

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**

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 14 February 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of aluminium extrusions originating in the People's Republic of China ('China' or the 'country concerned') on the basis of Article 5 of the basic Regulation.
- (2) The Commission initiated the investigation following a complaint lodged on 3 January 2020 (the 'complaint') by the association European Aluminium (the 'complainant'). The complainant represented more than 25 % of the total Union production of aluminium extrusions. The complaint contained evidence of dumping and of resulting material injury.
- (3) On this basis, the Commission considered that the complaint contained sufficient evidence to justify the initiation of the investigation.

1.2. Registration

- (4) Following a request from the complainant supported by the required evidence, the Commission made imports of the product concerned subject to registration under Article 14(5) of the basic Regulation by Commission Implementing Regulation (EU) 2020/1215 ⁽²⁾.

1.3. Interested parties

- (5) In the Notice of Initiation ⁽³⁾, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the known Union producers, the national aluminium associations of the Union, the known exporting producers, the authorities of China, the known importers, the known traders and users about the initiation of the investigation and invited them to participate.
- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The parties who so requested were granted an opportunity to be heard.

1.4. Comments on initiation

- (7) The Commission received comments from two importers (Airoidi and Kastens and Knauer) on initiation. The Commission considered all comments and addressed them in the sections below.

1.5. Sampling

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

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2020/1215 of 21 August 2020 making imports of aluminium extrusions originating in the People's Republic of China subject to registration (OJ L 275, 24.8.2020, p. 16).

⁽³⁾ OJ C 51, 14.2.2020, p. 26.

1.5.1. *Sampling of Union producers*

- (9) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the largest representative quantity of production and sales on the Union market which could be investigated within the time available. This sample consisted of the four largest Union producers in terms of production and sales. The selected sample produced and sold a very wide range of products, including the four basic product types (bars and rods, solid profiles, hollow profiles, pipes and tubes) and accounted for just under 10 % of production and sales on the Union market. The Commission invited interested parties to comment on the provisional sample.
- (10) European Aluminium submitted that by basing the sample on the largest producers the full extent of the injury might not be identified. This claim was based on the fact that smaller producers represented the largest quantity of production and sales and these companies did not benefit from economies of scale like the largest producers. European Aluminium proposed two additional companies to be included in the sample, which it also claimed enabled a larger coverage of end-user markets.
- (11) The Commission assessed the claim and decided to maintain its original sample. Although a few companies which could fulfil the legal criteria to be considered SMEs provided sampling information, they represented only a marginal proportion of production and sale in the Union. The smaller producers mentioned by European Aluminium were in fact too large to qualify as SMEs. Thus, the Commission had no objective reason to revise the sample or to include the two companies proposed by European Aluminium.
- (12) Thus, the Commission considered that the sample was representative of the Union industry based on the information available on the case file.

1.5.2. *Sampling of importers*

- (13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (14) Six unrelated importers provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two importers on the basis of the largest representative volume of sales of products under investigation originating from the People's Republic of China during the investigation period. In accordance with Article 17(2) of the basic Regulation, all known importers concerned were consulted on the selection of the sample. The Commission received no comments in this respect.
- (15) One importer (Airoldi Metalli S.p.A.) submitted that major importers, particularly from Germany, were not taking part in the investigation, which would mean that the market analysis performed by the Commission both concerning injury and dumping would not correspond to the economic reality of the industry.
- (16) All importers were informed of the initiation of the investigation by the Notice of initiation published in the *Official Journal of the European Union* and were given the opportunity to cooperate and be sampled. Furthermore, although the cooperation of importers was low, there was co-operation from Germany, including one of the sampled importers.
- (17) Therefore, the Commission considered that the sample was representative based on the sampling information available on the case file.

1.5.3. *Sampling of exporting producers in China*

- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (19) Thirty-seven exporting producers in China provided the requested information and agreed to be included in the sample within the stipulated deadline. Two of those exporting producers provided the requested information after the stated deadline. Their replies were taken into account, but not included in the sample at the later stage, as they were not among the largest with regard to volume of exports. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three cooperating groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available, representing 28,1 % of total exports.

- (20) In accordance with Article 17(2) of the basic Regulation, the Commission consulted all known exporting producers of aluminium extrusions, and the authorities of China on the selection of the sample. The Commission did not receive any comment on its preliminary selection.

1.6. Individual examination

- (21) Twenty-two exporting producers in China indicated their intention to request individual examination under Article 17(3) of the basic Regulation. However, only two exporting producers submitted completed questionnaires within the stipulated deadline. At this stage, given the time constraints, the Commission has not been able to consider those requests. Thus, it will decide whether to grant individual examination at the definitive stage of the investigation.

1.7. Replies to the questionnaire

- (22) The Commission requested the following parties to provide a reply to questionnaire ⁽⁴⁾:

Union producers

- Constellium Decin s.r.o., Decin, Czechia
- Hydro Extrusion Hungary k.f.t, Székesfehérvár, Hungary
- Impol d.o.o., Slovenska Bistrica, Slovenia
- ST Extruded Products GmbH, Vogt, Germany

Association of Union Producers

- European Aluminium, Brussels, Belgium

Unrelated importers

- Airoidi Metalli S.p.A.
- mejo Metall Josten GmbH & Co.

Exporting producers

- The Liaoning Zhongwang Group, composed of two exporting producers: (i) Liaoning Zhongwang Group Co., Ltd.; and, (ii) Yingkou Zhongwang Aluminium Business Co., Ltd;
 - The Haomei Group, composed of two exporting producers: (i) Guangdong Haomei New Materials Co., Ltd.; and, (ii) Guangdong King Metal Light Alloy Technology Co., Ltd; and,
 - The Press Metal Group, composed of two exporting producers: (i) Press Metal International Ltd.; and, (ii) Press Metal International Technology Ltd.
- (23) The Commission received questionnaire replies from the four sampled Union producers, the Union producers' association, the two sampled unrelated importers, one user (Alstom Holdings), and two groups of exporting producers: the Haomei Group and the Press Metal Group.
- (24) The Liaoning Zhongwang Group did not submit any reply to the questionnaire. In light of the above, on 1 April 2020, the Commission informed the Liaoning Zhongwang Group that it intended to apply the provision of Article 18 of the basic Regulation to it. In that letter, the Commission asked the Liaoning Zhongwang Group to submit its comments on the application of Article 18 no later than 13 April 2020. The Liaoning Zhongwang Group did not submit any comments. The sample was reduced to two groups of exporting producers representing 20,9 % of total exports.

1.8. Verification visits

- (25) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at provisional stage.
- (26) The Commission remotely cross-checked all the information deemed necessary for its provisional determinations. The Commission carried out remote crosschecks ('RCC') of the following companies/parties:

⁽⁴⁾ The respective questionnaires, as well as the users' questionnaire, were available online on the day of initiation at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2449

Association of European Producers:

— European Aluminium, Brussels, Belgium

Union producers:

— Constellium Decin s.r.o., Decin, Czechia

— Hydro Extrusion Hungary k.f.t, Székesfehérvár, Hungary

— Impol d.o.o., Slovenska Bistrica, Slovenia

— ST Extruded Products GmbH, Vogt, Germany

Exporting producers in China:

— The Haomei Group; and,

— The Press Metal Group.

1.9. Claim for the suspension of the investigation

- (27) Airoidi requested that, because of the COVID-19 outbreak, the investigation should be suspended until the situation had improved, as the confinement measures negatively impacted their rights of defence (for instance because they could not have access to their own records, or could not hold hearings with the Commission).
- (28) This request could not be accepted. In particular, there is no legal basis in the basic Regulation allowing the Commission to suspend the investigation. In fact, the Commission is subject to binding deadlines to complete the investigation. Therefore, the Commission has no discretion to take such a decision. Recognising the serious difficulties faced by certain co-operating companies, the Commission issued a Notice on the consequences of the COVID-19 outbreak which provides for as much additional flexibility as possible on deadline extensions, taking into account the legal constraints and the need to comply with the applicable deadlines. Moreover, as described in the previous paragraph, the Commission remotely cross-checked the information provided by parties or held videoconference hearings with interested parties in a satisfactory manner. All these measures ensured that parties, including Airoidi, were able to fully exercise their right of defence and participate in the investigation.

1.10. Investigation period and period considered

- (29) The investigation of dumping and injury covered the period from 1 January 2019 to 31 December 2019 (the 'investigation period' or the 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period (the 'period considered').

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

- (30) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions in China within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (31) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide the information requested in Annex III to the Notice of the Initiation regarding the inputs used for producing aluminium extrusions. Thirty-three Chinese exporting producers submitted the relevant information.
- (32) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the Government of the People's Republic of China (the 'GOC'). The GOC however did not reply to that questionnaire. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China.
- (33) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. Two exporting producers made comments on the existence of significant distortions. These comments are analysed in detail in recitals (74) to (89) below.

- (34) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (35) On 16 March 2020, the Commission published a first note to the file on the sources for the determination of the normal value ('the Note of 16 March 2020') seeking the views of the interested parties on the relevant sources that the Commission might use for the determination of the normal value, in accordance with Article 2(6a)(e) second paragraph of the basic Regulation. In that note, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified at that stage the following as possible representative countries: Brazil, Colombia, Ecuador, Islamic Republic of Iran, Kazakhstan, Malaysia, Mauritius, Mexico, Montenegro, Russian Federation, Serbia, Sri Lanka, Thailand and Turkey.
- (36) The Commission gave all interested parties the opportunity to comment. The Commission received comments from two Chinese exporting producers, the complainant and an importer. The GOC did not provide any comments.
- (37) The Commission addressed the comments received on the Note of 16 of March in the Second Note on the Sources for the Determination of the Normal Value of 25 June 2020 ('the Note of 25 June 2020'). The Commission also established a provisional list of factors of production and concluded that, at that stage, it intended to use Turkey as the representative country under Article 2(6a)(a), first indent of the basic Regulation. The Commission invited interested parties to comment and it received comments from the complainant, one exporting producer group and an importer. These comments are analysed in detail in recitals (169) to (173).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (38) The product under investigation is bars, rods, profiles (whether or not hollow), tubes, pipes; unassembled; whether or not prepared for use in structures (e.g. cut-to-length, drilled, bent, chamfered, threaded); made from aluminium, whether or not alloyed, containing not more than 99,3 % of aluminium.
- (39) The product under investigation, originating in China, is currently falling under CN codes ex 7604 10 10, ex 7604 10 90, 7604 21 00, 7604 29 10, 7604 29 90, ex 7608 10 00, 7608 20 81, 7608 20 89 and ex 7610 90 90 (TARIC codes 7604 10 10 11, 7604 10 90 11, 7604 10 90 25, 7604 10 90 80, 7608 10 00 11, 7608 10 00 80, 7610 90 90 10) ('the product concerned'). These CN and TARIC codes are given for information only and have no binding effect on the classification of the product.
- (40) The product concerned is commonly referred to as 'aluminium extrusions', referring to its most common manufacturing process even if it can also be produced by other production processes such as rolling, forging or casting.
- (41) The following products are not covered by this investigation:
- (1) products attached (e.g. by welding or fasteners) to form subassemblies;
 - (2) welded tubes and pipes;
 - (3) products in a packaged kit with the necessary parts to assemble a finished product without further finishing or fabrication of the parts ('finished goods kit').
- (42) The product concerned is used in a wide range of applications. The major end-use applications include:
- (1) Building and construction: windows, doors, railings, high-rise curtainwall, highway and bridge construction, framing members, other structures;
 - (2) Transportation: automotive (cars, buses, trucks, trailer/van/container vehicles), heavy rail, light rail and other mass transit vehicles, recreational vehicles, aircraft, aerospace, marine; and

- (3) Engineered products: consumer and commercial products such as air conditioners, appliances, furniture, lighting, sports equipment, personal watercraft; electrical power units, heat sinks, coaxial cables, bus bars; machinery and equipment, food displays, refrigeration, medical equipment, display structures, laboratory equipment and apparatus.

2.2. Like product

- (43) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:
- (1) the product concerned;
 - (2) the product produced and sold on the domestic market of country concerned; and
 - (3) the product produced and sold in the Union by the Union industry.
- (44) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.
- (45) The Union market for the product under investigation consists of bars and rods, tubes, and solid and hollow profiles manufactured from various aluminium alloys. These products have various dimensions and some products are finished using several methods such as drawing, cutting, shaping etc. These products are all sold into various user industries. This main user industries are building and construction (around 50 %), transport (around 30 %), engineering (around 12 %) and consumer products (around 8 %). The products are either directly sold to the end-user industries, or via distributors.
- (46) Imports from the country concerned also consists of the same basic product types, were made of a similar variety of aluminium alloys, dimensions and types of finishing. Price comparisons of the imported product types with those sold by the sampled Union producers showed that over 95 % of imported product types had a direct match to sales by the Union industry. It was therefore clear that competition between imported and Union industry sales was very high.
- (47) Many imported and Union industry sales were made to individual specifications of the customer. However, although these products can be considered as bespoke, they all shared the same basic physical, technical and chemical characteristics and should be considered as one product for the present investigation.

2.3. Claims regarding product scope

2.3.1. *Claims that the definition of the product scope is insufficiently clear*

- (48) Certain interested parties argued that the product under investigation was not clearly defined in the Notice of initiation. The following arguments made were:
- (1) the definition of the product under investigation should not be based on production methods;
 - (2) the alleged extension of the product definition by the term 'made from aluminium' was not appropriate;
 - (3) the term CN codes 'given for information only' was contested.
- (49) The product under investigation has been defined based on physical, technical and chemical characteristics. The definition clearly states that all bars, rods, profiles tubes and pipes containing not more than 99,3 % aluminium are within the scope of the investigation.
- (50) The Commission confirms that, contrary to the understanding of certain interested parties, the definition of the product under investigation was not based on production methods. While extrusion is indeed the most common production method, the products meeting the physical, technical and chemical characteristics of the product definition are covered irrespective of the production method.
- (51) As regards the alleged extension of the product definition by the term 'made from aluminium', this stemmed from an incomplete reading of the product definition. Indeed, the relevant term reads 'made from aluminium, whether or not alloyed'. This is merely a clarification of the condition 'containing not more than 99,3 % of aluminium', that products from both unalloyed aluminium and aluminium alloys are covered, as long as they contain not more than 99,3 % aluminium.

- (52) As regards the fact that CN codes are given ‘for information only’ in the Notice of Initiation, the party claimed that inserting such imprecise definition into the provisional or final version of the regulation imposing duties would constitute a breach of general principles of EU law. According to this party, the interpretation of CN codes is not binding and such a general reference would impair the legal certainty concerning the product scope. In this respect, the Commission noted that in the Notice of Initiation the reference to ‘for information only’ was inserted to ensure that the product under investigation is defined in accordance with the product definition contained in the Notice of Initiation, as opposed to the definition contained in the CN codes. Pursuant to Article 14(6) of the basic Regulation, the Commission created a number of TARIC codes on initiation of this investigation, where the CN codes indicated had a wider scope than the product concerned. These TARIC codes, which can be seen in recital (39), identify the product concerned in the operative part of this provisional Regulation.

2.3.2. Product exclusion requests

- (53) The importer Airoidi argued that aluminium extrusions made from hard alloys, specifically non-standard hard alloys, should be excluded from the product scope, since the EU production was far from meeting the actual EU demand for such products.
- (54) In this respect the investigation showed that aluminium extrusions made from hard alloys share the same basic physical, technical and chemical characteristics with other products covered by the definition of the product concerned. Airoidi did not provide any evidence that there is a shortage of supply for this product type. In fact, the Commission found that the Union industry, including two of the sampled producers, invested significantly in new hard alloy presses in the period considered, and therefore is capable of supplying a wide range of aluminium extrusions, including hard alloys.
- (55) The exporting producer Fuyao Glass argued that the investigation should target mainly those aluminium extrusions used in building and construction or ‘for use in structures’, and that products produced and exported by Fuyao Glass such as automobile related accessory products should be excluded.
- (56) Fuyao Glass further argued that taking into consideration distinguishable features in physical, technical and chemical characteristics, manufacturing process, quality, distribution channels, absence of interchangeability and different consumer perception, as well as disparity in costs of production and pricing between products of very different end-use application, would require the exclusion of their aluminium extrusions for automobile decorative use from the scope of the investigation.
- (57) In support of their claim, Fuyao Glass argued a number of technical differences between the products produced and exported by them, and the products used in the building and construction sector, such as the aluminium alloy type used, certain specific production steps, identification coding, aging, appearance inspection and packing. Fuyao Glass furthermore argued that the homogeneity or similarity is an element to be taken into consideration in the product definition.
- (58) In this respect, the Commission noted that Fuyao Glass did not explain why the investigation should target aluminium extrusions used in building and construction or ‘for use in structures’ only, and not aluminium extrusions used by other industries. Aluminium extrusions are used in numerous industries, including automotive, and they all share the same basic physical, technical and chemical characteristics. While it is true that there are certain differences between the different aluminium extrusions in terms of shape and properties, it is important to note that those items share the same basic physical, technical and chemical characteristics such as that they are made from aluminium, and are used as input (i.e. intermediary products) in the production of downstream products. Therefore, the various types effectively belong to the product concerned as described under the product definition.
- (59) Certain exporting producers (Jilin Qixing, Shandong Nollvetec Lightweight Equipment) and the user Alstom and its association UNIFE claimed that the aluminium extrusions for the rail transport industry should be excluded from the investigation. The main claims in this respect were that this is a small customer sector for the Union industry, that the user would be disproportionately impacted, and that imports from China are bespoke solutions. Also, it was claimed that different standards and technical characteristics apply to aluminium extrusions in this sector which differentiates it from other sectors.

- (60) The Union industry challenged this exclusion request on the grounds that the Union industry has the capacity to manufacture products for the rail transport industry. Also, the Union industry stated that the product under investigation is broadly defined and the physical, chemical and technical characteristics of this industry are included in that definition.
- (61) The Commission rejected this exclusion request because no convincing evidence has been submitted to demonstrate that aluminium extrusions for the rail transport sector have different basic physical, technical and chemical characteristics. In fact, all user sectors, and many individual users, have specific standards and technical requirements, which means that the rail transport industry is simply another user sector rather than one with grounds for exclusion from the measures. Similarly, other requests based on specific technical standards complied with by the imported products or specific end-uses could not be accepted because the compliance with a specific standard is not in itself a cause for exclusion from the product definition, if the product falls in the relevant definition. It is inevitable that the aluminium extrusions business, which is more and more focused on bespoke products, will have specific requirements and standards; however, this does not mean that they have different basic physical, technical and chemical characteristics.
- (62) In addition, several Union producers are able to supply this sector with most of its requirements. This was confirmed, for example, regarding large aluminium extrusions for rail carriages, where the rail transport industry stated that three producers in China and one in the Union was able to supply their needs.
- (63) Based on the foregoing, the Commission concluded that no grounds existed to exclude the rail sector (or a part of it) from the product scope of the investigation.
- (64) Several other interested parties commented on products they manufacture or import requesting clarification as to whether they are included in the product scope. Although, the Union industry commented on such requests in a Note placed on the file for inspection by interested parties, the Commission notes that, ultimately, such decisions are the competence of national customs authorities at the time of importation. Specific attention will be paid to this issue in terms of a potential alternative description of the product concerned.

3. DUMPING

3.1. Application of Article 18 of the basic Regulation

- (65) As indicated in recital (24) above, the Liaoning Zhongwang Group did not cooperate with the investigation. Also, it did not submit any comment to the letter whereby it was informed that the Commission intended to apply the provision of Article 18 of the basic Regulation.
- (66) As indicated in recital (32), the investigation has been initiated on the basis of Article 2(6a)(a) of the basic Regulation. The Commission sent the GOC two questionnaires concerning the existence of distortion ⁽⁵⁾ upon initiation of the investigation. The GOC however did not submit any replies. The Commission informed the GOC by Note Verbale of 25 March 2020 that it intended to make use of the provision of Article 18 of the basic Regulation in that regard and invited the GOC to submit its comment on the application of Article 18. The GOC did not submit any comments.

3.2. Normal value

- (67) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (68) However, Article 2(6a)(a) of the basic Regulation stipulates that in case it is determined that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, and shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits.

⁽⁵⁾ 'Questionnaire on the existence of significant distortions within the meaning of Article 2(6a) of Regulation (EU) 2016/1036 for the Government of the People's Republic of China' and 'Questionnaire on the existence of raw material distortions within the meaning of Article 7(2a) of Regulation (EU) 2016/1036 for the Government of the People's Republic of China'.

- (69) As further explained below, the Commission concluded in the present investigation that, based on the evidence available and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

3.2.1.1. Introduction

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

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

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

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

- (73) Pursuant to this provision, the Commission has issued a country report concerning China (hereinafter ‘the Report’) ⁽⁶⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). The Report was placed on the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation.

⁽⁶⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People’s Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter ‘Report’).

- (74) The complaint contained information on additional studies and reports analysing the situation of the aluminium industry in China. A first source was the Report on overcapacities in China issued by the European Union Chamber of Commerce in China ('EU Chamber of Commerce Report'), which was used to demonstrate the existence of excess production capacity in China. Secondly, the complainant listed the OECD paper titled 'Measuring distortions in international markets – The aluminium value chain' ('OECD Study')⁽⁷⁾, which closely analyses the issue of financial subsidies granted to companies in the aluminium industry, as well as the fact that export taxes on primary aluminium and incomplete VAT rebates on exports of certain aluminium products discouraged exports of primary aluminium and encouraged production and export of semis and fabricated articles of aluminium, including aluminium extrusions. Lastly, the complainant pointed out that in a recent expiry review regarding anti-dumping duties on imports of certain aluminium foil in rolls originating in China⁽⁸⁾, the Commission confirmed the existence of significant distortions and this finding was systemic in nature and not limited to the product concerned in that particular investigation, and there was no reason to depart from this methodology.
- (75) As indicated in recital (66), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file at the initiation stage, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (76) Comments in this regard were submitted on initiation on behalf of two exporting producers, Guangdong HaoMei New Materials Co., Ltd, and Guangdong King Metal Light Alloy Technology Co., Ltd (Haomei and King Metal). Firstly, these interested parties claimed that the subsidies they received were of minimum amount and focused on technology and IT upgrades. The exporting producers furthermore claimed that the aids they received were comparable to the ones granted in the EU to high-tech enterprises in order to achieve aims of public interest, such as upgrading technological transformation and digitalisation, listing a number of European laws concerning financial aid to enterprises.
- (77) The Commission recalls that for the purpose of establishing the existence of significant distortions under Article 2(6a)(b) of the basic Regulation the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, including matters related to financial support, such as support granted in the EU, are not taken into consideration in this context. Moreover, the Commission recalls that significant distortions in China were assessed at country wide level. Therefore, even if in fact the commenting exporting producers did not benefit from any significant state financing, both companies were eligible for financial support as described in sections 3.2.1.8 coupled with 3.2.1.5 below. This is because, as explained in section 3.2.1.4, both exporting producers were subject, as all companies in the aluminium sector, to Chinese State planning and guidance documents and enjoyed access to financing, through the Chinese financial system described in section 3.2.1.8. In this respect, banks and other financing institutions following the guidance of the GOC, facilitate access to finance for market players, including producers of aluminium products, hence creating a financial safety net for those enterprises, and giving them an additional advantage compared to their counterparts located outside China.
- (78) Secondly, the exporting producers claimed that the complaint referred to significant distortions affecting prices and costs in very general terms, and that these elements were not applicable particularly to themselves. The exporting producers submitted that under Article 2(6a) of the basic Regulation, in order to construct the normal value, the Commission can choose to use domestic costs to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence and the assessment should be done for each exporter and producer separately. Haomei and King Metal alleged that the evidence on significant distortions contained in the complaint, drawing on various Reports, pertained broadly to the Chinese economy and the Chinese aluminium sector, and was not automatically applicable to the two exporting producers.

⁽⁷⁾ OECD (2019), 'Measuring distortions in international markets: the aluminium value chain', OECD Trade Policy Papers, No. 218, OECD Publishing, Paris, <https://doi.org/10.1787/c82911ab-en> (last accessed on 3.9.2020)

⁽⁸⁾ 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).

- (79) The Commission notes, with regard to the above, that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established at country-wide level. If the existence of significant distortions is established, then the provisions of Article 2(6a) apply to all exporting producers in China. In any event, the same provision of the basic Regulation allows exporting producers to demonstrate that their own domestic costs are not affected by significant distortions, in which cases they can be used for the calculation of the normal value. However, no domestic costs have been established to be undistorted on the basis of accurate and appropriate evidence, including in the framework of the provision on interested parties in Article 2(6a)(c). In particular, the exporting producers did not submit accurate and appropriate evidence on undistorted prices and costs. In view of the findings of the investigation stated in section 3.2.1.10 and in the absence of relevant evidence that these findings do not apply to the domestic costs of those exporting producers, this claim was rejected.
- (80) Third, the exporting producers claimed that both the Commission Report and EU Chamber of Commerce Report on the file are very general, as they discuss about general problems in the aluminium industry which are however not applicable to Haomei and King Metal in particular. Similarly, the OECD Study concentrated on the largest producers and while they are major receivers of state subsidies in China, the paper acknowledges that other producers, including the producers of semis, do not benefit from the extensive state subsidies. Furthermore, the two exporting producers do not receive excessive amounts of state subsidies, as described in detail in the comments received listing all the State aid received by Haomei and King Metal. Therefore, the two exporting producers are not subject to the state subsidies to the extent the largest producers are and therefore their prices are not distorted.
- (81) The Commission recalled that the existence of significant distortions is established for the exporting country as a whole in accordance with Article 2(6a)(b). Therefore, the three reports used to show the existence of significant distortions are relevant to fulfil the requirements of Article 2(6a)(b). According to Article 2(6a)(a), the use of domestic costs is allowed if they are positively established not to be distorted on the level of individual exporting producers. The fact that the two exporting producers did not benefit from subsidies to the same level as other, larger, producers is irrelevant in this case, as further explained in recitals (76) to (77).
- (82) Furthermore, the two exporting producers submitted that their energy prices and wage costs were not distorted and that there was no evidence to support the claim that significant distortions affected those two factors of production.
- (83) As already explained in recital (77), the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level, and the provisions of Article 2(6a) allows the exporting producers to demonstrate that their own domestic costs are not affected by significant distortions, in which case they can be used for calculating the normal value. However, in the present case no domestic energy costs, nor domestic wages have been established to be undistorted on the basis of accurate and appropriate evidence, including in the framework of the provision on interested parties in Article 2(6a)(c). No exporting producer submitted evidence to demonstrate that their costs of energy and labour were not distorted. Therefore, their claim in that respect was rejected.
- (84) With regard to China's VAT rebates on exports of certain aluminium products, Haomei and King Metal submitted that they did not benefit from VAT rebates in relation to bars and rods, and that they only benefitted from a tax abatement of 10 % on the corporate income tax.
- (85) First, the commenting exporting producers did not disclose further details on whether other products exported by them might be subject to a VAT rebate, beyond information on bar and rods. Secondly, as established by the Commission in its Report, China's VAT rebates policy is particularly relevant as evidence proving distortions of the costs of inputs (i.e. primary aluminium) used in the production of the product concerned. The fact that Haomei and King Metal's exports of certain aluminium products would not be subject to VAT rebates would not alter the fact that the prices of raw materials used by them in the production process would be distorted as a result of the VAT exempting policy at country-wide level. The said exporting producers did not provide any evidence to the contrary. Therefore, their claim was rejected.
- (86) Furthermore, the two exporting producers claimed that their Commercial law and statutes of the companies do not mention the role of Party Committee, and that they were subject to enforcement of bankruptcy laws, corporate and property laws. They claimed that audits were regularly conducted by certified public accountants and the budgets were transparent and publicly accessible.

- (87) The Commission recalls that according to the CCP Constitution, all Chinese companies are required to establish party cells, as explained in detail in recital (105). Therefore, the fact that there were no specific provisions in the statutes of both exporting producers does not alter the fact the CCP influenced business decisions in the case of the majority of China's corporate fabric, through State presence in party cells⁽⁹⁾. This contributed to the overall influence and control by the CCP over the Chinese economy. In consequence, such State intervention has been affecting not only Chinese exporting producers but also the producers of raw materials and inputs used by these exporting producers (including Haomei and King Metal), resulting in the prices of these inputs being distorted. There is no evidence on the file to contest this fact. Secondly, the Commission established in section 3.2.1.6 country-wide distortions with regard to the enforcement of bankruptcy laws, corporate and property laws, in accordance with the requirements of Article 2(6a)b, fourth indent. No evidence was submitted to demonstrate that the distortions present on the country wide level are not applicable to the two exporting producers. Both claims were therefore rejected.
- (88) Another exporting producer, namely Press Metal Group, submitted comments concerning the existence of significant distortions in reaction to the Note of 16 March 2020. The exporting producer claimed that the Commission should not start the procedure based on Article 2(6a) of the basic Regulation before actually positively determining the existence of significant distortions. Therefore, according to this exporter, the Commission should not undertake steps such as sending Article 2(6a) questionnaires and starting looking for a representative country until the existence of significant distortions is positively established.
- (89) The Commission clarified that while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) only occurs at the time of the provisional and/or definitive disclosure, Article 2(6a)(e) lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case the Commission deemed the evidence submitted by the complainant on the significant distortions as sufficient to initiate the investigation on this basis. The Notice of Initiation clearly specified this in its point 3, in accordance with the obligation set out in Article 2(6a)(e) of the basic Regulation. Therefore the Commission took the necessary steps in application of Article 2(6a)(e) of the basic Regulation. This procedure includes sending out questionnaires, as well as searching for possible appropriate representative countries. Furthermore, the second subparagraph of Article 2(6a)(e) imposes a further obligation on the Commission to inform parties promptly after the initiation about the relevant sources it intends to use in this respect. This constitutes the legal basis for the information requested in the questionnaires on the notes on factors of production, as detailed at recitals (35) to (37). On the basis of all these elements, the Commission dismissed the claim.
- (90) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned.

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

- (91) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'⁽¹⁰⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership⁽¹¹⁾.
- (92) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable.

⁽⁹⁾ See <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU>, accessed on 11 July 2019.

⁽¹⁰⁾ Report – Chapter 2, p. 6-7.

⁽¹¹⁾ Report – Chapter 2, p. 10.

Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' ⁽¹²⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.

- (93) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽¹³⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (94) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.2.1.5 below) ⁽¹⁴⁾.
- (95) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.2.1.8 below) ⁽¹⁵⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximising the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽¹⁶⁾.
- (96) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽¹⁷⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽¹⁸⁾.
- (97) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽¹⁹⁾.

⁽¹²⁾ Available at http://www.fdi.gov.cn/1800000121_39_4866_0_7.html (last viewed 8 September 2020).

⁽¹³⁾ Report – Chapter 2, p. 20-21.

⁽¹⁴⁾ Report – Chapter 3, p. 41, 73-74.

⁽¹⁵⁾ Report – Chapter 6, p. 120-121.

⁽¹⁶⁾ Report – Chapter 6, p. 122 -135.

⁽¹⁷⁾ Report – Chapter 7, p. 167-168.

⁽¹⁸⁾ Report – Chapter 8, p. 169-170, 200-201.

⁽¹⁹⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

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

- (98) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (99) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector⁽²⁰⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance⁽²¹⁾. The elements that point to the existence of government control over enterprises in the aluminium sector are further developed in Section 3.2.1.5 below.
- (100) The OECD Study, submitted as evidence by the complainant, refers to SOEs in the aluminium sector which specifically emphasise in their regulatory filings how State ownership influences relevant industrial policies and how State ownership translates into government support. More specifically, one SOE mentions in its 2016 bond prospectus that it is one of the 52 backbone State-owned enterprises, that it plays a key role in the formulation and implementation of policies in the power sector and that it receives comprehensive and sustainable support from the GOC. Another SOE refers in its 2017 bond prospectus to the fact that the respective provincial government can exert significant influence on the group⁽²²⁾.
- (101) China is the largest aluminium producer in the world, with several large SOEs amongst the top individual producers worldwide. According to estimates, SOEs account for more than 50 % of the total primary aluminium output in China⁽²³⁾. A study on the non-ferrous metal industry in China also points in the direction of SOEs accounting for a dominant share of the domestic market⁽²⁴⁾. While an increase in capacity in recent years is attributed partly to privately-owned companies, such capacity increase would usually also entail various forms of (local) government involvement, such as tolerating illegal capacity expansion⁽²⁵⁾. Moreover, the aluminium production capacity amongst the main SOEs has also increased, though to a lesser extent⁽²⁶⁾.
- (102) Apart from controlling the SOEs, the GOC is also influencing the privately owned companies in China. For example, the Commission found that one of the sampled companies, Press Metal Group, acknowledged receiving financial support from the State in recent years. The Chairman of the board of the company, Guan Baoqiang, stated: *'the government supports the transformation of our enterprise towards intelligent manufacturing in various aspects. In 2011, the subsidiary of our newly established high-tech enterprise benefitted from governmental preferential policies such as tax relief, etc. Last year, in order to make the production chain more intelligent and automatic, we introduced large-scale high-end intelligent equipment, worth over RMB 100 million, and the government granted a technological transformation subsidy. Now, we will spontaneously pay attention to the governmental industry support policies'*⁽²⁷⁾.

⁽²⁰⁾ Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

⁽²¹⁾ Report – Chapter 5, p. 104-9.

⁽²²⁾ OECD Study, p. 29.

⁽²³⁾ Australian Anti-Dumping Commission, *Aluminium Extrusions from China*, REP 248, p. 79 (13 July 2015).

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

⁽²⁵⁾ See for example a report concerning Shandong provincial government's failure to curb aluminium capacity expansion: https://mp.weixin.qq.com/s?__biz=MzI2OTUyMzA0Nw==&mid=2247494318&idx=1&sn=9690ca50845c19f38eaff659516817a&chksm=eaddaba6ddaa22b071a5e2588aa787ed6f6a1a964ccae55c4d85c6f7ccbfb5cedd3cdceac9d&scene=0&pass_ticket=JFpLYZoDqNTFmOPYUGJbMwFOXlC1N3hAJ3EYPpsKx6rkt4fSeZ4TwlvB5BffX4du#rd (accessed on 7 September 2020).

⁽²⁶⁾ The Report – Chapter 15, p. 387-388.

⁽²⁷⁾ Lin Yaming Gong Chunhui, *Malaysian well known Chinese businessman Tan Sri Guang Baoqiang: our investment in Guangdong is correct*, Nanfang Daily (Nanfang+ service), 1 February 2019, <https://static.nfapp.southcn.com/content/201902/01/c1898086.html> (accessed 20 July 2020).

(103) Moreover, according to the Initial Public Offering prospectus of the exporting producer Guangdong Haomei New Materials Co. Ltd., the company received regularly governmental subsidies. During the reporting period, that exporting producer benefitted from the following amounts: RMB 11 318 300 in 2016, RMB 17 020 800 in 2017, RMB 11 486 700 in 2018. These transfers amounted to 11,28 %, 13,24 %, 11,16 % of the company's profit, respectively. In relation to this, the same document specifies the importance of those subsidies for the company: *'Over the reporting period, the governmental subsidies received by the enterprise provided some funding guarantee. Looking at the governmental subsidies/profit ratio, the enterprise's operating performance does not largely depend on governmental subsidies. Still, should the enterprise not be able to receive governmental subsidies in the future, this might have an impact on the enterprise's cash flow and operating results'* ⁽²⁸⁾.

(104) With the high level of government intervention in the aluminium industry and a high share of SOEs in the sector, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the aluminium sector are also subject to policy supervision and guidance as set out in section 3.2.1.5 below.

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

(105) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽²⁹⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁰⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³¹⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³²⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of aluminium products and the suppliers of their inputs.

(106) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the aluminium sector.

(107) As found by the Commission in another investigation on certain aluminium foil in rolls originating in China ⁽³³⁾, in 2017, a Chinese state-owned aluminium producer, China Aluminium International Engineering Corporation Limited ('Chalico'), amended its Articles of Association giving more prominence to the role of party cells within the company. It included a whole chapter on the Party Committee, and Article 113 thereof states: *'In deciding major corporate issues, the Board shall consult the Party Committee of the Company in advance'* ⁽³⁴⁾. Furthermore, in their 2017 Annual Report ⁽³⁵⁾, the Aluminum Corporation of China ('Chalco') stated that a number of directors, supervisors, and senior management – including the Chairman and Executive Director, and the Chairman of the Supervisory Committee – are members of the CCP.

(108) With regard to another SOE active in the Chinese aluminium sector, the Commission established that the executive director and the president of the company, He Zhihui, held the post of Secretary of the Communist Party Committee, while the chairman of the supervisory committee of the company, Ye Guohua, was a member of the Communist Party Committee.

⁽²⁸⁾ Initial Public Offering prospectus of Guangdong Haomei New Materials Co. Ltd, p. 1.1.45 and 46 http://pdf.dfcfw.com/pdf/H2_AN201904121318887721_1.pdf (accessed on 11 July 2020).

⁽²⁹⁾ Report – Chapter 5, p. 100-1.

⁽³⁰⁾ Report – Chapter 2, p. 26

⁽³¹⁾ Report – Chapter 2, p. 31-2.

⁽³²⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 9 September 2020).

⁽³³⁾ Implementing Regulation (EU) 2019/915.

⁽³⁴⁾ The Report – Chapter 15, p. 388.

⁽³⁵⁾ <http://www.chalco.com.cn/chalcoen/rootfiles/2018/04/19/1524095189602052-1524095189604257.pdf> (accessed on 8 March 2019).

- (109) Close ties with the State and its ideology are also reflected in the website description of another company – Xinfu Group. The company *'adheres to the guidance of Xi Jinping's socialist ideology with Chinese characteristics in the new era'* ⁽³⁶⁾. At the same time, the chairman of Shandong Xinfu Group, Zhang Gang, was awarded in 2001 the honorary title of 'Outstanding Communist Party Member of the Shandong Province' by the Province's CCP Committee. He was also member of the 10th and 11th National People's Congress ⁽³⁷⁾.
- (110) Similarly, the executive director and CEO of major producer China Hongqiao Group, Zhang Bo, was elected as a member of the 12th session of the Shandong Provincial People's Congress and awarded the title of 'National Model Worker' in 2010. At the same time, Zhang Bo holds the positions of vice-president of the China Nonferrous Metals Industry Association and president of Shandong Aluminum Industry Association ⁽³⁸⁾. The Commission also found that Hongqiao Group's vice-president, Deng Wenqiang, was a member of the 15th, 16th and 17th sessions of Zouping County People's Congress and the 9th and 10th session of Binzhou City People's Congress ⁽³⁹⁾.
- (111) In another example, the presence of the CCP in one of the sampled companies, Liaoning Zhongwang Group Co. Ltd. was confirmed by the following information: *'Among the seven members of the Party Committee of the group, the Secretary of the Party Committee serves as the deputy general manager of the group, and the other six members of the Party committee serve as deputy general manager, factory director and other positions respectively. Together with the Group's management level, the Party Committee of the group has established "Joint Meetings" and "Two-way Regular Meetings" and other systems and shall duly provide the management with feedback as to the opinions and suggestions collected from the staff and workers, so as to provide important reference for the enterprise's scientific decision-making. The Party's democratic centralism shall apply to the enterprise's decision-making on major issues, and the Party's internal evaluation system shall be introduced into the enterprise's human resource management, so as to guarantee the scientific decision-making'* ⁽⁴⁰⁾.
- (112) The State's presence and intervention in the financial markets (see also section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁴¹⁾. Thus, the State presence in firms, including SOEs, in the aluminium and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.
- 3.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces
- (113) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴²⁾.
- (114) For instance, the government plays a key role in the development of the Chinese aluminium sector. This is confirmed in the numerous plans, directives and other documents pertaining directly or indirectly to the sector, which are issued at national, regional and municipal level. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the aluminium sector. Such policies have an important direct or indirect impact on the production costs of aluminium extrusions.
- (115) In line with the Commission's findings in the case on certain aluminium foil in rolls originating in China ⁽⁴³⁾, the following facts are equally applicable to the present case concerning aluminium extrusions, which is, similarly, an aluminium downstream product:

⁽³⁶⁾ Xinfu Group website (Company Introduction) <http://www.xinfugroup.com.cn/AboutXinfu/GongSiJianJie.aspx> (accessed on 17 July 2020).

⁽³⁷⁾ <https://baike.baidu.com/item/%E5%BC%A0%E5%AD%A6%E4%BF%A1/19405?fr=aladdin> (accessed on 17 July 2020).

⁽³⁸⁾ Company's website: <http://en.hongqiaochina.com/details/108.html> (accessed on 17 July 2020).

⁽³⁹⁾ Company's website: <http://en.hongqiaochina.com/details/111.html> (accessed on 17 July 2020).

⁽⁴⁰⁾ Xie Qian, Huang Jin, *Liaoning Zhongwang Group: Party building leads development*, People.com.cn (CPCnews.cn), 4 January 2019, <http://dangjian.people.com.cn/n1/2019/0104/c117092-30503923.html>

⁽⁴¹⁾ Report – Chapters 14.1 to 14.3.

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

⁽⁴³⁾ Implementing Regulation (EU) 2019/915.

- (116) Although the 13th Five Year Plan on Economic and Social Development ⁽⁴⁴⁾ does not contain specific provisions on aluminium, for the non-ferrous metal industry in general it envisages a strategy of promoting cooperation on international production capacity and equipment manufacturing. To achieve these goals, the plan confirms that it will enhance supporting systems related to taxation, finance, insurance, investment and financing platforms, as well as risk assessment platforms ⁽⁴⁵⁾.
- (117) The corresponding sectoral plan, the Non-Ferrous Metal Industry Development Plan (2016-2020) ('the Plan') sets out specific policies and targets that the government aims to achieve for a number of non-ferrous metals industries ⁽⁴⁶⁾, including aluminium.
- (118) The Plan aims at upgrading the range of product types produced by the Chinese aluminium industry, inter alia, through supporting innovation. It calls for swift development of the mixed ownership system and a boost to SOE's vitality. It further provides for the possibility of stock-piling non-ferrous metals, improving the security of resources, including aluminium and sets specific quantitative targets for reducing power consumption, increasing the ratio of recycled aluminium in production and increasing capacity utilisation ⁽⁴⁷⁾.
- (119) The Plan further provides for structural adjustments with stricter control on new smelting facilities and elimination of outdated capacity. It provides for geographical distribution of processing plants, focuses on projects to increase bauxite and alumina resource exploitation and covers electricity supply and pricing policy ⁽⁴⁸⁾.
- (120) With this wide range of measures and policies, the Plan represents a continuation of the 2009 Non-Ferrous Metals Industry Adjustment and Revitalization Plan which was adopted to alleviate the negative effects on the non-ferrous metal industry of the financial crisis. The key objectives, set out in the plan include inter alia, production volume control, restructuring, raw material sourcing, export tax policy, security of resources, stockpiling, technological innovation, financial policy and planning and implementation ⁽⁴⁹⁾.
- (121) Another policy document targeting the aluminium sector is the Standard Conditions applicable to the Aluminium Industry issued by MIIT on 18 July 2013, in order to speed up structural adjustment and curb disorderly expansion of the aluminium smelting capacities. The Standard Conditions introduce minimum production quantities for new plants, quality standards and security of supply for imported and domestically sourced bauxite and alumina. The Standard Conditions indicate that MIIT is the authority in charge of the standardisation and management of the aluminium industry, as well as of the publication of the list of companies authorised to operate in the aluminium industry ⁽⁵⁰⁾.
- (122) In the Guiding Opinion on creating an excellent market environment, fostering the non-ferrous metal industry's structural adjustment and transformation and increasing benefits issued by the General Office of the State Council in 2016 (2016/42) ⁽⁵¹⁾, the Chinese authorities state as main objectives to '*optimise the non-ferrous metal industry structure; Basically balance supply and demand of key product categories; Maintain the utilisation rate of electrolytic aluminium production capacity above 80 %; Significantly increase the mineral resources supply security capacity for minerals such as copper and aluminium*' ⁽⁵²⁾. The document also prescribes to '*strictly control new production capacity.*' To achieve this, the State requires to: '*Ensure the implementation of indispensable electrolytic aluminium new (reformed, expanded) construction projects; [...] Use social supervision and other tools; Step up supervision and inspection efforts; Strictly investigate and deal with new electrolytic aluminium projects breaching regulations*' ⁽⁵³⁾. These provisions demonstrate the substantial degree of the GOC's intervention into the non-ferrous metals sector, including the aluminium sector.

⁽⁴⁴⁾ The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>

⁽⁴⁵⁾ The Report – Chapter 15, p. 377.

⁽⁴⁶⁾ The Report – Chapter 12, p. 275-282 and Chapter 15, p. 378-382.

⁽⁴⁷⁾ The Report – Chapter 12, p. 275-282

⁽⁴⁸⁾ The Report – Chapter 15, p. 378-382, 390.

⁽⁴⁹⁾ The Report – Chapter 15, p. 384-385.

⁽⁵⁰⁾ The Report – Chapter 15, p. 382-383.

⁽⁵¹⁾ See http://www.gov.cn/zhengce/content/2016-06/16/content_5082726.htm (accessed on 20 July 2020).

⁽⁵²⁾ Ibid, Section 3.

⁽⁵³⁾ Ibid, Section 4

- (123) The above State interference in the functioning of the aluminium sector by means of planning documents is reflected also at the provincial level. For example, the Shandong Province Government's Notice on the implementation plan for accelerating the high-quality development of the seven energy-intensive industries (2018/248) of 6 November 2018 requires to *'foster the extension of the electrolytic aluminium industry chain'* through the following actions: *'Further increase the proportion of fine and deep processing of electrolytic aluminium liquid and aluminium processing materials; Speed up and foster the extension of the aluminium industry chain to finished products and high-end products; Expand the use of high-end aluminium materials; Increase the development possibilities of the aluminium processing industry'* ⁽⁵⁴⁾.
- (124) As established by the Commission in its Report, the State has been intervening into the functioning of the aluminium sector for many years before the issuance of the above policy documents, which is, for example, illustrated by the Guidelines for Accelerating the Restructuring of the Aluminium Industry ('Restructuring Guidelines') ⁽⁵⁵⁾, issued by the NDRC in April 2006. The latter regarded aluminium as a fundamental product in the development of the national economy. The said Restructuring Guidelines stated that, in implementing the Industrial Development Policy approved by the State Council, specific objectives shall be achieved in certain areas. These areas were: Enhance the concentration in the industry; Access to financial capital (see also section 3.2.1.8 below); Organisation of the industry; Strict control of exports of electrolytic aluminium; and Elimination of outdated capacity.
- (125) Moreover, the Commission found that the Chinese State has been interfering with the free play of market forces in the sector of upstream aluminium products, hence in the production of inputs and of inputs to inputs, which are used by the producers of the product concerned. In that regard, for example, the Notice on fostering the orderly development of the Alumina Industry (2018/1655) issued on 28 December 2018 by the General Office of the MIIT ⁽⁵⁶⁾ stipulates – concerning alumina (a key input in the production of primary aluminium) – that *'guided by Xi Jinping's socialist ideology with Chinese characteristics in a new era, [all relevant parties shall] comprehensively and thoroughly implement the spirit of the 19th National Congress of the Party; stick to the general orientation of stability in progress work; stick to the new development concept; focus on supply-side structural reforms; make full use of the market's decisive role in allocating resources, better involve the government, [...] meet domestic development needs, and promote the orderly and healthy development of the alumina industry'* ⁽⁵⁷⁾. The same document states that *'the provincial Development and Reform Commissions and MIIT administrations shall: keep abreast of the current developments in the alumina industry in their region; combine their region's economic and social development, industry base, market demand and energy consumption and environmental capacity; strengthen the scientific planning for the development of the alumina industry; coordinate their region's industry development scale and layout; ensure project demonstrations; strictly implement the construction requirements; orderly support project constructions; strengthen the supervision of the entire process; ensure the industry development scale matches the domestic market demand and local bearing capacity; prevent projects construction rush'* ⁽⁵⁸⁾. In order to achieve the latter, the document prescribes to strengthen supervision and inspection: *'In accordance with the present notice's requirements the National Development and Reform Commission, the Ministry of Industry and Information Technology, together with the China Nonferrous Metals Industry Association and other relevant parties shall proceed to inspections of alumina construction projects in the form of letters of enquiries, research and random investigations. Should problems arise, they shall be strictly dealt with in accordance with the relevant regulations'* ⁽⁵⁹⁾. The provisions described above show the degree of State intervention and control in the Chinese market of alumina – a key input to in the production of primary aluminium, which is the raw material used by aluminium extrusions producers.
- (126) Another input in the production of the product concerned is electricity, which constitutes 2 %–3 % of the production cost of aluminium extrusions. In this regard, the Commission found evidence of State-induced distortions affecting the price of electricity provided to Chinese aluminium producers. Notably, it was established that the State intervened in favour of Chinese producers through differentiated, more advantageous energy pricing. In the Guiding Opinion on creating an excellent market environment, fostering the non-ferrous metal industry's structural adjustment and transformation and increasing benefits mentioned above, the Chinese authorities acknowledged as a policy goal to *'continue to implement the differentiated electricity price policy; Encourage eligible*

⁽⁵⁴⁾ See: http://gxt.shandong.gov.cn/art/2018/11/6/art_15681_3450015.html (accessed on 20 July 2020), Section 13

⁽⁵⁵⁾ The Report – Chapter 15, p. 386.

⁽⁵⁶⁾ See <http://miit.gov.cn/n1146285/n1146352/n3054355/n3057569/n3057572/c6566256/content.html> (accessed on 20 July 2020).

⁽⁵⁷⁾ Ibid, Section I.

⁽⁵⁸⁾ Ibid, Section II.

⁽⁵⁹⁾ Ibid, Section VII.

electricity users to conclude direct deals with power generation companies; Determine prices through negotiation' ⁽⁶⁰⁾. The Commission also established that similar policies were implemented at the provincial level. For example, in the Yunnan Province, according to information reported by the China Industry Journal in November 2019: 'In order to implement the plan, Yunnan has successively issued specific policies such as the "Implementing Opinion on Promoting the Integrated Development of Hydropower and Aluminium Materials" and the "Plan implementing preferential prices to promote the use of Hydropower". It appears clearly that any enterprise bringing its capacity quota to Yunnan shall benefit from the "preferential price, full transmission" policy, which means that for the first 5 years, electrolytic aluminium shall benefit from special preferential electricity price of RMB 0,25 per kWh. As to deep processing of materials, a special preferential electricity price of RMB 0,20 per kWh shall be granted. According to reports, the integrated projects of Henan Shenhua and Sichuan Qiyang's bringing quotas to be built in Yunnan have already benefitted from the policy for integration projects and have signed relevant agreements with local governments, power grid companies, and power generation companies' ⁽⁶¹⁾.

- (127) As another example of State interference, at the provincial level, in the already mentioned Shandong Province Government's Notice on the implementation plan for accelerating the high-quality development of the seven energy-intensive industries, the authorities have issued transformation and upgrading targets for the electrolytic aluminium industry with regard to energy use: 'By 2022, the electricity consumption of electrolytic aluminium per ton of aluminium shall drop to approximately 12,800 kWh, the electrolytic deep processing rate of electrolytic aluminium in the province shall reach approximately 50 %, and the added value of aluminium per ton shall increase by more than 30 % on average' ⁽⁶²⁾.
- (128) With respect to the enforcement of the provisions contained in the planning documents above, Chinese industry associations play an important role. These entities are to guarantee that industry implements the policies of the GOC. This responsibility is confirmed by the fact that in their activity, they liaise closely with State authorities, which is reflected in their statutes. In the case of the aluminium sector, the Articles of association of the China Non-Ferrous Metals Industry Association assert notably that '[t]he Association adheres to the party's basic line and various principles and policies, abides by the Constitution, laws, regulations and national policies, and abides by social and moral values. It shall stick to the purpose of serving the government, the industry, the enterprises and business managers; it shall set up and improve the industry self-discipline mechanism; it shall fully involve government's staff to get assistance; it shall play a bridging role between the government and enterprises.' (Article 3). Along the same lines, Article 25 states that the Association's chairman, vice-chairman and secretary general must fulfil as a first condition to: 'Adhere to the party's line, principles and policies, and have good political qualities' ⁽⁶³⁾.
- (129) Similarly, the Articles of association of the China Non-Ferrous Fabrication Industry Association stipulate that 'the Association accepts business guidance as well as supervision and management from the State-owned Assets Supervision and Administration Commission of the State Council, the Ministry of Civil Affairs and the China Nonferrous Metals Industry Association' (Article 4). One of the established elements of the Association's business scope is also to 'Actively put forward suggestions and opinions on industry development, industry policies, laws and regulations, in accordance with the Party's and the State's general principles and tasks concerning the building of a socialist market economy system and taking into account the industry's actual situation.' (Article 6). Finally, Article 22 also prescribes that the Association's chairman, deputy chairman and secretary general must, among others, meet as condition to: 'Adhere to the party's line, principles and policies, and have good political qualities' ⁽⁶⁴⁾.
- (130) Thus, the numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, clearly show the high degree of intervention of the Chinese government in the aluminium sector ⁽⁶⁵⁾. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the sector.
- (131) Beyond the plans, the government's intervention in the sector has taken the form, inter alia, of export-related measures, including export duties, export quotas, export performance requirements and minimum export price requirements on different raw materials for aluminium.

⁽⁶⁰⁾ See: http://www.gov.cn/zhengce/content/2016-06/16/content_5082726.htm, Section 10.

⁽⁶¹⁾ See: <https://finance.sina.com.cn/money/future/indu/2019-11-26/doc-iihnzahi3508583.shtml> (accessed on 20 July 2020).

⁽⁶²⁾ See: http://gxt.shandong.gov.cn/art/2018/11/6/art_15681_3450015.html, section 6.

⁽⁶³⁾ See <http://www.chinania.org.cn/html/introduce/xiehuizhangcheng/> (accessed on 21 July 2020).

⁽⁶⁴⁾ See: <http://www.cnfa.net.cn/about/1546.aspx> (accessed on 21 July 2020).

⁽⁶⁵⁾ The Report – Chapter 15, pp. 377-387.

- (132) The GOC further discourages exports of primary aluminium and its inputs, aiming at promoting higher added-value aluminium products. This objective is pursued by granting full or partial VAT rebates on downstream aluminium products in combination with incomplete VAT rebates and export taxes on primary aluminium ⁽⁶⁶⁾.
- (133) As found by the Commission (see recital (126)), the prices of key inputs such as energy and electricity are influenced by different types of government intervention ⁽⁶⁷⁾. Other types of government intervention leading to market distortions include the stockpiling policy through the State Reserve Bureau and the role of the Shanghai Futures Exchange (SHFE) ⁽⁶⁸⁾. In addition, several trade defence investigations have established that the Chinese government has consistently granted different types of State support measures to aluminium producers ⁽⁶⁹⁾. The extensive intervention of the GOC in the aluminium sector has led to overcapacity ⁽⁷⁰⁾, which is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.
- (134) The OECD Study also identified additional government support influencing market forces in the aluminium sector. Such support would typically take the form of inputs, in particular electricity and primary alumina, sold at below-market prices ⁽⁷¹⁾. The OECD Study further describes how the GOC objectives for the aluminium sector are translated into industrial policies and specific actions on the provincial and local level, including for example capital injections, priority possession rights to mineral resources, governmental grants and subsidies or tax incentives ⁽⁷²⁾.
- (135) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting key industries, including the aluminium sector, which encompasses the production of aluminium extrusions, as well as of primary aluminium – the main raw material used in the manufacturing of the product concerned (more than 50 % of its costs of production). Such measures impede market forces from operating freely.
- 3.2.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws
- (136) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁷³⁾.
- (137) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ⁽⁷⁴⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁷⁵⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁷⁶⁾.

⁽⁶⁶⁾ The Report – Chapter 15, p. 378 and 389; OECD Study, p. 25-26.

⁽⁶⁷⁾ The Report – Chapter 15, pp. 390-391. Provision of discounted electricity is reported also by other sources. See for example: Economic Information Daily: Worrying over growth downturns, western region releasing preferential policies to support high energy consumption industries http://jjckb.xinhuanet.com/2012-07/24/content_389459.htm (accessed on 4 September 2020), reporting on how western Chinese provinces like Shaanxi, Ningxia, Qinghai and Gansu have continued to provide cheap electricity to attract more investments.

⁽⁶⁸⁾ The Report – Chapter 15, pp. 392-393.

⁽⁶⁹⁾ The Report – Chapter 15, pp. 393-394.

⁽⁷⁰⁾ The Report – Chapter 15, pp. 395-396.

⁽⁷¹⁾ Ibid, p. 16, p. 30. However, the Chinese authorities interfere with respect to other inputs, too. A typical example is coal where the government retains the power to subdue coal price rises. See: https://policy.cn.com/policy_ticker/coal-price-unlikely-to-jump-during-heating-season/?iframe=1&secret=c8uthafuthefra4e (accessed on 4 September 2020).

⁽⁷²⁾ Ibid, p. 16-18.

⁽⁷³⁾ Report – Chapter 6, p. 138-149.

⁽⁷⁴⁾ Report – Chapter 9, p. 216.

⁽⁷⁵⁾ Report – Chapter 9, p. 213-215.

⁽⁷⁶⁾ Report – Chapter 9, p. 209-211.

- (138) Much like other sectors in the Chinese economy, producers of aluminium extrusions are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question.
- (139) This finding is supported by the provisional affirmative determination of the US Department of Commerce, in the Countervailing Duty Investigation of certain Aluminium Foil from China, which found, using facts available, that the Government of China's provision of land for Less Than Adequate Remuneration constitutes a financial contribution within the meaning of Section 771 (5)(D) of the Tariff Act of 1930, as amended ⁽⁷⁷⁾.
- (140) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the aluminium sector, including with respect to the product concerned.

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

- (141) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁷⁸⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁷⁹⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁸⁰⁾. Those findings lead to the distortion of wage costs in China.
- (142) No relevant evidence was submitted to the effect that the aluminium sector, including the producers of aluminium extrusions, would not be subject to the Chinese labour law system described. The aluminium sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

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

- (143) Access to capital for corporate actors in China is subject to various distortions.
- (144) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁸¹⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁸²⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁸³⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁸⁴⁾.

⁽⁷⁷⁾ Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of certain Aluminium Foil from The People's Republic of China, published by the International Trade Administration, Department of Commerce, on 7 August 2017, IX.E. p. 30, available at <https://enforcement.trade.gov/frn/summary/prc/2017-17113-1.pdf> (last accessed on 11 March 2019).

⁽⁷⁸⁾ Report – Chapter 13, p. 332-337.

⁽⁷⁹⁾ Report – Chapter 13, p. 336.

⁽⁸⁰⁾ Report – Chapter 13, p. 337-341.

⁽⁸¹⁾ Report – Chapter 6, p. 114-117.

⁽⁸²⁾ Report – Chapter 6, p. 119.

⁽⁸³⁾ Report – Chapter 6, p. 120.

⁽⁸⁴⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (145) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (146) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁸⁵⁾.
- (147) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁸⁶⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (148) In this respect, the OECD Study refers to anecdotal evidence that certain aluminium producers in China have obtained financing on preferential terms, with cost of financing being seemingly decoupled from the corresponding level of corporate leverage. According to that study, one state-owned aluminium producer explicitly stated in its 2016 bond prospectus that it attracts considerable financial support from Chinese policy banks bearing interest rate below benchmark. Similarly, the 2017 bond prospectus of another state-owned producer refers to the strong ties which the company maintains with Chinese banks, including policy banks that have provided that company with low-cost financing sources. The OECD Study concludes in this connection that while there can be many reasons why interest rates are low for these firms, the contrast between poor financial indicators and low interest rates may suggest some potential under-pricing of the risk associated with those borrowers ⁽⁸⁷⁾.
- (149) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (150) Thirdly, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (151) Overall credit growth in China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (152) In essence, despite the recent steps that have been taken to liberalise the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (153) No evidence was submitted to the effect that the aluminium sector, including the producers of aluminium extrusions, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

⁽⁸⁵⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽⁸⁶⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁸⁷⁾ OECD Study, p. 21.

3.2.1.9. Systemic nature of the distortions described

- (154) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.1 to 3.2.1.5 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6 to 3.2.1.8 above and in Part B of the Report.
- (155) The Commission recalls that in order to produce aluminium extrusions, a broad range of inputs is needed. According to evidence on the file, all the sampled exporting producers sourced all their inputs in China. When the Chinese producers of aluminium extrusions purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (156) As a consequence, not only the domestic sales prices of aluminium extrusions are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

- (157) The analysis set out in sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the aluminium sector (including the product concerned) showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (158) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3. Representative country

- (159) The Commission chose the representative country on the basis of the following criteria:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income similar to China on the basis of the database of the World Bank,
 - Production of the product under investigation in that country,
 - Availability of relevant public data in that country, and
 - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (160) As explained in recitals (31) to (37), the Commission published two notes to the file on the sources for the determination of the normal value.

- (161) In the Note of 16 March 2020, the Commission provided detailed information concerning the criteria above and identified the following countries as potential representative countries: Brazil, Colombia, Ecuador, Islamic Republic of Iran, Kazakhstan, Malaysia, Mauritius, Mexico, Montenegro, Russian Federation, Serbia, Sri Lanka, Thailand and Turkey. The Commission invited interested parties to submit comments in this regard. The Commission received comments concerning various aspects of the selection of the representative country from exporting producers, Union industry and unrelated importers.
- (162) The Commission then published the Note of 25 June 2020 addressing the comments received and informing interested parties that, on the basis of the criteria listed in recital (159), it intended to use Turkey as the representative country. The Commission invited interested parties to comment.
- (163) An importer submitted that it would be more appropriate to distinguish between soft alloys and hard alloys. Under this distinction, Turkey would be the appropriate representative country for soft alloys, while the Russian Federation would be a more appropriate for hard alloys.
- (164) First, product types are not necessarily determinant for the selection of an appropriate representative country. Second, the investigation revealed that in fact aluminium extrusions made of both type of alloys are produced in Turkey. Finally, as indicated in the Note of 25 June 2020, the Russian Federation was found not to be an appropriate representative country in this case due to export restriction on aluminium⁽⁸⁸⁾.
- (165) The Commission therefore confirmed that Turkey was the most appropriate representative country in this case.

3.4. Sources used to establish undistorted costs

- (166) On the basis of the information submitted by interested parties and other relevant information available in the file, the Commission established in Note of 16 March 2020 an initial list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under investigation by the exporting producers.
- (167) The Commission also identified the sources to be used in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation (the Global Trade Atlas ('GTA'), national statistics, etc). In the same note, the Commission identified the Harmonised System (HS) codes of factors of production which, on the basis of information provided by the interested parties, were initially considered to be used for the GTA analysis.
- (168) In the Note of 25 June 2020, the Commission confirmed that it would use GTA data to establish undistorted cost of the factors of production, including raw materials. The Commission further confirmed that it would use data from the Turkish Statistical Institute as to establish labour costs, electricity costs and gas costs. Finally, the Commission also informed interested parties that, to establish the undistorted SG&A and profit, it would use the financial data of the following companies:
- Onat Aluminyum Sanayi Ticaret Anonim Sirketi,
 - Okyanus Aluminyum Sanayi Ticaret Anonim Sirketi,
 - Alugen Aluminyum Sanayi Ve Ticaret Anonim Sirketi,
 - Eksal Aluminyum Kalip Sanayi Ve Ticaret Limited Sirketi, and,
 - Gensa Aluminyum Sanayi Ve Ticaret Anonim Sirketi.
- (169) Following the note of 25 June 2020, the complainant submitted that the profit margin on this basis was too low. According to the complainant, the appropriate profit before tax should be of 16 % and not of 7,3 % as identified by the Commission. In the complainant view, this was the profit required considering the very significant continuous investments to ensure asset sustainability over the long term.
- (170) The complainant further added that, in the event the Commission would not accept to use the proposed 16 % profit margin, it should exclude from the calculation of the average profit margin the two Turkish companies, which recorded the lowest profit. According to the complainant this would be appropriate as these two companies did not reach the minimum profit of 6 % required in Article 7(2)(c) of the basic Regulation.

⁽⁸⁸⁾ 'Second note on the sources for the determination of the normal value' of 25 June 2020, save number t20.004361.

- (171) The Commission rejected this claim. In the Note of 25 June 2020, the Commission explained in detail how the profit to be used in calculations based on the profit of the five Turkish companies listed in recital (168) was established. The Commission has already in that exercise excluded those companies that did not report profit. All profitable companies fulfilling the set criteria were taken into account, irrespective of the their profit level, as long as they were not loss making. This reflects the average profit margin achieved in the representative country during the investigation period. The Commission further noted that Article 7(2c) of the basic Regulation applies in the context of underselling, whereas in this context the Commission seeks to ascertain the undistorted profit in the country of origin.
- (172) The exporting producer, Press Metal Group, submitted that the London Metal Exchange ('LME') prices represented a more appropriate undistorted international price for aluminium, compared to GTA data. The exporting producer however indicated that it had reviewed the GTA data for imports into Turkey, included in the Commission's excel following the Note of 25 June 2020, and found that the GTA data of aluminium products in Turkey were generally in line with those published by LME.
- (173) An importer noted that the source data for various factors of production (labour costs, average profit and SG&A, electricity and gas) was based on information from different years. The Commission clarifies that, when required, the Commission takes that into consideration in its calculation by applying, wherever appropriate, deflators to establish the relevant value for factors of production during the investigation period.

3.5. Undistorted costs and benchmarks

- (174) The Commission sought to establish an initial list of factors of production and sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product concerned by the exporting producers.
- (175) The Commission did not receive any comments concerning the list of factors of production following the Note of 25 June 2020 where, based on the information received from interested parties, the Commission established a list of all Turkish goods codes corresponding to the factors of production used in the manufacturing of the product concerned.
- (176) Considering all the information submitted by interested parties and collected during the RCCs, the following factors of production and codes, where applicable, have been identified:

Table

Factors of production and sources of information

Factor of Production	Turkish goods codes	Value	Units
Raw materials			
Aluminium (not alloyed, unwrought)	7601 10 00	12,8	CNY/KG
Aluminium alloys (unwrought)	7601 20 20	13,6	CNY/KG
Aluminium scrap	7602 00 90	8,8	CNY/KG
Aluminium bars and rods (not alloyed)	7604 10 10	18,7	CNY/KG
Bars and rods of aluminium alloys	7604 29 10	32,6	CNY/KG
Zinc (minimum 99,99 % of zinc by weight, unwrought)	7901 11 00	18,2	CNY/KG
Zinc alloys	7901 20 00	19,9	CNY/KG
Magnesium (unwrought)	8104 11 00	19,0	CNY/KG
Titanium (unwrought)	8108 20 00	942,5	CNY/KG
Titanium (other) -Bars, rods, profiles and wire	8108 90 30	371,3	CNY/KG

Factor of Production	Turkish goods codes	Value	Units
Titanium (other) – Plates, sheets, strip and foil	8108 90 50	430,3	CNY/KG
Titanium (other) – Tubes and pipes	8108 90 60	2 504,3	CNY/KG
Titanium (other) – other	8108 90 90	1 286,1	CNY/KG
Zirconium (unwrought)	8109 20 00	2 012,7	CNY/KG
Manganese (waste and scrap)	8111 00 19	n/a	CNY/KG
Manganese (other)	8111 00 90	n/a	CNY/KG
Chromium alloys containing more than 10 % by weight of nickel	8112 21 10	3 653,0	CNY/KG
Copper (precipitated)	7401 00 00	1,9	CNY/KG
Articles of copper (other)	7419 99 90	188,7	CNY/KG
Iron oxides and hydroxides	2821 10 00	10,9	CNY/KG
Silicon (minimum. 99,99 % of silicon by weight)	2804 61 00	2 365,6	CNY/KG
Silicon (other)	2804 69 00	16,3	CNY/KG
Sulphuric acid	2807 00 00	0,4	CNY/KG
Nitric acid	2808 00 00	23,0	CNY/KG
Phosphoric acid	2809 20 00	5,3	CNY/KG
Sodium hydroxide	2815 11 00	3,2	CNY/KG
Refining agent (anionic)	3402 11 00	n/a	CNY/KG

Energy

Electricity	2716 00 00	0,6	CNY/KWh
Natural gas	2711 11 00	2,1	CNY/m ³
Mineral fuel – oil	2710 19 25	6,5	CNY/KG
Water	2201 90 00	7,6	CNY/m ³

Labour

Direct and indirect wages in the manufacturing sector	N/A	43,0	CNY/h
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By-product / waste

Aluminium scrap	7602 00 90	8,8	CNY/KG
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3.5.1. Raw materials

- (177) For all raw materials and auxiliary materials, the Commission relied on import prices in the representative country. The import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China. The Commission decided to exclude imports from China into the representative country due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected these prices. Similarly, import data on imports in the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and of the Council⁽⁸⁹⁾ were also excluded. After excluding those imports, the imports from other third countries remained representative, at 97 % on average of total volumes imported to Turkey for the factors of production listed in the Table above.
- (178) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country. At a later stage, during the individual dumping margin calculations, the Commission added company specific domestic transport costs to the import price. The domestic transport costs for all raw materials were based on the verified data provided by the sampled exporting producers.
- (179) For raw materials with negligible impact in terms of costs, which the companies did not report in Annex III of the Notice of Initiation, such costs were included in the manufacturing overheads as explained in recital (189). The factors of production moved to overheads were listed in the company-specific disclosures.

3.5.2. Labour

- (180) To establish the benchmark for labour costs, as indicated in the Note of 25 June 2020, the Commission used the statistics from the Turkish Statistical Institute.
- (181) With regard to labour costs, in the Note of 25 June 2020 the Commission indicated that it intended to use the hourly labour costs in the manufacturing sector for 2016, for the economic activity C.24 (manufacture of basic metals⁽⁹⁰⁾). This activity corresponds best to the identified NACE Rev.2⁽⁹¹⁾ and NAICS⁽⁹²⁾ codes and the code reported by the selected Turkish companies. These are the most recent statistics available⁽⁹³⁾. The values were properly adjusted using as deflator the domestic producer price index⁽⁹⁴⁾ published by the Turkish statistical institute.

3.5.3. Energy inputs

- (182) To establish the benchmark for electricity and gas costs, the Commission used the statistics from the Turkish Statistical Institute.
- (183) With regard to electricity, in the Note of 25 June 2020 the Commission indicated that it intended to apply the average electricity unit price for industrial users, provided in a press release issued by the Turkish statistical institute⁽⁹⁵⁾. With regard to gas costs the Commission indicated that it intended to apply the average gas unit price for industrial users, provided in the same press release. For both, electricity and gas, the Commission deducted the VAT and reduced the prices to the net level. In the absence of any comments, the Commission adopted this approach.
- (184) With regard to diesel prices, the Commission applied the average diesel price for the industrial sector in Turkey from OECD sources⁽⁹⁶⁾.

⁽⁸⁹⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

⁽⁹⁰⁾ The category 'basic metals' includes aluminium under code C24.4.2.

⁽⁹¹⁾ The NACE codes can be found at http://ec.europa.eu/competition/mergers/cases/index/nace_all.html

⁽⁹²⁾ The North American Industry Classification System (NAICS) developed by the statistical agencies of Canada, Mexico and the United States.

⁽⁹³⁾ The labour costs are available at http://www.turkstat.gov.tr/PrelstatistikTablo.do?stab_id=2088

⁽⁹⁴⁾ www.turkstat.gov.tr

⁽⁹⁵⁾ The press release publishing electricity and gas prices in Turkey for December 2019 can be found at: <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=33646>

⁽⁹⁶⁾ https://stats.oecd.org/BrandedView.aspx?oecd_bv_id=enepri-price-data-en&doi=data-00442-en#

3.6. Manufacturing overheads costs, SG&A and profits

- (185) According to Article 2(6a)(a) of the basic Regulation, the constructed normal value should include an undistorted and reasonable amount for administrative, selling and general costs ('SG&A') and for profits. In addition, a value for manufacturing overhead costs needed to be established to cover costs not included in the factors of production. In the Note of 25 June 2020, the Commission identified five Turkish companies, listed in recital (168).
- (186) In order to establish an undistorted value of SG&A and profits, the Commission used the proportion of the cost of manufacturing that SG&A represent in the cost structure of these five Turkish companies. The Commission used the figures as reported in the Orbis database for the period 1 January 2018 to 31 December 2018. The Commission made this data available to interested parties as an attachment to the Note of 25 June 2020.

3.7. Calculation of the Normal Value

- (187) In order to establish the normal value, the Commission took the following steps.
- (188) First, the Commission established the undistorted costs of manufacturing (covering the consumption of raw materials, labour and energy). It applied the undistorted unit costs to the actual consumption of the individual factors of production of the sampled exporting producers. The costs of manufacturing were reduced by the undistorted costs of by-products re-used in the production process as reported by the companies and verified by the Commission.
- (189) Second, to arrive at the undistorted costs of production, the Commission added manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of raw materials and auxiliary materials referred to in recital (179) and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (190) Finally, to the above calculation the Commission applied the SG&A and the weighted average profit of five Turkish companies as explained in recital (186) above.
- (191) The SG&A expressed as a percentage of the costs of manufacturing and applied to the undistorted costs of manufacturing amounted to 15,16 %.
- (192) The profit expressed as a percentage of the costs of manufacturing and applied to the undistorted costs of manufacturing amounted to 9,07 %, which is higher than the profit margin expressed as a percentage of the revenues in recital (169).
- (193) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation. The Commission constructed the normal value per product type for the two cooperating sampled exporting producers.

3.8. Export price

- (194) The cooperating exporting producers exported to the Union in three different ways: directly to independent customers, through a related importer in the Union or through a related company acting as a trader.
- (195) For direct sales or sales through a related trader to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (196) For the export sales through a related company acting as an importer, the export price was established based on the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. For these sales, the Commission adjusted the price for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

3.9. Comparison

- (197) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.

- (198) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments to the export price were made for transport, insurance, handling and loading, credit costs, bank charges, other import charges, year-end rebates and the commission of the unrelated trader in a third country.
- (199) The Commission also made an adjustment under Article 2(10)(b) of the basic Regulation for the difference in indirect taxes between export sales from China to the Union and the normal value where indirect taxes such as VAT have been excluded. The investigation concluded that in China the exporting producers incur a VAT liability of 17 % at exportation while 0 % (bars and rods) or 13 % (other aluminium extrusions) is refunded. Therefore, the difference in the indirect taxation, in this case the VAT that is partially refunded with regard to export sales, was adjusted in the normal value.
- (200) In addition, the Commission adjusted export price of one exporting producer related to the trader in the third country in accordance with article 2(10)(i) of the basic Regulation. The adjustment amounted to commission comprising of agent's fees recorded in trader's SG&A, remainder of the trader's SG&A and profit.

3.10. Dumping margins

- (201) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (202) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional anti-dumping duty
Haomei Group: — Guangdong Haomei New Materials Co., Ltd., — Guangdong King Metal Light Alloy Technology Co., Ltd.	30,4 %
PMI Group: — Press Metal International Ltd., — Press Metal International Technology Ltd.	38,2 %

- (203) For the cooperating exporting producers not included in the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. This margin was calculated as a weighted average on the basis of the margins established for the sampled exporting producers.
- (204) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 34,9 %.
- (205) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation was established considering the volume of exports of the cooperating exporting producers to the Union and the total export volume imports – as reported in Eurostat import statistics – from China into the Union.
- (206) The level of cooperation in this case was considered low because the imports of the cooperating exporting producers constituted around 48 % of the total exports to the Union during the investigation period. In addition, an exporting producer deliberately did not cooperate by not replying to the questionnaire, despite agreeing to be included in the sample. On this basis, the Commission considered it appropriate to base the residual dumping margin at the level of 48,0 %. This margin was set at the level of the highest dumping margin established on the basis of the data of the cooperating exporting producers.

- (207) In conclusion, the provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional anti-dumping margin
Haomei Group: — Guangdong Haomei New Materials Co., Ltd., — Guangdong King Metal Light Alloy Technology Co., Ltd.	30,4 %
PMI Group: — Press Metal International Ltd., — Press Metal International Technology Ltd.	38,2 %
Other cooperating companies	34,9 %
All other companies	48,0 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (208) The like product was manufactured by around 200 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (209) The total Union production during the investigation period was established at around 3,3 million tonnes. The Commission established the figure on the basis of the Union production data of European Aluminium, which was cross-checked for reliability and completeness with information supplied by Union producers including the data of the sampled Union producers.

4.2. Determination of the relevant Union market

- (210) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether, and to what extent, the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.
- (211) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire aluminium extrusions activity and determined whether the production was destined for captive use or for the free market.
- (212) The Commission found that a very small part of the total Union producers' production was destined for captive use as shown in Table 1 below. The captive market was stable at only around 2 % of consumption. Where appropriate, the figures for the small captive market are shown, and included in the overall assessment of that indicator. For other indicators, such as production, capacity, productivity, employment and wages, the figures quoted below relate to the whole activity and no separation of figures is appropriate.
- (213) Fuyao Glass argued that, if not excluded from the product scope, the end-use application of aluminium extrusions for automobile decorative use, should be taken into consideration in all aspects of the investigation, including a separate assessment of injury. As explained in recitals (43) to (47), these extrusions have the same basic physical, technical and chemical characteristics as those for other uses and therefore belong to the product concerned, and the assessment of injury is made for the Union industry as a whole. This claim was therefore dismissed.

4.3. Union consumption

- (214) The Commission established the Union consumption as mentioned at recital (209) on the basis of European Aluminium data for sales on the Union market plus import data from Eurostat.

(215) Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2016	2017	2018	Investigation period
Total Union consumption	3 078 972	3 315 536	3 409 292	3 284 766
<i>Index</i>	100	108	111	107
Captive market	61 338	60 455	60 143	56 640
<i>Index</i>	100	99	98	92
Free market consumption	3 017 634	3 255 081	3 349 149	3 228 126
<i>Index</i>	100	108	111	107

Source: European Aluminium and Eurostat

(216) The free market consumption in the Union increased by 7 % during the period considered. A detailed analysis shows that from 2016 to 2018 the Union market increased by 11 % from around 3,0 to 3,3 million tonnes and in 2019 it fell by 4 percentage points to around 3,2 million tonnes. The fluctuation and overall increase over the period considered was due to the growth in certain user sectors such as automotive.

4.4. Imports from the country concerned

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

- (217) The Commission established the volume of imports on the basis of Eurostat data. The product concerned is mainly imported to the Union market under the following CN codes: 7604 21 00 (hollow profiles), 7604 29 10 (bars and rods), 7604 29 90 (solid profiles), 7608 20 81 and 7608 20 89 (2 types of pipes and tubes, not welded) and 7610 90 90. The latter code covers various structures of aluminium, parts of structures and assembly kits of aluminium (all of which are not the product concerned), plus some types of the product concerned including bars, rods and profiles.
- (218) In the complaint, imports of the product concerned were calculated using all imports of the first 5 codes mentioned above plus 95 % of CN code 7610 90 90 for imports originating in China only. The justification for this methodology is that imports of code 7610 90 90 from China were priced at around 2 900 EUR per tonne in the investigation period which very closely matched the imports from China of the other 5 CN codes. By contrast, imports from other countries were made at an average price of around 6 500 EUR per tonne. This price information suggests that imports from China were the product concerned, whereas for other countries, they were more value added products such as structures, which are not the product concerned. The complainant stated that for reason of prudence 95 % of CN code 7610 90 90 should be counted as the product concerned.
- (219) The Commission investigated the matter initially by examining the trade flows at the level of TARIC codes (10 digit goods codes). This information existed from the date of initiation (14 February 2020). This data supported the complainant's approach in terms of price. At the same time, a major part of imports from China were being declared under TARIC code 7610 90 90 90, which is not the product concerned. The Commission therefore decided to request opinion and data from interested parties in a Note placed on the case file. Also, DG TAXUD and national customs authorities in Member States were contacted to request further data on this code from their records.
- (220) Two unrelated importers and European Aluminium provided certain comments and data following the additional request for information.
- (221) The two unrelated importers indicated that CN code 7610 90 90 should normally include higher value products because the code covers inter alia, aluminium structures. Therefore, the lower than average import prices from China under this code may indicate that a large quantity of unassembled products have been included, to benefit from a lower conventional duty (6 %) in this CN code, than the duty rate for tariff headings 7604 and 7608 (7,5 %).

- (222) European Aluminium argued that imports originating in China under CN code 7610 90 90 are predominantly aluminium extrusions 'prepared for use in structures', included in the product scope, because the average price is similar to that for products declared under CN codes 7604 and 7608 (i.e. 2 770 EUR/tonne) and the average price is not in line with that of products declared under CN code 7610 90 90 originating in all other third countries, excluding China, (i.e. 6 000 EUR/tonne) which corresponds to the economic added value of transforming aluminium extrusions into structures.
- (223) Also, the national customs authorities of four Member States and DG TAXUD supplied more detailed information on imports. However, at the provisional stage of the investigation, information from other Member States is pending. It was therefore provisionally decided that the complaint represented the best information available on import volumes, and all data presented and analysed below uses the methodology in the complaint to establish imports to the Union market. However, the Commission again request interested parties to come forward in order that a definitive decision can be made on data which is as complete as possible.
- (224) The market share of the imports was established on the basis of the import volume as compared to the volume of free market consumption shown in Table 1.
- (225) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume (tonnes) and market share

	2016	2017	2018	Investigation period
Volume of imports from the country concerned (tonnes)	209 064	255 347	283 407	309 853
<i>Index</i>	100	122	136	148
Market share on the free market (%)	6,9	7,8	8,5	9,6
<i>Index</i>	100	113	122	139

Source: Eurostat

- (226) Imports from the country concerned increased from around 210 000 tonnes to around 310 000 tonnes over the period considered, an increase of 48 %.
- (227) The market share of those imports increased from 6,9 % to 9,6 % over the period considered, an increase of 39 %.

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

- (228) The Commission established the prices of imports on the basis of Eurostat data, using the CN codes and methodology mentioned in recitals (217) to (223).
- (229) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/tonne)

	2016	2017	2018	Investigation period
China	2 812	2 733	2 798	2 912
<i>Index</i>	100	97	100	104

Source: Eurostat

- (230) Import prices from China increased from 2 812 to 2 912 EUR/tonne over the period considered, a rise of 4 %. This development should be seen in the light of the development of world aluminium indices such as the LME quotations for aluminium billets in Table 7. Aluminium billets are the main raw material of the product under investigation. Over the same period the LME price for aluminium billets increased by 10 % as shown in Table 7. During the investigation period, on the basis of the Union average prices in Table 7 below, there was a price difference between the subject imports and the Union prices of around 20 %.
- (231) The Commission determined the price undercutting during the investigation period by comparing:
- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (2) the corresponding weighted average prices per product type of the imports from China to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs. Where the sale from the Chinese producer to the first independent customer on the Union market was through a related sales company based in the Union, the price of the import was established on a CIF basis, by adjusting the sales price to the first independent customer taking into account all costs incurred between the importation and resale, including the SG&A of the related importer and for profits accruing based on the weighted average profit margin during the investigation period reported by the sampled unrelated importers, in accordance with article 2(9) of the basic Regulation;
- (232) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of over 25 %. The actual figures calculated are not recorded here for reasons of confidentiality but have been disclosed to the co-operating exporting producers concerned and are within the range between 15 % to 35 %. Around 99 % by volume of the product types imported were found to be undercutting. All sales of the sampled Union producers were made directly to independent customers, without related selling entities. One exporting producer sold to independent customers in the Union, without related selling entities in the Union. As regards the other exporting producer, the majority of its sales were made through a related selling entity in the Union. In any event, since less than half of the total exports of the sampled exporting companies were adjusted pursuant to Article 2(9), the Commission considered that there would be significant undercutting for the country as a whole, also in view of the observed price differences mentioned in recital (230).
- (233) One importer (Kastens and Knauer) claimed that the product under investigation include both low priced, standard and high-priced, non-standard products, which should not be compared with each other. According to this importer these products should not be compared.
- (234) As mentioned a very detailed system of price comparison was used involving product forms and dimensions, various types of finishing and type of raw material alloy. A high degree of matching was found between imported products and those of the Union industry. Therefore, the Commission confirms that accurate price comparisons were possible, based on detailed and objective criteria.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (235) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (236) As mentioned in recital (9), the Commission used sampling for the determination of possible injury suffered by the Union industry.
- (237) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the response of European Aluminium which included data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

- (238) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (239) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.6. Macroeconomic indicators

4.6.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2016	2017	2018	Investigation period
Production volume (tonnes)	2 760 000	2 890 000	2 960 000	2 810 000
<i>Index</i>	100	105	107	102
Production capacity (tonnes)	4 135 000	4 140 000	4 261 000	4 284 000
<i>Index</i>	100	100	103	104
Capacity utilisation (%)	66,7	69,8	69,5	65,6
<i>Index</i>	100	105	104	98

Source: European Aluminium

- (241) Throughout the period considered, the production volume of the Union industry increased by 2 %. A detailed analysis shows that from 2016 to 2018 Union production increased by 7 %, while in the investigation period Union production fell by 5 percentage points.
- (242) The overall increase over the period considered was due to the growth in demand described in Table 1. However, the Union industry only managed to increase their production by 2 % during the period considered, in a market growing by 7 %. The Union industry was therefore unable to fully benefit from the market growth.
- (243) During the period considered, Union production capacity increased by 4 %. This moderate increase in capacity reflects the attempts made by some Union producers' to increase capacity to match the growth potential of aluminium extrusions.
- (244) During the period considered, Union capacity utilisation fell by 2 % because the Union producers were unable to increase production in line with market growth.

4.6.2. Sales volume and market share

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

Table 5

Sales volume and market share

	2016	2017	2018	Investigation period
Total Sales volume on the Union market - both free and captive (tonnes)	2 629 338	2 751 455	2 817 143	2 675 640
<i>Index</i>	100	105	107	102

	2016	2017	2018	Investigation period
Captive market sales	61 338	60 455	60 143	56 640
<i>Index</i>	100	99	98	92
Captive market sales as a % of total market sales	2,0	1,8	1,8	1,7
<i>Index</i>	100	92	89	87
Free market sales	2 568 000	2 691 000	2 757 000	2 619 000
<i>Index</i>	100	105	107	102
Market share of free market sales (%)	85,1	82,7	82,3	81,1
<i>Index</i>	100	97	97	95

Source: European Aluminium and Eurostat

- (246) Throughout the period considered, the total Union sales volume of the Union industry increased by 2 %.
- (247) Union sales volume on the free market also increased by 2 % over the period considered. From 2016 to the 2018 Union sales volume on the free market increased by 7 % and fell by 5 % in the investigation period. Union sales followed the trend of Union production very closely because the industry largely operates a production to order system
- (248) The Union's industry captive market (expressed as a percentage over total Union sales) was around 2 % throughout the period considered. The small captive market suffered a fall of 8 % over the period considered, but this had a marginal impact due to the limited size of this market.

4.6.3. Growth

- (249) Consequently, it results from the fall in market share of Union sales volumes that the Union industry was not able to keep up with the growth on the Union market over the period considered.

4.6.4. Employment and productivity

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

Table 6

Employment and productivity

	2016	2017	2018	Investigation period
Number of employees (FTE)	39 326	41 449	42 551	39 836
<i>Index</i>	100	105	108	101
Productivity (tonnes/FTE)	70,18	69,72	69,56	70,54
<i>Index</i>	100	99	99	101

Source: European Aluminium

- (251) The Union industry employment rose by 8 % from 2016 to 2018 on an FTE basis. This rise was followed by a fall of 7 % in the investigation period. Again, this development largely follows the trend in production volume shown in Table 4.
- (252) European Aluminium explained that they carried out periodical employment surveys which were usually based on around 40 % of Union production. The figures quoted above are an extrapolation of the data so that it covers the entire industry. The results of these surveys are therefore considered representative for the Union industry as a whole.

- (253) As the figures for production and employment mirrored each other closely, productivity in terms of tonnes per employee remained largely stable.

4.6.5. *Magnitude of the dumping margin and recovery from past dumping*

- (254) 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.
- (255) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.7. **Microeconomic indicators**

4.7.1. *Prices and factors affecting prices*

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

Table 7

Sales prices in the Union

	2016	2017	2018	Investigation period
Average unit sales price on the free market (EUR/tonne)	3 053	3 372	3 508	3 619
<i>Index</i>	100	110	115	119
Unit cost of production (EUR/tonne)	2 960	3 245	3 448	3 541
<i>Index</i>	100	110	116	120
LME 3 month aluminium billet delivered (Rotterdam, Germany and Italy average in EUR/tonne)	1 766	2 066	2 163	1 950
<i>Index</i>	100	117	122	110

Source: Sampled Union producers and LME

- (257) Sales prices on the Union market to unrelated parties (the free market) increased from 3 053 EUR/tonne to 3 619 EUR/tonne over the period considered, an increase of 19 %.
- (258) This increasing trend should be seen in the light of important developments in the industry. Firstly, over the period considered all four sampled Union producers changed their product mix. In particular, the Union producers increased their sales of high value-added products, which have higher prices. Also, market prices increased because of increases in the price of aluminium billets as demonstrated by the LME 3 month delivered price.
- (259) The unit cost of production of the sampled producers was also heavily impacted by the LME price development and contained the additional costs incurred by the sampled producers in moving to higher value added products.
- (260) The unit cost of production increased by (20 %), i.e. at a greater rate than average prices in the free Union market (19 %).

4.7.2. Labour costs

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

Table 8

Average labour costs per employee

	2016	2017	2018	Investigation period
Average labour costs per employee (EUR)	33 971	33 002	33 734	34 584
Index	100	97	99	102

Source: Sampled Union producers

- (262) The average labour costs per employee increased by 2 % over the period considered.

4.7.3. Inventories

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

Table 9

Inventories

	2016	2017	2018	Investigation period
Closing stocks (tonnes)	8 583	8 930	11 056	10 845
Index	100	104	129	126
Closing stocks as a percentage of production (%)	3,4	3,4	4,1	4,4
Index	100	98	119	128

Source: Sampled Union producers

- (264) The stocks of the sampled Union producers increased by 26 % over the period considered. However, closing stocks as a percentage of production were low throughout the period. This is because the aluminium extrusions industry generally operates on a production to order basis. This indicator is therefore of a lesser importance in the overall injury analysis.

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2016	2017	2018	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	4,9	4,3	3,0	2,0
Index	100	88	61	42
Cash flow (EUR)	37 678 269	43 401 626	8 594 466	35 807 285
Index	100	115	23	95
Investments (EUR)	27 645 569	46 341 778	28 774 003	47 614 938
Index	100	168	104	172
Return on investments (%)	34,8	25,4	16,7	10,0

	2016	2017	2018	Investigation period
<i>Index</i>	100	73	48	29

Source: Sampled Union producers

- (266) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Extraordinary costs and unrealised hedging gains and losses were not included in the figures in Table 10. The profitability of the sampled producers was positive but low throughout the period considered and declined from 4,9 % in 2016 to 2,0 % in the investigation period. This development shows significant price suppression. As explained in recital (272), the costs of the Union producers increased more than their prices. The Union industry was unable to raise prices at the same extent as costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices). Indeed, throughout the period, Chinese prices were consistently low and significantly below Union industry prices, limiting price increases which would have been expected in a context of inter alia increasing raw material costs, and also growing demand. Chinese imports were significant during the period concerned. This resulted in depressed and decreasing profitability.
- (267) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow fluctuated. The sampled Union producers had positive but low levels of cash flow throughout the period considered. Cash flow fell by 77 % from 2016 to 2018 but recovered significantly in the investigation period. This recovery was largely based on one of the sampled producers which converted large quantities of work in progress at the beginning of 2019 to sales of finished goods in the investigation period.
- (268) The Union producers continued to invest in the period considered as demonstrated by the investment figures above. Investments were between 27 and 47 million EUR per year. The investments were mainly 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.
- (269) The return on investments is the profit in percentage of the net book value of investments. It developed negatively over the period considered and in fact fell by 71 %. This negative development shows that, although investments have continued to be made, in order to maintain competitiveness, the returns on those investments have fallen substantially over the period considered.
- (270) All four sampled producers are part of large groups of companies and they have continued to raise capital for investments during the period considered. However, with returns on investments falling so quickly, the sampled producing entities ability to raise capital in the future is clearly in jeopardy.

4.7.5. Conclusion on injury

- (271) Several indicators showed a positive trend such as production, capacity, sales volume on the Union market and employment. However, the positive development of these indicators related to the increase in consumption and, in fact, such indicators should have increased more strongly, if the Union industry would have been able to fully benefit from the growing market. Indeed, despite the increase in sales volume, the Union industry lost market share in the free market.
- (272) The prices of sales on the free market increased by 19 %. However, these price increases did not keep up with increases in costs (20 %). This development was caused by price suppression. The Union industry was unable to raise prices at the same extent as costs were increasing because of the downward pressure caused by imports from China which undercut the prices of the Union industry. Bearing in mind that profitability levels were below the target profit level throughout the period considered, and the volumes and low prices of the Chinese imports, the Commission concluded that price increases had been suppressed throughout the period considered. As a consequence, all financial performance indicators, namely profitability, return on investment and cash flow showed a declining trend, and profits made were below the target profit level throughout the period considered. This is particularly damaging because the market for the product under investigation was growing in the period considered, but the Union industry still suffered low and falling profits. Despite keeping investments as high as possible in order to remain competitive, the Union industry was clearly not delivering sufficiently high profit levels to encourage future investment. Furthermore, the decline of the Union industry was taking place in a period of growth on the Union market. The Union industry lost 5 % in market share in a growing market, and was visibly not able to take advantage from the growth of the Union market.
- (273) Furthermore, it should be recalled that the Union industry is serving a diverse customer base, which has continuously developing requirements. It is essential that the Union industry continues to invest in R&D and customer focus solutions. The rapidly deteriorating development of return on investments (– 71 %) in itself is, therefore, a serious threat to the continuing viability of the industry.

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

5. CAUSATION

- (275) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from third countries, the export performance of the Union industry, captive sales, raw material prices and the evolution in consumption.

5.1. Effects of the dumped imports

- (276) The deterioration in the situation of the Union industry coincides with significant penetration by imports from China, which consistently undercut the Union industry's prices and in any event suppressed EU market price levels, establishing a causal nexus between the two.
- (277) The volume of imports from China increased (as shown in Table 2) from around 209 000 tonnes in 2016 to around 310 000 tonnes in the investigation period, an increase of 48 %. In terms of market share the increase over the same period was from 6,9 % to 9,6 %, an increase of 39 %. Over the same period (as shown in Table 5), the Union industry sales on the free market increased by only 2 % and its market share fell from 85,1 % to 81,1 %, a fall of 5 %. The sales on the smaller captive market fell by 8 %. The dumped imports have increased steadily on a year-on-year basis in terms of both absolute and relative terms. As shown by Table 1, consumption on the Union market has increased by 7 % over the period considered. However, it is evident that it has been mainly imports from China that took advantage from this growth.
- (278) The prices of the dumped imports increased by 4 % over the period considered (as shown in Table 3) from 2 812 EUR/tonne in 2016 to 2 912 EUR/tonne in the investigation period. Over the same period world aluminium prices increased by around 10 % (as shown by the LME index at Table 7). Furthermore, the Union industry prices increased by 19 % over the period considered as shown in Table 7. However, this Table also shows that the Union industry's average costs increased by 20 % over the same period. Finally, the undercutting margin calculated for the exporting producers is over 25 % on average.
- (279) As explained above the increase in the Union industry's prices and costs need to be analysed in the light of changes in the Union industry's product mix and increases in aluminium prices. However, the increases in prices of the Union industry and its attempts to move into more high value added products (as required by customers), were not sufficient to prevent a further decrease of the profitability of its sales, which continued to fall throughout the period considered. This was because of the downward pressure imposed on market prices by the rising volume of dumped imports from China at low prices. It was therefore, concluded that the imports from China also caused price suppression and prevented price increases.
- (280) One interested party (Airoidi) questioned how Chinese imports comprising a limited market share in the investigation period could have such a significant impact. In this respect it is noted that the product under investigation is usually sold on a contract basis, where price is an important element, often the most important one. The existence on the market of low-priced offers from Chinese exporting producers explains why these sales were able to exert such a significant influence on market prices overall. The Chinese producers in the investigation period sold both to traders in the Union and to end users. This meant that their negative influence on market prices was felt in all sales channels of the market and not just those prices for sales of simple products to distributors.
- (281) The Union market for aluminium extrusions is progressively becoming more focused on providing bespoke solutions for customers in various industries such as automotive, engineering, transport, and building and construction. This development means that producers supplying the Union market need to invest in R&D for new products and to provide complex solutions to meet the needs of customers. However, despite this investment the Union industry has seen a progressive loss of profitability and market share. This development is caused by the price pressure exerted by the Chinese exporting producers at significant volumes.

- (282) Furthermore, the penetration of Chinese imports over the period considered has been achieved not only in the parts of the market which purchase simple, commodity type products. There is clear evidence that the Chinese are progressively penetrating the market by increasing their presence in the contract sales part of the market. Price is not the only important element in such contracts but it is clear that the undercutting margins mentioned above (over 25 %) play a key role in the decision making of customers.
- (283) It was, therefore, concluded that the imports from China caused material injury to the Union industry. Such injury had mainly price effects, but also volume effects.

5.2. Effects of other factors

5.2.1. Imports from third countries

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

Table 11

Imports from third countries

Country		2016	2017	2018	Investigation period
Turkey	Volume (tonnes)	77 136	87 706	107 393	110 463
	Index	100	114	139	143
	Market share on the free market (%)	2,6	2,7	3,2	3,4
	Average price	3 520	3 601	3 569	3 448
	Index	100	102	101	98
Other third countries	Volume (tonnes)	163 434	221 028	201 350	188 809
	Index	100	135	123	116
	Market share on the free market (%)	5,4	6,6	6,0	5,8
	Average price	3 629	3 513	3 841	3 879
	Index	100	97	106	107
Total of all imports except the country concerned	Volume (tonnes)	240 570	308 734	308 743	299 273
	Index	100	128	128	124
	Market share on the free market (%)	8,0	9,5	9,2	9,3
	Average price	3 594	3 538	3 747	3 720
	Index	100	98	104	104

Source: Eurostat

- (285) Imports from Turkey increased by 43 % over the period considered from around 77 000 tonnes in 2016 to around 110 000 in the investigation period. The market share of these imports increased from 2,6 % in 2016 to 3,4 % in the investigation period.

- (286) An overall examination of the imports of the product under investigation shows an average price of 3 448 EUR/tonne for Turkey during the investigation period, which is 18 % higher than the overall average price of Chinese imports of 2 912 EUR/tonne. A more detailed examination of the various CN codes shows that most of these imports (89 %) related to CN codes 7604 21 00 and 7604 29 90 which are hollow and solid profiles respectively. Due to the overwhelming importance of these product types, a separate price comparison was made. The average price of these profiles was 3 458 EUR/tonne during the investigation period. This is 19 % higher than the average price of the Chinese imports under the same two CN codes for the same period.
- (287) Imports from other third countries (mainly Russia, Switzerland, Norway and Bosnia and Herzegovina) also consisted mainly of solid and hollow profiles (69 %). Imports from other third countries increased by 16 % over the period considered from around 163 000 tonnes in 2016 to around 189 000 in the investigation period. The market share of these imports slightly increased from 5,4 % in 2016 to 5,8 % in the investigation period. The average price of such imports was 3 720 EUR/tonne, which is even higher than prices from Turkey.
- (288) Bearing in mind the volume, price and market share of imports from Turkey and other third countries, their impact on the Union industry is not such as to cause its deterioration.

5.3. Export performance of the Union industry

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

Table 12

Export performance of the Union producers

	2016	2017	2018	Investigation period
Export volume (tonnes)	201 697	212 634	218 680	208 144
Index	100	105	108	103
Average price (EUR/tonne)	5 213	5 436	5 623	5 797
Index	100	104	108	111

Source: Eurostat

- (290) Exports of the Union industry increased by 3 % over the period considered from around 202 000 tonnes in 2016 to around 208 000 in the investigation period.
- (291) The average price of these exports increased by 11 % over the period considered from 5 213 EUR/tonne in 2016 to 5 797 EUR/tonne in the investigation period.
- (292) Against the backdrop of their contribution to total production and sales of the Union industry, and bearing in mind the high price of these exports and their stable volume it is clear that these exports would not have caused injury to the Union industry.

5.4. Consumption

- (293) As shown at Table 1, from 2016 to 2018 the free Union market increased by 11 % from around 3 to 3,35 million tonnes and in the investigation period it fell by 4 percentage points to around 3,2 million tonnes. The overall increase over the period considered demonstrates that there was no contraction in demand.
- (294) Bearing in mind that consumption increased over the period considered, it could be concluded that developments in consumption would not have caused injury to the Union industry.

5.5. Captive use

- (295) As shown at Table 5, during the period considered the Union industry's sales to the captive market fell by 8 %. However, the volumes involved in each year were 2 % or less of total Union industry sales.

- (296) Bearing in mind the very limited size of the captive market, its developments would not have caused injury to the Union industry.

5.6. The Price of Raw Materials

- (297) The main raw material used by the Union industry is aluminium alloy billets, although some producers are more integrated and they also manufacture the aluminium alloys used in the production of aluminium extrusions.
- (298) Aluminium prices are set by the LME and represent around two thirds of the cost of typical aluminium extrusions, although this percentage is variable depending on the complexity of the final product sold.
- (299) As shown at Table 7, from 2016 to the investigation period the LME billet delivered indices increased by 10 % over the period considered. This would represent an increase in the cost of production of around 6 %–7 % for the product under investigation.
- (300) However, the Union industry usually sells using contracts whereby the most recent LME price is quoted, together with conversion and delivery costs. Union producers then use hedging facilities to cover them against the difference between the aluminium price quoted in the contract and the actual purchase price of the aluminium.
- (301) Bearing in mind the way that aluminium prices are set using contracts, and the fact that the Union industry protects itself against raw material fluctuations, it was clear that increases in raw material prices would not have caused injury to the Union industry.

5.7. Conclusion on causation

- (302) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of all other factors, on the Union industry's negative developments in terms of loss of market share, price undercutting and falling profitability, return on investment and cash flow was practically non-existent.
- (303) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury consists mainly of a loss of market share, price undercutting and suppression and falling profitability, return on investment and cash flow.

6. UNION INTEREST

- (304) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could conclude that it was not in the Union interest to adopt measures in this case in respect of imports from China despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and other relevant economic operators.

6.1. Interest of the Union industry and suppliers

- (305) There are some 200 companies producing aluminium extrusions in the Union. The imposition of measures would allow the Union industry to recover lost market share, while improving their low profitability towards levels considered sustainable.
- (306) The Union industry employs around 40 000 workers directly with many more relying on it on an indirect basis. The producers are widely spread throughout the Union.
- (307) The absence of measures is likely to have a significant negative effect on the Union industry in terms of further price suppression and lower sales and, thus lowering profitability and investments. The measures will allow the Union industry to exploit its potential on a Union market, recover lost market share, and improve profitability to levels to be expected under normal conditions of competition.
- (308) Aluminium is much lighter than steel and is regarded in the Union as a key raw material for making progress towards the meeting of emissions targets set by the Paris Agreement (2015). An example being the increased use of aluminium extrusions in the automobile industry and they are key in the establishment of the electric vehicle industry in the Union.

- (309) In addition to representing the Union industry, European Aluminium also represents a large part of the primary aluminium sector in the Union. Aluminium extrusions consume around 20 % of the primary aluminium produced in the Union. The primary aluminium sector is also a large employer in the Union and it relies on the health of its downstream customers. The main output of this sector for the aluminium extrusions industry are billets. The viability of these upstream suppliers will also be put at risk if the aluminium extruding industry contracts further.

6.2. Interest of importers

- (310) Very little cooperation was received from the importing sector. 6 unrelated importers submitted a sampling form representing only around 2 % of Chinese imports.
- (311) The sampled importers of aluminium extrusions are specialists in the aluminium business and around 50 % of their turnover derived from aluminium extrusions. The importers purchased around 50 % of their aluminium extrusions from the country concerned, the other 50 % being sourced from the Union industry and other third countries. Although, aluminium extrusions from China usually incurred a customs duty of 6 %–7,5 %, this business was significantly more profitable than the other products imported and more profitable than the Union industry despite the fact that less risks apply to the importing sector than the production sector.
- (312) The importers claimed that they cannot source all their aluminium extrusions from the Union industry because the industry cannot supply the full range required. More specifically, one importer (Airoidi) stated that they mainly import aluminium extrusions made from hard alloys, for which they claim longer lead times are applicable for the Union industry. They claim that further evidence of shortages of supply is that certain products are exempted from customs duties under autonomous tariff quotas. The Union industry rebutted this claim of supply issues, stating that the industry has spare capacity, and can supply the full range of products demanded by importers and the Union user industries, including aluminium extrusions made from hard alloys.
- (313) According to the information on the file, there does not seem to exist a shortage in the Union of any specific product or alloy. Two of the sampled Union producers manufacture large quantities of aluminium extrusions made from hard alloys and have significant spare capacity. The Union industry provided evidence that many more Union producers have capacity to produce aluminium extrusions from hard alloys. Furthermore, alternative sources of supply exist in third countries.
- (314) In terms of the import duty exemptions, indeed, autonomous tariff quotas totalling 3 000 tonnes of the product concerned are currently exempted from customs duty by Council Regulation (EU) 2019/2220⁽⁹⁷⁾. The Union industry explained that they have challenged these exemptions on the grounds that the Union industry is able to supply the specific products exempted. A decision on the continuing need for the exemptions is scheduled to be published before the end of 2020. Bearing in mind that the quantity involved is marginal (around 1 % of all imports in the investigation period), it is not considered that this issue represents a significant supply issue. Should additional information emerge, this matter will be reviewed at the definitive stage of the investigation.
- (315) One importer (Airoidi) argued that the COVID-19 pandemic is a case of *force majeure* and it would be against the Union's interests to impose anti-dumping duties on imports of the product concerned. They further argued that it would not be appropriate to apply duties in 2020 based on the 2019 situation, since 2020 is impacted by the COVID-19 epidemic. However, the period considered in this investigation is 2016 to 2019. Events in 2020 should not normally be taken into account in respect of imposition of measures, unless there has been a lasting change of circumstances. The evidence contained in the Regulation imposing registration of imports suggests that the pressure imposed by imports during the period March to May 2020 increased on the Union industry. No evidence has been submitted to justify termination of the investigation without measures on Union interest grounds. This claim was therefore, rejected. Airoidi has already received a letter explaining that there is no legal basis to terminate the current investigation because of the COVID-19 pandemic on *force-majeure* grounds.
- (316) Airoidi also made claims that the Union industry is using the anti-dumping instrument to reinforce an alleged oligopoly, which is an abuse of rights under the Union Courts case law. European Aluminium strongly rejected such claims. However, there are no indications that there are anti-competitive behaviour or an abusive oligopoly by the Union industry, and Airoidi has not provided any evidence concerning findings in this respect or any analysis to explain its relevance in the context of the basic Regulation.

⁽⁹⁷⁾ Council Regulation (EU) 2019/2220 of 19 December 2019 amending Regulation (EU) No 1388/2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products (OJ L 333, 27.12.2019, p. 33).

- (317) The anti-dumping measures are likely to have a certain negative impact for importers in the Union because measures on Chinese imports may reduce the turnover and profitability of their aluminium extrusions business. However, the importers will be able to pass on the duty to their customers given their significant profit margins of around 7 % to 13 %. They also have also the possibility to find alternative sources of supply, including suppliers from other third countries and the Union industry. Indeed, both sampled importers have a balanced supply structure and do not only rely on Chinese imports. Also, both sampled importers have significant activities which are not related to the product under investigation, and which are not affected by the imposition of the duties. Therefore, the combination of other activities, other sources of supply for the product under investigation and the ability to partially pass on the effect of the duties to their customers would mean that the unrelated importers are not disproportionately affected by the imposition of the measures.

6.3. Interest of users

- (318) The product under investigation is sourced by several user industries, mainly building, transport, engineering and others including consumer products. Some aluminium extrusions are sold to distributors prior to being resold to the end users.
- (319) Although some users and their associations registered as interested parties, most user industries did not cooperate with the investigation by completing questionnaire responses.
- (320) Only one questionnaire response was received, from the Alstom Group, which purchases aluminium extrusions for its rail transport business. Alstom and The European Rail Supply Industry Association (UNIFE) also made submissions relevant to issues of Union Interest.

Rail transport industry

- (321) Aluminium extrusions are important to the rail transport industry because they are key to the modernisation of rolling stock in order to meet with standards relating to the safety of passengers, crash resistance and in helping the industry to reduce its carbon footprint by reducing the weight of rolling stock and increasing fuel efficiency. The industry explained that it builds up relationships with its suppliers, in both the Union and China, to produce bespoke aluminium extrusions, which means that switching suppliers becomes undesirable and entails extra costs. Furthermore, the industry claimed that a limited number of producers in the Union were able to meet its specialised requirements. Alstom pointed out that some of its products could only be supplied by 3 producers in China and one in the Union. European Aluminium has argued that its members have both the capacity and the technical knowledge needed to supply the rail transport industry.
- (322) The Commission concluded that it was inevitable that switching suppliers would have cost implications for Alstom and other companies in this industry. However, the purchases of the product under investigation by Alstom represent an insignificant percentage of the company turnover, and the company purchases from several sources of supply, including China and other countries. Thus, where it would decide to source from China and pay anti-dumping duties at importation, the amount of such duties would be a marginal extra cost below 1 % of the corresponding turnover.
- (323) Alstom and UNIFE also argued that the imposition of anti-dumping measures on aluminium extrusions used in the rail transport industry would not be in the Union interest because:
- (a) these product types form a negligible share of imports from China, account for only around 1,3 % of the Union market for aluminium extrusions and, as such, are not a cause of injury to the Union producers; and
 - (b) the imposition of measures would seriously undermine the competitiveness of the Union's rail transport industry sector as they compete with imports of railway stock from third countries that are not subject to anti-dumping duties on their raw materials.
- (324) However, the fact that the products for the rail transport industry account for a minor part of imports in the Union market is not specific to the rail transport industry. No evidence was provided that the price depression caused by Chinese imports is not present for aluminium extrusions for the rail transport industry, or only present

to a lesser extent. To the contrary, based on the information provided by the sole cooperating user in the rail transport industry, Chinese imports had a much higher market penetration in this industry during the investigation period than overall, and this market penetration progressed at a much more rapid pace. Thus, the injurious effect of imports of aluminium extrusions to the rail transport industry is not different from the injury caused by other product types covered by the investigation.

Automotive industry

(325) As regards the automotive industry, which is one of the most important downstream industries, no cooperation was received from users in this sector. European Aluminium and the sampled Union producers have indicated that aluminium extrusions play an increasingly important role, especially in respect of the growing electric vehicle market where aluminium extrusions are important to reduce the weight of the vehicle and increase its range. This information was confirmed by reference to the sales data of the Union industry, and by publically available information published by the automotive industry association. However, it is assumed that similar mitigating factors would apply to the automotive industry as in the rail industry:

- extrusion purchases were around 3 billion EUR but still represent less than 1 % of the turnover of the automotive industry,
- most purchases are not sourced from China, and
- exports of vehicles from the Union were around 25 % of production in the investigation period⁽⁹⁸⁾ which means that anti-dumping duties on imported aluminium extrusions would not always be applicable due to possible inward processing arrangements for vehicles subsequently exported.

Construction industry

(326) As far as the construction industry is concerned, which is the most important downstream industry, no cooperation was received from users in this sector. European Aluminium and the sampled Union producers have confirmed that aluminium extrusions play an important role, accounting for around 50 % of the Union consumption. This information was confirmed by reference to the sales data of the Union industry. While aluminium extrusion sales to the construction industry accounted for around 5 billion EUR, this has to be seen in relation to the huge size of the construction sector in the Union. According to the latest information published by Eurostat, in 2018 the purchases of goods and services by the construction industry accounted for 1 277 billion EUR, while the turnover accounted for 1 874 billion EUR⁽⁹⁹⁾. The purchases of aluminium extrusions therefore account for an insignificant share of costs and turnover of the construction industry.

(327) As a result, the impact of any measures on this industry are considered minimal as a whole. However, it is recognised that the importance of aluminium extrusions on the various market players in the construction industry may be different. In the absence of cooperation, no detailed information is available.

Other industries

(328) No verifiable data was received for the other main user sectors, which are engineering and consumer industries. There are many industries within these sectors, and the degree of importance of aluminium extrusions and mitigating factors for each industry are not known. It cannot be excluded, therefore, that some users, which have not cooperated with the investigation, may have certain detrimental effects resulting from the measures. However, there is no information on the case file to substantiate or quantify these effects.

6.4. Conclusion on Union interest

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

7. LEVEL OF MEASURES

7.1. Calculation of the non-injurious price

(330) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

⁽⁹⁸⁾ Source: ACEA – Automobile Industry Pocket Guide 2020/2021.

⁽⁹⁹⁾ Source: Eurostat.

- (331) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions in the sense of Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and to obtain a reasonable profit ('target profit').
- (332) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors:
- the level of profitability before the increase of imports from the country concerned,
 - the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and
 - the level of profitability to be expected under normal conditions of competition.
- (333) European Aluminium and one of the Union producers claimed that a target profit level of at least 16 % was necessary because the aluminium extrusions industry requires a great deal of investment in both manufacturing equipment and in developing products with customers. A second Union producer claimed that normal profit should be above 8 %. These claims were supported by the fact that customer focus is becoming more and more important in this industry and additional investment of this nature is essential for the future survival of the industry. This investment is needed to provide bespoke solutions for customers in the main customer industries (automotive, engineering, transport and building and construction).
- (334) The Commission examined these claims together with the data available on the case file relevant to the requirements of Article 7(2c) of the basic Regulation in order to set the target profit.
- (335) Bearing in mind that Union industry's prices were suppressed throughout the period considered due to the dumped imports, as explained in recital (272) above, the profits during this period were not considered a suitable basis for establishing the target profit. The Commission therefore examined the profitability of the Union Industry before the period considered, also in light of the EU industry's claims concerning the high level of investment necessary in this business.
- (336) With regard to the profit expected during the normal conditions of competition, the Commission noted that prior to 2014 the financial crisis had a negative impact on profitability, and from 2014 onwards Chinese import levels increased sharply and became injurious. Therefore, 2014 is considered to be the most representative year for the profitability under the normal conditions of competition in this industry. Two of the four sampled producers, Constellium Decin and Impol, reached profitability levels of at least 10 % in 2014. The third producer, Hydro Hungary, was undergoing structural changes at this time, and therefore its level of profitability was not fully representative. No data is available for the fourth sampled producer STEP G, which was only founded in 2015. On that basis, the Commission considered that a target profit of 10 %, based on the profitability levels achieved in year 2014, would reflect the level of profitability before the increase of imports from the country concerned, and the level of profitability to be expected under normal conditions of competition.
- (337) In view of the claims of the EU industry as explained in recital (333) above, the Commission then examined whether such level would cover full costs and investments, research and development (R&D) and innovation, as required by Article 7(2c).
- (338) The verified data regarding investment support the claim that the aluminium extrusions industry requires a great deal of investment in both manufacturing equipment and in developing products with customers. Indeed, despite the decreasing profitability, investments increased over the period considered by 72 % for the sampled Union producers, representing over 4,4 % of turnover for the sampled companies throughout the period considered and 5,4 % in the investigation period. This supports the claims of the EU industry that a significant level of investment is consistently necessary in order to stay competitive and be able to keep customer focus regardless of the business and economic situation. Therefore, in the presence of injurious dumping that affects the normal conditions of

competition and ultimately has an impact on the industry profitability, this level of investment must be considered when establishing the relevant target profit. On this basis, the Commission concluded that a target profit of 10 % would cover the investments, research and development (R&D) and innovation of the aluminium extrusions industry and still leave margin for profits to compensate for the other factors of production.

- (339) While such target profit of 10 % is largely in line with the level claimed by one of the EU producers (a profit level above 8 %), European Aluminium and one other Union producer claimed that a target profit level of at least 16 % was necessary to cover investments. While such level was indeed obtained by one of the sampled companies in the 2014–2016 period, it would reflect only the most successful company with the most sophisticated product mix and thus higher investment needs. On the contrary, the level of 10 % fully reflects the product mix and investment of all the sampled EU producers and ultimately of the industry as a whole. The claim relating to the higher target profit level was therefore rejected.
- (340) Given all of the above, the Commission considers that provisionally setting the target profit level at 10 % meets all the requirements of Article 7(2c) of the basic Regulation.
- (341) In accordance with Article 7(2d) of the basic Regulation, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). The Commission established an additional cost of 0,04 % which was added to the non-injurious price. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (342) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the average estimated additional EU Allowances (EUA) which will have to be purchased during the period of the application of the measures (2020 to 2024). The EUAs used in the calculation were net of free allowances receivable and were adjusted to ensure they related solely to the product under investigation. The costs of the EUAs were extrapolated to account for the expected price variation during the lifespan of the measures. The source for these projected prices is a Bloomberg New Energy Finance extraction dated 7 July 2020. The average projected price for EUAs for this period is 36,4 EUR/tonne of CO₂ emitted.
- (343) On the basis described above, the Commission calculated a non-injurious price of the like product for the Union industry.
- (344) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (345) In terms of the residual margin, bearing in mind that co-operation of the Chinese exporters was not high, and other considerations explained in recital (206) above, the residual margin was set the Commission decided to base the residual underselling margin at the level of 65,6 %. This margin was set at the level of the highest underselling margin established for a product type sold in representative quantities, on the basis of the data of the cooperating exporting producers.
- (346) The result of these calculations is shown in the table below.

Company	Dumping margin	Underselling margin
Haomei Group	30,4 %	30,5 %
PMI Group	38,2 %	56,4 %
Other co-operators	34,9 %	45,5 %
All other companies	48,0 %	65,6 %

7.2. Examination of the margin adequate to remove the injury to the Union industry

- (347) As explained in the Notice of Initiation, the complainant provided the Commission sufficient evidence that there are raw material distortions in the country concerned regarding the product under investigation. Those distortions appear to result in prices that are lower than those quoted on international markets of the same product. Therefore, in accordance with Article 7(2a) of the basic Regulation, this investigation examined the alleged distortions to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury.
- (348) However, as the margins adequate to remove injury are higher than the dumping margins, the Commission considered that, at this stage, it was not necessary to address this aspect.

7.3. Conclusion

- (349) Following the above assessment the Commission concluded that it is in the Union interest to determine the amount of provisional duties in accordance with Article 7(2) of the basic Regulation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (350) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (351) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Provisional anti-dumping rate
Guangdong Haomei New Materials Co., Ltd.,	30,4 %	30,5 %	30,4 %
Guangdong King Metal Light Alloy Technology Co., Ltd.	30,4 %	30,5 %	30,4 %
Press Metal International Ltd.,	38,2 %	56,4 %	38,2 %
Press Metal International Technology Ltd.	38,2 %	56,4 %	38,2 %
Other co-operators	34,9 %	45,5 %	34,9 %
All other companies	48,0 %	65,6 %	48,0 %

- (352) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (353) 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⁽¹⁰⁰⁾. 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 notice informing about the change of name will be published in the *Official Journal of the European Union*.

⁽¹⁰⁰⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

- (354) To minimise the risks of circumvention due to the high 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'.
- (355) 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.
- (356) 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.
- (357) 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.

9. REGISTRATION

- (358) As mentioned in recital (4), the Commission made imports of aluminium extrusions originating in the People's Republic of China subject to registration. Registration took place with a view to possibly collecting duties retroactively under Article 10(4) of the basic Regulation. Registration was thus on-going during the pre-disclosure phase.
- (359) In view of the findings at provisional stage, the registration of imports should cease.
- (360) No decision on a possible retroactive application of anti-dumping measures has been taken at this stage of the proceeding. Such a decision will be taken at definitive stage.

10. INFORMATION AT PROVISIONAL STAGE

- (361) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (362) Two sampled exporting producers in China and other interested parties including one sampled importer, submitted their comments. The comments did not concern clerical errors of calculations and will be addressed during the definitive stage, if necessary.

11. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of bars, rods, profiles (whether or not hollow), tubes, pipes; unassembled; whether or not prepared for use in structures (e.g. cut-to-length, drilled, bent, chamfered, threaded); made from aluminium, whether or not alloyed, containing not more than 99,3 % of aluminium, excluding:

- (1) products attached (e.g. by welding or fasteners) to form subassemblies;
- (2) welded tubes and pipes;
- (3) products in a packaged kit with the necessary parts to assemble a finished product without further finishing or fabrication of the parts ('finished goods kit');

currently falling under CN codes ex 7604 10 10, ex 7604 10 90, 7604 21 00, 7604 29 10, 7604 29 90, ex 7608 10 00, 7608 20 81, 7608 20 89 and ex 7610 90 90 (TARIC codes 7604 10 10 11, 7604 10 90 11, 7604 10 90 25, 7604 10 90 80, 7608 10 00 11, 7608 10 00 80, 7610 90 90 10) and originating in the People's Republic of China.

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

Company	Provisional anti-dumping duty	TARIC additional code
Guangdong Haomei New Materials Co., Ltd.	30,4 %	C562
Guangdong King Metal Light Alloy Technology Co., Ltd.	30,4 %	C563
Press Metal International Ltd.	38,2 %	C564
Press Metal International Technology Ltd.	38,2 %	C565
Other cooperating companies listed in Annex	34,9 %	
All other companies	48,0 %	C999

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

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

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings shall do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2020/1215 making imports of aluminium extrusions originating in the People's Republic of China subject to registration.

2. Data collected regarding products which were imported into the EU for consumption not more than 90 days prior to the date of the entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 12 October 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Name	TARIC additional code
Foshan Guangcheng Aluminium Co Ltd	C566
Foshan Modern Copper & Aluminum Extrusion Co.,Ltd.	C567
Foshan City Nanhai Yongfeng Aluminium Co., Ltd	C568
Foshan QianYang aluminium Co.,Ltd	C569
Foshan Sanshui Fenglu Aluminium Co., Ltd	C570
Foshan Sanshui Match Hardware Products Co., Ltd.	C571
Fuyao Group: — Fujian Fuyao Automotive Aluminium System Co.,Ltd — Jiangsu Fuyao Automotive Trim System Co., Ltd.	C572
Giant Light Metal Technology Co., Ltd.	C573
Goomax Metal Co., Ltd. Fujian	C574
Guangdong Huachang Aluminium Factory Co Ltd	C575
Guangdong Jiangsheng Aluminium Co., Ltd.	C599
Guangdong Jihua Aluminium Co., Ltd.	C576
Guangdong Nanhai Light Industrial Products Imp. & Exp. Co Ltd	C577
Guangdong Weiye Aluminium Factory Group Co., Ltd.	C578
Guangdong Xingfa Aluminium Co., Ltd	C579
Guangya Aluminium Industries Co., Ltd	C580
HOSHION Group: — Zhongshan Hoshion Smart Home Accessories Co., Ltd. — Cyma Precision Aluminium Co., Ltd. — Guangdong Hoshion Industrial Aluminium Co. Ltd.	C581
Jiangmen Cosco Shipping Aluminium Co., Ltd	C582
Jiangsu Asia-Pacific Light Alloy Technology Co., Ltd	C583

Name	TARIC additional code
Jilin Qixing Aluminium Industries Co., Ltd	C584
JMA Group: — Foshan Jma Aluminium Co., Ltd — Guangdong JMA Aluminium Profile Factory (Group) Co., Ltd.	C585
PanAsia Aluminium (China) Limited	C586
Pingguo Jianfeng Aluminium Co., Ltd.	C587
Qingyuan Time Aluminum Co., Ltd.	C588
Shandong Huajian Aluminium Group Co., Ltd	C589
Shandong Nanshan Aluminium Co., Ltd	C590
Shandong Nollvetec Lightweight Equipment Co.Ltd	C591
Shandong Xinyudong Aluminium Co., Ltd.	C592
Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.	C593
Sihui Shi Guoyao Aluminum Co., Ltd	C594
Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd	C595
Tongcheng Metal Material Co., Ltd	C596
Xinhe Group: — Guangdong Xinhe Aluminum Co., Ltd. — Guangdong Yaoyinshan Aluminium Co., Ltd. — Guangdong Xinhe Aluminium Xinxing Co., Ltd	C597
Yingkou Liaohe Aluminum Products Co., Ltd.	C598