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⁽¹⁾ Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/580

of 1 February 2021

amending Delegated Regulation (EU) 2015/1366 as regards the basis for allocating the financial contribution in the apiculture sector

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 56(1) thereof,

Whereas:

- (1) Article 4 of Commission Delegated Regulation (EU) 2015/1366 ⁽²⁾ lays down the basis for the Union's financial contribution to Member States for their apiculture programmes. It is to be allocated in proportion to the average total number of beehives notified by the Member States during the two calendar years immediately preceding the notification to the Commission of the apiculture programmes.
- (2) Council Regulation (EU, Euratom) 2020/2093 ⁽³⁾ sets the yearly ceiling for the European Agricultural Guarantee Fund ('EAGF'). Within that ceiling, that fund will finance the Union contribution to the apiculture programmes, effective from 2021. The total amount provided for in the multiannual financial framework in respect of the EAGF includes an increase to EUR 60 million per year for apiculture programmes.
- (3) For the period 2021-2027, the Commission has proposed to allocate the increased Union contribution for the apiculture programmes as set out in Annex VIII to the Proposal for a Regulation of the European Parliament and of the Council establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽⁴⁾ and Regulation (EU) No 1307/2013 of the European Parliament and of the Council ⁽⁵⁾.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector (OJ L 211, 8.8.2015, p. 3).

⁽³⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433 I, 22.12.2020, p. 11).

⁽⁴⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁽⁵⁾ Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

- (4) The basis for allocating Union contribution to Member States set out in Commission proposal COM(2018) 392 final was the allocation of Union funds for the 2017-2019 apiculture programmes, which in turn was made on the basis of the number of beehives communicated in 2013 by the Member States in their respective 2014-2016 apiculture programmes, adjusted by the applications submitted by Member States for allocation in the 2017-2019 programming period.
- (5) The increased Union contribution to the apiculture programmes is to be effective from 2021, while Member States' CAP Strategic Plans under the future CAP legislative framework is expected to apply only in 2023.
- (6) For the purposes of consistency with Commission proposal COM(2018) 392 final, and in order to ensure coherence between the allocations for apiculture programmes for the years 2021 and 2022 and from 2023 onwards, the allocations for apiculture programmes for the years 2021 and 2022 should be calculated on the basis of the number of beehives communicated in 2013 by the Member States in their respective 2014-2016 apiculture programmes, adjusted by the applications submitted by Member States for allocation in the 2017-2019 programming period.
- (7) Delegated Regulation (EU) 2015/1366 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 4 of Delegated Regulation (EU) 2015/1366, the second paragraph is replaced by the following:

'By way of derogation from the first paragraph, the Union contribution to apiculture programmes in the years 2021 and 2022 shall be allocated to Member States with apiculture programmes on the basis of the number of beehives communicated in 2013 by those Member States in their respective 2014-2016 apiculture programmes, adjusted by the applications submitted by Member States for allocation in the 2017-2019 programming period. The minimum Union contribution shall be EUR 25 000 per apiculture programme.'

Article 2

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

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

Done at Brussels, 1 February 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2021/581
of 9 April 2021
on the situational pictures of the European Border Surveillance System (EUROSUR)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 ⁽¹⁾, and in particular Article 24(3) thereof,

Whereas:

- (1) Regulation (EU) 2019/1896 defines situational pictures as an aggregation of geo-referenced near-real-time data and information received from different authorities, sensors, platforms and other sources which is transmitted across secured communication and information channels and can be processed and selectively displayed and shared with other relevant authorities in order to achieve situational awareness and support the reaction capability at, along or in the proximity of the external borders and the pre-frontier area. This definition, represents a development of the concept as initially laid down in Regulation (EU) No 1052/2013 of the European Parliament and of the Council ⁽²⁾, reflecting a more a 'data centric' approach permitting users to select the appropriate graphical display and user interface depending on the operational situation and their command and control needs.
- (2) Regulation (EU) 2019/1896 provides for the establishment of national situational pictures, a European situational picture and specific situational pictures to be produced through the collection, evaluation, collation, analysis, interpretation, generation, visualisation and dissemination of information. Situational pictures are to consist of three separate information layers, namely, an events layer, an operational layer and an analysis layer.
- (3) It is necessary to lay down the details of each of the information layers of the situational pictures and the rules for the establishment of specific situational pictures. It is further necessary to specify the type of information to be provided and the processes governing the provision of such information as well as mechanisms to ensure quality control. In order to ensure a coordinated approach that enhances information exchange, reporting in the European Border Surveillance System ('EUROSUR') should be specified and standardised.
- (4) In order to ensure that the events layer of situational pictures are sufficiently comprehensive and detailed, national coordination centres and, where applicable, the European Border and Coast Guard Agency ('the Agency') and the international coordination centres, should provide timely reports on events likely to have an impact on the external border.
- (5) The reporting of events through indicators and as single event reports is complementary. The indicators help assessing the overall evolution at a border section and contribute to improved situational awareness while the single event reports are linked to a timely response to a given event.

⁽¹⁾ OJ L 295, 14.11.2019, p. 1.

⁽²⁾ Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosir) (OJ L 295, 6.11.2013, p. 11).

- (6) Single events reports may require urgent action to be taken. It must therefore be possible to report single events in a timely manner in order to allow a timely response to such events. An initial report should be sent as soon as the event is detected and should be displayed in the corresponding situational pictures. In order to prevent delay that could undermine the capability for a quick reaction, the validation process should permit the sending of a report with a partial validation.
- (7) At the same time, the issuing of reports in such circumstances can lead to false alarms. The originator and the owner of the situational picture should assess and indicate the level of confidence in the reports and in the events displayed in the situational picture. The first report should be completed with other follow up reports, as soon as supplementary information is available.
- (8) The reporting of events related to document fraud and criminality in EUROSUR will complement the reporting obligations provided for in Regulation (EU) 2020/493 of the European Parliament and of the Council ⁽³⁾ as part of the False and Authentic Document Online system (FADO).
- (9) The reporting of single events involving the cross-border movement of goods and associated illicit trafficking under this Regulation should not affect existing reporting obligations, restrictions or competences concerning the customs area as well as systematic control reporting in particular under the Import Control System 2 ('ICS2') pursuant to Article 186 of Commission Implementing Regulation (EU) 2015/2447 ⁽⁴⁾ or risk information sharing under the Customs Risk Management System ('CRMS') pursuant to Article 86 of the same Regulation and the Customs Information System ('CIS') established by Council Regulation (EC) No 515/97 ⁽⁵⁾. It should also not duplicate established reporting mechanisms carried out by Member States in connection with customs and customs performance matters. Where available, the relevant information could be obtained from existing Commission sources.
- (10) As regards the operational layer of situational pictures, in order to ensure sufficiently comprehensive overview, the owner of situational pictures should receive reporting on Member States' own assets, reports on operational plans, as well as reports on environmental information including, in particular, meteorological and oceanographic information. In the case where the impact level at a border sections are high or critical, the need for coordination calls for a detailed reporting of the operational plans to better anticipate the response of the different authorities involved.
- (11) The operational reporting to be carried out in the framework of a joint border operation or a rapid border intervention should be described in the operational plans of each joint border operation or of a rapid border intervention.
- (12) As regards the analysis layer of the situational pictures, the owner of situational pictures should establish the analysis layer based on risks analysis reports. These reports aim at enhancing the understanding of events at the external border which can facilitate the forecasting of trends, the planning and conduct of border control operations as well as strategic risk analysis. The methodologies related to the risk analysis reporting, and the attribution of confidence levels should be based upon the common integrated risk analysis model (CIRAM).

⁽³⁾ Regulation (EU) 2020/493 of the European Parliament and of the Council of 30 March 2020 on the False and Authentic Documents Online (FADO) system and repealing Council Joint Action 98/700/JHA (OJ L 107, 6.4.2020, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558)

⁽⁵⁾ Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

- (13) In order to ensure consistency and facilitate information exchange while preserving security, the Agency should integrate and develop its various risk analysis networks and tools in the framework of EUROSUR, such as the Frontex Risk Analysis Network (FRAN), the European Document Fraud Risk Analysis Network (EDF-RAN) or the Maritime Intelligence Community Risk Analysis Network (MIC-RAN).
- (14) Reporting in EUROSUR should take into account the specificity of certain border control activities such as air or maritime surveillance border surveillance but also the specificity of certain related events such as secondary movements or Search and Rescue incidents. The reporting of such information contributes to the establishment of the European situational picture, including risk analysis and the attribution of impact levels. In addition, reporting on search and rescue operations of migrants, both at land and at sea, should contribute to ensure the protection and saving lives of migrants.
- (15) The owner of the situational picture should manage the situational picture with a view to providing a clear understanding of the situation at each external border section and for each area of responsibility, and to facilitate risk analysis and reaction capabilities at proper level.
- (16) When establishing specific situational pictures with third parties to EUROSUR, Member States and the Agency should comply with and promote the technical and operational standards for information exchange developed by the Agency.
- (17) It is necessary to lay down the operational responsibilities for reporting and for maintaining the situational pictures in relation with the technical responsibilities for operating and maintaining the various technical systems and networks that support the processing of information in EUROSUR.
- (18) In order to ensure that operational responsibilities for the technical implementation of EUROSUR are defined in sufficient detail, it is necessary to identify the technical components of EUROSUR. In order to manage the significant amount of information processed and to reduce the workload of operators, information exchange in EUROSUR should be automated. Member States and the Agency should develop technical interfaces to foster machine to machine interconnections and use decision support tools to assist EUROSUR operators in their tasks.
- (19) When defining format of reports related to the vessels of interest as part of the technical standards for information exchange, the Agency, in close cooperation with the relevant national authorities, should make use of internationally agreed formats deriving from the relevant international legislation with in the first place the UN Convention on the Law of the Sea, the Customary law of the Sea and the instruments derived notably by the International Maritime Organization (IMO) as well as their variations in the domestic legal order of the flag States.
- (20) When defining format of reports related to the aircrafts of interest as part of the technical standards for information exchange, the Agency, in close cooperation with the relevant national authorities, should seek to use internationally agreed formats such as those defined by the International Civil Aviation Organization (ICAO).
- (21) The data security in EUROSUR aims at ensuring the authenticity, availability, the integrity, the confidentiality and the non-repudiation of the reports and of any other data and information processed in EUROSUR.
- (22) The data security of the technical components of EUROSUR corresponds to the ability of the technical components to detect and resist, at a given level of confidence, any action that compromises the security of the processed data and information, or the related services offered by, or accessible via, those networks and information systems.
- (23) The data security of EUROSUR is a collective responsibility of the Member States and of the Agency.

- (24) The cybersecurity threats are constantly evolving and are now more and more affordable to criminal and terrorist networks. EUROSUR should ensure an adequate and homogeneous protection against cyber threats at both EU and national levels. EUROSUR is a framework for the exchange of information covering different levels of classification. While implementing the technical components of EUROSUR, the relevant national authorities and the Agency should ensure that any user has proper access to the relevant information corresponding to his level of accreditation and his need to know.
- (25) When deploying the Communication Network up to 'Confidential EU', the Agency should provide an interim solution for those national components that would be still accredited only up to 'RESTREINT UE/EU RESTRICTED' level or equivalent national classification levels.
- (26) As part of the data security rules of EUROSUR and in order to ensure a proper accreditation process, this Regulation establishes a joint Security Accreditation Board ('the Accreditation Board'), within the Agency. In line with the provisions of the Commission Decision (EU, Euratom) 2015/444 ⁽⁶⁾, such a Board is needed in the case of EUROSUR because EUROSUR is composed of several interconnected systems involving several parties.
- (27) The Accreditation Board is an independent technical body which does not affect the functions of the Agency's management board.
- (28) In application of the principle of subsidiarity, security accreditation decisions should, following the process defined in the security accreditation strategy, be based on local security accreditation decisions taken by the respective national security accreditation authorities of the Member States.
- (29) In order for it to carry out all of its activities quickly and effectively, the Accreditation Board should be able to set up appropriate subordinate bodies acting on its instructions. It should accordingly set up a Board to assist it in preparing its decisions.
- (30) Security accreditation activities should be coordinated with the work of the authorities responsible for managing the systems and other relevant entities responsible for implementing the security provisions.
- (31) Given the specific nature and the complexity of EUROSUR, it is essential for the security accreditation activities to be carried out in a context of collective responsibility for the security of the Union and of the Member States, by making efforts to reach a consensus and by involving all parties with an interest in security, and for permanent risk monitoring. It is also imperative that technical security accreditation activities be entrusted to professionals who are duly qualified in the field of accrediting complex systems and who have an adequate level of security clearance.
- (32) In order to ensure that the Accreditation Board is able to accomplish its tasks, it should also be provided that Member States supply the Board with any necessary documentation, grant access to classified information in the framework of EUROSUR and supporting systems (including the Communication Network) and to any areas falling within their jurisdiction to duly authorised persons, and that they should be responsible at local level for the accreditation of the security of areas that are located within their territory.
- (33) While direct access to a national system is a sole prerogative of the Member State concerned, Agency staff could be granted direct access to national systems in the framework of EUROSUR to assist national authorities in their tasks.
- (34) The provisions related to data security of the external components of EUROSUR should be part of the provisions related to EUROSUR in the corresponding working arrangements and model status agreements. In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark did not take part in the adoption of Regulation (EU) 2019/817 of the European Parliament and of the Council ⁽⁷⁾ and is not bound by it or subject to its application.

⁽⁶⁾ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

⁽⁷⁾ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA (OJ L 135, 22.5.2019, p. 27).

However, given that Regulation (EU) 2019/817 builds upon the Schengen *acquis*, Denmark notified on 31 October 2019, in accordance with Article 4 of that Protocol, its decision to implement Regulation (EU) 2019/817 in its national law.

- (35) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁸⁾; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (36) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC ⁽⁹⁾.
- (37) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC, read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽¹⁰⁾.
- (38) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽¹¹⁾.
- (39) The measures provided for in this Regulation are in accordance with the opinion of the European Border and Coast Guard Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down:

- (a) the rules for reporting in EUROSUR, including the type of information to be provided and the time limits for reporting;
- (b) the details of the information layers of the situational pictures;

⁽⁸⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽⁹⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

⁽¹⁰⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽¹¹⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

- (c) the modalities for the establishment of specific situational pictures;
- (d) the responsibilities related to the reporting, to the management of the situational pictures and for operating and maintaining the various technical systems and networks that support EUROSUR;
- (e) the data security and data protection rules of EUROSUR;
- (f) mechanisms for ensuring quality control.

Article 2

Scope

This Regulation applies to the information exchange and cooperation for the purposes of EUROSUR including situational awareness, risk analysis and for supporting the planning and conduct of border control operations.

Article 3

Definitions

For the purpose of this Regulation, the following definitions apply:

- (1) 'event' means a situation, which is likely to have an impact on the external borders either as regards migration, cross-border crime, or the protection and saving of the lives of migrants, including border incidents, or that may affect the functioning of EUROSUR, including any of its technical components;
- (2) 'managing a situational picture' means establishing and maintaining the situational picture and processing all the information that it contains;
- (3) 'owner' means the entity, agency or body managing the situational picture and the corresponding reports;
- (4) 'processing' means any action performed on the data and metadata and information contained in a report, whether those actions are automated or not, including collecting, recording, organising, structuring, storing, modifying, consulting, using, transmitting, publishing, combining, erasing, downgrading and destroying this data and metadata;
- (5) 'indicator' means a measurement or value that refers to events or to tasks describing the situation at external borders which contributes to situational awareness and risk analysis or supports reaction capabilities;
- (6) 'technical indicator', means a measurement or value that refers to events or to tasks which contributes to situational awareness and risk analysis related to the functioning of EUROSUR or supports corresponding reaction capabilities;
- (7) 'Maritime Rescue Coordination Centre' means a unit responsible for promoting efficient organisation of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region as referred to in the International Convention on Maritime Search and Rescue;
- (8) 'external flight' means any flight of a manned or unmanned aircraft and its passengers and/or cargo to or from the territories of the Member States, which is not an internal flight as defined in point 3 of Article 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council ⁽¹²⁾;
- (9) 'International Coordination Centre' means the coordination structure established for the coordination of a joint operation or a rapid border intervention at the external borders;
- (10) 'watchlist' means a list of suspicious entities, assets, behaviours or profiles established on the basis of risk analysis, with a view to orient the detection and risk analysis capabilities of the European Border and Coast Guard and trigger appropriate reaction capabilities;

⁽¹²⁾ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

- (11) 'the technical components' means the systems and networks used for the purpose of EUROSUR, including the infrastructure, organisation, personnel and information resources needed to support it;
- (12) 'facilitation' means facilitation of unauthorised entry, transit and residence as defined in Council Directive 2002/90/EC ⁽¹³⁾;
- (13) 'refusal of entry' means a refusal of entry issued to a third-country national at external borders, in accordance with Article 14 of Regulation (EU) 2016/399, for not fulfilling all the entry conditions laid down in Article 6(1) while not belonging to the categories of persons referred to in Article 6(5) of that Regulation, and to whom a standard refusal form has been issued in accordance with Annex V of the Schengen Borders Code;
- (14) 'trafficking in human beings' means an offence referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council ⁽¹⁴⁾;
- (15) 'security accreditation' means the formal authorisation and approval granted to a system or network of EUROSUR by the relevant Security Accreditation Authority (SAA) to process EUROSUR data in its operational environment, following the formal validation of a Security Plan and its correct implementation;
- (16) 'operational status' means the ability of an asset, unit, system or centre to perform its operational function(s) characterised as 'fully operational', 'limited operational functions', or 'not available';
- (17) 'a sublayer' means a layer of information underneath the event layer, the operational layer or the risk analysis layer of a situational picture.

CHAPTER I

PRINCIPLES OF REPORTING IN EUROSUR

SECTION 1

General principles

Article 4

Reports in EUROSUR

1. Reports shall be transmitted between two or more entities, units, bodies or agencies for the purposes of contributing to the establishment of the different situational pictures, to contribute to risk analysis, or to support reaction capabilities.
2. Reports shall be composed of:
 - (a) data containing the basic information;
 - (b) meta-data containing additional information that contributes to the understanding of the dataset in a wider context and supports its processing in EUROSUR.
3. Reports may take the form of:
 - (a) indicators as referred to in Article 8;
 - (b) single event reports as referred to in Article 9;
 - (c) reports on own assets as referred to in Article 10;
 - (d) reports on operational plans as referred to in Article 11;
 - (e) reports on environmental information as referred to in Article 12;

⁽¹³⁾ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

⁽¹⁴⁾ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

- (f) risk analysis reports as referred to in Article 13;
- (g) requests for information as referred to in Article 14;
- (h) watchlists as referred to in Article 15.

Article 5

Roles in reporting

1. The national coordination centres, the European Border and Coast Guard Agency ('the Agency') or the entities managing the specific situational pictures, referred to as 'the originators of the reports', shall transmit reports in EUROSUR.
2. The owner of the situational pictures, referred to as the 'owners', shall be the recipients of the report and shall be responsible for processing it in accordance with the applicable rules.
3. Reports in EUROSUR may originate from the national sources referred to in Article 25(2) and Article 26(2) of Regulation (EU) 2019/1896 or from the Agency's own sources.

Article 6

Links

1. Where the originator of a report establishes a relationship between reports or with other elements of the situational picture that can facilitate the understanding of the overall situation and context, it shall link this report to the relevant elements.
2. The owners of a situational picture may add or modify the links related to the situational picture he is managing.

SECTION 2

Event reporting

Article 7

Reporting events in EUROSUR

1. Each national coordination centre shall ensure that the national authorities of Member States responsible for border management, including coast guards to the extent that they carry out border control tasks, report in the event layer of relevant situational pictures all events detected while conducting border control activities, performing situational awareness and risk analysis as well as events related to unauthorised secondary movements, where available.
2. When carrying out border control tasks, the Agency and, where relevant, the international coordination centres shall be subject to the obligation referred to in paragraph 1.
3. Events in EUROSUR shall be reported as indicators or as single event reports or both.

Article 8

Indicators on events at external borders

1. The national coordination centres and, when relevant and as provided for in the operational plans, the international coordination centres, shall report indicators on events at external borders to the Agency as set out in Annex 1 and provided at the times specified in that annex.

2. The data corresponding to the indicators may be derived from information and statistics available to national authorities including through searches of relevant Union databases and large-scale information systems, in accordance with the legal framework applicable to those databases and systems.
3. Indicators relating to illicit cross-border movement of goods and associated illicit trafficking shall be obtained in cooperation with competent national authorities taking due account of other reporting obligations or restrictions and the role of the Commission.
4. In addition to the reporting obligation referred to under paragraph 1, an originator of a report may send a specific report:
 - (a) to alert on an abnormal change of the values observed;
 - (b) to inform on a specific *modus operandi* or pattern which has been detected;
 - (c) in the case of situations referred to in point (b), the report may be linked to a specific risk analysis.
5. Where the Agency obtains any of the indicators referred to in paragraph 1 by its own surveillance assets or through cooperation of the Agency with Union institutions, bodies, offices and agencies and international organisation or cooperation of the Agency with third countries, it shall report the indicators in the European Situational Picture and shall inform the national coordination centres thereof. In this case and for these indicators, the reporting obligation of Article 7(1) shall not apply.

Article 9

Single events reports

1. The national coordination centres and, when relevant and as provided for in the operational plans, the international coordination centres, shall report the single events to the Agency.
2. Single events shall be reported in EUROSUR wherever:
 - (a) a timely reaction is needed for to the single event;
 - (b) the specific event has an impact on external borders which is high or very high; or
 - (c) the event is listed in Annex 2.
3. Unless specified otherwise in Annex 2, the originator of the report shall send the first report on the event no later than 24 hours after relevant competent authority became aware of an event has occurred or is likely to occur.
4. The originator of the report shall submit additional reports as appropriate for the purpose of complementing or updating a single event report. They shall be linked to the initial single event report and to the event reported in the situational picture.
5. Reports prepared under this Article shall contain a description of the response of the authorities to the events reported, including any action taken or planned to be taken.
6. Without prejudice to the first operational response, the owner of the report and the originator of the report may request further information and risk analysis as provided for in Article 14, in order to:
 - (a) complete the information corresponding to the event;
 - (b) increase the confidence level referred to in Article 16;
 - (c) update the impact level attributed;
 - (d) update the situation related to the event.

7. On the basis of the reports received, the owner of the situational picture may close the event where it is considered that:

- (a) the suspected event did not take place;
- (b) the estimated impact of the event does not justify the reporting;
- (c) the situation described in the event has ended.

In case an event is closed, the event and the various reports linked to it shall be stored and shall remain accessible in the situational picture for risk analysis purposes.

8. Where the Agency obtains sufficient information on single events by its own surveillance assets or through cooperation of the Agency with Union institutions, bodies, offices and agencies and international organisation or cooperation of the Agency with third countries, it shall report this information in the European Situational Picture and shall inform the national coordination centres thereof. In this case, the reporting obligation of paragraph 1 shall not apply.

9. The Agency shall include or update these events as appropriate in the European situational picture.

SECTION 3

Operational reporting

Article 10

Reports on own assets

1. Each national coordination centre and where applicable the relevant international coordination centre and the Agency shall ensure that their units participating in border control operations report on own assets in the European situational picture.

2. The reports on own assets in EUROSUR shall comprise:

- (a) the operational status of the national coordination centres including their ability to perform the tasks listed in Article 21(3) of Regulation (EU) 2019/1896 and, when relevant, the operational status of the international coordination centres. Any significant change in operational status of the national coordination centre shall be reported to the Agency in real time;
- (b) the position and operational status of the command and control centres used for border control operations;
- (c) the areas of responsibility for border surveillance and for the checks at border crossing points;
- (d) the type and distribution of border control units and their status.

Article 11

Reports on operational plans

1. Each national coordination centre shall ensure that the units participating in border control operations report their operational plans in the national situational pictures.

2. National coordination centres, and, where relevant, the international coordination centres, shall report the operational plans in the European situational picture where the impact levels at the borders sections are high or critical or in the case of joint border operations/rapid border interventions.

3. The reports on operational plans shall contain:

- (a) a description of the situation;
- (b) the operational aim and the anticipated duration of the operation;

- (c) the geographical area where the operation is to take place;
- (d) a description of the tasks, responsibilities and special instructions for the teams and units participating, with *modus operandi* and objectives of the deployment;
- (e) the composition of the deployed staff including numbers of staff deployed and their profiles;
- (f) command and control plans, including the operational status of the command and control centres, the function performed and corresponding systems and communication tools;
- (g) the technical equipment to be deployed, including specific requirements such as conditions for use, requested crew, transport and other logistics;
- (h) the schedule of border surveillance patrols, including the patrolling area and number of assets engaged;
- (i) detailed procedures on event reporting.

Article 12

Reports on environmental information

1. The relevant authorities, services, agencies and programmes at national and EU level may report environmental information in the operational layer of the relevant situational pictures.
2. The reporting on environmental information in EUROSUR may contain:
 - (a) real-time images provided by video cameras, radar systems and other detection devices;
 - (b) meteorological observations and weather forecasts;
 - (c) oceanographic information and drifting model services;
 - (d) geospatial products;
 - (e) other operational pictures, which may help understand the situation at external borders or monitor a specific border operation.

SECTION 4

Risk analysis reporting

Article 13

Reports related to risk analysis

1. The national coordination centres, the Agency and, where relevant, the international coordination centres, shall ensure the provision of risk analysis reports with a view to updating the analysis layers of the situational pictures.
2. The risk analysis reports shall include one or more of the following: analytical products such as briefing notes, analytical reports, third country analysis and risk profiles, and specific earth observation reports using geospatial information systems.
3. The risk analysis reports shall be used for:
 - (a) facilitating the understanding of events and incidents at external borders and, where available, their relation to unauthorised secondary movements and the analysis and forecast of related trends;
 - (b) facilitating the targeted planning and conduct of border control operations;
 - (c) strategic risk analysis.

*Article 14***Request for information**

1. Where there is a need to obtain further reports on a specific event, or to update the situational picture, the national coordination centres, the Agency or the entities managing the specific situational pictures, may send a request for information to one or several sources referred to in Article 25(2) and 26(2) of Regulation (EU) 2019/1896.
2. A request for information made pursuant to paragraph 1, may be subject to a classification level or other specific data policy restrictions.
3. The risk analysis reports in response to a request for information shall be linked to the original request for information.
4. The principle of originator's consent shall apply both to the requests for information and to the reports made in response thereto.

*Article 15***Watchlists**

1. The Agency shall establish and maintain watchlists for the purposes of enhancing the detection and risk analysis capabilities of the European Border and Coast Guard and trigger appropriate reaction capabilities.
2. Watchlists shall be composed of:
 - (a) entities, assets, behaviours or profiles, which, on the basis of risk analysis, are suspected to be connected with illegal immigration and cross-border crime, or that may endanger the safety of life of migrants;
 - (b) a suggested reaction in case of detection, including data policy restrictions applicable to the reports.
3. Watchlists may include:
 - (a) suspected vessels;
 - (b) suspected aircrafts;
 - (c) suspected airports of origin, and other places known or suspected to be places of origin of external flights;
 - (d) suspected ports of origin, anchorages, awaiting berths and other places known or suspected to be places of origin of maritime traffic;
 - (e) suspected operators.

*SECTION 5****Provisions common to the 'events layer' and the 'risk analysis layer'****Article 16***Confidence levels**

1. The originator of an event report or of a risk analysis report shall assess the confidence level in the reported information as part of the metadata forming part of the report.
2. The confidence level shall be assessed on the basis of the following criteria:
 - (a) the credibility of the reported information;
 - (b) the reliability of the source;
 - (c) the validation status of the report.

3. The owner shall take into account the confidence level associated with the report to update the situational picture accordingly.

Article 17

Attribution of impact levels

1. The originator of an event report or of a risk analysis report shall assess the impact level of the reported information as part of the metadata forming part of the report.
2. The impact level shall reflect the overall impact of the reported information on:
 - (a) the detection, prevention and combating of illegal immigration;
 - (b) the detection, prevention and combating of cross-border crime;
 - (c) the protection of and saving the lives of migrants.
3. Originators of a report referred to in paragraph 1 shall attribute an impact level to each event and risk analysis report.
4. Where a report relates to an event already reported in the situational picture, the originator shall link the report to that event.
5. Owners shall attribute an impact level to the events or modify them based on the reports received and on their own risk analysis.

SECTION 6

Reporting in the context of specific border control activities

Article 18

Reporting related to unauthorised secondary movements

Where this information is available, Member States shall:

- (a) display the analysis related to unauthorised secondary movement on their territory in a specific sublayer of the national situational picture. This specific sublayer shall be shared with the Agency;
- (b) report single events related to unauthorised secondary movements as provided for in Article 9, in line with their national procedures;
- (c) report specific indicators related to unauthorised secondary movements.

Article 19

Reporting related to maritime border surveillance

1. Each national coordination centre shall ensure that the units participating in maritime border surveillance report on vessels:
 - (a) suspected of carrying persons circumventing or intending to circumvent checks at border crossing points, where such circumvention relates to illegal migration;
 - (b) suspected of being engaged in smuggling activity by sea or other cross-border crime related activities;
 - (c) in cases where lives of migrants could be at risk;
 - (d) on the watchlists or which are subject to requests for information. In the case of reports relating to point (d), the reporting shall take into account the data policy restrictions provided for in Article 14(2) and Article 15(2)(b).

2. The participating unit shall transmit the information to its own national coordination centre and, in the case of a joint operation or a rapid border intervention, to the corresponding international coordination centre in accordance with the operation plan.

3. The national coordination centres and, when relevant, the international coordination centres shall update their respective situational pictures and report this information to the Agency with a view to update the European situational picture.

Article 20

Events related to Search and Rescue at sea

1. While performing maritime border surveillance, Member States authorities rendering assistance to any vessel or person in distress at sea, in accordance with their obligation under international maritime law shall take into account and transmit all relevant information and observations related to a potential Search and Rescue incident to the respective responsible Maritime Rescue Coordination Centre and inform their national coordination centre with a view to updating that event in the relevant situational pictures.

2. If Member States authorities clearly establish that the Search and Rescue incident is not related to the protection and saving of migrants' lives or to cross-border crime, they may decide not to inform the national coordination centre.

3. While performing maritime border surveillance operations and in accordance with Regulation (EU) No 656/2014 of the European Parliament and of the Council ⁽¹⁵⁾, the Agency shall be subject to the same obligation as the one referred to in paragraph 1.

4. During a Search and Rescue operation, the competent national coordination centre shall update the national situational picture and report this information to the Agency with a view to update the European situational picture.

5. The situational pictures shall be regularly updated:

- (a) to support the planning and conduct of the next operational phase once the Search and Rescue operation is concluded;
- (b) to assess the impact levels attributed to the corresponding incident and to the overall maritime border section;
- (c) to update the relevant indicators referred to in Article 8.

6. The competent national coordination centre shall report to the Agency about the termination of a Search and Rescue operation at the latest within 24 hours after the operation is terminated.

Article 21

Reporting related to air border surveillance

1. Each national coordination centre shall ensure that the national agencies and bodies involved in air border surveillance report on external flights:

- (a) suspected of carrying persons circumventing or intending to circumvent checks at border crossing points, if the incident relates to illegal migration;
- (b) suspected of being engaged in smuggling by air or other cross-border crime;
- (c) where lives of migrants could be at risk;
- (d) on the watchlists or which are subject to requests for information. In the case of reports relating to point (d), the reporting shall take into account the data policy restrictions provided for in Article 14(2) and Article 15(2)(b).

⁽¹⁵⁾ Regulation (EU) No 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 189, 27.6.2014, p. 93).

2. The national agencies and bodies involved in air border surveillance shall transmit that information to their own national coordination centre or, in the case of a joint operation or a rapid border intervention, to the corresponding international coordination centre in accordance with the operational plan.

3. The national coordination centre or the international coordination centre shall update their respective situational pictures and report this information to the Agency with a view to update the European situational picture.

SECTION 7

Reporting quality control in EUROSUR

Article 22

Reporting quality of data in EUROSUR

To monitor the quality of data in EUROSUR the Agency shall establish and maintain the following indicators:

- (a) the number and frequency of reports received per border section and per border crossing points;
- (b) the timeliness of the reporting;
- (c) the completeness and consistency of the reports.

Article 23

Reporting quality of service in EUROSUR

1. In monitoring the technical and operational functioning of EUROSUR in accordance with Article 23 of Regulation (EU) 2019/1896, The Agency, in close cooperation with the competent national authorities, may establish technical indicators and the requirements for single event reporting, to monitor the operational status and quality of service offered by the various systems and networks of Member States and of the Agency connected to and forming part of the technical component of EUROSUR as defined in Article 27.

2. The indicators shall be used:

- (a) to monitor the status of the various technical components of EUROSUR in real time;
- (b) to support the identification and response to incidents and failures identified in the functioning of EUROSUR;
- (c) to ensure the data security of EUROSUR.

3. The Member States and the Agency shall report on any single incident affecting the technical components of EUROSUR or the data security of EUROSUR.

CHAPTER II

SITUATIONAL PICTURES

Article 24

Structure of the situational pictures

1. The event and analysis layers of the European situational picture shall contain a sublayer on unauthorised secondary movements. Where available, event and analysis layers of the national situational picture and of the specific situational picture shall also contain sublayers on unauthorised secondary movements, for the purpose of understanding migratory trends, volume and routes.

2. The operational layer of the European situational picture shall contain sublayers on the technical functioning of EUROSUR. These sublayers shall describe:

- (a) the operational status of the national coordination centres and international coordination centres;
- (b) the main technical elements contributing to the functioning of EUROSUR and their status;
- (c) the quality of data and the quality of service in EUROSUR;
- (d) the incidents and events affecting the technical functioning of EUROSUR;
- (e) the data security incidents.

3. The situational picture shall comprise other specific sublayers of information in order to facilitate the display of information to the users.

4. Each situational picture shall be established in a document specifying the layer and sublayers and the applicable data policy.

Article 25

Management of the situational pictures

The owner of the situational picture shall:

- (a) process the reports received;
- (b) establish and maintain the event layer of the situational picture, generate and update the events in the event layer of the situational picture and attribute corresponding impact levels, and confidence levels;
- (c) establish and maintain the operational layer of the situational picture based on the reports on own assets and reports on operational plans;
- (d) establish and maintain the analysis layer of the situational picture based on the risk analysis reports and attribute corresponding impact levels and confidence levels;
- (e) establish and maintain the links between the different elements of the situational picture taking into account the links in the reports;
- (f) manage user access to the situational picture and contribute to the data security of EUROSUR;
- (g) transmit the relevant reports and necessary information to the owners of other situational pictures, in line with Chapter I;
- (h) archive and delete the relevant information in line with the applicable data policy.

Article 26

Rules for establishing and sharing a specific situational picture

1. When establishing a specific situational picture in accordance with Article 27 of Regulation (EU) 2019/1896, Member States and the Agency shall ensure alignment with:

- (a) the principles of reporting set out in Chapter I;
- (b) the requirements regarding the structure and management of situational pictures set out in Articles 24 and Article 25;
- (c) the general provisions set out in Chapter III.

2. The rules for establishing and sharing a specific situational picture shall contain:

- (a) the content and scope of the specific situational picture, including:
 - (i) the purpose of the specific situational picture,
 - (ii) the information layers and sublayers,
 - (iii) the type of information to be reported in the specific situational picture, including event reports, operational reports and risk analysis reports;

- (b) the governance of the specific situational picture, including:
 - (i) the owner,
 - (ii) the bodies, offices and agencies that can be originators of the reports,
 - (iii) the rules for reporting,
 - (iv) provisions related to data security, including user access;
- (c) the rules for information exchange with the other users of EUROSUR, including:
 - (i) the mechanisms to exchange information with national and European situational pictures and the mechanisms to ensure the originator's consent,
 - (ii) the rules for the provision of EUROSUR Fusion Services referred to in Article 28 of Regulation (EU) 2019/1896 and the corresponding procedures,
 - (iii) other aspects related to the technical functioning of EUROSUR, including the interconnection of the external component supporting the establishment of the specific situational picture with the relevant national or European components of EUROSUR.

CHAPTER III

GENERAL PROVISIONS

SECTION 1

Entities responsible for the technical aspects

Article 27

Technical components of EUROSUR

1. The technical components of EUROSUR shall include national components and a European component.
2. Each national component shall be composed of the national systems and networks used by Member States for the establishment of the situational pictures, reporting, situational awareness, risk analysis, and for supporting the planning and conduct of border control operations, including the infrastructure, organisation, personnel and information resources needed to support it. The interconnections among and between components inside a Member State as well as between Member States shall be part of the national components.
3. The European component shall complement the national components. It shall include the interconnection with the national components. It shall comprise the Communication Network and the systems and networks used by the Agency for the establishment of the situational pictures, reporting, situational awareness, risk analysis, and for supporting the planning and conduct of border control operations.

Article 28

Technical responsibilities of the Agency

The Agency shall be responsible for managing the European component, which shall include:

- (a) the definition of technical standards for interconnecting networks, systems, applications and equipment of the national and external components with those of the European component;
- (b) the certification process of the networks, systems, applications and equipment with a view to connecting them to EUROSUR, in close cooperation with the responsible authorities;

- (c) the service management of the systems and networks used by the Agency for the establishment of the situational pictures, reporting, situational awareness and risk analysis and for supporting the planning and conduct of border control operations;
- (d) the reporting of the operation, the quality service and the service management aspects of the systems and networks referred to in point (c), as provided for in Article 23;
- (e) the data security of the European component.

Article 29

Technical responsibilities of the Member States

1. Each Member State shall be responsible for:
 - (a) managing its national component, including service management, ensuring the coordination of the connection of national systems and networks used for the establishment of the situational pictures, reporting, situational awareness, risk analysis and for supporting the planning and conduct of border control operations;
 - (b) reporting the operation and the quality of service and the service management aspects of the systems and networks referred to in point (a), as provided for in Article 23;
 - (c) the compliance with the technical standards established by the Agency;
 - (d) the data security of the national component.
2. The national coordination centre shall:
 - (a) support the coordination, planning and implementation of the national component;
 - (b) contribute to the regular monitoring of the quality of service and quality of data, and report it to the Agency;
 - (c) ensure the operational reporting on the systems and networks of the European component.

Article 30

External components

1. An external component of EUROSUR shall be composed of the systems and networks, including the infrastructure, organisation, personnel and information resources needed to support it, that are not part of EUROSUR and which:
 - (a) exchange data and information with EUROSUR;
 - (b) support the establishment of a specific situational picture.
2. The interconnection of an external component to EUROSUR belongs to the external component. It shall be specified in the rules establishing the relevant specific situational picture.

SECTION 2

Data security and data protection rules for EUROSUR

Article 31

General principles of EUROSUR data security

1. EUROSUR data security shall encompass the management and the technical activities necessary to achieve an appropriate level of protection for handling EUROSUR data and information, cope with the evolving threat environment and enable the various national bodies and agencies involved in EUROSUR and the Agency to fulfil their mission. EUROSUR data security shall include information assurance, physical security, personal security and industrial security.

2. EUROSUR data security shall comprise:
 - (a) security risk management, including security controls and plans, and associated monitoring, evaluation, maintenance, improvement, reporting, awareness and training;
 - (b) business continuity and disaster recovery, including impact assessment, continuity and recovery controls and plans, and associated monitoring evaluation, maintenance, improvement, reporting, awareness and training;
 - (c) security incident response and cooperative response between the Agency and the Member States for security incidents;
 - (d) security accreditation;
 - (e) user access control;
 - (f) data security related aspects of the planning of border operations and of the planning of information systems;
 - (g) security aspects of the interconnections of components;
 - (h) handling of classified information for the purpose of EUROSUR.

Article 32

Governance of EUROSUR data security

1. The Agency shall ensure the overall security of EUROSUR, duly taking into account the need for oversight and integration of security requirements in each component of EUROSUR.
2. The Agency shall be responsible for the data security of the European component.
3. Each Member State shall be responsible for the data security of its national component.
4. The Agency and the Member States shall ensure alignment of the controls, the processes and the plans, so that the data security of EUROSUR is horizontally and effectively assured, based on a global security risk management process.
5. The responsibilities for the data security of the external component shall be set out in the agreements, arrangements and operational plans establishing the specific situational picture, as provided for in Article 26.
6. The Agency shall adopt standards laying down the security functional requirements and the security assurance requirements for controlling the access to, and handling of, technologies that provide security to EUROSUR.
7. Each Member State and the Agency shall ensure that the necessary steps are taken to comply with the standards referred to in paragraph 6, that adequate reasoning for fulfilment of the requirements and for controlling of the risks is documented and that any further requirements related to the security of the systems are met, taking full account of expert advice.
8. Each Member State and the Agency shall report in EUROSUR any security incident affecting the data security of EUROSUR as part of the reporting on data quality and quality of service.
9. Wherever the security of the Union or its Member States may be affected by the operation of EUROSUR:
 - (a) the Agency shall immediately inform the relevant national coordination centres;
 - (b) the executive director of the Agency may decide to take any appropriate measure to remedy the situation, in close coordination with the Member States concerned, including the disconnection of certain systems and networks from the European component of EUROSUR.

*Article 33***Application of security rules in EUROSUR**

1. When handling EUROSUR data and information, each Member State and the Agency shall ensure that security controls, processes and plans are in place, ensuring a degree of protection which shall at least be equivalent to that guaranteed by the Commission's rules on security set out in Decision (EU, Euratom) 2015/444 and Commission Decision (EU, Euratom) 2015/443 ⁽¹⁶⁾.
2. Member States shall immediately inform the Commission and the Agency of the adoption of national security rules relevant for EUROSUR as referred to in paragraph 1.
3. Natural persons resident in third countries and legal entities established in third countries may deal with EUROSUR data only where they are subject, in those countries, to security rules ensuring a degree of protection at least equivalent to that guaranteed by the equivalent rules on security of the Commission.
4. The equivalence of security rules applied in a third country may be recognised in an agreement with that country.
5. As part of the implementation of the European component of EUROSUR, the Agency shall support the corresponding exchange of EUROSUR reports and the interconnection of national components both at unclassified level and at classified level.

*Article 34***Principles of security accreditation in EUROSUR**

The security accreditation activities shall be carried out in accordance with the following principles:

- (a) security accreditation activities and decisions are to be undertaken in a context of collective responsibility for the security of the Union and of the Member States;
- (b) efforts shall be made for decisions to be reached by consensus and for all relevant parties with an interest in security issues to be involved;
- (c) tasks shall be carried out in respect of relevant security rules and accreditation standards applicable to the Agency, the Member States' authorities and the Commission;
- (d) a permanent monitoring process shall ensure that security risks are known, security measures are defined to reduce such risks to an acceptable level in accordance with the basic principles and minimum standards set out in the applicable security rules and that these measures are applied in line with the concept of defence in depth. The effectiveness of such measures shall be continuously evaluated;
- (e) security accreditation decisions shall, following the process defined in the security accreditation strategy, be based on local security accreditation decisions taken by the respective national Security Accreditation Authorities (SAAs) of the Member States;
- (f) the technical security accreditation activities shall be entrusted to professionals who are duly qualified in the field of accrediting complex systems, who have an appropriate level of security clearance, and who shall act objectively;
- (g) security accreditation decisions shall be taken independently of the Agency and of the entities responsible for implementing the national components of EUROSUR. The data security accreditation authority for EUROSUR shall be, within the Agency, an autonomous body that takes its decisions independently;
- (h) security accreditation activities shall be carried out while reconciling the requirement for independence with the need for adequate coordination between the Agency and the national authorities responsible for implementing security provisions in Member States.

⁽¹⁶⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

*Article 35***EUROSUR Security Accreditation Board**

1. A EUROSUR Security Accreditation Board ('the Accreditation Board') is established within the Agency.
2. As security accreditation authority, the Accreditation Board shall, with regard to security accreditation for EUROSUR, be responsible for:
 - (a) defining and approving a security accreditation strategy for EUROSUR including the European component;
 - (b) Member States shall report to the Accreditation Board regarding the accreditation of their national components, so as to ensure that the Accreditation Board can take relevant interconnection decisions;
 - (c) taking security accreditation decisions for the European component, taking into account the advice provided by national entities competent in security matters and the overall security risks;
 - (d) approving relevant documentation relating to security accreditation;
 - (e) advising, within its field of competence, the Agency and the Member States in the establishment of security operating procedures ('SecOps'), and providing a statement with its concluding position;
 - (f) examining and approving the security risk assessment cooperating with the Agency, Member States and the Commission to define risk mitigation measures;
 - (g) checking the implementation of security measures in relation to the security accreditation of the European component by undertaking or sponsoring security assessments, inspections or reviews;
 - (h) endorsing the selection of approved products and measures and of approved cryptographic products used to provide security for the European component of EUROSUR and for interconnection;
 - (i) approving or, where relevant, together with the relevant entity competent in security matters, participating in the joint approval of:
 - (i) the interconnection of the European component with national components,
 - (ii) the interconnection of the external components to EUROSUR;
 - (j) agreeing with the relevant Member State the procedures relating to access control;
 - (k) on the basis of the security risk reports, informing the Agency of its risk assessment and providing advice to the Agency on residual security risk treatment options for a given security accreditation decision;
 - (l) carrying out the consultations which are necessary to perform its tasks.
3. In the security accreditation strategy referred to in point (a) of paragraph 2, the Accreditation Board shall set out the following:
 - (a) the scope of the activities necessary to perform and maintain the accreditation of the European component of EUROSUR, and their potential interconnection with other components;
 - (b) a security accreditation process for the European component with a degree of detail commensurate with the required level of assurance and clearly stating the approval conditions;
 - (c) the role of relevant stakeholders involved in the accreditation process;
 - (d) an accreditation schedule compliant with the deployment of the EUROSUR standards, in particular as regards the deployment of infrastructure, service provision and evolution;
 - (e) the principles of the security accreditation of the national components to be performed by national entities of the Member States competent in security matters;
 - (f) the provisions related to data security of the external components of EUROSUR.
4. The Accreditation Board shall perform its tasks independently when handling files, performing system security audits, preparing decisions and organising its meetings.

*Article 36***Functioning of the Security Accreditation Board**

1. The Accreditation Board shall be composed of one representative per Member State and two representatives from the Commission.
2. The security officer of the Agency shall be a designated secretary of the Accreditation Board.
3. The Accreditation Board shall establish its rules of procedure and appoint its chairperson.
4. If there is no consensus, the Accreditation Board shall have recourse to majority voting.
5. The Accreditation Board may set up subgroups to investigate technical matters.
6. The Accreditation Board shall keep the management board of the Agency and the executive director of the Agency and the Commission informed of any of its decisions.

*Article 37***Role of Member States and the Agency with regard to the Accreditation Board**

Member States and the executive director of the Agency shall:

- (a) transmit to the Accreditation Board all information they consider relevant for the purposes of security accreditation;
- (b) permit duly authorised persons appointed by the Accreditation Board to have access to any classified information and to any areas/sites related to the security of systems falling within their jurisdiction, in accordance with their national laws and regulations, and without any discrimination on ground of nationality, including for the purposes of security audits and tests as decided by the Accreditation Board;
- (c) be responsible for the accreditation of their components of EUROSUR, and report, to this end, to the Accreditation Board.

*Article 38***User access**

1. Without prejudice to Article 35, the entity responsible for a component of EUROSUR shall manage user access to its systems networks and application.
2. In case a national staff member would be given direct access to a system or application of the Agency used for the purpose of EUROSUR, the Agency shall coordinate access rights with the relevant National Coordination Centre.
3. In case, an Agency staff member would be given direct access to a national system or application used for the purpose of EUROSUR, the responsible Member State shall coordinate access rights with the executive director of the Agency.

*Article 39***Data security of the external components of EUROSUR**

1. The external components may be connected to EUROSUR only if their data security is equivalent to the data security of EUROSUR.
2. The rules for establishing and sharing a specific situational picture referred to in Article 26 shall include provisions for data security, specifying the type of information that may be exchanged and the level of classification.
3. Any interconnection of an external component to EUROSUR shall be subject to the prior approval of the Accreditation Board.

*Article 40***Data protection rules for EUROSUR**

1. Although data processed by EUROSUR may exceptionally contain information relating to indirectly identifiable natural persons, such data shall not be processed in the framework of EUROSUR to identify these natural persons.
2. Where the processing of information in EUROSUR exceptionally requires the processing of personal data other than ship and aircraft identification numbers, these personal data shall be deleted as soon as the purpose for which they have been collected has been achieved.

*Article 41***Entry into force**

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 9 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX 1

List of indicators**1. INDICATOR ON REFUSALS OF ENTRY**

The fifteenth day of each month each national coordination centre shall report the number of refusals of entry during the last month, per border crossing points.

This indicator shall be broken down into the following subindicators:

- (a) nationality of the third-country nationals concerned;
- (b) country of origin;
- (c) last country of embarkation (for ports and airports, not counting transit);
- (d) age group;
- (e) gender;
- (f) breakdown of the reasons of refusal in accordance with Annex V, part B of Regulation (EU) 2016/399;
- (g) grounds for refusing, revoking or annulling ETIAS travel authorisations;
- (h) number of decisions of refusal of entry issued for the same persons with the same identity;
- (i) number of decisions of refusal of entry issued for the same persons using multiple identities.

2. INDICATOR ON ILLEGAL STAYS

The fifteenth day of each month, each national coordination centre shall report the number of third-country nationals who have been detected by national authorities while not fulfilling, or no longer fulfilling, the conditions for stay or residence in the Member State during the last month, whether they were detected inland or while trying to exit the territory.

This indicator shall be broken down into the following subindicators:

- (a) nationality of the third-country nationals concerned;
- (b) age group;
- (c) gender;
- (d) number of unaccompanied minors;
- (e) reason (e.g. visa over-stayers, expired residence permit etc.);
- (f) type of control when detected (border control, police check inland, crime prevention operations, traffic control);
- (g) main areas of detection.

When this information is available, each national coordination centre shall report the corresponding indicators related to unauthorised secondary movement.

3. INDICATOR ON FLOWS

1. The fifteenth day of each month, each national coordination centre shall report the number of passengers during the last month, per border crossing point.

When this information is available, this indicator shall be broken down into the following subindicators:

- (a) nationality;
- (b) destination: entry or exit of Schengen area.

2. The fifteenth day of each month, each national coordination centre shall report:

- (a) per land border crossing point, the number of vehicles;
- (b) per maritime border crossing point (ports), the number of vessels;

(c) per air border crossing points (airports), the number of external flights.

When this information is available, these indicators shall be broken down into destination: entry or exit of Schengen area.

4. INDICATORS ON THE SMUGGLING OF GOODS

4.1. Drugs

Drugs seizures shall be divided into the following categories:

- (1) Cannabis
- (2) Heroin
- (3) Other opioids
- (4) Cocaine
- (5) Amphetamine-type stimulants (including amphetamine and methamphetamine)
- (6) MDMA (ecstasy)
- (7) New psychoactive substances
- (8) Other illicit drugs.

The fifteenth day of each month, for each border section, the national coordination centre shall report for the past month:

- (a) the overall quantity seized per category;
- (b) the number of seizures per category;
- (c) the breakdown per origin if established;
- (d) the breakdown per provenance if established;
- (e) the breakdown by destination (entry or exit of Schengen or unknown) and per category;
- (f) the breakdown per type of border control activity (border surveillance or check at border crossing point) and per category;
- (g) national authority that detected the drugs;
- (h) the overall number of perpetrators apprehended;
- (i) value of seized substances.

4.2. Trafficking of vehicles

Trafficking of vehicles shall be divided into the following categories:

- (1) Stolen passenger cars
- (2) Stolen vans
- (3) Stolen lorries
- (4) Stolen construction and agricultural machinery
- (5) Other stolen vehicles
- (6) Stolen vehicle parts
- (7) Falsified vehicle registration documents.

The fifteenth day of each month, for each border section, the national coordination centre shall report:

- (a) the number of seizures per category;
- (b) the overall quantity seized per category;
- (c) the breakdown per origin if established;
- (d) the breakdown per destination (entry or exit of Schengen or unknown) and per category;

- (e) the breakdown per type of border control activity (border surveillance or check at border crossing point) per category;
- (f) the total number of perpetrators apprehended.

4.3. Weapons and explosives

Indicators on weapons and explosives shall be divided into the following categories:

(1) Firearms ⁽¹⁾

Firearms can be divided in the following subcategories as available:

- (a) Handgun: revolver
 - (b) Handgun: pistol
 - (c) Long firearm: rifle
 - (d) Long firearm: shotgun
 - (e) Long firearm: machine gun/100 % automatic
 - (f) Long firearm: other
 - (g) Heavy firearm (anti-tank, rocket launcher, mortar, etc.).
- (2) Essential components of firearms
- (3) Non-lethal weapons: alarm and signal weapons (not convertible into firearms)
- (4) Non-lethal weapons: airsoft weapons
- (5) Non-lethal weapons: deactivated firearms
- (6) Explosives
- (7) Ammunition
- (8) Other weapons.

The fifteenth day of each month, for each border section, the national coordination centre shall report:

- (a) the number of seizures per category;
- (b) the overall quantity seized per category;
- (c) the breakdown per origin if established;
- (d) the breakdown per destination (entry or exit of Schengen or unknown) and per category;
- (e) the breakdown per type of border control activity (border surveillance or check at border crossing point) per category;
- (f) the breakdown by transport mode:
 - (1) Container
 - (2) Lorry or commercial vehicle
 - (3) Passenger car
 - (4) Bus or coach
 - (5) Train
 - (6) Commercial aviation
 - (7) General aviation
 - (8) Freight and postal parcels
 - (9) Pedestrian;
- (g) national authorities that detected the weapons and/or explosives;
- (h) the total number of perpetrators apprehended.

⁽¹⁾ Including salute and acoustic weapons, as well as convertible alarm and signal weapons.

4.4. Other goods

Indicators on other goods can be divided into the following categories:

- (1) Tobacco
- (2) Cigarettes
- (3) Alcohol
- (4) Energy products (fuels)
- (5) Illicit trafficking of cultural objects
- (6) Other goods.

The fifteenth day of each month, for each border section, the national coordination centre shall report:

- (a) the number of seizures per category;
- (b) the overall quantity seized per category;
- (c) the breakdown by origin and per category if established;
- (d) the breakdown per provenance if established;
- (e) the breakdown per destination (entry or exit of Schengen or unknown) per category;
- (f) the breakdown by type of border control activity and per category (check at border crossing point, border surveillance);
- (g) national authority that detected the goods;
- (h) the total number of perpetrators apprehended;
- (i) value of seized goods.

5. INDICATOR ON OTHER CROSS-BORDER CRIMES

Other cross-border crimes shall be divided into the following categories:

- (1) Abduction of a minor
- (2) Attacks, threats to the staff of the European Border and Coast Guard (national authorities or the Agency staff)
- (3) Hijacking of means of transport
- (4) Others.

The fifteenth day of each month, for each border section, the national coordination centre shall report:

- (a) the number of cases per category;
- (b) the breakdown by type of border control activity (check at border crossing point, border surveillance) and per category;
- (c) national authorities that detected the case;
- (d) the total number of perpetrators apprehended.

6. OTHER INDICATORS DERIVED FROM SINGLE EVENT REPORTING

The fifteenth day of each month, for each border section, the Agency shall establish monthly indicators.

These indicators shall cover:

- (1) unauthorised border crossings based on the single event reports referred to in Annex 2 paragraph 1;
- (2) search and rescue events, based on the single event reports referred to in Annex 2 paragraph 8;

- (3) facilitation and trafficking in human beings, based on the single event reports referred to in Annex 2 paragraph 2;
- (4) document fraud based on the single event reports referred to in Annex 2 paragraph 4.

The Agency may establish other indicators based upon available information, which are deemed relevant for risk analysis or situational awareness.

ANNEX 2

Cases of single event reporting and corresponding information

The reporting of single events in EUROSUR consists in linking different building blocks of information, listed below, that help describe the situation at EU external borders.

The first report shall contain the set of information collected to trigger the first reaction. Based on this first report the various parties to EUROSUR shall endeavour to complement this information as provided for in this annex.

1. SINGLE EVENT REPORTING OF UNAUTHORISED BORDER CROSSING, OR SUSPICION TO ATTEMPT AN UNAUTHORISED BORDER CROSSING

The national coordination centre shall report any event related to unauthorised border crossing. The report on unauthorised border crossing can be linked to facilitation or trafficking in human being as provided for in paragraph 2 and to search and rescue event in line with paragraph 8.

The first report on the event shall be sent no later than 24 hours after the event is detected.

The originators and the owners shall endeavour to report the following information as available.

1.1. Type of event

- (a) attempt or actual illegal border crossing;
- (b) open or clandestine crossing.

1.2. Circumstances of the event

- (a) time and position;
- (b) destination (entry or exit of Schengen or unknown);
- (c) last country of embarkation (only applicable on entry for maritime and air border sections ports and airports);
- (d) country of destination;
- (e) purpose of illegal border-crossing;
- (f) circumstances of detection:
 - (1) during a check at border crossing point,
 - (2) during a border surveillance operation,
 - (3) other (secondary movement, pre-frontier area);
- (g) attempts to hide from the border control;
- (h) means of transport:
 - (1) Flight (a report on the flight shall be linked to the report as provided for in paragraph 7)
 - (2) Vessel (a report on the vessel shall be linked to the report as provided for in paragraph 1, or to the search and rescue case as provided for in paragraph 6)
 - (3) Container
 - (4) Lorry or commercial vehicle
 - (5) Passenger car
 - (6) Bus or coach
 - (7) Train
 - (8) Pedestrian.

1.3. Persons involved

- (a) total numbers of persons involved;
- (b) number of minors;
- (c) number of persons in need of international protection;
- (d) breakdown by nationalities (supposed/confirmed), citizenships;
- (e) age group.

2. SINGLE EVENT REPORTING OF FACILITATION OR TRAFFICKING IN HUMAN BEINGS, OR SUSPICION TO ATTEMPT FACILITATION OR TRAFFICKING IN HUMAN BEINGS

The national coordination centre shall report any event of facilitation, or suspicion to attempt facilitation, and of trafficking, or suspicion to attempt trafficking of human beings.

The first report on the event shall be sent no later than 24 hours after the event is detected.

The event can be linked to an event related to unauthorised border crossing.

The originators and the owners shall endeavour to report the following information, as available:

2.1. Type of event

- (a) facilitation, trafficking in human being;
- (b) stage (suspicion, attempt, committed).

2.2. Circumstances of the event

- (a) time and location;
- (b) destination (entry or exit of Schengen or unknown);
- (c) circumstances of detection:
 - (1) during a check at border crossing point,
 - (2) during a border surveillance operation,
 - (3) other (secondary movement, pre-frontier area);
- (d) means of transport:
 - (1) Flight (a report on the flight shall be linked to the report as provided for in paragraph 7)
 - (2) Vessel (a report on the vessel shall be linked to the report as provided for in paragraph 1, or to the search and rescue case as provided for in paragraph 6)
 - (3) Container
 - (4) Lorry or commercial vehicle
 - (5) Passengers car
 - (6) Bus or coach
 - (7) Train
 - (8) Pedestrian.

2.3. Perpetrators

- (a) total numbers of persons involved;
- (b) age groups;
- (c) break down by nationalities (supposed/confirmed), and countries of origin;
- (d) form of exploitation (sexual, labour, other).

2.4. Victims (if the event is not related to an unauthorised border crossing)

- (a) total numbers of victims;
- (b) number of minors;
- (c) number of un-accompanied minors and number of persons in need of international protection;
- (d) the breakdown of victims per transit countr(ies);
- (e) breakdown by nationalities (supposed/confirmed) and countries of origin.

2.5. Motivation and modus operandi

- (a) modus operandi;
- (b) purpose of facilitation or targeted exploitation in the case of trafficking in human being.

3. SINGLE EVENT REPORTING OF TRAFFICKING, OR SUSPICION TO ATTEMPT TRAFFICKING OF GOODS

In addition to the indicators referred to in Annex 1 paragraph 4, the national coordination centre shall report single events of trafficking, or suspicion to attempt trafficking of goods in the following cases:

- (1) The amounts seized are above the thresholds defined in Annex 3;
- (2) The trafficking, or suspicion to attempt trafficking is linked to a potential terrorist activity or could pose a threat for the security of the Union or of its Member States;
- (3) The trafficking, or suspicion to attempt trafficking entails a reaction from other Member States and the Agency or impacts border control measures;
- (4) The trafficking, or suspicion to attempt trafficking of goods is linked to a specific modus operandi. In that case the reports shall be linked to risk analysis report describing it;
- (5) The seizure of goods is abnormal, and could indicate a new criminal pattern.

The originators and the owners shall endeavour to report the following information as available.

3.1. Type of event

When describing the type of events the originator shall use the categories and subcategories of Annex 1 paragraph 4 and the units referred to in Annex 3 as appropriate.

3.2. Circumstances of the event

- (a) time and position;
- (b) destination (entry or exit of Schengen or unknown);
- (c) circumstances of detection:
 - (1) during a check at border crossing point,
 - (2) during a border surveillance operation,
 - (3) other (secondary movement, pre-frontier area);
- (d) means of transport:
 - (1) Flight (a report on the flight shall be linked to the report as provided for in paragraph 7)
 - (2) Vessel (a report on the vessel shall be linked to the report as provided for in paragraph 1, or to the search and rescue case as provided for in paragraph 6)
 - (3) Container
 - (4) Lorry or commercial vehicle
 - (5) Passenger car

- (6) Bus or coach
- (7) Train
- (8) Pedestrian
- (9) Freight or postal parcel;
- (e) *modus operandi* or suspected *modus operandi*, including:
 - (1) concealment type;
 - (2) concealment details.

3.3. **Type of goods**

- (a) category and subcategory in line with annex 1 paragraph 4;
- (b) amount (estimated/seized);
- (c) estimated value.

3.4. **Persons involved**

- (a) total numbers of persons involved;
- (b) role of the person;
- (c) number of minors;
- (d) break down by nationalities (supposed/confirmed).

4. **SINGLE EVENT REPORTING OF DOCUMENT FRAUD**

The national coordination centre shall report any single event related to document fraud or document criminality observed during a border control operation.

The first report on the event shall be sent no later than 24 hours after the event is detected.

The event can be linked to an event related to unauthorised border crossing, facilitation or trafficking in human beings, trafficking of goods, other forms of cross-border crime.

The originators and the owners report the following information as available.

4.1. **Type of document fraud**

4.2. **Circumstances of the event**

- (a) time and position;
- (b) destination (entry or exit of Schengen or unknown);
- (c) circumstances of detection:
 - (1) during a check at border crossing point,
 - (2) during a border surveillance operation,
 - (3) other (secondary movement, pre-frontier area);

4.3. **Information on the person**

- (a) claimed nationality of person;
- (b) gender;
- (c) age group.

4.4. **Information on the document**

- (a) document type and subtype (passport, id card, residence permit, visa, border stamp, other);
- (b) nationality of document;
- (c) document usage (presented, concealed, n.a.);

- (d) border crossing point of embarkation;
- (e) border crossing point of transit;
- (f) border crossing point of destination;
- (g) chip;
- (h) border stamp.

5. SINGLE EVENT REPORTING ON OTHER FORMS OF CROSS-BORDER CRIME

In addition to the indicators referred to in Annex 1 paragraph 7 the national coordination centre shall report single events related to other crime in the following cases:

- (1) The cross-border crime, or suspicion to attempt cross-border crime or the hit in the database or large-scale IT system is linked to a potential terrorist activity or could pose a threat for the security of the Union or of its Member States;
- (2) The cross-border crime, or suspicion to attempt cross-border crime or the hit in the database or large-scale IT system entails a reaction from other Member States and the Agency or has an impact on border control measures;
- (3) The cross-border crime, or suspicion to attempt cross-border crime is linked to a specific modus operandi. In that case the reports shall be linked to risk analysis report describing it.

The originators and the owners shall endeavour to report the following information as available:

5.1. Type of event

When describing the type of events the originator shall use the categories and subcategories of Annex 1 paragraph 7.

5.2. Circumstances of the event

- (a) time and position;
- (b) destination (entry or exit of Schengen or unknown);
- (c) circumstances of detection:
 - (1) during a check at border crossing point,
 - (2) during a border surveillance operation,
 - (3) other (secondary movement, pre-frontier area);
- (d) means of transport:
 - (1) Flight (a report on the flight shall be linked to the report as provided for in paragraph 7)
 - (2) Vessel (a report on the vessel shall be linked to the report as provided for in paragraph 1, or to the search and rescue case as provided for in paragraph 6)
 - (3) Container
 - (4) Lorry or commercial vehicle
 - (5) Passenger car
 - (6) Bus or coach
 - (7) Train
 - (8) Pedestrian
 - (9) Freight or postal parcel.

5.3. Persons involved

- (a) total numbers of persons involved;
- (b) role of the person;
- (c) number of minors;
- (d) break down by nationalities (supposed/confirmed).

6. SINGLE EVENT REPORTING OF VESSELS OF INTEREST

Information related to vessels of interest shall be reported:

- (1) if the vessel detected is on the watch list of suspected vessels, in that case the reporting shall be linked to the corresponding watch list;
- (2) if the vessel is involved in an event listed in this annex, in that case the report shall be linked to the corresponding event;
- (3) if the vessel is deemed suspect by the originator, in that case the reporting shall be linked to a risk analysis report.

The first report on the vessel shall be sent no later than 24 hours after the first detection.

The originators and the owners shall endeavour to report the following information as available:

6.1. Position and status of the vessel

Information on the position of the vessel of interest comprises:

- (a) the time of measurement, position and radius of uncertainty, heading and speed if the asset is moving;
- (b) the status of the vessel (engines off, smoke detected, anchored etc.);
- (c) the source of the measurement or detection (radar, positioning system, etc.);
- (d) the previous known positions of the vessel before the event.

The originators that can obtain information on the vessel shall seek to update its position using the information sources at their disposal as early as possible.

The information on the position of a vessel of interest at sea, once detected, shall be updated at least every hour.

6.2. Type of vessel

Information on the type of the vessel shall help discriminate

- (a) between passenger ship, sailing boat, motor yacht, fishing vessel, container ship, bulk carriers, oil tanker, general cargo ship, high-speed craft, mobile offshore drilling unit, special purpose ship;
- (b) between the ship usage: either commercial work or leisure.

6.3. Ship identifiers

Information on the ship identifiers comprises:

- (a) the flag;
- (b) the name of the ship;
- (c) International Maritime Organisation (IMO) number, Maritime Mobile Service Identity (MMSI) number and other visual and radio identifiers used to contact and characterize the vessels.

6.4. Passengers and cargo

Information on the passengers and cargo includes:

- (a) number of crew members;
- (b) breakdown by nationality of the crew members;
- (c) number of passengers;
- (d) breakdown by nationality of the passengers;
- (e) type and amount/weight of cargo.

7. SINGLE EVENT REPORTING ON EXTERNAL FLIGHTS OF INTEREST

Information related to external flights of interest shall be reported:

- (1) if the flight detected is on the watch list of suspicious flights, in that case the reporting shall be linked to the corresponding watch list;
- (2) if the flight is involved in an event listed in this annex, in that case the report shall be linked to the corresponding event;
- (3) if the vessel flight is deemed suspect by the originator; in that case the reporting shall be linked to a risk analysis report.

The first report on the flight shall be sent no later than 24 hours after the first detection.

The originators and the owners shall endeavour to report the following information as available.

7.1. Position of the aircraft of interest

Information on the position of the flight of interest comprises:

- (a) time of measurement;
- (b) position including altitude and volume of uncertainty;
- (c) heading and speed;
- (d) source of the measurement or detection (radar, positioning system, etc.).

The originators that can obtain information on the aircraft shall seek to update its position using the information sources at their disposal.

The information on the position of aircraft of interest in flight shall be updated in near real time.

7.2. Type of the aircraft of interest

Information on the type of the aircraft shall help distinguish between fixed or rotary wings, jet or propeller, piloted aboard or remotely, and if available could inform on the exact model.

7.3. Aircraft identifiers

Information on the aircraft identifiers comprises the different visual and radio identifiers used to contact and characterize the aircraft.

7.4. Information on the flight

Information on the flight comprises:

- (a) the flight type (commercial private governmental etc.);
- (b) the flight identifier, including the commercial flight identifiers;
- (c) the place of departure;
- (d) the destination;
- (e) the reference to the flight plan.

7.5. Passengers and cargo

Information on the passengers and cargo includes:

- (a) number of crew;
- (b) breakdown by nationality of the crew members;
- (c) number of passengers;
- (d) breakdown by nationality of the passengers;
- (e) type of cargo.

8. SINGLE EVENT REPORTING ON SEARCH AND RESCUE EVENTS

The national coordination centre shall report any event related to search and rescue in line with Article 21.

The reporting related to possible search and rescue event shall cover the duration of the event from the first detection of the vessel of interest or from the alert received regarding people in distress at sea until the completion of the border crossing event and the termination of the related search and rescue case.

The originators and the owners shall endeavour to report the following information as available.

8.1. Links to the reporting on the vessel in distress in line with paragraph 6

The report may also be linked to other vessels of interest involved in the search and rescue case such as mother ships.

8.2. Reporting on the status of the search and rescue case including

- (a) the search and rescue phase (uncertainty, alert, distress, search and rescue operation ongoing, search and rescue operation concluded);
- (b) the competent Maritime Rescue Coordination Centre;
- (c) the foreseen place of safety or place of safety, when the search and rescue operation is completed.

8.3. Links to the reporting of paragraph 1 and paragraph 2 as appropriate

ANNEX 3

Thresholds for single event reporting of goods**1. ILLICIT DRUGS**

- (1) Cannabis: 10 kg
- (2) Heroin: 500 gram
- (3) Other opioids (e.g. morphine, opium, etc.): 500 gram
- (4) Cocaine: 10 kg
- (5) Amphetamine-type stimulants (including amphetamine and methamphetamine): 100 gram
- (6) MDMA (ecstasy): 5000 tablets
- (7) New psychoactive substances: 500 tablets or 100 gram
- (8) Other illicit drugs.

2. WEAPONS AND EXPLOSIVES

- (1) Firearms or weapons parts: 15 units
- (2) Explosives: 3 kg
- (3) Ammunition: 10 000 pieces.

3. OTHER GOODS

- (1) Raw tobacco: 500kg
 - (2) Cigarettes: 1 million units
 - (3) Alcohol: 5 000 litres of pure alcohol
 - (4) Energy products (fuels): 10 000 litres
 - (5) Illicit trafficking of cultural objects: estimated value above EUR 1 million.
-

COMMISSION IMPLEMENTING REGULATION (EU) 2021/582**of 9 April 2021****imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7(4) thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 14 August 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of aluminium flat-rolled products ('AFRPs' or 'product concerned') originating in the People's Republic of China ('the PRC' or the 'country concerned') on the basis of Article 5 the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 30 June 2020 by European Aluminium ('the complainant') on behalf of producers of aluminium flat-rolled products. The complainant represents more than 25 % of the total Union production of aluminium flat-rolled products. Furthermore, as specified in the note on standing, the complaint was supported by producers accounting for over 80 % of the total non-captive Union production in the investigation period. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence that certain requirements are not met. One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. As can be seen in Table 1, the imports of aluminium flat-rolled products originating in the PRC showed a decrease by 26 % in the four months following initiation as compared to the investigation period. As there were no indications on the file that imports of aluminium flat-rolled products as defined in recital (55) below are subject to seasonal fluctuations, the Commission did not consider it necessary to also compare the level of imports during the period September to December 2019 with the level of imports during the same months in the preceding year. The data following initiation was based upon the TARIC codes created for the product concerned at initiation. This was compared to the monthly average imports from the PRC for four months in the IP.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of Initiation of an anti-dumping proceeding concerning imports of aluminium flat-rolled products originating in the People's Republic of China (OJ C 268, 14.8.2020, p. 5).

Table 1

Imports from China in the IP and after initiation (tonnes)

	Investigation period	Investigation period monthly average	September – December 2020	September – December 2020 Monthly average
Imports from China in the EU	265 727	22 144	88 576	16 382

Source: Eurostat and Surveillance database

- (4) Consequently, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation, as the condition of Article 10(4)(d) of the basic Regulation, that is a further substantial rise in imports, was not met.

1.3. Interested parties

- (5) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, it specifically informed the complainants, known Union producers, the known exporting producers and the authorities in the PRC, known importers and users as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (7) Several parties requested a hearing with the Commission services. Parties who so requested were granted an opportunity to be heard.

1.4. Request for anonymity

- (8) One user, Company A, requested anonymity in order to prevent possible retaliatory actions by some of the complainants, which were also its suppliers.
- (9) European Aluminium commented that Company A had no standing in this proceeding as, according to European Aluminium, it had not made itself known or provided that there was an objective link between its activities and the like product as defined in Section 2.2 below. It also claimed that the confidentiality of Company A's identity was not justified by the risk of retaliatory measures from within the EU on the grounds that Company A was located in the EU where European fundamental values apply and that European producers of the like product would not engage in such practice.
- (10) The information on file ⁽³⁾ and the confidential information shared by Company A with the Commission, demonstrated that Company A registered as an interested party in due time and demonstrated an objective link between its activities and the product under investigation. As far as the grounds of the anonymity request are concerned, the Commission considered the company provided sufficient justification for its request. In particular, Company A provided duly documented information regarding fears of commercial retaliation due to the nature of its activities and its business relations with other parties active on the market in question. Consequently, the Commission granted anonymity to the company in question for the purposes of this investigation.

⁽³⁾ Tron document T20.006896.

1.5. Comments on initiation

1.5.1. Comments on injury

- (11) Company A and Shanghai Huafon Aluminium Corporation ('Huafon'), complained about the lack of reasoning pertaining to the exclusion of the products referred to in recital (57) and in the definition of the product under investigation of the Notice of Initiation.
- (12) The basic Regulation provides that the complaint should include a complete description of the allegedly dumped product. It does not foresee any requirement for the complainant to provide reasoning with regard to the products that it does not wish to cover in its complaint. On this ground, this claim was rejected.
- (13) Company A also claimed that, since the complaint was lodged by producers representing only 80 % of the Union production, it could be assumed that producers accounting for 20 % of the Union production did not suffer any material injury.
- (14) The level of support for the initiation of an investigation is not indicative of the injury suffered by the Union industry. The legal requirements related to the initiation of an investigation are set out in Article 5 of the basic Regulation. The complaint contained sufficient evidence justifying the initiation of an investigation pursuant to Article 5(2). Furthermore, as recalled by Company A, the complaint was lodged and supported by Union producers accounting for 80 % of total non-captive Union production, which clearly represents a major proportion of the Union industry as required under Article 5(4). On these grounds, the Commission rejected the claim.
- (15) The same user argued that certain indicators of the injury described in the complaint were based on products excluded from the scope of the investigation. However, as this claim was not sufficiently specific and in any case not supported by evidence, it was rejected.
- (16) A user, Valeo Systèmes Thermiques SAS ('Valeo'), claimed that the complainant had proceeded to a segmented injury analysis and that this analysis did not show injury for aluminium flat-rolled products destined for automotive heat exchangers ('HEX AFRPs') in view of the *de minimis* undercutting and underselling margins reported in the complaint. Valeo also referred to the financial statements of the main producer of this product category and indicated that it reported a good financial performance in 2019 and the first half of 2020 and did not list PRC imports as a risk.
- (17) The Commission noted that the complaint did not contain a full injury analysis per segment but rather undercutting and underselling calculations for three representative product types, including automotive HEX AFRPs. As far as this product type is concerned, it did not contain all specific injury indicators. Rather, the complaint contained one set of all indicators relating to the like product as a whole but not an injury analysis per segment.
- (18) As far as the main producer of automotive HEX AFRPs is concerned, the Commission observed that its product range is not limited exclusively to automotive HEX AFRPs but also includes Heating Ventilation Air Conditioning and Refrigeration ('HVACR') products. Moreover, the financial statements of that producer do not relate exclusively to its sales in the Union but rather to its activities worldwide, which explains why it does not single out the PRC as a risk. Consequently, these claims were rejected.
- (19) Valeo and Company A asserted that the complaint did not provide evidence that the Union industry suffered material injury on the grounds that several indicators such as export sales, investments, capacity, stock, price and employment showed a positive trend.
- (20) The Commission recalled that Article 5(2)(d) of the basic Regulation requires an examination, among others, of the relevant injury factors at initiation stage. Article 5 of the basic Regulation does not specifically require that all injury factors listed in Article 3(5) thereof show deterioration in order for material injury to be established. Indeed, the wording of Article 5(2) of the basic Regulation states that the complaint shall contain information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by relevant (but not

necessarily all) factors and indices having a bearing on the state of the Union industry, such as those listed in Articles 3(3) and 3(5) of the basic Regulation. In fact, the specific injury analysis of the complaint has shown that there is sufficient evidence pointing to a significant penetration of the EU market by Chinese imports made at prices which substantially undercut and undersell the Union industry's own prices. The complaint contained evidence that this had a materially injurious impact upon the state of the Union industry over the period 2016 to the 2019, for example on the market share and profitability. Consequently, these claims were rejected.

- (21) Another interested party, Nilo Asia PTE Ltd/Lodec Metall-Handel Niederlassung Bremen der O. Wilms GMBH ('Nilo'), argued that the CN codes used for the undercutting and underselling calculations did not allow for the identification of the plates and common sheets and could lead to inaccuracies. It also contested the calculation method for the underselling calculation.
- (22) As far as the method for underselling calculations is concerned, the Commission considered that the complainant had used objective data and methodology to establish the export price on an EU-landed basis. Moreover, the CN codes, as verified by the Commission, were correct at that stage of the proceeding. The Union target price was based on the complainant's cost of production plus a target profit of 6 % in accordance with Article 7 of the basic Regulation. Consequently, the Commission determined that the complainant correctly established underselling and the claim was rejected.
- (23) Nilo and an exporting producer Xiamen Xiashun Aluminium Foil Co., Ltd. ('Xiamen Xiashun') claimed that total EU consumption had been overestimated by the complainant. They referred to the European Aluminium Report 2019 ⁽⁴⁾ which referred to a consumption of 5,447 million tonnes.
- (24) The Commission observed that the scope of this investigation is different from the report referred to. Indeed, as stated in the Notice of Initiation, several products were excluded from the product scope. Also, this report refers not only to the EU but also includes other countries members of EFTA such as Norway, Switzerland and Turkey. Because of these differences, this claim was rejected.
- (25) An exporting producer, Xiamen Xiashun, contested the complainant's statement that import prices from the PRC are consistently lower than the import price from other countries on the grounds that an analysis based on all covered CN codes was not accurate enough. It provided an analysis for CN code 7607 11 90 showing that Turkish prices were the lowest and accordingly that the injury suffered by the Union industry was due to imports from countries other than the PRC.
- (26) The Commission pointed out that such an analysis is limited to one CN code and does not disqualify the complainant's statement. As far as the overall analysis of imports during the period considered is concerned, reference is made to recitals (51) to (59). On this basis, this claim was rejected.
- (27) Xiamen Xiashun also claimed that the complaint did not contain positive evidence on the existence of material injury by imports originating in the PRC and referred to flaws in the allegations on macro and micro indicators. This party contested the reliability and accuracy of the indicators in the complaint by referring to multiple isolated elements concerning different Union producers that allegedly affected the indicators. However, it did not demonstrate how these examples could question the Commission's overall assessment that the complaint contained sufficient evidence justifying the initiation of this proceeding.
- (28) Several interested parties claimed that automotive HEX AFRPs and foil stock needed to be excluded from the scope of the investigation or at least required a separate segment-specific analysis.

⁽⁴⁾ <https://www.european-aluminium.eu/activity-report-2019-2020/market-overview/> consulted on 25 January 2021.

- (29) At initiation stage, there was no indication that such segments needed to be analysed separately. In the course of the investigation, the Commission collected comments from interested parties about the product concerned, exclusion requests and the need for analysis by segments. Exclusion requests are analysed in recitals (61) to (105) while the supposed need for analysis by segments is examined in recitals (38) to (45).

1.5.2. *Comments on dumping*

- (30) One importer, Nilo, questioned the methodology and CN codes used by the complainant in the dumping calculations relating to plates and common sheets and considered that this constituted a major flaw in the complaint.
- (31) The Commission considered that the complainant had used objective data and methodology to establish the export price. Moreover, the CN codes, as verified by the Commission, were correct at that stage of the proceeding. Furthermore, as far as the dumping calculation was concerned, considering the level of the normal value established in the complaint for plates and common aluminium sheets, the conclusion with regard to the finding of dumping would have been identical, namely the resulting dumping margin would largely exceed *de minimis* threshold. Consequently, the claim was rejected.
- (32) One of the sampled exporting producers, Xiamen Xiashun, submitted that the complaint contained insufficient evidence on dumping. According to the company, the aluminium ingot price was inflated and so was the normal value. It considered in particular that the 2019 average price of aluminium ingot used for the dumping calculations was USD 1 792 and not EUR 2 300 to EUR 2 700 per tonne, as indicated in the complaint. The company also considered that the consumption of 1-2 of aluminium ingots needed to produce 1 tonne of common aluminium sheet mentioned in the complaint was too high. Xiamen Xiashun further argued that the freight costs for common sheet of EUR 107,77 per tonne used in the dumping calculation in the complaint was too high, compared to its own transport costs for the same product ⁽⁷⁾.
- (33) The Commission rejected these claims. The aluminium ingot price used by the complainant for the calculations was 1 797 EUR per tonne, and not EUR 2 300 to EUR 2 700 per tonne as argued by Xiamen Xiashun ⁽⁸⁾. Moreover, the Commission considered that both the consumption of aluminium ingots to produce 1 tonne of common sheet and the freight costs used by the complainant were supported by sufficient evidence. Even if it recalculated the normal value using the freight costs proposed by Xiamen Xiashun, the resulting dumping margin largely exceeded *de minimis* threshold. On this basis, the Commission considered that the complaint contained sufficient evidence on dumping to initiate the proceedings.

1.6. **Sampling**

- (34) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.6.1. *Sampling of Union producers*

- (35) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. It selected the sample based on the volume of production and sales of the like product in the Union during the investigation period. The sample consisted of three Union producers. The sampled Union producers accounted for 35 % of the estimated total production and 35 % of the estimated total Union sales volume of the like product. The Commission invited interested parties to comment on the provisional sample. European Aluminium provided comments on behalf of two of its members selected to be in the sample. One provisionally sampled company requested that only one of its mills be included in the sample because this mill makes exactly the typical products imported from the PRC. It also claimed that the inclusion of only one mill would make the sample more representative. The Commission observed that the sampled companies consist of individual legal entities and that no distinction can be made on the basis of the internal organisation within the legal entity if all sub-entities belong to the same legal entity. Therefore, this request was rejected.

⁽⁷⁾ The company considered its transport costs confidential.

⁽⁸⁾ See paragraph 105 of the Complaint.

- (36) Another sampled company claimed that the inclusion in the sample of only one legal entity within its group would render verification difficult since the IT and accounting system are maintained on a group basis. The Commission decided to limit itself to the legal entity in question in view of the limited time available. However, considering the sales channels of the products manufactured by this legal entity and the fact that the related companies may be involved in the sales flow, other entities within the group also had to fill in the relevant parts of the questionnaire.
- (37) In light of the above, the sample was considered to be representative of the Union industry.

1.6.2. *Sampling of importers*

- (38) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (39) Four unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three on the basis of the largest volume of imports. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. No comments were made.

1.6.3. *Sampling of exporting producers in China*

- (40) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide information specified in the Notice of Initiation. In addition, the Commission asked the Mission of People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (41) Twenty-four exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three companies/groups of companies on the basis of the largest representative volume of exports to the Union that could reasonably be investigated within the time available. These companies/groups of companies represented 18,9 % of the estimated total exports. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned, were given the opportunity to comment on the selection of the sample.
- (42) By letter of 27 August 2020, the company Yantai Jintai International Trade Co., Ltd (part of 'Nanshan Group'), submitted its comments and requested to be part of the sample. By email of 2 September 2020, one of the selected companies, the company Tianjin Zhongwang Aluminium Co., informed the Commission that it stopped cooperation. On this basis, the Commission decided to replace the company Tianjin Zhongwang Aluminium Co. by the Nanshan Group. The modified sample also accounts for 18,9 % of the estimated total export volume to the Union from the People's Republic of China in the investigation period. No comments on the modified sample were received.

1.7. **Individual examination**

- (43) Seventeen exporting producers in China, which requested individual examination under Article 17(3) of the basic Regulation, were invited in the Notice of Initiation to submit a questionnaire response. However, no exporting producer submitted a completed questionnaire within the stipulated deadline. Therefore, no individual examination was granted.

1.8. Questionnaires and verification visits

- (44) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). It also sent to the GOC a questionnaire concerning raw material distortions within the meaning of Article 7(2a) and 7(2b) of the basic Regulation.
- (45) The Commission also sent questionnaires to the sampled Union producers, sampled importers, users and sampled exporting producers. The same questionnaires had also been made available online ⁽⁷⁾ on the day of initiation.
- (46) The Commission received questionnaire replies from the three sampled Union producers, the Union producers' association, the three sampled unrelated importers, five users, and three companies/groups of exporting producers.
- (47) One additional user provided an incomplete questionnaire reply that did not include a meaningful non-confidential version either. Despite several requests and reminders, this user did not provide the requested information. Its questionnaire reply was therefore not taken into account in the analysis.
- (48) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at provisional stage. The Commission instead cross-checked remotely all the information deemed necessary for its provisional determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ⁽⁸⁾. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Association of Union producers

— European Aluminium, Brussels, Belgium

Union producers

— Hydro Group ('Hydro'):

- Hydro Aluminium Rolled Products GmbH, Grevenbroich and Hamburg, Germany
- Hydro Aluminium Dormagen GmbH, Dormagen, Germany
- Aluminium Norf GmbH, Neuss, Germany

— Elval Halcor Group:

- ELVALHALCOR S.A., Oinofyta, Greece
- Symetal Aluminium Foil Industry Single Member S.A., Athens, Greece
- International Trade S.A., Brussels, Belgium
- UACJ ELVAL HEX Materials GmbH, Düsseldorf, Germany
- Vepal, Thiva, Greece

— Aludium Group:

- Aludium Transformacion dc Productos S.L, Amorebieta and Alicante, Spain
- Aludium France SAS, Castelsarrasin, France

Users

— Company A

— Valeo Group:

- Valeo Systèmes Thermiques, Le Mesnil Saint Denis, France
- Valeo Autosystemy Sp Zo.o, Skawina, Poland
- Valeo Vymeniky Tepia s.r.o., Zebrek, Czech Republic

⁽⁷⁾ https://trade.ec.europa.eu/tdi/case_details.cfm?id=2475

⁽⁸⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

Exporting producers in the PRC

- Jiangsu Alcha Aluminum Group Co., Ltd. ('Jiangsu Alcha Group')
- Nanshan Group:
 - Shandong Nanshan Aluminium Co., Ltd.
 - Yantai Nanshan Aluminum New Material Co., Ltd.
 - Longkou Nanshan Aluminum Rolling New Material Co., Ltd.
 - Yantai Donghai Aluminum Foil Co., Ltd.
- Xiamen Xiashun Aluminium Foil Co., Ltd.

1.9. Investigation period and period considered

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

1.10. Withdrawal of the United Kingdom from the EU

- (50) This case was initiated on 14 August 2020, i.e. during the transition period agreed between the United Kingdom ('UK') and the EU in which the UK remained subject to the Union law. This period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations from the UK no longer qualified as interested parties in this proceeding.
- (51) By a note to the case file ⁽⁹⁾ on 18 January 2021, the Commission invited UK operators that considered that they still qualified as interested parties to contact it. No company came forward.
- (52) In order to align the data set collected from interested parties with the fact that the transition period had ended and that the UK was no longer subject to Union law, interested parties concerned were invited to provide a revised questionnaire reply on EU-27 basis.
- (53) One user, Valeo, claimed that the complaint was vitiated by major procedural deficiencies as it was based on EU-28 data, including the UK, while this country was no longer a Member State at the time of lodging of the complaint and the initiation of the proceeding.
- (54) In this regard, as mentioned in recital (50), the UK and the EU had agreed on a transition period during which the UK remained subject to Union law. That period ended on 31 December 2020 ⁽¹⁰⁾. Since the case was initiated during the transition period, the complaint was validly lodged on an EU-28 basis. Consequently, the claim was rejected.

2. PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product concerned**

- (55) The product concerned is aluminium products, flat rolled, whether or not alloyed, whether or not further worked than flat rolled, not backed, without internal layers of other material,
- in coils or in coiled strips, in cut-to-length sheets, or in the form of circles; of a thickness of 0,2 mm or more but not more than 6 mm,
 - in plates, of a thickness of more than 6 mm,
 - in coils or in coiled strips, of a thickness of not less than 0,03 mm but less than 0,2 mm,

⁽⁹⁾ Tron document t21.000574.

⁽¹⁰⁾ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 1).

— originating in the People's Republic of China, currently falling under CN codes ex 7606 11 10 (TARIC codes 7606 11 10 25, 7606 11 10 86), ex 7606 11 91 (TARIC codes 7606 11 91 25, 7606 11 91 86), ex 7606 11 93 (TARIC codes 7606 11 93 25, 7606 11 93 86), ex 7606 11 99 (TARIC codes 7606 11 99 25, 7606 11 99 86), ex 7606 12 20 (TARIC codes 7606 12 20 25, 7606 12 20 86), ex 7606 12 92 (TARIC codes 7606 12 92 25, 7606 12 92 95), ex 7606 12 93 (TARIC code 7606 12 93 86), ex 7606 12 99 (TARIC codes 7606 12 99 25 and 7606 12 99 86), ex 7606 91 00 (TARIC codes 7606 91 00 25, 7606 91 00 86), ex 7606 92 00 (TARIC codes 7606 92 00 25, 7606 92 00 86), ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 48, 7607 11 90 51, 7607 11 90 53, 7607 11 90 65, 7607 11 90 71, 7607 11 90 73, 7607 11 90 75, 7607 11 90 77, 7607 11 90 91, 7607 11 90 93) and ex 7607 19 90 (TARIC codes 7607 19 90 75, 7607 19 90 86) ('the product concerned'). The CN and TARIC codes are given for information only.

- (56) The product concerned ⁽¹¹⁾ is commonly referred to as 'Aluminium flat-rolled products' or 'AFRPs'. It is the result of 4 subsequent production processes: melting, casting, rolling and finishing. Some companies may start the production process at a different stage depending on their level of integration.
- (57) The following products are excluded from this investigation:
- Aluminium beverage can body stock, end stock and tab stock.
 - Aluminium products, flat rolled, alloyed, whether or not further worked than flat rolled, of a thickness of not less than 0,2 mm and not more than 6 mm, for use as body panels in the car industry.
 - Aluminium products, flat rolled, alloyed, whether or not further worked than flat rolled, of a thickness of not less than 0,8 mm, for use in the manufacture of aircraft parts.
- (58) Aluminium flat-rolled products are used in a wide range of applications in sectors such as building and construction, foil, technical applications, transport and consumer durables.

2.2. Like product

- (59) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned,
 - the product produced and sold on the domestic market of the People's Republic of China, and
 - the product produced and sold in the Union by the Union industry.
- (60) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (61) Several parties submitted product exclusion requests concerning the following products: clad tube, clad plate, clad fin and unclad fin stock for use in the manufacture of automotive brazed aluminium HEX and the manufacturing of electrical vehicles battery coolers ('automotive HEX AFRPs'); aluminium coils for the production of coated coils and aluminium composite panels ('ACP'); lithographic sheets; battery sheets; aluminium converter foil of gauge 30 to 60 microns ('ACF-30-60') and AFRPs for use in the manufacture of slats for venetian blinds.

2.3.1. Automotive HEX AFRPs

- (62) Several interested parties, Huaфон, Valeo, Mahle GmbH, European association of automotive suppliers ('Clepa') and TitanX Holding AB ('TitanX') claimed that automotive HEX AFRPs did not share the same basic physical, technical and chemical characteristics. The distinct manufacturing process (specific equipment) and chemistry (through the use of proprietary alloys which differ from standard alloys) results in different brazing ability, formability, strength, corrosion resistance and clad ratio, and makes automotive HEX AFRPs entirely different from other AFRPs covered

⁽¹¹⁾ As defined in the Notice amending the Notice of initiation (OJ C 36, 2.2.2021, p. 18).

by the product definition. They also claimed that automotive HEX AFRPs were not interchangeable with in-scope commodity AFRPs used in other applications due to their unique physical, mechanical and chemical features that are jointly developed with the up- and downstream industry. It was also claimed that they were mainly made to order, traded in small volumes representing less than 5 % of the overall EU AFRP market and sold at a high price to Tier 1 automotive suppliers which buy all automotive HEX AFRP categories from the same supplier in a 'one-stop-shop' for technical, commercial, and risk minimisation reasons.

- (63) The parties further asserted that automotive HEX AFRPs could be identified at customs along the same lines as the products excluded from the product scope by the complainants and destined for the automotive ⁽¹²⁾ or aircraft industry. Similarly to body panels destined for the car industry, it was claimed that automotive HEX AFRPs should thus also be excluded.
- (64) Huaфон also argued that its automotive HEX AFRPs differed from the ones manufactured in the Union through a different production process (continuous casting) which gives unique specifications in terms of various aspects such as grain size, strength, corrosion performance, formability, brazing ability, tolerances and erosion to its products. It also argued that most Union producers are not willing to provide customer specific automotive HEX AFRPs.
- (65) These parties also justified their requests by the following elements:
- alleged current lack of production capacity of the Union industry and unwillingness to invest in additional capacity,
 - the merger between the two Union producers Gränges and Impexmetal which would allegedly lead to a price increase,
 - an expected increase in demand,
 - an expected increase in costs due to anti-dumping-duties and new validation ⁽¹³⁾ costs when their performance is negatively affected by the pandemic, and hence a negative impact on their profitability,
 - the negative impact on supply chain due to validation of new products and alloys, and
 - the need to achieve the Union's greenhouse gas emission target which would be otherwise impeded.
- (66) The Commission first observed that automotive HEX AFRPs belong to the product group of HEX AFRPs which includes not only automotive HEX but also HEX destined for HVACR and other applications such as wind mills. Automotive HEX AFRPs, similarly to those destined for HVACR and other applications include products that can be clad (tube, plate, fin) or unclad (fin). Contrary to what was claimed by the user Valeo, the evidence on file shows that the HVACR HEX market has a meaningful size and accounts for 20 % of the total HEX market in the EU. The evidence on file also shows that HVACR HEX are similar in terms of alloy, tempering and thickness to the automotive HEX.
- (67) Second, HEX AFRPs were covered by the complaint lodged by European Aluminium regardless of their application and fall in the product scope as defined in the Notice of Initiation and in recitals (55) to (58). Also, automotive HEX AFRPs can be classified using the product coding foreseen by the investigation in terms of thickness, form, material used, finishing and temper.
- (68) Third, the investigation revealed that automotive HEX AFRPs share the same basic chemical characteristics as other AFRPs. Even if they are clad, they are composed of more than 95 % of pure aluminium similarly to other AFRPs. In addition, even if so-called proprietary alloys are used in automotive HEX AFRPs, these are closely resembling other alloys since they are mostly derived from 3XXX series alloys.

⁽¹²⁾ As defined by the party and referring to the product definition as published in the Notice of initiation referred to in footnote 2 above.

⁽¹³⁾ Validation ensures that the developed product fulfils the customer requirements. Validation concerns the automotive HEX itself and the automotive HEX AFRPs. This process can last up to 2 years and includes lab testing, material and process validation.

- (69) As far as physical and technical characteristics are concerned, most AFRPs have their own specifications depending on the application or the requirements of the end-user concerned. The fact that AFRP manufacturers need to fulfil specific brazing ability, formability, strength, grain size or corrosion does not mean that they do not share the same basic technical and physical characteristics as other AFRPs. Even if they were not to share such basic characteristics with certain AFRPs falling in the scope of the investigation, *quod non*, they would share such basic characteristics with AFRPs belonging to the same product group, that is HEX AFRPs destined for HVACR and other applications.
- (70) As far as interchangeability is concerned, AFRPs that belong to different product groups may not be interchangeable due to various reasons such as the specific alloy treatments used or the type of finishing. Still, these products fall within the scope of the investigation as they share the same basic physical, chemical and technical characteristics.
- (71) As far as the manufacturing process is concerned, the Commission established that automotive HEX AFRPs are the result of the same manufacturing process as described in recital (56) and use to a large extent the same equipment as other AFRPs. The fact that certain alloys need to be developed or that the products need to be validated does not belong to the manufacturing process, rather it belongs to the research and development phase, which is distinct from the manufacturing process. Even if automotive HEX AFRPs used specific equipment (cladding station, slitting equipment), such equipment could be used in order to produce other HEX AFRPs or simply for other AFRPs of a certain width. Also, the fact that certain automotive HEX AFRPs are produced through continuous casting does not single out this product since other products falling within the scope of the investigation can also be produced through the same type of process.
- (72) Third, as far as the commercialisation of automotive HEX AFRPs is concerned, the Commission established that most AFRPs are made to order and that the share of commodity products is small. Also, when considering that such product accounts for around 9 % of the Union market consumption, it cannot be considered that it is traded in small quantities or to represent a niche market.
- (73) Fourth, the Commission also established that automotive HEX are not the sole products falling within the scope of the investigation sold to Tier 1 automotive suppliers. Indeed, other products such as chassis and components are eventually destined for the car industry and follow the same sales channel and also require a validation process. In addition, HEX manufacturers may buy the different automotive HEX AFRP categories from different suppliers and thus not on a 'one-stop-shop' basis, as erroneously claimed. Finally, the Commission also established that the sampled Union producers sold a significant share of other products falling within the product scope at higher prices than automotive HEX AFRPs. These other products accounted for over 8 % of the total sales volume by the sampled Union producers during the investigation period.
- (74) Fifth, the Commission did not agree that the HEX AFRPs should be excluded because of their use in the automotive industry. It recalled that not all products destined for the automotive industry are excluded from the scope of the investigation. Indeed, the product under investigation covers AFRPs for automotive products such as structural parts for automotive applications (chassis, components).
- (75) As far as Union interest claims are concerned, the Commission established that the Union industry has sufficient capacity to meet the current demand and that there is no risk of structural price increase in view of the conditions of competition and available capacities in the EU, as confirmed by the recent Commission decision regarding the merger of Gränges and Impexmetal⁽¹⁴⁾. Also, according to the information provided by the Union industry and verified by the Commission, the Union industry has recently invested in and has other ongoing projects to increase its production capacity. According to the information at its disposal, the Commission considered that this increase is likely to absorb the projected rise in demand following the expected changes in the car production models, namely decrease in internal combustion engines and increase in plug-in hybrid/electrical vehicles.

⁽¹⁴⁾ Case M.9560 – Gränges/Impexmetal Commission decision pursuant to Article 6(1)(b) of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1) and Article 57 of the Agreement on the European Economic Area (23.9.2020 C(2020) 6652 final), available at: https://ec.europa.eu/competition/mergers/cases1/202050/m9560_488_3.pdf

- (76) As far as increased costs are concerned, the Commission considered that the level of profits achieved before the pandemic would allow the automotive HEX manufacturers to absorb extra costs in the form of anti-dumping duties or validation costs, should they wish to switch back to procure from Union producers. Furthermore, the overall financial situation of these companies and the groups to which they belong and for instance their retained earnings did not point to a dramatic financial situation which would jeopardize the continuation of their activities in the current context.
- (77) Furthermore, as far as the impact on the supply chain is concerned, it should be noted that automotive HEX manufacturers normally rely on dual sourcing for specific products and that they usually have several validated suppliers for each product category (tube, plate, fin). Union producers of automotive HEX AFRPs have proven track record of supplying such specific products to the major manufacturers in large quantities, both within and outside the Union, for many years. Hence, they have the relevant equipment and technical know-how to develop and supply such products and are often pre-qualified suppliers. While this does not mean that users could switch from one AFRP supplier to another for all their products instantly if they wished so, the Union industry would be in a position to quickly substitute Chinese imports and offer a secure alternative source of supply. One of the Union producers claimed that a similar process had already taken place on the US market where certain non-US producers were able to substitute Chinese imports after anti-dumping duties were imposed on Chinese AFRPs.
- (78) While it is not disputed that the development of new generation electric vehicles would reduce greenhouse gas emissions in the Union, the Commission provisionally considered that producing the aluminium needed in such cars in the EU would be less polluting than importing it from the PRC. Indeed, regardless of the transportation costs from the PRC to the EU, aluminium production in the Union generates on average about three times less CO₂ than in the PRC ⁽¹⁵⁾. On this basis, the Commission considered that imposing duties on automotive HEX AFRPs from the PRC is not incompatible with the Union's broader policies. In this regard, one exporting producer, Huaфон, claimed that its CO₂ yield was much lower than the Chinese average. Such claim was however not supported by evidence and could, in any case, not be extrapolated to the whole Chinese aluminium industry.
- (79) Furthermore, two users, Mahle and Titanx, also indicated that producers of automotive HEX outside the European Economic Area ('EEA') would gain competitive advantage when buying AFRPs from China without paying anti-dumping duties and referred to a Chinese producer of automotive HEX established in Morocco. The Commission established that the investment by the automotive HEX manufacturers in question had been made with the aim to supply a brand new car manufacturing site located outside the EU where the evidence available point to an investment aimed at supplying the local market ⁽¹⁶⁾. Consequently, the claim was rejected.
- (80) In view of the above considerations, the Commission provisionally rejected the request for exclusion of automotive HEX AFRPs from the product scope of the product under investigation.

2.3.2. Aluminium coils for the production of coated coils and ACP

- (81) One user, Company A, requested the exclusion of aluminium coils for the production of coated coils and ACP on the grounds that such coils have distinct physical, technical and chemical characteristics with regard to their tension levelling and appearance considering that even a small imperfection makes the product unusable for the purpose for which it was purchased.

⁽¹⁵⁾ https://www.world-aluminium.org/media/filer_public/2018/02/19/lca_report_2015_final_26_june_2017.pdf Table 10 p. 34 and <https://www.european-aluminium.eu/media/2052/european-aluminium-environmental-profile-report-2018-executive-summary.pdf> p. 6 consulted on 18 February 2020.

⁽¹⁶⁾ <https://www.ecofinagency.com/finance/2007-34929-morocco-car-manufacturer-nanjing-xiezhong-to-build-at-kenitrahttps://autotechinsight.ihsmarkit.com/news/36512/nanjing-xiezhong-auto-airconditioner-to-set-up-a-new-plant-in-morocco-reportshttps://www.usinenouvelle.com/article/automobile-au-maroc-une-usine-en-vue-pour-le-chinois-xiezhong-specialiste-de-la-clim-a-proximite-du-futur-site-psa.N402812> consulted on 15 February 2020.

- (82) Given the high quality constraints, the company claimed that such product is not interchangeable with other AFRPs and not substitutable with other products. As far as the production process is concerned, this party argued that the Chinese producers manufacture the product type in question on state of the art equipment (hot rolling, tension levelling and stand tandem hot finishing lines) which result in higher quality and productivity rates as well as lower costs.
- (83) The same party also asserted that it faced significant difficulties not only in purchasing the product type at stake with the required standards from the Union industry but also in switching some of its Chinese sourcing to Union sourcing. It also claimed that the product type at stake represented a considerable proportion of its production cost and that, should duties be imposed, it would need to validate new suppliers leading to an increase in its costs.
- (84) The Commission established that aluminium coils for the production of coated coils and ACP fall in the definition of the product scope as defined in recital (55) to (58) above and can be classified using the product coding foreseen by the investigation in terms of thickness, form, material used, finishing and temper. Also, they share the same basic chemical, technical and physical characteristics as other AFRPs as they are composed of more than 95 % of pure aluminium similarly to other AFRPs. Furthermore, they are made of similar alloys and have similar finishing, temper and thickness as other AFRPs falling within the scope of the investigation. Tension levelling is not a process which is applied exclusively to the product type at stake as it is used for other AFRP categories as well, such as HEX AFRPs.
- (85) As far as interchangeability is concerned, AFRPs that belong to different product groups may not be interchangeable due to various reasons such as the specific alloy treatments used or the type of finishing. Still, these products fall in the product scope of the investigation as they share the same basic physical, chemical and technical characteristics.
- (86) As far as the manufacturing process is concerned, the Commission provisionally considered that aluminium coils for the production of coated coils and ACP are the result of the same manufacturing process as described in recital (56) and use to a large extent the same equipment as other AFRPs. The fact that Chinese producers allegedly use state of the art equipment does not make the product any different. In any case, some Union producers have similar production equipment.
- (87) However, the Commission acknowledged the specificity of the products that Company A manufactures and the difficulties that it faces in sourcing aluminium coils for the production of coated coils and ACP in the Union. So far, no evidence to the contrary had been provided by the Union industry. In addition, the Commission provisionally established with respect to the sampled Union producers that none of them was producing such special product types destined for the free market in sufficient quantities. Moreover, the share of ACP in the overall group of AFRPs in the Union can be estimated at below 2 %.
- (88) In view of the above considerations and based on the evidence at its disposal, the Commission provisionally concluded that imports of aluminium coils should be excluded from the payment of the duties when used for the production of coated coils and ACP.

2.3.3. *Lithographic sheets and battery foils*

- (89) One exporting producer, Xiamen Xiashun, sought clarification whether lithographic sheets and battery foils were covered by the product scope. In this regard, it claimed that these products differed from fin stock in terms of application, destination market, physical and chemical characteristics and production processes.
- (90) In this regard, it should first be noted that the lithographic sheets and battery foils fall in the definition of the product scope as defined in recitals (55) to (58) and can be classified using the product coding foreseen by the investigation in terms of thickness, form, material used, finishing and temper.

- (91) Second, unlike the arguments put forward by this party, the product scope of this investigation is much broader and is not limited to fin stock. Furthermore, the investigation revealed that lithographic sheets and battery foils share the same basic chemical characteristics as other AFRPs, as they are composed of more than 95 % of pure aluminium similarly to other AFRPs. Also, they are made of similar alloys and have similar finishing, temper and thickness as other AFRPs falling within the scope of the investigation. Furthermore, the fact that these products are destined for specific applications in specific sectors is not unique as most AFRPs have their own specifications depending on the application or the requirements of the end-user concerned.
- (92) As far as the manufacturing process is concerned, the Commission considered that lithographic sheets and battery foil are the result of the same manufacturing process as described in recital (56) and use to a large extent the same equipment as other AFRPs. The fact that these products require specific equipment (degreasing, tension levelling) is not unique as such equipment can be used in order to produce other AFRPs. On this basis, the Commission provisionally confirmed that lithographic sheets and battery foils are part of the scope of the investigation.

2.3.4. ACF-30-60

- (93) The exporting producer Nanshan group sought clarification whether aluminium converter foil with gauges between 30 and 60 microns were covered by this investigation and requested their exclusion from the product scope. It argued that ACF-30-60 has two different sides (mat and bright), it is produced with certain alloys (1xxx and 8xxx) and needs to comply with EU food contact legislation (Regulation (EC) No 1935/2004 of the European Parliament and of the Council ⁽¹⁷⁾, Commission Regulation (EC) No 2023/2006 ⁽¹⁸⁾, European Parliament and Council Directive 94/62/EC ⁽¹⁹⁾ and Regulation (EC) No 1907/2006 of the European Parliament and of the Council ⁽²⁰⁾ (REACH Regulation)) and European Standard CEN EN 602. It also referred to the fact that the Commission considered aluminium converter foil and aluminium household foil as different products in a previous anti-circumvention investigation ⁽²¹⁾ based on specifications related to aluminium alloys, wettability and pinholes.
- (94) The same party also referred to the end use and applications and in particular the fact that ACF-30-60 is mainly used for food applications while the main end uses of the product concerned are allegedly lidding foil and pharmaceutical foil. In addition, it argued that ACF-30-60 did not compete and was not interchangeable with the product concerned as, unlike buyers of AFRPs, buyers of ACF-30-60 are active in the food or pharmaceutical industries and ACF-30-60 are sold at higher prices. The same party also claimed that the production process was different in view of the finishing rolling pass leading to a mat and a bright side and that the 'complainants' did not, for most of them, manufacture ACF-30-60.
- (95) In this regard, it should first be noted that the ACF-30-60 falls under the definition of the product scope as defined in recitals (55) to (58) and is classified using the product coding foreseen by the investigation in terms of thickness, form, material used, finishing and temper. Furthermore, the Commission established that ACF-30-60 share the

⁽¹⁷⁾ Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4).

⁽¹⁸⁾ Commission Regulation (EC) No 2023/2006 of 22 December 2006 on good manufacturing practice for materials and articles intended to come into contact with food (OJ L 384, 29.12.2006, p. 75).

⁽¹⁹⁾ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

⁽²⁰⁾ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

⁽²¹⁾ Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil (OJ L 40, 17.2.2017, p. 51), as amended by Implementing Regulation (EU) 2017/2213 (OJ L 316, 1.12.2017, p. 17).

same basic chemical characteristics as other AFRPs, as they are composed of more than 95 % of pure aluminium similarly to other AFRPs. Also, they are made of similar alloys and have similar finishing, temper and thickness as other AFRPs falling within the scope of the investigation.

- (96) Second, the fact that these products have two different sides and need to comply with certain food legislation is not unique as most AFRPs have their own specifications depending on the application or the requirements of the end-user concerned and need to comply with certain legal requirements. This applies for instance to other food stock products that are covered by this proceeding.
- (97) As far as the previous anti-circumvention investigation is concerned, Article 1(4) of Regulation (EU) 2017/271 merely excluded from the extension of the existing anti-dumping duties aluminium foil imported for other uses than the use of household foil. As a result, aluminium foil used as converter foil was not covered by those measures. However, Regulation (EU) 2017/271 ultimately acknowledged that it is impossible to distinguish, based on the technical characteristics alloys, wettability and pinholes, between aluminium converter foil and foil covered by that investigation actually used for household applications (see recital 72 thereof). In any case, the analysis was made only in relation to identifying elements which would enable a distinction between aluminium household foil and aluminium converter foil in the context of the circumvention practices established regarding slightly modified aluminium household foil. Consequently, the conclusions drawn in that investigation have no bearing on the investigation at hand.
- (98) As far as end use is concerned, the Commission considered that such parameters are not relevant to support a product exclusion request when the product type at stake shares the same basic physical, chemical and technical characteristics as other AFRPs. In any case, in the case at hand, the investigation revealed that, contrary to what is claimed by this party, AFRPs are destined not only for lidding foil or pharmaceutical foil but also to food packaging as presented in the complaint and confirmed by the investigation.
- (99) As far as interchangeability is concerned, the Commission established that this parameter is not a relevant argument to support a product exclusion request when the product at stake shares the same basic physical, chemical and technical characteristics as other AFRPs. In the case at hand, although sharing the same basic characteristics and being manufactured on the same equipment, AFRPs that belong to different product groups may not be interchangeable due to various reasons such as the specific alloy treatments used or the type of finishing. Still, these products fall within the product scope of the investigation as they share the same basic physical, chemical and technical characteristics.
- (100) Regarding the production process, ACF-30-60 are the result of the same manufacturing process as described in recital (56) and use to a large extent the same equipment as other AFRPs. The fact that the product needs to go through a certain finishing process does not make the product different provided that it shares the same basic physical, chemical and technical characteristics as other AFRPs.
- (101) Finally, the allegation that most complainants did not manufacture ACF-30-60 was not supported by evidence. To the contrary, the Commission established that the Union industry manufactured such products.
- (102) In light of the above considerations, the Commission provisionally rejected the request for exclusion of ACF-30-60 from the scope of the investigation.

2.3.5. AFRPs for use in the manufacture of slats for venetian blinds

- (103) One user, OPL System AB, requested the exclusion of AFRPs for use in the manufacture of venetian blinds from the scope of the investigation. It argued that there is no producer of such material on the Union market and referred to Council Regulation (EU) 2019/2220⁽²²⁾ which provides for a duty-free import quota for aluminium and magnesium alloy strip or foil for use in the manufacture of slats for blinds. It also argued that the product at stake had to comply with specifications developed for its production equipment
- (104) The Commission observed that this interested party did not provide any supporting evidence showing that the product at stake does not share the same basic chemical, physical and technical characteristics as other AFRPs included in the scope of the investigation. Furthermore, this interested party did not provide evidence with regard to the alleged inability for the Union industry to manufacture the product at stake. In its turn, the Union industry commented that it was in a position to manufacture the product at stake.
- (105) In the absence of further evidence, the Commission provisionally rejected this product exclusion request.

3. DUMPING

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

- (106) The evidence available at the initiation of the investigation pointed to the existence of significant distortions in the PRC within the meaning of Article 2(6a), point (b) of the basic Regulation. The Commission therefore considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (107) In order to collect the necessary data for a possible application of Article 2(6a) of the basic Regulation the Commission invited all exporting producers in the country concerned to provide information regarding the inputs used for producing aluminium flat-rolled products. Fourteen exporting producers submitted the relevant information.
- (108) The Commission also requested, as mentioned above in recital (44), the GOC to respond to a questionnaire concerning the alleged existence of distortions in the PRC. No reply was received. Subsequently, the Commission informed the GOC of its intention to apply Article 18 of the basic Regulation and to use facts available for the determination of the existence of significant distortions in the PRC. No reply was received.
- (109) In addition, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. A submission was received from Xiamen Xiashun.
- (110) In point 5.3.2 of the Notice of Initiation the Commission informed interested parties that based on the information available at that stage a possible appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation could be Brazil if the conditions of application of this provision would be confirmed. The Commission also stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (111) On 5 October 2020, the Commission issued a First note on the sources for the determination of the normal value ('the Note of 5 October' or 'First Note') by which it informed interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of

⁽²²⁾ Council Regulation (EU) 2019/2220 of 19 December 2019 amending Regulation (EU) No 1388/2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products (OJ L 333, 27.12.2019, p. 33).

production such as raw materials, labour and energy used in the production of aluminium flat-rolled product. In addition the Commission identified Brazil, Thailand and Turkey as possible appropriate representative countries. The Commission gave all interested parties opportunity to comment. The Commission received comments from the complainant, the companies Airoidi Metalli Spa ('Airoidi'), Company A, Jiangsu Alcha Group, Nilo, Nanshan Group and Xiamen Xiashun.

- (112) On 25 November 2020, and after having analysed the comments received, the Commission issued the Second note on the sources for the determination of the normal value ('the Note of 25 November' or 'Second Note'). In that note the Commission established a provisional list of factors of production and informed interested parties of its intention to use Brazil as the representative country under Article 2(6a)(a), first indent of the basic Regulation. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on publicly available financial statements of the Brazilian company Novelis do Brasil Ltda. The Commission invited interested parties to comment. Comments were received from the complainant, and the companies Airoidi, Company A, Jiangsu Alcha Group, Lodec Metal, Nanshan Group and Xiamen Xiashun.
- (113) After having analysed the comments and information received on the Second Note, the Commission provisionally concluded that Turkey was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.3, below.

3.2. Application of Article 18 of the basic Regulation

- (114) Upon initiation of the investigation on the basis of Article 2(6a)(a) of the basic Regulation, the Commission sent two questionnaires concerning the existence of distortions to the GOC ⁽²³⁾. The GOC however did not submit any replies. The Commission informed the GOC by Note Verbale on 28 September 2020 that it intended to make use of the provision of Article 18 of the basic Regulation in regard to information covered by the two questionnaires and invited the GOC to submit its comment on the application of Article 18. No comments were received.

3.3. Normal value

- (115) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (116) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').*
- (117) As further explained below, the Commission concluded in the present investigation that, based on the evidence available and given the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

⁽²³⁾ Questionnaire on the existence of significant distortions within the meaning of Article 2(6a) of Regulation (EU) 2016/1036 for the Government of the People's Republic of China' and 'Questionnaire on the existence of raw material distortions within the meaning of Article 7(2a) of Regulation (EU) 2016/1036 for the Government of the People's Republic of China'.

3.3.1. Existence of significant distortions

3.3.1.1. Introduction

(118) Article 2(6a)(b) of the basic Regulation stipulates that ‘significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:

- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country,
- state presence in firms allowing the state to interfere with respect to prices or costs,
- public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces,
- the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws,
- wage costs being distorted,
- access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.

(119) As the list in Article 2(6a)(b) is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

(120) Article 2(6a)(c) of the basic Regulation provides that ‘[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector’.

(121) Pursuant to this provision, the Commission has issued a country report concerning the PRC (hereinafter ‘the Report’) ⁽²⁴⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.

(122) The complaint contained information on additional studies and reports analysing the situation of the aluminium industry in the PRC. A first source was the Report on overcapacities in China issued by the European Union Chamber of Commerce in China (‘EU Chamber of Commerce Report’), which was used to demonstrate the existence of excess production capacity in China. Secondly, the complainant listed the OECD paper titled ‘Measuring

⁽²⁴⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter ‘Report’).

distortions in international markets – The aluminium value chain’ (‘OECD Study’) ⁽²⁵⁾, which closely analyses the issue of financial subsidies granted to companies in the aluminium industry, as well as the fact that export taxes on primary aluminium and incomplete VAT rebates on exports of certain aluminium products discouraged exports of primary aluminium and encouraged production and export of semis and fabricated articles of aluminium, including aluminium extrusions. Lastly, the complainant pointed out that in a recent expiry review regarding anti-dumping duties on imports of certain aluminium foil in rolls originating in China ⁽²⁶⁾, the Commission confirmed the existence of significant distortions and this finding was systemic in nature and not limited to the product concerned in that particular investigation, and there was no reason to depart from this methodology.

- (123) As indicated in recital (114), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file at the initiation stage, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand. Comments received in this respect from a number of interested parties are dealt with in Section 3.3.1.11 below.
- (124) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC’s economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.

3.3.1.2. Significant distortions affecting the domestic prices and costs in China

- (125) The Chinese economic system is based on the concept of a ‘socialist market economy’. That concept is enshrined in the Chinese Constitution and determines the economic governance of the People’s Republic China. The core principle is the ‘socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people’. The State-owned economy is the ‘leading force of the national economy’ and the State has the mandate ‘to ensure its consolidation and growth’ ⁽²⁷⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership ⁽²⁸⁾.
- (126) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party (‘CCP’). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing

⁽²⁵⁾ OECD (2019), ‘Measuring distortions in international markets: the aluminium value chain’, OECD Trade Policy Papers, No 218, OECD Publishing, Paris, <https://doi.org/10.1787/c82911ab-en> (last accessed on 3.9.2020).

⁽²⁶⁾ Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People’s Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 146, 5.6.2019, p. 63).

⁽²⁷⁾ Report – Chapter 2, p. 6-7.

⁽²⁸⁾ Report – Chapter 2, p. 10.

first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' ⁽²⁹⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

- (127) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽³⁰⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (128) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.3.1.5 below) ⁽³¹⁾.
- (129) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.3.1.8 below) ⁽³²⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽³³⁾.
- (130) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽³⁴⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽³⁵⁾.

⁽²⁹⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 8 September 2020).

⁽³⁰⁾ Report – Chapter 2, p. 20-21.

⁽³¹⁾ Report – Chapter 3, p. 41, 73-74.

⁽³²⁾ Report – Chapter 6, p. 120-121.

⁽³³⁾ Report – Chapter 6, p. 122-135.

⁽³⁴⁾ Report – Chapter 7, p. 167-168.

⁽³⁵⁾ Report – Chapter 8, p. 169-170, 200-201.

- (131) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽³⁶⁾.

3.3.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (132) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

- (133) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.3.1.4), as well as through shaping the corporate structure of the SOE sector ⁽³⁷⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽³⁸⁾. The elements that point to the existence of government control over enterprises in the aluminium sector are further developed in Section 3.3.1.5 below.

- (134) The OECD Study, submitted as evidence by the complainant, refers to SOEs in the aluminium sector which specifically emphasize in their regulatory filings how State ownership influences relevant industrial policies and how State ownership translates into government support. More specifically, one SOE mentions in its 2016 bond prospectus that it is one of the 52 backbone State-owned enterprises, that it plays a key role in the formulation and implementation of policies in the power sector and that it receives comprehensive and sustained support from the GOC. Another SOE refers in its 2017 bond prospectus to the fact that the respective provincial government can exert significant influence on the group ⁽³⁹⁾.

- (135) The PRC is the largest aluminium producer in the world, with several large SOEs amongst the top individual producers worldwide. According to estimates, SOEs account for more than 50 % of the total primary aluminium output in the PRC ⁽⁴⁰⁾. A study on the non-ferrous metal industry in the PRC also points in the direction of SOEs accounting for a dominant share of the domestic market ⁽⁴¹⁾. While an increase in capacity in recent years is attributed partly to privately-owned companies, such capacity increase would usually also entail various forms of (local) government involvement, such as tolerating illegal capacity expansion ⁽⁴²⁾. Moreover, the aluminium production capacity amongst the main SOEs has also increased, though to a lesser extent ⁽⁴³⁾.

- (136) Apart from controlling the SOEs, the GOC is also influencing the privately owned companies in the PRC. During the investigation it was established that the aluminium flat-rolled products producers received subsidies from the government. For example, one of the sampled companies, Jiangsu Alcha Group, lists a number of governmental subsidies in the company's annual report. A number of SOEs persist among the aluminium flat-rolled products exporters, including Chalco Ruimin and Southwest Aluminium Group, which are subsidiaries of Chalco, an SOE under SASAC supervision ⁽⁴⁴⁾.

⁽³⁶⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

⁽³⁷⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽³⁸⁾ Report – Chapter 5, p. 104-9.

⁽³⁹⁾ OECD Study, p. 29.

⁽⁴⁰⁾ Australian Anti-Dumping Commission, *Aluminium Extrusions from China*, REP 248, p. 79 (13 July 2015).

⁽⁴¹⁾ Taube, M. (2017). *Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry*, Think!Desk, 24 April 2017, p. 51.

⁽⁴²⁾ See for example a report concerning Shandong provincial government's failure to curb aluminium capacity expansion: https://mp.weixin.qq.com/s?__biz=MzI2OTUyMzA0Nw==&mid=2247494318&idx=1&sn=9690ca50845c19f38eaff659516817a&chks-m=eaddaba6ddaa22b071a5e2588aa787ed6f6a1a964cae55c4d85c6f7ccbfc5cedd3cdceac9d&scene=0&pass_ticket=JFpLY-ZoDqNTfMOPYUGJbMwF0XlC1N3hAJ3EYPpsKx6rkt4fSeZ4TwlvB5BffX4du#rd (accessed on 7 September 2020).

⁽⁴³⁾ The Report – Chapter 15, p. 387-388.

⁽⁴⁴⁾ See position 35 of the SASAC list: <http://www.sasac.gov.cn/n2588035/n2641579/n2641645/index.html>

- (137) With the high level of government intervention in the aluminium industry and a high share of SOEs in the sector, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the aluminium sector are also subject to policy supervision and guidance as set out in Section 3.3.1.5 below.

3.3.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (138) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽⁴⁵⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the Chinese company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽⁴⁶⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽⁴⁷⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽⁴⁸⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of aluminium products and the suppliers of their inputs.
- (139) In addition, on 15 September 2020 a document titled 'General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era' ⁽⁴⁹⁾ was released, which further expanded the role of the party committees in private enterprises. According to the guidelines, Section II.4: 'We must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6: 'We must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' By this document, the party emphasised the role of the private enterprises in the 'United Front work' in an effort to increase the role of the CCP in non-party organisations and entities ⁽⁵⁰⁾.
- (140) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the aluminium sector.
- (141) As found by the Commission in another investigation on certain aluminium foil in rolls originating in China ⁽⁵¹⁾, in 2017, a Chinese state-owned aluminium producer, China Aluminium International Engineering Corporation Limited ('Chalieco'), amended its Articles of Association giving more prominence to the role of party cells within the company. It included a whole chapter on the Party Committee, and Article 113 thereof states: '*In deciding major corporate issues, the Board shall consult the Party Committee of the Company in advance.*' ⁽⁵²⁾ Furthermore, in their 2017 Annual Report ⁽⁵³⁾, the Aluminum Corporation of China ('Chalco') stated that a number of directors, supervisors, and senior management – including the Chairman and Executive Director, and the Chairman of the Supervisory Committee – are members of the CCP.
- (142) With regard to the enterprises active in manufacturing of aluminium flat-rolled products, including Southwest Aluminium, Jiangsu Alcha Group and Chalco Ruimin, the investigation showed that the management of those three companies includes CCP members. A number of aluminium flat rolled product manufacturers also organise party

⁽⁴⁵⁾ Report – Chapter 5, p. 100-1.

⁽⁴⁶⁾ Report – Chapter 2, p. 26

⁽⁴⁷⁾ The Report – Chapter 2, p. 31-2.

⁽⁴⁸⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 9 September 2020).

⁽⁴⁹⁾ Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 10 March 2021).

⁽⁵⁰⁾ Financial Times (2020) 'Chinese Communist Party asserts greater control over private enterprise', available at: <https://on.ft.com/3mYxP4j>

⁽⁵¹⁾ Implementing Regulation (EU) 2019/915.

⁽⁵²⁾ The Report – Chapter 15, p. 388.

⁽⁵³⁾ <http://www.chalco.com.cn/chalcoen/rootfiles/2018/04/19/1524095189602052-1524095189604257.pdf> (accessed on 8 March 2019).

building activities for their employees, for example Southwest Aluminium: ‘in order to implement the requirements of General Secretary Xi Jinping, following the political building efforts, the Southwest Aluminum (Group) Co., Ltd’s Party Committee shall vigorously promote the building of study party branches, ensure effective full coverage of Party organizations and Party work, foster the “double promotion” of Party members, and better involve Party members as pioneers and models’ ⁽⁵⁴⁾. Xiamen Xiashun explains the party building exercises in the following way: ‘Xiashun actively promotes party building and labour union work, and remains committed to the system of joint meetings between Party, government and workers over the years, providing an important platform for employees to participate in decision-making, protect their rights and interests, and build a harmonious atmosphere.’ ⁽⁵⁵⁾ Other companies involved in the party building activities include Tianjin Zhongwang Aluminium Industry, Jiangsu Alcha Group and Chalco Ruimin.

- (143) The State’s presence and intervention in the financial markets (see also Section 3.3.1.8 above) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁵⁶⁾. Thus, the State presence in firms, including SOEs, in the aluminium and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.3.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (144) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁵⁷⁾.
- (145) For instance, the government plays a key role in the development of the Chinese aluminium sector. This is confirmed in the numerous plans, directives and other documents pertaining directly or indirectly to the sector, which are issued at national, regional and municipal level. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the aluminium sector. Such policies have an important direct or indirect impact on the production costs of aluminium products.
- (146) In line with the Commission’s findings in the case on certain aluminium foil in rolls originating in China ⁽⁵⁸⁾ and in the case of aluminium extrusions (provisional measures) ⁽⁵⁹⁾, the following facts are equally applicable to the present product concerned, which is, similarly, an aluminium downstream product.
- (147) Although the 13th Five Year Plan on Economic and Social Development ⁽⁶⁰⁾ does not contain specific provisions on aluminium, for the non-ferrous metal industry in general it envisages a strategy of promoting cooperation on international production capacity and equipment manufacturing. To achieve these goals, the plan confirms that it will enhance supporting systems related to taxation, finance, insurance, investment and financing platforms, as well as risk assessment platforms ⁽⁶¹⁾.

⁽⁵⁴⁾ See the China Non Ferrous Metal Journal, 20 October 2020: <https://www.cnmn.com.cn/ShowNews1.aspx?id=423470>

⁽⁵⁵⁾ <http://act.chinatt315.org.cn/hy/tthy/2014/0906/13763.html>

⁽⁵⁶⁾ The Report – Chapters 14.1 to 14.3.

⁽⁵⁷⁾ The Report – Chapter 4, p. 41-42, 83.

⁽⁵⁸⁾ Implementing Regulation (EU) 2019/915.

⁽⁵⁹⁾ Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People’s Republic of China (OJ L 336, 13.10.2020, p. 8).

⁽⁶⁰⁾ The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020), <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>

⁽⁶¹⁾ The Report – Chapter 15, p. 377.

- (148) The corresponding sectoral plan, the Non-Ferrous Metal Industry Development Plan (2016-2020) ('the Plan') sets out specific policies and targets that the government aims to achieve for a number of non-ferrous metals industries ⁽⁶²⁾, including aluminium.
- (149) The Plan aims at upgrading the range of product types produced by the Chinese aluminium industry, inter alia, through supporting innovation. It calls for swift development of the mixed ownership system and a boost to SOE's vitality. It further provides for the possibility of stock-piling non-ferrous metals, improving the security of resources, including aluminium and sets specific quantitative targets for reducing power consumption, increasing the ratio of recycled aluminium in production and increasing capacity utilisation ⁽⁶³⁾.
- (150) The Plan further provides for structural adjustments with stricter control on new smelting facilities and elimination of outdated capacity. It provides for geographical distribution of processing plants, focuses on projects to increase bauxite and alumina resource exploitation and covers electricity supply and pricing policy ⁽⁶⁴⁾.
- (151) With this wide range of measures and policies, the Plan represents a continuation of the 2009 Non-Ferrous Metals Industry Adjustment and Revitalization Plan which was adopted to alleviate the negative effects on the non-ferrous metal industry of the financial crisis. The key objectives, set out in the plan include, inter alia, production volume control, restructuring, raw material sourcing, export tax policy, security of resources, stockpiling, technological innovation, financial policy and planning and implementation ⁽⁶⁵⁾.
- (152) Another policy document targeting the aluminium sector is the Standard Conditions applicable to the Aluminium Industry issued by MIIT on 18 July 2013, in order to speed up structural adjustment and curb disorderly expansion of the aluminium smelting capacities. The Standard Conditions introduce minimum production quantities for new plants, quality standards and security of supply for imported and domestically sourced bauxite and alumina. The Standard Conditions indicate that MIIT is the authority in charge of the standardisation and management of the aluminium industry, as well as of the publication of the list of companies authorised to operate in the aluminium industry ⁽⁶⁶⁾.
- (153) In the Guiding Opinion on creating an excellent market environment, fostering the non-ferrous metal industry's structural adjustment and transformation and increasing benefits issued by the General Office of the State Council in 2016 (2016/42) ⁽⁶⁷⁾, the Chinese authorities state as main objectives to '*optimize the non-ferrous metal industry structure; Basically balance supply and demand of key product categories; Maintain the utilization rate of electrolytic aluminium production capacity above 80 %; Significantly increase the mineral resources supply security capacity for minerals such as copper and aluminium*' ⁽⁶⁸⁾. The document also prescribes to '*strictly control new production capacity*.' To achieve this, the State requires to: '*Ensure the implementation of indispensable electrolytic aluminium new (reformed, expanded) construction projects; [...] Use social supervision and other tools; Step up supervision and inspection efforts; Strictly investigate and deal with new electrolytic aluminium projects breaching regulations*' ⁽⁶⁹⁾. These provisions demonstrate the substantial degree of the GOC's intervention into the non-ferrous metals sector, including the aluminium sector.
- (154) The above State interference in the functioning of the aluminium sector by means of planning documents is reflected also at the provincial level. For example, the Shandong Province Government's Notice on the implementation plan for accelerating the high-quality development of the seven energy-intensive industries (2018/248) of 6 November 2018 requires to '*foster the extension of the electrolytic aluminium industry chain*' through the following actions: '*Further increase the proportion of fine and deep processing of electrolytic aluminium liquid and aluminium processing materials; Speed up and foster the extension of the aluminium industry chain to finished products and high-end products; Expand the use of high-end aluminium materials; Increase the development possibilities of the aluminium processing industry*' ⁽⁷⁰⁾.

⁽⁶²⁾ The Report – Chapter 12, p. 275-282 and Chapter 15, p. 378-382.

⁽⁶³⁾ The Report – Chapter 12, p. 275 – 282

⁽⁶⁴⁾ The Report – Chapter 15, p. 378-382, 390.

⁽⁶⁵⁾ The Report – Chapter 15, p. 384-385.

⁽⁶⁶⁾ The Report – Chapter 15, p. 382-383.

⁽⁶⁷⁾ See http://www.gov.cn/zhengce/content/2016-06/16/content_5082726.htm (accessed on 20 July 2020)

⁽⁶⁸⁾ Ibid, Section 3.

⁽⁶⁹⁾ Ibid, Section 4.

⁽⁷⁰⁾ See: http://gxt.shandong.gov.cn/art/2018/11/6/art_15681_3450015.html (accessed on 20 July 2020), Section 13.

- (155) The State has been intervening into the functioning of the aluminium sector for many years before the issuance of the above policy documents, which is, for example, illustrated by the Guidelines for Accelerating the Restructuring of the Aluminium Industry ('Restructuring Guidelines') ⁽⁷¹⁾, issued by the NDRC in April 2006. The latter regarded aluminium as a fundamental product in the development of the national economy. The said Restructuring Guidelines stated that, in implementing the Industrial Development Policy approved by the State Council, specific objectives shall be achieved in certain areas. These areas were: Enhance the concentration in the industry; Access to financial capital (see also Section 3.3.1.8 below); Organisation of the industry; Strict control of exports of electrolytic aluminium; and Elimination of outdated capacity.
- (156) Moreover, the Chinese State has been interfering with the free play of market forces in the sector of upstream aluminium products, hence in the production of inputs and of inputs to inputs, which are used by the producers of the product concerned. In that regard, for example, the Notice on fostering the orderly development of the Alumina Industry (2018/1655) issued on 28 December 2018 by the General Office of the MIIT ⁽⁷²⁾ stipulates – concerning alumina (a key input in the production of primary aluminium) – that *'guided by Xi Jinping's socialist ideology with Chinese characteristics in a new era, [all relevant parties shall] comprehensively and thoroughly implement the spirit of the 19th National Congress of the Party; stick to the general orientation of stability in progress work; stick to the new development concept; focus on supply-side structural reforms; make full use of the market's decisive role in allocating resources, better involve the government, [...] meet domestic development needs, and promote the orderly and healthy development of the alumina industry.'* ⁽⁷³⁾ The same document states that *'the provincial Development and Reform Commissions and MIIT administrations shall: keep abreast of the current developments in the alumina industry in their region; combine their region's economic and social development, industry base, market demand and energy consumption and environmental capacity; strengthen the scientific planning for the development of the alumina industry; coordinate their region's industry development scale and layout; ensure project demonstrations; strictly implement the construction requirements; orderly support project constructions; strengthen the supervision of the entire process; ensure the industry development scale matches the domestic market demand and local bearing capacity; prevent projects construction rush.'* ⁽⁷⁴⁾ In order to achieve the latter, the document prescribes to strengthen supervision and inspection: *'In accordance with the present notice's requirements the National Development and Reform Commission, the Ministry of Industry and Information Technology, together with the China Nonferrous Metals Industry Association and other relevant parties shall proceed to inspections of alumina construction projects in the form of letters of enquiries, research and random investigations. Should problems arise, they shall be strictly dealt with in accordance with the relevant regulations.'* ⁽⁷⁵⁾ The provisions described above show the degree of State intervention and control in the Chinese market of alumina – a key input to in the production of primary aluminium, which is the raw material used by aluminium flat-rolled products producers.
- (157) Another input in the production of the product concerned is electricity, which constitutes up to 4 % of the production cost of aluminium flat-rolled products of the cooperating exporting producers. In this regard, the Commission found evidence of State-induced distortions affecting the price of electricity provided to Chinese aluminium producers. Notably, it was established that the State intervened in favour of Chinese producers through differentiated, more advantageous energy pricing. In the Guiding Opinion on creating an excellent market environment, fostering the non-ferrous metal industry's structural adjustment and transformation and increasing benefits mentioned above, the Chinese authorities acknowledged as a policy goal to *'continue to implement the differentiated electricity price policy; Encourage eligible electricity users to conclude direct deals with power generation companies; Determine prices through negotiation.'* ⁽⁷⁶⁾ The Commission also established that similar policies were implemented at the provincial level. For example, in the Yunnan Province, according to information reported by the China Industry Journal in November 2019: *'In order to implement the plan, Yunnan has successively issued specific policies such as the "Implementing Opinion on Promoting the Integrated Development of Hydropower and Aluminium Materials" and the "Plan implementing preferential prices to promote the use of Hydropower". It appears clearly that any enterprise bringing its capacity*

⁽⁷¹⁾ The Report – Chapter 15, p. 386.

⁽⁷²⁾ See <http://miit.gov.cn/n1146285/n1146352/n3054355/n3057569/n3057572/c6566256/content.html> (accessed on 20 July 2020).

⁽⁷³⁾ Ibid, Section I.

⁽⁷⁴⁾ Ibid, Section II.

⁽⁷⁵⁾ Ibid, Section VII.

⁽⁷⁶⁾ See: http://www.gov.cn/zhengce/content/2016-06/16/content_5082726.htm, Section 10.

quota to Yunnan shall benefit from the “preferential price, full transmission” policy, which means that for the first 5 years, electrolytic aluminium shall benefit from special preferential electricity price of RMB 0,25 per kWh. As to deep processing of materials, a special preferential electricity price of RMB 0,20 per kWh shall be granted. According to reports, the integrated projects of Henan Shenhua and Sichuan Qiyi’s bringing quotas to be built in Yunnan have already benefitted from the policy for integration projects and have signed relevant agreements with local governments, power grid companies, and power generation companies’ ⁽⁷⁷⁾.

- (158) As another example of State interference, at the provincial level, in the already mentioned Shandong Province Government’s Notice on the implementation plan for accelerating the high-quality development of the seven energy-intensive industries, the authorities have issued transformation and upgrading targets for the electrolytic aluminium industry with regard to energy use: ‘By 2022, the electricity consumption of electrolytic aluminium per ton of aluminium shall drop to approximately 12 800 kWh, the electrolytic deep processing rate of electrolytic aluminium in the province shall reach approximately 50 %, and the added value of aluminium per ton shall increase by more than 30 % on average’ ⁽⁷⁸⁾.
- (159) With respect to the enforcement of the provisions contained in the planning documents above, Chinese industry associations play an important role. These entities are to guarantee that industry implements the policies of the GOC. This responsibility is confirmed by the fact that in their activity, they liaise closely with State authorities, which is reflected in their statutes. In the case of the aluminium sector, the Articles of association of the China Non-Ferrous Metals Industry Association assert notably that ‘[t]he Association adheres to the party’s basic line and various principles and policies, abides by the Constitution, laws, regulations and national policies, and abides by social and moral values. It shall stick to the purpose of serving the government, the industry, the enterprises and business managers; it shall set up and improve the industry self-discipline mechanism; it shall fully involve government’s staff to get assistance; it shall play a bridging role between the government and enterprises.’ (Article 3). Along the same lines, Article 25 states that the Association’s chairman, vice-chairman and secretary general must fulfil as a first condition to: ‘Adhere to the party’s line, principles and policies, and have good political qualities’ ⁽⁷⁹⁾.
- (160) Similarly, the Articles of association of the China Non-Ferrous Fabrication Industry Association stipulate that ‘the Association accepts business guidance as well as supervision and management from the State-owned Assets Supervision and Administration Commission of the State Council, the Ministry of Civil Affairs and the China Nonferrous Metals Industry Association’ (Article 4). One of the established elements of the Association’s business scope is also to ‘Actively put forward suggestions and opinions on industry development, industry policies, laws and regulations, in accordance with the Party’s and the State’s general principles and tasks concerning the building of a socialist market economy system and taking into account the industry’s actual situation.’ (Article 6). Finally, Article 22 also prescribes that the Association’s chairman, deputy chairman and secretary general must, among others, meet as condition to: ‘Adhere to the party’s line, principles and policies, and have good political qualities’ ⁽⁸⁰⁾.
- (161) Thus, the numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, clearly show the high degree of intervention of the Chinese government in the aluminium sector ⁽⁸¹⁾. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the sector.
- (162) Beyond the plans, the government’s intervention in the sector has taken the form, inter alia, of export-related measures, including export duties, export quotas, export performance requirements and minimum export price requirements on different raw materials for aluminium.

⁽⁷⁷⁾ See: <https://finance.sina.com.cn/money/future/indu/2019-11-26/doc-iihnzahi3508583.shtml> (accessed on 20 July 2020).

⁽⁷⁸⁾ See: http://gxt.shandong.gov.cn/art/2018/11/6/art_15681_3450015.html, Section 6.

⁽⁷⁹⁾ See <http://www.chinania.org.cn/html/introduce/xiehuizhangcheng/> (accessed on 21 July 2020).

⁽⁸⁰⁾ See: <http://www.cnfa.net.cn/about/1546.aspx> (accessed on 21 July 2020).

⁽⁸¹⁾ The Report – Chapter 15, pp. 377- 387.

- (163) The GOC further discourages exports of primary aluminium and its inputs, aiming at promoting higher added-value aluminium products. This objective is pursued by granting full or partial VAT rebates on downstream aluminium products in combination with incomplete VAT rebates and export taxes on primary aluminium ⁽⁸²⁾.
- (164) The prices of key inputs such as energy and electricity are influenced by different types of government intervention ⁽⁸³⁾. Other types of government intervention leading to market distortions include the stockpiling policy through the State Reserve Bureau and the role of the Shanghai Futures Exchange (SHFE) ⁽⁸⁴⁾. In addition, several trade defence investigations have established that the Chinese government has consistently granted different types of State support measures to aluminium producers ⁽⁸⁵⁾. The extensive intervention of the GOC in the aluminium sector has led to overcapacity ⁽⁸⁶⁾, which is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.
- (165) The OECD Study also identified additional government support influencing market forces in the aluminium sector. Such support would typically take the form of inputs, in particular electricity and primary alumina, sold at below-market prices ⁽⁸⁷⁾. The OECD Study further describes how the GOC objectives for the aluminium sector are translated into industrial policies and specific actions on the provincial and local level, including for example capital injections, priority possession rights to mineral resources, governmental grants and subsidies or tax incentives ⁽⁸⁸⁾.
- (166) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting key industries, including the aluminium sector, which encompasses the production of aluminium flat-rolled products, as well as of primary aluminium – the main raw material used in the manufacturing of the product concerned (more than 50 % of its costs of production). Such measures impede market forces from operating freely.
- 3.3.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws
- (167) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁸⁹⁾.
- (168) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁹⁰⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at

⁽⁸²⁾ The Report – Chapter 15, p. 378 and 389; OECD Study, p. 25-26.

⁽⁸³⁾ The Report – Chapter 15, pp. 390 – 391. Provision of discounted electricity is reported also by other sources. See for example: Economic Information Daily: Worrying over growth downturns, western region releasing preferential policies to support high energy consumption industries http://jjckb.xinhuanet.com/2012-07/24/content_389459.htm (accessed on 4 September 2020), reporting on how western Chinese provinces like Shaanxi, Ningxia, Qinghai and Gansu have continued to provide cheap electricity to attract more investments.

⁽⁸⁴⁾ The Report – Chapter 15, pp. 392 – 393.

⁽⁸⁵⁾ The Report – Chapter 15, pp. 393 – 394.

⁽⁸⁶⁾ The Report – Chapter 15, pp. 395 – 396.

⁽⁸⁷⁾ Ibid, p. 16, p. 30. However, the Chinese authorities interfere with respect to other inputs, too. A typical example is coal, where the government retains the power to subdue coal price rises. See: https://policyn.com/policy_ticker/coal-price-unlikely-to-jump-during-heating-season/?iframe=1&secret=c8uthafuthefra4e (accessed on 4 September 2020).

⁽⁸⁸⁾ Ibid, p. 16-18.

⁽⁸⁹⁾ Report – Chapter 6, p. 138-149.

⁽⁹⁰⁾ Report – Chapter 9, p. 216.

allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁹¹⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁹²⁾.

- (169) Much like other sectors in the Chinese economy, producers of aluminium flat-rolled products are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the aluminium flat-rolled products sector.
- (170) This finding is supported by the provisional affirmative determination of the US Department of Commerce, in the Countervailing Duty Investigation of certain Aluminium Foil from China, which found, using facts available, that the Government of China's provision of land for Less Than Adequate Remuneration constitutes a financial contribution within the meaning of Section 771 (5)(D) of the Tariff Act of 1930, as amended ⁽⁹³⁾.
- (171) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the aluminium sector, including with respect to the product concerned.

3.3.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (172) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁹⁴⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁹⁵⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁹⁶⁾. Those findings lead to the distortion of wage costs in the PRC.
- (173) No relevant evidence was submitted to the effect that the aluminium sector, including the producers of aluminium flat-rolled products, would not be subject to the Chinese labour law system described. The aluminium sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

⁽⁹¹⁾ Report – Chapter 9, p. 213-215.

⁽⁹²⁾ Report – Chapter 9, p. 209-211.

⁽⁹³⁾ Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of certain Aluminium Foil from The People's Republic of China, published by the International Trade Administration, Department of Commerce, on 7 August 2017, IX.E. p. 30, available at <https://enforcement.trade.gov/frn/summary/prc/2017-17113-1.pdf> (last accessed on 11 March 2019).

⁽⁹⁴⁾ Report – Chapter 13, p. 332-337.

⁽⁹⁵⁾ Report – Chapter 13, p. 336.

⁽⁹⁶⁾ Report – Chapter 13, p. 337-341.

3.3.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the State

(174) Access to capital for corporate actors in the PRC is subject to various distortions.

(175) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁹⁷⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁹⁸⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁹⁹⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽¹⁰⁰⁾.

(176) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

(177) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽¹⁰¹⁾.

(178) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽¹⁰²⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.

(179) In this respect, the OECD Study refers to anecdotal evidence that certain aluminium producers in the PRC have obtained financing on preferential terms, with cost of financing being seemingly decoupled from the corresponding level of corporate leverage. According to that study, one state-owned aluminium producer explicitly stated in its 2016 bond prospectus that it attracts considerable financial support from Chinese policy banks bearing interest rate below benchmark. Similarly, the 2017 bond prospectus of another state-owned producer refers to the strong ties which the company maintains with Chinese banks, including policy banks that have provided that company with low-cost financing sources. The OECD Study concludes in this connection that while there can be many reasons why interest rates are low for these firms, the contrast between poor financial indicators and low interest rates may suggest some potential underpricing of the risk associated with those borrowers ⁽¹⁰³⁾.

(180) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

⁽⁹⁷⁾ Report – Chapter 6, p. 114-117.

⁽⁹⁸⁾ Report – Chapter 6, p. 119.

⁽⁹⁹⁾ Report – Chapter 6, p. 120.

⁽¹⁰⁰⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽¹⁰¹⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparuso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203

⁽¹⁰²⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽¹⁰³⁾ OECD Study, p. 21.

- (181) Thirdly, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (182) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (183) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (184) No evidence was submitted to the effect that the aluminium sector, including the producers of aluminium flat rolled products, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.3.1.9. Systemic nature of the distortions described

- (185) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.3.1.1-3.3.1.5 apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.3.1.6-3.3.1.8 above.
- (186) The Commission recalls that in order to produce aluminium flat-rolled products, a broad range of inputs is needed. When the producers of aluminium flat-rolled products purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (187) As a consequence, not only the domestic sales prices of aluminium flat-rolled products are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. The arguments and evidence adduced by the exporting producers in this regard are addressed in the next section.

3.3.1.10. Conclusion

- (188) The preceding analysis, which includes an examination of all the available evidence relating to public interventions in the Chinese economy in general as well as in the aluminium sector (including the product concerned), showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result

of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

3.3.1.11. Comments by interested parties

- (189) In its comments, one exporting producer, Xiamen Xiashun, firstly pointed out that Article 2(6a) is inconsistent with the WTO Anti-Dumping Agreement ('ADA'). This is because, first, Article 2.2 ADA recognizes three scenarios which allow for the normal value construction: (i) sales are not made in the ordinary course of trade; (ii) there is a particular market situation; or (iii) because of the low volume of sales on the domestic market, such sales are not representative. Xiamen Xiashun submitted that significant distortions meet none of the three criteria. It further submitted that even if the concept of significant distortions could possibly be considered to fall under the second of the above criteria, the Panel in WTO DS529 Australia – Anti-Dumping Measures on A4 Copy Paper confirmed that the fact that the domestic price of the product concerned and its inputs are affected by governmental distortions was not enough to consider that the proper comparison between domestic market sales and export sales is affected 'because of the particular market situation'. In addition, Xiamen Xiashun commented that the Commission applied the construction of normal value systematically, while it should be checking on a case by case basis if the conditions of Article 2.2 ADA are met. Xiamen Xiashun further submitted that Article 2.2 ADA requires that the construction of the normal value must reflect 'a cost in the country of origin', as confirmed in the cases WTO DS529 Australia – Anti-Dumping Measures on A4 Copy Paper and WTO DS473 EU —Biodiesel. Furthermore, Xiamen Xiashun argued that the normal value should be constructed in accordance with the requirements of Article 2.2.1.1 ADA, and DS473 it added that the findings in case WTO DS427 China – Anti-Dumping and Countervailing Duty Measures on Broiler Products from the United States required the investigating authorities to take into account the recorded costs of the exporting producers unless they are not in accordance with the generally accepted accounting principles or do not reasonably reflect the costs associated with the production and sale of the product under consideration. Even if the recorded costs satisfied those two conditions, Article 2(6a) of the basic Regulation is according to Xiamen Xiashun inconsistent with Article 2.2.1.1 WTO ADA because the costs of the exporting producer are disregarded systematically.
- (190) The Commission considered that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. As explicitly clarified by the WTO Appellate Body in DS473 European Union – Anti-Dumping Measures on Biodiesel from Argentina, WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The Commission recalled that the cases DS529 Australia – Anti-Dumping Measures on A4 Copy Paper and DS427 China – Broiler Products did not concern the interpretation of Article 2(6a) of the basic Regulation and the conditions for its application. Furthermore, the underlying factual situations in those cases was different from the underlying situation and criteria giving rise to the application of the methodology under this provision of the basic Regulation, which concerns the existence of significant distortions in the exporting country. Under Article 2(6a) it is only when significant distortions are found to be present and to affect costs and prices that normal value is constructed by reference to undistorted costs and prices sourced in a representative country or by reference to an international benchmark. In any event, Article 2(6a) second subparagraph, 3rd dash of the basic Regulation provides for the possibility to use domestic costs to the extent they are established not to be distorted. The Commission therefore rejected these claims.
- (191) Second, Xiamen Xiashun submitted that Article 2(6a) of the basic Regulation is inconsistent with Article 2.2.2 ADA. It further submitted that the Appellate Body in DS219 EC – Tube or Pipe Fittings confirmed that the investigating authority is obliged to use the actual SG&A and profit of the exporting producers, as long as such data exists. Xiamen Xiashun therefore submitted that the Article 2(6a) of the basic Regulation was incompatible with Article 2.2.2 ADA.

- (192) The Commission noted that once it is determined that due to the existence significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. As explained above in recital (190), the same provision of the basic Regulation also allows the use of domestic costs if they are positively established not to be distorted. In that context, the exporting producers had the possibility to provide evidence that their individual SG&A costs and/or other input costs were actually undistorted. However, as evidenced in Sections 3.3.1.2 to 3.3.1.9, the Commission has established the existence of distortions in the Chinese aluminium flat-rolled products industry and there was no positive evidence as to the factors of production of individual exporting producers being undistorted. Therefore, these claims were rejected.
- (193) Third, Xiamen Xiashun submitted that the Commission was obliged, according to the provisions of Article 2(6a) of the basic Regulation, to conduct a company-specific and cost-specific analysis. Therefore, there should have been a specific analysis of Xiamen Xiashun based on the questionnaire it submitted.
- (194) The Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level. If the existence of significant distortions is established, then the provisions of Article 2(6a) apply, *a priori*, to all exporting producers in the PRC and concerns all costs relating to their factors of production. In any event, the same provision of the basic Regulation provides for the use of domestic costs which are positively established not to be affected by significant distortions. However, no domestic costs have been established to be undistorted on the basis of accurate and appropriate evidence. In particular, the exporting producers did not submit accurate and appropriate evidence on undistorted prices and costs.
- (195) Furthermore, the calculations concerning Xiamen Xiashun's anti-dumping rate reflect the data submitted by the company itself, calculated in accordance with the provisions of the basic Regulation, in particular Article 2(6a). There was no evidence that Xiamen Xiashun's prices and costs were not distorted by the pervasive distortions established on the basis of the evidence available. Therefore, the provisional margins of dumping reflect the specific situation of the company, including the factors of production and amounts as reported by the company in the questionnaire reply, but duly taking into account the existence and impact of significant distortions in the PRC. These claims were therefore rejected.
- (196) With regard to the individual situation of the company, Xiamen Xiashun submitted first that the company was a wholly owned foreign enterprise (a 'WOFE') and subject to Chinese laws. Its shareholder was Daching Enterprises Limited, a company incorporated in Hong Kong. It further submitted that its financial statements were audited under the international accounting standards as it is part of an international group. It submitted that it was a privately-owned company and that there was no evidence that it was subject to the same ownership, control or policy supervision and guidance by the Chinese authorities as an SOE and was not subject to policy supervision and guidance through State presence interfering with respect to prices and costs. It thus claimed that it did not 'operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country' as referred to in Article 2(6a)(b), first indent, of the basic Regulation.
- (197) The Commission reiterated that once the significant distortions are established, the methodology under Article 2(6a) of the basic Regulation applies country-wide unless it is positively established that certain costs are not affected by distortions. Xiamen Xiashun did not provide any such evidence, but only some generic arguments concerning relating to certain criteria listed in Article 2(6a)(b) for the existence of significant distortions in the exporting country as a whole and not linked to their specific items of costs being undistorted. Thus, the evidence about the specific situation of Xiamen Xiashun as allegedly independent from State control is not relevant in this context. In any event, the Commission noted that even if these claims were relevant in this context, *quod non*, on substance the

argument of Xiamen Xiashun that it is free from any government influence, including ownership, control or policy supervision and guidance by Chinese authorities, does not correspond to reality. The substantial body of evidence and the conclusions in Sections 3.3.1.3 to 3.3.1.5 show the extent and pervasiveness of the influence of the government and of the CCP in the Chinese economy, including in the aluminium sector. Xiamen Xiashun did not present sufficient evidence that would question these findings. Moreover, as indicated in Section 3.3.1.8, the government disposes of a vast number of instruments and financial incentives to steer the companies, including the privately owned ones, to follow its guidance. As described in the same section, financial institutions, including the private ones have incentives to facilitate access to finance for projects in line with the governmental plans, which has a substantial impact on the privately owned companies which need to comply with the governmental directives to ensure financial liquidity.

- (198) With regard specifically to Xiamen Xiashun, the Commission noted that it is formally recognised as: a National Level Key High-Tech Enterprise by the State Council; Fujian Province's Backbone Enterprise for Strategic and Emerging Industries by the Fujian Province Economic and IT Commission; a Fujian Province Innovative Enterprise by the Fujian Province Science and Technology Bureau, the Fujian Province Economic and IT Commission, the Fujian Provincial Federation of Trade Unions and by the Fujian Province People's Government State-owned Asset Supervision and Administration Commission ⁽¹⁰⁴⁾. In order to receive these formal recognitions, the company must have fulfilled the relevant eligibility requirements, which include, among others, following the official line of the GOC and complying with the official governmental strategies and policies. This is also necessary to be able to retain such recognitions and further benefit from the direct or indirect governmental support attached to them. As an example, some of the specific policies, objectives and benefits linked to the recognition as Strategic and Emerging Industries backbone enterprises in Fujian province, a title held by Xiamen Xiashun, include: 'Involve backbone enterprises as leaders and examples, foster the leapfrog scientific development of strategic emerging industries in Fujian, and achieve the goals and tasks set in the "Implementation Plan for Accelerating the Development of Strategic Emerging Industries in the Fujian Province"; 'Support Fujian's various types of venture capital funds for strategic emerging industries to carry out equity investment to develop key projects of backbone enterprises'; 'Encourage and support the provincial strategic emerging industries backbone enterprises to go public for financing and to issue corporate bonds, short-term financing bills, etc., and provide relevant support and services for corporate financing'; 'Together with economic and trade departments of districts, cities, of Pingtan Comprehensive Experimental Zone and with provincial group (holding) companies, the Provincial Economic and Trade Committee has established a working and contact system with emerging industry backbone enterprises to help coordinate and solve the difficulties and problems encountered in the development of enterprises, and to ensure monitoring and analysis the development of backbone enterprises' ⁽¹⁰⁵⁾. The Commission thus did not accept the company specific defence that Xiamen Xiashun would be free from control or policy supervision or guidance of the authorities of the PRC.
- (199) Furthermore, Xiamen Xiashun submitted that it was formed based on the Foreign Trade Law of the People's Republic of China, the Foreign Investment Law of the People's Republic of China, the Company Law of the People's Republic of China and was subject to the Enterprise Bankruptcy Law of the People's Republic of China. Pursuant to those laws, it was protected by the bankruptcy law and its capital could be freely remitted inward or outward in accordance with the law. It further argued that its financial statements were audited under the international accounting standards, by Ernst & Young and if its financial health was in jeopardy, it would have to follow international standards and possibly be put in bankruptcy.
- (200) The Commission recalled, that, as described in Section 3.3.1.6, the distortions in the PRC in the domain of law do not stem from the fact that the Chinese laws are inadequate for their purpose. On the contrary, the Chinese laws are modelled on similar laws in other countries and hence there is no quality problem with the laws as such. The problem lies in inadequate enforcement of those laws and the role the state holds in the insolvency proceedings. Based on the findings in Section 3.3.1.6 and in absence of evidence that Xiamen Xiashun would not be subject to the country-wide distortions in respect to bankruptcy proceedings, this claim was rejected.

⁽¹⁰⁴⁾ See Xiamen Xiashun's website: <http://www.xiashun.com/about/awards.htm>

⁽¹⁰⁵⁾ See 2012 Fujian Province Notice on developing the recognition of Strategic and Emerging industry backbone enterprises, Sections II and VI: <http://www.fjmtxh.com/NewsInfo.aspx?Id=11101>

- (201) Xiamen Xiashun further commented that it conducted independent price negotiations with its customers in the EU or elsewhere based on the cost of production and the prevailing market conditions. It added that when selling to its customers in the EU, its price was based on a conversion premium plus aluminium price quoted, for sales to the EU, in the London Metal Exchange (LME).
- (202) According to the requirements of Article 2(6a)(a) of the basic Regulation, the normal value must be constructed on the basis of undistorted prices or benchmarks if it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions. The claims summarised in the previous recital are based on cost of production and prevailing market conditions when selling to EU customers (or elsewhere). Therefore, their context and factual situation concerns the export price to the EU (and elsewhere) and not the normal value, which is the object of this provision. The Commission thus rejected this claim.
- (203) With regard to raw materials, Xiamen Xiashun submitted that there are no public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces in the PRC. In its view, it has a free choice of selecting its own suppliers, whether producers or distributors, at freely negotiated prices. It added that the purchase price of the raw materials and other inputs was determined through negotiation and bidding among several suppliers. Xiamen Xiashun further added that it purchased some of its raw materials overseas. In particular, this is the case for Titanium Boron Aluminium Rod, which it buys entirely from the United Kingdom.
- (204) In this respect, the Commission recalled that Xiamen Xiashun did not provide evidence positively establishing that its costs regarding domestically sourced inputs were not affected by the substantial government intervention according to the findings made in Sections 3.3.1.2 to 3.3.1.9. The investigation established distortions in the entire chain of the aluminium flat-rolled products sector. Those distortions also concern the suppliers of raw materials, who are subject to all types of distortions found in the PRC, including the cost of electricity, labour, access to finance etc. In contrast, in the case of Xiamen Xiashun's purchases overseas, on the basis of the evidence submitted and subsequently remotely cross-checked, including the questionnaire reply, the relevant contracts, a price analysis of these purchases (showing prices similar to the ones used from the representative country), and absent any evidence of distortions for this input in the United Kingdom, it was positively established that the purchase price of Titanium Boron Aluminium Rod from the United Kingdom (which represents a small part of the overall costs of raw materials of this company) is non-distorted and does not have to be replaced with data from a representative country.
- (205) Furthermore, the investigation revealed that Xiamen Xiashun established jointly with Yunlu Aluminum Co., a SOE, an enterprise incorporated under the name of Yunnan Yongshun Aluminium Co., Ltd. in Jianshui County, Yunnan Province. That company's main business is the production of large aluminium alloy slabs and it is a supplier of Xiamen Xiashun. The above example shows that first, Xiamen Xiashun is closely cooperating with the Chinese state, by creating a joint-venture with a SOE, and secondly, that the country-wide distortions also concern its suppliers.
- (206) Xiamen Xiashun further submitted that the government had no influence over its ability to access credit or the terms of credit that the company was granted and that the terms of credit, such as the interest rate, are determined by the pertinent prevailing market rate. Also, Xiamen Xiashun submitted that its SG&A expenses were undistorted and reasonable and should be taken into account.
- (207) The Commission recalled that for the purpose of establishing the existence of significant distortions under Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. Even if the exporting producer did not benefit from any significant state financing directly, *quod non*, Xiamen Xiashun was eligible for financial support as described in Sections 3.3.1.8 coupled with 3.3.1.5 below. This is because, as explained in Section 3.3.1.5, the exporting producer was subject, as all companies in the aluminium sector, to Chinese State planning and guidance documents and enjoyed access to financing, through the Chinese financial system described in Section 3.3.1.8. In this respect, banks and other financing institutions following the guidance of the GOC, facilitate access to

finance for market players, including producers of aluminium products, hence creating a financial safety net for those enterprises, and giving them an additional advantage compared to their counterparts located outside the PRC. Furthermore, as explained in recital (198), Xiamen Xiashun, having the status of a Strategic Emerging Industry ('SEI'), is subject to the financial support made available to the companies having the SEI status, as described in the mentioned recital.

- (208) Regarding labour, Xiamen Xiashun submitted that it followed a sound and normal wage cost system. It negotiated independently with its employees for the individual wages based on the market rates and their personal expertise and achievements. It added that there is no state mandate regarding wage controls in the PRC.
- (209) The Commission recalled that distortions on the labour market were established at the country-wide level in Section 3.3.1.7. The issues inherent to the Chinese labour market, including the lack of labour unions independent from the government and the workforce mobility restrictions due to the household registration system as described in recital (172) have a distortive impact on the wage creation in the PRC. In this respect, there is no evidence establishing that the distortive effects of the country-wide lack of independent trade unions and the issue of household registration system are not applicable to Xiamen Xiashun. The claim was therefore rejected.
- (210) Finally, Xiamen Xiashun submitted that, for all the reasons mentioned above, its SG&A and profits were undistorted and also reasonable and should be taken into account in the calculations.
- (211) As for the claim concerning SG&A and profits, the Commission first noted that it was generic and unsubstantiated, as it simply referred to the other claims by this exporting producer which have all been rejected. Furthermore, Article 2(6a)(a) of the basic Regulation specifically requires that if there is a finding of significant distortions, the constructed normal value must include an undistorted and reasonable amount for SG&A costs and for profits. Since this is the case in this investigation and the exporting producer as well as its suppliers are affected by these distortions, these claims were rejected.
- (212) In reaction to Xiamen Xiashun's comments, Airoidi submitted a set of comments on significant distortions with regard to information submitted by other interested parties under point 8(i) of the Notice of Initiation.
- (213) First, Airoidi expressed its support for Xiamen Xiashun's comments submitted on initiation concerning the incompatibility of Art. 2(6a) of the basic Regulation with various provisions of the WTO Anti-dumping agreement.
- (214) The issue of compatibility of Art 2(6a) of the basic anti-dumping Regulation with the WTO law was already discussed in recitals (189) to (195). Therefore these claims were rejected.
- (215) Furthermore, Airoidi submitted that in case the Commission concluded that there are significant distortions in the PRC, it should still make a producer-exporter specific analysis of the costs and take into account the producer-exporter's own domestic costs which are found not to be distorted.
- (216) The Commission explained in recital (195) above that all the calculations were based on the company's specific data, and both the types of factors of production as well as their amounts were used as reported by the company, with only the values replaced by an undistorted benchmark. Therefore, these claims were rejected.
- (217) Third, Airoidi commented that the complaint submitted by the European Aluminium Association was in fact an anti-subsidy complaint, as the language of the complaint referred in a number of instances to subsidies made available to the aluminium flat-rolled products producers in the PRC. Airoidi submitted that by bringing the anti-dumping complaint and by relying on the assumption that the representative country methodology was automatically applicable, the complainant attempted to circumvent the very essence of the various objectives of the

countervailing and anti-dumping investigations. The former addressed the unfair trade practices, as originating from the benefit conferred by the state. The latter concerned unfair trade practices by the individual exporters. Airoidi observed that acceptance of such claims amounts to a violation of the very objectives of the basic anti-dumping and anti-subsidy Regulations ⁽¹⁰⁶⁾.

- (218) The Commission recalled that Article 2(6a) of the basic Regulation requires a demonstration of significant distortions in the exporting country in question. The complaint made certain references to subsidies to illustrate the presence of significant distortions in the PRC, in accordance with the requirement of Article 2(6a)(b), third indent in particular (public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces). It is undeniable that subsidies are just one of the means used by governments to interfere with the free market forces, and thus they show substantial government intervention according to this provision of the basic anti-dumping Regulation. Therefore, the complaint was fully in line with the provisions and the objectives of the basic anti-dumping Regulation. Thus, this claim was rejected.
- (219) Fourth, Airoidi submitted that the complainant had suggested that the Commission was bound by the principle of *stare decisis* with regard to its previous investigations, as per paragraphs 85-87 of the complaint. Airoidi explained that such a reasoning was manifestly unacceptable with the basic standards of the burden of proof under the basic anti-dumping and anti-subsidy Regulations. In Airoidi's view, the entire premise of application of the representative country methodology rested on merely two evidentiary documents: (i) the Commission report from 2017; and (ii) the OECD report. The complainant did not exercise due diligence in establishing the existence of specific schemes, with reference to specific measures as applicable in the PRC, which would solely benefit the aluminium sector in the PRC. The claims were unsubstantiated and lacked evidentiary support. Therefore, Airoidi requested that the complainant's disregard to the requirement of fulfilment of the burden of proof should result in a dismissal of the complaint.
- (220) The Commission recalled that the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation only occurs at the time of the provisional and/or definitive disclosure and not at initiation. Based on the evidence presented in the complaint, including the two reports, namely the country Report and the OECD Report, and the array of underlying objective sources referenced therein, the Commission deemed the evidence submitted by the complainant on the significant distortions sufficient to initiate the investigation on this basis and fully in accordance with Article 2(6a)(d) of the basic Regulation, which specifically gives the complainants the possibility to use the country Report as evidence when filing a complaint. With regard to the country Report, the Commission recalled that it is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. The report was published in December 2017 and all parties had ample opportunity to rebut, supplement, or submit comments on the Report in accordance with Article 2(6a)(c) of the basic Regulation, but the Commission received no such comments or evidence which would invalidate the Report. As for the findings in previous investigations such as those in paras. 85-87 of the complaint, they constitute relevant evidence, especially as they concerned not only the country-wide distortions in the same country, but specifically the distortions and the situations in the aluminium sector which are very likely to affect also exporting producers in this investigation. Therefore, these claims were rejected.
- (221) Finally, Airoidi presented its support for Xiamen Xiashun's claim that the prices for aluminium ingots in China are determined by market forces, either LME or the Shanghai Futures Exchange, plus a conversion premium. A similar comment was also received from Jiangsu Alcha Group, which submitted in the questionnaire reply that all its purchases were made based on arm's length negotiations with its suppliers, and are not affected by any significant distortions. As an example, Jiangsu Alcha Group presented evidence that its purchase price for aluminium ingots during the investigation period was higher than the LME price.

⁽¹⁰⁶⁾ OJ L 176, 30.6.2016, p. 21 and OJ L 176, 30.6.2016, p. 55.

- (222) The Commission noted that aluminium ingots are subject to an export tax in the PRC. The operation of this specific export tax distorts the normal operation of market forces by restricting exports and thereby increasing the domestic supply of aluminium ingots for aluminium producers in China. The Commission hence rejected the claim that the prices of aluminium ingots in China were free of State interference and determined by market forces. In this regard, the actual price paid is not determinative. It was not positively established that aluminium ingots were not affected by the government interventions according to the findings made in Sections 3.3.1.2 to 3.3.1.9. Those distortions also concern the domestic suppliers of aluminium ingots, who are subject to all types of distortions found in the PRC, including the cost of electricity, labour, access to finance, etc.

3.3.1.12. Overall conclusion on significant distortions

- (223) Since the Commission rejected all the claims above, it reaffirmed its conclusion as per recital (188) that it was not appropriate to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation.
- (224) Consequently, the Commission proceeded to construct the normal value on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation. At the same time it accepted the prices for Titanium Boron Aluminium Rod from one exporting producer which sourced that particular raw material entirely from the United Kingdom as explained at recital (204).

3.4. Representative country

3.4.1. General remarks

- (225) The choice of the representative country pursuant to Article 2(6a) of the basic Regulation was based on the following criteria:
- (1) A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ⁽¹⁰⁷⁾;
 - (2) Production of the product concerned in that country;
 - (3) Availability of relevant public data in the representative country;
 - (4) Where there was more than one possible representative country, preference would be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (226) As mentioned in recitals (111) to (113), the Commission made available on the file two notes for the file on the sources for the determination of the normal value on which interested parties were invited to comment: Note of 5 October ('First Note') and Note of 25 November ('Second Note'), respectively. These notes described the facts and evidence underlying the relevant criteria and addressed the comments received from the parties on those elements and on the relevant sources. The Commission's assessment of the facts and the evidence and conclusions can be summarised as follows:

3.4.2. A level of economic development similar to China

- (227) In the First Note, the Commission identified 55 countries with a similar level of economic development as China. In the investigation period, the World Bank classified these countries as 'upper-middle income' countries on a gross national income basis. However, as stated in the complaint, a sizeable production of the product under investigation was known to take place only in six of these countries, namely in Brazil, Indonesia, Russia, South Africa, Thailand and Turkey.

⁽¹⁰⁷⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

- (228) Indonesia, South Africa and Russia had, in the investigation period, export restrictions on aluminium, one of the main raw materials to produce the product under investigation ⁽¹⁰⁸⁾. Therefore, given that these restrictions could also have an influence and distort the import price of this raw material, the Commission concluded that it would not consider these countries as appropriate representative countries and it thus further assessed the availability of relevant public data only for Brazil, Thailand and Turkey.

3.4.3. Availability of relevant public data in the representative country

- (229) In the First Note, the Commission provided information on relevant public data, notably the availability of financial information of companies producing the product under investigation in Brazil, Thailand and Turkey, and on the imports to these countries of the raw material to produce the product under investigation identified by the interested parties.
- (230) According to the Global Trade Atlas ('GTA') database, Brazil, Thailand and Turkey imported most of the relevant raw materials in representative quantities and these imports could be thus used as benchmarks to establish the normal value in accordance with Article 2(6a) of the basic Regulation. The Commission also identified producers in these countries with publicly available information ⁽¹⁰⁹⁾.
- (231) After having received comments on the First Note, the Commission analysed the information at its disposal and it considered that the most appropriate public data was available for the Brazilian company Novelis do Brasil Ltda ('Novelis do Brasil'). Contrary to the producers identified in Thailand and Turkey, this company had full audited financial statements available on its website ⁽¹¹⁰⁾, and the financial information overlapped with the IP by nine months.
- (232) Consequently, the Commission proposed in the Second Note to select Brazil as the appropriate representative country for establishing undistorted prices and benchmarks and to use the data of the Brazilian company Novelis do Brasil to establish an undistorted and reasonable SGA and profit for the calculation of normal value.
- (233) Several interested parties ⁽¹¹¹⁾ raised objections against Brazil as the appropriate representative country. They mainly argued that Government policies, the existence of different taxes ⁽¹¹²⁾ on imported products and inefficiencies linked to the production of the product under investigation in Brazil led to exceptionally high prices of the product under investigation on the Brazilian market and to an unreasonable high profit of the Brazilian company. Therefore, the profit of the Brazilian company Novelis do Brasil did allegedly not constitute an appropriate benchmark in the sense of Article 2(6a)(a), last paragraph, of the basic Regulation ⁽¹¹³⁾.

⁽¹⁰⁸⁾ Aluminium, i.e. aluminium, not alloyed, unwrought (HS code 7601 10) and/or aluminium alloys, unwrought (HS code 7601 20) and/or aluminium scrap (HS code 7602 00) can, depending on the product type, represent up to 80 % of the total cost of manufacturing of the product concerned following the data provided in the complaint and by various interested parties. Aluminium scrap is a significant by-product that to a certain extent can be re-used in the production process. Following the complaint, the total quantity of scrap generated during the production can represent up to 50 % of the total production quantity.

⁽¹⁰⁹⁾ In Brazil, recent publicly available financial statements (2019) were only available for one of the two companies having their financial data available. In Turkey, recent publicly available financial statements (2019) were only available for one of the four companies having their financial data available. In Thailand, recent publicly available financial statements (2019) were only available for three of the five companies having their financial data available.

⁽¹¹⁰⁾ <http://www.hindalco.com/investor-cetre/reports-and-presentations>

⁽¹¹¹⁾ Companies Airoldi, Company A, Jiangsu Alcha Group, Lodec Metal, Nanshan Group and Xiamen Xiashun.

⁽¹¹²⁾ Import tax, tax on industrialized products ('IPT'), so called 'PIS-import' (PIS refers to Social Integration Program) and 'COFINS-import tax' (COFINS refers to Contribution for Social Security Financing), additional Freight for the Renovation of the Merchant Marine and the tax on the circulation of goods.

⁽¹¹³⁾ The basic Regulation requires the constructed value to 'include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.

- (234) In addition, some interested parties (Airoldi Metalli Spa and Xiamen Xiashun) also pointed out that the Brazilian authorities opened, on 29 July 2020, an anti-dumping investigation on Chinese imports of aluminium products into Brazil (Circular No 46 of 28 July 2020 – ‘Circular 46’ – of the Brazilian Secretariat of Foreign Trade – ‘SECEX’) ⁽¹¹⁴⁾.
- (235) The product scope of the investigation mentioned in Circular 46 largely overlapped with the scope of the product concerned in the current investigation, defined in Section 2 above. Circular 46 also published, in an index format, operational results of the complainants (three companies including Novelis do Brasil) that showed that throughout the period 2015 – 2019, the complainants registered losses ⁽¹¹⁵⁾.
- (236) Based on this new evidence, and despite the fact that Circular 46 contains consolidated indexed figures for the three complaining producers, the Commission considered unlikely that Novelis do Brasil’s reported profit (19,4 % in the latest financial period ⁽¹¹⁶⁾) had been achieved in relation to the product under investigation. In this respect, given that the company produces a large scope of products ⁽¹¹⁷⁾, the Commission considered that such a profit was most likely, and to a large extent, achieved in relation to other products manufactured by Novelis do Brasil, such as products for the aerospace, automotive industry and beverage cans.
- (237) The Commission therefore provisionally considered that data of Novelis do Brasil did not constitute an appropriate benchmark to establish a reasonable SG&A and profit for the product under investigation.
- (238) The Commission thus re-assessed the respective merits of Thailand and Turkey as possible appropriate representative countries. However, the only publicly available financial data of companies in Thailand and Turkey only partially overlapped with the IP. Moreover, in the most recent financial period that was available, the operational results of these companies were close to the breakeven point ⁽¹¹⁸⁾. Therefore, the Commission considered that data of these companies did not constitute an appropriate benchmark for establishing an undistorted and reasonable profit and SG&A.
- (239) Given this situation, the Commission considered that data of companies in a sector producing a similar product could be appropriate in these circumstances. This conclusion was reached close to the adoption of provisional measures. In light of the constraints imposed by the mandatory time limits set out in the basic Regulation, the Commission thus decided to provisionally base its analysis on the knowledge and information already available in another ongoing anti-dumping investigation in the same (aluminium) sector and covering a similar product and a similar period – aluminium extrusions ⁽¹¹⁹⁾. Aluminium extrusions are products having similar technical and physical characteristics as aluminium flat-rolled products. As for the production process, aluminium can be formed into a variety of products by extruding, rolling or casting. Extruded aluminium are formed into aluminium profiles of different shapes. Aluminium flat-rolled products include flat sheet, coiled sheet, plate, and foil. Furthermore, these products are often produced by the same companies as those producing aluminium flat-rolled products or within the same group.
- (240) The Commission will continue its investigation and if it obtains new and appropriate data from the potential representative countries the situation could be reassessed.
- (241) Therefore, given the similarities between the AFRPS and aluminium extrusion products, and given that the relevant data were publicly available ⁽¹²⁰⁾, the Commission decided provisionally to use data of the companies producing aluminium extrusions as these data were in the Commission’s view representative of the situation of companies producing aluminium flat-rolled products.

⁽¹¹⁴⁾ Circular No 46 of 28 July 2020, of the Brazilian Secretariat of Foreign Trade, <http://www.in.gov.br/en/web/dou/-/circular-n-46-de-28-de-julho-de-2020-269159613>

⁽¹¹⁵⁾ Section 6.1.6.3 of Circular 46.

⁽¹¹⁶⁾ April 2019 to March 2020.

⁽¹¹⁷⁾ Financial statements of Novelis do Brasil and the website of Novelis do Brasil mentions the production of aluminium for the aerospace, automotive and beverage cans sectors, <https://pt-br.novelis.com>

⁽¹¹⁸⁾ That is revenues equalling to total of fixed and variable costs.

⁽¹¹⁹⁾ See Implementing Regulation (EU) 2020/1428.

⁽¹²⁰⁾ Such data are publicly available in the context of the investigation on aluminium extrusion products, see Implementing Regulation (EU) 2020/1428.

3.4.4. *Level of social and environmental protection*

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

3.4.5. *Conclusion*

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

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

- (244) On the basis of the information submitted by interested parties and other relevant information available on the file, the Commission established, in the First Note, an initial list of factors of production (FOP) such as materials, energy and labour used for the production of the product under investigation.
- (245) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use included the Global Trade Atlas (the 'GTA'). Finally, in the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.
- (246) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that Note.
- (247) Subsequently, in the Second Note, the Commission updated the list of factors of production based on the comments of the parties and information submitted by the sampled exporting producers in the questionnaire reply.
- (248) Considering all the information submitted by the interested parties the following factors of production and their sources were identified with regard to Turkey in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 2

Factors of production and sources of information

Raw materials	Commodity codes in Turkey	Value	Unit of measurement
Aluminium alloys	760120800000	14,01	kg
Alumina powder	281820	6,94	kg
Aluminium ingot	760110	12,73	kg
Liquid aluminium	760110000000 – processing costs	12,20	kg
Aluminium fluoride	282612	10,37	kg
Aluminium scrap	760200190000	11,01	kg
Aluminium slab	760120200000	13,91	kg
Cathode copper	740329	39,47	kg
Cold rolled coil	760612920000	26,06	kg

Hot rolled coil	760612930000 760612990000	31,86	kg
Hot rolled plate	760612990000	36,02	kg
Magnesium ingot	810411	19,50	kg
Melting copper agent	740329	39,47	kg
Melting Ferro agent	720299300000 720299800000	10,88	kg
Melting manganese agent	811100	15,59	kg
Petroleum coke	271311	0,42	kg
Pitch	270810	3,82	kg
Rolling oil	271012110000	3,17	kg
Steam coal	270119000000	0,59	kg
Titanium carbon wire	760521	21,77	kg
Zinc ingot	790111	15,93	kg
Quick melt silicon agent	280469	18,38	kg
Iron agent	732690	37,13	kg
Chromium agent	811221	54,20	kg
Aluminium slags	262040	7,59	kg
Waste oil	340399	33,3	kg
Labour			
Labour	N/A	42,21	hour
Energy			
Electricity	N/A	0,62	Kwh
Gas	N/A	1,95	m ³
Water	N/A	5,21	m ³
By product/waste			
Aluminium scrap	760200190000	11,01	kg

3.5.1. Raw materials used in the production process

- (249) In order to establish the undistorted price of raw materials the Commission used as a basis the weighted average import price (CIF) to the representative country, as reported in the GTA, from all third countries excluding the PRC and countries that are not members of the WTO and listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽¹²¹⁾. The Commission decided to exclude imports from the PRC as it concluded that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation (recitals (188) to (224) above). Absent any evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export. The weighted average import price was adjusted for import duties, where appropriate.

⁽¹²¹⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

- (250) For a small number of factors of production the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for those had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission treated those factors of production as consumables as explained in recital (13).
- (251) The Commission expressed the transport cost incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the company's factory.
- (252) The Commission noted that aluminium liquid, which was used as an input by one of the companies within the Nanshan Group could not be transported at long distances and that no international benchmark existed for this input. Therefore, as an alternative, the Commission decided to use as a benchmark the undistorted price of aluminium ingot falling under HS code 7601 10 from which the processing costs, expressed as a percentage, incurred by the company concerned to transform the aluminium liquid into ingot ⁽¹²²⁾, were deducted.
- (253) After the publication of the Second Note, the Nanshan Group reiterated its argument submitted after the publication of the First Note, namely that the aluminium scrap it used to produce the product under investigation had the same aluminium purity as finished goods and that, in terms of usage, this product was recycled in the casting stage in the same manner as aluminium ingots. Consequently, according to the Nanshan Group, the HS code reported by the Commission in the First and Second note referred to a different product, namely to aluminium scrap from various sources, less purity and different alloy composition.
- (254) The Commission reviewed the claim. It observed based on the evidence brought by the Nanshan Group during the RCC process that the aluminium scrap used (and sold) by the different companies within the Nanshan Group was not priced at the same level as aluminium ingots, but a deduction of between 2 %-9 % depending on its grade was made to reflect the scrap purity. Therefore, it was confirmed that the price of the aluminium ingot was higher than the price of scrap.
- (255) The Commission also observed that the relevant commodity code under the Turkish nomenclature recognised so-called manufacturing scrap (under a more refined commodity code 760200190000) that, compared to scrap under commodity code 760200 900000, appeared to better reflect the type of scrap consumed and produced by the Nanshan Group. Finally, the Commission also reiterated that it had not received any evidence on the particular composition of the aluminium scrap imported under the mentioned HS code to support the claim that is a scrap with less purity and different alloy composition. Therefore, the Commission decided to use as the benchmark the import price under commodity code 760200190000 and not an import price for an ingot as suggested by the company.
- (256) The Nanshan Group also argued that the GTA price based on HS codes did not differentiate the end uses and alloys of aluminium coil, while by quantity, a very large portion of the imported aluminium coil could be used for products not covered by the product scope namely for automobile or aerospace industry, or, as a can stock. It argued that the prices of the different alloys and end uses varied substantially, and therefore, in its view, the GTA averaged price failed to provide a surrogate value of aluminium coil specific to that consumed by Nanshan Group for production of the product under investigation. The Nanshan Group proposed, instead of taking as benchmark the GTA prices, to rely on prices provided in the CRU reports for the foil stock price of alloy 1050 which was in its view very similar to foil stock alloy 8079 in terms of its chemical composition.

⁽¹²²⁾ The exact percentage of the processing costs is confidential.

- (257) The Commission assessed the claim. First, it observed that under the Turkish nomenclature, the HS code used as the benchmark for the calculation of the provisional margin excluded, contrary to Nanshan's claim, the largest group of products that fell outside the product scope, namely products to be used by the can industry. Second, in the Turkish nomenclature, the particular commodity codes distinguished between different thicknesses, and therefore, allowed for a more precise split between the different types of products, compared to prices in the CRU report that only referred to one particular thickness. Third, the prices in the CRU reports related to markets in the Union and thus did not reflect prices in a country with a similar level of economic development. Therefore, the Commission considered that the prices in GTA of the imported coils represented a more appropriate benchmark for establishing the normal value compared to prices indicated in the CRU report. The Commission thus rejected the claim and decided to use as the benchmark the import price under commodity code 760612920000 for cold rolled coils, the average of commodity code 760612930000 commodity code 760612990000 for hot rolled coils and commodity code 760612990000 for plates.
- (258) The Nanshan Group also argued that for steam coal, the Commission should not rely on import prices of coal in the GTA database, as import quantities into Turkey for 2019 were negligible. Instead, the Commission could consider prices of thermal coke and petroleum coke prices in the IHS report ⁽¹²³⁾.
- (259) The Commission observed first that there was no evidence to consider that the price in the GTA database of the imported quantity (of over 500 tonnes) was not representative of a market price or that the price in the GTA database would have been substantially different if the import volume was higher. Second, in the submitted report, the prices related, apart from China, to only five other countries, namely Australia, India, Russia, South Africa and Indonesia. These prices varied between the different regions and countries. The Commission found no compelling evidence that the prices in those countries would be more representative of an international undistorted price than the prices in the representative country. Therefore the Commission rejected the claim and decided to use as the benchmark the import price of the coal into Turkey.

3.5.2. Labour

- (260) To establish the benchmark for labour costs the Commission used the most recent statistics published by the Turkish Statistical Institute ⁽¹²⁴⁾. This institute publishes detailed information on wages in different economic sectors in Turkey. The Commission established the benchmark based on hourly labour costs for the economic activity C.24 (manufacture of basic metals) ⁽¹²⁵⁾. The values were adjusted using as deflator the domestic producer price index published by the Turkish statistical institute ⁽¹²⁶⁾.

3.5.3. Electricity

- (261) To establish the benchmark price for electricity, the Commission used prices of electricity for companies (industrial users) in Turkey published by the Turkish statistical institute ⁽¹²⁷⁾. The benchmark was established based on the price for electricity published on 25 March 2020. The price referred to the 2nd semester of 2019. The Commission used the data on the industrial electricity prices in the corresponding consumption band that is respectively $2\,000 \leq T < 20\,000$ MWh for medium consumers and $> 150\,000$ MWh for very large consumers.

3.5.4. Gas

- (262) To establish the benchmark for gas, the Commission used the prices of gas for companies (industrial users) in Turkey published by the Turkish statistical institute. The prices differed per consumption volume ⁽¹²⁸⁾. The Commission used the corresponding prices for medium or large consumers. The Commission used as benchmark the most recent data relating to 2nd semester of 2019.

⁽¹²³⁾ IHS Markit, <https://ihsmarkit.com/index.html>, in the open file.

⁽¹²⁴⁾ The labour costs are available at http://www.turkstat.gov.tr/PrelIstatistikTablo.do?istab_id=2088

⁽¹²⁵⁾ The category 'basic metals' includes aluminium under code C24.4.2.

⁽¹²⁶⁾ <https://data.tuik.gov.tr/Bulten/DownloadIstatistikselTablo?p=RQJc6lWaNMpivNV6h1MxkWk9ycHqk1cNqZM2UJk/fmUYAmenKIIz/lKzy74RY7Y2>

⁽¹²⁷⁾ <https://data.tuik.gov.tr/Bulten/DownloadFile?p=RitGfpW8hZZnYLLz6NVmT9EdA97OcZ4kN3AGp97wTnz8hDUuqKcBcTsov5Hkq-dePBK2GLKg1cJVUEzIPmlerlcsrW7chll366PgstWPx188=>

⁽¹²⁸⁾ http://www.turkstat.gov.tr/HbGetir.do?id=33646&tb_id=1

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

3.5.5. Water

(264) The price of water in Turkey is published by the Istanbul Water and Sewerage Administration (ISKI), the Eskişehir Water and Sewerage Administration & Antalya Water and Sewerage Administration ⁽¹²⁹⁾. To establish the benchmark price for water, the Commission used an average industry price in the Istanbul region, the Eskişehir Organized Industrial Zone (OIZ) and prices in the Antalya OIZ for which the relevant information was publically available.

3.5.6. SG&A and profits

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

(266) For establishing an undistorted and reasonable amount for SG&A and profits, the Commission used the SG&A and profit of the five companies in Turkey, which had been identified in the anti-dumping investigation covering the similar product i.e. aluminium extrusion products as explained at recitals (239)-(241). Therefore, the Commission used the same figures relating to 2018 financial data as those used in the recent regulation imposing provisional measures on that product in the ongoing anti-dumping proceeding concerning aluminium extrusions ⁽¹³⁰⁾. The five companies used were the following:

- (1) Alugen Aluminyum Sanayi Ve Ticaret Anonim Sirketi;
- (2) Eksal Aluminyum Kalip Sanayi Ve Ticaret Limited Sirketi;
- (3) Gensa Aluminyum Sanayi Ve Ticaret Anonim Sirketi;
- (4) Onat Aluminyum Sanayi Ticaret Anonim Sirketi; and,
- (5) Okyanus Aluminyum Sanayi Ticaret Anonim Sirketi.

(267) The same level of the weighted average profit of 7,2 % and of the weighted average proportion of SG&A costs of 12,2 % was used in this investigation.

3.5.7. Calculation of normal value

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

(269) To establish the undistorted costs of manufacturing for each legal entity manufacturing and exporting the product concerned, the Commission replaced, for each exporting producer, factors of production purchased both from related and unrelated parties by the factors of production identified in Table 2.

(270) The Nanshan Group argued that the normal value for the Group should be calculated in a consolidated way, i.e. the Commission should only consider replacing the prices of factors of production that the Group was buying at the beginning of the production process from an unrelated party with the benchmark prices. Therefore, it considered that the Commission should disregard the intra-group sales of intermediary products. The Nanshan Group referred in particular to the Commission's practice on the concept of a 'single economic entity' for the purpose of establishing the export price. The Group argued in particular that all the companies within the Group were controlled by one legal entity, there was no written contract for sales between the companies, the companies were located in the same facility or nearby, production types did not overlap, production of downstream is dependent on the upstream production, and finally, that the companies do not have independent export sales.

(271) The Commission observed that indeed, the production of different product types and/or different steps in production processes within the Group was split between the companies within the Group, and that the individual companies used the production inputs produced by a related company within the group. The intra-group sales

⁽¹²⁹⁾ <https://www.invest.gov.tr/en/investmentguide/pages/cost-of-doing-business.aspx>

⁽¹³⁰⁾ Implementing Regulation (EU) 2020/1428, recitals (185) and (186).

included sales of raw material (such as for instance aluminium liquid), energy (such as for instance electricity) and also product concerned that was further used as a production input by a downstream company (such as for instance cold rolled coils used by one of the companies to produce aluminium foil).

- (272) In response the Commission noted that Nanshan Group's claim is related to the construction of a normal value for the various exporting producers within the group. When the product concerned is produced and exported by various entities within a group, the Commission's practice is to establish a normal value for each investigated individual product type that is exported to the Union within a group of companies for each individual exporting producer separately based on the specific data (here, the factors of production) of the exporting producer concerned.. The request to have the normal value established on a consolidated basis artificially assumes that the group constitutes a single integrated producer. As explained above, this is not the case. The various producing companies of the group separately produce the product concerned. The request is therefore rejected.
- (273) First, the Commission established the undistorted costs of manufacturing based on the factors of production purchased by each of the companies. It then applied the undistorted unit costs to the actual consumption of the individual factors of production of each of the cooperating exporting producers. The Commission reduced the costs of manufacturing by the undistorted costs of by-products re-used in the production process.
- (274) Second, to arrive at a total undistorted costs of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and consumables referred to in recital (250) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (275) Finally, the Commission added SG&A and profit, determined on the basis of the five Turkish companies (see Section 3.5.6). SG&A expressed as a percentage of the cost of manufacturing and applied to the undistorted total cost of manufacturing, amounted to 15,16 %. The profit expressed as a percentage of the COGS and applied to the total undistorted costs of manufacturing, amounted to 9,07 %.
- (276) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.5.8. *Export price*

- (277) When the sampled exporting producers of the Nanshan Group exported the product concerned to the Union either directly to independent customers or through related companies located in China or in third countries, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (278) Two companies within the Nanshan Group also sold the product concerned to the Union through an additional related company in the Union acting as an importer. For these sales, the export price was constructed on the basis of the price at which the imported product was first resold to independent customers in the Union in accordance with Article 2(9) of the basic Regulation. The adjustments made related to all costs incurred between importation and resale, including SG&A expenses and profits, in order to establish a reliable export price at the Union frontier level.
- (279) Another sampled company, Xiamen Xiashun, exported the products concerned directly to independent customers in the Union. For these sales, the export price was thus the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.5.9. *Comparison*

- (280) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (281) In order to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments to the export price were made for transport, insurance, handling and loading, packaging, discounts, credits costs, bank charges and other import charges.
- (282) All export sales of the product concerned by the Nanshan Group were made exported via a wholly owned domestic trading company in China, which sold it either directly to independent customers or via a related trading company in Singapore. The Nanshan Group claimed that this domestic trading company acted as the internal sales department of the production companies. Based on an assessment of the evidence currently available, the Commission provisionally accepted the claim and no adjustment was made under Article 2(10)(i).
- (283) The Jiangsu Alcha Group exported all the production of the product concerned via related traders in China and Hong Kong. One of the companies within the Nanshan Group also sold partially the product concerned to the Union via a related trader in Singapore, as mentioned in the previous recital. Therefore for these sales, the Commission adjusted the export prices of these companies in accordance with Article 2(10)(i) of the basic Regulation as these traders were acting as agents working on a commission basis. The adjustment amounted to the SG&A and profit of the trader.

3.5.10. *Dumping margins*

- (284) For the sampled cooperating exporting producers the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned to calculate the dumping margin, in accordance with Article 2(11) and (12) of the basic Regulation.
- (285) For the companies within the Nanshan Group, it calculated individual dumping margins for each of the companies within the Group and then, it calculated a weighted dumping margin for the Group.
- (286) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (287) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 67,1 %.
- (288) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume – as reported in Eurostat import statistics – from the country concerned to the Union.
- (289) The level of cooperation in this case is low because the exports of the cooperating exporting producers constituted only around 40 % of the total exports to the Union during the investigation period. Therefore, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of the highest margin established for product types sold in representative quantities on the basis of the data of the cooperating exporting producers. The dumping margin thus established was 183,3 %.
- (290) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Jiangsu Alcha Aluminum Group Co., Ltd.	88,3 %
Nanshan Group	122,1 %
Xiamen Xiashun Aluminium Foil Co., Ltd.	30,0 %
Other cooperating companies	68,5 %
All other companies	183,7 %

4. INJURY

4.1. Preliminary remark

- (291) As indicated in recitals (50) to (52), the transition period for the UK withdrawal ended on 31 December 2020 and the UK ceased to be subject to Union law as of 1 January 2021. Consequently, the Commission requested interested parties to provide updated information on EU-27 basis. In view of the advanced stage of the provisional phase when this updated data was requested, with the exception of the undercutting, the Commission's provisional findings were based on EU-28 data, for the reasons explained in the next recital.
- (292) The Commission provisionally concluded that the EU-28 data was appropriate at this stage after analysing the information on file. This is because the impact of UK's withdrawal from the Union on the injury analysis appears to be limited. The sales of the sampled Union producers to the UK represented less than 5 % of their total sales to unrelated customers in the EU. There is only one producer of AFRPs located in the UK. The Chinese exports to the UK remained stable and evolved in line with the exports to the EU, and the UK exports to the EU remained also stable.
- (293) In any case, the findings on injury, causation and Union interest will be re-assessed at definitive stage on the basis of EU-27 data and amended, if need be. Those findings will be disclosed and parties will have the opportunity to comment.

4.2. Definition of the Union industry and Union production

- (294) The like product was manufactured by over 20 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (295) The total Union production during the investigation period was established at around 1 907 127 tonnes. The Commission established the figure on the basis of the Union production data of European Aluminium, which was cross-checked for reliability and completeness with information supplied by Union producers including the data of the sampled Union producers. As indicated in recital (35), three Union producers were selected in the sample representing 35 % of the total Union production of the like product.

4.3. Determination of the relevant Union market

- (296) In order to establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.

- (297) To provide a picture of the Union industry that was as complete as possible, the Commission obtained data for the entire AFRPs activity and determined whether the production was destined for captive use or for the free market.
- (298) The Commission found that a very small part of the total Union producers' production was destined for the captive market as shown in Table 3 below. The captive market increased over the period considered but remained at very low levels, below 1,5 % of consumption. Where appropriate, the figures for the captive market are provided and assessed separately. For other indicators, such as production, capacity, productivity, employment and wages, the figures considered below relate to the whole activity and therefore no separation was warranted.
- (299) As mentioned in Section 2.3.1, the non-sampled exporting producer Huafon requested the exclusion of automotive HEX AFRPs from the product scope of this investigation. In the absence of such exclusion, it requested a segment specific analysis with regard to dumping, injury, causal link and Union interest for automotive HEX AFRPs. In support of its request, it claimed that automotive HEX AFRPs showed similarities with the aluminium wheels cases ⁽¹³¹⁾, where different distribution channels were identified (Original Equipment Manufacturer v aftermarket), thus warranting an analysis by segments. It also referred to the Appellate Body reports *China – HP-SSST (Japan)/China – HP-SSST (EU)* ⁽¹³²⁾ without, however, explaining exactly how this case-law would apply to the facts of this case.
- (300) As explained in recitals (62) to (80), automotive HEX AFRPs were found to share the same basic physical, technical and chemical characteristics as other AFRPs and therefore fell within the product scope of the investigation. The Commission also concluded that there were no Union interest grounds to exclude the product from the scope of the investigation.
- (301) As far as the reference to the aluminium wheels cases is concerned, there are no clear dividing lines between automotive HEX AFRPs and other AFRPs in terms of distribution channels. Indeed, as explained in recital (74), automotive HEX AFRPs are not the sole products destined for the automotive industry. The product under investigation covers other automotive products, such as structural parts for automotive applications (chassis, components), that are also sold to Tier-1 suppliers.
- (302) Also, whereas this exporting producer did not make reference to specific elements of the Appellate Body report in HP-SSST referred to in recital (299), the facts in the present investigation are different. In the case referred to, the price differences between the different grades at issue were very significant (+ 100 or + 200 %). By contrast, in the current case, there is no significant price difference between automotive HEX AFRPs and other AFRPs that would have pointed to a clear dividing line between this product and other AFRPs. Thus, the analysis in HP-SSST applies to a specific factual situation in that case, and cannot be extrapolated to the present case, where the analysis took place on the basis of PCNs. It is recalled that the Chinese investigating authority does not apply a PCN method of comparison. In any event, there is no legal obligation that the Commission conducts a segment analysis in each and every case, regardless of the factual circumstances – neither in the basic Regulation nor in the WTO Anti-dumping Agreement, and there is nothing in the HP-SSST reports that would suggest the Appellate Body took such a position. Therefore, the Commission rejected this request for a segment specific analysis.
- (303) The sampled exporting producer Xiamen Xiashun claimed that foil stock was not meant to be covered by the complaint. The exporting producer requested a segment specific analysis on the grounds that foil stock was different from the other products described as common sheets and that it was sold via a different distribution channel. It also claimed that foil stock was sold by very few companies and mainly produced and consumed in the

⁽¹³¹⁾ OJ L 282, 28.10.2010, p. 1, rec. 83 and OJ L 18, 24.1.2017, p. 1, rec. 28.

⁽¹³²⁾ *China – Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ('HP-SSST') from Japan and China – Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ('HP-SSST') from the European Union*, WT/DS454/AB/R; WT/DS460/AB/R.

captive market. In support of its request, it claimed that automotive foil stock showed similarities with the aluminium wheels cases ⁽¹³³⁾, where different distribution channels were identified (Original Equipment Manufacturer v aftermarket), thus warranting an analysis by segments. It also referred the Appellate Body reports *China – HP-SSST (Japan)/China – HP-SSST (EU)* ⁽¹³⁴⁾ without being more specific. Finally, it argued that it was not listed as a producer in the complaint and that its products were not clearly mentioned.

- (304) The fact that a producer was not listed as an exporting producer by the complainant does not mean that it is not concerned by a proceeding or that its products are not covered by the proceeding. In fact, it is natural that complainants are not aware of all existing producers in a given country and therefore the list thereby provided cannot be expected to be exhaustive.
- (305) Foil stock falls within the definition of the product scope, as defined in recital (55) to (61) above, and can be classified using the product coding foreseen by the investigation in terms of thickness, form, material used, finishing and temper. It shares the same basic chemical, technical and physical characteristics as other AFRPs as they are composed of more than 95 % of pure aluminium. Furthermore, they are made of the same or similar alloys and have the same or similar finishing, temper and thickness as other AFRPs.
- (306) As far as the distribution channels are concerned, there are no clear dividing lines between foil stock and other AFRPs. In its claim, Xiamen Xiashun referred to the aluminium wheels case ⁽¹³⁵⁾ where a distinction was made between OEM and aftermarket market segments. However, the situation in the case at stake is different as foil stock is not sold to a different market segment from other AFRPs. While, like other AFRPs, foil stock has its own specifications, such product is sold to industrial users that will process it into a different product. This is true for PP caps for instance which will be made from AFRPs. Also, the investigation revealed that such product was sold by Union producers in significant quantities. Similarly, the sampled Union producers also sold the products exported by the other sampled producers regardless of their alleged segment. Furthermore, in contrast to the Appellate Body report on HP-SSST, in the current case, there is no significant price difference between foil stock and other AFRPs which would have distinguished unequivocally this product from other AFRPs. It is also recalled that the Chinese investigating authority does not apply a PCN method of comparison. In addition, as mentioned in recital (302), there is no legal obligation that the Commission conducts a segment analysis in each and every case, regardless of the factual circumstances – neither in the basic Regulation nor in the WTO Anti-dumping Agreement and there is nothing in HP-SSST that would suggest the Appellate Body took such a position. On this basis, the Commission rejected this request for segment specific analysis.
- (307) The importer Airoidi requested a segment specific analysis between soft and hard alloys claiming that that there were numerous producers of soft alloy AFRPs and only a few producers for hard alloys. It also claimed that there was insufficient production capacity for hard alloys.
- (308) Airoidi did not provide any evidence that there was a shortage of supply for hard alloys AFRPs. Also, the investigation showed that AFRPs made from hard or soft alloys share the same basic physical, technical and chemical characteristics with other AFRPs covered by the definition. In any case, the three sampled Union producers manufacture both soft and hard alloys in significant quantities. Also, temper is one characteristic foreseen in the definition of the different product types of this investigation. Hence, the alleged differences of such products were in any event captured in the price comparison. Therefore, the Commission also rejected this request for analysis by segments.

⁽¹³³⁾ OJ L 282, 28.10.2010, p. 1, rec. 83 and OJ L 18, 24.1.2017, p. 1, rec. 28

⁽¹³⁴⁾ *China – Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ('HP-SSST') from Japan and China – Measures imposing anti-dumping duties on high-performance stainless steel seamless tubes ('HP-SSST') from the European Union*, WT/DS454/AB/R; WT/DS460/AB/R.

⁽¹³⁵⁾ Commission Implementing Regulation (EU) 2020/353 of 3 March 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel road wheels originating in the People's Republic of China (OJ L 65, 4.3.2020, p. 9).

4.4. Union consumption

(309) The Commission established the Union consumption on the basis of the European Aluminium data for sales in the Union market plus import data from Eurostat as defined in recital (312).

(310) Union consumption developed as follows:

Table 3

Union consumption (tonnes)

	2017	2018	2019	Investigation period
Total Union consumption	2 623 119	2 772 585	2 659 616	2 403 637
<i>Index</i>	100	106	101	92
Captive market	19 347	29 987	34 953	33 204
<i>Index</i>	100	155	181	172
Free market	2 603 772	2 742 598	2 624 664	2 370 433
<i>Index</i>	100	105	101	91

Source: European Aluminium and Eurostat

(311) The free market consumption in the Union decreased by 9 % during the period considered. From 2017 to 2018 the Union market increased by 6 % from around 2,6 to 2,7 million tonnes before decreasing in 2019 by 4 percentage points and decreasing further to 2,4 million tonnes in the investigation period. Total Union consumption followed a similar trend with an increase in 2018 followed by a decrease in 2019, which continued in the investigation period as a consequence of the COVID-19 pandemic.

4.5. Imports from the country concerned

4.5.1. Volume and market share of the imports from the country concerned

(312) The Commission established the volume of imports based on adjusted Eurostat data for the CN codes following the uncontested methodology suggested by the complainant. The Commission checked and confirmed the estimations of the complainant regarding the proportion of the product concerned in volumes imported under the CN codes indicated in the Notice of Initiation ⁽¹³⁶⁾.

(313) Also, further to the publication of the amending notice referred to in footnote 11, imports under CN code 7607 19 90 were also taken into account in order to establish the volume of imports from the country concerned. The market share of imports was established on the basis of the import volume from the country concerned as compared to the volume of total Union consumption as shown in Table 3.

(314) In addition to the analysis of overall imports, the Commission also analysed separately imports under inward processing, given the significant share of the latter in the case at hand.

(315) Imports from the country concerned developed as follows:

⁽¹³⁶⁾ CN codes 7606 11 10, 7606 11 91, 7606 11 93, 7606 11 99, 7606 12 20, 7606 12 92, 7606 12 93, 7606 12 99, 7606 91 00, 7606 92 00 and 7606 11 90.

Table 4

Import volume (tonnes) and market share

	2017	2018	2019	Investigation period
Volume of imports from the country concerned (tonnes)	160 869	321 851	345 720	265 727
<i>Index</i>	100	200	215	165
Volume of imports from the country concerned under inward processing regime (tonnes)	15 588	108 188	104 054	60 824
<i>Index</i>	100	694	668	390
Volume of imports from the country concerned excluding inward processing	145 281	213 662	241 666	204 904
<i>Index</i>	100	147	166	141
Market share of imports from the country concerned (%)	6,2	11,7	13,2	11,2
<i>Index</i>	100	190	213	181
Market share of imports from the country concerned under inward processing regime (%)	0,6	3,9	3,9	2,5
<i>Index</i>	100	657	658	426
Market share of imports from the country concerned excluding inward processing (%)	5,5	7,7	9,1	8,5
<i>Index</i>	100	139	164	154

Source: Eurostat

- (316) Imports from the country concerned more than doubled between 2017 and 2019 reaching 345 720 tonnes before decreasing by 23 % between 2019 and the investigation period. Overall Chinese imports of AFRPs increased by 65 % during the period considered.
- (317) Imports from the country concerned under inward processing increased significantly in 2018 reaching 108 188 tonnes before decreasing slightly in 2019 and in much greater proportions (by 278 percentage points) in the investigation period. Overall, imports from China of AFRPs under inward processing regime increased by 290 % over the period considered.
- (318) Imports from the country concerned excluding inward processing increased massively between 2017 and 2018 from 145 281 tonnes to 213 662. In 2019, contrary to imports under inward processing and overall imports from the country concerned, it increased again by 19 percentage points in comparison with 2018. In the investigation period, it decreased by 36 762 tonnes. Overall such imports increased by 41 % during the period considered.

- (319) The exporting producer Xiamen Xiashun commented on the evolution of imports under CN code 7606 11 99 into Greece between 2019 and 2020 and questioned whether the products reported under this code, as far as imports into Greece were concerned, actually fell within the product scope.
- (320) The Commission investigated the matter but could not draw meaningful conclusions at provisional stage. In any case, it appears that a significant share of the Chinese imports under CN code 7606 11 99 into Greece and more generally, into the EU, were made under inward processing regime in the period 2018-2019 and decreased significantly in the investigation period. The Commission will continue its investigation on this matter at definitive stage.
- (321) The market share of imports from the country concerned first increased from 6,1 % in 2017 to 11,6 % in 2018 and thus outpaced the increase in consumption. In 2019, while consumption decreased, imports from the country concerned increased further leading to 13,2 % market share. The market share decreased to 11,2 % in the IP. However, overall, the market share of imports from the country concerned increased by 5 percentage points during the period considered, equivalent to an increase of 81 %.
- (322) The market share of imports under inward processing regime from the country concerned increased from 0,6 % in 2017 to 3,9 % in 2018 and 2019 before dropping to 2,5 % in the IP.
- (323) The market share of imports excluding inward processing from the country concerned increased from 5,5 % in 2017 to 9,1 % in 2019. In the IP, further to a decrease in such imports and in consumption, to a greater extent, the market share of imports excluding inward processing decreased to 8,5 %. Overall, such market share increased by 54 % during the period considered.

4.5.2. Prices of the imports from the country concerned and price undercutting

- (324) The Commission established the prices of imports on the basis of Eurostat data, using the CN codes and methodology indicated in recitals (312) and (313).
- (325) The weighted average price of imports from the country concerned developed as follows:

Table 5

Import prices from the country concerned (EUR/tonne)

	2017	2018	2019	Investigation period
All imports	2 437	2 296	2 177	2 205
<i>Index</i>	100	94	89	91
Inward processing	2 856	2 139	1 968	2 098
<i>Index</i>	100	75	69	73
Imports excluding inward processing	2 391	2 376	2 266	2 237
<i>Index</i>	100	99	95	94
LME Aluminium 3 Month – Ask (EUR/tonne)	1 752	1 791	1 617	1 535
<i>Index</i>	100	102	92	88

Source: Eurostat, LME

- (326) Average import prices from China decreased by 9 % over the period considered from 2 437 to 2 205 EUR/tonne. Those prices remained significantly below the Union's sales prices during the period considered, as shown in Table 9.
- (327) The price of imports under inward processing decreased significantly in 2018 when the import volume of such imports increased significantly. Overall, it decreased by 27 % and remained significantly below the average import price excluding inward processing from 2018 onwards.
- (328) The price of imports excluding inward processing decreased continuously starting at 2 391 EUR/tonne in 2017 and reaching 2 237 EUR in the IP (-6 %).
- (329) These developments should be seen in the light of the evolution of world aluminium indices such as the LME Aluminium 3-month price quotation ('LME') (EUR/tonne) showing the price of aluminium as a raw material and is often used as a point of reference for negotiating the final price of ARFPs. In this regard, it appears that the correlation was the highest between the LME and the Chinese prices of imports under other regimes (0,97). The correlation between the LME and the price of imports under inward processing was the lowest (0,5). During the investigation period, on the basis of the Union average prices in Table 9 below, there was a price difference between the imports from China and the Union prices of around 18 % when compared to the average import price from China and around 17 % when compared to the average import price from China excluding inward processing.
- (330) The Commission determined the price undercutting during the investigation period ⁽¹³⁷⁾ by comparing:
- (a) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the corresponding weighted average prices per product type of the imports from China to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs ⁽¹³⁸⁾.
- (331) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 4,6 % and 11,2 % by the imports from the country concerned on the Union market. The weighted average undercutting found was 7,5 %.
- (332) The exporting producer Xiamen Xiashun claimed that, on the basis of the characteristics of the PCN, foil stock would be similar to fin stock, PP cap and lithographic sheets. It also claimed that in view of its use as a raw material for foil rolling mills, this product commanded a different price from the product types mentioned above. Xiamen Xiashun requested the Commission to obtain from the Union producers their contracts and prices for the sale of foil stock specifically and to compare these prices to the prices charged by Xiamen Xiashun for the foil stock it sold to the EU.
- (333) However, Xiamen Xiashun did not provide evidence with regard to the alleged price difference between the different applications (fin stock, PP cap and lithographic sheet) and the models that it exported to the EU. Furthermore, it did not quantify such differences. In any case, Xiamen Xiashun's products were not compared to fin stock or lithographic sheets because such products were not sold by the sampled Union producers under the same product coding as foil stock. Therefore, this the Commission rejected this claim.

⁽¹³⁷⁾ As explained in recital (291), the undercutting margins were calculated on a EU-27 basis.

⁽¹³⁸⁾ Where the sale from the Chinese producer to the first independent customer on the Union market was through a related sales company based in the Union, the price of the import was established on a CIF basis, by adjusting the sales price to the first independent customer taking into account all costs incurred between the importation and resale, including the SG&A of the related importer and for profits accruing based on the weighted average profit margin during the investigation period reported by the sampled unrelated importers, in line with Article 2(9) of the basic Regulation.

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (334) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (335) As indicated in recitals (35) to (37), sampling was used for the determination of possible injury suffered by the Union industry.
- (336) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the response of European Aluminium Association which included data related to all Union producers. The Commission assessed the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (337) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (338) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2017	2018	2019	Investigation period
Production volume (tonnes)	2 130 916	2 164 561	2 104 231	1 907 127
<i>Index</i>	100	102	99	89
Production capacity (tonnes)	2 471 262	2 528 879	2 522 331	2 509 831
<i>Index</i>	100	102	102	102
Capacity utilisation (%)	86,2	85,6	83,4	76,0
<i>Index</i>	100	99	97	88

Source: European Aluminium, sampled Union producers

- (340) Production volume first increased in 2018 as a consequence of an increase in export sales and captive market. It decreased in 2019 and further in the investigation period. Production volume decreased by 11 % over the period considered.
- (341) Production capacity slightly increased over the period considered. As production volume decreased overall and capacity increased slightly, capacity utilization shows a downward trend (-12 %) over the period considered.

4.6.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2017	2018	2019	Investigation period
Total Sales volume on the Union market – both free and captive use (tonnes)	1 742 739	1 726 391	1 650 249	1 518 343
<i>Index</i>	100	99	95	87
Captive market sales and use	19 347	29 987	34 953	33 204
<i>Index</i>	100	155	181	172
Captive market sales and use as a % of total market sales	0,7	1,1	1,3	1,4
<i>Index</i>	100	147	178	187
Free market sales	1 723 392	1 696 403	1 615 297	1 485 139
<i>Index</i>	100	98	94	86
Market share (of free market sales (%))	66,2	61,9	61,5	62,7
<i>Index</i>	100	93	93	95

Source: European Aluminium, Eurostat and sampled Union producers

(343) Total sales in the EU followed a downward trend over the period considered (-13 %) and had already decreased by 5 % in 2019.

(344) As mentioned in recital (298), a very small part of the total Union producers' production was destined for the captive market. Such part accounted for less than 1,5 % of the Union consumption.

(345) Total sales on the free market by the Union industry decreased by almost 240 000 tonnes over the period considered. While consumption had increased to its highest level in 2018 (+ 5 %), those sales already showed a downward trend (-2 %) which continued in 2019 and in the investigation period. Overall sales on the EU free market decreased by 14 %.

(346) The market share of free market sales of the Union industry decreased from 66,2 % in 2017 to 62,7 % in the investigation period. After dropping by 7 % in 2018-2019, it increased by 1.2 percentage points.

4.6.2.3. Growth

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

4.6.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2017	2018	2019	Investigation period
Number of employees (Full Time Equivalent 'FTE')	9 025	8 518	8 644	8 240
<i>Index</i>	100	94	96	91
Productivity (tonne/FTE)	236	254	243	231
<i>Index</i>	100	108	103	98

Source: European Aluminium and sampled Union producers

(349) Employment decreased by 9 % over the period considered as the Union industry tried to ensure its sustainability and align it with the demand in the domestic market.

(350) Consequently, its productivity first improved in 2018 from 236 to 254 tonnes/FTE before decreasing following the reduction of the production volume. Overall productivity deteriorated by 2 %.

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

(351) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(352) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.6.3. Microeconomic indicators

4.6.3.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union

	2017	2018	2019	Investigation period
Average unit sales price on the free market (EUR/tonne)	2 792	2 888	2 752	2 680
<i>Index</i>	100	103	99	96
Unit cost of production (EUR/tonne)	2 712	2 854	2 762	2 739
<i>Index</i>	100	105	102	101
LME Aluminium 3 Month – Ask (EUR/tonne)	1 752	1 791	1 617	1 535
<i>Index</i>	100	102	92	88

Source: Sampled Union producers and LME

- (354) Sales prices on the Union market to unrelated parties (the free market) first increased from 2 792 to 2 888 EUR/tonne in 2018. It then decreased by 4 percentage points in 2019 before dropping to 2 680 EUR/tonne in the investigation period.
- (355) This trend should be seen in light of developments in the industry. First, over the period considered, the sampled Union producers tried to keep the same production volume to dilute their cost while adapting their product mix to increase their sales of high value-added products. Their prices then followed a downward trend in line with the evolution of the LME price of aluminium as a raw material as reported in Table 9.
- (356) The unit cost of production of the sampled producers was also heavily impacted by the LME price development and contained the additional costs incurred by the sampled producers in moving to higher value added products. Also, the decrease in production volume observed from 2019 onwards impacted negatively the unit cost of production. Overall, the cost of production increased by 1 % while the average unit sales price on the free market decreased by 4 % over the period considered. In parallel, the LME price of aluminium decreased by 12 %.
- (357) One importer, Nilo, claimed that German producers benefited from cost reductions as far as their electricity costs were concerned. The Commission established that Union producers needed to absorb higher direct and indirect electricity costs stemming from the EU Emission Trading System ('ETS') ⁽¹³⁹⁾, whereby EU companies will receive fewer free CO₂ allowances and hence need to purchase additional EU CO₂ allowances to produce the same volume of AFPRs. In the case at stake, the net result between the electricity cost increase for the German producers and the compensation received was a net loss and therefore the importer's claim is factually incorrect. On this basis, this claim was rejected.

4.6.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2017	2018	2019	Investigation period
Average labour costs per employee (EUR)	70 255	72 448	72 523	73 430
Index	100	103	103	105

Source: Sampled Union producers

- (359) The average labour costs per employee increased by 5 % over the period considered. One sampled company incurred restructuring costs which are reflected in the labour cost.

4.6.3.3. Inventories

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

Table 11

Inventories

	2017	2018	2019	Investigation period
Closing stocks (tonnes)	63 273	66 879	65 204	65 455

⁽¹³⁹⁾ The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements.

<i>Index</i>	100	106	103	103
Closing stocks as a percentage of production (%)	7,8	8,3	8,4	9,2
<i>Index</i>	100	106	108	118

Source: Sampled Union producers

- (361) Closing stocks remained at a reasonable level throughout the period considered. Since the AFRPs industry generally operates on a production to order basis, this indicator is of a lesser importance in the overall injury analysis.
- (362) The percentage of closing stocks expressed on production shows an overall increase which is mainly due to the decrease in production volume.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2,8	1,2	-0,4	-2,2
<i>Index</i>	100	42	-13	-78
Cash flow (EUR)	97 502 816	82 877 851	92 397 462	43 585 647
<i>Index</i>	100	85	95	45
Investments (EUR)	64 646 226	73 447 421	160 412 341	141 607 601
<i>Index</i>	100	114	248	219
Return on investments (%)	12,0	7,3	3,6	-2,8
<i>Index</i>	100	60	30	-23

Source: Sampled Union producers

- (364) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (365) The sales of the Union industry to unrelated customers turned from profit making in 2017 to loss making in 2019 and the IP. Hence, profitability followed a steady downward trend over the period considered from 2,8 % in 2017 to -2,2 % in the investigation period.
- (366) Importantly, as explained in recital (356), the costs of the Union producers increased more than their prices, which led to the decrease in profitability of the Union industry. The Union industry was unable to raise prices at the same extent as costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices). Indeed, throughout the period considered, Chinese prices were consistently low and significantly below Union industry prices (see Tables 5 and 9), limiting price increases which would have been

expected in the context of a growing demand (up to 2019) and change in product mix (more high value products). This resulted in price suppression and decreasing profitability. In the investigation period, price suppression continued. Indeed, while Chinese prices increased slightly, they remained far below the price level achieved by the Union industry. This is also evidenced by the significant undercutting margins stated in recital (331).

- (367) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed negatively over the period considered in line with the evolution of the profitability. Over the period considered, the cash flow decreased by 55 %.
- (368) Investments increased by 119 % over the period considered. They were driven by the unrolling of the investment plans by two sampled Union producers. The investments were made in order to make efficiency gains and to move the businesses towards high value added products and customer focus. This was seen as essential for the sampled producers to maintain competitiveness in the market and be able to follow the latest product developments and offer quality products.
- (369) The return on investments is the profit in percentage of the net book value of investments. It developed negatively over the period considered from 12 % in 2017 to -2,8 % in the IP. Such development follows the decreasing profitability of the Union industry.
- (370) The three sampled producers are part of larger groups of companies and they have continued to raise capital for investments during the period considered. However, with returns on investments falling so quickly, the sampled producing entities ability to raise capital in the future is clearly in jeopardy.

4.6.4. Conclusion on injury

- (371) During the period considered, imports of AFRPs from China increased significantly both in absolute (+ 65 %) and relative terms (+ 5 percentage points in market share) while consumption in the EU decreased by 8 %. The increase in imports concerned both imports under inward processing and total imports excluding inward processing. Chinese import prices were consistently low and significantly below Union industry prices throughout the period considered. During the investigation period, the import prices of the sampled exporting producers undercut Union prices by 7,5 % on average. Regardless of the specific undercutting found as regards the sampled exporting producers, the Commission also observed that Chinese prices were consistently low and significantly below Union industry prices during the entire period considered (see Tables 5 and 9). The Union industry was unable to raise prices to the same extent as costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices).
- (372) Most macroeconomic indicators showed a negative trend over the period considered such as production, capacity utilization, sales volume in the EU market, market share, employment and productivity. Only capacity showed a slightly positive trend. Similarly, most microeconomic indicators showed a negative trend over the period considered such as sales prices in the EU free market, cost of production, labour costs, profitability, closing stocks, cash flow and return on investments. Only investments showed a positive trend after the sampled producers made investments in order to maintain competitiveness and follow the latest product developments. The same injury indicators also developed negatively when looking at the period 2017-2019, that is, before the start of the COVID-19 pandemic.
- (373) The Union industry adapted its product mix in order to secure better margins on higher value added products over the period considered while keeping sufficient volume to dilute its fix costs. In this context, the costs of the Union industry naturally increased. Furthermore, the Union industry could not benefit from the increase in consumption in 2018-2019 and had to dilute its fix costs on a lower production volume (-11 %) leading to an overall increase in production costs (+ 1 %) while the LME 3-month aluminium price had decreased (-12 %). As far as sales prices are concerned, the Union industry also faced severe competition on the higher added value markets and could not

increase its prices to the expected level (-4 %). In view of the cost and price developments, the profitability deteriorated progressively and turned to a loss-making situation already in 2019 before the situation aggravated in the investigation period.

- (374) On the basis of the above, the Commission provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (375) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. The following potential factors were identified: COVID-19 pandemic, contraction in demand, imports from third countries, commercial strategy of the Union industry, export performance of the Union industry, efficiency of the Union industry, imports from the country concerned by the Union industry and contractual obligations linked to the LME aluminium price.

5.1.1. *Effects of the dumped imports*

- (376) The deterioration in the situation of the Union industry coincided with the significant penetration by imports from China, which consistently undercut the Union industry's prices and suppressed Union market price. As mentioned in recital (371), the import prices of the sampled exporting producers undercut Union prices by 7,5 % on average.
- (377) The volume of imports from China increased (as shown in Table 4) from around 161 000 tonnes in 2017 to around 266 000 in the investigation period, an increase by 65 %. In terms of market share, the increase was of 81 %, from 6,2 % to 11,2 %. Over the same period (as shown in Table 7), the Union industry sales on the free market decreased by 14 % and its market share on the free market fell from 66,2 % to 62,7 %, a fall of 5 %. Pending the analysis of the imports into Greece under inward processing, the Commission looked at imports also excluding those imports. In such case, the trend would be similar and show an increase in Chinese imports by 41 % and an increase in market share by 54 % from 5,5 % to 8,5 %.
- (378) The situation in the period 2017-2019 is even more telling as Chinese imports more than doubled (from 161 000 tonnes to 354 000 tonnes) reaching 13,2 % market share while the free market share of the Union industry had dropped to 61,5 % (-4,7 percentage points). Indeed, despite a decrease in consumption between 2018 and 2019, Chinese imports continued to increase and gain market share from the Union industry.
- (379) The dumped imports increased steadily on a year-on-year basis in terms of both absolute and relative terms until the start of the COVID-19 pandemic in the first half of 2020 (this is analysed in the next section). As evident from Table 3 and 4, the increase in consumption in 2018 and 2019 was mainly beneficial to Chinese imports. The apparent 'softening' of the penetration of imports from China observed during the investigation period is misleading. A close look at the trends in the period considered makes the relationship between imports and the injury suffered by the industry quite apparent. Indeed, the picture seen during the investigation period is just a prolongation of the observed trend, slightly eased by the general impact of the pandemic on the Chinese production, exports to the Union and consumption in the EU.
- (380) The prices of the dumped imports decreased by 9 % over the period considered (as shown in Table 5) from 2 437 to 2 205 EUR/tonne. In comparison, the Union industry prices decreased only by 4 % over the same period; i.e. from 2 792 EUR/tonne in 2017 to 2 680 EUR/tonne in the investigation period. Hence, although starting from a lower price level in 2017, Chinese prices decreased more (-232 EUR/tonne) than Union industry prices (-112 EUR/tonne) over the period considered. Also, in the period 2017-2019, the decrease in Chinese prices amounted to 11 % while the Union industry prices had decreased by 1 %.

- (381) The imports under inward processing were made at lower prices than imports excluding inward processing. Prices of imports from China under inward processing were also much lower than the sales prices by the Union industry. Such prices developed erratically and appear to be completely disconnected from the evolution of world aluminium prices such as the LME. They decreased by 27 % over the period considered.
- (382) The prices of the dumped imports excluding inward processing, which account on average for over 70 % of the imports from China, decreased steadily over the period considered from 2 391 EUR/tonne in 2017 to 2 237 EUR/tonne in the investigation period or by 6 % overall.
- (383) The price development of the dumped imports shows significant price suppression. The Union industry was unable to raise prices at the same extent as costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices). Indeed, throughout the period considered, Chinese prices were consistently low and significantly below Union industry prices, limiting price increases which would have been expected in the context of a growing demand (up to 2019) and change in product mix (more high value products). This resulted in price depression and decreasing profitability of the Union industry.
- (384) Furthermore, the investigation revealed that the penetration of Chinese imports over the period considered has been achieved not only in the commodity parts of the market where short term contracts usually apply but also in other parts of the market where higher added value products are sold in the framework of medium/long term contracts. Price is not the only important element in such contracts but it is clear that the low prices (reflecting undercutting margins indicated above of 7,5 % on average) play a key role in the decision making of customers.
- (385) On the basis of the above, the Commission provisionally concluded that the imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

5.1.2. *Effects of other factors*

5.1.2.1. Contraction in demand

- (386) One importer, Airoldi, claimed that the decrease in consumption was related to a decrease in demand in the aerospace sector. Hence, this importer requested the inclusion of this sector in the injury analysis.
- (387) As indicated in recital (57), products for use in the manufacturing of aircraft parts are excluded from this investigation. Therefore, this claim was rejected.
- (388) Another importer, Nova Trading S.A. (Nova Trading), claimed that the Union industry had increased its production capacity to meet an expected growth in the electric vehicle market that did not materialise leading to lower prices and lower profitability. However, AFPRs for use as body panels in the car industry are excluded from the product scope and therefore any injury suffered thereto is not covered or captured by this investigation. This claim was rejected.
- (389) The exporting producer Xiamen Xiashun claimed that the increase in imports in 2019 was more moderate than the decrease in consumption in 2019 and that the Union industry was more affected by the decrease in consumption than by the increase in Chinese imports. The same exporting producer claimed that the macroeconomic indicators were stable until the half/the end of 2019 and that the decrease in demand was the cause of injury.
- (390) The additional increase in imports from China in 2019, which took place in a period when consumption decreased, should be seen as another evidence of injury. Indeed, when demand is decreasing, one would normally expect all producers to be affected in a similar way or even exports to decrease more in comparison to domestic (Union sales) in view of the proximity between domestic producers and customers. Still, in 2019, the imports from China continued to increase in absolute terms leading to an increase in market share by 1,5 percentage points in relation

to 2018 to the detriment of the Union industry. Indeed, when consumption decreased by around 113 000 tonnes, the sales of the Union industry decreased by around 76 000 tonnes. That means the Union industry absorbed 67 % of the decrease while imports from China increased by around 24 000 tonnes. In parallel, the already low Chinese import prices decreased further by 5 %.

- (391) As far as the evolution of the macroeconomic indicators is concerned, the years 2018 and 2019 already showed signs of injury as sales, market share and employment had already deteriorated significantly. In any case, the injury analysis should not be based solely on the evolution of macroeconomic indicators but on an overall assessment of micro- and macroeconomic indicators. When looking at the year 2018 and 2019 as a whole, both types of indicators were already depicting an injurious situation.

5.1.2.2. COVID-19 pandemic

- (392) The COVID-19 pandemic that started in the first half of 2020 affected the situation on the EU market in various ways. There was a decrease in consumption in the EU market accompanied by a decrease in imports from China.
- (393) As explained in recital (379), the dumped Chinese imports had already increased steadily on a year-on-year basis in the period 2017-2019 leading to an increase of over 100 % until the start of the COVID-19 pandemic in the first half of 2020. In other words, the material injury caused to the Union industry by the dumped imports had already materialised as evidenced by the negative development of most macro- and microeconomic indicators in the period 2017-2019 when the COVID-19 came into the equation.
- (394) In this context, it cannot be denied that the COVID-19 pandemic, and the following decrease in consumption, contributed to further aggravate the already deteriorated Union industry's situation.
- (395) However, this development does not attenuate the causal link between the material injury found and the dumped imports from China. As noted above, the Union industry was materially injured by dumped imports from the PRC that more than doubled in a three-year period before the pandemic outbreak so it is clear that material injury already occurred before and regardless of the pandemic.

5.1.2.3. Imports from third countries

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

Table 13

Imports from third countries

Country		2017	2018	2019	Investigation period
Total of all third countries except the country concerned	Volume (tonnes)	719 511	724 344	663 648	619 566
	<i>Index</i>	100	101	92	86
	Market share on the free market (%)	27,6	26,4	25,3	26,1
	<i>Index</i>	100	96	92	95
	Average price	3 091	3 075	2 924	2 887
	<i>Index</i>	100	99	95	93

Of which Turkey	Volume (tonnes)	165 649	173 429	189 574	184 824
	<i>Index</i>	100	105	114	112
	Market share on the free market (%)	6,4	6,3	7,2	7,8
	<i>Index</i>	100	98	113	122
	Average price	2 622	2 714	2 517	2 443
	<i>Index</i>	100	103	96	93

Source: Eurostat

- (397) The sampled exporting producer Xiamen Xiashun, indicated that imports from China had decreased in the investigation period to the benefit of the Union industry and other countries. It also indicated that import prices from China had increased in that period. Furthermore, it indicated that the Union industry itself acknowledged unfair competition from imports from countries like India, Egypt and Turkey.
- (398) The user Company A claimed that the Chinese market share was low in comparison with that of the Union industry and requested an analysis of imports from other countries.
- (399) Despite the decrease in volume, Chinese imports still accounted for 11,1 % market share in the investigation period, which corresponds to an 80 % increase over the period considered. Also, even though Chinese prices rose in the investigation period, Chinese export prices still undercut the Union industry prices by 7,5 % on average during the investigation period.
- (400) Furthermore, imports from other countries decreased over the period considered by 14 %. In view of the decreasing consumption (-8 %), their corresponding market share also decreased from 27,6 % to 26,1 %. This means that imports from other countries also lost market share to the imports from China.
- (401) In particular, imports from Turkey which were the second largest in volumes after imports from China to the EU increased by 12 % over the period considered and gained 1,2 percentage point market share. However, their prices remained much higher than Chinese import prices and followed the evolution of the LME.
- (402) On this basis, the Commission concluded that the evolution of imports from other countries and the slight decrease of imports from China in the investigation period did not contribute to the material injury suffered by the Union industry.

5.1.2.4. Commercial strategy of the Union industry

- (403) The exporting producer Xiamen Xiashun claimed that the Union industry's focus on certain segments with higher priced products, where demand decreased over the period considered, was a factor capable of breaking the causal link. It also argued that, by focusing on higher priced products, the Union industry had reduced its capacity available for foil stock customers, which had to turn to other sources of supply. Furthermore, it claimed that, except for the Union industry, it was by far the main supplier to the EU market, and that Chinese and Union prices were comparable for AFRPs destined for foil stock.
- (404) As far as the commercial strategy of the Union industry is concerned, as indicated in recital (355), the Union industry tried to keep the same production volume, which only decreased by 1 % between 2017 and 2019, while adapting its product mix to increase its sales of higher value added products.

- (405) As showed in Table 3, the demand for AFPRs covered by this investigation remained stable or even increased in the period 2017-2019. Also, the investigation did not reveal that there was a drop in demand for products commanding higher prices. As indicated in recital (384), the investigation rather revealed that the Union industry also faced severe competition from Chinese imports in the high end part of the market. The dumped imports thus lead to decreasing sales without the possibility to achieve the expected higher prices. Consequently, the situation of the industry deteriorated significantly.
- (406) As far as the foil sector is concerned, as indicated in recital (303) to (306), an analysis by segments was not found to be warranted and the same reasons mentioned in recital (405) also apply. In addition, the injury suffered by the Union industry also came from the injurious prices charged by Xiamen Xiashun, which only sold to the foil sector and undercut Union prices at a level similar to the average undercutting margin found of 7,5 % during the investigation period. Thus, the claim was rejected.
- (407) On this basis, the Commission concluded that the commercial strategy followed by the Union industry did not contribute to the material injury suffered by the Union industry.

5.1.2.5. Export performance of the Union industry

- (408) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 14

Export performance of the sampled Union producers

	2017	2018	2019	Investigation period
Export volume (tonnes)	315 664	370 316	387 640	328 898
<i>Index</i>	100	117	123	104
Average price (EUR/tonne)	2 855	2 996	2 902	2 794
<i>Index</i>	100	105	102	98

Source: European Aluminium and sampled Union producers

- (409) Exports of the Union industry increased by 4 % over the period considered from 315 664 tonnes in 2017 to around 328 898 tonnes in the investigation period.
- (410) The average price of these exports first increased by 5 % in 2018 before progressively decreasing to a lower level than in 2017 (-2 %). The average price of these exports remained consistently above the price that the Union industry could achieve on the EU market.
- (411) One importer, Nova Trading claimed that the US-China trade war had a negative impact on the export performance of the Union industry.
- (412) As shown in Table 14, exports by the Union industry were not affected negatively by the deterioration of the trade relations between the US and China. This claim was therefore rejected.
- (413) Against the backdrop of their contribution to total production and sales of the Union industry, and bearing in mind the high price of the Union industry exports to third countries and their stable volume, the Commission provisionally concluded that the export performance did not contribute to the material injury suffered by the Union industry.

5.1.2.6. Efficiency of the Union industry

- (414) Several interested parties, Xiamen Xiashun, Airoidi, Nilo and Company A made various claims with regard to the efficiency of the Union industry. These claims can be summarized as follows:
- The production equipment of the Union industry is old and characterized by low usage. Contrary to the Chinese industry, the Union industry can only supply a limited volume of large width products. The Union industry does not have sufficient capacity. In addition, the Union industry does not have sufficient capacity for hard alloys.
 - Production and sales volumes in the foil segment were affected by restructuring
 - Decrease in profitability was impacted by increases in payroll costs and service costs
- (415) While some Union producers may still be lagging behind in terms of equipment, the investigation revealed that the Union industry is dynamic and has increased significantly its investments in a difficult period in order to increase its capacity, adapt its production equipment to rationalize its production process and acquire the latest technology to continue meeting customer's requirements. The analysis of capacity and capacity utilization in Table 6 shows that the Union industry increased its capacity and could achieve higher capacity utilization rates. With regard to hard alloys, no evidence was provided pointing to a lack of sufficient capacity. In any case, hard alloys accounted for 20-30 % of the sampled producers' total sales on the EU market. Considering the size of the sample, its sales of hard alloys and in the absence of evidence provided by Airoidi, it was provisionally concluded that there was sufficient capacity for such products. As a result, this claim was rejected.
- (416) As far as the situation in the foil segment in particular is concerned, a separate analysis of that segment was not found to be warranted. Indeed, as indicated in recitals (303) to (306) foil stock falls within the definition of the product scope and there are no clear dividing lines pertaining to the distribution channel or price of this product. Therefore, this claim was found to be without object.
- (417) While it cannot be excluded that additional investments in the latest technology may be needed to ensure the long term sustainability of the Union industry, the Commission concluded that the state of the Union industry's production equipment and the development of its operating costs do not attenuate the causal link established between the dumped imports and the material injury suffered by the Union industry.
- (418) The Commission found the alleged increase in service costs to be insignificant while the Union industry could keep its labour costs under control despite the impact of the restructuring expenses. Consequently, this claim was rejected.
- (419) One importer, Nova Trading also claimed that the performance of the Union industry was affected by a cyberattack on Hydro and an environmental dispute in Brazil concerning the same producer.
- (420) First, such elements do not concern the activities of the Union industry as they relate to the mother company of the Union producer based in Norway and to an affiliated company based in South America. In any event, given their nature, such elements relate to extraordinary expenses that are not taken into account when assessing the profitability of the Union industry. Consequently, this claim was rejected.
- (421) Therefore, the Commission concluded that none of the factors above contributed to the material injury suffered by the Union industry.

5.1.2.7. Imports by the Union industry

- (422) The exporting producer Xiamen Xiashun claimed that the alleged injury suffered was caused by purchases of the product concerned by the Union industry itself.
- (423) The imports by the Union industry were made by a company that was related to a Union producer and working on a semi-independent basis whereby it sourced a minor part of its needs from China. These imports were marginal and decreased over the period considered, representing only 1 to 4 % of the total imports from China during the investigation period. Given the low volume involved, the Commission concluded that these purchases could not have caused injury to the Union industry.

5.1.2.8. LME Aluminium price

- (424) The importer Nova Trading claimed that the decline in the LME price from July 2018 onwards to the pre-COVID-19 pandemic period had a direct influence on the profitability of the Union producers.
- (425) The Union industry usually sells AFRPs using contracts whereby the most recent LME price or the 3-month LME price are quoted as a reference. Union producers then use hedging facilities to cover them against the difference between the aluminium price quoted in the contract and the actual purchase price of the aluminium.
- (426) Bearing in mind the way that aluminium prices are set using contracts, and the fact that the Union industry protects itself against raw material fluctuations, the Commission provisionally concluded that decreases in raw material prices would not have caused injury to the Union industry.

5.1.3. Conclusion on causation

- (427) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. With the exception of the COVID-19 pandemic which aggravated the situation of the already materially injured Union industry, none of the factors contributed, alone or in combination, to the negative developments of the injury indicators observed in the period considered.
- (428) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the COVID-19 pandemic did not attenuate the causal link between the dumped imports and the material injury.

6. UNION INTEREST

6.1. Interest of the Union industry and suppliers

- (429) There are some 20 known groups of companies producing AFRPs in the Union. The imposition of measures would allow the Union industry to recover lost market share, while improving their profitability towards levels considered sustainable.
- (430) The Union industry employs over 8 000 workers directly with many more relying on it indirectly. The producers are widely spread throughout the Union.
- (431) The absence of measures is likely to have a significant negative effect on the Union industry in terms of further price suppression, lower sales and further deterioration of the profitability at a time when the industry has invested significant amounts in order to ensure its sustainability. The measures will allow the Union industry to exploit its potential on the Union market, recover lost market share, and improve profitability to levels to be expected under normal conditions of competition.
- (432) In addition to representing the Union industry, European Aluminium also represents a large part of the primary aluminium sector in the Union which supplies ingots/slabs to the Union industry. The primary aluminium sector is also a large employer in the Union and it relies on the health of its downstream customers. The viability of these upstream suppliers, which employ around 2 800 workers will also be put at risk if the Union industry contracts further.
- (433) Consequently, the Commission concluded that the imposition of measures would be in the interest of Union industry and its upstream suppliers.

6.2. Interest of importers

- (434) From the importers, only 4 unrelated companies submitted a sampling form representing less than 2 % of Chinese imports. The importers also bought AFRPs from other sources.

- (435) The sampled importers were operating in several activity sectors in and outside the Union. Overall, AFRPs accounted for less than 30 % of their turnover and for 10-15 % of their turnover on average. These importers were sourcing AFRPs from the country concerned, from third countries and from the Union industry. The importers expressed their opposition to the imposition of anti-dumping duties on the grounds that users and importers would be negatively affected by an artificial price increase for AFRPs.
- (436) One importer, Nilo, referred to the situation in the US market and indicated that the introduction of anti-dumping duties on Chinese AFRPs led to a price increase and to a replacement of Chinese imports by imports from other countries such as the EU. It claimed that such scenario was likely to take place on the EU market. The same importer also claimed that prices on the EU market would increase in view of the lack of spare capacity of the Union industry.
- (437) In light of the above, the Commission concluded at this stage that the imposition of measures would not necessarily be in the interest of importers. However, it further assessed their likely effects when weighing the different interests at stake (see Section 6.5).

6.3. Interest of users

- (438) The product concerned is sourced by several user industries, mainly building and construction, automobile and transport, consumer durables, energy, technical and foil stock. AFRPs can be used directly in a finished product or processed and sold to another industrial user.
- (439) As indicated in recital (46), five users provided questionnaire replies. These users accounted for only 12 % of the Chinese imports and were active in the following sectors: building and construction and more specifically production of coated products and ACPs, aluminium foil and more specifically flexible packaging, technical and more specifically automotive HEX. At provisional stage, only two companies have been verified through remote crosschecks. The Commission will further assess the completeness of the users' replies and whether more companies would need to be subject to RCCs. This may impact the definitive findings regarding users.

6.3.1. Building and construction

- (440) Two companies active in the construction sector provided a user questionnaire reply. One user, Multilaque SAS, purchased AFRPs exclusively from the Union industry and indicated that fair market prices should prevail.
- (441) The other user, Company A purchased AFRPs from the country concerned, the Union industry and other countries. Company A expressed its opposition to the imposition of anti-dumping measures on the product concerned. Furthermore, as developed in Section 2.3.2, Company A requested the exclusion of aluminium coils for the production of coated coils and ACP. This request was accepted. The comments raised by Company A and pertaining to Union interest were addressed under such section. Other comments raised by this party were addressed where relevant.

6.3.2. Foil stock

- (442) One user, Amcor Flexibles Singen GmbH ('Amcor'), active in the flexible packaging sector provided a user questionnaire reply. However, it did not provide a position with regard to the imposition of measures and did not provide meaningful non-confidential comments.
- (443) Based on its questionnaire reply, should this user not be able to transfer a cost increase, it would be in a position to absorb it in view of the profitability that it reported.

6.3.3. Technical

- (444) Two companies, Valeo and TitanX, active in the automotive HEX sector provided user questionnaire replies. Both companies sourced AFRPs from the country concerned and from the Union. Valeo also sourced AFRPs from other countries. While Valeo opposed potential anti-dumping measures, TitanX did not express a position. Both

companies filed exclusion requests as detailed in Section 2.3.1. These requests were rejected. The comments raised by these users and by other interested parties requesting the exclusion of automotive HEX AFRPs and pertaining to Union interest were addressed under such section.

- (445) As detailed in Section 2.3.1 above, the Union industry has sufficient capacity to meet the current and future demand and that there is no risk of structural price increase in view of the conditions of competition and available capacities in the EU. The Commission also concluded that the level of profits achieved before the pandemic would allow the automotive HEX manufacturers to absorb extra costs in the form of anti-dumping duties or validation costs, should they wish to switch back to Union producers. As far as the impact of measures on supply chain is concerned, the Commission concluded that the transition from one AFRP supplier to another could be burdensome but that the Union industry would be in a position to quickly substitute Chinese imports and offer a secure alternative source of supply.
- (446) In addition, it should be noted that apart from Mahle, another user in this sector, several other companies, representing over 50 % of the estimated consumption of automotive HEX AFRPs did not come forward to express their opposition to the investigation or to potential anti-dumping measures.
- (447) Consequently, on the basis of the information provided by the users in question, the Commission provisionally concluded that the imposition of measures would not be against the interest of users active in automotive HEX sector.

6.3.4. *Other industries*

- (448) No verifiable data was received for the other user sectors, such as consumer durables and energy. It cannot be excluded, that some users, which have not cooperated with the investigation, may have certain detrimental effects resulting from the measures. However, there is no information on the case file to substantiate or quantify these effects.

6.3.5. *Conclusion on interest of users*

- (449) The Commission concluded that there is no uniform interest of users either in favour or against the imposition of measures. Those users, who spoke out against the imposition measures, may face, though, certain limited negative consequences.

6.4. **Other interests**

- (450) Aluminium is much lighter than steel and is regarded in the Union as a key raw material for making progress towards the meeting of emissions targets set by the Paris Agreement (2015) and the European Union's own emission targets, as laid down in the European Council's Conclusions of 10/11 December 2020. As an example, AFRPs falling within and outside the product scope are used increasingly in the automobile industry and they are key in the establishment of the electric vehicle industry in the Union. Both AFRPs falling within and outside the product scope and used in the automobile industry are produced by the Union industry. The absence of measures on in-scope AFRPs would also have a negative impact on the production of out-of-scope AFRPs as the fix costs would need to be diluted on a lower production volume leading to cost and price increases for such products as well.
- (451) Furthermore, in the context of a clean and circular economy, the Union industry has been increasing the use of recycled materials in its production process to reduce its carbon footprint. This contributes to meeting the EU's emissions targets. Also, as indicated in recital (78), aluminium production in the EU generates on average almost 3 times less CO₂ than in the PRC.
- (452) Accordingly, the Commission concluded that the imposition of measures contributes to the achievement of the Union's policy on reducing CO₂ emissions.

6.5. Weighing of the competing interests

- (453) In line with Article 21(1) of the basic Regulation the Commission assessed the competing interests and gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition. It assessed in particular the claim of the importer Nilo that it would be disproportionately hit by the imposition of measures, as demonstrated by a similar development in the US market after the imposition of measures by the US government.
- (454) The Commission noted in that respect that the economic operators (producers, users and importers) are not the same. Second, the US investigation did not have exactly the same product scope and the level of duties imposed in the US was much higher.
- (455) As far as an increase in prices is concerned, the investigation revealed that Chinese prices were undercutting Union prices on average by 7,5 % and that the price suppression lead to a deterioration of the situation of the Union industry. Should prices rise again to sustainable levels and considering the significant market share of other countries, as indicated in Section 5.1.2.3, the Commission considered that such increase would be limited in view of the level of competition on the Union market. As already mentioned in Section 4.6.2.1, the Union industry has sufficient spare capacity. Accordingly, the negative effect on users would also remain limited.
- (456) When assessing the significance of such negative effects for the importers, the Commission first noted that the level of cooperation was extremely low. Based on this limited information on file, in any event it provisionally considered that the importers will be able to pass on the duty to their customers given their profit margins of around 5 % to 8 % on the product concerned. They also have the possibility to find alternative sources of supply, including suppliers from other third countries and the Union industry with which they are already operating. Indeed, the sampled importers have a balanced supply structure and do not rely on Chinese imports exclusively. Also, the sampled importers have significant activities which are not related to the product concerned, and which are not affected by the imposition of the duties.
- (457) Therefore, the Commission considered that unrelated importers would not be disproportionately affected by the imposition of the measures thanks to their other activities, other sources of supply for the product under investigation and the ability to partially pass on the effect of the duties to their customers. In any case, the situation of the importers will be further assessed at definitive stage.
- (458) Finally, one importer, Airoidi, claimed that the Union industry was using the anti-dumping instrument to obtain a dominant position, which is an abuse of rights under the Union Courts case law. However, there are no indications on the file about present or future anti-competitive behaviour or an abusive oligopoly by the Union industry. Consequently, the Commission did not identify any overriding interest to preserve effective competition in the Union as a reason not to impose measures.

6.6. Conclusion on Union interest

- (459) On the basis of the above, the Commission provisionally concluded that there were no compelling reasons to conclude it is not in the Union interest to impose provisional measures on imports of AFRPs originating in China.

7. LEVEL OF MEASURES

- (460) In order to determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (461) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. Then it examined whether this amount of duty would be adequate to remove the injury taken into account the alleged presence of raw material distortions in accordance with Article 7(2a) of the basic Regulation.

7.1. Underselling margin

- (462) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs *resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia*, and to obtain a reasonable profit ('target profit').
- (463) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors:
- the level of profitability before the increase of imports from the country concerned,
 - the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and
 - the level of profitability to be expected under normal conditions of competition.
- (464) Such profit margin should not be lower than 6 %.
- (465) European Aluminium claimed that the target profit should be set at least 12 % given the capital intensive and innovation-driven nature of the sector. One producer, Hydro, referred to a profit margin 'between 5 and 10 %' and also referred to the profit achieved in another sector (0 – 15 %) where there were no dumped imports.
- (466) At this stage of the investigation, none of the sampled producers provided evidence that it achieved the target profit as claimed by European Aluminium during the period considered or in the 10 years preceding the end of the investigation period. Furthermore, as indicated in Table 10, the average profit achieved by the sampled Union producers, remained lower than the target profit provided by Article 7(2c) during the investigation period. In addition, the Commission considered that using the profit achieved in another sector excluded from the scope of this investigation was not necessary.
- (467) In view of the above considerations, the profit margin was established at 6 % in accordance with the provision of Article 7(2c).
- (468) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). The Commission established an additional cost ranging from around EUR 0,5 to 8 per tonne which was added to the non-injurious price for the sampled Union producers concerned. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (469) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the average estimated additional EU Allowances (EUA) which will have to be purchased during the period of the application of the measures (2021 to 2025). The EUAs used in the calculation were net of free allowances receivable and were adjusted to ensure they related solely to the like product. The additional costs also took account of indirect CO₂ costs stemming from an increase in electricity prices over the period 2021 to 2025 linked to the EU ETS. Such indirect CO₂ costs were also based on the EUA and net of any compensation received from national authorities.
- (470) The costs of the EUAs were extrapolated to account for the expected price variation during the lifespan of the measures. The source for these projected prices is a Bloomberg New Energy Finance extraction dated 8 February 2021. The average projected price for EUAs for this period is 35,51 EUR/tonne of CO₂ emitted.
- (471) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry.

- (472) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (473) In terms of the residual margin, bearing in mind that cooperation of the Chinese exporters was not high, and other considerations explained in recital (289) above, the Commission considered it appropriate to set residual margin on the basis of facts available. This margin was set at the level of the highest underselling margin established for product types sold in representative quantities, on the basis of the data of the cooperating exporting producers. The residual underselling margin so calculated was set at a level of 46,7 %.
- (474) The result of these calculations is shown in the table below.

Company	Dumping margin	Underselling margin
Jiangsu Alcha Aluminum Group Co., Ltd.	88,3 %	28,3 %
Nanshan Group	122,1 %	19,3 %
Xiamen Xiashun Aluminium Foil Co., Ltd.	30,0 %	21,4 %
Other cooperating companies	68,5 %	22,6 %
All other companies	183,7 %	46,7 %

- (475) On the basis of the above, the Commission concluded that it was necessary to assess whether there are distortions of raw materials with regard to the product concerned within the meaning of Article 7(2a) of the basic Regulation, which would render a duty lower than the margin of dumping insufficient to remove the injury caused by dumped imports of the product concerned.

7.2. Raw material distortions

- (476) The complainant alleged that in the PRC, one of the raw materials used to produce the product concerned was subject to an export tax and therefore, distorted. The distorted raw material was aluminium ingots that according to the complainant accounts for more than 17 % of the cost of production of the product concerned.
- (477) Therefore, as announced in the Notice of Initiation, in accordance with Article 7(2a) of the basic Regulation, the Commission examined the alleged distortions within the meaning of Article 7(2a) of the basic Regulation.
- (478) The investigation confirmed that the PRC had, in the IP, an export tax on aluminium ingots. This tax amounts to 15 % of the export price of the ingots. The Commission therefore concluded that this measure falls under the list of measures amounting to a distortion of raw materials in the sense of Article 7(2a) of the basic Regulation.
- (479) The Commission further examined whether the price of this raw material was significantly lower as compared to prices in the representative international markets, in accordance with Article 7(2a), second paragraph. For the purpose of this comparison the Commission provisionally used the benchmark price established to calculate the normal value, namely the import price of aluminium ingots into Turkey as indicated in Table 2 at recital (248), as in this case this price was also considered to constitute a price of representative international markets. The Commission compared the benchmark price with the price of the aluminium ingots actually paid by the sampled exporting

producers, and established on that basis that the purchase price of this raw material in the PRC by the sampled exporting producers was not significantly below the representative international benchmark price, namely less than [6 %] on average. Evidence on file also showed that domestic prices for aluminium ingots fluctuated above and below international prices.

- (480) The Commission thus provisionally concluded that the price of aluminium ingots was not significantly lower as compared to prices in the representative international markets. Therefore, the Commission considered at this stage that the conditions of Article 7(2a) of the basic Regulation were not met, and as a result, the provisions of Article 7(2) were applicable to set the level of the provisional duty.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (481) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (482) Provisional anti-dumping measures should be imposed on imports of aluminium flat-rolled products originating in the People's Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation following the provisional conclusion at recital (480) concerning the possible application of Article 7(2a) of the basic Regulation.
- (483) The Commission compared the underselling margins and the dumping margins (recital (474) above). The amount of the duties was set at the level of the lower of the dumping and the underselling margins.
- (484) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty
Jiangsu Alcha Aluminum Group Co., Ltd.	28,3 %
Nanshan Group	19,3 %
Xiamen Xiashun Aluminium Foil Co., Ltd.	21,4 %
Other cooperating companies	22,6 %
All other companies	46,7 %

- (485) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (486) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

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

9. INFORMATION AT PROVISIONAL STAGE

- (488) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (489) Jiangsu Alcha, Nanshan Group and Xiamen Xiashun commented on the accuracy of calculations. The Union industry did not provide comments on the accuracy of calculations. The Commission considered the comments and corrected clerical calculation errors where appropriate.

10. FINAL PROVISIONS

- (490) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (491) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to Article 2, a provisional anti-dumping duty is hereby imposed on imports of aluminium products, flat rolled, whether or not alloyed, whether or not further worked than flat rolled, not backed, without internal layers of other material,

- in coils or in coiled strips, in cut-to-length sheets, or in the form of circles; of a thickness of 0,2 mm or more but not more than 6 mm,
- in plates, of a thickness of more than 6 mm,
- in coils or in coiled strips, of a thickness of not less than 0,03 mm but less than 0,2 mm,

currently falling under CN codes ex 7606 11 10 (TARIC codes 7606 11 10 25, 7606 11 10 86), ex 7606 11 91 (TARIC codes 7606 11 91 25, 7606 11 91 86), ex 7606 11 93 (TARIC codes 7606 11 93 25, 7606 11 93 86), ex 7606 11 99 (TARIC codes 7606 11 99 25, 7606 11 99 86), ex 7606 12 20 (TARIC codes 7606 12 20 25, 7606 12 20 88), ex 7606 12 92 (TARIC codes 7606 12 92 25, 7606 12 92 93), ex 7606 12 93 (TARIC code 7606 12 93 86), ex 7606 12 99 (TARIC codes 7606 12 99 25 and 7606 12 99 86), ex 7606 91 00 (TARIC codes 7606 91 00 25, 7606 91 00 86), ex 7606 92 00 (TARIC codes 7606 92 00 25, 7606 92 00 92), ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 48, 7607 11 90 51, 7607 11 90 53, 7607 11 90 65, 7607 11 90 71, 7607 11 90 73, 7607 11 90 75, 7607 11 90 77, 7607 11 90 91, 7607 11 90 93) and ex 7607 19 90 (TARIC codes 7607 19 90 75, 7607 19 90 94) and originating in the People's Republic of China

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional anti-dumping duty (%)	TARIC additional code
Jiangsu Alcha Aluminum Group Co., Ltd.	28,3	C610

Nanshan Group — Shandong Nanshan Aluminium Co., Ltd., — Yantai Nanshan Aluminum New Material Co., Ltd., — Longkou Nanshan Aluminum Rolling New Material Co., Ltd., — Yantai Donghai Aluminum Foil Co., Ltd.	19,3	C611
Xiamen Xiashun Aluminium Foil Co., Ltd.	21,4	C612
Other cooperating companies (Annex)	22,6	
All other companies	46,7	C999

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

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. The following products shall be excluded from the product described in Article 1(1):

- Aluminium beverage can body stock, end stock and tab stock.
- Aluminium products, alloyed, of a thickness of not less than 0,2 mm and not more than 6 mm, for use as body panels in the car industry.
- Aluminium products, alloyed, of a thickness of not less than 0,8 mm, for use in the manufacture of aircraft parts.

2. The product described in Article 1(1) shall be exempted from provisional anti-dumping duty if it is imported for use in the production of coated coils and aluminium composite panels and if it complies with the following technical characteristics

- Tension levelled aluminium coils
- Hot-rolled coils
- Widths: from 800 mm up to 2 050 mm
- Thicknesses: 0,20 mm up to 1,5 mm
- Tolerance on thickness:
 - +/- 0,01 mm from thickness 0,20 until 0,50 mm
 - +/- ½ norm for thicknesses from 0,51 mm until 1,50 mm
- Tolerance on width: +1,50/-0,00 mm
- Alloys: 5005, 3005, 3105
- Temper: h14, h16, h24, h26
- Max wave height: max. 3 in 1 000 mm

3. The exclusions under paragraph 1 indent 2 and 3 and the exemption under paragraph 2 shall be subject to the conditions laid down in the customs provisions of the Union on the end use procedure, in particular Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁴⁰⁾ (the Union Customs Code).

Article 3

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

Article 4

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 9 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹⁴⁰⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

ANNEX

Cooperating exporting producers not sampled

Name	TARIC additional code
Southwest Aluminium (Group) Co., Ltd	C613
Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd	C614
Shanghai Huaфон Aluminium Corporation	C615
Alnan Aluminium Inc.	C616
Yinbang Clad Material Co., Ltd.	C617
Jiangsu Metcoplus Industry Intl. Co., Ltd.	C618
Dalishen Aluminum CO.,Ltd	C619
Binzhou Hongbo Aluminium Foil Technology Co., Ltd.	C620
Yong Jie New Material Co., Ltd.	C621
Chalco Ruimin Co., Ltd.	C622
Luoyang Wanji Aluminium Processing Co., Ltd.	C623
Jiangyin Dolphin Pack Limited Company	C624
Henan Xindatong Aluminum Industry Co., Ltd.	C625
Zhejiang Yongjie Aluminum Co., Ltd.	C626
Jiangsu Zhongji Lamination Materials Co., Ltd.	C627
Zhengzhou Guandong Aluminum Industry Co., Ltd.	C628

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2021/583

of 9 April 2021

amending Implementing Decision (EU) 2016/1073 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ⁽¹⁾, and in particular Article 2a(2) thereof,

Whereas:

- (1) In Commission Implementing Decision (EU) 2016/1073 ⁽²⁾, the Commission has determined that the legal and supervisory framework applicable to designated contract markets (DCMs) in the United States of America (USA), under the regulatory oversight of the Commodity Futures Trading Commission (CFTC), ensures that DCMs comply with the legally binding requirements that are equivalent to those that apply to regulated markets in the Union, and that those DCMs are subject to effective supervision and enforcement on an ongoing basis.
- (2) Since the adoption of Implementing Decision (EU) 2016/1073, a number of additional DCMs established in the USA have obtained authorisation from the CFTC to trade in derivatives. In light of the information received from the CFTC, those additional DCMs comply with the legally binding requirements that are equivalent to the requirements for Union regulated markets laid down in Title III of Directive 2014/65/EU ⁽³⁾. In addition, some DCMs referred to in the Annex to Implementing Decision (EU) 2016/1073 have vacated their authorisation or amended their names. The Annex of the Implementing Decision (EU) 2016/1073 should therefore be amended accordingly.
- (3) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision (EU) 2016/1073 is replaced by the text in the Annex to this Decision.

Article 2

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

⁽¹⁾ OJ L 201, 27.7.2012, p. 1.

⁽²⁾ Commission Implementing Decision (EU) 2016/1073 of 1 July 2016 on the equivalence of designated contract markets in the United States of America in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 178, 2.7.2016, p. 24).

⁽³⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast) (OJ L 173, 12.6.2014, p. 349).

Done at Brussels, 9 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

‘ANNEX

Designated contract markets in the United States of America referred to in Article 1:

- (a) Bitnomial Exchange, LLC
 - (b) Cantor Futures Exchange, L.P.
 - (c) Cboe Futures Exchange, LLC
 - (d) Chicago Board of Trade (Board of Trade of the City of Chicago, Inc.)
 - (e) Chicago Mercantile Exchange, Inc.
 - (f) Commodity Exchange, Inc.
 - (g) ELX Futures, L.P.
 - (h) Eris Exchange, LLC
 - (i) ICE Futures U.S., Inc.
 - (j) KalshiEX, LLC
 - (k) LedgerX, LLC
 - (l) LMX Labs, LLC
 - (m) Minneapolis Grain Exchange, Inc.
 - (n) New York Mercantile Exchange, Inc.
 - (o) Nodal Exchange, LLC
 - (p) North American Derivatives Exchange, Inc.
 - (q) OneChicago LLC
 - (r) Small Exchange, Inc
 - (s) TrueEX LLC
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