II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2021/546

of 29 March 2021

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of aluminium extrusions originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] (the 'basic Regulation') and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 14 February 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of aluminium extrusions originating in the People's Republic of China ('China' or the 'country concerned') on the basis of Article 5 of the basic Regulation.

(2) The Commission initiated the investigation following a complaint lodged on 3 January 2020 (the 'complaint') by the association European Aluminium (the 'complainant'). The complainant represented more than 25 % of the total Union production of aluminium extrusions. The complaint contained evidence of dumping and of resulting material injury.

1.2. Registration

(3) Following a request from the complainant supported by the required evidence, the Commission made imports of the product concerned subject to registration under Article 14(5) of the basic Regulation by Commission Implementing Regulation (EU) 2020/1215 [2]. The registration of imports ceased with the entry into force of the provisional measures referred to in recital (5).

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[1] OJ L 176, 30.6.2016, p. 21, as subsequently modified.

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

1.3. **Provisional measures**

(4) In accordance with Article 19a of the basic Regulation, on 22 September 2020, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days.

(5) On 12 October 2020, the Commission imposed a provisional anti-dumping duty on imports of aluminium extrusions originating in China by Commission Implementing Regulation (EU) 2020/1428 ([3]) ('the provisional Regulation').

(6) As stated in recital (29) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 January 2019 to 31 December 2019 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period ('the period considered').

1.4. **Subsequent procedure**

(7) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, several users and importers of the product concerned, several suppliers of raw material to the Union industry, the Government of the People's Republic of China (the 'GOC') and seven Chinese exporting producers filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

(8) The points raised by the interested parties are summarised in this Regulation to the extent possible. Indeed, several points raised were unclear and it could not always be established to which Article of the basic Regulation they related. Interested parties were invited to clarify any arguments they consider relevant, to the extent they have not been addressed in the final disclosure.

(9) Following provisional disclosure, two more importers came forward, when the sampling exercise was already concluded. Their input was taken into consideration insofar as possible given the procedural stage of the investigation.

(10) Following the imposition of provisional measures, the interested parties who so requested were granted an opportunity to be heard. Hearings took place with Decora S.A., Vis Promotex d.o.o., Alstom S. A., O. Wilms GmbH & Co, Airoldi Metalli S.p.A (joined by O. Wilms GmbH, Kastens & Knauer GmbH & Co. International KG and Alpha Metall GmbH), Haomei Group (Guangdong Haomei New Materials Co., Ltd. and Guangdong King Metal Light Alloy Technology Co., Ltd.) and PMI Group (Press Metal International Ltd. and Press Metal International Technology Ltd.).

(11) Airoldi Metalli S.p.A (Airoldi) requested a meeting with the Union industry in accordance with Article 6(6) of the basic Regulation, which was not accepted by the latter. It further held a hearing with the Hearing Officer of the Directorate-General for Trade ('DG TRADE'), who dismissed the company's argument that insufficient information disclosed to it in the frame of the pre-disclosure provided for by Article 19a of the basic Regulation breached its rights of defence for the reasons explained in the dedicated Hearing Officer's report.

(12) Following final disclosure Airoldi contested the Hearing Officer's interpretation of Article 19a of the basic Regulation, claiming that a specific reading of that provision was necessary. However, bearing in mind that Airoldi did not specify any further issue to support its point, and the explicit requirement of the said Article to respect the confidentiality obligations contained in Article 19, the Commission maintained its position on the matter.

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

(13) As further detailed below, following the imposition of provisional measures, two additional remote cross-checks were held with Alstom S.A. and Airoldi to ascertain salient issues in the context of a definitive determination. The Commission also intended to hold an additional remote cross-check for another importer, which was not possible due to the latter's constraints.

(14) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of aluminium extrusions originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(15) The Commission received comments from a number of parties, including the Government of China, Chinese exporting producers, Union importers, users, Union producers, their suppliers and various representative associations.

(16) Following final disclosure certain interested parties were granted an opportunity to be heard according to the provisions in point 5.7 of the Notice of initiation. Hearings took place with Decora S.A., Airoldi (joined by O. Wilms GmbH, Amari Metals BV and Alpha Metall GmbH), Bash-tec GmbH, STAKO Sp. z o.o. and Haomei Group. In addition a hearing was organised by the DG Trade Hearing Officer to hear points raised by Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd.

(17) In support of an additional extension for replying to final disclosure Airoldi requested a copy of the General Disclosure Document in Italian, and claimed that failure to supply the document in Italian language constituted a breach of Regulation No 1/1958 ([4]) read in conjunction with Article 21, 22 and 41 of the Charter of Fundamental Rights. The Commission disagreed with this interpretation, replying in writing that Airoldi had raised this matter only at a very late stage of the investigation, and that up to that stage, both Airoldi and its lawyers had used English successfully, and at length, in both written and verbal communications ([5]). This was further demonstrated in extensive contacts with the Commission throughout the case. The Commission recalled the nature of that document, which is not an implementing Regulation, and confirmed its position. Nonetheless, the Commission provided an additional extension to Airoldi, on the basis of its approach to make all use of the provisions of the Notice of initiation of the case which is compatible with the completion of the investigation while respecting statutory deadlines. Following the additional final disclosure, Airoldi requested a translation of this document in Italian. This request, which did not show how Airoldi's right of defence was affected, could not be accepted for the same reasons mentioned above.

(18) On 8 February 2021 the Commission made an additional final disclosure to interested parties in order to reflect the fact that the EU-28 had become the EU-27. The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to revise the case findings including the definitive anti-dumping duty to reflect this change ('additional final disclosure'). All parties were granted a period within which they could make comments on the additional final disclosure. Comments were received from Haomei Group, Airoldi and Euranimi, which made itself known as an interested party after final disclosure.

(19) Following the additional final disclosure certain interested parties were granted an opportunity to be heard according to the provisions in point 5.7 of the Notice of initiation. Hearings took place with Haomei Group, Airoldi and Euranimi. In addition, on 18 February 2021, a hearing was organised by the Hearing Officer to hear points raised by Airoldi. At that occasion, the Commission services reiterated that the specific approach followed in this investigation was appropriate in view of the lack of impact of removing the UK from the findings (an issue further confirmed by the Union industry and not disputed by any interested party). It was further confirmed that the additional final disclosure contained the necessary explanations for interested parties to defend themselves.

([4]) Regulation No 1 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58).

([5]) See in this sense judgment of 13 July 2011, ThyssenKrupp Liften Ascenseurs NV and others v Commission, Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07, ECLI:EU:T:2011:364, para. 86. See also Article 2 of Regulation No 1/1958.

1.5. **Sampling**

(20) In the absence of comments concerning sampling, recitals (8) to (20) of the provisional Regulation were confirmed.

(21) In recital (19) of the provisional Regulation, the Commission referred to the initially selected sample of three cooperating groups of exporting producers representing 28,1 % of total exports. In recital (24) of the provisional Regulation, the Commission referred to the final sample of two groups of exporting producers, following the fact that the Liaoning Zhongwang Group did not submit any reply to the questionnaire. That sample of two groups represented 20,9 % of total exports.

(22) In recitals (206) to (210) of this Regulation, the Commission explains how it established the amended level of total imports from China for the IP. Following this change, the estimated level of imports of aluminium extrusions from China decreased. Consequently, the initially selected sample of three cooperating groups of exporting producers represented 45,3 %, and the final sample of two groups of exporting producers represented 33,7 % of the newly estimated imports.

(23) Two additional exporting producers duly substantiated their claims to be included in the list of cooperating exporting producers.

(24) After taking into account their comments, the Commission updated the Annex to the provisional Regulation accordingly and added the two entities to the list of cooperating exporting producers in the Annex to this Regulation.

(25) A cooperating exporting producer commented that it was too small to be selected to the sample. It claimed that because of its size, it was punished by being subject to the highest duty.

(26) The Commission noted that this exporting producer was not subject to the highest duty. The highest duty applies to companies that did not cooperate in the initial stage of the investigation and therefore were not listed in the Annex as cooperating companies. The duty for non-sampled cooperating companies, like the exporting producer making the claim, is in fact lower than a duty of one of the sampled exporting producers as it was calculated as a weighted average of the dumping margins established for the sampled exporting producers. Finally, the sample of exporting producers was selected in line with the requirements under the basic Regulation. The Commission therefore rejected this claim.

1.6. **Requests for additional information and analysis after final disclosure**

(27) Following final disclosure Airoldi commented that its rights of defence had been affected by the fact that details of the Remote Cross-Checks ('RCC') at the Union producers had not been made available to them. However, the details referred to by Airoldi are business confidential. In the same way the Union producers did not get access to business confidential details of the RCC performed with other interested parties. Furthermore, a version 'open to interested parties' of these RCCs was made available to Airoldi on the case file. The Commission maintains, therefore, that Airoldi's rights of defence have been fully respected.

(28) Some interested parties raised new elements after the deadline to submit factual information given in the Notice of initiation, and the deadline to submit comments to final disclosure, which had already been extended to parties requesting an extension by up to 7 days.

(29) In particular, Airoldi submitted a post-hearing briefing with certain claims concerning the alleged impact on the investigation of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('UK') from the European Union and the end of the transition period. These claims had not been made during the hearing.

(30) This briefing was submitted both after the deadline to submit factual information given in the Notice of initiation, and the deadline to submit comments to final disclosure, which was already extended to Airoldi by seven days. It is recalled that neither hearings nor post-hearing briefings can be used to present factual information or elements not yet on file, and therefore do not extend the deadline to submit further views. The company made several additional submissions which were equally beyond the required deadlines and thus could not be considered.

(31) The same applies to Haomei Group, which submitted two sets of comments after the required deadline, one of which concerns the alleged impact on the investigation of the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('UK') from the European Union and the end of the transition period.

(32) In addition, Euranimi submitted comments beyond the required deadlines for replying to disclosures and thus they could not be considered beyond aspects referring to the additional final disclosure.

(33) As regards those elements raised outside the timeframe for the Commission to properly conduct this investigation, the Commission notes that the findings made at provisional stage as well as in the final disclosure were made on the basis of EU-28 data since they were made before 1 January 2021. The deadline to submit factual information given in the Notice of initiation expired on 28 October 2020, that is well before the end of the transition period of the withdrawal of the UK those findings were made. This underpins the validity of those findings.

(34) In addition, no claims have been made by any party within the breadth of the periods afforded by the investigation stating (and much less demonstrating) that the measures would (or even could) have been significantly different if they had been based on information excluding the UK.

(35) That being said, the Commission has reviewed the information on file to assess whether findings made on the basis of EU-28 would remain applicable in an EU-27 context. For aspects of the investigation not mentioned hereunder, EU-28 findings are confirmed to be appropriate also for EU-27, since the Commission assured itself that the information obtained during the investigation was still representative of the Union on an EU-27 basis, the impact, if any, being minimal.

(36) Following the additional final disclosure, Airoldi claimed that its comments regarding the withdrawal of the United Kingdom from the Union arrived in good time, since the end of the transition period and the final definition of the commercial relations with the United Kingdom constituted a 'new fact'. This is difficult to reconcile with the company's own stated view that 'it was well known that Brexit and final withdrawal of the UK was to take place on 1 January 2021'. At any rate, the company was in a position to fully exercise its legal rights to comment on this matter by 11 January 2021, the deadline by which comments to final disclosure were due. The fact that the Commission, in an exercise of procedural flexibility, had extended this deadline by 7 days provided additional opportunity for the company to do so. Yet this was not the case, as comments requesting the re-examination of the investigation on an EU-27 basis arrived only on 20 January – well after the extended deadline. Therefore, the claim cannot be accepted. In any event, the Commission re-examined the matter, as described above.

(37) Following the additional final disclosure Haomei submitted a late request after the extended deadline for comments reiterating comments previously submitted. The late submission is therefore not admissible. The comments contained therein are in any case already addressed in recitals (196), (259) and (270).

1.7. **Individual examination**

(38) Two exporting producers, Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd. commented, with regard to the fact that the Commission did not individually examine those two companies, in spite that they have requested it and submitted the questionnaire replies. Both companies claimed that they should be granted 0 % duty rate resulting from their questionnaire reply.

(39) At the stage of provisional Regulation, the Commission stated that it would decide whether to grant individual examination at the definitive stage of the investigation. However, it turned out that the examination of these requests would have been burdensome and would not have allowed the completion of the investigation within the time period established in the basic Regulation. Furthermore, the additional period of time between the provisional and definitive phases was not sufficient to allow the Commission to properly consider these requests. The Commission therefore confirmed its decision not to grant any requests for individual examination.

(40) Following final disclosure, the same two exporting producers, Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd. reiterated their comments concerning not being granted individual examination and commented on the explanation provided by the Commission in recital (39). In particular, they argued that two requests for individual examination cannot be considered as very large number of exporters which unduly burdensome the charge of the Commission and would prevent the completion of the investigation in good time.

(41) Concerning the examination of additional requests to be burdensome and not allowing the completion of the investigation in time, the Commission wants to underline that in the process of examining the sampled producers, Haomei Group and the PMI Group the Commission, as mentioned in recital (22) of the provisional Regulation, it examined four exporting producers: Guangdong Haomei New Materials Co., Ltd.; Guangdong King Metal Light Alloy Technology Co., Ltd; Press Metal International Ltd. and Press Metal International Technology Ltd.

(42) In addition, the assessment of how burdensome the examination of the additional exporting producers includes all aspects of this very complex case and takes into account the restrictions imposed by the COVID-19 pandemic. The report of the hearing of 13 January 2021 by the Hearing Officer available on the case file provides more details in this regard.

(43) Comments also made reference to Article 9(6) of the basic Regulation stating that anti-dumping duty applied to cooperating exporting producers shall not exceed the weighted average margin of dumping, established with respect to the parties in the sample. In this regard, the Commission confirmed that this is the case, and it is the reason for which the anti-dumping duty applied to cooperating exporting producers is lower than the level of anti-dumping duty of one of the two sampled exporting producers.

1.8. **Claim for the suspension of the investigation**

(44) An importer, Airoldi, returned to the issue of suspension of the investigation as discussed in recitals (27) and (28) of the provisional Regulation, which was also the subject of a complaint to the European Ombudsman and dismissed by the latter. The importer claimed that the basic Regulation was in breach of fundamental rights of the parties (most notably the right to be heard, the right to good administration, the principle of equality and the right to health protection), as it did not prescribe for a suspension of the investigation in cases of emergency such as the current pandemic.

(45) Moreover, Airoldi claimed that the basic Regulation, interpreted in the light of the WTO Anti-dumping agreement ('ADA'), should have provided for longer time-frames for completing the investigation in the light of the circumstances. According to the party, the basic Regulation is an implementing measure of the ADA and since Article 5(10) of the ADA allows for investigations to be concluded within the maximum time-frame of 18 months, the European Union would be entitled to derogate to the investigation deadlines and apply the time limits mentioned in the ADA. According to the proposed reasoning, the DG TRADE, in application of Article 57 of the Vienna Convention on the law of the treaties ('Suspension of the operation of a Treaty under its provisions or by consent of the parties'), should also have requested the relevant Chinese authorities for their agreement for a suspension of the investigation given the circumstances.

(46) The suggested approach was, however, not legally possible because the current investigation was performed in the exercise of the implementing powers granted to the Commission by the basic Regulation. For this reason, the Commission cannot deviate from the deadlines prescribed therein. Moreover, according to the European courts' case law, the ADA can only be given direct effect in very limited circumstances which were not shown in this case and, therefore, cannot, in this case, take precedence over the basic Regulation.

(47) In response, the interested party claims that a legislative amendment was not needed to change the deadlines of the investigation, and in support of this claim it mentions the Commission Delegated Regulation (EU) 2020/1173 ([6]), which amends the basic Regulation in changing the duration of the pre-disclosure from three to four weeks. However, this precedent is not appropriate because the Commission adopted Regulation (EU) 2020/1173 in the exercise and within the limits of the powers delegated to it by Article 7(1) fourth paragraph of the basic Regulation. In the absence of such a specific empowerment, the specific provisions of the basic Regulation as regards mandatory deadlines to complete the investigation cannot be changed or derogated from.

(48) Moreover, with respect to this claim, the request for a suspension was in any case considered disproportionate in the present circumstances, since the Commission services were able to perform the investigation, and the parties to participate in it in a meaningful way despite the restrictions imposed by the COVID-19 pandemic. These alleged breaches of the fundamental rights were also submitted by Airoldi in the form of complaint to the European Ombudsman, who noted that the Commission had extended the deadlines to the maximum possible amount in order to take into account the challenges posed by the COVID-19 crisis. The European Ombudsman also noted that extending the deadlines further could have undermined the ability of the Commission to meet its obligations to complete the anti-dumping investigation within the legal deadlines that were binding on it. Therefore, the European Ombudsman found that the Commission acted reasonably and closed the case with a finding of no maladministration ([7]).

(49) Following final disclosure Airoldi reiterated that the Commission was wrong to have rejected its request to suspend the investigation. However, bearing in mind that no new arguments were raised, the Commission confirms that the claim cannot be accepted.

(50) The importer further requested access to some internal Commission documents, in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council ([8]). The request and the reply thereto follow the provisions of that Regulation and therefore do not form part of this investigation.

(51) Following final disclosure Haomei Group indicated that the Commission has announced the conclusion in principle of negotiations for the EU-China Comprehensive Agreement on Investment ('CAI'). They argued that the investigation should be postponed to allow parties involved in the proceeding to acquire broader information on the CAI and to deliver a proper written contribution on its effects on the pending procedure. This argument is irrelevant, the CAI being an agreement covering investment matters that does not alter or affect in any way the application of trade defence instruments, and is thus not accepted.

(52) Following additional final disclosure Haomei Group reiterated and expanded on their arguments to postpone the investigation, but these arguments did not alter the conclusion indicated in recital (51) that the arguments are irrelevant. Furthermore, Haomei Group's reiteration of the point had no relevance to the additional final disclosure and was therefore outside the required deadlines.

(53) Following additional final disclosure Haomei Group also claimed that the investigation should be closed because of the strength of their arguments concerning dumping, injury and causation. However, as these arguments have been rejected in this Regulation, the Commission confirmed that there are no grounds to close the investigation.

1.9. **Investigation period and period considered**

(54) In the absence of comments concerning the investigation period and period considered, recital (29) of the provisional Regulation was confirmed.

([6]) Commission Delegated Regulation (EU) 2020/1173 of 4 June 2020 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union as regards the duration of the period of pre-disclosure (OJ L 259, 10.8.2020, p. 1).

([7]) Ombudsman Decision in Case 924/2020/TE of 20 October 2020.

([8]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

(55) One exporting producer suggested to carry out dumping and injury assessment per market segment.

(56) As explained in the provisional Regulation, inter alia, in recitals (43) to (47), and in this Section, these aluminium products commonly referred to as aluminium extrusions have the same basic physical, technical and chemical characteristics and therefore all belong to the product concerned. Although specific extrusions might be used only for a specific application, this is the result of the fact that these products are bespoke and produced expressly for their intended use. The commercial practice introduced a number of distinctions, including between hard and soft alloys, medium and large size profiles, standard and special profiles and extrusions to be used for a specific application. The investigation has shown that while many producers are present in several of these categories, they produce according to the technical characteristics of their machines and on the basis of the requirements of their various customers. Moreover, concerning the alloys, the investigation proved that a number of aluminium alloys exist, and different alloys may be appropriate for a certain application. Furthermore, as explained in recital (197) of this Regulation, different parties claimed that the market should be differentiated using the above mentioned criteria. Despite that, given the absence of a clear dividing line or distinguishing criterion between the different products, the assessment of dumping and injury should be made for the Union industry as a whole, ensuring due comparability of products. This claim regarding segmentation was therefore dismissed.

(57) One importer (Airoldi) claimed that the definition and scope of CN code 7610 90 90 was imprecise, and that the Commission erred in including imports falling under this code in the import statistics for the product concerned.

(58) Firstly, the definition of a CN code, and products included therein, is not within the scope of this investigation, nor of trade defence legislation, but follows EU classification rules. Concerning instead the inclusion of products falling under CN code 7610 90 90 in the present investigation, as explained in the provisional Regulation in recitals (218) to (223), the Commission had already indicated that the proportion of product concerned included in this code could be lower than that initially estimated by the complainants. This does not impinge upon the fact that the product concerned currently falls notably under the aforementioned code as a matter of customs classification. The final determination on this matter is contained in the analysis and conclusions reported in recitals (206) to (210) of this Regulation.

(59) Airoldi returned to the issue mentioned in the previous recital following final disclosure. They reiterated their arguments and mentioned that numerous BTIs exist under the CN code in question. However, the existence of such BTIs does not imply that certain imports under the code do not fall under the product concerned. This issue is further considered in chapter 4.3 'Imports from the country concerned'.

(60) Following provisional disclosure, one user (Alstom) claimed that the Commission, in rejecting their product exclusion claim, failed to grasp the complexity of the characteristics of the products they imported, as railway aluminium extrusions constitute a product with different basic characteristics than the other aluminium products falling under the scope of the proceedings. They follow specific standards and must satisfy the demanding characteristics required for their intended use, including tolerance, microstructure, choice of usable alloys, fatigue requirements, thickness, testing, conformity of mechanical properties and soundness of extrusion seams, with a direct impact on the product to ensure the passengers' ultimate safety. This would be contrary to other on-demand products, where the bespoke character would relate only to requests concerning characteristics affecting the appearance of the product such as its length, width, weight or finishing (e.g. cut-to-length, polished, etc.), and not affecting the products' intrinsic characteristics. Compliance with the different product requirements would entail a dividing line between railway-specific products and products for other uses. Finally, the user claimed that in

previous cases the Commission excluded products from an investigation on the basis of their use and production process (in particular, the party refers to the measures on certain castings ([9]) and the recently opened investigation on flat-rolled aluminium products originating in China ([10])).

(61) Even if these claims were to be sufficiently substantiated, the Commission does not dispute the complexity of many aluminium extrusions, including those of the railway sector, nor the fact that different product types can have different specific characteristics, uses or production process; that they can follow different product standards; or that interchangeability may not be universal amongst each and every one of such types. However, within its margin of discretion, the Commission has to examine each case on its specific merits and in particular as to the key criterion of whether different types share the same basic physical, chemical and technical characteristics. In this case, the information provided regarding type-related specificities did not disprove the fact that the types at hand share the basic characteristics described in the provisional Regulation, regardless of the sector in which they are used. Besides, both the exporting producers and the Union industry produce and sell aluminium extrusions to serve the railway sector. Aluminium extrusions for the railway sector therefore belong within the scope of the investigation for which dumping, injury and Union interest considerations were assessed. Therefore, the claims could not be accepted.

(62) With respect to extrusions for the railway sector, two exporting producers (Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd.) also requested the exclusion of these products from the product scope. The arguments brought forward by these producers concerned the existence of specific and more demanding standards and production processes than for general applications. As explained above, the products included in the product scope, namely those mentioned at recitals (38) to (41) of the provisional Regulation, share the same basic characteristics despite their additional compliance with standards applicable to certain applications or sectors.

(63) Following final disclosure one Union association (UNIFE), one user (Alstom) and two exporting producers (Jilin Qixing and Shandong Nollvetec) reiterated the points they made to support the exclusion of extrusions in the railway sector.

(64) Alstom also claimed that the Commission had not adequately considered whether a competitive relationship existed between the products in its assessment of the product exclusion request. However, as mentioned at recital (61) both the exporting producers and the Union industry produce and sell aluminium extrusions to serve the railway sector. Therefore they are in competition with each other. The investigation has further confirmed the impact of unfair trading practices on the production of additional product types for the sector, and the Union's ability to do so in the context of fair trading conditions. This claim was therefore rejected.

(65) Alstom further claimed that the Commission had not considered the case law appropriately. In respect of the case regarding certain castings, Alstom claimed that the existence of an EN norm was part of the justification for an exclusion of products. In the current case, Alstom argued that the Commission has not elaborated on why the existence of an EN norm was not a relevant factor. As indicated in recital (61) the Commission does not dispute that each user industry purchases products with specific characteristics. However, this kind of differentiation applies to all user sectors and relates to the technical requirements of the sector. Again the existence of EN norms in the railway sector does not impinge upon the fact that the extrusions covered by the norm have the same basic characteristics as products for other applications. In respect of the footwear case ([11]), certain products were excluded from the scope of the investigation not least because basic characteristics of those products were not the same. This is not the

([9]) Commission Implementing Regulation (EU) 2017/1480 of 16 August 2017 imposing a provisional anti-dumping duty on imports of certain cast iron articles originating in the People's Republic of China (OJ L 211, 17.8.2017, p. 14).

([10]) See Notice of initiation at OJ C 268, 14.8.2020, p. 5.

([11]) Commission Regulation (EC) No 553/2006 of 23 March 2006 imposing a provisional anti-dumping duty on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 98, 6.4.2006, p. 3). Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ L 275, 6.10.2006, p. 1).

case here, as the basic characteristics are the same. To illustrate one example, in the footwear case, such differences resulted in different import and price trends – no claim has even been made in this regard. In sum, it is confirmed that this argument could not be accepted.

(66) Another user (Carl Prinz), a manufacturer of technological solutions for floor coverings, claimed that, because of the standards in place and the reduced tolerances required, as well as the need for specific presses and other manufacturing tools in the production, the products they import could not be compared with more standard imported products and should therefore be excluded from the investigation.

(67) Similarly as for the previous user, this argument could not be accepted. Firstly, the exporting producers and the Union industry both sold a large variety of products; however, the division by product types ensured that the price comparison was made on comparable products. Secondly, regardless of the technical requirements that make a certain product and its use very specific, it still shares the basic characteristics of the product concerned.

(68) One exporting producer (Fuyao) requested that the extrusions for automobile related accessory products should be excluded from the investigation. The exporting producer claimed that the Commission did not consider that these extrusions were different from other extrusions used, for example, in the construction sector. In support of its claim, the exporting producer stated that according to the case law of the Court of Justice, the Commission may take into account a 'number of factors, such as, inter alia, the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality' ([12]). For this reason, the exporting producer claimed that the products it exported should be excluded as they serve a different end-use than the other ones subject to the measures. Furthermore, in support of its claim, the exporting producer also mentioned that the Commission, at recital (41) of the provisional Regulation, excluded without giving reasons a series of products from the investigation (such as subassemblies, welded tubes and pipes and finished goods kits).

(69) With respect to these claims, as noted in recital (56), although specific extrusions might be used only in a given sector of the market for a specific application, this is the result of the fact that these products are bespoke and produced expressly for their intended use. The investigation has shown that there is not a clear dividing line or distinguishing criterion between the different products, which would justify a segment analysis. Rather, the Commission concluded that the most appropriate approach for the assessment of dumping and injury to the Union industry is to consider all product types together, while ensuring the comparability of all products being compared. As regards the exclusions mentioned at recital (41) of the provisional Regulation, these are defined by the complainants in their choice of the appropriate product scope which suffered the effects of injurious dumping. These claims were therefore dismissed.

(70) One user (Stako Sp. z o.o.) importing aluminium tubes under the autonomous tariff suspension for use in the manufacture of high pressure vessels claimed that the existence of the said tariff suspension would require the exclusion of the products from the scope of the measures. This claim was submitted significantly after the deadline to submit such requests i.e. 10 days following the date of the Notice of initiation. This company claimed that, because of the absence of production of the imported products in the Union, these imports by definition could not have caused injury to the Union industry and therefore should be excluded.

(71) In addition, the complainant identified one Union producer who they indicated would be able and willing to produce and supply the product.

([12]) See judgment of 13 September 2010 in Case T-314/06, *Whirlpool Europe Srl v Council*, ECR 2010 II-05005, para. 138.

(72) Following final disclosure, this user commented that the flow formed tubes concerned could not be supplied by the referred Union producer or by any other Union producer and they could only be obtained from China. The user requested the Commission, therefore, to exempt these types of tubes.

(73) European Aluminium then commented that another Union producer using a comparable process is able to supply a suitable product and indicated that Union producers are capable of producing any extrusion product.

(74) The Commission noted that Stako came forward late in the investigation and it was not possible for them to conclude on the usefulness of the comparable process within the remaining time. Additionally, at the hearing with Stako it was confirmed that the flow forming process is carried out in the Union.

(75) Moreover, the products subject to the tariff suspension share the same basic characteristics as the product concerned.

(76) For these reasons, the request for exclusion was not accepted.

(77) One user (Bi Silque S.A.) is importing hollow profiles under the autonomous tariff suspension for use in frames also requested the exclusion of these products from the scope of the measures, albeit significantly after the deadline to submit such requests. This company claimed that there was a lack of supply on the Union market and therefore these imports should be excluded from the product scope. An unrelated importer also commented on this matter and supported the claim.

(78) However, the complainant identified four Union producers who are able and willing to produce and supply such products. In the present case, the products imported by this user appear to have the same basic characteristics as the product concerned and, for this reason, the request for exclusion should be rejected.

(79) A Union user (Forest Group Nederland B.V.) claimed that its Chinese supplier or the product it sells should be excluded from the investigation as they were sold at non-dumped prices. This claim was submitted significantly after the deadline to submit such requests. In any case, the claim seems to come from a misunderstanding of anti-dumping proceedings. Even when one exporting producer is found not to be dumping (which is not the case here as the exporting producer in question did not cooperate with the investigation), this would not constitute a reason for exclusion of a product from the scope of the investigation. Therefore, the claim had to be rejected.

(80) A request for exemption from the anti-dumping duties was received on behalf of an exporting producer (Match Foshan Sanshui Hardware Products Company Ltd.) on the basis that the company is highly reliant on their exports for their economic viability and that it could not prove that it was not dumping as it had not been sampled. This claim was submitted significantly after the deadline to submit such requests. As these elements do not constitute grounds for an exclusion, the request should be rejected.

(81) One importer (O. Wilms GmbH & Co) requested that the product it imports should be excluded from the product scope as it requires a special finish, lengthy approval processes, and is sold to the Union at high prices. This claim was submitted significantly after the deadline to submit such requests. As these elements do not constitute grounds for an exclusion and the product shares the same basic characteristics as the product concerned, the request should be rejected.

(82) A company using the product concerned to produce picture frames in the Union (Mavanti B.V.) claimed that as a result of the measures it will suffer an increase in cost which will put its company at a competitive disadvantage with the finished products (i.e. picture frames) from China, which will not be subject to anti-dumping duties. This user therefore proposed to extend the product scope to cover other finished products such as picture frames. This claim was submitted significantly after the deadline to submit such requests. As the product scope excludes finished products and it would not be appropriate to extend the product scope after the initiation of the investigation, this request cannot be accepted either.

(83) In conclusion, the Commission determined that no grounds existed to exclude the products subject to the above requests from the product scope of the investigation.

(84) Following final disclosure two other users (Decora and Bash tec) indicated that the products they import should be excluded from the investigation because of their specific characteristics, a lack or absence of supply by Union producers or high prices from Union producers.

(85) These users provided details of initial discussions they had held with Union producers in order to try to source aluminium extrusions from them.

(86) European Aluminium reiterated that users should not expect to continue to benefit from injurious dumping as they had in the past. They also pointed out that extrusions are made to order and that the Union industry has spare capacity. European Aluminium identified Union producers able to meet the specifications required.

(87) The Commission noted that these users were at the early stages of discussions with potential Union suppliers and that the users are in the process of adapting to the existence of the measures. Therefore, it cannot be concluded that there is lack of ability or willingness to supply the aforementioned product types on the part of the Union industry.

(88) The Commission, therefore, maintains its position that the product exclusion requests of these users cannot be accepted.

(89) One user (Mat-Inter) claimed that the product definition was unclear and that it would risk its products being classified as product concerned. Despite the fact that the user did not provide a clear argument about the features of its products and the reasons for their uncertain classification (including the fact that it mentioned in its reasoning Sub Chapter 7904 of the combined nomenclature which is outside the scope of the investigation), it should be recalled that the product definition is also reported in the operative part of this Regulation and that the practical implementation of it is the competence of the Customs authorities of the Member State where the import takes place.

2.2. **Further details regarding product scope**

(90) Several parties posed questions as to whether their exports fell under the product concerned. To furnish clarification and mitigate the risk of misclassification, the Commission provides further details regarding the exclusions to the product scope, specifically the 'subassemblies' and 'finished goods kits', as described in recital (41) of the provisional Regulation.

(91) Products attached (e.g. by welding or fasteners) to form 'subassemblies' are not part of the product scope. Products are typically presented in subassemblies only where the subassembly is designed to be assembled into a bigger entity such as a final product or an assembly, and where sufficient economic justification exists to sell products in this fashion.

(92) Equally, there must be sufficient economic justification to sell products in 'finished goods kits', which comprise all essential characteristics of the finished product resulting from assembly of the 'kit', and are directly ready and complete for their final intended use (assembly of this final product).

(93) To facilitate the classification of such products and customs control, specific TARIC codes will be created for both exclusions.

(94) All other aspects of the provisional Regulation regarding the product under investigation, the product concerned, the like product and the product scope are confirmed.

3. **DUMPING**

3.1. **Normal value**

(95) Several interested parties and GOC commented on the lack of significant distortions in China.

(96) In their comments concerning the provisional Regulation, Haomei Group argued that they provided evidence justifying the application of Article 2(1) of the basic Regulation for the calculation of normal value. Particularly, Haomei Group rejected the existence of significant distortions for their companies and insisted that they had provided sufficient evidence showing that they meet the conditions laid down in Article 2(6a) of the basic Regulation, in particular proving the lack of distortions in the field of labour costs, credit and energy.

(97) As explained in detail at recital (77) and (79) and following of the provisional Regulation, the Commission reiterated that under Article 2(6a)(b) it considers the potential impact of one or more of the elements listed in that provision, including but not limited to labour costs, credit and energy. As also clarified in the same recitals, the starting point is the existence of significant distortions and their impact on prices and costs is established at a country-wide level rather than for each company. At the same time, as stated at recital (81) of the provisional Regulation, the sources to construct normal value when applying the methodology under Article 2(6a), subparagraph (2), third dash may include domestic costs, but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence. Therefore, even if the evidence submitted showed that these parties were not affected by distortions in the field of labour costs, credit costs, and energy – *quod non* – this did not affect the *application* of the methodology under Article 2(6a) as such. In any event, as explained at recitals (82) to (83) of the provisional Regulation, and in the absence of the additional relevant evidence at country-wide level, the claims of Haomei Group on the lack of distortions were not substantiated with any factual evidence and thus the conclusions at recital (77), (79), (81) and (83) of the provisional Regulation are confirmed.

(98) Secondly, Haomei Group observed that the provisional Regulation criticises the Chinese economic system, makes general statements about the Chinese Governments' influence on the major industries, and implies that the planning made by the central and provincial authorities leads to financial easing for Chinese companies via the banking system. Firstly, Haomei Group underlined that the European Governments also grant benefits to the European producers, which should be taken into consideration. Secondly, Haomei Group noted that none of the factors listed in Article 2(6a)(b) of the basic Regulation and quoted in point (70) of the provisional Regulation applied to them, because Haomei Group is fully privately owned, not subject to any form of control or directive from the Chinese Government and/or from the Chinese Communist Party ('CCP'). Furthermore, no members of the aforementioned institutions were seated in the boards of Haomei Group.

(99) Concerning the first argument, the Commission noted at recital (71) of the provisional Regulation that according to Article 2(6a)(b) of the basic Regulation the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, including matters related to generic and unsubstantiated financial support, such as the alleged generic support granted in the EU, do not bear any relevance whatsoever in the context of this proceeding ([13]). Secondly, as explained at recitals (77) and following, and at recital (103) of the provisional Regulation, both exporting producers were eligible for different forms of support, irrespective of their being private or public entities.

(100) In addition, the Commission observes that the argument of Haomei Group that both companies are free from any government or party influence does not correspond to reality. The Commission first recalls the substantial body of evidence and the conclusions contained at recitals (86) to (90), and in Sections 3.2.1.3 – 3.2.1.5 of the provisional Regulation, which show the extent and pervasiveness of the influence of the government and of the CCP in the Chinese economy, including the aluminium sector. Neither Haomei Group, nor any other interested party has provided any evidence rebutting or undermining these findings. This would already be sufficient to dismiss even from a substantive point of view these arguments. In any event, according to research carried out by the Commission, it is advertised on the website of Haomei Group that the company is involved into party building activities, such as educational activities for employees concerning 'Xi Jinping's thoughts on Socialism with Chinese Characteristics in the New Era, from the Constitution, Party Constitution and Regulations, the spirit of the 19th National Congress of the Communist Party of China, the spirit of the Fourth Plenary Session of the 19th Central

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

Committee of the Party, the spirit of Xi Jinping's important instructions concerning Guangdong […].' ([14]) Furthermore, the company presents itself as 'an enterprise with high-quality development guided by Party building' on the Foshan Nanhai Aluminium Profile Industry Association's website, where Haomei Group is further described in the following way: 'Haomei New Materials has kept being guided for a long time by Xi Jinping's thoughts of Socialism with Chinese Characteristics in the New Era, has kept deeply studying and implementing the spirit of the 19th National Congress of the Communist Party of China, armed with theory; has kept promoting the company's Party building work, and transforming the advantages of Party building work into advantages for the enterprise's development.' ([15]) Seen in the context of the Chinese government and party influence as thoroughly described in the mentioned recitals and sections of the provisional Regulation, this evidence further undermines the argument put forward by this party.

(101) Third, the exporting producers consider that the legality principle ([16]) is violated by the findings in recital (77) of the provisional Regulation, where the Commission stated that both producers were eligible for financial support, even if they received none. According to Haomei Group, by this statement the Commission reverses the burden proof and implied liability for acts of another person. With regard to the state financing, that is to be fully rejected because Haomei Group would be considered liable for the mere fact of being Chinese companies, even though they were never granted public financing and/or subsidies.

(102) The Commission recalls that Article 2(6a)(b) states that, when assessing the existence of significant distortions, the Commission must consider the 'potential impact' of the elements listed in that Article. The findings in section 3.2.1.8 in connection with section 3.2.1.5 of the provisional Regulation show that the Chinese aluminium producers do have preferential access to state financing and that there are countrywide distortions with regard to access to finance. Therefore, even if Haomei Group did not actually receive any state financing themselves, the presence of such distortions in the sector is relevant for the assessment of the existence of distortions under Article 2(6a)(b). The Commission further recalls that regardless of the exporting producers actually receiving state financing, their suppliers or other actors involved in the upstream or downstream markets of the production of the product concerned may have benefited from the preferential access to finance, which is an additional indicator that prices or costs are not the result of free market forces. On this basis, the claims of these companies could already be rejected.

(103) Nevertheless, the Commission went further to research the accuracy of the claims made by Haomei Group with regard to their situation. Contrary to what Haomei Group claimed, according to public information it appeared that both companies actually benefitted from loans extended by, among others, State-owned banks, including loans from Bank of Communications and Guangfa Bank ([17]). In addition, Haomei is located in the Qingyuan High-tech Zone, which according to the official website of the government of Qingyuan city offers support to companies located therein: 'In recent years, Qingyuan High-tech Zone has vigorously supported the listing of enterprises located in the zone, meeting the enterprises' development needs through multiple channels such as policy support and financing guarantees, and shortening the time for enterprises to go public. Afterwards, it will continue to cultivate and expand the enterprises within its jurisdiction, take multiple measures to promote these enterprises' transformation and upgrading, improve their competitiveness, and accelerate the pace of their development.' ([18])

([14]) See Haomei website describing a party building competition in December 2019: http://www.haomei-alu.com/Newsview.aspx?i=1179 (accessed 17 November 2020).

([15]) See Foshan Nanhai Aluminium Profile Industry Association's website describing a party building event that took place in September 2020: http://www.napa.org.cn/news_detail.php?id=1878 (last accessed on 17 November 2020).

([16]) General principle of European Union law (see judgement of 3 December 1998 in Case C-381/97, *Belgocodex S.A*, ECLI:EU:C:1998:589 *and* judgement of 26 April 2005 in Case C-376/02, *Stichting 'Goed Wonen'*, ECLI:EU:C:2005:251).

([17]) See Guangdong Haomei IPO notice (March 2019): http://pdf.dfcfw.com/pdf/H2_AN201904121318887721_1.pdf (last accessed on 17 November 2020).

([18]) See Qingyuan Municipal Government website, http://www.gdqy.gov.cn/gdqy/zxzx/bmdt/content/post_1171116.html (last accessed on 17 November 2020).

(104) The Commission also found that Haomei is recognised as National Enterprise Technology Centre ([19]), a status linked to certain benefits such as one time financial rewards ([20]), and preferential tax policies to support technological innovation in accordance with relevant national regulations ([21]). Furthermore, according to the Management Measures for the Recognition as National Enterprise Technology Centre published by the GOC, a close relationship persists between the State and the enterprises recognised as National Enterprise Technology Centres. Article 1 of that document states: 'The present measures are set out in accordance with the Chinese Law on Science and Technology Progress, in order […] to further strengthen the key position of enterprises in technological innovation […].' According to Article 3 of the same document: 'The State encourages and supports enterprises building Technology Centres, involves enterprises in technological innovation as key players and builds a comprehensive institutional mechanism for industry technology and R & D led by enterprises. […] the State […] grants policy support, as well as encourages and guides backbone enterprises to raise their capacity to drive industry technology progress and innovation.' ([22]) On the basis of all these elements, which supplement the findings of subsidies granted to Haomei Group as detailed at recital (103) of the provisional Regulation, it is clear that the company benefited from preferential policies, access to finance and subsidies, which all contradict the company's claims of not being affected by the relevant elements proving the significant distortions. Therefore, these claims must be rejected also as not corresponding to reality.

(105) Fourth, Haomei Group argued that there have been no accurate confutations of the evidence provided during the investigation concerning the lack of distortions. The exporting producers claim that Sections 3.2.1.1 to 3.2.1.10 of the Regulation assessed China globally, without specific references to Haomei Group. This, according to Haomei Group violates their defensive rights as per Article 6 ECHR on right to a fair trial and Article 47 of the Charter of Fundamental Rights of the European Union on right to an effective remedy and to a fair trial and constitutes a severe lack of motivation as per the general principle of effectiveness and Article 19 of the Treaty on European Union.

(106) The Commission recalled that, contrary to these claims, the findings of distortions are based on a substantial body of evidence and legal assessment as detailed in the entire Section 3.2.1 of the provisional Regulation. The exporting producers and all parties had ample opportunity since the initiation of the proceeding to provide arguments and evidence concerning the existence or impact of significant distortions in China country-wide, and/or that their domestic costs are not distorted in accordance with Article 2(6a)(a), second subparagraph, third dash. Both exporting producers did avail themselves of this possibility by making representations on these issues, which are being object of this assessment. As explained in this section, apart from general unsubstantiated or untrue statements, they failed to present any substantial evidence concerning the absence of distortions country-wide and/or that one or more specific factors of production were not distorted in their case. Therefore, this claim was rejected.

(107) Fifth, the same two exporting producers argued that the reported subsidies covered at recital (103) of the provisional Regulation were rewards to Haomei Group for implementing ecological and technological improvements. They further claimed that their amounts were negligible when compared to the companies' revenues, namely around EUR 1 million contribution against roughly EUR 330 million of revenues. Haomei Group reiterated that the rewards granted to them not only must be assessed taking into consideration their limited amount but, above all, must be put into relation with similar incentives granted to the European industries, within a comparative analysis aiming to evaluate whether they should be considered significant distortion or not. Additionally, the statement from the Initial Public Offering ('IPO') prospectus that the lack of subsidies would constitute an impact on the enterprise's cash flow and operating results, as quoted in recital (103) of the provisional Regulation, represents a standard clause that Chinese companies undertaking an IPO must include in the documents directed to potential subscribers as per Chinese laws and regulations.

([19]) See NDRC website, Haomei New Materials listed with number 1197 on the official list of enterprises with the National Enterprise Technology Centre Status: https://www.ndrc.gov.cn/xxgk/zcfb/tz/202001/P020200109540064113144.pdf

([20]) According to Haomei IPO: '[Haomei] was recognised as a National Enterprise Technology Center and as a Guangdong Demonstration Base for Innovation and Industrialization of SMEs and received national and relevant local policy support'. Available at http://www.csrc.gov.cn/pub/zjhpublic/G00306202/201910/P020191015564364143717.pdf

([21]) See NDRC website https://www.ndrc.gov.cn/xxgk/zcfb/tz/202001/t20200109_1218736.html

([22]) See Management Measures for the Recognition as National Enterprise Technology Centre available at http://www.gov.cn/xinwen/2016-03/24/5057350/files/3d4f511db7454c06a20ece567157662a.pdf (last accessed on 23.11.2020).

(108) The Commission recalled that, as already explained in recital (102), Article 2(6a) is applicable in case the Commission establishes the existence and impact of distortions in the exporting country at a country-wide level. Therefore, this claim could already be dismissed on this basis. Nevertheless, the Commission notes that the additional elements as detailed in recital (103) and (104) of this Regulation show that this company benefits from preferential policies and access to finance, and hence the claim is also not reflecting the truth. As to the magnitude of the benefit, there is no requirement that the Commission investigates the scale of the financial benefits listed by the exporting producers. In any event, as detailed at recital (103) of the provisional Regulation these transfers amount to an appreciable percentage of the company's profit, and by the company's own admission, the absence of governmental subsidies in the future might have an impact on the company's cash flow and operating results. Therefore, this claim is unfounded also as not corresponding to the reality of the situation. Lastly, as also explained at recital (99) of this Regulation, the comparison with the situation of the European companies is completely irrelevant from a legal point of view in light of Article 2(6a) of the basic Regulation, in addition to being generic and not substantiated by any evidence.

(109) The GOC submitted a number of comments to the provisional Regulation. First, with regard to the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China ([23]) (hereafter 'Report'), the GOC argued that a staff working document was not adequate for the purpose of proving distortions. This is because, Article 2(6a) of the basic Regulation required the Commission to produce a report regarding the existence of significant distortions in a certain country or a certain sector in that country. However, according to GOC, a staff working document did not meet such requirement, as there was no evidence indicating that the document was approved or endorsed by the Commission at or after the publication. Therefore, the GOC claimed that there were serious doubts regarding whether such document could be regarded as the official position of the Commission and whether its legal status met the requirement of basic Regulation 2(6a) of the Commission making, publishing and updating reports. The GOC further reminded that the reply of the Commission to a similar question in the anti-dumping case on hot-rolled stainless steel sheets did not specify whether such working document could represent the official position of the EU and did not clarify its legal nature.

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

(111) The Commission further noted that the objective sources of information contained in the Report may be used as relevant evidence in the Commission findings in anti-dumping investigations in the context of the application of Article 2(6a) of the basic Regulation, together with any other relevant elements and evidence not contained in the Report. The existence of a report covering a country or a sector is not a legal requirement for the application of Article 2(6a) of the basic Regulation. What counts in this respect is the existence of reliable evidence, whether contained in a country or sectoral Report or elsewhere, as long as it is relevant for the findings concerning the existence of significant distortions. Therefore, also from this point of view the nature and the form of the Report is not relevant for the actual findings on the significant distortions under Article 2(6a) of the basic Regulation.

(112) In this investigation, the report, including the evidence contained therein, is part of the evidence on file justifying the application of Article 2(6a). The Commission has used substantial additional evidence specific to the investigation and the claims put forward by the parties not included in the report. More importantly, the GOC has not provided any evidence that the information in the report was not valid or inapplicable for this investigation. In any event, the

([23]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

Commission recalls that the existence of a country report is not a necessary condition for the application of Article 2(6a). What counts for the application of the methodology under Article 2(6a) of the basic Regulation are the findings that the significant distortions are relevant in the case at hand, as is the case in this investigation. Therefore this claim was rejected.

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

(114) In reply to the claim on factual flaws in the country report, the Commission noted that the country report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The GOC has refrained from providing any such rebuttal or comment on the substance and evidence contained in the report ever since its release in December 2017.

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

(116) Third, the GOC commented that the Commission only issued staff working documents for a few selected countries, which was enough to raise concerns about most-favoured nation treatment and national treatment ('NT'). In terms of most-favoured nation, regardless of whether the staff of the Commission was considering drafting similar documents for other countries, up to this point, the Commission staff only drafted the documents regarding Chinese and Russian market. In addition, the GOC claimed that the Commission never published a clear and predictable standard for choosing the countries or sectors to publish reports.

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

(118) Furthermore, as stated above, the reports are not mandatory to apply Article 2(6a). Article 2(6a)(c) describe the conditions for the Commission to issue country reports, however according to Article 2(6a)(d) the complainants are not obliged to use the report nor, following Article 2(6a)(e), is the existence of a country report a condition to initiate an investigation under Article 2(6a). In fact, according to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by the complainants fulfilling the criteria of Article 2(6a)(b) is enough to initiate

the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, irrespective of the existence of the country report. Therefore, by definition the rules concerning country distortions do not violate the most favoured nation treatment. Therefore, the Commission rejected these claims.

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

(120) The Commission based its methodology in this investigation on the provision of Article 2(6a) of the basic anti-dumping Regulation. As each regulation, once formally approved by the European Parliament and the Council, it is legally binding and the Commission is obliged to apply it in its entirety as it forms part of the *acquis*. It is legally irrelevant that other European laws do not use the concept of significant distortions, since it is specific to the area of anti-dumping. Therefore, this claim was rejected.

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

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

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

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

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

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

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

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

(129) In reaction to the submission by the GOC, Airoldi subsequently submitted comments on the submission by the GOC. Airoldi underlined its endorsement concerning China's arguments concerning the legality of the staff working document. First, Airoldi submitted that Article 2(6a)(c) of the basic Regulation set the requirement that the document at issue must be a report and must be adopted formally by the European Commission. They further argued that the report needed to be made public and updated. Therefore, according to Airoldi, the document relied upon in the present investigation and published on the internet Site of DG TRADE, was not updated, and was a simple Commission's staff working document, lacked the formal and substantive characteristics for being considered a formal European Commission report. Furthermore, as a matter of EU Institutional law, such a report needed to be published in all official languages of the European Union in the *Official Journal of the European Union*. Additionally, Airoldi requested that DG TRADE provided it with an Italian version of this document and the issue of the *Official Journal of the European Union* where it was published. At the same time, Airoldi noted that the China report was published on DG TRADE's internet Site in the English language only. Therefore, the China report needed to be disregarded and the provisional regulation based on the report should be repealed. Furthermore, Airoldi made a specific request for disclosure in the present anti-dumping proceeding for all preparatory documents in whatever form related to the internal procedure followed within the European Commission to adopt the China report.

(130) As already explained in particular at recitals (110) to (112) about the value of the China report, the provisions of Article 2(6a)(c) do not prescribe a specific format in which a country report needs to be published, nor its channel of publication. Therefore the publication of the China report as a staff working document, a type of document which does not require translation into all European languages, nor formal publication in the *Official Journal of the*

European Union, complies with the relevant rules. In reply to these claims, the Commission notes that the report has been publicly available since December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. No evidence was provided by Airoldi, or any other interested party, which would have shown that the report is outdated. Therefore, this argument is rejected. With regard to the request for disclosure of the preparatory documents, the Commission refers to recital (50) above.

(131) Second, Airoldi submitted that as a consequence of the above arguments (the fact that the China report is a staff working document, published on DG TRADE website in the English language only), the China report was an unlawful document. Therefore, Airoldi argued that such evidence shall be disregarded and the complaint needed to be declared unfounded. Furthermore, the provisional Regulation which relied on China report had to be immediately repealed.

(132) This argument is a reiteration of GOCs comments in recital (109). The Commission replied to this comment in recitals (110) to (112).

(133) Following final disclosure, Haomei Group submitted a set of comments concerning the existence of significant distortions mainly reiterating the arguments made before during the investigation. First, Haomei Group reiterated, that they do not agree that the country Report is a comprehensive enough and a sufficient evidence of the existence of distortions. Furthermore, Haomei Group reiterated that they were not subject to any government intervention, received loans at undistorted interest rate and that the subsidy received was of minor value. Additionally, the Haomei Group argued that they were not affected by beneficial lending terms and other financial incentives provided by the government and added Commission's findings concerning credits were generic and not applicable to Haomei Group.

(134) With regard to the objectivity of the report and its suitability as evidence, the Commission notes, as already explained in recital (114), that the country report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources.

(135) On benefits, such as cheaper loans and subsidies, the Commission reiterates, as already stated in recitals (97), (99) and (102) of this regulation and in recitals (77) and (79) and following of the provisional Regulation, that in accordance with Article 2(6a)(b), in assessing the existence of significant distortions regard shall be had, inter alia, the potential impact of one or more of the elements listed in that provision. Therefore, it is crucial to assess whether the producers of aluminium extrusions have, at least potentially, access to cheaper financing and more favourable conditions than their counterparts elsewhere. Since the aluminium industry is subject to numerous plans and directive by the government, the Commission found in recitals (77) and (79) and following of the provisional Regulation, that the producers of aluminium extrusions, including Haomei Group, are at least potentially affected by the distortions in the aluminium extrusions sector in China.

(136) Secondly, Haomei Group argued that the party building activities mentioned by the Commission in recital (100) of this Regulation are cultural facts but do not amount to an evidence of political distortion.

(137) The Commission quoted some examples of party building activities exercised by Haomei Group in response to their comment in recital (98), in which Haomei Group claimed to be free from interference from party or the government. As quoted in recital (100) of this Regulation, Haomei Group clearly states that they are guided by the 'Party building', as well as guided by 'Xi Jinping's thoughts of Socialism with Chinese Characteristics in the New Era, […] implementing the spirit of the 19th National Congress of the Communist Party of China'. Even if, as claimed by Haomei Group, there are no CCP members in the board of directors of the two companies of the Haomei Group, it is under influence of the government and, as stated above, actively present itself as implementing the policy of the government and following its official agenda. No evidence was adduced to the contrary.

(138) Haomei Group submitted that its prices were not distorted, which is proven by the fact that its prices were aligned with the European prices.

(139) The Commission recalls that according to Article 2(6a)(a) of the basic Regulation, if it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions, the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks. In the case at hand, the Commission found existence of significant distortions in the sector of aluminium extrusions in China, as explained in section 3.2.1 of the provisional Regulation. Therefore, the level of prices of Chinese exporting producers is not relevant in this case.

(140) Following the final disclosure, Haomei Group submitted that they were considered responsible not for their own behaviour but for features of the Chinese economy assessed in a generic way.

(141) The specific findings of dumping and companies' rates reflect the data submitted by the companies themselves, calculated in accordance with the provisions of the basic Regulation, in particular Article 2(6a). As explained in recital (106), the existence of significant distortions is country-wide and, once distortions are demonstrated, that methodology applies in principle to all companies. Neither of the companies has demonstrated that the distortions found by the Commission do not affect their costs. Therefore, the final margins of dumping reflect the behaviour of the companies, taking into account the existence of significant distortions in China, where they operate.

3.2. **Representative country**

(142) In the provisional Regulation, the Commission selected Turkey as the representative country in accordance with Article 2(6a) of the basic Regulation.

(143) The GOC claimed that the Commission incorrectly replaced the producers' data without any evaluation of whether there may be market distortions affecting these replaced data.

(144) The Commission invited comments of interested parties on the selection of Turkey as the representative country in a transparent process involving two notes on the sources for the determination of the normal value (of 16 March 2020 and of 25 June 2020). The Commission eliminated a number of other potential representative countries. Since the Commission did not find market distortions in Turkey that would make it not suitable as a representative country, it concluded that Turkey was the most appropriate representative country.

(145) Airoldi repeated its comment concerning the choice of Turkey as the representative country with regard to differentiation between hard and soft alloys. As explained in recital (164) of the provisional Regulation, product types are not determinant for the selection of an appropriate representative country. The Commission therefore maintained that Turkey was the most appropriate representative country in this case.

(146) Following final disclosure, Airoldi repeated its comment concerning the choice of Turkey as a representative country. Airoldi added new elements in their comments against the choice of Turkey that concerned two main arguments: the Turkey's Customs Union with the Union, and that Turkey did not fulfil social and environmental protection standards.

(147) Airoldi failed to explain why the Customs Union would make Turkey an inappropriate representative country. As explained in the Regulation, the Commission took into account customs duties in order to establish the value for each factors of production. This is done in order to arrive at the price of the factor of production in the representative country. The fact that there is a customs union is irrelevant for the determination of this price. Even if Airoldi's argument was correct, *quod non*, the normal value would be underestimated and, as a result, the dumping margin would be lower, therefore benefiting rather than in detriment of the importer. As for social and environmental standards, as explained in the Second Note on the Sources for the Determination of the Normal

Value of 25 June 2020, Turkey was found to be the most appropriate representative country in this case on the basis of availability and quality of data. In the absence of any claim that would invalidate that finding, an analysis of those standards was not warranted.

(148) Following final disclosure, Haomei Group contested the normal value 'construed according to the Turkish parameters, especially in the light of the values taken into consideration as a benchmark, that are neither actual (they are from 2016), nor accurate […]'.

(149) The only factor of production based on data from 2016 used in the calculation was labour costs. This was clearly explained in the Note of 16 March 2020. The 2016 value was 'adjusted for inflation using the domestic producer price index ([24]) published by the Turkish statistical institute'. Therefore not only all the other factors were based on recent available data, but the only one that Haomei Group appears to refer to in the comments was in fact adjusted. Therefore Haomei Group's comment was dismissed as factually incorrect.

(150) Haomei Group also submitted that Turkey was not an appropriate choice of representative country due to a difference of its population compared to China.

(151) In this regard, the Commission notes that the level of development and not the size of the population is fundamental in the choice of representative country. Turkey has the same level of development of China according to the World Bank classification (upper middle income) and therefore is an appropriate representative country for the purpose of Article 2(6a) of the basic Regulation. Therefore, Haomei Group's claim was rejected.

(152) Therefore, for the reasons explained in the provisional Regulation, the Commission confirms its selection of Turkey as the representative country as no compelling arguments were put forward against the choice of Turkey following the adoption of the provisional Regulation.

3.3. **Sources used to establish undistorted costs**

(153) As explained in recitals (166) to (184) of the provisional Regulation, the Commission identified the following sources to establish undistorted costs: the Global Trade Atlas, national statistics including the Turkish Statistical Institute to establish labour costs, electricity costs and gas costs and OECD for diesel prices. Following the disclosure of the provisional findings, the Commission did not receive any substantiated claims on market distortions affecting the data and the sources used.

(154) In the absence of further comments with respect to the sources used to establish undistorted costs the Commission maintains those sources listed the provisional Regulation.

3.4. **Manufacturing overheads costs, SG&A and profit**

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

(156) Following final disclosure Haomei Group challenged that the 'price charged' by Turkish companies 'could be an element of comparison'. The Commission explained in detail the way of calculating the dumping margin in the exporting producer individual disclosure, but also in the two notes on the sources for the determination of the normal value made available to all parties in the case file. In none of those documents the Commission made any

([24]) www.turkstat.gov.tr

reference to prices charged by any of the Turkish companies to be used at any step of determination of the Normal Value. Turkish companies were used only as the source of SG&A and profit values. Thus, Haomei Group's claim is factually incorrect.

(157) Following final disclosure, the complainant repeated its claim that the Commission should exclude from the calculation of the average profit margin the two Turkish companies with the lowest profit, as these were far from the 16 % profit margin that was made by one EU producer in the absence of dumped imports.

(158) As explained in recital (171) of the provisional Regulation, the Commission excluded those companies that did not report any profit. All profitable companies were taken into account, irrespective of their profit level, as long as they were not loss making. The level of profitability achieved by one of the Union producers is not relevant when determining the appropriate profit level for the construction of the normal value on the basis of undistorted data in the representative country. The Commission therefore rejected this claim.

3.5. **Calculation of the Normal Value**

(159) The Commission received comments from an exporting producer, PMI Group, concerning the changes in VAT rates during the IP. The Commission adjusted the calculation of the Normal Value following this comment, as described in more detail in recitals (185) to (187). Other than that, all other calculations regarding the normal value in the provisional Regulation are confirmed.

(160) Following final disclosure, Haomei Group submitted an unclear claim which seems to challenge the level of the interest rate applied as allowances for export sales of Haomei Group. The Commission notes that the rates applied as the allowance were based on interest rates provided by Haomei Group itself and checked during the RCC.

(161) Haomei Group reiterated that the method of calculating the average price concerning European extrusions was allegedly flawed because it placed 'in the same basket heterogeneous products in terms of characteristics and price'.

(162) Following additional final disclosure, Haomei Group repeated its comment that due to distinction based on different alloys, fabrications, specifications the Commission must not consider the product under investigation as one single product.

(163) As explained in detail in recitals (232) to (234) of the provisional Regulation, the referred price comparisons were made on a type-by-type transaction level, where detailed product control numbers ensured fair comparison. The reason for it was precisely to make the comparison of similar products, and this was the aim for the product control number to include elements like shapes and form, alloy series, length, maximum cross-sectional dimension, type of finishes, type of fabrication and drawing. The allegation made by Haomei Group was unjustified and therefore rejected.

3.6. **Export price**

(164) As described in recital (196) of the provisional Regulation, the Commission made an adjustment under Article 2(9) of the basic Regulation for the export sales through related traders to independent customers in the Union.

(165) PMI Group commented that the importer profit margin used to construct the export price for indirect sales via related importers was too high, and questioned whether it had been adequately checked. The Commission confirmed that the margin used at the provisional stage was correct based on information available at the time, and that it originated from the sampled importers. In any event, after remote cross checking this margin was increased slightly and details of the revised data used were made available to the company concerned. This revised margin was also used to recalculate the undercutting and injury elimination level shown below.

(166) The Commission thus adjusted the calculation of the dumping margin for one of the exporting producer groups as the result of the above revision. All other calculations regarding export price in the provisional Regulation are confirmed.

(167) Following final disclosure, Haomei Group submitted that the Commission wrongly used cost of shipping that 'as of today' were significantly more expensive. The Commission recalls that all calculations are based on the investigation period. With regard to dumping, calculations are based on actual costs provided by Haomei Group. The fact that the costs of shipping, according to Haomei Group, increased by 300 % after the investigation period is not relevant; just like for all other costs, the cost of shipping during the investigation period is what must be used.

3.7. **Undertaking offers**

(168) Prior to final disclosure, one Chinese exporting producer expressed interest in submitting a voluntary undertaking offer, but did not do so in the terms which are permissible under Article 8 of the basic Regulation.

(169) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, three exporting producers submitted offers for a price undertaking: Haomei Group, Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd.

(170) According to Article 8 of the basic anti-dumping Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical. The Commission assessed offers in view of these criteria and considered that its acceptance would be impractical for the following reasons.

(171) The offer put forward by Haomei Group would not, if accepted, eliminate the injurious effect of dumping. Furthermore the offer did not contain the essential element of an undertaking: a minimum import price ('MIP') below which it commits not to sell. The offer is thus incompatible with the underlying principles of an undertaking.

(172) Haomei Group has a number of related companies directly involved in production or sales of the product under investigation. Haomei Group sells the product directly and indirectly.

(173) Such a complex group structure bears high risks of cross-compensation. The Commission would not be able to monitor and ensure compliance with the undertaking of the indirect sales via the related company in Hong Kong and possibly via the other related companies. This, on its own, would make the offer impractical.

(174) Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd. offered a MIP subject to an indexation.

(175) Both companies produce and sell various product types with significant differences in prices. The weighted average injury margin used for minimum import price calculation would be below the non-injurious price for the majority of product types exported to the Union by those companies. Therefore, the level of MIP proposed was not sufficient to remove the injurious effect of dumping.

(176) In addition, Shandong Nollvetec Lightweight Equipment Co., Ltd. has a high number of related companies in China, many of which are directly involved in the production and sale of the product under investigation on the domestic market. The company structure increases the risks of circumvention.

(177) Aluminium extrusion types and models cannot be easily distinguished from one another by a physical inspection. In particular, it would be very difficult to assess the alloy series only by physical inspection. Without a detailed lab analysis the customs authorities would not be able to determine whether the imported product corresponds to what is being declared.

(178) The high number of product types entails a high risk of cross-compensation among the different product types, with more expensive product types possibly being misdeclared as cheaper product types also subject to the undertaking. This renders the undertaking unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation.

(179) The Commission sent letters to the applicants, setting out the reasons to reject the undertaking offers.

(180) All three applicants listed in recital (169) submitted comments thereto. These comments were made available to interested parties on the case file.

(181) Shandong Nollvetec Lightweight Equipment Co., Ltd. and Jilin Qixing Aluminium Industries Co., Ltd. did not agree with the Commission's conclusion that the proposed MIP was not sufficient to remove the injurious effect of dumping. The parties also proposed to replace the price references published by the Shanghai Metals Market with references published by the London Metal Exchange. However, the comments and proposed changes have not removed the elements making the undertaking offers unenforceable.

(182) Haomei Group, neither proposed to eliminate the injurious effect of dumping nor added any essential elements of an undertaking, as explained in recital (171). The offer thus remained incompatible with the underlying principles of an undertaking.

(183) Following additional final disclosure, Haomei Group reiterated its request urging the Commission to consider its undertaking offer, without bringing any new elements, neither with regard to elimination of the injurious effect of dumping, nor missing elements explained in recital (171). Instead, Haomei Group's view was that, as measures would not withstand Court scrutiny, undertakings should be accepted. The Commission recalls that the Union is an *État de Droit* where administrations take decisions following the provisions of the law, which are not the subject of barter or negotiation.

(184) The Commission considered the undertaking offers unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation, for the reasons set out in recitals (171) to (183) and therefore rejected the offers.

3.8. **Comparison**

(185) As described in recital (199) of the provisional Regulation, the Commission made an adjustment under Article 2(10)(b) of the basic Regulation for the difference in indirect taxes between export sales from China to the Union and the normal value where indirect taxes such as VAT have been excluded.

(186) PMI Group's comments concerned mainly the fact that the VAT rates in China changed twice since the 2018 and the rate of 17 % used in the calculation of VAT adjustment. These changes occurred on 1 May 2018 and 1 April 2019 when VAT rates changed to 16 % and 13 % respectively.

(187) After taking into account the above comment, the Commission adjusted the calculation for both sampled groups of exporting producers.

(188) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive anti-dumping duty
Haomei Group: — Guangdong Haomei New Materials Co., Ltd., — Guangdong King Metal Light Alloy Technology Co., Ltd.	21,3 %
PMI Group: — Press Metal International Ltd., — Press Metal International Technology Ltd.	33,9 %
Other cooperating companies	28,6 %
All other companies	40,1 %

(189) Excluding export sales to the UK of the sampled exporting producers, which continue to be representative accounting for 20 % of total exports to the Union, dumping margins are as follows:

Company	Dumping margin
Haomei Group: — Guangdong Haomei New Materials Co., Ltd., — Guangdong King Metal Light Alloy Technology Co., Ltd.	21,2 %
PMI Group: — Press Metal International Ltd., — Press Metal International Technology Ltd.	25,0 %
Other cooperating exporting producers outside the sample	22,1 %
All other companies	32,1 %

(190) For the cooperating exporting producers not included in the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. This margin was calculated as a weighted average on the basis of the margins established for the sampled exporting producers, thus amounting to 22,1 %. The Commission considers appropriate to continue setting the residual duty at the level of the highest dumping margin established on the basis of the data of the cooperating exporting producers, namely 32,1 %, excluding UK data.

(191) Following the additional final disclosure, Haomei Group requested an explanation as to why other exporting producers' margins has considerably lowered while the difference in its margin was small. The company considered these differences and its new dumping duty to be discriminatory. It also claimed that no detailed and dedicated calculations had been provided to the interested parties.

(192) It is first recalled that Haomei Group itself challenged the Commission's findings on a EU-28 basis. Haomei Group claimed that since the UK was no longer part of the European Union, the Commission should have conducted a EU-27 examination. This claim was addressed as the Commission recalculated the dumping margin for all exporting producers (and reassessed injury and causation) accordingly.

(193) The Commission in recitals (185) to (190) explained the methodology of calculating the dumping margin, and that methodology has been exactly the same when the dumping margin excluding UK data was calculated. Haomei Group's final disclosure included additional confidential, much more detailed, documents on dumping and injury margin calculation and methodology. The reason for the higher effect on PMI Group was linked to differences in pricing, destination, product mix and other issues specific to the company. The recalculation of all dumping margins of the sampled companies also resulted in the change of dumping duties for all other exporting producers, as explained in recital (190). This was in fact explained to the company during a hearing held on 12 February.

(194) In addition, Haomei Group's request for the disclosure of the other sampled exporting producer's dumping calculation must be rejected. The calculation is based on confidential information and can only be disclosed to the company to which it refers. This is also the case of Haomei Group's calculations, which were not disclosed to any other interested party in this investigation.

(195) Following additional final disclosure, Haomei Group made number of comments referring to differences in data and methodology for injury calculations compared to dumping calculations.

(196) These differences emanate from the fact that the determination of dumping and the determination of injury are different. The two methodologies are described in two separate Articles of the basic Regulation (Article 2 and Article 3 of the basic Regulation, respectively). Recitals (187) to (200) of the provisional Regulation describe in detail the methodology of the calculation of the normal value for the determination of dumping. Recitals (330) to (345) of the provisional Regulation describe in detail the methodology of calculation of the non-injurious price for the determination of the margin adequate to remove the injury to the Union industry. Allegations made by Haomei Group were unjustified and therefore rejected.

4. INJURY BASED ON EU-28

4.1. General remarks

(197) Certain interested parties claimed that the provisional analysis of injury and causation was flawed because it did not analyse certain parts of the market separately. More specifically it was claimed that separate analyses were required for hard and soft alloys, medium and large size profiles, standard and special profiles and by market segment. However, for the reasons mentioned above at recitals (55) to (56), the Commission confirmed that the product under investigation should be treated as one single product. Furthermore, because of the number of proposed criteria and of the fact that no clear distinction exists for many of them, an injury analysis following such a methodology would be impracticable and inappropriate. In addition, the Union industry is active in all parts of the market mentioned above, and faces competition from dumped Chinese imports for all these product types. Moreover, both the Union and Chinese producers can produce a number of product types and can decide to concentrate on some of them when the market conditions allow. For this reason, the Chinese producers exercise price pressure across the product range, including for products which the Union industry can produce upon request. Therefore, the Commission confirmed that its analysis of injury in this investigation was performed for the entire product under investigation as defined in Section 2 of this Regulation, and for the Union industry as a whole. After final disclosure, Haomei Group contested the approach mentioned above concerning the product concerned being treated as one single product. According to this exporting producer, this approach is crucial for determining its undercutting and/or underselling. As explained in the following recital and in recitals (246) to (249), there is no connection between the determination of the product as one single product, and the price comparisons, which are performed on a product type basis. Haomei Group restated this argument after additional final disclosure. Given that the method for calculation did not change in the EU-27 analysis, also this comment cannot be accepted for the same reasons highlighted above.

(198) Following additional final disclosure Airoldi and Euranimi stated that the one single product analysis for the injury indicators had not been followed in respect of imports from China. However, this argument is factually incorrect; as can be seen at Tables 1bis and 2bis where the total imports from China have been calculated and their impact assessed on that basis. Airoldi and Euranimi also stated that the Commission should have analysed the impact of the various CN codes (such as 7608 2089) individually. However, the Commission confirms that it has performed a one single analysis for the reasons explained at recitals (55) to (56).

(199) The Commission further confirmed that in respect of undercutting and underselling margins, the price comparisons were performed on the basis of objective criteria on a type for type basis, as explained in recital (234) of the provisional Regulation. For more than 95 % of Chinese imports a directly matching product type produced and sold by the sampled Union producers was found.

4.2. Definition of the Union industry and Union production

(200) In the absence of any comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals (208) to (209) of the provisional Regulation are confirmed.

4.3. Imports from the country concerned

General

(201) A clear case of significant injury via prices emerged at provisional stage. Continuous pressure was exerted by abnormally low Chinese prices, which were significantly below Union industry prices (undercutting) and costs plus target profit (underselling). Through the market mechanisms described in recitals (279) and (280) of the provisional Regulation, this pressure had multiple implications: inter alia, it suppressed Union industry prices, prevented those prices from reflecting the international increase in raw material (aluminium) prices, and depressed profitability to such an extent that it jeopardised the Union industry's existence – preventing the latter from making the investments necessary to continue its transition upmarket and from providing bespoke solutions to specialised users. For this injurious picture to occur, massive import volumes are not necessary – even relatively modest

imports, or even the existence of a significant amount of low-priced imports (like indisputably in the present case) suffice to set a low price ceiling which affects the entire market. The investigation found that these dynamics, so characteristic of the capital-intensive aluminium industry, applied to the product under investigation.

Imports under CN Code 7610 90 90

(202) As indicated in the provisional Regulation, the precise quantification of the volumes of Chinese imports required further analysis. The product under investigation currently falls under 9 CN codes ([25]), and there were conflicting views as to one of them – CN Code 7610 90 90, which also covers products outside the scope of the investigation. In particular, views diverged as to which fraction of imports was indeed the product concerned. This code accounted for around half of total Chinese import volumes of the product concerned as determined provisionally.

(203) The import volumes were not a decisive factor for injury in this case, which mainly happened through price channels. Even if the Commission were to disregard this code entirely, Chinese penetration would still have remained significant, accounting for 5,3 % market share in the investigation period, and have increased by 48 % since 2016. Aside from the resulting nominal adjustments in market shares of all other market players, this would have entailed no changes to the injury picture. Crucially, if volumes under CN Code 7610 90 90 were totally excluded, weighted average Chinese prices remain at the same abnormally low levels found to cause injury at provisional stage. The foregoing is explained in more detail below.

(204) At any rate, to ascertain such volumes as indicated in recital (223) of the provisional Regulation, the Commission pursued three avenues.

(205) At recital (223) of the provisional Regulation, the Commission outlined the provisional findings concerning the provisional methodology and requested interested parties to come forward with any relevant information concerning the matter. European Aluminium provided additional clarification of its justification for its 95 % estimate. Several interested parties contested this estimate on the basis of their company experience of CN code 7610 90 90. Certain parties agreed with European Aluminium that the product under investigation was being imported under this code. Others disagreed by claiming that either the 95 % estimate was too high or that no imports were imported under the code. Some parties made an additional comment that using price as a justification was not reliable. However, the corpus of information collected was insufficiently comprehensive and substantiated to provide conclusive guidance.

(206) Following provisional disclosure, the Commission was able to complete its examination of information submitted by DG TAXUD and National Customs Authorities. The information from DG TAXUD was a complete list by customs declaration, but did not offer a clearer description of the products being imported.

(207) Furthermore, the information received from 8 Member States (France, Germany, Italy, the Netherlands, Poland, Spain, Sweden and the UK) was highly representative, as it covered 84 % of imports of CN Code 7610 90 90 in the investigation period, as well as detailed information by customs declaration and the description of the imported product as reported by importers on their Single Administrative Document ('SAD'). Granular analysis on this basis led to the conclusions presented below.

(208) As shown in Table 1, a significant proportion of exports under this CN Code were found to belong to the product concerned, on a conservative basis. Indeed, only those transactions were taken whose products descriptions were detailed enough to permit a precise determination that the imported product was the product concerned.

([25]) Import volumes from the country concerned were established provisionally as follows. All volumes in CN Codes 7604 21 00, 7604 29 10, 7604 29 90, 7608 20 81, 7608 20 89 were considered, as all products therein fall under the product concerned; 95 % of volumes in CN Code 7610 90 90 were also considered to be the product under investigation for the country concerned only; imports of the product concerned under CN Codes ex 7604 10 10, 7604 10 90 and 7608 10 00 were considered to be negligible.

Table 1

Import from China under CN code 7610 90 90

	2016	2017	2018	Investigation period
Full CN code volume (tonnes)	102 090	131 180	139 560	151 891
Full CN code price per tonne	2 944	2 776	2 764	2 902
Product concerned volume (tonnes)	18 637	23 948	25 477	27 728
Product concerned price per tonne ([26])	3 050	3 041	3 197	3 308
Not product concerned volume (tonnes)	53 728	69 037	73 448	79 937
Unclear volumes (tonnes)	29 725	38 195	40 635	44 225

Source: Eurostat and National Customs ([27])

(209) For a part of the volumes under Table 1, the description was insufficiently clear to determine whether the imports volumes linked to the relevant transactions fell under the product concerned. Therefore, on a conservative basis, such volumes were considered not to be imports of the product concerned.

(210) The Commission considered this a reasonable estimate as it was based on information with high representativeness.

(211) Following final disclosure Airoldi commented that the methodology to identify imports under CN code 7610 90 90 had not been explained. Paragraphs (118) to (122) of the final disclosure document and its footnote 22 explain the approach used. This claim was therefore not accepted.

(212) During that process, Airoldi requested that the data submitted to the Commission by Member States be sent to them. However, exchanges of information between Member States and the Commission are confidential, according to Article 19(5) of the basic Regulation. Also, bearing in mind that the data relates to individual customs declarations, and contains very sensitive price data, it is clearly business sensitive. This request was, therefore, rejected.

(213) While the Chinese market share was revised downwards as a result, imports remained significant and the same trend of growth as at provisional stage was observed.

(214) Airoldi commented following final disclosure on the volume of imports established under CN code 7610 90 90 as the product concerned. Airoldi stated that the methodology is not representative as it involves the customs authorities of only 8 Member States. However, bearing in mind that these Member States account for more than 83 % of imports, the methodology is representative and therefore this argument is rejected.

(215) Airoldi also reiterated its argument that imports of the product concerned under code CN 7610 90 90 should be zero and referred to the existence of numerous BTIs. The Commission could not accept this argument because the existence of BTIs clearly does not preclude that other products, including the product concerned, could fall under this code. The Commission's analysis of this code using customs authority data has proven this to be the case.

([26]) The prices of the product concerned for the investigation period were obtained from National Customs data. These prices were 14 % higher than the price for the 5 CN codes. This difference was used to set the price for the years 2016 to 2018.

([27]) Data based on imports reported by 8 Member States representing 84 % of imports during the investigation period. Volumes extrapolated to imports for all Member States.

(216) Airoldi further indicated that should imports under CN code 7610 90 90 be excluded from the investigation, the investigation should be terminated with no imposition of duties. However, as explained at recital (219), even if these import volumes were excluded they would remain at significant levels. The claim can thus not be accepted.

Volume, market share and price of the imports from the country concerned

(217) Accordingly, and on the basis described above, imports from the country concerned developed as follows:

Table 2

Import volume (tonnes) and market share

	2016	2017	2018	Investigation period
Imports under 8 CN codes ([28])	110 255	127 616	149 232	164 641
Total volume of imports from China	128 631	151 229	174 353	191 981
Index (2016 = 100)	*100*	*118*	*136*	*149*
Market share of China (%)	4,4	4,8	5,4	6,2
Index (2016 = 100)	*100*	*110*	*123*	*141*

Source: Eurostat (see also Table 1 and Table 4 on consumption)

(218) Also on the basis of the adjusted import volumes, significant levels of imports in both relative and absolute terms, reaching 6,2 % of market share in the investigation period, can be observed. In absolute figures, imports from the country concerned increased by 49 % during the period considered. In parallel, the total market share of the dumped imports increased by 41 % during the period considered.

(219) As noted in recital (203), even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, import volumes would remain significant, accounting for 5,3 % market share in the investigation period, and increasing by 48 % since 2016.

(220) An importer claimed that the level of market share increase of the Chinese imports did not justify anti-dumping duties as mentioned in the provisional Regulation. The threshold to impose measures in terms of the market share in the present case significantly exceeded throughout the period considered the 1 % threshold of Article 5(7) of the basic Regulation and cannot be considered 'negligible' under Article 9(3). In addition, the Chinese market share increased by 41 % during the period considered. Given the significant nature of imports in absolute and relative terms as well as the absolute and relative trends, the considerations under recital (201) and the price considerations in Table 3 below, this claim was rejected.

Table 3

Import prices (EUR/tonne)

	2016	2017	2018	Investigation period
Prices under 8 CN codes ([29])	2 684	2 676	2 813	2 911
Weighted average prices of imports from the China	2 736	2 733	2 869	2 967

([28]) The 8 CN codes are: ex 7604 10 10, ex 7604 10 90, 7604 21 00, 7604 29 10, 7604 29 90, ex 7608 10 00, 7608 20 81 and 7608 20 89.

([29]) The 8 CN codes are: ex 7604 10 10, ex 7604 10 90, 7604 21 00, 7604 29 10, 7604 29 90, ex 7608 10 00, 7608 20 81 and 7608 20 89.

Index (2016 = 100)	*100*	*100*	*105*	*108*

Source: Eurostat and National Customs Authorities

(221) The adjusted prices demonstrate similar level and trends as in the provisional Regulation, confirming the determination made therein.

(222) As noted in (203) above, if volumes under CN Code 7610 90 90 were totally excluded from the analysis, average import prices would be lower and would follow a similar trend over the period considered.

(223) As explained at recital (230) of the provisional Regulation these prices should be seen in the light of increases in raw material costs of 10 % and they were made in a period where the market was demanding more value added and bespoke products.

(224) The undercutting margins established at recital (232) of the provisional Regulation (over 25 %) were confirmed. Certain interested parties commented that their imports from the country concerned did not undercut at over 25 %. In fact, Haomei Group stated that their products could become uncompetitive on the Union market depending on the fluctuation of exchange rates. However, the Commission's undercutting calculations covered the entire sample of exporting producers using a detailed type by type and transaction by transaction methodology for the investigation period. Furthermore, the detailed calculations, including their methodology, were disclosed to the exporting producers including Haomei Group. The Commission confirmed that the methodology used to calculate undercutting gave both accurate and representative results.

(225) In the absence of any further comments with respect to imports from the country concerned, the remaining conclusions set out in recitals (217) to (234) of the provisional Regulation are confirmed.

4.4. **Union consumption**

(226) Union consumption figures were revised downwards as a consequence of the revision to import volumes from the country concerned explained in recitals (202) to (213). On this basis, the Union free market consumption developed as follows:

Table 4

Union consumption (tonnes)

	2016	2017	2018	Investigation period
Total Union consumption	2 991 288	3 204 315	3 290 561	3 159 475
Index	*100*	*107*	*110*	*106*
Captive market	61 338	60 455	60 143	56 640
Index	*100*	*99*	*98*	*92*
Free market consumption	2 929 950	3 143 860	3 230 418	3 102 835
Index	*100*	*107*	*110*	*106*

Source: European Aluminium and Eurostat ([30])

(227) During the period considered, the Union free market consumption increased by 6 %. The increase was mainly due to an increase of demand in the major downstream industries.

([30]) The Eurostat data were extracted in November 2020 and therefore contain small differences to the data presented in the provisional Regulation.

(228) As noted in recital (203), even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, consumption would have been at very similar levels and would also increase by 6 %. In the absence of further comments with respect to the Union consumption the conclusion set out in recital (216) of the provisional Regulation is confirmed.

4.5. **Economic situation of the Union industry on the basis of EU-28**

4.5.1. *Macroeconomic and microeconomic indicators*

(229) The market share of free market sales of the Union industry developed as follows as a result of the revision to imports from the country concerned mentioned above, and the revised consumption figures stated in Table 4.

Table 5

Market share

	2016	2017	2018	Investigation Period
Market share of free market sales (%)	87,6	85,6	85,3	84,4
Index (2016 = 100)	*100*	*98*	*97*	*96*

Source: European Aluminium and Eurostat

(230) It should be noted that, although the market share of the Union industry was reassessed at a slightly higher level in the period considered after the revision on import volumes from the country concerned, the market shares still decreased by 3,2 percentage points or 4 %.

(231) As noted in recital (203), even if the volumes under CN Code 7610 90 90 were totally excluded from the analysis, the market share of the Union industry would have been at very similar levels and would decrease by 3 %.

(232) Airoldi commented that the source for Tables 4 and 5 quotes both European Aluminium and Eurostat. Airoldi queried whether new data had been supplied by European Aluminium. However, these Tables were necessary to record the revised figures for consumption and market shares (202) to (215) due to the revision to imports from China. No new data was supplied by European Aluminium. The importer Airoldi made a claim concerning Table 7 (Sales prices in the Union) of the provisional Regulation. The importer alleged that the London Metal Exchange ('LME'), because of its ownership in Hong Kong, was not a reliable reference for aluminium prices and that, therefore, the data presented in the provisional Regulation at Table 7 was not appropriate. However, the LME was used by all the sampled Union producers as a reference in their contracts, and it is widely quoted in trade publications relating to aluminium. The investigation confirmed it is a reliable source for aluminium prices in the Union. Furthermore, this importer did not substantiate how the ownership of the LME would make it an unreliable source for the purpose used in Table 7 of the provisional Regulation. This claim was, therefore, rejected.

(233) The same importer made another claim concerning increases in cost in the same table. These cost increases are the actual cost increases reported by the Union producers and checked during the RCC. The claim alleged that the Commission did not properly explain the reasons for such increases. However, the Commission's analysis, at recital (232) of the provisional Regulation, offered the two major reasons for the increases in cost. One concerned the increased costs associated with market demands for more value added products. The second reason involved increases in aluminium billets which form the main raw material for production of the product under investigation. Such findings were based on the evidence provided during the investigation by the Union producers, verified during the RCCs and cross-checked with the information provided by European Aluminium. Thus, the Commission rejected the claim that such increases were not explained.

(234) The same importer also made a claim concerning Table 9 of the provisional Regulation concerning inventories. The claim challenged the Commission's analysis that the rise in stocks of 26 % did not represent an important injury indicator. However, the Commission's analysis was in the light that stocks as a percentage of production were low as the industry operates primarily on a production to order basis. Also a rise in stocks is often a sign that goods, which were not produced to order, but for the distribution market, could not be sold. This indicated an injurious situation. Also, when compared to the level of production, the stocks remained comparably low throughout the period considered, accounting for roughly 2 weeks of production. Therefore, the Commission maintained its provisional conclusion and rejected the claim.

(235) The same importer also made claims concerning Table 10 of the provisional Regulation concerning profitability. One claim was that a certain Union producer did not suffer big falls in profitability, and a second stated that Union producers of hard alloy product types were more profitable than soft alloy producers. However, the Commission reiterates that profitability, like all injury indicators, should be examined using the Union industry as a whole, or a representative sample as is the case and not individual companies or product types. Furthermore, the source quoted for the profitability of the named producer made it clear that it related to the entire company not the product under investigation. Therefore, the Commission rejected these claims.

(236) Following final disclosure Airoldi and other importers repeated their arguments relating to profitability of the Union industry, which had already been addressed in the preceding recital. These parties had extended their own research into the profitability of companies which produce extrusions in the Union. The parties commented that levels of profitability varied. Irrespective of the admissibility of such information given the late stage in which it was provided, the fact that it applied only to one Member State, and that it was not substantiated, on average, the evidence provided suggested a low level of profitability for the Union industry companies covered by the research, in line with the outcomes of the aforementioned recitals.

(237) The same importer made another claim concerning Table 10 of the provisional Regulation concerning investment. The claim alleged that the Commission did not properly explain the reasons for increases in investment. The Commission's analysis related to the investments made by the sampled Union producers, which demonstrated an increase of 72 % in 2019 as compared to 2016. Such data was discussed and checked with the sampled producers during the RCCs. Furthermore, the Commission explained that increases in investment were required to increase efficiency and provide greater customer focus in the light of the market's demand for more value added solutions. At recital (332) to (340) of the provisional Regulation the Commission made further remarks to demonstrate the importance of high levels of investment to the future of the Union industry. Therefore, the Commission rejected the claim that investments were not adequately explained.

(238) The same importer also claimed that the Commission accepted Union industry data at face value. As already explained at recitals (25) and (26) of the provisional Regulation, just like the information provided by the sampled exporting producers, the questionnaire responses of all four sampled Union producers were cross-checked remotely against the source company documentation and, where possible, against publically available sources. Therefore, this claim was rejected.

(239) Following final disclosure, Airoldi disagreed with the Commission's comments in the previous two recitals concerning the source and checking of data received. In particular, Airoldi contested that the data relied upon during the anti-dumping investigation at issue were appropriate in that they were drawn from company sources and not publicly available sources. With respect to this, the Commission confirms that, in line with its practice of cross-checking sensitive company data in the framework of an investigation, publicly available sources are also used where appropriate.

(240) Moreover, concerning investments, Airoldi claims that the Commission's finding regarding the fact that investments are required to increase efficiency and provide greater customer focus is generic and does not seem to be connected with the context of the anti-dumping investigation at issue. With respect to this point, the Commission reiterates the fact that the affirmation appropriately describes the situation of the industry producing the product under investigation.

(241) Following final disclosure, concerning the recital (234), Airoldi also affirmed that it would be wrong to correlate the presence of an adequate level of stocks with a finding of injury. The same importer also claimed that a level of 26 % of stocks is absolutely normal in the aluminium extrusion market. With respect to this argument, it should be firstly recalled that the consideration of stocks as an injury indicator is a legal requirement from the basic Regulation. Moreover, it was the same importer that at provisional stage claimed that the this indicator would be relevant. With respect to this point, the Commission maintains its preliminary conclusion that, as described in recital (264) of the provisional Regulation, inventories have a lesser importance in the injury analysis because of the production being principally made on an order basis. As described in recital (234), if they would be considered, they would point towards an injurious scenario.

(242) The same importer also claimed that the loss of market share of the Union industry described at Table 5 of the provisional Regulation could be quickly recovered even without imposition of anti-dumping measures. This claim was not further substantiated. No convincing reasons were given why the continuous decrease experienced throughout the period considered should be reversed without imposition of anti-dumping duties, in particular given the high undercutting margins of Chinese exports found of over 25 %, as explained in recital (232) of the provisional Regulation and confirmed by recital (224). Therefore, this claim was rejected.

(243) The same importer made further comments relating to the issue discussed at recital (316) of the provisional Regulation. The importer repeated its allegation that the Union industry was abusing its allegedly dominant position on the market. European Aluminium commented that such allegations were frivolous. The allegations are primarily within the competence of DG COMP, which confirmed, following provisional disclosure, that no cases of the nature claimed exist. However, the Commission would like to point out that the Union industry is comprised of over 200 producers. The Commission maintains its view that the importer has not provided any analysis or evidence to support these allegations, or to explain their relevance within the context of the basic Regulation. These claims were, therefore, rejected and the conclusions in Sections 4.6 and 4.7 of the provisional Regulation are confirmed.

(244) Following the final disclosure, Airoldi submitted a document described as a newspaper article showing that a representative from a Union producer had commented on competition issues on the Union market. In addition other importers and Haomei Group commented that the measures would strengthen certain Union producer's dominant position on the Union market. With regard to this alleged newspaper article, it should firstly be stressed that the document supplied is in reality a company promotional material (being presented as 'promotional information'). Moreover, the Union producer in question did not comment on competition issues in general but rather on the very special products that it produces, according its own promotional material. Given the very limited scope of the affirmation and the type of publication, the Commission therefore considers that neither the alleged newspaper article nor the unsubstantiated claim of the importers and Haomei Group should affect its conclusions reached in the previous recital.

(245) Also following final disclosure, Haomei Group commented on the injury suffered by the Union industry using their own research into the profitability of four Union producers. Haomei Group commented that their research demonstrated that the Union industry was more profitable than was portrayed by the Commission in Table 10 of the provisional Regulation. However, the data provided in Haomei Group's submission related to the total profitability of the companies selected by them and therefore does not relate to the product under investigation. Furthermore, the Commission's sample was selected in accordance with Article 17 of the basic Regulation in February 2020. No comments were received by Haomei Group at that stage. Bearing in mind the requirements of Article 17 and the fact that Haomei Group's data does not relate solely to the product under investigation, the Commission rejects this claim.

4.6. **Claims on the methodology for assessing material injury**

(246) An importer and the GOC commented on the methodology used by the Commission to assess material injury. The claim made argued that the injury analysis was flawed because many indicators show a positive development and it was claimed that the Commission relied on only certain indicators to support its conclusion. It was also claimed that several injury factors were evidence of no injury to the Union industry because the trends were not negative. However, these claims were based on assessing indicators on an individual basis, not taking the context – such as

increasing demand and increasing costs – into account. The claims were rejected as the provisional conclusion on injury was based on an assessment of all indicators and no one of those indicators necessarily gave decisive guidance. As already described in recitals (271) to (274) of the provisional Regulation, confirmed herein, while certain indicators did indeed show a positive development it was adequately substantiated how the finding of material injury was reached taking into account all injury indicators.

(247) Airoldi and O. Wilms claimed, following final disclosure, that the Commission had changed its findings on injury in order to reflect the reduction of imports under code CN 7610 90 90 as described below. It was claimed that injury at the provisional stage was mainly justified by volume indicators and that at the final disclosure this had changed so that injury was mainly felt in respect of price indicators. However recitals (271) to (274) of the provisional Regulation concentrate on the price injury suffered by the Union industry. Furthermore, recital (280) of the provisional Regulation explained how material injury had occurred when some parties considered Chinese import quantities and market share to be limited. The provisional Regulation indicated that the dimension of imports from China would be further investigated – this is part and parcel of any trade defence investigation, which refines its conclusions as it advances, allowing for a sound appreciation of the facts definitively established. Having completed this process, its conclusions confirm the outcomes highlighted in the provisional Regulation. The Commission can thus not accept the claim that it changed its approach.

(248) Also following final disclosure O. Wilms commented on developments in respect of volumes sold on the Union market by Chinese, Turkish and Union producers. As the Union industry had increased sales, O. Wilms contested the fact that the Union industry had suffered injury. A similar argument was also raised by Haomei Group. However, as explained at section 4.7, the finding of material injury derives mainly from price suppression and its impact on the performance indicators. Furthermore, despite the modest increase in sales volume on the Union market, the Union industry lost market share over the period considered.

(249) Also following final disclosure Haomei Group contested the injury suffered by the Union industry on the grounds that the price comparisons performed by the Commission were inappropriate. In particular, Haomei Group claimed in its submission that Haomei Group never harmed the Union aluminium industry as the prices of the two exporters were aligned when not superior to the ones of the European competitors. This affirmation cannot be accepted. The investigation has shown that when performing a comparison on a product type basis, the prices of these exporters were undercutting the Union industry ones by a significant margin, therefore resulting not only aligned but sensibly lower. Haomei Group also suggested using importer prices as a source for the price comparisons. However, as mentioned at recital (234) of the provisional Regulation, the Commission based its price comparisons on an objective basis using a detailed methodology and calculations which were disclosed to Haomei Group. This methodology compared products on a type for type basis using several objective criteria and was therefore the most representative method available to the Commission. The Commission therefore rejects the claim that this comparison was inappropriate and also the claim that this methodology distorted the injury assessment.

4.7. **Conclusion on injury**

(250) The import figures for the country concerned were revised and their impact on consumption and market shares and the conclusion on injury was reassessed at the definitive stage.

(251) The trend in import volumes showed an increase of 49 %. The market share of these imports increased by 41 % over the period considered. The market share of the Union industry also showed a significant decrease (– 4 %).

(252) It should be pointed out that the key indicators, which demonstrate the injury in this investigation would remain injurious even if Chinese imports would be assessed excluding CN Code 7610 90 90.

(253) Taking the revised findings into account together with the other unchanged injury indicators detailed in the provisional Regulation, it was definitively confirmed that the Union industry suffered material injury in the investigation period. This situation was primarily caused by injurious prices which have significantly undercut those of the Union industry, suppressed prices on the Union market and prevented sufficient price increases. This impact was exacerbated by the fact that significant Chinese imports have increased in absolute terms and gained market share substantially over the period considered. The Union industry is in the process of adapting to changes in the Union market where increasing investments are vital to ensure its long term survival. However, the low profitability, which is the result of the suppressed market prices, is clearly too low to generate the funding of such investments. This jeopardises the long term future of the industry which employs around 40 000 direct employees and many more indirectly in the aluminium supply chain.

(254) On the basis of the above and in the absence of any other comments on the issue, the conclusion of the situation of the Union industry as described in recitals (271) to (274) of the provisional Regulation was confirmed.

5. INJURY BASED ON EU-27 DATA

5.1. General

(255) Reference is made is made to recital (35).

5.2. Definition of the Union industry and Union production

(256) Regarding the definition of the Union industry, the fact that an association representing Union producers also contains members from non-EU countries does not impinge upon the *locus standi* of such an association to represent Union producers nor the representativeness thereof in line with Article 4 of the basic Regulation. It is also recalled that Union producers have issued specific powers of attorney to European Aluminium to represent their interests in the current proceeding. For this reason, claims made by Airoldi after additional final disclosure questioning the standing of Union industry, which has been further rebutted by European Aluminium by stating that its capacity to represent the Union industry has been on file since the beginning of the investigation, cannot be accepted.

(257) The information on file further indicates that production of the like product in the UK is lower than 3 % of the EU-28 total. Complainants, which do not produce in the UK, thus continue to meet the criteria of Article 5(4) of the basic Regulation.

(258) Excluding producers in the UK, the like product was manufactured by around 200 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

5.3. Imports from the country concerned under CN Code 7610 90 90

(259) Excluding imports into the UK, the figures for CN Code 7610 90 90 are as follows.

Table 1bis

Import from China under CN code 7610 90 90 – EU-27 basis

	2016	2017	2018	Investigation period
Full CN code volume (tonnes)	93 325	124 799	131 545	142 371
Full CN code price per tonne	2 912	2 739	2 722	2 867
Product concerned volume (tonnes)	15 534	20 773	21 896	23 697

Product concerned price per tonne ([31])	3 204	3 203	3 359	3 475
Not product concerned volume (tonnes)	52 038	69 588	73 349	79 386
Unclear volumes (tonnes)	25 753	34 439	36 300	39 288

Source: Eurostat and National Customs ([32])

(260) Following the additional final disclosure Airoldi repeated its claim that the methodology for obtaining imports data from the national customs authorities for CN code 7610 90 90 and adding it to the other imports from China was not explained. European Aluminium responded that this methodology was very clear to them. Following the additional final disclosure, Haomei Group requested that the data used by the Commission in establishing the Chinese imports would be submitted to them. With regards to Eurostat data, these figures are public. With regards to the figures provided to the Commission by customs authorities of Member States, it should be recalled that exchanges of information between Member States and the Commission are confidential, according to Article 19(5) of the basic Regulation. As concerns the explanation of the approach used, the Commission recalls the explanation of its approach at recitals (203) to (219) and the relevant footnotes, which apply mutatis mutandis to the EU-27 analysis.

(261) Airoldi associated itself with Haomei Group's aforementioned submission and reiterated its own claim. It is recalled that a submission in reaction to another party's submission cannot be used to propose new elements or requests. At any rate, the substantive responses in the previous recital apply. It is further recalled that the Commission has explained repeatedly to the company how imports were calculated and verified, and reiterates that its claims are unfounded not least as no evidence has been presented to rebut the conclusions of the Commission's analysis.

5.4. **Volume, market share and price of the imports from the country concerned**

(262) Accordingly, and on the basis described above, imports from the country concerned developed as follows:

Table 2bis

Import volume (tonnes) and market share – EU-27 basis

	2016	2017	2018	Investigation period
Imports under 8 CN codes ([33])	82 001	87 403	108 739	128 853
Total volume of imports from China	97 535	108 176	130 635	152 551
Index (2016 = 100)	*100*	*111*	*134*	*156*
Market share of China (%)	3,4	3,5	4,1	5,0
Index (2016 = 100)	*100*	*104*	*122*	*148*

Source: Eurostat (see also Table 1 and Table 4 on consumption)

([31]) The prices of the product concerned for the investigation period were obtained from National Customs data. These prices were 11 % higher than the price for the 5 CN codes. This difference was used to set the price for the years 2016 to 2018.

([32]) Data based on imports reported by 7 Member States representing 83 % of imports during the investigation period. Volumes extrapolated to imports for all Member States.

([33]) The 8 CN codes are: ex 7604 10 10, ex 7604 10 90, 7604 21 00, 7604 29 10, 7604 29 90, ex 7608 10 00, 7608 20 81 and 7608 20 89.

(263) Also on the basis of the adjusted import volumes, significant levels of imports in both relative and absolute terms, reaching 5 % of market share in the investigation period, can be observed. In absolute figures, imports from the country concerned increased by 56 % during the period considered. In parallel, the total market share of the dumped imports increased by 48 % during the period considered.

(264) Even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, import volumes would remain significant, accounting for 4,2 % market share in the investigation period, and increasing by 57 % since 2016.

Table 3bis

Import prices (EUR/tonne) – EU-27 basis

	2016	2017	2018	Investigation period
Prices under 8 CN codes ([34])	2 987	3 110	3 127	3 142
Weighted average prices of imports from China	3 038	3 173	3 183	3 193
Index (2016 = 100)	*100*	*104*	*105*	*105*

Source: Eurostat and National Customs Authorities

(265) The adjusted prices demonstrate similar price trends as previously disclosed, confirming the same conclusions.

(266) If volumes under CN Code 7610 90 90 were totally excluded from the analysis, average import prices would be lower and would follow a similar trend over the period considered.

(267) Following the methodology previously disclosed, the undercutting margins excluding imports to the UK amount to 23,6 %, confirming the previously disclosed conclusions.

(268) Following the additional final disclosure Airoldi commented that importers, including Airoldi, have not imported extruded products under code CN 7610 90 90 and that the Commission has not asked importers for clarification on this code. While this comment was late and disregards the Commission's definitive assessment on the calculation of imports under this code, the Commission requested cooperation from all parties at recital (223) of the provisional Regulation. Therefore, these claims were rejected.

(269) Following the additional final disclosure, Airoldi commented that the average prices of Chinese imports under CN code 7610 90 90 increased as a result of the reassessment of the case on a EU-27 basis. The Commission confirmed that this is the result of the exclusion of UK sales from the figures.

(270) Following the additional final disclosure, Haomei Group commented that certain aspects of the methodology for injury calculations including the source of data were not clear to them. The Commission confirms that the methodology for the injury calculations was disclosed to Haomei Group at the provisional and definitive stages of the investigation. At the additional final disclosure stage it was explained that the same methodology for the injury calculations had been applied except that UK data had been removed. The Commission therefore considered that its clear methodology has been fully explained. In addition, such points should have been raised at the provisional stage rather than following the additional final disclosure.

5.5. **Union consumption**

(271) Union consumption figures were revised as a consequence of the revision to import volumes from the country concerned explained above and revised import volumes from other third countries into the EU-27. On this basis, the Union free market consumption developed as follows:

([34]) Same as above.

Table 4bis

Union consumption (tonnes) (*) – EU-27 basis

	2016	2017	2018	Investigation period
Total Union consumption	2 965 810	3 167 207	3 251 443	3 123 439
Index	*100*	*107*	*110*	*105*
Captive market	61 338	60 455	60 143	56 640
Index	*100*	*99*	*98*	*92*
Free market consumption	2 904 472	3 106 752	3 191 300	3 066 799
Index	*100*	*107*	*110*	*106*

(*) given the low impact of sales to the UK – as described below – the Union consumption is partially based on figures from EU-28, which are considered representative for EU-27.
Source: European Aluminium and Eurostat

(272) During the period considered, the Union free market consumption increased by 6 %.

(273) Even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, consumption would have been at very similar levels and would also increase, confirming the previously disclosed conclusions.

(274) After the additional final disclosure, Airoldi claimed that the Commission did not explain the basis for the determination of the captive market. With respect to this claim, the Commission's findings relating to the captive market were already shown in the provisional findings (recital (248) of the provisional Regulation). This comment is moreover well out of time as it should have been raised within the deadline for comments on the provisional findings. The claim is rejected.

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

5.6.1. *Macroeconomic and microeconomic indicators*

(275) The market share of free market sales of the Union industry developed as follows as a result of the revision to imports from the country concerned mentioned above, and the revised consumption figures stated in Table 4.

Table 5bis

Market share (*) – EU-27 basis

	2016	2017	2018	Investigation Period
Union industry share of free market sales (%)	88,4	86,6	86,4	85,4
Index (2016 = 100)	*100*	*98*	*98*	*97*

(*) given the low impact of sales to the UK – as described below – the market share of the Union industry is partially based on figures from EU-28, which are considered representative for EU-27.
Source: European Aluminium and Eurostat

(276) Although the market share of the Union industry was reassessed at a slightly higher level in the period considered, the market shares still decreased by 3,0 percentage points.

(277) Even if the volumes under CN Code 7610 90 90 were totally excluded from the analysis, the market share of the Union industry would have been at very similar levels and would decrease, confirming the previously disclosed conclusions.

(278) On the basis of the confirmed information provided by Union producers and already on file, sales volumes by the Union industry to the UK market were assessed at around 2 % of the total sales in the EU-28. Such a volume could not have any material impact on economic indicators of the Union industry. Therefore, all other previously disclosed indicators in Section 6 above are also representative for the EU-27 and are confirmed, as are the conclusions derived therefrom.

(279) Following the additional final disclosure Airoldi commented that the Commission should have obtained a new set of EU-27 data from the Union industry in order to perform its EU-27 injury analysis, as it had done in another trade defence investigation. However, this was not necessary as the information on file already allowed for an EU-27 analysis, as explained above. This was confirmed by European Aluminium, which replied to Airoldi's claim by pointing out that producers in the UK represented less than 3 % of production, that Union industry business activity in the UK was low, and that therefore any impact on injury indicators was minimal. This claim was therefore rejected.

(280) Following the additional final disclosure Airoldi and Euranimi commented that the Union industry market share, being over 85 % in the investigation period was not an injurious indicator. These parties referred to a Judgment of the Court of Justice of the European Union of 4 February 2021 in Case C-324/19, Eurocylinder Systems AG which they claimed implied that injury could not exist with such a market share. Haomei Group also commented on this point, claiming that, according to several Court cases, the market share of 85 % would impede an injury determination. However, Case C-324/19 concerned the threat of injury and the assessment of the factors that determine it. In this case, it is recalled that the determination of injury relates mainly to price effects, as explained in recital (252), a fact that is not altered by the very limited changes in market shares, which in any event dropped by 3 % for the Union industry over the period considered. This claim was therefore rejected.

(281) Following the additional final disclosure Airoldi commented that the Union industry production had increased and that its share relative to consumption had also increased. Airoldi claimed this demonstrated a lack of injury. The arguments in the preceding recital are recalled. In addition, as explained at recital (242) of the provisional Regulation although Union production increased by 2 % over the period considered the Union industry lost share relative to consumption. This claim was therefore not accepted.

(282) Following the additional final disclosure Airoldi repeated its claims referenced in recitals (235) and (236) without providing any additional evidence, which were thus rejected for the substantive reasons mentioned in the aforesaid recitals.

(283) Following final disclosure Airoldi further commented on the fact that the LME is located outside the Union, and should not be used as a source of reference for aluminium prices. The same arguments as in recital (232) apply, and the claim is not accepted.

5.7. **Conclusion on injury on an EU-27 basis**

(284) Therefore, on the basis of the information on file on an EU-27 basis the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

6. **CAUSATION BASED ON EU-28**

6.1. **Effect of dumped imports**

(285) The effect of dumped imports was described in Section 5.1 of the provisional Regulation. Several interested parties claimed that the injury could not be attributed to the dumped imports from the country concerned and that other factors were attenuating the causal link. Some of the claims were a mere reiteration of the claims already discussed in the provisional Regulation without any new elements. The comments not previously raised are analysed below together with an assessment of additional data collected after the provisional disclosure, where appropriate.

(286) As a result of the revision of imports from the country concerned described in recitals (202) to (216), the consumption and the market shares of the Union industry and imports from the country concerned were revised. The Chinese market share increased from 4,4 % to 6,2 % (instead of 6,9 % to 9,6 % as in Table 2 of the provisional Regulation) whilst the Union industry market share on the free market decreased from 87,6 % to 84,4 % (instead of

85,1 % to 81,1 % as in Table 5 of the provisional Regulation). Consequently, these Tables of the provisional Regulation were amended accordingly. The impact of such changes had little or no impact in terms of the trends or the significant level of imports, as after the revision, inter alia, the import volume from the country concerned actually increased 49 % (instead of 48 %), and the trend of its market share increases from 41 % (instead of 39 %). Therefore, the revised import and market share figures did not materially affect the causation analysis described at recitals (276) to (283) of the provisional Regulation.

(287) Certain importers claimed that only a minor part of Chinese worldwide exports were sold to the Union market (only 13 %) and that the Chinese imports were easily absorbed onto the Union market without causing injury. However, this comment focused on certain volume issues, and ignored the fact that the most important part of the injury suffered by the Union industry was price related, due to the significant price pressure exercised by these low-priced imports which undercut the prices of the Union industry by more than 25 %. These importers also claimed that Chinese imports grew only at the expense of imports from third countries. This argument is factually incorrect, as shown by Table 6 below. In addition, the information in Table 4 clearly demonstrates that the Union industry has also suffered volume injury and has lost market share over the period considered to the dumped imports from the country concerned. These claims were therefore rejected.

(288) Following final disclosure Haomei Group contested the injury suffered by the Union industry on the grounds that imports from all sources had not increased over the period 2017 to 2020. However, it is recalled that the Commission's assessment of injury is heavily axed on prices. In addition, this investigation has shown that the Union industry market share has fallen over the period considered (2016-2019). Over the same period imports from China increased both in absolute terms and in respect of market share. Taking these issues into account, and the fact that Haomei Group's assessment of volumes covered all imports, and was not restricted to the period considered, the Commission rejects the argument made.

6.2. **Effect of other factors**

6.2.1. *Imports from third countries*

(289) Imports from third countries developed as follows over the period considered.

Table 6

Imports from third countries

		2016	2017	2018	IP
Turkey	Volume tonnes	77 041	87 632	107 392	110 452
	Index	*100*	*114*	*139*	*143*
	Market share %	2,6	2,8	3,3	3,6
	Index	*100*	*106*	*126*	*135*
	Average Price	3 519	3 599	3 569	3 448
	Index	*100*	*102*	*101*	*98*
Other third countries	Volume tonnes	156 278	213 999	191 673	181 402
	Index	*100*	*137*	*123*	*116*

	Market share (%)	5,3	6,8	5,9	5,8
	Index	*100*	*128*	*111*	*110*
	Average Price	3 197	3 126	3 398	3 489
	Index	*100*	*98*	*106*	*109*
Total of all countries excluding the country concerned	Volume tonnes	233 319	301 631	299 065	291 854
	Index	100	129	128	125
	Market share (%)	8,0	9,6	9,3	9,4
	Index	*100*	*120*	*116*	*118*
	Average Price	3 304	3 264	3 459	3 473
	Index	*100*	*99*	*105*	*105*

Source: Eurostat ([35])

(290) The import volumes of third countries changed slightly due to the aforementioned statistical revisions. The market share of these imports was also affected as a result of the revision to imports from the country concerned described at the recitals (202) to (213). However, these changes were minor and had even less impact in terms of the trend. The third country market share after revision increased from 8,0 % to 9,4 % (instead of 8,0 % to 9,3 % in Table 11 of the provisional Regulation). Therefore, such minor changes to the imports and market share figures of third countries did not materially affect the causation analysis described at recitals (284) to (288) of the provisional Regulation.

(291) Carl Prinz commented on recital (286) of the provisional Regulation stating that in their experience of prices in 2020, prices from Turkey were not significantly higher compared to the country concerned. However, this information related to information subsequent to the investigation period, and no information concerning the investigation period was provided. In addition no evidence has been submitted to show that the analysis in recital (286) of the provisional Regulation was incorrect.

(292) Taking into account the revised data shown at Table 6 and after analysing the comments received relating to recitals (284) to (287) of the provisional Regulation, the Commission confirms the conclusion of the impact of imports from third countries at recital (288) of the provisional Regulation.

(293) As noted in recital (203), even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, the import volumes from other third countries would not change and there would be only minimal changes to their market shares. The conclusion on causation by imports from third countries in the provisional Regulation is unaffected and therefore confirmed.

(294) Following final disclosure, Airoldi commented that the previous recital defied logic. However, it was unclear why Airoldi had reached this conclusion. The Commission's assessment that the impact of imports from third countries would continue to be injurious if imports under the CN code in question were not taken into account is valid. This is because the absolute volume of imports from third countries would be unaffected and their market share would change only minimally. Therefore the Commission confirms its analysis.

([35]) The Eurostat data were extracted in November 2020 and therefore contain small differences to the data presented in the provisional Regulation.

6.2.2. *Impact of consumption*

(295) The revised figures relating to consumption at recitals (226) to (228) had no material impact on the conclusion reached at recital (294) of the provisional Regulation. As noted in recital (203), even if the volumes under CN Code 7610 90 90 were totally excluded from the analysis, consumption on the free market would have been at very similar levels and would increase by 6 %. The conclusion in recital (294) of the provisional Regulation is therefore confirmed. In its comments after final disclosure, Airoldi claimed that the reasoning of this recital 'defies any logic' as it relies in an unjustified manner upon the importance in quantitative terms of imports of products classifiable in such a code. With respect to this comment, the Commission notes that the reasoning above highlights (to the contrary) that even *not* relying on the products imported under this code (which is not the appropriate method as this code also includes a meaningful proportion of product concerned), the injury findings would not be affected.

6.2.3. *Impact of costs in the Union*

(296) Airoldi also made a claim that the high investment costs reported at Table 10 of the provisional Regulation caused injury to the Union industry. The Commission's conclusion on investments was that they were required at increasing levels to stay relevant on the market. The investments were required to increase efficiency and provide greater customer focus in the light of the market's demand for more value added solutions. Recitals (332) to (340) of the provisional Regulation discussed how important high levels of investment are to the future of the Union industry. The Commission rejected the claim as misguided and unsubstantiated.

(297) The GOC cited a Reuters report of January 2014 that labour and environmental laws in the Union as well as high energy costs make the production of raw metals, like aluminium in the Union almost unprofitable. However, this claim related to the production of aluminium as a raw material. The claim could not be accepted, bearing in mind that this report does not relate to the Union industry which is a downstream industry, and it does not take into account developments in the Union aluminium industry in the period considered.

6.2.4. *Impact of sales to distributors*

(298) Airoldi claimed that the sales performance of the Union industry was affected by a business decision to stop selling to distributors. However, it was clear from the data collected in the questionnaire responses of the sampled Union industry that they had not stopped sales to distributors in general. In fact, the Commission found that Union sales to distributors had decreased due to price pressure by dumped Chinese imports. Furthermore, the questionnaire reply of Airoldi, who acts as an importer and a distributor, showed that they purchased significant quantities from the Union industry. This claim was, therefore, rejected.

6.3. **Conclusion on causation**

(299) The revision of import volumes from the country concerned meant that the conclusion on causation had to be reassessed at the definitive stage of the investigation. The revised import volumes and market shares on the Union market described above did not have any material impact on the causation analysis and an even smaller impact when examining the trends. The same applies should CN Code 7610 90 90 be excluded altogether.

(300) At recitals (280) to (282) of the provisional Regulation, the Commission explained how Chinese imports, having a much smaller market share than the Union industry, not only had penetrated the Union market, increasing their market share steadily to cause volume injury but, more seriously, had suppressed market prices and caused the Union industry to make reduced and inadequate profit levels throughout the period considered. These recitals remain valid at the levels of Chinese imports in both absolute and relative terms shown in Table 2 above, and, *arguendo*, if CN Code 7610 90 90 were excluded altogether.

(301) Furthermore, none of the comments made by interested parties altered the assessment of the factors made at the provisional stage and no valid comments were made following the imposition of provisional measures which could explain the material injury to the Union industry established in this investigation.

(302) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the other factors examined at provisional stage as well as at definitive stage was capable of having any relevant impact on the injurious situation of the Union industry. Thus, none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (302) and (303) of the provisional Regulation.

7. **CAUSATION BASED ON EU-27**

7.1. **Effect of dumped imports**

(303) As a result of the aforementioned revisions, the consumption and the market shares of the Union industry and imports from the country concerned were revised. The Chinese market share increased from 3,4 to 5 % whilst the Union industry's market share on the free market decreased from 88,4 % to 85,4 % during the period considered. The changes from EU-28 to EU-27 analysis had little or no impact in terms of the trends or the significant level of imports, as after the revision, inter alia, the import volume from the country concerned actually increased by 56 %, and the trend of its market share increased by 48 %. Therefore, the revised import and market share figures did not materially affect the attribution analysis previously disclosed.

7.2. **Effect of other factors**

7.2.1. *Imports from third countries*

(304) Imports from third countries developed as follows over the period considered.

Table 6bis

Imports from third countries to EU-27

		2016	2017	2018	IP
Turkey	Volume tonnes	73 187	84 678	103 888	106 702
	Index	*100*	*116*	*142*	*146*
	Market share (%)	2,5	2,7	3,3	3,5
	Index	*100*	*108*	*129*	*138*
	Average Price	3 475	3 595	3 569	3 439
	Index	*100*	*103*	*103*	*99*
Other third countries	Volume tonnes	165 749	222 898	199 778	188 546
	Index	*100*	*134*	*121*	*114*
	Market share (%)	5,7 %	7,2 %	6,3 %	6,1 %
	Index	*100*	*126*	*110*	*108*
	Average Price	3 438	3 353	3 684	3 760
	Index	*100*	*98*	*107*	*109*

Total of all countries excluding the country concerned	Volume tonnes	238 937	307 576	303 666	295 248
	Index	*100*	*129*	*127*	*124*
	Market share (%)	8,2	9,9	9,5	9,6
	Index	*100*	*120*	*116*	*117*
	Average Price	3 449	3 420	3 644	3 644
	Index	*100*	*99*	*106*	*106*

Source: Eurostat

(305) The import volumes from third countries changed slightly due to the aforementioned revisions. The market share of these imports was also affected as a result. However, these changes were minor and had even less impact in terms of the trend. The third country market share after revision increased from 8.,2 to 9,6 %.These minor changes do not materially affect the causation analysis as previously disclosed.

(306) Even if volumes under CN Code 7610 90 90 were totally excluded from the analysis, the import volumes from other third countries would not change and there would be only minimal changes to their market shares. The conclusion on causation by imports from third countries is unaffected and therefore confirmed.

(307) Following the additional final disclosure Haomei Group commented that the market share of imports from China had simply increased to the detriment of imports from third countries, rather than having an impact on Union industry market share. However, this claim is factually incorrect, and could not be accepted, bearing in mind that the Union industry market share has fallen by 3 % as shown in Table 5bis.

(308) Following the additional final disclosure Haomei Group and Airoldi commented that the Chinese market share and import volumes had reduced on an EU-27 basis to such an extent that the situation could not have been injurious to the Union industry, and that, conversely, the market share of the Union industry remained above 85 % in the IP. Reference is made to recitals (201) and (280) and to Table 5bis above. Moreover, the fact that, the import volumes in absolute terms are lower in this final determination than estimated in the complaint and at provisional stage, reflects the very nature of trade defence investigations, which as they advance refine their analysis as information from parties is progressively gathered, processed and verified. Indeed, the foregoing does not have any impact on the rate of growth of the imports, which remains significant. Indeed, it should be recalled that the market share of the Chinese imports had increased by 48 % over the period considered and the small reduction in Chinese market share does not impact materially on the injury found, not least in view of the price injury elements mentioned at recital (253). This claim was therefore rejected.

(309) Also following the additional final disclosure Haomei Group commented, using data extracted from the Consolidated Hydro Group Annual Reports, that the market share of the Hydro Group had increased. However, the market share of Union producers fell over the period considered as shown in Table 5bis above. The market share of individual Union producers or groups of producers is not a relevant issue to this causation analysis. This point was therefore rejected.

7.2.2. *Impact of consumption*

(310) The revised figures relating to consumption had no material impact on the conclusion previously disclosed. Even if the volumes under CN Code 7610 90 90 were totally excluded from the analysis, consumption on the free market would have been at very similar levels and would increase. The conclusions previously disclosed are therefore confirmed.

7.3. **Conclusion on causation**

(311) All other aspects previously disclosed being equally applicable in the EU-27 context, the conclusions on causation as previously disclosed are confirmed.

8. **UNION INTEREST BASED ON EU-28**

(312) The additional remote cross-checks mentioned in recital (13) provided a useful opportunity to further examine the relevant Union interest issues.

8.1. **Interest of the Union industry and suppliers**

(313) Four suppliers of aluminium in the Union showed their support to the imposition of the measures. These comments were supported by European Aluminium, which pointed out that the almost 30 % of the output of these suppliers was sold to the Union industry for use in the manufacture of the product under investigation. It was, therefore, evident that the outcome of the investigation will have a positive impact also on the entire aluminium value chain within the Union.

(314) In addition to that, according to an OECD study ([36]), aluminium producers in the Union use more recycled raw materials and more sustainable production methods than Chinese ones. In particular, while Europe is one of the leaders of recycling of aluminium, with a high share of recycled material, China relies mainly on the production of primary aluminium, which is a very energy intensive activity. For this reason, the environmental record of European producers would allow the Union to move more decisively towards the goal of a clean and circular economy, as indicated in the Commission Communication on a European Green Deal ([37]).

(315) Following final disclosure O. Wilms disputed the relevance of the abovementioned recycling issue to this investigation. However, the Commission considers that recycling of aluminium is relevant to the European Green Deal.

(316) Following final disclosure Alstom and UNIFE commented that the Union industry would not benefit from the measures (imposed on the rail transport industry) because such imports are only a small part of the product concerned (estimated by UNIFE at around 1,3 %). However, the Commission considers that bearing in mind that some Union producers sell significant quantities into this sector that such producers would indeed benefit from the imposition of measures, not least as in the absence of unfair trade they would be likely to expand their sales to this sector.

(317) In the absence of other comments regarding the interest of the Union industry, the conclusions set out in recitals (305) to (309) of the provisional Regulation are confirmed.

8.2. **Interest of unrelated importers**

(318) Reference is made to recital (9) where two importers came forward following provisional disclosure to make comments. In the provisional Regulation, it was indicated that the unrelated importers who submitted a sampling form in order to cooperate with the investigation represented around 2 % of imports from China. Following the provisional Regulation, two more importers came forward, when the sampling exercise was already closed, without submitting a questionnaire response. As a result of the corrected level of imports from China referred to in recital (208), the percentage of imports represented by the unrelated importers submitting imports volumes in the sampling form is 3,6 %.

(319) One importer, Airoldi, claimed that there was a difference between hard and soft alloy producers in the Union, and that on the hard alloy part of the market there would be a risk of shortage and of high prices, as shown by longer waiting times for purchases in the Union market. European Aluminium underlined that the Union industry was committed to the hard alloy market, and identified several producers that have invested heavily in the production of

([36]) OECD (2019), 'Measuring distortions in international markets: the aluminium value chain', OECD Trade Policy Papers, No 218, OECD Publishing, Paris. (available at: http://dx.doi.org/10.1787/c82911ab-en).

([37]) Communication from the Commission, 'The European Green Deal', COM(2019) 640 final.

hard alloys, giving the example of the extrusion presses recently installed by four Union producers. European Aluminium further noted that, even without these extra supply options, there was fierce competition between the EU producers and sufficient freely available capacity.

(320) The Commission examined the issue of hard and soft alloys, whose distinction is a commercial simplification based mainly on the chemical composition of the aluminium alloy. The investigation showed that several Union producers produce both types of alloys. Secondly, the evaluation of the examples of waiting times provided by the importer might reflect the particular business circumstances and negotiations between the parties and did not indicate a consistent pattern of disruptive waiting times in the face of measures. While it is possible that for some more sophisticated products the availability of producers and products would be lower than for more standard extrusions, it is nonetheless considered that the potential disruptions would only be temporary and the existence of the measures would give the Union producers the opportunity to invest in meeting the demand, without the risk of being undercut by unfairly low priced imports.

(321) The same importer also argued that the existence of autonomous tariff quotas ([38]) and tariff suspensions ([39]) for some limited products would constitute evidence of the shortage of supply of these products in the European market. In this respect, the granting of these tariff suspensions does not appear to be the consequence of a shortage of supply but rather the result of a process in which European Aluminium did not take part. Indeed, during the investigation period the total volume of imports from the country concerned under the existing tariff suspensions and quotas only accounted for around 1 % of imports of the product concerned, and less than 0,1 % of Union consumption. Therefore, the relevance of the products benefitting from these measures, as compared to the overall interest of businesses in the Union, is minimal. Also, the number of European producers (more than 200) and the available unused capacity of the Union industry (about one third of the installed capacity), indicate that after the impact of unfairly low prices is removed from the market, the Union producers would have the incentive to serve these niche applications.

(322) The same importer also claimed that the Commission was not entitled to perform a 'negative' Union interest test and conclude, as in recital (329) of the provisional Regulation, that no compelling reasons existed to decide that it was not in the Union interest to impose provisional measures on imports of the product concerned. Moreover, the same party claimed that the Commission did not properly consider that the importer introduced the product concerned on the Union market, as opposed to importers selling the relevant products to third countries, and failed to put in balance this interest *vis-à-vis* other European parties. With respect to this argument, the investigation has shown no evidence of importers further re-exporting the product concerned to third countries. In addition, the Union interest test under Article 21(1) of the basic Regulation is inherently a negative test, and that all the relevant interests in the Union have been considered in performing such test in this case.

(323) Concerning the impact of the measures on the importers, the remote cross-check mentioned in recital (13) confirmed the provisional determinations. One importer claimed that it never reported the profit margin mentioned at recital (317) of the provisional Regulation, that the passing on of the duty to the users would be detrimental to the users interest and that the initiation of the investigation on the side of the complainants constituted an abuse of rights with a view to strengthen an oligopoly in the market. With regards to the profit margin, the investigation confirmed that the profit margin mentioned at recital (317) of the provisional Regulation was the appropriate one when considering resales of product concerned in the Union. Furthermore, while the interest of the users is considered in the relevant section of the present Regulation, as already affirmed at recital (316) of the provisional Regulation, no evidence has been provided proving the existence of abusive oligopolies nor

([38]) See Council Regulation (EU) 2019/2220 of 19 December 2019 amending Regulation (EU) No 1388/2013 opening and providing for the management of autonomous tariff quotas of the Union for certain agricultural and industrial products (OJ L 333, 27.12.2019, p. 33) disposing for two autonomous tariff quotas of (i) 2 000 tonnes on aluminium alloy rods with a diameter of 200 mm or more, but not exceeding 300 mm; and of (ii) 1 000 tonnes on Aluminium alloy rods with a diameter of 300,1 mm or more, but not more than 533,4 mm.

([39]) See Council Regulation (EU) 2019/2197 of 19 December 2019 amending Regulation (EU) No 1387/2013 suspending the autonomous Common Customs Tariff duties on certain agricultural and industrial products (OJ L 335, 27.12.2019, p. 1) and following.

of anticompetitive behaviour. In addition, no relevant investigation is ongoing. At any rate, the number of seven suppliers for certain products is not particularly low in these circumstances, especially bearing in mind that some producers were large and had spare capacity.

(324) Following the imposition of provisional measures, several unrelated importers came forward and were heard individually and/or were granted a joint hearing. In the framework of these hearings, the arguments raised were the lack of sufficient supply in the Union market, especially in hard alloy products, as well as the high level of the provisional duty rates, which makes the imports no longer commercially viable. As explained in recital (321), the argument on insufficient supply cannot be accepted. Concerning the price levels prior to the imposition of the measures, the unfairly low prices practiced by the Chinese exporting producers created ample possibility of resales for the importers, as the high profit margins of the sampled importers demonstrate, which significantly exceed the profit margins achieved by the Union industry. However, as the investigation found that these prices are the result of unfair dumping practices, the access to products at these prices cannot be considered a normal market situation.

(325) Another importer, O. Wilms, claimed that the imposition of the measures on a product it imports would have significant impact on their customer, who is the user of the product, because of the lack of alternative suppliers in the Union. The importer claimed that the imposition of the measures would risk to cause the relocation of the process carried out by their customer outside of the Union, with the consequent negative impact on the economy and the employment. With respect to this, the argument was not made by the user of the product producing the downstream product, but by the importers supplying the user. As such, the credibility of the claim concerning relocation could not be established. In addition, according to European Aluminium, the Union industry can technically supply all products falling within the scope of the investigation. Moreover, since this user of the product concerned did neither provide a questionnaire reply nor cooperate with the investigation, it was not possible to evaluate precisely the impact of the measures on its business.

(326) Following final disclosure the importer O. Wilms and Haomei Group claimed that the Union industry will not benefit from measures because imports from third countries will replace imports from China. This argument could not be accepted because the measures will remove the price pressure exerted by the Chinese imports and allow the Union industry to increase prices, to invest and to compete under normal market conditions.

(327) Also following final disclosure several importers recalled that their imports consisted mainly of bars and rods under CN code 7604 29 10 for which there is a need in the Union market and that total imports from all sources under this code had decreased over the period 2017-2019. The parties recalled that imports from China had increased only to the extent that they had replaced imports from Russia and that therefore they were not injurious. The Commission recalls its previous comments regarding these issues and further notes that this argument, which relates to only part of the period considered, indicates that imports from China have increased. However, it should be recalled that the Commission's injury and causation analysis has been performed for the product concerned as a whole, irrespective of its customs classification and a partial analysis of one code, whatever its potential findings, is not decisive as to the overall analysis.

(328) The importers also repeated their claim that the prices of imports from China under CN code 7604 29 10 were not injurious and were of a high quality. Again, the Commission wishes to point out that its price comparisons mentioned at recital (224) covered the entire sample of exporting producers using a detailed type by type and transaction by transaction methodology for the investigation period. The Commission confirms, therefore, that its findings on price issues are clear, representative and accurate.

(329) The importers repeated their claim that anti-dumping measures were not required because the geographical remoteness of China was a sufficient barrier to trade. In the light of the volume and price injury findings of this investigation the Commission recalls that the geographical remoteness neither prevented Chinese imports to gain market share nor to sell at prices which severely undercut the prices of Union industry. As a consequence it is only by the imposition of duties that a level playing field can be re-established.

(330) The importers and Haomei Group claimed that the imposition of provisional measures has increased lead times for certain product types and, once Union demand recovers, this will lead to supply problems for certain product types resulting in shortages and higher prices. However, it should be recalled that anti-dumping measures are designed to increase import prices in order to ensure that fair competition is restored. It is inevitable that a degree of market disruption will occur during an initial period. As detailed in recital (320) above, the effect of such potential disruption would not be disproportionate in view of the benefits to be derived from the imposition of measures.

(331) In light of these considerations, the conclusions mentioned at recital (317) of the provisional Regulation concerning the impact of the measures on the importers' business should be maintained.

8.3. **Interest of users**

(332) As mentioned in recital (318) of the provisional Regulation, the product under investigation is sourced by several user industries, mainly building, transport, engineering and for various other applications.

(333) Concerning three important user sectors, namely construction, automotive and engineering, the Commission did not receive any comments following the imposition of the provisional measures.

(334) The Commission however received comments from a number of users who supply products for other applications. These parties highlighted three kinds of potential problems: availability of supply, long lead times for sourcing the products from Union producers and higher prices. Apart from the user Alstom mentioned in recital (337), no other party submitted a reply to the user questionnaire.

(335) Some parties also claimed that, as a result of the additional costs due to the duties, the finished product that they produce, and which uses the product concerned as an input, would suffer additional competition from imported finished products which already include the product concerned at the time of importation, and therefore do not incur anti-dumping duties. This could cause critical negative effects for the companies' activities.

(336) Where the Commission received data making it possible to carry out an analysis of the impact of the duties, this analysis showed that the impact of the duties is likely to be manageable. However, given the different situations and claims submitted by the parties, more details on each claim are provided in the following paragraphs. After final disclosure, an importer contested the use of the word 'manageable' because it considers that the impact on end users and customers cannot be qualified as such. However, as it did not provide any additional elements in support of this claim, the analysis of the following paragraphs should be confirmed.

Rail transport industry

(337) Concerning the rail transport industry, the train manufacturer Alstom claimed that some extrusions would not be sufficiently available within the required lead times if purchased from Union producers, and that it suffered in the past from refusals to supply. In the frame of its submission, Alstom provided confidential excerpts of correspondence with Union producers, in which these producers allegedly refused to supply certain products or to meet certain specifications, or proposed alternative solutions. However, Alstom indicated that at least one Union producer is able to supply the whole range of products it requires. Therefore, already as things stand, this user can source all of its products from Union producers. With respect to the potential long waiting times, measures would allow the Union industry to perform the necessary investments, once unfair pricing competition is removed. While longer waiting times cannot be excluded in some cases, the investigation indicates that this would in all likelihood be limited to an initial period, as the user (re-)builds the necessary technical and business relationship with Union industry, and as the latter undertakes further investment.

(338) The user Alstom further claimed that, if it was to suffer an increase in costs as a result of the measures, the economic impact resulting from it could be extremely negative for its competitiveness on the market for rolling stocks, in particular given the small profit margins in the railway sector.

(339) The availability of products at unfairly low prices cannot be considered a normal market situation upon which to rely. Moreover, the investigation determined that, even if Alstom were to continue sourcing the same proportion of product concerned from the country concerned, the impact of the duties would be well below 1 % of its cost of production of rolling stocks with an aluminium car body and below 0,1 % of the total company turnover. This would neither fundamentally affect the company's profits nor its ability to successfully participate in tenders.

(340) In conclusion, the analysis on the possible impact of the measures on this user allowed the Commission to conclude that this impact would not be disproportionate even in the most unfavourable scenario of having to keep importing the product concerned.

(341) Following final disclosure the Commission also took into account comments from Alstom regarding the impact of measures on the rail transport industry and the Union in general. Alstom pointed out that they may face problems of security of supply because extrusions for car body shells need to be supplied by a single producer.

(342) Moreover, in its confidential submissions, Alstom made claims concerning the fact that the possibility of supply from one Union producer was erroneous because of confidential information related to Alstom's sourcing and relations with the suppliers. Irrespective of the fact that this claim was not reported or summarized in a non-confidential version, from the incomplete anecdotal evidence supplied it was in any case not possible to draw a general conclusion regarding the validity of the claim.

(343) Alstom also claimed that the measures would affect their ability to win public contracts. However, the Commission noted that such contracts are awarded based on several factors, not just on price, and that price impacts would not necessarily be a decisive factor.

(344) Alstom further claimed that the measures would delay the entry into service of an environmentally-friendly mode of mass transportation. This would hamper the Commission's achievement of its goals in the transport sector as Governments would likely delay or cancel investments in rolling stock.

(345) However, bearing in mind the impact assessment mentioned at recital (339)(340), the Commission maintains its position that the imposition of the measures would not exacerbate, to a significant degree, Alstom's security of supply or its ability to win public contracts. Furthermore, the Commission considers that the industry's competitiveness would not be affected under the new fair market conditions which would apply, and therefore, there would be no significant impact on the Commission's goals in the transport sector.

(346) UNIFE pointed out that the railway sector is strategic to achieve the Union's ambition to be climate neutral by 2050 and that the measures would jeopardise the swift entry into service of rail rolling stock made of aluminium due to supply shortages.

(347) However, the Commission maintains that extrusions for the rail industry should either be available from the Union industry or from China (anti-dumping duty paid) and that therefore supply shortages, if any, are not exacerbated by the measures.

(348) UNIFE and Alstom also claimed that there would be severe economic consequences for the rail sector. The main claims were that the measures would jeopardize employment and know-how, and result in a lack of competitiveness as compared to train builders outside the Union. However, the Commission's findings at recital (339) demonstrate that the measures will not have a significant impact on the rail industry. Therefore, the Commission rejects the claim that the measures will have a significant impact on competitiveness and employment.

Market disruption

(349) Several interested parties, who seem to import aluminium profiles from the same exporting producer, submitted comments after the imposition of provisional measures, claiming that the Union market had been disrupted by the provisional measures. These users claimed that the imposition of duties without a transitional period and in the middle of the disruptions caused by the COVID-19 pandemic would hit their business in a significant way and hinder the companies' compliance with contracts already entered into. In particular, they claimed that all the efforts deployed on building a customer-supplier relationship would be lost and would have to be repeated. For these

reasons, they asked for either a transitional period to allow for adjustment to the duties or for a no-dumping determination for the exporting producer who supplies them, as it was found not to be dumping in an anti-dumping investigation by the Australian authorities.

(350) With respect to these claims, the finding of absence of dumping in an investigation in a third country does not have an impact in the present case. The fact that a company is allegedly not dumping in a third country's market does not mean that it would not be dumping the product concerned in the Union market. This determination needs to be conducted by the investigating authorities of each jurisdiction and their findings cannot bind the authorities of any other country. With respect to the impact of the measures on the companies' business, while the change in supplier could represent certain challenges for small and medium sized manufacturers, as noted above, the investigation indicates that this would in all likelihood be limited to an initial period, as users (re-)build the necessary relationship with Union industry.

(351) In addition to the claims reported in recital (349), one user claimed that as an outcome to the imposition of the measures, imported finished products would substitute the imported profiles and the Union would suffer job losses on the processing work performed by this company. Moreover, as the finished products produced in a third country allegedly do not follow the strict environmental standards in place in the Union, there would be a negative environmental effect as a result of the imposition of the duties. The Commission acknowledges these possibilities; however, given the fact that this user only provided a letter and did not respond to the questionnaire reply, it is not possible to evaluate the impact of the measures on its business.

(352) Another user, in addition to the claims reported in recital (349), claimed that as an outcome to the imposition of the measures, the production of finished products which include the product concerned and which was currently taking place in one Member State of the Union could be displaced to China in order to avoid the duties, with significant job losses. According to the information provided by this company in its comments, however, the products sold by them, which include the product concerned, only represent [6 – 11 %] of the company's turnover. The company explained in a hearing that the sale of these products was nonetheless crucial for them because it was connected to a full range of products it supplies to its customers. In any case, paying the duties for an adjustment period while exploring other sources of supply would represent in a very conservative scenario (i.e. without considering the added value on the imported products) an added cost equal to [1 – 4 %] of the turnover, which does not appear disproportionate. However, this user did not submit a questionnaire reply, it was not possible to evaluate precisely the impact of the measures on its business.

(353) Finally, with respect to the users mentioned in recitals (349) to (352), the exporting producer from which these companies source their extrusions has exported only a limited volume of the product concerned during the investigation period, equal to [0,5 – 1,5 %] of the imports of the product concerned and [< 0,2 %] of the total Union consumption. Therefore, the impact of the potential disruptions claimed by the users on the overall Union interest should be considered as affecting only a very small part of the market.

(354) A user producing curtains and curtains systems asked for a two-year transitional period to allow for adjustment to the duties, given that finding an appropriate supplier was a lengthy process, especially for a small producer. With respect to this claim, once a determination of injurious dumping is made, the granting of a transitional period is not within the legal boundaries of the Commission's discretion. Given the fact that this user did not provide a questionnaire reply, it is moreover not possible to evaluate precisely the impact of the measures on its businesses.

Autonomous tariff suspensions

(355) Two users importing products under the autonomous tariff suspension claimed that they cannot source the products they need from Union producers.

(356) Concerning the claim from the first company, Stako Sp. z o.o., however, the Commission refers to recital (71). Indeed the complainants identified one Union producer who is able and willing to produce and supply the product. Moreover, according to the information supplied by this user, it appears that it purchased the product it needs from both China and from another third country, and the imports from this other country will remain unaffected by the measures and still benefit from the tariff suspension, which applies to customs tariffs from all third countries.

(357) The second user importing under the autonomous tariff suspension, Bi Silque S.A., supported in its claim by an unrelated importer (Airoldi), also claimed that, as a result of the measures, its business would suffer negative consequences in terms of loss of competitiveness because of the absence of Union players producing the imported products. In view of the information on file provided by European Aluminium, in the past one Union producer offered to produce the products at issue but its offer was refused for reasons of pricing. Moreover, European Aluminium indicates that there are currently at least four Union producers who can and are willing to produce the product, as indicated in recital (78).

(358) With respect to the impact of the measures on the businesses of these two companies who are benefitting from tariff suspensions, it is acknowledged that the change in supplier which might be necessary as a result of the measures could represent certain challenges and eventually an increase in costs. However, the availability of products at unfairly low prices cannot be considered a normal market situation upon which to rely. Finally, given the fact that these users did not provide a questionnaire reply, it is not possible to evaluate precisely the impact of the measures on their businesses.

Delocalisation of downstream production

(359) One user producing insect protection systems, e.g. for windows and doors, argued that their input materials were covered by the anti-dumping measures, while the finished product they produce was not covered by the product scope. As a consequence, they claimed that the imposition of the duties would likely bring its company to the unavoidable conclusion of having to move the whole production of their finished product to third countries, with a consequent loss of jobs in Europe. With respect to this claim, the Commission received an indication from European Aluminium that the Union industry is able to produce all the product types currently imported. Moreover, this user did not specify whether the alleged consequences it described would stem from the unavailability of supply or to the increase in costs. With respect to this last possibility, the availability of products at unfairly low prices cannot be considered a normal market situation upon which companies could rely. Moreover, this user did not provide a questionnaire reply, so it is not possible to evaluate precisely the impact of the measures on its business.

(360) This user furthermore claimed that many producers in the Union are not able to produce the delicate extrusions with a low wall thickness [< 1 mm] they required. The investigation has however established that there are indeed producers in the Union who can produce extrusions with an even lower wall thickness than the one required by this user.

(361) Following final disclosure four users made submissions (Decora S.A., Bash-tec GmbH, Stako Sp. z o.o. and Mat Inter) to indicate the impact measures would have on their companies and on the investments made, and to point out that they had not been able to identify a Union producer to supply products they needed. Two users mentioned the risks of closure of their manufacturing operations based on the imports of the product concerned, with the consequent loss of employment, because the finished product they produce would be put at a disadvantage with respect to the competing finished product of Chinese origin. Haomei Group in its submission also raised this concern. European Aluminium responded by reiterating that Union producers had spare capacity and some of them would be able to supply the users concerned with products to match their requirements. They also indicated that users should not expect to benefit from unfair pricing. The Commission noted that the imposition of measures may involve a period of market disruption and necessitate switching suppliers, which could take some time, involve extra costs and result in higher purchase prices. The four users were not major importers from China and some of their supplies of the product under investigation were obtained from non-Chinese sources. Furthermore, the impact of the measures on these users was not substantiated as they had not submitted questionnaire responses as provided for in the Notice of initiation and therefore, any financial information included in their submissions were not sufficiently substantiated and could not be examined by the Commission for accuracy. Following the additional final disclosure, Decora

submitted new comments restating its position on the impact of the measures proposed thereto. The comments do not relate to any new findings included in the additional final disclosure, and the findings and conclusions reached after final disclosure remain valid.

8.4. **Conclusion on Union interest**

(362) On the basis of the above and in the absence of any other comments, the conclusions set out in recital (329) of the provisional Regulation were confirmed.

9. **UNION INTEREST BASED ON EU-27**

(363) All aspects previously disclosed being equally applicable in the EU-27 context, the conclusions as previously disclosed are confirmed, not least as the lower proposed duty level would reduce the impact, if any, of the measures on importers and users, while providing the necessary protection to the Union industry.

(364) Following the additional final disclosure Airoldi and Euranimi commented that higher prices, longer lead times and higher transport had resulted from the imposition of measures. This point has no validity with specific respect to the disclosure made and the impacts described did not occur in the period considered. Therefore, this point cannot be accepted. Indeed, the additional final disclosure suggests reduced duties and therefore, an even lower impact on importers and users in respect of the Union interest than under the EU-28 scenario.

10. **DEFINITIVE ANTI-DUMPING MEASURES**

(365) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

(366) The Commission determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market (EU-27) during the investigation period. The difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

(367) In terms of the residual margin, the Commission intends to base the residual underselling margin at the level of 56,1 %. This margin was set at the level of the highest underselling margin established for a product type sold in representative quantities in the EU-27, on the basis of the data of the cooperating exporting producers.

(368) A user commented that a 16 % target profit was unrealistic for the extrusions industry, while European Aluminium provided evidence that the profit margin used for the calculation of the non-injurious price at recital (339) of the provisional Regulation was inadequate, indicating that 16 % was necessary for the survival of the industry. While it does not enter into the adequacy of this argument, the Commission noted that the use of a higher target profit would be irrelevant since the duty is already set at the level of the dumping margins. Thus, there is no need to modify the injury elimination levels.

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

Company	Dumping margin (%)	Injury elimination level (%)	Anti-dumping duty (%)
Guangdong Haomei New Materials Co. Ltd.	21,2	29,8	21,2

Guangdong King Metal Light Alloy Technology Co. Ltd.	21,2	29,8	21,2
Press Metal International Ltd.	25,0	52,7	25,0
Press Metal International Technology Ltd.	25,0	52,7	25,0
Other cooperators	22,1	35,1	22,1
All other companies	32,1	56,1	32,1

(370) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured 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 should be subject to the duty rate applicable to 'all other companies'.

(371) A company may request the application of its individual anti-dumping duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission ([40]). The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it.

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

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

(374) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

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

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

(376) As mentioned in recital (202), there are conflicting views about the nature of the products declared under CN code 7610 90 90. Therefore, there is a risk that operators declare the product concerned as subassemblies or finished goods kits under CN code 7610 90 90 to circumvent the measures. Therefore, the Commission considered it appropriate to monitor imports of subassemblies and finished good kits in order to minimise the risk.

(377) Following final disclosure European Aluminium supported the need for such monitoring and enforcement.

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

(378) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

10.2. **Retroactivity**

(379) As mentioned in Section 1.2, the Commission made, following a request by the complainant, imports of aluminium extrusions subject to registration pursuant to Article 14(5) of the basic Regulation.

(380) During the definitive stage of the investigation, the data collected in the context of the registration were assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(381) The Commission's analysis showed that imports from the country concerned fell by 22 % in the period March to October 2020, on a monthly basis, as compared to the investigation period. Data received from the Union industry showed that, although its production and sales on the Union market also fell in this period, it had not lost market share and the Chinese imports had not made further substantial gains in market share in the months following the initiation of this investigation.

(382) Therefore, the condition under Article 10(4)(d) of the basic Regulation was not met in either absolute or relative terms.

(383) On that basis, the Commission concluded that the retroactive collection of the definitive duties for the period during which imports were registered was not justified in this case.

11. **FINAL PROVISION**

(384) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([41]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(385) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

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

(1) products attached (e.g. by welding or fasteners) to form subassemblies;

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

(2) welded tubes and pipes;

(3) products in a packaged kit with the necessary parts to assemble a finished product without further finishing or fabrication of the parts ('finished goods kit');

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

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

Company	Duty rate (%)	TARIC additional code
Guangdong Haomei New Materials Co., Ltd.	21,2	C562
Guangdong King Metal Light Alloy Technology Co., Ltd.	21,2	C563
Press Metal International Ltd.	25,0	C564
Press Metal International Technology Ltd.	25,0	C565
Other cooperating companies listed in Annex	22,1	
All other companies	32,1	C999

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

4. The Commission shall pay particular attention to potential avoidance of measures, and in particular monitor imports of products attached (e.g. by welding or fasteners) to form subassemblies referred to in paragraph 1(1) above and of finished goods kits referred to in paragraph 1(3) above, under TARIC codes 7610 90 90 91 and 7610 90 90 92, respectively.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2020/1428 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/1215 shall no longer be kept.

Article 4

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

(a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period of investigation (1 July 2018 to 30 June 2019);

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

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

Article 5

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

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

Done at Brussels, 29 March 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Name	TARIC additional code
Foshan Guangcheng Aluminium Co Ltd	C566
Foshan Modern Copper & Aluminum Extrusion Co.,Ltd.	C567
Foshan City Nanhai Yongfeng Aluminium Co., Ltd	C568
Foshan QianYang aluminium Co.,Ltd	C569
Foshan Sanshui Fenglu Aluminium Co., Ltd	C570
Foshan Sanshui Match Hardware Products Co., Ltd.	C571
Fuyao Group: — Fujian Fuyao Automotive Aluminium System Co.,Ltd — Jiangsu Fuyao Automotive Trim System Co., Ltd.	C572
Giant Light Metal Technology Co., Ltd.	C573
Goomax Metal Co., Ltd. Fujian	C574
Guangdong Huachang Aluminium Factory Co Ltd	C575
Guangdong Jiangsheng Aluminium Co., Ltd.	C599
Guangdong Jihua Aluminium Co., Ltd.	C576
Guangdong Nanhai Light Industrial Products Imp. & Exp. Co Ltd	C577
Guangdong Weiye Aluminium Factory Group Co., Ltd.	C578
Guangdong Xingfa Aluminium Co., Ltd	C579
Guangya Aluminium Industries Co., Ltd	C580
HOSHION Group: — Zhongshan Hoshion Smart Home Accessories Co., Ltd. — Cyma Precision Aluminium Co., Ltd. — Guangdong Hoshion Industrial Aluminium Co. Ltd.	C581
Jiangmen Cosco Shipping Aluminium Co., Ltd	C582
Jiangsu Asia-Pacific Light Alloy Technology Co., Ltd	C583
Jilin Qixing Aluminium Industries Co., Ltd	C584
JMA Group: — Foshan Jma Aluminium Co., Ltd — Guangdong JMA Aluminium Profile Factory (Group) Co., Ltd.	C585
PanAsia Aluminium (China) Limited	C586
Pingguo Jianfeng Aluminium Co., Ltd.	C587
Qingyuan Time Aluminum Co., Ltd.	C588
Shandong Huajian Aluminium Group: — Shandong Huajian Aluminium Group Co., Ltd — Shandong Huajian Aluminium Technology Co., Ltd	C589
Shandong Nanshan Aluminium Co., Ltd	C590

Shandong Nollvetec Lightweight Equipment Co.Ltd	C591
Shandong Xinyudong Aluminium Co., Ltd.	C592
Shenyang Yuanda Aluminium Industry Engineering Co., Ltd.	C593
Sihui Shi Guoyao Aluminum Co., Ltd	C594
Tai Shan City Kam Kiu Aluminium Extrusion Co., Ltd	C595
Tianjin Jinpeng Aluminium Profiles Manufacture Co., Ltd.	C607
Tongcheng Metal Material Co., Ltd	C596
Xinhe Group: — Guangdong Xinhe Aluminum Co., Ltd. — Guangdong Yaoyinshan Aluminium Co., Ltd. — Guangdong Xinhe Aluminium Xinxing Co., Ltd	C597
Yingkou Liaohe Aluminum Products Co., Ltd.	C598