COMMISSION IMPLEMENTING REGULATION (EU) 2022/402

of 9 March 2022

imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

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 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) Following an anti-dumping investigation, the Council with Regulation (EC) No 925/2009 ([2]), imposed anti-dumping duty on certain aluminium foils originating in Armenia, Brazil and China ('the original investigation'). Further to an expiry review pursuant to Article 11(2) of the basic Regulation, the European Commission ('Commission') with Implementing Regulation (EU) 2015/2384 ([3]) extended the measures on 17 December 2015 for exports from China and terminated the measures for Brazil ('the previous expiry review investigation'). The anti-dumping measures against imports originating in Armenia expired on 7 October 2014.

(2) As a result of an anti-circumvention investigation in accordance with Article 13 of the basic Regulation, the Commission with Implementing Regulation (EU) 2017/271 ([4]) extended the anti-dumping duty imposed on imports of certain aluminium foils originating in the People's Republic of China to imports of slightly modified certain aluminium foil.

(3) With Implementing Regulation (EU) 2021/1474 ([5]) the Commission, following a second anti-circumvention investigation in accordance with Article 13 of the basic Regulation, extended the anti-dumping duty imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China to imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not.

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

([2]) Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the duty imposed on imports of certain aluminium foils originating in Armenia, Brazil and the People's Republic of China (OJ L 262, 6.10.2009, p. 1).

([3]) Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 332, 18.12.2015, p. 63).

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

([5]) Commission Implementing Regulation (EU) 2021/1474 of 14 September 2021 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China to imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not. (OJ L 325, 15.9.2021, p. 6).

1.2. **Request for an expiry review**

(4) Following the publication of a Notice of impending expiry ([6]), the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.

(5) The request for review was lodged on 10 September 2020 by Union producers, representing around 90 % of the total Union production of certain aluminium foil ('the applicants'). The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

1.3. **Initiation of an expiry review**

(6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission, on 17 December 2020, by Notice, published in the *Official Journal of the European Union* ([7]) ('the Notice of Initiation'), initiated an expiry review with regard to imports of certain aluminium foil originating in the People's Republic of China ('PRC' or 'the country concerned') on the basis of Article 11(2) of the basic Regulation.

1.4. **Review investigation period and period considered**

(7) The investigation of a likelihood of continuation or recurrence of dumping covered the period from 1 October 2019 to 30 September 2020 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of a likelihood of continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

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

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

1.6. **Sampling**

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

1.6.1. *Sampling of Union producers*

(11) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and sales volumes of the like product in the Union. This sample consisted of three Union producers. The sampled Union producers accounted for around 77 % of the estimated total Union production and 75 % of the estimated sales volume of the like product in the Union. The Commission invited interested parties to comment on the provisional sample. The Commission received no comments. The sample was therefore considered representative of the Union industry.

([6]) OJ C 98, 25.3.2020, p. 10.

([7]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain aluminium foil originating in the People's Republic of China (OJ C 436, 17.12.2020, p. 10).

1.6.2. *Sampling of importers*

(12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(13) Only one unrelated importer provided the requested information and agreed to be included in the sample. Therefore, sampling was not necessary.

1.6.3. *Sampling of exporting producers in the PRC*

(14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(15) Two exporting producers in the country concerned came forward and provided the requested information. However, one of them declared it did not produce nor export the product under review during the review investigation period and therefore it did not wish to cooperate with the investigation. In view of the low number of replies, the Commission decided that sampling was not necessary.

1.7. **Questionnaire replies and remote cross-checking**

(16) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').

(17) At the initiation the questionnaire was made available in the file for inspection by interested parties and on DG Trade's website ([8]).

(18) Questionnaire replies were received from the three sampled Union producers. The exporting producer that came forward during the sampling did not provide a questionnaire reply. No reply was received from any of the unrelated importers. None of the users provided a questionnaire or came forward during the investigation. The GOC did also not provide a questionnaire reply.

(19) Because there was no cooperation from the Chinese exporting producers or the GOC, the findings with regard to dumping and injury were made on the basis of facts available pursuant to Article 18 of the basic Regulation. The Mission of the People's Republic of China to the European Union was informed accordingly. No comments were received.

(20) The Commission sought all the information deemed necessary for the investigation. In accordance with the Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([9]), remote crosschecking ('RCC') processes by videoconference were carried out with the following companies:

Union producers

— Alcomet AD, Shumen, Bulgaria

— Slim Aluminium SpA, Cisterna di Latina, Italy

— Symetal, Athens, Greece

([8]) https://trade.ec.europa.eu/tdi/case_details.cfm?id=2500
([9]) OJ C 86, 16.3.2020, p. 6.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

(21) The product under review is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg and originating in the People's Republic of China, currently falling under CN code ex 7607 11 19 (TARIC code 7607 11 19 10) ('the product under review', 'aluminium household foil' or 'AHF').

(22) The product under review is used for multi-purpose short-life wrapping in households, catering business, foodstuff industry and floristry retail business.

2.2. Like product

(23) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product under review;

— the product produced and sold on the domestic market of the country concerned, and

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

(24) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

(25) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measure in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

3.1. Preliminary remarks

(26) During the review investigation period, although imports of the product under review from the PRC continued, they only reached 1 588 tonnes, representing 2 % of the market share of the Union consumption. Most of these exports were made under the inward processing regime ([10]) and hence were subject to neither anti-dumping nor customs duty. The Commission concluded that the volume of imports was sufficiently representative to examine whether dumping continued during the review investigation period.

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

(27) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission initiated the investigation with regard to the exporting producers from this country on the basis of Article 2(6a) of the basic Regulation.

(28) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, the Commission invited in the Notice of Initiation all producers in the PRC to provide information regarding the inputs used for producing the product under review. No producer submitted this information.

(29) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, under point 5.3.2 of the Notice of Initiation the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No submissions were received.

([10]) Inward processing means that non-Union goods are imported in order to be used in the customs territory of the Union in one or more processing operations, for instance, for the purposes of manufacturing or repair. When imported, such goods are not subject to the import duties.

(30) No questionnaire reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of significant distortions in the PRC. The Commission informed that if findings are based on facts available in accordance with Article 18, the result may be less favourable to the party than if it had cooperated. No comments were received from the GOC.

(31) In point 5.3.2 of the Notice of Initiation, the Commission specified that, in view of the evidence available at that stage of the investigation, possible representative countries for the purpose of determining the normal value based on undistorted prices or benchmarks pursuant to Article 2(6a)(a) of the basic Regulation for the PRC were Brazil and Turkey. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in Article 2(6a)(a) first indent of the basic Regulation.

(32) On 29 January 2021, the Commission issued a first note for the file ('the First FoP Note') and informed interested parties on the relevant sources it intended to use for the determination of the normal value. In the First Note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of the product under review, based on the request of review and a submission from the applicants. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission at that stage of the investigation identified three possible representative countries, namely Brazil, the Russian Federation ('Russia') and Turkey. The Commission invited interested parties to submit comments. No comments on the First Note were received.

(33) On 28 May 2021, the Commission issued a second note for the file ('the Second FoP Note'). In this note the Commission established the list of factors of production and informed interested parties on the relevant sources it intended to use for the determination of the normal value. The Commission selected Turkey as a representative country. In the absence of an appropriate representative producer of the product under review in any of the possible representative countries, the Commission considered that data of companies producing a product in the same general category as the product under review could be appropriate to source the financial data (selling, general and administrative costs (SG&A) and profits). Therefore, the Commission informed interested parties that it would establish ('SG&A') and profits based on financial information from five Turkish companies producing aluminium extrusion products. The Commission considered that aluminium extrusions are products having technical characteristics closely resembling those of the product under review, and they also share a similar source material composition. These products are often produced by the same companies as the product under review or within the same group. Given the similarities between the product under review and aluminium extrusion products, as well as the fact that profitable producers of aluminium extrusions have been identified, such data is deemed representative of the situation of companies producing the product under review and hence adequate for establishing normal value in accordance with Article 2(6a)(a) of the basic regulation.

(34) The Commission invited interested parties to comment, but it received no comments on the Second Note.

3.3. **Normal value**

3.3.1. *Existence of significant distortions*

(35) In recent investigations concerning the aluminium sector in the PRC ([11]), the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.

([11]) 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 (OJ L 109, 30.3.2021, p. 1); Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 124, 12.4.2021, p. 40); Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China (OJ L 216, 18.6.2021, p. 142).

(36) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ([12]). In particular, the Commission concluded that in the aluminium sector not only does a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation ([13]) but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ([14]). The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ([15]). Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ([16]). In the same vein, the Commission found distortions of wage costs in the aluminium sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ([17]), as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ([18]).

(37) Like in previous investigations concerning the aluminium sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Commission Staff Working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations ([19]) ('the Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

(38) The request in this case referred to the Report, in particular to the sections concerning the aluminium sector and state-owned enterprises, as well as to previous Commission investigations of downstream products ([20]). Moreover, the request referred to independent studies which conclude that the Chinese aluminium market is distorted due to substantial subsidization, such as the 2019 OECD study "Measuring distortions in international markets: the

([12]) 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), recitals 91-97 and 154-158; Implementing Regulation (EU) 2021/582, recitals 125-131 and 185-188; Implementing Regulation (EU) 2021/983, recitals 80-86 and 140-143.

([13]) Implementing Regulation (EU) 2020/1428, recitals 98-104; Implementing Regulation (EU) 2021/582, recitals 132-137; Implementing Regulation (EU) 2021/983, recitals 87-92.

([14]) Implementing Regulation (EU) 2020/1428, recitals 105-112; Implementing Regulation (EU) 2021/582, recitals 138-143; Implementing Regulation (EU) 2021/983, recitals 93-98. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including the producers of aluminium foils and the suppliers of their inputs.

([15]) Implementing Regulation (EU) 2020/1428, recitals 113-135; Implementing Regulation (EU) 2021/582, recitals 144-166; Implementing Regulation (EU) 2021/983, recitals 99-120.

([16]) Implementing Regulation (EU) 2020/1428, recitals 136-140; Implementing Regulation (EU) 2021/582, recitals 167-171; Implementing Regulation (EU) 2021/983, recitals 121-125.

([17]) Implementing Regulation (EU) 2020/1428, recitals 141-142; Implementing Regulation (EU) 2021/582, recitals 172-173; Implementing Regulation (EU) 2021/983, recitals 126-127.

([18]) Implementing Regulation (EU) 2020/1428, recitals 143-153; Implementing Regulation (EU) 2021/582, recitals 174-184; Implementing Regulation (EU) 2021/983, recitals 128-139.

([19]) SWD(2017) 483 final/2, 20.12.2017, https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf.

([20]) Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council, OJ L 146, 5.6.2019, p. 63–97.

aluminium value chain" ([21]) and the 2017 report of the German non-ferrous metals industry association WVMetalle ([22]). These studies were placed in the investigation file at the initiation stage. No comments on the studies were provided by any interested party. The request emphasized that those studies document the significant presence of SOEs in the Chinese aluminium sector, provision of cheap raw material inputs to aluminium producers, as well as the existence of a taxation regime which effectively distorts the market. Referring again to the Report and to previous Commission investigation, the request further pointed out that Chinese authorities set prices for coal, electricity, natural gas and oil, which distorts the energy prices in the aluminium sector. In the same vein, the request referred to distortions of wages in the aluminium sector. Moreover, the request alleged distortions of machinery costs, in particular given that the aluminium sector is considered an "encouraged sector" by the Chinese authorities and is as such listed in the Chinese Government's Guidance Catalogue for the Industrial Structure Adjustment, including its latest 2019 iteration ([23]). The request further pointed to distortions of financial costs due to the overall set-up of the Chinese banking system, as well as due to a number of policy documents – such as national and sectoral five years plans or policies calling on the financial institutions to support the aluminium industry. Finally, the request listed distortions originating from additional government measures, such as the export seller's credit scheme, an income tax deduction for research and development expenses or VAT rebates on domestically produced equipment. The request referred in this connection to the 2018 United States Department of Commerce subsidy investigation of the Chinese aluminium foil sector ([24]).

(39) In the aluminium sector, a substantial degree of ownership and control by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Many of the largest producers are owned by the State. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state owned producers could not be determined. However, the investigation confirmed that in the aluminium sector a number of large producers are SOEs, including the Aluminium Corporation of China or the Shenhuo Group Aluminium, both of which also manufacture the product under review.

(40) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, both public and privately owned enterprises in the aluminium sector are subject to policy supervision and guidance. The Commission has extensively documented the party building activities in its previous investigations of the aluminium sector in which a number of producers which also manufacture the product under review participated ([25]). In addition, many producers of the product under review explicitly emphasise party building activities on their websites, have party members in the company management and underline their affiliation to the CCP.

(41) For instance, the Nanshan group reported recently the following with respect to a party building event which took place in March 2021: "On March 19, the party branch directly under Nanshan Holdings carried out the theme party day event in March, in-depth study and implementation of the spirit of General Secretary Xi Jinping's speech at the Party History Study and Education Conference, learn the heart of the party history, gather strength, and work hard. The relevant leaders of the party branch directly under Nanshan Holdings presided over the meeting. The branch secretary pointed out in his party lecture report that party members and cadres should give full play to their exemplary and leading role, not forget their original aspirations, and keep their mission in mind. […] All party members and cadres expressed that they will further study and implement the spirit of General Secretary Xi Jinping's speech at the Party History Study and Education Mobilization Conference, unify thoughts and actions to the requirements and deployment of the 14th Five-Year Plan, do not forget the original intention, keep the mission in mind, and work hard. Forge ahead, be brave to innovate, give full play to the exemplary vanguard role of party members in the enterprise […]" ([26]).

([21]) OECD Trade Policy Papers, No 218, OECD Publishing, Paris, available at: http://dx.doi.org/10.1787/c82911ab-en

([22]) Think!Desk China Consulting & Research, "Final Report – Analysis of Market Distortions in the Chinese Non- Ferreous Metal Industry".

([23]) http://www.gov.cn/xinwen/2019-11/06/content_5449193.htm (last viewed 29 October 2021).

([24]) Certain Aluminium Foil from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 83 Fed. Reg. 17,360 (Dep't Comm, Apr. 19, 2018)

([25]) Implementing Regulation (EU) 2021/582, recitals 141-142; Implementing Regulation (EU) 2021/983, recitals 96-97.

([26]) See at: http://www.nanshan.com.cn/searchdetails?id=2838&cid= (accessed on 31 August 2021).

(42) Similarly, the state-owned Dengfeng Electricity Group indicates on its website that "on the afternoon of November 10th [2020], the corporate management classroom training of the group company was held in the sixth meeting room. A total of 66 people from the group company directors and above management personnel, various business departments, directly affiliated enterprises and sub-enterprise leaders participated. […] Next, the group company will further conscientiously study the important speech of General Secretary Xi Jinping at the plenary meeting, understand the spirit of the plenary meeting, […] and earnestly understand the decision-making and deployment of the Party Central Committee, condense wisdom and strength to achieve the goals and tasks set in the '14th Five-Year Plan'" ([27]).

(43) Furthermore, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the aluminium sector.

(44) The aluminium sector is subject to numerous plans, guidelines, directives and other policy documents issued at national, regional and municipal level. Those policies in place during the review investigation period, ranging from the 13th Five-Year Plan on Economic and Social Development ([28]) or the Non-Ferrous Metal Industry Development Plan (2016-2020) and other policies at the national level, through regional plans such as, for example, the Shandong Province Government's Notice on the implementation plan for accelerating the high-quality development of the seven energy-intensive industries have been extensively documented by the Commission's previous investigation of the sector ([29]). Similarly, the Commission has documented in detail that the aluminium industry benefits from governmental guidance and intervention concerning the main raw materials and inputs, in particular energy ([30]). The same applies to other government measures in the sector interfering with market forces, such as, among others, export-related policies, stockpiling policies, production capacity expansion policies ([31]) or provision of inputs at below market prices ([32]).

(45) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main inputs used in the manufacturing of the product under review. Such measures impede market forces from operating freely.

(46) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the aluminium sector referred to above in recital (36) would not affect the manufacturers of the product under review.

(47) The aluminium sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (36). Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

(48) Moreover, no evidence was submitted in the present investigation demonstrating that the aluminium sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (36). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

([27]) See at: https://www.dfdcjt.com/article/item.html?id=2166 (accessed on 31 August 2021).

([28]) The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 6 May 2021).

([29]) Implementing Regulation (EU) 2021/582, recitals 147-155; Implementing Regulation (EU) 2021/983, recitals 102-109.

([30]) Implementing Regulation (EU) 2021/582, Implementing Regulation (EU) 2021/983, recital 111.

([31]) According to available information, in 2020 the Chinese aluminium foil production increased by 3,8 % year-on-year (see China Nonferrous Metals News – Exploring a new "blue ocean" for aluminum foil applications, available at: https://finance.sina.com.cn/money/future/indu/2021-07-14/doc-ikqciyzk5369663.shtml, last viewed 22 September 2021), In addition, while China' electrolytic aluminium production capacity was reported in 2020 to amount to approximately 38,55 million tons per year, it was expected to increase by 3,163 million tons in 2021 (see Review and Outlook of the Aluminum Market in 2020, available at: https://www.sohu.com/a/445610891_782456, last viewed 22 September 2021).

([32]) Implementing Regulation (EU) 2021/582, recitals 162-165; Implementing Regulation (EU) 2021/983, recitals 116-120.

(49) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions; they may borrow money that is subject to the distortions on the financial sector/capital allocation; and they are subject to the planning system that applies across all levels of government and sectors.

(50) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

(51) No evidence or argument to the contrary has been adduced by any of the interested parties.

(52) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.3.2. *Representative country*

(a) ***General remarks***

(53) Pursuant to Article 2(6a) of the basic Regulation, the choice of the representative country was based on the following criteria:

— a level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ([33]);

— production of the product under review in that country;

— availability of relevant public data in the representative country.

— Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(54) As explained in recitals (32) to (33), the Commission issued two notes to the file on the sources for the determination of the normal value: the First FoP Note and the Second FoP Note. In the Second FoP Note, the Commission informed interested parties of the selection of Turkey as appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

([33]) World Bank Open Data – Upper Middle Income, https://data.worldbank.org/income-level/upper-middle-income

(b) ***A level of economic development similar to the PRC and production of the product under review***

(55) In the First FoP Note, the Commission identified Armenia, Brazil, Russia and Turkey as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they were all classified by the World Bank as 'upper-middle income' countries on a gross national income basis during the RIP, where production of the product under review was known to take place.

(56) No comments were received concerning the countries identified in that note.

(c) ***Availability of relevant public data in the representative country***

(57) For the four countries mentioned at recital (55) above, the Commission further verified the availability of public financial data concerning the producers of the product under review in those countries.

(58) With regard to Armenia, there was no publicly available financial data for the sole known producer ([34]). In the absence of comments by the interested parties the Commission therefore concluded that Armenia could not be considered as an appropriate representative country for this investigation.

(59) With regard to Brazil, the Commission identified in the First FoP Note two producers of AHF, namely Companhia Brasileira de Aluminio ('CBA') and Novelis do Brasil Ltda ('Novelis'). CBA was loss making during the review investigation period and was therefore excluded for the determination of SG&A and profit. As regards Novelis, even though its financial data was available and the company was profitable during the review investigation period, in the Second FoP Note the Commission concluded that the company could not be considered for the following reasons: first, the Commission noted that there was an anti-dumping proceeding on Chinese imports of aluminium products, including AHF, ongoing in Brazil. The allegedly dumped Chinese imports may have a distorting effect on the Brazilian market, for example by creating price depression or causing injurious losses to the Brazilian aluminium industry; second, the overall profit reported in the financial statement of Novelis as found in the Dun and Bradstreet database was inconsistent with the loss-making financial results presented in the framework of the anti-dumping investigation conducted by the Brazilian authorities and where Novelis was one of the domestic complainants. This casted serious doubts on the quality and accuracy of Novelis' financial data available on Dun and Bradstreet. In addition, in the Second FoP Note the Commission stressed the existence of export restrictions on aluminium products in Brazil, notably an export quota on a key input (Aluminium alloys) and a by-product (Aluminium scraps) in the production of aluminium household foils. Therefore, the Commission concluded in the Second FoP Note that Brazil could not be considered an appropriate representative country.

(60) With regard to Russia, although financial data of the three producers of aluminium household foils identified in the First FoP Note were publicly available, in the Second FoP Note the Commission concluded that Russia could not be considered an appropriate representative country. The reasons for this conclusion were the existence of export restrictions on aluminium, the existence of natural gas distortions on the domestic market and the fact that the aluminium market in Russia appeared to be dominated by one company group (Rusal), preventing effective competition on the Russian domestic market.

(61) With regard to Turkey, of the three producers of aluminium household foil identified in the First FoP Note, recent financial data were available only for one company, namely Asaş Aluminyum. However, the profit achieved by Asaş Aluminyum was close to break-even. The Commission did not consider such low profit margin as reasonable within the meaning of Article 2(6a)(a) of the basic Regulation, taking into consideration that (i) as set out in Implementing Regulation (EU) 2020/1428 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China ([35]) the level of profit achieved in the aluminium extrusion sector in Turkey in 2018 was substantially higher, i.e. 7,3 %, and (ii) the profit obtained by the Union industry in the absence of injurious dumping, as used in the original investigation was 5 %. Therefore, the Commission concluded in the Second FoP Note that Asaş Aluminyum's financial data could not be used as a basis to determine SG&A and profit according to Article 2(6a)(a) of the basic Regulation, which provides that "the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits".

([34]) Financial data for the only producing company (Rusal Armenal, CJSC) could not be found in Dun and Bradstreet database (https://globalfinancials.com/index-admin.html), nor on the company's website or anywhere else in the internet.

([35]) Implementing Regulation (EU) 2020/1428, recital 169.

(62) In conclusion, there were no producers of aluminium household foil in Turkey whose financial data could be used to determine a reasonable amount for SG&A and profit.

(63) Therefore, the Commission considered whether data from companies producing a product in the same general category as the product under review could be used. The Commission concluded in the Second FoP Note that aluminium extrusion products had technical characteristics closely resembling those of the product under review, and that they shared a similar source material composition. Both are often produced by the same companies or within the same group. Therefore, the Commission found that it was appropriate in the present case to use data of Turkish companies active in the sector of aluminium extrusion products. Financial data covering half of the review investigation period were available for five aluminium extrusion producers in Turkey ([36]), and such data were considered representative of the situation of companies producing aluminium household foil. Therefore, the weighted average SG&A and profit of those five companies was used in order to determine an undistorted and reasonable amount for SG&A and profit for companies producing aluminium household foil.

(64) Interested parties were invited to comment on the appropriateness of Turkey as a representative country and of the five aluminium extrusion producers as producers in the representative country. No comments were received.

(d) ***Level of social and environmental protection***

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

(e) ***Conclusion on the representative country***

(66) In view of the above analysis, Turkey met all the criteria laid down in Article 2(6a)(a) first indent of the basic Regulation, and was therefore considered the appropriate representative country.

3.3.3. *Sources used to establish undistorted costs*

(67) In the First FoP Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review, and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

(68) As there was no cooperation from the Chinese producers and no comments from any of the interested parties, the Commission based itself on the information submitted by the applicant. In the Second FoP Note the Commission updated the list of factors of production used to establish the normal value based on the crosschecked information provided by one of the applicants that was, according to the applicants and in absence of any other information, considered to have factors of production and a production process representative of the Chinese exporting producers.

(69) In the Second FoP Note the Commission also stated that in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use data from the Global Trade Atlas ('GTA') ([37]) to establish the undistorted cost of the main factors of production, notably the raw materials. In addition, the Commission stated that it would use information from the Turkish Statistical Institute for establishing undistorted costs of labour ([38]) and energy ([39]).

(70) Finally, the Commission stated that to establish SG&A costs and profit, it would use the financial data from the five Turkish producers of aluminium extrusion products, as set out in recital (63) above.

([36]) The financial data from the five aluminium extrusion companies were used in two recent Commission investigations on aluminium products: aluminium flat-rolled products (OJ L 124, 12.4.2021, p. 40, rec. 266-267) and aluminium converter foil (OJ L 216, 18.6.2021, p. 142, rec. 223).

([37]) http://www.gtis.com/gta/secure/default.cfm

([38]) https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucret-108&dil=2

([39]) https://data.tuik.gov.tr/Kategori/GetKategori?p=cevre-ve-enerji-103&dil=2

(71) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The Commission established the ratio of manufacturing overheads to the direct costs of manufacturing, based on data of the Union producer referred to in recital (68) above, which provided specific information for that purpose. The methodology is duly explained in section 3.3.4 below.

3.3.4. *Factors of production*

(72) Considering all the information submitted by the interested parties and collected and cross-checked during the RCC process, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Factors of production of AHF

Factor of Production	Commodity Code	Value (RMB)	Unit
Raw materials			
Aluminium alloys unwrought, other ('casted coil')	7601 20 80	14,01	kg
Rolling Oil	2710 19 29	12,34	kg
Energy			
Electricity	N/A	0,61	kWh
Natural Gas	2711 21 00	1,97	M^3
Labour			
Labour cost in the manufacturing sector (NACE C.24)	N/A	57,59	hour per kg
By-product			
Aluminium scrap	7602 00 19	10,63	kg

(1) ***Raw materials and by-product***

(73) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price at CIF level to the representative country as reported in GTA, to which import duties and transport costs were added, where applicable. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO as listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ([40]).

(74) The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 3.3.1 above that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions did not equally affect products intended for export, the Commission considered that the same distortions affected export prices. This exclusion did not have a significant impact, as the remaining imports were still significant (i.e. 75 000 tonnes of foil stock, 700 000 tonnes of rolling oil, and 161 000 tonnes of aluminium scrap).

([40]) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). These countries are Azerbaijan, Belarus, North Korea, Turkmenistan and Uzbekistan. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

(2) ***Labour***

(75) To establish the benchmark for labour costs in the representative country, the Commission used the most recent statistics published by the Turkish Statistical Institute ([41]). This institute publishes detailed information on labour costs in different economic sectors in Turkey. The Commission established the benchmark based on hourly labour costs for 2016 ([42]) for the economic activity C.24, i.e. Manufacture of basic metals ([43]) according to NACE Rev.2 classification. The values were further adjusted for inflation using the domestic producer price index ([44]) to reflect the costs for the RIP.

(3) ***Electricity***

(76) The price of electricity for industrial users in Turkey is published by the Turkish Statistical Institute ([45]). The Commission used data on the industrial electricity prices in the corresponding consumption band in Kuruş/kWh covering the RIP.

(4) ***Natural gas***

(77) The price of natural gas for industrial users in Turkey is published by the Turkish Statistical Institute ([46]). The Commission used data on the industrial gas prices in the corresponding consumption band in Kuruş/M3 covering the RIP.

(5) ***Manufacturing overhead costs, SG&A and profits***

(78) According to Article 2(6a)(a) of the basic Regulation, "the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits". In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

(79) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on data of Union producers provided by the applicants, the Commission established the ratio of manufacturing overheads to the direct costs of manufacturing. This percentage was then applied to the undistorted value of the direct costs of manufacturing to obtain the undistorted value of manufacturing overheads.

(80) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the most recent available financial data of the five companies in Turkey that had been identified in the Second FoP Note as active and profitable producers of a product in the same general category i.e. aluminium extrusion products, as explained in recital (63) above. Financial data for the following five companies as extracted from Dun and Bradstreet ([47]) was used:

(1) Eksal Aluminyum Kalip Sanayi Ve Ticaret Limited Sirketi (financial year 2020),

(2) Okyanus Aluminyum Sanayi Ticaret Anonim Sirketi (financial year 2020),

(3) Cuhadaroglu Metal Sanayi Ve Pazarlama Anonim Sirketi (financial year 2020),

(4) P.M.S. Metal Profil Aluminyum Sanayi Ve Ticaret Anonim Sirketi (financial year 2020),

(5) Cansan Aluminyum Profil Sanayi Ve Ticaret Anonim Sirketi (financial year 2019).

([41]) https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucret-108&dil=2
([42]) This was the most recent period for which hourly labour costs for this activity were available at the moment we consulted the dataset.
([43]) The category "basic metals" includes aluminium under code C24.42 (see https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF, p. 156).
([44]) https://data.tuik.gov.tr/Bulten/DownloadIstatistikselTablo?p=RQJc6lWaNMpivNV6h1MxkWk9ycHqk1cNqZM2UJkJfMUYAmenKIIz/lKzy74RY7Y2
([45]) https://data.tuik.gov.tr/Kategori/GetKategori?p=cevre-ve-enerji-103&dil=2
([46]) https://data.tuik.gov.tr/Kategori/GetKategori?p=cevre-ve-enerji-103&dil=2
([47]) https://globalfinancials.com/index-admin.html (accessed on 28 September 2021).

3.3.5. *Calculation of the normal value*

(81) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

(82) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by any Chinese producer, the Commission relied on the information provided by one of the applicants, as mentioned in recital (68), on its usage of each factor (materials and labour) for the production of the product under review. These consumption ratios were verified during an RCC process. The Commission then multiplied the usage factors by the undistorted costs per unit observed in the representative country, as described in section 3.3.4 above.

(83) Once the undistorted manufacturing cost established, the Commission added manufacturing overheads and depreciation, as explained in recital (78) to the undistorted cost of manufacturing in order to arrive at the undistorted costs of production.

(84) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit of the five companies in the representative country. SG&A expressed as a percentage of the Costs of Goods Sold ('COGS') and applied to the undistorted costs of production, amounted to 14,1 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 7,1 %.

(85) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.4. **Export price**

(86) In the absence of cooperation by any Chinese producer, the export price was determined based on facts available in accordance with Article 18 of the basic Regulation. Thus, export prices were based on CIF prices recorded in Eurostat corrected to ex-works level. Thus, the CIF export price was reduced by the sea freight and insurance costs and domestic transport cost in China. Domestic Chinese and international transport costs were based on information provided by the applicants in the request for review, which were found in line with the transport costs calculated using external databases (World Bank and OECD).

3.5. **Comparison and dumping margin**

(87) The Commission compared the normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price as established above on an ex-works basis.

(88) On that basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was found at a level of 72,2 % during the RIP.

3.6. **Conclusion**

(89) The Commission concluded that exports to the Union of the product under review from the PRC continued to be dumped during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING SHOULD THE MEASURES LAPSE

(90) Further to the finding of the existence of dumping during the RIP, the Commission investigated the likelihood of continuation of dumping should the measures lapse, in accordance with Article 11(2) of the basic Regulation. The following elements were analysed: the production capacity and spare capacity in the PRC, availability of other markets and price behaviour of the Chinese exports as well as the attractiveness of the Union market. It is recalled that due to the non-cooperation from the Chinese exporting producers as well as the GOC, the analysis was based on facts available in accordance with Article 18 of the basic Regulation, in particular the request for review, GTA statistics and publicly available information.

4.1. **Production capacity and spare capacity in the PRC**

(91) To analyse production capacity and spare capacity in the PRC and given the non-cooperation of the GOC and the Chinese exporting producers, the Commission relied on the information provided by the applicant in its request for review and publicly available information as specified in below recitals.

(92) The investigation has shown that because of rapid growth between 2005 and 2015, there is a general overcapacity in the Chinese aluminium sector ([48]). This is also true for the AHF sector in specific ([49]). According to CRU, around 8 % of the total aluminium foil production is used for the production of AHF ([50]). On this basis, the production capacity of AHF in China substantially exceeds the current production volume and Chinese producers are therefore highly dependent on exports. In 2020, Chinese household foil consumption was around 250 000 tonnes, while production was estimated to be around 308 000 tonnes and production capacity around 360 000 tonnes. This means that Chinese spare capacity amounted to around 52 000 tonnes in 2020, or 65 % of the Union consumption of AHF during the review investigation period, which amounted to around 80 000 tonnes.

(93) The overcapacity in China is confirmed by publicly available information from the Shanghai Municipal Commission of Economy and Information, reporting that there is even new capacity of aluminium foil created in China and that such new production capacity reached a record high of 1,65 million tonnes in 2020 ([51]). Assuming that an estimated 8 % of this total capacity (i.e. 132 000 tonnes) would be used for AHF, the increase in total AHF production capacity alone would represent more than 150 % of the Union consumption.

(94) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacities and capacities are still being expanded. These spare capacities could be used for exports to the Union if the measures were allowed to lapse.

4.2. **Demand in the Chinese domestic market and other third country markets**

(95) Due to the non-cooperation of the Chinese producers there is no information available concerning the Chinese domestic market of AHF and domestic consumption was established as estimated by the applicants, based on CRU data. This has shown that the total consumption in China is substantially below the installed capacity, and producers in China are therefore dependent on export markets. There has been a stable increase in demand observed in China in the last years (from 2017 to 2020) of around 3 % per year (i.e. around 8 000 tonnes per year), while the spare capacity represented 52 000 tonnes in 2020. Therefore, demand is not of such level to be able to absorb the total spare capacity in China.

(96) The Commission also analysed the situation on other third country markets and their ability to absorb increased exports of AHF from China. During the RIP, Chinese producers were exporting to a number of other third countries, Thailand, India, South Korea, Indonesia and Japan being the main export destinations, representing close to 40 % of all exports from China during the RIP.

([48]) Annex 1C.3 to the request of review (CRU Overcapacity in Chinese rolled product sector increases focus on exports and European Union Chamber of Commerce in China, Overcapacity in China – an impediment to the Party's reform agenda) and Chapter 15 of the Commission Staff Working document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigations.

([49]) Annex 1C.3 to the request of review (CRU Overcapacity in Chinese rolled product sector increases focus on exports).

([50]) Chapter 6 of CRU, The Global Market Outlook for Aluminium Foil to 2022 (Annex 1C.3 to the request of review).

([51]) http://www.sheitc.sh.gov.cn/jjyw/20210106/ada4d50132bf4ccaa5c97944073a7d2d.html (last visited 2 September 2021).

(97) There is a wide range of trade defence measures and other import restrictions in place against exports of AHF originating in the PRC. According to Global Trade Alert ([52]), the WTO ([53]) and information provided in the request for review ([54]), trade defence measures exist in Argentina (anti-dumping), India (anti-dumping), Mexico (anti-dumping), Turkey (anti-dumping), the United States (anti-dumping and anti-subsidy) and Indonesia (safeguard). Those measures show that the access of Chinese producers to those markets is limited, and exports to these markets are therefore unlikely to increase substantially in the near future.

(98) One importer argued that the increase in demand in the Asian Pacific region, and the lower transport costs as compared to those incurred when exporting to the Union market, would mean that it is economically more viable for Chinese exporting producers to export AHF to the Asian Pacific region rather than to the Union market, even despite the trade defence measures and other trade barriers in some of these countries.

(99) Exports of aluminium foil to the largest five export markets of China grew by 34 % from 2017 to the RIP. However, the Commission considered that even though the demand within China and its neighbouring countries have shown an increase in the last years, there was still substantial spare capacity available, which showed that this increase in demand, despite the lower transport costs related to such exports, is not likely to absorb the spare capacity available.

(100) Thus, a large part of the spare capacities will very likely be used to increase exports from China to the Union, should measures be allowed to lapse and access to the Union market become without significant restrictions.

4.3. **Price behaviour of the Chinese exporting producers to other third country markets**

(101) The Commission considered that price levels to other third country markets would be a reasonable indicator for likely future price behaviour to the Union market. The Commission therefore analysed the export price levels from China to its most important export markets during the RIP; i.e. Thailand, India, South Korea, Indonesia and Japan. This analysis revealed that export prices to these countries were lower priced than the exports to the Union, as explained in recital (102). Considering in addition the significant dumping margins established for exports to the Union during the RIP, there was no reason to conclude that export prices to the Union would not continue to be at dumped levels, should measures be allowed to lapse.

4.4. **Attractiveness of the Union market**

(102) As set out in recitals (119) and (120), Chinese exports to the Union were made both under the inward processing scheme (mainly), without being subject to anti-dumping measures or customs duties, and under the normal customs regime. The Commission considered that should measures lapse, imports under the normal customs regime will in all likelihood increase and eventually largely surpass imports under the inward processing scheme. This is based on the fact that prior to the imposition of anti-dumping duties substantial imports were made under the normal customs regime and that the Union market as set out in the recital (103) is one of the largest markets worldwide and able to absorb at least partly the significant spare capacities available in China. Therefore, import prices under the normal import regime were considered an appropriate benchmark to establish whether the Union market is attractive for Chinese imports in terms of price levels. On this basis, during the review investigation period, Chinese export price levels to the Union were found to be on average 7 % higher than the average price to China's other main export markets (anti-dumping duty excluded). This indicated that the Union market is attractive in terms of prices as it is more lucrative.

(103) The Union market for aluminium foil is, after China, the second largest in the world accounting for 15 % of world demand ([55]). Therefore, the Union is also attractive to the Chinese producers of AHF in view of its size.

([52]) https://www.globaltradealert.org/data_extraction
([53]) http://i-tip.wto.org/goods/Forms/TableView.aspx
([54]) t20.007357 (Annex 1B.4: Open Annexes, part 1, p. 27 to 32).
([55]) Annex 1C.3 to the request of review (CRU Global outlook for foil and outlook for primary aluminium, p. 9).

(104) In addition, as explained in recitals (2) and (3), in the past Chinese exporting producers repeatedly accessed the Union market via circumvention practices by exporting a slightly modified product and by setting up assembly operations in Thailand, with the sole purpose to avoid the anti-dumping duties in force. These circumvention practices prove the strong interest of the Chinese producers in accessing the Union market without restrictions and thus the attractiveness of the Union market for those producers.

(105) Therefore, the Commission concluded that, should the current measures lapse, it is likely that the Chinese exporting producers would redirect exports towards the Union at dumped prices.

4.5. **Conclusion on the likelihood of continuation of dumping**

(106) The investigation showed that Chinese exports continued to enter the Union market at dumped prices and the unfair pricing practices of the Chinese AHF exporting producers would likely continue at a larger scale if measures would lapse.

(107) Chinese exports to their other main export markets are even lower than prices to the Union, and there are several trade defence measures in force against Chinese exports of AHF in several other jurisdictions which confirm the unfair pricing behaviour of Chinese exporting producers.

(108) Furthermore, the Commission found other indicators that dumping will likely continue should the measures lapse, such as the high spare capacity of AHF in China and the attractiveness of the Union market in terms of price levels and size. At the same time, the Chinese domestic market and other third country markets do not appear to be able to absorb any significant spare capacity that exists in China which would therefore be available to be exported to the Union should measures be allowed to lapse.

(109) Consequently, the Commission concluded that there is a strong likelihood of continuation of dumping, if the measures would lapse.

5. **INJURY**

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

(110) The like product was manufactured by six producers in the Union during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(111) The total Union production during the review investigation period was established at 39 460 tonnes. The Commission established the figure on the basis of the verified questionnaire replies of the sampled Union producers and the estimated data provided by the non-sampled producers and the applicants ([56]). As indicated in recital (11) the three sampled Union producers represented more than 80 % of the total Union production of the like product.

5.2. **Union consumption**

(112) The Commission established Union consumption on the basis of the sales volumes of the Union industry's own production destined for the Union market, the import volumes obtained from Eurostat statistics and the circumvented imports of a slightly modified product under review from the PRC as recorded by Member States under Article 14(6) of the basic Regulation (the '14.6 data base') ([57]).

(113) On this basis, Union consumption developed as follows:

([56]) The production volume is based on EU-27 data as the United Kingdom ceased to be part of the European Union as from 1 February 2020 and the transition period for the United Kingdom's withdrawal ended on 31 December 2020.

([57]) Implementing Regulation (EU) 2017/271.

Table 1

Union consumption (tonnes) ([58])

	2017	2018	2019	Review investigation period
Total Union consumption	74 030	72 074	74 356	80 065
Index	100	97	100	108

Source: Eurostat, 14.6 database, information provided by the sampled and non-sampled Union producers, information provided by the Union producer's association.

(114) Overall, during the period considered, the Union consumption increased. While it remained relatively stable from 2017 to 2019, it increased by 8 % in the review investigation period compared to both the previous year and 2017.

5.3. **Imports from the PRC**

5.3.1. *Volume and market share of the imports from the PRC*

(115) As mentioned in recital (112), the Commission established the volume of imports from the PRC on the basis of Eurostat statistics and information from the 14.6 database. The market share was established based on of the Union consumption as set out in recital (113).

(116) Imports from the PRC developed as follows:

Table 2

Import volume (tonnes) and market share

	2017	2018	2019	Review investigation period
Volume of imports from the PRC ([59]) (tonnes)	2 103	2 071	2 242	1 588
Index	*100*	*98*	*107*	*76*
Market share (%)	2,8	2,9	3,0	2,0
Index	*100*	*101*	*106*	*70*

Source: Eurostat and 14.6 database.

(117) Imports of the product under review from the country concerned increased between 2017 and 2019 and dropped during the review investigation period. Overall, the imports from the country concerned decreased by 24 % between 2017 and the review investigation period. The market share of the imports from the PRC remained stable between 2017 and 2019 and decreased in the review investigation period by around 1 percentage point, despite the more significant decrease in imports in absolute terms.

(118) This development should however be seen against the background of the massive increase in imports of the circumvented product from Thailand during the same period as outlined in recitals (131) and (133).

([58]) The consumption is based on EU-27 data, excluding data related to the United Kingdom.

([59]) During the investigation period, 1 339 tonnes were importer under the inward processing statistical regime, 106 tonnes under the normal statistical regime and 143 tonnes were the circumvented imports under Regulation (EU) 2017/271.

(119) The product under review is imported from the PRC under the normal regime as well as under the inward processing system.

(120) The imports from the PRC under the normal regime and under inward processing system developed as follows:

Table 3

Import volume (in tonnes) from the PRC under normal regime and inward processing system

	2017	2018	2019	Review investigation period
Import volume from the PRC under the normal regime (tonnes)	861	934	1 124	249
Index	*100*	*109*	*131*	*29*
Market share (%)	1,2	1,3	1,5	0,3
Index	100	112	130	27
Import volume from the PRC under the inward processing system (tonnes)	1 243	1 136	1 118	1 339
Index	*100*	*91*	*90*	*108*
Market share (%)	1,7	1,6	1,5	1,7
Index	*100*	*94*	*90*	*100*

Source: Eurostat and 14.6 database.

(121) Imports volumes under the normal regime increased by 31 % between 2017 and 2019 and dropped significantly during the review investigation period, which translated in an increasing market share between 2017 and 2019 from 1,2 % to 1,5 % and a decrease in the review investigation period to 0,3 %. Imports under the inward processing system followed an opposite trend, decreasing between 2017 and 2019 by 10 % and increasing in the review investigation period by 20 %. Thus, overall during the period considered, import volumes under the inward processing scheme increased by 8 %, albeit given the parallel increase in consumption not gaining market share, which remained overall at 1,7 %.

5.3.2. *Prices of the imports from the PRC and price undercutting*

(122) The average price of imports from the PRC developed as follows:

Table 4

Import prices (EUR/tonne)

	2017	2018	2019	Review investigation period
Import prices from the PRC under the normal regime	2 573	2 509	2 609	2 737
Index	*100*	*97*	*101*	*106*
Import prices from the PRC under the inward processing system	2 152	2 312	2 329	2 277

Index	*100*	*107*	*108*	*106*
Import prices from the PRC (all customs regimes)	2 179	2 373	2 450	2 351
Index	*100*	*109*	*112*	*108*

Source: Eurostat and 14.6 database.

(123) Overall, for both, the normal custom regime and the inward processing system, the average import prices from the PRC increased by 8 % during the period considered. Import prices (all customs regimes) remained below the prices of the Union producers during the IP (table 9).

(124) The average import price under the normal regime remained relatively stable between 2017 and 2019 and increased by 5 percentage points in the review investigation period, while the average import price under the inward processing regime increased steadily up to 2019 and then decreased by 2 percentage points in the review investigation period.

(125) In view of the non-cooperation of the Chinese exporting producers, the Commission determined the price undercutting during the review investigation period by comparing:

(1) the weighted average sales price of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

(2) the corresponding weighted average import prices of the product under review from the PRC from Eurostat under the normal regime, established on a CIF basis, including the anti-dumping duty, with appropriate adjustments for customs duties and post-importation costs. In the absence of any other information, these costs were estimated at 1 % of the CIF value.

(126) The result of the comparison showed no undercutting.

(127) A more detailed analysis per import regime revealed, however that imports made under the inward processing scheme were undercutting the Union industry sales prices on average by 7,2 %. As outlined in recital (173), the price levels of these imports were considered as a strong indicator of future price levels to the Union without anti-dumping duties.

(128) In addition, when considering the average import price of all Chinese imports irrespective of the import regime without applying the anti-dumping duties, they were found to undercut the Union industry's sales prices on average by 4,2 % during the review investigation period. Like above, these prices were also considered as a reasonable indicator of future possible price levels should measures be repealed.

(129) Moreover, the Commission considered also the price levels of the circumvented imports from Thailand as those imports were in reality from Chinese exporting producers that were merely avoiding the anti-dumping duties in force on imports originating in China. The investigation established that these imports (with appropriate adjustments for customs duties and post-importation costs), undercut the Union industry prices on average by 3,5 % during the review investigation period.

5.3.3. *Imports from third countries other than the PRC*

(130) The imports of the product under review from other third countries were mainly from Armenia, Thailand and Turkey.

(131) The volume of imports from other third countries, as well as the market share and price trends developed over the period considered as follows:

Table 5

Imports from third countries other than the PRC

Country		2017	2018	2019	Review investigation period
Armenia	Volume (tonnes)	14 164	19 278	18 373	17 257
	Index	*100*	*136*	*130*	*122*
	Market share (%)	19	27	25	22
	Index	*100*	*140*	*129*	*113*
	Average price	2 804	2 895	2 730	2 533
	Index	*100*	*103*	*97*	*90*
Thailand	Volume (tonnes)	28	1 027	2 659	6 820
	Index	*100*	*3 693*	*9 565*	*24 534*
	Market share (%)	0,04	1,4	4	9
	Index	*100*	*3 793*	*9 364*	*22 685*
	Average price	2 337	2 544	2 426	2 381
	Index	*100*	*109*	*104*	*102*
Turkey	Volume (tonnes)	16 221	15 289	17 565	18 103
	Index	*100*	*94*	*108*	*112*
	Market share (%)	22	21	24	23
	Index	*100*	*97*	*108*	*103*
	Average price	2 878	2 952	2 828	2 601
	Index	*100*	*103*	*98*	*90*
Rest of the world	Volume (tonnes)	3 407	2 539	1 968	558
	Index	*100*	*75*	*58*	*16*
	Market share (%)	5	4	3	1
	Index	*100*	*77*	*58*	*15*
	Average price	2 751	2 928	2 918	3 117
	Index	*100*	*106*	*106*	*113*
Total third countries except the PRC	Volume (tonnes)	33 820	38 133	40 564	42 738
	Index	*100*	*113*	*120*	*126*
	Market share (%)	46	53	55	53
	Index	*100*	*116*	*119*	*117*
	Average price	2 834	2 910	2 764	2 545
	Index	*100*	*103*	*98*	*90*

Total third countries except Thailand and the PRC	Volume (tonnes)	33 792	37 106	37 905	35 918
	Index	*100*	*110*	*112*	*106*
	Market share (%)	46	51	51	45
	Index	*100*	*113*	*112*	*98*
	Average price	2 834	2 921	2 785	2 576
	Index	*100*	*103*	*98*	*91*

Source: Eurostat.

(132) During the period considered, imports from other third countries increased by around 9 000 tonnes, i.e. by 26 % which is faster than the progression of the Union consumption which resulted in the market share increase from 46 % to 53 %.

(133) However, 76 % of this increase (6 792 tonnes) were imports from Thailand that are circumventing the definitive anti-dumping measures in force on imports from China as set out in recital (3) and have therefore to be considered as Chinese imports.

(134) As shown in table 5, while imports from other third countries except Thailand increased by 6 % during the period considered (2 126 tonnes), at a pace slower than the Union consumption, imports from Thailand increased by several thousand times resulting in an increase of market share from 0 % to 9 %. Other third country imports without Thailand lost market share, in particular between 2019 and the review investigation period, where the increase in market share from Thailand was the most pronounced (+5 percentage points).

(135) During the review investigation period, price levels of imports from Thailand were found to undercut Union industry sales prices by 3,5 % on average, as explained in recital (129) above, while at the same time import prices from other third countries except Thailand were in line with the Union industry sales prices.

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

5.4.1. *General remarks*

(136) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(137) As mentioned in recital (11), sampling was used for the assessment of the economic situation of the Union industry.

(138) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the replies to the anti-dumping questionnaire by the sampled producers as well as macroeconomic data provided by the non-sampled producers and the Union producers' association, crosschecked with the data in the review request. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(139) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

(140) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.4.2. *Macroeconomic indicators*

5.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2017	2018	2019	Review investigation period
Production volume (tonnes)	41 387	35 173	36 292	39 460
Index	*100*	*85*	*88*	*95*
Production capacity (tonnes)	52 900	47 600	48 100	50 750
Index	*100*	*90*	*91*	*96*
Capacity utilisation (%)	78,2	73,9	75,5	77,8
Index	*100*	*94*	*96*	*99*

Source: information provided by the sampled and non-sampled Union producers, information provided by the Union producer's associations.

(142) Although Union consumption increased by 8 % during the period considered as mentioned in recital (113), production volume of the like product decreased by 15 % from 2017 to 2018, after which it slightly recovered over the rest of the period considered, resulting in a decrease of 5 % during the full period considered. Therefore, the increase of the Union consumption has not benefitted the Union industry.

(143) The decrease of the production volume is partly due to the Union industry's restructuring processes undertaken to recover from the injury suffered during the review investigation period of the previous expiry review investigation (1 October 2013 to 30 September 2014), and partly due to the increasing unfair competition that the Union industry faced from circumvented imports of the product under review coming from Thailand. As explained in recital (132), the increase in import volumes from third countries was mainly due to an increase in circumvented AHF from Thailand.

5.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2017	2018	2019	Review investigation period
Total sales volume on the Union market (tonnes)	38 107	31 871	31 550	35 739
Index	*100*	*84*	*83*	*94*
Market share (%)	51	44	42	45
Index	*100*	*86*	*82*	*87*

Source: Information provided by the applicant, information provided by the sampled and non-sampled Union producers.

(145) Sales volume of the Union industry decreased by 6 % during the period considered. It decreased steadily up to 2019 (by 17 %) and recovered partially during the review investigation period, increasing by 11 percentage points. However, this increase was not in line with the increase in Union consumption which resulted overall in a loss of market share of the Union industry from 51 % in 2017 to 45 % in the review investigation period (minus 6 percentage points), while the market share of the circumvented imports from Thailand gained 9 percentage points during the same period.

5.4.2.3. Growth

(146) Although Union consumption increased by 8 % during the period considered, the sales volume of the Union industry decreased by 6 %, which resulted in a 13 % market share loss for the Union industry over the period considered. Consequently, there was no growth for the Union industry during the period considered.

5.4.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2017	2018	2019	Review investigation period
Number of employees (FTE)	394	356	359	378
Index	*100*	*90*	*91*	*96*
Productivity (unit/employee)	105	99	101	104
Index	*100*	*94*	*96*	*99*

Source: Information provided by the applicant, information provided by the sampled and non-sampled Union producers.

(148) The number of employees of the Union industry decreased between 2017 and the review investigation period by 4 %. The productivity of the Union industry's workforce, measured as output (tonnes) per employee, followed the same trend up to 2019 and recovered in the review investigation period following the production and sales increase, as explained in recitals (142) and (145) above.

(149) The decrease of the number of employees is due to the decrease of production volume, which is also linked to the decrease of the Union industry's sales volume.

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

(150) The Commission concluded in recital (89) that dumping from the PRC continued during the review investigation period. The Commission also concluded that there was a strong likelihood of continuation of dumping from the PRC, if the measures lapse.

(151) Notwithstanding the anti-dumping measures in force since 2009, the Union industry has lost substantial sales volume which is reflected in a loss of market share of 13 % over the period considered. Thus, no full recovery from the past dumping could be established and the Union industry remains highly vulnerable to the injurious effects of any dumped imports in the Union market.

5.4.3. *Microeconomic indicators*

5.4.3.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union

	2017	2018	2019	Review investigation period
Average unit sales price in the Union on the total market (EUR/tonne)	2 822	2 930	2 810	2 663
Index	*100*	*104*	*100*	*94*
Unit cost of production (EUR/tonne)	2 645	2 776	2 620	2 574
Index	*100*	*105*	*99*	*97*

Source: Questionnaire replies of the sampled Union producers.

(153) The average unit sales price increased between 2017 and 2018 and decreased in 2019 at the same level of 2017, then dropped by 6 % during the review investigation period. While the Union industry managed to keep its sales prices above the unit cost of production during the entire period considered, the price pressure of the increased circumvented imports from Thailand were showing an effect on the Union industry sales prices during the review investigation period, were they dropped to a higher degree than the unit cost.

5.4.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2017	2018	2019	Review investigation period
Average labour costs per employee (EUR)	19 444	19 827	20 487	22 184
Index	*100*	*102*	*105*	*114*

Source: Questionnaire replies of the sampled Union producers.

(155) The average labour cost progressively increased over the period considered. Overall, the average labour cost per employee increased by 14 %. This trend was mostly influenced by the restructuring process on the Union industry, as some producers invested in creating sales structures in different Member States.

5.4.3.3. Inventories

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

Table 11

Inventories

	2017	2018	2019	Review investigation period
Closing stocks (tonnes)	978	940	1 693	1 425
Index	*100*	*96*	*173*	*146*
Closing stocks as a percentage of production	2,4	2,7	4,7	3,6
Index	*100*	*113*	*197*	*153*

Source: Questionnaire replies of the sampled Union producers.

(157) Inventories cannot be considered as a relevant injury indicator in this sector, as production and sales are mainly based on orders and, accordingly, producers tend to hold limited stocks. Therefore, the trends on inventories are given for information only.

(158) Overall, inventories increased during the period considered by 46 %. Initially they decreased by 4 % from 2017 to 2018 before progressively increasing in 2019 and the review investigation period.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	8,2	7,4	6,8	3,4
Index	*100*	*90*	*83*	*41*
Cash flow (EUR)	10 768 045	10 888 351	8 682 415	10 199 898
Index	*100*	*101*	*81*	*95*
Investments (EUR)	1 141 165	4 327 224	1 119 149	1 665 356
Index	*100*	*379*	*98*	*146*
Return on investments (%)	10	7	5	1
Index	*100*	*74*	*55*	*15*

Source: Questionnaire replies of the sampled Union producers.

(160) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(161) After the previous expiry review investigation mentioned in recital (1), where the anti-dumping measures were imposed, the situation of the Union industry improved and its profit margin reached 8,2 % in 2017. However, the situation deteriorated subsequently and profit margins declined as from 2018 reaching only 3,4 % in the review investigation period, corresponding to a decrease of 59 % over the period considered.

(162) This was mainly due to the price pressure exerted by the circumvented imports from Thailand which entered into the Union undercutting those of the Union industry and exerting a significant price pressure that forced the Union industry to reduce their prices levels, as explained above in recital (153).

(163) The net cash flow is the Union industry's ability to self-finance their activities. Given that the Union industry is still profitable, despite the decreasing trend, the cash flow remained overall relatively stable over the period considered.

(164) Investments increased by 46 % in the period considered, which is mainly due to the efforts made by the Union industry to rationalize its production and increase efficiency and productivity to face the increasing low priced imports. However, in the same period, the return on investments, which is expressed as the profit in percentage of the net book value of investments dropped from 10 % to 1 % and therefore followed the same trend as the profitability.

(165) The decreasing profitability and return on investment made it increasingly difficult for the sampled Union producers to raise capital for investment. With returns on investments falling so quickly, the sampled producers' ability to raise capital in the future is in even greater jeopardy.

5.4.4. *Conclusion on injury*

(166) The evolution of the micro and macro indicators during the period considered showed that the financial situation for the Union industry deteriorated. Overall, the trends of the main economic indicators worsened over the period considered.

(167) In particular, production, sales volumes and market shares decreased, as well as sales prices which had a negative effect on employment and productivity as well as on profitability. The increased price pressure from the circumvented imports coming from Thailand in particular did not allow the Union industry to align its sales prices with the development of its production costs with negative effects on its profitability which saw a decrease of almost 60 % over the period considered. Finally, the rapidly decreasing returns on investments has a negative impact on the Union industry's ability to raise capital and investments.

(168) On the other hand, despite the declining trends, the Union industry still managed to maintain large sales volume and considerable market share. Likewise, despite the negative trend, profitability remained positive throughout the period considered. Therefore, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period, but was in a fragile situation.

(169) Therefore, the Commission further examined the likelihood of recurrence of injury if the measures lapse.

6. **LIKELIHOOD OF RECURRENCE OF INJURY**

(170) The Commission concluded in recital (168) that the Union industry did not suffer material injury during the review investigation period, but was in a fragile situation. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from the PRC if the measures were allowed to lapse.

(171) In order to establish whether there is likelihood of recurrence of injury originally caused by the dumped imports from the country concerned, the Commission considered the following elements: (i) production volume and spare capacity in the PRC and attractiveness of the Union market; (ii) likely price levels of imports from the PRC and their impact on the Union industry's situation, should the measures allowed to lapse; and (iii) the existence of circumvention practices.

6.1. **Production volume and spare capacity in the PRC – attractiveness of the Union market**

(172) As set out in recital (91), the production capacity in the PRC substantially exceeds the production volumes and internal demand on the Chinese domestic market. Given in addition the conclusions on the attractiveness of the Union market as described in recitals (102) to (105), such spare capacity will very likely largely be used for exports to the Union market, if measures were allowed to lapse.

6.2. **Likely price levels of imports from the PRC and their impact on the Union industry's situation should the measures lapse**

(173) In order to assess the impact of future imports on the situation of the Union industry, the Commission considered that price levels of the Chinese exports without anti-dumping duties would be a reasonable indicator of future price levels to the Union market. On this basis, as set out in recitals (127) and (128) respectively, the average undercutting margin for the product under review was found to be 4,2 % for all import regimes, and 7,2 %, under the inward processing regime, the latter, subject to no duties, is considered the best indicator of the likely price levels in the absence of anti-dumping measures.

(174) Moreover, as explained in recital (120), almost all the imports from the PRC into the Union were made under the inward processing regime. Therefore, it can be concluded that the anti-dumping measures were effective in preventing dumped imports from the PRC from entering the Union market and that they will most likely resume if the measures will expire.

(175) The product under review is a commodity product, and therefore the market is price sensitive. A surge in imports at low prices would force the Union industry to further reduce their prices as it has already been done in order to compete with the circumvented imports from Thailand, as explained above in recitals (133) and (135).

(176) Considering the above, and if confronted with an increase of low priced imports from the PRC, the Union producers, in an attempt to keep sales volumes and market shares, would reduce their prices by 4,2 % (at the level of the undercutting), this would have an impact on the industry's overall profitability, which would decrease from 3,4 % in the review investigation period to -1 % and therefore turn negative in short term.

(177) On the other hand, if the Union industry keeps its current price levels, and considering AHF is a commodity product, this would have an almost immediate negative impact on its sales and production volume as well as market share. Moreover, a decrease in production volume would result in an increase of the unit costs of production due to the reduced economy of scales. This would further deteriorate the Union industry's profitability and turn into losses in short term.

(178) With a loss of profitability, the Union industry would not be able to carry out necessary investments. Ultimately, this would also lead to loss of employment and risk of closure of production lines.

6.3. **Existence of circumvention practices**

(179) As set out in recital (104), the Chinese exporters have a history of dumping practices towards the Union market. Currently, as mentioned in recitals (2) and (3), two anti-circumvention measures are in place, one against imports of a slightly modified product from China and a second, more recent, for imports coming from Thailand were Chinese exporting producers set up assembly operations.

(180) As indicated in recitals (153) and (162), circumvention practices from Thailand were the main cause for the Union industry's losses in sales volume and marked share during the period considered. The existence of these circumvention practices show that circumvented imports that enter the Union market without anti-dumping duties have significant negative effect on the Union industry's situation, that materialise quickly due to the price sensitivity of the market.

6.4. **Conclusion**

(181) In view of the above, the Commission concluded that the expiry of the measures would in all likelihood result in a significant increase of dumped imports from the PRC at prices undercutting the Union industry prices, and therefore further aggravate the already fragile economic situation of the Union industry. It is highly likely that this would lead to a recurrence of material injury and as a consequence, the viability of the Union industry would be at serious risk.

7. **UNION INTEREST**

(182) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, distributors and users.

(183) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.

7.1. **Interest of the Union industry**

(184) The Union industry is composed of around eight companies and employed around 1 000 workers directly with many more relying on it indirectly. As mentioned in recital (11), the Commission selected a sample of Union producers. The sample consisted of 3 Union producers that provided a reply to the questionnaire. The sample was considered representative for the Union industry.

(185) As set out above, the Union industry did not suffer material injury during the period considered but it is in a fragile situation, as confirmed by the negative trends of the injury indicators. Removing the anti-dumping duties would lead to a likely recurrence of material injury which would be translated in a loss of sales and production volume, as well as market share leading to a loss of profitability and employment.

(186) On the other hand, the Union industry has proven to be a viable industry. After the last expiry review it managed improving its situation under fair conditions on the Union market, making investments and reaching a fair profitability. The continuation of the measures would prevent low priced imports from the PRC to flood the Union market and therefore allow the Union industry to maintain sustainable price levels and increase its profitability to reach levels necessary for future investments.

(187) On this basis, the Commission thus concluded that the maintenance of the anti-dumping measures is in the interest of the Union industry.

7.2. **Interest of unrelated importers, traders and users**

(188) The Commission contacted all known unrelated importers, traders and users. Only one importer, Cellofix, provided comments but did not submit a reply to the questionnaire.

(189) Cellofix opposed the renewal of the measures in force claiming that: (i) it would not result in a recurrence of injury for the Union industry and, (ii) it would not be in the interest of the Union.

(190) As regards the first point, Cellofix argued that the current measures have been in force for a period of over eleven years during which it claimed the Union industry had recovered from any injury suffered. This would also be evidenced by the industry's growth.

(191) The Commission disagrees with this claim. As set out in section 5.4, the investigation established a general downward trend of the Union industry's economic and financial indicators and showed that the Union industry was in a fragile situation during the review investigation period. As set out in recital (146), the Commission did also not find that there was a growth of the Union industry. It is recalled that on the basis of these developments the Commission concluded that the expiry of the measures would likely lead to a recurrence of material injury. The arguments of the importer in this respect were therefore rejected.

(192) As regards the second point that the renewal of the measures will not be in the Union interest, the importer claimed that, following the adoption of the definitive anti-dumping measures in 2009, it has struggled to buy AHF from the Union industry due to their lack of production capacity but also due to the pressure exerted by its large competitors on the Union producers, in order to limit the supply to Cellofix.

(193) Concerning the alleged lack of production capacity, the investigation has shown that the Union industry had about 10 000 tonnes of spare capacity available which does not suggest any problems of the Union industry to supply the Union market. Regarding the alleged pressure on the Union industry to limit supply of AHF, the company did not provide any evidence to support this claim. These claims were therefore dismissed.

(194) Given the non-cooperation of any other importers, traders or users, no information was available on the impact of the duties on these parties. The original investigation revealed, however, that any impact on other interested parties was not as such that measures had to be considered to be against the Union interest and likewise, the previous expiry review investigation established that the maintenance of the measures would not have a significant negative impact on the situation these parties.

(195) On the basis of the above, the Commission concluded that the maintenance of the anti-dumping measures in force would not have any significant adverse effects on importers, traders or users.

7.3. **Conclusion on Union interest**

(196) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product under review originating in the PRC.

8. **ANTI-DUMPING MEASURES**

(197) Based on the conclusions reached by the Commission concerning the continuation of dumping from the PRC, the recurrence of injury caused by dumped imports from the PRC, and the Union interest, the Commission finds that the anti-dumping measures on imports of certain aluminium foil originating in the PRC should be maintained.

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

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

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

(201) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(202) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([60]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(203) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure. No comments were received.

(204) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([61]), 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.

(205) 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 hereby imposed on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, currently falling under CN code ex 7607 11 19 (TARIC code 7607 11 19 10), and originating in the People's Republic of China.

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

Country	Company	Anti-dumping duty	TARIC additional code
PRC	Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd	6,4 %	A944
	Shandong Loften Aluminium Foil Co., Ltd	20,3 %	A945
	Zhenjiang Dingsheng Aluminium Co., Ltd	24,2 %	A946
	All other companies	30,0 %	A999

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

([61]) 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).

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

4. The definitive anti-dumping duty applicable to "all other companies" as set out in paragraph 2, is hereby extended to imports into the Union of certain aluminium foil originating in the People's Republic of China, currently falling under CN codes ex 7607 11 19 and ex 7607 11 90 (TARIC codes 7607 11 19 30, 7607 11 19 40, 7607 11 19 50, 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, and 7607 11 90 72), with the exception of those produced by the companies listed below:

Company name	TARIC additional code
Jiangsu Zhongji Lamination Materials Co., Ltd	C198
Luoyang Wanji Aluminium Processing Co., Ltd	C199
Xiamen Xiashun Aluminium Foil Co., Ltd	C200
Yantai Donghai Aluminum Foil Co., Ltd	C201

5. The definitive anti-dumping duty applicable to imports originating in the People's Republic of China, as set out in paragraph 2, is hereby extended to imports of certain aluminium foil, currently falling under CN codes ex 7607 11 19 and ex 7607 11 90 (TARIC codes 7607 11 19 10, 7607 11 19 30, 7607 11 19 40, 7607 11 19 50, 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, 7607 11 90 72) consigned from Thailand, whether declared as originating in Thailand or not (TARIC additional code C601).

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

Article 2

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

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

Done at Brussels, 9 March 2022.

For the Commission
The President
Ursula VON DER LEYEN