mercado. Não haveria confirmação da extensão da negociação feita pelo Grupo chinês. Segundo relatado pela imprensa, porém, tal posição envolveria, pelo menos, 100 mil toneladas de níquel.

1422. Esse movimento repentino de alta do preço representaria a maior crise da história da LME, criada há 145 anos. Retomadas as negociações em 16 de março, o preço do níquel seguiria ao redor de US$ 33.000,00/t, longe de uma normalidade, e condicionado a uma nova regra de negociação, a qual já teria sido revisada diversas vezes ao longo do mês. Em decorrência de toda essa grave situação, a Aperam, assim como diversos outros produtores mundo afora, teria suspendido por alguns dias a comercialização de aços inoxidáveis austeníticos incluindo o produto sob análise, tendo em vista ter se tornado impossível precificá-lo. De forma distinta, as empresas do Grupo Tsingshan na Indonésia, que baseiam sua produção a partir do NPI (Gusa-Níquel) fornecido localmente, com preços subsidiados, continuariam comercializando seus aços inoxidáveis austeníticos, inclusive no Brasil, de acordo com relatos do mercado, sem o repasse do aumento de custo decorrente de sua própria ação de especulação na LME.

1423. Segundo a peticionária, restaria claro que as empresas do Grupo Tsingshan ignorariam a crise da LME, pois, ao contrário das empresas que seguiriam regras de economia de mercado aberto e competitivo, como a Aperam, os subsídios recebidos do governo da Indonésia, como demonstrados na presente investigação, sustentariam sua estratégia predatória e especulativa. Cabe destacar que os contratos da LME poderiam ser fisicamente liquidados com os metais que estão armazenados em depósitos que se estendem da Holanda à Malásia. Visando proteger seus estoques de movimentos abruptos no preço do níquel, os produtores de aços inoxidáveis se utilizariam de ferramentas financeira de hedge, permitindo assim a manutenção de um fluxo regular de compra e venda do metal. No caso desta peticionária, a crise da LME afetaria fortemente seus resultados financeiros.

1424. Restaria claro que o cenário apresentado, com interferência do próprio Grupo Tsingshan no mercado mundial, com consequências diretas no mercado brasileiro, agravaria as distorções causadas pela concessão de subsídios pelo governo da Indonésia aos produtores/exportadores do produto objeto da presente investigação, corroborando e ratificando a necessidade premente de aplicação de direitos compensatórios provisórios, conforme solicitação desta peticionária apresentada em 11 de novembro de 2021.

1425. Em manifestação datada de 17 de março de 2022, reiterada posteriormente, a IRNC requereu que não fosse recomendada a aplicação de medidas compensatórias provisórias quando da determinação preliminar a ser emitida por essa Subsecretaria no âmbito do presente procedimento investigatório. Nesse contexto, a IRNC solicitou o seguimento da investigação sem recomendação de aplicação de medidas compensatórias provisórias, mesmo a SDCOM venha a preliminarmente concluir pela existência de subsídios acionáveis concedidos aos produtores/exportadores indonésios de laminados a frio de aço inoxidável 304, e da ocorrência de dano à indústria doméstica decorrente de tal prática, para se evitar um quadro de incerteza quanto à eventual apuração de margem individual de subsídios à IRNC, questão que dependeria de sua resposta ao questionário do produtor/exportador.

1426. A APRODINOX, em manifestação de 23 de dezembro de 2021, reforçada em 14 de junho de 2022, expôs que, nos termos do art. 62 do Decreto nº 10.839, de 18 de outubro de 2021, as medidas compensatórias preliminares pleiteadas pela indústria doméstica dependeriam da existência de determinação preliminar positiva de subsídio, de dano à indústria doméstica e de nexo de causalidade entre ambos, e do entendimento de que tais medidas provisórias seriam necessárias para impedir o dano; de forma tais requisitos não poderiam ser verificados no presente caso, explicando que não seria possível se estabelecer a relação de causalidade para indicar a existência de dano, uma vez que a peticionária se valeria dos resultados operacionais e margens operacionais, os quais têm sua confiabilidade sendo questionada neste processo e que ensejaram o encerramento no processo de dumping.

1427. Dessa maneira, para a APRODINOX a aplicação das medidas compensatórias provisórias não pareceria ser adequada dado a falta de confiabilidade em relação aos dados de dano apresentados, o que implicaria em dúvida quanto à sua própria do dano.

1428. Reforçou que a aplicação de medida provisória seria necessária para impedir que ocorresse dano durante a investigação, contudo, nesse contexto, para a Aprodinox, observar-se-ia que desde a abertura da investigação não houve aumento expressivo do volume de importações do produto similar originária da origem investigada a indicar a necessidade de impedir a ocorrência de dano durante investigação. Ante o exposto, a Aprodinox requereu a não recomendação da aplicação do direito provisório em determinação preliminar, posto que ausentes os requisitos para justificar tal medida.

1429. A Aprodinox, em manifestação de 14 de junho de 2022 acerca da volatilidade do preço do níquel alegada pela peticionária explicou que houve uma variação conjuntural que teria sido observada nos metais em geral, e não apenas no níquel.

1430. No que toca ao níquel, em específico, a Aprodinox observou que houve movimento de valorização em linha com a tendência de outros metais, antes da eclosão do conflito Ucrânia x Rússia; haveria um movimento de retorno à normalidade, com o alinhamento das expectativas.

1431. Nesse quadro, para a Aprodinox, considerando-se que o níquel representa 33% do preço do níquel, (8% da composição física do aço 304), haveria pressão para aumento de 3%, sem se considerar a existência de mecanismo de hedge da Aperam; de forma que houve uma variação em razão da 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 sobre Subsídios e Medidas Compensatórias possui disposição específica estabelecendo, como recomendação geral, a aplicação da regra do menor direito para situações nas quais seja possível neutralizar o dano com montantes inferiores daqueles apurados, conforme Artigo 19.2 e art 55 do Decreto nº 1.751, de 1995. Assim, em linha com a nota de rodapé 50 do ASMC, solicita que eventuais direitos sejam balizados pelas margens de subcotação encontradas para P5.

1433. A Aperam, em sua manifestação final, solicita o encerramento da investigação com a aplicação por cinco anos de medidas compensatórias. Aduziu ainda que, em se tratando de concessão de subsídios governamentais, e considerando a utilização das melhores informações disponíveis tanto para os produtores/exportadores como para o Governo da Indonésia, deveria ser aplicado, como direito compensatório, o montante total de subsídios apurado, não cabendo análise de margem de subcotação para tal fim.

1434. Acrescentou a Aperam que eventual direito seja aplicado na forma de alíquota ad valorem, devido ao fato de parte significativa dos subsídios acionáveis versar sobre o minério de níquel, cujo preço pode apresentar variação relevante.

8.3 Dos comentários da SDCOM

1435. Em relação aos comentários sobre a Determinação Preliminar, cabe ressaltar inicialmente, que o Decreto nº 1.751, de 1995, não traz obrigatoriedade de emitir determinação preliminar. Neste contexto, conforme Circular SECEX nº 37, de 19 de agosto de 2022, publicada no Diário Oficial da União de 19 de agosto de 2022, não foi realizada determinação preliminar no âmbito desta investigação, tendo em conta que o período de pandemia trouxe dificuldades adicionais não previstas que impactaram de forma direta a evolução do trabalho da autoridade investigadora no que diz respeito às diversas demandas relacionadas ao tema de defesa comercial. Destaca-se, igualmente, que houve casos positivos de contaminação por COVID-19 no quadro de servidores da SDCOM, prejudicando, de forma não desprezível, o progresso do trabalho na investigação em tela.

1436. Além disso, o contexto de flexibilização das medidas de combate ao COVID-19 e o retorno a certa normalidade dos tempos de antes da pandemia trouxeram excepcional sobrecarga de trabalho à equipe devido ao acúmulo de atividades a serem executadas no presente ano, em especial, a retomada de verificações in loco, que não puderam ser realizadas no ano de 2021, nos termos da Instrução Normativa SECEX nº 3, de 22 de outubro de 2021.

1437. Os comentários sobre o dano foram considerados na análise feita na seção pertinente. Com relação aos demais comentários da peticionária e da Aprodinox acerca do preço do níquel e da guerra na Ucrânia, estes parecem exorbitar do que é analisado nesta investigação.

1438. No que concerne aos comentários da Aprodinox sobre uso de subcotação como baliza para direitos recomendados, esta SDCOM ressalta que, como bem pontuado pela manifestante, a prática do que se conhece como menor direito em investigações antissubsídios não é obrigatória, não havendo no presente caso nenhum elemento que justifique sua aplicação.

1439. Sobre o comentário da Aperam, a SDCOM recomendou a aplicação em montante ad valorem.

9 Do cálculo das medidas compensatórias

9.1 Do montante de subsídios acionáveis

1440. Os cálculos desenvolvidos indicaram a existência de subsídios acionáveis nas exportações da Indonésia para o Brasil, conforme demonstrado a seguir:

Subsídio Acionável

Produtor/Exportador	Montante de Subsídio (US$/t)	Montante ***ad valorem*** **, base FOB(%)**
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 de subsídios acionáveis para as empresas investigadas superaram o considerado de minimis, nos termos previstos no §9 º do art. 21 do Decreto nº 1.751, de 1995.

10 DA RECOMENDAÇÃO

1442. Consoante a análise precedente, ficou determinada a existência de subsídios acionáveis nas exportações de produtos de aço inoxidável 304 laminados a frio da Indonésia para o Brasil, e de dano à indústria doméstica decorrente de tal prática. Assim, propõe-se a aplicação de medidas compensatórias, por um período de até cinco anos, na forma de alíquotas ad valorem, fixadas em percentual a ser aplicado sobre o valor aduaneiro do produto, em base Cost, Insurance & Freight - CIF, apurado nos termos da legislação, nos montantes abaixo especificados.

Medida Compensatória Recomendada

País	Produtor/Exportador	Medida Compensatória ***ad valorem*, base CIF (%)**
Indonésia	Todos produtores	18,79

Fonte: quadros anteriores

Elaboração: SDCOM.

ANEXO II

1. RELATÓRIO

O presente documento apresenta as conclusões finais advindas do processo de avaliação de interesse público referente à possibilidade de aplicação de medida compensatória sobre as importações brasileiras de produtos de aço inoxidável laminados a frio 304, 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), quando originárias da Indonésia.

Tal avaliação é feita no âmbito dos processos nº 19972.100974/2021-66 (público) e nº 19972.100976/2021-55 (confidencial), em curso no Sistema Eletrônico de Informações (SEI) do Ministério da Economia, iniciados em 9 de junho de 2021, por meio de publicação no Diário Oficial da União (D.O.U.) da Circular Secex nº 40, de 1º de junho de 2021, a qual também determinou o início da investigação de subsídios acionáveis em referência. Nos termos da Portaria Secint nº 13/2020, art. 5º, a avaliação de interesse público é obrigatória nos casos de investigação original de dumping ou de subsídios, por meio do ato da Secretaria de Comércio Exterior (Secex) que der início à respectiva investigação de defesa comercial.

Especificamente, busca-se com a avaliação de interesse público responder a seguinte pergunta: a imposição da medida de defesa comercial impacta a oferta do produto sob análise no mercado interno (oriunda tanto de produtores nacionais quanto de importações), de modo a prejudicar significativamente a dinâmica do mercado nacional (incluindo os elos a montante, a jusante e a própria indústria), em termos de preço, quantidade, qualidade e variedade, entre outros?

Importante mencionar que os Decretos nº 9.679, de 2 de janeiro de 2019, e nº 9.745/2019, de 8 de abril de 2019, alteraram a estrutura regimental do Ministério da Economia, até então exercidas pela Secretaria de Assuntos Internacionais do Ministério da Fazenda (SAIN). Mais especificamente, o art. 96, XVIII, do Decreto nº 9.745/2019 prevê propor a suspensão ou alteração de aplicação 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 40, de 1º de junho de 2021, dando início à investigação de subsídios acionáveis nas exportações da Indonésia para o Brasil de produtos de aço inoxidável laminados a frio 304, comumente classificadas nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, e de dano à indústria doméstica decorrente de tal prática. Conforme art. 13 da referida Circular, foi iniciada também avaliação de interesse público sobre a possível aplicação da medida antidumping em questão, nos termos do art. 4º, da Portaria Secex nº 13, de 29 de janeiro de 2020. O art. 13 da Circular Secex nº 46/2020 estabeleceu, ainda, que as partes interessadas dispunham, para a submissão da resposta ao questionário de interesse público, do mesmo prazo inicial concedido para a restituição dos questionários de importador da investigação original em curso, definido inicialmente para 20 de julho de 2021.

Antes do vencimento do prazo original de apresentação do questionário de interesse público, as seguintes partes interessadas apresentaram pedido de prorrogação do prazo, sendo deferida a extensão 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 e Distribuidores de Aços Inoxidáveis (Aprodinox), Inconel Comércio Importação e Exportação de Produtos Siderúrgicos Ltda. (Inconel), Inoxplasma Comércio de Metais Ltda. (Inoxplasma), Usinas Metais Ltda. (Usinas Metais) e Jati - Serviços Comércio e Importação de Aços Ltda. (Jati).

No tocante ao CADE, recorde-se que a autoridade concorrencial é membro convidado permanente do GECEX, portanto, com legitimidade para apresentar considerações acerca das avaliações de interesse público em respeito à fase probatória do processo, bem como para subsidiar a tomada de

decisão final do GECEX, nos termos dos §§ 2º e 7º do art. 5º da Portaria Secex nº 13/2020.

As partes Aperam, Aprodinox, CADE, Inconel, Inoxplasma e Usinas Metais apresentaram devidamente o questionário de interesse público antes do vencimento do prazo estabelecido, de forma a serem considerados nas conclusões preliminares, conforme art. 5º, §2º, da Portaria Secex nº 13/2020.

Apesar de a Jati ter apresentado o questionário de interesse público no prazo estabelecido, a empresa não regularizou sua representação legal no prazo concedido pela autoridade investigadora, não sendo possível considerar seu questionário para fins da presente avaliação de interesse público, nos termos dos §§ 4 º e 7º do art 5º da Portaria SECEX nº13/2020.

Os argumentos apresentados pelas partes foram distribuídos neste documento de acordo com a pertinência temática dos critérios de avaliação de interesse público, sendo que, alguns deles, são apresentados resumidamente e de modo geral a seguir.

1.1.1 Aperam

A Aperam, única produtora nacional de laminados a frio 304, forneceu, em resumo, os seguintes argumentos nos autos:

- o processo produtivo no Brasil segue a rota tradicional, com a diferença que se utiliza gusa líquido para ajustar o balanço de carga, embora seja utilizado em pequenas quantidades. A principal matéria-prima utilizada nesta rota é a sucata de aço inoxidável;

- em aplicações como o segmento de bens de capital, não haveria produtos substitutos aos laminados a frio 304. No entanto, em alguns segmentos, como o de construção civil (cubas, pias e elevadores) pode haver concorrência com outros produtos, ainda que apresentem desempenho inferior. Ainda, no segmento de utilidades domésticas, a cutelaria disporia de produtos substitutos;

- o mercado brasileiro de aços inoxidáveis seria formado por dois grandes grupos, quais sejam, grandes clientes industriais e distribuidores. A Aperam possuiria modelos de relacionamento diferenciados com distribuidores: Distribuidor Integrado Aperam (DIA), Distribuidor Regular Aperam (DRA) e distribuidores independentes. Tanto os distribuidores DIA, quanto os DRA, possuiriam contrato com a Aperam, com a exigência de compras mínimas mensais, não havendo barreiras à migração entre os modelos de relacionamento. Os distribuidores independentes não possuiriam nenhum compromisso com a Aperam. Não existiriam critérios de diferenciação de preços entre os segmentos de distribuidores, com exceção do volume adquirido;

- os preços dos aços inoxidáveis no mercado interno se ajustariam aos preços internacionais, de forma a manter uma relação de equilíbrio de longo prazo;

- a Aperam não seria capaz de exercer poder de mercado, dado que o mercado brasileiro seria aberto a importações e contaria com poucas barreiras à entrada, sendo o preço da indústria doméstica definido com base nos preços internacionais. Não haveria, assim, capacidade de controle de preços e/ou volume ofertados;

- a comparação entre as alíquotas de imposto de importação aplicadas pelo Brasil e a média dos países integrantes da OMC não seria adequada, uma vez que as tarifas aplicadas em países não produtores de laminados a frio 304 tenderiam a ser mais baixas ou, até mesmo, zeradas;

- não haveria dificuldades ou ausência de atendimento da demanda interna no Brasil, mesmo que a medida antidumping pleiteada venha a ser implementada, uma vez que possuiria capacidade instalada efetiva suficiente para atender todo o mercado brasileiro, caso necessário;

- a indústria doméstica estaria tecnologicamente atualizada em seu processo produtivo e portfólio, concorrendo em condições tecnológicas e de qualidade similares com os produtos importados, independentemente da origem.

1.1.2 Aprodinox, Inconel, Inoxplasma, Usinas Metais

A Aprodinox, entidade que representa os processadores e distribuidores de aços inoxidáveis, e as empresas Inconel, Inoxplasma, Jati e Usinas Metais, importadoras de laminados a frio 304 forneceram, em resumo, os seguintes argumentos nos autos:

- o aço inox possuiria aplicações específicas, não havendo, assim, produtos considerados substitutos pela ótica da demanda. Pela ótica da oferta, também não haveria fabricantes de outros produtos com capacidade de passar a fabricar laminados a frio 304 no curto prazo com baixo investimento;

- a Aperam Serviços, parte relacionada da Aperam, possuiria possíveis preferências em atendimento a sua cadeia em relação aos demais distribuidores atendidos pela Aperam;

- o mercado brasileiro de laminados a frio 304 seria altamente concentrado, com as importações atuando como único elemento capaz de disciplinar os preços praticados pela indústria doméstica;

- a Aperam adotaria condutas anticompetitivas com o objetivo de garantir que seus clientes e distribuidores não optem pela importação de laminados a frio 304;

- as principais origens alternativas do produto eram alvo de medidas antidumping por parte do governo brasileiro;

- a relevante participação da origem investigada no total importado pelo Brasil seria causada pela reduzida gama de origens disponíveis para aquisição do produto no mercado internacional;

- o Brasil teria enfrentado insuficiência de produtos siderúrgicos e atrasos, inclusive de aços inoxidáveis, para abastecimento que da demanda interna desde o segundo semestre 2020;

- o preço da indústria doméstica teria registrado variações superiores à inflação, medida pelo IPCA e pelo IGP-DI, ao longo de 2018 e 2019, o que teria representado crescimento real dos preços do produto;

- a indústria doméstica não produziria determinadas larguras e acabamentos dos laminados a frio 304 e haveria possíveis problemas de qualidade no produto.

1.1.3 CADE

O CADE, autoridade concorrencial e membro convidado permanente do Gecex, forneceu, em resumo, os seguintes argumentos nos autos:

- não foram identificados produtos substitutos aos laminados a frio 304, sendo o produto importado "fundamental para equilibrar o mercado brasileiro";

- em processos que já passaram pelo CADE (AC nº 08012.005092/2000-89 e PA nº 08700.010789/2012-73) a respeito desse mercado relevante, foi manifestada preocupação com o comportamento da indústria nacional frente às importações e ressaltada a necessidade de manter o mercado aberto para compensar potencial exercício de poder de mercado;

- a Aperam possuiria maior parte da participação do mercado brasileiro, sendo que o crescimento de importações se revelou como uma resposta importante ao funcionamento equilibrado do mercado e à busca de bem-estar econômico; e

- existiriam potenciais preocupações concorrenciais em relação aos efeitos de uma medida compensatória no tocante à contestação internacional no setor.

1.2 Da instrução processual

Em 9 de junho de 2021, foi enviado uma notificação aos membros do Comitê-Executivo de Gestão da Câmara de Comércio Exterior (Gecex), por meio do Ofício Circular SEI nº 2.187/2021/ME. A partir do envio de tal correspondência, convidaram-se os órgãos a participar da avaliação de interesse público em curso como partes interessadas, fornecendo informações relacionadas a suas esferas de atuação. Até o presente momento, apenas o CADE se manifestou, por meio do Ofício nº 7306/2021, conforme relatado no item 1.1 deste documento.

Em 7 de fevereiro 2022, foi enviado ofício à parte Jati - Serviços Comércio e Importação de Aços Ltda. (Jati), para que apresentasse documentação que permitisse a regularização da condição da representante legal indicada. A empresa não apresentou documentação necessária para a regularização da representante legal. Dessa forma, a resposta ao questionário de interesse público da empresa não foi considerada para fins desta avaliação pois não foi realizada a devida regularização da representação da parte interessada, nos termos dos §§ 4 º e 7º do art 5º da Portaria SECEX nº13/2020.

Ressalta-se que, para fins de avaliação final de interesse público, foram consideradas as informações fornecidas até 20 de outubro de 2022, prazo final para apresentação das manifestações de interesse público, conforme informado no Despacho SEI-ME 28695303.

Em 31 de maio de 2022, a Aperam protocolou manifestação a respeito dos argumentos trazidos pelas partes em sede de resposta ao questionário de interesse público. Já em 7 de julho de 2022, a Aprodinox protocolou manifestação na qual apresentava novas informações a respeito dos elementos apresentados pela Aperam. Destaca-se que, nos termos do art. 5º, §§ 2º e 7º, da Portaria Secex nº 13/2020, tais informações não constaram da determinação preliminar desta avaliação de interesse público, sendo incorporados na presente avaliação final.

Após a análise das informações apresentadas nas respostas ao Questionário de Interesse Público e dos elementos apresentados no âmbito do processo de investigação original de subsídios acionáveis nas importações de laminados a frio 304 originárias da Indonésia, verificou-se, preliminarmente, a existência de indícios preliminares de que a demanda nacional pelo produto continuará sendo adequadamente atendida em termos de oferta internacional e nacional em caso de aplicação da medida, ainda que tais elementos careçam de maior aprofundamento, em especial no que concerne à cadeia produtiva do produto, substitutibilidade, à concentração do mercado brasileiro, a restrições à oferta nacional em termos de preço, qualidade e variedade, além de práticas discriminatórias entre clientes.

Nos termos do artigo 5º, § 1º, da Portaria Secex nº 13/2020, foi publicada, em 19 de agosto de 2022, a Circular Secex nº 37, de 19 de agosto de 2022, tornando públicas as conclusões preliminares da avaliação de interesse público e também os fatos que justificaram a decisão de não se elaborar uma determinação preliminar sobre a existência de prática de subsídios, de dano à indústria doméstica e de nexo causal entre eles. A referida Circular decidiu, ainda, tornar públicos os prazos que serviriam de parâmetro para o restante da referida investigação.

Já em 9 de setembro de 2022, a Aprodinox juntou aos autos da presente avaliação de interesse público suas manifestações finais em sede da fase probatória. Por sua vez, a Aperam apresentou manifestação em 3 de outubro apresentando considerações ao processo em referência. Em 20 de outubro de 2022, a Aperam, em seu turno, protocolou manifestação final, reiterando seus argumentos de ausência de elementos de interesse público que levem à suspensão ou redução das medidas compensatórias às importações do produto em análise, bem como apresentou no anexo cartas de apoio de 3 entidades e nota técnica elaborada pela Consultoria Tendências, referente a uma análise econômica realizada para o caso. Ainda na data de 20 de outubro de 2022, a Aprodinox protocolou manifestação final reiterando seus 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 processual, conforme disposto no art. 5º, § 7º, da Portaria Secex nº 13/2020.

Os argumentos e evidências adicionais trazidos ao longo da instrução processual apresentados pelas partes foram distribuídos neste documento de acordo com a pertinência temática dos critérios de 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 (1998/2000) - África do Sul, Espanha, França, Japão e México

Em 10 de agosto de 1998, foi protocolada, pela empresa Cia. Aços Especiais Itabira - Acesita, petição de início de investigação de dumping nas exportações para o Brasil de produtos planos, laminados a frio, de aço inoxidável, de espessura não superior a 3 mm, classificadas nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do Mercosul - NCM, originárias da África do Sul, Alemanha, Itália, Japão e México.

A partir de dados contidos na petição, foram constatadas importações originárias da França e da Espanha em volumes relevantes do produto em questão. Por conseguinte, tais países foram incorporados às origens investigadas para fins de início da investigação.

Em 30 de novembro de 1998, por meio da Circular Secex nº 42, de 27 de novembro de 1998, foi iniciada investigação para averiguar a existência de dumping nas exportações para o Brasil de produtos planos, de aço inoxidável, laminados a frio, de espessura não superior a 3 mm, classificadas nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originárias da África do Sul, Alemanha, Espanha, França, Itália, Japão e México, e de dano à indústria doméstica decorrente de tal prática.

A Portaria Interministerial nº 34, de 24 de maio de 2000, publicada no D.O.U. de 26 de maio de 2000, encerrou a investigação com aplicação de direito antidumping definitivo sobre as importações de produtos planos, de aço inoxidável, laminados a frio, de espessura não superior a 3 mm, classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originárias da África do Sul, Espanha, França, Japão e México, exclusive os aços refratários, entre os quais se classificam os aços AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H e 347 e os aços inoxidáveis AISI 301L e DIN 1.4110, na forma de alíquotas ad valorem, por um prazo de cinco anos.

1.3.2 Da revisão de final de período de laminados a frio, de espessura não superior a 3 mm (2005/2006) - África do Sul, Espanha, França, Japão e México

Em 25 de fevereiro de 2005, a empresa Acesita protocolou petição de revisão de final de período com o fim de prorrogar o direito antidumping aplicado às importações brasileiras de produtos planos, laminados a frio, de aço inoxidável, de espessura não superior a 3 mm, originárias da África do Sul, 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. de 23 de maio de 2006, encerrou a revisão com a prorrogação do direito antidumping aplicado às importações brasileiras de produtos planos de aço inoxidável, laminados a frio, de espessura não superior a 3 mm, exclusive os aços refratários, classificados nas normas AISI 309, 309S, 310, 310S, 311, 312H, 316Ti, 317, 321H e 347, os aços inoxidáveis AISI 301L e DIN 1.411 e o produto plano de aço inox, laminado a frio, denominado comercialmente como fita de aço inoxidável GIN-6 ou 7C27MO2 ou UHB716 de espessura entre 0,152 e 0,889 mm.

O direito antidumping foi prorrogado na forma de alíquota específica, por dois anos, conforme art. 57 do Decreto n° 1.602, de 23 de agosto de 1995. Tal prazo reduzido de aplicação foi justificado por se tratar de setor sensível, cujos preços tiveram comportamento influenciado pela demanda asiática e por incertezas que permeavam o mercado internacional e limitavam previsões quanto à evolução desses preços. Não há elementos públicos no D.O.U. que sinalizem o fundamento jurídico para a alteração na duração da medida de defesa comercial, se por razões de interesse público ou não.

1.3.3 Da investigação original de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm (2011/2012) - Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã

Em 15 de dezembro de 2011, foi protocolada, pela Aperam Inox América do Sul S.A. (Aperam), petição de início de investigação de dumping nas exportações de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da África do Sul, da Alemanha, da China, da Coreia do Sul, dos Estados Unidos da América (EUA), da Finlândia, de Taipé Chinês e do Vietnã, e de dano à indústria doméstica decorrente de tal prática.

A investigação foi iniciada por meio da Circular Secex nº 17, de 12 de abril de 2012, publicada no 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 1995, vigente à época, a investigação de dumping nas exportações da África do Sul e dos EUA para o Brasil foi encerrada sem a aplicação de direitos, uma vez constatado que o volume de importações dessas origens foi insignificante, conforme consta da Circular Secex nº 35, de 26 de julho de 2012, publicada no DOU de 27 de julho de 2012.

Tendo sido verificada a existência de dumping nas exportações de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, e de dano à indústria doméstica decorrente de tal prática, conforme o disposto no art. 42 do Decreto nº 1.602, de 1995, a investigação foi encerrada, por meio da Resolução CAMEX nº 79, de 3 de outubro de 2013, publicada no D.O.U. de 4 de outubro de 2013, com a aplicação do direito antidumping definitivo, na forma de alíquotas específicas pelo prazo de cinco anos.

1.3.4 Da revisão de final de período de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços inoxidáveis ferríticos tipo 430, laminados a frio, com espessura igual ou superior a 0,35 mm, mas inferior a 4,75 mm (2018/2019) - Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã

Em 27 de abril de 2018, a Aperam Inox América do Sul S.A. protocolou, por meio do Sistema DECOM Digital (SDD), petição para início de revisão de final de período com o fim de prorrogar o direito antidumping aplicado às importações brasileiras de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços 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 NCM, originárias da Alemanha, China, Coreia do Sul, Finlândia, Taipé Chinês e Vietnã, consoante o disposto no art. 106 do Decreto nº 8.058, de 26 de julho de 2013.

A investigação foi iniciada por meio da Circular Secex nº 41, de 02 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 e Assuntos Internacionais (Secint), publicou a Portaria nº 4.353, de 1º de outubro de 2019, na qual prorrogou a aplicação do direito antidumping definitivo, por um prazo de até 5 (cinco) anos, aplicado às importações brasileiras de laminados planos de aços inoxidáveis austeníticos tipo 304 (304, 304L e 304H) e de aços 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 China e Taipé Chinês, a ser recolhido sob a forma de alíquota específica, e não prorrogando, assim, para as demais origens, quais sejam, Alemanha, Coreia do Sul, Finlândia e Vietnã.

1.3.5 Da investigação original de produtos planos de aços 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 (2020/2021) - África do Sul, Indonésia e Malásia

Em 31 de julho de 2020, a Aperam protocolou, por meio do Sistema DECOM Digital (SDD), petição para início de investigação da prática de dumping nas exportações de produtos planos de aços 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, doravante denominados "laminados a frio 304", comumente classificados nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originários da África do Sul, da Indonésia e da Malásia.

Cumpre registrar que a Secex encerrou, em 2020, três procedimentos especiais de verificação de origem não preferencial com a desqualificação da origem Malásia para o produto laminados a frio 304 e 430, classificado nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, declarado como produzido pelas empresas Excel Metal Industries Sdn Bhd., Yankong Stainless Sdn. Bhd. E Bahru Stainless Sdn. Bhd.

Tendo em vista que a totalidade das importações brasileiras de laminados a frio 304 com origem declarada como sendo a Malásia, em P5, foi realizada por empresas que tiveram sua origem desqualificada pela Secex em tais procedimentos, não restando volumes significativos de importações dessa origem nesse período para efeitos de análise de dumping de exportações ao Brasil originárias da Malásia, concluiu-se pela não abertura da investigação antidumping em relação a essa origem.

Em 18 de fevereiro de 2021, em atendimento ao que determina o art. 47 do Decreto nº 8.058, de 2013, os governos da África do Sul e da Indonésia foram notificados, por meio dos Ofícios, da existência de petição devidamente instruída, com vistas ao início de investigação de dumping de que trata o presente processo.

Com base no que constava do Parecer nº 3/2021, por terem sido encontrados indícios suficientes de dumping nas exportações de laminados a frio 304 da África do Sul e da Indonésia para o Brasil, e de dano à indústria doméstica dele decorrente, foi publicada a Circular Secex nº 15/2021, no D.O.U. de 25 de fevereiro de 2021, dando início à investigação de dumping em tela.

Já em 4 de novembro de 2021, com base na Nota Técnica, de 29 de outubro de 2021, foi publicada a Circular Secex nº 75, de 3 de novembro de 2021, que encerrou, sem julgamento de mérito, a referida investigação, uma vez que se concluiu pela falta de confiabilidade dos dados constantes da petição de início e pela magnitude e intempestividade das alterações, no conjunto agregado, apresentadas em sede de elementos de prova, restando prejudicada a comprovação da existência de dano à indústria doméstica no âmbito do presente processo, nos termos do inciso I do art. 74 do Decreto nº 8.058, de 2013.

1.3.6 Das medidas de defesa comercial em vigor

Relatados todos os processos de investigação de dumping, apresenta-se a seguir tabela que consolida todas as medidas de defesa comercial vigentes aplicadas sobre as importações brasileiras de laminados a frio 304:

Medidas de Defesa Comercial em vigor

Origem	Produtor/Exportador	Direito Antidumping Definitivo (em US$/t)
China	Shanxi Taigang Stainless Steel Co., Ltd. ., quando exportar por meio da empresa exportadora Tisco Stainless Steel (H.K.) Limited	175,62
China	Shanxi Taigang Stainless Steel Co., Ltd	218,37
China	Galaxy International Trade (Wuxi) Co., Ltd.	218,37
China	Henan Jianhui Construction Machinery Co., Ltd.	218,37
China	Hunan Bright Stainless Co., Ltd.	218,37
China	Jieyang Kailian Stainless Steel Co., Ltd.	218,37
China	Shanghai Stal Precision Stainless Steel Co., Ltd.	218,37
China	Wuxi Steel Co. Ltd.	218,37
China	Zhangjiagang Pohang Stainless Steel Co., Ltd.	218,37
China	Foshan Shunhengli Import & Export Ltd.	629,44
China	Demais.	629,44
Taipé Chinês	C.S.S.S.C	93,36
Taipé Chinês	Chain Chon Industrial Co., Ltd.	93,36
Taipé Chinês	Datung Stainless Steel Co., Ltd.	93,36
Taipé Chinês	Froch Enterprise Co., Ltd.	93,36
Taipé Chinês	Genn-Hann Stainless Steel Enterprise Co., Ltd.	93,36
Taipé Chinês	Lien Kuo Metal Industrial Co., Ltd.	93,36
Taipé Chinês	Midson International Co., Ltd.	93,36
Taipé Chinês	S-More Steel Materials Co., Ltd.	93,36
Taipé Chinês	Stanch Stainless Steel Co., Ltd.	93,36
Taipé Chinês	T.M. Development Co., Ltd.	93,36
Taipé Chinês	Tang Eng Iron Works Co., Ltd.	93,36

Taipé Chinês	TSL Stainless Co., Ltd	93,36
Taipé Chinês	Y C Inox Co., Ltd.	705,61
Taipé Chinês	Yuan Long Stainless Steel Corp. (YLSS)	93,36
Taipé Chinês	Yes Stainless International Co., Ltd.	93,36
Taipé Chinês	Yeun Chyang Industrial Co., Ltd.	93,36
Taipé Chinês	Yieh Corporation Limited	93,36
Taipé Chinês	Yieh Mau Corp.	93,36
Taipé Chinês	Yieh United Steel Corporation (YUSCO)	705,61
Taipé Chinês	Yue Seng Industrial Co., Ltd.	93,36
Taipé Chinês	Yu Ting Industrial Co., Ltd.	93,36
Taipé Chinês	Yuen Chang Stainlees Steel Co., Ltd.	93,36
Taipé Chinês	Demais	705,61

Assim, verifica-se que estão em vigor medidas de defesa comercial sobre as importações brasileiras de laminados a frio 304, aplicadas sobre duas origens, quais sejam, China e Taipé Chinês.

1.4 Do histórico de avaliações de interesse público

No dia 25 de fevereiro de 2021, a Secex do Ministério da Economia publicou a Circular nº 15, de 24 de fevereiro de 2021, que deu início à investigação da prática de dumping nas exportações de produtos planos de aços 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, comumente classificados nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, originários da África do Sul e da Indonésia. A referida Circular também determinou o início da avaliação de interesse público, referente à possível aplicação de medida antidumping sobre as importações em questão.

Contudo, a Circular Secex nº 75/2021, de 3 de novembro de 2021, publicada no D.O.U. de 4 de novembro de 2021, encerrou a avaliação de interesse público em razão de sua perda de objeto, uma vez que foi encerrada sem análise de mérito a investigação da prática de dumping iniciada por meio da Circular Secex nº 15/2021.

1.5 Da atual investigação sobre subsídios sujeitos a medidas compensatórias da Indonésia

Com base na Circular Secex nº 40, de 1º de junho de 2021, iniciou-se investigação para averiguar a existência de subsídios sujeitos a medidas compensatórias concedidos aos produtores da Indonésia que exportaram para o Brasil produtos de aço inoxidável 304 laminados a frio, comumente classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do MERCOSUL - NCM, e de dano à indústria doméstica decorrente de tal prática, objeto dos Processos SEI-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 2020, foi iniciada igualmente a avaliação de interesse público referente à possível aplicação de medida compensatória sobre as importações brasileiras de produtos laminados a frio, comumente classificados nos subitens 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da Nomenclatura Comum do MERCOSUL - NCM, originárias da Indonésia, em decorrência do Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial).

Em 19 de agosto de 2022, foi publicada a Circular Secex nº 37, de 19 de agosto de 2022, a qual tornou públicos os fatos que justificaram a decisão de não se elaborar uma determinação preliminar sobre a existência de prática de subsídios, de dano à indústria doméstica e de nexo causal entre eles. Em 28 de setembro de 2022, foi emitida Nota Técnica SEI nº 43660/2022/ME, a qual apresentou os fatos essenciais que se encontravam em análise e que formariam a base para que a Subsecretaria de Defesa Comercial e Interesse Público estabelecesse a determinação final no âmbito de defesa comercial.

2. CRITÉRIOS DE AVALIAÇÃO FINAL DE INTERESSE PÚBLICO

Na avaliação final de interesse público em defesa comercial, são considerados os seguintes elementos: 1) características do produto, cadeia produtiva e mercado do produto sob análise; 2) oferta internacional do produto sob análise; 3) oferta nacional do produto sob análise; e 4) impactos da medida de defesa comercial na dinâmica do mercado nacional, conforme figura abaixo:

O período de análise de dano na investigação original de subsídios acionáveis, a ser utilizado como referência também na presente avaliação de interesse público, foi assim dividido:

P1 - abril de 2015 a março de 2016;

P2 - abril de 2016 a março de 2017;

P3 - abril de 2017 a março de 2018;

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 validados em procedimento de verificação in loco:

2.1 Características do produto, da cadeia produtiva e do mercado do produto sob análise como insumo ou produto final

2.1.1Características do produto sob análise

O produto objeto da investigação de subsídios acionáveis contempla os produtos planos de aços 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, originários da Indonésia, comumente classificados nos subitens 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, doravante denominados laminados a frio 304.

Os produtos planos de aço inoxidável são ligas de ferro (Fe) e cromo (Cr), com um mínimo de 10,5% de Cr. Outros elementos metálicos também integram essas ligas, como níquel (Ni), carbono um, silício (Si), manganês (Mn), fósforo (P) e enxofre (S).

Dois elementos destacam-se na composição dos aços inoxidáveis: o cromo, sempre presente, por seu importante papel na resistência à corrosão, e o níquel, por sua contribuição na melhoria das propriedades mecânicas.

Simplificadamente, pode-se dividir os aços inoxidáveis em dois grandes grupos, quais sejam, os da série 300 e os da série 400. Os produtos da série 300 são os aços inoxidáveis austeníticos, ou seja, são aços não magnéticos com estrutura cúbica de faces centradas, basicamente ligas Fe-Cr-Ni. Por outro lado, os produtos da série 400 são os aços inoxidáveis ferríticos, que são aços magnéticos com estrutura cúbica de corpo centrado, basicamente ligas Fe-Cr.

Cada série de aços inoxidáveis é dividida em tipos distintos, conforme a composição específica, o que implica também, normalmente, diferentes utilizações. Internacionalmente, utilizam-se diferentes nomenclaturas para a definição dos distintos tipos de aços inoxidáveis, sendo 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 do AISI. Existem, contudo, outras nomenclaturas internacionais que especificam os diferentes tipos de aços inoxidáveis que podem ser utilizadas, a depender da região/país no qual o produto é fabricado/comercializado.

Os aços inoxidáveis são fabricados e comercializados com uma grande variedade de acabamentos. Os acabamentos mais utilizados nos aços inoxidáveis constam da norma ASTM A-480, de forma não exaustiva. Esses acabamentos são citados a seguir:

- Nº 1: Laminado a quente, recozido e decapado. A superfície é um pouco rugosa e fosca. É um acabamento frequente nos materiais com espessuras não inferiores a 3,00 mm, destinados às aplicações industriais. Muitas vezes, na fabricação da peça final, o material é submetido a outros acabamentos, como o lixado, por exemplo;

- Nº 2D: Laminado a frio, recozido e decapado. Muito menos rugoso que o acabamento Nº 1, mas mesmo assim apresenta uma superfície fosca, popularmente denominada mate. Este acabamento não é utilizado, por exemplo, no aço 430, já que com este acabamento, durante a conformação, estes materiais dão lugar ao aparecimento de linhas de Lüder;

- Nº 2B: Laminado a frio recozido e decapado seguido de um ligeiro passe de laminação em laminador com cilindros brilhantes (skin pass). Apresenta um brilho superior ao acabamento Nº 2D e é o mais utilizado entre os acabamentos da laminação a frio. Como a superfície é mais lisa, o polimento resulta mais fácil que nos acabamentos Nº 1 e Nº 2D;

- BA: Laminado a frio com cilindros polidos e recozido em forno de atmosfera inerte. Superfície lisa, brilhante e refletiva, características que são mais evidentes na medida em que a espessura é mais fina. 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 abrasivos de grana (tamanho do grão de diamante) de aproximadamente 100 mesh;

- Nº 4: Material lixado em uma direção com abrasivos de grana de 120 a 150 mesh. É um acabamento com rugosidade menor que a do Nº 3;

- Nº 6: Material com acabamento Nº 4, acabado com panos embebidos em pastas abrasivas e óleos. O aspecto é fosco, satinado, com refletividade inferior à do acabamento Nº 4. O acabamento não 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, mas conserva algumas linhas de polido. É um material com alto grau de refletividade obtido com polimentos progressivos cada vez mais finos;

- Nº 8: Acabamento espelho. A superfície é polida com abrasivos cada vez mais finos até que todas as linhas de polimento desapareçam. É o acabamento mais fino que existe e permite que os aços inoxidáveis sejam usados como espelhos. Também é utilizado em refletores; e

- Acabamento TR: Acabamento obtido por laminação a frio ou por laminação a frio com recozimento e decapagem de maneira que o material tenha propriedades mecânicas especiais. Geralmente as propriedades mecânicas são mais elevadas que a dos outros acabamentos e a principal utilização é em aplicações estruturais.

Há ainda outros tipos de acabamentos de aços inoxidáveis não incluídos na norma ASTM A-480, dentre os quais, citam-se:

- Nº 0: Laminado a quente e recozido. Apresenta a cor preta dos óxidos produzidos durante o recozimento. Não é realizada decapagem. Às vezes são vendidas desta forma chapas de grande espessura, particularmente de aços inoxidáveis refratários, que serão utilizados em altas temperaturas;

- Nº 5: O material do acabamento Nº 4 submetido a um ligeiro passe de laminação 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. A aparência é de um lixamento com alta rugosidade. A rugosidade varia de 2,00 a 2,50 mícrons Ra;

- SF (Super Finish): Acabamento do material com lixas com grana de 220 a 320 mesh. É um lixamento de baixa rugosidade, variando entre 0,70 e 1,00 mícrons Ra;

- ST (Satin Finish): Acabamento com Scotch Brite, sem uso de pastas abrasivas. O material possui uma rugosidade que varia entre 0,10 e 0,15 mícrons Ra, mesmo que sua aparência seja fosca;

- HL (Hair Line): Material com acabamento em linhas contínuas, realizado com lixas com grana de até 80 mesh. É também um lixamento de alta rugosidade (2,00 a 2,50 mícrons Ra); e

- BB (Buffing Bright): Polimento feito com granas que variam entre 400 e 800 mesh. É um material muito brilhante. A rugosidade é inferior a 0,05 mícrons Ra.

A Aperam fabrica os laminados a frio 304 nas larguras padrão de 1.020 mm, 1.040 mm, 1.220 mm, 1.240 mm, 1.250 mm, 1.270 mm, 1.295 mm e 1.320 mm, sendo possível, entretanto, fornecer o produto na largura que o cliente demandar, até o limite de 1.320 mm. Os laminados a frio 304 são fabricados pela empresa com os seguintes acabamentos: nº 2B, nº 3, nº 4, nº 6, Acabamento TR, BB (Buffing Bright), RF (Rugged Finish), SF (Super Finish) e HL (Hair Line).

Os laminados a frio 304 são utilizados na fabricação de torres, tubos, tanques, estampagem geral, profunda e de precisão, com aplicações diversas, como em utensílios domésticos, instalações criogênicas, destilarias, fotografia, assim como nas indústrias aeronáutica, ferroviária, naval, petroquímica, de papel e celulose, têxtil, frigorífica, hospitalar, alimentícia, de laticínios, farmacêutica, cosmética, química, dentre outras.

Assim, conclui-se que os laminados a frio 304 se caracterizam como insumos, com aplicação em diversos setores como: automotivo, construção civil, química e petroquímica, utensílios domésticos, máquinas e equipamentos, entre diversos outros.

2.1.2 Cadeia produtiva do produto sob análise

Conforme informado pela Aperam, o processo produtivo de laminados a frio 304 engloba as etapas de redução, aciaria, laminação a quente e laminação a frio.

A redução é etapa em que os altos-fornos são alimentados com minério de ferro e 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 e transferido para a aciaria, onde sofre um primeiro pré-tratamento, removendo-se as impurezas, tais como fósforo, enxofre, carbono e nitrogênio. Após, adicionam-se, nos fornos elétricos a arco (FEA), para serem fundidos, o níquel (na forma 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), o ferro silício, o ferro manganês e alguma outra liga metálica para realizar ajustes de alguma propriedade específica do material. Então, transfere-se essa carga fundida para o AOD (Argon-Oxygen Decarburization) e onde se junta ao ferro gusa proveniente dos altos-fornos para ajustes finais de temperatura, composição e para desgaseificação. Ao final da etapa da aciaria, o aço, ainda líquido, é enviado aos equipamentos de lingotamento contínuo, que o solidificam no formato de placas (slabs).

A etapa seguinte é a laminação a quente, que consiste na conformação a quente das placas com redução significativa de espessura. Primeiro, as placas são reaquecidas. Posteriormente, efetua-se o ajuste preliminar de espessura, para, então, iniciar a laminação nos laminadores Rougher e Steckel a fim de 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 de decapagem, pelos laminadores a frio e por equipamentos auxiliares, de modo a se atingir os laminados a frio 304 com espessuras entre 0,35 mm e 4,75 mm.

De acordo com a Aperam, o processo produtivo no Brasil segue a rota tradicional, que é similar às rotas adotadas por tradicionais produtores de aços inoxidáveis do mundo, tais como os países da União Europeia, os EUA, o Japão, entre outros. A principal matéria-prima utilizada na rota tradicional é a sucata de aço inoxidável, que, em conjunto com outras matérias-primas, tais como o ferro cromo, ferro níquel, sucata de carbono, ferro silício, ferro manganês, ferro gusa e níquel eletrolítico, são levadas aos fornos elétricos a arco, na aciaria. O processo produtivo adotado pela Aperam é considerado tradicional, com a diferença que se utiliza gusa líquido para ajustar o balanço de carga, embora seja utilizado em pequenas quantidades.

No entanto, algumas empresas, como no caso das produtoras da Indonésia, adotam a rota integrada, que se diferencia da rota tradicional por utilizar a maior parte da carga de níquel com o NPI (Nickel Pig Iron) produzido internamente, que possui composição de 10% a 11% de Ni, 1% de Cr e 82% de Fe. O NPI fundido é introduzido diretamente nos vasos AOD da aciaria, junto a outras matérias-primas que são aquecidas com carvão em panela, tais como sucata de aço 304, ferro níquel, níquel eletrolítico, ferro cromo, ferro manganês, ferro silício etc. Após a etapa que ocorre nos vasos AOD, a rota integrada é idêntica à rota tradicional, descrita anteriormente.

No tocante ao mercado brasileiro, a Aperam informou, em seu questionário de interesse público, que os principais segmentos atendidos pelos laminados a frio 304 seriam: linha branca (fogão, geladeiras, máquinas de lavar, fornos elétricos, entre outros, com participação de [CONFIDENCIAL]%), utilidades domésticas (cutelaria, panelas, entre outros, com participação de [CONFIDENCIAL]%), construção civil (pias, cubas, elevadores, fachadas e acabamentos em geral, com participação de [CONFIDENCIAL]%), saúde e alimentação (hospitais, restaurantes e caterings em geral, com participação de [CONFIDENCIAL]%), tubos inox (tubos decorativos e normalizados, com participação de [CONFIDENCIAL]%), indústria automotiva (sistemas de veículos, com participação de [CONFIDENCIAL]%), transporte (tanques de caminhões, aplicações em trens de metrôs, entre outros, com participação de [CONFIDENCIAL]%), bens de capital (projetos de óleo e gás, papel e celulose, bebidas, agronegócios, mineração, compras para manutenção de equipamentos, entre outros, com participação de [CONFIDENCIAL]%) e revendas (empresas comerciais que compram de distribuidores e revendem para pequenos clientes, com participação de [CONFIDENCIAL]%).

Conforme a empresa, tanto a linha branca, quanto a indústria automotiva, são concentradas em grandes empresas consumidoras de aço, sobretudo aço carbono e ligado, sendo o laminado a frio 304 pouco demandado. No caso dos bens de capital, apesar de demandarem [CONFIDENCIAL]% de todo o consumo do produto, o valor de investimento relativo aos laminados a frio 304, de [CONFIDENCIAL], se torna pouco relevante no contexto do segmento, fato que, segundo a Aperam, reforça a tese de baixa participação do aço inoxidável na maioria dos produtos fabricados.

Ademais, argumentou que segmentos como construção civil, saúde e alimentação possuem muitos players, sendo setores mais relevantes para os laminados a frio 304. Informou, além disso, que o mesmo acontece com as revendas do produto, que estão presentes em praticamente todas as cidades médias e grandes e que atendem pequenos serralheiros e projetistas/montadores de pequenos artefatos de utilidade comercial. Nesse sentido, alegou que a cadeia produtiva dos laminados a frio 304 é complexa, sendo composta por cerca de 5.000 empresas que trabalham não apenas com o produto, mas também com outros tipos de aço inoxidável, além de aço carbono, cobre, alumínio etc.

Além disso, informou que o mercado brasileiro de aços inoxidáveis é formado por dois grandes grupos: grandes clientes industriais, que se abastecem diretamente das usinas no mercado interno, ou por meio de importações, e os distribuidores. Segundo a empresa, destacam-se dentre os clientes industriais: grandes cutelarias, fabricantes de produtos da linha branca e de artigos para a construção civil, além do segmento de bens de capital. Já os distribuidores forneceriam o produto a um mercado formado por "pequenos e médios clientes dos mais diversos segmentos e, também, revendas". Nesse segmento, as vendas seriam realizadas em quantidades menores e de forma pulverizada, uma vez que o cliente final não teria interesse em manter estoques elevados em sua planta.

A parte destacou que o mercado brasileiro de laminados a frio 304 atingiu um volume de 78,8 mil toneladas em P5, sendo 24,8 mil toneladas relativas a compras diretas do consumidor final e 54,0 mil toneladas via distribuição, sendo que existem canais de distribuição, como: Distribuidor Integrado Aperam (DIA), Distribuidor Regular Aperam (DRA) e distribuidores independentes.

A Aprodinox informou, em seu questionário de interesse público, que seria difícil reduzir 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 Aperam seriam: linha branca, baixelas e cutelaria UD, automotivo, arquitetura e construção civil, açúcar e álcool, óleo e gás, bens de capital, tubos e alimentos. Já os segmentos atendidos pelos distribuidores de laminados a frio 304 seriam: bens de capital, construção civil, baixelas e cutelaria UD, açúcar e álcool, automotivo e linha

branca. A parte indicou, ainda, que a Aperam comercializa seus produtos com grandes clientes no mercado e por meio de distribuidores, com destaque para a Aperam Serviços, que seria verticalmente relacionada com a empresa.

Por fim, a Inconel e a Usina Metais, em seus questionários de interesse público, citaram a fabricação de tanques, tubos e equipamentos para frigoríficos como exemplos de aplicações dos laminados a frio 304. Por sua vez, a Inoxplasma informou estar inserida nas cadeias produtivas de produtos alimentícios, sucroalcooleiros, óleo e gás, farmacêuticos, papel e celulose, mineração, entre outros.

Assim, conclui-se, que os laminados a frio 304 integram a cadeia produtiva de diversos produtos, em segmentos como utilidades domésticas, construção civil, bens de capital, entre outros. Na cadeia a montante se encontram empresas produtoras de ferro-níquel, ferro-cromo, ferro-silício, ferro-manganês, entre outras ligas, e de reciclagem de sucatas de aço inox 304, verticalizadas ou não em relação aos produtores de laminados a frio 304.

Por sua vez, a cadeia a jusante dos laminados a frio 304 é formada por um número elevado de empresas, representantes dos diversos segmentos (linha branca, utilidades domésticas, construção civil, saúde e alimentação, tubos inox, indústria automotiva, transporte, bens de capital, entre outros) que o utilizam como insumo.

2.1.3 Substitutibilidade do produto sob análise

Nesta seção, objetiva-se averiguar se há outros produtos substitutos ao produto sob análise tanto pelo lado da demanda quanto pelo lado da oferta.

Sobre a substitutibilidade do produto sob a ótica da demanda, a Aperam, em seu questionário de interesse público, afirmou que, em aplicações como o segmento de bens de capital, os laminados a frio 304 são considerados essenciais, não havendo substitutos, tendo em vista suas características de resistência à corrosão e de boa estampabilidade. No entanto, de acordo com a empresa, em alguns segmentos, como o de construção civil (cubas, pias e elevadores) pode haver concorrência com outros produtos, ainda que apresentem despenho inferior. Ademais, indicou que, no segmento de utilidades domésticas, a cutelaria dispõe de produtos substitutos, tais como vidro, alumínio, cobre, plástico, que podem substituir produtos mais caros.

Além disso, argumentou, por meio da análise realizada pela Tendências, que os laminados a frio 304 concorrem com outros materiais, como aço carbono, pedras (mármore, granito, entre outros), produtos não ferrosos (alumínio, prata, bronze latão, entre outros), vidros e plástico. Segundo a empresa, a escolha do material não depende apenas do preço, sendo considerados, por exemplo, a vida útil do material, no caso de trocadores de calor de usinas de açúcar, e aspectos arquitetônicos, no caso de edifícios e elevadores.

Argumentou, ainda, que os laminados a frio 304 podem ser substituídos por outros tipos de aço, como os da série 400. Tal substituição seria possível em função da adição de elementos como o molibdênio e o nióbio, que aprimorariam as propriedades de resistência à corrosão e de condutibilidade térmica deste tipo de aço. De acordo com a Tendências, os aços da série 400 são compostos por ligas de ferro e cromo, não havendo níquel em sua composição. Com a substituição do níquel por outras ligas, seria possível reduzir o preço do produto, que "também deixa de oscilar em decorrência de alterações no preço do níquel".

Ademais, indicou que os aços da série 200, que são constituídos de ligas compostas por ferro, cromo e níquel (baixo teor em comparação com os laminados a frio 304, variando entre 1,8% e 4,0%), também poderiam substituir o produto objeto da análise, apesar de pouco utilizado, em vista da possibilidade de substituições inadequadas. Informou, por fim, que pode haver a substituição por aços que não são inoxidáveis, embora haja desvantagens em determinados atributos como vida útil, espessura e peso.

De acordo com a Aprodinox, em seu questionário de interesse público, o aço inox possui aplicações específicas, não havendo, assim, produtos que possam ser considerados substitutos pela ótica da demanda. Nesse sentido, informou desconhecer diferenças entre o produto fabricado no Brasil e o importado, com exceção de alguns acabamentos e larguras que não seriam fabricados no mercado doméstico. Diante disso, argumentou que o produto nacional pode ser substituído apenas pelo produto importado com as mesmas especificações.

No tocante à ótica da oferta, a Aprodinox afirmou que desconhece fabricantes de outros produtos com capacidade de passar a fabricar laminados a frio 304 no curto prazo (inferior a um ano) e com baixo investimento.

Ainda, a associação afirmou, em manifestação protocolada em 7 de julho de 2022, que os produtos laminados a frio de aço inoxidável possuem como características a resistência à corrosão, resistência mecânica adequada, facilidade de limpeza/baixa rugosidade superficial, aparência higiênica, facilidade de conformação, resistência a altas temperaturas, resistência a temperaturas criogênicas (abaixo de 0°C), resistência às variações bruscas de temperatura, acabamentos superficiais e formas variadas, forte apelo visual (modernidade, leveza e prestígio), excelente relação custo/benefício, baixo custo de manutenção e é um material reciclável, de modo que o produto seria amplamente utilizados em processos industriais e representam um insumo essencial à produção para diversos setores da economia brasileira.

Nesse sentido, argumentou que se trata de produto essencial para os consumidores brasileiros, de modo que não haveria substitutos: "os segmentos de indústria como alimentícia, de bebidas e química, não podem substituir seu maquinário feito de aço inoxidável, por maquinário produzido com outro tipo de aço".

Por fim, o CADE ressaltou, em seu questionário de interesse público, a inexistência de produtos substitutos aos laminados a frio 304. Nesse sentido, indicou que os produtos nacionais e importados são similares. Desse modo, alegou que a única forma de substitutibilidade do produto se daria entre os laminados nacionais e importados. Em manifestação protocolada pela em 20 de outubro de 2022 a Aprodinox corrobora o que foi relatado pelo CADE

Em manifestação protocolada em 3 de outubro de 2022 a Aperam reafirmou que o produto sob análise poderia ser substituído por outros tipos de aços inoxidáveis ou por alumínio, pedras, vidros, cerâmicas, dentre outros, dependendo a escolha do material da aplicação do produto, da sua viabilidade técnico-econômica,

Assim, conclui-se, a partir das manifestações das partes interessadas, que a substitutibilidade dos laminados a frio 304 sob a ótica da oferta se apresenta como improvável no curto prazo. Ademais, sob a ótica da demanda, os elementos acostados aos autos da avaliação de interesse público não permitiram 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 com que intensidade a eventual aplicação da medida de defesa comercial pode influenciar a relação entre estrutura do mercado e concorrência.

No tocante ao tema, o CADE afirmou, em seu questionário de interesse público, que o mercado brasileiro de laminados a frio 304 é formado por apenas um produtor nacional, a Aperam, responsável por 100% de sua produção.

Em sua resposta ao questionário de interesse público, a Aprodinox argumentou que a Aperam é a única fabricante de aço inox no Brasil e que a empresa adota condutas anticompetitivas "visando garantir que seus clientes e distribuidores não optem pela importação do produto". Conforme a associação, como não há produtos substitutos pela ótica da demanda ou da oferta, a estrutura de oferta do produto no mercado brasileiro estaria restrita ao produzido pela Aperam e às importações. Ainda, alegou que o mercado brasileiro é altamente concentrado, com as importações atuando como único elemento capaz de disciplinar os preços praticados pela indústria doméstica. Diante disso, argumentou que a aplicação da medida antidumping sobre as importações provenientes da África do Sul e da Indonésia eliminaria o único fator disciplinador dos preços domésticos, dada a existência de direito antidumping vigente às importações originárias da China, principal fabricante de laminados a frio 304 no mundo. Ressalta-se, contudo, que a investigação antidumping em relação às importações provenientes da África do Sul e da Indonésia foi encerrada por meio da Circular Secex nº 75, de 3 de novembro de 2021.

Por outro lado, a Aperam alegou, em seu questionário de interesse público, que não há poder de mercado por parte de nenhum player no mercado do produto objeto da análise, não havendo, assim, capacidade de controle de preços e/ou volume ofertados. De acordo com a empresa, esse fato seria corroborado pela verificação de existência de dano decorrente das importações de laminados a frio 304 originárias da Indonésia.

Nesse contexto, a Aperam, por meio da análise realizada pela Tendências, argumentou que a empresa não é capaz de exercer poder de mercado por, pelo menos, dois fatores:

- o mercado brasileiro seria aberto a importações e contaria com poucas barreiras à entrada; e

- com base em um mercado aberto, a precificação adotada pela Aperam não apresentaria evidências de poder de mercado, visto que ela segue os valores praticados no contexto mundial.

Segundo a Tendências, as importações dos laminados a frio 304 no Brasil ocorreram de maneira ininterrupta, crescente e a partir de diversas origens, que se alternam na participação do volume importado ao longo do tempo, características de um mercado competitivo com poucas barreiras à entrada. A Tendências indicou que, a partir de 2005, foram importados produtos de 45 origens diferentes, sendo que, no período de 2016 a 2020, o Brasil teria importado anualmente, em média, aço inox de 25 países diferentes.

Informou, também, que, além do crescimento do volume importado - passando de 16,4 mil toneladas em 2005 para 77,1 mil toneladas em 2020, as origens mais relevantes se alternariam com certa frequência: Alemanha, de 2005 a 2008, seguida de Taipé Chinês nos quatro anos seguintes, sendo ultrapassada pela África do Sul, que teria ocupado o posto até 2018, e depois pela China, em 2019, e pela Indonésia, em 2020. Argumentou, ademais, que outra evidência que os produtos importados poderiam entrar no mercado brasileiro sem muitas barreiras estaria na avaliação do índice C4: "entre 2005 e 2020, ele oscilou para baixo, partindo de 82% em 2005 para 68% em 2020 e passando por um mínimo de 51% em 2013".

Dessa forma, alegou que uma análise baseada apenas na participação de mercado da Aperam levaria à conclusão de um mercado potencialmente pouco competitivo, "quando na verdade ele apresenta características de baixas barreiras à entrada e de facilidade de se trocar de origem para importação do produto".

Em resposta a este argumento, a Aprodinox, em manifestação protocolada em 7 de julho de 2022, argumentou que os volumes de importação trazidos pela empresa Tendências abrangeria outros tipos de aço inoxidável, superestimando tais volumes, de modo que a análise não "aparenta ser adequada".

Já em 9 de setembro de 2022, a Aprodinox apresentou manifestação na qual reitera as informações apresentadas anteriormente.

Apresentadas as manifestações das partes, passa-se à análise da estrutura de mercado. A existência de estruturas concentradas pode conduzir ao poder excessivo de mercado das empresas, expresso na capacidade de cobrar preços em excesso aos custos, proporcionando maiores lucros às expensas do consumidor e, consequentemente, a diminuição do bem-estar da economia.

Nesse contexto, o Índice Herfindahl-Hirschman (HHI) pode ser utilizado para o cálculo do grau de concentração dos mercados. Esse índice é obtido pelo somatório do quadrado do market share de todas as empresas de um dado mercado. O HHI pode chegar até 10.000 pontos, valor no qual há um monopólio, ou seja, há uma única empresa com 100% do mercado.

De acordo com o Guia de Análise de Atos de Concentração Horizontal, emitido pelo CADE, 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 das participações de mercado das origens gravadas e de outros países exportadores do produto foram calculas de forma agregada, sem segmentação por empresa, no período entre P1 e P5, de acordo com os dados fornecidos na investigação de dumping e nas estatísticas de importações da RFB. A análise da composição do 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	Demais	HHI

P1	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5880
P2	80-70	0-10	0-10	0-10	0-10	0-10	0-10	0-10	6996
P3	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5948
P4	70-80	0-10	0-10	0-10	0-10	0-10	0-10	0-10	5891
P5	60-70	10-20	0-10	0-10	0-10	0-10	0-10	0-10	4854

Na análise dos extremos da série, observa-se que o HHI apresenta trajetória decrescente de P1 a P5. O intervalo de P1 a P2 é o único que registra crescimento do HHI, de 18,9%, seguido de reduções sucessivas nos intervalos seguintes - 14,9%, de P2 a P3, 0,9%, de P3 a P4, e 17,6%, de P4 a P5. De P1 a P5, o índice de concentração do mercado se reduziu em 17,4%, passando de 5.887 para 4.863 pontos de HHI. Dessa forma, o HHI do mercado brasileiro de laminados a frio 304 se manteve em níveis altamente concentrados ao longo do período de análise, de P1 a P5.

Nota-se que o aumento de concentração do mercado registrado entre P1 e P2 parece ser, em parte, explicado pelo aumento da participação de mercado da Aperam, que passou de [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P2, em detrimento das importações provenientes das origens não investigadas, que passaram de [CONFIDENCIAL] % de participação no mercado brasileiro em P1 para [CONFIDENCIAL] % em P2.

Por sua vez, a queda na concentração de mercado observada entre P2 e P5 parece ser, em parte, justificada pelo aumento da participação das importações no mercado brasileiro, que subiram de [CONFIDENCIAL] % em P2 para [CONFIDENCIAL]% em P5. Destaca-se o aumento na participação das importações da origem investigada, que passaram de [CONFIDENCIAL] % de participação em P2 para [CONFIDENCIAL] % em P5, as quais corresponderam à maior parte do crescimento das importações registrado no período.

Ademais, a queda na concentração observada no período parece ter sido impactada pela redução da participação das vendas da indústria doméstica no mercado interno, atingindo [CONFIDENCIAL] % em P5, ou seja, uma redução de [CONFIDENCIAL] p.p. entre P1 e P5.

A Aperam informou, em manifestação protocolada em 20 de outubro de 2022 que análise como HHI ou C4, quando observados isoladamente, mostram números elevados e que apontariam para um mercado concentrado, sendo assim é sugerido considerar as especificidades de cada caso.

No tocante aos atos de concentração no setor afetado, o CADE identificou o Ato de Concentração Econômica nº 08012.005092/2000-89, referente à operação de aquisição dos ativos da empresa Amorim S.A. Aços Inoxidáveis, além de participação acionária nas empresas Tubos Inoxidáveis Ltda. e Inoxtubos S.A., pela Acesita S.A. No processo, o mercado relevante foi delimitado ao de beneficiamento e distribuição de aços inoxidáveis laminados a frio e a quente com espessuras a partir de 0,15 mm (séries 3XX e 4XX), escopo que abrange produtos não abordados na presente análise.

De acordo com o órgão, a operação foi aprovada sem restrições, sendo ressaltada, todavia, preocupação com os riscos e efeitos de uma integração vertical quando realizada entre agentes econômicos horizontalmente concentrados. O CADE informou que o voto condutor registrou duas recomendações principais e determinou três itens de abstenção, endereçadas à Acesita e "endossadas à unanimidade pelo plenário":

"(..) a Acesita que, por sua posição dominante no mercado brasileiro de aços especiais deve, sob pena de infringir a ordem econômica e incorrer nas penas da Le1) praticar na venda de seus produtos, para todos os distribuidores, preço e pagamento em igualdade de condições com a Amorim, inclusive de crédito e de prazo.

2) respeitar os volumes retrospectivos e evolutivos de cada distribuidor no mercado, na quantificação e qualificação dos programas de compra dos distribuidores; demais Centros de Serviços/Distribuição. Além disso, a Acesita deve abster-se d1) criar qualquer obstáculo para que distribuidores de aço, quer seja de produtos da Acesita, quer não, importem produtos sem qualquer restrição, mesmo que estes produtos sejam concorrentes dos produtos da Acesita,2) criar qualquer sistema de vendas por consignação para a Amorim que não seja extensivo aos demais distribuidores Acesita; 3) privilegiar a Amorim com abastecimento especial em fluxo contínuo e direto de qualquer produto, ou dar-lhe vantagem que não seja extensiva aos seus demais Centros de Serviços/Distribuição."

Ainda, o CADE identificou o Processo Administrativo nº 08700.010789/2012-73, no qual houve alegações de descumprimento das orientações expressas pelo órgão em relação a práticas anticompetitivas no segmento de aços inoxidáveis, no âmbito do Ato de Concentração Econômica nº 08012.005092/2000-89. De acordo com o órgão, uma das práticas denunciadas foi a imposição de direitos antidumping, que se mostraria como barreira adicional, reforçando, assim, a posição dominante da Acesita/Aperam no mercado brasileiro.

Conforme o CADE, a Nota Técnica da Secretaria Geral (SG) 254/2013 sugeriu a abertura de processo administrativo, apontando preocupação com a prática de preços da Aperam: "como os preços cobrados pela empresa estavam acima do preço de mercado, haveria uma tendência de importações". No entanto, de acordo com o órgão, as importações estariam limitadas por meio de obrigação contratual imposta pela Aperam no que se refere a volumes mínimos de compra, "conferindo quase que uma exclusividade tácita para viabilizar a compra do produto da Aperam com preços mais elevados". O CADE apresentou o posicionamento da Secretaria Geral na Nota Técnica:

"cabe fazer a ressalva de que as questões relativas à ocorrência ou não de dumping no mercado em questão são de competência da SECEX, não cabendo ao Cade juízo quanto ao mérito da petição feita pela APERAM junto ao órgão do Ministério do Desenvolvimento, Indústria e Comércio Exterior (M"IC"). Não obstante, também integra o escopo fático deste processo o movimento da Aper-m - por meio de ações antidumping, de requisições de aumento da TEC e, possivelmente, das disposições contratuais ora analisad-s - de procurar impedir o avanço das importações no país".

Ademais, indicou que a Superintendência-Geral, por meio da Nota Técnica nº 12/2015/CGAA3/SGA1/SG/CAD, ressaltou que foram identificados potenciais indícios de condutas anticompetitivas no que tange, sobretudo, aos seguintes pontos da política comercial da Aperam à época:

- Tratamento privilegiado dos distribuidores que faziam parte do grupo integrante da APERAM e 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 "descontos aos distribuidores de acordo com o percentual do volume de compra que é dedicado à representada, sem qualquer aderência ao volume absoluto de compras efetiv"do" configurava uma forma de desconto não linear. Assim afirmou que tal política de desconto poderia ter como esco"o "restringir a concorrência das importações, sem contrapartidas de eficiência para a representada que eventualmente justifique a legitimidade da prát"ca".

O Processo Administrativo nº 08700.010789/2012-73 foi encerrado em abril de 2015, mediante Termo de Compromisso de Cessação, no qual a Aperam comprometeu-se a:

- "não praticar qualquer desconto não linear aos distribuidores que tenham por objeto ou efeito induzir a aquisição exclusiva de produtos da Compromissária";

- "abster-se de adotar cláusula que tenha por objeto ou efeito restringir a importação de aço inoxidável"; e

- "abster-se de impor qualquer alteração das políticas comerciais em função de qualquer decisão de importação ou compra de produto concorrente pelos distribuidores".

Dessa forma, o CADE argumentou que a potencial prática de restrições às importações foi considerada "clara e grave no Processo Administrativo". Ademais, o TCC previu o pagamento de contribuição pecuniária no valor de R$ 5.574.075,21, fundamentada em posicionamento da Superintendência-Geral à época:

"62. Como se percebe dos precedentes indicados, esta investigação se diferencia pelos seguintes fatos: (i) a Compromissária propôs uma proposta de acordo logo após a abertura do processo; (ii) o tempo de duração do processo, desde a denúncia até a proposta de acordo, foi inferior a 2 (dois) anos: (iii) embora não haja precisão do tempo de duração da conduta, há indícios de que ela foi inferior aos dois precedentes citados.63. Pesa contra a Compromissária o fato de ter sido alertada pelo Cade, no âmbito do Ato de Concentração n° 08012.005092/2000-89, para não adotar conduta discriminatória. Por isso, no entender da SG, a necessidade de repreensão via contribuição pecuniári". "No cálculo do seu valor, porém, a contribuição parece adequada, tendo em vista os precedentes citados."

O órgão destacou, contudo, que a celebração do TCC não configurou análise de mérito a respeito do objeto do referido Processo Administrativo. Da mesma forma, não restou configurada por parte da Aperam, seus gestores e prepostos, "confissão quanto à matéria de fato nem reconhecimento de culpa, ilegalidade ou qualquer irregularidade da conduta, e, por parte do CADE, não gera precedente sobre a matéria".

De acordo com a Nota Técnica nº 12/2015, o CADE informou que, "em casos de conduta unilateral em que, na maior parte dos casos, a ilicitude da prática depende de uma avaliação detalhada da estrutura do mercado, do seu padrão de competição e também das justificativas da prática em relação aos seus possíveis efeitos anticompetitivos, não é obrigatório, em todos os casos, o reconhecimento do ilícito quando da celebração do TCC". Dessa forma, o TCC pode ser celebrado sem que haja um entendimento final da autoridade acerca da ocorrência ou não da infração à ordem econômica.

Por fim, o CADE identificou o Procedimento Preparatório nº 8700.000841/2021-74, no qual a Aprodinox apresentou relatório explicitando as supostas condutas anticompetitivas que estariam sendo praticadas pela Aperam:

- "Prática de preços pela Aperam Serviços incompatíveis com o merca-o - prática de preços abaixo dos custos, prejudicando as margens de lucro dos demais distribuidores no mercado (margin squeeze);

- Regra discriminatória entre Distribuidores DIA (Distribuidor Integrado Aperam) e DRA (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 ineficiência produtiva por parte da Aperam diante de um mercado internacional competitivo é o principal motivo das condutas anticompetitivas da Aperam no mercado nacional. A falta de investimentos por parte da monopolista para acompanhar o mercado internacional, fez com que a Aperam se concentrasse em duas estratégias protecionistas: o uso recorrente de mecanismos de defesa comercial e a criação de condições anticompetitivas em benefício de sua distribuidora verticalmente integrada". Além disso, a Aprodinox teria 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 e que o segmento de distribuição é peça-chave para manutenção de um ambiente competitivo no setor". Na fase investigativa de tal processo, a Aperam apresentou documentação na qual nega todas as acusações. Por fim, o CADE informou que o processo se encontra em fase de instrução, não sendo proferida decisão de mérito por parte da autoridade quando do preenchimento do questionário de interesse público.

A respeito do Ato de Concentração Econômica nº 08012.005092/2000-89, a Aprodinox informou, em seu questionário de interesse público, que, à época, a Acesita S.A. era a única empresa fabricante de aços especiais no Brasil, sendo que a referida aquisição resultou na integração vertical entre a Acesita S.A. e a Amorim S.A. (atualmente Aperam Usina e Aperam Inox Serviços Brasil Ltda., segundo a associação). Desse modo, de acordo com a associação, houve a integração vertical entre:

- a produção de aços especiais (realizada pela Aperam, única produtora destes tipos de aço à época e atualmente) e a distribuição de tais produtos (a distribuição seria realizada pela Amorim S.A., atual Aperam Inox Serviços Brasil Ltda.); e

- a produção de aços especiais e os tubos de aços especiais (conforme a Aprodinox, a Inoxtubos utilizava os produtos da Aperam em seu processo produtivo).

A associação destacou, ainda, o Processo Administrativo nº 08700.010789/2012-73, em desfavor da Aperam em função de "práticas anticompetitivas que consistiam na discriminação de adquirentes de aço inoxidável, restrição às importações e favorecimento da distribuidora do mesmo grupo econômico da Aperam". Esse processo foi instaurado a partir de representações da empresa Inox-Tech e do Sindicato Nacional da Indústria de Trefilação e Laminação de Metais Ferrosos, doravante denominado "SICETEL".

Nesse sentido, resumiu as condutas denunciadas pela Inox-Tech no âmbito desse processo administrativo:

- a Aperam estaria desincentivando, via pressão de preços, as importações realizadas pelos maiores distribuidores brasileiros do produto; e

- a empresa também estaria favorecendo os distribuidores de seu grupo econômico.

De acordo com a parte, o estudo econômico apresentado pela Inox-Tech apresentado no Processo Administrativo nº 08700.010789/2012-73 indicava os seguintes mecanismos adotados pela Aperam:

- constituição da "RAD", uma rede de distribuição dos produtos da Compromissária, impondo a obrigação dos distribuidores "RAD" de adquirir 75% de sua demanda diretamente da Aperam;

- criação de um mecanismo denominado "Importação virtual", pela qual os distribuidores receberiam descontos caso não importassem produtos concorrentes aos da Compromissária e perderiam tais descontos gradativamente à medida que passassem a importar tais produtos;

- medidas antidumping utilizadas para onerar a importação de produtos concorrentes, com o objetivo de fechar o mercado e "impedir que distribuidores ganhem poder de mercado suficiente para operar somente com base em importações".

Além disso, conforme a associação, o SICETEL alegou no Processo Administrativo nº 08700.010789/2012-73 que a Aperam estaria se aproveitando de sua posição dominante no mercado brasileiro para "impor condições de venda abusivas a seus distribuidores, como limitação a importações sob pena de expulsão da rede credenciada e favorecimento à distribuidora própria verticalizada".

O Processo Administrativo nº 08700.010789/2012-73, conforme visto anteriormente, foi encerrado mediante Termo de Compromisso de Cessação. Além do destacado pelo CADE, a Aprodinox argumentou que a Aperam comprometeu-se também a não oferecer qualquer vantagem comercial à distribuidora do seu grupo econômico que não seja extensível aos demais distribuidores: "a Compromissária assume a obrigação de abster-se [...] conceder qualquer vantagem à distribuidora de seu grupo, em especial relativa a preço, condições de pagamento e abastecimento, que não seja extensível aos 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 criação do programa Força Inox Aperam, que criou os modelos vigentes de relacionamento com os distribuidores, objetos de análise do item 2.3.4 deste parecer. No TCC, segundo a associação, a Aperam teria se comprometido a praticar os mesmos preços e prazos de pagamento para os distribuidores DIA e DRA, quando adquiridos volumes idênticos, além de condições cadastrais e de crédito equivalentes. Por fim, indicou que o prazo estabelecido no TCC foi de cinco anos, período que se encerrou em abril de 2020. No entanto, os efeitos devem subsistir por tempo indefinido, conforme trecho do TCC trazido pela parte:

"8. DO PRAZO DE VIGÊNCIA

8.1. O Acordo vigerá por um período de 5 (cinco) anos, contados a partir da assinatura deste TCC, sem prejuízo do cumprimento das

obrigações em caráter definitivo, a fim de que sejam asseguradas as condições de concorrência no mercado brasileiro de prestação de serviços de beneficiamento e distribuição de aços planos inoxidáveis.

8.2. A obrigação prevista na cláusula terceira, itens 3.1, 3.2, 3.3 e 3.4 subsiste mesmo após o decurso de prazo previsto no item 8.1,

ressalvada a eventual hipótese de modificação da legislação antitruste que autorizem expressamente essas condutas."

Cabe ressaltar que as práticas e condutas na análise concorrencial se apresentam em nicho de produto maior, ou seja, não especificamente atrelada ao produto sob análise.

Assim, verifica-se que o aumento da participação das importações da origem sob análise, aliado à queda de participação da indústria doméstica, contribuíram para o movimento de desconcentração do mercado brasileiro de laminados a frio 304 entre P1 e P5, ainda que este tenha sido altamente concentrado em todos os períodos analisados.

2.2 Oferta internacional do produto sob análise

A análise da oferta internacional busca verificar a disponibilidade de produtos similares ao produto objeto da investigação. Para tanto, verifica-se a existência de fornecedores do produto igual ou substituto em outras origens não investigadas pela prática de subsídios acionáveis. Nesse sentido, é necessário considerar também os custos de internação e a existência de barreiras à importação dessas origens, como barreiras técnicas.

2.2.1 Origens alternativas do produto sob análise

2.2.1.1 Capacidade produtiva do produto sob análise

Em seu questionário de interesse público, a Aperam apresentou dados de capacidade produtiva de laminados a frio por país, extraídos do relatório CRU Monitor Steel, de maio de 2019. Vale destacar que esses dados englobam outros produtos laminados a frio, além do produto objeto da presente avaliação de interesse público. Os dados de capacidade mundial dos 10 (dez) maiores produtores de laminados a frio estão consolidados na tabela a seguir, considerando o período de 2015 a 2023, sendo dados reais de 2015 a 2018 e estimativas de 2019 a 2023.

Capacidade de produção de laminados a frio por país. 2015-2023 (em mil toneladas).									
Origem	2015	2016	2017	2018	2019	2020	2021	2022	2023
China	14.175	15.305	16.155	16.990	17.895	19.135	19.585	19.885	19.885
Índia	2.236	2.236	2.336	2.646	3.546	3.946	3.946	3.946	3.946
EUA	2.595	2.390	2.475	2.755	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	1.986
Japão	1.877	1.877	1.877	1.877	1.877	1.877	1.877	1.877	1.877
Taipé Chinês	1.668	1.668	1.768	1.768	1.768	1.768	1.768	1.768	1.768
Indonésia	150	150	150	350	550	850	850	850	850
França	850	850	850	850	850	850	850	850	850
Itália	775	775	843	843	843	843	843	843	843
Finlândia	750	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	4.795
Total	31.836	32.631	33.864	35.609	37.614	39.554	40.004	40.304	40.304

Assim, a China, origem gravada pela medida antidumping aplicada por meio da Portaria nº 4.353, de 2019, seria o país com maior capacidade de produção de laminados a frio no mundo, representando 47,7% da capacidade produtiva do referido produto em 2018, tendo apresentado elevação de 19,9% entre 2015 e 2018 e de 17,0% entre 2018 e 2023, período de dados estimados pela publicação. Em seguida, aparecem EUA e Índia, com participações de 7,7% e de 7,4% na capacidade produtiva mundial do produto em 2018, respectivamente.

Ademais, Taipé Chinês, outra origem gravada pela medida antidumping, aparece como sexto país com maior capacidade produtiva em 2018, representando 5,0% da capacidade mundial. Por fim, a Indonésia, origem objeto da presente avaliação de interesse público, figura como décimo quinto país mais representativo em termos de capacidade produtiva do produto em questão, com participação de 1,0% no mesmo ano.

Vale destacar, no caso da Indonésia, que os dados referentes ao ano de 2018 parecem não englobar o crescimento da capacidade instalada observado nos anos seguintes. Ressalta-se, dessa forma, que as estimativas apresentadas para o ano de 2020 já demonstram que a Indonésia seria a sétima origem com maior capacidade instalada no mundo, com participação de 2,1%.

Desse modo, em 2018, as origens não gravadas ou não investigadas foram responsáveis por 46,3% da capacidade produtiva global de laminados a frio, enquanto as origens gravadas ou investigada respondem por 53,7% da capacidade, conforme os dados apresentados pela Aperam.

A empresa apresentou, além disso, estimativas de produção mundial, com base no mesmo relatório, cujos dados estão consolidados a seguir:

Produção de laminados a frio por país/bloco. 2015-2023 (em mil toneladas).

Origens	2015	2016	2017	2018	2019	2020	2021	2022	2023
China	10.883	12.381	13.380	14.269	14.466	15.208	15.810	16.592	17.285
Índia	1.734	1.854	1.943	2.112	2.217	2.410	2.579	2.782	2.972
EUA	1.460	1.513	1.631	1.686	1.737	1.805	1.853	1.889	1.903
Japão	1.369	1.358	1.463	1.460	1.439	1.444	1.498	1.536	1.574
Taipé Chinês	1.051	1.270	1.306	1.252	1.168	1.217	1.268	1.309	1.345
Coreia do Sul	1.186	1.219	1.263	1.223	1.238	1.284	1.344	1.388	1.430
Finlândia	740	770	753	718	728	715	709	723	738
Itália	612	612	630	631	693	686	702	724	737
França	505	498	509	544	562	586	591	608	619
Bélgica	465	474	481	485	470	554	579	580	600
Demais origens	2.738	2.772	2.892	3.158	3.369	3.474	3.658	3.802	3.923
Total	22.743	24.723	26.250	27.538	28.086	29.382	30.591	31.933	33.125

No que se refere à produção mundial de laminados a frio, a China foi a origem mais relevante, sendo responsável por uma parcela de 47,9% da produção em 2015 e atingindo 51,8% em 2018. Nesse período a produção chinesa cresceu 31,1%, enquanto a previsão de crescimento entre 2018 e 2023 alcança 21,1%. Em seguida, aparecem India e EUA, com participações de 7,6% e de 6,4% na produção mundial do produto em 2018, respectivamente. Novamente, Taipé Chinês aparece em uma posição relevante, sendo o quinto maior produtor de laminados a frio no período.

Já a Indonésia, origem investigada, apresentou pequena participação na produção mundial do 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 observado nos anos seguintes. Ressalta-se, dessa forma, que as estimativas apresentadas para o ano de 2020 demonstram que a Indonésia seria a décima primeira origem com maior produção global, com participação de 1,9%.

Desse modo, em 2018, as origens não gravadas ou não investigadas foram responsáveis por 42,6% da produção global de laminados a frio, enquanto as origens gravadas ou investigada respondem 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 Forum (ISSF), referente ao ano de 2020. A Associação destacou que estes dados se referem a todos os tipos de aços inoxidáveis e que os laminados a frio 304 corresponderiam a cerca de 25,97% do total.

Os dados de produção mundial dos 5 (cinco) maiores produtores de aços inoxidáveis estão consolidados na tabela a seguir, considerando o período de 2015 a 2019. Foram consideradas apenas os 5 maiores, tendo em vista que algumas origens foram apresentadas de forma agregada, como, por exemplo, Finlândia, Suécia e Reino Unido. Registre-se, ainda, que origens relevantes não tiveram seus dados desagregados para o ano de 2019, sendo alocados na linha "Outras Origens". Diante disso e considerando que os dados reais apresentados pela Aperam se referem até o ano de 2018, utilizou-se como parâmetro de 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	3.933
Japão	3.175	3.328	3.061	3.093	3.168	3.283	2.963
EUA	2.030	2.389	2.346	2.481	2.754	2.808	2.593
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	13.328
Total	38.506	41.686	41.548	45.778	48.081	50.730	52.218

Assim como visto nos dados trazidos pela Aperam, a China foi a origem mais relevante, sendo responsável por uma parcela de 49,3% da produção mundial em 2013 e atingindo 52,6% em 2018. Nesse período, a produção chinesa cresceu 40,7%. Em seguida, aparecem Índia e Japão, com participações de

7,4% e de 6,5% na produção mundial do produto em 2018, respectivamente.

Nesse contexto, Indonésia e Taipé Chinês aparecem em posições relevantes, sendo responsáveis por 4,3% e 2,3% da produção mundial de aços inoxidáveis no período, respectivamente. Desse modo, em 2018, as origens não gravadas ou não investigadas foram responsáveis por 40,7% da produção global de aços inoxidáveis, enquanto as origens gravadas ou investigadas respondem por 59,3%, de acordo com os dados apresentados pela Aprodinox.

2.2.1.2 Exportações mundiais do produto sob análise

Com o objetivo de analisar a oferta internacional do produto, buscou-se identificar os maiores exportadores mundiais dos produtos classificados nos códigos 7219.32, 7219.33, 7219.34, 7219.35 e 7220.20 do Sistema Harmonizado (SH), conforme tabela a seguir. Ressalta-se que, por não ser possível a depuração das estatísticas internacionais de maneira desagregada, dada a ausência de detalhamento dos produtos abarcados nos volumes identificados, os dados de exportação em questão podem incluir produtos classificados no mesmo código tarifário, mas distintos dos laminados a frio 304.

Lista dos países exportadores de laminados a frio 304 em 2020			
	Origens	Volume Exportado (t)	Participação nas exportações mundiais (%)
1	China	958.398,67	15,2%
2	Indonésia	628.562,02	9,9%
3	Taipé 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 Comtrade, da Organização das Nações Unidas (ONU), em toneladas, observa-se que a China foi o maior exportador mundial do produto classificado nos códigos tarifários de referência em 2020, com 15,2% das exportações mundiais. Em segundo lugar aparece a Indonésia, origem investigada, com 9,9% de participação, em terceiro Taipé Chinês, com 9,5%. De acordo com os dados do Comtrade, 62 (sessenta e dois) países/territórios exportaram produtos classificado nos códigos de referência em 2020. Cumpre registrar, conforme apresentado no item 1.1, que a China e Taipé Chinês são origens gravadas por medida antidumping, cuja prorrogação se deu por meio da Portaria nº 4.353, de 2019.

Em termos de origens não investigadas ou não gravadas por medidas antidumping, a principal origem exportadora mundial foi a Itália, responsável por 8,3% do volume total exportado, seguida pela Coreia do Sul (7,6%), Holanda (7,0%), Bélgica (5,3%) e França (5,1%), as quais ocupam posição relevantes em termos de exportações mundiais.

Em resumo, observa-se que as origens não gravadas ou não investigadas são responsáveis por 65,4% das exportações globais de laminados a frio 304, enquanto as origens gravadas ou investigadas respondem por 34,6% das exportações do referido produto.

Nesse sentido, a Aprodinox destacou que as principais origens alternativas do produto eram alvo de medidas antidumping por parte do governo brasileiro, sendo que, até outubro de 2019, estavam em vigor direitos antidumping contra as importações de laminados a frio 304 originárias da China, Taipé

Chinês, Alemanha, Coreia do Sul, Finlândia e Vietnã. Apenas as medidas antidumping aplicadas às importações da China e de Taipé Chinês foram prorrogadas até 2024.

Por outro lado, a Aperam ressaltou o potencial exportador da origem investigada, representado pelo excedente exportável da Indonésia, calculado pela empresa. A parte calculou, com base na publicação internacional CRU Monitor Steel de agosto de 2017, o excedente exportável como uma diferença entre a capacidade instalada da origem e as vendas para o mercado doméstico e internacional, entre P1 e P3, e como a diferença entre a capacidade e as exportações da origem para P4 e P5. De acordo com a Aperam, como os dados da publicação apresentam apenas estimativas para P4 e P5, foi necessário utilizar os dados de exportação obtidos na plataforma TradeMap. Contudo, tal metodologia desconsidera eventuais consumos cativos do produto, além de não considerar as vendas domésticas entre P4 e P5.

Ainda, o cenário internacional pode ser analisado a partir da perspectiva do preço médio praticado. Com base nos dados disponibilizados pelo Comtrade, identificou-se o preço médio praticado pelos principais exportadores listados anteriormente do produto classificado nos códigos SH em questão, tendo em vista o ano de 2020. Os valores identificados estão expostos na tabela e no gráfico de dispersão a seguir:

Preço médio das exportações de laminados a frio 304. 2020	
Origens	US$/t
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/t) foi o segundo mais baixo dentre todas as origens mais relevantes, sendo 34,3% inferior à média de preço geral. Ademais, os preços médios das possíveis origens alternativas África do Sul (menor preço praticado dentre todas as origens), Itália, Coreia do Sul, Holanda e Bélgica estiveram abaixo da média total de preços, enquanto o preço médio 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 acima, buscou-se também referenciar as importações de tais origens com base em suas exportações líquidas (saldo das exportações menos importações) do produto, em toneladas, classificado nos códigos 7219.32, 7219.33, 7219.34, 7219.35 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

Coreia do Sul	478.630	203.728	274.901
Holanda	442.448	581.170	-138.722
Bélgica	333.514	84.303	249.210
França	319.618	128.786	190.832
Alemanha	302.116	918.444	-616.328
Espanha	260.632	64.890	195.742
Japão	244.175	132.544	111.631
EUA	179.908	157.153	22.755
África do Sul	142.952	13.556	129.396
Malásia	131.899	87.595	44.304
Suécia	101.315	66.240	35.075

Verifica-se que, em 2020, a Indonésia apresentou superávits comerciais nas transações de laminados a frio, sendo, assim, uma origem exportadora líquida.

Dentre os países com potencial exportador elevado, poucas origens não investigadas ou não gravadas por medida de defesa comercial obtiveram superávits comerciais, podendo, a princípio, serem caracterizadas como origens de perfil exportador com base na composição de exportação e de fluxo de comércio. Destacam-se, nesse contexto, a Coreia do Sul, Bélgica, França, Espanha, Africa do Sul e Japão.

2.2.1.4 Importações brasileiras do produto sob análise

No exame de possíveis fontes alternativas, há ainda que se observar o perfil recente das importações brasileiras. Assim, a tabela abaixo apresenta o volume de importações brasileiras de laminados a frio 304 por origem, durante o período de análise de dano da investigação de dumping, conforme depuração realizada no âmbito dos Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial). Os dados expostos desconsideram as importações de produtos laminados a frio de graus diversos do 304 e/ou com espessura inferior a 0,35 mm ou igual ou superior a 4,75 mm, chapas perfuradas, placas de desgaste, placas de fricção, perfis, pratos, chapas de transferêncinimação recalçadas, fitas de vedação, telhas, acessórios para escapamentos, alça de cabo de 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
Taipé Chinês	100,0	-	-	187,1	992,3
Finlândia	100,0	-	-	142,9	1.338,1
Coréia 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 brasileiras de laminados a frio 304 ao longo do período analisado. De P1 a P5, o volume total das importações brasileiras, em toneladas, cresceu 74,0%. Esse aumento é causado, destacadamente, pelas importações originárias da Indonésia, que cresceram 3.047% de P1 a P5 e dos EUA, que registraram elevação de 63,5% no período. O período de maior elevação das importações provenientes da Indonésia ocorreu de P3 a P5, quando passaram de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas - aumento de 2.389,6%. Por

outro lado, as importações originárias da África do Sul declinaram 15,7% entre P1 e P5. Destaque-se, ainda, o crescimento das importações originárias da Malásia (129,7% entre P1 e P5), que, tendo em vista o procedimento de desqualificação de origem realizado por esta Secex, não representa necessariamente a produção dessa origem.

O resultado destes movimentos foi de declínio de 1,4% das importações não investigadas entre P1 e P5. O crescimento das importações provenientes dos EUA foi contrabalanceado pela redução das importações sul-africanas. Portanto, enquanto as importações investigadas apresentaram elevação substancial, as importações não investigadas registraram decréscimo.

No caso da China, origem gravada com a renovação da medida antidumping realizada por meio da Portaria nº 4.353, de 2019, as importações provenientes desse país apresentaram redução de 46,1% entre P1 e P5, alcançando [CONFIDENCIAL] toneladas em P5. Já as importações provenientes de Taipé Chinês, outra origem gravada pela medida antidumping, aumentaram 891,6% no período ao alcançar [CONFIDENCIAL] toneladas em P5.

No tocante às origens desgravadas a partir da edição da Portaria nº 4.353, de 2019 (Alemanha, Coreia do Sul, Finlândia e Vietnã), é possível notar que não houve elevação relevante no volume importado pelo Brasil: a maior elevação observada refere-se às importações provenientes da Finlândia, que cresceram [CONFIDENCIAL] toneladas. Vale ressaltar, contudo, o curto período de tempo de avaliação do crescimento de tais importações, uma vez que a desgravação ocorreu em 2 de outubro de 2019 e 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 brasileiras 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]
Taipé Chinês	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Finlândia	[0-10]	[0-10]	[0-10]	[0-10]	[0-10]
Coréia 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 no volume total importado pelo Brasil em P5. China e Taipé Chinês, origens gravadas por medida de defesa comercial, foram conjuntamente responsáveis por [CONFIDENCIAL] % do volume importado pelo Brasil em P5.

Dentre as origens não investigadas, destaca-se os EUA, que, apesar da perda 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, apesar de ter perdido [CONFIDENCIAL] p.p. de participação, representou [CONFIDENCIAL] % do total importado pelo Brasil de laminados a frio 304 em P5.

Nesse sentido, a Aprodinox ressaltou, em seu questionário de interesse público, a relevante participação da origem investigada no volume importado pelo Brasil. A associação alegou que essa participação não seria causada pela prática de dumping, mas sim pela reduzida gama de origens

disponíveis para aquisição do produto no mercado internacional. Destacou, ademais, que a Indonésia iniciou a produção de laminados a frio 304 em 2018, tendo importações significativas apenas a partir de P4.

Além disso, o CADE alegou, em seu questionário de interesse público, que existem potenciais preocupações concorrenciais em relação aos efeitos de uma medida compensatória no tocante à contestação internacional no setor. Na visão do órgão, aparentemente haveria cinco possíveis origens alternativas, sendo a China e Taipé Chinês, ambas origens gravadas por medida de defesa comercial, a Indonésia, origem objeto da análise, EUA e África do Sul. No caso da África do Sul, vale recordar que a investigação antidumping em relação à origem foi encerrada sem julgamento de mérito. Argumentou, ademais, que as importações provenientes da Malásia, outra possível origem alternativa, "também estão proibidas em razão de descumprimento de regras de origem".

Isso posto, nota-se relevante aumento das importações de laminados a frio 304 (74,0%) ao longo do período analisado, sendo que a maior parte desse aumento se deve ao crescimento das importações originárias da Indonésia e dos EUA. No caso da África do Sul, apesar da redução do volume importado ao longo do período, conclui-se que esta origem se mantém como uma das principais origens das importações brasileiras de laminados a frio 304. Constata-se, durante o período analisado, a existência de duas possíveis origens alternativas relevantes em termos de volume importado pelo Brasil, quais sejam, os EUA e a África do Sul, com participações de [CONFIDENCIAL], respectivamente, nas importações brasileiras do produto. Ressalta-se também a desgravação das origens Alemanha, Coreia do Sul, Finlândia e Vietnã a partir de outubro de 2019, cujo efeito ainda não pôde ser totalmente observado no período de disponibilidade dos dados.

2.2.1.5 Preço das importações brasileiras do produto sob análise

Para aprofundar o exame da existência de possíveis fontes alternativas do produto, também é importante verificar a evolução de preços cobrados pelas principais origens das importações brasileiras. Conforme a investigação de defesa comercial, a análise foi realizada em base CIF de forma a tornar a análise do valor das importações mais uniforme, considerando que o frete e o seguro, dependendo da origem considerada, têm impacto relevante sobre o preço de concorrência entre os produtos ingressados 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
Taipé 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 laminados a frio 304 foi de [CONFIDENCIAL], tendo registrado redução de 10,7% entre P1 e P5.

O preço médio das importações da Indonésia foi de [CONFIDENCIAL] em P5, tendo sofrido uma redução de 26,8% entre P1 e P5. Por sua vez, o preço médio das importações das demais origens foi de [CONFIDENCIAL] em P5, valor 6,2% inferior ao registrado em P1.

Considerando individualmente os preços das origens analisadas, observa-se que o preço médio do produto originário da África do Sul foi de [CONFIDENCIAL] em P5, registrando queda de 3,8% em comparação com P1. Já o preço médio do produto importado da Indonésia foi de [CONFIDENCIAL] em P5, tendo registrado declínio de 26,8% em relação a P1. Os EUA, origem não investigada mais relevante em termos de volume importado pelo Brasil, praticaram preço médio de [CONFIDENCIAL] em P5, valor 15,5% superior ao praticado pela origem investigada no período.

Nota-se, nesse sentido, que o preço médio praticado pela Indonésia foi inferior ao praticado pelas demais origens em todos os períodos. Dentre as origens não investigadas, o preço médio de importação da África do Sul foi inferior ao da Indonésia entre P1 e P4, enquanto os EUA praticaram preços superiores aos da origem investigada de P2 a P5.

2.2.1.6 Conclusões sobre as origens alternativas

Sendo assim, considerando os elementos trazidos aos autos para fins de conclusões da presente avaliação de interesse público, observa-se o seguinte:

- no tocante à capacidade instalada e produção mundial relativa aos laminados a frio 304, estima-se que a Indonésia seria pouco representativa em termos de participação, atingindo 1,0% da capacidade e 1,9% da produção mundial em 2018. Registre-se, contudo, que tais dados não englobam o crescimento produtivo e de capacidade instalada da Indonésia nos anos seguintes, até alcançar 2,1% de participação na capacidade instalada mundial em 2020, conforme dados apresentados pela Aperam. Vale lembrar, além disso, que a China e Taipé Chinês, origens gravadas, são países com participação relevante em termos de capacidade produtiva e de produção mundial dos laminados a frio 304, sendo a China o país mais relevante. Nesse sentido, de acordo com os dados da publicação CRU Monitor Steel, as origens gravadas ou investigada responderiam por 53,7% da capacidade produtiva global dos laminados a frio 304 e por 57,4% da produção mundial em 2018. Os dados da publicação ISSF, apresentados pela Aprodinox, demonstram comportamento semelhante, sendo que a origem investigada ou gravadas por medida antidumping são responsáveis por 59,3% da produção mundial do produto, conforme os dados;

- sobre as exportações do produto, a Indonésia correspondeu a 9,9% do volume exportado mundial em 2020, sendo o segundo país mais relevante em termos de volume exportado. Novamente, China e Taipé Chinês, origens gravadas, respondem por parcela relevante do comércio mundial de laminados a frio 304, com participação conjunta de 24,6%. As possíveis origens alternativas, com destaque para a Itália, Coreia do Sul, Holanda, Bélgica, França, EUA, corresponderam a 65,4% do volume exportado nesse período;

- o preço médio de exportação praticado pela Indonésia foi o segundo mais baixo dentre todas as origens relevantes, sendo 34,3% inferior à média de preço geral.. Destaque-se, ainda, que a África do Sul praticou o menor preço dentre as origens relevantes, sendo 36,0% inferior à média geral. Ademais, os preços médios das demais possíveis origens alternativas Itália (US$ 2.434,13/t), Coreia do Sul (US$ 1.961,55/t), Holanda (US$ 2.389,92/t) e Bélgica (US$ 2.571,83/t) estiveram abaixo da média total de preços, enquanto o preço médio da França (US$ 2.847,24/t) e dos EUA (US$ 3.087,15/t) estiveram acima da média;

- em termos da balança comercial, em 2020, a Indonésia apresentou superávit comercial nas transações de laminados a frio 304. Das origens com potencial exportador elevado, observa-se que as origens não investigadas EUA, Coreia do Sul, Bélgica e França obtiveram superávits comerciais, podendo, a princípio, se caracterizarem como origens de perfil exportador com base na composição de exportação e de 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 desse aumento se deve ao crescimento das importações originárias da Indonésia e dos EUA, que registraram elevação de 3.047,0% e de 63,5%, respectivamente, no período. Constata-se, assim, que os EUA são a principal origem alternativa, com participação de [CONFIDENCIAL] % no volume importado pelo Brasil em P5, seguido da África do Sul, com participação de [CONFIDENCIAL] % no período; e

- em relação aos preços das importações, nota-se que a Indonésia praticou preços médios inferiores às demais origens, sendo o menor preço em P5. Já a África do Sul, outra origem alternativa relevante em termos de volume importado, praticou preços inferiores à Indonésia entre P1 e P4. Os EUA,

origem alternativa mais relevante, praticaram preço médio 15,5% superior ao preço médio das importações investigadas em P5.

Assim, foram observadas evidências que caracterizam a Indonésia como uma origem de destaque em termos globais, sobretudo quando se considera sua posição em termos de exportações mundiais, sendo o segundo país mais relevante. Além disso, essa origem possui perspectivas de crescimento da capacidade produtiva e da produção dos laminados a frio 304, fazendo com que o país se torne mais relevante em termos de comércio mundial. Há evidências de perfil exportador em termos de balança comercial para a origem.

Ressalta-se, ainda, que a China e Taipé Chinês, produtores mundiais relevantes, estão gravados por medida antidumping. Desse modo, as origens gravadas ou investigadas respondem por mais da metade da produção e da capacidade produtiva mundial dos laminados.

Por outro lado, há elementos que indicam que a África do Sul não está entre as principais origens para fornecimento de laminados a frio 304 no mundo, visto que não há indícios de participação relevante em termos de capacidade produtiva, produção ou volume de exportação mundial. No entanto, tal origem, apesar da redução do volume importado ao longo do período, manteve-se como uma das principais origens das importações brasileiras de laminados a frio 304, sendo a segunda origem não gravada ou investigada mais relevante, com participação de [CONFIDENCIAL] % no volume total importado pelo Brasil em P5. Destaque-se, ainda, que a origem praticou preços inferiores aos praticados pela Indonésia entre P1 e P4, sendo a origem alternativa mais relevante em termos de penetração das importações ao longo de P1 a P5.

Além disso, os EUA também se destacam como origem alternativa relevante, com participação de [CONFIDENCIAL] % no volume importado pelo Brasil em P5, embora com um preço médio 15,5% superior ao praticado nas importações advindas da origem investigada. Apesar de outros produtores importantes como Itália, Bélgica, Coreia do Sul, Holanda e França também comercializarem o produto no mercado brasileiro, os volumes exportados por essas origens atualmente são muito inferiores aos provenientes da Indonésia. Além disso, dentre tais origens, apenas a Bélgica, a Coreia do Sul e a França são exportadoras líquidas do produto.

Em suma, a África do Sul revelou-se capaz de rivalizar com a origem sob análise em termos de volume e preço importado, sendo a segunda origem mais relevante nas importações brasileiras do produto. Da mesma forma, os EUA também se consolidaram como uma possível origem alternativa em termos de produção disponível para exportação ao Brasil, além de ser a origem alternativa mais relevante nas importações brasileiras do produto em P5, porém com preço médio superior ao praticado pela 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 gravadas com medidas de defesa comercial pelo Brasil e ainda se há casos de aplicação por outros países de medidas de defesa comercial para o mesmo produto. Com isso, aprofundam-se as considerações sobre a viabilidade de fontes alternativas e obtêm-se indícios da frequência da prática de dumping e de subsídios acionáveis no mercado em questão.

Conforme apresentado no item 1.1, os laminados a frio 304, comumente classificados nos códigos 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM, são objeto de aplicação de medida de defesa comercial pelo Brasil quando importados da China e de Taipé Chinês, consoante Portaria nº 4.353, de 2019.

Em consulta ao Portal Integrado de Inteligência Comercial (Integrated Trade Intelligence 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 aplicadas 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	26/06/2014

Antidumping	União Europeia	Taipé Chinês	26/06/2014
Antidumping	Índia	China	22/04/2009
Antidumping	Índia	Taipé Chinês	22/04/2009
Antidumping	Índia	Tailândia	22/04/2009
Antidumping	Índia	EUA	22/04/2009
Antidumping	Índia	União Europeia	22/04/2009
Antidumping	Índia	Coreia do Sul	22/04/2009
Antidumping	Índia	África do Sul	22/04/2009
Antidumping	Malásia	China	08/02/2018
Antidumping	Malásia	Coreia do Sul	08/02/2018
Antidumping	Malásia	Taipé Chinês	08/02/2018
Antidumping	Malásia	Tailândia	08/02/2018
Antidumping	Taipé Chinês	China	15/08/2013
Antidumping	Taipé Chinês	Coreia do Sul	15/08/2013
Antidumping	Taipé Chinês	Rússia	18/12/2015
Antidumping	Tailândia	China	10/12/2013
Antidumping	Tailândia	Japão	13/03/2003
Antidumping	Tailândia	Coreia do Sul	13/03/2003
Antidumping	Tailândia	Taipé Chinês	13/03/2003
Antidumping	EUA	China	03/04/2017
Antidumping	EUA	Japão	27/07/1999
Antidumping	EUA	África do Sul	27/07/1999
Antidumping	EUA	Taipé Chinês	27/07/1999
Antidumping	EUA	Coreia do Sul	07/07/1999
Antidumping	Vietnã	China	04/10/2014
Antidumping	Vietnã	Indonésia	04/10/2014
Antidumping	Vietnã	Malásia	04/10/2014
Antidumping	Vietnã	Taipé Chinês	04/10/2014
Medida Compensatória	Índia	China	07/09/2017
Medida Compensatória	Taipé Chinês	China	09/10/2019
Medida Compensatória	EUA	China	03/04/2017
Medida Compensatória	EUA	Coreia do Sul	06/08/1999

No período de referência, encontravam-se em vigor 33 (trinta e três) medidas de defesa comercial relacionadas aos códigos tarifários em questão, sendo 29 (vinte e nove) direitos antidumping e 4 (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 de dumping por parte da autoridade investigadora da Índia, em relação às importações de laminados a frio, quando originárias da China, União Europeia, Indonésia, Japão, Coreia do Sul, Malásia, México, Singapura, África do Sul, Taipé Chinês, Tailândia Emirados Árabes, EUA e Vietnã. Deve-se mencionar também que a Indonésia estaria conduzindo uma investigação de dumping em relação às importações originárias da China e da Malásia. Por fim, foi iniciada investigação de dumping por parte do México em relação às importações provenientes da China e de Taipé Chinês.

A Aperam e a Aprodinox, em seus questionários de interesse público, fizeram menção também à adoção da Seção 232 pelos EUA, implementando sobretaxas nas importações do país de aço e alumínio. As partes afirmaram, ainda, que, essas tarifas afetam a maior parte dos parceiros comerciais dos EUA, inclusive a origem investigada.

Por fim, as empresas alegaram que os laminados a frio 304 estariam no escopo das medidas de salvaguardas aplicadas pela União Europeia em 1º de fevereiro de 2019, "no montante de 25%, a incidir sobre o volume que exceder a média simples do volume das importações dos anos de 2015 a 2017". No entanto, tal medida não foi encontrada na base de dados I-TIP.

2.2.2.2 Tarifa de importação

Para avaliar as condições tarifárias do país no nível do produto frente à concorrência internacional, buscou-se comparar a tarifa de importação brasileira com as tarifas médias de outros países.

Os laminados a frio 304 são normalmente classificados nos subitens tarifários 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00 e 7220.20.90 da NCM. A tarifa do imposto de importação destes subitens manteve-se inalterada em 14% durante o período de análise, conforme Resolução Camex nº 94, de 8 de dezembro de 2011, e Resolução Camex nº 125, de 15 de dezembro de 2016.

Para comparação da tarifa brasileira com o cenário internacional, faz-se necessário adotar níveis mais agregados dos códigos tarifários, correspondentes à nomenclatura de 6 (seis) dígitos do SH. De forma a comparar a tarifa brasileira de 14% para o produto sob avaliação em P5, calculou-se a média simples das tarifas de Nação Mais Favorecida reportadas pelos países membros da OMC, excluindo o Brasil (totalizando 131 países), entre 2015 e 2020, em relação aos códigos 7219.32, 7219.33, 7219.34, 7219.35 e 7220.20 do Sistema Harmonizado (SH). Os resultados dessa comparação foram compilados no gráfico abaixo.

Observa-se que a tarifa internacional média para o produto é de 4,03%, patamar inferior ao cobrado pelo Brasil. Além disso, a tarifa brasileira de 14% está acima do patamar praticado por 94,7% dos países que reportaram suas alíquotas à OMC. Somente os países Algeria, Camarões, República Centro-Africana, Chade, Comores, Gabão e Tonga praticam alíquotas de importação superiores à brasileira. Na comparação com os cinco maiores exportadores do produto em 2020, o II brasileiro é maior que as tarifas de importação médias praticadas pela China (7,3%), Indonésia (9,5%), Taipé Chinês (0%) e Coreia do Sul (0%). Não foram reportadas tarifas para a Itália, quarto maior exportador do produto.

Nesse sentido, a Aperam, em seu questionário de interesse público, argumentou que a comparação entre as alíquotas de II aplicadas pelo Brasil e a média dos países integrantes da OMC não seria adequada, uma vez que as tarifas aplicadas em países não produtores de laminados a frio 304 tenderiam a ser mais baixas ou, até mesmo, zeradas. No entanto, cumpre registrar, conforme visto acima, que a alíquota brasileira é superior a 94,7% dos países, sendo que os países produtores de laminados a frio 304 mais relevantes no comércio mundial praticaram tarifas médias inferiores ao II no Brasil entre 2015 e 2020.

Deve-se ressaltar que, em novembro de 2021, foi publicada a Resolução GECEX nº 269/2021 concedendo redução temporária da ordem de 10% nas tarifas de importação aplicadas a 87% dos códigos que compõem a NCM, incluindo o produto sob análise, vigente até 31 de dezembro de 2022. Em 23 de maio de 2022, a Resolução GECEX nº 353 ampliou para 20% a redução tarifária temporária anteriormente aplicada, de forma que a alíquota de importação aplicável aos códigos relativos aos laminados a frio 304 passou para 11,2%.

Em 20 de julho de 2022, o Mercosul anunciou, na última reunião de Cúpula de Presidentes, que Brasil, Argentina, Paraguai e Uruguai concordaram em converter a redução de 10% anunciada em novembro de 2021 em redução definitiva da TEC, fazendo com a alíquota para os laminados a frio 304 passasse para 12,6% de forma definitiva.

2.2.2.3 Preferências tarifárias

Os subitens referentes aos laminados a frio 304 contam com as seguintes preferências tarifárias, concedidas em acordos pelo Brasil/Mercosul:

Preferências Tarifárias			
País	Acordo	Entrada em Vigor do Acordo	Preferência
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-Equador	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%

Colôm-ia	ACE 72 - Mercosul-Colômbia	07 de dezembro de 2017	100%
Egito	ALC - Mercosul-Egito	01 de setembro de 2017	40%*

Dentre os países aos quais foram concedidas preferências tarifárias de P1 a P5, nenhum passou a ser origem relevante das importações brasileiras de laminados a frio 304. Os países que já contavam com preferências tarifárias tampouco se destacam na lista de maiores exportadores do produto ao mercado brasileiro. O Uruguai, país que conta com 100% de preferência tarifária para o produto desde a implementação do Mercosul, é o parceiro preferencial mais relevante, sendo a 17ª (décima sétima) origem mais importante das importações brasileiras de laminados a frio 304 em P5, com apenas [CONFIDENCIAL] % do volume total importado.

2.2.2.4 Temporalidade da proteção do produto

As importações brasileiras de laminados a frio 304 originárias da Indonésia não se encontram gravadas por medida de defesa comercial atualmente.

Cumpre registrar, entretanto, que o produto sob análise, quando originário da China e de Taipé Chinês, está gravado por medida de defesa comercial definitiva desde outubro de 2013, com base na Resolução Camex nº 79/2013, e permanece em vigor até os dias atuais, prorrogado pela Portaria SECINT nº 4.353, de 2019, em consonância com o apresentado no item 1.1., totalizando nesse sentido cerca de 8 anos com direito antidumping aplicado. Já Alemanha, Coreia do Sul, Finlândia e Vietnã tiveram seus 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 sobre Comércio e Desenvolvimento (UNCTAD), não foram encontradas possíveis barreiras não tarifárias impostas pelo Brasil a outros países relacionadas aos códigos 7219.32, 7219.33, 7219.34, 7219.35 e 7220.20 do SH. Para fins de comparação internacional, foram encontradas 474 barreiras não tarifárias por outros 65 países com relação a estes códigos do Sistema Harmonizado.

Em seu questionário de interesse público, a Aperam informou que, internacionalmente, utilizam-se diferentes nomenclaturas para a definição dos distintos tipos de aços inoxidáveis, sendo a nomenclatura mais utilizada a do American Iron and Steel Institute - AISI. No Brasil, segundo a empresa, a Associação Brasileira de Normas Técnicas - ABNT adota a mesma nomenclatura do AISI. Informou, ademais, que existem outras nomenclaturas internacionais que especificam os diferentes tipos de aços inoxidáveis que podem ser utilizadas, a depender da região/país no qual o produto é fabricado/comercializado. A Aprodinox, em seu questionário de interesse público, apresentou as mesmas informações.

Diante disso, não foram identificadas barreiras não-tarifárias impostas pelo Brasil sobre 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, vale compreender o comportamento das vendas da indústria doméstica, das importações da origem investigada e das importações de outras origens. A importância dessa análise é verificar o quanto as vendas da indústria doméstica e as importações representam no mercado brasileiro do produto. Desse modo, descreve-se o mercado brasileiro de laminados a frio 304, a partir dos dados fornecidos pela indústria doméstica e das estatísticas da RFB.

Conforme explicitado na Circular Secex nº 40/2021, não houve consumo cativo por parte da indústria doméstica, de forma que o consumo nacional aparente (CNA) e o mercado brasileiro se equivalem. Com o objetivo de dimensionar o mercado brasileiro de laminados a frio 304, foram consideradas as quantidades fabricadas e vendidas líquidas de devoluções da indústria doméstica no mercado interno e o volume total importado apurado com base nos dados oficiais da Secretaria Especial da Receita Federal do Brasil (RFB).

A indústria doméstica (ID) na investigação de subsídios de referência foi definida como sendo a linha de produção de laminados a frio 304 da Aperam, que representou 100% da produção nacional do produto no período de análise.

Mercado Brasileiro (em número-índice de toneladas) [CONFIDENCIAL]							
	Vendas Indústria Doméstica		Importações Origem Investigada		Importações Outras Origens		Mercado Brasileiro
P1	100,0	[70-80]	100,0	[0-10]%	100,0	[20-30]%	100,0
P2	127,7	[80-90]	138,4	[0-10]%	79,5	[10-20]%	116,3
P3	124,8	[70-80]	126,4	[0-10]%	122,0	[20-30]%	124,1
P4	132,0	[70-80]	687,2	[0-10]%	116,0	[20-30]%	131,5
P5	117,3	[60-70]	3.147,0	[10-20]%	98,6	[10-20]%	131,0

Conforme dados expostos, o mercado brasileiro de laminados a frio 304 cresceu 31,0% de P1 a P5, saindo de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas. Ao longo dos intervalos, apresentou elevações de 16,3%, de P1 para P2, de 6,7%, de P2 para P3 e de 6,0%, entre P3 e P4. Em seguida, considerando o intervalo entre P4 e P5, foi registrada redução de 0,4%.

Seguindo a tendência de crescimento do mercado brasileiro, as vendas internas da indústria doméstica também registraram elevação, de 17,3% entre P1 e P5. Observou-se que o volume de vendas destinado ao mercado interno cresceu 27,7%% de P1 para P2 e diminuiu 2,2%%, de P2 para P3. Nos períodos subsequentes, as vendas apresentaram crescimento de 5,8% de P3 para P4 e redução de 11,4% de P4 para P5.

No mesmo período, houve elevação relevante das importações provenientes da origem investigada: 3.047,0% considerando o período compreendido entre P1 e P5. As importações provenientes 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 P2, com [CONFIDENCIAL] % do volume total comercializado. A partir de então foram registradas reduções contínuas, perdendo [CONFIDENCIAL] p.p. do mercado de P2 a P5, quando atinge sua menor participação no mercado brasileiro, de [CONFIDENCIAL] %. O espaço perdido pelas vendas da indústria doméstica foi ocupado pelas importações provenientes da origem investigada, que cresceram [CONFIDENCIAL] p.p de participação no mercado brasileiro de P1 a P5.

A Aperam, por meio da análise realizada pela Tendências, informou que a comercialização do produto se dá por meio de vendas realizadas diretamente à indústria ou a distribuidores que, por sua vez, comercializam com a indústria. A participação de vendas diretas da Aperam, segundo a Tendências, dependeria de fatores como: a assistência técnica oferecida, a exposição do aço em questão à variação do preço do níquel, o porte dos clientes industriais, o segmento da indústria, entre outros. De acordo com a consultoria, a participação das vendas para distribuidores partiu de [CONFIDENCIAL] % do total vendido pela empresa em P1, alcançando [CONFIDENCIAL] % em P5, o que revelaria a relevância da distribuição na comercialização desse produto.

Portanto, nota-se que o mercado brasileiro de laminados a frio 304 cresceu em maior proporção que as vendas internas da indústria doméstica, fazendo com que a indústria doméstica perdesse participação de mercado ao longo do período analisado. O mesmo ocorreu com as importações provenientes das origens não investigadas. As perdas de participação no mercado brasileiro foram supridas via importações provenientes da origem investigada.

2.3.2 Risco de desabastecimento e de interrupção do fornecimento em termos quantitativos

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. Analisa-se os dados da produção da indústria doméstica em relação à capacidade instalada e à capacidade ociosa de laminados a frio 304 da indústria doméstica para que possam ser comparados com os dados do mercado brasileiro do produto.

Destaca-se que a linha de produção é compartilhada com outros tipos de laminados, cuja representação é em média de [CONFIDENCIAL] % da produção total (outros produtos e produto em análise) do período de análise.

Capacidade Instalada, Produção e Grau de Ocupação (em número-índice de toneladas) [CONFIDENCIAL]						
	Capacidade Instalada Efetiva (t)	Produção (Produto em análise) (t)	Produção (Outros Produtos) (t)	Produção Total (t)	Mercado Brasileiro (t)	Grau de ocupação (%)
P1	100,0	100,0	100,0	100,0	100,0	[70-80]
P2	103,6	97,5	101,6	100,3	116,3	[70-80]
P3	99,6	94,1	103,1	100,2	124,1	[70-80]
P4	94,6	84,8	100,3	95,4	131,5	[70-80]
P5	100,0	73,3	91,4	85,7	131,0	[60-70]

Entre os extremos da série analisada - de P1 a P5 -, verifica-se estabilidade na capacidade instalada efetiva da indústria doméstica, apesar de pequenas variações ao longo dos intervalos, sendo a mais relevante entre P4 e P5, com crescimento de 5,7%.

Por outro lado, o volume de produção dos laminados a frio 304 apresentou decréscimos constantes em todo os períodos analisados: 2,5% de P1 para P2, 3,5% de P2 para P3, 9,9% de P3 para P4 e 13,6% de P4 para P5. Considerando todo o período de análise, o volume produzido declinou 26,7%. A produção de laminados a frio 304 foi superior ao mercado brasileiro entre P1 e P3, tendo revertido essa tendência a partir de P4. A produção do produto foi, em média, equivalente a [CONFIDENCIAL] % do mercado brasileiro de P1 a P5. A produção de outros produtos, por sua vez, também registrou decréscimo ao longo do período de análise, reduzindo-se em 8,6% de entre P1 e P5. Como resultado, o grau de ocupação da capacidade instalada apresentou redução de [CONFIDENCIAL] p.p. de P1 para P5, quando atingiu [CONFIDENCIAL] %.

A partir dos dados apresentados, verifica-se que a capacidade efetiva de produção da indústria doméstica é, em média, [CONFIDENCIAL] vezes superior ao mercado brasileiro em P5. Contudo, ressalta-se que a linha de produção do produto similar nacional é compartilhada com outros produtos, cujo volume de 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 Aperam informou que tal fato é comum nas usinas integradas, representando, ao invés de risco, garantia de escala e sustentabilidade da produção em todos os aspectos para as empresas produtoras. Já a Aprodinox, em manifestação protocolada na mesma data, acusou impactos negativos causados pela priorização de linhas de produto mais lucrativas, mas afirmou que retirou seu pleito de desabastecimento em função de uma possibilidade de manutenção de um fluxo de abastecimento com os fornecedores internacionais em virtude da diminuição dos valores dos fretes e seguros, do arrefecimento da paninimação diminuiçõa unitaleral da TEC.

O grau de ocupação da linha de produção de laminados a frio 304 manteve-se em patamares considerados baixos ao longo do período de análise, variando de [CONFIDENCIAL] % em seu maior índice (P4) a [CONFIDENCIAL] % no período de menor ocupação (P5), o que demonstra capacidade disponível relevante para aumento da produção do produto. A ociosidade nominal da indústria doméstica em P5 (cerca de [CONFIDENCIAL] toneladas), permitiria à indústria doméstica atender ainda [CONFIDENCIAL] % do mercado brasileiro no mesmo período.

Nesse quesito, a Aprodinox e a Inoxplasma alegaram, em seus questionários de interesse público, que o Brasil tem enfrentado insuficiência de produtos siderúrgicos, inclusive de aços inoxidáveis, para abastecimento da demanda interna desde o segundo semestre 2020, ou seja, fora do período investigado.

A Inoxplasma afirmou que [CONFIDENCIAL]. A empresa citou como exemplo [CONFIDENCIAL].

De maneira similar, a Usinas Metais e a Inconel alegaram que [CONFIDENCIAL]. Informaram, além disso, que [CONFIDENCIAL]. Nesse sentido, alegaram que [CONFIDENCIAL].

Por outro lado, a Aperam, em seu questionário de interesse público, argumentou que não há dificuldades ou ausência de atendimento da demanda interna, mesmo que a medida antidumping pleiteada venha a ser implementada. Indicou, dessa forma, que possui capacidade instalada efetiva suficiente para atender todo o mercado brasileiro, caso necessário.

Além disso, afirmou, em manifestação protocolada em 31 de maio de 2022, que realizou investimentos que envolvem a modernização da planta, redução de seus custos de produção, eliminação de gargalos, desenvolvimento e pesquisa de novos produtos e em tecnologia, de modo que os resultados de tais investimentos estariam demonstrados nos "custos competitivos de produção da empresa e, também, no desenvolvimento de produtos conforme demanda específica de cada cliente, contribuindo para a melhoria contínua da qualidade não apenas do produto sob análise, mas, também, do produto final produzido pelas indústrias na cadeia a jusante". Nesse quesito, indicou, ademais, que realizará inversões da ordem de R$ 588 milhões nos próximos anos, com foco na "contínua modernização da planta e em sustentabilidade na produção do aço verde, em complemento ao ciclo de investimentos de R$ 243 milhões iniciado em 2021".

Em relação aos argumentos da Inconel e da Usina Metais, a Aperam argumentou que o risco de restrições no fornecimento do produto doméstico seria inferior ao do produto importado, "sendo o lead time da Aperam muito inferior ao alegado pelas empresas mencionadas". Alegou, também, não haver histórico de problemas na produção como indicado pelas empresas. Na visão da parte, o mercado brasileiro é abastecido tanto pelo produto nacional como pelo produto importado, de modo que a aplicação de medida compensatória visaria, apenas, "corrigir a distorção causada pela concessão de subsídios pelo governo da Indonésia e garantir justa concorrência entre os diversos players no mercado brasileiro".

Ademais, a Aprodinox, em manifestação protocolada em 7 de julho de 2022 alegou atrasos na entrega de produtos por parte da peticionária. Em resposta à alegação feita, a Aperam, em sua manifestação protocolada em 3 de outubro de 2022, informou que durante o contexto da pandemia, a indústria doméstica garantiu o abastecimento do mercado brasileiro e, uma vez regularizado o fornecimento via importações, os distribuidores novamente passaram a optar por estas em detrimento das aquisições junto à indústria doméstica.

No que se refere ao compartilhamento da linha de produção com outros produtos, a Aperam, em sua manifestação protocolada em 10 de outubro de 2022 alegou que é algo comum nas usinas integradas para a garantia de escala e sustentabilidade da produção em todos os seus aspectos para as empresas produtoras. Nesse contexto, também reiterou que, basicamente, nenhum produtor/exportador estrangeiro trabalha com linha exclusivamente para o produto similar, o mesmo não faz sentido para a produtora brasileira.

Tendo em vista o exposto, há evidências de que a capacidade instalada efetiva da indústria doméstica foi superior ao mercado brasileiro em todos os períodos analisados e que há capacidade disponível para expandir de forma relevante a produção de laminados a frio 304.

Além disso, foram apresentados argumentos relativos a atrasos no fornecimento do produto pelos consumidores de laminados a frio 304, mas desacompanhados de elementos probatórios. A indústria doméstica por sua vez, alegou ter garantido o abastecimento doméstico em período de restrição de importações durante a pandemia de Covid-19. Nesse sentido, ainda que se admita a ocorrência de atrasos no fornecimento, as manifestações das partes ao longo do processo não permitiram evidenciar restrições quantitativas de fornecimento por parte da indústria doméstica.

Ademais, como a indústria doméstica apresenta vendas no mercado externo, deve-se também observar se existe a possiblidade de priorização de tais operações, o que poderia acarretar risco de desabastecimento ao mercado brasileiro. Para tanto, analisam-se as características da totalidade das operações da indústria doméstica (vendas ao mercado interno e exportações), conforme tabela abaixo:

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

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

Observa-se que, em todos os períodos, as vendas no mercado interno da indústria doméstica foram maiores que as vendas para o mercado externo. As vendas no mercado interno representaram, em média, [CONFIDENCIAL] % das operações totais, variando de [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P5. Já as vendas no mercado externo representaram, em média, [CONFIDENCIAL] % das operações totais, variando de [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P5. Tais fatos evidenciam a relevante redução das vendas da indústria doméstica para o mercado externo, que apresentaram queda de 84,2% entre P1 e P5.

Assim, nota-se uma redução significativa da relevância das vendas da indústria doméstica no mercado externo. Portanto, não se pode indicar possível priorização de mercados neste produto em relação às operações de exportação.

2.3.3 Risco de restrições à oferta nacional em termos de preço, qualidade e variedade

2.3.3.1 Risco de restrições à oferta nacional em termos de preço

Nesta seção, busca-se avaliar eventual risco de restrições à oferta nacional em termos de preço, qualidade e variedade. No que se refere à análise de preço, averígua-se a existência de elementos que possam indicar eventual exercício de poder de mercado por parte da indústria doméstica.

Em relação ao risco de restrição à oferta nacional em termos de preço, analisa-se as informações disponíveis sobre o preço laminados a frio 304 vendidos pela indústria doméstica e do seu custo de produção, atualizados com base em P5, de forma a identificar possíveis restrições à oferta do produto, conforme tabela e gráfico abaixo.

Preço e custo médio de produção da indústria doméstica (em número-índice de R$/t) [CONFIDENCIAL]			
Períodos	Custo de Produção (A)- (R$/t)	Preço de Venda no Mercado Interno (B)- (R$/t)	Relação (A)/(B) (%)
P1	100,0	100	[70-80]
P2	87,9	88,6	[70-80]
P3	96,0	95,4	[70-80]
P4	107,3	103,4	[70-80]
P5	106,5	98,3	[80-90

Nota-se que a relação dos custos de produção sobre os preços praticados pela indústria doméstica foi, em média, de [CONFIDENCIAL] % ao longo do período analisado, aumentando de [CONFIDENCIAL] % em P1 para [CONFIDENCIAL] % em P5, período de maior relação custo/preço. Esse movimento foi resultado da elevação de 6,5% dos custos de produção e laminados a frio 304, aliado a um decréscimo de 1,7% no preço de venda interno do produto ao longo do período analisado. Portanto, nota-se que a relação entre o custo de produção e o preço de venda interno apresentou sucessivas elevações, com deterioração dessa relação ao longo do período de análise, ou seja, com perda de rentabilidade na relação custo-preço.

De forma complementar, comparou-se o comportamento dos preços nominais da indústria doméstica com a evolução de índices associados às ponderações dos grupos e produtos individualizados do Índice de Preços ao Produtor Amplo, segundo os setores de origem (IPA-OG-DI). O objetivo é compreender como o preço do produto da indústria doméstica variou em relação aos outros preços de produtos industriais. Considerou-se a média do índice de preços mensal para produtos industriais de cada período. Ademais, os preços da indústria doméstica e os indicadores foram transformados em números-índice com base em P1 para facilitar a comparação.

Nota-se que, considerando todo o período analisado, o preço do produto da indústria doméstica teve aumento de 25,2%, enquanto o índice de produtos industriais cresceu 27,4%. O preço e o índice seguiram, grosso modo, a mesma tendência de crescimento, com exceção de P2, no qual o preço da

indústria doméstica sofreu uma redução nominal, enquanto índice de preços registrou crescimento. Considerando os extremos da série, conclui-se que os preços da indústria doméstica registraram crescimento inferior ao observado no índice de produtos industriais.

Ainda com relação à evolução de preços, cabe comparar a trajetória do preço do produtor doméstico com o preço das importações brasileiras de laminados a frio de P1 a P5, ambos atualizados com base em P5. Na tabela a seguir, utiliza-se como base de comparação as importações da origem analisada e a média das importações de outras origens, em reais CIF por toneladas com base no câmbio das operações efetivas, de acordo com as estatísticas de importação da RFB.

Comparação de preços da indústria doméstica e importações (em número-índice de R$ CIF/t) [CONFIDENCIAL]			
Períodos	Indústria Doméstica	Origem em Análise	Demais Origens
P1	100	100	100
P2	88,6	73,9	73,0
P3	95,4	75,3	80,9
P4	103,4	97,8	93,3
P5	98,3	92,2	87,8

Nota-se que o preço de venda da indústria doméstica foi superior ao preço do produto importado (calculado na condição CIF) oriundo da origem investigada e das demais origens em todos os períodos. Ademais, observa-se que o preço da origem investigada declinou 7,8% de P1 a P5, enquanto os preços da indústria doméstica e das demais origens retraíram 1,7% e 12,2%, respectivamente, no período. Na média do período analisado, o preço praticado pela indústria doméstica é [CONFIDENCIAL]% superior ao preço dos laminados a frio 304 importados da Indonésia e [CONFIDENCIAL] % superior ao importado de outras origens.

Nesse contexto, a Aprodinox, em seu questionário de interesse público, alegou que o preço da indústria doméstica registrou variações superiores à inflação, medida pelo IPCA e pelo IGP-DI, ao longo de 2018 e 2019, o que representou crescimento real dos preços do produto.

Vale ressaltar, no entanto, conforme apresentado anteriormente, que o crescimento dos preços praticados pela indústria doméstica ao longo de 2018 e 2019 compensou a queda ocorrida em 2017, fazendo com que o índice de preços industriais apresentasse elevação superior ao observado nos preços domésticos da Aperam, ao se considerar todo o período de análise.

Apresentou, ademais, uma comparação entre o preço de venda do produto pela indústria doméstica e o custo do níquel, em números-índice com base em janeiro de 2017. Para os preços da indústria doméstica, foram utilizados os dados referentes às bitolas 0,49 ~ 0,40 e 4,00 ~ 2,00, produtos com maiores volumes e maior percentual de desconto, segundo a Aprodinox. A associação não informou 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 replicar a evolução dos custos do níquel, conforme apresentado. No gráfico apresentado, o custo médio do níquel em março de 2020 parece ser inferior ao registrado em janeiro de 2017, enquanto os dados fornecidos demonstram um crescimento de 31,2% no período, a partir da média mensal das cotações de fechamento diárias, ou seja, com crescimento superior ao registrado nos preços da indústria doméstica.

A Aperam, por meio da análise realizada pela consultoria Tendências, realizou testes de cointegração, para verificar a relação de longo prazo entre os preços internos praticados pela indústria doméstica e os preços praticados no mercado internacional, e estimou um vetor de correção de erros (VEC), utilizado para corroborar os resultados obtidos com base no teste de cointegração. Para tanto, utilizou como parâmetro de preço da indústria doméstica os preços mensais do aço inox 304 praticados pela Aperam para seus clientes e, como parâmetro de preço internacional, adotou o preço mensal Cold-rolled Grade 304 (2mm) China Export FOB da base de dados fornecida pelo CRU Group. A Tendências realizou a análise considerando os dados entre janeiro de 2011 e dezembro de 2020. Aos 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;

- Despesas portuárias no valor de US$ 44,00/t;

- Frete terrestre do porto até o cliente de US$ 10,00/t.

Além do preço internacional, foram utilizados componentes comuns de custos na avaliação da existência de uma relação de longo prazo entre os preços internos e externos dos aços inoxidáveis, considerando a seguinte composição de custo variável:

- Preço Internacional do níquel ([CONFIDENCIAL] %);

- Preço Internacional do cromo ([CONFIDENCIAL] %);

- Preço Internacional do minério de ferro ([CONFIDENCIAL] %);

- Preço da energia elétrica paga pela Aperam ([CONFIDENCIAL] %);

Com base nesses dados, a Tendências apresentou o gráfico a seguir, que demonstra as séries dos preços do aço inox no mercado interno e externo e o vetor de custos.

De acordo com a consultoria, a análise do gráfico demonstraria semelhanças na dinâmica dos preços domésticos e externos, o que denotaria a possível relação de longo prazo entre essas variáveis.

Diante do estudo realizado, a Tendências concluiu que os preços dos aços inoxidáveis no mercado interno se ajustam aos preços internacionais, de forma a manter uma relação de equilíbrio de longo prazo. De acordo com a consultoria, esses resultados "indicam o poder disciplinador que os preços internacionais causam sobre os preços domésticos, evidência compatível com o fato de a Aperam seguir a dinâmica de preços internacionais". Nesse sentido, alegou que a empresa não é capaz de exercer poder de mercado, não havendo, assim, capacidade de controle de preços e/ou volume ofertados. Desse modo, argumentou que a adoção de medidas de defesa comercial contra países que não determinam os preços internacionais somente é capaz de realinhar "os preços internalizados das importações dessas origens aos preços de mercado do produto, também internalizados".

Em resposta ao teste realizado pela empresa Tendências, a Aprodinox argumentou, em manifestação protocolada em 7 de julho de 2022, que tal exercício possuiria uma limitação no sentido de não verificar as diferenças entre os níveis dos preços praticados pela indústria doméstica e do produto importado internado. Conforme a associação, a Aperam poderia, ao longo do período avaliado, estar exercendo seu poder de mercado e praticando preços bem superiores aos do produto importado internado: "seus preços seguiriam a dinâmica dos preços internacionais, mas com uma margem de conforto elevada. O oposto também poderia estar ocorrendo. Desse modo, os testes realizados não seriam suficientes para que se conclua que os preços dos produtos importados internados disciplinariam os preços da empresa, "mas apenas permitem que se infira que o os preços internacionais são uma referência relevante na precificação (em especial nos incrementos e reduções nos preços)".

Em suas manifestações de 03 de outubro de 2022, reiteradas pelas manifestações finais de 20 de outubro de 2022, a Aperam defende que os preços da indústria doméstica seguiram os preços do mercado internacional Em 9 de setembro de 2022, a Aprodinox apresentou manifestação na qual reitera as informações apresentadas anteriormente e em suas manifestações finais de 20 de outubro de 2022, a Aprodinox criticouo parecer Tendências no que tange ao fato de não haver constatação de que os preços 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 de venda interno da indústria doméstica apresentou comportamento semelhante ao índice de preços industriais, tendo, inclusive, registrado uma elevação inferior no período analisado. Ressalta-se, ainda, que, em termos reais, o preço da indústria doméstica apresentou contração entre P1 e P5, enquanto houve aumento real do custo de produção, gerando, assim, uma elevação da relação custo/preço.

Foram também apresentados indícios de uma relação entre os preços dos aços inoxidáveis no mercado interno e no mercado internacional no longo prazo, de modo que os preços domésticos se ajustariam aos preços internacionais, não havendo, assim, poder de mercado da indústria doméstica para controlar preços. Tanto com base nas estatísticas oficiais de importação quanto no teste de cointegração apresentado pela Aperam, verifica-se que a variação dos preços da indústria doméstica acompanha os 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, em todos os períodos analisados.

2.3.3.2Risco de restrições à oferta nacional em termos de qualidade e variedade

No tocante ao risco de restrições à oferta nacional em termos de variedade, a Aprodinox, a Inoxplasma, a Inconel, a Jati e a Usinas Metais argumentaram que a indústria doméstica não produz determinadas larguras e acabamentos dos laminados a frio 304. De fato, conforme informações constantes dos Processos SEI-ME nº 19972.100974/2021-66 (público) e nº 19972.100976/2021-55 (confidencial), a Aperam fabrica os laminados a frio 304 nas larguras padrão de 1.020 mm, 1.040 mm, 1.220 mm, 1.240 mm, 1.250 mm, 1.270 mm, 1.295 mm e 1.320 mm, sendo possível, entretanto, fornecer o produto na largura que o cliente demandar, até o limite de 1.320 mm. Os laminados a frio 304 são fabricados pela empresa com os seguintes acabamentos: nº 2B, nº 3, nº 4, nº 6, Acabamento TR, BB (Buffing Bright), RF (Rugged Finish), SF (Super Finish) e HL (Hair Line). Larguras superiores a 1.320 mm e outros acabamentos são obtidas apenas por meio de importações.

Sobre o risco de restrições à oferta nacional em termos de qualidade, a Inoxplasma alegou que [CONFIDENCIAL]. Ressalta-se, no entanto, que tais medidas não estão contempladas no escopo da medida em análise. Argumentou, ainda, que [CONFIDENCIAL].

Nesse quesito, a Aperam afirmou, em seu questionário de interesse público, que os laminados planos de aço inoxidável de fabricação própria estão sujeitos aos mesmos regulamentos técnicos que os produtos importados, sendo que não há diferenciação entre eles.

Informou, ademais, que realizou investimentos que envolvem a manutenção e redução da planta produtiva, redução de custos de produção, eliminação de gargalos, desenvolvimento e pesquisa de novos produtos e em tecnologia. De acordo com a empresa, os resultados de tais investimentos restariam demonstrados nos "custos competitivos de produção" e no desenvolvimento de produtos consoante demanda específica de cada cliente, fato que contribui para a melhoria contínua da qualidade dos laminados a frio 304 e dos produtos finais produzidos na cadeia a jusante. Dessa forma, destacou que a indústria doméstica estaria tecnologicamente atualizada em seu processo produtivo e portfólio, concorrendo em condições tecnológicas similares com os produtos importados, independentemente da origem.

Ainda, a empresa alegou, em manifestação protocolada em 31 de maio de 2022, que fabrica os laminados a frio 304 com padrões de acabamento diversos. No caso do acabamento BA, que não seria produzido pela indústria doméstica, a Aperam argumentou que produz o produto com acabamento 2B, "o qual também confere efeito reflexivo e brilhante, sendo a diferença entre tais tipos imperceptível a olho nu". Na visão da parte, os produtos sob análise seguiriam normas internacionais, de forma que não existiriam diferenças de qualidade entre o produto nacional e o importado.

Nesse sentido, citou a Resolução Camex nº 79/2013, a qual aplicou direitos antidumping sobre as importações brasileiras de laminados a frio de aços inoxidáveis (graus 304 e 430), originárias da Alemanha, da China, da Coreia do Sul, da Finlândia, de Taipé Chinês e do Vietnã:

"De forma semelhante, os acabamentos, ainda que processados de forma distinta, via ação química ou física na superfície do aço, vão gerar produtos similares que serão utilizados em aplicações semelhantes.

Assim, reitera-se o posicionamento exarado na Nota Técnica DECOM n 43, de 2013, reafirmando que o produto fabricado no Brasil possui as mesmas características físicas, composição química e se presta às mesmas utilidades que o produto importado. Ambos concorrem no mesmo mercado, e não há nenhum tipo de uso dos laminados a frio de aço inoxidável em que seja impossível substituir o produto importado pelo nacional. [...]."

De maneira similar, citou a Portaria Secint nº 4.353/2019, a qual prorrogou o referido direito para as importações provenientes da China e Taipé Chinês:

"Destaque-se que possíveis diferenças na qualidade do produto não afetam as conclusões a respeito da similaridade. Há informações nos autos que contradizem as alegações apresentadas por parte dos importadores. A Tramontina Farroupilha afirmou, por exemplo, que não haveria diferença entre o produto importado e o produzido pela indústria doméstica. Com relação às características e à qualidade da superfície obtidas através do acabamento tipo BA, deve-se esclarecer, em que pese não se possa

afastar a similaridade entre o produto fabricado pela indústria doméstica e o produto importado, diferenças de acabamento, principalmente quando envolvem etapas produtivas adicionais que são consideradas para fins de justa comparação".

No que se refere aos laminados a frio 304 com larguras superiores a 1.500mm, a empresa indicou que o produto com largura inferior a 1.500mm poderia "perfeitamente ser utilizados para as mesmas aplicações dos laminados planos de largura superior a 1.500 mm, sendo, portanto, produtos substituíveis". Nessa seara, citou novamente a Resolução Camex nº 79/2013:

"No que diz respeito aos pleitos de exclusão de tipos de produtos em razão da inexistência de produção nacional de laminados com determinadas larguras ou de determinados acabamentos, cabe lembrar que o conceito de similaridade abarca não só o produto idêntico, mas com características semelhantes.

O produto fabricado no Brasil possui as mesmas características físicas, composição química e se presta às mesmas utilidades que o produto importado. Isto significa que o produto nacional e o importado concorrem no mesmo mercado. Não há nenhum tipo de uso dos laminados a frio de aço inoxidável em que seja impossível substituir o produto importado pelo nacional.

Especificamente com relação aos aços "ultra largos", é fato que os cortes em uma bobina podem ser efetuados de forma longitudinal ou transversal, a depender do interesse do usuário do produto. 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 n 43, de 2013, reafirmando que o produto fabricado no Brasil possui as mesmas características físicas, composição química e se presta às mesmas utilidades que o produto importado. Ambos concorrem no mesmo mercado, e não há nenhum tipo de uso dos laminados a frio de aço inoxidável em que seja impossível substituir o produto importado pelo nacional. Além disso, afirma-se novamente que uma largura maior ou menor do produto não vai determinar mercados distintos para seu uso."

Desse modo, a parte argumentou que não existiram diferenças de qualidade ou variedade entre o produto nacional e o importado, argumento reiterado em suas manifestações finais de 20 de outubro de 2022.

Sobre a qualidade dos produtos, a Aprodinox afirma em suas manifestações finais de 20 de outubro de 2022, que, mesmo havendo similaridade, haveria produtos com qualidades distintas para o mercado.

Tendo em vista os elementos apresentados na presente avaliação de interesse público, entende-se que não foram apresentados elementos que indiquem restrições de qualidade em relação ao produto fornecido pela indústria doméstica. Já com relação à variedade da oferta nacional, apesar do reconhecimento pela indústria doméstica de que não produziria o produto com espessura superior a 1.320 mm e com alguns acabamentos, não foram fornecidos elementos no processo que indiquem utilização distinta e a essencialidade dessa variedade do produto para a cadeia a jusante, nem tampouco sobre a disponibilidade de tal variedade entre os produtores/exportadores da origem sob análise. Nesse sentido, não foi possível alcançar uma conclusão de que haveria restrições à oferta nacional em termos de variedade.

2.3.4 Risco de restrições à oferta nacional em termos de práticas discriminatórias entre clientes

No tocante ao risco de restrições à oferta nacional em termos de práticas discriminatórias entre clientes, o CADE citou, em seu questionário de interesse público, o Ato de Concentração Econômica nº 08012.005092/2000-89, no qual foram ressaltadas preocupações do órgão relativos aos riscos e efeitos de uma integração vertical quando realizada entre agentes econômicos horizontalmente concentrados.

Ainda, o CADE citou o Processo Administrativo nº 08700.010789/2012-73, no qual houve alegações de descumprimento das orientações expressas pelo órgão em relação a práticas anticompetitivas no segmento de aços inoxidáveis, no âmbito do Ato de Concentração Econômica nº 08012.005092/2000-89. No âmbito deste Processo Administrativo, o órgão informou que foram

identificados, à época, potenciais indícios de condutas anticompetitivas no que tange ao tratamento privilegiado dos distribuidores que faziam parte do grupo integrante da Aperam e da rede de distribuidores da Aperam (RAD) e à limitação de acesso aos produtos da empresa.

O órgão argumentou, ademais, que política de "descontos aos distribuidores de acordo com o percentual do volume de compra que é dedicado à representada, sem qualquer aderência ao volume absoluto de compra" efetivado" configurava uma forma de desconto não linear. Assim, afirmou que tal política de desconto poderia ter c"mo escopo "restringir a concorrência das importações, sem contrapartidas de eficiência para a representada que eventualmente justifique a legitimidade"da prática".

O Processo Administrativo em questão foi encerrado mediante Termo de Compromisso de Cessação firmado em abril de 2015, no qual a empresa se comprometeu a:

- não oferecer qualquer vantagem comercial à distribuidora do seu grupo econômico que não seja extensível aos demais distribuidores: "a Compromissária assume a obrigação de abster-se [...] conceder qualquer vantagem à distribuidora de seu grupo, em especial relativa a preço, condições de pagamento e abastecimento, que não seja extensível aos demais distribuidores, sempre que as aquisições sejam feitas em igualdade de condições";

- "não praticar qualquer desconto não linear aos distribuidores que tenham por objeto ou efeito induzir a aquisição exclusiva de produtos da Compromissária";

- "abster-se de adotar cláusula que tenha por objeto ou efeito restringir a importação de aço inoxidável"; e

- "abster-se de impor qualquer alteração das políticas comerciais em função de qualquer decisão de importação ou compra de produto concorrente pelos distribuidores".

O CADE alegou, nesse sentido, que a celebração do TCC não configurou análise de mérito a respeito do objeto do referido Processo Administrativo por parte do órgão. Da mesma forma, não restou configurada por parte da Aperam, seus gestores e prepostos, "confissão quanto à matéria de fato nem reconhecimento de culpa, ilegalidade ou qualquer irregularidade da conduta, e, por parte do Cade, não gera precedente sobre a matéria".

Informou, também, que, "em casos de conduta unilateral em que, na maior parte dos casos, a ilicitude da prática depende de uma avaliação detalhada da estrutura do mercado, do seu padrão de competição e também das justificativas da prática em relação aos seus possíveis efeitos anticompetitivos, não é obrigatório, em todos os casos, o reconhecimento do ilícito quando da celebração do TCC". Dessa forma, o TCC poderia ser celebrado sem que haja um entendimento final da autoridade acerca da ocorrência ou não da infração à ordem econômica.

O CADE citou, por fim, o Procedimento Preparatório nº 8700.000841/2021-74, no qual a Aprodinox apresentou relatório explicitando supostas condutas anticompetitivas que estariam sendo praticadas pela Aperam:

- "Prática de preços pela Aperam Serviços incompatíveis com-o mercado - prática de preços abaixo dos custos, prejudicando as margens de lucro dos demais distribuidores no mercado (margin squeeze);

- Regra discriminatória entre Distribuidores DIA (Distribuidor Integrado Aperam) e DRA (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 instrução, não sendo proferida decisão de mérito por parte da autoridade quando do preenchimento do questionário de interesse público.

A Aprodinox, por sua vez, também destacou o Processo Administrativo nº 08700.010789/2012-73, em desfavor da Aperam em função de "práticas anticompetitivas que consistiam na discriminação de adquirentes de aço inoxidável, restrição às importações e favorecimento da distribuidora do mesmo grupo

econômico da Aperam". Conforme visto anteriormente, segundo a associação, o estudo econômico apresentado pela Inox-Tech no âmbito do referido Processo Administrativo indicava os seguintes mecanismos adotados pela Aperam:

- constituição da "RAD", uma rede de distribuição dos produtos da Compromissária, impondo a obrigação dos distribuidores "RAD" de adquirir 75% de sua demanda diretamente da Aperam;

- criação de um mecanismo denominado "Importação virtual", pela qual os distribuidores receberiam descontos caso não importassem produtos concorrentes aos da Compromissária e perderiam tais descontos gradativamente à medida que passassem a importar tais produtos;

- medidas antidumping utilizadas para onerar a importação de produtos concorrentes, com o objetivo de "fechar o mercado" e "impedir que distribuidores ganhem poder de mercado suficiente para operar somente com base em importações".

Além disso, conforme a associação, o SICETEL alegou, no Processo Administrativo, que a Aperam estaria se aproveitando de sua posição dominante no mercado brasileiro para "impor condições de venda abusivas a seus distribuidores, como limitação a importações sob pena de expulsão da rede credenciada e favorecimento à distribuidora própria verticalizada".

O TCC que encerrou o Processo Administrativo em questão também instituiu o programa Força Inox Aperam, no qual foram criados os modelos vigentes de relacionamento com os distribuidores: Distribuidor Integrado Aperam (DIA), Distribuidor Regular Aperam (DRA) e distribuidores independentes.

A Aprodinox indicou que os distribuidores DIA comercializam com exclusividade os produtos da indústria doméstica, tendo como exceção os produtos não fabricados pela empresa. Segundo a associação, as principais vantagens dessa categoria seriam:

- Acesso a investimentos por parte da Aperam em marketing, vendas, desenvolvimento conjunto 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 em relação aos demais 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 contrato de exclusividade com a Aperam. Informou, ainda, que os pedidos devem ser realizados com três meses de antecedência, "mediante o oferecimento de pelo menos 2 (dois) pedidos de compras firmes e inalteráveis em volume e linha, para os meses à frente". Conforme a associação, essa categoria engloba as seguintes vantagens:

- Acesso a alguns investimentos por parte da Aperam em marketing, vendas, desenvolvimento conjunto e inovação;

- Acesso integral à assistência técnica corretiva, preventiva e diferenciada; e

- Acesso ao material disponível em condições de igualdade em relação aos demais distribuidores DRA.

Por fim, os distribuidores independentes, chamados de "Comprador Spot" pela Aprodinox, 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 valores seriam superiores aos praticados para os distribuidores DIA e DRA. Afirmou, além disso, que as compras dessa categoria seriam realizadas apenas via leilão e a assistência técnica corretiva seria limitada aos produtos fornecidas pela Aperam.

Ademais, a Aprodinox afirmou que os preços praticados para os distribuidores DIA e DRA só dependem do volume adquirido, não havendo diferenciação entre tais categorias. Para pedidos adicionais, seria utilizado o preço praticado para a categoria dos distribuidores independentes. No entanto, alegou que, ao longo dos últimos anos, houve expressiva migração de distribuidores DIA para a condição de DRA.

Ainda, a associação alegou que a Aperam, "em claro abuso da sua posição de domínio de mercado, reiteradamente tem adotado condutas anticompetitivas visando garantir que seus clientes e distribuidores não optem pela importação do produto". Nesse contexto, afirmou ter apresentado ao CADE uma Representação contra a Aperam por abuso de posição dominante, em consonância com as informações apresentadas pelo órgão.

O CADE produziu nota técnica na qual decidiu pela instauração de Inquérito Administrativo para Apuração de Infrações à Ordem Econômica. Na Nota Técnica para a instrução do feito, foi informado que o Conselho deverá adotar as seguintes providências, sem prejuízo de outras que eventualmente se mostrem necessárias: expedição de ofícios às distribuidoras do mercado para coleta de dados e melhor entendimento de como cada uma é afetada pelas práticas denunciadas; avaliação da forma de alteração das taxas de câmbio para precificar o produto; análise detalhada das tabelas de descontos da Aperam e de suas alterações; e coleta de dados para melhor entendimento do sistema MD.

Além disso, em manifestação protocolada em 7 de julho de 2022, a associação afirmou que a migração da condição DIA para a DRA implicaria na perda de uma série de vantagens: "se a migração para DRA permite a importação do produto pelos distribuidores, ao mesmo tempo ela acaba por fazer com que a empresa opere em faixa com menor desconto ou mesmo fazendo compras spot, o que tira boa parte da competitividade deste distribuidor no mercado, dado que as diferenças entre os preços spot e aqueles das maiores faixas de desconto podem ultrapassar 10%".

Nesse sentido, afirmou que os três maiores distribuidores de laminados a frio 304 decidiram migrar da categoria DIA para a DRA entre os anos de 2019 e 2020, restando apenas a empresa Aperam Serviços e mais duas "empresas pequenas" na categoria DIA. A associação apresentou gráfico demonstrando a evolução dos distribuidores alocados em cada categoria. Conforme os dados, houve a redução do número total de distribuidores de 19 para 17 e a migração de distribuidores DIA para a condição de DRA. Os distribuidores DRA representavam 63% do total em junho de 2016 (12 em 19) 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 para a importação -, em janeiro de 2021, a Aperam implantou uma nova política comercial, com um novo modelo de precificação. Esse modelo atrelava [CONFIDENCIAL], prática que claramente distorcia o espírito do TCC". A associação argumentou que a nova política de descontos praticada pela Aperam estabelecia que seriam levados em consideração seis períodos para o cálculo do volume médio de compra de cada cliente, com a seguinte diferenciação entre DIA e DRA:

A Aprodinox informou, ademais, que teria sido criado um desconto por oscilações de volumes 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 parte alegou que os incentivos criados pela nova política teriam sido implementados para garantir que os distribuidores, sejam eles DIA ou DRA, mantenham suas compras junto à Aperam sempre no mesmo nível, evitando que "concentrem suas compras por meio de importações em alguns meses, nos quais as compras junto à Aperam seriam menores". Logo, seriam eliminados incentivos para que os distribuidores importem o produto sob análise, impactando, sobretudo, os distribuidores de menor porte em situações de redução de demanda.

Em 9 de setembro de 2022, a Aprodinox apresentou manifestação na qual reitera as informações apresentadas anteriormente.

Em relação ao tema, a Aperam informou, em seu questionário de interesse público, que os distribuidores DIA possuem um relacionamento mais estreito com a empresa e se comprometem a não importar produtos fabricados por ela. Os distribuidores DRA, por outro lado, poderiam importar qualquer produto, 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 mensais, não havendo

barreiras à migração entre os modelos de relacionamento. Por fim, os distribuidores independentes não possuem nenhum compromisso com a Aperam e, usualmente, são abastecidos por meio de importações. A Aperam informou que existe apenas um critério de diferenciação de preços no fornecimento aos distribuidores, qual seja, o volume adquirido.

Ainda, a empresa argumentou, em manifestação protocolada em 31 de maio de 2022, que o Procedimento Preparatório nº 8700.000841/2021-74 teria como finalidade apurar se a conduta sob análise trata de matéria de competência do CADE ou se diz respeito apenas a uma lide privada, fora da competência do Conselho. Desse modo, conforme a parte, não existiriam indícios suficientes para a instauração de um "procedimento investigatório de natureza inquisitorial (chamado de Inquérito Administrativo), muito menos para a abertura de um processo administrativo para imposição de sanções administrativas por infração à ordem econômica (chamado de Processo Administrativo)".

No tocante ao Termo de Compromisso de Cessação firmado em abril de 2015, a empresa alegou que o monitoramento realizado pelo CADE teria sido "rigoroso e intenso" e que, durante sua vigência, a Aprodinox não teria apresentado ao CADE qualquer fato ou alegação de seu eventual descumprimento. Nesse sentido, segundo a Aperam, a representação apresentada pela Aprodinox ao CADE não apresentaria fatos novos: "todos os dados e informações apresentados pela Aprodinox ao CADE referem-se ao período no qual o TCC estava em vigor e no qual o CADE monitorou e fiscalizou intensamente a atuação da empresa". Por fim, a parte indicou não ter praticado nenhum tipo de discriminação entre distribuidores, "aplicando rigorosamente a mesma política comercial a todos os clientes, inclusive a Aperam Serviços, sem nenhuma alteração e sem nenhum acesso distinto a informações de mercado, como atestado durante os cinco anos nos quais a atuação da Aperam foi monitorada e fiscalizada".

Relatadas as manifestações, pontua-se que, do ponto de vista da análise de interesse público, não foi possível concluir se a política de distribuição praticada pela Aperam se configuraria como restrição à oferta nacional. A distribuição entre distribuidores exclusivos (DIA), não exclusivos com descontos por volume (DRA) e compras spot foi objeto de acordo com o CADE e é também observada no fornecimento de diversos outros produtos. Dito isso, as supostas práticas anticoncorrenciais apontadas pela parte, conforme relatado neste documento, estão sendo objeto de análise corrente da autoridade da concorrência, por meio do Procedimento Preparatório nº 8700.000841/2021-74, e deverão ter seus encaminhamentos pela autoridade competente no caso de apuração de conduta anticompetitiva.

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% de P1 a P5, saindo de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas. No mesmo intervalo, as vendas da indústria doméstica aumentaram 17,3% de P1 a P5, fazendo com que a Aperam perdesse [CONFIDENCIAL] p.p. de participação de mercado. O espaço perdido pelas vendas da indústria doméstica foi ocupado, principalmente, pelas importações provenientes da origem investigada, que apresentaram crescimento de 3.047,0% entre P1 e P5, registrando [CONFIDENCIAL] % de participação no mercado brasileiro em P5, e 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, [CONFIDENCIAL] vezes superior ao mercado brasileiro no período respectivo. Destaca-se, ademais, que o grau de ocupação da indústria doméstica permaneceu em patamares baixos ao longo do período analisado, atingindo [CONFIDENCIAL] % em P5. Apesar da linha de produção do produto similar nacional ser compartilhada com outros produtos, a ociosidade nominal em P5 permitiria à indústria doméstica atender ainda [CONFIDENCIAL] % do mercado brasileiro no mesmo período;

- em termos das operações da indústria doméstica, nota-se um aumento da importância 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 em relação às operações de exportação;

- com relação ao risco de restrições em termos de preço, nota-se que a relação do custo com o preço de produção apresentou elevações contínuas ao longo do período analisado, atingindo seu maior patamar em P5, quando alcançou [CONFIDENDIAL] %. Este movimento foi resultado da elevação do custo de produção dos laminados a frio 304, aliada à redução no preço de venda interno do produto;

- em termos de evolução dos preços, considerando todo o período analisado, o preço do produto da indústria doméstica teve aumento de 25,2%, enquanto o índice de produtos industriais aumentou em 27,4%. O preço e o índice seguiram, grosso modo, a mesma tendência de crescimento, com exceção de P2, no qual o preço da indústria doméstica sofreu uma redução nominal, 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;

- em termos da comparação do preço da indústria doméstica e das importações, o preço de venda da indústria doméstica foi superior ao preço do produto importado (calculado na condição CIF) oriundo da origem investigada e das demais origens em todos os períodos. Observa-se, ainda, que o preço da origem investigada declinou 7,8% de P1 a P5, enquanto os preços da indústria doméstica e das demais origens retraíram 1,7% e 12,2%, respectivamente, no período;

- não foram apresentados elementos que indiquem restrições de qualidade em relação ao produto fornecido pela indústria doméstica. Já com relação à variedade da oferta nacional, houve divergência entre as partes, sem que tenham sido fornecidos elementos que indiquem utilização distinta e a essencialidade de variedades não comercializadas pela indústria doméstica, nem tampouco sobre a disponibilidade desses produtos entre os produtores/exportadores da origem sob análise; e

- em relação às restrições à oferta nacional em termos práticas discriminatórias entre clientes, os elementos apresentados pelas partes interessadas não foram não foram suficientes para se chegar a uma conclusão definitiva.

Dessa forma, identificou-se que a indústria doméstica possui capacidade produtiva suficiente para o pleno atendimento ao mercado brasileiro de laminados a frio 304 e que não houve priorização das operações de exportação da indústria doméstica frente às vendas domésticas.

Com relação aos preços, verificou-se que, mesmo com a aplicação de direitos antidumping em relação a várias origens no período analisado, a indústria doméstica não conseguiu aumentar sua lucratividade, tendo apresentado a menor margem bruta de lucro em P5, e modificou seus preços em patamares inferiores ao índice de produtos industriais. Por outro lado, o preço do produto doméstico é em regra superior ao preço dos produtos importados da origem analisada e ao preço médio de outras origens, ressalvando-se que tal comparação é afetada pela diferença na cesta de produtos comercializados por cada origem.

Por fim, os argumentos apresentados sobre atrasos de fornecimento, ausência de oferta nacional de determinadas variedades e práticas discriminatórias entre clientes não permitem uma conclusão no sentido de restrição à oferta nacional. Os argumentos de restrição à variedade carecem de elementos que abordem a essencialidade da demanda dos tipos indicados e alternativas de fornecimento, enquanto as alegações de atrasos não foram devidamente comprovadas. Já as alegações sobre práticas anticoncorrenciais de discriminação entre clientes se encontram em análise pelo CADE, que é a autoridade competente sobre o assunto.

2.1 Impactos da medida de defesa comercial na dinâmica do mercado brasileiro

Na avaliação final de interesse público em medidas de defesa comercial, busca-se avaliar os impactos da medida de defesa comercial na dinâmica do mercado nacional. No presente caso, é necessário analisar os possíveis efeitos decorrentes da imposição do direito antidumping e de previsões dos impactos sobre a dinâmica de mercado do produto face às conclusões alçadas em defesa comercial, conforme Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial).

Como uma das formas de estimar os efeitos da medida de defesa comercial, utiliza-se uma simulação com base em Modelo de Equilíbrio Parcial. A referida metodologia está prevista no Guia Consolidado de Interesse Público em Defesa Comercial, que descreve o sistema de equações utilizado e a forma de obtenção da variação de bem-estar de interesse, disponível às partes em acesso público.

Apesar de suas limitações, o modelo de equilíbrio parcial tem respaldo na literatura para ser utilizado no contexto das repercussões de medidas de defesa comercial na economia e, provavelmente por esse motivo, é adotado também, por exemplo, pelas autoridades de defesa comercial no âmbito de avaliações semelhantes ao interesse público, como na Nova Zelândia e no Reino Unido, o que reforça a adequação de seu uso de forma alinhada às melhores práticas internacionais. De qualquer forma, reforça-se que as partes não estão vinculadas à utilização desse modelo, conforme esclarece o Guia Consolidado de Interesse Público.

Tal modelo de equilíbrio parcial parte da estrutura de Armington, na qual os produtos das diferentes origens são tratados como substitutos imperfeitos e, dada a estrutura de elasticidade de substituição constante (CES), a substitutibilidade entre os produtos pode ser governada pela elasticidade de substituição (s), conhecida como elasticidade de Armington. A estrutura do modelo apresentado seguiu o trabalho de Francois (2009), com a única diferença de ter considerado a ótica de um único país, enquanto Francois considera um modelo global com "n" países importando e exportando.

Considerando a ausência de estimativas para o mercado brasileiro em relação à elasticidade-preço da oferta, optou-se pela adoção, em substituição, de estimativas realizadas pela United States International Trade Comission (USITC), medidas em intervalos. Utilizou-se para a definição do parâmetro as estimativas de elasticidade para o produto "a produtos de aço plano laminado a frio", que engloba diversos produtos classificados nos códigos 7209.15, 7209.16, 7209.17, 7209.18, 7209.25, 7209.26, 7209.27, 7209.28, 7209.90, 7210.70, 7211.23, 7211.29, 7211.90, 7212.40, 7225.50, 7225.99 e 7226.92 do SH (investigação frente às importações da China e do Japão), em consonância com a sugestão apresentada pela Aperam na presente avaliação de interesse público.

De todo modo, reconhece-se, como limitação da disponibilidade de informações, que os produtos de aço plano laminado a frio englobam outros bens distintos dos laminados a frio 304 em análise, em que pese guardar proporção do mesmo nível tarifário SH-2 ao produto em análise. Nesse sentido, foi realizada análise de sensibilidade com intuito de estabelecer limites máximos e mínimos, com base no intervalo de parâmetros de elasticidade para diminuir as limitações dos dados disponíveis. Segundo o USITC, a elasticidade da oferta doméstica americana está entre 4 e 8. Dessa forma, adotou-se um valor intermediário de 6 para a oferta doméstica brasileira, supondo que o produtor brasileiro se comporta de forma semelhante ao produtor americano. Para as elasticidades de oferta das outras origens adotou-se um valor de 99, que se baseia na suposição de que a oferta estrangeira é consideravelmente mais elástica que a doméstica.

Com relação à elasticidade-preço da demanda (h), também estimada para o mercado estadunidense pelo USITC no caso de "produtos de aço plano laminado a frio", foi adotado o valor de -0,5, com base na média do valor estimado para o intervalo de -0,75 e -0,25. Para a elasticidade de substituição, foi o valor médio entre 3 e 5, ou seja, 4. O valor utilizado é coerente com as estimativas comumente realizadas em estudos da literatura econômica especializada. De todo modo, foi realizada análise de sensibilidade com intuito de estabelecer limites máximos e mínimos com base no intervalo dos parâmetros de elasticidade.

Foi utilizado como cenário base para realização das simulações a configuração do mercado em 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 da RFB. O imposto de importação de cada origem foi calculado com base nos valores efetivamente arrecadados em P5, de acordo com as estatísticas de importações da RFB.

Por sua vez, a alíquota efetiva média do direito antidumping que poderá ser imposta às importações brasileiras de laminados a frio 304 originárias da Indonésia foram apuradas, em base CIF, em [CONFIDENCIAL] %, com base nos montantes calculados na determinação final da investigação antidumping, conforme Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial).

Os resultados apresentados são submetidos a uma análise de sensibilidade, de forma a verificar possíveis diferenças nas conclusões apresentadas com a variação dos parâmetros de elasticidade em faixas.

2.4.1 Impactos na indústria doméstica

Na análise de possíveis impactos da aplicação a medida de defesa comercial na indústria doméstica, são considerados elementos qualitativos e quantitativos que possam elucidar os efeitos esperados no setor responsável pelo produto similar nacional.

Na tabela a seguir são descritos os dados relativos à evolução do número de empregados da indústria doméstica ao longo do período de análise (P1 a P5), separando-se os empregados vinculados à linha de produção e os empregados dos setores de administração e vendas.

Número de empregados (em número-índice) [CONFIDENCIAL]					
	P1	P2	P3	P4	P5
Linha de Produção	100	100	99,0	93,8	83,3
Administração e Vendas	100	107,7	107,7	100,0	84,6
Total	100	100,3	99,4	94,0	83,3

A partir dos dados apresentados, observou-se que o número de empregados que atuam em linha de produção manteve-se constante de P1 para P2, apresentando declínios consecutivos em seguida: 1,0% de P2 para P3, 5,3% de P3 para P4 e 11,2% de P4 para P5. Ao se considerar todo o período de análise, o número de empregados que atuam em linha de produção revelou variação negativa de 16,7% em P5, comparativamente a P1.

Com relação à variação de número de empregados que atuam em administração e vendas ao longo do período em análise, houve crescimento de 7,7% entre P1 e P2, seguida de manutenção do patamar entre P2 e P3. Nos demais períodos, foram registradas reduções de 7,1% entre P3 e P4 e de 15,4% entre P4 e P5. Ao se considerar toda a série analisada, o indicador de número de empregados que atuam em administração e vendas declinou 15,4%.

Ao se avaliar a variação de quantidade total de empregados no período analisado, entre P1 e P2 verifica-se uma elevação de 0,3%. É possível verificar, ainda, nos demais períodos, quedas consecutivas: 0,9% entre P2 e P3, 5,4% entre P3 e P4 e11,4% entre P4 e P5. Analisando-se todo o período, a quantidade total de empregados apresentou contração da ordem de 16,7%, considerado P5 em relação a P1.

Em seguida, descrevem-se os resultados apurados para o negócio de laminados a frio 304 no mercado interno da indústria doméstica, considerando o período de P1 a P5. Os valores obtidos em reais correntes no processo de referência foram atualizados pela IPA-OG, da Fundação Getúlio Vargas, produtos industriais.

Evolução dos resultados nas vendas de laminados a frio 304 da indústria doméstica no mercado interno (em número-índice de mil reais atualizados) [CONFIDENCIAL]					
	P1	P2	P3	P4	P5
Receita líquida	100,0	113,1	119,1	136,5	115,3
Resultado bruto	100,0	121,1	120,1	129,4	89,6
Resultado operacional	100,0	123,0	104,1	128,2	76,0
Resultado operacional (exceto RF e OD)	100,0	122,5	121,2	131,9	88,5

Observou-se que o indicador de receita líquida, em mil reais atualizados, referente às vendas no mercado interno apresentou elevações de 13,1% de P1 para P2, de 5,3% de P2 para P3 e de 14,6% de P3 para P4. Já entre P4 e P5, o indicador sofre redução de 15,5%. Ao se considerar todo o período de análise, o indicador de receita líquida referente às vendas no mercado interno revelou variação positiva de 15,3% em P5, comparativamente a P1.

Com relação à variação de resultado bruto da indústria doméstica, foram registradas oscilações ao longo do período em análise: elevação de 21,1% entre P1 e P2, redução de 0,8% entre P2 e P3, aumento de 7,8% entre P3 e P4 e retração de 30,8% entre P4 e P5. Ao se considerar toda a série analisada, o indicador de resultado bruto da indústria doméstica registrou declínio de 10,4%, considerado P5 em relação ao início do período avaliado (P1).

De maneira análoga, o resultado operacional oscilou ao longo do período analisado: 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 retração de 40,7% entre P4 e P5. Analisando-se todo o período, o resultado operacional apresentou redução da ordem

de 24,0%, considerado P5 em relação a P1.

Em relação à variação de resultado operacional, excluídos o resultado financeiro e outras despesas, também foram verificadas oscilações ao longo do período: elevação de 22,5% entre P1 e P2, redução de 1,1% entre P2 e P3, aumento de 8,9% entre P3 e P4 e retração de 32,9% entre P4 e P5. Desse modo, ao se considerar toda a série analisada, o indicador de resultado operacional, excluídos o resultado financeiro e outras despesas, apresentou contração de 11,5%.

Em sua resposta ao Questionário de Interesse Público, a Aperam apresentou estudo econômico, no qual realizou análise com base no Modelo de Equilíbrio Parcial. Os resultados foram compilados na tabela a seguir:

Variações no excedente do consumidor, no excedente do produtor, na arrecadação e no bem-estar	
Componente	Variação (em milhões de US$)
Excedente do consumidor	-4,91
Excedente do produtor	1,89
Arrecadação	4,35
Bem-estar líquido (A)	1,33
Variação índice de preços	2,40%
Variação quantidade ID	3,46%

A empresa argumentou que o aumento na quantidade produzida pela indústria doméstico e no preço doméstico eram esperados, uma vez que a aplicação de medidas compensatórias faz com que as importações das origens investigadas retomem preços de mercado frente ao produto nacional, o que levaria os demandantes do aço inox laminado a frio 304 a importarem menos em detrimento da produção nacional, o que acarreta aumento na quantidade produzida pela indústria doméstica. Considerando o efeito sobre todos os agentes, o resultado do bem-estar líquido seria positivo, ou seja, "as perdas para consumidores com a eventual inserção das medidas antidumping e compensatória seriam mais que compensada pelo ganho para produtores e governo".

Em sua manifestação final, a Aperam refutou as alegações da Aprodinox e do CADE a respeito do fato de a fabricante nacional ser a única produtora de laminados a frio 304 no mercado brasileiro e, nessa condição, a Aperam estaria apta a exercer poder de mercado e de controle de preços. Para a produtora nacional, o estudo econômico que ela apresentou por ocasião da resposta ao Questionário de Interesse Público e a própria verificação da existência de dano decorrente das importações de laminados a frio 304 originárias da Indonésia corroboram o argumento de que seus preços seguem os preços internacionais do referido produto. Ademais, a Aperam reiterou suas alegações de que não há nenhuma dificuldade ou ausência de atendimento da demanda interna, nem riscos de que isso possa ocorrer, mesmo com a aplicação da medida compensatória pleiteada.

A Aprodinox, em manifestação protocolada em 7 de julho de 2022, argumentou que as elasticidades estimadas pela Tendências não se referem exatamente ao produto objeto da investigação. Para o caso dos EUA, "as elasticidades referem-se a bobinas laminadas a frio (cold-rolled steel flat products) e no caso do Brasil refere-se a uma cesta de produtos. Portanto, em nenhum dos casos as elasticidades se mostram adequadas". Desse modo, argumentou, "considerando uma classificação mais restrita de produtos (como é o caso desta investigação) e a existência de alguns substitutos (mesmo que imperfeitos)", que as elasticidades-preço da demanda tenderiam a ser ainda maiores do que as das classificações mais agregadas de produtos. Alegou, assim, que os resultados para o caso em análise tenderiam a gerar bem-estar líquido negativo. Ademais, argumentou que a simulação realizada pela Tendências somente gerou bem-estar líquido positivo em função da "elevada arrecadação tributária associada à variação tarifária", que dependeria da evolução futura das importações das origens investigadas.

Já em 9 de setembro de 2022 e em sua manifestação final de 20 de outubro de 2022, a Aprodinox reiterou as informações e os argumentos apresentados em sua resposta ao Questionário de Interesse Público e em manifestações posteriores.

No que se refere aos efeitos da medida de defesa comercial na indústria doméstica, estão expostos na tabela a seguir os resultados obtidos na simulação do Modelo de Equilíbrio Parcial para a aplicação do direito antidumping conforme recomendação final nos Processos SEI-ME nº 19972.101391/2021-52 (restrito) e nº 19972.101392/2021-05 (confidencial), dentro das condições vigentes no cenário-base.

Variações no excedente do consumidor, no excedente do produtor, na arrecadação e no bem-estar [CONFIDENCIAL]	
Componente	Variação (em milhões de US$)
Excedente do consumidor	-4,79
Excedente do produtor	1,16
Arrecadação	1,75
Bem-estar líquido (A)	-1,88
Mercado Brasileiro (B)	[CONFIDENCIAL]
Bem-estar líquido (%) (A)/(B)	[CONFIDENCIAL]

O Modelo de Equilíbrio Parcial prevê uma variação negativa de US$ 1,88 milhão no bem-estar líquido da economia brasileira a partir da aplicação do direito antidumping recomendado, o que representa [CONFIDENCIAL] % do mercado brasileiro de laminados a frio 304. O saldo é resultante de uma variação negativa de US$ 4,79 milhões no excedente dos consumidores e variações positivas de US$ 1,16 milhão 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 as prováveis variações de preços e quantidades de laminados a frio 304 comercializado pelo produtor doméstico, conforme tabela a seguir.

De acordo com a simulação, observa-se que a quantidade vendida pela indústria doméstica cresceria 4,83% com a imposição da medida. Da mesma forma, os preços do produto de origem doméstica aumentariam 0,79%.

Observando-se as faixas de elasticidades consideradas, é possível estimar as participações 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 prediz que a aplicação do direito antidumping reduziria a participação das importações originárias da Indonésia no mercado brasileiro para a faixa de [CONFIDENCIAL]% a [CONFIDENCIAL]%. Por outro lado, o produtor doméstico teria sua participação aumentada para uma faixa entre [CONFIDENCIAL]% e [CONFIDENCIAL]%. Da mesma forma, as importações do resto do mundo cresceriam em termos relativos, variando de [CONFIDENCIAL]% a [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 eventual aplicação de direito antidumping aos laminados a frio 304 importados da Indonésia não seria suficiente para afastar esse produto do mercado brasileiro ou tornar sua presença insignificante. Não obstante, reforça-se o caráter complementar das importações de outras origens, com destaque para EUA e África do Sul, respectivamente 12º e 13º maiores exportadores líquidos globais do produto sob análise, em termos de possível expansão.

No cenário-limite considerado (participação mínima das importações das origens sob análise), as importações de laminados a frio 304 originárias da Indonésia representariam, ainda assim, [CONFIDENCIAL] % do mercado brasileiro. Nesse cenário, as importações de outras origens, por sua vez,

aumentariam sua participação em relação ao percentual observado no cenário base, passando a representar, no mínimo, [CONFIDENCIAL]% do mercado brasileiro.

2.4.2 Impactos na cadeia a montante

Nenhuma das partes apresentou manifestação quanto a possíveis impactos na cadeia a montante decorrentes de eventual aplicação de medidas compensatória. Assim, não foram obtidos, na presente avaliação de interesse público, elementos que pudessem ajudar a estimar, especificamente, o impacto da medida sobre a cadeia a montante.

2.4.3 Impactos na cadeia a jusante

Em sua resposta ao Questionário de Interesse Público, o CADE fez uma breve descrição da cadeia a jusante, na qual destacou que a Aperam venderia seus produtos para diferentes tipos de clientes no mercado, além de vender por meio de distribuidores, sendo um deles verticalmente relacionado com a empresa (Aperam Serviços). O CADE asseverou, ainda, que o mercado brasileiro também pode ser abastecido via importação e, em caso de aprovação de medida compensatória, a importação deixaria de ser indutora da competição uma vez que as importadoras seriam taxadas, tornando o produto importado mais caro em relação ao produto nacional. Para o CADE, esse cenário impactará diretamente as indústrias automobilísticas, de bens de capital, de eletrodomésticos (linha branca), cutelaria, construção civil, indústrias aeronáutica, ferroviária, naval, petroquímica, de papel e celulose, têxtil, frigorífica, de laticínios, farmacêutica, cosmética, química, de utensílios domésticos etc. O CADE argumentou também que a eventual imposição da medida compensatória teria o condão de diminuir a contestação do poder de mercado das importações, em razão da existência de direitos antidumping contra as importações brasileiras de laminados a frio 304 originárias da China e de Taipé Chinês. Por fim, o CADE alegou que uma empresa do mercado a jusante teria apontado condutas da Aperam, destacadas no processo n° 08700.010789/2012-73, já relatadas anteriormente nos autos do presente processo, consideradas potencialmente corno abuso de poder econômico. O CADE acrescentou manifestações em resposta aos relatos da parte interessada nos seguint"s termos: "eventual dano ao consumidor industrial derivado de eventual abuso do poder econômico, a autoridade investigadora para fins de defesa comercial não seria autoridade competente para examinar infrações à orde" econômica"

Em relação aos impactos da imposição da medida na cadeia a jusante, a Aperam apresentou estudo econômico, no qual realizou uma análise de Equilíbrio Geral - com base no modelo de Insumo-Produto -, e estimou "variações na produção a partir de uma alteração na demanda final, composta por investimentos, consumo do governo, consumo das famílias, exportações e variações de estoques". Conforme a empresa, o modelo se configura como de equilíbrio geral por absorver os efeitos das alterações setoriais em toda a economia, de modo que os resultados podem se estender para muitos agregados econômicos, como valor adicionado, produção, impostos indiretos, empregos e renda.

Os resultados da simulação foram compilados nas tabelas a seguir. Na visão da parte, os efeitos 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 às importações oriundas da origem investigada geraria ganhos da atividade econômica, na forma de aumentos de produção, valor adicionado, renda, impostos indiretos e empregos: "mesmo que os consumidores do produto 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 elos da cadeia indicam que os impactos positivos da siderurgia são mais representativos em relação aos efeitos sobre os elos a jusante. O espraiamento 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

Valor adicionado	56
Renda	25
Impostos indiretos	4
Empregos (unidades)	693

Diante do estudo apresentado pela empresa Tendências, a Aprodinox, em manifestação protocolada em 7 de julho de 2022, argumentou que elasticidades estimadas não se referem especificamente ao produto sob análise, englobando outros produtos.

Ainda, a associação alegou que, no Brasil, o uso de aço inoxidável ainda é bastante reduzido em razão do alto custo dos produtos fabricados, resultando da "concentração da produção em um único produtor e das iniciativas que se estendem por mais de duas décadas de fechamento do mercado por meio da aplicação de medidas de defesa comercial" e do produto importado internado, que teria um valor "altíssimo", inibindo, assim, seu consumo. Nesse sentido, indicou que as empresas a jusante na cadeia produtiva dependem de um único fornecedor doméstico para adquirir laminados a frio 304, sendo que as "potenciais fontes de fornecimento estrangeiras e que ampliariam a concorrência para o único produtor nacional, diversas origens estão gravadas com medida antidumping".

Já em 9 de setembro de 2022, a Aprodinox apresentou manifestação na qual reiterou as informações apresentadas anteriormente.

Em sua manifestação final, a Aperam destacou a possibilidade de utilização, de produtos substitutos aos laminados a frio 304 tais como: aço carbono, pedras (mármore, granito, entre outros), produtos não ferrosos (alumínio, prata, bronze latão, entre outros), vidros e plástico, além de outros tipos de aços inoxidáveis. Para a fabricante nacional, a existência de produtos substitutos nos segmentos de bens de consumo teria o condão de limitar os efeitos de eventuais aumentos de preços do produto sob análise.

Já a Aprodinox, em sua manifestação final, argumentou que há grande dificuldade prática na substituição do produto sob análise, decorrente das características de resistência à corrosão e boa estampabilidade, conjugada com restrições de ordem econômica e mesmo regulatória para a aplicação de outros materiais. Adicionalmente, a referida associação citou a conclusão do CADE sobre a insubstituibilidade dos laminados a frio para inferir que "não há outro produto que cumpra a mesma função do aço inoxidável 304 laminados a frio tanto no mercado nacional como no internacional". A Aprodinox reiterou ainda o argumento de que teria havido desabastecimento de aços inoxidáveis, incluindo os laminados a frio, pela indústria para os seus distribuidores. A principal consequência disso teria sido a falta do produto em diversas aplicações industriais, levando a impactos negativos de curto e longo prazo para a indústria e para toda a economia. Para a Aprodinox, a razão do suposto desabastecimento teria sido a priorização pela indústria doméstica de outras linhas de produto - supostamente mais lucrativas - no período investigado e imediatamente posterior, a despeito dos prejuízos decorrentes dessa decisão comercial. Por fim, em relação à análise do parecer econômico apresentado pela Aperam, a Aprodinox repisou os comentários já trazidos em manifestações anteriores.

Feitas as considerações das partes em tela, como forma de mensurar impactos gerais na cadeia a jusante, são apresentados na tabela a seguir as projeções para variação de índices de preços e quantidade comercializadas no mercado brasileiro de laminados a frio 304, a partir dos resultados obtidos no Modelo de Equilíbrio Parcial para a aplicação do direito antidumping recomendado, dentro das 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 brasileiras de laminados a frio originárias da Indonésia aumentaria o índice de preços do produto no mercado brasileiro em 2,27%, ao mesmo tempo em que diminuiria a quantidade total consumida em 1,12%.

Reconhece-se, nesse sentido, que a aplicação de medidas compensatórias possui, naturalmente, o condão de aumentar os preços internos ao mesmo passo em que diminui a quantidade vendida no mercado interno, podendo acarretar perda de bem-estar. Diante desse contexto, faz-se necessário relembrar que a intervenção excepcional no âmbito de interesse público é realizada quando o impacto da imposição da medida antidumping e compensatória sobre os agentes econômicos como um todo se mostra potencialmente mais danoso quando comparado aos efeitos positivos da aplicação da medida de defesa comercial.

Por fim, reforça-se que a estimativa dos efeitos da medida de defesa comercial por meio de modelos econômicos é apenas mais um dentre vários outros critérios a serem considerados em uma avaliação de interesse público. Conforme consta no art. 3º, § 3º, da Portaria SECEX nº 13/2020, nenhum dos critérios analisados, isoladamente ou em conjunto, será peremptoriamente capaz de fornecer indicação decisiva sobre a necessidade ou não de intervir na medida de defesa comercial.

3. CONSIDERAÇÕES FINAIS ACERCA DA AVALIAÇÃO DE INTERESSE PÚBLICO

Após análise dos elementos apresentados e coletados ao longo da avaliação de interesse público, feita no âmbito da investigação de subsídios acionáveis nas exportações de laminados a frio 304 da Indonésia para o Brasil, nota-se o seguinte:

- os laminados a frio 304 se caracterizam como insumos, com aplicação em setores como automotivo, construção civil, química e petroquímica, utensílios domésticos, máquinas e equipamentos, entre diversos outros;

- a substitutibilidade dos laminados a frio 304 sob a ótica da oferta se apresenta como improvável no curto prazo. Ademais, sob a ótica da demanda, os elementos acostados aos autos da avaliação de interesse público não permitiram vislumbrar substitutibilidade entre o produto sob análise e outro tipo de produto;

- o mercado brasileiro manteve-se em níveis altamente concentrados ao longo de todo o período analisado (acima de 2.500 pontos do HHI), ainda que o aumento da participação das importações 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 capacidade produtiva, produção e volume exportado mundial. Por sua vez, China e Taipé Chinês, produtores mundiais relevantes, não constituem origens alternativas factíveis, uma vez que estão gravadas por medida antidumping. Desse modo, as origens gravadas e a investigada respondem por mais da metade da produção e da capacidade produtiva mundial e por 34,6% das exportações mundiais do produto. Destacam-se, nesse sentido, as origens EUA, Itália, Bélgica, Coreia do Sul, Holanda e França como possíveis origens alternativas, que em conjunto representam 36,1% das exportações mundiais. Dentre tais origens, apenas os EUA, a Bélgica, a Coreia do Sul e a França são exportadoras líquidas do produto;

- o preço médio de exportação praticado pela Indonésia para todos seus destinos foi o segundo mais baixo dentre todas as origens relevantes, sendo 34,3% inferior à média de preço geral. Destaque-se, ainda, que a África do Sul praticou o menor preço dentre as origens relevantes, sendo 36,0% inferior à média geral. Ademais, os preços médios das demais possíveis origens alternativas Itália, Coreia do Sul, Holanda e Bélgica estiveram abaixo da média total de preços, enquanto o preço médio da França e 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 desse aumento se deve ao crescimento das importações originárias da Indonésia e dos EUA, que registraram elevação de 3.047,0% e de 63,5%, respectivamente, no período. Constata-se que os EUA são a principal origem alternativa, com participação de [CONFIDENCIAL]% no volume importado pelo Brasil em P5, seguido da África do Sul, com participação de [CONFIDENCIAL]% no período.

- a Indonésia praticou preços médios inferiores às demais origens das importações brasileiras, sendo o menor preço em P5. Já a África do Sul, outra origem alternativa relevante em termos de volume importado, praticou preços inferiores à Indonésia entre P1 e P4. Os EUA, origem alternativa mais relevante, praticaram preço médio 15,5% superior ao preço médio das importações investigadas em P5;

- no período de referência, encontravam-se em vigor, no mundo, 33 (trinta e três) medidas de defesa comercial relacionadas aos códigos tarifários correspondentes aos laminados a frio 304, sendo 29 (vinte e nove) direitos antidumping e 4 (quatro) medidas compensatórias. A Indonésia é alvo de uma medida antidumping, aplicada pelo Vietnã;

- o produto sob análise, quando originário da China e de Taipé Chinês, está gravado por medida antidumping definitiva desde outubro de 2013. Já Alemanha, Coreia do Sul, Finlândia e Vietnã tiveram seus direitos antidumping encerrados pela Portaria SECINT nº 4.353, de 2019, após vigência de 6 anos;

- a tarifa internacional média para o produto é de 4,03%. A tarifa brasileira de 14%, correspondente ao período de análise da investigação de referência, é maior que a praticada por 94,7% dos países que reportaram suas alíquotas à OMC. Ressalta-se que, em 20 de julho de 2022, o Mercosul decidiu pela redução definitiva da TEC em 10%, fazendo com a alíquota para os laminados a frio 304 passasse para 12,6% de forma definitiva;

- dentre os países aos quais foram concedidas preferências tarifárias de P1 a P5, nenhum passou a ser origem relevante das importações brasileiras de laminados a frio 304. Os países que já contavam com preferências tarifárias tampouco se destacam na lista de maiores exportadores do produto ao mercado brasileiro;

- de acordo com a base de dados "i-TIP" da OMC, o Brasil não adotaria barreiras não tarifárias na importação dos códigos tarifários correspondentes aos laminados a frio 304;

- o mercado brasileiro de laminados a frio 304 cresceu 31,0% de P1 a P5, saindo de [CONFIDENCIAL] toneladas para [CONFIDENCIAL] toneladas. No mesmo intervalo, as vendas da indústria doméstica aumentaram 16,9% de P1 a P5, fazendo com que a Aperam perdesse [CONFIDENCIAL] p.p. de participação de mercado;

- o espaço perdido pelas vendas da indústria doméstica foi ocupado, sobretudo, pelas importações provenientes da origem investigada, que apresentaram crescimento de 3.047,0% entre P1 e P5, registrando elevação de [CONFIDENCIAL] p.p. de participação no mercado brasileiro no período, e pelas importações originárias dos EUA, que cresceram 63,5% no período, apresentando elevação de [CONFIDENCIAL] p.p. de participação no período;

- a indústria doméstica possui capacidade produtiva suficiente para o pleno atendimento ao mercado brasileiro de laminados a frio 304. Destaca-se, nesse sentido, que o grau de ocupação da indústria doméstica permaneceu em patamares baixos ao longo do período analisado, atingindo [CONFIDENCIAL]% em P5. A ociosidade nominal da linha de produção em P5 permitiria à indústria doméstica atender ainda [CONFIDENCIAL]% do mercado brasileiro no mesmo período;

- houve aumento da importância das vendas da indústria doméstica no mercado interno, que corresponderam, em média, a [CONFIDENCIAL]% das operações totais de P1 a P5. Portanto, não se pode indicar possível priorização de mercados neste produto em relação às operações de exportação;

- a relação do custo com o preço de produção apresentou elevações contínuas ao longo do período analisado, atingindo seu maior patamar em P5, quando alcançou [CONFIDENDIAL]%. Este movimento foi resultado da elevação do custo de produção dos laminados a frio 304, aliada à redução no preço de venda interno do produto;

- o preço do produto da indústria doméstica teve aumento de 25,2%, enquanto o índice de produtos industriais aumentou em 27,4%. O preço e o índice seguiram, grosso modo, a mesma tendência de crescimento, com exceção de P2, no qual o preço da indústria doméstica sofreu uma redução nominal, 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 do produto importado (calculado na condição CIF) oriundo da origem investigada e das demais origens em todos os períodos. Observa-se, ainda, que o preço da origem investigada declinou 7,8% de P1 a P5, enquanto os preços da indústria doméstica e das demais origens retraíram 1,7% e 12,2%, respectivamente, no período;

- não foram apresentados elementos que indiquem restrições de qualidade em relação ao produto fornecido pela indústria doméstica. Já com relação à variedade da oferta nacional, houve divergência entre as partes, sem que tenham sido fornecidos elementos que indiquem utilização distinta e

a essencialidade de variedades não comercializadas pela indústria doméstica, nem tampouco sobre a disponibilidade desses produtos entre os produtores/exportadores da origem sob análise;

- não foi possível concluir se a política de distribuição praticada pela Aperam se configuraria como restrição à oferta nacional. As supostas práticas anticoncorrenciais apontadas pelas partes interessadas estão sendo objeto de análise corrente da autoridade da concorrência, por meio do Procedimento Preparatório nº 8700.000841/2021-74, e deverão ter seus encaminhamentos pela autoridade competente no caso de apuração de conduta anticompetitiva;

- em termos dos efeitos na indústria doméstica, o número total de empregados da indústria doméstica decresceu 16,7% de P1 para P5. Por sua vez, o resultado bruto da indústria doméstica apresentou decréscimo ao longo do período analisado (10,4%). De maneira similar, o resultado operacional registrou contração entre P1 e P5, de 24,0%; e

- as simulações realizadas com base no Modelo de Equilíbrio Parcial estimaram um efeito negativo de US$ 1,88 milhão no bem-estar da economia brasileira, decorrente da eventual aplicação da medida compensatória, o que representa - [CONFIDENCIAL]% do mercado brasileiro de laminados a frio 304. Estima-se, ainda, um aumento de 0,79% no preço da indústria doméstica, crescimento de 2,27% no preço médio do produto no mercado brasileiro e um decréscimo de 1,12% na quantidade consumida do produto, em contraponto a uma variação positiva de 4,83% na quantidade ofertada pela indústria doméstica; e

- a simulação do Modelo de Equilíbrio Parcial prediz que a aplicação do direito antidumping reduziria a participação das importações originárias da Indonésia no mercado brasileiro para a faixa de [CONFIDENCIAL]% a [CONFIDENCIAL]%. Por outro lado, o produtor doméstico teria sua participação aumentada para uma faixa entre [CONFIDENCIAL]% e [CONFIDENCIAL]%. Da mesma forma, as importações do resto do mundo cresceriam em termos relativos, variando de [CONFIDENCIAL]% a [CONFIDENCIAL]% de participação no mercado brasileiro.

Dessa forma, foram identificadas origens alternativas relevantes no que se refere à produção e capacidade produtiva mundial, exportações mundiais e para o Brasil, além da balança comercial, quais sejam, África do Sul e EUA. Outros produtores importantes como Itália, Bélgica, Coreia do Sul, Holanda e França exportam para o Brasil em menor volume no período analisado, mas possuem capacidade produtiva relevante e grande participação nas exportações mundiais do produto em análise - 33% do total exportado por todas as origens em 2020.

A África do Sul revelou-se capaz de rivalizar com a origem sob análise em termos de volume e preço importado, sendo a segunda origem mais relevante nas importações brasileiras do produto (P1 a P5). Ressalta-se, ademais, que os EUA também se consolidaram como uma possível origem alternativa em termos de produção disponível para exportação ao Brasil, além de ser a origem mais relevante nas importações brasileiras do produto, porém com preço médio superior ao praticado pela Indonésia.

Cabe lembrar também que Alemanha, Coreia do Sul, Finlândia e Vietnã se encontravam gravadas por direitos antidumping até meados de P5 - encerrados pela Portaria SECINT nº 4.353, de 2019 - e apresentam potencial para se consolidarem como origens alternativas do produto.

Com relação à oferta nacional, verificou-que a indústria doméstica possui capacidade produtiva relevante, que é [CONFIDENCIAL] vezes superior ao mercado brasileiro de laminados a frio 304 em P5. Ainda que a linha de produção seja compartilhada com outros produtos, apenas a capacidade ociosa atual seria suficiente para atender o mercado brasileiro [CONFIDENCIAL] vezes. Com relação a preços, identificou-se que o preço da indústria doméstica é em regra superior ao da média das importações, mas que apresentou variação no período analisado condizente com os preços internacionais e inferior ao índice de preços dos produtos industriais.

Em relação à simulação de impacto, pondera-se que a aplicação de medidas compensatórias possui, naturalmente, o condão de aumentar os preços internos ao mesmo passo em que diminui a quantidade vendida no mercado interno, podendo acarretar perda de bem-estar em cerca de [CONFIDENCIAL]% do mercado de laminados a frio. Nas estimativas de participação de mercado, conclui-se que a aplicação de uma medida compensatória aos produtores/exportadores da Indonésia, conforme recomendação final no processo de investigação de subsídios, diminuiria a participação da origem de

[CONFIDENCIAL]% para uma faixa entre [CONFIDENCIAL]% e [CONFIDENCIAL]%, o que seria insuficiente para afastar a origem do mercado brasileiro de laminados a frio 304 ou tornar sua participação insignificante.

Nesse sentido, verifica-se que a possível aplicação da medida compensatória no presente caso não parece impactar significativamente a dinâmica do mercado brasileiro de laminados a frio 304, considerando que os elementos analisados ao longo desta avaliação de interesse público indicam que a demanda nacional pelo produto continuará sendo adequadamente atendida em termos de oferta internacional e nacional.

Assim, recomenda-se o encerramento da presente avaliação de interesse público, sem a identificação de razões de interesse público que possam justificar a suspensão das medidas compensatórias sobre as importações brasileiras de laminados a frio 304, quando originárias da Indonésia, nos termos recomendados no âmbito da investigação de defesa comercial.

	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