II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2018/1690

of 9 November 2018

imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Articles 15 and 24(1) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 14 October 2017, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of certain new and retreaded tyres of a kind used on buses or lorries and with a load index exceeding 121, originating in the People's Republic of China ('the PRC' or 'the country concerned'). The initiation was based on Article 10 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ('Notice of Initiation') ([2]).

(2) The Commission initiated the investigation following a complaint lodged on 30 August 2017 by the Coalition against unfair tyres imports ('the complainant') on behalf of Union producers representing more than 25 % of the total Union production of certain new and retreaded tyres of a kind used on buses or lorries and with a load index exceeding 121 ('TBR tyres'). The complaint contained evidence of subsidisation and of a resulting injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') ([3]) that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 10 October 2017, but no mutually agreed solution could be reached.

([1]) OJ L 176, 30.6.2016, p. 55.
([2]) OJ C 346, 14.10.2017, p. 9.
([3]) The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.

(4) On 7 May 2018, the Commission imposed a provisional anti-dumping duty on imports of the same product originating in the PRC ([4]) ('the provisional anti-dumping Regulation') in an investigation which had been initiated on 11 August 2017 ([5]) ('the parallel anti-dumping investigation'). On 22 October 2018, the Commission imposed a definitive anti-dumping duty on imports of the same product originating in the PRC ([6]) ('the definitive anti-dumping Regulation') in the parallel anti-dumping investigation. The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the parallel anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the sampled Union producers and the investigation period are the same in both investigations. All the relevant elements pertaining to these aspects have been taken into account also in the present investigation.

1.1.1. *Comments concerning initiation*

(5) The GOC claimed that the investigation should not be initiated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures and of Article 10(2) of the Basic Regulation. According to the GOC, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury.

(6) The Commission rejected that claim. The evidence submitted in the complaint constituted the information reasonably available to the complainant at that stage. It was sufficient to show, at initiation stage, that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence of the existence of injury to the Union industry, which was caused by the subsidised imports.

(7) Contrary to what was claimed by the GOC, the complaint did not only rely on the tyre industry policy in 2010, but also contained (in particular in points 81 to 92), a number of other policy documents, plans and catalogues with references to the tyre industry. Moreover, the Commission (where appropriate) relied on other available sources to confirm the alleged subsidisation. For example, given that the US authorities had recently made public determinations on some of the measures, the Commission also relied on this material already at this stage. Moreover, the Commission found it useful to include a reference to a new industrial promotion plan of the Hebei province of 2016, which it had on file, but was not mentioned in the complaint. This additional evidence, which is available in the non-confidential file of the case as part of the memorandum on sufficiency of evidence, further confirmed and complemented the allegations made in the complaint as regards the existence and nature of the alleged subsidisation. Insofar as the GOC pointed to any deficiencies with respect to the accuracy and adequacy of the complaint, the Commission examined these allegations during the investigation, and found no reason to question the allegations about the existence and extent of subsidisation when initiating the investigation.

(8) Following final disclosure, Hämmerling claimed that the Commission cannot initiate an investigation with a general reference to CN codes *given for information only*. According to Hämmerling, although the CN codes are not binding in their interpretation, such a general reference defining product concerned cannot be accepted, as it impairs the legal certainty of all of the interested parties, concerning whether they will fall within the scope of the investigation and constitutes a direct breach of Article 41 of the Charter of Fundamental Rights of the European Union (hereinafter 'Charter') and the right to good administration. Moreover, such a reference and unclear language referring to '*of a kind used*' convey the message that the scope of the investigation was uncertain and could have been further discretionally extended or narrowed, at the later stage of the investigation, which impairs the right to be heard of interested parties.

([4]) Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China (OJ L 116, 7.5.2018, p. 8).

([5]) Notice of initiation of an anti-dumping proceeding concerning imports of certain new and retreaded tyres of a kind used on buses or lorries and with a load index exceeding 121, originating in the People's Republic of China (OJ C 264, 11.8.2017, p. 14) as amended by Corrigendum to notice of initiation of an anti-dumping proceeding concerning imports of new and retreaded tyres for buses or lorries originating in the People's Republic of China (OJ C 356, 21.10.2017, p. 24).

([6]) Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and repealing Implementing Regulation (EU) 2018/163 (OJ L 263, 22.10.2018, p. 3).

(9) In regard to this claim, the Commission found that the party did not substantiate its theoretical claim how the use of CN codes impair legal certainty. The Commission is not bound by the CN codes but by the product definition as stated in the Notice of Initiation. The party made no claims that the Commission did not respect the product definition as stated in the Notice of Initiation. Therefore this claim was rejected.

1.2. **Registration of imports**

(10) The complainant submitted requests for registration of imports of the product concerned originating in the PRC pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic Regulation on 19 August 2017 and on 5 October 2017 respectively.

(11) On 4 October 2017, the China Rubber Industry Association ('CRIA') and the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') submitted comments on the request for registration. They claimed that the request had failed to satisfy the applicable evidentiary standard as there was no evidence of a history of dumping/subsidy, a substantial rise in imports and that the imports are likely to seriously undermine the remedial effects of the duty. On 19 October 2017, the Commission held a hearing at the request of CRIA during which it reiterated its earlier comments.

(12) On 2 February 2018, the Commission published Implementing Regulation (EU) 2018/163 ('the registration Regulation') ([7]) making imports of the product concerned originating in the PRC subject to registration as of 3 February 2018 onwards. The Commission took into account comments by interested parties when assessing the validity of the request for registration.

(13) After the registration entered into force Hankook Group ([8]) claimed that its rights of defence were violated as no information regarding the Commission's intention to make imports of the product concerned subject to registration had been communicated to it before the entry into force of the registration Regulation. For that reason the Hankook Group claimed that there was a breach of Article 41 of the Charter of Fundamental Rights of the European Union.

(14) The Commission observed that prior disclosure is mandatory under Article 30(2) of the basic Regulation before the imposition of definitive measures. The same does not apply to a registration Regulation under Article 24(5) of the basic Regulation. That Article only provides for the prior information to Member States in due time. Moreover, the right to be heard under Article 41(2)(a) of the Charter of Fundamental Rights of the European Union only applies to individual adverse measures. In this case, the Commission directed the Union customs authorities to register imports. The registration Regulation is not an individual measure affecting the Hankook Group adversely. It was neither addressed to the Hankook Group nor did it produce individual negative effects for that group. In this respect, it should also be recalled that the registration of imports is an appropriate step in order to allow for the subsequent imposition of duties against registered imports and duly informs operators about the potential liability attached to those imports which may be incurred in case of definitive measures. Therefore, neither the rights of defence of the Hankook Group nor Article 41 of the Charter of Fundamental Rights of the European Union were violated by failing to inform the Hankook Group in advance of the registration decision.

1.3. **Investigation period and period considered**

(15) The investigation of subsidisation and injury covered the period from 1 July 2016 to 30 June 2017 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to end of June 2017 ('the period considered').

1.4. **Interested parties**

(16) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

(17) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

([7]) Commission Implementing Regulation (EU) 2018/163 of 1 February 2018 making imports of new and retreaded tyres for buses or lorries originating in the People's Republic of China subject to registration (OJ L 30, 2.2.2018, p. 12).

([8]) See recital 50 for the detailed composition of the Group.

(18) Two Union producers, represented by the complainant, took this opportunity to request the Commission to keep their names confidential for fear that they could face retaliation by customers or competitors concerned by this investigation, in accordance with Article 29(1) of the basic Regulation. Moreover, two other cooperating Union producers requested the same status subsequently.

(19) The Commission individually examined the merits of each confidentiality request. It established that there was indeed evidence of a significant possibility of retaliation in each case and accepted that the names of those companies should not be disclosed.

(20) Two exporting producers, the Giti Group ([9]) and the China National Tire Group ([10]), claimed that the anonymity of two Union producers represented by the complainant could seriously affect the parties' right of defence as it is not possible to verify that the complainant effectively represents more than 25 % of total Union production. In addition, the anonymity does not allow interested parties to know in which tier ([11]) the complainant is active and thus, to meaningfully comment on the material injury that it could suffer due to Chinese exports of the product concerned to the Union. Moreover, the Giti Group claimed that, according to the complainant, tier 3 Union production represented only 16 % of total Union production. Finally, the Giti Group and the China National Tire Group argued that confidentiality hinders interested parties from knowing whether sampled Union producers are related to Chinese exporting producers.

(21) In light of these comments, the Commission re-assessed the non-confidential version of the complaint but came to the conclusion that the version available for inspection by interested parties sufficiently permitted interested parties to assess the standing requirements underlying this investigation. In any case, the Commission noted that whether a complainant belongs to a particular market tier is not determinative of the finding of standing since standing is assessed on the basis of the total production (regardless of any tier segmentation) of the product concerned. Finally, the Commission observed that there was insufficient evidence or explanation provided how the alleged lack of knowledge of potential links between anonymous complainants and Chinese exporting producers would impede the rights of defence of interested parties. The Commission invited interested parties to provide such evidence or explanations, but no further evidence was provided. The claims levied against granting of confidentiality were therefore rejected.

(22) Article 29 of the basic Regulation stipulates that the Commission must not reveal any information which is deemed confidential upon good cause being shown without specific permission from the supplier of such information. The Commission considered that the open version of the complaint permitted interested parties to assess the standing requirements. Moreover, whether the complainant belongs to a particular market tier is irrelevant since standing is assessed on the basis of the total production (regardless of any tier segmentation). Finally, the Commission was not convinced by the argument that the lack of knowledge of potential links between anonymous complainants and Chinese exporting producers should impede the rights of defence of interested parties. The claims levied against granting of confidentiality were therefore rejected.

1.5. **Sampling**

(23) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.5.1. *Union producers*

(24) In the Notice of Initiation, the Commission stated that it had preliminarily selected a sample of Union producers on the basis of the highest representative production and sales volumes whilst ensuring a geographical spread. It invited interested parties to comment on the provisional sample.

(25) Four interested parties submitted comments on the provisional sample (the China National Tire Group; the Giti Group; the CRIA and the CCCMC). In particular, they considered that the market segmentation into three tiers was not duly reflected in the provisional sample and that the sample should mirror as close as possible the percentage of tier 1, tier 2 and tier 3 production and sales out of the total Union production and sales.

([9]) See recital 50 for the detailed composition of the Group.
([10]) See recital 50 for the detailed composition of the Group.
([11]) Information collected and received by the Commission indicates that the Union market for bus and lorry tyres is segmented in three tiers. Tier 1 tyres cover premium new tyres with the flagship brand of main manufacturers. Tier 2 tyres cover most non-premium tyres, both new and retreaded tyres, with prices and mileage performances ranging between approximately 65 % and 80 % of the price of tier 1 tyres. Tier 3 tyres cover both new and retreaded tyres with lower mileage performances and very limited retreadability.

(26) Further to that comment, on 25 September 2017, the Commission requested Union producers to provide additional information on the tiers with a view to establishing a revised sample of Union producers.

(27) Cooperating Union producers that responded to the sample questionnaire include large and Small and Medium Size Enterprises ('SMEs') ([12]) and represent more than 50 % of the total estimated Union production and sales.

(28) In order to establish the definitive sample, the Commission took into consideration the fragmentation of the tyres sector among different tiers, ensuring that all three tiers were covered by the sampled companies. In addition, to ensure that the situation of the SMEs was properly reflected in the injury analysis given that they represent around 15 % of the total Union sales volumes of Union producers, the Commission considered that SMEs should also be represented in the sample.

(29) Eleven Union producers were sampled on the basis of:

— the overall representativity in terms of size of the production and sales volume of the product concerned in the year 2016;

— the representativity of tiers in terms of size of the production volume of the product concerned in the year 2016;

— the geographical spread; and

— the representativity of the Union producers in terms of size, namely between SMEs and larger companies.

(30) The sampled Union producers comprise both large companies and SMEs. The selected Union producers were based in six Member States which together accounted for more than 36 % of Union production and sales reported by the cooperating Union producers.

(31) On 22 December 2017, one of the sampled Union producers, the Polish producer, Geyer & Hosaja, informed the Commission that it had decided to stop cooperating with the investigation. The percentages mentioned in recital (30) above are not impacted by the withdrawal of this producer as its production represents less than 0,1 % of the total Union production. The Commission therefore concluded that the final sample remains representative of the Union industry.

(32) Finally, the Giti Group submitted that the Commission should have terminated this investigation immediately because of the procedurally erroneous pre-selection of the sample of Union producers. The Commission recalled that the provisional selection of a sample of Union producers is legally possible and conducive to an effective investigation within tight deadlines. As demonstrated in recitals (26) to (30), the provisional sample was changed further to comments from interested parties. Consequently, the claim was rejected.

1.5.2. *Importers*

(33) In order 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. Five importers came forward importing around 430 000 units of imports from the PRC. Two companies were sampled accounting for [70 % - 90 %] of the importers that submitted a sampling form.

1.5.3. *Exporting producers*

(34) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it requested the authorities of the PRC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(35) 44 exporting producers/group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 27(1)(b) of the basic Regulation, the Commission selected the following sample of four 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:

— China National Tire Group, China;

— Giti Group, China;

([12]) See Commission Recommendation of 6 May 2003 concerning the definition of Micro, Small and Medium Sized Enterprises (2003/361/EC).

— Hankook Group, China;

— Xingyuan Group, China.

(36) The sampled groups of exporting producers represented more than 50 % of the total imports of the product concerned to the Union.

(37) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the GOC, were consulted on the selection of the sample.

(38) Comments on the proposed sample were received from the European Retreading Association ('BIPAVER'), which claimed that the finally selected sample could lead to a strong imbalance in the product mix between tier 2 and tier 3 tyres. In their view, the average import prices might not accurately reflect the part of import volumes that are most harmful to the Union industry. Therefore, they urged the Commission to reassess and amend the sample.

(39) The Commission assessed whether it would be practically feasible to further enlarge the sample. It pointed out that the groups of exporting producers selected in the sample consisted of: (1) 13 legal entities that were involved in the production and domestic sales of the product concerned; (2) two related exporters located outside of the Union; and (3) more than ten related importers located in the Union. The data provided by each of these entities needed to be processed and verified. Therefore, the Commission considered that more exporting producers could not be reasonably investigated within the time available.

(40) BIPAVER also considered that two of the sampled companies were not representative recipients of countervailable subsidies because they have their headquarters and some production facilities outside of the PRC.

(41) The Commission noted that the fact that an individual company might not have received directly a specific type of alleged subsidy did not render the sample non-representative, as the purpose of the sample was to represent the overall tyres industry in the PRC with regard to eligibility for all types of alleged subsidies. The four sampled groups of exporting producers were representative in terms of eligibility for the subsidies alleged in the complaint. Hence, the Commission considered that the selected sample represents a proper basis to examine the existence and the extent of the alleged subsidisation.

(42) The proposed sample hence complies with Article 27(1)(b) of the basic Regulation. The Commission therefore decided to retain the proposed sample as the final sample.

(43) In addition to the four sampled exporting producers, six exporting producers declared that, in the event that they are not selected to be in the sample, they would like to receive a questionnaire and other claim forms in order to claim an individual examination under Article 27(3) of the basic Regulation. As requested, the Commission sent questionnaires to these six exporting producers. However, none of them replied to the questionnaire.

1.6. **Questionnaire replies and verification visits**

(44) The Commission sent questionnaires to the four sampled Chinese exporting producers; the non-sampled exporting producers as well as the sampled Union producers.

(45) Questionnaire replies were received from the four sampled Chinese exporting producers and from ten sampled Union producers. None of the non-sampled exporting producers sent a reply to the questionnaires.

(46) A questionnaire was also sent to the GOC. It included specific questionnaires for the China Development Bank ('CDB'), Export Import Bank of China ('EXIM'), Agricultural Bank of China ('ABC'), Bank of China ('BOC'), and the Chinese Export & Credit Insurance Corporation ('Sinosure'). Those financial institutions had been specifically referred to in the complaint as public bodies or bodies directed and entrusted granting subsidies. In addition, the GOC was asked to forward the specific questionnaire for financial institutions to any other financial institution that provided loans or export credits to the sampled companies, or to the buyers of the sampled companies. The GOC was also asked to gather any responses provided by these financial institutions and to send them directly to the Commission.

(47) Furthermore, the questionnaire for the GOC included specific questionnaires for those producers of natural rubber, synthetic rubber, carbon black and nylon cord which, according to the complaint, provided inputs at less than adequate remuneration to the sampled companies, i.e. Sinopec, Sinopec Baling Co., Chemchina, Shandong Haohua, Jiangxi Blackcat Carbon Black Co., Ltd, Hangzhou Zhongce Qingquan Industrial Co., Ltd and Suqian Junma Tyre Cord Company Limited. In addition, the GOC was asked to forward that specific questionnaire to all other producers and distributors of the raw materials in question which had provided inputs to the sampled companies. The GOC was also asked to gather any responses provided by these producers and to send them directly to the Commission.

(48) The Commission received questionnaire replies from the GOC, which included replies to the specific questionnaire from EXIM, BOC, ABC and Sinosure.

(49) The Commission sought and verified all information deemed necessary for the determination of subsidy, injury and Union interest. A verification visit took place at the premises of the Chinese Ministry of Commerce, during which officials from other relevant ministries also participated. Moreover, representatives from the following financial institutions were present during this verification visit;

— Export Import Bank of China, Beijing, China;

— Agricultural Bank of China, Beijing, China;

— Bank of China, Beijing, China;

— Sinosure, Beijing, China.

(50) Moreover, verification visits pursuant to Article 26 of the basic Regulation were carried out at the premises of the following companies:

Sampled Union producers

— Good Year Firma Oponiarska, Poland;

— Wetest, Czech Republic;

— B.R.P. Pneumatici, Italy;

— Banden plant, the Netherlands;

— Marangoni SpA Ltd Italy;

— Roline N.V., the Netherlands;

— four Union producers which requested confidentiality.

Sampled unrelated importers in the Union

— Heuver Bandengroothandel B.V, the Netherlands;

— Hämmerling The Tyre Company GmbH, Germany.

Sampled producers in the PRC

China National Tire Group:

— Aeolus Tyre Co. Ltd, Jiaozuo, PRC;

— Beijing Rubber Research and Design Institute, Beijing, PRC;

— Chemchina Corporation, Beijing, PRC;

— Chemchina Finance, Beijing, PRC;

— China National Tire & Rubber Co. Ltd, Beijing, PRC;

— Aeolus Tyre (Taiyuan) Co. Ltd ([13]), Taiyuan, PRC;

— Chonche Auto Repair Group Co. Ltd, Beijing, PRC;

— Henan Tyre Group Co. Ltd, Jiaozuo, PRC;

— Yanzhou Ruiyuan Rubber Plastic Co. Ltd:, Jining, PRC;

— Yinhe Power Plant Co. Ltd, Jining, PRC;

— QingdaoYellow Sea (Rubber) Group Co. Ltd, Qingdao, PRC;

([13]) During the investigation period, this company was known under the name 'Chonche Auto Double Happiness Tyre Corp'. The company changed its name to Aeolus Tyre (Taiyuan) Co., Ltd as of 13 August 2018.

— Qingdao Yellow Sea Rubber Co. Ltd, Qingdao, PRC;

— Pirelli Tyre Co. Ltd, Jining, PRC ([14]).

Giti Group:

— Giti Tire (China) Investment Co., Shanghai, PRC;

— Giti Tire (Anhui) Co. Ltd, Hefei, PRC;

— GITI Radial Tire (Anhui) Ltd, Hefei, PRC;

— Anhui Prime Cord Fabrics Company Ltd, Hefei, PRC;

— Giti Tire (Hualin) Co. Ltd, Hualin, PRC;

— Giti Tire (Fujian) Co. Ltd, Fujian, PRC;

— GITI Tire (Yinchuan) Co. Ltd, Yinchuan, PRC;

— GITI Greatwall Tire (Yinchuan) Co. Ltd, Yinchuan, PRC;

— GITI Tyre (Chongqing) Company Ltd, Chongqing, PRC;

— GITI Steel Cord (Hubei) Company Ltd, Hubei, PRC;

— 3S Engineering Shanghai Company Ltd, Shanghai, PRC;

— Seyen Machinery (Shanghai) Company Ltd, Shanghai, PRC.

Hankook Group:

— Shanghai Hankook Tire Sales Co. Ltd, Shanghai, PRC;

— Chongqing Hankook Tire Co. Ltd, Chongqing, PRC;

— Jiangsu Hankook Tire Co. Ltd, Jiangsu, PRC;

Xingyuan Group:

— Xingyuan Tyre Co. Ltd, Dongying, PRC;

— Guangrao Xinhongyuan Tyre Co. Ltd, Dongying, PRC;

— Xingyuan International Tyre Co. Ltd, Dongying, PRC;

— Guangda Tyre Co Ltd, Dongying, PRC.

1.7. **Non-imposition of provisional measures and subsequent procedure**

(51) Given that it had imposed provisional measures in the parallel anti-dumping case in May 2018, the Commission decided not to impose provisional measures in the present case. On 13 July 2018, all interested parties received an Information Document describing the Commission's preliminary findings on the alleged subsidy schemes and the Commission's preliminary conclusions as far as injury, causation and Union interest were concerned, as set out in the provisional anti-dumping Regulation.

(52) Several interested parties made written submissions on the information document. The parties who so requested were granted an opportunity to be heard.

(53) Following the disclosure of the Information Document, Pirelli Tyre Co. Ltd claimed that it should not be considered as a related company of China National Tire & Rubber Co. Ltd ('CNRC'). In this sense, Pirelli Tyre Co. Ltd disagreed with the application of Article 127 of the Union Customs Code Implementing Act (EU) 2015/2447 (the 'Union Customs Code') for the purpose of calculating a weighted average amount of subsidisation for related companies. Instead, Pirelli Tyre Co. Ltd referred to the definition of Article 16 of the ASCM Agreement, which requires control of one company over another, in order to establish the relation between companies. Pirelli Tyre Co. Ltd then argued that Pirelli Tyre Co. Ltd would not qualify as a related company under this standard, as it was allegedly not controlled by CNRC. In addition, Pirelli Tyre Co. Ltd noted that the basic Regulation did not make any reference to the Union Customs Code.

([14]) Related to China National Tire & Rubber Co. Ltd through a shareholding of more than 5 % during the investigation period, in accordance with Article 127(d) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

(54) The Commission recalled that Article 16 of the ASCM Agreement is mirrored in Article 9(2) of the basic Regulation. However, both articles refer only to the definition of the Union industry and the relationship of Union producers to exporting producers. In that context, a Union producer may be taken from the definition of the Union industry if it is controlled by an exporting producer. In contrast, both the ASCM Agreement and the basic Regulation are silent about the method how to assess the relationship between exporting producers for the purpose of establishing the amount of subsidisation. In order to ensure that measures can be enforced effectively, particularly to avoid channelling exports through a related company with the lowest duty, it is the Commission's practice to establish the relationship between exporting producers through the criteria laid down in Article 127 of the Union Customs Code Implementing Act (EU) 2015/2447 of 24 November 2015. This was clearly communicated to all parties in the Notice of initiation at the start of the proceeding. In addition, reference to Article 127 of the Union Customs Code Implementation Act is explicitly contained in Article 2(1) of the basic Anti-dumping Regulation ([15]) and the Commission should have the same treatment of parties in both anti-dumping and anti-subsidy cases ([16]).

(55) Article 127 (d) of the Customs Code establishes that two persons shall be deemed to be related if: a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them. CNRC is the largest shareholder of Pirelli Tyre Co. Ltd During the investigation period, it owned 65 % of the shares. As of today, it still holds 46 % of the shares. Therefore, in the context of this investigation, Pirelli Tyre Co. Ltd and CNRC are considered to be related. The claim was thus rejected.

(56) Pirelli Tyre Co. Ltd also commented that it should be considered only as a cooperating party, and not as an exporting producer, since the company stopped the production of the product concerned in November 2017.

(57) The Commission established that Pirelli Tyre Co. Ltd was an exporting producer during the entire investigation period. The fact that subsequently the company ceased the production does not alter the result of the investigation. The claim was therefore rejected.

(58) Following final disclosure Pirelli reiterated its claim that it functions independently from the China National Tire Group. However, none of the claims was substantiated with additional evidence. In particular, Pirelli did not contest the ownership structure described by the Commission in annex 2 of its final disclosure. Therefore the Commission rejected this claim.

(59) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings.

(60) Given that the injury period and the investigation period are the same as in the parallel anti-dumping investigation, the Commission informed, on 1 June 2018, interested parties that the information and comments submitted concerning injury in the framework of the anti-dumping investigation were also going to be taken into account for this investigation. None of the parties opposed to this approach.

(61) In the parallel anti-dumping investigation parties received, on 24 July 2018, final disclosure of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of the product concerned into the Union. Furthermore interested parties received an additional disclosure on 10 September 2018. As described in recital (60) above the comments submitted in the framework of those disclosures were in so far they concerned injury, causation and Union interest fully considered in this investigation and, where appropriate, taken into account and reflected in the findings of this investigation.

1.8. **Final disclosure**

(62) On 28 September 2018, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of the product concerned into the Union.

([15]) 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 (OJ L 176, 30.6.2016, p. 21).

([16]) Pursuant to Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on SCM. See also DS 427 WT/DS427/RW China anti-dumping CVD measure on broilers — paragraph 7.1 cites that declaration. The Commission considers that it should ensure consistent results in parallel anti-dumping and anti-subsidy investigations to the extent possible.

(63) All parties were granted a period within which they could make comments on the final disclosure (i.e. 8 October 2018). Several interested parties requested an extension of the deadline. The Commission granted until 10 October 2018 10AM for submitting comments to those parties.

(64) The CCCMC, the CRIA, three out of the four sampled Chinese exporting producers, two unrelated importers made written submissions commenting on the final disclosure.

(65) Following final disclosure, the China National Tire Group claimed its rights of defence have been breached by the Commission when it rejected its request for further extension of the deadline provided for submission of comments on the final disclosure. According to it, the Commission should not view the ten-day period as a fixed time limit. Furthermore, when setting out the deadline, the Commission should consider the peculiarities of the case at hand and allow sufficient time for both written and oral submissions. In respect of these claims, the Commission noted that it had fully complied with the minimum deadline of 10 days set in Article 30(5) of the basic Regulation for comments on final disclosure. Furthermore, it also granted an extension to all interested parties in the proceeding who requested so taking into account the urgency of the matter in accordance with the same Article.

(66) Hämmerling requested a hearing with the Hearing Officer to raise legal concerns related to the current investigation and certain horizontal issues concerning data protection of confidential and non-confidential information as included in the TRON TDI database and the current practice of granting access to the non-confidential files to interested parties outside the territory of the Union through that database.

(67) The Commission observed that the EU institutions are not legally bound by the General Data Protection Regulation ([17]) but by Regulation (EC) No 45/2001 ([18]). Moreover, Hämmerling confirmed that the personal data protection issue was not directly linked to a possible specific hampering of its rights of defence under trade defence law. The Commission therefore concluded that Hämmerling's status as interested party in the proceeding and its rights of defence were not directly affected.

(68) After final disclosure, Hämmerling reiterated its claim that 'the right to personal data protection is an independent right, where threshold for its violation does not require an actual example, but the mere possibility of being misused in inappropriate manner, such as making it available to unverified users of database in third-countries with no adequate assessment of their observance of data protection law'.

(69) In relation to this claim, the Commission referred to Article 9(6) of Regulation (EC) No 45/2001 that allows the Commission to transfer personal data if the transfer is necessary or legally required for the defence of legal claims, and the fact that all data subjects have to sign the TRON terms of use (that stipulates amongst other that there can be no unauthorized release of any information from TRON) when entering into TRON for the first time when they were granted interested party access to a case. It considered therefore that the use of TRON is compliant with the applicable data protection rules.

(70) Following final disclosure the Giti Group requested a hearing with Hearing Officer claiming that its rights of defence have been breached by the Commission as it included the duty drawback scheme very late in the proceeding and it arrived to wrong conclusions. The Hearing Officer took the view that the Notice of Initiation allowed for covering the scheme under discussion. Furthermore, the Giti Group should have been aware that this scheme is covered by the proceeding and had sufficient time to present all their comments to the Commission. The Hearing Officer concluded that the rights of defence of the Giti Group were respected.

(71) Several other interested parties reiterated the same concerns as expressed after the information document and asked the Commission to make further clarifications.

(72) The Commission considered that the open file, the Information Document and the Final Disclosure contained sufficient information allowing all interested parties to fully exercise their rights of defence. Moreover, a note for the file ([19]) providing clarifications on the Information Document was included in the open file before final disclosure. It therefore rejected the request to provide further clarifications.

([17]) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1.

([18]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ L 8, 12.1.2001, p. 1.

([19]) Note for the File (Filing system number t18.007994).

(73) Finally, the parties claimed that their rights of defence were seriously affected as the period for commenting on the final disclosure was too short even with the extension and did not take into consideration the peculiarities of this investigation.

(74) Regarding the set deadline the Commission reiterated that it had complied with the legal deadline under Article 30(5) of the basic Regulation, as further explained in recital (65) above. It added that the parties had received an extensive disclosure by means of the Information Document in July 2018 which already set out the main considerations and conclusions for all subsidies with the exception of excess remission of natural rubber and electricity provided for less than adequate remuneration. At that stage parties were granted a deadline of 25 days to submit comments. As most of the issues were therefore known to all parties, the comments received upon final disclosure were also substantial, ranging from 8 to 63 pages.

(75) With respect to the injury aspect of this investigation, the Commission noted that parties received a final disclosure and an additional final disclosure document also in the context of the parallel anti-dumping investigation. The present investigation addressed the comments received following the two disclosures. Therefore, the Commission considered that the open file and the disclosures already contained sufficient information allowing all interested parties to fully exercise their rights of defence within the deadline as set out in the definitive disclosure document. For these reasons, the Commission took the view that the rights of defence of all interested parties were fully observed during this proceeding.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(76) The product concerned is certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the PRC, currently falling within CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10). These CN and TARIC codes are given for information only.

(77) The product concerned covers both new and retreaded pneumatic tyres for buses or lorries which share the same essential physical, chemical and technical characteristics.

(78) Both types of the product concerned are made of the same input (even if the technology involved may differ) and have a similar structure. The variance in raw materials and structure impart different performance characteristics.

2.1.1. *Manufacturing process*

2.1.1.1. New tyres

(79) The manufacturing process of the new lorry and bus tyres involves: (1) compounding and mixing rubber; (2) tyre components preparation; (3) (green) tyre building; (4) curing (vulcanisation); and (5) final inspection. All lorry and bus tyres are made from the same basic raw materials, namely natural rubber, synthetic rubber, steel, carbon black, other chemicals and oils as well as fabric and have the same components, namely tread belt, sidewall, inner casing, bead wires, steel belts, casing cords, even if a certain variance is found between the various producers of this product.

(80) The manufacturing process of the new lorry and bus tyres was also found to involve varying technologies, which, however, did not impact on the overall findings of interchangeability.

2.1.1.2. Retreaded tyres

(81) Retreading is essentially a recycling process whereby worn tyres are refurbished through a replacement of the tread on an old casing. Casings are main elements of the retreading process, and, as such a substantial part of the retreader activity is the selection and acquisition of casings suitable for retreading. Casings are thereby the main input of the production process and constitute — depending of their quality — either a real 'semi-finished' product or a waste.

(82) Again, this process can involve varying technologies without impact on the Commission's interchangeability findings.

2.1.2. *Uses and types of tyres*

(83) Lorry and bus tyres are produced in a large variety of types and sizes found on a wide range of commercial vehicles, from local delivery lorries and buses in urban or regional settings to the long haul lorries and buses according to their size and load index specifications. They are neither suitable for use on passenger vehicles or on other light commercial vehicles nor for fully off-the-road vehicles such as agricultural tractors.

(84) Tyres for lorries or buses are sold in two types and four categories. Tube type tyre is a more traditional option; it has an inner tube, which has its own valve, placed inside the tyre. In a tubeless tire, the tire and the rim of the wheel form an airtight seal, with the valve being directly mounted on the rim. An overwhelming majority of tyres for lorries or buses sold in the Union are tubeless tyres. The four categories of tyres for lorries or buses are: steer, drive, trailer and multi-position. Steer tyres are designed to be used on the front axle to aid with steering, but can be used in all positions on the lorries or bus depending on the vehicle's use. Drive tyres are designed for the drive train and provide better traction. Trailer tyres are designed to be mounted on trailers, while multi-position tyres are designed to be used in all in all positions on a vehicle depending on its use.

(85) Tyres, new or retreaded, are subject to the same safety requirements in the Union market as set out in Directive 2007/46/EC of the European Parliament and of the Council ([20]).

2.2. **Segmentation into three tiers of the Union market for tyres**

(86) Information collected and received by the Commission indicates that the Union market for bus and lorry tyres is segmented in three tiers or segments. While there are no clear dividing lines among tiers, there is a general agreement among interested parties and the findings of the Commission on the following categorisation.

(87) Tier 1 tyres cover premium new tyres with the flagship brand of main manufacturers. Brand recognition is a key factor for tyres in this tier and justifies significantly higher prices for expected high performances as well particularly strong marketing investments. Original equipment for lorries or buses manufacturers ('OE1') tyres are primarily included in that tier. The quality of tier 1 tyres ensures a high level of retreadability of the tyres which are designed to be 'multi-life' tyres further increasing the significantly higher mileage of the original product (up to three retreading for a normal use). Tier 1 tyres are also associated with a higher level of safety and are often accompanied with a good level of after-sale services.

(88) Tier 2 tyres cover most non-premium tyres, both new and retreaded tyres, with prices ranging between approximately 65 % and 80 % of the price of tier 1 tyres. Original equipment for trailers manufacturers ('OE2') tyres may be included in that tier. Brand recognition remains important in this tier and brands are usually well-known from purchasers which are also able to identify the tyre manufacturers. They are generally retreadable at least once and, although more limited than tier 1 tyres, deliver good performances in terms of mileage.

(89) Tier 3 tyres cover both new and retreaded tyres with lower mileage performances and very limited retreadability, if any. They are typically priced at less than 65 % of the price and mileage performance of tier 1 tyres. In that tier, brand recognition is almost non-existent and price becomes the determining factor in the customer's decision to purchase. They are usually not provided with after-sale services.

(90) Retreaded tyres can be classified under tier 2 or tier 3. While some Chinese tyres are retreadable, there is very little retreading performed in China. Retreading is, however, quite widespread in the Union and in other markets, for example in Brazil. The retreading activity in the Union consists of:

— integrated retreaders acting under the name, brand or mandate of a producer of new tyres. They are seen as the continuation of the brands selling the new tyres. This corresponds to tier 2 tyres,

— independent retreaders which usually cover much smaller geographical markets and volumes. They sell tyres under their own name or brand and rely on their own expertise. Most of them are SMEs (at least 380 companies in the Union). This corresponds to tier 3 tyres.

([20]) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 263, 9.10.2007, p. 1).

(91) The Commission issued the mapping of new and retreaded tyres by brand on the basis of information provided by the complainant, which was made available to all the interested parties on 27 October 2017.

2.3. **Claims regarding the segmentation of the Union market for tyres**

(92) As noted in recital (86), interested parties generally accepted the principle of the market segmentation into three tiers.

(93) The market mapping of tyre brands as laid down in the note to the file of 27 October 2017 by tiers was generally endorsed by the interested parties, except for the following claims from interested parties to reclassify certain brands into different tiers. More specifically, China National Tire Group considered its Aeolus brand as tier 3 (instead of tier 2); two importers importing the brand Double Coin claimed it should be classified into tier 2 (instead of tier 3); the Hankook Group considered that its brand Aurora belonged to tier 2 (instead of tier 3); the Giti Group considered in its questionnaire reply that its brand Primewell and GT Radial belonged to tier 2 (instead of tier 3) and an independent importer claimed that the brand Sailun should be classified into tier 2 (instead of tier 3).

(94) The Commission reviewed the claims on the basis of evidence submitted by the interested parties and information collected *ex officio* during the investigation. In line with the characteristics identified in recital (81), it analysed in how far the tyres from the specific brands are (1) retreadable; (2) used for original equipment for buses and lorries; and (3) marketed in a certain tier according to each company's own assessment.

(95) With respect to the Hankook Group, the Commission accepted to classify the brand Aurora into tier 2 as requested. However, it also found that Hankook brand should be classified into tier 1. For its Hankook brand, there is a legal guarantee that its tyres can be retreaded at least once. Moreover, it acts as an OE1 supplier for European companies such as Scania, MAN and Mercedes-Benz. The website of the Hankook group markets its Hankook brand as 'premium', and an internal document from a related importer handed over during verification indicated that the brand has moved into tier 1.

(96) With respect to the Giti Group, the Commission accepted to classify the brands Primewell and GT Radial into tier 2 as requested. The Commission also found that Giti tyres are retreadable. However, the original equipment activities of the Giti Group do not extend to lorries and buses, but relate to passenger car tyres. In addition, the Giti Group considers its brands as tier 2. Therefore, the brands of the group were classified into tier 2.

(97) For the China National Tire Group, the Commission preliminarily accepted to classify its Aeolus brand into tier 3 as requested by the company, based on the claims that its tyres are generally not retreadable and they are not sold in the OE market.

(98) The importers making the claims on the brands Double Coin and Sailun were not sampled companies, so the Commission could not verify their claims at this stage. As they were not sampled, their classification into tier 2 or 3 does not affect the outcome of the investigation. Therefore, while not calling into question the evidence submitted by the importers on their experience of their customers with the tyres from such brands, the Commission did not take any position on their claims at this stage.

(99) Several interested parties submitted that the tier mapping by brand is applicable only to the Union and in other markets the tier mapping may be very different. In particular the Union tier mapping cannot be transposed to the Chinese market. The Commission underlined that the mapping by brand was used in this investigation for the purpose of analysing the situation in the Union market and had no legal significance for other markets.

2.3.1. *Product exclusion requests*

(100) CRIA and CCCMC as well as China National Tire Group claimed that either new tyres or retreaded tyres should be excluded from the definition of the product concerned, because:

— new tyres and retreaded tyres have different essential physical, technical and chemical characteristics,

— retreaded tyres have a shorter lifespan than new tyres,

— new tyres and retreaded tyres have different uses, sales channels, applications and consumer perception. In particular, retreaded tyres are not used in the original equipment market, and they are not generally fitted on the steering axle and onto lorries carrying dangerous goods,

— new and retreaded tyres have different CN codes.

(101) After the final disclosure, Pirelli reiterated a similar claim.

(102) Those parties also observed that the Commission and the European Court of Justice ('ECJ') in several competition cases concluded that new tyres and retreaded ones constitute two different relevant markets in terms of price, structure of supply, structure of demand, supply channels and substitutability ([21]). The CRIA and the CCCMC also pointed out that other anti-dumping investigating authorities treated new and retreaded tyres separately ([22]). After the final disclosure, Hämmerling reiterated a similar claim.

(103) The CRIA and the CCCMC submitted that the Commission erred in its assessment with regard to the factors of relevance, by not treating new and retreaded tyres separately.

(104) The Giti Group claimed that retreadable or multi-life tyres should be excluded from the definition of the product concerned as retreadable tyres are more sophisticated than non-retreadable tyres with distinctive technical features.

(105) The Commission found that the retreading process preserves the main characteristics, the components, and the structure of the tyre resulting from the initial manufacturing process. In particular, the key technical specifications of the tyre, namely size, load index and speed rating of the tyre are not modified at the retreading stage. New tyres (retreadable or non-retreadable) and retreaded tyres are made of the same raw materials, of the same components, and have a similar structure.

(106) The main difference in technical characteristics between a newly produced tyre and a retreaded tyre built on its casing is that a retreaded tyre may indeed have a shorter lifespan and the retreaded tyre may be perceived as a less safe option. However, exactly the same technical, quality and safety perception differences arise between two new tyres from different tiers. In particular, lower tier tyres have also lower mileage and they will not be a preferred option for vehicles that need to comply to very high safety standards namely the ones carrying dangerous goods.

(107) Therefore, the Commission rejected the claim that new (retreadable or non-retreadable) and retreaded tyres have different basic physical, chemical and technical characteristics.

(108) The Commission further found that both new and retreaded tyres are used by owners of lorries or buses, mainly active in the sector of short to long haul transportation of persons or goods. Therefore, the essential end use of new and retreaded tyres is the same. The Commission also found that new and retreaded tyres have the same four main types of application namely steer, drive, trailer and all-position and are subject to the same safety requirements on the Union market as set in the relevant legislation.

(109) Therefore the claim that new and retreaded tyres have different applications was rejected.

(110) The Commission agreed that retreaded tyres differ from tier 1 new tyres to the extent that they are not sold on the original equipment market. The Commission also found that exactly the same is true for tier 3 tyres and to a large extent to tier 2 brands which are not sold on the original equipment market either.

(111) Therefore, the Commission rejected the claim that new and retreaded tyres have different sales channels.

([21]) European Commission, Case COMP/M.4564 — Bridgestone/Bandag; Case COMP/E-2/36.041/PO. European Court of Justice, Judgement of 9 November 1983, Case C-322/81 *Michelin* v *Commission* ECLI: EU:C:1983:313.

([22]) The investigations cited concerned the US, India, Egypt and the Eurasian Commission.

(112) Regarding the Commission's competition decisions and the ECJ judgment ([23]) in which retreaded tyres were found to be a separate product market, this is in fact irrelevant for the product definition in trade defence investigations. The market definition in a merger case focuses on demand-side and supply-side substitution ([24]). In an anti-dumping investigation, the market is defined by the physical, technical and chemical characteristics of the product concerned. Therefore, the Commission rejected this claim.

(113) Regarding the claim concerning the product definition in anti-dumping cases in third countries, the Commission pointed out that the product definition falls within the wide margin of discretion of the investigating authority in trade defence matters ([25]). Therefore, the way that investigating authorities in third countries used their discretion in this respect cannot limit the margin of discretion of the Commission for the purposes of this investigation.

(114) It was also submitted that the product concerned should not be covered by several CN codes. In this regard, the Commission recalled, first, that it is very common that a single product concerned is covered by several CN codes. This arises naturally from the design of the Combined Nomenclature. Furthermore, the Notice of Initiation clearly stated that the CN codes were given for information only. Second, no factual evidence was provided, nor did the Commission find information that the product concerned was defined in such a way that imported retreated and new tyres could not be found to constitute alternatives to, and compete directly with, retreaded and new tyres produced in the Union. The same applies to producer and consumer perceptions, channels of distribution, or other factors as to the existence of a single or multiple product categories as opposed to the differentiation between new and retreaded tyres for the purposes of this investigation.

(115) Lastly, interested parties submitted that, arising from the market segmentation in the Union, retreaded tyres are perceived to be of lower quality than tier 1 new tyres, even if they are made on a tier 1 tyre-casing.

(116) The Commission accepted this claim which is in line with the tier mapping established for this investigation, and only considered retreaded tyres in tiers 2 and 3.

2.4. **Like product**

(117) The investigation showed that the following products have the same basic physical characteristics as well as the same basic uses:

— the product concerned,

— the product produced and sold in the Union by the Union industry.

(118) The Commission decided at this stage that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

3. **SUBSIDISATION**

3.1. **Introduction: Presentation of Government plans, projects and other documents**

(119) Before analysing the alleged subsidisation in the form of subsidies or subsidy programmes, the Commission assessed government plans, projects and other documents, which were relevant for more than one of the subsidies or subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning to encourage the tyres industry for the following reasons.

(120) The 13th Five Year Plan for National Economic and Social Development of the PRC ('the 13th Five Year Plan'), which covers the period 2016-2020, highlights the strategic vision of the GOC for improvement and promotion of key industries. It emphasizes the role of technological innovation in the economic development of the PRC, as well as the continued importance of '*green*' development principles. According to its chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five Year Plan. This idea is further elaborated in chapter 22, which explains the strategy to modernize

([23]) European Commission, Case COMP/M. 4564 — Bridgestone/Bandag; Case COMP/E-2/36.041/PO. European Court of Justice, Judgement of 9 November 1983, Case C-322/81 *Michelin* v *Commission* ECLI: EU:C:1983:313.
([24]) European Commission, Case COMP/M. 4564 — Bridgestone/Bandag, page 4.
([25]) European Court of Justice, Judgment of 17 March 2016, Case C-232/14 *Portmeirion Group*, ECLI:EU:C:2016:180, at paragraphs 47 *et seq*.

the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five Year Plan states that companies will be supported to '*comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency*'. Box 7 specifically refers to projects relating to downstream petrochemical products (which include tyres) in this context. Environmental protection is further elaborated in chapter 44. According to this chapter, a clean production '*renovation*' will be implemented in key industries, and box 16 specifically refers to the petrochemical industry in this respect.

(121) At a more detailed level, the GOC also released the 13th Five Year Plan for the Development of the Chemical and Petrochemical Industry ('the 13th Five Year Petrochemical Plan'), which includes the tyres industry, and is based on the 13th Five Year Plan. This plan indicates in the introduction that the petrochemical and chemical industry is an important pillar industry for China's national economy. It further elaborates on the principles of technological innovation, structural adjustment, and green development mentioned in the 13th Five Year Plan, links them to more specific priorities within the petrochemical industry (see chapter III – Main tasks), and makes the link with various fiscal and financial support measures (see chapter IV – Safeguard measures: section 4 — Strengthen policy support).

(122) Furthermore, the GOC has issued a specific plan for the tyres industry for the purpose of implementing the 13th Five Year Petrochemical Plan, i.e. the Tyres Industry Policy ([26]). This Policy highlights that the main priority for the GOC is the structural adjustment, technological reform and emission reduction of the tyres industry. Article 6 mentions that the development of high-performance radial tires and tubeless TBR tyres are encouraged. In addition, the preamble to the Tyres Industry Policy states that '*This industry policy shall serve as the basis for all relevant departments when embarking on the various aspects of investment management, land supply, environmental assessment, energy-saving assessment, safety permission, credit financing and electricity supply for such tire industry project as the construction of production facilities and technology development.*'

(123) Finally, this document also establishes entry conditions on the market, since only enterprises that exceed a certain production capacity and that meet environmental requirements may enter the market ([27]).

(124) Following the disclosure of the Information Document, the GOC reiterated its basic position on China's Five Year Plans, claiming that they are not binding, and should merely be seen as 'guiding' documents. The Commission disagreed with this position- Indeed, chapter 17 of the 13th Five Year Plan states: '*The national development strategy and plan will come into play with a leading and constraining role.*' ([28]) Furthermore, Chapter IV of the 13th Five Year Petrochemical Plan organizes the execution of the plan and notes that enterprises are expected to: '*realize key tasks in the plan, realize self-regulation and feed back problems in plan execution in time*' ([29]). Finally, the Tyres Industry Policy mentions in its Preamble that it '*shall be implemented by all relevant entities accordingly*'. Thus, rather than making only general statements of encouragement, these plans use language which points to their binding nature.

(125) The following documents also identify the tyres industry as a strategic, prioritized and/or encouraged industry:

— Decision No 40 of the State Council on 'Promulgating and Implementing the Temporary Provisions on Promoting the Industrial Structure Adjustment' ('Decision No 40'). This Decision states that the 'Guidance Catalogue for the Industrial Structure Adjustment', which is an implementing measure of Decision No 40 is an important basis for guiding investment directions. It also guides the GOC to administer investment projects, and to formulate and enforce policies on public finance, taxation, credit, land, import and export ([30]). The tyres industry, and more specifically the production of certain tyres such as 'high-performance radial tyre (including tubeless truck tyre (…))' is indicated as an encouraged category in Chapter VIII of this Guidance Catalogue ([31]). As to its legal nature, the Commission noted that Decision No 40 is an Order from the State Council, which is the highest administrative body in the PRC. In that regard, the decision is legally binding for other public bodies and the economic operators. ([32])

([26]) Announcement of the Ministry of Industry and Information Technology on Printing and Distributing the Tire Industry Policy, Gong Chan Ye Zheng Ce [2010] No 2.
([27]) See article 30 to of the Tyres Industry Policy.
([28]) Chapter 17, section 1 of the 13th Five Year Plan, emphasis added.
([29]) Chapter IV, section 5 of the 13th Five Year Petrochemical Plan.
([30]) Chapter III, Article 12 of Decision No 40.
([31]) Guidance Catalogue for the Industrial Structure Adjustment, (2011 Version).
([32]) See Council Implementing Regulation (EU) No 215/2013, OJ L 73, 15.3.2013, Recital 182 (Organic coated steel).

— According to its chapters III.1&5 and VIII, the National Outline for the Medium and Long-term Science and Technology Development (2006 – 2020) supports the development of key fields and priority themes, and encourages financial and fiscal support to these key fields and priorities. Chapters III.1 & 5 of this document clearly mention the (petro)chemical industry in connection with priority themes No 1 called 'Industrial Energy Efficiency', and No 31 called 'Basic Raw Materials'. Chapter VIII encourages financial and fiscal support to these priority themes.

— The GOC's Catalogue of Chinese New and High-tech Exports Products ([33]) lists 'new pneumatic radial tyre of a kind used on buses or lorries (of rubber, cross-section width ≥ 24 inch)' as products encouraged for exports.

— At local level, Shandong Province is the province with the largest tyre manufacturing industry in China, and has also promulgated plans to promote the tyre industry. For example, in October 2014, the Shandong provincial government promulgated the Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province ([34]), which, among other things, sets production targets for truck and bus radial tyres of 91 million units by 2017 and 120 million units by 2020 and provides for support for backbone truck and bus tyre enterprises.

(126) In conclusion, the tyres industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective.

3.2. **Partial non-cooperation and use of facts available**

3.2.1. *The application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending, inputs provided at less than adequate remuneration and export credit insurance*

(127) For administrative convenience, the Commission requested the GOC to forward specific questionnaires to four specific state-owned banks mentioned in the complaint and Sinosure, as well as any other financial institution that provided loans or export credits to the sampled companies, or to the buyers of the sampled companies. Similarly, the Commission requested the GOC to forward specific questionnaires to those producers of natural rubber, synthetic rubber, carbon black and nylon cord which, according to the complaint, provided inputs at less than adequate remuneration to the sampled companies, as well as to any other producers and distributors of the raw materials in question which had provided inputs to the sampled companies.

(128) At first, the GOC did not respond to the Commission's request. In the deficiency letter, the Commission therefore repeated its request, with a view to maximising the possibilities to engage financial institutions and input suppliers in the investigation by providing the necessary information for the Commission to make findings on the existence and extent of the alleged subsidisation. Following the deficiency letter, the GOC did indeed contact the above-mentioned financial institutions and suppliers. However, only three state-owned banks specifically mentioned by the complainant and Sinosure responded to the questionnaire.

3.2.1.1. Preferential lending

(129) According to the GOC, it had no authority to demand information from the state-owned banks that did not reply to the questionnaire, as they operate independently of the GOC.

(130) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. Indeed, according to the Law of the People's Republic of China on State-Owned Assets of Enterprises ([35]), State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people's governments perform the duties and responsibilities of the capital contributor of a State-invested enterprise on behalf of the government. Such agencies are thus entitled to receive returns on assets, to participate in major decision making and to select managerial personnel of State-invested enterprises. Furthermore, according to Article 17 of the above mentioned Law on State-owned Assets, State-invested enterprises shall accept administration and supervision by governments and relevant governmental departments and agencies, accept public supervision, and be responsible to capital contributors.

([33]) Notice on Issuing the 2006 Export Catalogue of High-Tech Products of China, Guo Ke Fa Ji Zi [2006] No 16.
([34]) Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province (Oct. 22, 2014).
([35]) Law of the People's Republic of China on State-Owned Assets of Enterprises, Decree No 5 of the President of the People's Republic of China, 28 October 2008, article 11 & 12.

(131) In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not state-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority. For example, according to Articles 33 & 36 of the Banking Supervision Law ([36]), the CBRC has the authority to require all financial institutions established in the PRC to submit information, such as financial statements, statistical reports and information concerning business operations and management. The CBRC can also instruct financial institutions to disclose information to the public.

(132) Furthermore, although they provided some general explanations on the functioning of their loan approval and risk management systems, none of the cooperating state-owned banks provided specific information concerning loans provided to the sampled companies, arguing that they were bound by statutory and regulatory requirements and contractual clauses with respect to the confidentiality of the information related to the sampled companies.

(133) Therefore, the Commission asked the sampled groups of exporting producers to grant access to company-specific information held by all banks, state-owned and private, from which they received loans. Although the sampled companies gave their agreement to provide access to the bank data pertaining to them, the banks refused to provide the required detailed information.

(134) In the end, the Commission only received information on corporate structure and ownership from the three state-owned banks mentioned in recital (48) but not from any of the other financial institutions which had provided loans to the sampled companies. Moreover, none of the financial institutions provided any information specific to the risk assessment of the loans granted to the sampled groups of exporting producers.

(135) Since it had no information in relation to most of the state-owned banks which provided loans to the sampled companies, and no company-specific information on the loans provided by the cooperating banks, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(136) Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

(137) In the reply to the Commission's letter as well as in the comments to the Information Document and to the final disclosure, the GOC objected to the application of Article 28(1) of the basic Regulation regarding preferential lending. The GOC reiterated that it had no authority over the banks. The GOC also considered that it had cooperated to the best of its abilities, that the Commission had imposed an unreasonable extra burden on it, and that the missing information was not 'necessary' in the sense of Article 28 of the basic Regulation, since it was already available through the responses to the questionnaires.

(138) The Commission maintained its position that the GOC has the authority to request information from the banks for the reasons explained in recitals (130) to (131) above. It acknowledged that the GOC has forwarded the relevant questionnaires to the banks, and that it has received replies from three state-owned banks. It used the information so provided, and complemented it with facts available only for those parts that were missing.

(139) This missing information mainly concerns two aspects: first, information on the ownership and governance structure of the non-cooperating banks. This information was necessary for the Commission to determine whether these banks are public bodies or not. Second, company-specific information from the cooperating banks, such as e.g. the internal loan approval process of the bank and the creditworthiness assessment of the banks for the loans provided to the sampled companies was necessary in the sense of Article 28 of the Basic Regulation in order to determine whether loans where provided at preferential rates to the sampled companies. Furthermore, such internal documents can only be provided by the banks, and could thus not be supplied through the questionnaire replies of the sampled companies.

(140) Finally, the Commission did not consider that it had imposed an unreasonable burden on the GOC. From the start, the Commission limited its investigation to those financial institutions that had provided loans to the sampled companies. The Commission also did not burden the GOC with the identification of these financial

([36]) Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry, Order No 58 of the President of the People's Republic of China, 31 October 2006.

institutions, as the list with names and addresses of the banks, as well as the request to forward the questionnaires, was provided to the GOC at the very beginning of the investigation, in December 2017. This provided ample time for the GOC to comply with the Commission's request. However, the Commission's questionnaires were only effectively sent by the GOC to the banks on 28 March 2018, with a deadline of three working days for the banks to reply. This delay cannot be attributed to the Commission. It thus considered that it had done its utmost to facilitate the tasks requested from the GOC.

(141) The Commission thus maintained that it had to rely partially on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

3.2.1.2. Export credit insurance

(142) Sinosure partially responded to the specific questionnaire concerning export credit insurance provided to the sampled companies. However, Sinosure failed to provide the supporting documentation requested concerning its corporate governance, such as its Annual Report or its Articles of Association, arguing that this was confidential information.

(143) Sinosure also did not give specific information about the export credit insurance provided to the tyres industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.

(144) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(145) It is the Commission's understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. This is also the case for Sinosure, which is a fully state-owned entity. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through export credit insurance.

(146) In the reply to the Commission's letter as well as in the comments to the Information Document and to the final disclosure, the GOC objected to the application of Article 28(1) of the basic Regulation regarding export credit insurance, by pointing to the fact that Sinosure had provided a questionnaire reply, and had answered to the Commission's questions during the on-spot verification.

(147) Sinosure indeed provided a questionnaire reply and representatives from Sinosure were present at the verification at the GOC's premises. However, as mentioned in recitals (142) and (143) above, the information provided was incomplete, and did not allow the Commission to draw conclusions on crucial parts of the investigation regarding export credit insurance, that is whether Sinosure is a public body and whether the premiums charged to the sampled companies were market conform.

(148) The Commission thus concluded that it had to rely partially on facts available for its findings concerning export credit insurance.

3.2.1.3. Provision of inputs a less than adequate remuneration

(149) None of the producers of natural rubber, synthetic rubber, carbon black and nylon cord which had provided inputs to the sampled companies responded to the specific questionnaires forwarded by the GOC.

(150) According to the GOC, it had no authority to demand information from the state-owned suppliers that did not reply to the questionnaire, as they operate independently of the GOC. The Commission disagrees with this view. It is the Commission's understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder.

(151) In addition, the GOC refused to provide an overview with the names and the ownership structure of the Chinese producers of the inputs under investigation, claiming that this was confidential information.

(152) Since the Commission had no information concerning the corporate governance of the state-owned producers which provided inputs to the sampled companies, and no company-specific information on the price setting of the inputs provided by the suppliers of inputs to the sampled companies, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(153) Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through the provision of inputs at less than adequate remuneration.

(154) In the reply to the Commission's letter as well as in the comments to the Information Document, the GOC objected to the application of Article 28(1) of the basic Regulation regarding the provision of inputs at less than adequate remuneration, for the same reasons as developed in recital (137) above. Concerning the GOC's lack of authority to request information from the producers, as well as the existence of an unreasonable burden imposed on the GOC, the Commission maintained its argumentation developed in recitals (138) and (140) above, which also applies to the suppliers of inputs to the sampled companies.

(155) This missing information mainly concerns two aspects: first, information on the ownership and governance structure of the non-cooperating producers. Without such information the Commission could not determine whether these producers are public bodies or not. Second, company-specific information from the non-cooperating producers, such as e.g. information on the price setting of the inputs provided to the sampled companies. Such information is necessary in the sense of Article 28 of the Basic Regulation in order to determine whether inputs had been provided at less than adequate remuneration to the sampled companies. Furthermore, such information could only be provided by the producers, and could thus not be supplied through the questionnaire replies of the sampled companies.

(156) The Commission thus maintained that it had to rely also on facts available for its findings concerning the provision of natural rubber, synthetic rubber, carbon black and nylon cord at less than adequate remuneration in accordance with Article 28(1).

3.2.2. *The application of the provisions of Article 28(1) of the basic Regulation to one exporting producer in relation to export credit insurance*

(157) Xingyuan Group reported in its questionnaire reply that it did not have any export credit insurance agreement during the investigation period. However, after the verification visit, the Commission found that the company had received grants in the form of refunds of export credit insurance premiums paid for the year 2016, thus covering the investigation period. The documents provided do not clarify whether such refunds represent the total or only part of the premium paid by the company for its export insurance.

(158) Under these circumstances, the Commission considered that it had received false or misleading information.

(159) Therefore, the Commission notified the company that it would consider basing its findings partially on facts available pursuant to Article 28(1) of the basic Regulation (i.e. as far as the information related to export credit insurance was concerned).

(160) In the reply to the Commission's letter, the company objected to the application of Article 28(1) of the basic Regulation regarding the export credit insurance. It claimed that as it did not export directly, it did not have any credit risks. Therefore, the company did not need any export credit insurance and could not receive refunds of premiums which they had not paid.

(161) The Commission accepted that the company only exported indirectly to the EU. However, the claim of the company that it did not need an export credit insurance and that it could not receive refunds for an insurance premium which it had not paid, was in contradiction with the evidence on the file, which showed that the company actually did receive a refund. The company failed to explain why the government would have provided a refund for a premium which had allegedly not been paid. The Commission also noted that the definition of the rights and obligations between the company and its traders selling to the EU was not clear. In fact, the company did execute some export formalities on behalf of the traders selling to the EU during the investigation period, and it received import duty waivers for natural rubber used in exported tires, even though it did not export these directly.

(162) In the absence of any new information to the contrary received from the company, the Commission concluded that the company had provided incorrect and incomplete information about the export credit insurance received in the investigation period. The Commission therefore relied on the facts available for its findings concerning export credit insurance for this company, which consisted of the highest subsidy amount concerning export credit insurance found in the other sampled companies.

3.2.3. *The application of the provisions of Article 28(1) of the basic Regulation to one exporting producer in relation to preferential financing*

(163) Huaqin Rubber Industry Group and Yanzhou Yinhe Power Plant Co. Ltd failed to provide complete information about their loan agreements.

(164) Therefore, the Commission notified the companies in question that it would consider basing its findings partially on facts available pursuant to Article 28(1) of the basic Regulation (i.e. as far as the information related to these agreements was concerned). In the reply to the Commission's letter informing the companies in question of the possible application of Article 28(1) of the basic regulation, they objected to this application in general.

(165) However, since no additional evidence was submitted concerning the loan agreements mentioned in recital (163) above, the Commission continued to rely partly on facts available for its findings concerning these loan agreements.

3.3. **Subsidies and subsidy programmes within the scope of the current investigation**

(166) On the basis of the information contained in the complaint, the Notice of Initiation and the replies to the Commission's questionnaire, the alleged subsidisation through the following subsidies by the GOC were investigated:

(i) Preferential policy loans, credit lines, export sellers and export buyers credits, other financing, and guarantees;

(ii) Preferential Export credit insurance,

(iii) Grant Programmes

— Famous Brand Programme;

— Export Assistance Grants, such as e.g. rewards for advanced exporting enterprises or export performance, reward for processing trade, grants for outward investment;

— Environmental Protection grants, such as e.g. Special fund for energy-saving technology reform, the clean production technology fund, incentives for Environmental Protection and Resource Conservation;

— Grants related to technological upgrading or transformation, such as e.g. State Key Technology Project Fund Subsidies, promotion of R & D tasks under Science and Technology Support Plans, Promotion of Key Industry Adjustment, Revitalisation and Technology Renovation;

— ad-hoc subsidies provided by the municipal/provincial authorities;

(iv) Revenue foregone through Direct Tax Exemption and Reduction programmes

— EIT privileges for High and New Technology Enterprises;

— EIT offset for research and development;

— Western Region preferential tax policies;

— Land Use Tax exemption or reduction;

— Local tax discounts;

(v) Revenue foregone through Indirect Tax and Import Tariff Programmes

— VAT exemptions and import tariff rebates for the use of imported equipment and technology;

— Import tariff waivers for processing trade;

(vi) Government provision of goods and services for less than adequate remuneration (LTAR)

— Government provision of natural rubber for less than adequate remuneration;

— Government provision of synthetic rubber for less than adequate remuneration;

— Government provision of carbon black for less than adequate remuneration;

— Government provision of nylon cord for less than adequate remuneration;

— Government provision of power for less than adequate remuneration;

— Government provision of land and land-use rights for less than adequate remuneration.

3.4. **Preferential financing and insurance: loans**

(167) According to the information provided by the four sampled groups of exporting producers, 32 financial institutions located within the PRC had provided loans to them. Of these 32 financial institutions, 27 were state-owned banks ([37]). The 5 remaining financial institutions were privately owned. However, only three state-owned banks filled in the specific questionnaire, despite a request to the GOC that covered all financial institutions which had provided loans to the sampled companies.

3.4.1. *State-owned banks acting as public bodies*

(168) The Commission ascertained whether the state-owned banks were acting as public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation. In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows ([38]): '*What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.*' In the present case, the conclusion that the state-owned banks are vested with authority to exercise governmental functions is based on formal indicia of government control and evidence showing that it has been exercised in a meaningful way.

(169) The Commission sought information about State ownership as well as formal indicia of government control in the state-owned banks. It also analysed whether control had been exercised in a meaningful way. For this purpose, the Commission had to partially rely on facts available due to the refusal of the GOC and the state owned banks to provide evidence on the decision making process that had led to the preferential lending.

(170) In order to carry out this analysis, the Commission first examined information for the three state-owned banks that had filled in the specific questionnaire and allowed for verification.

3.4.1.1. Cooperating state-owned banks

(171) The following three state-owned banks provided a questionnaire reply, which was verified on site: EXIM, ABC, and BOC.

(a) ***Ownership and formal indicia of control by the GOC***

(172) Based on the information received in the questionnaire reply and during the verification visit, the Commission established that the GOC held, either directly or indirectly, more than 50 % of the shares in each of these financial institutions.

(173) Concerning the formal indicia of government control of the three cooperating state-owned banks, the Commission qualified all of them as 'key State-owned financial institutions'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' states that: 'The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial

([37]) See recital 132 for the cooperating state-owned banks and recitals 165 & 166 for the names and the data concerning the non-cooperating state-owned banks.

([38]) WT/DS379/AB/R (US – Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 – 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors'.

(174) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of State-owned Key Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating state-owned banks' business activities. In addition to these generally applicable indicia, the Commission found the following with respect to the three state-owned banks:

EXIM

(175) EXIM was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM. According to its Articles of Association, the State directly nominates the management of EXIM. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' (State Council Decree No 282) and other laws and regulations, and it is responsible to the State Council.

(176) The Articles of Association also mention that the Party Committee of EXIM plays a leading and political core role to ensure that policies and major deployment of the Party and the state are implemented by EXIM. The Party's leadership is integrated into all aspects of corporate governance.

(177) The Articles of Association further state that EXIM is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the state's foreign trade and 'going out' policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.

ABC

(178) As mentioned in Article 137 of ABC's Articles of Association, the GOC, in its capacity of main shareholder holding 79,62 %, has the power to appoint all of the Directors in the Board of Directors. The same applies to the Board of Supervisors according to Article 204 of the Articles of Association.

(179) Moreover, according to ABC's Articles of Association, the Board of Directors determines the strategy of the bank, decides on the budget of the bank, takes investment decisions, appoints the President and the Board Secretary of the bank, and establishes and monitors the risk management system of the bank. This non-exhaustive list of responsibilities illustrates the institutional control of the State on ABC's daily business.

(180) The Commission also found that state-owned financial institutions, including ABC and BOC, have changed their Articles of Associations in 2017 to increase the role of the China Communist Party ('CCP') at the highest decision-making level of the banks.

(181) These new Articles of Association stipulate that:

(182) the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;

(183) the CCP's role is to ensure and supervise the Bank's implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and

(184) the opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.

BOC

(185) As mentioned in Article 125 of the Articles of Association, the GOC, in its capacity of main shareholder holding 64,63 %, has the power to appoint both the executive and the non-executive Directors of the bank, which constitute the Board of Directors.

(186) Moreover, according to BOC's Articles of Association, the Board of Directors decides, inter alia, the financial institution's strategic principles, business plans and major investment plans, appoints or dismisses senior staff such as the President and Secretary of the Board, the Vice President, and other senior management personnel. The Board further decides on the implementation of resolutions at the shareholders' meeting, and approves corporate governance policies. This non-exhaustive list of responsibilities illustrates the institutional control of the State on BOC's daily business.

(187) In addition, the new stipulations concerning the role of the CCP mentioned in recital (181) above also apply to BOC.

(b) ***Evidence showing that the Government exercised meaningful control over the conduct of those institutions***

(188) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of the three cooperating state-owned banks with respect to their lending policies and assessment of risk, where they provided loans to the tyres industry. The following regulatory documents have been taken into account in this respect:

— Article 34 of the Law of the PRC on Commercial Banks ('Bank law');

— Article 15 of the General Rules on Loans (implemented by the People's Bank of China)

— Chapter 4 of the 13th Five-year Petrochemical Plan,

— Decision No 40;

— Preamble to the Tyres Industry Policy

— Implementing Measures of the China Banking Regulatory Commission ('CBRC') for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBRC [2017] No 1)

— Implementing Measures of the CBRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBRC [2015] No 4)

— Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBRC [2013] No 3)

(189) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions, for the following reasons.

(190) With respect to EXIM, its public policy mandate is established in the notice of establishing the Import Export Bank of China as well as in its Articles of Association.

(191) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that '*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*'. Although Article 4 of the Bank Law states that '*Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property*', the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.

(192) In addition, Article 15 of the General Rules on Loans provides: '*In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas.*'

(193) Following the disclosure of the Information Document, the GOC commented that the Commission had misinterpreted Article 34 of the Bank law. Article 34 should not be read in isolation, and Article 4, being part of the General Provisions, has an overarching effect over the remaining articles of the law. However, the findings of this investigation (as well as the Commission's findings in previous investigations concerning the same subsidy programme) ([39]) did not support the claim that banks do not take government policy and plans into account

([39]) Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17), recitals 121 to 128.

while making lending decisions. It rather confirmed the contrary, as has been described in recitals (202) to (206) below. Therefore, the Commission found that Article 4 of the Bank law did not prevent commercial banks from taking government industrial policy and plans into account.

(194) The GOC also requested to disregard Article 15 of the General Rules on Loans, since it was established more than 20 years ago, and has remained inactive for a long period. However, the GOC at the same time acknowledged that the General Rules on Loans had not been formally repealed yet. The Commission thus considered that its reference to the General Rules on Loans remains valid.

(195) The industrial policy of the State is established through central planning, as explained in section 3.1 above. With regards to the tyres industry, chapter 5 of the 13th Five Year Petrochemical Plan provides to '*Strengthen the connection between financial, taxation, trading policies and industrial policies. Realize bank-enterprise connection and production cooperation policies. Strengthen financing support on key enterprises and key projects. Make use of existing special capital channels (special projects and funds, etc.) to keep supporting industrial upgrading and technical reconstruction*'.

(196) Furthermore, the Tires Industry Policy '*shall serve as the basis for all relevant departments*' concerning '*credit financing for such tire industry projects*'.

(197) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. As already explained in section 3.1, projects of the tyres industry belong to the 'encouraged' category. Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations.

(198) In response to the Information Document, the GOC commented that Decision No 40 only allows credit support if it is based on the principles of credit lending. The Commission acknowledged that Articles 17 and 18 of the same Decision also ask the banks to respect credit principles. However, as explained in more detail in recitals (202) to (206) below, the Commission could not establish during the investigation that this was done in practice.

(199) The Commission also found that the China Banking and Regulatory Commission ('CBRC') has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ([40]):

— approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the CBRC is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and

— a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organizational form, etc.

(200) The Bank law is legally binding. The mandatory nature of the Five Year Plans and of Decision No 40 has been established above in section 3.1. The mandatory nature of the CBRC regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses which they contain.

(201) On that basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the three cooperating state-owned banks whenever those were providing loans to the tyres industry.

(202) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete loans. During the verification visit, the three cooperating state-owned banks maintained that in practice they had used sophisticated credit risk assessment policies and models when granting the loans at issue. During the verification visit at the GOC, ABC and BOC representatives also indicated that they had reduced their overall credit exposure towards the tyres industry during the last two years, because they detected some issues relating to overcapacity in the sector.

([40]) According to the Implementing Measures of the CBRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBRC [2017] No 1), Implementing Measures of the CBRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBRC [2015] No 4), Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBRC [2013] No 3).

(203) However, no concrete examples relating to the sampled companies were provided. The three cooperating state-owned banks refused to provide information, including their specific credit risk assessments, related to the sampled companies for regulatory reasons and contractual reasons even though the Commission had provided them with a written consent from the sampled companies waiving their confidentiality rights.

(204) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (188) to (201), in combination with the behaviour of the three cooperating state-owned banks with regard to the loans provided to the sampled companies. This behaviour contrasted with their official stance during the verification visit, as in practice they were not acting based on thorough market-based risk assessments.

(205) The verification visits revealed that with the sole exception of certain loans in foreign currency, loans were provided to the four groups of sampled exporting producers at interest rates close to the People's Bank of China ('PBOC') benchmark interest rates, regardless of the companies' financial and credit risk situation. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the four sampled exporting producers. In addition, the sampled companies had received revolving loans, which allow them to immediately replace the capital repaid on loans at the maturity date by fresh capital from new loans. In the case of two of the sampled groups of companies, payment schedules were restructured or debt was forgiven because of financial difficulties.

(206) The Commission also found that loans which should have been reported by the banks as 'not normal' loans had not always been indicated as such in the national central credit register by the three cooperating state-owned banks. The obligation to report such 'not normal loans' exists in particular when loans had been restructured, when the debtor defaulted on its payments, or when revolving loans had been issued. Such occurrences were found for all four groups of sampled exporting producers. According to the CBRC's 'Guidelines on risk-based loan classification', all of these instances should have been included in the central credit register. This lack of reporting by the financial institutions leads to a distorted picture of the company's credit situation in the central credit register, as the register does not show the real creditworthiness of the company. As a result, even if a financial institution were to apply a market-based risk assessment, it would have done so based on inaccurate information.

(207) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the three cooperating state-owned banks with respect to their lending policies and assessment of risk concerning the tyres industry.

(c) ***Conclusion on cooperating financial institutions***

(208) The Commission found that the legal framework set out above is being implemented by the three cooperating State-owned financial institutions in the exercise of governmental functions with respect to the tyres sector, thereby acting as public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

3.4.1.2. Non-cooperating state-owned banks

(209) As set out in section 3.2 above, none of the other state-owned banks which provided loans to the sampled companies replied to the specific questionnaire. Therefore, in line with the conclusions reached in recitals (127) to (136) above, the Commission decided to use facts available to determine whether those state-owned banks qualify as public bodies.

(210) In the anti-subsidy investigation on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China ([41]), the Commission established that the following banks which had provided loans to the four sampled groups of exporting producers in the investigation at hand were partially or fully owned by the State itself or by State-held legal persons: China Development Bank, China Construction Bank, Industrial and Commercial Bank of China, Bank of Communications, China Everbright Bank, Postal Savings Bank, China Merchants Bank, Shanghai Pudong Development Bank, China Industrial Bank, Shenyang Rural Commercial Bank, Bank of Shanghai, Ningbo Bank, China CITIC Bank, China Guangfa Bank, China Bohai Bank, Huaxia Bank.

([41]) See HRF case, cited in footnote 39 above, recital 132.

(211) Using publicly available information, such as the bank's website, annual reports, information available in bank directories or on the internet, the Commission furthermore found that the following banks that had provided loans to the four sampled groups of exporting producers were partially or fully owned by the State itself or by State-held legal persons:

Bank name	Information on ownership structure
Hankou Bank	at least 34,86 % of the shares held by state-owned entities
Hubei Bank	at least 42,55 % of the shares held by the local government and SOEs
Huishang Bank	mainly state-owned, with shares diluted among many SOEs and entities associated to the local government
Dongying Bank	Dongying City Bureau of Finance holds 20,88 %, Dongying State-owned Assets Operation Co., Ltd 11,14 %
Bank of Tianjin	at least 40,2 % of the shares held by the local government and SOEs
Bank of Kunlun	owned by China National Petroleum Corporation (SOE)
Shanghai Rural Commercial Bank	SOE shares represent 35,52 % of the share capital
China Industrial International Trust Limited	subsidiary of Industrial Bank, which was found to be state-owned in the anti-subsidy investigation on HRF ([42])
Daye Trust Co., Ltd	subsidiary of China Orient Asset Mgt Co. Ltd, (state-owned Asset Management Company)
Sinotruk Finance Co., Ltd	owned by Sinotruk (SOE)

(212) The Commission further established, absent specific information from the financial institutions at issue indicating otherwise, GOC ownership and control based on formal indicia for the same reasons as set out above in section 3.4.1.1. In particular, based on facts available, managers and supervisors in the non-cooperating state-owned banks are assumed to be appointed by the GOC and accountable to the GOC in the same manner as in the three cooperating state-owned banks.

(213) With regard to the exercise of control in a meaningful manner, the Commission considered that the findings concerning the three cooperating financial institutions, which accounted for a substantial part of the loans to the four sampled groups of companies during the investigation period (ranging from 30 % to 50 % depending on the company) could be considered representative also for the non-cooperating state-owned financial institutions. The normative framework analyzed in section 3.4.1.1(b) above applies to them in an identical manner. Absent any indication to the contrary, based on best facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the three cooperating state-owned banks, so that the analysis on the concrete application of the normative framework in section 3.4.1.1.(b) above applies to them in an identical manner.

(214) Moreover, the Commission observed that the majority of loan contracts which the Commission had obtained from the sampled companies had similar conditions and that the lending rates which had been agreed were similar and partly overlapped with the rates provided by the three cooperating state-owned banks.

(215) The Commission therefore considered that the findings for the three cooperating state-owned banks constituted the facts available under Article 28 of the basic Regulation for assessing the other state-owned banks, due to those similarities in loan conditions and lending rates and the representativeness of the three financial institutions that were verified.

([42]) See HRF case, cited in footnote 39 above, recital 132.

(216) On that basis, the Commission concluded that the other state-owned banks which provide loans to the sampled companies are public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation.

3.4.1.3. Conclusion on State owned financial institutions

(217) In light of the above considerations the Commission found that all state-owned Chinese financial institutions that provided loans to the four sampled groups of cooperating exporting producers are public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation.

(218) In addition, even if the state-owned financial institutions were not to be considered as public bodies, the Commission found that they would also be considered entrusted and directed by the GOC to carry out functions normally vested in the government, within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in recitals (220) to (223) below. Thus, their conduct would be attributed to the GOC in any event.

3.4.2. *Entrustment and direction of private financial institutions*

(219) The Commission then turned to the remaining financial institutions. The following five financial institutions were considered to be privately owned, based on the findings established in the in the HRF case ([43]), and complemented by publicly available information: JPMorgan Chase Bank (China), HSBC, Ping An Bank, Bank of Qingdao, Bank of Beijing. The Commission analysed whether these financial institutions had been entrusted or directed by the Government of China to grant subsidies to the tyres sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(220) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body ([44]). In both cases, the government uses a private body as a proxy to effectuate the financial contribution, and '*in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement*' ([45]). At the same time, paragraph (iv) does not allow Members to impose countervailing measures to products '*whenever the government is merely exercising its general regulatory powers*' ([46]) or where government intervention '*may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market*' ([47]). Rather, entrustment and direction implies '*a more active role of the government than mere acts of encouragement*' ([48]).

(221) The Commission noted that the normative framework concerning the tyres industry mentioned above in recitals (188) to (201) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBRC cover all Chinese-funded and foreign-invested banks under the management of the CBRC.

(222) Furthermore, the verification visits in the sampled companies revealed that the majority of loan contracts which the Commission had obtained from the sampled companies had similar conditions, and that the lending rates provided by the private financial institutions were similar and partly overlapped with the rates provided by the publicly owned financial institutions.

(223) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the tyres industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the tyres industry.

(224) In line with this finding, the Commission found with respect to the Hankook Group that the normative framework did not apply to some foreign-owned financial institutions which had provided loans to the Hankook Group. Indeed, they were not under the supervision of the CBRC, since they were located outside the PRC, and were providing overseas loans in foreign currency. Therefore, the Commission concluded that these financial institutions were not entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation.

([43]) See HRF case, cited in footnote 39 above, recital 141.
([44]) WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea), Appellate Body Report of 21 February 2005, para.116.
([45]) Appellate Body Report, DS 296, para. 116.
([46]) Appellate Body Report, DS 296, para. 115.
([47]) Appellate Body Report, DS 296, para. 114, agreeing with the Panel Report, DS 194, para. 8.31. on that account.
([48]) Appellate Body Report, DS 296, para. 115.

(225) Following the disclosure of the Information Document, both the GOC and the Hankook Group alleged that private financial institutions, among which JPMorgan Chase Bank (China), could not be considered to have been entrusted and directed by the GOC within the meaning of Article 3(1)(a)(iv) of the basic Regulation to provide loans at preferential rates. They submitted that the two regulations governing the CBRC mentioned in recitals (188) and (199) above are common to all regulatory banking authorities, and reflect the core principles for effective banking supervision recommended by the Basel Committee on Banking Supervision. Moreover, the Hankook Group alleged that the Commission should have analysed factual circumstances on a case-by-case basis for each financial institution instead of referring to the normative framework as a whole.

(226) The Commission rejected these allegations because the supervision and approvals exercised by the CBRC go beyond the core principles of banking supervision recommended by the Basel Committee on Banking Supervision. Indeed, the normative framework of the Basel Committee on Banking Supervision puts the primary responsibility for monitoring the adequacy of capital levels in relation to risks clearly on the bank management itself. The supervisory authorities' role is to review and evaluate the internal processes, controls and risk management put in place by the banks. The core principles for effective banking supervision of the Basel Committee on Banking Supervision clearly state that 'the emphasis of the banking authorities' review should be on the quality of the bank's risk management and controls and should not result in supervisors functioning as bank management'.

(227) However, as already explained in recital (199) above, the approval of the CBRC is required for the recruitment not only of senior management at the headquarters of a bank, but all levels of management, even managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and administrative approvals are required even for minor changes, such as selling more than 5 % of the shares of a bank, or changing domicile. In fact, the Basel Committee on Banking Supervision only provides that the supervisor has the power to review, reject and impose prudential conditions on proposals to transfer significant ownership or controlling interests. According to the Commission, such activities would rather fall under the responsibility of the bank management, without any need for the approval of the supervisory authority following the core principles for effective banking supervision of the Basel Committee on Banking Supervision.

(228) In addition, the normative framework applying to all banks in China is much wider than only the two regulations governing the CBRC, as shown in recital (188) above, and the entire set of regulatory documents is legally binding, as explained in recital (200) above, so that they amount to more than acts of mere encouragement. Moreover, verification visits in the sampled companies did not reveal any significant differences between loan conditions or rates provided by the private financial institutions, and those provided by publicly owned financial institutions.

(229) Finally, the Commission noted that despite its explicit request, the JPMorgan Chase Bank (China) decided not to cooperate during this investigation. As a result, the Commission was not in a position to investigate factual circumstances on an individual basis as far as the JPMorgan Chase Bank (China) is concerned.

(230) After final disclosure, the Hankook Group reiterated its comments regarding the entrustment and direction of the JPMorgan Chase Bank (China), pointing in particular to the fact that if the Hankook Group had known that the bank needed to cooperate in the investigation, they could have requested the bank to do so. In this respect, the Commission noted that the questionnaire to the exporting producers already requested the company to provide a bank authorization, to allow the Commission to review information to be provided by the financial institutions. The exchanges between the GOC and the Commission on the cooperation of financial institutions were available in the open file, and the non-cooperation of JPMorgan Chase Bank (China) was disclosed to the company in the Information Document. Therefore, the Commission considered this argument to be unfounded.

3.4.3. *Specificity*

(231) As demonstrated in recitals (188) to (201), several legal documents which are specifically targeted at companies in the tyres sector, direct the financial institutions to provide loans at preferential rates to the tyres industry. On the basis of these documents it is demonstrated that the financial institutions only provide preferential lending to a limited number of industries/companies which comply with the relevant policies of the GOC.

(232) The Commission therefore concluded that subsidies in the form of preferential lending are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover there was no evidence submitted by any of the interested parties suggesting that the preferential lending is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

3.4.4. *Benefit and calculation of the subsidy amount*

(233) The Commission then calculated the amount of the countervailable subsidy. For this calculation it assessed the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company pays on the government loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.

(234) In this regard, the Commission noted a number of specificities on the Chinese tyre market. As explained in sections 3.4.1 to 3.4.3 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.

(235) The sampled groups of companies differ in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of e.g. maturity, collateral, guarantees and other attached conditions. For those two reasons, each company had a different average interest rate based on its own set of loans received.

(236) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential lending established in the anti-subsidy investigation on hot rolled flat steel products originating in the PRC ([49]) and explained in the recitals below. As a result, the Commission calculated the benefit from the preferential lending practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.

3.4.4.1. Credit ratings

(237) In the anti-subsidy investigation on hot rolled flat steel products originating in the PRC, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund ([50]), showing a discrepancy between international and Chinese credit ratings, combined with the findings of the investigation concerning the sampled companies. Indeed, according to the IMF, over 90 % of Chinese bonds are rated AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the US. For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category. ([51])

(238) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas. ([52]) Fitch for example clearly indicates, where applicable, that such guarantees are a key driver underlying its credit ratings of Chinese companies. ([53])

(239) During the investigation, the Commission found further information to complement this analysis. First, the Commission determined that the State can exercise a certain influence over the credit rating market. According to two studies published in 2016, there were around 12 credit rating agencies active on the Chinese market, a majority of which are state-owned. In total, 60 % of all rated corporate bonds in China had been rated by a state-owned ratings agency. ([54])

([49]) See HRF case cited in footnote 39 above, recitals 152 to 244.

([50]) 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.

([51]) Livingston, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in Journal of Banking & Finance, p. 24.

([52]) Price, A.H., Brightbill T.C., DeFrancesco R.E., Claeys, S.J., Teslik, A. and Neelakantan, U. (2017). *China's broken promises: why it is not a market-economy*, Wiley Rein LLP, p. 68.

([53]) For a concrete example, see Reuters. (2016). *Fitch Rates Shougang's USD Senior Notes Final 'A-'* https://www.reuters.com/article/idUSFit982112, (accessed on 21 October 2017).

([54]) Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A Network Perspective on China's Corporate Debt Market*. Columbia Law and Economics Working Paper No 543, p. 20; Livingstone, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in Journal of Banking & Finance. p. 9.

(240) The GOC confirmed that, during the investigation period, there were 12 credit rating agencies active on China's bond market, among which 10 domestic rating agencies, including Global Credit Rating Co. Ltd, Shanghai Brilliance Credit Rating & Investors Service Co. Ltd, Golden Credit Rating International Co. Ltd, China Chengxin Securities Rating Co. Ltd, Pengyuan Credit Rating Co. Ltd, Shanghai Fareast Credit Rating Co., Ltd, China Bond Rating Co. Ltd, China Securities Index Co. Ltd, Shanghai Credit Information Services Co. Ltd There were also 2 Sino-foreign joint venture credit rating agencies, namely China Lianhe Credit Rating Co. Ltd, and China Chengxin International Credit Rating Co.,Ltd

(241) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations. ([55]) During the investigation period, foreign rating agencies were not allowed as such to operate on the Chinese domestic market, since the credit rating market was included in the 'restricted' category of the GOC's Catalogue of Industries for Guiding Foreign Investment, and foreign credit rating agencies were prohibited from issuing domestic bond ratings. The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions, but this was not yet applicable during the investigation period ([56]). Nevertheless, in the meantime, foreign agencies did establish joint ventures with some local credit rating agencies, which provide credit ratings for domestic bond issues. However, these ratings follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained above.

(242) In view of the situation described in recitals (237) to (241) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. On this basis, even if some sampled companies were awarded a good credit rating by a Chinese rating agency, the Commission concluded that such ratings are not reliable.

3.4.4.2. Revolving loans

(243) Following the findings described in section 3.4.4 of the anti-subsidy investigation on hot rolled flat steel products originating in the PRC ([57]), revolving loans are loans which allow a company to replace the capital repaid on loans at the maturity date by fresh capital from new loans. Revolving loans are usually a sign of short term liquidity problems of the borrower, and involve a greater risk exposure for the banks granting them. The existence of revolving loans in a given company was therefore considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to short-term liquidity problems.

3.4.4.3. Hankook Group

(244) For the purpose of the current investigation, the Hankook Group in China consists of two exporting producers, two companies providing inputs to the exporting producer, and one sales company. The headquarters of the Group are located outside China, in Korea, and there is no holding company within China exercising control over all the companies operating in the PRC.

(245) During the investigation period, the exporting producers mainly secured necessary funds from international banks located outside of China, as well as the Korean mother company, and an intercompany cash pool agreement. However, they also secured some short-term loans by selling their export receivables to Chinese banks.

(246) The two exporting producers of the Hankook Group have a very different financial situation. One of them is a mature business with constant profits during the period 2014-2016, the other one has been more recently set up and has accumulated heavy losses since its start up, although it had been making profits for the first time in 2017. The debt to assets ratio is quite low in one case and very high in the other case. When taken together and compared over a longer period, the combined profitability of the companies was positive though fragile over the period considered, indicating that minor changes in the internal or external business environment could expose the group to a loss-making situation. This assessment was confirmed during the verification visit.

([55]) See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No 50, 24 August 2007; and Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No 547, 16 December 1997.

([56]) See 'Announcement of PBOC on Issues concerning the Credit Rating Business Carried out by Credit Rating Agencies on the Interbank Bond Market', effective on July 1, 2017.

([57]) See *HRF* quoted in footnote 39 above, section 3.4.4, recitals 152 to 242.

(247) The Commission noted that Jiangsu Hankook Tire Co. Ltd ('JHT') has been awarded credit ratings ranging from BBB+ to AA+ by Chinese state-owned financial institutions, whereas Chongqing Hankook Tire Co. Ltd ('CHT') has been awarded credit ratings ranging from BBB- to A+ by the same state-owned financial institutions. In light of the overall distortions of Chinese credit ratings mentioned in recitals (237) to (242) above, the Commission concluded that this rating was not reliable.

(248) Looking at the situation of the loss-making producer, there could be doubts about the companies' debt repayment abilities. However, the vast majority of loans granted to the company were intercompany loans from the Korean mother company. The company only had a limited amount of short-term loans from Chinese banks.

(249) The Commission found that these short-term loans provided by a Chinese financial institution were actually revolving loans. Following the disclosure of the Information Document, the Hankook Group submitted that these loans were successive withdrawals of capital within the context of a wider framework agreement. After further analysis, the Commission accepted Hankook's claims on the nature of these loans, and adapted its calculations accordingly, using the interest rate at the time of withdrawal of the funds.

(250) As mentioned in section 3.4.1 above, the Chinese lending financial institutions did not provide any credit-worthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Hankook Group were at market level.

(251) The Commission considered that the overall financial situation of the group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by the rating agency as likely enough to meet payment obligations that banks are allowed to invest in them.

(252) The premium expected on bonds issued by firms with this rating (BB) was then applied to the standard lending rate of the PBOC in order to determine the market rate.

(253) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the benchmark interest rates as published by the PBOC at the date when the loan was granted ([58]), and for the same duration as the loan in question. This was done individually for each loan provided to the company.

(254) As for loans denominated in foreign currencies in the PRC, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(255) Following the disclosure of the Information Document and after final disclosure, both the GOC and three out of the four sampled companies contested the Commission's methodology using a relative spread between US AA rated and US BB rated corporate bonds to calculate the benefit on preferential loans. All of them alleged that the Commission should have used an absolute instead of a relative spread between the US AA rated bonds and the US BB rated bonds. The following reasons were provided:

— The level of the relative spread fluctuates with the level of the base interest rate in the US: the lower the interest rate level is, the higher the resulting mark-up will be.

— The level of the resulting benchmark fluctuates according to the level of the PBOC benchmark rate to which it is applied. The higher the PBOC benchmark rate, the higher the resulting benchmark will be.

— According to historical data provided by the Giti Group, the absolute spread remains roughly stable over time, whereas the relative spread shows great variations.

— The fact that the Commission found a benefit for all loans in RMB but not for most loans in foreign currencies proves that the use of the relative spread is erroneous.

([58]) In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

(256) The first three issues were already presented in the HRF case ([59]). As can be seen from recitals (175) to (187) in the HRF case, the Commission rejected these arguments on the following grounds:

— First, while the Commission recognised that commercial banks usually use a mark-up expressed in absolute terms, it observed that this practice seems mainly based on practical considerations, because the interest rate is ultimately an absolute number. The absolute number is however the translation of a risk assessment that is based on a relative evaluation. The risk of default of a BB-rated company is X % more likely than default of the government or a risk-free company. This is a relative evaluation.

— Second, interest rates reflect not only company risk profiles, but also country- and currency specific risks. The relative spread thus captures changes in the underlying market conditions which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of default at 10 % higher than the risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %). From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level.

— Third, the relative spread is also country–neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups. This is also acknowledged by the Giti Group in table 3 of its submission, where the impact of different PBOC rates is simulated. In practice, when applying the data provided by the Giti Group to the historical PBOC rates, it shows that in some years the relative methodology indeed produces a lower benchmark than the absolute spread.

— On the third point, the Commission interpreted the facts presented by the Giti Group in a different manner. The Giti Group itself noted that the absolute spread is not as stable as alleged, but instead varies over time, from 1 % to 4,5 %. In addition, the relative spread follows exactly the same trend as the absolute spread over the past 23 years, i.e. when the relative spread increases the absolute spread also increases and vice versa. As for the alleged volatility of the relative spread, the magnitude of the changes are similar — the difference between the highest and the lowest figures is 530 % for the relative spread and 450 % for the absolute spread.

— Finally, on the fourth point, the Commission disagreed with the assessment of the Giti Group that the lack of benefit when applying the Commission's calculation methodology to loans in foreign currencies shows that the use of the relative spread is erroneous. Indeed, the domestic RMB loan market is essentially a closed market, in which the GOC, as shown above, can exert a certain influence. On the other hand, among others due to foreign currency restrictions in China, the hard currency loan market is less subject to the domestic policy choices of the GOC, and operates much more according to market conditions. The fact that the benchmark used by the Commission yields no benefit in most cases is thus not so surprising. On the contrary, the Commission considers that this shows that the Chinese banks, when operating on the international market, grant loans which are in line with market based conditions for BB rated companies, which is not the case when they are providing loans on the domestic market. It also proves that the methodology of the Commission yields results which are in line with market based conditions for BB rated companies on the international market.

(257) After final disclosure, the GOC reiterated its previous arguments and claimed that the use of the relative spread was inappropriate, as the benchmark did not make the necessary adjustments to reflect the prevailing conditions on the Chinese financial market, and would lead to unreasonable results. The Commission disagreed with this view, since the PBOC benchmark rate is used as a starting point for the calculation. Furthermore, the use of the relative spread captures changes in the underlying country-specific market conditions which are not expressed

([59]) See *HRF* quoted in footnote 39 above, recitals 175 to 187.

when following the logic of an absolute spread, as explained in recital (255) above. In addition, the Commission noted that the resulting interest rate of around 9 % for BB rated companies is not unreasonable in view of the fact that the yield of BB rated corporate bonds on the Chinese domestic market was 20 % at the end of the investigation period ([60]).

(258) For these reasons, the Commission maintained its position that the relative spread method reflects more adequately the risk premium that a financial institution would apply to the Chinese exporting producers in a non-distorted market, in particular given that the base interest rate in the PRC and the base interest rate in the US have evolved differently over time.

(259) The Hankook Group also alleged that the Commission had not deducted interest paid after the investigation period which was due for the investigation period. The Commission reviewed its calculations and found that it had correctly done so and rejected the claim.

(260) Furthermore, the Hankook Group argued that its outward documentary billings could not be qualified as financing. Moreover, even if they were to be considered to be financing instruments, it contested the benchmark rate employed by the Commission when calculating the benefit, which allegedly disregarded the interest rate structure applied by the banks (based on the country-specific LIBOR rate) in the corresponding currencies.

(261) First, the Commission disagreed with the Hankook Group that outward documentary billings cannot be qualified as financing. Indeed, thanks to these financial instruments, the Hankook Group could collect money in advance and thus reduce its currency exchange risk when billing in other currencies than the RMB. Consequently, this is a short-term financing arrangement to the benefit of the Hankook Group.

(262) Second, concerning the benchmark rates used, the Commission could not find any indices for 'BB' rated loans denominated in CAD, AUD and JPY. Since these countries have a similar level of economic development as the USA, the Commission therefore used the USD average LIBOR rates plus the US risk premium for 'BB' rated companies as a proxy for these currencies. The ICE BofAML index was used for the outward documentary billings denominated in GBP, SEK and EUR. In fact, the LIBOR rates for loans denominated in EUR, GBP and SEK were often negative and were therefore considered to be inappropriate as a starting point for constructing a benchmark. The ICE BofAML index on the other hand is a basket of high-yield bonds, i.e. bonds below investment grade, denominated in EUR. This corresponds to the credit rating which the Commission considered to be applicable to the Hankook Group. The Commission thus maintained its position on the outward documentary billings of the Hankook Group.

(263) After final disclosure, the Hankook Group claimed further that the ICE BofAML Euro High Yield Index was irrelevant for the purpose of establishing a benchmark interest rate on a LIBOR plus premium basis, and that the Commission should have adapted the risk premium as it did for bank loans. The Commission disagreed with this view. As explained in recital (262) above, the ICE BofAML Euro High Yield Index is a basket of bonds with a credit rating corresponding to a BB credit rating, which is the rating applied to the Hankook Group. It thus corresponds to the interest rate which a BB rated company would be expected to pay for funds denominated in EUR. Concerning loans denominated in CAD, AUD & JPY, the Hankook Group reiterated the comments provided in the context of the Information Document. It stated that it is the Commission's burden to establish a benchmark as close to the reality of the market as possible. The Commission considered that this is already the case, since there are no publicly available data for CAD, AUD, JPY at the level of 'BB' rated companies which would allow constructing a benchmark based on the respective LIBOR ratings. In addition, the British Bankers' Association (nowadays called the Intercontinental Exchange Group or ICE) discontinued LIBOR fixing for a number of currencies including CAD and AUD in 2013. Furthermore, the market conditions on those markets are similar to the conditions on the US financial market. Therefore, the Commission maintained its position that using the ICE BofAML Euro High Yield Index was an appropriate method.

3.4.4.4. Giti Group

(264) The Giti Group also presented itself in a generally profitable financial situation according to its own financial accounts. However, the group also has a high debt to assets ratio, with an increasing trend during the investigation period.

([60]) Daily Report of China Onshore RMB Bond Market, 2017-05-17, Bond Information Department, China Central Depository & Clearing Co. Ltd, p. 5.

(265) The exporting producers of the Giti Group have a very diverse financial situation. Three of them were profitable during the period considered. Furthermore, other financial indicators, such as the debt to assets ratio or the interest coverage ratio did not indicate any significant structural problems regarding these companies' debt repayment abilities. However, the two other producers were continuously loss-making during the entire period considered. However, they had no loans outstanding from unrelated banks and are in fact fully financed by a long outstanding debt from the parent company.

(266) The Commission noted that the Giti Group was awarded an A+ rating by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in recitals (237) to (242) above, the Commission concluded that this rating is not reliable.

(267) The Commission therefore considered that it is appropriate to use the BB benchmark as set out in recitals (251) to (253) above at the level of the group activities to calculate the overall benefit conferred upon tyres derived from the absence of a proper risk assessment.

(268) Following the disclosure of the Information Document, the Giti Group contested the BB credit rating applied to the companies of the Giti Group. The company alleged that the Commission had used a BB rating across the board for all companies in China, instead of examining the individual situation of the sampled companies. In this respect, the company pointed towards the fact that the group did not have any revolving loans, and that the profits of the various companies within the group varied widely.

(269) The Commission disagreed with the assessment of the Giti Goup. As shown in sections 3.4.4.3 to 3.4.4.6 the Commission has made an individual assessment of each group of sampled companies, and has examined the individual situation of each of the companies within these groups. In the specific case of the Giti Group, there were indeed no revolving loans and the financial situation of the exporting producers varied widely, with three profitable exporting producers and two exporting producers with heavy, long-lasting losses. The Commission could thus have assigned different credit ratings to each of these exporting producers. However, in view of the interconnections between the companies, and more particularly the fact that the debt burden of the loss-making producers was actually transferred to and supported by the profit-making entities of the group via intercompany transactions, the Commission decided to attribute a single credit rating to the group. This claim was thus rejected.

(270) The Giti Group also mentioned some minor calculation errors, which were accepted by the Commission and corrected accordingly.

3.4.4.5. China National Tire Group

(271) The four exporting producers of the China National Tire Group have diverse financial situations. Two of them made constant profits during the period 2014-2016, and had quite healthy financial indicators. Nevertheless, one of these two producers started making losses in the first half of 2017, and a revolving loan was found in this producer, indicating that the company may be in a more fragile financial situation than what the financial statements would suggest at first sight.

(272) For the third and fourth producers, however, the financial statements as well as evidence found during the verification visit showed that these company continued receiving loans at attractive rates despite consecutive years of losses, high debt to assets ratios, low interest coverage, worsening financial indicators, idle production, going concern issues raised by the auditors and an uncertain outlook for the future. Furthermore they were dependent on revolving loans and one of them was unable to repay some of its debts. In fact, these companies stopped receiving external loans during the investigation period. However, they continued to receive financial support in the form of loans taken out on their behalf by their parent company. The terms of these loan agreements referred to the ailing subsidiary in the purpose of the loan. In addition the exporting producers in question had to repay these loans in full to the parent company according to an intercompany agreement.

(273) The intermediate parent company, CNRC, was profitable during the period 2015-2016 and the investigation period, even though profitability was weak, and the company was highly leveraged. Furthermore, the Commission established that more than half of the loans provided at the level of CNRC were revolving loans. A similar picture emerges from the analysis of the ultimate parent company, Chemchina Group, where low profitability was combined with high leverage and a certain dependency on revolving loans. In addition, at the level of the Chemchina Group, the Commission found that bonds were used to repay outstanding loans.

(274) No credit ratings have been provided for CNRC or its subsidiaries. However, the Chemchina Group was repeatedly awarded AAA credit rating by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in recitals (237) to (242) above, as well as the evidence found during the verification, the Commission disregarded the Chinese rating of the Chemchina Group.

(275) In view of the above general situation, the Commission found it necessary to find an appropriate benchmark for the various companies in the group. In order to take into account the increased risk exposure of the banks highlighted by the existence of revolving loans in some of the group companies, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation for such loans, by making a comparison between US AA corporate bonds and US B (instead of BB) corporate bonds with the same duration. According to Standard & Poor's credit rating definitions, an obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently still has the capacity to meet its financial commitments. Nevertheless, adverse business, financial, or economic conditions may impair the obligor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered to be appropriate to reflect the additional risk derived from the use of revolving loans.

(276) The Commission thus used this as the relevant benchmark for all loans with a maturity of 2 years or less provided to companies which were making use of revolving loans. Indeed, revolving loans are usually concluded for short durations. It is highly unlikely that a revolving loan would be found with a maturity of more than two years, and the evidence of the loans verified in the sampled companies supported this conclusion.

(277) For the remaining loans with a maturity of 2 years and above and for companies that did not have revolving loans, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recital (251).

(278) Finally, the Commission concluded that at the level of two of the companies involved in the production of tyres, the companies were in a poor financial situation in 2015-2016, and during the investigation period. They would not have had access to further loans during the investigation period absent State support. Therefore, the received benefit for this company went beyond an ordinary mark-up of an interest rate. Rather, the benefit during the investigation period derived from the award of loans which would not have been granted absent State support based on the company's overall financial situation. In this respect, the Commission noted that the China National Tire Group is a large State Owned Enterprise ('SOE') which is part of the Chemchina Group, and that the Chemchina Group was earmarked as a key enterprise in the 13th Five Year Petrochemical Plan.

(279) Therefore, in line with section E(b)(V) of the 1998 guidelines ([61]), the Commission decided to treat the outstanding amounts of these loans during the investigation period as a grant provided in pursuit of governmental policies. Since these companies did not receive any new external loans anymore during the investigation period due to their poor financial situation, which already existed during the period 2015-2016, the Commission treated the loans outstanding during the investigation period, but which were provided during 2015 and the first half of 2016, as grants, duly adjusted as described in recital (280) below. In addition, the Commission treated the intercompany loans taken out by the parent company on behalf of its subsidiary during the investigation period as grants, as they were clearly destined to and had to be paid by the subsidiary.

(280) After final disclosure, the China National Tire Group argued that the intercompany loans taken out by the parent company on behalf of its subsidiary should not be treated as grants since the loan agreements were signed between the parent company and the banks. Therefore, these loans could not be treated as loans of the subsidiaries for the calculation of the benefit of the subsidy. The Commission disagreed with this assessment since the loan agreements signed with the banks clearly stipulated that the purpose of the loans was to provide financing to the ailing subsidiaries. In addition, specific agreements were signed between the parent company and the subsidiaries making clear references to the precise loan agreements with the banks and stipulating that the subsidiaries had to repay the loans with their own funds.

(281) The China National Tire Group also claimed in general that loans provided to the two exporting producers did not correspond to grants, since these loans were not forgiven or defaulted on. In this respect, the Commission clarified that it had not considered the loans provided to the sampled companies to equate to grants as such. The Commission acknowledged that the loans provided to the companies had payment obligations attached to them.

([61]) Guidelines for the calculation of the amount of subsidy in countervailing duty investigations, OJ C 394, p. 6, 17.12.1998.

When calculating the benefit of such transaction, the Commission did not make a comparison of interest rates, but took instead the outstanding capital amount of the loan as a starting point. The Commission further noted that it did not take the entire amount of the loan into account for the benefit calculations, as explained in the recital below.

(282) The benefit conferred was determined based on the outstanding capital amount of the loan minus the interest paid during the investigation period. The capital amount of the loan was adjusted by depreciating it according to the underlying purpose of the loan. If the purpose of the loan was labelled as liquidity/working capital, the full amount was taken. If the loan was clearly linked to a long-term investment, the capital amount was depreciated over the duration of the loan, and only the amount allocated to the investigation period was taken into consideration. Finally, the amount of the benefit was further adjusted to reflect only the number of days in the investigation period in which the loan was running.

(283) Finally, after final disclosure, the China National Tire Group highlighted that the benefit on the intercompany loans obtained from ChemChina Finance had been double counted, since they were taken into consideration at the level of the individual beneficiaries within the group, even though the Commission had already calculated the subsidy benefit of the inter-bank loans obtained by ChemChina Finance from the banks. The Commission accepted this claim, and adapted the benefit calculation for preferential lending accordingly.

3.4.4.6. Xingyuan Group

(284) The Xingyuan Group presented itself in a generally difficult financial situation according to its own financial accounts. The main company in the group, which is also the main exporting producer, was loss-making during the entire period 2014-2016. At the end of 2016, the company had a negative equity, because its debt to assets ratio exceeded 100 % and its accumulated losses were higher than its paid-in capital.

(285) During the verification visit, the Commission also found several revolving loans among the sampled loans, and noted that the company had difficulties to repay interest and capital on loans. Several loans had been repaid late, and some loans which expired during the investigation period had not been repaid after several months.

(286) Furthermore, the PBOC's enterprise credit report of the company showed that the company had significant off-balance sheet liabilities, as it had provided guarantees for loans provided to unrelated third parties in the tire business in the region. In addition, 31 % of its outstanding loans were classified in the 'concerned' category in the enterprise credit report.

(287) Finally, the Commission found that the company had difficulties paying its main raw material supplier, and that it had an important outstanding amount qualified as 'loan' with this supplier.

(288) The related exporting trader on the other hand was slightly profitable during the period considered. Although it was not loss-making, profitability levels were generally weak, which exposes the company to adverse changes in business, financial, or economic conditions. The company had a high debt to asset ratio, but did not have any revolving loans.

(289) Despite these circumstances, the Xingyuan Group was awarded an AA domestic credit rating during the investigation period by a Chinese credit rating agency. Therefore, in light of the overall distortions of Chinese credit ratings mentioned in recitals (237) to (242) above, as well as the evidence found during the verification, the Commission disregarded the Chinese rating of the Xingyuan Group.

(290) In view of the above general situation, the Commission found it necessary to find an appropriate benchmark for the various companies in the group.

(291) The Commission concluded that at the level of the exporting producer, the situation was such that that this company would not have had access to further loans during the investigation period absent State support. Therefore, the received benefit for these companies went beyond an ordinary mark-up of an interest rate. Rather, the benefit during the investigation period derived from the award of loans which would not have been granted absent State support based on the company's overall financial situation. In this respect, the Commission noted that the Xingyuan Group was indicated as one of the seven key regional tyre producing enterprises in the Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province.

(292) Therefore, in line with section E(b)(V) of the 1998 guidelines, the Commission decided to treat the outstanding amounts of these loans during the investigation period as a grant provided in pursuit of governmental policies. Based on the information available, the Commission only countervailed the loans granted during the investigation period.

(293) For the loans of the exporting producer granted before the investigation period, and in view of the existence of revolving loans at the level of this company, the Commission reverted to the benchmark established in recital (275) above for all loans with a maturity of 2 years or less. For any remaining loans with a maturity of 2 years and above, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recital (251).

(294) For the other companies in the Xingyuan Group, the Commission concluded that, based on the available information, the Commission could use the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recital (251).

3.4.4.7. Credit lines

(295) The investigation showed that Chinese financial institutions also provided credit lines in connection with the provision of individual loans to each of the sampled companies. These consisted of framework agreements, under which the bank would allow the sampled companies to withdraw up to a certain maximum amount of funds in the form of various debt instruments (loans, documentary bills, trade financing, etc.). Under normal market circumstances, such credit lines would normally be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks, as well as to renewal fees charged on an early basis for renewing the validity of the credit lines. However, the Commission found that all of sampled companies benefited from credit lines provided free of charge.

(296) In accordance with Article 6(d)(ii) of the basic Regulation the benefit thus conferred on the recipients is considered to be the difference between the amount that the company pays for the provision of credit lines by Chinese financial institutions and the amount that the company would pay for a comparable commercial credit line obtainable on the market.

(297) One of the sampled exporting producers in the Hankook Group obtained credit lines from two banks whose headquarters are established in a financial jurisdiction other than the PRC and which were subject to commitment and arrangement fees as is the usual practice on world financial markets. Since those credit lines granted specifically to companies operating in the tyre business were not subject to renewal fees, the Commission decided not to apply such fees in the case at hand. The credit lines in question were therefore considered to be a reasonable proxy for a benchmark. As a result, the average of the fees applied to these credit lines was used as a benchmark in accordance with Article 6(d)(ii) of the basic Regulation.

(298) The level of the fees used as a benchmark was applied *prorata* to the amount of each credit line in question to obtain the amount of subsidy (minus any fees actually paid). In cases where the duration of the credit line was more than one year, the total amount of subsidy was allocated over the duration of the credit line and an appropriate amount attributed to the investigation period.

(299) Following the disclosure of the Information Document and at the final disclosure, the Hankook Group claimed that no upfront fees were charged because Chinese banks took into account the overall revenue generated on other products and services in the decision to open a credit line for a company.

(300) The Commission agreed that any customer opening a credit line at a bank is expected to buy other products and services of that particular bank. However, it is a common practice that customers are required to pay an upfront fee, as was shown by the upfront fee charged by two overseas banks on their credit line openings to the Hankook Group. Indeed, banks need to commit funds to make them readily available at any time during the credit line is opened. The Hankook group failed to provide any evidence on the alleged reasons for the waiver of the upfront fees. In addition, in some cases, borrowers may also be required to keep a minimum amount on deposit at the bank. Therefore, the claim of the Hankook Group is rejected.

(301) After the disclosure of the Information Document, the Giti Group commented that the Commission used a wrong number of outstanding days for a number of credit lines, and that it did not deduct some of the fees paid by the company from the calculated benefit. The Commission partially accepted these comments and revised the benefit calculation accordingly.

3.4.5. *Conclusion on preferential lending*

(302) The investigation showed that all sampled groups of exporting producers benefited from preferential lending during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, these loans and credit lines should be considered as a countervailable subsidy.

(303) The subsidy amount established with regard to the preferential lending during the investigation period for the sampled groups of companies amounts to:

Preferential lending	
Company/Group	Overall Subsidy amount
China National Tire Group	8,28 %
Giti Group	1,53 %
Hankook Group	0,34 %
Xingyuan Group	48,37 %

3.5. **Preferential financing and insurance: bonds**

(304) Two of the sampled companies benefited from preferential financing in the form of bonds.

(a) ***State-owned financial institutions acted as public bodies***

(305) In China, the players on the bond market are essentially the same entities as those which are active on the loan market. Companies that want to issue bonds need to solicit the services of a financial institution, acting as an underwriter. Underwriters organize the issuance of bonds and propose the interest rates at which the bond will be presented to investors. These underwriters are the same state-owned banks that also provide the preferential loans discussed in section 3.4 above. Furthermore, investors buying the bonds are also mainly Chinese (state-owned) banks, since more than 95 % of the total trading volume of bonds happens on the interbank market ([62]).

(306) As described in section 3.4.1 above, these financial institutions are characterized by a strong state presence, and the GOC has the possibility to exercise a meaningful influence on them.

(307) The general legal framework in which these financial institutions operate, and which was already described in section 3.4 above, is also applicable to bonds. In addition, the following regulatory documents apply specifically to bonds:

(308) Law of the People's Republic of China on Securities, revised and adopted at the 18th Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on October 27, 2005, and effective as of January 1, 2006 (current version promulgated on August 31, 2014) ('Securities Law');

(309) Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;

(310) Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008;

(311) Regulations on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011.

(312) In line with the regulatory framework, bonds cannot be issued or traded freely in China. The issuance of each bond must be approved by various governmental authorities, such as the PBOC, the NDRC or the CSRC, depending on the type of bond and the type of issuer. In addition, according to the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.

([62]) Goldman Sachs Asset Management, Global Liquidity Management. (2015). *FAQ: China's Bond Market, first half 2015*. See also http://www.kwm.com/en/knowledge/insights/chinas-onshore-bond-market-open-for-business-20151216#ref-id-here (accessed on 16 November 2016).

(313) Furthermore, according to Article 16 of the Securities Law, the public issuance of bonds should satisfy the following requirements: *'the investment of raised funds shall comply with the industrial policies of the State […]' and 'the funds as raised […] shall be used for the purpose as verified'*. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must be in compliance with the industrial policies of the State.

(314) According to the Administrative Measures for the Issuance and Trading of Corporate Bonds, only certain bonds corresponding with strict quality criteria, such as an AAA credit rating, may be offered for public issuance. Most bonds will therefore be privately issued to so-called qualified investors, which have been approved by the CSRC, and which are essentially Chinese institutional investors.

(315) Finally, the interest rates on corporate bonds are not freely determined, since Article 18 of the Regulations on the Administration of Corporate Bonds states that *'the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity'*.

(316) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete issues of bonds. It therefore examined the overall legal environment as set out above in recitals (307) to (315), in combination with the concrete findings of the investigation.

(317) The verification visits revealed that bonds were issued by the two groups of sampled exporting producers at interest rates close to the People's Bank of China ('PBOC') benchmark interest rates, regardless of the companies' financial and credit risk situation.

(318) In practice, interest rates on bonds are influenced by the credit rating, similar to loans. However, as described above in recitals (237) to (242), the local credit rating market is distorted and credit ratings are unreliable. This was illustrated by the fact that the bond prospectuses and credit rating reports for the bonds issued by the sampled companies did not correspond to the actual situation of the companies.

(319) In one case for example, the financial analysis for the bond issue was based on a very high turnover and a profit of 12 %, although the financial statements of the company showed that it was making losses in fact.

(320) In another case, the detailed bond prospectus warned that the liability level of the company had been rising, that *'the debts burden on the issuer is heavy, and its assets-liability ratio is higher than the industry average… On the whole, the issuer's short-term solvency is relatively low, so there's certain short-term solvency pressure… The company mainly relies on non-operating income as its profits. This represents a lot of uncertainties for its profitability.'* Nevertheless, the report then concluded by providing a AAA credit rating to the bond offering.

(321) Finally, the Commission noted that under normal market circumstances, interest rates on bonds should on average be higher than interest rates on loans, because they are considered as subordinated debt. However, in the case of the sampled companies, the interest rates on loans were equal to or higher than the interest rates on the bonds.

(322) In light of the above considerations, the Commission found that the Chinese financial institutions organizing the issuance of bonds for the sampled companies are public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation. Furthermore, a benefit was provided to the two sampled exporting producers, since the bonds were issued at rates below the market rates corresponding to their actual risk profile.

(b) ***Specificity***

(323) The Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law of the PRC states that the issuance of bonds must comply with the State's industrial policies. According to these policies, high-performance radial tires (including tubeless truck tires) are specified as an encouraged category of products.

(c) ***Calculation methodology***

(324) Since bonds are in essence just another type of debt instrument, similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation

methodology for loans as described above in section 3.4.4. This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the benchmark interest rates published by the PBOC to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

(325) The subsidy amount established with regard to preferential bonds during the investigation period for the sampled groups of companies amounts to:

Preferential financing: bonds	
Company/Group	Overall Subsidy amount
China National Tire Group	0,72 %
Xingyuan Group	0,12 %

3.6. **Preferential financing and insurance: export buyer credits**

(326) According to the complainant, state-owned banks in China provided export buyer's credits or concessional loans to foreign companies, such as importers, in order to promote the export of Chinese products, technology, and services, such as tyres.

(327) During the investigation, the Commission found that none of the importers, whether related or unrelated, had any outstanding loans from Chinese financial institutions in their accounts. The Commission therefore concluded that this programme was not applicable to the sampled companies during the investigation period.

3.7. **Preferential financing and insurance: support for foreign investment**

(328) At the end of 2015, CNRC acquired a 65 % stake in the Pirelli Group. This Group had been valued at 7,1 billion EUR at the time. This acquisition was accompanied by several support measures from the GOC.

(329) Following the disclosure of the Information Document and final disclosure, the GOC, Pirelli and the CNRC claimed that the Commission could not investigate this scheme as it had not been covered by the complaint or by the Notice of Initiation. After final disclosure the GOC reiterated this claim and argued that the Commission did not provide an opportunity for consultations prior to initiation in accordance with Article 10(7) of the basic Regulation preventing the PRC from proposing a mutually agreed position. In addition, the GOC claimed that new schemes can be countervailed only if there was a legal basis in EU law. However, such legal basis was only introduced upon the entry into force of the new Article 10(7), second paragraph, of the basic Regulation in December 2017 ([63]), which was not applicable to this proceeding. The CNRC took the view that each program had to be individually mentioned in the notice of initiation. As the Commission had only referred to 'grants' or 'loans' and not to 'equity investment' the SRF investment was not covered by the proceedings.

(330) The Commission disagreed. The Notice of Initiation referred to the '(1) direct transfer of funds and potential direct transfer of funds or liabilities'. Both under Article 3(1)(a)(i) of the basic AS Regulation and Article 1.1 (a)(1)(i) of the SCM Agreement the term 'direct transfer for funds' is explained by bracketed examples. They enumerate 'for example, grants, loans, equity infusion'. As an equity investment, the SRF investment was hence covered by the Notice of Initiation under the heading 'direct transfer of funds'. Moreover, as explained below in recitals (334) to (340), the SRF investment was not considered to be a separate, self-standing programme for the purpose of this investigation. Rather, the SRF investment constituted an additional intervention in a package of five financial interventions from the Government of China in the context of acquiring Pirelli. Next to another equity investment from CINDA, the other parts of the package were a grant, a loan, and an interest repayment which the CNRC accepts for having been properly subject to investigation. By analysing the SRF investment, the Commission had thus not included a separate programme into the investigation, but rather looked at all relevant parts of one complex financial measure, as part of a programme to promote foreign trade in this context.

(331) Moreover, even if there had been a doubt about the scope of the covered subsidies by the proceeding, the Commission had dispelled such doubts in full transparency during the investigation. The question of the market-based nature of investments made by the Silk Road Fund ('SRF') was raised by common agreement during the

([63]) By means of Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017, OJ L 338, 19.12.2017, p. 1.

verification visit at the GOC, where the GOC also provided useful information about the nature of the SRF. In this respect, the Commission was also surprised about the allegation of CNRC made after final disclosure that the GOC had only made an oral response during the Commission's verification visit and that the Commission had not sought further information on the market-based nature of the SRF. Rather to the contrary, the Commission had sent an Article 28 letter to the GOC in that respect and received some documentation about the SRF investment by the GOC, which again underlines that this aspect of the GOC financing was properly part of the proceeding.

(332) The claim that the SRF investment was outside the scope of the investigation was therefore rejected.

(a) ***Legal basis***

(333) 13th Five Year Plan for the Development of Foreign Trade, issued by the Ministry of Commerce ('MOFCOM'), 26 December 2016;

— 13th Five Year Petrochemical Plan;

— Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation, issued in 2015 ('Guiding Opinions');

— Notice on Appropriating Subsidized Funds of Key Projects of 2015 Special Funds for the Development of Foreign Trade and Economy, C.H. [2015] No 653 and Chemchina File [2016] No 144;

— Notice of the Ministry of Finance on Release of Central State-Owned Capital Operating Budget in 2016, CZ [2016], No 18.

(b) ***Findings of the investigation***

(334) The Commission found that the GOC had intervened in several ways to facilitate the acquisition of the 65 % stake in the Pirelli Group by CNRC.

(335) First, CNRC received a grant of 500 million RMB (around 66 million EUR) from SASAC, to 'promote global production capacity cooperation under the 'One Belt, one Road Initiative", in line with the Notice of the Ministry of Finance on Release of Central State-Owned Capital Operating Budget in 2016, CZ [2016], No 18.

(336) Second, CNRC received a 800 million EUR preferential loan from a bank consortium including China Development Bank ('CDB'), EXIM and China Construction Bank ('CCB'). The loan agreement mentions as purpose of the loan the acquisition of Pirelli.

(337) Third, CNRC received a 17 million RMB refund of the interest paid on the loan mentioned in the recital above. This refund was granted by the Ministry of Finance 'for the acquisition of Pirelli's stock rights' as part of the 'key projects of 2015 special funds for the development of foreign trade', in line with the Notice on Appropriating Subsidized Funds of Key Projects of 2015 Special Funds for the Development of Foreign Trade and Economy, C.H. [2015] No 653 and Chemchina File [2016] No 144.

(338) Fourth, the GOC participated in the acquisition of the stake in the Pirelli Group by providing an equity participation worth 533 million EUR via SRF, a government investment fund which is part of the 'One Belt, one Road Initiative'. The investment agreement deals with the practical details of the transaction, but is silent about the underlying conditions. The Commission was not provided with any other documents between the SRF and the CNRC relating to this specific operation.

(339) Finally, the GOC participated in the restructuring exercise within the China National Tire Group after the acquisition by providing an equity participation worth 266 million EUR via the China Cinda Asset Management Company Ltd ('Cinda') in the company holding the Pirelli Group's industrial tire business.

(340) All five interventions had the common objective to allow CNRC purchasing Pirelli. Together, they are referred to as 'the measure'.

(c) ***Public Bodies***

(341) Some of the GOC's support was thus provided directly (e.g. via grants), some of it was provided indirectly via state-owned entities. Concerning the preferential loan mentioned in recital above, the Commission already established in section 3.4.1 above that CDB, EXIM and CCB were acting as public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation when providing loans to the sampled companies.

(342) With respect to SRF and Cinda, the Commission found that both entities are fully owned by the GOC and their corporate governance structure indicates that the State exercises a meaningful influence over them.

(343) According to its website, SRF is a State-owned entity established and supported by the State to provide investment and financing support for trade and economic cooperation and connectivity under the framework of the Belt and Road Initiative. The company is 100 % owned by the State through the State Administration of Foreign Exchange, China Investment Corporation, EXIM Bank and CDB. It has a board of directors and a board of supervisors, which consist of representatives from various Ministries.

(344) Cinda was founded as a state-owned enterprise and a bad bank for the China Construction Bank in 1999. According to its Annual Report, it was the first asset management company established in April 1999 pursuant to approval of the State Council to tackle financial risk and maintain the stability of the financial system as well as to facilitate the reform of state-owned banks and enterprises. In 2017, the main shareholders of the company were the Ministry of Finance (64,45 %) and the National Council for Social Security Fund of the PRC (7,06 %). The Board of Directors and the Board of Supervisors of the company consists of a mix of representatives from governmental authorities and large state-owned financial institutions.

(345) Distressed asset management is the core business of the company. According to its Annual Report, the company 'closely coordinated the national strategy', and supported, among others, the construction of the 'Belt and Road' Initiative. The Company also vowed that it 'will earnestly study and implement the spirit of the 19th National Congress of the CPC and Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, vigorously strengthen the overall leadership of the Party and provide strong political guarantee for the development of the Company'.

(346) Based on the information provided during the verification visit, as well as publicly available information, the Commission thus concluded the existence of formal indicia of government control with respect to SRF and Cinda.

(347) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of SRF and Cinda. In this context, the Commission noted that their participation must be seen within the context of the following legislative framework:

(348) The 13th Five Year Plan for the Development of Foreign Trade sets out the general principles behind China's foreign trade policy, which includes opening up with a larger scope and higher level and combining 'going out' and 'introduction' to drive trade growth. The Plan also aims at promoting a transformation from exports dominated by goods to exports of goods, services, technologies and capital. In this context, one of the major tasks set out in chapter III.3 of the Plan mentions the enhancement of the transnational operation capability of foreign trade enterprises, which encourages powerful companies to extend industrial chains, to conduct transnational mergers and acquisitions, and to obtain quality brands, core technologies and marketing channels. The Plan further mentions that systematic supports will be provided for transnational enterprises with good credit, thus forming a batch of large enterprises with transnational business capability which have a worldwide distribution market network.

(349) The Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation provide further details on how the 'going out' strategy is to be implemented in practice. The objectives are to realize a promotion from export of products to export of industries and to 'to actively develop and 'tap into' markets in developed countries'. The ultimate goal is to form a number of leading enterprises with international competitiveness and market development capacity.

(350) Articles 30 to 36 of these Guiding Opinions list all the policy support that companies 'going abroad' can receive, such as fiscal and tax support policies, concessional loans, financial support through syndicated loans, export credits, and project financing, equity investment, and finally export credit insurance.

(351) Article 35 specifically mentions the Silk Road Fund as a tool to fund projects supported by the State, which is used to 'increase equity investment sources. … We will give full play to the role of the Silk Road Fund. We will actively support international production capacity and equipment manufacturing cooperation projects through equity investment and debt financing'.

(352) Furthermore, the Silk Road Fund itself states on its website that its aim is to help Chinese enterprises to improve their export performance by giving them better access to overseas markets through the setting up of overseas operations and through the acquisition of foreign advanced technology.

(353) On this basis, the Commission concludes that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of SRF and Cinda.

(354) The Commission also examined the concrete behaviour of SRF and Cinda and noted that within the context of the acquisition of the stake in the Pirelli Group, both of these entities acted as financial investors, and do not actually exercise any operational control over their investments. Furthermore, both of them confer a benefit that could not be obtained under normal market circumstances:

(355) Cinda paid an abnormally high amount for its equity participation. Cinda paid 266 million EUR for this equity participation, although the underlying stake in the equity only corresponded to 38 million EUR, and the net assets of the company were worth 73 million EUR.

(356) As for SRF, according to its own statements, SRF's aim is to provide financial support for projects that do not have sufficient own capital, by reducing the overall debt ratio and improving the financing capability of the projects. At the same time, the fund facilitates syndicated loans (such as the preferential loan mentioned in recital (336) above), which provide further financing support for the projects. The Pirelli deal is repeatedly mentioned by SRF itself on its website as an example of this working method.

(357) Therefore, the Commission concluded that the legal framework set out above is being implemented by SRF and Cinda in the exercise of governmental functions with respect to the tyres sector, thereby acting as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

(358) In addition, even if SRF and Cinda were not to be considered as public bodies, the Commission found that they would also be considered entrusted and directed by the GOC to carry out functions normally vested in the government, within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons as set out in recitals (342) to (356) above. Thus, their conduct would be attributed to the GOC in any event.

(359) Following the disclosure of the Information Document and final disclosure, CNRC and Pirelli argued that SRF and Cinda are not public bodies, since SRF is not an aid agency and both SRF and Cinda pursue market-based returns like any private investor. In CNRC's view, the fact that the SRF investment had paid Pirelli's shares at market price confirmed that SRF investment decisions are taken independently and are based on market principles.

(360) The Commission recalled that the public body analysis responds to the question whether an entity is vested with governmental authority. The State not only owns the SRF (as set out in recitals (343) to (346)), but the government also exercises meaningful control over it. Whether or not individual SRF decisions are sound from a commercial perspective is not dispositive. Rather, the decisive point is that SRF decisions are not taken independently from government influence. As shown in recitals (348) to (353) there is a strong normative framework, in which the SRF operates as a government instrument to pursue the policy objectives of the One Belt One Road initiative (renamed Belt and Road initiative ('BR Initiative')). SRF managers appointed by and supervised by the GOC carry them out and thereby exercise meaningful control over SRF. The Commission hence confirmed its assessment that the SRF constitutes a public body or is at least entrusted or directed by the government to carry out functions normally vested in the government, such as pursuing public policy objectives.

(d) ***Benefit***

(361) CNRC and Pirelli also commented on the Information Document that the Commission did not prove that the terms of SRF's investment were inconsistent with usual investment practice. Any benefit should be limited to the difference between the terms offered by the government and the terms that the recipient could have secured on the market. In any case there was no benefit for CNRC or Pirelli, since the funds were provided to the previous shareholders of Pirelli to acquire their shares.

(362) The Commission disagreed with the fact that the SRF investment conferred no benefit to CNRC and that the transaction was comparable to what could have been secured on the market for the following reasons:

(363) While the SRF paid Pirelli's shares at market price, the advantage of the government intervention for CNRC is separate from the price at which SRF's equity investment was done. Indeed, the benefit of the government intervention resided in the fact that CNRC did not have sufficient own funds to finance the acquisition of Pirelli.

The deal was thus highly leveraged. If SRF had not intervened to take equity participation, CNRC would have had to secure additional funds on the loan market. However, this would have been difficult due to the high leverage already involved. In this respect, one of the pre-conditions of the loan granted by the China Development Bank to CNRC stipulated that CNRC needed to prove that it had secured additional funds from other sources. In addition, as mentioned in recital (356) above, SRF advertises on its website that its main objective is to provide financial support for projects that do not have sufficient own capital, by reducing the overall debt ratio and improving the financing capability of the projects. At the same time, the fund facilitates syndicated loans, which provide further financing support for projects.

(364) Even if CNRC had been able to secure the necessary funds via an extra loan, this would have come at a cost, since the company would have had to pay interest on the loan, and would have had to repay the capital on the loan. Thanks to the intervention of SRF, CNRC therefore did not have any additional financing costs, and improved the debt ratio of the transaction, which in turn facilitated the receipt of funds from the banks.

(365) Furthermore, the investment of SRF corresponded exactly to the amount which was needed by CNRC to gain an absolute majority ownership in the Pirelli Group (65 % versus 48,75 % without SRF). This majority ownership was acquired without relinquishing control to a minority shareholder.

(366) Finally, the lock up period for the exit of SRF is much longer than usual for private venture capital investors, who want to maximize their returns as soon as possible.

(367) After final disclosure, CNRC contested these arguments. In its view, the Commission had conducted an erroneous counterfactual analysis by examining whether the SRF's *equity* investment was consistent with the usual investment practice of private investors making *debt* investments. It also recalled the multiple steps in the SRF investment, arguing that it was fully consistent with the usual investment practice as a classical leveraged buyout. In particular, the lock-up period for the exit of SRF was not unusually long. It had been terminated ahead of schedule and was the same as for other minority shareholders. Finally, for CNRC, broad policy statements are insufficient to demonstrate the benefit conferred by financial contribution.

(368) The Commission rejected this claim. The benefit for CNRC as the recipient of the SRF investment was multi-faceted. A market-investor considering an equity participation of the kind operated by the SRF would have had to evaluate the risks associated with the transaction. Its industrial partner, the CNRC, did not have at the time sufficient funds to become the majority owner of Pirelli and was dependent on finding a financial investor at its side. As stated in recital (363) CNRC was only able to receive additional loans from other banks because of an improved overall debt ratio. Handing over the key to CNRC for becoming not only the majority shareholder in Pirelli, but also for securing additional loans, the SRF investment was an essential part of an operation of the GOC to add Pirelli to the CNRC's portfolio. A market-investor would have leveraged this position and would have provided funds on substantially different terms.

(369) First, the Commission noted the unusual agreement of SRF to relinquish its voting rights in the board in favour of CNRC. It is highly questionable whether a market-investor would have been satisfied by 'empowering' CNRC to become a majority shareholder with full operational control and relinquishing its voting rights to act as a 'powerless' minority shareholder.

(370) Second, the relatively long lock-up period for SRF underlines the public policy driven SRF investment. A market-investor would have insisted on a much shorter period to maximise its returns – and the fact that other minority shareholders accepted the same terms is irrelevant since one of them is not a financial investor at all, and while the other operates as a long-term investment fund. Events after the investment, namely the earlier termination of the lock-up arrangement due to the re-listing of Pirelli ahead of schedule, speak to the same point: they show that the agreed lock-up period was not consistent with standard market terms for a financial investor with such a huge leverage on CNRC as explained above.

(371) Third, the pre-emptive rights to CNRC to buy the remaining shares after the end of the lock-up period to acquire full control over the company are not market-based. A profit-oriented market investor would have kept flexibility to achieve a higher price for the shares if there were competing bidders for them and not agreed to such pre-emptive rights. Their existence again underlies that the SRF investment followed the public policy objective to help CNRC as a state-owned enterprise in completing its acquisition of Pirelli on favourable terms.

(372) For all these reasons, the Commission maintained its position that the SRF investment provided a benefit to CNRC.

(373) Concerning Cinda, the context for the determination of the benefit was different, since the funds were actually paid to CNRC, and since the Commission concluded that the equity participation was not based on a market-conform price, as mentioned in recital (355) above. In response to the Information Document, CNRC and Pirelli submitted an asset valuation report to establish that the investment had been performed on market-based terms. After verification, the Commission found that the figures indicated in the valuation report did not correspond to the figures at the disposal of the Commission. In fact, the valuation report did not concern the investment from Cinda, but had been drawn up in the context of another equity transaction within the CNRC group. This transaction also involved Pirelli Industrial Srl., but concerned a different buyer and a different time period, one year before the equity participation of Cinda. The Commission noted that Pirelli Industrial Srl. had undergone a major restructuring exercise during the year 2016. As such, its financial situation at the end of 2016, as evidenced in the audit report for 2016, was not comparable anymore to the situation presented in the asset valuation report submitted by CNRC. In the absence of verifiable information relating to the correct entities and time period, the Commission therefore maintained its position regarding the investment of Cinda.

(374) After final disclosure, CNRC and Pirelli took issue also with this analysis. In its view, there was no benefit for CNRC, as Cinda's investment was consistent with usual investment practice. In particular, in support of their claim they referred to the same valuation report made by an independent appraiser analysed in the recital above. Although acknowledging that the report was indeed drawn up in the context of a different equity transaction, they argued that this is not sufficient to exclude that it can be used as a reference for the pursuance of other transactions (such as the acquisition made by Cinda).

(375) The Commission did not accept this claim for the same reasons as those explained in recital (373) above and as acknowledged by Pirelli: the asset valuation report concerns another equity transaction and it covers a different time period, one year before the equity participation of Cinda. During that period Pirelli underwent a major restructuring exercise which undoubtedly had an impact on its financial situation. In addition, as confirmed by CNRC, Cinda acquired 38 % shares in Pirelli Industrial Srl., which is now called Prometeon Tyre Group S.r.l. ('PTG'). As the capital of that company amounted to EUR 100 million at the time, the nominal value of the shares was EUR 38 million. Cinda paid EUR 266 million for its equity participation. Considering that the net value of the company assets stood at less than half of this amount at the time and that it was barely making any profits, neither the asset-based evaluation nor the income-based evaluation would justify this high amount of equity participation. Failing the market-investor test, the Commission confirmed its position that the Cinda investment conferred another benefit onto CNRC.

(e) ***Specificity***

(376) The Commission also determined that the subsidies provided under this measure are specific under Article 4(2) of the basic Regulation. In particular, the chemical industry and SRF are specifically mentioned in the GOC's legislation. The fact that the coverage of industries in the legislation is wide, and that SRF or Cinda could invest in other industries does not invalidate these findings. After final disclosure, CNRC questioned this finding. It argued that the funding in the BR Initiative is not explicitly limited to certain enterprises or industries. In particular, it stressed that the list of priority areas in the Guiding Opinions is not exhaustive.

(377) The Commission recalled some characteristics of the Chinese preferential financing. Rather than operating clearly prescribed funding programmes with strict eligibility criteria, the highest political level identifies a number of encouraged industries. Financial actors, such as the policy banks, SRF or Cinda, comply with these directions in their actual practice. Against this background, the Commission regularly countervails subsidies for such encouraged industries as specific as they can be regarded as 'certain enterprises' within the meaning of Article 4(2) of the basic Regulation ([64]). In the present case, the CNRC did not contest that the chemical industry is part of such an encouraged industry. The fact that the list could be enlarged to other industries does not change this finding.

(378) Moreover, as mentioned in recitals (348) and (349) above, the legislation specifically targets exporting companies and refers to 'obtaining access to international markets'. Given its export contingency (as will be further detailed in section (f)) the measure shall therefore also be deemed to be specific under Article 4(4)(a) of the basic Regulation.

([64]) See Commission Implementing Regulation (EU) 2017/969, OJ of 9.6.2017, L 146, 17, paras. 149-151.

(f) ***Export contingency***

(379) The Commission then analysed whether the measures were in fact contingent upon export performance, because they were specifically granted to certain enterprises for 'going out' of China. In general, the support falls under the One Belt, one Road initiative, which is part of MOFCOMs Five Year Plan for the Development of Foreign Trade.

(380) The Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation specifically mention the industries which are to be considered under this strategy, among which the chemical industry is a priority area. The acquisition of the stake in the Pirelli Group by Chemchina is even specifically mentioned in the 13th Five Year Petrochemical Plan as a major achievement.

(381) The measure is specifically targeted at companies making outward investments. As mentioned in recital (349) above, the objectives are to realize a promotion from export of products to export of industries and 'to actively develop and 'tap into' markets in developed countries'. Therefore, Chinese companies which are only operating on the domestic market are not eligible to receive such financial support. The export contingent design of the measure is also illustrated by the fact that the fields to be chosen as a priority for outward investment are those with international market demand and those with 'remarkable advantages in international competition', i.e. those where Chinese export performance can be promoted. Chapter III.3 of the 13th Five Year Plan for the Development of Foreign Trade further specifies that support is geared towards foreign trade enterprises.

(382) Concerning the acquisition of the Pirelli Group in particular, the SRF stated the following on its website: '*the fund supported ChemChina in its acquisition of Pirelli, which has helped ChemChina to…effectively obtain access to international markets.*', and '*The fund supported Chemchina to propel ChemChina into the high end of the manufacturing industry, thus giving a competitive advantage on the international market*'.

(383) Indeed, by acquiring a 65 % stake in the Pirelli Group, CNRC in practice increased its overall exports to the EU by 29 % during the investigation period. CNRC also agreed to further increase its exports to the EU by integrating Pirelli's EU truck tyre business entirely into the Chinese exporting producer Aeolus Tyre Co. Ltd Therefore, the long-term objective of the supported acquisition was to upgrade the truck tyres produced by Aeolus with the technology acquired from the Pirelli Group, in order to move upwards in the tiers, and to start exporting truck tyres of a higher quality which are more competitive on the EU market.

(384) After the investigation period, CNRC reduced its financial participation in the Pirelli Group to 46 %. Pirelli Tyre Co, Ltd stopped producing the product concerned, to focus on motorbike and automobile tyres, thus completing the segregation of the Pirelli Group activities from the product concerned. However, these post investigation period events do not detract from the fact that before and during the investigation period, CNRC had received countervailable subsidies. In fact, these events confirm that CNRC proceeded as promised by increasing the exports of the product concerned to the EU through its related companies. Therefore, the Commission considers that the information collected regarding the Pirelli Group is representative in order to calculate the amount of subsidisation conferred upon the product concerned during the investigation period.

(385) In response to the Information Document, CNRC and Pirelli commented that the subsidy is not export contingent, citing case-law from the Appellate Body in the Airbus case where the notion of export contingency had been interpreted in a narrow sense.

(386) The Commission recalled that the concept of de facto export contingent subsidies is set out in Article 4(4)(a) of the basic Regulation, which mirrors Article 3.1(a) and footnote 4 of the SCM Agreement. This includes the situation in which the subsidy is 'in fact tied to … anticipated exportation'. De facto export contingency is assessed on the basis of the total configuration of the facts surrounding the grant of the subsidy, including its design and operation. The Commission agreed with the interested parties that the notion should be interpreted in line with the guidance from the Appellate Body.

(387) In Large Civil Aircraft the Appellate Body stated that: '*The standard for de facto export contingency under Article 3.1(a) and footnote 4 of the SCM Agreement would be met when the subsidy is granted so as to provide an incentive to the recipient to export in a way that is not simply reflective of the conditions of supply and demand in the domestic and export*

markets undistorted by the granting of the subsidy ([65])*.*' In other words, '*is the granting of the subsidy geared to induce the promotion of future export performance by the recipient?* ([66])'. This could include the situation in which the recipient promises to increase export (compared to domestic) performance.

(388) Applying the facts of this case in the light of the evidence on the file, the Commission found that this test was met. In contrast to the Airbus case, where the four granting authorities were financing a European company active in both domestic and foreign markets and where the design of the measure was not geared towards more export orientation of Airbus, the present case involves a three-way relationship: Chinese public bodies financed CNRC which had no margins how to spend the money. It received it with the precise legal condition to purchase another company, namely Pirelli. When accepting to receive such tied financing, CNRC promised to increase its export (compared to domestic) performance and increase its sales notably in Europe.

(389) First, the granting of the subsidy is tied to anticipated exportation, because, inter alia, the design of the measure is geared towards foreign trade enterprises. Support was only available for CNRC to gear its activities more towards exports (compared to its domestic sales) and such support was not given to other Chinese companies which are exclusively selling on the Chinese domestic market. This is supported by the following official government documents:

(390) The 13th Five Year Petrochemical Plan specifically mentions the acquisition of Pirelli by Chemchina as a major achievement of the 12th Five Year Plan, under the header 'international cooperation'. Furthermore, chapter 10 mentions in the context of international cooperation projects under the Belt and Road initiative that 'the expansion of international capacity cooperation in the tire industry and other high proportion export industries' should be emphasized.

(391) The Pirelli acquisition has been designated by MOFCOM as a key project for the development of foreign trade in 2015. In more general terms, one of the objectives of the 13th Five Year Plan for the Development of Foreign Trade (chapter III.3) is the enhancement of the transnational operation capability of foreign trade enterprises, which encourages powerful companies to extend industrial chains, to conduct transnational mergers and acquisitions, and to obtain quality brands, core technologies and marketing channels. The Plan further mentions that systematic supports will be provided for transnational enterprises with good credit, thus forming a batch of large enterprises with transnational business capability which have a worldwide distribution market network.

(392) In the Guiding Opinions the State Council stated that 'China's industrial advantage and funding advantage shall be combined with the demand abroad […] to vigorously promote international production capacity and equipment manufacturing cooperation'. Furthermore, they stipulate that 'fields […] with remarkable advantages in international competition and with international market demand shall be chosen as priorities'. Furthermore, as mentioned in recital (349) above, the objectives of the Guiding Opinions are 'to actively develop' and 'tap into' markets in developed countries'.

(393) The SRF only operates with foreign exchange funds (i.e. USD and EUR). Contrary to the banks, providing resources both in RMB and hard currency, the SRF supports projects only with foreign currency. As stated by the chairman of the SRF: 'The Silk Road Fund is an outbound investment fund investing mainly in foreign exchange' ([67]).

(394) Consequently, a company which sells only on the Chinese market and does not export or does not have any proven business plan to increase its exports would not be eligible to be supported by the SRF.

(395) Second the Commission analysed the concrete circumstances existing at the time when the granting authorities were providing the subsidies in order to establish that also this specific support was tied to the skewing of CNRC's anticipated sales towards exports (compared to its domestic sales). It found a number of indicators confirming the conclusion that this was indeed the case:

(396) In all five interventions referred to as 'the measure', the granting authority specified that the funds were provided to acquire the Pirelli Group. In the case of the intervention of Cinda, the granting authority specified even further the conditions for granting the funds. Indeed, as mentioned in relation to Cinda's intervention, the quotaholders' agreement notes that Cinda acknowledges that its equity participation in Pirelli Industrial is contingent to a plan to inject all of its stake into the Chinese exporting producer Aeolus before a certain deadline.

([65]) WT/DS316/AB/R EC and Certain Member States – Large Civil Aircraft, 18 May 2011, para. 1102.
([66]) WT/DS316/AB/R EC and Certain Member States – Large Civil Aircraft, 18 May 2011, para. 1067.
([67]) 'The Silk Road Fund begins operations: an interview with Zhou Xiaochuan', 16 February 2015, http://www.silkroadfund.com.cn/enweb, accessed on 11 September 2018.

(397) The SRF, as a co-investor, was fully aware of the market position of CNRC and anticipated the benefits on export performance which the transaction would bring. The Chairman of the Silk Road Fund acknowledged this as follows: 'The Fund supported Chemchina in its acquisition of Pirelli, which has not only helped Chemchina to successfully introduce from overseas advanced technologies and management knowhow for high-end manufacturing, but also to effectively obtain an access to international markets. ([68])'

(398) For CNRC, the main benefits from the acquisition of Pirelli were not linked to the domestic market. At the time of the acquisition, CNRC was already a major player for truck tires on the Chinese domestic market, whereas Pirelli only had a very small market share on the same market (less than 1 %). In addition, the Pirelli Group is a global player, for whom the Chinese market represented less than 10 % of the total sales of all products. Also, export sales already represented around 60 % of total sales, both for CNRC and Pirelli Tyre Co. Ltd

(399) Furthermore, among others in the Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province, corroborated by the sampling replies of the cooperating exporting producers, the Chinese domestic market is a market dominated by sales in the Tier 3 category, whereas Tier 1 tires are much more represented on the EU and US markets. Thus, adding a tier 1 player with a globally recognized brand such as Pirelli in its product portfolio did not add any immediate value for CNRC on the domestic sales market, but significantly enhanced its competitiveness on the export market, since it could now export the full range of products on top of its usual tier 3 product range.

(400) In addition, the Chinese market is already characterized by a certain overcapacity, and CNRC itself had a significant amount of idle capacity. According to the market analysis report conducted on behalf of CNRC prior to the investment, and on which the investment decision was based, the CNRC brand was thus 'looking for opportunities to escape from the current 'Red Ocean' competition and pursued further outbound expansion to give full play of its strength ([69])'. The report further stated that the main benefits for CNRC would be to enhance its international business by leveraging Pirelli's global sales network. In this respect, the Commission noted that before the acquisition, CNRC did not have its own direct sales channels in the EU, but was selling via independent dealers.

(401) This is also illustrated by an interview with Pirelli's global operations manager after the acquisition ([70]), who stated that thanks to the acquisition, the new group could now enter Australia with tyres in different price segments, and that the company intended to increase its exports, thus increasing its market share in Australia from 1 % to 10 % by selling tyres across the whole commercial tyre market.

(402) The pre-investment report also highlighted that CNRC could leverage Pirelli's R & D resources to enhance its own product lines, to better meet international market demand. After the acquisition, a license was indeed granted to one of the Chinese exporting producers within the group to use the Pirelli knowhow in its production process.

(403) In light of the above evidence about the profile of Pirelli known at the time of the grant and about the significant advantages that the acquisition would bring to the export performance of CNCR, the Commission concluded that the granting authority anticipated and was promised by CNRC in return for obtaining the subsidy that CNRC's exports sales would increase (compared to its domestic sales). Thus, there is a relationship of conditionality or dependence between the subsidy and CNRC's anticipated exports.

(404) Finally, the Commission analysed what was the actual effect of the Pirelli acquisition on CNRC's sales structure. Indeed, as mentioned in recital (345), CNRC agreed to integrate Pirelli's EU truck tyre business entirely into its related exporting producer Aeolus Tyre Co. Ltd in order to start exporting truck tyres of a higher quality which are more competitive on the EU market. In this respect, the Commission compared the sales structure of the CNRC group before and after the acquisition: not only did overall sales increase thanks to the addition of Pirelli, but the Commission also found that export sales increased more than domestic sales thanks to the acquisition, i.e. CNRC's sales were skewed towards exports (compared to its domestic sales). More specifically, truck tyre export sales had increased by 55 % towards Europe, by 5 % towards other markets and by 14 % overall during the investigation period. In addition, the group was now using a direct sales network in all major EU markets,

([68]) The Belt and Road Initiative: launching a new paradigm for international investment and financing cooperation, interview with Jin Qi, chairman of the Silk Road Fund, 26 June 2017, http://www.silkroadfund.com.cn/enweb/23809/23812/35485/index.html, accessed on 11 September 2018.
([69]) Provided by CNRC as exhibit 5 to the comments on the disclosure of the Information Document.
([70]) https://premium.goauto.com.au/pirellis-new-push-into-truck-tyres/, 14 April 2016, accessed on 11 September 2018.

whereas previously they could only sell indirectly via independent dealers. Finally, the product range of the tyres sold on the EU market was extended from Tier 3 tyres to Tier 1 as well as Tier 3 tyres. Therefore, the Commission concluded that the CNRC actually fulfilled the conditions tied to the granting of the subsidy, i.e. CNRC's promise to increase its sales towards exports (as compared to domestic sales).

(405) Consequently, the granting of the subsidy to CNRC to purchase Pirelli was geared to induce the promotion of promised future export (compared to domestic) performance by the recipient CNCR. The Commission thus maintained that the subsidies provided under this measure are contingent upon export performance within the meaning of Article 4(4)(a) of the basic Regulation.

(406) After final disclosure the CNRC, Pirelli and the GOC contested the export contingent nature of the measure. They argued that the granting authority had not tied the granting of the subsidy to an improved export performance of CNRC. CNRC submitted that the Guiding Opinions do not exclude Chinese companies only operating on the domestic market from access to enhanced investment cooperation under the BR initiative. Moreover, there was no contingency on export, but on value creation that happened to arise from the outward investment. Finally, the Commission could not just rely on actual effects of the alleged subsidy, but should do a proper *ex-ante* analysis. The GOC also argued that a cause and effect relationship would not be sufficient to affirm export contingency. It added that government measures or subsidies which assist foreign investment transactions, such as acquisition of shares in third-country enterprises, do not figure in Annex I to the SCM Agreement and can therefore not be qualified as export subsidies.

(407) The Commission noted that Annex I to the SCM contains an 'Illustrative List' of measures that can qualify as export subsidies. The list gives examples and is not exhaustive. Moreover, Article 3.1 (a) of the SCM Agreement refers to export subsidies, 'including those illustrated in Annex I'. It follows that non-listed measures can qualify as export contingent when they meet the conditions laid down in that provision. In line with the guidance of the Appellate Body in the Airbus case ([71]), the Commission analysed whether the granting authority provided the subsidy on condition that the recipient would increase exports (as compared to its domestic sales). In that respect, the Commission took into account the (i) design and structure of the measure; (ii) the modalities of operation set out in such measure; and (iii) the relevant factual circumstances surrounding the granting of the subsidy that provide the context for understanding the measure's design, structure, and modalities of operation.

(408) With respect to the design and structure of the measure, the Commission recalled that companies with only domestic activities are not eligible for funding under this programme. The fact that the Guiding Opinions do not formally exclude Chinese companies only operating on the domestic market from SRF funding, could only be relevant for a *de jure* contingency analysis. However, at stake is a *de facto* contingency. Indeed, since its creation in December 2014, the Silk Road Fund only supports foreign projects and companies which are exporting. They receive financial injections contingent upon skewing their current export performance towards more export sales (as opposed to domestic sales). The companies accepting the financing are thus made aware that the support is granted under the condition to skew anticipated sales towards exports.

(409) This legal tie is a constant feature in all projects of the Silk Road Funds. A review of the latest operations confirms that recipients were active on export markets and the financial support received under the Silk Road Fund was conditioned upon improving their export performance (as compared to domestic sales). For example, the SRF's investment in the construction of the world's largest solar power plant in Dubai allowed the Chinese SOE Shanghai Electric Group to sign a 700 MW EPC (Engineering, Procurement, Construction) contract in 2018 to build the power plant and to supply the power equipment. According to the press release for the signature of this contract, '*This project is a flagship project in supporting the three major Chinese power equipment suppliers, namely Shanghai Electric, Dongfang Electric and Harbin Electric, to 'go abroad' and break through the sophisticated and established power market* ([72])'. The chairman of the Shanghai Electric Group also declared that thanks to the Dubai project, the company aims '*to build Shanghai Electric into a renowned Chinese brand all over the world*', and added that '*the CSP project in Dubai showed huge progress in the group's business operation and equipment manufacturing against the bigger backdrop of China's Belt & Road initiative* ([73])'. A similar setup occurred for the first project in which the SRF invested in 2015, the Karot hydropower project in Pakistan, where the construction and supply of the equipment

([71]) WT/DS316/AB/R EC and Certain Member States – Large Civil Aircraft, 18 May 2011, paras. 1043, 1046.
([72]) https://www.acwapower.com/en/newsroom/press-releases/latest-news/epc-contract-with-shanghai-electric-to-develop-700-mw-dewa-csp-project-signed-in-china/.
([73]) 'Shanghai Electric to construct solar facility in Dubai', 14 April 2018, www.chinadaily.com.cn.

for the hydropower plant was entrusted to the Chinese SOE China Three Gorges Corporation ('CTG'). The project also was clearly linked by the company to the Belt & Road initiative and to export performance as follows: '*Under the 'One Belt, One Road' initiative, CTG is determined to expand its new energy business globally having formed four international business lines i.e. investment, construction, operation and consultancy* ([74])'.

(410) In the present case, the granting authority clearly stipulated in the grant notices, in the loan agreement, as well as in the investment agreement between the SRF and CNRC, that funds were received conditional upon the acquisition of Pirelli. With the adding of the top tier Italian brand Pirelli to CNRC's profile, the SRF not only leveraged the industrial investor to create value, as stated by CNRC in its comments upon final disclosure. The granting authority also ensured stronger export sales of CNRC in particular towards Europe. Thus, not only an anticipated increase in CNRNC's export sales in particular towards Europe was envisaged, but also the circumstances of the present case and the available evidence demonstrate that CNRC promised to skew its sales towards export sales (compared to domestic sales) vis à vis the granting authority when obtaining the subsidy.

(411) Looking at the modalities of operations set out in the measure, the Commission observed that the SRF only operates with foreign exchange funds (i.e. USD and EUR). Contrary to the banks, providing resources both in RMB and hard currency, the SRF supports projects only with foreign currency. As stated by the chairman of the SRF: 'The Silk Road Fund is an outbound investment fund investing mainly in foreign exchange' ([75]). In view of restrictions on the use of foreign exchange funds within China, it was thus clear when providing the funds that the granting authority was restricting the company to use these funds to develop and improve its export-related business (i.e. as opposed to simply acquiring domestic companies and/or focusing on domestic sales).

(412) This modality is also a constant feature in other projects funded by the Silk Funds, which involved investments in foreign currency in countries such as Dubai, Russia, Pakistan or Germany.

(413) As to the factual circumstances surrounding the granting of the subsidy, the Commission also looked at the details Pirelli's integration into the CNRC's structure.

(414) As mentioned in recital (383) above, the purpose of Cinda's intervention was to facilitate the restructuring and integration of the Pirelli truck tyre business into the Chinese exporting producer Aeolus. According to the quotaholders' agreement between Cinda and CNRC, Cinda made its equity participation in Pirelli Industrial contingent to a plan to inject its entire stakes into Aeolus before a certain deadline. If this condition is not met, an auction process is triggered to sell the Cinda shares and thus terminate the granting of the funds. The master agreement between CNRC and Aeolus stipulates that the purpose of this equity injection is to create 'build a large international company that focuses on the industrial tire business, based in China, listed in China, and with a worldwide footprint'. This was also publicly notified as such by Aeolus to the Shanghai stock exchange. It follows that the granting authority made a legal condition on the way in which CNRC should restructure, skewing it towards more export performance.

(415) Finally, the Commission did not imply from the mere actual effects of the subsidy that there had been a contingency at the time of granting it, as alleged by CNRC. Rather, it had analysed the facts surrounding the transaction from an *ex-ante* perspective. When accepting the subsidy measure, the recipient fully endorsed the legal ties attached to it. In the bond prospectus for medium term notes which was issued shortly after the acquisition, Chemchina (the parent company of CNRC) worded its promise to execute the conditions tied to the subsidies involved as follows: 'Since its establishment, the company has fully responded to the 'going out' strategy put forward by the central government to make full use of international resources. In order to build an internationally competitive enterprise group in recent years, it has completed some overseas M&A projects and created an internationally competitive enterprise group'. In this context, the purchase of Pirelli is quoted as one of its major achievements in this context, highlighting the global marketing network and sales channels of the company. Following up on this promise, CNRC skewed the ratio of its export sales to the EU v. total sales from 9 % (in 2015) to 12 % (in the investigation period) as compared to its domestic sales which only increased by 10 %. Without the support at issue, CNRC would have continued selling Tier 3 tiers in China as a market leader in the context of increasing domestic consumption.

([74]) http://ctgsail.com/message-from-chairman.
([75]) 'The Silk Road Fund begins operations: an interview with Zhou Xiaochuan', 16 February 2015, http://www.silkroadfund.com.cn/enweb, accessed on 11 September 2018.

(416) The Commission therefore maintained its position that the design and structure, the modalities of operation and the factual circumstances surrounding the measure, all support its findings that the subsidy (i.e. the five interventions from public bodies received to purchase Pirelli) was de facto contingent on export performance of the recipient.

(g) ***Calculation of the subsidy amount***

(417) The benefit on the preferential loan provided by CDB, EXIM and CCB was calculated according to the calculation methodology established in section 3.4.4. However, it was not included in the subsidy amounts calculated for preferential lending under section 3.4, but added to the subsidy amount established below in recital (421).

(418) The benefit of the grants and the equity participations was calculated as the amount allocated to the investigation period, based on an amortization of the investment over seven years, as this was the term of the long-term loan taken out by CNRC to finance the investment, and also corresponds to the average investment horizon of seven to 10 years put forward by the SRF on its website.

(419) Following the disclosure of the Information Document, CNRC and Pirelli contested the amount of the benefit calculated by the Commission, and submitted further documentation showing that the amount of the equity participation by SRF had been incorrectly assessed by the Commission. Based on the information submitted by CNRC, the Commission agreed that the actual equity investment of SRF was lower than found initially. The calculations were adapted accordingly.

(420) CNRC also requested the Commission to use the consolidated turnover instead of the export turnover of CNRC as a denominator for the benefit calculation. However, since the Commission maintained its position concerning the export contingent nature of the subsidy, this request was rejected.

(421) The subsidy amount established with regard to this scheme during the investigation period amounts to 18,99 % for the China National Tire Group.

(422) After final disclosure, the GOC submitted there is no record in the case file indicating that any other Chinese exporter has benefited from these programmes, or even engaged in any acquisition of foreign tyre producers. Therefore, when calculating the subsidy amounts for other non-sampled cooperating Chinese exporting producers, the subsidy amount established with regard to these programmes and relating to this specific exporter should not be applied to other non-sampled exporters. The Commission recalled that the sample is meant to be representative of the situation of all cooperating companies in China. Therefore, extrapolating the results found in the sample is deemed appropriate in the present case. Non-sampled cooperating exporting producers can request accelerated reviews pursuant to Article 20 of the basic Regulation. Consequently, the Commission rejected this claim.

3.8. **Preferential financing and insurance: export credit insurance**

(423) The complainant alleged that Sinosure provided export credit insurance on preferential terms to producers of the product concerned.

(a) ***Legal basis***

(424) Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa[2004] No 368), issued jointly by MOFCOM and Sinosure;

(425) Notice on Issuing the 2006 Export Catalogue of High-Tech Products of China, Guo Ke Fa Ji Zi [2006] No 16

(b) ***Findings of the investigation***

(426) Three out of four sampled groups of companies had outstanding export insurance agreements with Sinosure during the investigation period.

(427) During the verification visit at the GOC, Sinosure confirmed that it is fully state-owned, and that it holds around 90 % of the domestic market for export insurance. However, as mentioned in recitals (142) to (148) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance, such as its Annual Report or its Articles of Association.

(428) In addition, Sinosure did not provide more specific information about the export credit insurance provided to the tyres industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business. Therefore, the Commission had to complement the information provided by facts available.

(429) According to Sinosure's reply to the deficiency letter, Sinosure is a State-owned policy insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The Government has the power to appoint and dismiss the company's senior managers. Based on the reply to the deficiency letter, as well as the information provided during the verification visit, the Commission concluded that there is formal indicia of government control with respect to Sinosure.

(430) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of Sinosure with respect to the tyres industry. In this context, the Commission noted that the Export Catalogue of High-Tech Products of China specifically lists 'new pneumatic radial tyres of a kind used on buses or lorries (of rubber, cross-section width ≥ 24 inch' as products encouraged to be exported.

(431) Furthermore, according to the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance, Sinosure should increase its support for key industries and products on the basis of strengthening its overall support for the export of high tech products. It should treat products listed in the Export Catalogue of High-Tech Products of China, such as the radial tyres mentioned in recital (429) above, as its business focus and provide comprehensive support in terms of underwriting procedures, approval with limits, claims processing speed and rate flexibility. With regard to rate flexibility, it should give products listed in the Catalogue the maximum premium rate discount within the floating range provided by the credit insurance company.

(432) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.

(433) The Commission also sought concrete proof of the exercise of control in a meaningful way on the basis of concrete insurance agreements. During the verification visit, Sinosure maintained that in practice its premiums were market-oriented and based on risk assessment principles. However, no specific examples with respect to the tyres industry or the sampled companies were provided.

(434) In the absence of concrete evidence, the Commission therefore examined the concrete behaviour of Sinosure with regard to the insurance provided to the sampled companies. This behaviour contrasted with their official stance, as they were not acting based on market principles.

(435) In this respect, the Commission noted that Sinosure's Annual report for the year 2014 ([76]) states that the claims paid to key industries under short-term export credit insurance contracts reached 590 million USD in 2014, which represented 72,3 % of total claims. After comparing the total claims paid with the total insured amounts, the Commission concluded that on average Sinosure would need to charge 0,23 % of the insured amount as a premium to cover the cost of the claims (without even taking into account overhead expenses). However, in practice, the premiums paid by the sampled companies were much lower than the minimum fee needed to cover operational costs.

(436) In addition, the Commission found that several of the exporting producers benefited from a partial or total refund of the export credit insurance premiums paid to Sinosure.

(437) Therefore, the Commission concluded that the legal framework set out above is being implemented by Sinosure in the exercise of governmental functions with respect to the tyres sector, thereby acting as a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law. Furthermore, a benefit was provided to the sampled exporting producers, since the insurance was provided at rates below the minimum fee needed for Sinosure to cover its operational costs.

(438) The Commission also determined that the subsidies provided under the export insurance programme are specific, because they could not be obtained without exporting and are thus export contingent within the meaning of Article 4(4)(a) of the basic Regulation.

([76]) Sinosure Annual Report 2014, p. 20.

(c) ***Calculation of the subsidy amount***

(439) Since Sinosure represents around 90 % of the domestic market for export insurance in the PRC, the Commission could not find a market-based domestic insurance premium. In line with previous anti-subsidy investigations, the Commission thus used the most appropriate external benchmark, for which information was readily available, i.e. the premium rates applied by the Export-Import Bank ('Ex-Im Bank') of the United States of America to non-financial institutions for exports to OECD countries.

(440) The refunds of export insurance premiums awarded during the investigation period were treated as a grant. Since there was no evidence of additional costs incurred by the companies for which an adjustment would be needed, the benefit was calculated as the full amount of the refund received in the investigation period.

(441) The subsidy amount established with regard to this scheme during the investigation period for the sampled exporting producers amounts to:

Preferential financing and insurance: export credit insurance	
Company/Group	Subsidy Rate
China National Tire Group	0,18 %
Hankook Group	0,06 %
Xingyuan Group	0,17 %

3.9. **Government provision of goods at less than adequate remuneration**

3.9.1. *Provision of goods at less than adequate remuneration: general remark*

(442) As mentioned in section 3.2 above, the Commission informed the GOC that, given the absence of questionnaire replies from producers of natural rubber and synthetic rubber, it might have to base its findings on facts available pursuant to Article 28(1) of the basic Regulation as far as the information relating to suppliers of the above mentioned raw materials was concerned. The Commission investigated whether the sampled companies received raw materials for producing tyres at subsidised prices from the GOC.

3.9.2. *Provision of carbon black and nylon cord at less than adequate remuneration*

(443) All sampled companies purchased domestically from either related or unrelated companies, but also imported small quantities of carbon black and nylon cord.

(444) During the investigation, the Commission found indications that the State exercised a certain influence over the domestic market for carbon black and nylon cord. First, according to information received from the GOC, SOEs represented respectively 26,44 % and 8,46 % of the domestic output of carbon black and nylon cord.

(445) Second, the overall legislative framework indicates that carbon black and nylon cord are part of encouraged sectors, for which support measures exist. For example, as mentioned in recital (121) above, the 13th Five Year Petrochemical Plan, which includes carbon black, makes the link with various fiscal and financial support measures.

(446) Furthermore, the Tyres Industry Policy encourages among others the development of 'high-modulus low-absorption polyester cord fabric, and high strength nylon cord fabric', and 'the development of environmental-friendly rubber additives and other raw materials such as special carbon black and white carbon black' ([77]).

(447) In addition, the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries ([78]) prioritize the development of production technology and key raw materials for radial tyres, including carbon black and fibre framework materials.

([77]) Announcement of the Ministry of Industry and Information Technology on Printing and Distributing the Tire Industry Policy, Gong Chan Ye Zheng Ce [2010] No 2, art. 18 & 19.

([78]) Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science and Technology, the Ministry of Commerce and the National Intellectual Property Office.

(448) Although the investigation thus found that the supply of carbon black and nylon cord on the domestic market is to a certain extent influenced by the State for the reasons explained in recitals (444) to (447) above, the Commission concluded that it could not find sufficient evidence of subsidisation of the purchases of carbon black and nylon cord by the sampled exporting producers during the investigation period.

3.9.3. *Provision of natural rubber at less than adequate remuneration*

(449) All sampled companies imported natural rubber in significant volumes. Domestic purchases of natural rubber were negligible, except for one of the sampled companies, which purchased significant amounts of natural rubber on the domestic market via unrelated companies. The Commission established, based on verified information concerning individual transactions from all sampled companies that the purchase prices for domestic natural rubber were on average higher than the purchase prices for imported natural rubber.

(450) Therefore, the Commission concluded that there were no grounds to establish any countervailable subsidies on the purchase of natural rubber at less than adequate remuneration.

3.9.4. *Provision of synthetic rubber at less than adequate remuneration*

(451) All sampled companies purchased synthetic rubber domestically from either related or unrelated companies but also imported some quantities of synthetic rubber. The Commission established, based on verified information concerning individual transactions from all sampled companies, that the purchase prices for synthetic rubber on the domestic market were on average lower than the prices of imported synthetic rubber, and that the prices of synthetic rubber provided by SOEs was on average lower than the price of synthetic rubber provided by private companies.

(452) During the investigation, the Commission found indications that the State exercised a certain influence over the domestic market for synthetic rubber. First, according to information received from the GOC, SOEs represented 31,43 % of the domestic output of synthetic rubber.

(453) Second, the overall legislative framework indicates that synthetic rubber is part of an encouraged sector, for which support measures exist. For example, as mentioned in recital (121) above, the 13th Five Year Petrochemical Plan, which specifically mentions synthetic rubber, makes the link with various fiscal and financial support measures.

(454) Furthermore, Article 17 of the Tyres Industry Policy encourages among others 'the development of isoprene rubber and halogenated butyl rubber', and aims to 'increase synthetic rubber product brands such as butadiene rubber and styrene butadiene rubber, to gradually increase the utilization ratio of synthetic rubber, and the development and production capabilities'.

(455) In addition, the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries prioritize the development of production technology and key raw materials for radial tyres, including synthetic rubber.

(456) Finally, the Guidance Catalogue for Industrial Structure Adjustment, which is implementing Decision 40, includes 'large-sized synthetic rubber, advanced technology of rubber and elastomer, as well as manufacturing of new products'.

(457) The Commission established, based on verified information concerning individual transactions from all sampled companies, that the overall purchase prices for synthetic rubber on the domestic market were on average lower than the prices of imported synthetic rubber, and that the prices of synthetic rubber provided by SOEs was on average lower than the price of synthetic rubber provided by private companies. However, the Commission also noted the existence of several different types of rubber, such as styrene-butadiene rubber, butadiene rubber, isoprene rubber, butyl halogynated rubber, chloroprene rubber, etc. These different types of synthetic rubber are all used in the production process for tyres, but they have different chemical characteristics, uses, prices, and are produced by different companies.

(458) These differences are such that the Commission decided to segment its market analysis according to these different types. After further verification, the Commission found that although price differences had been observed at an aggregate level, there was no benefit on the domestic purchases of the most commonly used types of synthetic rubber, such as styrene-butadiene and butadiene rubber, and that a significant amount of the less commonly used types of rubber had been imported by the sampled companies.

(459) Although the investigation thus found that the supply of synthetic rubber on the domestic market is to a certain extent influenced by the State for the reasons explained in recitals (452) to (456) above, the Commission concluded that it could not establish any benefits relating to the purchase of synthetic rubber at less than adequate remuneration.

3.9.5. *Provision of electricity at less than adequate remuneration*

(460) All sampled companies either generated power themselves or purchased it. The purchase prices of power from the grid followed the officially established price levels set at provincial level for large industrial clients. As found in previous investigations ([79]), this level did not confer a specific advantage for these large industrial clients.

(461) However, the Commission established that two of the sampled companies benefitted from reductions or refunds of part of their electricity cost in the form of grants. For calculation purposes, these grants were included in the figures calculated under section 3.12.3 'Ad Hoc Grants' below.

(a) ***Legal basis***

— Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9);

— Interim Measures on the pilot for direct power of Jiangsu key electricity users and power generation enterprises, issued by the Jiangsu Economic and Information Technology Commission, 13 May 2014;

— Jiangsu Province Electricity internet Bidding Notice for March-April 2017;

— Notice of issuing the pilot scheme of direct electricity trading in Chongqing, Yu Fu Office [2016] No 167.

(b) ***Findings of the investigation***

(462) The Commission found that some key large industrial users of electricity are allowed to enter into direct purchasing contracts with power generators instead of buying from the grid. Three out of the four sampled groups of companies had such direct electricity purchasing agreements during the investigation period, whereas the fourth one procured electricity from its own related power plant. In all of the agreements investigated, the prices received through such contracts were lower than the fixed prices set at provincial level for large industrial clients.

(463) The possibility to enter into such direct contracts is currently not open to all large industrial consumers. At national level, the legislation specifies for example that *'enterprises that do not conform to the national industrial policy and whose products and processes are eliminated should not participate in direct transactions.'* ([80]),

(464) In practice, direct electricity trading is executed by the provinces. Companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil certain criteria. For example, in Jiangsu, direct electricity contracts are established via a centralized internet bidding platform. However, only companies which are *'in line with the national industrial policy guidelines such as the Guidance Catalogue for Industrial Structure Adjustment'*, are allowed to participate in the bidding process. Similarly, in Chongqing, *'enterprises that do not conform to the state's industrial policies, as well as products and processes belonging to restricted or eliminated businesses, shall not participate in direct transactions* ([81])*'*.

(465) Furthermore, there is no actual market-based negotiation or bidding process, since the quantities purchased under direct contracts are not based on the real supply and demand. Indeed, power generators and power users are not free to sell or purchase all of their electricity directly. They are restricted by quantitative quotas which are

([79]) Recital 182 of Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, p. 16–97).
Council Implementing Regulation (EU) No 451/2011 of 6 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of coated fine paper originating in the People's Republic of China (OJ L 128, 14.5.2011, p. 1–17).

([80]) Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9).

([81]) Notice of issuing the pilot scheme of direct electricity trading in Chongqing, Yu Fu Office [2016] No 167.

allocated to them by the local government. For example, in Ningxia province, the local government restricted the activity of the electricity trading platform by allocating the same quota of Mwh to all companies across the board, irrespective of the real quantities which the users tendered for, and which the power generation companies were ready to supply.

(466) After final disclosure, GITI claimed that in Ningxia province the quantitative quotas actually differ substantially among companies and are not allocated evenly. The Commission acknowledged that the quotas are not allocated evenly. However, this does not alter the conclusion that the power generators and the power users are not free to sell or purchase all of their electricity directly. In fact, despite the different quotas allocated among companies and the different periods of allocation, only two prices with a difference of less than 1 % between them were applied to all users in the provinces. This indicates that prices are not freely fixed between the buyer and the seller. In addition, as acknowledged by GITI, it was not able to purchase all of its electricity needed via the bidding process during the investigation period and had to pay the higher electricity rates set by the local government outside the bidding process. Therefore, the claim was rejected.

(467) In addition, the agreements reviewed by the Commission stipulated that if the user or the power company deviated from the allocated quotas by more than 5 %, a penalty has to be paid, and that the additional revenue from the penalty would be awarded to the State grid company.

(468) Furthermore, although prices are supposed to be negotiated directly between the power generators and the power user, the final contract is also signed by the State grid company, and the invoices to the companies are actually still issued by the State grid company. Finally, all signed direct purchase contracts need to be submitted to the local government for the record.

(469) The Commission considered that the reduced electricity rate at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC (i.e. the operator of the grid) that confers a benefit to the companies concerned. The benefit for the recipients is equal to the electricity price saving, since the electricity was provided at rates below the normal grid price paid by other large industrial users. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that conform with certain industrial policy objectives determined by the State and whose products or process have not been eliminated as not eligible.

(470) The Commission noted that the GOC is currently extending this scheme, and has recently issued further legislation to increase the number of direct transactions on the electricity market ([82]). However, this legislation was not applicable during the investigation period, and has not been implemented yet. Furthermore, the Commission will need to examine exactly how the new rules will work in practice, before being able to conclude that there are no distinctions between the beneficiaries anymore. Thus, the Commission concluded that the subsidy scheme was in place during the investigation period and that it is specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation. Furthermore, it will continue to confer benefits after the investigation period in accordance with Article 15(1) of the basic Regulation.

(c) ***Calculation of the subsidy amount***

(471) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total electricity price payable according to the normal grid rate and the total electricity price payable under the reduced rate.

(472) The Hankook Group and Giti Group claimed that the Commission made a clerical error when calculating their subsidy amounts. The Commission accepted these comments and revised the calculations accordingly.

([82]) Notice on accelerating market-based power trading and improving trading mechanisms, issued by the NDRC and the National Energy Administration, 18 July 2018.

(473) The subsidy amount established with regard to this scheme during the investigation period for the sampled exporting producers amounts to:

Provision of electricity at less than adequate remuneration	
Company/Group	Subsidy Rate
China National Tire Group	0,04 %
Giti Group	0,31 %
Hankook Group	0,23 %

3.9.6. *Land use rights (LUR)*

(a) ***Introduction***

(474) All land in the PRC is either owned by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships therein.

(475) Pursuant to the constitutional law of the PRC and the Land Law, companies and individuals may however purchase 'land use rights'. For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.

(476) According to the GOC, since 31 August 2006, by Article 5 of the State Council's Notice regarding Strengthening Regulation of Land (GF[2006] No 31), title to industrial land can only be granted from the State to industrial enterprises through bidding or a similar public offering process whereby the final deal price must not be lower than the minimal bidding price. The GOC considers that there is a free market for land in the PRC, and that the price paid by an industrial enterprise for the leasehold title of the land reflects the market price.

(b) ***Legal basis***

(477) The land-use right provision in China falls under Land Administration Law of the People's Republic of China. In addition, the following documents also are part of the legal basis:

— Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No 18);

— Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas;

— Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No 653);

— Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation;

— State Council's Notice regarding Strengthening Regulation of Land (GF[2006] No 31).

(c) ***Findings of the investigation***

(478) According to Article 10 of the 'Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation', local authorities set land prices according to the urban land evaluation system, which is only updated every three years, and the government's industrial policy.

(479) In previous investigations, the Commission found that prices paid for LUR in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the Urban Land Evaluation System which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.

(480) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that, with the exception of one plot of land for the Hankook Group, none of the sampled exporting producers had gone through bidding or a similar public offering process for any of its LURs, not even for the land use rights obtained recently. LURs held by the sampled companies were allocated by local authorities at negotiated prices.

(481) Following the disclosure of the Information Document, Pirelli Tyre Co. Ltd argued that it did not receive any LURs at below-market prices, since it allegedly leases its land from Chinese private landlords on the basis of standard market practices. The Commission agrees that Pirelli Tyre Co. Ltd rents part of its land. However, since the Chinese private landlord referred to by Pirelli Tyre Co. Ltd actually was a related company holding the LUR, the Commission disregarded this intercompany rental price and took into account the actual purchase contract and price of the LUR paid by the related company. This argument was therefore rejected.

(482) After final disclosure, Pirelli reiterated its arguments and claimed that the related company holding the LUR had acquired its land via a competitive bidding process. However, no evidence had been provided, either before or after final disclosure, that any bidding process had taken place for the acquisition of this land. The Commission thus maintained its position.

(483) The Commission noted that there is also a dynamic land monitoring system in addition to the urban land monitoring system. In the expiry review on Solar Panels originating in the People's Republic of China ([83]), the Commission found that these prices are higher than the minimum benchmark prices set by the urban land evaluation system and used by local governments, because the latter were updated only every three years, while the dynamic monitoring prices were updated quarterly. However, there was no indication of land prices being based on the dynamic monitoring prices. In fact, the GOC had confirmed during the investigation on solar panels that the urban land price dynamic monitoring system monitored the fluctuations of the price levels of land in certain areas (i.e. 105 cities) in the PRC and was designed to assess the evolution of land prices. However, the starting prices in biddings and auctions were based on the benchmarks established by the land evaluation system. In addition, in this case, the sampled groups of companies received their plots of land through allocation. Therefore, the fact that the latter system existed was irrelevant since it did not apply to the sampled companies.

(484) Following the disclosure of the Information Document as well as final disclosure stage, both the GOC and the sampled companies contested the use of an out-of-country benchmark, and proposed the use of an in-country benchmark instead. Both the GOC and the Hankook Group highlighted that the Commission should have used the Chinese price for land-use rights from the dynamic land monitoring system, in light of the fact that the land-use right of one of the Chinese subsidiaries of the Hankook Group was acquired through a bidding process. However, the Commission already referred in its MET assessment in the parallel anti-dumping investigation to the fact that it had doubts on this bidding process. In particular, the Hankook Group was the only bidder for the land, and the price paid corresponded to the starting price of the bidding process. In the absence of additional detailed information concerning the actual process of the auction and taking into consideration that a similar plot of land was sold for a higher price during the same time period, it was uncertain that the initial price was set independently and corresponded to the market value of the land-use right in 2011. Moreover, thereafter, the initial 2011 price of this piece of land was even further reduced by a significant refund. This claim was therefore rejected.

(485) The Commission also found that companies in the Giti Group as well as in the Hankook Group received refunds from local authorities to compensate for the prices which they paid for the LURs. Furthermore, some of the LURs obtained by companies in the Xingyuan Group had not been paid yet, and some LURs in the China National Tire Group only had to be paid several years after the land had been put into use.

(486) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of a market price which is determined by free market supply and demand.

(487) After final disclosure, Pirelli argued that the Commission failed to present any new evidence to prove that the GOC had indeed provided LURs to the tyre manufacturers for less than adequate remuneration. The Commission

([83]) Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, *(Solar panels), recitals 421 and 425*.

disagreed with this statement. As shown in recital (475) above, the Commission investigated for each of the sampled exporting producers whether any competitive bidding had taken place, but concluded that this was not the case, which confirmed the findings from previous investigations.

(d) ***Conclusion***

(488) The findings of this investigation show that the situation concerning land provision and acquisition in the PRC is non-transparent and the prices were arbitrarily set by the authorities.

(489) Accordingly, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods which confers a benefit upon the recipient companies. As explained in recitals (478) to (486) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (494) to (504) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

(490) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (479). Within this industrial policy, the tyres industry is considered to be a pillar of the Chinese industry, and is listed as an encouraged industry ([84]). In addition, Decision No 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries. Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the tyre sector, and government practices in this area are unclear and non- transparent.

(491) The Giti Group claimed that the specificity of the subsidy for LUR was linked to being listed as an encouraged industry in the Chinese government plans, and that there was no evidence that the tyre companies belonged to an encouraged industry when the LUR prices were agreed. This claim is rejected, as the tyres and/or the petrochemical industry were already indicated as an encouraged industry as far back as the 8th and 9th Five Year Plan, which indicates the petrochemical industry as one of the country's pillar industries, and talk about proactively developing fine chemical products and supporting key chemical projects, as well as in the 'Catalogue of the major industries, products and technologies currently encouraged by the State (amended in 2000)', which includes manufacturing of high-grade radial tyres. These documents correspond to the period when the first LURs were granted to the sampled companies.

(492) The Giti Group also commented that the Commission did not provide any evidence that the upstream companies producing inputs, such as steel cord or nylon cord, for the exporting producers belonged to an encouraged industry. However, the Guidance Catalogue for the Industrial Structure Adjustment lists production, development and application of supporting special materials for high-performance radial tyres as '*encouraged*'. Moreover, the Tyre Industry Policy encourages the '*development and usage of new structure steel cord, high modulus and low shrinkage polyester cord fabric, high tenacity nylon cord fabric and other tyre skeleton materials*'. This argument was thus rejected.

(493) Consequently, this subsidy is considered countervailable.

(e) ***Calculation of the subsidy amount***

(494) As in previous investigations ([85]) and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ([86]). The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated

([84]) See section 3.1 above.

([85]) See, amongst others, Council Implementing Regulation (EU) No 2011/42, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013, 15.3.2013, OJ L 73, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22. ((*Filament glass fibre*), Commission Implementing Decision 2014/918/EC, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

([86]) As accepted by the General Court in Case T-444/11 Gold East Paper and Gold Huacheng Paper versus Council, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.

(495) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:

— the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;

— the physical proximity of the PRC and Chinese Taipei;

— the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;

— the strong economic ties and cross border trade between Chinese Taipei and the PRC;

— the high density of population in many of the provinces of the PRC and in Chinese Taipei;

— the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and

— the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

(496) Following the methodology applied in previous investigations, the Commission used the average land price per square meter established in Taiwan corrected for inflation and GDP evolution as from the dates of the respective land use right contracts. In the Information Document, the information concerning industrial land prices was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan. The inflation and GDP evolution for Taiwan were calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF for 2015.

(497) After final disclosure, Pirelli claimed that the use of an outside benchmark was not in line with the findings of the WTO Appellate Body report in *US — Softwood Lumber IV* ([87]), as the benchmark did not make the necessary adjustments to reflect the prevailing conditions on the Chinese financial market. However, the Commission noted that the Taiwanese benchmark is considered to be an appropriate benchmark, which is already close to the Chinese market for various reasons, as set out in recital (488) above. In addition, the Taiwanese land prices were adjusted for the past to take into account the evolution of GDP and inflation over time.

(498) Following disclosure of the Information Document, the Hankook Group pointed to the fact that the data provided by the Industrial Land Supply and Service information website of the Industrial Development Bureau of the Ministry of Economic Affairs of Taiwan, which the Commission had used, could not be accessed anymore and only provided offers for industrial land rather than actual transactional prices.

(499) The Commission acknowledged that the data which were used as a basis for the Information Document ceased to be publicly accessible. The Commission subsequently found that the Ministry of Interior of Taiwan had developed a new database collecting actual trading records for the sales of industrial land, starting as of 2013, and accessible via the following website: http://lvr.land.moi.gov.tw/login.action. The Commission considered this to be a reliable source of data accessible to all interested parties. Moreover, it refers to actual transactional prices rather than offers for industrial land. The Commission thus accepted the arguments of the Hankook Group and changed the benchmark for the benefit calculation relating to LURs accordingly for all sampled companies.

(500) As a result, for the period starting as of 2013, the Commission used the actual prices from the Taiwanese Ministry of Interior. For LURs acquired before this date, historic prices were constructed based on the evolution of GDP and inflation in Taiwan, as was the case in previous investigations.

(501) After final disclosure, the Giti Group, the Hankook Group and the GOC criticised that the LUR prices based on the new set of data were much higher than the ones used in the previous investigations, which raised doubts about the reliability of the new benchmark. In addition, the Hankook Group claimed that errors had been made in the data download from the Taiwanese database, and submitted an alternative calculation based on the same database. The Commission acknowledged that there had been a clerical error in the aggregation of the individual land prices, and corrected the average land prices accordingly. However, the Commission did not agree with the

([87]) Appellate Body Report, *US – Softwood Lumber IV*, para. 106.

selection criteria used by the Hankook Group for compiling the data. First, the Hankook Group selected transactions from a wrong period i.e. from 2012 at least as far as certain transactions are concerned. Second, the Hankook Group used the prices from all 22 districts in Taiwan, including some rural areas with little or no industrial activities. The Commission on the other hand had based its selection on the six districts where most Taiwanese industrial parks are located. Since all the sampled exporting producers are located in industrial zones in China an appropriate benchmark needs to be based on transactions that also took place in an industrial zone. This part of Hankook's claim was therefore rejected.

(502) The Hankook Group argued in its comments that the constructed Taiwanese prices for the past should take into account GDP development in China instead of GDP development in Taiwan, in order to take into account the faster rate of development in China in the past 30 years. As such, for the Hankook Group, corrected Taiwanese prices should take into account the level of economic development in the Chongqing Municipality since 2010 and in Huai'an, Jiangsu Province since 1996.

(503) The Commission acknowledged that China has known a faster rate of development than Taiwan in the past. Employing a GDP factor that takes into account this difference is in principle appropriate to arrive at a proper benchmark. However, according to the World Bank's statistical capacity indicator score, the quality of statistical data in China only reached a level of reliability which is similar to other upper middle income countries after the year 2012. This corresponds to the end of the period for which data need to be constructed ([88]). Therefore, the Commission could not use statistical data relating to Chinese GDP to construct historic LUR prices in the present case.

(504) After final disclosure, the Giti Group argued that the World Bank's statistical capacity indicator score uses a whole list of indicators, many of which have nothing to do with macroeconomic indicators. The Commission agreed that the World Bank's statistical capacity indicator is based on a basket of indicators, which include both macroeconomic and other indicators. Its aim is to reflect a nation's ability to collect, analyse, and disseminate high-quality data about its population and economy, based on the methodology, data sources, periodicity and timeliness used by a country to produce its economic and population statistics. However, the fact that the score does not focus exclusively on GDP statistics, but has a broader remit does not invalidate its results. Therefore, the Commission maintained that the data relating to Chinese GDP could not be used for past LUR prices.

(505) In accordance with Article 7(3) of the basic Regulation the subsidy amount has been allocated to the investigation period using the normal life time of the land use right for industrial use land, i.e. 50 years. This amount has then been allocated over the total respective company turnover during the investigation period, because the subsidy is not contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(506) The Giti Group alleged that the Commission should take the date of the valuation of the LUR, instead of the transaction date, to calculate any benefit concerning the LUR. The Commission rejected this allegation, since the date of the transaction is equivalent to the event having a monetary impact on the financial position of the company.

(507) In addition, the Giti Group urged the Commission to include the additional expenses for making the land available for industrial use, as well as the so-called land supporting fees and land requisition fees in the benefit calculation. The Commission rejected these comments for the following two reasons:

— The companies in question acquired their LURs at a contractual value in which there was no reference made to any other additional expenses. As a result, the Commission assessed that only the contractual value had to be taken into consideration;

— The benchmark value itself does not include any additional expenses or fees.

(508) Finally, some minor company-specific comments relating to clerical errors and the calculation of benefits which did not relate to the investigation period were accepted for China National Tire, Giti and Hankook.

([88]) The World Bank's Statistical Capacity Indicator is a composite score assessing the capacity of a country's statistical system. It is based on a diagnostic framework assessing the following areas: methodology; data sources; and periodicity and timeliness. Countries are scored against 25 criteria in these areas, using publicly available information and/or country input. Data for all countries can be extracted on http://databank.worldbank.org/data/reports.aspx?source=Statistical-capacity-indicators.

(509) The subsidy amount established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Provision of Land use rights at less than adequate remuneration	
Company/Group	Subsidy Rate
China National Tire Group	1,80 %
Giti Group	1,75 %
Hankook Group	1,11 %
Xingyuan Group	1,06 %

3.10. **Direct tax exemption and reduction programmes**

3.10.1. *EIT privileges for High and New Technology Enterprises*

(510) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law'), high and new technology enterprises to which the State needs to give key support are given a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) ***Legal basis***

(511) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC, as well as:

— Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing 'Administrative Measures for the Recognition of High-Tech Enterprises', G.K. F.H. [2016] No 32;

— Notification of the Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation concerning Revising, Printing and Issuing the Guidance for the Recognition Management of High and New Tech Enterprises, GKFH [2016] No 195; and

— Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science and Technology, the Ministry of Commerce and the National Intellectual Property Office.

(b) ***Findings of the investigation***

(512) Companies which can benefit from the tax reduction are part of certain key high and new technology fields supported by the State, as well as the current priorities on high technology fields supported by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries. These guidelines clearly mention manufacturing technology and key raw materials for radial tires as a priority area.

(513) In addition in order to be eligible, the companies must satisfy the following criteria:

— keep a certain proportion of research and development expenses in comparison with their sales revenue;

— keep a certain proportion of income from high-tech technology/products/services in the enterprise's total revenue; and

— keep a certain proportion of technical personnel in the enterprise's total employees.

(514) Companies benefiting from this measure have to file their income tax return and the relevant annexes. The actual amount of the benefit is included in the tax return.

(515) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State, such as some key technologies within the tyres sector.

(c) ***Calculation of the subsidy amount***

(516) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(517) The amount of subsidy established for this specific scheme was 0,12 % for the China National Tire Group and 0,01 % for the Giti Group.

3.10.2. *EIT offset for research and development expenses*

(518) The tax offset for research and development entitles companies to preferential tax treatment for their R & D activities in certain high technology priority areas determined by the State and when certain thresholds for R & D spending are met.

(519) More specifically, R & D expenditures incurred to develop new technologies, new products and new crafts which do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 50 % deduction after being deducted in full in light of the actual situation. Where the above-mentioned R & D expenditures form intangible assets, they are subject to amortization based on 150 % of the intangible asset costs.

(a) ***Legal basis***

(520) The legal basis for the programme is Article 30(1) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC; as well as the following notices:

— Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R & D Expenses. (Cai Shui [2015] No 119);

— Notice of the State Administration of Taxation on Issues Concerning Policy of Pre-tax Deduction of R & D Expenses of Enterprises; and

— Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science of Technology, the Ministry of Commerce and the National Intellectual Property Office.

(b) ***Findings of the investigation***

(521) During a previous investigation ([89]), it was established that the 'new technologies, new products and new crafts' which can benefit from the tax deduction are part of certain high technology fields supported by the State, as well as the current priorities on high technology fields supported by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries.

(522) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R & D expenses in certain high technology priority areas determined by the State, such as the tyres sector.

(523) The Giti Group alleged that the tax offset for research and development is not a specific subsidy, since it applies to all Chinese companies as set out in Article 95 of the Regulation on the Implementation of the Enterprise Income Tax Law which applies to all companies, not only to high and new technology enterprises.

(524) The Commission rejected the allegation that the tax offset for research and development is not a specific subsidy. Although it is true that it does not only apply to high and new technology enterprises, its use is restricted to 'new technologies, products and crafts', which have been defined specifically as mentioned in recital (521) above. Therefore, the Commission's preliminary conclusion remains unchanged,

([89]) See Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17), recital 330.

(c) ***Calculation of the subsidy amount***

(525) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 50 % deduction of the actual expenses on R & D.

(526) The amount of subsidy established for this specific scheme was 0,02 % for the Giti Group.

(527) The Giti Group claimed that by not deducting the alleged benefits from schemes that lower a company's costs (and hence increase its profits) when calculating the benefit under the tax reduction for high and new technology enterprises, the Commission effectively counted some of the alleged benefits twice.

(528) The Commission agreed with the Giti Group that benefits from subsidies (when reported as an income in the income statement) decrease the costs of a company and as a result increase the gross profit of a company, leading to a higher tax and where applicable a higher tax reduction. Nevertheless, the company Giti Radial is entitled to declare grants and subsidies as exempted income for the calculation of the taxable amount, thus reducing the income taxes payable. In addition, the Commission's methodology is consistently applied by calculating the benefits on the basis of the available financial data for the investigation period, as provided by the company and verified on the spot.

3.10.3. *Land use tax exemption*

(529) An organization or individual using land in cities, county towns and administrative towns and industrial and mining districts shall normally pay urban land use tax. Land use tax is collected by the local tax authorities where the land is used. However, certain categories of land, such as land reclaimed from the sea, land for the use of government institutions, people's organizations and military units for their own use, land for use by institutions financed by government allocations from the Ministry of Finance, land used by religious temples, public parks and public historical and scenic sites, streets, roads, public squares, lawns and other urban public land are exempted from the land use tax.

(a) ***Legal basis***

(530) The legal basis for this programme is:

— Provisional Regulations of the People's Republic of China on Real Estate Tax (Guo Fa [1986] No 90, as amended in 2011); and

— Interim Regulations of the People's Republic of China on Urban Land Use Tax (Order of the State Council of the People's Republic of China [2013] No 645).

(b) ***Findings of the investigation***

(531) Two of the sampled companies benefited from rebates or exemptions on the payment of land use taxes by the local Land Use Bureau, even though they did not fall under any of the exempted categories as set by the national legislation above.

(c) ***Conclusion***

(532) The Commission considers that the tax exemption at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the companies received a tax reduction although they did not fit into any of these objective criteria mentioned in recital (529).

(d) ***Calculation of the subsidy amount***

(533) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax actually paid during the investigation period.

(534) Following the disclosure of the Information Document, the Hankook Group commented that the refund of land use tax which it had received was not countervailable, as it had been received before the investigation period. After further analysis, the Commission accepted this argument, since the last refund of the land use tax had indeed been booked before the start of the investigation period in June 2016, and since no further payments were made after this date.

(535) Furthermore, the Giti Group claimed that land use tax is not generally payable on certain types of buildings (residential buildings and schools), as demonstrated in a notice on land use tax exemptions from 1988. The Commission found that this notice was not valid anymore, since the '*Interim Regulations of the People's Republic of China on Urban Land Use Tax*', mentioned above in recital (530), do not include schools and residential buildings anymore in the exempted categories. Therefore, this claim was rejected.

(536) Finally, the Giti Group stated that two of the companies in the group did pay the land use taxes relating to the investigation period through offsets with earlier payments. Consequently, there were no benefits for these two companies. The Commission agreed with these statements and amended the subsidy calculations accordingly. As a result, the amount of subsidy relating to this specific scheme was 0,01 % for the Giti Group.

3.10.4. *Local tax discounts or refunds*

(537) One of the companies in the Hankook Group benefitted from a refund by the local government of taxes collected according to national regulations.

(a) ***Legal basis***

(538) The legal basis for this programme is:

— Measures of Huaian Municipal Economic Development Zone for Realization of Preferential Tax Policies (1996).

(b) ***Findings of the investigation***

(539) According to an agreement with the local government, the company was eligible for a full income tax refund for the first two years from the first year of corporate tax payable by the company (thus starting in 2003). In years 3 to 5, the company was eligible for a reduced income tax of 15 %, as well as a 100 % reimbursement of the local part of the income tax paid. In years 6 to 10, the company was eligible for a 75 % reimbursement of the local part of the income tax paid. As of year 11 onwards, the company was eligible for a 50 % reimbursement of the local part of the income tax paid.

(540) The company explained that the government changed its policy over the years and therefore, the company was only eligible for these type of refunds and preferential rates only until 2012. The eligible refund which had not been paid out yet by 2012, was promised to be paid in the future when the local government budget would allow it. As a result, the company still benefited from a reimbursement during the investigation period.

(c) ***Conclusion***

(541) The Commission considers that the tax exemption at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the company concerned. The benefit for the recipient is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the company received a local tax reduction specifically intended for it, which was not available to other companies.

(542) While the Commission saw no evidence that the programme was still operational during the investigation period, the Commission established on the basis of the information from the sampled companies that they still availed benefits under this programme.

(543) After the disclosure of the Information Document, the company reiterated its statement that it had only been eligible for refunds until 2012. However, no new evidence was presented that would alter the Commission's conclusion.

(d) ***Calculation of the subsidy amount***

(544) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax actually paid during the investigation period.

(545) The amount of subsidy relating to this specific scheme was 0,13 % for the Hankook Group.

3.10.5. *Total for all direct tax exemption schemes and reduction programmes*

(546) The total subsidy amount established with regard to all direct tax schemes during the investigation period for the sampled exporting producers was as follows:

Direct tax exemptions and reductions	
Company/Group	Subsidy Amount
China National Tire Group	0,12 %
Giti Group	0,04 %
Hankook Group	0,13 %
Xingyuan Group	0 %

3.11. **Indirect Tax and Import Tariff Programmes**

3.11.1. *VAT exemptions and import tariff rebates for the use of imported equipment and technology*

(547) This programme provides an exemption from VAT and import tariffs for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged project issued by the Chinese authorities or by the NDRC in accordance with the relevant investment, tax and customs legislation.

(a) ***Legal basis***

(548) The legal bases of this programme are:

— Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa [1997] No 37;

— Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies;

— Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No 43;

— Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, [2006] No 316; and

— Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

(b) ***Findings of the investigation***

(549) Equipment imported in order to develop domestic or foreign investment projects in line with the policy of encouraging foreign or domestic investment projects may be exempted from payment of the VAT and/or import duty, unless the equipment category is listed in the catalogue of non-duty exemptible article. To benefit from this exemption, the company needs to obtain a confirmation letter from the local authority responsible for the project, which needs to be submitted to the local customs authority.

(550) The GOC claimed that with effect from 1 January 2009, only the import duty was exempted and VAT on importation of equipment for self-use was collected.

(551) However, exemptions of both VAT and import duty during the investigation period were identified in the sampled companies. These included exemptions for equipment imported in previous years, but for which the benefit was amortized over the lifespan of that equipment and was thus partially allocated to the investigation period. While the Commission saw no evidence that this exemption was operating during the investigation period, the Commission established on the basis of the evidence on the file relating to the sampled companies that the sampled companies still availed benefits under this programme.

(552) Following the disclosure of the Information Document, Pirelli found that the calculation concerning benefits from imported machines and equipment was incorrect. The Commission agreed with the corrections provided, and adapted the calculation accordingly.

(c) ***Conclusion***

(553) This programme provides a financial contribution in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs which would be otherwise due. It also confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation.

(554) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation. The legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and belonging either to the encouraged category or the restricted category B under the *Catalogue for the guidance of industries for foreign investment and technology transfer* or those which are in line with the *Catalogue of key industries, products and technologies the development of which is encouraged by the State*. In addition, there are no objective criteria to limit eligibility for this programme and there is no conclusive evidence to infer that eligibility is automatic under Article 4(2)(b) of the basic Regulation.

(d) ***Calculation of the subsidy amount***

(555) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In order to ensure that the countervailable amount only covered the investigation period the benefit received was amortized over the useful life of the equipment according the company's normal accounting procedures.

(556) All the sampled companies benefitted from rebates under this scheme. The amount of subsidy established for this specific scheme ranged from 0,04 % to 0,13 %.

3.11.2. *Import duty drawback scheme for the purchase of natural rubber*

(557) The Commission noted that all the sampled companies had been qualified as so-called 'processing trade enterprises'. According to Article 3 of the Measures of the Customs of the People's Republic of China for the Supervision of Processing Trade Goods ([90]), *'the term 'processing trade' shall refer to business activities wherein the operating enterprise imports all or part of the raw or auxiliary materials, parts and components, component parts and packaging materials, and re-exports the finished products after processing or assembling, including processing of supplied and imported material.'* Article 5 furthermore states that *'Where taxes are collected during import in accordance with the relevant provisions, customs shall rebate the collected taxes according to the verified quantity of the goods actually processed and re-exported after the export of the finished goods.'*

(a) ***Legal basis***

— Customs Law of the People's Republic of China, Order of the President of the People's Republic of China No 81, 4 November 2017;

— Measures of the Customs of the People's Republic of China for the Supervision of Processing Trade Goods, Order of the General Administration of Customs No 235, 20 December 2017;

— Measures of the Customs of the People's Republic of China for the Administration of Unit Consumption in Processing Trade, Order of the General Administration of Customs No 218, 13 March 2014;

— Preliminary Administrative Measures on Enterprise Creditworthiness Management, Order of the General Administration of Customs No 225, 4 September 2014.

([90]) Order No 235 of the General Administration of Customs, 20 December 2017.

(b) ***Findings of the investigation***

(558) During the investigation, the Commission found that all of the sampled companies had registered with customs for the processing trade scheme mentioned in recital (557) above, and that, in line with the provisions of Article 5 of the Measures of the Customs of the People's Republic of China for the Supervision of Processing Trade Goods, all of them had received waivers of '*taxes collected during import*' (i.e. import duties) on imports of natural rubber used in the production of exported tyres.

(559) Such a setup corresponds to a duty drawback scheme as described in Annex I(i) of the basic Regulation. Pursuant to point (i) of Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

(560) In order to determine whether such excess remission existed, in accordance with Annex III, point II of the basic Regulation, the Commission requested additional information from the GOC on the processing trade scheme in general, and more specifically on the existence and effective application of the accompanying monitoring and verification procedures.

(561) Based on the information received, the GOC has indeed put a legislative framework in place for monitoring the processing trade system. However, the Commission also noted that some features built into the system could potentially lead to excess drawbacks:

— The system is predominantly based on self-declarations by companies.

— Contrary to generally accepted practice, import duties are waived upfront. Customs authorities only retain a right to reclaim them afterwards.

— The intensity of checks performed on companies is based on the attribution of a credit score, which is itself mainly based on self-declaration, and includes extra points for being part of an encouraged industry.

— Customs declarations are based on standard consumption rates set by the customs authorities. The standard consumption rate of natural rubber per exported tyre was much higher than the actual consumption rate verified at the premises of the sampled companies.

(562) Furthermore, during the verification visits at the sampled companies, it appeared that this framework was not effectively applied in practice. For example, the Commission found that contrary to what was stated in the legislation, natural rubber destined for exported tires was not separated from other natural rubber in the warehouses, and that no regular on spot verifications had taken place at the premises of the sampled companies.

(563) In addition, companies imported so-called mixed rubber under HS code 40028000 (with a 0 % tariff rate). This HS code should normally be used for compounded rubber, i.e. a mixture of natural and synthetic rubber, but predominantly composed of synthetic rubber. In reality, the mixed rubber imported by the sampled companies contained 97,5 % of natural rubber, had the same physical characteristics as natural rubber, and was used in the same manner and the same proportions as natural rubber in the production process of the verified companies.

(564) As a result, three out of four sampled groups of companies did not pay all of the import duties which should have been due.

(c) ***Conclusion***

(565) In accordance with Annex III of the basic Regulation, the Commission notified the GOC in a separate document of the individual transactions examined during the investigation, so that the GOC could conduct any additional enquiries it deemed necessary. In its response to the Commission's letter, the GOC argued that the conditions provided in point II (3) of Annex III of the basic AS Regulation were not met, since the Chinese Government has a strict legislative framework in place to monitor the actual transactions on imports of natural rubber. The GOC further referred to the fact that the legislation in place foresees sanctions and legal liabilities in case of violations. Moreover, customs have sufficient human resources to implement the regime at local level and implement penalties. Finally, if there are findings of smuggling and irregularities, the company will be downgraded in its credit rating.

(566) As mentioned in recital (561) above, the Commission acknowledges that the GOC has put a legislative framework in place for monitoring the processing trade system. However, the Commission also found, as mentioned in recitals (561) to (562) above, that the legislative framework showed some weaknesses and that it was not effectively applied in practice with regard to the sampled companies. The GOC did not present any evidence which would contradict the Commission's findings in this respect, and did not include any new information relating to the specific transactions notified by the Commission.

(567) The Commission thus concluded that the GOC's monitoring system for processing trade was not effectively applied as far as natural rubber is concerned. Furthermore, the Commission determined that the processing trade system for natural rubber used in exported tyres led to excess remissions, which constitute a countervailable subsidy within the meaning of Article 3(1)(a)(ii) of the basic Regulation, as they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

(568) These excess remissions are also specific, given that they are contingent upon export performance within the meaning of Article 4(4)(a) of the basic Regulation.

(569) Following final disclosure the GOC and the Giti Group submitted comments in this respect. The GOC restated its earlier claim that it has a strict legal framework in place which is properly enforced and the Commission cannot draw its conclusion on the basis of a few isolated cases where companies did not respect the laws regulating processing trade scheme. In reply to these claims the Commission reiterated that the facts do not substantiate the claim of GOC that there were only a few isolated cases where exporting producers did not respect the applicable of legislation. Indeed, as stated in recital (562) all the exporting producers in the sample which used this scheme did not pay some of the import duties which were due. The GOC also failed to conduct a further examination of the transactions at issue. Therefore, the Commission rejected this claim.

(570) Following final disclosure the Giti Group claimed that the Commission breached its rights of defense by including the duty drawback scheme at such a late stage of the investigation and had no competence to investigate the scheme as it was not covered by the Notice of Initiation.

(571) In respect of the claims that the Commission breached the exporting producer's right of defense the Commission observed that the Notice of Initiation allowed for investigating the duty drawback scheme since section 3 thereof specifically referred to import tariff rebates. Furthermore, the Commission already informed interested parties that it was investigating this scheme in section 3.13.3 of the Information Document. Therefore, the claim that the Commission did not respect the Giti Group's rights of defence was rejected.

(572) Moreover, the Giti Group claimed that the imports of mixed rubber should not be subject to duty drawback as the regular import duty for such a product is zero. Further it stated that it regularly uploads import data, consumption ratios and exported quantities on a web platform that is constantly monitored by the customs and customs carries out on-spot verifications.

(573) In response to these claims the Commission noted the following. The Commission accepted the claim that the duty rate for mixed rubber is zero and therefore cannot be subject to a duty drawback. Accordingly, the calculation of excess remission originating from this scheme was revised for all sampled exporting producers concerned. The final subsidy amounts are set out in recital (580) below.

(574) Concerning the monitoring system of the customs authorities, the Commission did not deny that Giti Group did indeed upload certain information to the web platform concerning the imports and usage of natural rubber. However, as mentioned in recital (561) above, these are essentially self-declarations. Even so, out of 11 exporting producers which were verified by the Commission, only one producer in the Giti Group had an on-spot check carried out at its premises. In addition, this check only consisted of a simple stock reconciliation. The Commission considered that such a check is not sufficient to ensure effective verification and therefore rejected this claim.

(d) ***Calculation of the subsidy amount***

(575) The benefit was calculated as the difference between the amount of import duties due during the IP, and the actual amount of import duties paid during the IP. In absence of the availability of actual consumption ratio of natural rubber per different type of tyre, the Commission assumed that 1) that the average consumption ratio for all types of tyres is the same and 2) all imported natural rubber would be used as a priority for exported tyres before being used for domestic tyres. Then, it first established the quantity of natural rubber imported during the investigation period. Second, it calculated the ratio between the export sales volume in comparison with the total sales volume of the product concerned. Third, the Commission applied this export sales ratio to the total volume of imported natural rubber and it determined the quantity of imported natural rubber for which import duties could be waived. Then in order to establish the amount of benefit, the Commission calculated the amount of import duty payable for the quantities of natural rubber used for the production of tyres for the domestic market and from this amount it deducted the amount of import duty actually paid.

(576) Following the final disclosure the Giti Group claimed the Commission should have used its actual consumption ratio for the calculation of benefit as it collected this information during the on-spot verification visit. By using the methodology described above, the Commission had overlooked the fact the natural rubber is also used in the production of other tyres and that these tyres have different consumption ratios.

(577) The Commission partially accepted the claim of the Giti Group. For GITI Yinchuan and GITI Hualin the Commission used the consumption ratio as reported on their import license. However, for the other two companies of the Giti Group who also benefited from this scheme the actual consumption ratios were not made available during the on-spot verification visit. Therefore, the Commission used the weighted average consumption ratio of GITI Yinchuan and GITI Hualin. The calculation of the amount of benefit was revised accordingly.

(578) None of the other sampled exporting producer submitted their actual consumption ratios. In this respect the Commission noted that results of the different methodology used were very similar. Indeed, the amount of subsidy established by the original methodology of the Commission was 3,62 % and by using their actual consumption ratio the amount of subsidy established is 3,64 %. This result showed that the original methodology of the Commission to establish the amount of subsidy was also solid. Therefore, the Commission concluded that there was no need to change the methodology used for the calculation of the amount of subsidy in relation to the other sampled exporting producer.

(579) The amount of subsidy established with regard to this type of subsidies during the investigation period for the sampled exporting producers was as follows:

Import duty drawback on natural rubber	
Company/Group	Subsidy Amount
China National Tire Group	1,10 %
Giti Group	3,64 %
Xingyuan Group	1,25 %

3.11.3. *Total for all indirect tax exemption or reduction schemes*

(580) The total subsidy amount established with regard to all indirect tax and import tariff schemes during the investigation period for the sampled exporting producers was as follows:

Indirect tax exemptions and reductions	
Company/Group	Subsidy Amount
China National Tire Group	1,21 %
Giti Group	3,74 %
Hankook Group	0,13 %
Xingyuan Group	1,30 %

3.12. **Grant programmes**

3.12.1. *Energy saving, conservation and emission grants*

(581) Three out of four sampled companies benefited from a variety of grants related to environmental protection and reduction of emissions, such as *e.g.* incentives for Environmental Protection and Resource Conservation, Promotion of synergistic resource utilization, Incentive funds for energy conservation projects, Promotion of Energy Management Demonstration Centres, grants related to Air Pollution Improvement Projects, incentives for circular economy projects.

(a) ***Legal basis***

— Law of the People's Republic of China on Energy Conservation, version revised and adopted on October 28, 2007, and version amended on July 2, 2016;

— Cleaner Production Promotion Law of the People's Republic of China, Order No 54 of the President of the People's Republic of China, as amended on 29 February 2012;

— Measures on Clean Production Inspection, Decree No 38 of the NDRC and Ministry of Environmental Protection, promulgated on 1 July 2016;

— Notice on Printing and Distributing the Interim Measures on the Administration of Subsidy for Energy Saving and Emission Reduction, Ministry of Finance [2015] No 161;

— Key Points of Energy Conservation and Comprehensive Utilization in Industry in 2015, issued by the MIIT on 3 April 2015;

— Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province issued by the Shandong Provincial People's Government Office on 22 October 2014;

— At local level: Notice on allocating the 2016 Jiaozuo Special Fund Plan for Environmental Protection; Notice on allocating the 2013 Air Pollution Prevention Special Fund, HeCaiZhiJian [2013] 702; and

— Notice on allocating 2014 industrial enterprise energy management center project fund, Ministry of Finance, CaiJian [2013] 470.

(b) ***Conclusion***

(582) The energy saving, conservation and emission programme confers subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

(583) The Commission also found that this subsidy programme is specific within the meaning of Article 4(2)(a) of the basic Regulation since only companies operating in key technologies or in the production of key products as listed in the guidelines and catalogues that are published on a regular basis are eligible to receive them. In particular, the MIIT document of 2015 specifically mentions the chemical industry as an industry for specific incentives related to energy conservation.

(584) Furthermore, the Tyres Industry Policy encourages '*the development of (…) energy-saving*' and '*environmental-protection*' tyres. According to the Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province ([91]), one of the main objectives for the tyres industry in Shandong is energy conservation and emission reduction. In this respect, support is to be provided with regard to investment, credit, and taxes associated with the production and application of so–called 'green' (i.e. environmentally friendly) tyres ([92]).

(c) ***Calculation of the subsidy amount***

(585) The benefit was calculated as the amount received in the investigation period, or allocated to the investigation period, where the amount was depreciated over the useful life of the fixed asset to which the grant was related. The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's Guidelines for the calculation of the amount of subsidy ([93]). However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the investigation period according to the depreciation rates of the related fixed assets, in line with the calculation methodology used in previous cases ([94]).

([91]) Shandong Province is the province with the largest production base of tyres in China, representing around 50 % of the PRC's total output of tyres.

([92]) Implementation Plan for Transforming and Upgrading the Tire Industry of Shandong Province issued by the Shandong Provincial People's Government Office on 22 October 2014, chapters 4.6 and 6.2.

([93]) OJ C 394, p. 6, 17.12.1998.

([94]) Such as e.g. Council Implementing Regulation (EU) No 2011/42, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 2013/215, 11.3.2013, OJ L 73, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22. (*Filament glass fibre*), Commission Implementing Decision 2014/918/EC, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

(586) The amount of subsidy established with regard to this type of subsidies during the investigation period for the sampled exporting producers was as follows:

Energy saving and conservation grants	
Company/Group	Subsidy Amount
China National Tire Group	0,02 %
Giti Group	0,04 %
Xingyuan Group	0,01 %

3.12.2. *Grants related to technological upgrading, renovation or transformation*

(587) The sampled companies benefited from a variety of grants under this programme related to R & D, technological upgrading and innovation, such as e.g. promotion of R & D tasks under the Science and Technology Support Plans, promotion of investments for Key Industry Adjustment, Revitalisation and Technology Renovation, etc.

(a) ***Legal basis***

— The 13th Five-year Plan on Technological Innovation;

— Guiding Opinions on Promoting Enterprise Technology Renovation, State Council, Guo Fa [2012] 44;

— Industry Revitalization and Technology Renovation Work Plan, issued by NDRC and MIIT, 2015;

— Medium to Long-Term Programme on Technological and Scientific Development (2006-2020) promulgated by the State Council in 2006;

— Administrative Measures for National Science and Technology Support Plan as revised in 2011; and

— At local/provincial level: notices on allocating special funds for technical renovation, special funds for industrial revitalization, special funds for technical transformation, special funds for industrial development.

(b) ***Conclusion***

(588) According to the Guiding Opinions on Promoting Enterprise Technology Renovation (at 3.2), central and local governments are called upon to further increase the amount of financial support and increase investment with a focus on industrial transformation and upgrading in key areas and critical issues of technology renovation. Furthermore, authorities should continuously innovate and improve fund management methods, flexibly carry out multiple types of support and raise the usage efficiency of fiscal funds.

(589) The Industry Revitalization and Technology Renovation Work Plan implements the above mentioned Guiding Opinions in practice by setting up special funds for promoting technological progress and technological transformation projects. These funds include investment subsidies and loan discounts. The use of the funds must be in line with national macroeconomic policies, industrial policies and regional development policies.

(590) The grants provided under this programme confers subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

(591) The Commission also determined that these subsidies are specific within the meaning of Article 4(2)(a) of the basic Regulation because only companies operating in key areas or technologies as listed in the guidelines, administrative measures and catalogues that are published on a regular basis are eligible to receive them. The tyres and/or the (petro)chemical sector are listed among the eligible sectors.

(c) ***Calculation of the subsidy amount***

(592) The benefit was calculated in accordance with the methodology described in recital (585) above.

(593) The amount of subsidy established with regard to this type of subsidies during the investigation period for the sampled exporting producers was as follows:

Technological upgrading, renovation or transformation grants	
Company/Group	Subsidy Amount
China National Tire Group	0,03 %
Giti Group	0,15 %
Hankook Group	0,05 %

3.12.3. *Ad hoc grants provided by municipal/regional authorities*

(594) In its complaint, the complainant provided evidence which showed that the tyre industry in the PRC may receive various one-off or recurring grants from different levels of government authorities, i.e. local, regional and national.

(595) The investigation revealed that the four sampled groups of companies received significant one-off or recurring grants from various government levels resulting in the receipt of benefits during the investigation period. Some of these had already been reported by the sampled companies in their respective questionnaire replies, while others were found on-the-spot during the verification visits. None of them were disclosed in the questionnaire reply of the GOC.

(a) ***Legal Basis***

(596) These grants were given to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled companies, or specific in terms of location or type of industry. The level of legal detail for the exact law under which these benefits were granted, if there was any legal basis for them at all, was not disclosed. However, the Commission was sometimes given a copy of a document issued by a government authority which accompanied the grant of funds (referred to as 'the notice').

(b) ***Findings of the investigation***

(597) Given the large amount of grants contained in the complaint and/or found in the books of the sampled companies, only a summary of the key findings is presented in this information document. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC were initially supplied by the four sampled companies, and detailed findings on these grants are provided to the individual companies in their specific disclosure documents.

(598) Examples of such grants were patent funds, science and technology funds and awards, business development funds, export promotion funds, grants for basic infrastructure, awards for industrial output or industrial investment, production safety awards, support funds provided at district or provincial level, interest discounts on loans for imported equipment.

(c) ***Conclusion***

(599) These grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the producers of the product concerned took place and a benefit was thereby conferred.

(600) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that they appear to be limited to certain companies or specific projects in specific regions and/or the tyre industry. In addition, some of the grants are contingent upon export performance within the meaning of Article 4(4)(a). These grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.

(601) In all cases the companies provided information as to the amount of the grant, and from whom the grant was received. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had had these accounts independently audited. This has been taken as positive evidence of a subsidy that conferred a countervailable benefit.

(602) Therefore, the Commission decided that the verified findings during on-the-spot verifications represented a reasonable indicator of the level of subsidisation in this respect. As those grants share common features, they were awarded by a public authority and were not part of separate subsidy programme, but individual grants to this encouraged industry, the Commission assessed them together.

(603) The Hankook Group commented that the Commission could not countervail grants received by the downstream subsidiary Shanghai Hankook Tire Sales Co. Ltd ('SHT'), since the latter was not involved in the export of the product concerned. However, the Commission noted that SHT's activities include, inter alia, negotiations for the procurement of raw materials, and that it plays a crucial role in the cash pooling system from which the exporting producers of the Group are benefiting. Therefore, there is a clear link with the product concerned, and as a result, the grants which SHT received are countervailable.

(604) After final disclosure, the China National Tire Group claimed that the Commission had not provided the source data for one specific grant relating to the exporting producer Yellow Sea. In fact, the data in question was included in the specific disclosure, but it had been included in the worksheets for LUR instead of grants, since the grant had been provided in relation to the disposal of a plot of land. Nevertheless, the subsidy amount had been correctly added to the grants of the company. The China National Tire Group also argued that the Commission used the wrong turnover for the calculation of the grant. However, the Commission maintained that the correct turnover was used, since the grant related specifically to the company Qingdao Yellow Sea Rubber Co. Ltd These claims were thus rejected.

(d) ***Calculation of the subsidy amount***

(605) The benefit was calculated in accordance with the methodology described in recital (585) above.

(606) The amount of subsidy established with regard to this type of subsidies during the investigation period for the sampled exporting producers was as follows:

Ad hoc grants	
Company/Group	Subsidy Amount
China National Tire Group	1,46 %
Giti Group	0,18 %
Hankook Group	0,01 %
Xingyuan Group	0,05 %

3.12.4. *Other grants*

(607) No financial contribution was received by the sampled exporting producers from the remaining grant programmes mentioned in section 3.3(iii) above during the investigation period.

3.12.5. *Total for all grants*

(608) The total subsidy amounts established with regard to all grants during the investigation period for the sampled exporting producers were as follows:

Grants	
Company/Group	Subsidy Amount
China National Tire Group	1,51 %
Giti Group	0,37 %
Hankook Group	0,06 %
Xingyuan Group	0,06 %

3.13. **Conclusion on subsidisation**

(609) The Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic Regulation for the sampled companies by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per tonne of product concerned exported to the Union during the investigation period was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(610) Following the disclosure of the Information Document, the Giti Group disagreed with the allocation keys for some companies not producing or selling the product concerned. The Commission partially agreed with the arguments brought forward, and adapted the calculation of the subsidy amount for the group accordingly.

(611) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings related to preferential lending even if it had to rely partially on facts available to determine those amounts. Indeed, the Commission considers that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation through the preferential lending in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach. ([95])

(612) Given the high rate of cooperation of Chinese exporting producers, the Commission set the amount for 'all other companies' at the level of the highest amount established for the sampled companies. The 'all other companies' amount was applied to those companies which did not cooperate in the investigation.

Company name	Amount of countervailable subsidies
China National Tire Group	32,85 %
Giti Group	7,74 %
Hankook Group	2,06 %
Xingyuan Group	51,08 %
Other cooperating companies	18,01 %
All other companies	51,08 %

4. **INJURY**

4.1. **Definition of the Union industry**

(613) The like product was manufactured by more than 380 producers in the Union during the period considered. Those producers constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

(614) The total Union production during the investigation period was established at around 21,7 million tyres. The Commission established the total Union production figure on the basis of the data obtained during the investigation. As indicated in recital (30), ten Union producers in the final sample represent more than 36 % of Union production and sales reported by the cooperating Union producers of the like product. Therefore, the microeconomic indicators were examined on the basis of data obtained from the replies of those ten Union producers.

([95]) See also, *mutatis mutandi*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

(615) The Union production is fragmented between large groups of companies and more than 380 SMEs throughout the Union. Large companies make up around 90 % of the total Union production and around 87 % of the Union sales of the Union producers. SMEs are involved in the production of retreaded tyres and cover the remaining 10 % of the Union production and around 13 % of the Union sales of the Union producers during the investigation period (Please refer to the Table 5 — Share of SMEs sales in the total Union sales).

(616) Sampled producers were found to import and resell the product concerned on the Union market from the PRC. However, in comparison to their overall sales, the imports remain marginal and do not affect their qualification as Union producers.

(617) As described in recitals (613) to (615), the like product was manufactured by more than 380 producers in the Union, producing both new and retreaded tyres. Together, they were defined as the Union industry.

(618) The CRIA and the CCCMC claimed that retreaders, whether operating or not under tolling arrangements, cannot form part of the Union industry. They considered that retreading is an after service market which cannot be protected by anti-subsidy measures as the retreaders take an existing tyre that is part-worn and reprocess it so it can be used. Moreover, retreaders operating on a tolling basis cannot own the casing. Customers retain ownership of the casing while the casing is serviced and a new tread applied to a worn tyre before it is returned to the owner.

(619) Following final disclosure, the CRIA and the CCCMC reiterated their claims that the retreading is a service and considered that the concepts of producer and service provider are mutually exclusive.

(620) The Commission noted the retreading industry provides a second life (or more as the same casing can be retreaded several times) to a casing originating from a worn-tyre. A worn-tyre is no longer safe to be used on public road and cannot be put back into circulation. Without the retreading process, the fate of a worn-tyre is to end in a scrap heap; though part of the worn-tyre can be pyrolysed to produce tire-derived fuel. As described in recital (81), retreading is a recycling process whereby a worn tyre is refurbished through a replacement of the tread on an old casing. Therefore, retreading is not merely a service, but a production process. Irrespective of ownership arrangements, the retreaders are Union producers whose production process starts from a casing and who are producing a tyre.

(621) In addition, the life cycle of worn tyres ends in one of two ways. They are either discarded as a waste or used as a good casing to be retreaded. If considered waste, the owner of the worn tyre may have to pay a fee to dump the worn tyre. In the second scenario, the worn tyre becomes a source of revenue. Retreaders may purchase the worn tyre from a service garage or retread a worn tyre under a tolling agreement. All verified retreaders use two sources of supply (namely either stock casing or tolling agreement) to produce tyres. The purchase price of a worn tyre was on average around 10 % of the overall cost of production of a retreaded tyre. The Commission considered that the difference in costs of production or in the added value between the two ways of retreading casings, was not significant, and regarded those as two different business models of retreading. Therefore, the Commission concluded that the retreaders were part of the Union industry since they bring into existence the product concerned.

(622) As a result, data provided by the retreaders and verified by the Commission (including actual costs and sales prices) were used for the establishment of the injury indicators and the injury margin calculation.

4.2. **Union consumption**

(623) As mentioned in the recital (50), the Commission carried out verification visits at the premises of two unrelated importers. It was found that the imports of the product concerned were also declared during the period considered under the CN codes 4011 90 00 and 4011 99 00. These imports concerned tier 3 tyres. However, it was not possible to establish whether there was a systemic problem with the declaration of the product concerned, or whether the issue was limited to this particular importer.

(624) In addition, the total volume reported by the cooperating Chinese exporting producers in the investigation period exceeded the total of imports originating from the People's Republic of China provided by Eurostat Comext. However, as there is no data reported by these exporting producers concerning the preceding years the Commission decided to follow a conservative approach and not to revise the import volumes from the PRC.

(625) It was subsequently found that the sales of tread suppliers that were not members of ETRMA Europool had been omitted when provisionally establishing the Union consumption. Therefore, the Commission revised the Union consumption for the period considered.

(626) As a result, the revised Union consumption ([96]) developed as follows:

Table 1

Union consumption (in items) ([97])

	2014	2015	2016	Investigation period
Total Union consumption	20 499 603	20 962 782	21 600 223	21 748 781
Index 2014 = 100	*100*	*102,3*	*105,4*	*106,1*

Source: ETRMA and tread suppliers not members of ETRMA Europool.

(627) Accordingly, the Union consumption increased over the period considered. Over the period considered the consumption increased by 6,1 %, from around 20,5 million tyres in 2014 to around 21,7 million tyres in the investigation period.

4.3. **Background regarding the Union market**

4.3.1. *General description*

(628) The Union market for lorry and bus tyres is a very competitive market, with multiple producers and brands.

(629) The Union market is divided between the original equipment sales to lorry or bus manufacturers and the replacement market. Market demand for lorry and bus tyres in the original equipment sector is driven by lorry and bus production while the aftermarket sector is influenced by many factors, including economic activity, sales, size, composition and use of the lorries or buses and fleets in service. Chinese imports' sales are concentrated mainly in the replacement market.

(630) Around 17 % of the total Union consumption is original equipment sold to lorries and buses manufacturers. The remainder of lorries and bus tyres sales in the Union are sold as replacement tyres directly or indirectly to the lorries or bus owners. The replacement tyres cover a broader range of tyres and are sold through a wider variety of channels with different marketing strategies. Replacement tyres may be sold directly to end-users or through related or unrelated distributors which will then resell to the end-users.

(631) Main sales channels are sales to distributors who resell them to fleet owners or direct sales to fleet owners sometimes alongside services (control, maintenance, services).

(632) Branding also influences the price customers are willing to pay for lorry and bus tyres. Brands are often linked with perceived quality and service, and more for higher quality tyres.

4.3.2. *Interconnection between new and retreaded tyres*

(633) The Commission determined that the main Union producers concentrated in tiers 1 and 2, where tyres were/are designed to have a long life cycle and to be retreadable. That justified significantly higher prices (and profit margins) for expected high performances for tiers 1 and 2 tyres.

(634) In fact, the investigation showed that the larger Union producers actively market retreadability of their tyres as a way to create brand loyalty and distinguish themselves from lower-priced imports of tier 3 tyres. As such, the investigation has shown that a large part of the value attributed to tiers 1 and 2 tyres originate, in fact, from the existence of the retreading industry in tier 3.

([96]) Note for the File concerning the methodology used to estimate the Union consumption (Filing system number: t18.004870).
([97]) The Union consumption was provisionally established at: 2014: 20 248 578; 2015: 20 782 365; 2016: 21 452 278; investigation period: 21 590 193.

(635) The high interchangeability of retreaded and new tyres, however, makes tier 3 also the most vulnerable to low-priced Chinese imports of the product concerned. This is true in particular when considering that the users are aware that, performance-wise, retreaded and low-quality new tyres are not significantly distinguishable. That interchangeability in turn, establishes price as the determining factor in the customer's decision to purchase a retreaded or tier 3 new tyres.

(636) The Commission invited interested parties to comment on the preliminary assessment and to provide information supporting or contradicting that analysis so as to arrive at as complete a picture as possible at the final stage of this investigation.

(637) A number of interested parties have challenged the interconnection between new and retreaded tyres and among tiers. The Commission compiled all information on this matter in a note for the file on interconnection ([98]).

(638) Regarding recital (634), the CRIA and the CCCMC claimed that there was no value attribution to tiers 1 and 2 tyres from the existence of the retreading industry.

(639) Information regarding the importance of the retreading business is well spread out and publicly available. As mentioned in recital (90), the producers of new tyres are also producing retreaded tyres. Some Chinese exporting producers have their own brands for retreaded tyres such as Hankook Alphatread or Giti Genesis. As explained in the note for the file on interconnection, the Commission found that the main tyre producers, including Chinese exporting producers, were engaged in the retreading business. Hankook Group relies on Union retreaders such as Vacu-Lug in the United Kingdom or B.R.P. Pneumatici in Italy for its retreading activity. Giti Genesis previously known as GT Ree Tread relies on Vacu-Lug in the United Kingdom.

(640) Moreover, Pirelli Italy declared in 2009 concerning a contract signed with Marangoni (a Union provider of retread solutions) that this project, which is part of the strategy of strengthening and enlarging the supply of services by Pirelli Truck, aims to add value in particular to the new products in the 88 Series and the 01 Series, launched on the European market in 2009, characterized, among other qualities, by their high suitability for retreading ([99]). Other producers are also marketing that their tyres are retreadable, for instance Athos brand importer providing that Athos tyres are regroovable and suitable for cold and hot retreading as well as the Aeolus brand ([100]) (reported both as tier 3). This shows that retreadability is a significant value factor both in the European Union and in the country concerned. Indeed, the Commission's investigation has shown that 'upper tier' producers rely heavily on the existence and availability of a retreading industry to not only create high value market perception, but also for their consumer and business continuity strategies. As the note for the file on interconnection in addition shows, retreadability is viewed by the production industry in the Union and the country concerned as more than a mere marketing asset, but a real value driver for the upper tiers. Accordingly, the value and sales price of the upper tiers are indissolubly linked to a healthy retreading industry 'downstream'. It is for those reasons that the Commission, in recital (634), stated that 'a large value attributed to tiers 1 and tier 2 tyres originate, in fact, from the existence of a retreading industry in tier 3'.

(641) On that basis, the Commission confirmed its initial findings on the interconnection between new and retreaded tyres and among tiers.

(642) Regarding recital (635), the CRIA and the CCCMC considered that the Commission did not disclose the source of the high interchangeability of retreaded tyres that, in turn, established price as a determining factor in the customer's decision to purchase a retreaded or tier 3 new tyres.

(643) The Commission accepted that claim. Accordingly, in its note for the file on interconnection, it showed examples of tyres of different tiers having common sales channels.

4.4. **Imports from the country concerned**

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

(644) The Commission established the volume of imports on the basis of Eurostat.

([98]) Note for the file on interconnection (Filing system number: t18.007993).
([99]) https://www.pirelli.com/tyre/ww/en/news/2009/12/04/pirelli-tyre-collaboration-with-marangoni-for-truck-tyre-retreading/ [last accessed 7 September 2018].
([100]) https://www.aeolus-tyres.com/aeolus-eco-twin-a-second-life-for-tyres/ [last accessed 17 July 2018].

(645) Imports into the Union from the country concerned and the market share, on the basis of the revised Union consumption calculation as per recital (626), developed as follows:

Table 2

Import volume (in items) and market share

	2014	2015	2016	Investigation period
Volume of imports from PRC (in items)	3 471 997	3 840 290	4 420 368	4 596 098
Index 2014 = 100	*100*	*110,6*	*127,3*	*132,4*
Market share	16,9 %	18,3 %	20,5 %	21,1 %
Index 2014 = 100	*100*	*108,2*	*120,8*	*124,8*

Source: Eurostat Comext

(646) On the basis of Eurostat, the import volumes from the PRC increased by 32 % during the period considered, from around 3,5 million tyres in 2014 to around 4,6 million tyres in the investigation period. This resulted in an increase of the market share of Chinese imports, in a growing market, from 16,9 % to 21,1 %.

(647) The China National Tire Group and Pirelli claimed that the Commission should have considered for its analysis the increase in the Union consumption and should have provided a separate analysis for the three tiers. The parties claimed that, with reference to tier 1 and tier 2, Chinese imports decreased by 2,7 % and 2 % respectively, whereas tier 3 imports increased by 3,9 % from 2015 and 2016. In conclusion, they claimed that any alleged rise in imports (in absolute or relative terms) during the investigation period was not substantial and did not injure the Union industry.

(648) As explained in recital (697), the economic situation of the Union industry was analysed on an aggregated basis, and this included the analysis of imports. It was only in certain key microeconomic indicators that the additional analysis at the level of tiers was performed, given the Union market segmentation. The import volumes of the product concerned from the PRC increased. On the basis of the import statistics from Eurostat Comext (which as explained in recitals (623) and (624) could be underestimated), such increase in the volume of imports from the PRC was substantial, both in absolute and relative terms.

4.4.2. *Prices of the imports from the country concerned*

(649) The Commission established the prices of imports on the basis of Eurostat. Price undercutting of the imports was established on the basis of the sampled Chinese exporting producers.

(650) The average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/item)

	2014	2015	2016	Investigation period
PRC	144,4	144,3	127,7	128,8
Index 2014 = 100	*100*	*99,9*	*88,4*	*89,1*

Source: Eurostat Comext

(651) Over the period considered the Chinese imports prices into the Union decreased by 11 %.

(652) The China National Tire Group and Pirelli claimed that the Commission's analysis lacks any reference to the market segmentation and reports only Eurostat figures, without any reference to import figures collected from the sampled exporting producers.

(653) As explained in recital (697), the economic situation of the Union industry was analysed on an aggregated basis and, in certain key microeconomic indicators, was also analysed at the level of tiers given the Union market segmentation. However, in the undercutting calculations the prices from the sampled exporting producers were indeed compared to the prices of the Union producers taking into account the specific tier where they belonged.

(654) The China National Tire Group and Pirelli further claimed that import prices were significantly affected by currency rate fluctuations. The Commission failed to see the relevance of the currency exchange rate as all prices used for the comparison purposes in the injury margin calculation are denominated in EURO. Hence, the fluctuation between USD and EUR did not play a role in determining either the undercutting or level of the measures. Therefore, that claim was rejected.

(655) Some interested parties (Pirelli, the Giti Group) claimed that according to Eurostat Chinese import prices (mainly related to tier 3 tyres) have decreased over the past three years only due to declining raw material prices (by EUR 15,6 per item). The parties stated that the prices of raw materials (natural rubber and oil) significantly decreased, with a consistent impact on import prices during the period of investigation.

(656) The evolution of the average price of imports into in the Union from the country concerned with the evolution of main raw materials prices developed as follows:

Table 4

Evolution of import and main raw materials prices

	2014	2015	2016	Investigation period
PRC import price (EUR/item)	144,4	144,3	127,7	128,8
Index 2014 = 100	*100*	*100*	*88*	*89*
Natural Rubber:				
SGX RSS3 USD/tonne	1 957	1 560	1 641	2 050
Index 2014 = 100	*100*	*80*	*84*	*105*
SGX TSR20 USD/tonne	1 710	1 370	1 378	1 660
Index 2014 = 100	*100*	*80*	*81*	*97*
Butadien US cents per lb	59,0	34,0	37,2	62,5
Index 2014 = 100	*100*	*58*	*63*	*106*
Brent indicator USD per barrel	99,7	53,4	43,6	49,6
Index 2014 = 100	*100*	*54*	*44*	*50*

Source: Eurostat Comext and the Complaint

(657) Over the period considered, the Chinese import prices have not reflected the evolution of raw material prices. While the Chinese import prices remained stable between 2014 and 2015, the price of main raw materials have decreased significantly by 20 % for natural rubber and by around 45 % of butadiene and Brent indicators. While the Chinese import prices decreased by 12 % between 2015 and 2016, the raw material prices remained rather stable. Finally, for the period 2016 and the investigation period where most of raw material prices have significantly increased as from the second quarter 2016 until first quarter 2017, the Chinese import prices remained stable. The Commission concluded that the Chinese import prices were disconnected from the evolution of raw material prices. Therefore, that claim was rejected.

4.4.3. *Price undercutting*

(658) The Commission determined the price undercutting during the investigation period by comparing:

(1) the weighted average sales prices per product type and segment 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 and segment of the imports from the sampled Chinese exporting producers 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.

(659) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of between 18 % and 24 % by the imports of the product concerned from the country concerned on the Union market. Moreover, the weighted average undercutting margin in the three tiers was found to be significant: between 18 % and 20 % for tier 1 and between 22 % and 24 % for tier 2 and tier 3. The substantial level of undercutting demonstrates the pronounced effect of subsidized imports in this case.

(660) Several interested parties claimed that the price undercutting calculations should be established by analogy with the methodology used for the calculation of the dumping margin on the basis of a comparison of a weighted average sales prices per product type and segment of the sampled Union producers charged to unrelated customers with a weighted average of prices of all comparable export transactions. After final disclosure, several parties reiterated similar claims. Moreover, the CRIA and the CCCMC claimed that the Commission should adjust the Chinese prices upwards or the Union prices for retreaded tyres downwards to ensure that the prices compared reflect a similar mileage and for after sales and warranty services provided by the Union producers selling retreaded tyres, in particular for tier 3 as the Chinese producers did not provide such services. After the final disclosure, the parties reiterated similar claims.

(661) As explained in recitals (658) and (659), the methodology of the price undercutting comparison considered the average sales price per product type (PCN) and per segment. The price undercutting was calculated on the basis of comparable transactions by reference to the product type or type-by-type. As within each tier, the tyres are considered similar in terms of mileage, no overall adjustment was thus needed. The same is true for warranty services, with the exception of tier 3, whereby in contrast to the Chinese producers, the Union producers may indeed provide after sales and warranty services. Consequently, the Commission adjusted the prices of the sampled Union producers for after-sales and warranty services for tier 3 when necessary. The undercutting and the underselling margins were established without any weighting within the meaning of recital (692) below.

(662) Regarding the claim on the analogy between dumping and injury calculations, the Commission noted that the dumping calculations indeed require to take 'all comparable export transactions' into account when calculating dumping margins for the like product as a whole ([101]). By contrast, '*an investigating authority is not required […] to establish the existence of price undercutting for each of the product types under investigation, or with respect to the entire range of goods making up the domestic like product. That said, an investigating authority is under an obligation to examine objectively the effect of the dumped imports on domestic prices*' ([102]). In the case at hand, the Commission was satisfied with the very high level of matching between the Union producers' and the exporting producers' product types sold on the Union market (the overall matching is ranging between 80 % and 90 %). Therefore, that claim was rejected.

(663) The CRIA and the CCCMC claimed that the Commission should disclose further information about the physical characteristics of the tyre types that were used for comparison purposes as it is highly likely that there are differences that are not reflected in the PCNs but which merit an adjustment. They claimed that they were simply unable to identify such differences as they have no information about the products sold by the sampled Union producers. The parties further argued that the WTO Appellate Body Report in EC – Fasteners ([103]) supports this approach.

(664) The Commission did not accept this argument. It pointed out that the Appellate Body Report mentioned above is about a failure to provide the necessary information regarding the characteristics of a given product, which was used for determining the normal value. This led to a situation in which the producers were not in a position to decide about the necessity to request level of trade adjustments or not in order to ensure a fair comparison under Article 2(10) of the basic anti-dumping Regulation in the context of dumping calculations. However, the Panel report in the same case stated that '*while it is clear that the general requirements of objective examination and positive*

([101]) Appellate Body Compliance Report in WT/DS397/AB/RW, EC – Fasteners, para. 5.265.
([102]) Appellate Body Report in WT/DS454/AB/R and WT/DS460/AB/R, China – HP-SSST (Japan)/China – HP-SSST (EU), para. 5.180.
([103]) Appellate Body Compliance Report in WT/DS397/AB/RW, EC – Fasteners, para.5.189.

evidence of Article 3(2) of the basic Regulation limit an investigating authority's discretion in the conduct of a price undercutting analysis, this does not mean that the requirements of Article 2(10) of the basic Regulation with respect to due allowance for differences affecting price comparability are applicable' ([104]). Therefore, this jurisprudence cannot be relied upon in the present case where the CRIA and the CCCMC make speculations about the absence of disclosure of information about '*any other relevant characteristics*' and differences not reflected in the PCNs for the purpose of undercutting and injury calculations. Furthermore, the Commission carried out the undercutting calculation in line with its usual methodology which ensures a fair comparison whereby PCNs sufficiently reflect physical and all other differences between the product types sold by the Union producers and the exporting producers. Moreover, should the exporting producers consider that their products have specific features that are different to the characteristics of the Union products and which, in their view, are not captured by the PCN, they should have made such claims in due course, which was not the case. Therefore, the claim was rejected.

(665) Some interested parties claimed the Commission did not establish undercutting for the whole period considered. A detailed undercutting calculation was only made for the investigation period. While average Chinese import prices in previous periods can be compared with sales prices by the Union industry, such a comparison is essentially meaningless and inaccurate as (i) no separate data are available for Chinese import prices by tier; and (ii) these average prices do not take into account the possibility that the product mix may have changed during the period.

(666) The WTO Appellate Body Report in China – HP-SSST (EU) ([105]) requested that an investigating authority has to assess the significance of the price undercutting by the dumped imports in relation to the proportion of domestic production for which no price undercutting was found. The parties considered that the Commission did not carry out such assessment.

(667) As stated in recital (658), the Commission performed in accordance with the applicable jurisprudence the calculations on the basis of the verified data for the investigation period, per PCN and tiers. All relevant calculations were disclosed to the interested parties respecting their procedural rights. The overall level of price undercutting during the investigation period was around 21 %, which the Commission considers significant. Therefore, that claim was rejected.

(668) The CRIA and the CCCMC, however, considered that it is likely that the Commission only found undercutting for a small subset of sales by the sampled Union producers. In their view, the Commission has to assess the price pressure, if any, that could be exercised by the Chinese imports on the remaining Union industry sales for which it did not find undercutting.

(669) That claim was rejected because the volume of sales of the sampled Union producers that matched the imports of the Chinese exporting producers is significant (between 80 % and 90 %). Moreover, the weighted average undercutting margin in the three tiers was found to be significant, between 18 % and 24 %.

(670) The China National Tire Group and Heuver requested that the Aeolus' CIF prices should be revised in order to reflect Heuver's post-importation costs. Pirelli claimed that the Commission must take its additional costs into account when comparing the Pirelli tyres to other tyres produced and sold by the Union industry and to the (independent) retailers.

(671) The Commission found that Heuver was not related to the China National Tire Group. Therefore, no adjustment was warranted. Regarding Pirelli, the CIF weighted average price was established in accordance with Article 2(9) of the basic anti-dumping Regulation as described in recital (118) of the provisional anti-dumping Regulation. As explained in recitals (673) to (678) below, the Commission found it appropriate to apply Article 2(9) of the basic anti-dumping Regulation by analogy to the undercutting and underselling calculations in anti-subsidy cases in view of the Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on SCM, which suggests a consistent treatment of both anti-dumping and anti-subsidy cases. Therefore, that claim was rejected.

([104]) Panel Report in WT/DS397/REC –Fasteners (China), para. 7.328; see also Panel Report in WT/DS219/R, EC – Tube or Pipe Fittings, para. 7.292.

([105]) Appellate Body Report in WT/DS460/AB/R, China – HP-SSST (EU), para.5.180.

(672) Several parties claimed that the Commission cannot rely on constructed export prices when making the price undercutting analysis and the determination of the injury level and that the methodology used is contrary of Article 8(1)(a) and Article 8(2) of the basic Regulation. Moreover, the Hankook Group claimed that it should be treated as a single economic entity for the injury margin calculations.

(673) Firstly, Article 8(1) of the basic Regulation refers to the effect of subsidized imports that may cause injury to the Union producers and not to the resale price of a company (related importer) within the Union to another customer.

(674) Secondly, as far as undercutting is concerned, the basic Regulation does not provide any specific methodology of such calculations. The Commission therefore enjoys a wide margin of discretion in assessing this injury factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as requested by Article 8(1) of the basic Regulation.

(675) When it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas customers. By contrast, to look at resale prices of unrelated importers does not reflect the point where real competition takes place. This is only the point where the established sales structure of the exporter tries to find customers but it is already after the point where the decision to import has been taken. Indeed, once the exporter has established its system of related companies in the Union, they have already decided that the source of their merchandise will be from overseas. Hence, the point of comparison should be right after the good crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user of the good.

(676) This approach also ensures coherence in cases where an exporting producer is selling the goods directly to an unrelated customer (whether importer or final user) because under this scenario, resale prices would not be used by definition. A different approach would lead to discrimination between exporting producers based solely on the sales channel that they use. Moreover, this approach also ensures consistent results in cases of parallel anti-dumping and anti-subsidy investigations.

(677) In this case, the import price cannot be taken at face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length basis, such price has to be constructed by using the resale price of the related importer to the first independent customer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic anti-dumping Regulation are pertinent, and are applied by analogy, just as they are pertinent for the determination of the export price for dumping purposes. The application by analogy of Article 2(9) of the basic anti-dumping Regulation allows arriving at a price that is fully comparable to the CIF price (Union border) that is used when examining sales made to unrelated customers.

(678) Therefore, in order to allow for a fair comparison, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer is warranted in order to arrive to a reliable CIF price.

(679) Several parties requested the Commission to disclose the nature of certain post-importation costs and the percentage applied, with an indication of the source. Moreover, the Xingyuan Group claimed that these fixed costs should be allocated as a fixed amount per tyre instead of a percentage, which will unfairly penalise exporters whose prices are at the lower end of the scale.

(680) The Commission noted that it increased the CIF value by 3,2 % for post-importation costs (of which transport represented 60 %, handling 32 % and customs expenses 8 %). The percentages were calculated on the basis of verified post-importation costs per piece and were subsequently expressed into a percentage of the CIF price of the verified unrelated importers.

(681) The CCCMC and the CRIA claimed that the differences between new tyres and retreaded tyres should be taken into account for the fair comparison in the investigation for the purposes of the undercutting and underselling determination.

(682) As stated in the recital (117), new tyres and retreaded tyres have the same basic physical characteristics as well as the same basic uses. Therefore, this claim was rejected.

(683) The Hankook Group found a discrepancy between the profit margin reported for tier 1 and the target profit margin used to establish the underselling margin.

(684) The Commission reviewed the underselling margins and found a clerical error when establishing the underselling margin for tier 1 and tier 2. Therefore, the Commission corrected the underselling margin calculation.

(685) Following a request from the Hankook Group, the Commission disclosed additional information on the SG&A items deducted from the price to the first independent customer in order to reach an ex-works level. The Commission confirmed that the costs deducted were: transport, insurance costs, handling, loading and ancillary, packing, credit, discounts and commissions. The Commission did not deduct from the Union producers' prices indirect sales expenses, R & D, finance, marketing nor profit.

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

4.5.1. *General remarks*

(686) In accordance with Article 8(4) of the basic Regulation, the examination of the impact of the subsidized 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.

(687) As mentioned in recitals (24) to (32), sampling was used for the determination of possible injury suffered by the Union industry.

(688) 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 complaint, Eurostat statistics, submissions from ETRMA, as appropriate, to ensure that the 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 and the submission of ETRMA. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(689) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin.

(690) The microeconomic indicators are: average unit prices, unit costs, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

(691) There are two remarks concerning the methodology for the analysis of the injury indicators as performed at preliminary stage.

(692) As mentioned in recital (28), the Union producers are composed of two categories of companies in terms of size: large companies and SMEs (highly fragmented), representing 85 % and 15 % respectively of the total Union sales of the Union producers in 2016. However, as a result of the sampling of the Union producers, the sales data of the sampled SMEs represented a small fraction of the total Union sales of sampled Union producers. Therefore, the Commission decided to weight the results of the sampled Union producers in accordance with the market share of each category of companies. As SMEs are active only in tier 3 segment, this adjustment had as a direct consequence to increase the share of tier 3 sales within the set of data originating from the sampled Union producers.

(693) Moreover, the total Union sales of the Union producers were split between the three tiers in the following proportion: tier 1: 51 %, tier 2: 23 % and tier 3: 26 %. However, the Union sales data of the sampled Union producers, even after the adjustment described in recital (692), did not reflect the real proportion of Union sales per tier. Therefore, the Commission decided to weight the results of the sampled Union producers in accordance with the share of each tier in the total Union sales of the Union producers to ensure that the three tiers were represented according to their share in the total Union sales in all micro-indicators.

(694) Several parties submitted that if the Commission follows the segmentation by the three tiers the determination of injury needs to be carried out also at the level of tiers. In particular, the status of the Union industry as well as the impact of imports needed to be evaluated on a tier basis, for example the impact of tier 2 imports (both Chinese and from other countries) need to be assessed on tier 2 Union producers.

(695) The Commission considered that despite the segmentation of the Union market, the tyres as defined in recital (109) share the same basic physical, chemical and technical characteristics and are interchangeable. Consequently, the determination of injury was done for the product concerned in compliance with the WTO Anti-Subsidy Agreement. In particular, the Appellate Body's found that 'where investigating authorities undertake an examination of one part of a domestic industry, they should, in principle, examine, in like manner, all of the other parts that make up that industry, as well as examine the industry as a whole' ([106]). Therefore, a segmental analysis is possible under WTO law, but it has to be accompanied by an analysis of the whole industry. Similarly, the General Court accepted that the injury analysis may focus on the tier most affected by subsidized imports ([107]).

(696) The Commission conducted hence the analysis of certain indicators at the tier level. As shown in recitals (823) to (834) this analysis confirms that overall the Union industry suffered injury and that the trends for the product concerned considered as a whole in general correspond to those for the tiers considered separately.

(697) The economic situation of the Union industry is analysed on an aggregated basis and, for certain microeconomic indicators also at the level of tiers given the Union market segmentation.

(698) Several parties requested more detailed information regarding the methodology to weight the different categories of companies (large or SME) and by tiers as described in recitals (692) and (693).

(699) The weighting process was based on the sales volumes as this is the relevant parameter when considering the sales price in the Union for establishing the cost of production or the profitability of sales in the Union to unrelated customers.

(700) One of the criteria for the selection of the sample of Union producers was the representativity of the Union producers in terms of size, namely between SMEs and larger companies (recital (29)). Five SMEs were sampled. One SME decided to stop cooperating with the investigation. Four replied to the sampling questionnaire.

(701) In addition, the Commission took into consideration comments from interested parties that argued that the market segmentation into three tiers had to be reflected in the sample of Union producers (recital (25)). Additional information was provided by the cooperating Union producers as explained in recital (26).

(702) The Commission sampled eleven Union producers. This is an unusual large number of Union producers to be investigated. However, despite this effort, the performance of the SMEs and per tier required a weighting for a proper analysis of the resulting aggregation of the microeconomic injury indicators.

(703) The split per tier of the sales of the cooperating Union producers and of the sampled Union producers were similar: in the range of 60 % to 70 % for tier 1, in the range of 15 % to 25 % in tier 2 and in the range of 10 % to 20 % in tier 3. SMEs represented in the range of 7 % to 10 % of the total Union sales reported by cooperating Union producers. Moreover, sampled Union producers are producing new and retreaded tyres in tier 2 and tier 3. Around half of the sales of the sample in tier 3 are retreaded tyres.

(704) The first step was to estimate the split between the sales of large companies and SMEs. The estimation of SME sales was based on the information provided by ETRMA (for cold process) and by tread suppliers not member of ETRMA Europool ([108]). For the purpose of this investigation, it was considered that cold process sales are made by SMEs and hot process by large producers. This is a conservative approach to estimate the sales of SMEs as the Commission verified one SME producer with both techniques. The estimation of the sales of the large companies is the difference between the total Union sales of the Union producers minus the estimation of SME sales. The Commission found that SME sales represented around 15 % of the total Union sales of the Union industry in 2016 (as mentioned above this was a conservative estimate since some SMEs also use hot retreading processes). As a result, the ratio was established at around 85 % for large companies and around 15 % for SMEs.

([106]) WT/DS184/AB/R, 23.8.2001, *United States – Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan*, paragraph 204.
([107]) General Court, Judgment of 28 October 2004, Case T-35/01 Shanghai Teraoka Electronic Co.Ltd V Council, paragraphs 129 and 258.
([108]) The estimation for cold process sales for the period considered is: 2014: 2 619 000; 2015: 2 335 000; 2016: 2 095 000; IP: 2 046 000.

(705) The second step was to compare the ratio of 85 %/15 % with the ratio of the sample (in which large companies weighed over 95 %). Moreover, the sales data of the sampled SMEs represented around 4 % of the total Union sales of Union SMEs producers. To ensure a proper reflection of the relative importance of the two categories of Union producers in the microeconomic indicators, the Commission weighted the individual company indicators when aggregating on the basis of the 85 %/15 % ratio mentioned above. The methodology resulted in an increase of the weight of tier 3 sales used to establish the microeconomic indicators.

(706) Preliminary, both weightings, the weighting of the category of companies and the weighting of the tiers, were applied equally throughout the period considered, on the basis of 2016. The Commission considered this approach reasonable in view of the available evidence.

(707) The CRIA and the CCCMC claimed that the Commission should not use a fixed ratio (namely a ratio calculated for 2016) over the period considered but rather a ratio for each period of the period considered. Moreover, they claimed that some large producers of tread were producing retreaded tyres by using the cold process and that two producers of retreaded tyres were part of a larger group qualifying them as large company. Therefore, the parties claimed that the methodology used could not be considered as conservative and that the volume of SMEs sales was overestimated. Bipaver claimed that the hot process is not only used by one retreader but by several Union retreaders ([109]).

(708) Firstly, the Commission examined the claims made and the evidence provided by the parties. It found that indeed some large suppliers of treads have related subsidiaries producing retreaded tyres by using the cold process. Moreover, the two producers initially considered as SMEs mentioned by the parties were part of a larger groups, hence they could not be considered as SMEs. The Commission thus adjusted the ratios used in the weighting. The large suppliers and SMEs provided their sales over the period considered. The total volume reported is around: 2014: 254 000, 2015: 227 000, 2016: 240 000 and the investigation period: 250 000 retreaded tyres, representing around 5,5 % of the estimated retreaded tyres sales during the period considered.

(709) Secondly, regarding SMEs hot production sales, the Commission found that more than one SME is producing retreaded tyres using the hot process. It requested from a few producers to provide the volume of the hot process production for the period considered. The total volume reported is around: 2014: 149 000, 2015: 152 000, 2016: 138 000 and the investigation period: 132 000 retreaded tyres, representing around 3,2 % of the estimated retreaded tyres sales during the period considered.

(710) Thirdly, the Commission recalculated the estimation of the SMEs sales during the period considered by adding the SMEs hot production sales and deducting the large companies' cold production sales.

(711) Finally, the Commission calculated the share of SMEs sales in the total Union sales for each period of the period considered:

Table 5

Share of SMEs sales in the total Union sales (in %)

	2014	2015	2016	Investigation period
Ratio used at definitive stage for SMEs sales in the total Union sales	16,9	15,3	13,7	13,2
Ratio used at preliminary stage for SMEs sales in the total Union sales	14,6	14,6	14,6	14,6

([109]) Kraiburg, a tread supplier, provided to Bipaver a list of its customers purchasing raw materials for the hot process. That list contains 38 company names.

(712) As shown in Table 5, the weight of SMEs in the total Union sales during the period considered has been increased by 2,3 percentage points in 2014, by 0,7 percentage points in 2015 and decreased by 0,9 percentage points in 2016 and 1,4 percentage points in the investigation period. As shown in Table 2, the use of a specific ratio for each year of the period considered has no impact on the conclusions based on the trends at preliminary stage remain valid for tier 3. The Commission concluded that the establishment of a ratio per year has a marginal impact on the overall outcome of the analysis. On the basis of the above, the conclusions based on the trends at the preliminary stage remain valid.

(713) Regarding the second adjustment by tiers, the Commission relied at the preliminary stage on the information provided by the complainant, which provides the estimation of the weight of each tier for the Union consumption for 2016. However, the CRIA and the CCCMC claimed that the Commission should use a ratio for each period of the period considered.

(714) The investigation did not reveal any data that would have been more appropriate which could have been used for the calculation of the weighting of the tiers throughout the period considered, nor have interested parties been able to present such data. Therefore, the Commission decided not to apply the second adjustment by tiers at definitive stage. This approach has increased the weight of tier 1 and tier 2 used to establish the microeconomic indicators.

(715) The CRIA and the CCCMC claimed that the weighting process was illegal, as the basic Regulation did not allow for amendments to the sampling of the Union producers that is supposed to be representative for the entire Union industry. Moreover, they argued that the Commission's methodology did not comply with the requirement to base the injury determination on positive evidence to carry out an objective examination since a very limited number of companies eventually determined the whole outcome of the injury assessment, to the detriment of a much larger dataset, the importance of which is downgraded. Moreover, the CRIA and the CCCMC claimed that the Commission cannot rely on the information provided by four sampled SMEs which would be the basis for the weighting of the injury indicators. Following the final disclosure, the CRIA and the CCCMC claimed that the Commission did not address the inappropriateness of the methodology for the first adjustment. The parties claimed that the Commission should have abandoned its approach.

(716) The Commission recalled the methodology used in recitals (699) to (714).

(717) Furthermore, the Commission reiterated that as a result of the weighting, the selected sample became statistically more representative of the Union industry as a whole, in accordance with the applicable WTO and EU case-law ([110]). In addition, this allowed the Commission to better take into account the performance of the non-sampled Union producers (SMEs and large producers), which would otherwise be not sufficiently reflected in the injury indicators had the Commission based its findings on the sample without applying the weighting in the case at hand. Given the fragmented character of the Union industry, the Commission could not simply disregard the significance of the SMEs producers on the Union market. The data provided by the verified SMEs represents around 4 % of the estimated total SMEs production over the period considered. To reflect the relative importance of the two categories of companies, the Commission based its findings on the verified data of the sampled companies and applied the weighting. The information relied on was available on the open file, duly verified where needed. The Commission accordingly considered that it had carried out an objective examination of the existence of injury based on positive evidence. Therefore, those claims were rejected.

4.2. **Injury segmented analysis**

(718) As explained in recital (697), the economic situation of the Union industry was analysed on an aggregated basis and, for certain microeconomic indicators at the level of tiers given the Union market segmentation. Some interested parties claimed that the injury analysis by segment should consider all injury indicators and causation indicators. They referred to the Appellate Body Report in United States — Hot Rolled Steel Products from Japan ([111]). Moreover, these parties requested that the Commission should also distinguish between new and

([110]) WT/DS184/AB/R, 23.8.2001, United States — Anti-dumping Measures on Certain Hot-Rolled Steel Products from Japan, paragraph 204 and General Court, Judgment of 28 October 2004, Case T-35/01 Shanghai Teraoka Electronic Co. Ltd v Council, paragraphs 129 and 258.

([111]) Appellate Body in WT/DS184/AB/R, *United States — Hot Rolled Steel Products from Japan*, paras. 195-196.

retreaded tyres, original equipment and replacement tyres, as the original equipment market was shielded from Chinese competition, again by reference to the Appellate Body report in United States — Hot Rolled Steel Products from Japan ([112]).

(719) The jurisprudence mentioned above indicates that the investigating authorities who undertake an examination of one part of a domestic industry '*should, in principle, examine, in like manner, all of the other parts that make up the industry, as well as examine the industry as a whole*' ([113]). However, the Appellate Body Report does not impose on the investigating authorities an obligation to provide all injury indicators by segment.

(720) Moreover, the facts in that case were different. In the Appellate Body report in United States — Hot Rolled Steel Products from Japan, a significant part of the domestic production in the United States – captive production – was shielded by the structure of the domestic market from direct competition from subject imports. In that specific situation, the Appellate Body took issue with 'comparative examination' of each part of the domestic market – which 'juxtaposed' the merchant market and captive market. For the Appellate Body, this 'enhanced' the ability of the investigating authorities to make an appropriate determination about the state of the domestic industry as a whole. In the present case, though, there is no protection of the tier 1 and 2 segments of the Union market. The Chinese imports' sales are concentrated mainly in the replacement market, which is a factual situation that is not imposed by the structure of the Union market. Moreover, the product concerned was also sold to original equipment manufacturers. Therefore, the claim that Union original equipment market was shielded from Chinese competition and should thus be analysed separately was rejected.

(721) Moreover, as noted in recital (695), case-law also confirms that, when examining whether there is injury for the Union industry as a whole, such analysis may focus on the segment most affected by subsidised imports. In the present case, around 65 % of Chinese imports of tyres relate to tier 3. Therefore, a proper injury analysis cannot disregard the impact of the subsidised imports especially in a market situation where tier 3 tyre sales are continuously growing, and where all tiers that make up the Union tyre market are interrelated.

(722) For these reasons, the Commission considered to have conducted a proper examination of the industry as a whole.

4.2.1. *Macroeconomic indicators*

(723) The CRIA and the CCCMC claimed that they had doubts about the reliability of some of the information relied on concerning the macroeconomic indicators.

(724) A document providing clarifications on the preliminary findings was included in the open file ([114]).

(725) Regarding the establishment of the macroeconomic indicators, the Commission relied on various sources, including data provided by the European Tyre & Rubber Manufacturers' Association ('ETRMA'). ETRMA publishes market analysis that is publicly available on its web site. The open version of the complaint included a document originating from ETRMA (annex 16 – ETRMA booklet for 2016 ([115])). The Commission noted that some of the exporting producers as well as certain Union producers are members of ETRMA and were also providing submissions supported by data from ETRMA (such as the Hankook Group and Pirelli).

4.2.1.1. Production, production capacity and capacity utilisation

(726) After disclosure of the Information Document, the Commission established that, as implied in recital (625), the Union production volume should be corrected in order to contain the sales of tread suppliers not members of ETRMA Europool. Moreover, a clerical error was found when establishing the production capacity.

([112]) Appellate Body in WT/DS184/AB/R, *United States — Hot Rolled Steel Products from Japan*, para. 207.
([113]) Appellate Body in WT/DS184/AB/R, *United States — Hot Rolled Steel Products from Japan*, para. 204.
([114]) Note for the file (Filing system number t18.007994).
([115]) ETRMA web site provides the booklet for the years 2016 and 2017.
Please refer to http://www.etrma.org/uploads/Modules/Documentsmanager/20180329—statistics-booklet-2017—alternative-rubber-section-final-web.pdf.

(727) The estimated total Union production, production capacity and capacity utilisation were revised accordingly and developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation

	2014	2015	2016	Investigation period
Production volume (in items) ([1])	20 973 089	20 360 055	20 619 725	21 111 923
Index 2014 = 100	*100*	*97,1*	*98,3*	*100,7*
Production capacity (in items)	29 038 117	28 225 985	27 115 950	26 525 214
Index 2014 = 100	*100*	*97,2*	*93,4*	*91,3*
Capacity utilisation	72,2 %	72,1 %	76,0 %	79,6 %
Index 2014 = 100	*100*	*100*	*105*	*110*

([1]) The production volume (in items) was preliminary established at: 2014: 20 722 065; 2015: 20 199 411; 2016: 20 496 669; Investigation Period: 20 863 087.

Source: ETRMA, tread suppliers not members of ETRMA Europool, Eurostat Comext and information submitted by the complainant.

(728) As shown in Table 6, production remained relatively stable, with 21,1 million units in the investigation period, while the capacity utilisation rate increased by 7,4 percentage points (from 72,2 % to 79,6 %) over the period considered given the decrease in production capacity.

(729) The main cause of the increase in capacity utilisation can only be attributed to the significant decrease in production capacity by almost 10 %. That concerned mainly the retreading activity as during the period considered, at least 85 SMEs located in virtually all Member States stopped producing retreading tyres but also the closure of subsidiaries of large companies ([116]).

(730) The flat trend of the Union production and the closure of companies are in contrast with the post-crisis growing consumption in the Union from which the Union industry could have benefited.

4.2.1.2. Sales volume and market share

(731) After disclosure of the Information Document, the Commission established that, as implied in recital (625), the total sales volume in the Union market should be corrected in order to contain the sales of tread suppliers not members of ETRMA Europool.

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

Table 7

Sales volume and market share

	2014	2015	2016	Investigation period
Total sales volume on the Union market (in items) ([1])	14 835 082	14 738 677	14 533 199	14 584 885
Index 2014 = 100	*100*	*99,4*	*98,0*	*98,3*

([116]) In 2017, Goodyear Group closed its UK plant (around 330 jobs); Michelin Group closed several plants in the Union: in France two plants (in 2014 700 employees and in 2017 330 employees), in Germany (2016 200 employees), in Hungary (2015 500 employees) and in Italy; Continental Group closed one plant in Germany.

	2014	2015	2016	Investigation period
Market share	72,4 %	70,3 %	67,3 %	67,1 %
Index 2014 = 100	*100*	*97,2*	*93,0*	*92,7*

([1]) The total sales volume on the Union market (in items) was provisionally established at: 2014: 14 584 057; 2015: 14 558 260; 2016: 14 385 254; Investigation Period: 14 426 297.
Source: ETRMA, tread suppliers not members of ETRMA Europool and Eurostat Comext.

(733) In a growing market, sales in the Union decreased slightly over the period considered. This resulted in a decrease by 5,3 percentage points of market share (from 72,4 % to 67,1 %) while import volume from the PRC increased by over 1,1 million of tyres, or an increase of 4,2 percentage points of market share (from 17,1 % to 21,3 %).

(734) The China National Tire Group and Pirelli claimed that the sales volume in the Union market remained stable over the previous three years and the market share of the Union industry decreased by 5 percentage points from 2014 to 2017, which is an insignificant decrease.

(735) They also claimed that the volume of Union sales reported by the complaints for the period 2013 and 2016 showed a strong decline for tier 3 (– 30 %), a decline in sales for tier 2 (– 7 %) and a slight decline in sales for tier 1 (– 1 %). As such, it was clear that the only injury could be found in the tier 3 segment and that the injury analysis must take into consideration the market segmentation.

(736) The Commission noted that the figures mentioned in the previous recital relate to the sales of the complainants only, and not to the Union industry as a whole. They also relate to a different period in time. Therefore, it is not possible to transpose the evolution of the complainants' sales volume to the Union industry. As explained in recitals (718) to (722), the Commission considered that the existence of material injury must be determined with regard to the product concerned and the Union industry as a whole, and not only for certain parts of it. Therefore, the Commission did not examine the trends in isolation, namely per tier, since it followed an aggregated approach.

4.2.1.3. Growth

(737) The Union consumption increased by 6,1 % during the period considered. The sales volumes of the Union industry decreased by 1,7 % in spite of the growing consumption, which resulted in the Union industry losing market share. The market share of the imports from the country concerned increased during the period considered (by more than 4 percentage points).

(738) The Giti Group claimed that the Union consumption had to be analysed in value instead of in volume. On this basis, Union consumption decreased by 5 % in value, and only started to slowly increase between 2016 and the Investigation Period.

(739) The Commission rejected that claim. The Union consumption gave a snap-shot of the number of tyres available on the Union market at a given moment. Union consumption is customarily calculated in volume precisely to avoid that the pricing behaviour of the market players may affect the trends over the period considered.

4.2.1.4. Employment and productivity

(740) Productivity was recalculated based on the revised Union production figures as explained in recital (726). Therefore, the employment and productivity developed over the period considered as follows:

Table 8

Employment and productivity

	2014	2015	2016	Investigation period
Number of employees	38 445	36 478	34 959	34 188
Index 2014 = 100	*100*	*95*	*91*	*89*

	2014	2015	2016	Investigation period
Productivity (unit/employee) [1]	546	558	590	618
Index 2014 = 100	*100*	*102*	*108*	*113*

[1] The productivity (unit/employee) was provisionally established at: 2014: 539; 2015: 554; 2016: 586; Investigation Period: 610.

Source: Verified questionnaire replies of the sampled Union producers, submissions from tread suppliers and ETRMA.

(741) There were over 4 257 direct jobs lost over the period considered and affecting both SMEs where at least 85 producers located throughout the Union have stopped production and the large companies which have shut down several plants.

(742) After the disclosure of the Information Document, the Italian association of retreaders ('AIRP') claimed that the retreading sector in the Union accounts for around 13 000 jobs for production and distribution. Retreading activity is a rather labour intensive activity and a retreaded tyre supports 3 to 4 times the number of jobs of a new tyre. According to AIRP, several companies associated are currently reducing personnel or making a massive use of unemployment insurance funds.

(743) The China National Tire Group and Pirelli stated that the employment, for which the Commission found a decrease of 11 % exclusively relates to the retreading industry. The development of productivity can instead be explained by the fact that the Union industry has recently gone through a period of restructuring and rationalisation.

(744) The statement regarding the decrease in employment is factually incorrect, since around half of it is from large manufacturers. Therefore, that claim was rejected.

(745) Heuver requested that the names of the 85 SMEs mentioned in recital (809) should be disclosed.

(746) The Commission had found that there were at least 85 producers that stopped production based on the list of customers that tread suppliers had provided in this investigation. The Commission granted confidential treatment to the identity of the customers and the volume of sales per customers since this is sensitive business information. Moreover, interested parties are not requested to provide a summary for this type of document. The tread suppliers provided a summary of their submissions, which can be found in the open file. The Commission therefore concluded that the parties had sufficient information to exercise their rights of defence.

(747) The CRIA and the CCCMC claimed that the Commission's assumption that all cold process sales are made by SMEs is erroneous as many large companies are using the cold process retreading methodology. They concluded that the resulting estimation of employment and productivity were therefore unreliable.

(748) As mentioned in recital (708), the Commission found that the production of large companies using the cold process is rather limited and cannot as such dismiss the estimation made by the Commission regarding the employment and productivity. Moreover, the productivity relates mostly to the type of production (namely retreading or new). Therefore, that claim was rejected.

(749) In addition, the CRIA and the CCCMC claimed that the list of customers provided by one tread supplier show that one customer was mentioned inactive while its financial statements lodged to the local authorities showed that the company was still active in 2017. The Commission in its Note for the file ([117]) explained that the list was built by aggregating the information on sales provided by eight tread suppliers. For the purposes of the investigation a retreader was considered as having stopped production when it did not purchase treads any longer. Therefore, it is not possible to conclude positively on whether a retreader is active or inactive solely on the basis of the list of unique supplier and/or on the basis of filed financial statements. Moreover, while it is true that the company mentioned by the CCCMC had not closed down, it confirmed to the Commission that it does not operate any longer its retreading workshop. Therefore, the Commission continued to use the list as established.

([117]) Note for the file (Filing system number t18.007994).

4.2.1.5. Magnitude of the amounts of subsidisation

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

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

4.2.2. *Microeconomic indicators*

(752) The Giti Group requested the Commission to also disclose the evolution in the microeconomic factors without the weighting adopted by the Commission to allow it to analyse whether such unmanipulated data would result in a different injury picture. Also the CRIA and the CCCMC made the same claim and reiterated it after the final disclosure.

(753) The Commission rejected that claim, as disclosing the injury indicators without the weighting would not reflect the real situation of the Union industry given that it is not possible to sample as many SMEs as it would be necessary to reflect their real weight among the Union producers.

4.2.2.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union and Cost of production

	2014	2015	2016	Investigation period
Average unit sales price in the Union (EUR/item)	237	225	216	218
Index 2014 = 100	*100*	*95*	*91*	*92*
Average cost of production (EUR/item)	200	188	183	188
Index 2014 = 100	*100*	*94*	*91*	*94*

Source: Verified questionnaire replies of sampled Union producers

(755) Average unit selling price decreased by 19 EUR while unit costs decreased by 12 EUR over the same period. This corresponds to a decrease of prices by 8 % over the period considered while the costs decreased by 6 %.

(756) During the investigation period, the cost of production increased as compared to 2016, which could not be fully reflected on the selling price.

(757) A separate analysis based on the same methodology as described was made for the three tiers.

(758) In tier 1, the average unit selling price decreased by 25 EUR while unit costs decreased by 19 EUR over the same period. Both decreased by 9 % over the period considered.

Table 10

Sales prices in the Union and Cost of production — Tier 1

	2014	2015	2016	Investigation period
Average unit sales price in the Union (EUR/item)	270,8	255,3	245,3	245,7
Index 2014 = 100	*100*	*94*	*91*	*91*

	2014	2015	2016	Investigation period
Average cost of production (EUR/item)	222	200	199	203
Index 2014 = 100	*100*	*90*	*89*	*91*

Source: Verified questionnaire replies of sampled Union producers

(759) In tier 2, the average unit selling price decreased by 27 EUR while unit costs decreased by 17 EUR over the same period. This corresponds to a decrease of the average price by 12 % over the period considered while the costs decreased by 9 %.

Table 11

Sales prices in the Union and Cost of production — Tier 2

	2014	2015	2016	Investigation period
Average unit sales price in the Union on the total market (EUR/item)	228	212	193	201
Index 2014 = 100	*100*	*93*	*85*	*88*
Average cost of production (EUR/item)	187	176	162	170
Index 2014 = 100	*100*	*94*	*87*	*91*

Source: Verified questionnaire replies of sampled Union producers

(760) In tier 3, the average unit selling price decreased by 9 EUR while unit costs increased by 2 EUR over the same period. This corresponds to a decrease of the average price by 5 % over the period considered while the costs increased by 1 %.

Table 12

Sales prices in the Union and Cost of production — Tier 3

	2014	2015	2016	Investigation period
Average unit sales price in the Union on the total market (EUR/item)	181	176	172	172
Index 2014 = 100	*100*	*97*	*95*	*95*
Average cost of production (EUR/item)	170	175	167	172
Index 2014 = 100	*100*	*103*	*98*	*101*

Source: Verified questionnaire replies of sampled Union producers

(761) The CRIA and the CCCMC requested the Commission to clarify whether transfer prices between related companies had been considered when establishing the injury indicators.

(762) The Commission clarified that when related companies were involved in the sales, the sampled producers were requested to provide the sales to the first independent customers. Regarding the purchases of raw materials through related companies, the transfer price policy was examined by the Commission and did not result in any adjustments.

4.2.2.2. Labour costs

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

Table 13

Average labour costs per employee

	2014	2015	2016	Investigation period
Average labour costs per employee (EUR)	43 875	44 961	46 432	46 785
Index 2014 = 100	*100*	*102*	*105*	*106*

Source: Verified questionnaire replies of sampled Union producers.

(764) The average labour cost increased over the period considered by 6 %.

4.2.2.3. Inventories

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

Table 14

Inventories

	2014	2015	2016	Investigation period
Closing stocks *(Index 2014 = 100)*	*100*	*81*	*100*	*144*
Closing stocks as a percentage of production	7 %	6 %	7 %	9 %
Index 2014 = 100	*100*	*81*	*97*	*134*

Source: Verified questionnaire replies of sampled Union producers.

(766) Stocks have increased by 44 % over the period considered and reached around 9 % of the yearly production. This situation has a negative impact on the financial situation of the sampled Union producers.

(767) The China National Tire Group and Pirelli claimed that the Commission should consider analysing not only the overall industry but also the distinction between new and retreaded tyres or between different categories of tiers. They argued that according to the complaint, no increase in stock has taken place for tier 1 or 2 tyres. On the contrary, tier 1 and 2 stocks decreased by 15 % and 21 %, respectively, between 2013 and 2016. Conversely, the complainant reported a 17 % stock increase for tier 3 tyres. For them, the reported increase in stocks relates only to the retreading industry. Furthermore, stock fluctuations can be explained by various factors. For instance, stock increases can be triggered by increased sales, which are made on anticipated orders. Specifically, Prometeon Tyre Group S.r.l. recorded an increase in stock due to several factors, all related to the European economic crisis. Tyre production is strictly connected to transportation, and transportation depends mainly on trade in general. A trade crisis results in low transportation and this, logically, means fewer tyre sales.

(768) The Commission first noted that the increase of the stocks of the sampled Union producers had occurred between 2016 and the investigation period. Therefore, it was not directly concerned by the financial crisis of 2011. Furthermore, the figures quoted by the interested parties only concerned the complainant and did not reflect the situation of the sampled Union producers. Thus drawing any conclusions from them cannot be considered representative of the Union industry for the investigation. On this basis, that claim was rejected.

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

(769) At preliminary stage, profitability, cash flow, investments, return on investments and ability to raise capital were established with the methodology described in recitals (692) and (693).

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

Table 15

Profitability, cash flow, investments and return on investments

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	15,6 %	16,7 %	15,2 %	13,7 %
Index 2014 = 100	*100*	*107*	*98*	*88*
Cash flow (in million EUR)	309	312	292	272
Index 2014 = 100	*100*	*101*	*94*	*88*
Investments (in million EUR)	86	63	59	65
Index 2014 = 100	*100*	*73*	*69*	*76*
Return on investments	21,0 %	21,7 %	19,3 %	17,6 %
Index 2014 = 100	*100*	*103*	*92*	*84*

Source: Verified questionnaire replies of sampled Union producers

(771) 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.

(772) The overall profitability decreased from 15,6 % in 2014 to 13,7 % in the investigation period. This was calculated on the basis of the weight of each of the tiers in the sales, as explained in recitals (692) and (693). The decreasing profitability by 1,9 percentage points is the result of a sharper decrease in prices (– 8 %) than the decrease in costs (– 6 %).

(773) The overall profitability is influenced by the profitability in the tier 1, whereas the tier 3 alone became loss-making during the investigation period. Moreover, the relative trend in profitability for the entire Union industry is also decreasing.

(774) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow shows a decrease by 12 %.

(775) The return on investments is the profit in percentage of the net book value of investments. It developed negatively from 21,0 % to 17,6 % over the period considered.

(776) At definitive stage, following the comments from the parties on the weighting methodology (recitals (694) to (717)), the profitability of sales in the Union to unrelated customers (% of sales turnover) was revised accordingly.

(777) As shown in Table 16 below, with the revised weighting, the conclusions based on the trends at preliminary stage remain valid for all the microeconomic indicators analysed on aggregated basis:

Table 16

Profitability of sales in the Union to unrelated customers (% of sales turn-over)

	2014	2015	2016	Investigation period
Profit margin as in Table 15 (% of sales turn-over)	15,6	16,7	15,2	13,7
Index 2014 = 100	*100*	*106,9*	*97,7*	*88,1*

	2014	2015	2016	Investigation period
Profit margin with the revised methodology (recitals (694) to (717)) (% of sales turn-over)	15,4	16,9	15,3	13,7
Index 2014 = 100	*100*	*109,5*	*99,5*	*88,6*

(778) A separate analysis based on the same methodology as described was made for the three tiers.

(779) The profitability in tier 1 fluctuated during the period considered. It increased from 2014 (17,9 %) to 2015 (21,8 %) and then decreased in the investigation period to a level slightly below 2014 (17,5 %). This is partly explained by the evolution of the cost of production and the prices, since in 2015 the cost of production decreased more than the selling prices.

(780) In tier 1, the net cash flow remained stable while the return on investments decreased from 26,0 % to 24,3 % during the period considered.

Table 17

Tier 1 Profitability, cash flow, investments and return on investments

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	21,8 %	18,9 %	17,5 %
Index 2014 = 100	*100*	*122*	*106*	*98*
Cash flow (in million EUR)	191	218	199	192
Index 2014 = 100	*100*	*113*	*104*	*100*
Investments (in million EUR)	54	36	35	38
Index 2014 = 100	*100*	*68*	*65*	*72*
Return on investments	26,0 %	29,3 %	25,0 %	24,3 %
Index 2014 = 100	*100*	*112*	*96*	*93*

Source: Verified questionnaire replies of sampled Union producers

(781) Regarding tier 2, the profitability declined by 2,6 percentage points over the period considered (from 17,9 % in 2014 to 15,3 % in the investigation period).

(782) In tier 2, the net cash flow decreased significantly by 22 % and the return on investments decreased from 20,4 % to 16,2 % over the period considered.

Table 18

Tier 2 Profitability, cash flow, investments and return on investments

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	17,9 %	16,7 %	16,0 %	15,3 %
Index 2014 = 100	*100*	*93*	*90*	*86*
Cash flow (in million EUR)	88	76	65	69
Index 2014 = 100	*100*	*86*	*74*	*78*

	2014	2015	2016	Investigation period
Investments (in million EUR)	18	16	15	17
Index 2014 = 100	*100*	*92*	*84*	*97*
Return on investments	20,4 %	21,4 %	20,1 %	16,2 %
Index 2014 = 100	*100*	*105*	*98*	*79*

Source: Verified questionnaire replies of sampled Union producers

(783) Tier 3 is loss-making in the investigation period (– 0,4 %). The losses for the SMEs were particularly pronounced (– 6,1 % in the investigation period). The profitability for the large companies in tier 3 halved from 2014 to the investigation period from 10 % to 4,8 %.

(784) In tier 3, the net cash flow decreased significantly by 62 % and the return on investments decreased from 7,6 % to 2,5 % over the period considered.

Table 19

Tier 3 Profitability, cash flow, investments and return on investments

	2014	2015	2016	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	6,1 %	0,6 %	2,7 %	– 0,4 %
Index 2014 = 100	*100*	*10*	*45*	*– 7*
Cash flow (in million EUR)	28	17	26	11
Index 2014 = 100	*100*	*62*	*93*	*38*
Investments (in million EUR)	14	10	10	10
Index 2014 = 100	*100*	*69*	*66*	*66*
Return on investments	7,6 %	0,2 %	4,8 %	2,5 %
Index 2014 = 100	*100*	*2*	*62*	*33*

Source: Verified questionnaire replies of sampled Union producers

(785) At definitive stage, following the comments from the parties on the weighting methodology (recitals (694) to (717)), the profitability of sales in the Union to unrelated customers (% of sales turnover) for tier 3 was revised accordingly.

(786) As shown in Table 20 below, with the revised weighting, the conclusions based on the trends at preliminary stage remain valid for tier 3:

Table 20

Tier 3 profitability of sales in the Union to unrelated customers (% of sales turn-over)

	2014	2015	2016	Investigation period
Profit margin as in Table 18 (% of sales turn-over)	6,1	0,6	2,7	– 0,4
Index 2014 = 100	*100*	*10*	*45*	*– 7*

	2014	2015	2016	Investigation period
Profit margin with revised weighting (% of sales turn-over)	5,9	0,5	2,7	– 0,7
Index 2014 = 100	*100*	*9*	*45*	*– 12*

(787) Regarding the investments, the China National Tire Group and Pirelli claimed that the investigation contradicted the figures provided by the complainant. The Giti Group claimed that the profitability of the Union industry as a whole was understated because the Commission tinkered with the data of the sampled Union producers to increase the importance of tier 3 data. The Giti Group also claimed that the only segment of the industry with deteriorating (and low) profit margins was the tier 3 segment. This segment of the market, however, accounted for only 20 % of the total Union sales/consumption. The China National Tire Group and Pirelli considered that the Union industry is in general very profitable, clearly positive in tier 1 and positive in the tier 2 segment.

(788) Regarding the comment on the methodology for calculating the profitability, the Commission explained in recitals (691) to (717) the methodology applied for the weighting of the microeconomic indicators to reflect the economic reality of the Union producers. It also noted that the profitability of all tiers deteriorated from 2014 to the end of the investigation period and that the absolute figures on profitability had to be read in conjunction with its findings on the inter-connection between tiers. Therefore, the Commission rejected those claims.

4.3. **Interconnection between the tiers**

(789) The Union market for tyres for buses or lorries has been strongly affected by the economic crisis. As the consumption of tyres is intrinsically linked to the purchase of new vehicles and of kilometres travelled by the fleets, it is very dependent on the overall economic activity. Any variation in the economic activity, and notably of the volume of goods transported by road, is reflected directly in the tyre sales. In a period when lorries are used less, acquisition of new lorries or replacement of lorries tyres becomes less necessary and therefore the tyres market declines.

(790) After the economic crisis, there has been a structural shift of demand from the higher tiers to the lower tiers, where price tends to drive the purchasing decision. In this context, the cheap offers of imported tyres and the preference of certain fleet owners to opt for cheaper tyres have played a major role in the reconfiguration of the Union market.

(791) As retreaders are under strong pressure, closure of plants and workshops have been increasingly numerous as set out in recital (741). Due to the lack of available local facilities, it becomes less possible to retread a high-quality worn out tyre. Consequently, the purchase of a high-quality tyre with the option of multiple retreadings becomes less attractive. In light of these developments and in the face of low-priced imports of tier 3 tyres, which accounted for most of the Chinese imports, Union producers of new tyres have no option but to strengthen their presence in tier 3, too.

(792) Finally, the intersegment competition is also clear from the impact of the prices in the lower tiers on the pricing in the higher tier. In the Union, prices of tier 1 tyres have felt the pressure of cheap imports. The complainant claimed that the impact was all the more obvious in regional areas where tier 3 tyres were more present (i.e. in these areas tier 1 tyres were typically priced at lower levels than in other areas of the Union which highlights the competitive impact of tier 3 tyres on tier 1 tyres).

(793) This means that economic operators appear to have shifted part of their purchase from tier 1 or tier 2 tyres to tier 3 tyres, showing that competition takes place across the different segments.

(794) The table below shows the share per tier in the Union consumption in 2012 and in 2016. In that period, Union consumption increased by around 3,8 million items, and over 90 % of such increase was in tier 3 (around 3,6 million items). This resulted in a tilt of the relative importance of tier 3, which increased from 27 % to 39 % of total Union consumption.

Table 21

Union consumption split per tier in years 2012 and 2016

	2012	2016
Union Consumption	17 684 000	21 452 278
Tier 1	46 %	37 %
Tier 2	27 %	24 %
Tier 3	27 %	39 %

Source: ETRMA and Eurostat Comext.

(795) On the basis of the information collected, the Commission determined that, in the past, tier 1 tyres set the price benchmark for the others tiers. The main Union producers concentrated in tiers 1 and 2, where tyres were/are designed to have a long life cycle and to be retreadable. That justified significantly higher prices (and profit margins) for expected high performances for tiers 1 and 2 tyres. Consumers valued these physical and performance properties and were willing to pay higher prices for these properties. However, information available to the Commission showed that the above mentioned pricing trend changed and a 'reverse-cascading effect' started with tier 3 prices inversely affecting tier 1. Of note, most of the low-priced imports relate to tier 3 where the Union producers suffered losses during the investigation period.

(796) On the basis of above the Commission concluded that that there is symbiotic relationship between the different tiers, where price pressure on tier 3 also affects the prices in the other tiers.

(797) Interested parties generally accepted the principle of a market segmentation into three tiers. As described in recitals (86) to (91), in the Union market, the brands were positioned in one of the three tiers. Tyres in all tiers were generally sold through common sales channels.

(798) There were a number of interested parties that challenged the findings on the interconnection between the tiers. The Commission compiled the information on this matter in a note for the file on interconnection between new and retreaded tyres and between the tiers ([118]).

(799) The CRIA and the CCCMC claimed that the idea that the prices in tier 3 would drive the pricing in tiers 1 and 2 (recitals (792) to (796)) is baseless and that the Commission failed to give any reason for this alleged impact. Even assuming that the aforementioned findings were correct, none of these could lead to the conclusion that prices in tier 3 would have an impact on prices in tiers 1 and 2. They also claimed that the prices of tyres are led by the cost of raw materials and that it was incorrect that competition takes place across the different segments. They contended that the Commission simply refers to 'the impact of the prices in the lower tiers on the pricing in the higher tier' (recital (792)), echoing the complainant without any supporting evidence. The Giti Group submitted that the Commission's reverse-cascading theory was not supported (and was in fact contradicted) by the facts on the record. In this connection, the Giti Group also recalled that the Complaint itself had stated that: 'Actors, pricing, competition and strategies vary significantly from one segment to the other and a decisive factor on one segment might be irrelevant on another. While direct competition may exist between extremities of segments, intersegment competition is mostly the result of a strategic choice between quality and price' ([119]).

(800) As mentioned in recital (637), the Commission produced a note for the file containing the basis for concluding that there is interconnection between tiers. This conclusion was based on a number of elements. The first one is that competition across tiers takes place at the moment a purchase is decided. The purchaser then has the option to choose;

— a tier 1 tyre, with greater durability, the latest technology and the best performance, at a higher initial price, or

([118]) Note for the file on interconnection (Filing system number: t18.007993).
([119]) Complaint paragraph 107.

— a tier 2 tyre, often made by premium tyre makers, with a greater durability than tier 3 brands and lower cost than premium brands, at a higher initial price than tier 3 tyres, or

— tier 3 tyre, with the lowest upfront cost, but the least durability and lowest performance.

(801) This decision, translated into prices, results in a two-fold analysis: the upfront payment and overall cost per tyre. Regarding the upfront payment, the tier 1 tyres are the ones that involve a higher investment. At the same time, on a cost per tyre per km basis, they have the lowest cost. The variables are exactly opposite for tier 3 tyres, where the upfront payment is the lowest, but the cost per tyre per km is the highest ([120]).

(802) Another element that played a critical role was the common sales channels, which usually display the tyres of different tiers together for sale, facilitating the dynamic of the interconnection between tiers ([121]).

(803) The Commission also noted that the claim regarding the cost of raw materials was not supported by evidence.

(804) The Commission referred to the development in Union sales of the different tiers, relying, in this regard, on a table provided by interested parties (Prometeon/Pirelli). This table was labelled as 'Estimated evolution of Union sales for Union producers members of ETRMA'. The CRIA and the CCCMC claimed that the figures differed from the Union sales as established by the Commission. The Commission examined the claim and requested a clarification from ETRMA. ETRMA explained that the data in the table disclosed was erroneously labelled. The data contained in the table disclosed in fact concerned the evolution of the Union replacement market of new tyres (Table 22 below). According to that data, there was a clear and rapidly growing interest of Union producers in the lower price, tier 3 segment of the market.

Table 22

Estimated evolution of Union replacement market of new tyres

	2014	2015	2016	2017	estimate 2018
Tier 1 + Tier 2 (in million)	8,7	9,0	9,1	9,0	9,2
Index 2014 = 100	*100*	*103*	*105*	*103*	*106*
Tier 3 (in million)	3,6	4,0	5,0	5,4	5,5
Index 2014 = 100	*100*	*111*	*139*	*150*	*153*
Share of ETRMA producers on T3 segment	12,5 %	12,4 %	13,1 %	14,1 %	18,9 %

Source: Prometeon Tyre Group and Pirelli (Hearing presentation by Prometeon Tyre Group and Pirelli, 9 April 2018 (Filing system number: t18.007993)).

(805) On the basis of the above table, estimated 2018 sales of tier 3 new tyres are expected to increase by more than 53 %in comparison with their 2014 levels, while the volumes of sales of tier 1 and 2 tyres remain similar, and are expected to increase by only 6 % compared with their 2014 levels. This development must be viewed against the background of a drastic increase of tier 3 competition from exporting producers in the country concerned during the period 2014-2018, as well as financially unviable profit levels in tier 3 for Union producers of the product concerned.

(806) The Commission observed that this shift in Union replacement market has affected the Union producers who would have yielded far higher profit levels in tiers 1 and 2. This can only be understood in light of the reasons set out in recital (635) et seq., namely as a move to protect the main value driver for higher tiers distinguishing Union tier 1 and 2 sales from imports of tier 1 and 2 imports from the country concerned. The increase in low-profit tier 3 sales and, thereby, competition in the tier 3 sales segment, showcases that pressure from the reverse-cascading effect to tier 1 and 2 sales was felt by Union producers of the product concerned during the investigation period and beforehand, and that this pressure will increase even during the post-investigation period.

([120]) Tables 10 to 12 above for the average Union sales price per tier and the note for the file on interconnection, pages 7 to 10 (Filing system number: t18.007993).

([121]) Note for the file on interconnection, pages 11 and 12 (Filing system number: t18.007993).

(807) The CRIA and the CCCMC noted that the Commission stated that it had become less possible to retread a high-quality worn out tyre (recital (791)) but had not provided any figures to support that statement.

(808) The Commission considered that the fact that there might be closures of plants and workshops of retreaders does not necessarily mean that there are less possibilities to retread high-quality worn out tyres, as the demand for such high-quality tyres dropped after the economic crisis (recital (789)).

(809) The CRIA and the CCCMC requested the Commission to disclose the sales figures of tier 1 tyres and the actual capacity of retreading, to allow to assess to which extent the availability of retreading facilities really dropped taking into account the decreasing sales of tier 1 tyres. The Giti Group noted that the Commission did not present data on market share by tier that would be necessary information to check whether the Commission's reverse-cascading theory is supported by facts. This theory was built on the assumption that cheap tier 3 imports put price pressure on and took market share away from Union producers in tier 2 (and tier 1). However, should market share data by tier show that tier 1 and/or tier 2 Union producers actually managed to maintain (or even increase) their market share, this would fatally undermine this theory. It is not clear to the Giti Group whether the Commission has opted not to disclose information on market share or whether this information has simply not been collected. In any event, the Giti Group urged the Commission to disclose (and if necessary collect) this information to check the correctness of the Commission's reverse-cascading theory. Moreover, the Giti Group requested to have the macro-indicators analysed per tier.

(810) The Commission explained in recital (697), that it was appropriate to analyse the economic situation of the Union industry as a whole. There was capacity, production and imports in all tiers. Tier 3, where most of Chinese imports take place, were dragging down the industry as a whole. Chinese subsidised prices significantly undercut the prices of the Union industry in all tiers during the investigation period. Over the period considered, the overall performance of the Union industry deteriorated. Some plants that produced different tiers had to close ([122]) and many retreaders had to stop production. The Commission established that at least 85 SMEs stopped production, which reduced the retreading capacity, as explained in recital (791). Therefore, the Commission rejected the claim.

(811) The CRIA and the CCCMC claimed that the Commission's allegation that 'Union producers of new tyres have no option but to strengthen their presence in tier 3, too' (recital (791)) was difficult to understand, as the Commission itself explained that all integrated retreaders (thus, producers of new tyres who also do retreading) would be part of tier 2 (recital (90)). The parties reiterated a similar claim after the final disclosure.

(812) The Commission noted that in the Note with the mapping of new and retreaded tyres by brand, there were brands of Union producers of new tyres classified in tier 3. Therefore, this claim was rejected.

(813) The Commission stated that 'information available to the Commission showed' that the pricing trend changed and that now allegedly tier 3 prices inversely affect tier 1 prices (recital (795)). The CRIA and the CCCMC requested that this information was made available to interested parties.

(814) The Commission considered that the interconnection between tiers also encompassed a rationale of price setting across tiers. In fact, Union new tyre manufacturers following a multi-brand strategy indicated that a price change on one tier necessarily triggered an adjustment of the price on the overall portfolio and one of the sampled Union producer provided a substantiated explanation. These elements were all considered by the Commission for the conclusion on the price pressure across tiers and were disclosed to interested parties ([123]). Therefore, the Commission rejected the request by CRIA and the CCCMC.

(815) Some interested parties claimed that the evolution of profitability of tier 1, tier 2 and tier 3 did not correlate with the interconnection between the tiers. They pointed out that the profitability of tier 1 of Union producers during the investigation period (at 17,5 %) is higher than the target profit (namely the profit that could be expected in the absence of subsidized imports) as preliminarily established by the Commission in the parallel anti-dumping

([122]) In 2017, Goodyear Group closed its UK plant (around 330 jobs); Michelin Group closed several plants in the Union: in France two plants (in 2014 700 employees and in 2017 330 employees), in Germany (2016 200 employees), in Hungary (2015 500 employees) and in Italy; Continental Group closed one plant in Germany.

([123]) Note for the file on interconnection, pages 12 to 14 (Filing system number: t18.007993).

investigation (at 15,6 %) (as described in recital (770) the profitability was revised in the meantime at 15,4 %). Similarly, the profitability of tier 2 Union producers during the investigation period (at 15,3 %) was essentially the same as that target profit. Moreover, if profitability of Union producers in tier 1 and tier 2 was (indirectly) affected by cheap tier 3 imports, one would expect to see a similar evolution in profitability as for tier 3 Union producers.

(816) The Commission considered that is not the case. While profitability of tier 3 dropped from 6,1 % to 0,6 % in 2015 (as described in recital (785) the profitability was revised after disclosure from 5,9 % to 0,5 %), between 2014 and 2015, the profitability of tier 1 producers actually increased from 17,9 % to 21,8 %. Conversely, while profitability of tier 1 and 2 dropped between 2015 and 2016, during the same period profitability of tier 3 producers quadrupled from 0,5 % to 2,7 %. In short, those parties claim that there was no correlation in the development of the profitability of tier 3 and the profitability of tier 1 and tier 2.

(817) Moreover, the Commission noted that the only period in which there was a correlation in the development of profitability was between 2016 and the investigation period. The slight decrease in profitability during the investigation period can however be explained by a sudden increase in raw material costs that had not translated yet into higher sales prices. As concerns the development of sales prices, even if it was correct that the data provided in the Information Document showed a decrease in sales prices of 9 % (for tier 1) and 12 % (for tier 2) over the period considered. This downward trend cannot be attributed to tier 3 Chinese imports for the following reasons. First, as the Commission acknowledged in other sections of the Information Document – but appeared to have ignored when developing its reverse-cascading theory – the cost of production (because of a decline in raw material prices) decreased during the investigation period. For tier 1, the cost of production decreased by 9 %, exactly the same decrease as the one observed for the sales prices. Similarly, for tier 2, the cost of production dropped by 9 %. In other words, those interested parties alleged that the decrease in prices that the Commission observed is fully (for tier 1) and for 75 % (for tier 2) explained by the drop in the cost of production. They claim that that is also evident from the fact that once the cost of production increased between 2016 and the investigation period, so did sales prices. Second, there was a shift towards smaller tyres on the Union market. The unit price of smaller tyres is lower than for bigger tyres and this explains part of the decrease in the sales prices over the period considered. Those interested parties claim that the Commission did not take this development in consideration.

(818) The Commission considered that the lack of correlation on the development of the profitability of the different tiers can be explained by the way the purchasing decisions were taken. There is a time lag given the nature of the product and the range of options the user has depending on the situation. Indeed, the range of options the user has will depend on whether it has a tyre, and if so, whether the tyre it has could be further retreadable or not, the relative price of the available options, etc. For example, if the user needs to purchase a tyre, it will probably decide based on the whole range available. However, if the user has a retreadable tyre already, the cost of retreading the tyre it has will probably compete with the cost of purchasing a new tier 3 net of the income of selling the carcass.

(819) Additionally, the information gathered by the Commission concerning different sizes commercialised in the Union market over the period considered did not support the argument that prices and costs were lower because of the relatively stronger presence of smaller tyres on the market ([124]). The data showed indeed that the product mix on the market was stable and remains concentrated on the main dimensions. Moreover, such a reduction of the average size of the product could not be found in the Eurostat data for Chinese imports, revealing that, on the contrary the weight of the imported tyres from China increased by 3 % between 2014 and the investigation period. Conversely, the Commission noted overall structural adaptations made by the Union industry in order to reduce costs, as a result of the 'knock-on effect' on the different tiers at play.

(820) Some interested parties claimed that there were substantial imports (accounting for a market share of 11,9 %; up by more than 1 % compared to 2014) from other countries and these were made at decreasing prices (over the period considered, the average import price dropped by 17 %). Their pricing also indicated that these imports were aimed at the tier 1 and/or tier 2 segment of the market. The imports from Turkey, Thailand, Japan, South Korea as well as other countries (excluding Russia) have consistently undercut prices of Union producers in tier 1 in a range between 10 %-25 %. The Giti Group claimed that the price decreases in tier 1 and tier 2 may have been caused by imports of tier 1 and tier 2 tyres from other countries and not by price pressure from Chinese

([124]) Note for the file on interconnection, pages 12 and 13 (Filing system number: t18.007993).

tier 3 tyres. Again, such a situation would fatally undermine the Commission's theory. In any case, that party noted, in the absence of an examination of import volumes (and import prices) of tier 1 and tier 2 tyres from other countries, it would be impossible to determine whether the Commission's theory is factually correct.

(821) With regard to that claim, the Commission found that the analysis advanced by the Giti Group was flawed as it was considering that all imports were sold directly to the first independent customers in the Union. That theory disregards that average prices may be affected by the fact that of some of these imports are sold to interested related parties. Moreover, imports statistics did not provide an average price per tier, so that the Commission was not in a position to examine import prices on a tier basis, as was requested by the Giti Group. Therefore, the analysis proposed cannot be carried out with the information that the Commission was able to collect so far during the investigation, or that which was received from interested parties, and was rejected accordingly.

(822) Therefore, the Commission rejected the claims brought forward by interested parties and confirmed its initial findings.

4.4. **Conclusion on injury**

(823) Overall, the injury indicators show that the Union industry as a whole has been under intensive pressure. There was a reduction of production capacity, investment and employment over the period of investigation and a significant loss of market share despite decreasing sales prices. Market share was gained by imports of the product concerned at the expense of the Union industry, irrespective of segmentation, resulting in over 4 200 jobs lost. While still around 14 % for the industry as a whole, profitability declined by 1,7 percentage points between 2014 and the investigation period and by 3,2 percentage points between 2015 and the investigation period. Moreover, the relative trend in profitability for the entire Union industry is also decreasing.

(824) It was also established that Chinese imports were substantially undercutting the Union industry prices, which, in turn, pointed to a direct and significant impact on the deteriorating performance and declining capacity, production, employment and other injury indicators of the Union industry. The negative development was most felt in the tier 3 where many SMEs retreaders exited the market and could not benefit from the economic recovery in the sector, which was ultimately captured by the low-priced imports. It is recalled that the companies mostly active in tier 3 account for around 20 % of the total Union production. The losses of tier 3 are not sustainable and put the survival of the entire retreading activity in the Union at risk.

(825) Moreover, the effects of the price pressure also affected the prices of the higher tiers. The growing price pressure from tier 3 tyres resulting from low-priced imports, mostly relating to tier 3 tyres, has triggered a similar development in tier 2, where sales prices fell by 12 % in the period considered, and even the prices for tier 1 tyres had to be lowered by 9 % to remain competitive.

(826) Indeed, given the price interconnection between the tiers, even the best-performing tier 1 was suffering from the reverse-cascading price pressure across the three tiers explained in the previous chapter. This resulted in industrial depletion, loss of value throughout the supply chain of all three tiers, and degradation of the quality of the tyres available on the Union market. Moreover, the intense price competition in all three tiers has negative consequences for the capacity utilisation and leads to rising stocks of the industry, coupled with less cash flow and investments. Finally, the loss of the retreading industry in the Union also affects the profitability that the companies active in tier 1 and 2 can achieve.

(827) In addition, the complainants alleged that there was a risk of further aggravation of injury. In their view, numerous measures have been imposed in other import export markets which could cause immediate trade diversion. Moreover, the Union producers are said to be under threat on their export markets, as some countries such as Turkey had initiated a safeguard investigation. The risk of aggravation would also be linked to massive overcapacities in the PRC, where unused capacities represent about 40 % of current Chinese exports. The complainants further feared a structural impact on the EU market of tyres as the additional cost to purchase a high-quality tyre would become less and less possible to justify when the option of multiple retreading of a high-quality tyre disappears together with the retreading industry. Finally, they foresee a continuous improvement of tyres from the PRC. If higher-quality tyres from the PRC were allowed to compete with Union tyres at subsidized prices, this would reduce the Union tyre industry margins and hence its capacity to invest and innovate. This, in turn, would likely force the Union industry to rely on lower quality tyres requiring limited investment in R & D, further affecting their retreadability.

(828) The Giti Group claimed that the improved performance of retreaders may have much to do with increasing raw materials costs rather than the imposition of provisional anti-dumping measures. The Commission did not see evidence linking the evolution of the raw material costs with the increase of the commercial orders reported by the retreaders. Therefore, that claim was rejected.

(829) With respect to the profitability of the Union industry, the Commission acknowledged the critical comments received from the China National Tire Group that tier 3 is loss-making in the investigation period (– 0,7 %) while the profitability of tiers 1 and 2 are in the double digits. However, the Commission did not share the conclusion that this indicator, showing a difference in profitability depending on the tiers, could negate a finding of material injury for the Union industry as a whole.

(830) All relevant indicators show that the Union industry has suffered material injury in tier 3. In addition to the negative profit margin, there were a significant decrease in employment, in particular for the retreading business. The level of undercutting of 31 % is significant in tier 3, where the volume effect of Chinese competition is also felt the most. As shown in Table 18, there is a noticeable and constant (year after year) shift of new tyre sales by Union producers towards tier 3. In 2016, Union sales shown in Table 18 stood at 5 million tyres in tier 3. That development continued in 2017. The forecast for 2018 shows an even higher increase in that shift of sales to tier 3 thus clearly demonstrating the price pressure that Union producers in tiers 1 and 2 find themselves under.

(831) In that regard, as laid down in section 4.3, the Commission maintained that there is a strong interconnection between tiers with a reverse-cascading effect. Contrary to the comments from many interested parties, there is only one market for tyres from the Union producers' point of view, who divide it into three tiers mainly for reasons of marketing strategy and differences in quality. This means that Union producers take into account the developments in all three tiers. Hence, the price and volume pressure in tier 3 has a direct impact on the other two tiers as well, as is set out in recital (798) *et seq*. Moreover, consumers of tyres chose between tyres from all three tiers. They balance their willingness to pay a higher price with the expected lifetime of the tyres and the associated costs. Accordingly, the behaviour of producers and consumers confirms that there is a strong interconnection between the tiers. It follows that the observed shift towards tier 3 tyres exercises an ongoing pressure on the other two tiers as well. In that respect, the Commission further noted that the subsidized imports concern mainly tier 3. In view of the interconnection between tiers and the growing importance of tier 3, the Commission considered that the negative trends already observed for the Union industry as a whole can only but continue in the near future.

(832) The risk of further aggravation of injury is also evidenced by the 13th Five Year Plan for the Development of the Chemical and the Petrochemical industry in China, which aims at technological innovation, structural adjustment and green development. This plan applies to the tyres industry and the Commission has found an important number of subsidies. They underpin that Chinese exporting producers have the structural advantage to climb up the value chain with continued access to cheap financing. If higher-quality tyres from the PRC were competing more and more with Union tyres at subsidized prices, this would reduce the Union tyre industry margins and hence its capacity to invest and innovate. This, in turn, would likely force the Union industry to rely on lower quality tyres requiring limited investment in R & D, further affecting their retreadability, and so causing injury to all three tiers.

(833) Because of the injurious situation in tier 3 and the presently-felt reverse-cascading effect on tiers 2 and 1, the Commission maintained its conclusion that the industry as a whole suffered material injury within the meaning of Article 8(4) of the basic Regulation.

(834) Therefore, the Commission concluded that the Union industry as a whole was under intense pressure. There was a reduction of production capacity, investment and employment over the period considered and a remarkable loss of market share despite the ongoing decrease in sales prices. Chinese imports were substantially undercutting Union industry prices. Profitability of the Union industry as a whole also declined, and even faster toward the end of the period considered. In addition, stocks of all types of tyres increased, in particular during the investigation period, negatively impacting the financial situation of the Union industry. Many SMEs retreaders stopped production and could not benefit from the economic recovery. The Commission also attached importance to the submissions of AIRP, Bundesverband Reifenhandel und Vulkaniseur-Handwerk (respectively the Italian and German retreaders association) or Banden Plan Europa B.V. (Union retreader) or Vipal Europe (tread supplier)

noting that the imposition of provisional anti-dumping measures has already triggered a positive momentum in the sector. In particular, retreaders in several Union Member States have seen increased orders since May 2018 and believe this optimistic outlook would continue should the provisional anti-dumping measures become definitive.

5. CAUSATION

(835) In accordance with Article 8(6) of the basic Regulation, the Commission examined whether the subsidized imports from the country concerned caused material injury to the Union industry. In accordance with Article 8(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry.

(836) The Commission ensured that any possible injury caused by factors other than the subsidized imports from the country concerned was not attributed to the subsidized imports. Those factors are: imports from other third countries, export sales performance of the Union producers and costs evolution.

5.1. Effects of the subsidized imports

(837) Prices of subsidized imports from the PRC significantly undercut Union industry prices during the investigation period with undercutting margins of 21 % leading to decreasing market share and profitability for the Union industry (respectively from 72,4 % to 67,1 % and from 15,4 % in 2014 to 13,7 % during the period considered). In effect, during the period considered the Union industry sales volume slightly decreased whilst the import volume from the PRC rose by 32 % and thus seizing the bulk of the increase in Union consumption.

(838) Overall, during the period considered, the Union industry's loss of market share (– 5,3 percentage points) was taken by the Chinese imports (+ 4,2 percentage points).

(839) The analysis of the injury indicators in recitals (686) to (784) shows that the economic situation of the Union industry, and in particular its financial situation, has worsened and this coincides with the arrival of large volumes of subsidized imports from the PRC. The prices of these imports undercut those of the Union industry and have exerted a significant downward pressure on prices in the Union market. Indeed, it is the steep increase of imports and the substantial price undercutting found that are the chief factors to be considered in this case.

(840) Chinese exporters managed to increase significantly its market share at the expense of the Union industry. During the investigation period, the majority of the total volume of subsidized Chinese imports concentrates on tier 3, forcing several of Union producers in that tier, in particular SME retreaders, to exit the market. In addition, the Commission established that such high volumes at subsidized prices have affected the price setting. Previously, the price setting was driven by tier 1, i.e. tier 2 prices were established in relation to tier 1 and tier 3 in relation to tier 2. Now this was reversed: tier 2 price is established on the basis of tier 3 and tier 1 on the basis of tier 2. This resulted in a decrease of selling prices in all tiers. The Commission thus concluded that the surge of subsidized imports from the PRC had a determining role in the material injury suffered by the Union industry.

(841) Several interested parties claimed that the Commission did not demonstrate how the volume and price levels of the imports of Chinese tyres have materially affected the Union industry, either individually or jointly. They claimed that although imports from Chinese exporters into the Union increased by 1 124 101 items during the period considered, the consumption in the Union also increased by 1 341 615 items. Thus, the increase in Chinese imports at competitive prices could not by itself harm the Union industry's sales in the market. Further, the fact that some Union producers had to exit a segment of the market and that the price setting changed in the Union market does not necessarily mean that Chinese imports are responsible for causing material injury to the Union industry. The fact that Chinese exporters' prices were lower than those of the Union industry and that Union producers could not capture the consumption increase and had to reduce their prices to be more competitive is not sufficient to prove that Chinese imports are responsible for the injury suffered by the Union industry.

(842) The Commission reiterated that the Chinese subsidised prices significantly undercut the prices of the Union industry in all tiers during the investigation period. They were on average significantly lower during the whole period considered. Moreover, the fact that import prices remained stable between 2014 and 2015, dropped in 2016 and remained at the same low level during the investigation period (see recital (650)) cannot be explained by the evolution in the raw material prices. The latter decreased at the beginning of the period considered, but increased during the investigation period. Nevertheless, the Chinese exporting producers did not revise their prices upwards. This showed that they wished to gain and indeed gained further market share to the detriment of the Union industry.

(843) One exporting producer claimed that there is no causal link between the Chinese imports and the injury caused to the Union industry as the Chinese exports are predominantly present on tier 3 market while the majority of the Union producers sell tier 1 and 2 products. This statement is factually incorrect. Products falling under tier 1 and tier 2 represent around 32 % of the total Chinese imports. Furthermore, as explained in section 4.3 regarding the interconnection between new and retreaded tyres and between the different tiers, there is a symbiotic relationship between the different tiers, together forming a single product. Price and volume pressure from cheap Chinese tyres in tier 3 also affects the price in the other tiers, thereby affecting the Union industry as a whole. Therefore, the claim was rejected.

(844) The same exporting producer also claimed that the injury analysis and thus the causation analysis should be performed taking into consideration that tier 3 tyres were lower priced since they have a significantly shorter lifespan than tier 1 and tier 2 tyres. The evaluation of the market share should be made by comparing the market share in value and not in quantity. If one takes this into account the decrease in the market share of the Union industry and the increase in the market share of the Chinese exporting producer are much less pronounced.

(845) The Commission acknowledged that the life-span of tyres is an important aspect of the analysis, which demonstrates the interconnection between tiers. However, it did not accept that this aspect would negate the finding of causality. Even if, admittedly, the market share of Chinese tyres in the Union is lower in value due to 'shorter lifespan' than 'per unit', it does not change the fact that it is precisely because of the growing attractiveness for consumers to buy Chinese 'low-price – low-mileage' tyres that the Union industry has become under pressure and suffered material injury. Thus, the Commission considers that the increase in the market share of the imports from the PRC, either on value or on volume basis, confirm the finding on causality.

(846) One interested party claimed that the decrease in price of Chinese imports is caused by a change in the product mix triggered by the growing demand for smaller tyres. There was, however, no evidence supporting that claim. In any event, even if the size had could have had an impact on the evolution of the average prices, Chinese imports were undercutting the Union industry's prices also for the same sizes as the comparison is always made per product type. Therefore, the Commission rejected that claim.

(847) Other factors which were examined in the causality analysis in accordance with Article 8(7) of the basic Regulation were: the imports from other countries, export performance of the Union industry and evolution of costs of the Union industry.

5.2. **Imports from third countries**

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

Table 23

Imports from third countries

Country	2014	2015	2016	Investigation period
Turkey				
Volume of imports from Turkey	712 497	710 504	856 110	884 241
Index (2014 = 100)	*100*	*100*	*120*	*124*
Unit import prices from Turkey	212	216	194	185
Index (2014 = 100)	*100*	*102*	*91*	*87*
Market share	3,5 %	3,4 %	4,0 %	4,1 %
Share in total Union import volume	12,6 %	11,4 %	12,1 %	12,3 %

Country	2014	2015	2016	Investigation period
Korea				
Volume of imports from Korea	431 676	463 643	477 185	381 167
Index (2014 = 100)	*100*	*107*	*111*	*88*
Unit import prices from Korea	219	191	181	186
Index (2014 = 100)	*100*	*87*	*83*	*85*
Market share	2,1 %	2,2 %	2,2 %	1,8 %
Share in total Union import volume	7,6 %	7,4 %	6,8 %	5,3 %
Japan				
Volume of imports from Japan	386 128	418 802	398 427	390 859
Index (2014 = 100)	*100*	*108,5*	*103,2*	*101,2*
Unit import prices from Japan	293	227	218	221
Index (2014 = 100)	*100*	*77,6*	*74,4*	*75,4*
Market share	1,9 %	2,0 %	1,9 %	1,8 %
Share in total Union import volume	6,8 %	6,7 %	5,6 %	5,5 %
Russia				
Volume of imports from Russia	181 031	237 582	270 515	279 798
Index (2014 = 100)	*100*	*131,2*	*149,4*	*154,6*
Unit import prices from Russia	145	131	130	130
Index (2014 = 100)	*100*	*90,7*	*89,6*	*89,5*
Market share	0,9 %	1,1 %	1,3 %	1,3 %
Share in total Union import volume	3,2 %	3,8 %	3,8 %	3,9 %
Thailand				
Volume of imports from Thailand	142 735	177 209	174 994	167 509
Index (2014 = 100)	*100*	*124,2*	*122,6*	*117,4*
Unit import prices from Thailand	310	226	233	241
Index (2014 = 100)	*100*	*72,9*	*75,3*	*77,7*
Market share	0,7 %	0,9 %	0,8 %	0,8 %
Share in total Union import volume	2,5 %	2,8 %	2,5 %	2,3 %

Country	2014	2015	2016	Investigation period
Other third countries				
Volume of imports from all other countries	338 457	376 075	469 425	464 224
Index (2014 = 100)	*100*	*111*	*139*	*137*
Unit import prices from all other countries	202	195	200	192
Index (2014 = 100)	*100*	*96*	*99*	*95*
Market share	1,7 %	1,8 %	2,2 %	2,1 %
Share in total Union import volume	6,0 %	6,0 %	6,6 %	6,5 %
Total all third countries except the PRC				
Volume of imports from all other countries	2 192 524	2 383 815	2 646 656	2 567 798
Index (2014 = 100)	*100*	*109*	*121*	*117*
Unit import prices from all other countries	227	202	192	189
Index (2014 = 100)	*100*	*89*	*85*	*83*
Market share	10,8 %	11,5 %	12,3 %	11,9 %
Share in total Union import volume	38,7 %	38,3 %	37,5 %	35,8 %

Source: Eurostat

(849) Imports from other third countries showed a slight increase of their market share from 10,8 % to 11,9 % in the period considered. Out of all imports from other third countries, only Russian imports had average prices similar to those of Chinese imports. The average prices of imports of the product concerned were clearly higher than the average prices of Chinese imports. The market share of imports of the product concerned from Russia increased from 0,9 % to 1,3 % in the period considered. However, the limited quantities of Russian imports do not attenuate the causal link between the subsidized imports and the injury suffered by the Union industry.

(850) Therefore, the Commission preliminarily concluded that even if imports from other third countries may have had some limited impact on the situation of the Union industry, subsidized imports from the PRC remained the main cause of injury.

(851) Several interested parties claimed that the Commission should provide further analysis of the impact of the Russian imports, which are priced at the level of the Chinese imports.

(852) The Commission found that there is a crucial difference between the volumes imported. While Chinese imports increased from 3,5 million tyres in 2014 to 4,6 million tyres (namely by 1 100 000 items) in the investigation period, Russian imports increased from 0,2 million tyres to 0,3 million tyres (namely with only 100 000 items) in the same period. Given the limited quantities originating from Russia (they constitute only 6 % of the total volumes of import from the PRC and have only 1,3 % market share of the Union market) at a similar price, these imports cannot weaken the causal link between the Chinese imports and the injury suffered by the Union industry.

(853) Other interested parties claimed that imports from other countries such as Japan, Korea and Turkey took place at significant quantities and at lower prices than that of the Union industry. Due to their price and quantity they allegedly severed the causal link between the Chinese imports and the injury suffered by the Union industry.

(854) The Commission observed that the import prices from Japan, South Korea and Turkey were well above the Chinese import prices. Moreover, they are mostly transfer prices to related importers. Therefore, those import prices cannot serve as a basis for a comparison with the prices of the Union industry. Finally, the Japanese, South Korean and Turkish tyres were sold at a price corresponding to their respective tier in the Union market. Therefore, those imports should not cause injury to the Union industry. As far as the quantities are concerned their market shares remained stable (the volume decreased for South Korea by 50 000 items, remained stable for Japan and increased for Turkey by 170 000 items) and represented around half of the volume of imports originating in the PRC. Therefore that claim was rejected.

5.2.1. *Export performance of the Union industry*

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

Table 24

Export performance of the Union producers

	2014	2015	2016	Investigation period
Export volume (in items)	6 079 036	5 920 561	5 893 729	5 920 981
Index 2014 = 100	*100*	*97,4*	*97,0*	*97,4*
Average price (EUR/item)	188	179	169	168
Index 2014 = 100	*100*	*95,3*	*89,9*	*89,8*

Source: Eurostat Comext

(856) Based on Eurostat, export volumes decreased by 2,6 % during the period considered. Average export prices are affected by transfer values to related companies. There is no evidence that the export activity of the Union industry could dilute the causal link between the subsidized imports and the injury found.

(857) Certain interested parties claimed that the Union industry suffered losses as they are exporting at a loss throughout the period considered which impacted their return on investment and the ability to invest. As indicated in recital (862), average export prices are affected by transfer values to related companies. Moreover, the costs of production reported in recital (754) were calculated for the sales by the sampled Union producers charged to unrelated customers. This does not allow drawing meaningful conclusions on the basis of comparing these two sets of data. Moreover, the micro-indicators showed that the exports of the sampled Union producers were found profitable. Therefore, the claim was rejected.

(858) The Commission reiterated that the volumes remained stable during the period considered. Furthermore, these prices are transfer prices between related parties, and therefore no conclusion can be drawn from the fact that these prices show a downward trend during period considered. Those claims were therefore rejected. Thus, the Commission confirms that there is no evidence that the export activity of the Union industry could attenuate the causal link between the subsidized imports and the injury found.

5.3. **Costs evolution**

(859) As mentioned in recital (755), the total costs of the Union industry decreased by EUR 12 per tyre over the period considered due to the evolution of the main raw materials (namely natural and synthetic rubber). However, the average selling price of the Union industry decreased by EUR 19 per tyre due to the price pressure of the subsidized Chinese imports.

(860) It can be therefore concluded that the costs evolution could not be a cause of the injury to the Union industry.

(861) The Giti Group claimed that the new tyres have become cheaper as costs dropped, but the retreaders could not benefit from this decrease as the proportion of raw materials in their cost of production is significantly lower compared to new tyres. This explains the loss suffered by the retreading industry in tier 3, which is mainly due to the evolution of raw material prices as they have been continuously declining since 2012 and only started to recover in 2017.

(862) As mentioned in recital (650), the Chinese import prices did not follow the evolution of the raw materials prices while the cost of production of the Union industry reflected this evolution ([125]). The losses were due to the fact that Chinese imports are substantially undercutting the Union industry prices over the period considered. Therefore, the claim was rejected.

5.4. **Other known factors**

(863) The China National Tire Group and Pirelli claimed that the Commission did not take into consideration that two major producers have invested heavily in their retreading business. This could allegedly explain why other Union producers had to exit tier 3 of the market. According to these parties, the economic crisis pushed two major producers (Goodyear and Continental) to invest in their retreading business and they opened their own retreading plants. According to the information available, the production capacity of each plant is equivalent to the annual production of ten small retreaders. The China National Tire Group believes that these investments have led to self-inflicted injury. These investments are said to have created over-capacity and artificially increased the unit costs and as a result caused profit reduction. The effect of the investments on the overall Union industry is allegedly sufficient to attenuate any potential causal link between the subsidized Chinese imports and the injury suffered by the Union industry, whether considered individually or jointly with the other known factors.

(864) According to information provided by ETRMA, the hot cured retread process (exclusively used by large manufacturers) actually decreased during the period considered (the output went from 2,3 million in 2014 to 2,1 million in the investigation period). These figures did thus not support the claim that the investment of the two major producers had produced an overcapacity. Therefore, the claim about self-inflicted injury was rejected.

(865) Certain interested parties submitted that a growing demand for smaller tyres probably affected the product mix in different years in such a way that proportionally more small-sized tyres were sold towards the end of the investigation period. Due to inner-city weight and size restrictions on vehicles and the growth of the e-commerce business (which requires loads to be broken down into smaller quantities, which in turn requires more light trucks and light commercial vans), there has been a shift towards increased demand for smaller tyres. This observation did not only apply to sales by the Union producers. Chinese imports also catered to the increased demand for smaller tyres and this, therefore, (partly) explained the decrease in sales prices of the Chinese imports.

(866) With regard to the claim on the evolution of the product mix, the information gathered by the Commission concerning sizes commercialized in the Union market over the period considered does not support the argument that prices and costs are lower because of the relatively stronger presence of smaller tyres on the market ([126]). The data for the investigation period indeed shows that the product mix on the market is stable and remains concentrated on the main dimensions. Moreover, such a reduction of the average size of the product cannot be found in the Eurostat data for Chinese imports, revealing that, on the contrary the weight of the imported tyres from China increased by 3 % between 2014 and the investigation period ([127]). Conversely, the Commission noted that the industry had made overall structural adaptations in order to reduce costs in view of the 'knock-on' effect on the different tiers at play. Therefore, the claim was rejected.

5.5. **Conclusion on causation**

(867) A causal link was established between the injury suffered by the Union producers and the subsidized imports from the country concerned.

(868) The considerable price and volume pressure exerted on the Union industry by the increasing subsidized imports from the country concerned over the period considered have not allowed the Union industry to benefit from the post-crisis growing Union market. Indeed, the fiercest competition takes place in tier 3, where most of the Chinese imports take place, also affecting the higher tiers as explained in recitals (825) to (826). The analysis of the injury indicators above shows that the economic situation of the Union industry as a whole has been affected by an increase of low-priced subsidized imports from PRC that undercut substantially the Union prices. Chinese exporters managed to gain significant market share at the expense of the Union industry, resulting in a decrease

([125]) Recitals (176) to (182) of the provisional anti-dumping Regulation.
([126]) Analysis of the dimension sold on the market based on Europool data. Third party data summarized in the open version of the Coalition's comments on provisional anti-dumping Regulation.
([127]) Weight/unit calculation based on the Eurostat data and it is fully available on the sheet 'Var. Imports Weight' of the open version of annex 2 of the complaint.

of employment and a reduction of production capacity. The Union industry lost 5,2 percentage points of its market share between 2014 and the investigation period, and the sales volumes stagnated, while the consumption increased in the Union market. Moreover, the trend in profitability for the entire Union industry is also decreasing, suffering loses in particular in tier 3 tyres.

(869) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidized imports. The effect of the other identified factors namely imports from other third countries, the export sales performance of the Union producers and the costs evolution on the Union industry's negative developments in terms of market share, prices and profitability were not found to dilute the causal link. Even when their combined effect was considered, the Commission's conclusion was not different: in the absence of the subsidized imports, the Union industry would not have been negatively affected to such a significant extent. In particular, the market share would not have dropped to such levels and employment would have been maintained.

(870) Therefore, the Commission concluded at preliminary stage that the material injury to the Union industry was caused by the subsidized imports from the country concerned and that the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the subsidised imports.

(871) Neither the Russian imports (because of their small volume), nor the imports from Japan, Korea and Turkey (because of their transfer prices which were even higher than the Chinese prices) had been the main cause of injury to the Union industry. Also the Union's export performance and its cost evolution were not at the root of the Union's injurious situation. The latter can also not be explained by other facts, such as the investment into the retreading business by two major producers and the evolution of the product mix.

(872) Therefore, the Commission confirmed its findings as set out in recitals (835) to (871) that the material injury to the Union industry was caused by the subsidized imports from the PRC and that the other factors, considered individually and collectively did not attenuate the causal link.

6. **UNION INTEREST**

(873) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious subsidy. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and importers.

6.1. **Interest of the Union industry**

(874) The effect of the potential anti-subsidy measures is likely to be positive for the Union producers and in particular for SMEs. They would be able to benefit from the growing consumption and a market governed by fair conditions. It is especially expected that under these conditions Union producers would be able to increase their sales and thus regain part of the market share lost. This would in turn further increase the Union production and the capacity utilization rate. In fair conditions, the Union industry would be able to increase their prices and improve their financial situation.

(875) Given the interconnection between the retreading business and the production of retreadable tyres, the proposed measures would in particular allow the viability of the retreading industry. This would bring relief in terms of employment, in particular since the retreadable industry is labour intensive and located all throughout the Union.

(876) Certain interested parties (the China National Tire Group and Pirelli, the Giti Group, and Kirkby) considered that the retreading industry in the Union would be negatively affected by a decreased supply and an increased price of casings. In their view, the anti-dumping measures on tier 1 and 2 tyres would negatively impact the independent Union retreaders, which use the casings of those tiers in its production line.

(877) The Commission disagreed with this assessment. In spite of the fact that large Union producers have integrated retreading operations, many of their casings are still retreaded by independent Union retreaders. In addition, independent Union retreaders indicated to the Commission that there is an oversupply of casings at present. In their assessment, many consumers find it cheaper to buy low tier Chinese tyres than to retread the existing ones. This means that many casings that could be retreaded had to be discarded. Most importantly, while independent retreaders and associations supported the measures, no single Union retreader came forward opposing the measures. This indicates that the measures are in the interest of the retreading Union industry.

6.2. **Interest of the Union users and importers**

(878) The Notice of Initiation was sent to over 40 importers and users of the product concerned, and their associations.

(879) Five unrelated importers replied to the sampling questionnaire. They represent [10 % - 15 %] of the total imports from the PRC. Out of these five companies, two were sampled on the basis of their volume of imports (representing [6 % - 10 %] of the total Chinese imports) and replied to the questionnaire.

(880) For both sampled importers, the Chinese imports of the product concerned represented a significant share of the turnover in the investigation period. Their business model is mainly based on contracts with Chinese exporting producers, although they also have alternative sources (either domestically or from other third countries). Therefore, while measures would have an impact on their activity, it is also expected that the imposition of the measures will increase the prices in the Union market to fair levels.

(881) There is another business model that relies on a 'container only trading strategy'. In this case, importers have more flexibility to change sources of supply. Three of the non-sampled importers fall under this category, representing less than 2 % of the total Chinese imports in the investigation period. Such a low level of cooperation suggests that the imposition of measures would not have any significant impact on their activity.

(882) Additional twelve importers and two associations of importers came forward, most of them after the publication of the registration regulation. Comments were made on the registration and the possible imposition of measures. However, none of the Union importers submitted substantiated claims.

(883) The China National Tire Group and Pirelli, the Giti Group, and Heuver claimed that if measures were adopted, there would be a decrease in Chinese imports leading to a general decline in supply. This, in turn would lead to a speculative increase in prices, to the detriment of end users. Measures protecting the Union industry would also imply that final consumers would have less product choice.

(884) The Commission considered that there was sufficient overall capacity in the Union to supply the internal market as resulting from Table 1 and Table 6. Moreover, there are many producers located in third countries (Turkey, South Korea, Japan, Russia, Thailand, and many other countries) who are already selling to the Union market. Their combined sales volumes during the period considered were relatively stable, with a market share of around 12 %. The Commission recalled that the Chinese prices were well below the prices of all other major importing countries, according to Eurostat the average import price from China was 128,8 EUR/item, while the import prices from all other countries were 189 EUR/item in the investigation period. Therefore, it can be reasonably expected that once the level playing field is restored in the Union market, imports from all countries will provide for the necessary supply.

(885) The Commission also recalled that the Union market is a competitive market in which many producers active in all tiers are fiercely competing. Therefore, the imports at a fair level of prices will keep exerting an additional competitive pressure on the Union industry's prices.

(886) Several importers claimed that they might exit the market altogether if the measures are imposed. The Commission recalled that the purpose of imposing anti-subsidy measures is to restore a level playing field so that Union producers and third country producers compete on a level playing field. Accordingly, the duties are only set at a level that would still enable the Chinese imports to continue competing with the Union producers, but at fair prices. In addition, given that the high difference between subsidized Chinese prices and the import prices from all other countries will be reduced through the measures, the importers will have increased business opportunities to sell bus and lorry tyres from other countries.

(887) The Commission concluded that measures would not be in the interest of importers who predominantly rely on the import of very cheap Chinese tyres. However, importers with a broader portfolio are unlikely to be severely affected by the restoration of fair competition.

(888) Interest of suppliers

(889) Treads suppliers have made submissions supporting the imposition of anti-subsidy measures alleging such measures are essential for the survival of the retreading industry. Without retreading activities, their business will be severely affected. The Commission concluded that measures would be in the interest of treads suppliers.

6.3. **Other interests**

(890) It is a long-standing Union policy ([128]) to reduce waste and to manage raw materials in a sustainable way. Indeed, Union policy is in fact two-fold: it concerns waste avoidance and encourages recycling ([129]). Moreover, there is a horizontal policy goal to encourage the presence of small and medium sized enterprises in the Union market ([130]).

(891) Retreading is crucial for a virtuous circular economy. In addition to guaranteeing a high standard of reliability, performance and safety, retreads represent a great advantage also from an environmental point of view (less use of raw materials and energy, less production of CO_2, pollution and less water consumption). This would therefore also contribute to the achievement of such larger societal goals, goals recognised by specific Union policies.

(892) Several interested parties underlined that premium tyre manufacturers are producing new high quality tyres which are designed to have along life cycle and can be retreaded. Without the retreading industry, the competition in the tyre industry will end up in a race to the bottom, resulting in industrial depletion, loss of value throughout the supply chain and minimize the quality of the offer in the Union.

(893) AIRP stated that the retreading activity is an example of a circular economy as the retreading of a single tyre compared with the production of a new tire uses 70 % less raw materials, 65 % less energy and 19 % less water, produces 37 % less CO_2 and 21 % less air pollution (particles), and causes 29 % less soil erosion in countries where natural rubber is produced.

(894) Moreover, the retreading industry currently prevents the creation of around 240 000 tons of worn-out tires yearly. Accordingly, measures that protect high quality tyres in the Union that are retreadable imposed against essentially one-use-tyres would also contribute to the avoidance of waste in line with the objectives of the Waste Directive, as they would support the maintenance of a viable retreading business in the Union.

(895) According to studies carried out by AIRP, Italy saves an average of 30 million litres of crude oil annually through retreading, as well as over 20 000 tons of other strategic raw materials such as natural and synthetic rubber, black smoke, textile fibres, steel and copper, besides reducing CO_2 emission by 10 202 tons. According to the same studies, each retreaded tyre reduces CO_2 emissions by 26,5 kg.

(896) Accordingly, measures that protect high quality tyres in the Union that are retreadable imposed against essentially single-use-tyres would also foster policy coherence with the Union objectives on waste reduction and circular economy, as they would support the maintenance of a viable retreading business in the Union. Moreover, given that mostly SMEs are active in this sector, they would also be in line with the important Commission objective to support these companies.

6.4. **Conclusion on Union interest**

(897) The effects of the anti-subsidy measures on the Union producers would be positive. In spite of the claims of a potential negative impact on Union importers, the duty would still not be disproportionate in view of global effects on the whole Union industry. In fact, it is considered that the free available capacity in the Union industry and the imports from other countries would mitigate the risks by offering alternative sources of supply. The restoration of fair competition and of a level playing field, in the absence of subsidized imports, would benefit the healthy development of the overall Union tyre market and foster policy coherence with the objectives of a circular economy, waste avoidance and the protection of SMEs in the Union. On those grounds, there are no compelling reasons against the imposition of measures on imports of tyres for buses and lorries from the PRC.

(898) Following final disclosure Hämmerling claimed that the imposition of anti-subsidy duties is not within the Union interest under Article 31 of basic Regulation. It cited the Commission's conclusion set out in the previous recital and opined that 'such dismissive approach' could not be accepted. However, as Hämmerling failed to present any argument or additional evidence about clearly disproportionate high costs for importers stemming from the measure, which could suggest that the weighing of competing interests would have to be revised, the Commission rejected this claim.

([128]) See Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3.
([129]) See the Circular Economy Action Plan adopted in January 2018; http://ec.europa.eu/environment/circular-economy/index_en.htm.
([130]) See the Commission Policy to support Small and Medium Sized Enterprises; https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act_en.

(899) Therefore, the imposition of anti-subsidy measures can be expected to enable the Union industry to stay in the market and following that to improve its situation. There is a high risk that should measure not be imposed, the Union industry would have to consider withdrawing from the retreaded tyre business in the medium term, resulting in inevitable job losses – as has already occurred with the closure of dozens of SMEs as set out in recital (729). From the perspective of importers or users, no compelling reasons were identified against the imposition of anti-subsidy measures on imports of tyres for buses and lorries originating from the PRC at this stage of the investigation. There are no compelling reasons under Article 31 of the basic Regulation that it would not be in the interest of the Union to impose measures.

7. **DEFINITIVE ANTI-SUBSIDY MEASURES**

(900) On the basis of the conclusions reached by the Commission on subsidy, injury, causation and Union interest, definitive anti-subsidy measures should be imposed.

7.1. **Injury elimination level (Injury margin)**

(901) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.

(902) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of subsidised imports. This target profit was established on the basis of the profit reached by the Union industry in 2014. Out of the period considered, this was considered the year in the period considered that resembled most normal conditions of competition because the volume of Chinese imports was the lowest and the average import price was the highest.

(903) Following the disclosure in the parallel anti-dumping investigation, several interested parties asserted that there was broad agreement on the segmentation of the Union market into three tiers, and that there was extensive analyses and data provided per segment. However, the approach used at the preliminary stage of one target profit for all tiers would have the effect of overprotecting the Union producers from the subsidized imports of tier 3 tyres, which could not reach the stipulated target profit for the industry as a whole. Therefore, the Commissions should use the profitability of each tier to calculate the non-injurious price and the injury margin for a proper application of the lesser duty rule.

(904) The Commission accepted the claim. It considered that is more appropriate to establish target profits per tier in this particular case because the form of the measures is a fixed duty per tyre, which in turn is based on an injury margin derived from a product control number per tier. Therefore, it revised the target profit to 17,9 % for tier 1, 17,9 % for tier 2 and 6,1 % for tier 3.

(905) The Giti Group claimed that 2014, which is used as a basis for the target profit, was an abnormal year because the profitability for tier 1 and tier 2 were the same whereas they differed in the next two years.

(906) The Commission recalled that it is bound to establish a target profit by identifying a year that resembles most to normal conditions of competition undistorted by subsidised imports. Against that yardstick, 2014 amounts to the year with lowest volumes and market share of subsidised imports, as compared to 2015 or 2016 and the latter should therefore be excluded. Likewise, the Commission could not resort to years prior to 2014 as no verified information existed for those years. Therefore, that claim was rejected.

(907) Some interested parties (the complainant, Tyre Specialists of Finland, Italian Tyre Retreaders Association, Bipaver, VIPAL, Portuguese Association of Retreading Industries, Bundesverband Reifenhandel und Vulkaniseur-Handwerk) considered that the target profit of 6,1 % for tier 3 used in the disclosure of the parallel anti-dumping investigation was too low to address the injury suffered by the retreaders and that a profit rate of around 10 % achieved before the surge of imports was warranted.

(908) The Commission recalled that the tier 3 tyre market is identifiable by the particular presence of retreaded and new tyres, which actively compete against each other for market share. As preliminarily established in recital (824), unsustainable levels of losses in the retreading industry put the survival of the entire retreading activity in the Union at risk. As further preliminarily established in recital (868), these losses also affect the profitability that the companies active in tiers 1 and 2 can achieve. These findings are to be seen in light of the clear Union interest for the existence of a strong retreading industry, as established in recital (153).

(909) The Commission accordingly decided to assess the claim that the profitability of 6,1 % reached in 2014 for tier 3, as noted in the Final Disclosure Document, would not adequately ensure the survival of the retreading activity in the Union.

(910) For that, it decided to look at the profitability levels achieved by companies active in that tier for year 2014, on the basis of the data received in the verified questionnaire replies. For sampled large companies active in the tier 3 retreading business, the profitability figure for 2014 was – 6,04 %. For sampled SMEs, this figure was 2,71 %. These figures show that the retreading industry, representing a significant part of the Union industry as a whole, was already affected by Chinese imports in 2014.

(911) The Commission accordingly sought to determine what target profit Union producers in tier 3 should achieve under normal conditions of competition with due attention given to retreaders. For this assessment, it also turned to the information available on the file. In the complaint, the target profit for tier 3 producers of the product concerned was set at 9,2 %, which, according to the complainants, would ensure adequate operations for all producers active in tier 3 (including retreaders of the product concerned). This figure was also in line with comments made by retreaders of the product concerned, in reply to the Final Disclosure Document in the parallel anti-dumping investigation, which argued that the Commission should look at profitability levels of around 9 % for tier 3 producers. Their argument principally centred around 2014 figures already showing an injured state of the retreading industry in the Union. Similarly, the Commission considered the submitted data from the sampled Union retreaders for the years 2006 and 2007, which, according to Union retreaders, represented the last years during which normal conditions of competition took place. For those years, profitability of Union retreaders was 9,4 %.

(912) The Commission compared these figures with aggregated tier 3 profitability figures for the sampled Union producers in 2014. Without reflecting the weight of the performance of SMEs in the entire Union industry, the profitability in tier 3 in that year stood at 9,2 %. This unweighted figure was more appropriate than the previously weighted figure of 6,1 %. SMEs in tier 3 were already heavily affected in 2014 by Chinese imports, so that the weighted figures for that year do not fully reflect normal conditions of competition in the retreading industry.

(913) As a result, the Commission considered it more appropriate to calculate the target profit in year 2014 in a manner which attenuates the injurious impact of the Chinese imports already observed in that year also for the Union retreading industry. In light of the above information, the Commission decided to set the target profit for tier 3 producers of the product concerned at 9,2 %. This accounts for the minimum non-injurious price that Union tier 3 producers need to achieve under normal conditions of competition, with due respect given to the needs of the retreading industry.

(914) Heuver claimed that the Commission cannot distinguish between retreaded tyres and new tyres as it was consistently considered as the same products in view of their interchangeability. Moreover, the entire injury and causality analysis was made without making any distinction whatsoever.

(915) That party claimed that the Commission did not provide a valid basis for departing from the period considered of this investigation and that the Union industry as a whole was already affected by the Chinese imports in 2014. Moreover, that party claimed that the fact they have not reached this target profit level at times when the imports from the PRC did not cause injury to the Union industry (2008-2014) clearly means that there are other causes of injury.

(916) The Xingyuan Group claimed that the target profit of 9,2 % was inappropriate because it was unverified. The years 2006 and 2007 were too distant from the current situation and there was no evidence that the Union industry was suffering injury in 2014. In addition, that party claimed that the aim of the target profit was not to ensure the survival of the industry, but to remove the effect of injurious dumping. It claimed that using an unweighted profitability was inappropriate. The China National Tire Group reiterated a similar claim after the final disclosure.

(917) The China National Tire Group claimed that the Commission did not conduct an analysis on the causal link between the Chinese imports and the performance of the Union retreading industry. Moreover, that party claimed that the profit margin must be limited to the profit margin that the Union industry could reasonably count on under normal market conditions of competition. It claimed that the Commission must not differentiate between new tyres and retreaded tyres when evaluating the appropriate target profit for tier 3. Finally, it claimed that the Commission had not justified why it had set the target profit for tier 3 at 9,2 %. The party reiterated a similar claim after the final disclosure.

(918) The CCCMC and CRIA claimed that setting the target profit at 9,2 % for tier 3 did not reflect normal conditions of competition and the years 2006 and 2007 are no proper benchmarks for identifying injury. As the Commission had overly paid attention to tier 3 retreaders it had also undermined its injury analysis for the Union industry as a whole. After the final disclosure, these parties reiterated similar claims.

(919) Prometeon claimed that the revised injury margin calculation reinforces the conclusion that the alleged injury is marginal. The total loss attributable to tier 3 would be around 54 million EURO representing 91 % of the total injury suffered by the Union industry, whereas tier 1 and tier 2 tyres are not affected. It also reiterated its claim that another form of the measure should be used. After the final disclosure, the party and Hämmerling reiterated similar claims.

(920) The Commission rejected those claims for the following reasons.

(921) First, the target profit for tier 3 at a level of 9,2 % is based on the actual profitability of the sampled Union producers in tier 3 in 2014 before the weighting of companies per tier. It is not improper to unweigh the figures for that purpose in order to lessen the impact of the performance of the SMEs which were already affected by the significant level of Chinese imports.

(922) Second, the Commission's reference to the years 2006-2007 does not alter that assessment. Rather, it confirmed the findings on the basis of unweighted figures for 2014 as a reasonable benchmark. None of the interested parties has alleged that the conditions of competition in the years 2006-2007 were distorted. The sampled retreaders have substantiated with financial statements the claim that their normal profitability stood on average between 9 and 10 % in the years 2006-2007.

(923) Third, the target profit for tier 3 found on the basis of unweighted figures for 2014 also conformed to the level of target profit suggested in the complaint. Already at initiation phase the Union industry thus considered this figure (namely 9,2 %) to be an appropriate target profit – i.e. long before the Commission had engaged in the weighting process.

(924) The Commission therefore rejected those claims and confirmed its choice of a target profit set at 9,2 % for tier 3 tyres.

(925) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the *ad valorem* subsidy rate for these companies.

7.2. **Definitive measures**

(926) As stated in recital (10), the Commission made imports of the product concerned originating in the PRC subject to registration by the registration Regulation in view of the possible retroactive application of any countervailing measures under Article 24(5) of Regulation (EU) 2016/1037 of the European Parliament and of the Council ([131]). The Commission Implementing Regulation (EU) 2018/163 was repealed by Article 4 of the Commission Implementing Regulation (EU) 2018/1579.

(927) According to the Harmonised System Explanatory Notes (HSEN) to headings 8708 and 8716, road, trailer and semi-trailer wheels fitted with tyres are to be classified in headings 8708 and 8716. As there might be a risk that operators use the import of wheels fitted with Chinese tyres to circumvent the measures, the Commission considered it appropriate to monitor imports of such wheels in order to minimise that risk. Information collected under that monitoring scheme could also be used should an anti-circumvention investigation under Article 23 of the basic Regulation need to be triggered in the future. Therefore, separate TARIC codes should be established for imports of road, trailer and semi-trailer wheels fitted with pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121.

(928) Hämmerling claimed that the basic Regulation does not provide the Commission a legal basis to classify goods for customs purposes. As mentioned in recital (927), according to the Harmonised System Explanatory Notes (HSEN) to headings 8708 and 8716, road, trailer and semi-trailer wheels fitted with tyres are to be classified in headings 8708 and 8716. That recital explained the Commission's intention to monitor imports of pneumatic

([131]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 that were fitted in a wheel and are correctly classified according to customs law in chapter 87 of the Combined Nomenclature ([132]).

(929) The anti-subsidy investigation was carried out in parallel with an investigation concerning the anti-dumping measures, limited to the injury elimination level. In view of the use of the lesser duty rule, and the fact that the definitive amounts of countervailable subsidies expressed on *ad valorem* basis are in some cases lower than the injury elimination level, the Commission will impose the definitive countervailing duty at the level of the established definitive amounts of countervailable subsidies and then impose the definitive anti-dumping duty up to the relevant injury elimination level.

(930) On the basis of this methodology and of the facts of the case, in particular the fact that the measures are limited by the injury margin, the Commission considers that no 'double-counting' issue arises in this case.

(931) Given the high rate of cooperation of Chinese exporting producers, the 'all other companies' duty was set at the level of the highest duty imposed on the sampled companies. The 'all other companies' duty will be applied to those companies which did not cooperate in this investigation.

(932) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings related to preferential lending even if it had to rely partially on facts available to determine those amounts. Indeed, the Commission considered that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation through the preferential lending in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach.

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

Chinese exporting producers	Dumping margin (*)	Subsidy margin	Injury elimination level	Countervailing duty rate	Anti-dumping duty rate	Fixed countervailing duty	Fixed anti-dumping duty
China National Tire Group	85 %	32,85 %	37,29 %	32,85 %	4,44 %	49,07	0,37
Giti Group	56,8 %	7,74 %	29,56 %	7,74 %	21,82 %	11,07	36,89
Hankook Group	60,1 %	2,06 %	23,41 %	2,06 %	21,35 %	3,75	38,98
Xingyuan Group	106,7 %	51,08 %	55,07 %	51,08 %	3,99 %	57,28	4,48
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex I	71,5 %	18,01 %	32,39 %	18,01 %	14,38 %	27,69	21,62
Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in the Annex II	71,5 %	51,08 %	55,07 %	51,08 %	0 %	57,28	0
All other companies	106,7 %	51,08 %	55,07 %	51,08 %	3,99 %	57,28	4,48

(*) Established in the anti-dumping investigation.

([132]) Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 619 - 632).

(934) The individual company anti-dumping and anti-subsidy duty rate specified in this Regulation was established on the basis of the findings of the present investigations. Therefore, it reflects the situation found during these investigations with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(935) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. 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*.

(936) 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 duties. The companies with individual 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) hereof. Imports not accompanied by that invoice should be subject to the duty applicable to 'all other companies'.

(937) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers which did not have any exports to the Union during the investigation period.

(938) In view of the recent case-law of the Court of Justice ([133]), it is appropriate to provide for the rate of default interest to be paid in case of reimbursement of definitive duties, because the relevant provisions in force concerning customs duties do not provide for such an interest rate, and the application of national rules would lead to undue distortions between economic operators depending on which Member State is chosen for customs clearance.

8. **FORM OF THE MEASURES**

(939) The Commission found that *ad valorem* duty has two major disadvantages. First, an *ad valorem* duty creates an incentive for a company to sell its lower-end of its product mix. This would create additional pressure in tier 3, although it is precisely that tier of the market which needs the most protection against fierce unfair competition. Therefore, the Commission considered it more appropriate to fix a duty for tier 3 tyres at a certain absolute level.

(940) Second, an *ad valorem* duty could also lead to fairly high amounts in the high price tier of tier 1 and tier 2 tyres. Here, the risk is that such high-quality tyres could become too expensive, although it is exactly those tyres which may be beneficial to the Union retreading business. The Union retreaders need suitable casings, which could be either provided by Union tier 1 or tier 2 producers, or by some Chinese exporters in that tier. If the measures over-sanction tier 1 and tier 2 imports into the Union, the Union policy goals of a circular economy may be negatively impacted.

(941) Accordingly, the Commission considered that Union interest grounds speak in favour of imposing fixed duties per item, calculated on the basis of the individual injury margin for each exporter. Such fixed duties would remedy the risk of insufficiently addressing the subsidies in tier 3, as tier 3 tyres are imported into the Union in large quantities and would pay a relatively high fixed duty when compared to their actual value. At the same time, such duties respond to the risk of over penalising tier 1 and tier 2 imports into the Union, which are retreadable and can be retreaded by the Union retreaders.

(942) In conclusion, the Commission found it appropriate to impose definitive duties in the form of fixed duties.

9. **DISCLOSURE**

(943) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain new and retreaded tyres of a kind used on buses or lorries and with a load index exceeding 121, originating in the PRC.

([133]) Judgment of the Court (Third Chamber) of 18 January 2017, *Wortmann v Hauptzollamt Bielefeld*, C-365/15, EU:C:2017:19, paragraphs 35 to 39.

(944) The measures provided for in this Regulation are in accordance with the positive opinion of the Committee established by Article 25(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council ([134]),

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling within CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and originating in the People's Republic of China.

2. The definitive countervailing duty applicable in EUR per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive countervailing duty	TARIC additional code
Xingyuan Tire Group Ltd, Co.; Guangrao Xinhongyuan Tyre Co., Ltd	57,28	C331
Giti Tire (Anhui) Company Ltd; Giti Tire (Fujian) Company, Ltd; Giti Tire (Hualin) Company Ltd; Giti Tire (Yinchuan) Company, Ltd	11,07	C332
Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co, Ltd	49,07	C333
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	3,75	C334
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex I	27,69	See Annex I
Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in the Annex II	57,28	See Annex II
All other companies	57,28	C999

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 or in Annexes I or II shall be conditional upon presentation to the customs authorities of the Member States 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 (item(s)) 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 the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

4. Road, trailer and semi-trailer wheels fitted with pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, shall fall under TARIC codes 8708 70 10 15, 8708 70 10 80, 8708 70 50 15, 8708 70 50 80, 8708 70 91 15, 8708 70 99 15, 8716 90 90 15 and 8716 90 90 80.

5. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of Commission Implementing Regulation (EU) 2015/2447, the amount of anti-subsidy duty laid down in paragraph 2 shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

6. Unless otherwise specified, the provisions in force concerning customs duties shall apply. The default interest to be paid in case of reimbursement that gives rise to a right to payment of default interest shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by three and a half percentage points.

([134]) Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

Article 2

Commission Implementing Regulation (EU) 2018/1579 is amended as follows:

(1) Articles 1(2) and (3) are replaced by the following:

'2. The definitive anti-dumping duty applicable in EUR per item of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive anti-dumping duty	TARIC Additional Code
Xingyuan Tire Group Ltd, Co.; Guangrao Xinhongyuan Tyre Co., Ltd	4,48	C331
Giti Tire (Anhui) Company Ltd; Giti Tire (Fujian) Company, Ltd; Giti Tire (Hualin) Company Ltd; Giti Tire (Yinchuan) Company, Ltd	36,89	C332
Aeolus Tyre Co., Ltd; Aeolus Tyre (Taiyuan) Co., Ltd; Qingdao Yellow Sea Rubber Co., Ltd; Pirelli Tyre Co, Ltd	0,37	C333
Chongqing Hankook Tire Co., Ltd; Jiangsu Hankook Tire Co., Ltd	38,98	C334
Other cooperating companies listed in the Annex I	21,62	See Annex I
Other cooperating companies listed in the Annex II	0	See Annex II
All other companies	4,48	C999

3. The application of the individual duty rates specified for the companies listed in paragraph 2 or in Annexes I or II 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 name and function, drafted as follows: 'I, the undersigned, certify that the (item(s)) 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 the People's Republic of China. 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.'

(2) Article 2 is replaced by the following.

'Article 1(2) may be amended by adding the new exporting producer to the list of companies identified in the table and subject to an individual duty not exceeding the duty rate applicable to those companies that cooperated in the anti-dumping investigation but not in the anti-subsidy investigation, where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

(a) it did not export to the Union the product concerned in Article 1(1) in the period between 1 July 2016 and 30 June 2017 (investigation period);

(b) it is not related to any exporter or producer in the People's republic of China which is subject to the anti-dumping measures imposed by this Regulation;

(c) it has actually exported to the Union the product concerned after the investigation period on which measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union.'

(3) The Annex is replaced by Annex I and Annex II.

Article 3

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

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

Done at Brussels, 9 November 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX 1

Cooperating Chinese exporting producers not sampled:

Name of the Company	TARIC additional code
Bayi Rubber Co., Ltd	C335
Bridgestone (Huizhou) Tire Co., Ltd	C336
Chaoyang Long March Tyre Co., Ltd	C338
Guizhou Tyre Co., Ltd	C340
Jiangsu General Science Technology Co., Ltd	C341
Megalith Industrial Group Co., Ltd	C342
Michelin Shenyang Tire Co., Ltd	C343
Nanjing Kumho Tire Co., Ltd	C344
Ningxia Shenzhou Tire Co., Ltd	C345
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Qingdao Fudong Tyre Co., Ltd	C348
Qingdao Hairunsen Tyre Co., Ltd	C349
Qingdao GRT Rubber Co., Ltd	C350
Sailun Jinyu Group Co., Ltd	C351
Shaanxi Yanchang Petroleum Group Rubber Co., Ltd	C352
Shandong Kaixuan Rubber Co., Ltd	C353
Shandong Changfeng Tyres Co., Ltd	C354
Shandong Haohua Tire Co., Ltd	C355
Shandong Hengfeng Rubber & Plastic Co., Ltd	C357
Shandong Hengyu Science & Technology Co., Ltd	C358
Shandong Homerun Tires Co., Ltd	C359
Shandong Huasheng Rubber Co., Ltd	C360
Shandong Hugerubber Co., Ltd	C361
Shandong Jinyu Tire Co., Ltd	C362
Shandong Linglong Tyre Co., Ltd	C363
Shandong Mirage Tyres Co., Ltd	C364
Shandong Vheal Group Co., Ltd	C365
Shandong Wanda Boto Tyre Co., Ltd	C366
Shandong Wosen Rubber Co., Ltd	C367
Shandong Yongfeng Tyres Co., Ltd	C368
Shandong Yongsheng Rubber Group Co., Ltd; Shandong Santai Rubber Co., Ltd	C369
Shandong Yongtai Group Co., Ltd	C370
Shanghai Huayi Group Corp. Ltd; Double Coin Group (Jiang Su) Tyre Co., Ltd	C371
Shengtai Group Co., Ltd	C372
Toyo Tire (Zhucheng) Co., Ltd	C374
Triangle Tyre Co., Ltd	C375
Weifang Goldshield Tire Co., Ltd	C376
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Xuzhou Armour Rubber Company Ltd	C378

ANNEX 2

Other non sampled Chinese exporting producers cooperating in the anti-dumping investigation, but not in the anti-subsidy investigation:

Name of the Company	TARIC additional code
Briway Tire Co., Ltd	C337
Goodyear Dalian Tire Co., Ltd	C339
Shandong Hawk International Rubber Industry Co., Ltd	C356
Sichuan Kalevei Technology Co., Ltd	C373
Zhongce Rubber Group Co., Ltd	C379