COMMISSION IMPLEMENTING REGULATION (EU) 2021/1784

of 8 October 2021

imposing a definitive 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 9(4) thereof,

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 'the product under investigation') originating in the People's Republic of China ('the PRC' or the 'country concerned') on the basis of Article 5 of the basic Regulation ([2]).

1.2. Provisional measures

(2) In accordance with Article 19a of the basic Regulation, on 15 March 2021, the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within 3 working days. The three sampled exporting producers provided comments ([3]). The Commission considered the comments and corrected calculation errors where appropriate.

(3) On 12 April 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/582 ([4]) ('the provisional Regulation').

1.3. Subsequent procedure

(4) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, the sampled exporting producers, a non-sampled exporting producer, several users in the automotive heat exchanger sector and one downstream user, one user in the foil sector, two users in the electrolytic capacitor sector, one user in the aluminium composite panel sector, one user in the venetian blind sector and its supplier, an unrelated trader, an importer, the European Association for Automotive Suppliers, the European automobile manufacturers association and the Government of the People's Republic of China ('GOC') made written submissions making their views known on the provisional findings. Two exporting producers requested and received further details on the calculation of their injury margins.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ C 268, 14.8.2020, p. 5.
([3]) See recitals (488) to (489) of the provisional Regulation.
([4]) Commission Implementing Regulation (EU) 2021/582 of 12 April 2021 imposing a provisional duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 124, 12.4.2021, p. 40).

(5) The parties who so requested were granted an opportunity to be heard. The Commission held hearings with the three sampled exporting producers, the complainants, Company B, two users in the automotive heat exchanger sector, one user in the foil sector, one user in the aluminium electrolytic capacitor sector, an unrelated trader, an unrelated importer and an association of independent distributors (EURANIMI). At the request of Nanshan Group ('Nanshan'), a hearing took place between Nanshan and the Hearing Officer for trade proceedings.

(6) The Commission proposed to hold a hearing with parties having adverse interests active in the Automotive heat exchangers aluminium flat rolled products ('AHEX AFRP') sector; i.e. Valeo Systèmes Thermiques SAS and related companies ('Valeo') and a Union producer. However, the latter party did not agree to participate. Valeo regretted the behaviour of the Union producer and argued that the arguments of Valeo on the (non-)existence of capacity in the Union market should have a higher value as evidence, given that Valeo itself had not refused to be confronted with the Union producer in question.

(7) As Valeo acknowledged, hearing with parties having adverse interests can only be organised when both parties agree to such hearing. As provided by Article 6(6), the fact that a party refuses to participate in such hearing shall not be prejudicial. Valeo's claim was therefore rejected.

(8) Following definitive disclosure, the parties who so requested were granted an opportunity to be heard. The Commission held hearings with the three sampled exporting producers, two users in the automotive heat exchanger sector and one unrelated importer. A hearing took also place between Jiangsu Alcha Aluminum Group Co., Ltd ('Jiangsu Alcha') and the Hearing Officer for trade proceedings at the request of this exporter.

(9) The Commission continued to seek and verify all the information it deemed necessary for its final findings. In this regard, it considered that the company Nilo Asia PTE Ltd/Lodec Metall-Handel Niederlassung Bremen der O. Wilms GMBH ('Nilo'), that had presented itself as an unrelated importer was actually a trader. In this context, the questionnaire reply of this company was not considered for the definitive findings. However, this company was still considered as an interested party and continued cooperating in the investigation.

(10) Considering that interested parties had had sufficient time to provide comments on other parties' comments and with the exception of replies to information requests by the Commission, the Commission did not consider submissions filed after 17 June 2021 for its definitive findings.

(11) On 13 July 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China ('final disclosure'). Furthermore, interested parties received an additional disclosure on 13 August 2021 ('first additional final disclosure') and on 3 September 2021 ('second additional final disclosure'). All parties were granted a period within which they could make comments on the final and additional disclosures.

(12) Following definitive disclosure, Airoldi Metalli S.p.a. ('Airoldi'), claimed that its rights of defence had been violated as it did not have the opportunity to comment on documents added to the non-confidential file a day before the definitive findings were disclosed and allegedly taken into account in the general disclosure document. On this basis, it requested the withdrawal of the general disclosure document.

(13) In this regard, it should first be noted that, as mentioned in recital (10), with the exception of document t21.004671, all submissions referred to by Airoldi were not taken into account for the general disclosure document in view of their untimely filing. As far as the claims raised in document t21.004671 are concerned, as can be seen in recital (527), they are of the same nature as claims made by other interested parties including Airoldi. On this basis, it was considered that there was no breach of Airoldi's rights of defence. Furthermore, following the definitive disclosure, Airoldi had the opportunity to comment on the untimely filed documents referred to by Airoldi in its submission.

(14) On 28 July 2021, the Commission requested Union producers, importers, users and their associations to provide information concerning post-IP developments to allow for an assessment under Article 14(4) in due course.

(15) The comments submitted by the interested parties were considered and taken into account where appropriate in this Regulation.

1.4. **Sampling**

(16) In recital (35) of the provisional Regulation, the Commission referred to a sample of three Union producers accounting for 35 % of the Union production. That percentage was based on EU28 data.

(17) As provided in Section 1.9, the definitive findings of this investigation are based on EU27 data. Furthermore, as mentioned in recital (191), certain products were excluded from the product scope. On that basis, the three Union producers accounted for over 38 % of the Union production. Therefore, the sample remained representative.

1.5. **Request for anonymity**

(18) After provisional disclosure, one Union producer which is not in the sample filed a request for anonymity. The justification for this request was that this interested party is concerned about direct public exposure hurting its interests in other countries. Based on the elements provided in its sensitive request, the request for anonymity was accepted. No comments were received.

1.6. **Individual examination**

(19) In the absence of comments concerning this section, recital (43) of the provisional Regulation was confirmed.

1.7. **Verification visit**

(20) In addition to the remote cross checks ('RCCs') mentioned in recital (48) of the provisional Regulation, the Commission carried out an additional RCC of the user Amcor Flexibles Singen GmbH ('Amcor') based in Singen, Germany.

1.8. **Investigation period and period considered**

(21) One exporter, Southwest Aluminium (Group) Co., Ltd ('SWA') claimed that the investigation period ('IP') was affected by the COVID-19 pandemic and could not be compared to the other years of the period considered.

(22) The Commission considered the impact of the COVID-19 pandemic in its analysis and addressed comments received in this regard in Section 5.1.2.2 of the provisional Regulation and Section 5.2.2 of this Regulation. On this basis, this claim was rejected.

(23) In the absence of further comments concerning the IP and the period considered, recital (49) of the provisional Regulation was confirmed.

1.9. **Change of geographical scope**

(24) Since 1 January 2021, the United Kingdom of Great Britain and Northern Ireland ('UK') is no longer part of the European Union. Therefore, this regulation is based on data for the European Union without the UK ('EU27'). The Commission therefore asked the complainant and the sampled Union producers to submit certain parts of their original questionnaire responses with data for EU27 only. The complainant and the sampled Union producers submitted the requested data. As the difference between the macro-economic indicators published in the provisional Regulation and the macro-economic data for EU27 is due to the exclusion of the data from one single UK producer, certain tables in this Regulation are provided in ranges in order not to disclose confidential information related to that producer.

(25) In relation to dumping, only the export sales of the sampled exporting producers to EU27 were considered to calculate the definitive dumping margins.

(26) Finally, for the Union interest assessment, the Commission also enquired about the impact of the UK withdrawal on the questionnaire responses submitted by unrelated importers and users, namely Nova Trading S.A., Airoldi, TitanX Engine Cooling AB ('TitanX'), Multilaque SAS, Valeo, Company A and Amcor Flexibles Singen GmbH and received updated data, where applicable.

(27) On 12 January 2021, by means of a note to the file ([5]), the Commission informed companies and associations from the UK that they would no longer qualify as interested parties in trade defence proceedings. No interested party reacted to this note.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Change of the product scope in order to avoid applying two different anti-dumping duties on the same product

(28) The investigation revealed that the anti-dumping measures on AFRPs and the anti-circumvention measures on imports of certain aluminium foil imposed by Commission Implementing Regulation (EU) 2017/2213 ([6]) slightly overlap in terms of product definition for two TARIC codes, that is under 7607 11 90 44 and 7607 11 90 71. Although the overlap is extremely minor and only covers coils from 0,03 mm to 0,045 mm when presented with at least two layers, it would be illegal to apply simultaneously and cumulatively two different anti-dumping duties on the same product. Therefore, the Commission decided to correct the product scope of the measures in question in order to solve this issue and remove the coils from 0,03 mm to 0,045 mm when presented with at least two layers. This correction has no material impact on the analysis on the findings of the investigation.

(29) Consequently, aluminium products falling under TARIC codes 7607 11 90 44 and 7607 11 90 71 were excluded from the product scope.

2.2. Claims regarding the product scope

(30) As indicated in recitals (61) to (105) of the provisional Regulation, 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 heat exchangers 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.

(31) Following provisional disclosure, several parties provided comments on the provisional findings of the Commission which are addressed in this section below. Furthermore, four other users; i.e. Amcor Flexibles Singen GmbH ('Amcor'), Hitachi ABB Power grids ('Hitachi'), TDK Foil Italy S.p.A. ('TDK IT') and TDK Hungary Components Kft ('TDK HU') submitted additional product exemption requests relating to the following products: foil stock, AFRPs for use in the production of power transformers and AFRPs for use in the production of aluminium electrolytic capacitors.

([5]) t21.000389.

([6]) Commission Implementing Regulation (EU) 2017/2213 of 30 November 2017 amending Commission Implementing Regulation (EU) 2017/271 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 316, 1.12.2017, p. 17).

2.2.1. *Automotive HEX AFRPs*

2.2.1.1. Procedural aspects

(32) Valeo claimed that the submissions filed by the European Aluminium association ('EA') and Company B further to the provisional disclosure were submitted untimely except for document t21.003825. On the basis of Sections 7.ii and 8.ii of the Notice of initiation, Valeo submitted that the deadline to submit comments on other parties' submissions and to submit new factual elements coincided and should have been set to 10 May 2021 as far as its submissions are concerned. On this basis, it claimed that EA's and Company B's submissions filed after this date should be disregarded for the definitive findings.

(33) The Commission rejected this claim. In line with Section 8, last paragraph of the Notice of initiation and Section 5.7 of the same Notice, last paragraph, the Commission had requested EA and Company B to submit additional information ([7]) in the form of updates of information already submitted or supporting evidence with regard to certain claims and pieces of information. The additional information was necessary for the proper assessment of claims from other parties. As far as the timing of EA's comments is concerned, the Commission had granted an extension of the deadline to 28 May 2021 after having received a duly substantiated request ([8]). These comments were thus filed within the requested deadline.

(34) On 11 June 2021, Valeo provided comments on other parties' documents t21.003825, t21.004224, t21.004298 and t21.004304. As these documents had been available in TRON more than 7 days before Valeo's submission, the Commission considered that they had not been filed timely.

(35) Following definitive disclosure, Valeo claimed that the Commission's reasoning to consider its 11 June comments as untimely filed was contradictory, unsubstantiated and in violation of Valeo's rights of defence. In particular, it argued that the Commission considered the submission as untimely filed but still addressed its comments so that Valeo could not consider whether the comments had been considered admissible in their entirety and taken into account by the Commission. Furthermore, Valeo referred to the type of documents filed by EA and Company B; i.e. 'Comments', 'Hearing report/Submission', 'Submission' and 'Rebuttals'. It claimed that the 7-day deadline to comment on the information provided by other interested parties in reaction to the disclosure of the provisional findings mentioned in Point 8.ii of the notice of initiation did not apply to its submission which contained rebuttals to rebuttals and comments on newly submitted information.

(36) In this regard, the Commission considered that the 7-day deadline mentioned in Point 8.ii of the notice of initiation applied equally to both comments on other parties' submissions and to rebuttals to comments made by other parties. In this specific regard, the Commission confirmed that Valeo's submission was not filed timely. In any case, as mentioned in recital (10), the Commission considered all submissions received until 17 June 2021. Considering that the Commission thus took Valeo's comments of 11 June into account, and gave Valeo an opportunity to comment on the Commission's findings in this regard, the Commission did not consider that Valeo's rights of defence were violated. This claim was therefore rejected.

(37) Valeo also argued that Company B was allegedly given a very generous and unreasonably long extension of the 7-day deadline. In this regard, it should be noted that Company B's rebuttals were submitted within the 7-day deadline to comment on other parties' comments once the latter were available on the open file, and that no deadline extension was granted. This claim was therefore rejected.

(38) Valeo also argued that the Commission cited certain documents which were not published on the record and claimed that this represented a violation of its procedural rights as it considered EA's submission (t21.004221) as untimely, inadmissible and hence not worthy of a sub-rebuttal. Furthermore, Valeo referred to Section 9 of the Notice of initiation and considered that EA had been favoured in an arbitrary and discriminatory fashion when its deadline to comment on other parties' comments was extended by 18 days while other parties were generally granted extensions of 7 days.

([7]) See documents t21.004505 and t21.004607.
([8]) See document t21.004606.

(39) Valeo's claim concerning the availability of certain documents was found to be legitimate as the said documents were inadvertently not made available as part of the open file to parties upon definitive disclosure. Such documents were added to the open case file in the meantime. With regard to Valeo's claim relating to the inadmissibility of the comments and their assessment of such comments, the Commission noted that Valeo had sufficient time to provide comments on other parties' comments, including EA's submission, and that it actually commented on other submissions filed several days after EA's submission. Furthermore, the Commission assesses each deadline extension request individually as the reasons to request such extensions are company-specific and the Commission considered that the circumstances put forward by EA were of a nature to allow the requested deadline extension. In fact, the Commission did not refuse any request for deadline extension in the framework of comments following definitive disclosure. In this regard, the Commission did not consider that it had favoured EA in an arbitrary and discriminatory fashion. These claims were therefore rejected.

(40) Following definitive disclosure, Valeo requested the Commission to consider its submissions made between 11 June and 11 July 2021 ([9]). The Commission agreed and these comments were taken into account.

(41) In the same respect, TitanX claimed, after the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, that the comments submitted by Company B ([10]) were filed untimely and could not be verified. It invited the Commission to base its findings on the information submitted by interested parties through 10 May 2021. Should the Commission base its findings on the untimely submission of Company B, TitanX claimed that the Commission should also consider the information that it submitted to rebut Company B's arguments. Furthermore, TitanX also claimed that Company B's submission violated other interested parties' rights of defence as it did not identify the documents that it was rebutting or the company targeted by these comments.

(42) In this context, and as mentioned in recital (10), the Commission did not consider submissions filed after 17 June for its definitive disclosure. Yet, in order to ensure the rights of defence of all interested parties, TitanX's comments filed on 21 June 2021 were taken into account, where appropriate, as comments following final disclosure. Thus, the Commission confirmed that it took into account all submissions made by interested parties in this Regulation.

(43) As far as rights of defence are concerned, the Commission did not consider that Company B's submission violated other parties' rights of defence. To the contrary, Company B's submission, by not identifying other interested parties specifically, ensured that business secrets, whose disclosure could be detrimental to any or both parties, were not disclosed. Also, considering that the number of parties to this investigation active in the AHEX AFRP sector is limited and considering that the comments submitted by Company B were specific enough to allow other parties a reasonable understanding of their substance, the Commission did not consider that such comments breached the rights of defence of other interested parties. On this basis, this claim was rejected.

2.2.1.2. Analysis of the claims

(44) After provisional disclosure, comments were received from three users, the automotive supplier association, the European Automobile manufacturers' association (ACEA), BMW, one non-sampled exporter, Shanghai Huafon Aluminium Corporation ('Huafon'), and EA.

(45) Various parties claimed that AHEX AFRPs and other in-scope commodity AFRPs belong to different classes of products as they have different characteristics in terms of alloys, different R&D and validation processes. The exporting producer Huafon claimed that 95 % of the HVACR ([11]) and other applications do not utilise brazing as a joining technology for HEX AFRPs and resulted from a different manufacturing process. It also claimed that HEX applications in the HVACR and other segment do not use clad fin and clad tube. The same exporting producer claimed that a very high share of European AFRP sales consists of standard products as defined in the complaint

([9]) Documents t21.004496, t21.004676, t21.005226, t21.005296.
([10]) Document t21.004304 of 2 June 2021.
([11]) Heating Ventilation Air Conditioning Refrigeration.

which contradicts the Commission's statement in recital (69) of the provisional Regulation that most AFRPs have their own specifications depending on the application or requirements of the end-user concerned. Huafon added that the Union producers were not prepared to supply the unique products that they export.

(46) These parties also claimed that these differences lead to a lack of interchangeability.

(47) The Commission referred to its initial assessment that AHEX AFRPs share the same basic chemical, technical and physical characteristics with other AFRPs falling within the scope of the investigation (see recitals (67) to (68) of the provisional Regulation). Furthermore, these products are similar to HEX AFRPs, which also fall within the scope of the investigation. These are used for other applications such as HVACR which are composed of similar alloys (whether cladded or not) and are manufactured on the same production equipment. Also, as mentioned in recital (73) of the provisional Regulation and confirmed by EA, AHEX AFRPs are not the sole products sold to Tier 1 (that is the biggest on the market) automotive suppliers, which, among many other products need to go through a R&D and validation process.

(48) Huafon's claims relating to HVACR were not substantiated. In any case, the evidence on file shows that AHEX AFRPs and HVACR AFRPs share the same basic chemical, technical and physical characteristics and that they are manufactured using the same production equipment. In addition, publicly available sources ([12]) contradict the claim that HVACR AFRPs do not utilise brazing as a joining technology. Also, Huafon did not provide any supporting evidence to the claim that a very high share of European AFRP sales consisted of standard products nor that their products could not be manufactured by the Union industry or substituted with other products.

(49) As far as interchangeability is concerned, the Commission referred to recital (70) of the provisional Regulation. Similarly to other in-scope products, AHEX AFRPs may not be interchangeable with other AFRPs as they may have their own specifications depending on the application or requirements of the end-user concerned. However, as indicated by EA, this does not make them unique and it does not imply that they do not share the same basic physical, chemical and technical characteristics as other products that fall within the scope of the investigation. In that regard, EA also argued that AHEX AFRPs are interchangeable with other HEX AFRPs as they are similar in chemical composition and/or as regards their specifications within the technical tolerances relevant for the specific applications. On this basis, these claims were rejected.

(50) TitanX and Valeo claimed that, in line with existing case law ([13]), the Commission should not attribute decisive importance to the existence of allegedly identical basic physical, technical and chemical characteristics of the two classes of product. The same parties also claimed that the Commission failed to explain which other elements are decisive to conclude on the existence of the same basic features between the two classes of products.

(51) At the outset, it must be recalled that the basic Regulation does not directly define the concept of the 'product concerned' and that the Commission has considerable discretion in this area, provided only that 'the requirement that the product under consideration be homogeneous should not be entirely excluded from the interpretation of the basic Regulation' ([14]). Furthermore, the case law relied on by the interested parties states that the physical, technical and chemical characteristics are 'naturally important' but does not necessarily have priority. Indeed, there are a range of factors the Commission may rely on, but these are indicative and the Commission is under obligation to determine the product concerned using all of those criteria. Importantly, it necessarily follows that products which are not identical may be grouped together under the same definition of the product concerned, and the

([12]) http://www.eurofoil.com/our_products/automotive_industrial.html
([13]) *Photo USA Electronic Graphic v Council*, Case T-394/13, EU:T:2014:964, at para. 41.
([14]) *Portmeirion Group UK*, Case C-232/14, EU:C2016:180, paras. 40-47.

examination of whether a specific product has been validly included is to be based on the characteristics of the product concerned as defined by the Commission ([15]). In its analysis in the present case, the Commission did not rely solely on the fact that AHEX AFRPs share the same basic physical, technical and chemical characteristics as other AFRPs. Indeed, the Commission established that:

(1) AHEX AFRPs belong to the product group of HEX AFRPs which includes not only automotive HEX but also HEX destined for HVACR and other applications and that these products can be clad or unclad;

(2) the types of alloys used for AHEX AFRPs are similar or closely resembling other alloys used for other in-scope AFRPs;

(3) AHEX AFRPs are produced by using the same manufacturing process as described in recital (56) of the provisional Regulation and use to a large extent the same equipment as other AFRPs;

(4) it is not a niche product;

(5) similarly to other in-scope AFRPs, it is sold to Tier 1 automotive suppliers and/or follows a validation process; and

(6) their price was not significantly higher than the other products within the product-scope of AFRPs.

(52) On that basis, the claim by TitanX and Valeo was rejected.

(53) Various parties claimed that the Commission's assessment on Union production capacity was based on incorrect facts and lacked reasoning. They indicated that the conclusions were not supported by record evidence or were insufficiently reasoned and that other interested parties could not comment on such data.

(54) TitanX and Valeo claimed that the Commission should not have relied on DG COMP's decision regarding the acquisition by Gränges of Impexmetal as such decision assumed the presence of other supplying parties including Chinese producers and the situation on the AHEX AFRPs market has changed significantly as EU suppliers lack available capacity and Chinese suppliers do not represent anymore a viable supply option following the imposition of AD measures.

(55) The Commission's finding that the Union industry has sufficient capacity to meet the current demand as mentioned in recital (75) of the provisional Regulation is not solely based on the Commission decision regarding the merger of Gränges and Impexmetal ([16]). Indeed, it also relied on other information ([17]) already on the file when the Commission reached its provisional conclusions (and confirmed by the above mentioned Commission decision). Furthermore, it relied on additional information supplied after the provisional disclosure which confirmed and supported the provisional Commission's assessment. It should be noted that interested parties had the opportunity to comment on such new information ([18]).

(56) Valeo also claimed that the Commission ignored the extensive information pointing to a lack of available capacity in the provisional Regulation. Valeo and TitanX also provided additional documents pointing to increased lead times and capacity issues in the form of e-mail extracts. In this regard, the Union industry argued that the slightly increased lead times and the temporary capacity issues were linked to the sudden and strong post-COVID recovery. This led to an overall increase in demand. Other elements, such as a container shortage in the PRC, also contributed to an additional increase in demand in the EU. The Union industry also explained that the requested volumes went

([15]) *Yingli Energy (China) v Council*, Case T-160/14, EU:T:2017:125, paras. 111-114.

([16]) 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

([17]) See document t21.000866.

([18]) See document t21.004336.

beyond the agreed volumes and that, considering the post-COVID situation, such increase in demand could not be absorbed instantly without increasing the workforce. In order to do so, the Union industry claimed that it needed medium term visibility in the form of signed contracts, and not spot orders, to determine the expected volumes and required workforce. Also, the Union industry provided satisfactory explanations showing that certain e-mail extracts provided by users could be misinterpreted as pointing to a structural lack of capacity but actually related to a temporary shortage situation.

(57) Following definitive disclosure, Valeo claimed that it could not be blamed for requesting volumes that go beyond the contractual agreements and that there is an increasing need for AHEX AFRP due to the boom in demand in the electric mobility sector. Valeo also added that the inability of the Union industry to quickly adapt to the increasing demand was the most clear sign of the major and structural capacity constraints faced by the Union industry.

(58) In this regard, even if considering allegations about post-IP developments, the Commission considered that the Union industry was adapting to the increase in demand and that the capacity constraints were of a temporary nature. Indeed, those allegations showed that users were negotiating new contracts with the Union industry. On this basis, this claim was rejected.

(59) In addition, the Union industry argued that the main users of AHEX AFRPs claiming a lack of capacity did not submit requests for quotations pertaining to additional volumes to be delivered on top of the already existing contract volumes to the majority of the AHEX AFRPs suppliers. This claim undermines the lack of available capacity. In any case, the Commission observed that it appears from the information on file that certain users could source or are planning to source additional quantities from the Union industry. Consequently, the Commission rejected the claim that the Union industry does not have sufficient production capacity.

(60) Following definitive disclosure, Valeo explained that the fact that it had not launched formal requests for quotations was linked to the numerous refusals that it had faced and was therefore expecting a negative reply. Furthermore, Valeo argued that it engaged in negotiations for the delivery of AHEX AFRPs with a Union producer.

(61) In this regard, the Commission considered that Valeo's comment was speculative and could not be considered as supporting evidence relating to requests for quotations. The Commission also noted that the negotiation to which Valeo referred did not relate to additional volumes but to a contract renewal after the IP and, thus, those allegations were rejected.

(62) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, TitanX claimed that the terms of its new contract were less favourable than past contracts and that the new contract did not solve the problems posed by the entry into force of provisional anti-dumping duties. Also, it argued that the new contract did not fully address the supply issue as TitanX would have to continue sourcing at artificially high prices from the PRC for a given period of time.

(63) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, Valeo reiterated that the Union producers do not have the capacity to meet the entirety of the EU demand for AHEX AFRPs and provided sensitive documents describing certain capacity issues and commercial behaviours.

(64) Following definitive disclosure, TitanX claimed that the capacity issue faced by the Union industry should not be considered as temporary in view of its duration. It reported other recent issues having an impact on its supply chain and complained about the opportunistic and abusive behaviour of certain major Union producers.

(65) Following definitive disclosure, Valeo claimed that the reasons invoked by the Commission to refute Valeo's claim of lack of capacity (post-COVID recovery, freight costs and unavailability of raw materials) did not address the many instances documented on the record allegedly pointing to chronical and systemic capacity issues experienced by Union producers.

(66) In this respect, even if considering allegations about post-IP developments, the Commission considered that, given its duration, the situation described by TitanX and Valeo was not of a systemic, chronical or structural nature but rather a temporary situation allowing the Union industry to adjust to the new market situation in a context of strong post-COVID economic recovery. This is also evidenced by the situation described in recital (61) pointing to a temporary issue linked to the imposition of provisional anti-dumping measures. Thus, the Commission confirmed its findings on the basis of the evidence during the IP and rejected this claim.

(67) As for the other issues referred to, even if considering information about post-IP developments, the Commission did not consider that they would correspond to abnormal business relationship developments in general but rather to negotiation practices in a period of tension on the market. Thus, the findings made on the basis of the evidence during the IP would remain unchanged. In any case, as mentioned in recital (552), it should be recalled that the purpose of anti-dumping measures is to restore a fair and level playing field, their result normally being an increase in prices on the Union market.

(68) Furthermore, as mentioned in recital (56), the Commission did not invoke reasons such as freight costs and unavailability of raw materials to refute Valeo's claim on lack of capacity. As mentioned in recital (152), such elements were used to explain the recent price increase, not the lack of capacity. On the contrary, the Commission relied on the post-COVID economic recovery to explain the current market situation. On this basis, these claims were rejected.

(69) Following definitive disclosure, Valeo also claimed that the Commission failed to consider all evidence on the record and failed to provide sufficient and consistent reasoning in support of its findings on the AHEX AFRP capacity. It added that the Commission is under an obligation to consider all opposing data on the record and decide which ones have the highest evidentiary value. In particular, Valeo first complained about the allegedly 'extremely' deficient public summaries of certain documents ([19]) used by the Commission for its findings. In this regard, Valeo considered that the use of such redacted information constituted a violation of Valeo's rights of defence. Furthermore, Valeo claimed that the 54 % production capacity utilisation reported by the Union industry for AHEX AFRPs in 2020 contradicted the alleged 'temporary' capacity issues faced in the first part of 2021 and could not be explained by the 'sudden and strong post-COVID recovery'. In this regard, Valeo pointed to self-inflicted injury when the Union industry was allegedly not able to supply in 2021 while it had such a low utilisation rate in 2020.

(70) The Commission disagreed and considered that it had taken all the relevant evidence on the record into account in order to reach meaningful and impartial conclusions based on sufficient and consistent reasoning. First, the Commission considered that the open version of the documents it relied on contained a summary of the sensitive information that allowed all interested parties a reasonable understanding thereof. The Commission also noted that Valeo did not request a revised open version of such documents. In this regard, the Commission did not consider that Valeo's rights of defence had been violated. As far as the capacity utilisation rate and alleged self-inflicted injury were concerned, it should first be noted that, as mentioned in recital (117), the Commission did not rely on EA's submission showing a 54 % capacity utilisation in 2020 to assess production capacity but conservatively relied on the shipments by the Union industry. Furthermore, it should be noted that the contradiction described by Valeo corresponds to 2 different years (2020 vs 2021) where the economic situation differed significantly, leading to very different levels of growth and demand for AFRPs.

(71) Furthermore, TitanX contested some statements made by Company B regarding alleged difficulties to source from the PRC due to factors such as the container shortage or supply difficulties with Chinese suppliers. It also contested statements that Company B's delivery situation had improved and that HEX producers had not exhausted the options to find additional sourcing from other Union producers or that the requested volumes for 2022 would be lower than in 2021.

(72) The Commission considered that the unsupported and contradictory allegations made by Company B and subsequent rebuttals by TitanX related to company-specific elements within a business relationship which the Commission could not verify.

([19]) t21.000866 and t21.004336.

(73) Valeo also argued that EA had misled the Commission on their available capacity with false submissions in this regard. EA claimed that Valeo's allegations concerning its submissions were false and unacceptable. It also argued that these claims were not substantiated with evidence on the open file. The Commission confirmed EA's comment and rejected Valeo's claim in this regard.

(74) Various interested parties claimed that the Union industry's investments would not be sufficient to meet the projected increase in demand driven by the switch from internal combustion engine ('ICE') vehicles to electric/hybrid vehicles by 2026. In the same context, ACEA considered that the increase in demand would exacerbate the capacity issues.

(75) TitanX claimed that there is a lack of available capacity for the supply of AHEX AFRPs for the manufacturing of powertrain cooling solutions for commercial vehicles. The demand for such product is expected to grow in 2021 and the trend is expected to continue in 2022.

(76) In this regard, Valeo and the Union industry provided their consumption projection until 2026 as far as AHEX AFRPs are concerned. These projections were based on the number of light vehicles per engine type to be produced and on the weight that AHEX AFRPs will represent for each engine type (internal combustion, electric, full hybrid, plug-in hybrid, mild hybrid, etc.).

(77) Based on the Union industry's projection, AHEX AFRP consumption/demand is expected to increase from [195 – 215] ([20]) thousand tonnes in 2019 to [220 – 270] thousand tonnes in 2026 corresponding to an overall 28 % increase. In its detailed calculations, the Union industry provided the AHEX AFRP weight per car (based on market intelligence provided by members of European Aluminium) and the expected vehicle production volume by engine type (based on Ducker Frontier/LMC Automotive ([21]) August 2020) in a transparent way. In its turn, Valeo only indicated that the Union total available capacity, would be on average 17 % lower than demand over the period 2021-2027 without providing other information on which other parties could comment.

(78) As mentioned in recital (34), Valeo's submission of 11 June 2021 was not filed timely and part of the comments raised related to a document on capacity and supply projections ([22]) added to the file by EA before provisional disclosure, and to which Valeo already had access.

(79) In its other comments, Valeo agreed with the consumption volume for the year 2019 and considered that it was also valid for the year 2021. However, Valeo considered that EA's split of the production volume between ICE and other hybrid vehicles (around 50 % vs 50 %) was incorrect as the share of hybrid vehicles would be much higher in 2026 (around 73 % vs 27 %). In this regard, it referred to IHS Markit, a market intelligence company allegedly consulted by the entirety of the automotive industry and which it used in its projection ([23]). It could however not be ascertained that the information was provided by IHS. In any case, Valeo's calculations of the share of ICE vehicles in 2026 based on EA's projection is inaccurate. Indeed, EA's projection is that ICE vehicles will represent 40 % (and not 50 %) of the production. Furthermore, Valeo's claim that EA's total production projection would be in the area of 16 million vehicles in 2026 is also wrong as EA reported a total output of around 20 million for that period.

(80) In a search for another source of information, the Commission consulted an article published by the Boston Consulting group ('BCG') ([24]), provided by the European association of automotive suppliers (CLEPA), which confirmed that the share of non-ICE vehicles will increase in the coming years. According to this source, the projected market share of ICE vehicles (diesel and gasoline) will decrease to 36 % in 2025; i.e. much closer to EA's figure than to Valeo's. Consequently, the Commission found that EA's projections of the future market developments regarding ICE reflected more closely what are currently expected to be the future trends in the next 5 years.

([20]) Given the sensitivity of some figures, they were presented using ranges.
([21]) LMC defines itself as the leading independent and exclusively automotive focused global forecasting and market intelligence service provider of automotive sales, production, powertrain and electrification.
([22]) See document t21.001354.
([23]) Source IHS - 2020M06.
([24]) https://www.bcg.com/publications/2021/why-evs-need-to-accelerate-their-market-penetration

(81) Valeo also claimed that EA considered that ICE and hybrid vehicles require an equal volume of AHEX AFRPs which is allegedly in contradiction with information shared between Company B and Valeo, which points to a higher AHEX AFRP weight and need for hybrid vehicles than for ICE vehicles.

(82) In this regard, it should first be noted that EA did make a distinction in the consumption of AHEX AFRPs between ICE and hybrid vehicles and considered that hybrid vehicles would on average require more AHEX AFRPs than ICE vehicles. Second, the information shared between the Union producer Company B and Valeo cannot be considered representative of the actual difference between standard ICE and hybrid vehicles. Indeed, this information refers only to a given product using AHEX AFRPs (chiller) and the mentioned quantities represent only an insignificant part of Valeo's purchase volume for the year 2019 or the IP. Also, the impact of the size of the project and a potential increase in the number of pieces ordered by the downstream OEM user could not be established. Third, the investigation revealed that the weight of AHEX AFRPs per model will vary depending on the type of hybrid vehicle (mild/plug-in/full hybrid). As a matter of fact, mild hybrid vehicles require only slightly more AHEX AFRP than ICE vehicles and they will represent a major share of the non-ICE vehicles up to 2026. On this basis and in the absence of other comments concerning the quantity of AHEX AFRPs required per type of vehicle, the Commission considered that the EA's estimate regarding the consumption ratio for different types of vehicles was reasonable.

(83) As far as existing capacity and additional capacity investments are concerned, some parties claimed that the Commission should not extrapolate the data of the sampled Union producer Elval to the whole Union industry. Also, Valeo claimed that, based on 'extremely accurate and conservative data', the investment plan presented by Company B was not sufficient to cover the forecasted demand for AHEX AFRPs between 2022 and 2025, based on its consumption projection. In its turn, CLEPA claimed that the Union industry did not substantiate its investments to expand capacity by compelling evidence or sufficient reasoning. Valeo also claimed that Company B's statement that they are currently approaching the maximum machinery park capacity was in contradiction with the reported capacity utilisation presented in document t21.004224 where Company B reports an [80-88 %] capacity utilisation forecast for 2021.

(84) First, it should be noted that the Commission did not extrapolate Elval's data to the Union industry and considered such information for Elval only. Furthermore, as far as Company B's data is concerned, Valeo relied on an inaccurate assumption relating to the allocation of production capacity to AHEX AFRPs. Indeed it considered the [60-70 %] allocation to HEX applicable only in 2021, for the entire 2022-2026 period while Company B indicated that the extra installed capacity would be allocated to HEX depending on the commercial conditions but at least growing with the demand. By doing so, Valeo underestimated by [30-40 %] the installation of additional capacity for HEX products.

(85) Further to CLEPA's comments, the Commission requested the Union industry to complement the sensitive information already available on file in the form of questionnaire replies, mission exhibits and other sensitive documents with additional evidence available to other parties as well as to clarify certain figures and make certain corrections. The additional information provided by EA ([25]) and Company B ([26]) confirmed the provisional findings.

(86) Besides, the Commission failed to see the contradiction between the capacity utilisation forecast and Company B's statement. Indeed, contrary to Valeo's claim, Company B does not state that it is at full capacity rather that it is currently approaching such capacity utilisation while the [80-88] % capacity utilisation forecast relates to the year 2021 as a whole; i.e. the situation in a given moment (when Company B is currently approaching full capacity) should not be extrapolated and compared to a forecast relating to a full year.

(87) To summarise, the Commission compiled the following demand and supply forecasts ('FC') for the years 2021 and 2026.

([25]) See document T21.004336.
([26]) See document t21.004298.

Table 1

Supply and demand for AHEX AFRP in the EU (1 000 tonnes)

	2021 FC	2026 FC without imports from the PRC	2026 FC with imports from the PRC	2026 Valeo FC without imports from the PRC	2026 Valeo FC with imports from the PRC
Demand	[200 - 220]	[265 - 275]	[265 - 275]	[295 - 315]	[295 - 315]
Imports from China	[20 - 30]		[20 - 30]		[20 - 30]
Imports from Turkey	[15 - 25]	[15 - 25]	[15 - 25]	[15 - 25]	[15 - 25]
Union capacity	[180-200]	[180-200]	[180-200]	[195-215]	[180-200]
Additional capacity		[50 - 70]	[50 - 70]	[50 - 70]	[50 - 70]
Surplus (*shortage*)	[15 - 25]	[5 - 10]	[25 -35]	*-[10 - 20]*	[5 - 15]
% of demand	9,5 %	2,3 %	11,7 %	*-5,5 %*	2,7 %

(88) The sources for the above values are the following. For the above table, demand was based on EA's consumption projection ([27]) adapted to BCG's split between ICE and non-ICE vehicles. Valeo's consumption projection ([28]) was reported as submitted.

(89) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, Valeo provided revised forecast figures based on a May 2021 market report from research firm IHS Markit. On the basis of that report and Valeo's projected AHEX AFRP weight per car engine type, Valeo claimed that demand would reach [320 – 350] thousand tonnes in 2026 following an expected increase in car production and an acceleration of the electrification trend. On this basis, it claimed that EA's demand projection was underestimating future demand even more and reiterated that the Union industry could not meet current demand and supplied email exchanges in this regard. Valeo also reiterated that the Union industry's planned investments were insufficient to meet future demand.

(90) Following definitive disclosure, Valeo further contested the Commission's reliance on the BCG article to reject Valeo's estimates of future AHEX AFRPs demand on various grounds and considered that the Commission's demand estimate was outdated and should be revised in light of the new forecast provided. Furthermore, Valeo referred to the 'Fit for 55' legislative package under the European Green Deal as an important development not taken into account in other forecasts and which specifically included proposals aiming at a reduction of the net greenhouse emissions and a reduction of the average emissions of new cars by 55 % from 2030 and 100 % from 2035 as compared to 2021. In this context, it argued that the demand projection of Table 1 and recital (87) was obsolete and that future projections would significantly increase as a result of the Green Deal. In this context, it requested the Commission to use Valeo's demand forecast based on the May 2021 IHS Markit report which showed a faster increase in future demand for AHEX AFRPs than the reports provided previously by Valeo or EA. Furthermore, Valeo argued that IHS Markit was a better source than Ducker and LMC Automotive ('LMC'), that it was more up to date (at the time of submission) and it was accessible to other parties (through meaningful non-confidential versions or upon purchase).

(91) Valeo's reiterated claim (see recital (89)) that the Union industry could not face current demand was already addressed in recitals (64) to (66).

([27]) See document t21.001354.
([28]) See document t21.003632.

(92) Further to Valeo's comments relating to the existence of more up to date information, EA was requested to provide an updated demand forecast. The demand forecast EA provided was based on two sources; IHS Markit Light Vehicle Production Forecast of 5 July 2021 and DuckerFrontier (May 2021) based on LMC Automotive Q1/2021. The IHS Markit data was highly detailed and included the forecast production volumes per country of production, thus allowing the identification of the volume to be produced in the Union. The LMC automotive Q1/2021 data set did not relate to the Union market only and was adjusted downward on the basis of the IHS Markit production forecast of 5 July 2021 to correspond to EU27. Furthermore, the LMC Automotive data was also used to establish the split between the different engine types. On the basis of these updated statistics and on the basis of EA's AHEX AFRP weight per car engine type, EA projected that the demand would increase from [188 – 195] thousand tonnes in 2019 to [222 – 263] thousand tonnes in 2026.

(93) Further to the EA's submission, Valeo commented that the lower limit for 2026 was below the demand estimated by the Commission in Table 1 and that this value was illogical in view of the expected growth in demand due to the electrification of the automotive sector.

(94) In this regard, the Commission noted that, contrary to previous demand projections, EA's latest projection related exclusively to the EU27, which explained why, despite showing a significant increase in demand, the projection started from a lower level. Therefore, the Commission considered that EA's estimate was logical as it showed an increase in demand over the period 2019 – 2026 in line with the electrification trend.

(95) Valeo also claimed that the sources used by EA pre-dated the Commission's announcement of the Fit for 55 Green deal of 14 July 2021 and that EA was aware of that announcement, but that EA had not taken that element into account in its estimate of the demand. On this basis, it argued that EA had not cooperated to the best of its abilities. Furthermore, Valeo requested the Commission to estimate future demand either on the basis of the IHS Markit report referred to in recital (90) after updating it upwards to take account of the Green Deal impact or on the basis of the newly submitted ([29]) updated LMC Automotive statistics of 29 July 2021 which allegedly considered the impact of the Green Deal. On this basis, Valeo demand estimate for 2026 reached [340 – 380] thousand tonnes.

(96) The Commission considered that EA had cooperated to the best of its abilities as EA had used the most recent IHS Markit statistics at its disposal. In any case, according to Valeo and a 'leading industry association', IHS Markit is a better source than Ducker and LMC. Furthermore, the Commission considered that the information provided by EA was sufficiently recent to estimate future demand as accurately as possible. In addition, Valeo did not provide evidence showing that the Green Deal announcement had not been anticipated by research firms such as IHS Markit or LMC, especially when considering that they produce such reports on a regular basis and that the Green Deal announcement only formalised what market experts had already anticipated before ([30]). Furthermore, as indicated by Valeo, precise future forecasts would in any event be subject to discussions with its OEM customers to determine future needs.

(97) The Commission also considered the most recent forecasts provided by Valeo but rejected them as the analysis of the information supplied by Valeo referred to in recitals (89) and (95), and which was supported with underlying data in its comments on definitive disclosure, showed that its demand estimates (whether based on IHS Markit or LMC) were overestimated as they did not relate to engine installation or car production in the Union, but also included engine installation or car production in other countries such as the UK, Russia and Turkey. As a matter of fact, the IHS Markit reports used by Valeo overestimated the yearly engine installation in the Union by over 18 % over the period 2021-2026. While the provided LMC reports did not allow a distinction per car production country, they clearly referred to a greater geographic scope than the Union as they included CIS countries and presumably other countries, such as the UK and Turkey, where car production is taking place in significant quantities. On this basis, it was considered that the geographical scope of these statistics was too broad and should not be used in order to assess AHEX AFRP demand in the Union. In this context, the Commission considered that the projected demand supplied by EA, as mentioned in recital (103), was more appropriate as it related to the EU only and, it was based on a sufficiently recent IHS Markit report, which, as mentioned in recital (90), Valeo considers a better source than Ducker and LMC.

([29]) See document T21.005701.

([30]) Ducker, The Electrification Trend's Impact on the Aluminum Industry, https://ducker.com/the-electrification-trends-impact-on-the-aluminum-industry/

(98) Following definitive disclosure, TitanX claimed that the Commission's demand forecast was obsolete and did not take commercial vehicles into account. It referred to the European Green Deal and to the announced legislative proposals aiming at reducing greenhouse gas emissions in general and in the automotive sector in particular. In this context, it claimed that the new emission targets would increase the pace of electrification in the automotive industry and lead to an increase in demand for AHEX AFRPs. In this respect, it invited the Commission to consider Valeo's demand forecast mentioned in recitals (89) and (104).

(99) As far as TitanX's claim relating to commercial vehicles is concerned, as mentioned in recital (115), the Commission took only 85 % of the average shipment volume to the EU destined for transport into account in order to conservatively assess the demand for light vehicles only. As such, the remaining 15 % included the shipments destined for commercial vehicles. In the absence of any information pointing to different conclusions in this regard or evidence concerning the future demand for commercial vehicles, it was considered that the Union industry had sufficient capacity to serve demand for this particular sector. Therefore, this claim was rejected.

(100) Following additional disclosure, Valeo and CLEPA contested the Commission's approach to exclude car production in countries such as Turkey, Russia and the UK from its calculations. In this regard, Valeo argued based on Eurostat statistics and its own records that there are significant exports of HEX components to Russia, Turkey and the UK. Also, it argued that there is very limited HEX components production in these countries and that these countries heavily rely on imports from the Union. In its turn, CLEPA claimed that the vehicle production outside the Union is responsible for a significant share of production by automotive suppliers in the EU and that there is limited production capacity for AHEX outside the EU. CLEPA also claimed that the share of EU parts or EU added value in vehicles produced in the UK, Russia or Turkey was significant. Hence, CLEPA claimed that exports generate significant revenues for EU automotive suppliers and that production of automotive suppliers should not just be determined by vehicle production in the EU itself, but by the wider region as well. On this basis, Valeo and CLEPA argued that the demand for AHEX AFRPs should be based on the actual needs of AHEX producers regardless of the destination of their products. Furthermore, Valeo argued that if AHEX destined for export were not taken into account, Union interest would not analysed properly.

(101) As mentioned in recital (145), the Commission acknowledged the existence of exports of HEX components by certain AHEX producers. However, the Commission disagreed with the fact that the car production in these countries should be taken into account as a whole for the assessment of the demand in the EU. Indeed, the claim that such countries heavily relied on imports from the Union was not substantiated with supporting evidence. As acknowledged by Valeo, the Eurostat statistics did not relate exclusively to AHEX and included other products. While acknowledging the existence of AHEX production capacity in these countries, Valeo did not quantify the production capacity of the domestic AHEX producers that it mentioned. In addition, it could not be excluded that these markets would not be supplied by domestic AHEX suppliers ([31]) other than those quoted by Valeo or by non-EU AHEX producers. On this basis, the Commission considered that Valeo had not demonstrated that AHEX producers located in the Union were supplying these countries in such proportions that such markets were heavily relying on the Union producers of AHEX. Furthermore, the Commission considered that CLEPA's claims were not specific enough as they did not relate to AHEX in particular but rather to the export activities of automotive suppliers in general.

(102) Based on the elements on file, the Commission recognised the existence of certain commercial links between AHEX producers located in the Union and car manufacturers in countries such as Russia, Turkey and the UK. However, in the absence of specific information allowing the identification of the AHEX exports to these countries, the Commission could not base its findings on the geographical scope referred to by Valeo in its projected AHEX AFRP demand. In any case, the Commission considered that the demand on the Union market should primarily be based on the car production in the Union, especially in the light of the Green deal, which concerns the Union exclusively.

([31]) The Commission identified the following AHEX manufacturers in Turkey, Russia and the UK: www.yetsan.com.tr, https://www.denso.com/tr/en/about-us/company-information/dntr/, https://www.akg-turkey.com/en/akg-group/about-akg-turkey/, https://www.oris.com.tr/, https://www.hanonsystems.com/En/Company/Network#tab1-3 and https://karyergroup.com/ (Turkey); https://www.ugmk.com/en/activities/radiators/, http://www.trm-nn.ru/ru/produktciya/ and https://luzar.ru/en/about/ (Russia); and https://www.mahle.com/en/about-mahle/locations/great-britain.jsp; https://www.denso.com/uk/en/about-us/company-information/dmuk/ and https://www.alutec.co.uk/ (UK).

Furthermore, the analysis of demand as presented in recital (127) and supply as presented in Table 1 would still allow the Union industry to supply additional quantities necessary to produce AHEX to be exported. Moreover, AHEX producers in the Union can apply for an authorisation to import AFRPs under the inward processing regime which, if granted by the customs authorities in accordance with customs legislation, would allow them to then export the resulting AHEX without being subject to the anti-dumping duties. Therefore, the burden and financial impact on the export activities of AHEX producers would be very limited. On this basis, Valeo's and CLEPA's claims were rejected and the Commission considered that Union interest had been assessed properly.

(103) On 12 August 2021, EA provided an updated AHEX AFRP demand forecast based on a more detailed IHS Markit Light vehicle production report identifying the engine types. That report was issued at the same time as the 5 July 2021 report mentioned in recital (91) and these reports were consistent. On that basis, EA's lower end forecast increased from 222 to 232 thousand tonnes. EA's forecast based on DuckerFrontier/LMC Automotive Q1/2021 remained identical at 263 thousand tonnes.

(104) When comparing the 5 July 2021 IHS Markit with the 29 July 2021 LMC split per engine type, the Commission observed that the LMC data, which allegedly took the Fit for 55 legislative package into account, still projected a much higher share for ICE (40 %) for the year 2026 than the IHS Markit data of 5 July (22 %) published before the Fit for 55 legislative package announcement and used by EA for its projection.

(105) On the basis of the above, the Commission considered that it was difficult to foresee the level of the AHEX AFRP demand for 2026 with a high degree of accuracy as there are still a number of uncertainties with regard to the implementation of the Fit for 55 legislative package into the electrification of mobility and the light vehicle car production in particular. In any case, the Commission considered that EA's forecasts on demand, whether based on the latest IHS Markit data available as recommended by Valeo or on the higher values of the LMC data, were reasonable.

(106) Following additional disclosure, Valeo commented that the Commission's observations relating to the 29 July 2021 LMC data were incorrect. Valeo pointed out that the LMC data did not relate only to the EU27, but also took the slower automotive electrification efforts in Turkey and Russia into account, resulting from the absence of legislation equivalent to the Green Deal. On this basis, Valeo claimed that the LMC data was complete and reliable, and should therefore have been taken into account by the Commission. Furthermore, it claimed that the Commission did not present relevant data relating to the share of ICE, electric and hybrid vehicles and that the Commission should consider the LMC data in its assessment of the forecasted demand for AHEX AFRPs on the grounds that, while IHS Markit is the most authoritative source, the LMC data are the only data on the record that quantify the impact of the Green Deal announcement.

(107) In the absence of available LMC data per country of production, the Commission was not in a position to confirm Valeo's comments relating to slower pace of electrification in Russia and Turkey allegedly taken into account by LMC. In any event, as mentioned in recitals (97) and (101), the Commission considered that the geographical scope of the LMC data was inappropriate in order to assess domestic demand; that the information provided by EA was sufficiently recent to estimate future demand; and that there are indications that market experts had anticipated the Green Deal announcement. Besides, Valeo did not provide evidence showing that the Green Deal announcement had not been anticipated by research firms such as IHS Markit. In the absence of appropriate LMC data; i.e. limited to EU27, the Commission thus considered IHS Markit data of 5 July as the most recent and most appropriate basis for assessing the AHEX AFRP demand in 2026. In addition, the Commission also notes that Valeo cannot logically consider IHS as a more authoritative source than LMC and then request the Commission to use LMC data, especially when its geographical scope is inadequate. On this basis, this claim was rejected.

(108) Following additional disclosure, Valeo also provided new simulations regarding the capacity and investment projections of the Union industry based on the 29 July 2021 LMC data. Valeo claimed that the Union industry could not meet future demand in the period 2021-2027 even if car production volumes were reduced by 18 %.

(109) In this regard, it should be noted that such submission of new simulations was made after the deadline for comments on the definitive disclosure and that the additional disclosure did not relate to Union capacity or investments. On this basis, these elements could not be taken into account. In any case, as set out in recital (107), the LMC data could not be accepted. Furthermore, the Commission considered that the LMC data, even when reduced by 18 %, still overestimated the projected EU27 demand significantly. Indeed, on the basis of the latest IHS Markit data (05 July 2021), production in non-EU countries over the period 2021-2027 represented between 26,8 and 30,5 % of the EU car production, as opposed to 18 %. On the basis of the above, this claim was rejected.

(110) Following additional disclosure, Valeo and CLEPA claimed that the Commission's conclusion that Union demand could be absorbed by the projected Union industry's capacity and projected imports from third countries was vitiated by a lack of reasoning and not supported by any quantitative analysis. More specifically, Valeo claimed that, contrary to the general disclosure document, the additional disclosure did not contain an equivalent summary to Table 1, which did not allow Valeo to properly exercise its rights of defence and comment on the sufficient capacity in the EU for meeting demand of AHEX AFRPs. In addition, Valeo claimed that the additional disclosure did not address the 'dozens of emails and other evidence submitted by Valeo' regarding the repeated refusal by Union producers to supply sufficient quantities of AHEX AFRPs. By not properly assessing such evidence, Valeo claimed that the additional disclosure was vitiated by insufficient reasoning and by a manifest error of assessment of the facts.

(111) In this regard, the Commission considered that the additional disclosure document contained sufficiently detailed information relating to the submissions made following the general disclosure document and that parties could easily refer to the parties' original submissions. Furthermore, the additional disclosure document, as reflected in recitals (92) and (98), reported the latest projected AHEX AFRP demand as submitted by EA. The Commission had used information that was available to parties and Valeo could simply replace the projected demand, contained in Table 1 for the year 2026, by the information contained in the additional disclosure document, that also referred to the submissions by EA. Therefore the Commission considered that the additional disclosure contained the necessary reasoning and quantitative analysis. As far as Valeo's rights of defence are concerned, the Commission considered that the additional disclosure was sufficiently detailed to allow Valeo to exercise its rights of defence. Moreover, the additional disclosure concerning the Union industry's capacity did not contain any new elements not already available on the open file.

(112) Furthermore, the Commission considered that the evidence supplied by Valeo with regard to the supply difficulties did not justify an additional disclosure as the nature of those claims was not new. Those claims were already addressed in recital (91).

(113) Valeo also claimed that the additional disclosure's findings were illogical and lacked sufficient and adequate reasoning. In essence, it claimed that since the Commission had concluded that the Union industry would not have sufficient capacity to meet a demand of [295 – 315] ([32]) thousand tonnes, it could not absorb a higher demand based on Valeo's projections of up to [340 – 380] ([33]) thousand tonnes. On this basis, it claimed that the Commission was neglecting the impact of the Green Deal.

(114) As mentioned in recital (97), the Commission considered that Valeo's previous and latest demand projections were not based on an appropriate geographical scope and overestimated significantly car production in the Union and, consequently, the demand for AHEX AFRPs in the Union. On the basis of the latest projected car production figures and using the appropriate geographical scope as mentioned in recital (98), the Commission considered that EA's estimates ranging from 232 to 263 thousand tonnes were reasonable. On this basis and on the basis of the estimated Union industry capacity and imports from third countries, the Commission concluded there would be sufficient capacity to absorb the increase in demand whether imports from the PRC remain on the market or not on this basis, this claim was rejected.

([32]) See Table 1, pre-last column.
([33]) See recital (99).

(115) Imports from China of AHEX AFRPs were based on Valeo's submission. Imports from Turkey were assessed based on EA's verification exhibit No 11 providing shipments in the same format as document t21.004336. In order to be conservative, only 85 % of the average shipment volume to the EU destined for transport for years 2017-2019 was considered to account for AHEX AFRPs not destined for light vehicles.

(116) Following definitive disclosure, Valeo raised doubts concerning the import volumes from Turkey but did not specify on which grounds nor submitted any evidence supporting its claims. As mentioned in recital (89), such import volume was conservatively assessed based on shipments from Turkey to the EU as reported to EA. On this basis, that claim was rejected.

(117) Union capacity was based on EA's submission relating to shipments of AFRP for HEX production in the transport sector. This is a rather conservative approach as the actual production and capacity could be much higher than the shipments. In the same vein, only 85 % of the average shipment volume in the EU destined for transport for years 2017-2019 was considered to account for AHEX AFRPs not destined for light vehicles. Valeo's capacity figure was taken from the same submission.

(118) Following definitive disclosure, EA claimed that the Commission should not have relied on the shipment data which correspond to its sales but rather on the capacity as submitted to the Commission that amounted to [400 – 450] thousand tonnes in the IP ([34]).

(119) In response to those comments, Valeo and TitanX claimed that the reported capacity did not appear on the non-confidential file, that the late filing of such information did not allow them to comment on its content and that it did not include a meaningful explanation concerning the methodology used except that the information was collected from EA's members. Furthermore, they questioned the relationship between the submission referred to by EA and certain previous submissions ([35]). In addition, they claimed that the reported capacity should have taken the validation of the producers with major HEX programs into account. On this basis, it claimed that the absence of detailed explanations in the open file violated their rights of defence. Furthermore, Valeo and TitanX claimed that the reported capacity was unrealistic in view of the low capacity utilisation reported for the IP and of the subsequent temporary capacity issues faced during the first half of 2021 leading to allegedly opportunistic and abusive pricing behaviour by the Union industry. On this basis, Valeo and TitanX supported the Commission's approach as far as capacity is concerned.

(120) In this regard, the Commission considered that the capacity reported by EA did not take account of the capacity normally allocated to other HEX AFRPs manufactured by the Union industry or to other products manufactured on the same equipment. As the Commission did not rely on document t21.004414 for its findings, the Commission did not consider that Valeo's or TitanX's rights of defence were violated, although it admitted that the non-confidential version of the document did not contain a meaningful summary of its sensitive content. On this basis and in order to report production capacity on a conservative basis, the Commission confirmed its approach and based its capacity estimate on the shipments in the Union. Consequently EA's claim was rejected.

(121) Following additional disclosure, Valeo argued that, in line with the Commission methodology to assess market demand, the assessment of the Union industry's capacity should exclude AHEX AFRPs to be ultimately used in the production of cars in non-EU countries.

(122) As explained in recital (117), Union capacity was assessed conservatively on the basis of the shipments destined for the Union market. Considering that this indicator reflects conservatively the quantity that the Union industry was able to deliver to the Union market, the Commission did not consider that such quantity should be revised downward to take account of the share of AHEX exported to non-EU countries and produced from AFRPs manufactured by the Union industry. In any case, Valeo did not provide the HEX quantity manufactured in the Union which was exported to non EU countries. On this basis, this claim was rejected.

([34]) See document t21.004414.

([35]) T21.000610, t21.000866 and t21.004336.

(123) Additional capacity projected to be added by the Union industry was established both on the basis of Valeo's submission mentioned in recital (88), on Company B's submission on this specific matter backed with concrete evidence on investment projects ([36]) and on the verified information of the sampled Union producer concerned.

(124) Following definitive disclosure, Valeo raised doubts concerning the investments in additional capacity of the Union industry for the years 2022 and 2023 claiming that it would not be fully operational before 2024 due to trial runs, equipment optimisation and debottlenecking. Valeo also raised doubts concerning the allocation of the investment to AHEX AFRPs.

(125) However, such claims were not substantiated. In any case, the Union industry indicated that its capacity would follow the evolution of the market demand and that the additional capacity would be allocated to AHEX AFRPs if fair market conditions prevailed.

(126) On the basis of the above conservative forecast, the Commission considered that the Union industry had sufficient capacity to meet the current demand and that there was sufficient spare capacity. As far as the future demand is concerned, the Commission concluded that, considering the additional capacity, there would be sufficient supply to absorb the increase in demand whether imports from the PRC remain on the market or not. In any event, it could be expected that some imports from PRC would continue at non-injurious prices.

(127) . The Commission also observed that the demand for the year 2026, based on the EU27 IHS Markit data of 5 July 2021 and Valeo's internal estimate for the AHEX AFRP weight per engine type, would still be lower than the material available on the Union market whether supplied by the Union industry or sourced from third countries.

(128) When considering Valeo's consumption forecast, while at the same correcting the additional capacity projections as explained in recital (118) above, the Commission concluded that there would be a material shortage if imports from the PRC were to stop completely. However, such shortage would be much lower (5,5 %) than the shortage foreseen by Valeo for the period 2022-2027 (17 %) or for the year 2026 (21,7 %). In any case, should imports from the PRC continue in the same quantities, such shortage would disappear. On the above basis, the claims relating to capacity, investments and material shortage in view of the increased demand were rejected.

(129) The users and their association, supported by ACEA, claimed that the Commission did not assess properly the impact of the measures in view of the lack of available capacity. They claimed that even if capacity was available, validation would be a short term barrier and that they could not quickly substitute imports from the PRC with European supply. On this basis, they also claimed that they were exposed to significant commercial risk and the loss of business opportunities. In this regard, CLEPA also added that certain global customer projects, where the same part is produced, require the same material input to ensure consistency of the programme performance. However, this claim was not substantiated with supporting evidence relating to AHEX AFRPs. In the same regard, ACEA claimed that the level of provisional measures would increase significantly the manufacturing costs.

(130) Valeo indicated that a quick substitution was not possible as, according to their 2021 AHEX AFRPs supply forecast, validated Chinese alloys are not available on the Union market and no alternative sources exist. Also, Valeo and several other parties claimed that dual sourcing (meaning the same product is secured simultaneously by more than one supplier) was not often accepted by the clients.

(131) The Commission observed that for several specific alloys with important share of purchases by Valeo, the latter had sourced them in the past years from a Union producer and had subsequently replaced them with products with the same technical specifications from the PRC. In addition, the Commission had evidence on the file that the Union producer in question has the necessary capacity to supply this specific product and would not require a completely new validation from the user. Furthermore, Valeo's allegation were based on a 2021 supply forecast while the information provided for the investigation period (2019 and 2020) did not support its claim. Consequently, the Commission rejected the claim that the alloys in question could not be sourced from the Union market any longer.

([36]) See document t21.004298.

(132) The evidence on file showed that certain customers require dual sourcing and that certain users find alternative solutions for their purchases of AHEX AFRPs when confronted with delivery issues. This is also supported by Valeo's supply forecast database for the years 2019 and 2020 which points to the fact that a significant share of the material supplied from China had a second validated source in the EU in those years. Dual sourcing is further evidence that the same alloys and materials are validated for Chinese and Union suppliers at the same time.

(133) EA also confirmed that the shift from sourcing from China to sourcing from the Union was already taking place in 2021, including by some large customers. Moreover, it indicated that most of the material from China imported currently was initially supplied by the Union industry before they were replaced by low cost suppliers. This is further evidence that substitution of imports from the PRC by supply from the Union industry can happen quickly. Furthermore, EA indicated that shifting suppliers is not lengthy and costly but is the result of a normalisation process of pricing after anti-dumping measures are imposed.

(134) Furthermore, as far as equivalent alloys are concerned, Valeo claimed that the reason for the discrepancy between 2019/2020 and 2021 was linked to the sourcing and development of battery cooling plates and claimed that such information is pivotal for the assessment of the impact of validation. As far as dual sourcing is concerned, Valeo claimed that, despite the Commission's adjustment, less than [SENSITIVE] % of the AHEX AFRPs sourced from the PRC had a second source validated in the EU.

(135) With regard to substitution and validation, it should first be recalled that AHEX AFRP users purchased the majority of their AFRPs in the EU over the period considered and also after that period, according to the post-IP data available to the Commission.

(136) With regard to equivalent alloys, it should be noted that, while post-IP data should not be ignored, the findings of this investigation should be based primarily on data pertaining to the investigation period. The information at hand relating to one user showed that a vast majority of the alloys purchased had an equivalent in the EU for the years 2019 and 2020. As for the year 2021, the percentage of alloys purchased in the PRC that had an equivalent in the EU dropped, as a consequence of the development of battery cooling plates AFRPs sourced from the PRC, but still represented more than half of the volume purchased from the PRC. Considering the historical record pertaining to the IP and the most recent data, the Commission rejected Valeo's claim that 'validated Chinese alloys are not available on the Union market'.

(137) As for dual sourcing, the Commission considered that the evidence on file referred to in recital (132) and the significant share of AHEX AFRPs which had a dual sourcing were sufficient evidence rebutting the claim that 'dual sourcing was not often accepted by the clients'.

(138) Following definitive disclosure, TitanX reiterated that its ability to source AHEX AFRPs from other producers was seriously impaired by validation barriers which could not be surmounted in the short term. In the absence of new evidentiary elements in this regard or comments on the Commission's findings, this claim was rejected.

(139) The users and their association, supported by ACEA, also claimed that the situation on the US market differs from the situation in the EU as there is no available capacity in the EU or other countries, and that the US administrative review process offers more flexibility that is not replicated in the basic Regulation.

(140) First, as mentioned in recitals (126) and (127), the Commission concluded that the Union industry had sufficient capacity to absorb the current and future demand provided that market conditions prevail.

(141) Second, even though the US and EU TDI laws differ, the basic Regulation foresees the existence of interim reviews pursuant to Article 11(3) which allow for a revision of the measures in force in certain circumstances. Article 11(8) of the basic Regulation also foresees that anti-dumping duties can be refunded provided that certain conditions are met.

(142) On the basis of the above, the claims relating to validation, substitution, dual sourcing and differences with the US market were rejected.

(143) The users and their association also claimed that the duties would have a material impact on their financial situation and that they could not absorb a cost increase linked to significant anti-dumping duties or validation costs in view of their financial situation. The user MAHLE GmbH ('Mahle') added that the Commission had wrongly assumed that it was profitable in the pre-COVID situation.

(144) EA indicated that the level of the anti-dumping measures were reasonable and could level the playing field to restore normal conditions of competition.

(145) The Commission observed that the level of the definitive measures is lower than the provisional ones. Furthermore, the investigation revealed that users were mainly sourcing their AHEX AFRPs in the EU. On this basis, it considered that the measures would only have a limited impact on the financial situation of the users. As far as Mahle is concerned, in the absence of questionnaire reply, the Commission was not in a position to assess the impact of the measures on its financial situation. Also, the information shared by Valeo concerning the impact of the measures entailed certain shortcomings and their impact was overestimated. The investigation also revealed that a significant share of the user's sales volumes made from AHEX AFRPs sourced from the PRC was exported to non-EU countries. Consequently, it is reasonable to expect that those imports could qualify under the inward processing regime and thereby avoid the payment of anti-dumping duties and reduce the impact of the associated additional costs. Also, as evidenced in recitals (130) to (133), users could avoid validation costs by resourcing materials currently purchased in the PRC from validated suppliers in the EU or by shifting additional volumes from Chinese to European sources for AHEX AFRPs that have dual sourcing. On this basis, these claims were rejected.

(146) Following definitive disclosure, TitanX claimed that the assessment of the impact of the measures was flawed as, even with lower duties, anti-dumping measures would have serious financial consequences for its operations. In this regard, it provided calculations showing the impact of measures on its profitability.

(147) After analysis of these calculations, it appeared that TitanX had not limited its impact assessment to the imposition of measures. Indeed, it had also factored in a price increase on the Union market in its calculations for the investigation period and the period following the investigation period. However, such price increases either did not take place in the IP or should not have been considered for the whole period following the investigation period. On this basis, the Commission considered that TitanX had overestimated the impact of the measures. In any case, the impact of the measures and of the price increase was not considered significant.

(148) As far as the impact of measures is concerned, it should be considered that the existence of anti-dumping measures aims at restoring a level playing field allowing fair trade. Also, as mentioned in recital (447) of the provisional Regulation, the Commission concluded that the imposition of measures would not be against the interest of users active in the automotive HEX sector. Furthermore, it should be noted that the level of the anti-dumping measures has been revised downward in the definitive disclosure.

(149) Following definitive disclosure, Valeo claimed that the Commission did not disclose the facts on which it based its reasoning to claim that Valeo's calculations contained certain shortcomings and were overestimating the impact of the measures. In this regard, it provided a revised profitability analysis and claimed that the impact on profitability had to be assessed for each Valeo site manufacturing AHEX and that it was irrelevant to look at the Valeo group profitability.

(150) The Commission confirmed that Valeo's calculations were overestimating the impact of measures. For example they did not factor in the fact that, as explained in recital (145), Valeo could resort to import AFRPs under the inward processing procedure to reduce the impact of anti-dumping measures. Therefore, the Commission confirmed its assessment as mentioned in recital (145), i.e. that the measures would only have a limited impact on the financial situation of the users.

(151) CLEPA and Mahle claimed, contrary to the Commission's analysis on available capacity in the provisional Regulation, that the level of prices had increased by an alleged 30 %. Mahle also claimed that there is a high demand for foil stock and a lack of production capacity. In view of the alleged lack of available production capacity and the imposition of anti-dumping duties, Mahle expressed its concerns concerning a structural price increase. Several parties also claimed that the duties would have a detrimental impact on the supply chain. CLEPA claimed that the uptake of electric vehicles and economic recovery would accentuate the capacity deficiencies and jeopardise the recovery and development of a strong EU car manufacturing industry after revenues and margins dropped in the past years. It also argued that AHEX manufacturers would run the risk of being unable to meet their contractual obligations with their clients or see their margins annihilated by the increased costs. Valeo added that the electrification efforts by the EU automotive industry cannot take place without complementing its purchases from the Union industry with imports from the PRC. For Mahle the imposition of anti-dumping duties would create a competitive disadvantage for the EU automotive suppliers. The company repeated that it cannot transfer the expected price increase to its customers. BMW indicated that the imposition of measures would lead to a disruption of their supply chain in view of the lengthy and costly material validation procedures to take place in order to shift to alternative suppliers. Eventually, ACEA claimed that the automobile industry was already subject to various other measures leading to additional financial burdens for the OEMs such as the steel safeguard measures, which harm their competitiveness on the domestic and on export markets.

(152) EA indicated that the recent price increase was due to several factors such as the increase in raw material prices for alloys and slabs, a shortage in containers in international shipping, an increase in freight costs and the sudden and strong post-COVID increase in demand in all industrial sectors. Furthermore, EA considered that while prices have likely been influenced by the imposition of provisional measures, the price increase cannot be linked necessarily to a lack of capacity and should not be seen as a structural issue, rather a temporary situation that is expected to lapse when the demand and supply situation normalises after the initial period of tension on the market. In this context, EA had also indicated that the level of the anti-dumping measures were intended to level the playing field and restore normal conditions of competition. In addition, EA claimed that capacity would not be an issue when it comes to supporting the development of the car electrification as far as AHEX AFRPs are concerned since certain additional capacity had already been installed or was progressively being installed so that the Union industry could meet the increasing demand.

(153) The Commission concluded that the definitive measures would only have a limited impact on the financial situation of the users. Also, as mentioned in recitals (131) to (133), substitution of imports from China by supply from the Union industry can happen relatively quickly since certain validated Union producers were supplying the AHEX AFRPs in the past and since dual sourcing exists in the EU. Furthermore, as analysed in recitals (87) to (127), it is likely that the current and future capacity of the Union industry would be sufficient to meet a growing demand. On this basis, the Commission considered that there was no compelling reason to exclude AHEX AFRPs on Union interest grounds.

(154) EA claimed that certain users were using low priced AFRPs from China to compete against other producers using European material leading to a price erosion on the Union market. In this context, EA failed to understand how a user can claim that there is a lack of capacity, when according to EA's recent survey, only very few Union producers received a request to quote for additional volumes in 2021 besides the volumes secured in the existing contracts. It also added that the alleged future capacity deficit in view of the increasing demand disregards additional executed or announced capacity expansions by 2 other Union producers.

(155) In this regard, Valeo claimed that EA's claim that AHEX AFRPs users, including Valeo, were contributing to price erosion by Chinese suppliers was incorrect. In support of its claim, Valeo provided an extract of the historical evolution of prices and volume of AHEX AFRPs supplied by Union producers to Valeo for the period 2017-2022. Furthermore Valeo reiterated that it needed long-term agreements to ensure a smooth supply with the automotive OEMs and that Union producers were deliberately not willing to supply or that they did not have the required capacity. Valeo also pointed to recent delays in supply with one Union producer.

(156) EA also claimed that any capacity shortage would be linked to dumping practices which prevented Union producers to allocate capacity to the production of AHEX AFRPs. As far as recent delays in supply are concerned, reference is made to recital (56) where EA provided explanations for such delays.

(157) With regard to price erosion, the evidence provided by Valeo in support of its rebuttal was found to be fragmentary and thus inconclusive. Indeed, Valeo's analysis is based on a limited number of Union suppliers, the conclusions are based on a period going beyond the period considered ending in June 2020 and thus potentially impacted by this investigation (initiation, imposition of provisional measures). Furthermore, it does not take the evolution of demand into account. On the contrary, Valeo's questionnaire reply shows that the relative share of purchases from the PRC increased between 2019 and the investigation period. Furthermore, as mentioned in Section 7.1, significant underselling margins were established confirming the existence of price erosion. On this basis, Valeo's claim was rejected.

(158) With regard to greenhouse emission targets, CLEPA claimed that measures would limit investments in innovation pursuing the digital and green goals set by the European Union and the development of a European automotive battery supply chain in particular.

(159) As mentioned in recital (145), measures are expected to have only a limited impact on users given the share of AHEX AFRPs sourced from the PRC and the level of the measures. On this ground, they should have a limited impact on the described investments.

(160) In the same context, EA pointed that buying EU AFRP's would help the car and automotive industries in terms of lowering their carbon footprint and referred to recitals (78), (451) and (452) of the provisional Regulation where it was provisionally concluded that the Union industry was contributing to meeting the EU's emissions targets through its increasing use of recycled material and by generating on average almost three times less CO2 than in the PRC when producing AFRPs.

(161) EA also questioned the rationale of certain AHEX AFRP users sourcing from the PRC on the grounds that it was contrary to the ambition of the EU to achieve the European Green Deal in view of the lower carbon footprint of primary aluminium production in the EU. It also referred to past experience in the solar panel sector, which suffered from dumped imports after it privileged a short-term 'Chinese supply strategy' rather than maintaining a healthy value chain in the EU.

(162) In this regard, Valeo claimed that it was purchasing only limited quantities of material originating in the PRC and that it was not purchasing cheap and polluting AHEX AFRPs from the PRC. Valeo further argued that, with its strategy, it was supporting the revolutionary electrification of mobility and assisting the EU's environmental objectives as well.

(163) However, Valeo did not provide any evidence concerning the carbon footprint of its suppliers or other piece of evidence contradicting the Commission's assessment in this regard. Furthermore, while Valeo may be purchasing limited quantities of AHEX AFRPs from the country concerned, the share of its purchases from the PRC has been increasing in the past years.

(164) Following definitive disclosure, TitanX claimed that the Commission's new emission targets and the role to be played by the EU automotive industry justified the exclusion of AHEX AFRPs on Union interest grounds.

(165) In this regard, reference is made to recital (160) and (161) which confirm that buying AFRPs in the EU would help the car and automotive industries in terms of lowering their carbon foot print.

(166) In view of this detailed analysis, the Commission confirmed its provisional findings as set out in section 2.3.1 of the provisional Regulation and did not exclude AHEX AFRPs from the scope of this investigation.

2.2.2. *Aluminium coils for the production of coated coils and ACP*

(167) As laid down in section 2.3.2 of the provisional Regulation, the Commission had excluded aluminium coils for the production of coated coils and ACP from the product scope. EA claimed that the definition of the provisionally exempted product was not specific enough. In its view, the user Company A had not provided detailed technical information allowing other parties to provide meaningful comments, thus limiting their rights of defence.

(168) Company A responded that the provided definition was specific enough and provided evidence that certain Union producers were not able to produce products with those specifications. On this basis, it concluded that the technical characteristics result in a very specific product. The Commission considered that the submissions of both EA and Company A were meaningful, allowed for a reasonable understanding of the sensitive information and that the rights of defence of both parties were respected.

(169) EA claimed further that Company A had not filed its request timely. The Commission observed that Company A had made the request at a very early stage of the proceedings. It was also duly substantiated and filed sufficiently in time for the Commission to gather all relevant information in order to draw meaningful conclusions.

(170) EA also contested the provisional finding that the Union industry would not have the capacity to produce the required volumes of the exempted product with the requested quality and technical standards. It provided statements by five Union producers claiming that they have the relevant equipment to manufacture the provisionally exempted product with mostly one restriction on width, and added that other producers can produce the provisionally exempted product in the EU. In addition, EA provided statements by four producers of ACP that they can source the exempted material in sufficient quantities and therefore do not face the same issues as Company A.

(171) Company A accepted that certain producers in the EU are able to manufacture the exempted product. However, it stressed that it cannot source it in sufficient quantities in the EU. There was a need to source certain volumes of the exempted product from the PRC due to the lack of supply and consequent longer lead times in the EU and in other countries. It substantiated its claims with additional supporting evidence and referred to the evidence already provided demonstrating the inability of certain producers to manufacture the exempted product due to technical restrictions or the inability to source the exempted product in sufficient quantities.

(172) Furthermore, Company A also argued that some of the statements made by the Union producers were inaccurate as they cannot supply the provisionally exempted product or that they are specialised in other products. In its view, these statements confirm that European producers have no plans to invest in additional capacity.

(173) EA contradicted Company A, stating that there is enough capacity in the Union market. It also claimed that the delayed deliveries are related to orders that go beyond concluded agreements. As far as delays are concerned, the Commission noted that the evidence on file confirmed that certain Union producer(s) which could not meet the technical requirements of Company A had to reimburse it for non-compliant shipments and thus cannot supply Company A. Hence, Company A had no choice but to ask for additional quantities from other suppliers.

(174) Company A replied that four of the five producers of ACP have a guaranteed source of supply due to historical, geographical, contractual or shareholding/ownership reasons and that they have a vested interest in limiting competition from another ACP producer in the EU. Company A also argued that the nine companies that provided statements are members of EA, some of them being represented in the executive committee of EA, which leaves little doubt concerning their position on the exclusion request.

(175) Company A also claimed that the statements provided by the producers of ACP should be rejected on the grounds that they are not registered interested parties, that they did not cooperate with the investigation and did not substantiate their statements with supporting evidence.

(176) The Commission confirmed that the statements of certain AFRP producers were not supported by sufficient evidence. It also found that they did not reflect entirely their technical capacity. While some AFRP producers are indeed able to manufacture the exempted product, others could not substantiate their statements with additional elements on the file. On the contrary, these producers cannot meet the specification requirements of Company A and supplied AFRPs that have different characteristics from the exempted product.

(177) EA claimed that the exempted product covers practically the full range for paint stock and that the volume covered by the product exempted under Article 2.2 of the provisional Regulation would represent far more than the 2 % referred to in the provisional Regulation and rather [300 000 - 600 000] ([37]) tonnes. Following provisional disclosure, EA submitted an estimate for the consumption of aluminium coil for use in the production of coated coils when subsequently used in the production of ACPs. Such estimate amounts to [52 000 - 68 000] ([38]) tonnes; i. e. close to the Commission's estimate in recital (87) of the provisional Regulation. Company A commented that the Commission's consumption estimate does not correspond to the exempted product used for the production of ACPs as the specific technical features of that product are very strict and some ACP producers use coated AFRPs. At the same time, Company A stated that its consumption for the production of ACPs was lower than the latest estimate provided by EA. As the consumption in the Union is not limited only to the purchases made by Company A, the Commission considered that the estimate provided in recital (87) of the provisional Regulation reasonably reflects the consumption of AFRPs for the production of ACPs in general.

(178) Further to Company A's claim relating to an overall capacity shortage, EA argued that there is no structural capacity shortage in the EU as evidenced by the capacity utilisation rate reported in the provisional Regulation and that the current supply difficulties are linked to the Covid-19 pandemic.

(179) Company A also commented that, in view of the lack of supply in the Union market, the existence of anti-dumping duties would be detrimental to its activity and compromise its viability.

(180) The Commission verified that Company A was facing significant supply difficulties with the product that was provisionally exempted. As substantiated by Company A, there are quality and technical limitations to what the Union industry is able to manufacture. Furthermore, certain integrated Union producers (producing both AFRP, coated coils and ACP) want to limit their supply to Company A for reasons of competition and/or vertical integration. These two main factors limit the availability of the exempted products on the Union market. Also, the information on file points to the fact that non EU sources do not offer a sufficient alternative in terms of volume or quality. The Commission therefore concluded that Company A cannot source the provisionally exempted product in sufficient quantities in the Union market or from other sources.

(181) Article 2(2) of the provisional Regulation provided that the product described in Article 1(1) should be exempted from provisional anti-dumping duty if it is imported for use in the production of coated coils and aluminium composite panels. In this regard, Company A or any other user on the market did not provide sufficient evidence that it was directly concerned by the imports of ARFPs for the production of coated coils during the IP. Furthermore, the investigation revealed that the consumption of AFRPs in the coated coils sector was much more significant that in the ACP sector. Therefore, the risk exists that the technical characteristics of the provisionally exempted product would become the norm in this sector and be imported in increased quantities, thus potentially injuring the Union industry. In addition, while Company A has difficulties in sourcing ARFPs for the production of coated coils in sufficient quantities, it can still source a significant part of its needs in the EU.

(182) Also, the investigation revealed that the technical characteristics of the provisionally exempted product differ depending on the use; that is, the production of coated coils or production of aluminium composite panels.

([37]) Confidential information provided using ranges by this interested party.
([38]) Confidential information provided using ranges by this interested party.

(183) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, EA reiterated its claim regarding the availability of the product at stake in the Union and referred to macroeconomic data submitted further to the Commission's request which allegedly demonstrated that there is sufficient capacity on the Union market. Furthermore, it claimed that AFRPs for use in ACPs and AFRPs for use in coated coils have the same product description and that the provisional product description created an overlap and confusion between the two products. It also reiterated its claim related to the size of the coated coil market already referred to in recital (177) and indicated that Company A had been buying the product at stake for many years in the Union and referred to the statements by other ACP producers already referred to in recital (170) and addressed in recital (175)(176). Also, EA referred to other sources of supply without specifying which ones.

(184) In this regard, it should first be noted that the macroeconomic data supplied by EA was found to be inaccurate and was adjusted by the Commission when establishing definitive injury indicators in line with the information on file concerning their technical capacity.

(185) EA's claim referring to the difference between AFRPs for use in ACPs and AFRPs for use in coated coils did not take the latest product description as provided in Article 2(2) into account. Furthermore, considering that Company A's exclusion request is based on end-use customs procedure as per Article 254 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ([39]) ('the Union Customs Code'), the fact that these products would have the same description was considered irrelevant. On this basis, this claim was rejected.

(186) The fact that Company A has been buying the product at stake in the Union for many years was not found to contradict the Commission's assessment that the product at stake was not available in sufficient quantities in the Union market. In the absence of more precise information concerning other sources of supply, this claim was also rejected.

(187) Following definitive disclosure, Company A claimed that the availability issue applied to AFRPs used in the production of coated coils as well as for the production of ACPs and reiterated its request that AFRPs used in the production of coated coils should be exempted from the collection of anti-dumping duties. Furthermore, it reiterated that certain Union suppliers could not deliver the agreed quantities or were facing quality problems with regard to the exempted AFRPs.

(188) While the Commission admitted that the availability issue applied to both applications, the Commission already clarified in recital (181) why the exemption should not apply to AFRPs used in the production of coated coils. In the absence of further comments in this regard, this claim was rejected.

(189) Following definitive disclosure, EA questioned the Commission's decision to reduce the production capacity reported by certain Union producers with regard to the exempted product and claimed that certain limitations concerning the outer range width do not support such reductions of the production capacity. Furthermore, EA claimed that even the reduced production capacity corrected by the Commission would be sufficient to supply the Union market with the necessary quantities. EA also claimed that the absence of non-EU alternative sources was not supported by evidence on file available to other parties and should have been disregarded in line with Article 19(3) of the basic Regulation. Finally, EA reiterated its claim that all other ACP producers in the Union have declared being able to source the necessary quantities in the Union.

(190) Following EA's comments, Company A confirmed the accuracy of the Commission's assessment of the Union industry's capacity for AFRPs used in the production of ACPs regardless of the limitations on the outer range width and referred again to quality problems. As explained in the specific disclosure sent to EA, the information related to the exempted product submitted by EA was corrected based on submissions from other parties evidencing that these producers could not meet the required specifications or did not produce the product at stake. Furthermore, as explained in recitals (174) to (180), while it is not denied that certain AFRP producers are indeed able to manufacture the exempted product, certain integrated Union producers (producing all AFRP, coated coils and ACP) want to limit their supply to Company A for reasons of competition and/or vertical integration, thus leading to

([39]) 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).

insufficient availability on the Union market. As far as non-EU sources are concerned, it should be noted that the information on file could not be summarised in a non-confidential version without disclosing business secrets which could have been detrimental to the parties concerned. In any case, EA did not provide evidence pointing to the existence of available capacity in non-EU countries. Eventually, the fact that other ACP producers could allegedly source their AFRPs in the Union was not found to contradict the Commission's findings pointing to insufficient availability of the product at stake and its quality requirements. On this basis, EA's claims were rejected.

(191) On this basis, the Commission confirmed its provisional findings that it was in the Union interest to exempt the product in question from the collection of anti-dumping duties, but to limit the exemption to only AFRPs used in the production of aluminium composite panels.

2.2.3. *Lithographic sheets and battery foils*

(192) After provisional disclosure, Xiamen Xiashun Aluminium Foil Co., Ltd ('Xiamen Xiashun') challenged the rejection of its request addressed in recitals (89)-(92) of the provisional Regulation that lithographic sheets and battery foils should be excluded from the scope of the investigation. It claimed that these products do not differ from the products listed in in recital (57) of the provisional Regulation and which were excluded from the scope of the investigation already in the Notice of Initiation. The already excluded products also share the same chemical characteristics, as they are composed of more than 95 % of pure aluminium, similarly to other AFRPs.

(193) Xiamen Xiashun also reiterated the claims raised in recital (89) of the provisional Regulation with regard to the physical and chemical characteristics, gauge, production process and application.

(194) EA confirmed that lithographic sheets and battery foils fall under the product definition and share the same basic chemical characteristics as other AFRPs as they are composed of more than 95 % of pure aluminium similarly to other FPRs. They are the result of the same manufacturing process as other AFRPs. EA also claimed that they were included in the complaint because they are produced by a number of EU producers which were faced with very low dumped and injurious prices from China.

(195) In this regard, the Commission observed that the product scope of this investigation was correctly defined by the complainants as it covered products for which there was sufficient evidence of dumped imports causing injury to the Union industry. On this basis and in the absence of new elements, this claim was rejected.

(196) Following definitive disclosure, Xiamen Xiashun reiterated the claims submitted at initiation stage. In the absence of new elements and since these claims were already addressed in recitals (89) to (92) of the provisional Regulation, and Xiamen Xiashun's further claims were addressed in recital (195), these claims were rejected.

(197) In the absence of any other comments, all other conclusions set out in Section 2.3.3 of the provisional Regulation were confirmed.

2.2.4. *ACF-30-60*

(198) The initial request to exclude ACF-30-60 by Nanshan was addressed in recitals (93) to (102) of the provisional Regulation. After provisional disclosure, Nanshan reiterated its claim that the product under investigation and ACF-30-60 are different based on a number of factors such as essential technical and physical characteristics, end-use and application, production process and distribution channels. It also repeated that these products are not interchangeable and not in competition with one another. It argued that, according to settled case law ([40]) no factor is more decisive than others when assessing whether a product is distinct from the other products covered by the scope of an investigation. It also indicated that the Union ACF market is extremely tight with limited availability from Union producers in the coming months.

([40]) *JingAo Solar Co. Ltd*, Joined Cases T-158/14, T-161/14 and T-163/14, EU:T:2017:126, para. 93.

(199) In response to Nanshan's comments, EA claimed that the AFRPs at stake are or can be produced within the EU and fall within the product description.

(200) With regard to competition between ACF-30-60 and the other products covered by the scope of the investigation, it should first be recalled that ACF-30-60 falls under the definition of the product scope as defined in recitals (55) to (58) of the provisional Regulation. First of all, ACF-30-60 and other products covered by the scope of the investigation share the same basic physical, chemical and technical characteristics, the product falls within the scope of the investigation. In addition, in its provisional assessment, the Commission did not limit its assessment to a given factor only as it relied on several factors such as basic characteristics, function, production process, and end-use in order to assess whether ACF-30-60 was covered by the scope of the investigation. The claim relating to the limited availability of ACF-30-60 on the Union market was not substantiated with sufficient supporting evidence.

(201) Following definitive disclosure, Nanshan reiterated the claim raised at provisional stage. It also indicated that the characteristics of the two sides of the product at stake differ, which leads to a different production process on state-of-the-art equipment and leads to a different end-use. Furthermore, Nanshan claimed that the introduction of anti-dumping measures would have a detrimental impact on users due to a severe shortage of supply in the Union. Nanshan supported such claim with statements by users reporting sourcing difficulties in the past months (after the IP) and months to come. In this regard, it also pointed to the fact that one Union producer had stopped its production of the product at stake to focus on other products. In the absence of alternative sources of supply, Nanshan claimed that Chinese imports were crucial to non-integrated users.

(202) In this regard, reference is made to recitals (93) to (102) of the provisional Regulation and to recital (200) above where Nanshan's initial claims were addressed. Furthermore, the Commission noted that ACF-30-60 is not the only product covered by the scope of this proceeding which has sides with different characteristics, as HEX AFRPs also present such feature.

(203) Even if taking post-IP elements into account, the Commission considered that the situation described by Nanshan and two users did not point to a structural lack of capacity, but rather to a temporary situation due to the general post-COVID economic recovery where demand increased significantly in a short period of time so that the Union industry now needs to adjust to the new market situation. In this context, it was not considered that the introduction of anti-dumping measures would have a detrimental impact on end-users. In any case, the users that provided comments did not provide a questionnaire reply. Therefore, it could not be assessed to which extent they would be affected by the measures. This claim was therefore rejected.

(204) The Commission thus confirmed its conclusions reached in Section 2.3.4 of the provisional Regulation.

2.2.5. *AFRPs for use in the manufacture of slats for venetian blinds*

(205) The initial request by OPL System AB ('OPL') to exclude slats for venetian blinds was addressed in recitals (103) and (104) of the provisional Regulation.

(206) OPL reiterated that the Union industry does not produce and is not able to produce AFRPs according to OPL's specifications. It emphasised that using a product of a lower quality would damage its equipment and the finished products would not correspond to its customers' requirements.

(207) OPL referred to objections to its 2016 tariff quota from 4 different Union producers, which allegedly do not produce and are not able to produce AFRPs according to OPL's specifications. In this regard, it claimed that in spite of commercial exchanges with some of the 4 companies, none provided samples to OPL. Such claims were however not backed by supporting evidence for any of the companies but one. At the same time, OPL argued that none of the Union producers could produce the product at stake. However, with the exception of one producer, OPL did not substantiate the claim that it had solicited supplies or that Union producers had refused to supply and/or indicated that they were unable to produce the product at stake, within the deadline for comments on the provisional disclosure or deadline for comments on other parties' comments after provisional disclosure.

(208) EA reiterated that the Union industry is able to produce AFRPs according to OPL's specifications and submitted statements that certain Union producers could supply the product at stake. It also questioned the claim that OPL had contacted several Union producers indicating that none of the Union industry had received any request for quote recently, or that discussions were ongoing.

(209) While the statements made by one Union producer can be questioned, the Commission established that at least one Union producer is able to produce AFRPs according to OPL's specifications.

(210) The evidence provided by OPL within the prescribed deadlines regarding the Union industry's ability to produce, and the fact that it had contacted the Union producers is limited to only one Union producer, and OPL's claims are mostly not substantiated by supporting evidence. Furthermore, the evidence provided for the producer concerned, covered a period after the imposition of provisional measures. Given the potential effect of those provisional measures on the behaviour of the market players, the Commission did not consider this piece of evidence as a sufficiently reliable proof of refusal to produce or supply by that producer once the definitive measures are imposed and the normal market conditions are fully restored. Indeed, at the moment the Commission imposes provisional measures, it is reasonable to expect that Union producers may decide to postpone entering into long-term contractual relationship until it is clear whether definitive duties will be imposed and at what level. In addition, even though the submissions contained claims that other Union producers did not want to or were unable to supply OPL, these claims were not supported by any evidence. In any event, it can reasonably be expected that imports will continue from the PRC given the level of the definitive measures.

(211) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, OPL provided several email exchanges with Union producers which were requested to confirm whether they could manufacture AFPRs according to OPL's specifications. On this basis, OPL claimed that, with the exception of one Union producer which is willing to supply trial AFRPs, none of the Union producers were in a position to manufacture the AFRPs according to its specifications.

(212) The investigation revealed that the conclusion drawn by OPL that Union producers were not able to manufacture AFRPs according to its specifications were not supported by evidence as the email exchanges showed that certain producers were willing to engage in a business relationship with OPL. Furthermore, it appeared that the specifications requested by OPL with regard to the chemical composition were stricter than the specifications provided in its exclusion request. On this basis, this claim was rejected.

(213) On this basis, OPL's request for exclusion was rejected and the Commission confirmed its conclusions reached in section 2.3.5 of the provisional Regulation.

2.2.6. *AFRPs for use in transformers*

(214) After provisional disclosure Hitachi claimed that the imposition of anti-dumping measures was having a detrimental impact on the wider electricity sector in the EU. It claimed that several of its AFRPs suppliers were experiencing capacity shortages leading to a shortage of material on the Union market. Hitachi also indicated that this development coincided with the imposition of provisional anti-dumping measures of AFPRs originating in the PRC. Consequently, it claimed that it was experiencing production delays which would soon affect their deliveries. Furthermore, it claimed that the demand for AFRPs in the power transformer sector will increase as a consequence of the evolution of the regulatory framework in this sector ([41]). On this basis it requested an exemption of the anti-dumping measures for the transformer industry. It also claimed that such exemptions were already granted to beverage can, car and aircraft manufacturers. It further argued that a similar exemption should be granted to the transformer sector based on the principle of non-discrimination and considering the share that AFRPs represent in their end products.

([41]) Ecodesign Regulation 2019/1783 (OJ L 272, 25.10.2019, p. 107).

(215) EA claimed that the current capacity and deliveries issues were not related to imposition of anti-dumping measures since they are directly linked to the massive post-COVID economic recovery. It further claimed that this was a worldwide phenomenon affecting many industries which are not even subject to anti-dumping duties. It also added that users of AFRPs in the EU which secured volumes from European producers via long term contracts do not have supply issues.

(216) The Commission observed that none of the claims made by Hitachi were substantiated by supporting evidence except for the change in the regulatory framework. Furthermore, considering the exemption request and the claim concerning non-discrimination, the Commission observed that beverage can, car and aircraft manufacturers have never been included in the scope of the investigation. Therefore, no exemption has been granted to those products. Therefore, the Commission fails to see how Hitachi could be discriminated. In any case, it can reasonably be expected that imports will continue from the PRC given the level if the definitive measures. Therefore, the Commission rejected the request.

2.2.7. *AFRPs for use in aluminium electrolytic capacitors*

(217) After provisional disclosure, the users TDK IT and TDK HU filed comments requesting the exclusion of low-voltage and high-voltage anode aluminium, tab foil and cathode aluminium foil for use in the production of aluminium electrolytic capacitors, from the scope of the investigation. They claimed that these AFRPs have distinct physical, technical and chemical characteristics (purity, alloys, crystalline structure and oxide properties), that they require specific production technology (no melting) and that the Union industry does not have available production capacity for this product. Furthermore, they also claimed that these products are only used for the production of aluminium electrolytic capacitors, that they have higher prices and that the imported volumes accounts for a small part of the AFRP Union consumption. In their view, the exclusion of such products would not cause injury to the Union industry while the anti-dumping measures would negatively impact its financial performance.

(218) EA claimed that the AFRPs at stake can be produced within the EU or the European Economic Area ('EEA') and fall within the product description. It also added that such products were manufactured in the EU and that some producers are planning to start production again.

(219) In response to EA's submission, TDK IT contested that the AFRPs at stake are available in the EU. It further claimed that these specific products were no longer available since the second half of 2018 and referred to a statement by a Union producer. It also claimed that the AFRPs delivered by the Union industry in the past were at the lower end of the acceptable quality and that customer demand now requires higher grade products which this producer could not manufacture when it stopped its production. It added that, should the production re-start, the material would need to go through a long double validation process (with TDK and its customers) before it could be used again.

(220) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, EA reiterated its claim regarding the availability of the product at stake in the Union or in the EEA. It also added that the Union industry had to discontinue its production of the products at stake in the Union due to unfair competition from Chinese exporting producers. Should fair competition prevail, it stated that several producers in the Union would be in a position to supply these products on the Union market. On this basis, it concluded that it would be against the Union interest to exempt these products originating in China as such exemption would perpetuate an unfair situation and seriously undermine recent efforts of Union producers to produce these products in the Union.

(221) Further to EA's comments submitted after the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, TDK HU submitted that the products that it imported were different from the ones imported by TDK IT in terms of processing and quality, value, customs code and end-use. It also claimed that the two products are not like products as the product imported by TDK IT is a raw aluminium foil to be processed while the product imported by TDK HU is already processed and to be built into aluminium electrolytic capacitors without further processing.

(222) Furthermore, it added that EA's comments related only to high purity aluminium foil used to produce high voltage anode and tab foil for aluminium electrolytic capacitors and not to the aluminium foils and low/high voltage anode aluminium foils imported by TDK HU, and that EA had not provided any meaningful and substantiated evidence concerning the current or future availability of the latter product imported by TDK HU.

(223) TDK HU also stated that the product that can be produced by the Union industry or in the EEA does not correspond to the product that it uses, in view of its characteristics.

(224) Further to EA's comments reflected in recital (220), TDK IT submitted that the producers allegedly able to manufacture the products at stake either did not meet the required quality standards or did not manufacture the product under investigation but rather slabs; i.e. a semi-finished product used to manufacture the product under investigation.

(225) TDK IT also claimed that EA's comments relating to unfair competition were vague and not supported by evidence and that the relevant market is not price- but quality-driven. Furthermore, it disputed EA's comments relating to the Union interest, on the grounds of lack of an effective and stable source of supply on the Union market. This would lead to increased costs and undermine the efficiency of downstream users.

(226) After the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings, the German Electrical and Electronic Manufacturers' Association ('ZVEI') supported the claims of TDK HU and TDK IT about the lack of product availability in the Union and insisted on the necessity to ensure stable supply to their customers in the automotive and industrial electronics industries and on the negative impact that measures would have on their competitiveness towards non-EU suppliers. Apart from China, ZVEI identified Japan as another source of supply for the products at stake.

(227) Following definitive disclosure, TDK HU claimed that the Commission had not examined its claims relating to the availability of the products that it requires during the provisional stage. It reiterated that the products that it uses have not been produced in the EU for about 5 years. More specifically, it claimed that cathode aluminium foils and low-voltage anode aluminium foils are not produced in the EU and that, while certain high-voltage anode aluminium foils are produced within the EU, these products do not comply with its physical, chemical or technical specifications. Furthermore, it claimed that it would require significant investment (both in time and financial terms) to resume production in the EU.

(228) TDK HU also argued that Union producers did not oppose their exclusion request on the basis of meaningful and well-founded objections. It argued that EA had confused the products imported by TDK IT and TDK HU, which are allegedly different, and that it did not provide evidence that there is or will soon be production of the products that TDK HU requires. On this basis, it claimed that the Commission did not assess TDK HU and EA's submissions in sufficient detail and hence did not handle its request impartially or fairly during the provisional stage.

(229) Furthermore, TDK HU claimed that the Commission did not assess the possibility of applying the end-use customs procedure as per Article 254 of the Union Customs Code. In TDK HU's view, applying such customs procedure would not cause any damage to the Union industry and actually serve the EU-settled capacitor producers.

(230) Following definitive disclosure, TDK IT reiterated that the product it uses requires a high degree of purity which makes the product unique in terms of technical properties and not comparable with other aluminium flat-rolled products. In this regard, it referred to a third party source ([42]). Furthermore TDK IT claimed that the high purity aluminium foil produced in the Union was inadequate or non-existent so that the imposition of anti-dumping duties would interrupt the supply of high purity aluminium foil and create disturbances in the Union market as the sole Union producer left the market in 2018 due to the poor quality of its products and it would take 2 to 3 years to resume production. Finally, TDK IT also claimed that the sole Union producer of high purity aluminium foil would work under a tolling agreement and thus not own the product used by TDK IT.

([42]) Nagata, *Aluminium Electrolytic Capacitor with Liquid Electrolyte Cathode*, pp. 120-137.

(231) Based on the information on file, the Commission established that the AFRPs at stake fall in the product scope as defined in the Notice of Initiation and in recitals (55) to (58) of the provisional Regulation. They share the same basic physical, technical and chemical characteristics as other AFRPs as they are composed of more than 95 % of pure aluminium similarly to other AFPRs. Also, most AFRPs have their own specifications depending on the application or the requirements of the end-user concerned. The fact that the AFRPs at stake have a certain level of purity, are made of certain alloys, have a specific crystalline structure or certain oxide properties does not mean that they do not share the same basic chemical, technical and physical characteristics as other AFRPs.

(232) As far as the manufacturing process is concerned, the Commission established that the AFRPs at stake share to a large extent the same manufacturing process as described in recital (56) of the provisional Regulation and use to a large extent the same manufacturing equipment as other AFRPs. The fact that the AFRPs at stake use a specific equipment is not unique as other AFRPs, which are part of the product scope, may also have specific dedicated equipment (such as cladding station or slitting equipment).

(233) The Commission also noted that there were divergent views on the availability of this product on the Union market and was not convinced by the elements on the file that there was a long-term structural risk of shortage of supply. In any case, it can reasonably be expected that imports will continue from the PRC given the level of the definitive measures.

(234) The Commission regrets that TDK IT and TDK HU had not provided questionnaire replies as users and that they registered as interested parties only after the provisional disclosure. In this context, the Commission could only assess the claim and situation of these companies on the basis of the incomplete information that they provided as part of their comments to the provisional disclosure. Hence, the Commission did not receive any questionnaire reply or sufficient timely information that it could verify and thus was unable to assess the share of AFRPs in the total cost of production of the two companies and the potential impact that the anti-dumping measures may have on their business and profitability.

(235) After definitive disclosure, TDK HU contested the fact that the Commission had not received sufficient timely information and that it was unable to assess its claim and situation on the grounds that it had provided written comments on the provisional disclosure to the Commission within the required deadline and three subsequent submissions, all containing meaningful information on its activities. In the same respect, TDK HU regretted that, although invited to do so, the Commission did not contact it to request additional information/justification to assess their request and resolve contradictions.

(236) As provided in point 5.5 of the Notice of initiation, all interested parties were invited to provide information concerning the assessment of Union interest within 37 days of the date of initiation of this proceeding either in free format or by completing a questionnaire available to all parties from the date of initiation. Point 5.5 of the notice of initiation also specifies that the information submitted will only be taken into account if supported by factual evidence at the time of submission.

(237) In this respect, it should first be noted that none of the two companies provided information concerning the assessment of Union interest within the 37-day deadline. Second, neither TDK HU nor TDK IT submitted a reply to the user questionnaire that would have allowed the Commission to gather the information deemed necessary in due time, request additional information if need be, verify the information received and assess the claims on the basis of verified information. In the case at hand, the Commission only had fragmentary unverified information that was not submitted timely, which differed significantly from the standard set of data requested in the questionnaire reply. Such information did not allow a proper assessment of the potential impact that the anti-dumping measures may have on TDK HU's or TDK IT's activities. In the absence of a timely filed questionnaire reply, the Commission considered that the burden of proof fell on the companies submitting requests after provisional disclosure, not with the Commission which had invited parties to participate in the investigation from the start as provided in Point 5.5 of the Notice of initiation.

(238) Consequently, the Commission lacked essential information concerning the availability of the products at stake in and outside the Union and could not assess either whether the products at stake were already being or could be sourced from other countries. Consequently, the Commission could not assess the possibility of applying the end-use customs procedure as per Article 254 of the Union Customs Code either.

(239) All in all, and referring to TDK HU's and TDK IT's claims reflected in recitals (227) to (228), the Commission considered that the absence of questionnaire replies normally containing information relating to elements such as sources of supply; purchases; sales in and outside the Union; and share of the product under investigation as part of total cost and profitability; did not allow the Commission to conduct a meaningful assessment of TDK HU's and TDK IT's claims on the basis of a standard set of sufficient timely filed information. In this context, the Commission considered that it had acted diligently and impartially by addressing all claims and comments for which it had sufficient information at its disposal. The same logic applies for TDK HU's claim mentioned in recital (229).

(240) On the basis of the above, TDK HU's and TDK IT's claims were rejected.

2.2.8. *Foil stock*

(241) After provisional disclosure, the user Amcor submitted comments and requested an end—use exemption of foil stock on Union interest grounds. It claimed that it faces difficulties in acquiring foil stock due to the alleged limited capacity of the raw material in the EU and around the world. Xiamen Xiashun supported Amcor's request. In addition, it also claimed that foil stock and other AFRPs are different products as they have different physical and technical characteristics, production processes, end-use and applications.

(242) EA responded that Amcor did not secure volumes in Europe early enough and that the situation it faces is only a short term issue since the market did not anticipate the current high demand linked to the post-COVID economic recovery. It also claimed that Amcor's situation should not be compared to other foil producers as Amcor's core business is packaging production, not foil rolling.

(243) For the Commission, the claims related to different physical and technical characteristics, production processes, end-use and applications were not substantiated with supporting evidence. Furthermore, despite the announcement of the measures, Amcor had not requested an increase of the contractual volume with its Union suppliers and had not sought either to sign a medium term contract with other potential EU suppliers. Moreover, the definitive duties are lower than the provisional ones, and the legal entity 'Amcor Singen Rolling GmbH' would still be reasonably profitable even if anti-dumping measures were imposed. Indeed, it achieved sufficient profit levels during and before the IP; there are strong indications that it could transfer a part or the entirety of the cost of the duty to its customer; and it has significant downstream export activities allowing importation of the product concerned under the inward processing regime. In addition, provisional anti-dumping duties were recently imposed on imports of aluminium converter foil originating in the People's Republic of China ([43]) which are part of its downstream product portfolio. Finally, while there are many other companies active in the foil sector, Amcor was the only company that registered as an interested party, provided comments and requested an end-use exemption. Therefore, it appeared that Amcor's concerns were not shared by other users in the sector. On this basis, this request was rejected.

(244) Following definitive disclosure, Amcor complained that the Commission had not addressed its request to exclude foil stock from the product scope in that disclosure. In the same set of comments, Amcor withdrew its request for exclusion of foil stock from the product scope and for end-use exemption. Furthermore, Amcor claimed that, contrary to the Commission's finding, it had contacted Union producers to secure foil stock from them.

([43]) OJ L 216, 18.6.2021, p. 142.

(245) In view of Amcor's comments and in particular, the withdrawal of its request, the Commission did not consider it necessary to assess Amcor's product exclusion request. With regard to Amcor's contacts with Union producers, it should be noted that while Amcor indeed contacted Union producers, its contacts were limited to only a small number of them. Hence, the vast majority of Union producers that could be a valid alternative source of supply were not contacted. On this basis, Amcor's claims were rejected.

(246) Following definitive disclosure, Xiamen Xiashun claimed that its submissions regarding the differences in characteristics of foil stock remained insufficiently addressed by recitals (303) and (306) of the provisional Regulation to which the Commission had referred. More specifically, Xiamen Xiashun referred to differences in alloy, chemical composition, and technical specifications such as gauge and temper and production processes. Furthermore, the same exporter claimed that other factors such as product group, type of alloys and manufacturing process had been considered when assessing the exclusion request pertaining to AHEX AFRPs and that foil stock should be assessed in the light of the same factors.

(247) The Commission disagreed with that claim. The elements put forward in recitals (303) to (306) of the provisional Regulation did address Xiamen Xiashun's claim and referred precisely to the fact that 'they are made of the same or similar alloys and have the same or similar finishing, temper and thickness as other AFRPs'. In addition, foil stock is the result of the same production process, referred to in recital (56) of the provisional Regulation, as other AFRPs.

(248) Considering that the burden of the proof falls on the parties requesting an exclusion, it should be noted that, unlike in the case of AHEX AFRPs, Xiamen Xiashun did not submit specific claims relating to elements such as product group. On this basis, the Commission did not assess such aspects for Xiamen Xiashun's request relating to foil stock. On this basis, these claims were rejected.

2.3. **Claims regarding the product control number ('PCN')**

(249) Xiamen Xiashun argued that the PCN structure used in this investigation would not permit the identification of foil stock separately from the other products that have different characteristics and specifically very different uses from foil stock. In its view, the use of the PCN structure for the determination of the normal value, the determination of the prices of the EU producers for price undercutting and price underselling and the consequent comparison with its exported models yields an apple-to-orange comparison that is inaccurate. In particular, it claimed that it provided *prima facie* evidence for an alleged price difference between PP Cap foil and foil stock and urged the Commission to investigate the existence of such alleged price differences. Furthermore, it also enquired whether one of the models it exported was compared to automotive heat shields.

(250) The Commission recalled that it enjoyed large discretion how to construct product control numbers in order make a fair comparison between the exported products and the productions made by the Union industry. When constructing the PCN in this case, such fair comparison was fully ensured.

(251) First, the provisional Regulation ([44]) concluded that foil stock shared the same basic chemical, technical and physical characteristics as other AFRPs and that it falls within the definition of the product scope. Second, the sampled Union producers sold foil stock in significant quantities at a similar price level as PP Cap foil during the investigation period, thus confirming the absence of significant price difference between these two products. The investigation also confirmed that automotive heat shields AFRPs were not compared to the model that Xiamen Xiashun exported.

(252) Following definitive disclosure, the same exporter complained that the Commission had not collected data on the prices for the sale of foil stock from the Union producers so as to be able to compare these with its export prices. In this regard, it indicated that the Commission did not collect such information on the grounds that Xiamen Xiashun had not provided evidence for the alleged price difference. Furthermore, it indicated that the Commission should have investigated this matter in order to ensure an objective and fair comparison and requested the Commission to disclose the price range for PP Cap foil sold by the Union industry in support of its statement. Moreover, it requested the Commission to confirm that Xiamen Xiashun's foil stock was not compared to any other type of AFRP for the purpose of the undercutting and underselling calculations.

([44]) Recitals (303) to (306).

(253) It should first be clarified that the Commission collected the information deemed necessary on the basis of its standard practice, namely by requesting, in this case, sampled Union producers to fill in the Union producers questionnaire which requires sampled Union producers to provide a transaction by transaction sales listing identifying the product types using a given PCN structure, under which foil stock could be classified. The information collected from the Union industry included sales of foil stock. The Commission therefore disagreed with the claim that it did not collect data on the prices for the sale of foil stock from the Union producers.

(254) Second, as mentioned in recital (333) of the provisional Regulation, Xiamen Xiashun did not provide evidence with regard to the alleged price difference between the different applications (fin stock, PP cap and lithographic sheet) when submitting its claim or at a later stage of the proceeding. In any case, as mentioned in recital (251), the Commission investigated the matter and confirmed that there was no significant price difference between these two products.

(255) As per Xiamen Xiashun's request for additional details, it should be noted that the price difference between PP cap and foil stock charged by the Union industry ranged between 0 and 10 % depending on the foil stock customer and was lower than [2 – 6] ([45]) % on average. As far as Xiamen Xiashun's request concerning the end-use is concerned, Xiamen Xiashun did not provide any prima facie evidence that, for specific PCNs, different end uses lead to significant different prices. In this context, the Commission considered that the PCN properly reflected the relevant characteristics of AFRPs to ensure a fair comparison and rejected Xiamen Xiashun's claims.

(256) The Commission hence concluded that the PCN structure properly reflected the characteristics of foil stock allowing a fair comparison of this product to other products with the same PCN structure. On this basis, this claim was rejected.

2.4. **Conclusion**

(257) The Commission confirmed the conclusions set out in recitals (60) to (105) of the provisional Regulation, as revised in recital (191) above.

3. **DUMPING**

(258) Following provisional disclosure, the complainant, the GOC, the three sampled exporting producers and Airoldi commented on the provisional dumping findings.

3.1. **Normal value**

3.1.1. *Significant distortions*

(259) The GOC and Xiamen Xiashun commented on the issue of significant distortions in China.

(260) First, the GOC submitted that the content of the China report and the ways it is used had serious factual and legal flaws. According to the GOC, the content was misrepresentative, one-sided, and out of touch with reality. The working document treated the legitimate competitive advantages of Chinese companies and the normal institutional differences between China and Europe as the basis for the determination of significant market distortion. Furthermore, the GOC claimed that by accepting the investigation application submitted by the domestic industries based on the country report, the Commission provided its industry with unfair advantages, which equalled to making judgments before trial. Additionally, the GOC claimed that replacing investigations with reports did not conform to the fundamental legal spirit of fairness and justice.

(261) In reply to the claim on factual flaws in the country report, the Commission noted that the country report 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. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The GOC has refrained from providing any such rebuttal or comment on the substance and evidence contained in the report ever since its release in December 2017.

([45]) Range used to ensure confidentiality of the information.

(262) Regarding the argument of the GOC suggesting the issuing of a country report replaced the actual investigation, the Commission recalled that according to Article 2(6a)(e), if the Commission deems the evidence submitted by the complainant on the significant distortions sufficient, it can initiate the investigation on this basis. However, the determination on the actual existence and impact of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) occurs at the time of the provisional and/or definitive disclosure as result of an investigation. The existence and impact of the significant distortions are not confirmed at initiation stage as claimed by the GOC, but only after an in-depth investigation, hence this argument is rejected.

(263) Second, the GOC commented that the Commission only issued staff working documents for a few selected countries, which was enough to raise concerns about most-favoured nation treatment and national treatment ('NT'). In addition, the GOC claimed that the Commission never published a clear and predictable standard for choosing the countries or sectors to publish reports on.

(264) The Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a certain country or sector in that country. Upon approval of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia and does not exclude that other reports will follow. Since the majority of trade defence investigation ('TDI') cases concerned China and since there were serious indications of distortions in that country, it was the first country for which the Commission drafted a report. Russia is the country with the second most TDI cases, hence there were objective reasons for the Commission to prepare reports on those two countries in this order.

(265) Furthermore, as stated above, the reports are not mandatory to apply Article 2(6a). Article 2(6a)(c) describe the conditions for the Commission to issue country reports, however according to Article 2(6a)(d) the complainants are not obliged to use the report nor, following Article 2(6a)(e), is the existence of a country report a condition to initiate an investigation under Article 2(6a). In fact, according to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by the complainants fulfilling the criteria of Article 2(6a)(b) is enough to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, irrespective of the existence of the country report. Therefore, by definition the rules concerning country distortions do not violate the most favoured nation treatment. Therefore, the Commission rejected these claims.

(266) Third, the GOC added that in terms of NT, the concept of market distortions or corresponding standards did not exist in the EU's legislation regarding internal market or competition apart from the basic Regulations. Therefore, the GOC argued that the Commission had no authority in terms of international law nor any legislation and practices under its exclusive competence in the internal market or competition regulation to investigate the distortions in China.

(267) The Commission based its methodology in this investigation on the provision of Article 2(6a) of the basic Regulation. It is legally irrelevant that other European laws do not use the concept of significant distortions, since it is specific to the area of anti-dumping, which is governed by the rules under the WTO Anti-Dumping Agreement. When taking action against imports, there is no requirement under the Anti-Dumping Agreement to assess domestic market conditions beyond the prescribed injury analysis. In any event, the Union market is characterised by a strongly competitive free market environment, notably thanks to the Union's strict State aid and competition laws. Therefore, this claim was rejected.

(268) Furthermore, the GOC commented that the Commission applied discriminative rules and standards against Chinese companies when they were in similar situations as the EU companies, including but not limited to unfair standards of evidence and burden of proof. At the same time, the Commission did not evaluate whether the EU or the Member States had market distortions. This set of practices seriously affected the reliability and legitimacy of the Commission's analysis and conclusions on the core issues in anti-dumping investigations regarding dumping and injury calculation. Thus, it is enough to raise concerns about a potential breach of national treatment obligations under WTO rules.

(269) The GOC did not provide any evidence showing that the EU companies would be subject to distortions comparable to those of their Chinese competitors and would thus be in a similar situation. In any event, the concept of significant distortions is relevant in the context of the determination of normal value for the determination of dumping, whereas this concept is legally irrelevant for the Union industry in the specific context of anti-dumping investigations. Therefore this claim was considered unsubstantiated and legally irrelevant.

(270) Fourth, the GOC submitted that provisions of Article 2(6a) of the basic Regulation is inconsistent with Article 2.2 of the ADA, which provides an exhaustive list of situations where the normal value can be constructed and significant distortions are not included therein. The GOC further claimed that the use of data from an appropriate representative country or international prices to construct normal value according to Article 2(6a) was also inconsistent with GATT Article 6.1(b) and Article 2.2 of the ADA, especially Article 2.2.1.1. The GOC further argued that the WTO rules required using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits when constructing normal value. However, Article 2(6a) of the basic Regulation broadened the scope of data source to include the costs of production and sale in an appropriate representative country, or international prices, costs or benchmarks. This was beyond the scope of WTO rules according to the GOC. Therefore, no matter whether the EU basic Regulation 2(5) is in line with the WTO rules or not, the Commission should not construct normal value when there is so-called 'market distortions' based on the authorisation of the basic Regulations Article 2(6a).

(271) The Commission considers that the provisions of Article 2(6a) are consistent with the European Union's WTO obligations. It is the Commission's view that, in line with the Appellate Body's clarifications in DS473 EU-Biodiesel (Argentina), the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second sub-paragraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Therefore, the Commission rejected this claim.

(272) The GOC submitted that in this case, the Commission directly disregarded the records of the Chinese exporters, which was inconsistent with Article 2.2.1.1 of ADA. The GOC argued that the Appellate Body in EU-Biodiesel (Argentina) (DS473) and the panel in EU-Cost Adjustment Methodologies II (Russia) (DS494) asserted that according to Article 2.2.1.1 of the Anti-Dumping Agreement, as long as the records kept by the exporter or producer under investigation corresponded – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under investigation, the investigation authority should use such records to determine the production cost of the investigated producers.

(273) The Commission recalled that the disputes DS473 and DS494 did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. These disputes also concerned different factual situations than the factual situation concerning the existence of significant distortions. Therefore, this claim was rejected.

(274) Finally, the GOC submitted that the investigation conducted by the Commission based on Article 2(6a) of the basic Regulation in this case had double standards. According to the GOC, the Commission refused to accept the cost data of Chinese exporters on grounds that there were significant market distortions in the Chinese market, but it accepted the representative country's data and used it to replace the Chinese producers' data without any evaluation of whether there may be market distortions affecting these replacing data. This, according to the GOC, is a proof of 'double standards'. The GOC submitted that this approach failed to guarantee the reliability of the relevant costs in the selected representative country. Moreover, it was impossible to truly reflect the cost of the producers in the country of origin.

(275) Furthermore, the GOC added that according to the GOC, there were also development initiatives within the EU and member states that are similar to China's 5-year plans, such as the New Industrial Strategy and German Industry 4.0 etc. According to official sources, in its internal market 2017-2020, the EU aluminium industry benefited from over 200 various state aid measures, provided by the EU Member States and authorised by the Commission.

(276) The Commission recalled that during the investigation the Commission considered whether there are elements on file pointing to the existence of any distortions present in the representative countries, also namely with regard to the main raw materials used for the production of the product concerned, for example whether they are subject to export restrictions. Furthermore, during the investigation there is ample opportunity for all parties to comment on the appropriateness of the potential representative countries considered by the Commission. In particular, the Commission publishes two notes to the file on the appropriateness of the possible representative countries and a preliminary choice of an appropriate country for the investigation. These notes are made available to all parties for their comments. Also in this case, the GOC and all other parties had the possibility to prove that the possible representative countries considered were affected by significant distortions and were thus not suitable for the investigation.

(277) The Commission notes that according to 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. The cost structure and price formation mechanisms in other markets, including matters related to generic and unsubstantiated financial support, such as the generic and unsubstantiated support alleged to be granted in the EU, do not bear any relevance whatsoever in the context of this proceeding (even if they would be present, *quod non* ([46])). Therefore, this claim was unfounded and was rejected.

(278) Xiamen Xiashun submitted a number of comments with regard to the existence significant distortions.

(279) First, Xiamen Xiashun noted in recital (142) of the provisional Regulation, that reference is made to an internet article whereby it is said that Xiamen Xiashun actively promotes party building and labour union work. Xiamen Xiashun commented that this article should be interpreted in the way as meaning solely that Xiamen Xiashun is facilitating the possibility for its workers in labour unions whether party members or not to conduct their activities within the company. However, Xiamen Xiashun underlined that the wording 'decision-making' does not mean that the party members or labour union have any say on the management and governance of the company, or the pricing setting of raw material purchases or product sales. As a result, no conclusion of government control or market distortion should be made based on these wordings.

(280) Additionally, Xiamen Xiashun opposed the findings made by the Commission in recital (142) of the provisional Regulation, explaining that the fact that there are party members in the company, does not mean that they are controlling the company. Xiamen Xiashun observed that it is legally obliged to allow the party members to organise party building activities, but it does not mean the party members have any influence over the company. It added that every person is allowed to belong to a religion or political party of its choice and it has no bearing on the decision making in the company. Furthermore, it underlined that the fact that there are party building activities organised in the company, does not mean that there are CCP members among the management of the company. Finally, Xiamen Xiashun explained that Commission's translation of the 'party building' is wrong and that the CCP's members' activities within the company are mainly those related to the studying of government policies, providing their opinion and advice to their party organisation, or sometimes even some entertainment activities. It added that there was nothing in the record indicating that the CCP is controlling the respondent companies. Xiamen Xiashun repeated those comments following definitive disclosure.

(281) The Commission observed that, first, the activities of the party committee active within Xiamen Xiashun are clearly described as 'decision making' in the article quoted in recital (142) of the provisional Regulation. The article does not analyse nor interpret in detail what this 'decision making' entails. However, the Commission recalls that according to Article 2(6a) first and second indent, two elements pointing to the existence of distortions in a country are: 'the market in question being served to a significant extent by enterprises which operate under the ownership,

([46]) See e.g. judgment of 28 February 2018 in Case C-301/16 P, *Commission v Xinyi PV Products (Anhui)*, ECLI:EU:C:2018:132, para. 56.

control or policy supervision or guidance of the authorities of the exporting country' and 'state presence in firms allowing the state to interfere with respect to prices or costs'. The involvement of the party committee into 'decision making' in Xiamen Xiashun falls under both criteria. The requirement that the state presence in the company interfere with the prices and costs does not mean that the State sets directly the prices of the goods sold, but rather that due to the presence and involvement of the party members in the company, the company can expect more favourable treatment and support from the authorities, which indirectly impacts its costs and prices. Furthermore, the presence of Chinese Communist Party ('CCP') members in the company and the fact that the company facilitates party building activities and involvement thereof into 'decision making' is a clear indicator, and not conjecture as submitted by Xiamen Xiashun following definitive disclosure, that the company is not independent from the state, and is liable to be acting in accordance with CCP policy rather than market forces. This argument is therefore rejected.

(282) Whereas indeed every employee has the right to belong to the religion or political party of its choice, in China the situation is different, as China is a one party state and the CCP is equal with the State and its government ([47]). Therefore, the presence of CCP members in a company, who organise regular 'party building' activities and have 'decision making' rights, as discussed in recitals (279) and (281) above, is equal to a state presence in the company. With regard to the activities of the party committee, the Commission first would like to explain that the 'party building' activities are used by the Commission in the sense of 'activities to strengthen the party spirit in the company', or 'development of party-related activities to ensure party overall leadership' in accordance with the official guidelines ([48]). The Commission recalls that as already explained in recital (281) above, the party committees present in the company do have at least an indirect, albeit at least potentially distortive effect, due to the close interconnection between the state and the CCP party in China.

(283) Secondly, Xiamen Xiashun disputed the Commission's conclusion in recital (209) of the provisional Regulation that that Xiamen Xiashun is subject to the country wide distortions concerning labour. Xiamen Xiashun argued that its wages are significantly higher than those of its competitors. Furthermore, Xiamen Xiashun observed that the burden of proof placed on exporting producers to rebut the alleged de facto presumption of the existence of 'significant distortions' has become so heavy that it is impossible for any individual company to meet. Xiamen Xiashun observed that in practice, this means that: (i) it is entirely unclear as to how, and by means of which evidence, an individual company could rebut the presumption that its cost items, such as labour costs, are distorted; and (ii) even if specific factual evidence is provided that comparatively shows significant differences in costs between exporting producers, this will not lead the Commission to call into question its prima facie finding as to the existence of 'significant distortions'.

([47]) According to an article on the website of the Central Commission for Discipline and Inspection: 'In the Chinese historical tradition, "government" has always been a broad concept bearing unlimited responsibilities. Under the leadership of the Party, the Party and the government only share the work, and there is no separation between the Party and the government. Regardless of whether the National People's Congress, the Chinese People's Political Consultative Conference, or the "one government and two houses", they all must implement the decisions and arrangements of the Party's Central Committee, be responsible to the people and be subject to their supervision. All organs exercising state power under the single leadership of the Party belong to the category of general government.' available at: https://www.ccdi.gov.cn/special/zmsjd/zm19da_zm19da/201802/t20180201_163113.html (last viewed on 16 June 2021).

([48]) See for example the General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era, from 15 September 2020. 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', 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.', Section VII.26: 'Improving the leadership institutions and mechanisms. Party committees at all levels must rely on the United Front work leading groups to set up and improve the mechanisms for coordinating the United Front work in the private sector, and regularly study, plan and advance the work in a coordinated manner. We must enable the United Front work departments of Party committees to fully play their leading and coordinating roles and enable federations of industry and commerce to play their bridging and assisting roles in the United Front work in the private sector.' Available at: http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm

(284) The Commission recalled that, as found in section 3.3.1.7 of the provisional Regulation, the wages in China are distorted *inter alia* due to the restrictions of mobility due to the household registration system (hukou) restrictions, as well as due to the lack of the presence of independent trade unions and lack of collective bargaining. Since the Commission's findings in section 3.3.1.7 point to the presence of horizontal, country-wide distortions in the Chinese labour market, the seriousness of those distortions led to the conclusion that the wages in China are not reliable. There are no elements on file on whose basis it could be positively established that the domestic wage costs of this exporting producer were not affected by the distortions in the labour market. First, this exporting producer has not submitted any evidence of how these horizontal distortions do not affect its labour costs, for instance by proving that its personnel was not affected by the hukou system, that there were independent trade unions and there was collective bargaining. Furthermore, there was no evidence that its wages were higher than those of its competitors, as it did not submit any data in this respect.

(285) Following definitive disclosure, Xiamen Xiashun submitted that it had argued that its wages were significantly higher than those of its competitors. The company referred to a statement by one of the Commission verifiers during the RCC expressing surprise that Xiamen Xiashun's wages were high. This led to a request for further information on the wage levels, followed by Xiamen Xiashun's submission of information to the satisfaction of the verifiers. Therefore, the company claimed, the Commission had all data necessary to determine and compare Xiamen Xiashun's wage levels. The Commission reiterates that the actual wage level of each cooperating exporting producer is confidential information. In any event, this claim does not change the conclusion already stated in the definitive disclosure that a certain level of wages by comparison to wages of competitors in the same business does not *per se* indicate that the horizontal country-wide distortions present in the labour market in the PRC would not affect the level of the wages of this exporting producer. In other words, even if the wages for this exporting producer were higher than those of its competitors, this does not show that such a level of wages is not affected by the distortions in the labour market in the PRC.

(286) As for the claim that it is not possible for exporting producers to rebut an alleged *de facto* presumption of the existence of significant distortions, reiterated following definitive disclosure, the Commission strongly disagrees with this unsubstantiated assertion. First, there exists no purported *de facto* presumption, because the Commission in each and every investigation assesses in great detail the existence of significant distortions affecting the product under investigation and the exporting producers concerned, taking into account, in an even-handed manner, all evidence available on the file. Furthermore, if there are claims that horizontal distortions do not affect certain domestic costs under Article 2(6a)(a) third indent, the Commission carefully analyses them in detail, as the length of the analyses in this and all other investigations concerning the PRC clearly show. If there was evidence on file that Xiamen Xiashun was not affected by the country-wide distortions present on the Chinese labour market, the Commission would certainly use the company's own cost of labour in accordance with Article 2(6a)(a) third indent of the basic Regulation.

(287) Third, Xiamen Xiashun commented, and reiterated following definitive disclosure, that the fact that the Commission systematically disregards the labour costs of the Chinese exporting producers, proves that Article 2(6a) of the basic Regulation is incompatible with Article 2.2, Article 2.2.1.1 and Article 2.2.2 of the WTO Anti-Dumping Agreement ('ADA'). This is because Article 2(6a) of the basic Regulation foresees that costs and prices are to be disregarded systematically, without examining whether the conditions set forth in Article 2.2 of the ADA are met.

(288) The Commission recalls that in every investigation all the parties have the opportunity to provide evidence on all relevant elements, including the allegation that certain factors of production are not distorted, in accordance with Article 2(6a) third indent of the basic Regulation. As explained in recitals (284) and (286) above, the Commission does not systematically reject labour costs of the Chinese exporting producers, but analyses the data in detail in every instance in which a party makes a claim of the lack of distortions to check whether an exporting producer is affected by the significant distortions. The same approach applies to administrative, selling and general costs and to profits. Therefore, the claim was rejected.

(289) Fourth, Xiamen Xiashun observed that in recital (198) of the provisional Regulation, the Commission indicated that Xiamen Xiashun received certain awards or formal recognitions meaning it needed to meet eligibility requirements in order to receive them, including following the official line of the GOC and complying with the official governmental strategies and policies. Xiamen Xiashun underlined that these recognitions are merely honours received by the company and while the company needed to meet some requirements, it was not controlled by the government. Xiamen Xiashun added that there was no evidence on the record indicating it is instructed by the government to set a raw material purchase price or its product selling price contrary to market conditions. Following definitive disclosure, Xiamen Xiashun stated that the Commission does not indicate in what way Xiamen Xiashun followed strictly the line of the government or even whether it benefited from direct or indirect governmental support attached to these recognitions. From Xiamen Xiashun's point of view, nothing in the data submitted or the verification by the Commission officials would allow the Commission to conclude that the company followed strictly the line of the government or obtained any related benefits.

(290) As already explained by the Commission in recital (198) of the provisional Regulation, the rewards and titles obtained by Xiamen Xiashun not only recognise the achievements of this company, but also clearly require it to be aligned with the official policy of the government. As evidenced by the quotes in recital (198) of the provisional Regulation, only the companies following strictly the line of the government are eligible for the rewards obtained by Xiamen Xiashun, such as the Fujian Backbone Enterprise title. Following definitive disclosure, Xiamen Xiashun provided no evidence contradicting these conclusions.

(291) Fifth, Xiamen Xiashun commented that in recital (205) of the provisional Regulation the Commission indicated that Xiamen Xiashun has established a joint venture with a state owned enterprise ('SOE'), concluding that it was closely cooperating with the Chinese State and that the country-wide distortions also concern its suppliers. Xiamen Xiashun stated that it is very common around the world that private companies do business with State-owned enterprises or government agencies, and it does not mean that the other party is forced to yield control of the business to the government. In the case of Xiamen Xiashun, the joint venture with the SOE is operated solely under the Articles of Association and the Company Law of China. Xiamen Xiashun underlined that there was no evidence on the record suggesting that the government is controlling and directing the price setting of products, supply and demand of raw materials, as well as the daily operation of the joint venture.

(292) Whereas the Commission agrees that joint ventures between private and State owned enterprises are very common in the world, the role of the SOEs in China is very specific, as described in section 3.3.1.3 of the provisional Regulation. An additional pertinent illustration of the distortive effect of the SOEs in China on prices and costs is the quote from an article published on the official page of the Chinese state, which says: 'The large-scale development of state-owned enterprises in core technology and strategic industries has benefited and supported private enterprises in many aspects, such as price inclusiveness, talent transfer, technology spill-over, and capital rescue.' ([49]). The 'benefit', 'support', 'price inclusiveness' and 'capital rescue' mentioned in the article clearly point to a distortive effect of the cooperation between the SOEs and private enterprises on the Chinese market. Following definitive disclosure, Xiamen Xiashun reiterated its comments but provided no evidence rebutting the Commission's conclusions.

(293) Airoldi submitted a comment concerning the Report. Airoldi submitted that Article 2(6a)(c) of the basic Regulation set the requirement that the document at issue must be a report and must be adopted formally by the European Commission. Airoldi further argued that the report needed to be made public and updated. Therefore, according to Airoldi, the document relied upon in the present investigation and published on the Internet Site of DG TRADE, was not updated, and was a simple Commission's staff working document, lacked the formal and substantive characteristics for being considered a formal European Commission report. Furthermore, as a matter of EU Institutional law, such a report needed to be published in all official languages of the European Union in the Official

([49]) See the article 'The role of state-owned enterprises is irreplaceable', published on 29 November 2018, available at: http://www.gov.cn/xinwen/2018-11/29/content_5344296.htm

Journal of the European Union. Additionally, Airoldi requested that DG TRADE provided it with an Italian version of this document and the issue of the Official Journal where it was published. At the same time, Airoldi noted that the China report was published on DG TRADE's Internet Site in the English language only. Therefore, the China report was unlawful and needed to be disregarded.

(294) Airoldi quoted a number of reasons why it should be given access to the Report in Italian. First, Airoldi claimed that EEC Council Regulation No 1 of 1958 determining the languages to be used by the European Economic Community gives European companies and citizens the right to obtain a copy of such document or to access it in their national official languages which are also official languages of the European Union. Secondly, Airoldi argued that the Report is linked to Article 2 of the basic Regulation and specifically mentioned therein. It is therefore a document implementing the substantive provisions of this Article of the basic Regulation and therefore needs to be published in all Official languages of the European Union. Third, Airoldi claimed that the lack of an Italian language version of the Report, which is the main piece of evidence in this case, constitutes a breach of Regulation No. 1/1958 read in conjunction with Articles 21, 22 and 41 of the Charter of Fundamental Rights. Furthermore, according to Airoldi, it has the right to access the Report in Italian language based on the following legal provisions: Article 2 of the Treaty on European Union (TEU), where great importance is given to respect for human rights and non-discrimination; Article 3 TEU stating that the EU 'shall respect its rich cultural and linguistic diversity'; Article 165(2) of the Treaty on the Functioning of the European Union (TFEU) emphasising that 'Union action shall be aimed at developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States', while fully respecting cultural and linguistic diversity (Article 165(1) TFEU). Finally, Airoldi argued that the Charter of Fundamental Rights of the EU, prohibits discrimination on grounds of language (Article 21) and places an obligation on the Union to respect linguistic diversity (Article 22). The first regulation, dating from 1958, determining the languages to be used by the former European Economic Community, has been amended following subsequent accessions to the EU, and defines the Union's official languages, together with Article 55(1) TEU.

(295) The Commission noted that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The Commission recalled that the report is a fact-based technical document used only in the context of trade defence investigations. The report is therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation.

(296) Since the provisions of Article 2(6a)(c) do not prescribe a specific format in which a country report needs to be published, nor its channel of publication, the publication of the China report as a staff working document, a type of document which does not require translation into all European languages, nor formal publication in the Official Journal, complies with the relevant rules. In any event, the Commission disagreed with the argument that, in this case, Airoldi's rights of defence were affected when not receiving an Italian translation of the Report. Indeed, Airoldi had raised this matter only at a very late stage of the investigation, and that up to that stage, both Airoldi and its lawyers had used English successfully, and at length, in both written and verbal communications. The Commission recalled the nature of that document, which is not an implementing Regulation, and confirmed its position.

(297) Regarding the argument that the Report was outdated, the Commission recalls that so far no evidence was provided showing that the report is outdated. On the contrary, the Commission noted in particular that the main policy documents and evidence contained in the Report, including the relevant 5-year plans and legislation applicable to the product under investigation were still relevant during the IP, and that neither Airoldi nor other parties have proven that this was no longer the case.

3.1.2. *Representative country*

(298) In the provisional Regulation, the Commission selected Turkey as the representative country in accordance with Article 2(6a) of the basic Regulation. The details on the methodology used for the selection were set out in the First and Second note made available to parties in the open file on 5 October 2020 and 25 November 2020 ('First Note' and 'Second Note'), and in recitals (225) to (267) of the provisional Regulation.

(299) Airoldi considered that its rights of defence were breached. In its view, the information provided by the Commission at the provisional stage did not allow parties to understand what data, conclusion and methodology were extrapolated from the investigation on aluminium extrusions, and at what stage of procedure it was done.

(300) The Commission disagreed. As described in recital (226) of the provisional Regulation the methodology for choosing the representative country had been explained in detail in the First and Second Note made available to all the interested parties. Furthermore, the Commission had explained the reasons to choose Turkey as the appropriate country, and what benchmarks were used to construct the normal value in recitals (225) to (267) of the provisional Regulation. The Commission therefore considered that the information provided to parties allowed parties to understand all the detail including on what data, conclusion and methodology were extrapolated from the investigation on aluminium extrusions. It thus rejected the claim.

(301) Following definitive disclosure, Airoldi added that the relationship between the two investigations (the current one and the one on the aluminium extrusions) had been subject of specific findings of the Hearing Officer which clarified in writing that data of one investigation cannot be compared and used in another investigation. Therefore, the use of data on aluminium extrusions breached Airoldi's legitimate expectations and its rights of defence. On this basis Airoldi requested that the data from the investigation on aluminium extrusions should not be relied upon in the current investigation on aluminium flat-rolled products. Airoldi also requested an additional disclosure of the methodology how data were 'imported' from the investigation on the aluminium extrusions.

(302) The Commission noted that the report of the Hearing Officer mentioned that the 'two investigations do not run in parallel' and 'no parallels can be drawn between the two cases'. This referred to the fact that the investigation on aluminium extrusions had started several months earlier. This meant that the final disclosure of 22 December 2020 took place before the agreement between the EU and the UK. Accordingly, the provisional injury analysis in the aluminium extrusions case had been based on data of EU28, while the investigation on aluminium flat rolled products only relied on EU27 data from its start. Therefore, the Hearing Officer did not take a position that no data from one case can ever be used in another case.

(303) The Commission further noted that the data from the aluminium extrusions proceeding also used in this proceeding concerned exclusively the level of profit and SG&A of producers of aluminium extrusions in the representative country chosen in both proceedings, that is, Turkey. This data is by definition 'readily available' within the meaning of Article 2(6a)(a) of the basic Regulation, that is, available in the public domain, rather than specific data received within the meaning of Article 19(6) of the Basic Regulation. Furthermore, for the definitive disclosure the Commission further checked and updated the data available for producers of aluminium extrusion in the representative country to ensure they were most closely overlapping the investigation period of this proceeding.

(304) The Commission explained in detail in the provisional Regulation that in the absence of readily available data from producers of the product concerned in the representative country Turkey, the Commission was entitled to rely on data from a closely resembling sector for which information on SG&A and profit was available. Furthermore, contrary to Airoldi's assertion, as explained in recital (300), the Commission provided a detailed explanation on its methodology to 'import' and process the relevant data in the First and Second Notes to file, as well as in the provisional regulation. The level of detail and information allowed all the parties to understand the underlying reasons that led to the conclusion that data on SG&A and profit of companies in the aluminium extrusions sector was the most appropriate benchmark in the given circumstances. The Commission considered that no additional disclosure was necessary and thus rejected the claim.

(305) Airoldi also claimed that the Commission erred in choosing Turkey as an appropriate representative country. In its view, the fact that Turkey is part of a Custom Union with the European Union influenced the assessment of dumping to be performed under the basic Regulation. Airoldi also considered that Turkey did not fulfil social and environmental protection standards.

(306) Turkey was found to be the most appropriate representative country on the basis of availability and quality of data. The fact that there was a Custom Union with Turkey did not undermine the appropriateness of Turkey as a representative country for the purpose of establishing undistorted prices and costs. In light of the Commission's findings in recitals (229) to (243) of the provisional Regulation, and in the absence of any claim that would invalidate that finding, an analysis of social and environmental protection standards was not warranted.

(307) Following provisional disclosure, Xiamen Xiashun, Nanshan Group and Airoldi contested the Commission's choice to use the data of companies producing aluminium extrusions as the benchmark for selling, general and administrative costs ('SG&A') and profit. In their view, aluminium extrusions were not similar to AFRPs and there were substantial differences between the two products in terms of their use, cost of production and factors of production. Xiamen's Xiashun further argued that the differences influenced profit and SG&A of the companies, and therefore, profit and SG&A of the companies producing aluminium extrusions should not be used to determine the normal value. The Nanshan Group and Xiamen Xiashun reiterated the same claim following definitive disclosure. In particular, Xiamen Xiashun quoted a Commission Regulation where the Commission based its assessment of the similar sector on similarities in the production process, factors of production, and costs of production ([50]). It also argued that the fact that both products were produced by the same companies did not play a role.

(308) In the absence of data showing a reasonable level of SG&A and profits of producers of the product concerned in potential representative country/ies according to Article 2(6a)(a), last subparagraph of the basic Regulation, the Commission may, if necessary, consider also producers manufacturing a product in the same general category and/or sector of the product under investigation. In these situations, although certain characteristics, end-uses, production processes and production costs may not be identical, these aspects must be considered as a whole to determine whether a product or sector falls in the same general category and/or sector of the product under investigation. The polyvinyl alcohols case cited by these parties confirms that in that case the Commission also weighed all the relevant elements related to the product concerned and the closest upstream and downstream products, and chose the closest product on this basis. In any event, the Commission recalled that Article 2(6a)(a) simply requires the Commission to establish corresponding costs of production and sales, as well as a reasonable level of SG&A and profits, in an appropriate representative country, without mandating the use of companies producing exactly the same product as the product concerned.

(309) The Commission considered that although presented in different shapes, and despite other differences pointed out by Xiamen Xiashun, aluminium flat-rolled products and aluminium extrusions are produced of the same basic raw material, aluminium. Furthermore, extrusions are, together with aluminium flat-rolled products, considered semi-finished aluminium products, thus pertaining to the same general category of products. Moreover, as explained in recital (239) of the provisional Regulation, both aluminium extrusions and flat-rolled products were in some instances manufactured within the same company, or within the same group. This is the case for instance of one of the sampled exporting producers, the Nanshan Group.

(310) Furthermore, both aluminium extrusions and aluminium flat-rolled products fall under the same general category 'manufacture of basic metals' and are classified under the same NACE code (NACE code 24), a category of products including, under the codes 24.42 and 24.53, both flat rolled and extruded products ([51]). This category was also used to establish a benchmark for labour costs (see recital (260) of the provisional Regulation).

([50]) Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1), recital (190).

([51]) https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF.pdf/dd5443f5-b886-40e4-920d-9df03590ff91?t=1414781457000

(311) More importantly, while criticising the choice of aluminium extrusions, the exporting producers failed to propose any alternative closest resembling product and/or sector to AFRPs producers with available financial data and reasonable profit from an appropriate representative country/ies. In the Commission's view, the companies used in this investigation were representative of a broader aluminium product group with clear links to the product concerned, including rolled products. As explained in recital (310), companies considered suitable in the context of Article 2(6a)(a) of the basic Regulation frequently produced more than one product. In this case, the financial data of the extrusions producers identified was only available at an aggregate level. Therefore, the available financial data for aluminium extrusions companies is representative not only strictly of the situation in the extrusions market, but also as concerns the market for a broader product group, including rolled products. The Commission thus rejected these claims and maintained that the data on SG&A and profit of companies in the aluminium extrusions sector constituted an appropriate benchmark.

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

(312) The Commission set out the details concerning the sources used to establish the normal value in recitals (244) to (267) of the provisional Regulation. After publication of the provisional Regulation, several parties made claims on the different sources used to determine the normal value.

3.1.3.1. Raw material

(313) Jiangsu Alcha claimed that to establish the normal value of one of its factors of production, aluminium wire, the Commission had used the normal value of titanium carbon wire which was more expensive.

(314) The Commission recalled that the HS code for this factor of production (HS 7605) was provided by the company itself. It further noted that the corresponding description of the HS code in the extract from the GTA database disclosed to parties together with the Note of 5 October 2020 referred to titanium carbon wire. However, according to the Combined Nomenclature ([52]), the HS code corresponded to aluminium wire, or a wire in which aluminium is the defining component. The Commission thus concluded that despite the inaccurate description of the code in the GTA database, the HS code and the corresponding surrogate value that was used to construct the normal value for Jiangsu Alcha related to the aluminium wire and was therefore correct.

(315) Nanshan Group considered that the Commission's approach to use the GTA database was inappropriate, since more precise surrogate values were publicly available. They considered that in line with Article 2(6a) of the basic Regulation, the Commission should use as surrogate values 'undistorted international prices, costs, or benchmarks'. Nanshan Group contested in particular the GTA values for steam coal, alumina powder, hot and cold rolled coil and hot rolled plate. It suggested to use alternative benchmark prices based on IHS steam coal report ([53]) (for steam coal), LME alumina settlement prices ([54]) (for alumina powder), and the CRU report (for cold/hot rolled coil and plate).

(316) In reply to comments made by the Nanshan Group, the complainant opposed to use the alternative benchmark prices suggested by the Nanshan Group. It found that, contrary to the prices in GTA, the sources suggested by the Nanshan Group did not reflect what a producer in Turkey would actually pay for the factor of production. In its view, the data in the three sources were markers (in case of the HIS steam coal report), indexes (in case of the LME prices) or benchmark prices (in case of the CRU report) reflecting market dynamics. Moreover, these markers, indexes or prices did not include different premiums parties may add on top of these prices.

(317) With regard to steam coal, Nanshan reiterated that the imported quantity in the GTA came from only two countries. The data material was hence negligible and did not permit the determination of the caloric content of the coal. In its view, the Commission should have used data from the IHS steam coal report. The Nanshan Group made the same claim after the disclosure of the definitive findings.

([52]) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:361:FULL&from=EN
([53]) Submitted as Annex 1 to Nanshan Group's comments to the First note to file (t.20.0006989).
([54]) London Metal Exchange: Historical data for cash settled futures (lme.com).

(318) The Commission maintained that there was no compelling evidence to consider that the price in the GTA database was not representative of a market price or the particular type of coal, or that the price in the database would have been substantially different if the import volume was higher. Therefore, the Commission confirmed its findings in recitals (258) and (259) of the provisional Regulation that the import price of coal to Turkey based on the GTA database was an appropriate benchmark price for steam coal.

(319) With regard to alumina powder, the Nanshan Group considered that the GTA database included mainly imports of non-metallurgical alumina since it was imported to Turkey from countries which are not the metallurgical alumina producers ([55]). In its view, the prices between the different alumina types significantly varied and the type of alumina reported in the GTA resulted in an abnormally high surrogate value. Instead, the Nanshan Group proposed to use the LME alumina settlement price.

(320) The Commission analysed the claim and found it justified. In view of the reasons presented by the Nanshan Group, the Commission considered that the price of alumina powder imported to Turkey was not representative of the factor of production used by the Nanshan Group.

(321) However, the evidence in the file and information submitted by parties did not allow the Commission to conclude that the LME prices actually represented an undistorted market price. According to the Nanshan Group, the LME price reflected the market value of the alumina powder whilst the complainant considered that these prices were only indexes to which parties add different premiums. Therefore, even though the LME is not generally discarded as a source to establish an appropriate benchmark, the Commission decided, in view of the case specific doubts described in recital (317), to determine the alumina powder benchmark based on the benchmark value of aluminium liquid, by deducting the processing costs actually incurred by Nanshan. In any event, there was not a significant difference in value between the value used and the LME price.

(322) The Nanshan Group also reiterated its comment on the use of benchmarks for cold rolled coil, hot rolled coil, and hot rolled plate. In its view, the imports to Turkey of these products included products used for aircraft parts and automobile industry, excluded from the product scope. In its view, the resulting benchmark values were thus unreasonably high. As an alternative, the Nanshan Group proposed to use prices on the Union market for a few Union countries indicated in the CRU report. Turkey imported significant quantities of the rolled products from the Union, and therefore, the prices in Turkey were in its view heavily influenced by the prices applied in the Union. As a result, the Turkish domestic prices were consistent with the Union prices and the prices in the CRU report would in its view be a representative benchmark to use to construct the normal value.

(323) The Commission accepted the claim that the prices in the Union would constitute an appropriate benchmark for these specific factors of production in this case. However, it considered that it could not use the values indicated in the CRU report. The product categories used in the report were not clearly specified and the report did not appear to contain prices related to hot rolled coils. The Commission also lacked information on if and what premiums parties add to these prices. For this reason, the Commission decided to instead rely on the actual and verified sales price data for hot rolled coils, cold rolled coils and hot rolled plates that it had received from the sampled Union producers in the present investigation. This data constituted representative and highly accurate data related to sales of these products during the IP in the Union. The Commission thus established the relevant benchmark based on the verified prices of the Union industry at ex-works level for each of these factors of production.

(324) Following final disclosure, the Nanshan group reiterated that the Commission could have used the prices in the CRU report directly, since they constituted prices of actual transactions, including premiums. They argued that the report mentioned the price of the raw material to produce the cold rolled coils. Since the raw material to produce the cold rolled coil was hot rolled coil, the Commission should have taken this price of the raw material as the benchmark value for hot rolled coil. Furthermore, in its view the report as such constituted a reliable source of information since it was referred to in other jurisdictions, notably in the United States.

([55]) The alumina used to produce the product concerned is metallurgical alumina.

(325) The Commission recalled that it did not reject the use of the CRU report as such and that it also accepted the claim that the Union prices constituted a representative benchmark. However, the Commission had at its disposal the actual and verified sales price data for the three categories of the factors of production (hot rolled coils, cold rolled coils and hot rolled plates) which constituted representative and accurate data related to sales of these products during the IP in the Union. Hence using these data constituted in its view a more appropriate benchmark than using the prices mentioned in the CRU report.

(326) The Commission also disagreed that the prices of the hot rolled coils would be directly available from the report. The report only referred to the raw material for cold rolled coils, without specifying which stage of the production process and what raw material it referred to ([56]). Therefore the Commission considered that using as a benchmark verified prices of the Union industry at ex-works level for each of these factors of production was more precise, since the price to be used as the benchmark clearly related to the correct factor of production. It thus rejected the claim.

(327) The Nanshan Group also took issue with the benchmark for scrap. In its view, the benchmark price of scrap should be determined by using as a basis the benchmark for aluminium ingots. The Group reiterated the same claim following definitive disclosure.

(328) In the provisional Regulation, the Commission explained its methodology and why it decided to use the benchmark value from the GTA database rather than using the benchmark value for aluminium ingot. As the Nanshan Group did not provide any new evidence on why the Commission could not use the value in the GTA database, the Commission rejected the claim and maintained its findings as mentioned in recitals (254) to (255) of the provisional Regulation.

(329) Nanshan Group and Xiamen Xiashun also argued that in the provisional Regulation, the Commission expressly considered that the price of one of the main raw materials, aluminium ingot, was found to be undistorted for the purpose of Article 7(2a) of the basic Regulation, and that it mentioned that the purchase price for ingots paid by the sampled exporting producers 'was not significantly below the representative international benchmark price' ([57]). Therefore, in its view, the Commission should have used the actual price paid by the exporting producer for the ingot instead of using a surrogate (benchmark) value.

(330) The Commission recalled that the calculation of the normal value and the assessment related to the application of the lesser duty rule were different analyses based on different articles of the basic Regulation. The normal value was determined in accordance with Article 2(6a)(a) of the basic Regulation. In accordance with this Article, the Commission found that the aluminium sector in the PRC was affected by significant distortions (recitals (223) to (224) of the provisional Regulation), and therefore, the normal value had to be constructed on the basis of cost of production and sale reflecting undistorted prices or benchmarks.

(331) On the other hand, under Article 7(2a) of the basic Regulation, the Commission examined 'whether a duty lower than the margin of dumping would be sufficient to remove injury.' Under this Article the Commission examined, amongst other points, whether the price of a raw material (in this case of an ingot) was 'significantly lower compared to prices in the representative international markets.' While the conclusions reached under Article 2(6)(a) were based on the situation in the given country and many different factors being taken into account, the investigation under Article 7(2a) is more limited and conducted in the context of determining the applicability of the lesser duty rule. Therefore, the outcome of the examination under Article 7(2a) did not impact conclusions reached by the Commission in recitals (223) to (224) of the provisional Regulation. The Commission thus rejected the claim.

(332) Following definitive disclosure, the Nanshan Group repeated its claim. It argued that pursuant to Article 2(6a)(a), distortions should be positively established, and the assessment shall be done for each exporting producer separately. This required evidence that aluminium ingots are purchased at prices which do not reflect the benchmark price. The Nanshan Group pointed out that its purchase price is above the LME price, and therefore, in its view it can be positively established that the price was not distorted.

([56]) The raw material of the processing step before hot rolled coils could also be aluminium ingots.

([57]) Recital (479) of the provisional Regulation.

(333) Xiamen Xiashun reiterated that, if because of the significant distortions, domestic prices and costs cannot be used, the same Article refers to corresponding costs of production and sale in an appropriate representative country or to 'undistorted international prices, costs or benchmarks'. It further argued that the Commission recognised that the domestic Chinese prices for aluminium ingots were similar to the prices in the representative international markets, and that this must also mean that any significant distortions did not affect the level of prices of the ingots. Accordingly, there was no reason to replace the actual prices settled by Xiamen Xiashun by import prices to Turkey.

(334) The Commission recalled that the conclusions reached under Article 2(6)(a) were based on several factors. These include an assessment of the potential impact of one or more elements listed under Article 2(6a)(b) of the basic Regulation, such as for instance public policies, interference of public authorities on the markets, state presence in firms etc. The overall assessment on the existence of distortions may also take into account the general context and situation in the country. In contrast, under Article 7(2a) of the basic Regulation, the Commission only assesses the price level of a specific input in the domestic market and whether the price level of such input domestically is 'significantly lower' compared to an international benchmark to warrant the non-application of the lesser duty rule. This comparison of domestic and international prices under Article 7(2a) has a different purpose and context than the normal value calculation based on Article 2(6a) of the basic Regulation. There was no evidence on file supporting a finding of positive establishment under Article 2(6a)(a) third indent that the price of aluminium ingots purchased by one or more exporting producers was not affected by the significant distortions and thus warranted the use of domestic ingot prices in that context. With regard to the source of the undistorted price of factors of production, the basic Regulation states that this can be either in an appropriate representative country under Article 2(6a)(a), first indent, or set by reference to undistorted international prices, costs or benchmarks under Article 2(6a)(a), second indent. There was no evidence on file or other compelling reason to use the latter over the former in the context of the construction of normal value. Therefore, the Commission maintained that the outcome of the examination under Article 7(2a) did not impact the conclusions reached by the Commission under Article 2(6)(a), and that the Commission correctly relied on prices in an appropriate representative country. The Commission thus rejected the claim.

(335) The Nanshan Group and Xiamen Xiashun also argued that the Commission should not apply import duties in relation to materials which the exporting producers produce themselves, or purchase in the PRC. In their view, the application of the import duty was against the rationale of Article 2(6a)(a) of the basic Regulation to recreate the actual costs that a theoretical company in a country with a non-distortive economy would have borne. The third paragraph of that prevision requires that an 'assessment shall be done for each exporter and producer separately'. This entailed, according to the Nanshan Group, that the normal value cannot be calculated abstractly, but must be grounded on the concrete situation of the investigated companies. The Nanshan Group referred to the Commission Regulation of (EU) 2019/915 of 4 June where the Commission mentioned that the objective of this Article was to 'find, in a possible representative country, all or as many of the corresponding undistorted factors of production used by the cooperating Chinese producers and of undistorted amounts for manufacturing overheads, SG&A and profits as possible' ([58]). Consequently, Nanshan Group considered that the inclusion of import duties for raw materials that Chinese companies purchase in their home country cannot be considered as reasonable within the meaning (and rationale) of this provision. Xiamen Xiashun also argued that the import duty was to offset VAT that is not levied by the exporting countries, so that the export price is comparable to domestic price, on which VAT applies. Therefore, for the normal value calculation import duty should not be added.

(336) After definitive disclosure, Xiamen Xiashun reiterated that the Commission should not take into account the import duty when calculating the benchmark value. It further argued that import duties were not added by the United States investigating authority. It submitted that the costs in the representative country must be those that correspond to the costs elements incurred in China, where no import duties are incurred for locally produced goods. Hence, import duties should not be taken into account.

([58]) 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), recital (122).

(337) The Commission recalled that Article 2(6a) allows the Commission to establish the normal value on the basis of undistorted costs and prices in a representative country, in this case Turkey. In the absence of available data on domestic prices in the possible representative countries (in this case in Turkey), data on import prices which are readily available to the Commission are applied. In order to arrive at a reasonable proxy representing an undistorted domestic price in the domestic market of the selected representative country, the import prices identified need to be adjusted by adding the relevant import duties, because these affect the actual price on the domestic market. The practice of the US investigating authority is not relevant for the findings under the basic Regulation, because the respective legal frameworks and practices are different. The Commission thus rejected the claim.

3.1.3.2. Labour

(338) Jiangsu Alcha claimed that the benchmark cost for labour used to establish the normal value at provisional stage (of 60,08 RMB/hour) was in contradiction with the value of 42,21 RMB/hour mentioned in recital (248) of the provisional Regulation.

(339) The Commission clarified that the value of 42,21 RMB/hour mentioned in recital (248) of the provisional Regulation was a clerical mistake. The correct benchmark for labour costs used at the stage of the provisional calculations when constructing the normal value was 60,08 RMB/hour. Therefore, the provisional dumping margin calculation was correct.

(340) Following provisional and definitive disclosure, the Nanshan Group contested the Commission's choice to determine the labour costs based on the NACE code for the economic activity C.24 – manufacture of basic metal. In its view, for three companies of the Group operating upstream of the production of the product concerned, the Commission should have used the labour costs under the code C25.50 – forging, pressing, stamping and roll-forming of metal, powder metallurgy ([59]), since the rolling phase was in its view the most important step in the manufacturing process of the product under investigation.

(341) The Commission first observed that activities of exporting producers (as well as the Union producers) differed depending on their level of integration – some companies like the Nanshan Group started the production process from alumina powder while some others, like for instance Jiangsu Alcha, were at some instances buying cold rolled coils for further processing. Therefore, the scope of the activities differed between companies.

(342) Secondly, the NACE code C.24, which the Commission used to establish the labour costs included activities to refine metal into ingots ([60]). Moreover, NACE code C24.42 included specifically the aluminium production, including production of aluminium foil ([61]) (including the phase of rolling). Therefore the Commission considered that to establish the benchmark for the labour costs it was more accurate to use the NACE code C24. It thus rejected the claim.

(343) The Nanshan Group also argued that the exchange rate the Commission used differed from the rates the Commission itself had provided to the exporting producer as an annex to the questionnaire to be used for the purpose of the investigation, and that the benchmark values were therefore inflated. The Commission analysed the claim and found that it was justified. It therefore recalculated the values using the exchange rates provided in the questionnaire. The new benchmark value is 59,97 RMB/hour.

3.1.3.3. Electricity

(344) The Nanshan Group claimed that to establish the benchmark for electricity, the Commission should have used data from Eurostat, which were in its view more accurate than the Turkish national data used by the Commission since it excluded VAT and other recoverable taxes.

([59]) Europa - RAMON - Classification Detail List
([60]) Europa - RAMON - Nomenclature Detail View
([61]) Europa - RAMON - Nomenclature Detail View

(345) The Commission examined the claim and found that Eurostat data related to Turkey was based on data received from the Turkish national statistics albeit presented differently. However, contrary to the available data from the Turkish national statistics, the publicly available data of Eurostat covered the entire investigation period. The Commission therefore accepted the claim and established the benchmark for electricity on the basis of publicly available data in Eurostat.

(346) The Nanshan Group also argued that the Commission considered a single consumption band for all the companies of Nanshan Group whilst volumes of electricity consumed by each company in the group differed. The Commission accepted the claim and recalculated the normal value by using the relevant benchmark value corresponding to the consumption of each of the companies in the Group.

3.1.3.4. Gas

(347) The Nanshan Group claimed that to establish the benchmark for gas, the Commission should have used data of Eurostat, which were in its view more accurate than the Turkish national data used by the Commission since it excluded VAT and other recoverable taxes.

(348) The Commission considered that there was no basis to consider that the Turkish national data would not be accurate. These data, which covered the entire investigation period, were provided by the Turkish authorities directly, and, in contrast to data from Eurostat, they also provided for information and prices in the required unit (m^3). Also, these data excluded taxes such us VAT. The Commission therefore rejected the claim.

(349) The Nanshan Group also argued that the Commission considered a single consumption band for all the companies of Nanshan Group. However, volumes of gas consumed by each company in the group differed. The Commission accepted the claim and recalculated the normal value by using the relevant benchmark value corresponding to the consumption of each of the companies in the Group.

3.1.3.5. Water

(350) The Nanshan Group argued that the Commission should have excluded costs of the water in the Istanbul region to establish the benchmark for water. It pointed out that none of the companies whose data were used to establish undistorted costs of SG&A and profit, was situated in this region.

(351) The Commission re-assessed the publicly available data it initially used to establish the benchmark ([62]). It found that, contrary to the claim by Nanshan Group, none of the tariffs used to establish an average cost for water related to the Istanbul region specifically. More precisely, one of the publicly available tariffs for water was a tariff paid by industry in the entire country, and the two others were specific tariffs for two (out of many) industrial zones in Turkey. Therefore the Commission considered that the appropriate tariff to be used as the benchmark to establish the costs of the water of the industry was the tariffs relating to the average of the industrial tariffs in Turkey and to exclude the tariffs applicable in the two industrial zones.

3.1.3.6. SG&A and profits

(352) The Nanshan Group claimed in its comments on the provisional findings that the Commission should have selected one of the several companies indicated by the Nanshan Group which allegedly produced the product under investigation instead of companies from the aluminium extrusion sector in order to establish the benchmark for an undistorted SG&A. It also considered that the Commission used outdated data from 2018.

(353) The Commission did not find recent, publicly available financial data for any of the six companies indicated by the Nanshan Group. Furthermore, for the reasons explained in recitals (307) to (311) and in the absence of alternative financial data, the Commission maintained that data of companies active in the aluminium extrusion sector constituted an appropriate benchmark.

([62]) Cost of Doing Business - Invest in Turkey.

(354) Following provisional and definitive disclosure, Xiamen Xiashun and the Nanshan Group also contested the Commission's decision to disregard the data of a Turkish producer of aluminium flat-rolled products, 'PMS Metal' ([63]) because its profit was close to the breakeven point. In its view, this contradicted the Commission's approach taken in the investigation on aluminium extrusions, where the Commission, when establishing a reasonable value for SG&A and profit, took into consideration all profitable companies irrespective of their profit level, and as long as they were not loss making ([64]). Xiamen Xiashun reiterated the same claim following definitive disclosure. For Xiamen Xiashun the fact that a company has a very low profit was not a sufficient reason to exclude it. It argued furthermore that there was no basis to consider that an average of profit of several companies was more representative than a data of one single company. Furthermore, it argued that the Commission used data from 2018 but at the same time, it rejected to use the data of PMS Metal for which data overlapping with the IP existed.

(355) The Commission recalled that the Turkish producer identified in the First Note to file was the only company with publicly available data at the time. Also, the available data were not full financial statements and it only partially overlapped with the IP. Based on all these elements together and the fact that the profit of this company was very close to the breakeven point, the Commission concluded that such data could not be considered representative of the sector.

(356) The Commission further noted that, as set out in 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'. A profit close to break-even cannot be considered reasonable. The use of pooled and weighted financial data of a basket of companies is in principle more adequate than examining the performance of a single producer for the purposes of finding a reasonable amount for SG&A and profit. Therefore, excluding individual companies was not in the Commission's view inconsistent with its approach of calculating a weighted average of several companies producing aluminium extrusions that reported profit. In contrast, as the data reflected the financial situation of several companies, their weighted average was considered as being representative of companies active in the sector. The Commission thus rejected the claim.

(357) Following definitive disclosure, the Nanshan Group further argued that the Commission could use data of Asaş Aluminyum found in the other ongoing investigation concerning aluminium converter foil. The Nanshan Group also reiterated that the Commission should base its findings on the most recent data.

(358) The Commission recalled that in the cited investigation, the Commission did not consider data of Asaş Aluminyum because the company's profit in 2019 was close to break-even ([65]). For the reasons explained in recital (357), the Commission maintained that the data of companies having profit close to breakeven point could not be considered as an appropriate benchmark.

(359) The combined level of SG&A and profit used in the provisional Regulation was based on data for the year 2018. The Commission checked the availability of more recent data for SG&A and profit in the representative country for 2019. This data was only available for three of the five provisionally selected companies and it showed that the combined level of SG&A and profits increased only very marginally in 2019. This would not have a noticeable impact on the constructed normal value. In light of this, and in the absence of any other comments by interested parties with respect to manufacturing overheads costs, SG&A and profit levels, the Commission maintained the levels listed in the provisional Regulation.

([63]) P.M.S. Metal Profil Aluminyum Sanayi Ve Ticaret Anonim Sirketi (Annex IIIa of the Note to file of 5 October 2020).

([64]) 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), recital (171).

([65]) Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China (OJ L 216, 18.6.2021, p. 142), recital (182).

3.1.4. *Factors of production and sources of information*

(360) 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	Units	Source of information
Aluminium alloys	760120800000	14,01	CNY/kg	GTA
Alumina powder	N/A	2,38	CNY/kg	GTA/company's data
Aluminium ingot	760110	12,73	CNY/kg	GTA
Liquid aluminium	760110000000 – processing costs	12,20	CNY/kg	GTA/company's data
Aluminium fluoride	282612	10,37	CNY/kg	GTA
Aluminium scrap	760200190000	11,01	CNY/kg	GTA
Aluminium slab	760120200000	13,91	CNY/kg	GTA
Cathode copper	740329	39,47	CNY/kg	GTA
Cold rolled coil	N/A	18,40	CNY/kg	Union industry
Hot rolled coil	N/A	18,15	CNY/kg	Union industry
Hot rolled plate	N/A	20,31	CNY/kg	Union industry
Magnesium ingot	810411	19,50	CNY/kg	GTA
Melting copper agent	740329	39,47	CNY/kg	GTA
Melting Ferro agent	720299300000 720299800000	10,88	CNY/kg	GTA
Melting manganese agent	811100	15,59	CNY/kg	GTA
Petroleum coke	271311	0,42	CNY/kg	GTA
Pitch	270810	3,82	CNY/kg	GTA
Rolling oil	271012110000	3,17	CNY/kg	GTA
Steam coal	270119000000	0,59	CNY/kg	GTA
Titanium carbon wire	760521	21,77	CNY/kg	GTA
Zinc ingot	790111	15,93	CNY/kg	GTA
Quick melt silicon agent	280469	18,38	CNY/kg	GTA
Iron agent	732690	37,13	CNY/kg	GTA
Chromium agent	811221	54,20	CNY/kg	GTA
Aluminium slags	262040	7,59	CNY/kg	GTA
Waste oil	340399	33,3	CNY/kg	GTA

Labour				
Labour	N/A	59,97	CNY/hour	The Turkish National Data
Energy				
Electricity	N/A	0,48 – 0,59 ([66])	CNY/Kwh	Eurostat
Gas	N/A	1,93 – 2,00 ([67])	CNY/m^3	The Turkish National Data
Water	N/A	13,89	CNY/m^3	The Turkish National Data
By product/waste				
Aluminium scrap	760200190000	11,01	CNY/kg	GTA

3.1.5. *Calculation of the normal value*

(361) The details of the calculation of the normal value were set out in recitals (268) to (276) of the provisional Regulation.

(362) Nanshan Group reiterated its claim 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. The company considered that despite being legally distinct entities, the companies of the Group form a part of a single unit from an economic perspective since: (i) they are controlled by the same entity and there is significant overlap within the group in terms of both boards of directors and at managerial level; (ii) they are all located in the same industrial park; and (iii) the production process is extremely integrated, with the output of one company constituting the input for the other. Moreover, the individual companies appear to the unrelated customers as a single entity as well, with a single website, single brand, and a single contact centre. Nanshan claimed that the concept was not restricted to trade defence law, and it made reference to various Court cases, where the concept of the single economic entity was further developed. In its view, the Commission's findings leads to discrimination since it overlooks the differences among sampled exporters. It gave as an example the company Xiamen Xiashun subject to the lowest dumping margin. According to the Nanshan Group, this is only because Xiamen Xiashun produces the product under investigation from aluminium ingot under the same legal entity.

(363) In Nanshan's view, the methodology also violated the provisions of Article 2(6a) of the basic Regulation which refers to the 'corresponding costs of production and sale in an appropriate representative country'. In Nanshan's view, its corresponding costs of production were not that of intermediate raw materials, but the first raw materials in the production chain of aluminium, namely bauxite and coal. The provision in Nanshan's view only authorised the Commission to disregard the costs of material from unrelated suppliers.

(364) The Commission reassessed the claim and the evidence on file. However, as explained in the recital (272) of the provisional Regulation, the Commission's well established method is to establish a normal value (and dumping margin) for each investigated entity representing an exporting producer separately. Whether or not the various companies in a Group constitute a single economic entity is not in the Commission's view relevant for establishing the normal value under Article 2(6a) of the basic Regulation following a different method. If prices and costs are found to be distorted in China as regards the product concerned as well as its inputs, the inputs made by the related company within the Group would also be affected by those findings. Thus, those inputs, regardless of whether they

([66]) Depending on consumption.
([67]) Depending on consumption.

were sourced from a related supplier, should be adjusted in this context. Furthermore, the Commission did not consider the method discriminatory – in its view, it reflected the actual set up of the Group, and the fact that companies within the Group were separate legal entities. Therefore, in the Commission's view, the 'corresponding' costs of production mentioned in Article 2(6a) of the basic Regulation were the costs borne by each of the legal entities individually and affected by the significant distortions. Therefore, the Commission rejected the claim.

(365) On this basis, the Commission confirmed its provisional findings and the method to calculate the normal value as set out in recitals (268) to (276) of the provisional Regulation.

(366) Following final disclosure, the Nanshan Group reiterated its claim that the Commission should have applied the concept of the single economic entity when constructing the normal value for the companies of the Group. It argued that the Commission had already applied this concept when construing the normal value in previous cases. It referred in particular to the Commission Implementing Decision (EU) 2017/957 ([68]). Furthermore, the Nanshan Group considered that the Group fulfilled all the relevant criteria. In its view, by considering only factors of production bought from unrelated parties and not the captive sales between the related entities, the Commission would cover all the distorted factors of production bought by the Group. Finally, the Nanshan Group reiterated that it considered the Commission's method discriminatory since it violated the principle of equal treatment by not taking into account that the Group was vertically integrated.

(367) The Commission considered that the above Commission Decision does not constitute a relevant precedent. First, it noted that in that Commission Decision, the claim to apply the concept of a single economic entity was rejected on the merits. Furthermore, the legal framework and the factual circumstances differed. In *Terephtalitic Acid*, the claim was related to a raw material supplier, and the exporting producer asked to deduct the profit of its supplier for the purpose of the normal value calculation. However, in the case at hand, the companies of the Nanshan Group that asked to be treated as a single economic entity are producers of the product concerned for which the Commission has to establish individual dumping margins. As explained in recital (272) of the provisional Regulation, the Commission establishes a normal value (and a dumping margin) for each investigated entity representing an exporting producer separately. The Commission thus considered it appropriate to base the constructed normal value on the factors of production bought by the different legal entities of the Nanshan Group individually.

3.2. **Export price**

(368) The details of the calculation of the export price were set out in recitals (277) and (279) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions

3.3. **Comparison**

(369) The details concerning the comparison of the normal value and the export price were set out in recitals (280) to (283) of the provisional Regulation.

(370) Xiamen Xiashun submitted that in order to determine the export price for one of its customers, the Commission should have taken into account the actual credit costs incurred rather than calculate them based on the agreed payment terms. It argued that, unlike for other customers, the relationship with this customer was subject to a contract with its bank, in the framework of which the bank only charged the company the actual credit costs it incurred.

([68]) Commission Implementing Decision 2017/957 of 6 June 2017 terminating the anti-dumping proceeding on imports of purifies terephtalitic acid and its salts originating in the Republic of Korea (OJ L 144, 6.6.2017, p. 21), recitals (37) – (41).

(371) The Commission assessed the claim. The credit costs were one of the elements discussed in the price negotiation, and the (export) price was set when the terms were negotiated. Therefore it is the negotiated conditions, including the payment terms, that affected the setting of the price level, and hence, the determination of the export price. Furthermore, the price would not be changed retroactively if, for a particular transaction, there was a difference between the negotiated and actual payment terms. The Commission therefore rejected the claim.

(372) Jiangsu Alcha claimed that its dumping margin calculation were based on the wrong PCN structure and contained significant errors. In particular, at pre-disclosure, Jiangsu Alcha submitted that to calculate the dumping and the underselling margin, the Commission used information provided by Jiangsu Alcha based on an outdated PCN structure, and not on the (corrected) PCN structure communicated to parties by Note to file of 9 September 2020. Jiangsu Alcha claimed that the Commission should have addressed the error after pre-disclosure, and corrected the calculations before publishing the provisional measures. In its view, the Commission's failure to provide corrected calculations violates Article 19a(1) of the basic Regulation.

(373) The Commission maintained the view communicated to the company after pre-disclosure that the possibility to correct calculations at pre-disclosure in accordance with Article 19a was limited to the accuracy of calculations, and clerical errors in addition, subtraction, or other arithmetic function, error resulting from inaccurate copying, duplication, application of inconsistent units of measurement or conversion rates and any other similar types of clerical errors. Verifying the correct company's PCN structure required an additional check of the company's export data and it did not thus relate to accuracy of calculations and the type of the errors that could be corrected after pre-disclosure.

(374) The Commission therefore examined the claim together with the other claims after provisional Regulation. It confirmed that Jiangsu Alcha's initial classification of product types was not correct. The Commission thus replaced the wrong PCN codes by correct codes. The change did not impact the dumping margin calculation. However, the Commission corrected the underselling margin calculations accordingly (see recitals (564) to (566)).

(375) The Nanshan Group also considered that the SG&A and profit of the Turkish companies included allowances such as transport and insurance. Therefore, in line with Article 2(10) of the basic Regulation and in order to ensure a fair comparison, the Commission should make adjustments.

(376) The Commission considered that first, there was no element in the file allowing it to conclude that the SG&A and profit of the Turkish companies included transport and insurance, and therefore, that the values included different costs than the same values taken into account for the Chinese exporting producers. Therefore, there was no basis for the Commission to make any such adjustment. In the absence of an evidence on the differences the Commission considered that the values on SG&A and profit of both the Turkish companies and the Chinese exporting producers were at the same level and allowed a fair comparison.

3.4. **Dumping margins**

(377) Given that the Commission accepted some comments from the interested parties submitted after provisional disclosure it recalculated the dumping margins accordingly.

(378) As explained in recital (289) of the provisional Regulation, the level of cooperation in this case is low. After the changes brought in the volume of imports from the country concerned as explained in Section 4.5 below, this conclusion was confirmed as the exports of the cooperating exporting producers constituted only around 65 % 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 dumping margin established for a product type sold in representative quantities by the exporting producer with the highest dumping margin found. The dumping margin thus established was 88 %.

(379) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Jiangsu Alcha Aluminum Group Co., Ltd	72,1 %
Nanshan Group	55,5 %
Xiamen Xiashun Aluminium Foil Co., Ltd	23,7 %
Other cooperating companies	44,5 %
All other companies	88,0 %

(380) The calculations of the individual dumping margins, including corrections and adjustments made following comments by the interested parties submitted after provisional disclosure, were disclosed to the sampled exporting producers.

4. **INJURY**

4.1. **Preliminary remark**

(381) As indicated in recitals (291) to (293) of the provisional Regulation, provisional findings were established on EU-28 basis with the exception of the undercutting margin calculation. However, the definitive findings of this investigation were based on EU27 data (see Section 1.9 above). As mentioned in recital (292) of the provisional Regulation, one sampled Union producer of the product under investigation was active in the UK during the period considered and its data had been used to determine provisional macro-indicators on EU28 basis. Therefore, and in order to ensure confidentiality of the data of this producer, certain macro-indicators were presented using ranges for definitive findings.

(382) Furthermore, following the conclusions on product scope, the data pertaining to AFRPs for use in the production of ACPs as described in Article 2(2) below have been excluded from the injury analysis.

4.2. **Definition of the Union industry and Union production**

(383) The total Union production during the investigation period was established at around 1 792 606 tonnes. The Commission established the figure on the basis of the Union production data of EA, 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) of the provisional Regulation and recital (17), three Union producers were selected in the sample representing after the changes made 38 % of the total Union production of the like product.

(384) In the absence of any comments with respect to the definition of the Union industry and other changes with respect to the production of the Union industry, the conclusions in recitals (294) and (295) of the provisional Regulation were confirmed.

4.3. **Determination of the relevant Union market**

(385) After provisional disclosure, TitanX and Valeo reiterated their claims that the AHEX AFRPs deserve a separate injury analysis as these products do not share the same basic physical, technical and chemical characteristics. They also claimed that EA should provide separate micro- and macro-indicators for this sector. Similarly, Huafong claimed that the Commission should have conducted a segment specific analysis for the AHEX AFRPs due to the alleged price difference between HEX AFRPs and other products.

(386) In the absence of new elements and since these claims were addressed in the provisional Regulation, reference is made to recitals (300) to (302). This claim was therefore rejected.

(387) After provisional disclosure, Xiamen Xiashun reiterated that the alleged price difference between PP Cap foil and foil stock required a segment-specific analysis and referred again to the Appellate Body report on HP-SSST ([69]).

(388) As indicated in recital (251) above the Commission established that, contrary to Xiamen Xiashun's claim, there is no significant price difference between the price of PP Cap foil and foil stock. On this basis the findings made in recital (306) of the provisional Regulation were confirmed that a segment-specific analysis was not warranted.

(389) Following definitive disclosure, Xiamen Xiashun reiterated that foil stock was a specific product which should not be commingled with other AFRPs. It also provided additional comments on the provisional Regulation claiming that the absence of Xiamen Xiashun's name from the list of known exporting producers should have led to a more thorough examination as to whether the complainant really intended to target foil stock and claimed that the complainant had identified this product as a special product category in the complaint.

(390) The same exporter added that, if its products were compared to any other AFRPs and if the absence of significant price difference referred to in recital (390) could not be supported, this would disprove the Commission's indication in recital (306) of the provisional Regulation that '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.' Xiamen Xiashun also claimed that, contrary to the Commission provisional conclusion, the same Appellate Body report called for a segmented analysis when there are significant price differences between two segments.

(391) Furthermore, Xiamen Xiashun added that, contrary to other AFRPs which vary due to demand-driven factors, the price of foil stock does not fluctuate very much except for the impact of the LME. Also, this exporter reiterated its claim relating to foil stock being a raw material for foil rolling; i.e. not an end-use product, and that foil stock is different from any other common sheet and plates that are subject to this investigation.

(392) The claim relating to the absence of Xiamen Xiashun's name from the complaint was already addressed in recital (304) of the provisional Regulation, and the Commission disagreed with the statement that it did not examine Xiamen Xiashun's claim thoroughly. The various aspects of its claim were addressed and the Commission engaged in additional investigatory work with regard to the activities of the customers of the Union industry buying the same PCNs as those exported by Xiamen Xiashun, as mentioned in recitals (251) and (390). Furthermore, the complaint did not present foil stock as a special product category. On the contrary, it was listed as one of the main product types covered by the complaint at the same level as sheets and coils, plates or fin stock.

(393) With regard to the reference to the Appellate Body report on HP-SSST, it should first be noted that whether Xiamen Xiashun's products were compared to other products is irrelevant, as Xiamen Xiashun did not demonstrate that such products belonged to an unequivocally different product segment (see recitals (303) to (306) of the provisional Regulation), or that significant price differences existed between foil stock and other AFRPs classified under the same product coding. As a matter of fact, Xiamen Xiashun did not substantiate its claim with supporting evidence, whereas the investigation revealed that there was no significant price difference between foil stock and other AFRPs classified using the same product coding. Second, the price difference referred to in recital (255) is not comparable with that observed in the HP-SSST case, where the price differences reached 100 or 200 %, as mentioned in recital (302) of the provisional Regulation. Therefore, considering that the circumstances are different; i.e. foil stock does not belong to a different product segment and there is no significant price difference, the Commission did not act contrary to the approach followed in the HP-SSST Appellate Body report.

([69]) Appellate Body Report, *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, para. 5.5212.

(394) As far as price fluctuations are concerned, it should first be noted that Xiamen Xiashun's claim was not substantiated with supporting evidence. In any case, the investigation revealed that, similarly to other AFRPs such as AHEX AFRPs or AFRPs for use in the production of ACPs, foil stock is usually sold under medium to long term contracts where the conversion price does not fluctuate much, if at all. Still, the evidence on file shows that changes in market conditions will equally impact foil stock and other AFPRs covered by the scope of this investigation when contracts are renewed. As far as the claim relating to foil stock being a raw material is concerned, reference is made to recital (306) of the provisional Regulation where this claim was already addressed. With regard to the comparison with common sheets and plates, it was considered that the PCN allowed a distinction between such products and foil stock as the PCN identified elements such as thickness and form of AFRP.

(395) On the basis of the above, these claims were rejected.

(396) Following definitive disclosure, Xiamen Xiashun commented on the evolution of certain macro-indicators for foil stock AFRPs as provided by the Union industry. As the Commission did not rely on such information for its definitive findings, those comments were not addressed.

(397) After provisional disclosure, Airoldi reiterated its request for a segment-specific analysis allowing a distinction between heat treated products (hard alloys) and non-heat treated products (soft alloys) and also added that the width of plates and sheets was key to define the market situation. In this context, it claimed that Union producers have limitations as far as the plate/sheet width is concerned and added that there was a lack of production capacity and a shortage of raw materials for heat treated aluminium plates in the EU so that these products were imported in significant quantities in 2019 from the PRC, Egypt and Norway.

(398) In the absence of any new elements concerning the request for a segment-specific analysis between hard and soft alloys, the provisional conclusions drawn in recital (308) of the provisional Regulation were confirmed. As far as the width of sheets/plates is concerned, Airoldi did not provide any evidence that there was a shortage of supply for sheets/plates above 1 500 mm. It follows om the file that at least two Union producers have the relevant equipment in order to produce sheets/plates in width superior to 1 500 mm or even 2 000 mm. Even if the Union industry was not in a position to manufacture the product at stake at sufficient quantities, there are producers in other third countries such as in Turkey that are able to manufacture and supply the Union market with such product. On this basis, this claim was rejected.

(399) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (296) to (308) of the provisional Regulation.

4.4. **Union consumption**

4.4.1. *Free market consumption in the Union*

(400) 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 set out in Section 4.5.1 below.

(401) In EU27, the Union consumption developed as follows:

Table 3

Union consumption (tonnes)

	2017	2018	2019	IP
Total Union consumption	2,35 - 2,5 million	2,4 - 2,5 million	2,3 - 2,35 million	2,1 - 2,2 million
Index	*100*	*102*	*97*	*90*
Captive Market	19 347	29 987	34 953	33 204

Index	*100*	*155*	*181*	*172*
Free Market	2,35 - 2,45 million	2,35 - 2,45 million	2,25 - 2,35 million	2,05 - 2,2 million
Index	*100*	*101*	*97*	*89*

Source: Eurofer, sampled Union producers and Eurostat

(402) The free market consumption in the Union decreased by 11 % during the period considered. From 2017 to 2018 the Union market increased by 1 % from around 2,35 to 2,45 million tonnes before decreasing in 2019 by 4 percentage points and decreasing further to 2,1-2,2 million tonnes in the investigation period. Total Union consumption followed a similar trend with a slight increase in 2018 followed by a decrease in 2019, which continued in the investigation period as a consequence of the COVID-19 pandemic, with an overall decrease by 10 % during the period considered. Consequently, following the changes in the import statistics the findings on the trends in consumption in Section 4.4 of the provisional Regulation are confirmed while the fall is slightly more exacerbated.

(403) After provisional disclosure, one importer, Airoldi claimed that consumption was underestimated and that that the EU production amounted to 5,6 – 5,8 million tonnes and that imports from the PRC could not amount to 10 %.

(404) However, Airoldi did not substantiate its claims with supporting evidence. In any case, it appears that Airoldi based its claim relating to production on a larger product scope; i.e. including products not covered by this investigation. On this basis, this claim was rejected.

(405) Following definitive disclosure, SWA contested the Union consumption figures reported in Table 3 and claimed that the 'reference market' exceeded 3,6 million tonnes. Airoldi supported that comment.

(406) In the absence of supporting evidence or calculations, this claim was rejected.

(407) Following definitive disclosure, Xiamen Xiashun requested that the Commission explain whether and how the revised import statistics were taken into account for the calculation of the Union consumption of the product under investigation. It sought clarification on how the Union consumption figures had changed between the provisional and definitive disclosure. Xiamen Xiashun also questioned how captive market data had remained the same.

(408) In this regard, reference is made to recitals (383) and (384) which mention that the Commission based its definitive findings on EU27 data and excluded certain AFRPs for use in the production of ACPs from the scope. In addition, the Commission also took account of Xiamen Xiashun's comments as mentioned in recital (390). In addition, reference is made to recital (413) relating to inward processing. Furthermore, it should be noted that the definitive disclosure erroneously referred to Section 4.2 instead of Section 4.5.1 in this regard.

(409) The information relating to captive market was not affected by the changes referred to in recitals (383) and (384).

4.5. **Imports from the country concerned**

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

(410) After provisional disclosure Xiamen Xiashun claimed that the Commission did not assess the import volumes and prices accurately as the methodology used does not exclude products falling under ex codes not covered by the investigation.

(411) As indicated in recital (320) of the provisional Regulation, the Commission continued its investigation concerning imports under the inward processing regime and CN code 7606 11 99 in particular. The investigation revealed that a large share of these imports did not relate to the product under investigation. Those imports were thus excluded from the calculation of the import statistics.

(412) Furthermore, in the light of the comments received, the Commission re-assessed the import statistics and established the volume of imports based on adjusted Eurostat data using the methodology explained to the interested parties and available on file ([70]). In this context, it also excluded imports of products exempted from the definitive anti-dumping duty as defined in Article 2(2). The Commission checked and confirmed the estimations of the complainant regarding the proportion of the product concerned in volumes and values imported under the CN codes indicated in the Notice of Initiation and subsequently amended by the Notice amending the Notice of initiation ([71]).

(413) Following definitive disclosure, Xiamen Xiashun requested clarification on how the Commission checked the accuracy of the statistical data used to assess the imports from the country concerned and in particular the accuracy of the market intelligence used by EA. Furthermore, it questioned how EA could have access to information on imports at TARIC level and complained about the confidentiality claimed in many regards. All in all, Xiamen Xiashun indicated that it could not comment and exercise its rights of defence based on the information on file. Furthermore, Xiamen Xiashun pointed to the late submission of the information.

(414) In this regard, it should be noted that the Commission enjoys discretion as to how it assesses the accuracy of the information it receives. In any case, as can be seen from the open file, EA made a first submission ([72]) of the import statistics further to requests by the Commission ([73]). Following that submission, the Commission analysed the information received by assessing the rationality of the assumptions and adjustments made by EA for each CN code and ensured that the submitted information related exclusively to the scope of the investigation as defined by the different TARIC codes that were created at initiation and in the course of the proceeding. As a follow-up to the Commission's comments ([74]), EA provided a first revised sensitive version of its import statistics ([75]). Further to additional sensitive comments by the Commission ([76]), EA provided revised import statistics taking the Commission's comments into account. Those statistics were added to the case file together with explanatory notes relating to the methodology applied. That data, as referred to in recital (414), was subsequently used to establish the imports of the product under investigation. Based on the above, the Commission considered that it assessed the import statistics as provided by EA with the necessary diligence. The information at TARIC code level was obtained by EA following a reasoned request in line with Article 14(6) of the basic Regulation ([77]).

(415) As far as the exercise of the rights of defence are concerned, the Commission considered that the information provided by EA was sufficiently detailed to allow a reasonable understanding of the sensitive information and methodology applied ([78]). In this context, the Commission noted that no interested party commented on the quality of the non-confidential version of the information submitted before it was used as a basis for establishing the import volume and import prices. As far as the alleged late submission of the information is concerned, reference is made to recital (416) which details the sequence of the information request and submissions and shows that EA submitted the information further to the Commission's request. On this basis, these claims were rejected.

(416) 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.

([70]) Document t21.004724 of 22 June 2021.
([71]) OJ C 36, 2.2.2021, p. 18.
([72]) Document t21.004414 of 9 June 2021.
([73]) Document t21.005709 of 20 May 2021 and t21.004937 of 25 May 2021.
([74]) Document t21.005708 containing email exchanges of 9 and 10 June 2021.
([75]) Document t21.005704 of 12 June 2021.
([76]) Document t21.005705 of 15 June 2021.
([77]) Document t21.005708 containing email exchanges of 9 and 10 June 2021.
([78]) See document t21.004724 of 22 June 2021.

(417) The imports from the country concerned into EU27 developed as follows:

Table 4

Import volume and market share

	2017	2018	2019	IP
Volume of imports from the country concerned (tonnes)	100 888	172 249	201 928	171 240
Index	*100*	*171*	*200*	*170*
Volume of imports from the country concerned under inward processing regime (tonnes)	14 855	29 254	26 099	22 162
Index	*100*	*197*	*176*	*149*
Volume of imports from the country concerned excluding inward processing regime (tonnes)	86 033	142 995	175 829	149 078
Index	*100*	*166*	*204*	*173*
Market share of imports from the country concerned on the free market (%)	4,1 - 4,5 %	7 - 7,4 %	8,7 - 8,9 %	8,0 - 8,4 %
Index	*100*	*168*	*207*	*190*
Market share of imports from the country concerned under inward processing regime on the free market (%)	0,4 - 0,8 %	1 - 1,4 %	0,9 - 1,3 %	0,9 - 1,3 %
Index	*100*	*194*	*182*	*167*
Market share of imports from the country concerned excluding inward processing regime (%)	3,5 - 3,9 %	5,8 - 6,2 %	7,5 - 7,9 %	6,9 - 7,3 %
Index	*100*	*164*	*212*	*194*

Source: EA, sampled Union producers questionnaire replies and Eurostat

(418) Imports from the country concerned doubled between 2017 and 2019 reaching 201 928 tonnes before decreasing by 15,2 % between 2019 and the investigation period. Overall imports from the PRC of AFRPs increased by 70 % during the period considered.

(419) Imports from the country concerned under inward processing increased significantly in 2018 reaching 29 254 tonnes before decreasing slightly in 2019 and in greater proportions in the investigation period. Overall, imports from China of AFRPs under inward processing regime increased by 49 % during the period considered.

(420) Imports from the country concerned excluding inward processing increased significantly between 2017 and 2019 from 86 033 to 175 829 tonnes. In the investigation period, it decreased by 26 751 tonnes. Overall such imports increased by 73 % during the period considered.

(421) The market share of imports from the country concerned first increased from 4,1 -4,5 % in 2017 to 8,7 – 9,1 % in 2019 and thus followed an opposite direction to the development of consumption over the same period. In the IP, the market share decreased slightly to 8 - 8,4 %. Overall, the market share of imports from the country concerned increased by 3,9 percentage points during the period considered, equivalent to an increase of 90 %.

(422) The market share of imports under inward processing regime from the country concerned increased from 0,4 – 0,8 % in 2017 to 0,9 - 1,3 % in the IP.

(423) The market share of imports excluding inward processing from the country concerned increased from 3,5 - 3,9 % in 2017 to 7,5 - 7,9 % in 2019. In the IP, further to a decrease in such imports and, to a greater extent, in consumption the market share of imports excluding inward processing decreased to 6,9 - 7,3 %. Overall, such market share increased by 94 % during the period considered.

(424) Following definitive disclosure, Airoldi claimed that the Commission did not make a distinction within the imports under inward processing between the various options of inward processing and claimed that only imports which were subsequently exported should have been considered in the imports statistics and injury calculations.

(425) In this regard, it was considered that all imports under inward processing should be taken into account regardless of the 'option of inward processing'. Indeed, as mentioned in recital (491), such imports have an impact on the situation of the Union industry in the sense that they represent lost volume both in terms of sales and production. On this basis, this claim was rejected.

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

(426) The Commission established the prices of imports on the basis of Eurostat data, using the methodology referred to in recital (414).

(427) The weighted average price of imports from the country concerned into EU27 developed as follows:

Table 5

Import prices from the country concerned (EUR/tonne)

	2017	2018	2019	IP
All imports	2 426	2 370	2 266	2 235
Index	*100*	*98*	*93*	*92*
Inward processing	2 313	2 303	2 275	2 182
Index	*100*	*100*	*98*	*94*
Imports excluding inward processing	2 445	2 384	2 265	2 243
Index	*100*	*98*	*93*	*92*
LME Aluminium 3-Month – Ask (EUR/tonne) ([1])	1 752	1 791	1 617	1 535
Index	*100*	*102*	*92*	*88*
Import price (all) net of LME Aluminium 3-Month – Ask (EUR/tonne)	673	579	649	700
Index	*100*	*86*	*96*	*104*

Source: Eurostat, LME

([1]) As explained in recital (329) of the provisional Regulation, 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.

(428) Average import prices from China decreased by 8 % over the period considered from 2 426 to 2 235 EUR/tonne. Those prices remained significantly below the Union's sales prices during the period considered, as shown in Table 9.

(429) The price of imports under inward processing followed a continuous downward trend and decreased by 6 % over the period considered.

(430) The price of imports excluding inward processing followed a similar trend and decreased continuously starting at 2 445 EUR/tonne in 2017 and reaching 2 243 EUR in the IP (-8 %).

(431) In 2018, contrary to the evolution of the LME aluminium price (+2 %), the price of imports from the country concerned decreased by 2 %. This period also coincides with the period when imports from the country concerned increased substantially. The price of imports from the country concerned net of the LME aluminium price first dropped by 14 % in 2018 before increasing in 2019 and the IP to reach an overall increase by 4 %.

(432) After provisional disclosure, Jiangsu Alcha provided comments relating to the calculation of its underselling margin as indicated in recital (374). Further to those comments and to slight changes relating to the level of profit achieved by unrelated importers in the EU used to establish the export price for the purposes of Article 2(9) of the basic Regulation, the weighted average undercutting margin for the cooperating sampled exporting producers was revised and now ranges from 4,4 % to 9,3 % for the imports from the country concerned on the Union market. The weighted average undercutting found was 7 %.

4.6. **Economic situation of the Union industry**

4.6.1. *General remarks*

(433) As provided under Section 1.9, the geographical scope of this investigation had to be amended. Therefore, the complainant and the sampled Union producers submitted certain parts of their original questionnaire responses with data for EU27 only. Furthermore, in view of the provisional exemption of certain AFRPs for use in the production of ACPs, the complainant and the sampled Union producers were requested to provide data whereby AFRPs for use in the production of ACPs as defined in Article 2(2) are presented separately.

(434) Hence, the Commission based its definitive injury determinations on EU27 basis after exclusion of data pertaining to AFRPs for use in the production of ACPs as defined in Article 2(2).

(435) Following definitive disclosure, Airoldi claimed that the information contained in the complaint lodged by EA had not been verified thoroughly and was not correct.

(436) In this regard, it should be noted that, as indicated in point 5.2 of the Notice of initiation, the deadline to provide comments on the complaint expired 37 days after the date of publication of this notice. Therefore, this claim was rejected in view of its untimely filing. In any event, the legal criterion under Article 5(3) of the basic regulation is not as such the accuracy and adequacy of the evidence, but the sufficiency of the evidence to initiate the investigation ([79]). Ultimately, Airoldi failed to produce any evidence contradicting the Commission's determination that the complaint contained sufficient evidence to initiate the investigation.

4.6.2. *Macroeconomic indicators*

4.6.2.1. Production, production capacity and capacity utilisation

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

([79]) See judgment of 11 July 2017, *Viraj Profiles Ltd*, T-67/14, ECLI:EU:T:2017:481, para. 99.

Table 6

Production, production capacity and capacity utilisation

	2017	2018	2019	IP
Production volume (tonnes)	2 – 2,1 million	2 – 2,1 million	1,9 – 2 million	1,7 – 1,8 million
Index	*100*	*100*	*98*	*89*
Production capacity (tonnes)	2,2 – 2,25 million	2,25 – 2,3 million	2,23 – 2,28 million	2,23 – 2,28 million
Index	*100*	*103*	*102*	*102*
Capacity utilisation	91,3 %	88,7 %	87,4 %	79,8 %
Index	*100*	*97*	*96*	*87*

Source: EA and sampled Union producers questionnaire replies

(438) During the period considered, the Union industry's production volume decreased by 11 %, while the production capacity increased by 2 %. Consequently, the capacity utilisation decreased by 13 %, from 91,3 % in 2017 to 79,8 % in the investigation period.

(439) Xiamen Xiashun submitted that the decrease in capacity utilisation was the most marked in the investigation period and related to a decrease in the export volume by the Union industry in the same period. It claimed that in the absence of a drop in exports, the capacity utilisation would have reached 78 %. Xiamen Xiashun claimed that the decrease in capacity was linked to a decrease in export volume.

(440) As can be seen in Table 6, capacity utilisation deteriorated from 91,3 % to 79,8 % over the period considered. Even if the impact of the decrease in export volume was to be neutralised; i.e. exports would have remained at the same level in the investigation period, capacity utilisation would still have dropped to 82,7 %, or 9 % less than in 2017. On this basis, this claim was rejected.

(441) Following definitive disclosure, Xiamen Xiashun requested clarification concerning the difference between data presented in the provisional Regulation and the definitive disclosure with regard to Table 6 - Production, production capacity and capacity utilisation - and questioned the fact that the differences only related to the adjustments mentioned in recitals (435) and (436).

(442) In this regard, the Commission confirmed that the differences relate to the aforementioned adjustments and to the correction made to EA's macro-indicators, as referred to in recital (190). In any case, the trends reflected in the two documents follow the same evolution.

4.6.2.2. Sales volume and market share

(443) The Union industry's sales volume and market share developed as follows:

Table 7

Sales volume and market share

	2017	2018	2019	IP
Total Sales volumes on the Union market – both free and captive use (tonnes)	1,55 – 1,6 million	1,52 – 1,56 million	1,48 – 1,52 million	1,38 – 1,42 million
Index	*100*	*98*	*95*	*88*

Sales volumes on the Union free market (tonnes)	1,55 – 1,6 million	1,52 – 1,56 million	1,47 – 1,51 million	1,35 – 1,39 million
Index	*100*	*98*	*95*	*88*
Captive market sales and use (tonnes)	18 000 -20 000	28 000 – 30 000	34 000 – 36 000	32 000 – 34 000
Index	*100*	*155*	*181*	*172*
Captive market sales and use as a % of total market sales	0,6 - 1 %	1 - 1,4 %	1,3 - 1,7 %	1,4 - 1,8 %
Index	*100*	*152*	*186*	*191*
Free market sales	1,56 – 1,58 million	1,52 – 1,54 million	1,46 – 1,48 million	1,34 – 1,36 million
Index	*100*	*97*	*94*	*86*
Market share of free market sales on the free market (%)	66,6 - 67 %	63,8 - 64,2 %	64,4 - 64,8 %	64,6 - 65 %
Index	*100*	*96*	*97*	*97*

Source: EA, sampled Union producers questionnaire replies and Eurostat

(444) Total sales in the EU followed a downward trend over the period considered (-12 %) and had already decreased by 5 % in 2019.

(445) As mentioned in recital (298) of the provisional Regulation, a very small part of the total Union producers' production was destined for the captive market. Such part accounted for not more than 1,6 % of the Union consumption.

(446) Total sales on the free market by the Union industry decreased by over 200 000 tonnes over the period considered. While consumption had increased to its highest level in 2018 (+ 2 %), 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 %.

(447) The market share of free market sales of the Union industry decreased from 66,6 – 67 % in 2017 to 64,6 – 65 % in the investigation period. After dropping by 4 % in 2018, it recovered slightly afterward leading to an overall market share decrease of 3 %.

4.6.2.3. Growth

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

4.6.2.4. Employment and productivity

(449) For EU27, employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity

	2017	2018	2019	IP
Number of employees (full time equivalent ('FTE'))	8 800 – 9 000	8 300 – 8 500	8 400 – 8 600	8 000 – 8 200
Index	*100*	*97*	*98*	*93*
Productivity (tonnes per FTE)	233	238	232	222
Index	*100*	*102*	*100*	*95*

Source: Eurofer and sampled Union producers

(450) Employment decreased by 7 % over the period considered as the Union industry tried to ensure its sustainability and align it with the conditions in the domestic market.

(451) Consequently, its productivity first slightly improved in 2018 from 222 to 238 tonnes/FTE before decreasing following the reduction of the production volume. Overall productivity deteriorated by 5 % over the period considered.

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

(452) 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.

(453) 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

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

Table 9

Sales prices and cost of production in the Union

	2017	2018	2019	IP
LME Aluminium 3-Month – Ask	1 752	1 791	1 617	1 535
Index	*100*	*102*	*92*	*88*
Average unit sales price on free market (EUR/tonne)	2 812	2 912	2 776	2 703
Index	*100*	*104*	*99*	*96*
Conversion price (average unit sales price minus LME Aluminium 3-Month – Ask (EUR/tonne)	1 060	1 121	1 159	1 168
Index	*100*	*106*	*109*	*110*
Unit cost of production (EUR/tonne)	2 726	2 872	2 782	2 750
Index	*100*	*105*	*102*	*101*
Conversion cost of production (EUR/tonne)	974	1 081	1 165	1 216
Index	*100*	*111*	*120*	*125*

Source: Sampled Union producers and LME

(455) Sales prices on the Union market to unrelated parties (the free market) first increased from 2 812 to 2 912 EUR/tonne in 2018. It then decreased by 5 percentage points in 2019 before dropping to 2 703 EUR/tonne in the investigation period.

(456) The corresponding unit cost of production followed a similar trend whereby it first increased by 5 % to 2 872 EUR/tonne before dropping progressively to 2 750 EUR/tonne in the IP with an overall increase by 1 % during the period considered.

(457) After provisional disclosure, Xiamen Xiashun claimed that the import price of imports from the PRC net of LME Aluminium 3-Month reference price ('Chinese conversion price') increased over the period considered while the Union industry's selling price net of LME Aluminium 3-Month reference price ('UI conversion price') increased constantly thus dispelling the Commission's finding that the Union industry's prices followed a downward trend in line with the evolution of the LME Aluminium price.

(458) Table 9 shows that the Union industry conversion price increased by 10 % over the period considered. This finding is in line with the conclusions drawn in recital (355) of the provisional Regulation indicating that the Union industry adapted its product mix to increase its sales of high value-added products. In light of this evolution and as stated in recital (356) of the provisional Regulation, the cost of production of the Union industry also increased as can be seen in Table 9 of the provisional Regulation and Table 9 above. In this table, it can be seen that the conversion cost of the Union industry (that is cost of production net of LME Aluminium price) increased progressively during the period considered and overall by 25 %. As already mentioned in recital (371) of the provisional Regulation, the increase in conversion costs by 25 % and increase in conversion prices by only 10 % demonstrate that the Union industry was unable to raise prices to the same extent as costs were increasing because of the price suppression caused by imports from China (both in terms of volumes and low prices) which put a downward pressure on the Union industry's prices.

(459) The fact that the Chinese conversion price increased demonstrates that the Chinese producers have progressively exported more and more high-value added products to the EU which were in strong competition with the Union industry. As mentioned in recital (434), these imports were found to undercut the Union industry's prices by 7 % on average in the investigation period. On this basis, this claim was rejected.

(460) After provisional disclosure, Xiamen Xiashun claimed that the argument relating to price suppression established in the provisional Regulation was without grounds in view of the limited increase of the cost of production (+1 % over the period considered) and the parallel increase of the Union industry conversion price (+10 %).

(461) Concerning this claim, the Union industry conversion price should be compared to a corresponding cost; i.e. the conversion cost of the Union industry which is also net of the LME Aluminium price. As mentioned in recital (460), this comparison demonstrates that the Union industry was unable to achieve the expected price increase linked to the higher value added products to which it was switching, due to the price suppression caused by imports from China (both in terms of volumes and low prices). On this basis, this claim was rejected.

4.6.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2016	2017	2018	IP
(EUR)	70 384	72 541	72 670	73 567
Index	*100*	*103*	*103*	*105*

Source: Sampled Union producers questionnaire replies

(463) During the period considered, the average labour costs per employee went up by 5 %.

4.6.3.3. Inventories

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

Table 11

Inventories

	2017	2018	2019	IP
Closing stocks (tonnes)	63 184	66 711	65 132	65 386
Index	*100*	*106*	*103*	*103*
Closing stocks as a percentage of production	8,1 %	8,5 %	8,3 %	8,5 %
Index	*100*	*105*	*108*	*113*

Source: Sampled Union producers

(465) 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.

(466) 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

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

Table 12

Profitability, cash flow, investments and return on investments

	2017	2018	2019	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	3,1 %	1,4 %	-0,2 %	-1,8 %
Index	*100*	*45*	*-7*	*-58*
Cash flow (EUR)	98 921 097	84 961 572	92 987 311	45 112 501
Index	*100*	*86*	*94*	*46*
Investments (EUR)	63 432 410	73 035 666	155 492 227	137 829 861
Index	*100*	*115*	*245*	*217*
Return on investments	12,4 %	7,6 %	4,1 %	-2,5 %
Index	*100*	*61*	*33*	*-20*

Source: Sampled Union producers

(468) Profitability developed followed a downward trend over the period considered and decreased from 3,1 % in 2017 to -1,8 % in the investigation period.

(469) As explained in recitals (457), (458) and (460), 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 to the same extent as costs were increasing because of the price suppression 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 and costs (see Tables 5 and 9), limiting price increases which would have been expected in the context of a change in product mix (more high value-added 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 (434).

(470) 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 54 %.

(471) Investments increased by 117 % 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.

(472) Nilo referred to recital (415) of the provisional Regulation and claimed that it missed the evidence pointing to the fact that the Union industry is dynamic and has increased significantly its investments. It also indicated that the investments shown by EU mills relate to maintenance rather than new production facilities while Chinese aluminium producers have invested in additional capacity using European equipment.

(473) In this regard, reference is made to Table 12 of the provisional Regulation and Table 12 above which shows that the Union industry invested significant amounts in the product under investigation. As indicated in recital (473), the Union industry did not only invest in maintenance but also and mainly in efficiency gains, high value added products and customer focus. This is also evidenced by the communications of the sampled Union producers on such investments ([80]).

(474) Following definitive disclosure, SWA claimed that the Union producers systematically had positive EBITDA for years and that they were not harmed by Chinese imports. Airoldi supported that comment.

(475) In the absence of supporting evidence on such EBITDA levels and their link to sales of the product under investigation to unrelated customers in the Union, this claim had to be rejected.

(476) The return on investments is the profit in percentage of the net book value of investments. It developed negatively over the period considered from 12,4 % in 2017 to -2,5 % in the IP. Such development follows the decreasing profitability of the Union industry.

4.7. **Conclusion on injury**

(477) During the period considered, imports of AFRPs from China increased significantly both in absolute (+ 70 %) and relative terms (+ 3,9 percentage points in market share) while consumption in the EU decreased by 10 %. The increase in imports concerned both imports under inward processing and 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 % 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 4 and 8). The Union industry was unable to raise conversion prices to the same extent as conversion costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices).

([80]) https://www.elval.com/en/media-elvals-new-tandem-mill-has-successfully-initiated-operations; https://aludium.com/aludium-alicante-invests-in-the-future/; accessed on 20 June 2021.

(478) Most macroeconomic indicators showed a negative trend over the period considered such as production, capacity utilisation, sales volume in the Union market, market share, employment and productivity. Only capacity and captive sales/use showed a 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, 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. Furthermore, except for productivity, the same injury indicators also developed negatively when looking at the period 2017-2019, that is, before the start of the COVID-19 pandemic.

(479) 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 and had to dilute its fix costs on a lower production volume (-11 %) contributing 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.

(480) After provisional disclosure, ACEA urged the Commission to take the evolution of the aluminium price after the end of the investigation period into account in the assessment of injury for the Union industry.

(481) Since the analysis of the injury situation is limited to the period considered as mentioned in recital (49) of the provisional Regulation, this claim was not considered valid and was therefore rejected.

(482) As explained in Section 1.9, the UK withdrawal from the European Union entailed a revision of micro- and macro-economic indicators and a few other data. Also, certain products exempted from the definitive anti-dumping duty as defined in Article 2(2) were excluded from the analysis. The differences between Tables 3-12 of the provisional Regulation and Tables 2-11 of this Regulation are however insignificant, both in terms of units and trends. The undercutting levels remained significant. Consequently, the Commission concluded that the UK withdrawal and the exclusion of certain products does not alter the conclusion on injury reached in the provisional Regulation.

(483) Following definitive disclosure, Airoldi claimed that injury indicators such as production and profitability were inconsistent with the publicly available information relating to certain Union producers.

(484) In this regard, it should be noted that the publicly available information referred to by Airoldi did not relate to the performance of the Union industry on the Union market with regard to the products concerned by this investigation but to a much larger product scope, and also covered markets other than the European Union. On some occasions, the information also related to the performance of the group to which the Union producer belonged, at a global level. Considering the difference in product and geographical scope, this claim was rejected.

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

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(486) The GOC claimed that the poor performance of the Union industry with regard to some indicators should not be attributed to the imports from China whose market share, as established in the provisional Regulation, increased only from 5,5 % to 8,5 %, thus remaining below 10 % when excluding imports under inward processing, but rather to high production costs and sluggish demand in and outside the EU.

(487) The Commission recalled that the injury analysis is based on a holistic assessment of all indicators. As explained in recital (423), imports from the country concerned increased both in absolute and relative terms in a period where the consumption on the Union market was decreasing. As such, imports from the country concerned did not follow the consumption trend in a period where demand was decreasing and thus increased the pressure on the Union industry. Furthermore, these imports were made at injurious prices as evidenced by the level of the undercutting margins found and caused price suppression. With regard to the production costs, as explained in recitals (458) to (460), they increased as a consequence of the Union industry's switch to higher added value products and due to the lost sales volume linked to the increase in imports from the country concerned whereby the Union industry's fix costs per unit increased. Considering these elements, this claim was rejected.

(488) Xiamen Xiashun claimed that the Commission considered that imports under inward processing regime caused injury but did not provide any evidence in this regard. It also claimed that the development of the Union industry's export performance was in line with the development of imports under inward processing regime.

(489) It should first be noted that as reported in Table 4, the volume of imports under inward processing has been revised downward and now accounts for a limited share of imports from the country concerned. Second, imports under inward processing regime increased over the period considered and were made at prices lower than the Union industry selling price to unrelated customers. In any case, these imports had an impact on the situation of the Union industry in the sense that they represent lost volume both in terms of sales and production. As such, these additional volumes would have allowed the Union industry to dilute its fixed costs on a larger volume and thus improve its cost and profit situation. On this basis, this claim was rejected.

(490) Although the export performance of the Union industry as depicted in Table 14 followed a similar trend as imports from the country concerned under inward processing, the absolute increase between 2017 and 2019, and decrease in the IP cannot be compared to the evolution of imports under inward processing in the same period. Indeed, the changes in exported volume are much more significant. Furthermore, the fact that certain AFRPs are imported under inward processing does not mean that the exported product also falls in the scope of this investigation. On this basis, this claim was rejected.

(491) Xiamen Xiashun submitted that imports from the PRC continued to decrease after the investigation period and that import prices followed an upward trend in the same period.

(492) Since the analysis of the injury situation is limited to the period considered as mentioned in recital (49) of the provisional Regulation, this claim was rejected.

(493) Following definitive disclosure, SWA claimed that the Commission should have analysed market research information provided by Harbour or CRU, and that it would have come to the conclusion that the markets have been operating in full competition and in compliance with the rules for over 10 years. Airoldi supported that comment.

(494) As this claim was vague and did not contain the market research information being referred to, it was rejected.

5.2. **Effects of other factors**

5.2.1. *Contraction in demand*

(495) After provisional disclosure, Xiamen Xiashun reiterated its claim that the decrease in production and sales for the Union producers was related to the decrease in consumption, especially in the investigation period. Xiamen Xiashun also claimed that the Commission focused on the development in 2019 and ignored the development in the IP, namely with regard to imports from other countries, when assessing the evolution of market share of the Union industry's free market sales.

(496) As already mentioned in recitals (390) and (391) of the provisional Regulation and confirmed by the updated import statistics, it is recalled that the imports from the PRC more than doubled between 2017 and 2019. Furthermore, while consumption decreased in 2019, imports from the PRC continued to increase thereby having a negative impact on the situation of the Union industry as evidenced by numerous indicators. While the market share of

imports from the PRC decreased slightly from 8,7 – 9,1 % in 2019 to 8 – 8,4 % in the IP, imports from the PRC increased overall by 70 % during the period considered and remained at a significant level in the IP. Also, even if imports from the PRC were made at higher prices in the IP, such prices were found to undercut the Union industry prices by 7 % on average. While it cannot be denied that consumption decreased in the IP and affected the situation of the Union industry, such element cannot break the causal link when considering the increasing presence of imports from the country concerned entering the Union market at prices undercutting significantly the Union industry's prices and the impact that such imports had on the Union industry over the period 2017-2019 and in the IP.

(497) As far as imports from third countries are concerned, while they gained market share in the IP, they show a downward trend over the period considered (-1,9 percentage point). Furthermore, as indicated in recital (505), the average price of these imports was constantly well above the average import price from the country concerned. On this basis, it was considered that imports from third countries do not break the causal link.

(498) Following definitive disclosure, Xiamen Xiashun claimed that production, capacity utilisation and sales only decreased substantially when consumption decreased significantly; i.e. in the IP. On this basis, it considered that the decrease in consumption was such as to attenuate the causal link between imports from China and the economic indicators of the Union Industry.

(499) As mentioned in recital (498), imports from the PRC more than doubled between 2017 and 2019, having a negative impact on the vast majority of the injury indicators including production, capacity utilisation and sales, but also on other indicators such as profitability, cash flow and labour cost. That impact took place before consumption decreased in the IP. On this basis, this claim was rejected.

(500) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (386) to (391) of the provisional Regulation.

5.2.2. *COVID-19 pandemic*

(501) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (392) to (395) of the provisional Regulation.

5.2.3. *Imports from third countries*

(502) 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	IP
Total of all third countries except the country concerned	Volume (tonnes)	681 508	686 669	602 672	567 027
	Index	*100*	*101*	*88*	*83*
	Market share	28,7-29,1 %	28,5-28,9 %	26,3-26,7 %	26,8-27,2 %
	Index	*100*	*99*	*92*	*93*
	Average price (EUR/tonne)	3 002	3 028	2 894	2 846
	Index	*100*	*101*	*96*	*95*

Of which Switzerland	Volume (tonnes)	123 024	115 185	109 955	95 944
	Index	*100*	*94*	*89*	*78*
	Market share	5 - 5,4 %	4,6 - 5 %	4,6 - 5 %	4,4 - 4,8 %
	Index	*100*	*92*	*92*	*88*
	Average price (EUR/tonne)	3 016	3 130	2 873	2 891
	Index	*100*	*104*	*95*	*96*
Of which Turkey	Volume (tonnes)	116 677	117 864	130 681	128 634
	Index	*100*	*101*	*112*	*110*
	Market share	4,8-5,2 %	4,7 – 5,1 %	5,5 - 5,9 %	5,9 - 6,3 %
	Index	*100*	*100*	*116*	*124*
	Average price (EUR/tonne)	2 552	2 642	2 432	2 361
	Index	**100**	**104**	**95**	**93**

Source: Eurostat

(503) During the period considered, imports from countries other than the country concerned decreased by 17 %; their market share decreased from 28,7 – 29,1 % to 26,8 – 27,2 %. The average price of these imports was constantly well above the average import price from the country concerned.

(504) Imports from Switzerland decreased by 22 % over the period considered. Their market share also followed a downward trend (-0,6 %). The average price of imports from Switzerland decreased but remained far above the price of imports from the country concerned.

(505) Imports from Turkey increased by 10 % over the period considered. Their market share also followed an upward trend (+1,2 %). The average price of imports from Turkey decreased as well but remained well above the price of imports from the country concerned.

(506) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (396) to (402) of the provisional Regulation.

5.2.4. *Commercial strategy of the Union industry*

(507) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (403) to (407) of the provisional Regulation.

5.2.5. *Export performance of the Union industry*

(508) The volume and prices of exports of the Union industry to unrelated parties developed over the period considered as follows:

Table 14

Export performance

	2017	2018	2019	IP
Export volume (1 000 tonnes)	350 - 360	380 - 390	400 - 410	340 - 350
Index	*100*	*109*	*114*	*96*

Average price (Euro/tonne)	2 819	2 956	2 860	2 758
Index	*100*	*105*	*101*	*98*

Source: Eurofer (volumes) and sampled Union producers (average prices)

(509) Union producers increased export volumes from 2017 to 2019 before they decreased significantly in the IP. Overall the export volume decreased by 4 % over the period considered and remained below 2 million tonnes in 2019. Overall, the volumes exported by the Union industry represented less than 6 % of its sales volume on the Union free market.

(510) As indicated in recital (413) of the provisional Regulation, 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, it is concluded that the export performance did not contribute to the material injury suffered by the Union industry.

(511) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (408) to (413) of the provisional Regulation.

5.2.6. *Efficiency of the Union industry*

(512) Following definitive disclosure, Xiamen Xiashun claimed that the Commission failed to consider that the increase in the conversion price by the sampled Union producers below the increase in the conversion cost of production could have been caused by factors other than imports from China such as outdated production equipment and inefficient production lines. In this regard, it also added that the late investments in efficiency gains did not allow the industry to face a significant decrease in consumption.

(513) The Commission did consider such elements and addressed comments in this regard in recitals (414) to (421) of the provisional Regulation. As far as the claim related to investments is concerned, the Commission considered that the investments in efficiency gains and higher added value products as described in Table 12 and recital (473) allowed the industry to limit the damage caused by the dumped imports but could not counter the overall increase in imports and market share by the Chinese imports over the period considered.

(514) In the absence of additional comments with respect to this section, the Commission confirmed its conclusions set out in recitals (414) to (421) of the provisional Regulation.

5.2.7. *Imports by the Union industry*

(515) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (422) to (423) of the provisional Regulation.

5.2.8. *LME Aluminium price*

(516) In the absence of comments with respect to this section, the Commission confirmed its conclusions set out in recitals (424) to (426) of the provisional Regulation.

5.3. **Conclusion on causation**

(517) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (427) to (428) of the provisional Regulation.

6. UNION INTEREST

6.1. Interest of the Union industry

(518) No party contested that the measures would be in the interest of the Union industry. The conclusions set out in recitals (429) to (433) of the provisional Regulation were thus confirmed.

6.2. Interest of unrelated importers

(519) Following provisional disclosure, the importer Airoldi claimed that, in spite of a market share between 80 and 85 % for the Union producers and considering a market share of more or less 4 - 5 % for the imports from the country concerned, the Union industry relied on trade defence instruments to reinforce their position on the market. Airoldi also requested an analysis of the competitive situation on the Union market in view of the alleged low number of operators on the Union market and the fact that imports from the PRC have been allegedly excluded from the market. Airoldi also pointed to a number of arguments relating to extruded products.

(520) In this regard, the investigation revealed that, contrary to what was stated by this unrelated importer, and as mentioned in Table 7, the market share of the Union industry was well below the claimed 80-85 % and actually amounted to 64,6 - 65 % in the IP. Similarly, the market share of the imports from the country concerned was well above the quoted 4-5 % and increased from 4,1 – 4,5 % in 2017 to 8,0 – 8,4 % in the IP. Furthermore, as indicated in recital (458) of the provisional Regulation, 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 perform such analysis.

(521) Furthermore, while anti-dumping measures can have an important effect on the market, they do not imply that a certain product cannot enter the Union market anymore. The purpose of the application of anti-dumping duties is not to exclude imports from the country concerned but to level the playing field by restoring fair competition. Since this investigation does not concern extruded products, the claims relating to these products were not addressed in this Regulation.

(522) The trader Nilo and the user Airoldi also claimed that the post-IP situation, characterised by an increase in prices and a temporary shortage of material, was favouring few producers and taking other companies in the Union such as importers and distributors out of the market. However, these parties did not provide evidence with regard to the fact that importers and distributors were taken out of the market. On the basis of the above, these claims were rejected.

(523) Following definitive disclosure, Airoldi claimed that, contrary to the Commission's finding, it had provided the Commission with a detailed list of prices and a detailed overview of the dynamics of the aluminium market.

(524) While it is not disputed that Airoldi provided price information, the evidence on file relating to importers and distributors being taken out of the market were vague and did not rely on supporting evidence showing that the dynamics of the aluminium market had changed and that, for instance, the market share or level of activity of importers/service centres had changed significantly. On this basis, this claim was rejected.

(525) The trader Nilo, the importer Airoldi and the user Overland srl ('Overland') referred to disruptions in the market causing lack of supply, large delays in supply and abnormal price increases (LME and processing prices) to be absorbed by users. The exporter Henan Xindatong Aluminum Industry Co., Ltd ('Xindatong') also referred to significant post-IP price increases. Airoldi indicated that this situation was linked to various elements (increase in aluminium consumption in the last 20 years, upward price pressure exerted by European producers of primary aluminium, the initiation of three separate anti-dumping proceedings on aluminium products in 2019 - 2020 covering about 1 000 000 tonnes originating in the PRC) including the imposition of provisional measures and the lack of production capacity in the EU. Airoldi and Nilo also indicated that the Union market was dependent on the imports from the PRC and that there was a lack of capacity in the EU and in other countries (Turkey, South Africa, Switzerland) which was slowing down the recovery and growth in the EU. The exporter Xindatong also referred to

lack of available capacity in third countries. Airoldi also added that the dramatic market shortage was leading to production stoppages and that the risk of blocking the market was significant and could not be underestimated. It claimed that all European companies should be helped equally when recovering from the COVID-19 crisis. On these grounds, Airoldi claimed that the investigation should be suspended or simply discontinued.

(526) In this regard, EA reckoned the price increase, the slightly increased lead times and the temporary capacity issues. It explained that this situation was due to the general post-COVID economic context; i.e. users were now willing to buy AFRPs not only to meet the current increased demand but also to bring their stocks back to a normal level after they had been reduced. EA also referred to several other factors such as the increase in raw material prices for alloys and slabs, a shortage in containers, an increase in freight costs, a lagging effect of higher SHFE ([81]) prices vs LME plus premiums, an increase in trade barriers against Chinese imports of AFPRs around the world and the sudden and strong post-COVID increase in demand in all industrial sectors. Furthermore, EA considered that while prices have likely been influenced by the imposition of provisional measures, the price increase did not result from a structural lack of capacity but from a temporary imbalance between demand and supply that is expected to lapse when the situation normalises after the initial period of tension on the market to which this investigation contributed. EA also indicated that this situation was not specific to the aluminium sector or to the Union market exclusively and that other sectors such as semi-conductors, chips, steel, paint and wood were also facing temporary supply difficulties and price increases. In this regard, EA pointed to the possibility to suspend anti-dumping measures pursuant to Article 14(4) of the basic Regulation.

(527) On the basis of the above, even if considering allegations about post-IP developments, the Commission considered that the situation described by Nilo, Airoldi and Overland did not point to a structural lack of capacity but rather to a temporary post-COVID situation characterised by a strong economic recovery and demand accompanied with several side effects (price increase for raw material and transport), having an impact on prices. Such recovery could not be anticipated and required some time for the market to adapt until the economic recovery and growth would normalise and demand and supply would be in balance again. Furthermore, as far as the dependency on imports from the PRC is concerned, it is reminded that, as indicated in recital (523), the purpose of the application of anti-dumping duties is not to exclude imports from the country concerned but to level the playing field by restoring fair competition. On the basis of the above, the claim that the current situation was linked to a structural lack of capacity was rejected.

(528) Following definitive disclosure, Nilo reiterated that the Union market is struggling with a material shortage, delayed deliveries and price increases which are affecting the downstream industry.

(529) Following definitive disclosure, Airoldi reiterated that the alleged insufficient production capacity of the Union industry combined with the strong post-COVID recovery had led to material shortage, delayed deliveries and price increases since the end of the investigation period. On this basis, Airoldi claimed that it would not be in the interest of the downstream industry to impose anti-dumping measures as it would worsen the supply situation for users while the Union industry would benefit from duties, shortage, delay and an increase in prices and profit to the detriment of the entire industrial EU system.

(530) In the absence of new elements pertaining to these two claims, reference is made to recital (529) where the Commission acknowledged the existence of material shortage and price increase but did not conclude that there was a structural lack of capacity. On this basis, this claim was rejected.

(531) In the absence of any other comments regarding the interest of unrelated importers, the conclusions set out in recitals (434) to (437) of the provisional Regulation were confirmed.

([81]) Shanghai Futures Exchange.

6.3. **Interest of users**

(532) Nilo's and Airoldi's comments following provisional disclosure relating to users were common to comments relating to unrelated importers and they have been already addressed in section 6.2 above.

(533) Following definitive disclosure, SWA claimed that the investigation had 'given full control of the raw material suppliers to very few operators' and that this was damaging the downstream industry and 'millions of workers'. It also claimed that there was a material shortage and that conversion prices had increased by 75-140 %. Furthermore, it requested the Commission to investigate the post-IP period to reach a conclusion towards the suspension of the anti-dumping duties at issue. Airoldi supported such comment.

(534) In the absence of supporting evidence by this exporter, its claim was rejected. As mentioned in recital (14), the Commission requested post-IP information in order to investigate the possible suspension of measures in due course.

6.3.1. *Building and construction*

(535) Company A provided comments relating to its product exemption request. This is addressed in Section 2.2.2.

(536) Following definitive disclosure, Company A claimed that it continued facing supply difficulties in and outside the EU for the exempted AFRPs in an attempt to secure its supplies for the year 2022 and that the sharp increase in prices due to the lack of EU supply had a very negative impact on its ACP and coated coil activities. Company A also referred to Russia's recent announcement that it will implement a new tariff ([82]) on its aluminium exports. Considering the large share of primary aluminium imported in the Union originating in Russia, Company A claimed that Union producers would face supply difficulties and increased costs leading to an additional price increase.

(537) As far as the supply difficulties are concerned, reference is made to Section 2.2.2 where Company A's exemption request was addressed. As for Russia's implementation of a new export tariff, the Commission reckoned that such an element could lead to an additional price increase. However, the Commission also considered that such an element was of a general nature and would affect economic operators worldwide in view of the large share of exports of Russian primary material to EU and non EU countries. On this basis, these claims were rejected.

(538) Despite repetitive requests, Multilaque SAS did not provide a reply to the Commission's deficiency letter. On this basis, its questionnaire reply could not be used.

6.3.2. *Foil stock*

(539) Following provisional disclosure, Xiamen Xiashun claimed that the Commission disregarded the interests of the users of its foil stock. However, it did not point to specific arguments brought by users in this sector. On this basis, this claim was rejected.

(540) Following provisional disclosure, Amcor submitted a product exemption request, which is analysed in Section 2.2.8.

6.3.3. *Aluminium heat exchangers (AHEX AFRPs)*

(541) Following provisional disclosure, TitanX, Valeo and CLEPA claimed that the Commission did not assess the interest expressed by AHEX AFRPs users appropriately as the European association of automotive suppliers and the AHEX AFRPs users account for more than 50 % of the consumption of this product, the AHEX AFRPs users employ more

([82]) P. Desai, 'Russia's aluminium export tax fuels price surge on spot market', *Reuters*, 7 July 2021, available at: https://www.reuters.com/article/us-metals-aluminium-russia-graphic/russiasaluminium-export-tax-fuels-price-surge-on-spot-market-idUSKCN2ED10H consulted on 30 July 2021

workers than the Union industry and the non-exclusion of AHEX AFRPs would form a barrier to the electrification transition in the commercial vehicles segment of the automotive industry. In this regard, Valeo also added that the European Automobile Manufacturers' Association ('ACEA') and BMW had expressed their support for the exclusion of AHEX AFRPs from the scope of the measures.

(542) While CLEPA participated in the investigation by providing comments and supported TitanX and Valeo's claims regarding product scope, TitanX and Valeo were the only two users in this sector that cooperated fully with the investigation by providing questionnaire replies and comments. In any case, the comments raised by the parties mentioned in recital (543) are addressed in Section 2.2.1 above.

(543) TitanX provided a revised questionnaire reply following the Commission's deficiency letter. In this questionnaire reply it did not express a position regarding the imposition of measures and reiterated its request for exclusion of AHEX AFRPs from the scope of the measures. This request is analysed in Section 2.3.1 of the provisional Regulation. Comments relating to this product are addressed in Section 2.2.1 above.

(544) Mahle claimed that the Commission's conclusion concerning HEX producers located outside the EU was not evaluated thoroughly and claimed that a Chinese supplier was delivering HEX to automotive plants in the EU. In this regard, CLEPA claimed that the manufacturers of heat exchangers are in direct competition with other producers in the region; i.e. Morocco and Ukraine. However, the claims were not substantiated with supporting evidence and were therefore rejected.

(545) Following definitive disclosure, Valeo reiterated that AHEX AFRPs users contribute more to employment than the EU aluminium industry and will have a key role to play in the electrification of the automotive sector in the Union. On this basis, it claimed that not excluding AHEX AFRPs would not be in the Union interest.

(546) In this regard, as mentioned in recital (145), the Commission considered that the measures would have only have a limited impact on the financial situation of the users. Consequently, and also bearing in mind the conclusions reached about the interest of the EU Industry, even if AHEX AFRPs users represent more employment that the Union industry, the Commission did not consider that it was against the Union interest not to exclude AHEX AFRPs from the scope of this investigation. On this basis, this claim was rejected.

6.3.4. *Other industries*

(547) No comments were received from users active in other industries further to the provisional disclosure.

6.3.5. *Conclusion on interest of users*

(548) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (449) of the provisional Regulation.

6.4. **Other interests**

(549) Following provisional disclosure, the GOC claimed that the recently initiated anti-dumping and anti-subsidy cases on imports of aluminium products originating in China went against the new industrial strategy and proposed new goals for green and digital transformation. The GOC also indicated that only fair and free trade could guarantee the sustainable development of EU industries and deepen the cooperation between the EU and its economic and trade partners. Eventually, the GOC claimed that imports from the PRC help to promote energy conservation and innovation in the relevant EU industries that benefits the EU green transformation goal.

(550) The Commission recalled that the purpose of anti-dumping and anti-subsidy investigations is not to exclude imports from a given country from the Union market but, provided that the relevant legal requirements are met, to restore a level playing field allowing fair trade between economic partners. Also, the level of the measures has been revised downward and is not considered prohibitive. On this basis, it was not considered that the imposition of measures would go against the new industrial strategy and proposed new goals for green and digital transformation as imports from the PRC can still enter the Union market and contribute to the new goals for green and digital transformation.

(551) Other claims with regard to the new goals for green and digital transformation are addressed in sub-section 2.2.1 above.

6.5. **Conclusion on Union interest**

(552) In view of the above, the Commission confirmed the conclusions set out in recital (459) of the provisional Regulation in view of the revised level of the measures.

7. **DEFINITIVE ANTI-DUMPING MEASURES**

7.1. **Injury elimination level**

(553) Under Article 9(4), third paragraph, of the basic Regulation, the Commission assessed the development of import volumes during the period of pre-disclosure described in recital (2) above in order to reflect the additional injury in case there would be a further substantial rise in imports subject to the investigation in that period. According to Eurostat and Surveillance 2 databases, a comparison of the import volumes of the product concerned in the investigation period and those of the pre-disclosure period showed no further substantial rise in imports. Therefore, the requirements for an increase in the determination of the injury margin under Article 9(4) of the basic Regulation were not met and no adjustment was made to the injury margin.

(554) Following definitive disclosure Xiamen Xiashun contested the Commission's addition of future environmental costs to the Union industry's target price, in accordance with Article 7(2d) of the basic Regulation. The company argued that, like the Union, Xiamen Xiashun will be subject to the China's Emissions Trading Scheme ('ETS') as of 2022. It also claimed that it had received the Aluminium Stewardship Initiative's Performance Standard ('PS') certification. It therefore allegedly incurred compliance costs resulting from the UN Framework Convention on Climate Change and the commitments from the Paris Agreement. Consequently, Xiamen Xiashun claimed that it incurred equivalent environment compliance costs compared to the Union producers, which will be reflected in export prices to the Union and the future environmental costs should therefore not be added to the non-injurious price.

(555) The Commission rejected the claim. The fact that China will apply its own ETS or that Xiamen Xiashun incurred environment compliance costs is irrelevant for the application of Article 7(2d) of the basic Regulation, according to which future environmental costs, inter alia, must be taken into account to establish the target price of the Union Industry.

(556) Following definitive disclosure, Nanshan claimed that the 6 % target profit applied by the Commission does not reflect a profit that can be reasonably achieved by this industry and referred to the 5,2 % profit margin achieved by the Union industry in 2016 ([83]). Furthermore, Nanshan claimed that the target profit should not be applied to the cost of the input but only to the processing cost on the ground that the LME price is not negotiated between the buyer and the seller as the seller passes the cost to the buyer. In this regard, it claimed that the negotiation is limited to the processing cost.

([83]) See complaint, p. 30.

(557) In this regard, the Commission noted that the target profit used for the purpose of the underselling calculations was set in line with the Article 7(2c). As far as the elements to which the target profit needs to be applied, Article 7(2c) clearly refers to a level of profit needed to cover full costs and investments. Consequently, the target profit should be applied to all cost elements and not only to the processing costs. On this basis, this claim was rejected.

(558) On this basis and in the absence of any comments regarding the injury elimination level, the conclusions set out in recitals (462) to (475) of the provisional Regulation were confirmed.

7.2. **Raw material distortions**

(559) In the absence of comments concerning this section, recital (476)-(480) of the provisional Regulation was confirmed.

7.3. **Definitive measures**

(560) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in this section, anti-dumping duties should be set in accordance with the lesser duty rule.

(561) The Commission 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 (EU-27) during the investigation period. The difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(562) After provisional disclosure, Jiangsu Alcha claimed that the disclosure of the underselling and undercutting margins were deficient as target prices and quantities sold by the Union industry, for all PCNs but one, were labelled as confidential whereby it was not able to exercise its rights of defence. It also requested additional information concerning the adjustments made to ensure comparability. Jiangsu Alcha claimed that the PCN structure used for the calculation of the level of the provisional measures did not ensure sufficient PCN comparability and questioned the conditions of competition applicable in the EU. As mentioned in recital (374), Jiangsu Alcha submitted that the Commission had used information provided by Jiangsu Alcha based on outdated PCN structure to calculate the underselling margin.

(563) Following Jiangsu Alcha's request, the Commission provided ranges for the underselling margin and Union industry's target prices used for the calculation of the underselling margin calculations, additional explanations concerning the adjustments made as well as the Union industry's full list of PCNs. However, Jiangsu Alcha indicated that the additional information was obsolete as it was allegedly based on the wrong facts and did not take account of its comments on the PCN structure.

(564) Further to Jiangsu Alcha's comments on the PCN, the Commission examined the claim together with the other claims received after provisional disclosure. It confirmed that Jiangsu Alcha's initial classification of product types was not correct. The Commission thus replaced the wrong PCN codes by correct codes and recalculated the level of the underselling margin for this exporter.

(565) Following definitive disclosure, Jiangsu Alcha claimed that the Commission had not disclosed sufficient data pertaining to the Union industry figures as it disclosed full details for the undercutting and underselling calculations for one PCN only. For the other PCNs, it complained that the Commission had used wide ranges for the target price and underselling margins which could not be considered to constitute meaningful disclosure. Furthermore, Jiangsu Alcha commented that by not having access to the sales quantities of the sampled Union producers at PCN level, it could not comment on the fairness of the calculation. In this regard, it requested the Commission to identify the number of producers for each PCN. In addition, Jiangsu Alcha also referred to a potential difference in level of trade, commissions and other selling costs. On this basis, it claimed that its rights of defence were violated and requested a more meaningful additional disclosure guaranteeing a fair comparison.

(566) The definitive disclosure was done in line with the Commission's standard practice in order to ensure the confidentiality of the data provided by the Union industry. In this regard, given the size of the sample, the data pertaining to PCNs which were manufactured and sold by one or two Union producers only could not be disclosed without leading to indirect disclosure of sensitive data. For the same reasons, the Commission cannot disclose to Jiangsu Alcha's the number of producers selling a given PCN. Hence, the Commission could only disclose the target price and underselling margins by using ranges. It should be recalled that the Commission had already followed this methodology in the provisional disclosure following Jiangsu Alcha's request for additional disclosure, as mentioned in recital (565). In this regard, Jiangsu Alcha had not commented on the level of detail of the additional provisional disclosure of its injury calculations.

(567) As far as other aspects of the calculations are concerned (level of trade, commission, selling costs), it should be noted that commissions and selling costs are already taken into account in the undercutting and underselling calculations. Considering the type of products that Jiangsu Alcha exports to the Union; i.e. AHEX AFRPs destined for automotive suppliers, the comment relating to the level of trade was not justified. On this basis, these claims were rejected.

(568) Furthermore, Jiangsu Alcha requested additional information concerning the construction of the ranges and in particular the author of the ranges.

(569) The ranges presented in the definitive disclosure were constructed by the Commission on the basis of the sensitive information used for the underselling calculations; i.e. they are based on the target price and underselling margin calculated in line with the methodology described in recitals (462) to (473) of the provisional Regulation.

(570) Jiangsu Alcha claimed that the PCNs it exported were manufactured by a limited number of Union producers and that the data of one allegedly inefficient Union producer could distort the target price of the Union industry and unfairly inflate the underselling margin. In this regard, it provided alternative undercutting and underselling margin calculations based on a simple (non-weighted) average of the undercutting and underselling amount per unit and requested the Commission to re-run the underselling calculations on this basis to eliminate the alleged unfairness resulting from very different quantities sold by Jiangsu Alcha and the sampled Union producers. It also provided an underselling calculation based on the upper values of the range and requested clarifications concerning the range used.

(571) In this regard, it should be recalled that the calculation of the underselling and undercutting margins were based on a sample of Union producers. In this respect, Jiangsu Alcha did not submit any comments on the sample or evidence concerning the alleged inefficiency of the sampled Union producers. It should also be noted that, except for two PCNs, all of Jiangsu Alcha exported PCNs could be matched with a corresponding PCN sold by at least one sampled Union producer in significant quantities. The simple average methodology applied and suggested by Jiangsu Alcha was considered erroneous as it did not take export volume into account and thus did not reflect its export behaviour accurately. The other method described by Jiangsu Alcha (upper values of the range) was not considered appropriate either as it disregards lower values and would not reflect its export behaviour accurately. Considering the sensitive nature of the figures provided in ranges, the Commission could not provide the requested clarification. On this basis, this claim was rejected.

(572) In the same regard, CLEPA claimed that the price difference between EU produced and imported AHEX AFRPs did not justify the level of the provisional measures. Valeo claimed that the adjustments made by the Commission with regard to the type of coils were unrealistic and leading to aberrational results.

(573) The Commission took comments pertaining to the exports of AHEX AFRPs into account, where warranted, and adjusted the underselling margin accordingly.

(574) Following definitive disclosure, EA requested clarification concerning the decrease in the underselling margin of Jiangsu Alcha. It also questioned the fact that, contrary to the level of the dumping margin which remained at a similar level, the underselling margin decreased significantly. Also, it referred to the CLEPA and Valeo's comments regarding the level of the underselling margin and questioned how this was taken into account in the establishment of the underselling margin.

(575) In this regard, it should be noted that the replacement of the wrong PCNs affected equally the establishment of the export price and normal value so that the corresponding dumping margin remained unaffected in this respect. As far as the injury margin is concerned, the PCN issue concerned only Jiangsu Alcha and not the Union industry so that the correction of the PCN led to a significant change in the level of the underselling margin for this exporting producer. CLEPA and Valeo's comments on the level of the underselling margin did not have an effect on the level of the underselling margin.

(576) Further to EA's comments on definitive disclosure, Jiangsu Alcha confirmed the Commission's clarification.

(577) Further to Xiamen Xiashun's request, the Commission provided ranges for the underselling margin and Union industry's target prices used for the calculation of the underselling margin calculations, additional explanations concerning the adjustments made as well as the Union industry's full list of PCNs.

(578) After provisional disclosure, Nanshan requested the disclosure of additional information in the form of the Union industry's target prices used for the calculation of the underselling margin, additional explanations concerning the adjustments made as well as the Union industry's full list of PCNs. Furthermore, it requested the disclosure of its underselling margin calculation without applying Article 2(9) of the basic Regulation and a range value for the underselling margin per PCN.

(579) In response to this request, the Commission provided the ranges for the underselling margin and Union industry's target prices used for the calculation of the underselling margin calculations, additional explanations concerning the adjustments made as well as the Union industry's full list of PCNs. The alternative underselling margin calculation without applying Article 2(9) was not provided on the grounds that such information did not form part of the information on which the Commission relied to base its findings. Yet, the Commission noted that the portion of sales through related entities is very low so that the impact of applying the adjustment under Article 2(9) of the basic Regulation would be, if any, very small.

(580) In spite of the additional information shared and with regard to the adjustment referred to in recitals (592) to (597), Nanshan claimed that it should also receive the target price for other PCNs which differ only in terms of alloy in order to provide meaningful comments on the adjustment made.

(581) In accordance with Article 19(4) of the basic Regulation whereby the Commission shall only disclose the evidence relied upon to draw its conclusion, the Commission did not consider that this information should be disclosed. In any case, it was considered that Nanshan received the information upon which the Commission relied to draw its definitive findings.

(582) After provisional disclosure, Nanshan claimed that the Commission erroneously calculated the injury elimination level as it relied for this purpose on Article 2(9) of the basic Regulation in order to determine Nanshan's import prices. In particular, it referred to specific paragraphs of the General Court's judgements T-383/17 ([84]) and T-301/16 ([85]). It argued that the General Court found that the Commission committed an error by deciding to deduct SG&A costs and a profit margin, for the resales of the product concerned by [the Applicant's related entity in the EU] to independent customers, for the purpose of establishing the export price of that product in the context of the determination of the injury.

(583) The Commission noted that the findings referred to by Nanshan in T-383/17 are not relevant for the case at hand as they concern only the undercutting calculations carried out in the investigation subject to that judgment ([86]). Regarding T-301/16, even though Nanshan referred to the General Court's findings on undercutting (para 188

([84]) Case T-383/17, *Hansol Paper Co. Ltd v European Commission*, Judgment of the General Court of 2 April 2020, EU: T:2020:139, paras 196, 199, 201, 203 and 205.

([85]) Case T-301/16, *Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission*, Judgment of the General Court of 10 April 2019, EU:T:2019:234, para. 188.

([86]) This is evident from paras 164-169 of that judgment which state that the arguments brought forward by the applicant concern the existence of injury and causal link (Articles 1 and 3 of the basic Regulation) and not the extent to which the injury margin was below the dumping margin or how the underselling margin was calculated.

thereof), the Court also found that (in para 194) the calculations on undercutting might have an impact also on the injury margin. However, by contrast to the investigation subject to that Court ruling, in the case at hand, the Commission based its underselling calculations on a different methodology for establishing the non-injurious Union price. While in T-301/16 the non-injurious price included also the costs incurred by the related sales entities of the sampled Union producers, in the case at hand the non-injurious price was based on the cost of production of the Union producers plus a target profit, thereby excluding any costs incurred by their related sales entities. Consequently, by contrast to the findings of the Court in T-301/16, in the case at hand there is no asymmetry between the import prices established for Nanshan whereby the SG&A and profit of the related importer in the Union had been deducted in accordance with Article 2(9) of the basic Regulation and the established target price for the sampled Union producers which does not include either SG&A or profit of their related sales entities. In addition, by contrast to the factual situation in T-301/16 whereby almost all sales of the exporter in question were carried out via related importers, in the case at hand the adjustment under Article 2(9) of the basic Regulation concerned only [25-35] % of Nanshan's export volumes ([87]) and less than 20 % of all sales of the sampled Union producers were carried out via related entities. Consequently, this claim was rejected.

(584) Following definitive disclosure, Nanshan reiterated its claim and indicated that its sales carried out via related importers were not very low and that the Commission could not disregard the General Court's case law as established in T-107/08 ([88]), T-383/17 and T-301/16 because the impact of its violation would allegedly be small. It based its reasoning on Article 47 of the Charter of Fundamental Rights of the European Union and on the principle of the rule of law in the Union's legal order enshrined in Article 263 TFEU.

(585) In this regard, it should be noted that the Commission did not disregard the General Court's case law on the grounds that the impact of the adjustment would be very small. Rather, the Commission refused to provide the information requested in recital (580) on the ground that such information did not form part of the information on which it relied to base its findings and that the impact of such adjustment, if any, would be very small.

(586) Nanshan also referred to para. 199 of T-383/17 and claimed that that case 'does not differentiate between the undercutting and underselling margins' and that this is only logical as the underselling margin aims at assessing the price situation of the Union industry 'under normal conditions of competition, in the absence of the dumped imports' according to other court rulings ([89]). It added that the underselling margin is the arithmetical way chosen by the Commission to assess price depression and suppression and consequently to assess the level adequate to remove the injury caused by the exporting producer's dumped imports to the Union industry ([90]).

(587) In this regard, first, this judgment is under appeal before the Court of Justice ([91]). Therefore, the findings of the judgment regarding the issue subject to the claim made by Hansol are not final. Also, it should be noted that the quoted paragraph refers to 'prices negotiated between an undertaking and the customers and not prices at an intermediate stage'. Considering that target prices used in the underselling calculations can as such not be negotiated but actually correspond to the fictitious price at which the Union industry would be able to sell in the absence of dumped imports, the target price cannot be considered as a negotiated price. On this basis, this claim was rejected.

([87]) Nanshan had higher volume of imports via related entities (around [30-50] %) but only [25-35] % of its total imports were actually used for the underselling calculations because the rest had no matching with the product types sold by the Union industry.

([88]) Case T-107/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v. Council and Commission*, EU:T:2011:704.

([89]) Case T-443/11, *Gold East Paper (Jiangsu) Co. Ltd and Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd v. Council*, EU:T:2014:774, para. 245; Case T-210/95, *European Fertilizer Manufacturers' Association (EFMA) v. Council*, EU:T:1999:273, para. 60.

([90]) Panel Report, *Russia – Commercial Vehicles*, WT/DS479/R, para. 7.61.

([91]) Case T-383/17, *Hansol Paper Co. Ltd v European Commission*, Judgment of the General Court of 2 April 2020, EU: T:2020:139.

(588) Nanshan also claimed that the fact that costs incurred by the related sales entities were not taken into account to construct the target price is irrelevant when assessing whether the Commission disregarded the General Court's case law in its underselling calculations as such costs should not be taken into account when constructing the target price. More specifically, it indicated that the Commission had constructed the target price based on the 'pre-tax net profit of the sales of the like product to unrelated customers in the Union in 2016' and that such a target price reflected the price at which the Union industry would ideally sell to its first independent customers and included all pricing components up to these first independent buyers. Nanshan therefore added that the costs incurred by the related sales entities of the sampled Union producers should therefore not have been taken into account.

(589) In this regard, it should first be noted that, contrary to Nanshan's claim and as mentioned in recital (467) of the provisional Regulation, the Commission established the target profit in accordance with the provisions of Article 7(2c), not on the basis of the profit achieved by the Union industry in 2016. Furthermore, the target price was constructed by applying the target profit to the cost of production of the sampled EU producers, that did not include any costs incurred by related selling entities. On this basis, this claim was rejected.

(590) Furthermore, Nanshan claimed that the Commission is under no obligation to make a comparison covering a majority of the sales of the exporting producer in its undercutting and underselling margin calculations. It further stated that the matching between Nanshan's exported products and those sold by the Union industry in the Union market would still reach 65 % of Nanshan's sales without comparing a PCN for which an adjustment was necessary. Nanshan also referred to the Appellate Body in China – GOES ([92]) and to panel in China – Autos (US) ([93]) claiming that the Commission should limit its comparison to products that are comparable. It also added that the export sales of a PCN which is not sold by the Union industry cannot undercut or cause injury to the Union industry. It also added that the Commission did not examine carefully and impartially all the relevant aspects of the individual case in line with the general principles of EU law ([94]) and pointed to Article 3(2) of basic Regulation whereby 'a determination of injury shall be based on positive evidence and shall involve an objective examination'.

(591) The quoted WTO jurisprudence provides that the investigating authority has an obligation to ensure price comparability between subject imports and the domestic like product. However, this jurisprudence does not require that only 'identical' or 'interchangeable' products should be compared. Furthermore, this WTO jurisprudence does not exclude the possibility to make adjustments in order to ensure an accurate and valid comparison.

(592) Following definitive disclosure, Nanshan referred to other WTO panels ([95]) claiming that that case law did not allow an authority to compare incomparable prices in its injury determination after adjusting these prices to make them comparable. It added that comparing products that do not compete with each other does not satisfy the requirement of the investigating authority to conduct an objective examination of positive evidence and argued that the Union industry product used in the price undercutting had different end-uses from the product exported by Nanshan to which it was compared.

(593) The Commission considered that Nanshan's reading of the quoted WTO panels was inaccurate and that it omitted important parts of the reports. Indeed, the panel report China – X-Ray Equipment mentioned at para 7.51 that 'when price comparisons are conducted as a part of a price undercutting analysis […], it is necessary for an investigating authority to consider whether the prices are actually comparable. […] a way in which to account for differences in the products being compared would be to make relevant adjustments. […] in many instances relevant adjustments will effectively ensure price comparability under Article 3.2.' This confirmed the Commission's methodology of performing adjustments in order to ensure price comparability. This was also confirmed in China – Broiler Products at paragraph 7.479: 'price comparability needs to be examined any time that a price comparison is

([92]) Appellate Body Report, *China – GOES*, WT/DS414/AB/R of 18 October 2012, para. 200.
([93]) Panel Report, *China – Autos*, WT/DS339/R, WT/DS340/R, WT/DS342/R, of 18 July 2008, para. 7.227.
([94]) Judgment of the General Court of 12 March 2020, Case T-835/17, *Eurofer*, EU:T:2020:96, para. 143.
([95]) Panel Reports, *China – X-Ray Equipment*, WT/DS425/R, para. 7.50, and *China – Broiler Products*, WT/DS427/R, para. 7.476.

performed in the context of a price undercutting analysis, yet also recognise that the need for adjustments necessarily depends on the factual circumstances of the case and the evidence before the authority.' Furthermore, paragraph 7.483 provides that 'the authority must make adjustments to control and adjust for relevant differences in the physical or other characteristics of the product.'. On this basis, it was considered that the Commission acted in line with the WTO case law when making relevant adjustments to account for the physical differences and ensure price comparability. As a matter of fact, by performing the 2,7 % price adjustment in the present case, the Commission ensured a valid and accurate comparison between the Union industry's products and the product exported by Nanshan. On this basis, this claim was rejected.

(594) With regard to the matching percentages, the Commission considered the PCNs with the highest export volume in order to ensure that Nanshan's export behaviour was accurately reflected in the level of its underselling margin. In doing so, it calculated an underselling margin for a PCN for which an adjustment was needed. In line with the Panel Report in China - GOES ([96]), the Commission ensured that the prices it was using for its comparison were properly comparable and proceeded with an appropriate adjustment as described below. In this context, it was considered that the Commission made a careful and objective assessment of the case at hand on the basis of positive evidence.

(595) In addition, Nanshan also claimed that the 2,7 % price adjustment performed in order to compare one PCN exported to the EU (cold rolled coil) by Nanshan with a PCN sold by the Union industry (hot rolled coil) was insufficient. In this regard, it referred to an alleged CRU report pointing to a 25 % price difference between cold and hot rolled coils. It also added that the underselling margin calculated for this PCN was not in line with the average underselling margin for the matching PCNs. On this basis, it requested the Commission to review the level of the adjustment and the corresponding undercutting and underselling calculation. In the same context, Nanshan indicated that rather than basing the adjustment on PCNs which differ in thickness, the Commission should base such adjustment on PCNs which differ only in terms of alloy used as thickness is one of the main factors determining the price of the product under investigation.

(596) The Commission noted first that the methodology used is in line with its standard practice. Second, it could not confirm the 25 % price difference between hot and cold rolled products quoted by Nanshan by reference to a CRU report. Indeed, while the price reference for cold rolled coils indeed referred to a CRU price quotation average for the IP, the alleged CRU source for hot rolled coils could not be established. Indeed, unlike Nanshan's claim, such alleged price reference did not exist as such and was the result of several adjustments and assumptions which could not be verified and related only vaguely to an approximation of a reference price for hot rolled coils. Also, it was not clear that the calculated hot-rolled price referred to the same type of alloy. Third, Nanshan internal records did not confirm the alleged price difference between hot and cold rolled coils. Furthermore, even when basing the adjustment on the method suggested by Nanshan (difference in alloys), the level of the underselling margin percentage was found to be in the same range; i.e. lower or higher by 3 percentage points than the calculated percentage thus confirming that the level of underselling found for that particular PCN using the Commission's methodology was representative of the price difference. In addition, it should also be noted that the established export price for that PCN was the lowest of all PCNs exported by Nanshan to the EU and on average [10 – 20] % lower than Nanshan's average export price. This also explains why the underselling margin found for this PCN was higher than for the other matching PCNs. On the basis of the above, this claim was rejected.

(597) It should be noted that Nanshan's comments on the provisional disclosure were supported by Xindatong after the deadline to comment on information provided by other interested parties in reaction to the disclosure of the provisional findings.

(598) Following definitive disclosure, Nanshan reiterated that the 2,7 % adjustment applied to the target price was insufficient. Nanshan referred to a comparison of the normal values constructed by the Commission for hot and cold rolled products; to a comparison of Nanshan's export price for similar hot and cold rolled products; to the alleged CRU report; and to a US ITC report. As far as the adjustments based on the method suggested by Nanshan

([96]) Panel Report, China – Goes (DS414), WT/DS414/R of 15 June 2012, para. 7.530.

are concerned, it claimed that the Commission had not explained how the Commission had adjusted the price of these PCNs and indicated that these calculations were thus of no value to it. Finally, Nanshan claimed that the export price of this PCN was the lowest simply because this PCN was solely sold by Nanshan Europe and therefore affected by the allegedly unlawful application of Article 2(9).

(599) In this regard, the Commission considered that the adjustment to be performed to the Union industry's target price should be based on price differences observed on the Union market as the target price should, in essence, reflect the price that the Union industry should achieve in the absence of dumped imports on its domestic market. Therefore, the reference to differences in normal value applicable in the country concerned were not considered reliable. Also, as mentioned in Section 3.4, Nanshan's export prices were found to be dumped. Therefore, the reference to differences in dumped export prices was not considered reliable either.

(600) In the absence of new elements or rebuttals concerning the alleged CRU report, the Commission's findings were confirmed. As far as the reference to the ITC report is concerned, while it is unclear how Nanshan computed the price difference as the calculations did not provide any formulas allowing the Commission to understand how the comparison had been performed, the Commission noted that the data referred to related to the period 2011-2015 which differed significantly from the IP or the period considered. With regard to the method suggested by Nanshan, it should be noted that the Commission actually reproduced the same methodology for calculating the adjustment in line with the suggestion made by Nanshan in its comments on the provisional disclosure. In this regard, the Commission did not consider that such calculations were of no value. Instead, they confirmed the Commission's finding with regard to the level of underselling for this particular PCN. As far as the export price of the PCN at stake is concerned, it should be noted that, even if the Article 2(9) adjustment was not applied, the export price of that PCN would remain well below the average export price of other PCNs exported by Nanshan, regardless of the sales channel used, and also below the average export price of PCNs exported exclusively through Nanshan Europe. On this basis, this claim was rejected.

(601) Following definitive disclosure, Nanshan claimed that the Commission should have performed a level of trade adjustment as [95-100] % of its export sales to the EU were destined for distributors to which it charges lower prices than to end-users. To substantiate its claim, Nanshan compared the CIF unit price of the same PCN sold to distributors and end-users. Nanshan claimed that the Union industry predominantly sold the product under investigation to end-users.

(602) In this regard, the Commission noted that the quantities sold by Nanshan to distributors and to end-users for that particular PCN were not comparable as the sales to end-users were insignificant and could therefore not be relied on for the purpose of a meaningful comparison. Furthermore, as required by Article 2(10)(d), Nanshan did not provide evidence supporting consistent and distinct differences in functions and prices of the seller for the different levels of trade. For instance, Nanshan did not provide evidence that it incurred additional costs for its sales to end-users, such as marketing or customer service expenses, which would justify a higher selling price to end-users. On this basis, this claim was rejected.

(603) Airoldi claimed that in view of the increase in LME and transport prices, the imposition of duties on an ad valorem basis would bring Chinese prices for AFRPs above the current European prices and would create an imbalance in a context of alleged lack of production capacity.

(604) The Commission considered that an ad valorem duty was the most appropriate form of duty to remove the injury suffered by the Union industry during the investigation period and referred back to its conclusion on the balance of interests in recital (554).

(605) In terms of the residual margin, as explained in recital (380) above, the findings in recitals (289) and (473) of the provisional Regulation that the cooperation is low were confirmed. Therefore, Commission set the residual margin at the level of the highest underselling margin established for a product type sold in representative quantities in the EU-27 by the exporting producer with the highest underselling margin found. On this basis, and taking comments on the underselling calculations into account where warranted, the residual underselling margin was set at the level of 24,6 %.

Company	Definitive dumping margin	Definitive underselling margin
Jiangsu Alcha Aluminum Group Co., Ltd	72,1 %	14,3 %
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	55,5 %	19,1 %
Xiamen Xiashun Aluminium Foil Co., Ltd	23,7 %	21,4 %
Other cooperating companies	44,5 %	19,0 %
All other companies	88,0 %	24,6 %

(606) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Definitive anti-dumping duty
Jiangsu Alcha Aluminum Group Co., Ltd	14,3 %
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	19,1 %
Xiamen Xiashun Aluminium Foil Co., Ltd	21,4 %
Other cooperating companies	19,0 %
All other companies	24,6 %

(607) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect 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 the 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.

(608) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([97]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(609) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

([97]) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

(610) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(611) 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.

(612) 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 to the producers which did not have exports to the Union during the investigation period.

7.4. **Definitive collection of the provisional duties**

(613) According to Article 10(3) of the basic Regulation, the definitive duty rates being lower than the provisional duty rates, the amounts secured in excess of the definitive anti-dumping duty rates should normally be released.

(614) However, under Article 10(2), the Commission may also decide not to collect provisional duties altogether in particular circumstances. In the present case, for the same reasons as those that led to the temporary suspension (see Commission Implementing Decision (EU) 2021/1788 ([98]), 'the suspension Decision'), the collection of the provisional duties would create an additional unjustified burden in particular on EU importers and users without providing an additional relief to the Union industry. Thus, the Commission decided that the amounts secured by way of the provisional anti-dumping duty imposed by the provisional Regulation should not be definitively collected.

(615) After the second additional final disclosure, a trader and four users expressed their support for the Commission's intention not to collect provisional duties, while EA and Elval opposed it.

(616) First, EA asserted that the deadline of 1 working day to comment on this issue breached its rights of defence. Second, it failed to understand how the Commission can conclude that it will reimburse the provisional anti-dumping duties at the time that it has not even received the comments by the EU industry on its intention to suspend the measures. Third, as the suspension Decision itself is vitiated by manifest errors of assessment and breach of procedural rights the intention not to collect provisional duties was unlawful as well. The third comment was also supported by Elval.

(617) Regarding the first point, the Commission observed that neither the basic Regulation, nor Section 6 of the Notice of Initiation specify a specific deadline for additional final disclosures but rather leave discretion to the Commission to set the deadline. In the view of the time constraints of the investigation and the minimal content to be commented upon (two recitals on less than one page), the Commission concluded that the 1-day deadline was still reasonable. In fact, all interested were able to provide their opinion on this straightforward point within the set deadline. Hence, there was no breach of the rights of defence.

([98]) Commission Implementing Decision (EU) 2021/1788 of 8 October 2021 suspending the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China (see page 105 of this Official Journal).

(618) On the second point, the Commission observed that there is no legal obligation to wait for comments of interested parties on the suspension Decision before disclosing the intention not to collect provisional duties. In fact, the disclosure of its intention not to collect definitively the provisional duties does not prejudge the Commission's final determination either on this matter or on the suspension of the measures. Both draft legal acts were properly disclosed and could have been modified after comments if warranted.

(619) On the third point, the Commission observed that the EA did not challenge the non-collection of provisional duties as such but only the link made with the draft suspension Decision. As it concluded in the separate suspension Decision, taking into account all the comments received, that all the elements at its disposal militate for such a suspension, the third claim is without object.

(620) Furthermore, the Commission noted that the imposition of the provisional measures had a chilling effect on the level of the imports originating in the People's Republic of China. In view of this reduced level, the Commission considered that the non-collection of the provisional duties would not injure the Union industry nor undermine the remedial effect of the definitive measures.

8. **FINAL PROVISIONS**

(621) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([99]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(622) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. Without prejudice to Article 2, a definitive 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 48, 7607 11 90 51, 7607 11 90 53, 7607 11 90 65, 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.

([99]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. The rates of the definitive 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	Definitive anti-dumping duty rate (%)	TARIC additional code
Jiangsu Alcha Aluminum Group Co., Ltd	14,3 %	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	19,1 %	C611
Xiamen Xiashun Aluminium Foil Co., Ltd	21,4 %	C612
Other cooperating companies (Annex)	19,0 %	
All other companies	24,6 %	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. 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,

— products currently falling under TARIC codes 7607 11 90 44 and 7607 11 90 71,

— 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 definitive anti-dumping duty if it is imported for use in the production of aluminium composite panels and if it complies with the following technical characteristics:

— tension levelled aluminium coils,

— hot-rolled coils,

— mill finish,

— widths: from 800 mm up to 2 050 mm,

— thicknesses: 0,20 mm up to 0,5 mm,

— tolerance on thickness: +/- 0,01 mm,

— tolerance on width: +1,50/-0,00 mm,

— alloys: 5005, 3105,

— temper: h14, h16, h24, h26,

— max wave height: max. 3 in 1 000 mm.

3. The exclusions under paragraph 1 indent 3 and 4 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 ([100]) (the Union Customs Code).

Article 3

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/582 shall not be collected.

Article 4

Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) originating in People's Republic of China during the period of investigation (1 July 2019 to 30 June 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 5

This Regulation shall enter into force on the 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, 8 October 2021.

For the Commission
The President
Ursula VON DER LEYEN

([100]) 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 Huafon 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