II

*(Non-legislative acts)*

# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2020/776

**of 12 June 2020**

**imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt**

THE EUROPEAN COMMISSION,

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

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

Whereas:

### 1. PROCEDURE

#### 1.1. Initiation

(1) On 16 May 2019, based on Article 10 of the basic Regulation, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the Union of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China (the 'PRC') and Egypt (together referred to as 'the countries concerned'). The Commission published a Notice of Initiation in the *Official Journal of the European Union* ('Notice of Initiation') [2] on 16 May 2019.

(2) The Commission initiated the investigation following a complaint lodged on 1 April 2019 by Tech-Fab Europe ('the complainant') on behalf of producers representing more than 25 % of the total Union production of certain woven and/or stitched glass fibre fabrics. The complaint contained evidence of subsidisation and of a resulting injury that was sufficient to justify the initiation of the investigation.

(3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') [3] and the Government of Egypt ('GOE') [4] that it had received a properly documented complaint, and invited the GOC and the GOE for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 13 May 2019 with the GOC and with the GOE. However, no mutually agreed solution could be reached.

[1] OJ L 176, 30.6.2016, p. 55.
[2] Notice of initiation of an anti-subsidy proceeding concerning imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ C 167, 16.5.2019, p. 11).
[3] The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies and Administrations at central, regional or local level.
[4] The term 'GOE' is used in this Regulation in a broad sense, including all Ministries, Departments, Agencies and Administrations at central, regional or local level.

(4) On 21 February 2019, the Commission initiated a separate anti-dumping investigation of the same product originating in the PRC and Egypt [5] ('the separate anti-dumping investigation'). On 7 April 2020, the Commission imposed definitive anti-dumping duties on imports of the product concerned originating in the PRC and Egypt [6] ('the definitive anti-dumping Regulation'). The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the separate anti-dumping investigation are *mutatis mutandis* identical, since the definition of the Union industry, the sampled Union producers, the period considered and the investigation period are the same in both investigations.

1.1.1. *Comments by the GOC concerning initiation*

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

(6) The Commission rejected that claim. The evidence submitted in the complaint constituted the information reasonably available to the complainant at that stage. As shown in the memorandum on sufficiency of evidence, which contains the Commission's assessment on all the evidence at the disposal of the Commission concerning the People's Republic of China and Egypt, and on the basis of which the Commission initiated the investigation, there was sufficient evidence at initiation stage that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence of the existence of injury to the Union industry, which was caused by the subsidised imports.

(7) More specifically, during the pre-initiation consultations, the GOC indicated that the complainant's references to any Chinese plans, programmes, or recommendations were irrelevant as they are not binding and that the GFF industry is not mentioned in China's 13th Five Year Plan nor in the 13th Five Year Plan for the Building Materials Industry (2016-2020). Following initiation, the GOC also stated that GFF is not covered by the document 'Made in China 2025'. The Commission noted that the GOC does not dispute the existence of such plans, programmes, or recommendations but only the extent to which they are binding or to which they cover the GFF industry. The Commission further observed that the complainant provided evidence indicating that 'new materials' are mentioned in several government documents, while 'glass-based materials' are mentioned in the 13th Five Year Plan for the Building Materials Industry (2016-2020). The GOC failed to produce any evidence showing that those statements would not be applicable to the product concerned.

(8) The GOC also stated that neither the Chinese Export & Credit Insurance Corporation ('Sinosure') nor State-owned commercial banks are public bodies and that the GOC did not entrust or direct private banks. The Commission noted that this claim is connected to the claim already evoked above, and that the complaint among others mentioned the Bank Law in China, which the GOC does not dispute to belong to the Chinese legislation. The Commission also highlighted that recent EU anti-subsidy investigations had concluded differently on this matter [7].

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[5] Notice of initiation of an anti-dumping proceeding concerning imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ C 68, 21.2.2019, p. 29).

[6] Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 imposing definitive anti-dumping duties on imports of certain woven, and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 108, 6.4.2020, p.1).

[7] Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case') and Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5) ('E-bikes case').

(9) Furthermore, the GOC claimed that export buyers' credit are provided to foreign companies and hence do not benefit Chinese GFF producers. The Commission found however that benefits granted to foreign companies owned by Chinese GFF producers may benefit the latter.

(10) The GOC indicated that the tax scheme relating to accelerated depreciation of equipment used by High-Tech enterprises for High-Tech development and production, as well as some of the mentioned grants programmes had been terminated. The Commission took note of this comment, but highlighted that it does not apply to all programmes nor to the different levels of government authorities (i.e. national, regional or local) mentioned in the complaint. In addition, the tax scheme related to accelerated depreciation could still procure ongoing benefits such as depreciation over the lifespan of the relevant equipment, possibly covering the investigation period.

(11) Following initiation, the GOC further argued that the complainant did not establish the conditions for applying an out-of-country benchmark for loans and for land use rights. The Commission found, however, that the allegations contained in the complaint are supported by recent EU anti-subsidy investigations concluding on those matters the need for external benchmarks adjusted to the prevailing conditions in the PRC ([8]).

(12) In addition, the GOC stated that the complaint lacked sufficient evidence as it relied mostly on previous EU regulations, which concern different product scopes. The Commission however noted that the findings made in previous and recent anti-subsidy investigations relate to the same subsidy programmes alleged in the complaint. Following initiation, the GOC furthermore submitted that substantial changes and reforms had occurred in the financial sector in the years 2016 to 2018, and that the complaint could thus not rely on any pre-existing situation. However, the Commission noted that the complainant also provided additional evidence in the complaint of the continued existence of the subsidy programmes, without having been substantially altered. The Commission further recalled that the GOC failed to provide evidence rebutting the continuation of the relevant programmes. Thus, at the stage of initiation, the evidence available tended to show that there was no relevant change in the subsidy programmes at issue. Ultimately, this was also confirmed in this investigation.

(13) The GOC further claimed, in relation to various subsidies, that the applicant failed to provide evidence of benefit and specificity. The Commission is of the view that the complainant provided sufficient evidence of benefit and specificity as was reasonably available to it. In any event, the Commission examined the evidence in the complaint and provided its own assessment of all relevant elements in the memorandum of sufficiency of evidence, which was put on the open file upon initiation. The GOC reiterated its comments following initiation, but did not provide any further evidence.

(14) Therefore, the Commission concluded that there was sufficient evidence provided in the complaint tending to show the existence of the alleged subsidisation by the GOC.

(15) Finally, a particular element of this case is that the alleged subsidisation in Egypt concerns two companies in the China-Egypt Suez Economic and Trade Cooperation Zone ('SETC-Zone'), a special economic zone which was set up together by the PRC and Egypt, which are the two countries targeted by the complaint. The Commission stated its intention to investigate all subsidies received by these companies in the SETC-Zone, regardless of their source.

(16) During the pre-initiation consultations, the GOC indicated that the complainant had no legal basis to challenge the GOC via the product concerned originating in or exported from Egypt. The Commission noted the concerns of the GOC, but still considered that there was sufficient evidence to start an investigation into the alleged countervailable subsidies granted to the companies in the SETC-Zone, regardless of their source.

([8]) Idem.

(17) Following initiation, the GOC argued that, when establishing the Union consumption, the adjustment made to the import data from the PRC was unfair when compared to the adjustment made to the import data from other third countries like Russia. The GOC further argued that these adjustments were not cross-checked by the Commission. The GOC also argued that there is no information on the record on what constitutes market information / intelligence used in adjustments made to import data.

(18) As also outlined in recital (937), further to the complainant's import analysis on CN-basis, the imports were also assessed based on import statistics at TARIC level, cross-checked with other sources and adjusted where appropriate. With regards to Russia, the import data was cross-checked and adjusted based on the import data from GFF producers related to the Union producers that were the only known GFF producers in Russia. This methodology was found reasonable leading to an accurate estimate of the imports of the product concerned from Russia. In the same way, during the investigation, as explained in recital (937) below, the Commission cross-checked the Eurostat TARIC-level data with the data submitted by the known producers in the PRC, who came forward during the sampling exercise. The export volume of GFF reported by the cooperating Chinese exporting producers represented the totality of the imports recorded in Eurostat under the relevant TARIC codes and all exports were therefore considered to be the product concerned. Finally, by contrast to what was claimed by the GOC, the complaint explained how market information / intelligence was used to adjust import data. This claim was therefore rejected.

(19) In its comments on initiation, the GOC argued that the market for GFF is segmented and each of the segments represent vastly different price bands. The GOC argued that the three main types of products woven rovings ('WR'), knitted non-crimp fabrics ('NCF'), and complex materials ('CM') have different composition and production steps/processes, and therefore also production costs and sales prices. Moreover, these three product types have different physical and technical characteristics, which in turn define their end uses. According to the GOC, the price comparison/undercutting assessment, as well as the assessment of the allegedly injurious impact of the Chinese imports as done in the complaint at an aggregate level is misleading and insufficient without actually assessing the extent of the presence, i.e. volume and market share, of the Chinese and the Union producers in each of the product segments.

(20) The Commission considered that the GOC failed to submit any evidence to support those claims. At initiation, the complainant provided sufficient evidence regarding costs and prices of the product under investigation. The fact that different types of products exist that may have different production processes, costs and sales prices does not automatically entail that there is a segmentation of the market. It is noted that in accordance with Article 10(2) of the basic Regulation the complainant must provide the information that is reasonably available to it. As costs and prices of products types produced in China are by nature confidential and not available to the complainant, the Commission considered that the complaint contained sufficient information that was reasonably available to the complainant to initiate the investigation.

(21) Furthermore, the information collected and received by the Commission during the investigation showed that the Union market for GFF is not segmented. The claim that the three product types – WR, NCF and CM – have different physical and technical characteristics, which in turn define their end uses, is factually incorrect. As explained in the complaint and in recitals (129) to (138), and as undisputed by the GOC, the product concerned is used to reinforce thermoplastic and thermoset resins in the composites industry. There are many overlaps in usage; the fabric type chosen will depend on the surface look, the resin flow, the tension to which the finished product will be subject and the application technique. Certain product types are particularly good for closed mould production techniques, or hand lay-up.

(22) The three product types have the following main and overlapping uses: WRs are used on thermoset applications, especially hand lay-up, for marine products (boat hulls and decks), vehicle body panels (e.g. trucks, trains), windmill blades, pipes and tanks. NCFs are used for the construction of marine products (boat hulls and decks), vehicle bodies and panels (e.g. trucks, trains), windmill blades and nacelles, skis and snowboards, pipes and tanks. CMs are used in closed mould applications for vehicle bodies and panels, marine products (boat hulls and decks), windmill nacelles and leisure vehicles.

(23) Finally, the Commission notes that it is not unusual for a product concerned to have product types that have different cost structure and prices. This is the very reason for which the Commission collects data on the basis of detailed product types classification. That classification, aside of fabric forms, distinguished between sales formats, types of glass used, area weight and density of rovings. The undercutting calculation was based on product type per product type comparison and thus all these characteristics were taken into consideration when imports from the PRC were being compared with GFF from Union producers. This argument was therefore rejected.

(24) In its comments on initiation, the GOC further argued that significant differences between import prices of GFF from different sources also makes clear that the Union market for the different product types is segmented and imports from different countries are for different market segments.

(25) As noted above, the information collected by the Commission throughout the investigation confirmed that the Union market for GFF is not segmented. Furthermore, the investigation has shown that Chinese exporting producers and Egyptian exporting producers do not export completely different forms of GFF. The matching between product sold by exporting producers in the PRC and Egypt was at around 90 %. This argument was therefore rejected.

(26) In its comments on initiation, the GOC further argued that the Chinese import price comparison and undercutting calculation in the complaint were based on un-comparable and cherry-picked data that was wrongly adjusted.

(27) As mentioned above, Article 10(2) of the basic Regulation sets the standard of the evidence to be provided by the complainant in the complaint. Thus, while the information has to be sufficient it must also be reasonably available to the complainant. Since cost and price information are by nature confidential, no precise data on costs and prices per product types exported by companies in third countries are reasonably available to the complainant at initiation stage. The information provided was nonetheless considered sufficient to initiate the investigation since it was based on Chinese import prices statistics from Eurostat.

(28) The Commission further noted that, as specified in recital (965), the undercutting calculation during the investigation was mainly based on actual detailed data of sampled Union producers and exporting producers, which confirmed the undercutting allegations contained in the complaint based on Eurostat statistics. This argument was therefore considered moot also with regard to the data used in the investigation.

(29) In its comments on initiation, the GOC argued that Chinese GFF imports did not cause price pressure. This statement was not substantiated by any evidence.

(30) In contrast, the complaint provided information on the effect of the subsidised imports on prices of the like product in the Union market and the consequent impact of the imports on the Union industry that was considered sufficient to initiate the investigation. The evidence provided in the complaint showed that Union prices were significantly undercut by both Egyptian and Chinese import prices.

(31) In addition, that statement is factually incorrect. As found by the Commission during the investigation and explained in recital (966), the sampled Chinese exporting producers significantly undercut Union industry's prices during the IP. This argument was therefore rejected.

(32) In its comments on initiation, the GOC argued the cumulation of imports from China and Egypt for the purpose of the injury analysis is not justified in the present case. This is because the conditions of competition between the imports from these countries, and between the imports from these countries and the like product produced and sold by the Union industry on the Union market are vastly differ. The GOC argued that Chinese GFF is not in competition with Egyptian GFF as (i) Egyptian GFF imports were practically inexistent until 2017; (ii) GFF imports from China and Egypt followed completely opposite trends; (iii) Egyptian imports are differently priced; and (iv) the Egyptian imports are only of NCF according to the Complainant's own calculations and therefore do not compete with the Union and Chinese GFF sales on the Union market.

(33) The Commission first observed that the complaint contained sufficient evidence tending to show that imports of the product concerned were being subsidised and imports volumes were significant and cause injury to the Union industry. It also contained a number of elements regarding the cumulative assessment of imports from the two countries concerned (in particular that for each country the estimated amounts of subsidisation are not *de minimis* [9], that for each country the import volumes are significant [10] and that the countries concerned are competing with each other, with the like product and third countries and that the products exported by these countries are sharing the same characteristics and end uses with the like product [11]), which were found to overcome their burden at initiation stage. This evidence was analysed further during the investigation and the Commission confirmed that the conditions for cumulation were met, as described in recitals (947) to (950) explained in detail.

(34) The GOC further argued that Chinese import volume decreased in the period considered and could not have injured the Union producers.

(35) As discussed above, the complaint contained sufficient evidence that Chinese and Egyptian imports of GFF should be assessed cumulatively. According to the evidence in the complaint, GFF imports from both countries are competing with each other and with the like product, as well as with imports from third countries. Imports from the PRC and Egypt have the same product characteristics and uses, and are sold to customers across the Union in direct competition with GFF produced by the Union industry and third countries.

(36) In its comments on initiation, the GOC argued that the complainant has failed to provide reliable data as regards the Union industry as a whole, as the data for non-complainants was unreliable. Furthermore, the complainant did not provide information on several injury indicators.

(37) The GOC did not explain in what way the data was unreliable. Again, confidential information on sales and production data of the non-complainant Union producers was not available to the complainant. The complainant therefore provided estimates that were considered reasonable and sufficiently accurate and in compliance with Article 10(2) of the basic Regulation. In order to provide sufficient evidence of injury, there is no obligation to provide data on all injury indicators mentioned in Article 8(4) of the basic Regulation; neither do all injury indicators have to show a downward trend.

(38) The Commission noted that the sample of Union producers selected during the investigation, included the biggest non-complainant, which gave the Commission an opportunity to cross-check macro data provide by the complainant. Furthermore, all relevant injury indicators were considered by the Commission in the investigation. This argument was therefore rejected.

(39) In its comments on initiation, the GOC argued that, the Union producers are not injured and particularly not on account of the Chinese imports. According to the GOC, between 2015 and the complaint IP, the Union industry was doing well and basically, all the injury indicators developed positively or remained stable.

(40) The data in the complaint clearly showed that the Union industry has been materially injured by heavily undercutting subsidised imports of GFF from the subject countries. The production, sales and market share of the Union industry have dropped substantially. The complainants were forced to reduce investment and employment. Stocks of Union producers supporting the complaint increased and their profitability dropped.

(41) The Commission noted that during the investigation the injury indicators established based on the actual verified data provided by sampled Union producers showed material injury that was caused by imports from the countries concerned. The GOC provided comments on these indicators, in its comments on the final disclosure [12]. These comments are addressed in Section 5.4. of this Regulation.

(9) Annexes to Section 6 of the consolidated version of the complaint.
(10) Annexes to recitals 349 to 352 of the consolidated version of the complaint.
(11) Annexes to Section 4 of the consolidated version of the complaint.
(12) 'Definitive disclosure' is the same as 'final disclosure' for the purpose of this document.

(42) In its comments on initiation, the GOC argued that the Union industry suffered injury due to its related imports from third countries and the decline in demand on the Union market.

(43) The Commission disagreed. The complaint demonstrated that due to the low volumes of the related imports from third countries these could not have caused the material injury. The complainant's analysis of the injury indicators further showed that the injury cannot be explained with the decline in demand on the Union market as their losses in market share demonstrate that its loss in sales went clearly beyond the consumption decline.

(44) The complainant provided sufficient evidence of causal link between imports from the countries concerned and injury. In addition, the complainant analysed other potential causes of injury such as the performance of Union producers, the export performance of Union producers and imports from other third countries.

(45) During the investigation, imports from third countries and the decline in demand on the Union market, were examined in Section 6.2. below. After final disclosure, no new arguments were provided in the GOC's comments on initiation. This argument was therefore rejected.

(46) In its comments on initiation, the GOC argued that vertically integrated Union producers suffered injury due to costs related to "backward integration" and decreased ability to sell on the open market due to "downward integration".

(47) At initiation, no information was available concerning an apparent competitive disadvantage from the Union industry. Furthermore, Union producers are predominantly not vertically integrated.

(48) In addition, the Commission noted that the investigation has not demonstrated abnormal costs due to vertical integration. Furthermore, all sampled Union producers sold primarily to unrelated customers. This argument was therefore rejected.

(49) In its comments on initiation, the GOC argued that the different sales trends of the complainant and non-complainant producers between 2015 and the complaint IP indicate that the two sets of producers compete for sales and customers. Thus, the loss of sales and market share by the complainant producers to the non-complainant producers was also a likely reason that the former suffered in terms of sales volumes and could not increase prices in the complaint IP.

(50) Competition amongst Union producers is a consequence of the free market and it is normally an assumption (unless e.g. there is evidence of the existence of anti-competitive practices, which is not the case), rather than a factor explaining the existence of injury. Thus, not only complainant and non-complainant Union producers compete with each other on the Union market, but also the complainant Union producers themselves compete with each other. This cannot be considered as attenuating the causal link between subsidised imports and the material injury suffered by the entire Union industry. The findings of material injury based on a valid sample rely on an assessment of the industry as a whole, including data from complainants and non-complainants (micro and macro data).

(51) During the investigation, as specified in the Note to the file for inspection by the interested party on the final sample of the Union producers of 21 June 2019, the sample of Union producers consisted of both, complainant and non-complainant Union producers. Furthermore, the injury determination was not limited to the complainant Union producers but to the entire Union industry as a whole. This claim was therefore rejected.

(52) Finally, in its comments following initiation, the GOC claimed that excessive confidentiality has been granted to key information such as the supporters of the complaint and the main injury-related data. The GOC asserted that this had prevented it from properly rebutting the injury claims made by the complainant.

(53) The Commission considered that the version open for inspection by interested parties of the complaint contained all the essential evidence and non-confidential summaries of data granted confidential treatment in order for interested parties to exercise their rights of defence throughout the proceeding. It is recalled that Article 29 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. The claims of the GOC in this regard were therefore rejected.

1.1.2. *Comments by the GOE concerning initiation*

(54) The GOE claimed that the investigation should not be initiated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) of the WTO Agreement on Subsidies and Countervailing Measures and of Article 10(2) of the Basic Regulation. According to the GOE, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury. The Commission rejected that claim for the same reasons as mentioned in recital (6) above.

(55) During the pre-initiation consultations, the GOE indicated that the complainant did not present evidence that the alleged preferential loans are granted by the Egyptian government. However, in view of the body of evidence brought forward in the complaint, and most notably the arrangements between China and Egypt, as well as the objectives of these arrangements, the Commission is of the view that the complainant provided sufficient evidence as was reasonably available to it showing that the conduct of granting subsidies through preferential lending could be attributed to the GOE.

(56) Furthermore, the GOE claimed that the alleged tax benefits were removed from the legislation in 2015 and that the complainant failed to provide evidence that they continue to apply for existing projects. The Commission however found that the complainant provided sufficient evidence of the grandfathering of such tax benefits as was reasonably available to it.

(57) The GOE also stated that the remission of import duties on raw materials is not a subsidy to the extent that these imported products are re-exported as such or as processed into a downstream product. The Commission acknowledged that only the excess remission of import duties on raw materials is a countervailable subsidy, and paid particular attention to this during the investigation. The Commission further noted that the GOE's comment does not apply to production equipment.

(58) The GOE claimed that the complainant failed to provide evidence of benefit on the provision of land at less than adequate remuneration. The Commission however found that the complainant provided sufficient evidence of benefit as was reasonably available to it.

(59) Finally, the GOE indicated that the complainant failed to provide evidence of specificity concerning the provision of electricity at less than adequate remuneration, as there is no specificity when access to a subsidy is subject to objective conditions. The Commission noted that the GOE did not provide any evidence with respect to such objective conditions during the pre-initiation consultations.

(60) Therefore, the Commission concluded that there was sufficient evidence provided in the complaint to start an investigation into the alleged countervailable subsidies granted directly or indirectly by the GOE.

1.1.3. *Comments concerning the separate anti-dumping investigation*

(61) Following definitive disclosure, Yuntianhua Group claimed that the replacement of factors of production performed in the separate anti-dumping investigation is inappropriate and requested the Commission to perform a dumping margin calculation for the exporting producers of the group without any recourse of Article 2(6a) of 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 (the 'basic anti-dumping Regulation') ([13]). According to Yuntianhua Group, the anti-subsidy investigation found no evidence that the inputs of GFF were provided for less than adequate remuneration. It similarly argued that the anti-subsidy investigation accepted that inputs of GFF were purchased at undistorted market values since the turnover of input and raw material suppliers were used for the calculation of the subsidy benefits.

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

(62) The Commission, firstly, noted that comments on the calculation and methodology used in the separate anti-dumping investigation are outside of the scope of this proceeding. Therefore, comments concerning the methodology used for the determination of the dumping should be provided in the context of the said investigation.

(63) Second, the investigation, as described in Section 3, showed that the key suppliers of the exporting producers benefited extensively from government subsidies. The Commission recalled that the use of the turnover of related companies supplying inputs and raw materials does not imply the acceptance of undistorted market values of those supplies. On the contrary, the turnover is the allocation key, which allows a sound apportionment of the established subsidies from which the exporting producers benefited.

(64) Finally, the Commission noted that the findings made under Article 2(6a) of the basic anti-dumping Regulation relate to significant distortions when prices or costs are affected by substantial government intervention. A variety of elements is examined in this context holistically. Accordingly, the fact that an anti-dumping investigation under Article 2(6a) does not rely on evidence concerning subsidisation of raw materials or of the product concerned is not a bar for the Commission to investigate separately and pursuant to the applicable rules in the basic Regulation whether there is subsidisation. The arguments of Yuntianhua Group were therefore rejected.

(65) Following the additional definitive disclosure, the Yuntianhua Group claimed that the disclosure contained new findings regarding: (i) the lack of GFF market segmentation; (ii) physical and technical product characteristics; (iii) cost and price structure; (iv) double counting resulting from the concurrent imposition of anti-dumping and anti-subsidy duties which affected the level of definitive anti-dumping duties imposed on 7 April 2020; and (v) the fact that the dumping margin found in the anti-dumping investigation for this party was incorrect and should be reduced by the entire amount of subsidization established in the PRC to avoid double-counting. These elements were not contained in the final disclosure of the parallel anti-dumping procedure, which would thereby not contain these essential findings and considerations. As a result, according to this party, the definitive anti-dumping Regulation (EU) 2020/492 would be manifestly unreasoned and illegal, and the dumping margin of 64,7 % appearing in the anti-dumping Regulation (EU) 2020/492 would be wrong.

(66) The Commission noted at the outset that the explanations contained in the additional definitive disclosure in this proceeding are a reaction to comments received by parties further to that disclosure, and thus contained more details to the findings made by the Commission. Accordingly, they do not constitute new findings but simply address the comments of the interested parties.

(67) Furthermore, with regard to points (i)-(iii) raised by this party i.e. the lack of GFF market segmentation, the product characteristics, and the cost and price structure, the Commission noted that the remarks in the additional disclosure concerning these three points were meant to address new claims raised by the parties. These new claims were submitted only in the context of this anti-subsidy proceeding. The only claim raised in the anti-dumping proceeding on segmentation was that Union producers would only produce OEM customer-specific products and no measures should be imposed on the OEM segment. These arguments were fully addressed in recital 409 of the anti-dumping Regulation ([14]). Therefore, the Commission could not possibly have addressed these new comments already in the context of the anti-dumping disclosure. The definitive anti-dumping regulation contained all the essential findings and considerations on the basis of which the Commission took its decision in relation to that procedure and fully addressed all the arguments that had been raised in the context of that proceeding. The findings in the anti-subsidy procedure do not affect the reasoning provided for in the definitive anti-dumping regulation.

(68) Moreover, from a substantive point of view, these points do not affect or alter in any way the findings of the investigation, either the anti-dumping or the anti-subsidy. Therefore, there is no impact whatsoever of these points in the situation of the party raising this claim or of other parties. Despite that, the Commission decided to give an additional opportunity for parties to comment on those points. Indeed, even though they did not introduce any changes themselves (and thus the Commission did not have in principle an obligation to address them in the additional disclosure but in the definitive regulation), they were included in the additional definitive disclosure. For all these reasons, these claims were rejected.

([14]) OJ L 108, 6.4.2020, p. 67.

(69) In any event, there is no contradiction between the findings of the two investigations. The only difference is that parties had the opportunity to comment at a later stage and made additional comments in this proceedings. The Commission had the obligation to reply to these comments and have done so in this Regulation.

(70) With regard specifically to the last two issues, (iv) and (v) in recital (67) above, of possible double counting and the dumping margin, the Commission noted the following. First, as already explained in reply to the parties' comments to the definitive disclosure of this proceeding in particular at recital (1137), the Commission fully addressed the potential issue of double counting and gave ample opportunity to all parties to submit comments in the course of this proceeding. It could not possibly have done so in the context of the then ongoing anti-dumping proceeding. Second, the Commission notes that in the context of separate anti-dumping and anti-subsidy proceedings on the same product originating from the same country where the imposition of countervailing duties occurs later than the imposition of anti-dumping duties, there is no option other than amending the previously imposed anti-dumping duties. This must be done in order to take into account the new countervailing duties while at the same time preventing double counting and respecting the lesser duty rule if applicable and relevant. For this purpose, in these cases the legislative technique is to impose the relevant countervailing duties and then at the same time amend the relevant accplicable anti-dumping duties accordingly via the same Regulation. Therefore, contrary to what this party is arguing, the anti-dumping Regulation (EU) 2020/492 is not manifestly wrong and unreasoned. The relevant assessments and claims were fully addressed in this Regulation, which also constitutes the basis for amending the definitive anti-dumping regulation. As the relevant anti-dumping duty applicable to the Yuntianhua Group is also modified accordingly pursuant to this Regulation, as explained in details at Section 8, also the claim of this party that the level of its anti-dumping duty in Regulation (EU) 2020/492 is incorrect is both factually and legally wrong. For all these reasons, the claims by the Yuntianhua Group are rejected.

### 1.2. **Registration of imports**

(71) On 31 July 2019, the complainant submitted a request for registration of imports of GFF originating in the countries concerned based on Article 24(5) of the basic Regulation. On 21 November 2019, the complainant re-submitted a request for registration pursuant to Article 24(5) of the basic Regulation, with updated import figures.

(72) Under Article 24(5) of the basic Regulation, imports of the product concerned are subject to registration for the purpose of ensuring that should the investigation result in findings leading to the imposition of definitive countervailing duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with the applicable legal provisions.

(73) Responding to the request for registration, interested parties submitted comments that the Commission addressed in the registration Regulation. The Commission had at its disposal sufficient evidence justifying the need to register imports.

(74) On 21 January 2020, the Commission published Implementing Regulation (EU) 2020/44 ('the registration Regulation') [15] making imports of GFF originating in the PRC and Egypt subject to registration as of 22 January 2020.

### 1.3. **Clarification of the product scope**

(75) During the investigation, it became apparent that some economic operators might not have come forward based on an incorrect understanding of the definition of the product under investigation. For that reason, on 18 September 2019, the Commission clarified the wording of the product scope description included in the Notice of Initiation by publishing a Notice ('Clarification Notice') [16]. The Clarification Notice also gave the possibility for parties to come forward within a prescribed time limit to make themselves known and to request a questionnaire, if they wished so. No interested party submitted any comment on the Clarification Notice nor requested a questionnaire.

[15] Commission Implementing Regulation (EU) 2020/44 of 20 January 2020 making imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt subject to registration (OJ L 16, 21.1.2020, p. 1).

[16] Notice clarifying the notices of initiation of anti-dumping and anti-subsidy proceedings concerning imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ C 314, 18.9.2019, p. 6).

(76) After publication of the Clarification Notice and in the subsequent investigation, it was confirmed that no economic operators had failed to come forward due to the possible misunderstanding in the definition of the product concerned contained in the Notice of Initiation.

### 1.4. **Investigation period and period considered**

(77) The investigation of subsidisation and injury covered the period from 1 January 2018 to 31 December 2018 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2015 to the end of the investigation period ('the period considered').

(78) Both the current anti-subsidy investigation and the anti-dumping investigation mentioned in recital (4) have the same investigation period and the same period considered.

### 1.5. **Interested parties**

(79) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the GOE, the GOC, other known Union producers, the known exporting producers, known importers and users about the initiation of the investigation and invited them to participate.

(80) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Yuntianhua Group requested an intervention from the Hearing Officer to raise concerns related to the deadline given to respond to a deficiency letter. The company argued that it had not noticed the deficiency letter because its IT server had mistakenly considered the Commission's e-mail as junk mail, and requested an extension of 18 days. The Hearing Officer invited the Commission to extend the deadline by 6 days.

(81) As mentioned in Section 1.3, the Commission clarified the product scope during the investigation and gave interested parties concerned by the clarification, or who might not have made themselves known because they believed they were not concerned by the proceeding, the opportunity to make themselves known and request a questionnaire within a time limit. No additional parties came forward.

### 1.6. **Sampling**

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

#### 1.6.1. *Sampling of Union producers*

(83) In the Notice of Initiation, the Commission stated that it had decided to limit the investigation to a reasonable number of Union producers by applying sampling. It added that it had provisionally selected a sample of Union producers based on the reported production volume of the like product in the Union between October 2017 and September 2018 also taking into consideration the geographical spread. This sample consisted of four Union producers accounting for more than 40 % of the estimated total Union production of GFF. None of the interested parties provided comments and the provisional sample was therefore confirmed. The sample is representative of the Union industry.

#### 1.6.2. *Sampling of importers*

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

(85) Only one unrelated importer (Euroresins UK Ltd.) provided the requested information and agreed to be included in the sample. In view of the low number of cooperating importers, the Commission decided that sampling was not necessary.

#### 1.6.3. *Sampling of exporting producers in the PRC*

(86) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known 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.

(87) Eight exporting producers or groups of exporting producers in the PRC provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of two groups of exporting producers based on the largest representative volume of exports to the Union, which could reasonably be investigated within the time available. The sampled groups of exporting producers represented more than 79 % of the reported exports of GFF from the PRC to the Union during the investigation period.

(88) The sample of exporting producers or groups of exporting producers is the following:

— China National Building Materials Group ('CNBM Group'), including

— Jushi Group Co. Ltd ('Jushi' or 'Jushi China');

— Zhejiang Hengshi Fiberglass Fabrics Co. Ltd ('Hengshi');

— Taishan Fiberglass Inc ('Taishan')

— Yuntianhua Group ('Yuntianhua Group'), including:

— PGTEX China Co. Ltd ('PGTEX'),

— Chongqing Tenways Material Corp. ('CTM').

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

(90) Comments on the selection of the sample were received from two sampled exporting producers, Jushi and Hengshi, belonging to the CNBM Group. While Jushi and Hengshi did not dispute the fact that they were related companies, they claimed that they were not related to Taishan. Jushi claimed that the Commission could not mechanically rely on Article 127(1)(d) or (f) of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 ([17]) (the 'Union Customs Code Implementing Act') to treat Hengshi, Jushi and Taishan as a single entity. In support of that claim, Jushi referred to the WTO Panel in Korea – Certain Paper ([18]) and the Guidelines for related transactions of listed companies of Shanghai Stock Exchange.

(91) They highlighted that (i) they had no common direct shareholding, (ii) there was no overlap in the members of their boards, (iii) there were no related transactions between Hengshi/Jushi and Taishan, and (iv) they were competitors on the market.

(92) After the sampling exercise, on 13 November 2019, a hearing took place with Taishan, in which the above-mentioned arguments were again raised.

(93) The investigation revealed that China National Building Material ('CNBM') is a Chinese state-owned enterprise owned directly and indirectly as to 41,27 % by CNBM Parent, which is in turn wholly owned by the State-owned Assets Supervision and Administration Commission of the State Council ('SASAC'). CNBM owns 26,97 % stake in China Jushi Co., Ltd. ('China Jushi'), which is the sole shareholder of Jushi ([19]).

(94) In September 2017, CNBM entered into a Merger Agreement ([20]) with Sinoma that was finalised in May 2018. Sinoma, through its subsidiary Sinoma Science & Technology Co. was the owner of Taishan. After the merger, Sinoma was merged into and absorbed by CNBM. As a consequence, CNBM holds 26,97 % stake in China Jushi (the sole shareholder of Jushi) and 60,24 % in Sinoma Science & Technology Co., Ltd. (sole shareholder of Taishan).

([17]) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

([18]) WT/DS312/R of 28 October 2005

([19]) http://cnbm.wsfg.hk/index.php?SectionID=FinancialReports&PageID=2019&Language=eng (last viewed on 20 November 2019)

([20]) https://www1.hkexnews.hk/listedco/listconews/sehk/2017/0908/ltn20170908865.pdf (last viewed on 20 November 2019)

(95) Article 127(1)(d) of the Customs Code Implementing Act establishes that two persons shall be deemed to be related if: a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them. CNBM holds 26,97 % stake in China Jushi (the sole shareholder of Jushi) and 60,24 % in Sinoma Science & Technology Co., Ltd. (sole shareholder of Taishan). Therefore, the companies were found to be related.

(96) Furthermore, according to a company report by the Chinese brokerage company Guotai Junan Securities from 2019 ([21]), CNBM has been reorganising its operating entities in order to enhance regional coordination and eliminate horizontal competition among listed subsidiaries since 2017. Furthermore, CNBM intends to resolve horizontal competition issues by 2020. According to the publicly available information in the report, CNBM planned to start this process by consolidating its glass fibre business by asset injections between China Jushi and Sinoma Science & Technology (Taishan's sole shareholder). Thus, the evidence collected during the investigation does not support the companies' argument that the common shareholding has no practical implication and that the companies operate independently. To the contrary, that evidence suggests that beyond the mere shareholding (which alone could be determinant for the conclusion that the companies are related), the three companies are also able to significantly influence each other's business decisions, and that their controlling company (CNBM) aims to at least coordinate, if not to integrate, their operations ('resolve the horizontal competition issues'). This means that the subsidies received by any of those companies may be used to the advantage of the product concerned indistinctly. Therefore, the Commission rejected the claim that its conclusion to consider the three companies as related disregarded factual and economic realities.

(97) In relation to the argument that the Commission could not treat Hengshi, Jushi and Taishan as a single group for the purpose of calculating the amount of subsidisation conferred on the product concerned, the Commission recalled that in order to ensure that measures can be enforced effectively, particularly to avoid channelling exports through a related company with the lowest duty, it is the Commission's practice to establish the relationship between exporting producers through the criteria laid down in Article 127 of the Union Customs Code Implementing Act. This was clearly communicated to all parties in the Notice of initiation at the start of the proceeding. In addition, reference to Article 127 of the Union Customs Code Implementing Act is explicitly contained in Article 2(1) of the basic Anti-dumping Regulation ([22]) and the Commission should have the same treatment of parties in both anti-dumping and anti-subsidy cases ([23]). Moreover, pursuant to Article 7(1) of the basic Regulation, the calculation of the amount of subsidisation is made per unit of the subsidised product exported to the Union. The calculation of the amount of countervailable subsidies on the basis of the product concerned exported into the Union implies that, when companies are related, since money is fungible, they can use those benefits for the product concerned indistinctly, and thus, regardless of the exporting producer in particular. In this case, since Henghsi, Jushi and Taishan make and export the product concerned, the amount of countervailable subsidies granted upon them should take into account the fact that, because of their relationship, they are capable of channelling those benefits to the product concerned exported to the Union as they see fit. Consequently, the benefits granted to those exporting producers with respect to the product concerned should result in one single amount for the group.

(98) Finally, the WTO case ([24]) referred to by Jushi in recital (90) does not support the company's claim. In fact, contrary to what Jushi tries to infer, the WTO Panel in that case confirmed that, for the purpose of dumping determinations in anti-dumping investigations, the rule in Article 6.10 of the WTO Anti-Dumping Agreement (where a dumping margin should be calculated per exporting producer) did not necessarily preclude treating distinct legal entities as a single exporter or producer. The Panel noted that this treatment would be permitted

([21]) https://img3.gelonghui.com/pdf/3a1a2-2862061c-769f-43a8-823e-ebbf7ac6de94.pdf (page 4, last viewed on 20 November 2019)

([22]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21)

([23]) Pursuant to Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on SCM. See also DS 427 WT/DS427/RW China anti-dumping CVD measure on broilers — paragraph 7.1 cites that declaration. The Commission considers that it should ensure consistent results in parallel anti-dumping and anti-subsidy investigations to the extent possible (see also Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice (WT/DS295/AB/R), para. 295.

([24]) WT/DS312/R of 28 October 2005

*"where the structural and commercial relationship between the companies in question is sufficiently close to be considered as a single exporter"* ([25]). Applying this consideration, the Panel did not establish the criteria that investigating authorities must apply to assess whether companies are related. The Panel merely looked into the specific elements (such as shareholding, board of directors, sales channels) which where before the investigating authority in that case. The Appellate Body in *EC – Fasteners* confirmed the possibility of treating a number of exporters as a single entity, listing also elements which may be relevant, such as the existence of corporate and structural links between the exporters, such as (i) common control, shareholding and management; (ii) the existence of corporate and structural links between the State and the exporters, such as (i) common control, shareholding and management; and (iii) control or material influence by the State in respect of pricing and output ([26]). In that respect, from the legal and factual elements of this case, the existence of corporate links between Jushi, Hengshi and Taishan cannot be disputed.

(99) Based on the above, the Commission concluded that they were related companies for the purpose of this investigation and all claims in this regard were thus rejected.

(100) Following definitive disclosure, Taishan objected to the application of a countervailing duty combined with Hengshi/Jushi. This interested party claimed that the common ultimate shareholder CNBM had only very limited control on the business and operation decisions of Jushi or Hengshi. They reiterated that Taishan and Hengshi/Jushi were competitors on the market and noted that they had previously submitted evidence in support of these claims. Taishan offered a written commitment that would effectively cut any commercial link between Taishan and Hengshi/Jushi and thus it would not allow the channelling of any exports of GFF to the Union from Hengshi/Jushi via Taishan.

(101) As described in recital (96), the investigation revealed that through their common shareholders the three companies are able to significantly influence each other's business decisions. The evidence on file showed that the companies are in the process of consolidating and coordinating glass fiber operations. No new information or evidence was provided that could invalidate these findings. In fact, Taishan did not contest the plans of its main shareholder to consolidate its glass fibre business. Such plans are in clear contradiction with any commitment to cut commercial links between Taishan and Hengshi/Jushi. Besides, and without taking a position on whether the Commission could accept such a commitment, the company is clearly not in the position to enter into any kind of commitment without the endorsement of its ultimate controllers. Therefore, Taishan's claims and commitment request were rejected.

(102) Following definitive disclosure, the CNBM Group argued that the subsidies received by the related trader Jushi Hong Kong Co. Ltd. could not be countervailed, since the company was based in Hong Kong and not in China. Hong Kong is an independent member of the WTO and is therefore considered an independent jurisdiction under WTO law and for the purposes of the Union trade defence investigations. Since the current anti-subsidy proceedings were not initiated against Hong Kong, any subsidies allegedly received by Jushi Hong Kong should not be taken into account. The Commission noted that the CNBM Group did not dispute the Commission's findings regarding subsidisation for this related trader. Irrespective of the status of Hong Kong in this investigation, the real center of activities and control of the company Jushi Hong Kong was actually located in Mainland China. As stated by the company itself, "*In fact, Jushi Hong Kong is a paper company, with no dedicated employee, no land, no physical office and benefit, neither tax programmes nor grants*". The accounting records were located in Jushi Group Co. Ltd., relevant personnel for the verification was also located there, and the subsidies received and benefiting the product concerned were granted by Chinese entities. Moreover, as confirmed by the Appellate Body in *United States - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, subsidies bestowed on the recipient in countries other than the subsidising Member may be relevant in order to calculate the amount of *ad valorem* subsidisation ([27]). The company's claim was therefore rejected.

([25]) WT/DS312/R of 28 October 2005, para. 7.162.

([26]) WT/DS397AB/R of 15 July 2011, para. 376. The same language is now reproduced in Article 9(5), second paragraph, of the Basic Anti-Dumping Regulation.

([27]) Appellate Body Report, United States - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (WT/DS464/AB/R), 7 September 2016, para. 5.298.

(103) Following definitive disclosure, Yuntianhua Group claimed that its subsidy margin has been inflated by adding subsidies granted to companies that did not supply inputs used in the production of the product concerned, and, therefore, requested that subsidies of these companies should not be taken into consideration for the calculation of the countervailing duty.

(104) Article 1 of the basic Regulation provides that a countervailing duty may be imposed to offset any subsidy granted, directly or indirectly, for the manufacture, production, export or transport of any product whose release for free circulation in the Union causes injury. The Commission has evidence that the companies included in the investigation and whose subsidy benefits have contributed to the duty of the group, have participated directly or indirectly, providing inputs, services, materials, or assets that used in the production of the product concerned as describes in the Article 1 of the basic Regulation. In this respect, the comments made by the Yuntianhua Group were not supported by concrete evidence.

(105) The Commission, nonetheless, observed that one of the related companies, whose subsidies have been countervailed, was originally requested to participate in the investigation since it leased machinery to one of the exporting producers. However, following the comments received, the Commission revised the allocation key relating to the leasing activities of the company that were linked to the product concerned. Since the benefits that could be allocated through the leasing activities were considered negligible, the Commission decided not to take them into account.

### 1.7. **Individual examination**

(106) Five of the Chinese exporting producers that returned the sampling form informed the Commission of their intention to request individual examination under Article 27(3) of the basic Regulation. The Commission made the questionnaire available online on the day of the initiation. Moreover, the Commission informed the non-sampled exporting producers that they were required to provide a questionnaire reply if they wished to be examined individually. However, none of the companies provided a questionnaire reply. As a result, no individual examinations were possible.

### 1.8. **Cooperating exporting producers in Egypt**

(107) In the notice of initiation, the Commission invited all exporting producers in Egypt to contact it. Two related exporting producers, representing 100 % of the exports to the Union and 100 % of the production of GFF in Egypt, came forward:

— Jushi Egypt For Fiberglass Industry S.A.E ('Jushi Egypt'), The third Sector of North-West Gulf of Suez Economic Zone, Egypt,

— Hengshi Egypt Fiberglass Fabrics S.A.E ('Hengshi Egypt'), The third Sector of North-West Gulf of Suez Economic Zone, Egypt.

### 1.9. **Questionnaire replies and verification visits**

(108) The questionnaires for the Union producers, importers, users, and exporting producers in the PRC and in Egypt were made available online ([28]) on the day of initiation.

(109) The Commission received questionnaire replies from the two sampled Chinese exporting producer groups, the two Egyptian exporting producers, from the four sampled Union producers, five users and one unrelated importer. None of the non-sampled Chinese exporting producers sent a reply to the questionnaires.

(110) The Commission also sent a questionnaire to the GOC and to the GOE. The questionnaire for the GOC included specific questionnaires for the China Development Bank ('CDB'), Export Import Bank of China ('EXIM'), and Sinosure. Those financial institutions had been specifically referred to in the complaint as public bodies or bodies directed or entrusted granting subsidies. In addition, the GOC was asked to forward the specific questionnaire for financial institutions to any other financial institution that provided loans or export credits to the sampled companies, or to the customers of the sampled companies. The GOC was also asked for administrative convenience to gather any responses provided by these financial institutions and to send them directly to the Commission.

([28]) Available at http://trade.ec.europa.eu/tdi/case_details.cfm?id=2398

(111) The questionnaire to the GOE included specific questionnaires for the National Bank of Egypt, Ahli Bank and Bank Misr. Those financial institutions had been specifically referred to in the complaint as public bodies or bodies directed or entrusted granting subsidies. In addition, for administrative convenience the GOE was asked to forward the specific questionnaire for financial institutions to any other financial institution that provided loans or export credits to the sampled companies. Furthermore, the questionnaire to the GOE included specific questionnaires for Egypt-TEDA Investment Company ('Egypt TEDA') and for the Egyptian Chinese JV Company for Investment ('ECCI'), which had been identified in the complaint as state-owned entities operating in the SETC-Zone. The GOE was asked to gather any responses provided by these financial institutions and other entities, and to send them directly to the Commission.

(112) The Commission received questionnaire replies from the GOC, which included replies to the specific questionnaire from EXIM and Sinosure, as well as from the GOE, which included replies to the specific questionnaire from the National Bank of Egypt, Bank Misr and Egypt TEDA.

(113) Without prejudice to the application of Article 28 of the basic Regulation, the Commission sought and verified all information deemed necessary and made available by the parties in a timely manner for the determination of subsidy, injury and Union interest. A verification visit took place at the premises of the Chinese Ministry of Commerce, during which officials from other relevant ministries also participated. Moreover, representatives from EXIM, CDB and Sinosure were present during this verification visit.

(114) A verification visit took also place at the premises of Egypt TEDA, as well as at the premises of the following Egyptian government authorities:

— General Authority for Investment ('GAFI'), Cairo, Egypt;

— General Authority of the Suez Canal Economic Zone ('General Authority of the SCZone'), Suez Canal Economic Zone, Egypt;

— Egypt Gas Holding ('EGAS'), Cairo, Egypt;

— Egyptian Electric Utility and Consumer Protection Regulatory Agency ('EgyptERA'), Cairo, Egypt.

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

*Union producers*

— European Owens Corning Fiberglas, Sprl ('OC');

— Chomarat Textiles Industries S.A.S. ('Chomarat');

— Saertex GmbH & Co. KG ('Saertex');

— Ahlstrom-Munksjö Glassfibre Oy ('Ahlstrom');

*Sampled producers in the PRC* ([29])

— China National Building Materials Group ('CNBM group');

— Jushi Group Co., Ltd, Tongxiang, PRC;

— Zhejiang Hengshi Fiberglass Fabrics Co., Ltd, Tongxiang, PRC;

— China Jushi Co., Ltd., Tongxiang, PRC;

— Jushi Group Hong Kong Co., Limited, Tongxiang, PRC;

— Tongxiang Leishi Mineral Powder Co., Ltd., Tongxiang, PRC;

— Tongxiang Jinshi Precious Metal Equipment Co., Ltd., Tongxiang, PRC;

([29]) This list includes exporting producers as well as other related entities with in the same group, regardless of whether they are making the product concerned.

— Huajin Capital Limited, Hong Kong, PRC;

— Jushi Group (HK) Sinosia Composite Materials Co., Ltd., Hong Kong, PRC;

— Taishan Fiberglass Inc., Taian, PRC;

— China National Building Material Group finance Co., Ltd, Beijing, PRC;

— Sinoma Science & Technology Co., Ltd, Beijing and Nanjing, PRC;

— Huatai Non-Metallic Powder Co., Ltd, Taian, PRC;

— Taian Antai Gas Co., Ltd, Taian, PRC;

— Taishan Fiberglass Zoucheng Co., Ltd, Zoucheng, PRC;

— Sinoma Jinjing Fiber Glass (Zibo) Co., Ltd, Zibo, PRC;

— Shandong Linyi Shanqi Mining Co., Ltd, Station of Sunzu Town, PRC

— Yuntianhua Group ('Yuntianhua Group'):

— PGTEX China Co., Ltd., Changzhou; PRC

— Chongqing Tenways Material Corp.Ltd, Chongqing, PRC;

— Chongqing Polycomp International Corporation (CPIC), Chongqing, PRC;

— CPIC International Co., Limited (CPIC HK), Chongqing, PRC;

— Changzhou Diba Textile Machinery Co., Ltd., Changzhou; PRC

— Changzhou Newtry Co., Ltd., Changzhou; PRC

— Chongqing Tianze New Material Co., Ltd., Chongqing, PRC;

— Wenzhou Jinhui Nonmetallic Mining Co., Ltd., Chongqing, PRC;

— Chongqing Yuanjia Mining Co., Ltd. (Chongqing Wingreat), Chongqing, PRC;

— Yunnan Yuntianhua Group Co., Ltd., Kunming, PRC;

— Yunnan Yuntianhua Financial Co., Ltd., Kunming, PRC;

*Exporting producers in Egypt*

— Jushi Egypt For Fiberglass Industry S.A.E, Suez;

— Hengshi Egypt Fiberglass Fabrics S.A.E., Suez;

*Users*

— Siemens Gamesa Renewable Energy GmbH&Co KG ('SGRE');

— Vestas Wind Systems A/S ('Vestas').

(116) Due to the threat of the COVID-19 transmission and the consequent measures taken to deal with the outbreak ([30]), the Commission was unable to verify the data submitted by a number of companies belonging to the group of one of the exporting producers located in the PRC. Given that this unforeseen situation occurred at a very late stage of the proceeding and that no other solution was possible, the Commission exceptionally used the information submitted by these companies for the subsidy calculation, which was verified based on available information.

### 1.10. **Non-imposition of provisional measures and subsequent procedure**

(117) On 24 January 2020, pursuant to Article 29(a)(2) of the basic Regulation, the Commission informed interested parties that it intended not to impose provisional measures and continue with the investigation.

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

([30]) See Note to the file on the consequences of the coronavirus outbreak on anti-dumping and anti-subsidy investigations, reference t20.001353

### 1.11. **Definitive disclosure**

(119) On 27 February 2020, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of the product concerned into the Union ('definitive disclosure').

(120) All parties were granted a 15 days period within which they could make comments on the definitive disclosure. Several interested parties requested an extension of the deadline. The Commission granted until 20 March and 23 March 2020 for submitting comments to those parties. 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.

(121) In the separate anti-dumping investigation parties received, on 19 December 2019 a final disclosure of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of the product concerned into the Union. Furthermore, interested parties received an additional disclosure on 10 February 2020.

(122) The Commission addressed in this regulation comments submitted during the anti-subsidy procedure. Comments submitted in the context of the separate anti-dumping investigation were not addressed in this regulation unless the parties explicitly indicated that the comments submitted covered both procedures.

(123) Following definitive disclosure, no party requested a hearing with the hearing officer.

(124) Furthermore, interested parties received an additional definitive disclosure on 17 April 2020 and were granted until 22 April 2020 for submitting comments ('additional definitive disclosure').

(125) Moreover, interested parties received a second additional definitive disclosure on 24 April 2020 and were granted until 27 April 2020 for submitting comments ('second additional definitive disclosure').

(126) The Commission had hearings with the Union industry, with the exporting producers Jushi/Hengshi China, and with the Egyptian exporting producers Jushi/Hengshi Egypt as well as with the GOE.

## 2. **PRODUCT CONCERNED AND LIKE PRODUCT**

### 2.1. **Product concerned**

(127) The product concerned ([31]) is *fabrics of woven and/or stitched continuous filament glass fibre rovings and/or yarns with or without other elements, excluding products which are impregnated or pre-impregnated (pre-preg), and excluding open mesh fabrics with cells with a size of more than 1,8 mm in both length and width and weighing more than 35 g/m$^2$* ('GFF'), originating in the PRC and Egypt, currently falling under CN codes ex 7019 39 00, ex 7019 40 00, ex 7019 59 00 and ex 7019 90 00 (TARIC codes 7019 39 00 80, 7019 40 00 80, 7019 59 00 80 and 7019 90 00 80) ('the product concerned').

(128) GFF is used in a wide range of applications, for example for the production of blades for wind turbines, in the boat, truck and sport equipment production, as well as in pipe rehabilitation systems.

### 2.2. **Like product**

(129) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of countries concerned; and

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

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

([31]) As clarified in the Notice of Clarification.

### 2.3. **Claims regarding the product scope**

(131) One exporting producer and the Ministry of Trade of the Arab Republic of Egypt claimed that pre-cut GFF kits should not be covered by the scope of the investigation. They argued that pre-cut GFF kits would be a downstream product requiring additional production steps and with differences in physical characteristics, having a much smaller size. It would come in different forms and packaging, consisting of several smaller pieces of fabrics quilted together. It was further argued that there would be no circumvention risk by excluding kits as the process of cutting would be irreversible and that the product is not interchangeable with the uncut GFF.

(132) The complainant argued that pre-cut GFF kits and non-cut GFF have the same basic characteristics and end uses. As GFF are reinforcement materials, the cutting to shape is necessary to fit the form of the product that needs to be reinforced, but does not change its basic characteristics as such. The cutting process can be carried out by the GFF producer, an independent industrial cutter or the customer itself. It is a very simple and low-cost operation. The complainant further argued that users do not perceive pre-cut GFF differently from other GFF, as GFF are generally produced to user specifications. If the cutting process would change the characteristics of the GFF, that would render them unusable for the specific customer.

(133) The investigation showed that pre-cutting and kitting processes do not change the basic physical, technical or chemical characteristics of GFF or their basic end uses. Customers of both products are largely the same and both are sold via the same distribution channels.

(134) The investigation also confirmed that for most applications GFF are produced to order according to customers' specifications. Pre-cut GFF kits constitute merely an additional specification in the customer order. That pre-cut GFF kits receive a different packaging does also not change the characteristics. Since GFF is ordered increasingly in the form of pre-cut GFF kits and the services of external kitters are used increasingly, there would be a high circumvention risk, if pre-cut GFF would be excluded from the scope of the investigation. Therefore, the Commission concluded that it would not be appropriate to exclude pre-cut GFF from the scope of the investigation.

(135) Another exporting producer argued that glass fibre yarns should be deemed to be excluded from the scope of the investigation. This exporting producer argued that glass fibre yarn was not to be mentioned explicitly in the questionnaire, the complaint or in the Notice of Initiation, which would indicate that they are not covered by the product scope. It further argued that GFF from yarn could not be classified under the characteristics of the product control number ('PCN'), that GFF from yarn would be imported under different CN codes than the ones mentioned in the complaint and that glass fibre yarns would also not be covered by the measures against glass fibre rovings in other proceedings.

(136) The complainant and another Union producer (not party to the complaint) argued that only GFF from non-twisted or zero-twisted glass fibre yarns should be covered by the investigation, whereas twisted yarns could be excluded from the scope of the investigation. The complainant argued that non-twisted or zero-twisted glass fibre yarns share the characteristics of glass fibre rovings to consist of a bundle of untwisted filaments or strands and are also used for the same purposes as rovings and are typically 13-24 micrometres in diameter and are 300-4 800 tex.

(137) Regarding the inclusion of GFF from glass fibre yarns, the Notice of Initiation defined the product under investigation as *"fabrics of woven, and/or stitched continuous filament glass fibre rovings and/or yarn, […]"* [32]. The investigation has shown that non-twisted or zero-twisted glass fibre yarns share the same basic characteristics as glass fibre rovings, i.e. to consist of a bundle of untwisted filaments or strands, and are also used for the same purposes. Both are typically 13-24 micrometres in diameter and are 300-4 800 tex. Thus, it would not be appropriate to exclude these product types from the scope of the investigation.

[32] Notice of Initiation as clarified by Clarification Notice.

(138) In relation to GFF made mainly from twisted glass fibre yarn, the Commission notes that this product, which has different basic characteristics and is also subject to different end uses, e.g. printed circuit boards, was never part of the product concerned. The Commission explicitly clarified this point in the Clarification Notice.

## 3. SUBSIDISATION: PEOPLE'S REPUBLIC OF CHINA

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

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

(140) The 12th Five-Year Plan for National Economic and Social Development of the PRC ('the 12th Five-Year Plan') highlighted the importance of the new materials industry, which includes GFF, as a "strategic emerging industry" and stipulates that it should be developed into a "leading pillar industry" through comprehensive policy support and guidance ([33]). Furthermore, the 13th Five-Year Plan for National Economic and Social Development of the PRC ('the 13th Five-Year Plan'), which covers the period 2016-2020, aims to develop further new materials industries by strengthening research and development and enhancing the innovation capability of the manufacturing industry ([34]).

(141) The 13th Five-Year Plan highlights the strategic vision of the GOC for improvement and promotion of key industries. It emphasizes the role of technological innovation in the economic development of the PRC, as well as the continued importance of "green" development principles. According to its Chapter 5, one of the main development lines is to promote the upgrading of the traditional industrial structure, as was already the case in the 12th Five-Year Plan. Chapter 22 further elaborates this idea explaining the strategy to modernize the traditional industry in the PRC by promoting its technological conversion. In this respect, the 13th Five-Year Plan states that companies will be supported to *"comprehensively improve in areas such as product technology, industrial equipment, environmental protection and energy efficiency"*.

(142) The 13th Five-Year Plan mentions the new materials in a couple of instances: *"we will move faster to make breakthroughs in core technologies in fields such as next generation information and communications, new energy, new materials […]"* ([35]). The plan furthermore envisages that there will be projects carried out related to key new materials research, development and application ([36]).

(143) Following definitive disclosure, the GOC reiterated its basic position on China's Five Year Plans, claiming that they are not mandatory or legally binding but are simply guidance documents because they do not contain actual legal provisions, sanctions or any rules on applicability. The GOC further stated that the 12th Five-Year Plan is not applicable anymore and even if the 13th Five-Year Plan would be legally binding, quod non, it does not mention GFF. Additionally, while the plan refers to "new materials", it does not define this term. Finally, the 13th Five-Year Plan is not specific to the GFF industry or to the "new materials industry" but covers nearly the entire economy

(144) The Commission disagreed with this position. Chapter 17 of the 13th Five-Year Plan states: "*the national development strategy and plan will come into play with a leading and constraining role*." Thus, rather than making only general statements of encouragement, this plan uses language which points to its binding nature.

(145) Even if the 12th Five-Year Plan is not applicable anymore, it is the predecessor that highlighted the importance of the new materials industry as a "strategic emerging industry" that the 13th Five-Year Plan further developed. As demonstrated in recitals (148) and (149), the new materials industry includes the GFF industry. As mentioned in recital (141), the 13th Five-Year Plan highlights the strategic vision of the GOC for improvement and promotion of key industries; therefore, it prioritise certain sectors and technologies, including GFF.

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([33]) See 12th Five-Year Plan, page 9.
([34]) See 13th Five-Year Plan, pages 23 and 24.
([35]) See 13th Five-Year Plan for Economic and Social Development of the People's Republic of China, part II, Chapter 6, Section 1.
([36]) Ibid, part II, Chapter 6, Section 4.

(146) Therefore, the claims of the GOC in this respect were rejected.

(147) The new materials industry is also an encouraged industry under the Made in China 2025 initiative [37], and thereby eligible to benefit from considerable State funding. A number of funds had been created to support the Made in China 2025 initiative and hence indirectly the GFF industry such as the National Integrated Circuit fund, the Advanced Manufacturing Fund and the Emerging Industries Investment Fund [38].

(148) Furthermore, GFF is often referred to under the umbrella of 'new materials'. The Made in China 2025 Roadmap [39] 10 strategic sectors, which are the key industries for the GOC. It describes in Sector 9 'new materials' and its subcategories, including advanced fundamental materials (point 9.1), key strategic materials (point 9.2) including high performance fibres and composite materials, new energy materials [40]. New materials thus benefit from the advantages stemming from the support mechanisms listed in the document, including, among others, Financial Support Policies, Fiscal & Taxation Policy, State Council Oversight and Support [41].

(149) Additionally, further to the Made in China 2025 Roadmap, in November 2016, the list of 10 strategic sectors was refined into a Catalogue of Four Essentials published by the National Manufacturing Strategy Advisory Committee (NMSAC), an advisory group to the National Leading Small Group on Building a National Manufacturing Power. In this catalogue, each of the 10 strategic sectors is split into four chapters: (i) core essential spare parts, (ii) key essential materials, (iii) advanced essential processes/technologies and (iv) industry technology platforms. Glass fibre can be found in sector 7: electrical equipment, point II key essential material: subpoint 16 glass fibre insulation boards and sector 9: new materials, point II key essential materials, subpoints 10. High-performance fibre, monomer and composite materials and 24. Glass-based materials.

(150) Following definitive disclosure, the GOC claimed that GFF is not mentioned in the Made in China 2025 initiative which is broadly available throughout the economy and that Made in China 2025 is not mandatory but is a mere guideline.

(151) In this respect, the Commission reiterates that the Made in China 2025 initiative clearly targets the new material industries, which include the GFF industry as already demonstrated. It provides for strategic support and guarantee through, inter alia, improved financial support policy and increased support of fiscal taxation policy. For instance, it clearly provides to "*increase the support to the new generation of information technology, high-end equipment, new materials, etc.*"

(152) The Made in China 2025 initiative states that it is "*the program of actions in the first ten years of implementing the strategy of manufacturing power*" and it sets clear strategic policies and targets. The Made in China 2025 initiative also provides that "*various regions shall work out specific implementation program and refine the policy measures to ensure various tasks to be implemented*" and further states that "*the Ministry of Industry and Information shall strengthen the tracking analysis, supervision and direction jointly with relevant departments, and report major events to the State Council in a timely manner*". Furthermore, the Made in China 2025 initiative is supported by implementing measures such as the Made in China 2025 Roadmap and the 'Notice of the General Office of the Ministry of Industry and Information Technology on the release of the 2017 Industrial Transformation and Upgrade (Made in China 2025) Funding Guide' [42], which provided for funds that benefitted certain cooperating GFF exporting producers. In addition, the Building Materials Industry Development Plan (2016-2020) mentioned in recital (153) "*is prepared based on the Outline of the 13th Five-Year Plan for National Economy and Social Development of the People's Republic of China and the Made in China 2025 Strategy*". Considering the above-mentioned, the Made in China 2025 initiative does not appear to be a mere guideline; on the contrary, it appears to have a *de facto mandatory* effect and is largely implemented. Therefore, the claims of the GOC were rejected.

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(37) http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm
(38) See US-China Economic and Security Review Commission: The 13th Five-Year Plan, page 12.
(39) https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf
(40) See Made in China 2025 Roadmap. p.142, 152.
(41) See Made in China 2025, Chapter 4: Strategic Support and Supply.
(42) http://www.miit.gov.cn/n1146295/n1652858/n1652930/n3757016/c5657745/content.html

(153) Furthermore, the Building Materials Industry Development Plan (2016-2020) also promotes the GFF industry. This plan calls for optimizing industrial structure by, inter alia, expanding emerging industries such as glass-based materials, industrial ceramics, intraocular lens, high-performance fibres and composites, and graphene and modified materials. This is to be achieved through government funding, taxation, financial, pricing, energy, and environmental protection policies, and support for capital to participate in the mergers, acquisitions and restructuring of building materials enterprises through various means including lending ([43]).

(154) Following definitive disclosure, the GOC claimed that the Building Materials Industry Development Plan applies to all building materials and is thus also broadly available throughout the economy. Furthermore, this plan only concerns general information about government policy.

(155) The Building Materials Industry Development Plan provides for specific measures targeting the building materials industry, to which the GFF industry belongs as explained in recital (166). Therefore, the Commission disagrees with the GOC's statement that it is available through the economy.

(156) Although the Building Materials Industry Development Plan might appear merely as a guidance document, as mentioned in recital (152), it is an implementation of the 13th Five-Year Plan and the Made in China 2025 Strategy. It aims at "*promoting transformation and upgrading of the building materials industry, facilitating the transition of the building materials industry from a large industry to a powerful one and achieving the sustainable development during the "13th Five-Year Plan" period*" and sets clear tasks and projects in order to achieve the fixed objectives during a defined concrete five-year period ([44]). Therefore, its purely guidance character is disputable, and more so when examining in its broader context.

(157) The GFF industry is also covered by the Intelligent Manufacturing Development Plan (2016-2020) published by the Chinese Ministry of Industry and Information Technology (the 'MIIT'), which sets up 10 key tasks that aim at shortening the product development cycle, improving production efficiency, product quality, reducing operating cost, resources and energy consumption, and accelerating the development of intelligent manufacturing. In 2018, the State Council announced China's plans to expand its program for smart manufacturing by adding about 100 pilot projects that same year, and according to publicly available information, one of the cooperating exporting producers, Taishan Fiberglass, Inc. was listed in 2015 among 'The Intelligent Manufacturing Plants' by the MIIT ([45]).

(158) According to the GOC, the Intelligent Manufacturing Development Plan (2016-2020) is irrelevant, since this is not specific to the GFF industry but concerns the entire manufacturing industry. Additionally, the GOC claimed that the plan is not a mandatory document but a mere guideline.

(159) The Intelligent Manufacturing Development Plan (2016-2020) is "*prepared in accordance with the Outline of the 13th Five-Year Plan for National Economy and Social Development of the People's Republic of China, the Made in China 2025 Strategy*" ([46]). Therefore, it implements the strategy laid down in these documents. As already explained before, the 13th Five-Year Plan and the Made in China 2025 Strategy target specifically certain industries, among which is the GFF industry as part of the new materials industries. In addition, at many instances, the Intelligent Manufacturing Development Plan refers to the ten key fields of Made in China 2025 Strategy. In particular, the 'Special Column 6 Intelligent transformation emphasis of key field' provides that "*for the new generation of information technologies, (…) new material, (…) building material (…), the deep application of intelligent and digital technologies in the research and development and design, manufacturing, logistics and warehousing, operation and management, after-sales service and other key links of enterprises is promoted*". Therefore, the Intelligent Manufacturing Development Plan (2016-2020) is specific to the key industries laid down by the Made in China 2025 Strategy and covers, inter alia, the new materials and the building materials sectors to which the GFF industry belongs.

([43]) See the Building Materials Industry Development Plan (2016-2020)
([44]) See the Building Materials Industry Development Plan (2016-2020)
([45]) Taishan Fiberglass Inc. website.
([46]) See the Intelligent Manufacturing Development Plan (2016-2020)

(160) The Commission also notes that the language used in the Intelligent Manufacturing Development Plan (2016-2020) suggests a mandatory character of the document. In particular, Section II (III) 'Development objectives' provides that *"Before 2025, "Two-Step" strategy shall be implemented to promote intelligent manufacturing development: Step one, by 2020, the intelligent manufacturing development foundation and supporting capacity will be obviously enhanced, the digital manufacturing will be basically realized in the key field of traditional manufacturing industry, and the intelligent transformation of key industry with conditions and foundation will make obvious progress; Step two, by 2025, the intelligent manufacturing support system is basically established, and the intelligent transformation is initially realized in the key industry"*. Furthermore, Section V 'Organization and implementation' provides that *"the Ministry of Industry and Information Technology and Ministry of Finance are responsible for organizing and implementing the Plan, strengthening the leadership, carefully organizing, timely solving the problems met in the implementation process of the Plan, and promoting the implementation of various tasks and measures"* and that *"the competent departments of industry and information technology and of finance in various regions shall quickly formulate the implementation scheme connected with the Plan, implement relevant supporting policies, and complete the information feedback work according to the assignment of responsibility"*. Therefore, the Commission concluded that the Intelligent Manufacturing Development Plan has clearly defined objectives that are mandatory for the companies involved.

(161) In light of the above findings, the claims of the GOC were rejected.

(162) Moreover, the China High-Tech Export Products Catalogue issued by the Ministry of Science and Technology, the Ministry of Foreign Trade and the General Administration of customs lists 1900 high-tech products in 8 categories, which are targeted for preferential export policies by the GOC. One of the categories is the 'New Materials' category, which includes GFF ([47]). In addition, the China High-Tech Products Catalogue issued by the Ministry of Science and Technology, the Ministry of Finance and State Administration of Taxation refers to 11 areas, among which the 'new materials category'. Furthermore, according to the Law of the PRC on Science and Technology Progress, the high-tech enterprises established in High-tech Development Zones can benefit from a list of preferential policies, which include: (i) an Enterprise Income Tax rate of 15 %, instead of the normal rate of 25 %; (ii) if the output value of export products reaches 70 % of the total value for that year, the EIT rate is further reduced to 10 %; (iii) newly-established high-tech enterprises are exempt from EIT tax for the first two years from the date production begins; (iv) newly-established high-tech enterprises are exempt from construction tax; (v) for new technology development and production and operation houses, R&D land is tax-free; (vi) equipment used by high-tech enterprises for high-tech production and development is subject to accelerated depreciation; (vii) export products produced by high-tech enterprises are exempt from export tariffs except those restricted by the State or concerning specific products, etc ([48]).

(163) Following definitive disclosure, the GOC claimed that the China High-Tech Products Catalogue, read in conjunction with the Law of the PRC on Science and Technology Progress is not specific to a certain industries because these documents set out objective criteria for eligibility, which are applied automatically.

(164) In this respect, as already mentioned in recital (162), the China High-Tech Export Products Catalogue high-tech products in 8 categories, including 'new materials'. The Commission further notes that the China High-Tech Products Catalogue refers to 11 areas, among which *"6. New material"*. Considering that both catalogues are limited to a certain number of areas, it cannot be concluded that they applies to all industries. Therefore, the claim of the GOC is rejected.

(165) The Temporary Provisions on Promoting Industrial Structure Adjustment (Decision No. 40 2005 of the State Council) ('Decision No 40'), Chapter III refers to 'The Guiding Catalogue for Industry Restructuring' which is composed of three kinds of contents, namely encouraged project contents, limited projects content and eliminated projects content. According to Article XVII of the Decision, if *"the investment project belongs to the encouragement*

([47]) Preferential policies of the National High-Tech Industrial Development Zones, pages 12 to 14.
([48]) Preferential policies of the National High-Tech Industrial Development Zones, page 1.

*content shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles; the self-using equipment imported in the total amount of investment, with the exception of commodities in the Non-exempt Imported Commodities Content of Domestic Invested Projects (amended in 2000) issued by the Ministry of Finance, can be exempt from import duty and import links value-added tax, unless there are new regulations on the non-exempt investment projects content. Other favorite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations*".

(166) The Guiding Catalogue for Industry Restructuring (2011 Version) (2013 Amendment) ([49]) lists under 'Category I Encouragement'

"*XII. Building Materials:*

*[…]*

6. *Technology development and production of alkali free glass fiber tank kiln wire drawing and high-performance glass fiber and products with an annual yield of 50 000 ton*"

(167) According to the GOC, Decision No. 40 is not specific to an enterprise or industry, as required by Article 2.1 of the SCM Agreement but to certain encouraged projects. Moreover, Decision No. 40 is not mandatory. The GOC affirmed that the Guiding Catalogue for Industry Restructuring referred to by the Commission is irrelevant because the Commission refers to the 2011 version of this catalogue, which has already expired. According to the GOC, the new version of this catalogue does not mention GFF.

(168) First, the Commission points out that it referred to 'The Guiding Catalogue for Industry Restructuring (2011 Version) (2013 Amendment)'; therefore, it did not refer to the 2011 version but to the 2013 amended version. To the Commission's knowledge, the latest amendment of the Catalogue was approved by Decree of the National Development and Reform Commission of the People's Republic of China No. 29 of 27 August 2019 and entered into force on 1 January 2020 ([50]). This new 'Guiding Catalogue for Industry Restructuring (2019 Version)' indeed abolished the 'Guiding Catalogue for Industry Restructuring (2011 Version) (Amendment)'. However, it was adopted and entered into effect after the investigation period. Therefore, 'The Guiding Catalogue for Industry Restructuring (2011 Version) (2013 Amendment) was applicable during the investigation period. In any event, contrary to the GOC's statement, the 2019 version of the 'Guiding Catalogue for Industry Restructuring' refers to GFF under 'Section I Encouraged industries' as follows:

"*XII. Building materials*

*[…]*

6. *[…] Technology development and production of high-performance glass fiber and glass fiber products such as degraded and irregular cross-section*".

(169) Second, the Commission disagrees that Decision No. 40 has no mandatory effect. Indeed, Decision No. 40 lays down the temporary regulations promoting the industrial restructuring and it refers to '*The Guiding Catalogue for Industry Restructuring*', which defines three kinds of content: encouraged projects content, limited projects content and eliminated projects content. However, Article XVII of Decision No. 40 establishes the treatment of investment projects belonging to the encouraged content in a mandatory manner, e.g. '*all financial institutions shall provide credit*

([49]) Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) (Issued by Order No. 9 of the National Development and Reform Commission on March 27, 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No. 21 of the National Development and Reform Commission on February 16, 2013).

([50]) http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf

*support according to the credit principles*', '*other favourite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations*'. Furthermore, Article XXI sets that '*the relevant preferential policies implemented according to The Content of Industries, Products and Technologies Currently Especially Encouraged by the State (amended in 2000) shall be adjusted to be implemented according to the encouragement content of The Guiding Catalogue for Industry Restructuring*'. Therefore, Decision No. 40 has a mandatory effect in this respect. The Guiding Catalogue for Industry Restructuring, 'Category I Encouragement' lists a certain number of projects under a certain number of industries. As explained in recital (166), it includes the building materials industry and specific projects related to the GFF industry. Consequently, Decision No. 40 read together with The Guiding Catalogue for Industry Restructuring provides for specific treatment of certain projects within certain encouraged industries. Therefore, although these documents refer to specific projects, they first establish the specific industries that are encouraged and then certain projects in these industries that could benefit from the preferential treatment provided for in Decision No. 40. Therefore, the Commission rejected the claims of the GOC.

(170) Furthermore, GFF is covered by the Building Materials Industry Development Plan 2016-2020 ([51]), which envisages, among others, the transition of the construction material industry from a large industry to a strong industry. It also envisages an optimisation of the construction sector's structures, improvement of the security of supply of key materials, increase in the level of concentration in the industry as well as enhancement of the international competitiveness. The plan provides for quantitative development targets, governmental control over production capacity, detailed production targets, geographical distribution of industries among provinces in the PRC, security of supply, development of specific industries, government control and influence over enterprises and industry support measures ([52]). This demonstrates the strong presence and intervention of the State in the fibreglass industry.

(171) The 13th Five-Year Plan for Fibre and Composite Materials Industry ([53]) is a plan targeting specifically the fibre material industry. It clearly guides the development of the sector, for example Section III.3 sets the goal to:

(172) '*Actively integrate and upgrade the upstream and downstream ends of the industry chain to maintain the healthy and stable development of the fibre and composite materials industry: Encourage large-scale pond and kiln enterprises to steadily implement the "go global" development strategy, implement global production capacity patterns. On this basis: - keep the control over the domestic glass fibre production volume growth rate at a relatively low level; - at the same time, reduce the export ratio of domestic glass fibre and products; -actively adjust product structures; […] - actively adjust product structure and guide enterprises to implement differentiated development, vigorously develop deep processing of glass fibre products, expand the market size of fibre and composite materials products in mid-to-high-end application fields, and improve product quality and added value. Ensure that the annual growth rate of the main business revenue of the fibre and composite materials industry is higher than the national GDP growth rate by about 5 to 6 percentage points, that is, as of 2020, the total revenue of enterprises above designated size will reach 500 billion yuan, i.e. doubling compared to the situation prevailing at the end of the 12th Five-Year Plan.*' ([54])

(173) Furthermore, Section IV.3.4 of that plan sets basis for governmental guidance of the enterprises and the entire industry:

(174) '*Guide various types of enterprises to get involved in differentiated operations taking into account their individual advantages and specific market segments. In particular, it is necessary to guide small and medium-sized enterprises to follow the growth path consisting in filling up specific gaps, in having small enterprises being complementary to big ones, in considering specialisation as the way to success. Thanks to differentiated operations, scale-competition between large enterprises is*

([51]) Building Materials Industry Development Plan 2016-2020, Ministry of Industry and Information Technology, GXBG [2016] No. 315.

([52]) Report, Chapter 12.3.1.4, p. 283-286.

([53]) 13th FYP for Fibre and Composite Materials Industry published by the China Glass fiber industry association and the China composite materials association on 2 June 2015.

([54]) Ibid. section III.3.

*avoided, and the competition between similar enterprises is avoided, thus eliminating the low-cost competition market. At the same time, with specialized production, small and medium-sized enterprises can also win the respect and attention of large enterprises, establish close cooperative relationships with large enterprises, and effectively support and promote the development of large enterprises.'*

(175) The industry associations are closely interlinked with the State, mostly through the importance of CCP building in those associations ([55]). The provisions of Section IV.3.6 of the same plan also point to a State intervention into the fibre production, including the GFF sector:

*'[The Association shall]*

— *assist the government in duly designing and implementing industry policy, to ensure the sound development of the sector;*

— *ensure the effective implementation of the glass fiber sector entry and management system and at the same time explore and implement and entry and management system applicable to the composite material sector;*

— *set out and implement sector and entry management systems in order to*

— *effectively curb* low level duplications,

— *strengthen enterprises' self-discipline awareness as well as the sector's perspectives,*

— *foster the elimination of obsolete production capacities and the transformation and upgrade of the sector,*

— *maintain a sound and orderly competition and orderly development of the sector;*

— *take account of the sector's development needs, strive to set out incentive policies and measures, guide the sector's sound development;*

— *actively strive to obtain export tax refund on glass fiber deeply processed products and guide the sound development of the glass fiber deep processing industry;*

— *actively strive to obtain the introduction and improvement of import and export tax rates for fibers and composite materials so as to offer incentives to the growth of high value-added composite material products exports;'*

(176) The PRC has actively promoted the GFF industries on different government levels, an example of a local initiative covering one of the sampled companies can be found in the Jiujiang City 13th Five-Year Plan for the economic and social development:

*Section III 2.2 Effectively implement a development plan for strategic and emerging industries*

— *New materials:*

— *[…]*

— *Extend and support the new materials industry chain, foster the development of new materials industry clusters;*

— *Rely on Jiujiang economic development zone, Jiujiang Chihu district industry park, Yongxiu Xinghuo Industry park and the Lushan fiber production base, and focus on the development of organic silicone new materials, glass fiber composite materials, bio-fiber new materials, metal new materials, and graphene new materials;*

— *[…]*

([55]) See Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2, p. 33-34.

— *Actively foster the JUSHI GROUP, Shengxiang Electronics, Cabot Chemical Industry and other leading enterprises' innovation-driven development, active connexion to the market, exploration and development of new fields of application for glass fiber and composite new materials so as to speed up the transformation and upgrade of the glass fiber industry* ([56]).

(177) Following definitive disclosure, the GOC claimed that the 13th Five-Year Plan for Fiber and Composite Materials Industry and the Jiujiang City 13th Five-Year Plan both only concerns general information about government policy, with no direct connection to any of the alleged subsidy programs at issue and are thus not "*sufficient evidence*" of specificity.

(178) The Commission disagreed with this claim. As explained in recitals (171) and (172), the 13th Five-Year Plan for Fibre and Composite Materials Industry targets specifically the fibre material industry and it clearly guides the development of the sector. Even if this document might have no direct connection to the alleged subsidy programs as claimed by the GOC, it points to specific measures encouraging the fibre and composite materials industry. Furthermore, as mentioned in recital (176), the Jiujiang City 13th Five-Year Plan for the economic and social development specifically targets Jushi Group, which is one of the cooperating exporting producers. Therefore, these documents demonstrate that the Chinese authorities target specifically a given industry, which includes the GFF industry, and certain companies in this industry. Consequently, the claims of the GOC were rejected.

(179) Considering the above-mentioned, the GFF industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective.

(180) Following definitive disclosure, the GOC objected to the Commission's assessment that the GFF industry is an encouraged industry and that the Commission's allegation that the GFF industry is encouraged in China does not show that the measures at issue are specific within the meaning of Article 2 of the SCM Agreement.

(181) The Commission disagreed with the COG's statement. The findings demonstrated in recitals (140) to (178) show that the GFF industry, as part of the 'building materials' and the 'new materials' industries, is particularly targeted and encouraged through various policy and regulatory tools and listed in catalogues of encouraged industries. The fact that these documents provide for specific measures with respect to certain industries, including the GFF industry, is sufficient to demonstrate that they are specific within the meaning of Article 2 of the SCM Agreement.

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

### 3.2.1. *The application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending and export credit insurance*

(182) For administrative convenience, the Commission requested the GOC to forward specific questionnaires to the two specific state-owned banks mentioned in the complaint, to Sinosure, as well as to any other financial institution that provided loans or export credits to the sampled companies.

#### 3.2.1.1. Preferential lending

(183) The GOC indeed forwarded the specific questionnaires to the banks. 15 bank branches confirmed their outstanding loans with the sampled companies during the IP, but without providing a reply to the questionnaire as such. Only the in-house bank of one of the exporting producers (CNBM Finance) and one state-owned bank (Export-Import Bank of China) actually responded to the questions in the questionnaire. Furthermore, the CDB did not respond to the questionnaire, but was available for questions during the verification visit.

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

([56]) Jiujiang City 13th Five-Year Plan for the economic and social development.

(185) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. Indeed, according to the Law of the People's Republic of China on State-Owned Assets of Enterprises ([57]), State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people's governments perform the duties and responsibilities of the capital contributor of a State-invested enterprise on behalf of the government. Such agencies are thus entitled to receive returns on assets, to participate in major decision-making and to select managerial personnel of State-invested enterprises. Furthermore, according to Article 17 of the above-mentioned Law on State-owned Assets, State-invested enterprises shall accept administration and supervision by governments and relevant governmental departments and agencies, accept public supervision, and be responsible to capital contributors.

(186) In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority. For example, according to Articles 33 and 36 of the Banking Supervision Law ([58]), the China Banking and Insurance Regulatory Commission ('CBIRC') has the authority to require all financial institutions established in the PRC to submit information, such as financial statements, statistical reports and information concerning business operations and management. The CBIRC can also instruct financial institutions to disclose information to the public.

(187) Furthermore, although the sole cooperating State-owned bank provided some general explanations on the functioning of their loan approval and risk management systems, it did not provide specific information concerning loans provided to the sampled companies. It argued that it was bound by statutory and regulatory requirements and contractual clauses with respect to the confidentiality of the information related to the sampled companies.

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

(189) In the end, the Commission only received information on corporate structure and ownership from the cooperating State-owned bank but not from any of the other financial institutions, which had provided loans to the sampled companies. Moreover, none of the financial institutions provided any information specific to the risk assessment of the loans granted to the sampled groups of exporting producers.

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

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

(192) In the reply to the Commission's letter, the GOC objected to the application of Article 28(1) of the basic Regulation. In general, it argued that the specific information requested was not necessary to begin with because the proceeding was based on a complaint that failed to provide sufficient evidentiary requirements of the SCM Agreement and the basic Regulation. The Commission considered that the sufficiency of evidence of the complaint was already addressed in Section 1.1.1 above and thus maintained its conclusion that there was sufficient evidence provided in the complaint tending to show the existence of the alleged subsidisation by the GOC.

([57]) Law of the People's Republic of China on State-Owned Assets of Enterprises, Decree No. 5 of the President of the People's Republic of China, 28 October 2008, article 11 & 12

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

(193) The GOC also objected more specifically to the application of Article 28(1) of the basic Regulation regarding preferential lending. The GOC reiterated that it had no authority over the banks. The GOC also considered that it had cooperated to the best of its abilities, that the Commission had imposed an unreasonable extra burden on it, and that the missing information was not "necessary" in the sense of Article 28 of the basic Regulation, since it was already available through the responses to the questionnaires. The GOC reiterated these claims after the definitive disclosure.

(194) The Commission maintained its position that the GOC has the authority to request information from the banks for the reasons explained in recitals (185) and (186) above. It acknowledged that the GOC forwarded the relevant questionnaires to the banks, and that it received a meaningful reply from one State-owned bank. The Commission used the information so provided, and complemented it with facts available only for those parts that were missing.

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

(196) The GOC also claimed that company-specific information could not be provided for regulatory reasons. Even if the Commission had a general written consent from the sampled companies waiving their confidentiality rights, the GOC maintained that the relevant banks or financial institutions would be required to ask the parties for their express permission with respect to each particular loan transaction and that these permissions would have to be verified by the relevant financial institutions.

(197) However, the Commission noted that consent was requested separately from each company for the loan transactions of each specific bank. The Commission considered that such a specific consent should be sufficient as such to grant access to the records related to the sampled companies. In addition, some of the banks actually provided an overview of their outstanding loans with the companies, thus showing that they were not restricted in providing information as such on specific transactions. However, none of these banks provided any information related to their own internal assessment of the transactions that had been disclosed.

(198) Finally, the Commission did not consider that it had imposed an unreasonable burden on the GOC. From the start, the Commission limited its investigation to those financial institutions that had provided loans to the sampled companies. The Commission also did not burden the GOC with the identification of these financial institutions, as the list with names and addresses of the banks, as well as the request to forward the questionnaires, was provided to the GOC at the very beginning of the investigation, in June 2019. This provided ample time for the GOC to comply with the Commission's request. The Commission thus considered that it had done its utmost to facilitate the tasks requested from the GOC.

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

3.2.1.2. Export credit insurance

(200) Sinosure responded partially to the specific questionnaire concerning export credit insurance provided to the sampled companies. In particular, Sinosure did not give specific information about the export credit insurance provided to the GFF industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.

(201) Furthermore, Sinosure failed to provide the requested supporting documentation concerning its corporate governance, such as its Articles of Association, arguing that this was confidential information.

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

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

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

(205) Sinosure indeed provided a questionnaire reply and representatives from Sinosure were present at the verification at the GOC's premises. However, as mentioned in recitals (200) and (201) above, the information provided was incomplete. For example, Sinsoure provided global figures on its profitability, but not on the profitability of its short-term export credit insurance business as such. The information provided thus did not allow the Commission to draw conclusions on crucial parts of the investigation regarding export credit insurance, that is whether Sinosure is a public body and whether the premiums charged to the sampled companies were market conform.

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

3.2.2. *The application of the provisions of Article 28(1) of the basic Regulation to the China National Building Materials Group*

(207) According to the subsidy questionnaire sent to exporting producers, holding companies are required to provide a reply to sections A & E of the questionnaire. However, China National Building Materials Co. Ltd. ('CNBM'), the ultimate owner of the exporting producers Jushi, Hengshi and Taishan, failed to provide such a reply.

(208) CNBM considered that it was not involved in the glass fibre fabrics business, and that it did not have any direct transactions with the exporting producers. However, the Commission found that there had been significant capital increases funded by CNBM relating to one of the exporting producers. Furthermore, the Commission found evidence that grants provided to some entities in the group had transited through the bank accounts of CNBM, and that some grants had been allocated between various entities in the group via the capital reserves accounts.

(209) The Commission considers that in the absence of a questionnaire reply from the parent company CNBM, it is impossible to determine the full extent of the subsidies received by the CNBM Group. Under these circumstances, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

(210) Therefore, the Commission informed the CNBM Group that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted to CNBM, the parent company of the CNBM Group.

(211) In the reply to the Commission's letter, Jushi objected to the application of Article 28(1) of the basic Regulation regarding CNBM. Jushi reiterated that CNBM plays the role of equity investor, rather than the role of an actual controller of China Jushi, that it was not involved in the glass fibre fabrics business, and that it did not have any direct transactions with the exporting producers. Furthermore, although CNBM is the top 1 shareholder of China Jushi, its shareholding accounts for only 26,97 %.

(212) Concerning the capital increases, Jushi stated that the proportion of CNBM's shareholding in China Jushi decreased from 60,25 % in 1998 to 26,97 % at the end of the IP. In the last three years, the registered capital of China Jushi was only increased via its own capital reserves, so the shareholding of CNBM remained stable at 26,97 %.

(213) First, the Commission considered under all circumstances that holding companies should provide a questionnaire reply in order to ascertain whether any subsidies have been provided at the level of the parent company that may relate to the exporting producer. Without a questionnaire reply, it is impossible to determine the full extent of the subsidies relating to the exporting producers.

(214) Second, for the claims relating to the actual control of CNBM over Jushi, the Commission referred to the reasoning developed in recitals (93) to (96) above concerning the relationship between Jushi and Taishan. On this basis, these claims were rejected.

(215) Third, in terms of capital increases, although it is true that the shareholding of CNBM has decreased in relative terms over time, it has actually increased in absolute terms over the period 2010 to 2018.

(216) Finally, the items mentioned in recital (208) above relate not only to Jushi and Hengshi, but also to Taishan. As a result, even if the Commission were to accept Jushi's comments, this would not alter the Commission's findings for the CNBM Group as such.

(217) The Commission thus concluded that it had to rely partially on facts available for its findings concerning CNBM, the parent company of the CNBM Group.

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

(218) Yunnan Yuntianhua Group Co., Ltd. failed to provide complete information in time about funds received via other equity instruments by certain shareholders of the company.

(219) Despite repetitive requests from the Commission, during and after the on-spot verification, the company failed to provide the solicited information. Therefore, the Commission notified the company in question that it would consider basing its findings partially on facts available pursuant to Article 28(1) of the basic Regulation (i.e. as far as the information related to other equity instruments was concerned). In the reply to the Commission, the company indicated that due to the official shutdown in China during the last week of January and the first week of February, it was not in the position to respond to the Commission's request of information within the set deadline.

(220) Absent any additional evidence concerning the funds received via other equity instruments mentioned in recital (218) at this stage, the Commission continued to rely partly on facts available for its findings concerning these funds received via other equity instruments by certain shareholders of the company as detailed in Section 3.4.3.4 below.

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

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

(i) Preferential financing (e.g. policy loans, credit lines, bank acceptance drafts, export financing)

(ii) Preferential Export credit insurance

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

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

— Government provision of raw materials for less than adequate remuneration.

(iv) Revenue foregone through provision of power at reduced rates and Tax Exemption and Reduction programmes

— Provision of electricity at reduced rate

— Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises;

— EIT offset for research and development;

— Dividend exemption between qualified resident enterprises;

— Exemption or waiving of real estate and land use taxes;

— Accelerated depreciation of equipment used by High-Tech enterprises

(v) Grant Programmes

— Grants related to technological upgrading or transformation, such as e.g. promotion of R&D tasks under Science and Technology Support Plans, Promotion of Key Industry Adjustment, Revitalisation and Technology Renovation, Industrial Transformation and Upgrade of Made in China 2025 Funds, grants related to Intelligent Manufacturing;

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

— Corporate development grants;

— Famous Brand Programmes;

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

### 3.4. **Preferential financing**

#### 3.4.1. *Financial institutions providing preferential financing*

(222) According to the information provided by the two sampled groups of exporting producers, 36 financial institutions located within the PRC had provided financing to them. Of these 36 financial institutions, 29 were State-owned banks [59]. The remaining financial institutions were either privately owned (four institutions), or the Commission was not able to determine whether they were State-owned or privately owned (three institutions). However, only one State-owned bank filled in the specific questionnaire, despite a request to the GOC that covered all financial institutions, which had provided loans to the sampled companies.

(223) EXIM provides export-contingent loans at preferential rates to Chinese companies that produce new- and hi-tech products, products with indigenous intellectual rights, self-owned brands, high value-added products and software products that are registered with the authorities for industry and commerce [60]. According to the information available to the Commission, Chinese GFF producers qualify for export-oriented loans as new- and hi-tech products and/or as self-owned brands, given that several producers are recognized as 'National High-Tech Enterprises' or have been awarded famous brand, top brand, etc. status.

(224) Furthermore, EXIM also assists exporters through export buyers' credits. Export buyers' credits are provided to foreign companies to finance their import of Chinese products, technologies and services [61].

##### 3.4.1.1. State-owned banks acting as public bodies

(225) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows [62]: '*What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a*

(59) See Section 3.4.1.2 for the cooperating State-owned banks and Section 3.4.1.4 for the names and the data concerning the non-cooperating State-owned banks.
(60) Chinese Export-Import Bank 2017 Annual Report, p. 5.
(61) Chinese Export-Import Bank, page 33
(62) WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 – 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

*sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.'*

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

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

3.4.1.2. Cooperating State-owned banks

(228) Only one State-owned bank, namely EXIM, provided a questionnaire reply, which was verified on site.

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

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

(230) Concerning the formal indicia of government control of the cooperating State-owned bank, the Commission qualified it as 'key State-owned financial institution'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' states that: *"The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors"*.

(231) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions' (State Council Decree No. 282). Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating State-owned bank's business activities. In addition to these generally applicable indicia, the Commission found the following with respect to EXIM:

(232) EXIM was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM. According to its Articles of Association, the State directly nominates the management of EXIM. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' and other laws and regulations, and it is responsible to the State Council.

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

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

(235) The Commission also found that State-owned financial institutions have changed their Articles of Associations in 2017 to increase the role of the China Communist Party ('CCP') at the highest decision-making level of the banks.

(236) These new Articles of Association stipulate that:

— the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;

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

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

(237) This evidence shows that the Government exercised meaningful control over the conduct of this institution

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

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

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

— Decision No 40;

— Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No. 1)

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

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

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

(240) With respect to EXIM, its public policy mandate is established in the notice of establishing EXIM as well as in its Articles of Association.

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

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

(243) Similarly, Decision No. 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. As already explained in Section 3.1 and more specifically in recital (166), projects of the GFF industry belong to the 'encouraged' category. Decision No. 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations. The Commission also found that the CBIRC has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ([63]):

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

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

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

(245) Following definitive disclosure, the GOC claimed that none of the regulatory documents relied upon by the Commission were sufficient to show that meaningful control had, in fact, been exercised by the GOC on EXIM. More specifically, the GOC argued that Article 34 of the Chinese Commercial Banking Law is nothing more than a general statement without any practical implications. The GOC added that Article 34 should not be read in isolation, but in conjunction with Articles 4, 5, and 41 of the Bank law relating allegedly to the bank's autonomy, and the lack of interference by entities, individuals or governments. The GOC also requested to disregard Article 15 of the General Rules on Loans, since it is not mandatory. Finally, the GOC stated that Decision No. 40 of the State Council was not binding, and referred to Article 17 of this Decision, according to which all financial institutions are required to make lending decisions based on market principles.

(246) The Commission first recalled that, as mentioned in recital above, it considered that the Bank law and Decision No. 40 are mandatory. Furthermore, the findings of this investigation (as well as the Commission's findings in previous investigations concerning the same subsidy programme ([64])) did not support the claim that banks do not take government policy and plans into account. The investigation rather showed that Article 15 of the General Rules on Loans was actually applied in practice, and that Articles 4, 5 and 41 of the Bank law were applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions. The findings of this investigation did not support the claim that banks do not take government policy and plans into account while making lending decisions. For example, the Commission found that the exporting producers benefit from similarly low interest rates through preferential lending.

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

([64]) See for example the HRF, Tyres and E-bikes cases cited in footnote 7, respectively in Section 3.4.1.1.b, Section 3.4.1.1.b and Section 3.5.1.1.

(247) The Commission also noted that the Decision No. 40 of the state Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of 'other preferential policies on the encouraged projects'. On the basis of the above, banks are required to provide credit support to the GFF industry. While Article 17 of the same Decision also asks the bank to respect credit principles, the Commission could not establish during the investigation that this was done in practice. Decision No. 40 hence confirmed the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations.

(248) On that basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the GFF industry.

(249) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete loans. During the verification visit, the cooperating State-owned bank maintained that in practice it had used sophisticated credit risk assessment policies and models when granting the loans at issue. However, as already indicated in recitals (187) to (190) above, no concrete examples relating to the sampled companies were provided. The cooperating State-owned bank refused to provide information, including its specific credit risk assessments, related to the sampled companies for regulatory reasons and contractual reasons even though the Commission had a written consent from the sampled companies waiving their confidentiality rights.

(250) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (238) to (245), in combination with the behaviour of the cooperating State-owned bank with regard to the loans provided to the sampled companies. This behaviour contrasted with its official stance during the verification visit, as in practice it was not acting based on thorough market-based risk assessments.

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

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

(253) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the GFF industry.

#### 3.4.1.3. Conclusion on cooperating financial institutions

(254) The Commission established that the cooperating State-owned financial institution implemented the legal framework set out above in the exercise of governmental functions with respect to the GFF sector. Therefore, it was acting as public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

3.4.1.4. Non-cooperating State-owned banks

(255) As set out in section 3.2 above, none of the other State-owned banks, which provided loans to the sampled companies, replied to the specific questionnaire. The CDB did not respond to the questionnaire, but was available for questions during the verification visit at the premises of MOFCOM. During this visit, the CDB stated that the statements it had made during a previous anti-subsidy investigation by the EU in 2012 were still valid, and that no major changes had occurred since then. The CDB did not provide any further detailed information on its governance structure, risk assessment or examples relating to specific loans to the GFF industry.

(256) Therefore, in line with the conclusions reached in recitals (182) to (199) above, the Commission decided to use facts available to determine whether those State-owned banks qualify as public bodies.

(257) In previous anti-subsidy investigations [65], the Commission established that the following banks, which had provided loans to the sampled groups of exporting producers in the investigations at hand, were partially or fully owned by the State itself or by State-held legal persons: China Development Bank, China Construction Bank, Industrial and Commercial Bank of China, Bank of Communications, China Everbright Bank, Postal Savings Bank, China Merchants Bank, Shanghai Pudong Development Bank, China Industrial Bank, Shenyang Rural Commercial Bank, Bank of Shanghai, Ningbo Bank, China CITIC Bank, China Guangfa Bank, China Bohai Bank, Huaxia Bank, Hankou Bank, Hubei Bank, Huishang Bank, Dongying Bank, Bank of Tianjin, Bank of Kunlun, Shanghai Rural Commercial Bank, China Industrial International Trust Limited, Daye Trust Co., Ltd. and Sinotruk Finance Co., Ltd. Since no information has been provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.

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

| Bank name | Information on ownership structure |
|---|---|
| Hangzhou Bank | Hangzhou Finance Bureau is the actual controller of the bank |
| Zheshang Bank | at least 37 % of the shares held by the local government and SOEs |
| Qilu Bank | at least 36 % of the shares held by the local government and SOEs |
| Fudian Bank | mainly State-owned, with shares diluted among many SOEs and entities associated to the local government of Kunming |
| Suzhou Bank | mainly State-owned, with shares diluted among many SOEs and entities associated to the local government of Suzhou |
| Bank of Jiangsu | at least 32 % of the shares held by State-owned entities |
| China Merchants Bank Financial Leasing Co., Ltd. | subsidiary of China Merchants Bank, which was found to be State-owned in the anti-subsidy investigation on HRF [1] |

[65] See HRF and Tyres cases cited in footnote 7, recital (132) and recital (211) respectively.

| Bank name | Information on ownership structure |
|---|---|
| Chongqing Rural Commercial Bank | at least 23 % of the shares held by State-owned entities |
| China Technology Financial Leasing Co., Ltd. | established by the Ministry of Commerce and led by the Chongqing Science and Technology Research Institute |
| Chongqing Yinhai Leasing Co., Ltd. | Owned by Chongqing SASAC |

([1]) See the HRF and tyres cases cited in footnote 7, recital 132.

(259) The Commission further established, absent specific information from the financial institutions at issue indicating otherwise, GOC ownership and control based on formal indicia for the same reasons as set out above in Section 3.4.1.2. In particular, based on facts available, managers and supervisors in the non-cooperating State-owned banks would appear to be appointed by the GOC and be accountable to the GOC in the same manner as in the cooperating State-owned bank.

(260) With regard to the exercise of control in a meaningful manner, the Commission considered that the findings concerning the cooperating financial institution could be considered representative also for the non-cooperating State-owned financial institutions. The normative framework analysed in Section 3.4.1.2 above applies to them in an identical manner. Absent any indication to the contrary, based on facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the cooperating State-owned bank, so that the analysis on the concrete application of the normative framework in Section 3.4.1.2 above applies to them in an identical manner.

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

(262) The Commission therefore considered that the findings for the cooperating state-owned bank constituted the facts available under Article 28 of the basic Regulation for assessing the other State-owned banks, due to those similarities in loan conditions and lending rates.

(263) On that basis, the Commission concluded that the other State-owned banks, which provide loans to the sampled companies, are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

(264) Following definitive disclosure, the GOC argued that the Commission based itself only on previous investigations and indicia of formal control to establish that the non-cooperating State-owned banks were acting as public bodies. No separate analysis was performed for each bank. In addition, since EXIM is a policy bank, its situation could not be transposed to commercial banks

(265) In this respect, the Commission recalled that in the absence of cooperation from the other State-owned banks, the Commission had to rely on facts available. The Commission concluded that the information from previous investigations, combined with formal indicia of control and the findings of the investigation itself regarding EXIM and regarding the actual conduct of the banks towards the exporting producers constituted the best facts available in this case. In any event, the GOC failed to put forward any evidence or argument to rebut the Commission's findings concerning the fact that the other State-owned banks which provided loans to the sampled companies are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. The Commission thus maintained its position.

3.4.1.5. Conclusion on State owned financial institutions

(266) In light of the above considerations, the Commission established that all State-owned Chinese financial institutions that provided loans or financial leasing to the two sampled groups of cooperating exporting producers are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

(267) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3 (1)(a)(iv) of the basic Regulation for the same reasons, as set out in recitals (269) to (272) below. Thus, their conduct would be attributed to the GOC in any event.

3.4.1.6. Entrustment or direction of private financial institutions

(268) The Commission then turned to the remaining financial institutions. The following financial institutions were considered to be privately owned, based on the findings established in previous anti-subsidy investigations [66], and complemented by publicly available information: China Minsheng Bank, Sumitomo Mitsui Banking (China) Co., Ltd, Standard Chartered Bank, Ping An Bank. For the following financial institutions, in the absence of cooperation and in the absence of sufficient publicly available information the Commission could not ascertain whether they were State-owned or privately owned: Chongqing Runyin Financial Leasing Co., Ltd., Wuxi International Platinum Co., Ltd., Liangjiang Financial Leasing Co., Ltd., Taian Bank and Taian Daiyue Rural Commercial Bank Co., Ltd. Following a conservative approach, the Commission analysed the latter in the same manner as privately owned financial institutions and they are referred hereafter as 'privately owned financial institutions'. The Commission analysed whether these financial institutions had been entrusted or directed by the Government of China to grant subsidies to the GFF sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(269) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body [67]. In both cases, the government uses a private body as a proxy to make the financial contribution, and '*in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement*' [68]. At the same time, paragraph (iv) does not allow Members to impose countervailing measures to products '*whenever the government is merely exercising its general regulatory powers*' [69] or where government intervention '*may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market*' [70]. Rather, entrustment or direction implies '*a more active role of the government than mere acts of encouragement*' [71].

(270) The Commission noted that the normative framework concerning the industry mentioned above in recitals (238) to (245) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBIRC cover all Chinese-funded and foreign-invested banks under the management of the CBIRC.

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

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

(66) See HRF and Tyres cases cited in footnote 7.
(67) WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMS) from Korea), Appellate Body Report of 21 February 2005, para.116.
(68) Appellate Body Report, DS 296, para. 116.
(69) Appellate Body Report, DS 296, para. 115.
(70) Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.
(71) Appellate Body Report, DS 296, para. 115.

(273) After definitive disclosure, one of the parties argued that the fact that each of the sampled groups of companies benefitted from different types of loans or financial leasing during the investigation period with variances in respect of e.g. maturity, collateral, guarantees and other attached conditions, as mentioned in recital (281) below, indicated that they are not being entrusted or directed by the State. This party also submitted that the overlap in rates by private and publicly owned banks showed that the publicly owned banks were providing loans on market terms, not the opposite. The Commission also tried to shift the burden of proof by stating that its conclusions applied '*[i]n the absence of any divergent information received from the private financial institutions*'. However, the Commission should have first established a prima facie case.

(274) In response to these claims, the Commission recalled that in the absence of cooperation from the banks, the Commission had to rely on facts available for the private banks. As such, it did not shift the burden of proof. Furthermore, since there was cooperation from only one State-owned bank, the Commission used the information from the cooperating party, which was deemed to be a public body, to compare it with the conditions offered by private banks, which were not cooperating. The fact that there was an overlap in rates shows that the private banks also provided loans below market terms, not the opposite. To follow the reasoning of the party would be equivalent to concluding that information based on facts available is more reliable than conclusions based on verified information. The fact that companies benefitted from different types of loans during the investigation period with different conditions attached to it, does not alter this. In any event, the party failed to put forward any evidence or argument to rebut the Commission's findings. These claims were thus rejected.

(275) In addition, the normative framework applying to all banks in China is much wider than only the two regulations governing the CBIRC, as shown in recital (238) above, and the entire set of regulatory documents is legally binding, as explained in recital (244) above, so that they amount to more than acts of mere encouragement. Moreover, verification visits in the sampled companies did not reveal any significant differences between loan conditions or rates provided by the private financial institutions, and those provided by publicly owned financial institutions.

(276) Following disclosure, the GOC submitted that the legislation invoked by the Commission has only guiding role, and a mere guiding role of the government is not sufficient for a finding of entrustment or direction to be made. In this context, the GOC highlighted that article 34 of the Bank Law was nothing more than a general statement without practical implications.

(277) Article 15 of the General Rules on Loans is also not a mandatory obligation but merely allows financial institutions to take state policies into account. Decision No. 40 is also not a binding document, and it explicitly mandates financial institutions to provide financial support 'according to the credit principles'.

(278) The Commission disagreed with this view, since the normative framework applying to all banks in China is legally binding, as explained in recital (244) above, so that they amount to more than acts of mere encouragement or guidance by the government. Concerning Decision No. 40, the Commission already established in recital (247) above that Decision No. 40 instructs all financial institutions to provide credit support only to encouraged projects even though Article 17 of the same Decision also asks the bank to respect credit principles. The Commission thus maintained its position.

3.4.1.7. Credit ratings

(279) In previous anti-subsidy investigations, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund ([72]), showing a discrepancy between international and Chinese credit ratings, combined with the findings of the investigation concerning the sampled companies. Indeed, according to the IMF, over 90 % of Chinese bonds are rated AA to

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

AAA by local rating agencies. This is not comparable to other markets, such as the EU or the US. For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category ([73]).

(280) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas ([74]). Fitch for example clearly indicates, where applicable, that such guarantees are a key driver underlying its credit ratings of Chinese companies ([75]).

(281) The Commission also found further information to complement this analysis. First, the Commission determined that the State can exercise a certain influence over the credit rating market. According to two studies published in 2016, there were around 12 credit rating agencies active on the Chinese market, a majority of which are State-owned. In total, 60 % of all rated corporate bonds in China had been rated by a State-owned ratings agency ([76]).

(282) The GOC confirmed that, during the investigation period, there were 15 credit rating agencies active on China's bond market, among which 12 domestic rating agencies, including Shanghai Brilliance Credit Rating & Investors Service Co., Ltd, Dagong Global Credit Rating Co., Ltd, Golden Credit Rating International Co., Ltd, China Bond Rating Co., Ltd, CSCI Pengyuan Credit Rating Co., Ltd, Fareast Credit Rating Co., Ltd, China Chengxin Securities Rating Co., Ltd, United Credit Ratings Co., Ltd, Shanghai Credit Information Services Co., Ltd, China Securities Index Co., Ltd, Beijing North Joint Credit Evaluation Co., Ltd and Sichuan Dapu Credit Rating Limited Company. Most of the domestic rating agencies were State-owned. There were also 3 Sino-foreign joint venture credit rating agencies, namely China Lianhe Credit Rating Co. Ltd, S&P Global China Rating, and China Chengxin International Credit Rating Co., Ltd.

(283) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations ([77]). The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. However, during the investigation period, no foreign credit rating agency had been admitted yet ([78]). Nevertheless, in the meantime, foreign agencies did establish joint ventures with some local credit rating agencies, which provide credit ratings for domestic bond issues. However, these ratings follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained above.

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

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

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

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

([77]) See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No. 50, 24 August 2007; Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd. and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No. 547, 16 December 1997, and Announcement No. 14 [2018] of the People's Bank of China and the China Securities Regulatory Commission on Issues Concerning the Provision of Bond Rating Services by Credit Rating Agencies on the Interbank Bond Market and the Stock Exchange Bond Market.

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

(284) Finally, a recent study performed by the PBOC itself confirms the Commission's findings, stating in its conclusions that *'if the investment level of foreign bonds is set to international rating BBB-and above, then the domestic bond investment grade may be rated at AA-level and above, taking into account the difference between the average domestic rating and the international rating of 6 or more notches'* ([79]).

(285) In view of the situation described in recitals (279) to (284) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. On this basis, even if some sampled companies were awarded a good credit rating by a Chinese rating agency, the Commission concluded that such ratings are not reliable. Those ratings were also distorted by the policy objectives to encourage key strategic industries, like GFF.

3.4.2. *Preferential financing: loans*

3.4.2.1. Revolving loans

(286) In line with the findings in the HRF and tyres investigations ([80]), revolving loans are loans, which allow a company to replace the capital repaid on loans at the maturity date by fresh capital from new loans. Revolving loans are usually a sign of short-term liquidity problems of the borrower, and involve a greater risk exposure for the banks granting them. The existence of revolving loans in a given company was therefore considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to short-term liquidity problems.

(287) Following definitive disclosure, the GOC claimed that revolving loans are not necessarily a sign of liquidity issues. This is clear from the websites of leading European banks. For instance, revolving credit lines and loans are a part of the standard business of banks such as ING ([81]) and BNP Paribas ([82]) and are not associated with higher interest rates.

(288) The Commission disagreed with the assessment made by the GOC. The Chinese authorities themselves consider revolving loans to be an additional factor of credit risk. As stated in the CBRC's 'Guidelines on risk-based loan classification', revolving loans should be reported at least as a 'concerned' loan ([83]). A loan falling under this category means that even though a borrower can pay the principal and interest of the loan now, there are some factors, which may negatively affect the repayment thereof.

(289) Revolving credit facilities do indeed exist in Europe, but their terms and conditions are very different from the Chinese revolving loans. Revolving credit facilities in the Union are basically credit lines, with a pre-determined maximum amount that can be withdrawn and repaid on several occasions during a pre-specified time period. In addition, such credit facilities entail an additional cost, be it a contractual margin on top of the usual short-term market rates ([84]), or a predetermined management fee. Furthermore, the example of BNP Paribas provided by the GOC also foresaw a fee for unused capital over the duration of the credit facility.

(290) On the other hand, the revolving loans found during the verification visits at the Chinese sampled companies did not have conditions different from other short-term loans. They were not labelled as being a credit line or a revolving credit facility and there were no extra fees or margins attached to it. At first sight, they appeared to be normal short-term loans. However, sometimes the purpose of the loan referred to 'repayment of loans'. In addition,

([79]) PBOC Working Paper No.2017/5, May 25,2017, p. 28.
([80]) See the HRF case cited in footnote 7 above (recitals 152 to 242) as well as the Tyres case quoted in the same footnote (recitals 243 to 294).
([81]) https://www.ing.com.tr/en/for-your-business/loans/other-cash-loans/revolving-loan
([82]) https://companies.bnpparibasfortis.be/en/solution?n=revolving-credit
([83]) Article X, point II of the CBRC's Guidelines on risk-based loan classification.
([84]) Also the example of BNP Paribas provided by the GOC makes this point.

when verifying the repayments of such loans during the verification visit, it became clear that the capital amount was actually being repaid by fresh loans received from the same bank for the same amount within a week before or after the maturity date of the initial loan. The Commission then extended its analysis to the other loans in the loan tables and found in most cases other instances with exactly the same characteristics. For all these reasons, the Commission maintained its position on revolving loans.

3.4.2.2. Financing with the aim to restructure long-term debt

(291) In the course of the investigation, the Commission found that certain sampled companies issued bonds with the specific purpose of debt repayments, namely loans. The Commission established that by restructuring their debt via this instrument, some companies could rearrange and defer their liabilities, as well as, obtain the funds without which they would not be able to meet their repayment obligations, evidencing therefore problems to raise funds.

(292) The use of bonds to that aim raises concerns on the ability of a given company to pay for its debts, therefore questioning not only its short-term liquidity, but also the solvency in the long term. The existence of bonds issued with the purpose of repayment of loans in a given company is therefore considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing.

3.4.2.3. Specificity

(293) As demonstrated in recitals (238) to (245), several legal documents, which specifically target companies in the sector, direct the financial institutions to provide loans at preferential rates to the GFF industry. These documents demonstrate that the financial institutions only provide preferential lending to a limited number of industries/companies, which comply with the relevant policies of the GOC.

(294) Following definitive disclosure, the GOC disputed the specificity conclusions on preferential lending. According to the GOC, Articles 4 and 34 of the Bank law merely set out general guidelines with respect to the conduct of commercial banks and do not mention to which companies or industries loans should be granted. Furthermore, Article 15 of the General Rules on Loans does not expressly and unambiguously restrict the availability of this specific subsidy to companies in the GFF sector. Decision No. 40 is not specific to an enterprise or industry but to certain encouraged projects, which is not synonymous. Moreover, Decision No. 40 is not mandatory, and in light of the extremely wide array of economic sectors and industries covered by Decision No. 40, it cannot be concluded that this documents explicitly limits the access of the alleged subsidy to certain enterprises.

(295) In this respect, the Commission noted that, even though the Bank law and the General Rules on Loans do not specify GFF as such, they do refer to the State's industrial policies, which are set out in the documents listed in Section 3.1 above. The Commission thus referred back to the documents that were listed and the conclusions that were reached in Section 3.1 above. In addition, it considered that references to the GFF industry are sufficiently clear as this industry is identified either by its name or by a reference to the product that it manufactures or the industry group that it belongs to. Moreover, the fact that the GOC supports a limited group of encouraged industries, which includes the GFF industry, makes this subsidy specific. The Commission thus maintained its conclusions.

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

3.4.2.4. Benefit and calculation of the subsidy amount

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

(298) In this regard, the Commission noted a number of specificities on the Chinese GFF market. As explained in Sections 3.4.1.1 to 3.4.1.7 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.

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

(300) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential lending established in the anti-subsidy investigation on hot rolled flat steel products originating in the PRC, as well as in the anti-subsidy investigation on tyres originating in the PRC ([85]) and explained in the recitals below. As a result, the Commission calculated the benefit from the preferential lending practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.

(a) CNBM Group

(301) As mentioned in recitals (250) to (252) above, the Chinese lending financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the CNBM Group were at market level.

(302) The exporting producers of the CNBM Group presented themselves in a generally profitable financial situation according to their own financial accounts. One of the exporting producers did not have any loans. However, the Commission noted that it financed 65 % of its purchases by a sort of preferential short-term financial instrument (bank acceptance drafts). As explained in Section 3.4.3.2 below, bank acceptance drafts are a type of debt instrument; therefore, their extensive use points to short-term liquidity issues. The second exporting producer made constant profits during the period 2016-2018, and had healthy financial indicators at first sight, such as a low debt-to-assets ratio. However, it appeared to have short-term liquidity problems for the following reasons: the company's outstanding short-term debt represented almost 100 % of its turnover; it issued a bond to repay bank loans; it used a high amount of bank acceptance drafts to finance its purchases, and it used revolving loans, which suggests that the company may be in a more fragile financial situation than what the financial statements would suggest at first sight. The third exporting producer showed a similar picture, with a profitable situation, but an extensive use of bank acceptance drafts and a bond issued to repay bank loans.

(303) The first intermediate parent company, China Jushi, was profitable during the period 2016-2017 and the investigation period, but used bank acceptance drafts extensively to finance its purchases. Furthermore, the Commission established that some of the loans provided at the level of China Jushi were revolving loans, and that China Jushi had issued two bonds with the purpose of repaying bank loans. Revolving loans were also found in the second intermediate parent company, Sinoma Technology.

(304) As mentioned in recitals (207) to (217) above, the parent company CNBM did not cooperate. However, looking at its publicly available annual report for 2018, a similar picture emerges: the company has a high leverage, with a net debt ratio of 130 %, and a debt-to-assets ratio of 68 %. During the investigation period, the company concluded a debt-to-equity swap deal with State-owned banks, in order to improve its debt structure. Under such a deal, the company could convert part of its debt to State-owned banks into shares, and thus reduce the liabilities on its balance sheet.

([85]) See HRF case cited in footnote 7 above (recitals 152 to 244) and Tyres case also cited in footnote 7 (recital 236).

(305) The Commission noted that the various companies in the CNBM Group were awarded ratings ranging between AA- and AA+ by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in recitals (279) to (285), the Commission concluded that this rating is not reliable.

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

(307) After definitive disclosure, the CNBM Group claimed that the Commission gave a joint credit rating to the entire CNBM Group based mainly on CNBM's credit rating, even though the level of indebtedness of CNBM could not have a detrimental effect on China Jushi, for which it holds only a 27 % stake. In addition, CNBM could not transfer its debt liabilities to China Jushi since the companies in the group are separate legal entities with limited liability, meaning that the debts of shareholders or subsidiaries could not be transferred. Furthermore, since the CNBM Group considers that bank acceptance drafts are not equivalent to short-term loans they should also not be taken into account for the assessment of the companies' credit rating.

(308) The Commission disagreed with these statements. As shown in recitals (301) to (304) above, the Commission has made an individual assessment of each of the companies within these groups. In the specific case of the CNBM Group, irrespective of the situation described at the level of CNBM, most of the companies reviewed showed a similar picture, including revolving loans, extensive use of bank acceptances, and bonds taken out to repay loans. In addition, contrary to what was stated by the company, debt was actually transferred between various companies in the group through intercompany loans. Therefore, the Commission decided to attribute a single credit rating to the group. Finally, as mentioned in Section 3.4.3.2 below, the Commission considered bank acceptance drafts as another type of financial instrument equivalent to a short-term loan, which can thus be used in the determination of the credit ratings. Hence, the company's claims were rejected.

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

(310) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the benchmark interest rates as published by the PBOC at the date when the loan was granted ([86]), and for the same duration as the loan in question. This was done individually for each loan provided to the company.

(311) Following definitive disclosure, several parties claimed that the use of a relative spread was flawed. All of them alleged that the Commission should have used an absolute instead of a relative spread between the US AA rated bonds and the US BB rated bonds. The following reasons were provided:

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

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

(3) The absolute spread remains roughly stable over time, whereas the relative spread shows great variations.

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

(312) These issues were already presented in previous investigation ([87]). As can be seen from recitals (175) to (187) in the HRF case, and from recital (256) in the Tyres case, the Commission rejected these arguments on the following grounds.

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

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

(315) Third, the relative spread is also country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US the method will lead to lower absolute mark-ups.

(316) On the third point, historical data showing the evolution of the absolute and relative spread over time were already analysed in the Tyres case. The Commission's analysis found that the absolute spread is not as stable as alleged, but instead varies over time, from 1 % to 4,5 %. In addition, the relative spread followed exactly the same trend as the absolute spread over the past 23 years, i.e. when the relative spread increases the absolute spread also increases and vice versa. As for the alleged volatility of the relative spread, the magnitude of the changes were similar — the difference between the highest and the lowest figures was 530 % for the relative spread and 450 % for the absolute spread ([88]).

(317) The GOC also objected to the use of an out-of-country benchmark as such. In this respect, the GOC noted that the Commission first should have looked for comparable commercial loans the exporting producers could actually obtain on the market. Otherwise, the benchmark should be based on positive evidence and reasoned explanations that all loans in the market concerned were distorted by government intervention such that no comparable loan existed on the domestic market.

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([87]) Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China, (OJ L 146, 9.6.2017, p. 17), ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case').

([88]) Tyres case cited in the previous, footnote, recital (256).

(318) In this respect, as explained in Section 3.4.1.7 above, the Commission determined that domestic credit ratings awarded to Chinese companies were not reliable as such, and were also distorted by the policy objectives to encourage key strategic industries, like GFF. As a result, Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset, and the Commission had to look for a benchmark based on undistorted credit ratings. Furthermore, the Commission noted that the resulting interest rate of around 9 % for BB rated companies is not unreasonable in view of the fact that the yield of BB rated corporate bonds on the Chinese domestic market was 21 % at the end of the investigation period ([89]). Consequently, these claims were rejected.

(319) The GOC also claimed that the use of an out-of-country benchmark was inappropriate, as the benchmark did not make the necessary adjustments to reflect the prevailing conditions on the Chinese financial market, and that the Commission failed to take into account differences that existed in the size of the loans, the repayment terms and conditions and whether or not the loans were guaranteed, among other factors.

(320) The Commission disagreed with this view, since the PBOC benchmark rate is used as a starting point for the calculation. Furthermore, the use of the relative spread captures changes in the underlying country-specific market conditions, which are not expressed when following the logic of an absolute spread, as explained in the recital above. In addition, the Commission observed that it it not possible to include all factors of the individual risk assessment of a bank into the proxy. However, the Commission's calculation methodology takes into account parameters of individual loans, such as the start date and the duration of the loan, as well as the variability of the interest rate. The GOC's claims were thus rejected.

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

(322) Furthermore, as explained in Section 3.4.2.1, the existence of revolving loans in a given company is considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to short-term liquidity problems. Indeed, revolving loans are usually concluded for short durations. It is highly unlikely that a revolving loan would have a maturity of more than two years, and the evidence of the loans verified in the sampled companies supported this conclusion.

(323) Therefore, in order to take into account the increased risk exposure of the banks when providing short-term financing to companies with revolving loans, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation for all short-term financing of the concerned companies. The Commission thus made a comparison between US AA corporate bonds and US B (instead of BB) corporate bonds with the same duration. According to Standard & Poor's credit rating definitions, an obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently still has the capacity to meet its financial commitments. Nevertheless, adverse business, financial, or economic conditions may impair the obligor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered to be appropriate to reflect the additional risk derived from the use of revolving loans as short-term financing.

(324) The Commission thus used this as the relevant benchmark for all short-term debt, including loans, with a maturity of 2 years or less provided to companies, which were making use of revolving loans.

(325) For the remaining loans with a maturity above 2 years and for companies that did not have revolving loans, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recital (306).

([89]) Daily Report of China Onshore RMB Bond Market, 2018-07-20, Bond Information Department, China Central Depository & Clearing Co. Ltd, p. 4.

(326) The Commission found that certain companies within the group issued bonds with the purpose of debt restructuring. In this case, as explained in Section 3.4.2.2, the Commission considered that the companies concerned are in a worse financial situation than what are the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing. Therefore in order to take into account the increased risk exposure, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation also for their long-term financing, including loans, by making a comparison between US AA corporate bonds and US B.

(327) Finally, since the parent company CNBM did not cooperate, the benefit for preferential lending at the level of CNBM was established by using the methodology explained in this section, applied to the publicly available information in the 2018 annual report of this company, such as outstanding liabilities, average cost of capital and average duration of borrowings.

(b) Yuntianhua Group

(328) As mentioned in recitals (250) to (252) above, the Chinese lending financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Yuntianhua Group were at market level.

(329) The exporting producers of the Yuntianhua Group presented itself in a generally profitable financial situation according to its own financial accounts.

(330) However, the analysis of the short-term liquidity raises concerns for the two exporting companies since the short-term debts in the IP represent from 90 to over 100 percent of the companies turnover, with an increasing trend from previous year. The use of short-term debt is significant in both companies. Although one of the exporting producers has no loans during the IP, it financed most of its purchases, as well as part of other non-operative cost, through bank acceptance drafts, an instrument with a maturity, generally, lower than a year.

(331) CPIC, the first direct shareholder and key supplier for the exporting producers, was profitable during the IP. However, it decreased the return to equity from previous year. Furthermore, the company presents liquidity issues, since its short term debts represent 80 to 90 % of the total debt. The comparison of the company's current assets to its current liabilities provides a current ratio ([90]) with a low value, below 1, which raises concerns on its capacity to repay short-term debts. Similarly, the Commission established the extensive use of bank acceptance drafts to finance its purchases.

(332) Yunnan Yuntianhua Group Co., Ltd., the parent company of the Yuntianhua Group, involved in the supply chain of the product under investigation, was loss-making during the IP. The comparison of the company's current assets to its current liabilities, through the current ratio below 1, raises serious concerns on its liquidity and its ability to repay short terms debts. Furthermore, the investigation revealed that the company issued bonds with the explicit purpose of debt repayment. The use of revolving loans was similarly established.

(333) The Commission noted that the Yuntianhua Group was awarded an AA rating by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in recitals (279) to (285) above, the Commission concluded that this rating is not reliable.

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

([90]) The current ratio is a liquidity ratio that measures a company's ability to pay short-term obligations due within one year. The current ratio is expressed as the comparison of a company's current assets to its current liabilities.

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

(336) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the benchmark interest rates as published by the PBOC at the date when the loan was granted ([91]), and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.

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

(338) Furthermore, as explained in Section 3.4.2.1, the existence of revolving loans in a given company is considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to short-term liquidity problems. Indeed, revolving loans are usually concluded for short durations. It is highly unlikely that a revolving loan would have a maturity of more than two years, and the evidence of the loans verified in the sampled companies supported this conclusion.

(339) Therefore, in order to take into account the increased risk exposure of the banks when providing short-term financing to companies with revolving loans, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation for all short-term financing of the concerned companies. The Commission thus made a comparison between US AA corporate bonds and US B (instead of BB) corporate bonds with the same duration. According to Standard & Poor's credit rating definitions, an obligor rated 'B' is more vulnerable than the obligors rated 'BB', but the obligor currently still has the capacity to meet its financial commitments. Nevertheless, adverse business, financial, or economic conditions may impair the obligor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the additional risk derived from the use of revolving loans as short-term financing.

(340) The Commission thus used this as the relevant benchmark for all short-term debt, including loans, with a maturity of 2 years or less provided to companies, which were making use of revolving loans.

(341) For the remaining loans with a maturity above 2 years and for companies that did not have revolving loans, the Commission reverted to the general benchmark awarding the highest grade of 'Non-investment grade' bonds, as explained in recital (306).

(342) The Commission found that certain companies within the group issued bonds with the purpose of debt restructuring. In this case, as explained in Section 3.4.2.2, the Commission considered that the companies concerned are in a worse financial situation than what are the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing. Therefore in order to take into account the increased risk exposure, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation also for their long-term financing, including loans, by making a comparison between US AA corporate bonds and US B.

3.4.2.5. Conclusion on preferential financing: loans

(343) The investigation showed that all sampled groups of exporting producers benefited from preferential lending during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered preferential lending a countervailable subsidy.

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

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

**Preferential financing: lending**

| Company/Group | Overall Subsidy amount |
|---|---|
| Yuntianhua Group | 2,53 % |
| CNBM Group | 7,39 % |

3.4.3. *Preferential financing: other types of financing*

3.4.3.1. Credit lines

(345) The investigation showed that Chinese financial institutions also provided credit lines at preferential conditions in connection with the provision of financing to each of the sampled companies. These consisted of framework agreements, under which the bank allows the sampled companies to use various debt instruments, such as working capital loans, bank acceptance drafts, documentary bills, other forms of trade financing, etc., within a certain maximum amount.

(346) The purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. The investigation showed that the two sampled exporting producers had credit line agreements with different banks that covered diverse short-term financing instruments with the purpose to finance operating expenses. Consequently, the Commission considered that in principle, all short-term financing of the sampled companies should be covered by a sort of credit line instrument, including bank acceptance drafts, which are issued on a regular basis to finance current operations.

(347) Therefore, the Commission compared the amount of the credit lines available to the cooperating companies during the investigation period with the amount of short-term financing used by these companies during the same period to establish whether all short-term financing was covered by a credit line. In case the amount of the short-term financing exceeded the credit line limit, the Commission increased the amount of the existing credit line by the amount actually used by the exporting producers beyond that credit line limit.

(348) Under normal market circumstances, credit lines would be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks at the opening of a credit line, as well as to a renewal fee charged on a yearly basis for renewing the validity of the credit lines. However, the Commission found that all of the sampled companies benefited from credit lines provided free of charge.

(349) Following definitive disclosure, the GOC argued that the Commission's claim that in normal market circumstances, credit lines are subject to commitment fees was unjustified in light of its own consideration in the Aircraft cases. According to the GOC, commitment fees only apply when the credit line is a committed credit line. However, the Commission did not establish that the credit lines in question were committed credit lines. The GOC recalled that in 'EC – Aircraft', the EU itself contended that the fact that the EIB did not charge commitment fees was justified because '… *(i) for "openrate" contracts (i.e. contracts where the rates are not fixed ex ante), there is no certainty as to the timing of the availability of funds, and the EIB does not commit to a precise interest rate*'.

(350) In response to this claim, the Commission noted that the argument of the EU in EC-Aircraft proceedings regarding commitment fees was not followed by the Panel in its ultimate findings. In particular, the Panel established that the lack of charging commitment fees by the EIB to compensate for the the EIB's commitment to make funding available was more advantageous than a comparable loan from a commercial lender and conferred a benefit ([92]). Therefore, this claim was rejected.

([92]) WT/DS316/R - European Communities and Certain Member States - Measures Affecting Trade in Large Civil Aircraft - Report of the Panel, 30 June 2010, paras 7.739 and 7.801.

(351) In accordance with Article 6(d)(ii) of the basic Regulation, the Commission considered the benefit thus conferred on the recipients to be the difference between the amount that the company has paid as a fee for the opening or the renewal of credit lines by Chinese financial institutions and the amount that the company would pay for a comparable commercial credit line, which the company could obtain on the market.

(352) Following disclosure, several parties claimed that the Commission did not perform a specificity analysis for credit lines. Furthermore, the GOC reiterated its comments developed in Section 3.1 above, stating that GFF is not an encouraged industry and none of the documents referred to by the Commission in this regard show that the credit lines provided to the GFF industry are specific within the meaning of Article 2 of the SCM Agreement.

(353) The Commission did not make a separate specificity analysis as credit lines are intrinsically linked to other types of preferential lending such as loans, and thus follow the same specificity analysis as developed in Section 3.4.2.3 above for the loans. As a result, these claims were rejected.

(354) The appropriate benchmark for the arrangement fee was established at 1,5 % by reference to publicly available data ([93]) for opening similar credit lines in similar (but undistorted) situations. The amount of the arrangement fee is payable on a lump sum basis at the time of the opening of the credit line. Therefore, the Commission applied the benchmark to the amount of credit lines opened during the investigation period.

(355) For credit lines existing before the beginning of the IP and renewed during the IP, a renewal fee of 1,25 % was used as a benchmark following the same source. The amount of the renewal fee is payable yearly on a lump sum basis at the time of the renewal of the credit line. Therefore, the Commission applied the benchmark to the amount of credit lines renewed during the IP.

(356) After definitive disclosure, one of the parties commented that the costs pertaining to arrangement and renewal fees are commonly waived by banks in order to secure large commercial clients. The company further provided an example of a bank in the United States, which did not charge an arrangement fee and only charged a 0,25 % annual renewal fee for a committed credit line of between USD 100 001 and USD 3 million ([94]) In addition, given that the United States is a much larger market than the United Kingdom and that the Commission relied on bond ratings from the United States to establish creditworthiness, such a benchmark was considered to be much more suitable than the UK benchmark for small businesses used by the Commission.

(357) The Commission noted that the allegation that the costs pertaining to arrangement and renewal fees are commonly waived by banks in order to secure large commercial clients was not substantiated by any evidence. Moreover, the Commission reviewed the benchmark proposed by the company and found that this benchmark specifically concerned lines of credit for small businesses with a maximum amount of USD 3 million, and more particularly related to short term working capital needs. On the contrary, the benchmark used by the Commission had a minimum limit of GBP 25 000 but no upper limit, there were no limitations in terms of the use of the capital provided or the duration, and it was separate from another financial product mentioned in the same document, but specifically tailored to small businesses. The Commission's own benchmark was thus more suitable for large size clients. In addition, the US bank providing the credit lines in the example chosen by the claimant was a bank operating exclusively on the US market, whereas HSBC (the benchmark used by the Commission) is a global bank, operating also on the Chinese market. There is no evidence available to the Commission indicating that HSBC waives the fees depending on the size of the customer. In this respect as well, the Commission's benchmark thus seemed more appropriate. Consequently, the company's claims were rejected.

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([93]) Fees charged by HSBC UK: https://www.business.hsbc.co.uk/…/pdfs/en/bus_bnkg_price_list.pdf

([94]) https://www.pnc.com/en/small-business/borrowing/business-lines-of-credit/secured-businessline-of-credit.html

3.4.3.2. Bank acceptance drafts

(a) General

(358) Bank acceptance drafts are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is a form of short-term financing that might *'reduce fund cost and enhance capital efficiency'* of the drawer ([95]).

(359) Bank acceptance drafts can only be used to settle genuine trade transactions and the drawer must produce sufficient evidence in that respect, e.g. through purchase/sales agreement, invoice and delivery order etc. Bank acceptance drafts may be used as a standard means of payment in purchase agreements together with other means such as remittance or money order.

(360) The bank acceptance draft is drawn by the applicant (the drawer, which is also the buyer in the underlying commercial transaction) and accepted by a bank. By accepting the draft, the bank accepts to make unconditional payment of the amount of money specified in the draft to the payee/bearer on the designated date (the maturity date).

(361) In general, the bank acceptance contracts contain the list of the transactions covered by the amount of the draft with indication of the payment due date with the supplier and the maturity date of the bank acceptance draft.

(362) The Commission established that generally bank acceptance drafts are issued within the framework of a bank acceptance draft agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and the buyer and detailing the value per supplier, the payment due date agreed with the supplier and the maturity date of the bank acceptance draft.

(363) The Commission also established that credit line agreements generally list bank acceptance drafts as possible use of the finance limit along with other short-term financial instruments such as working capital loans.

(364) Depending on the conditions established by each bank, the drawer might be required to make a small deposit in a dedicated account, make a pledge and pay acceptance commission. In any event, the drawer is obliged to transfer the full amount of the bank acceptance draft to the dedicated account at the latest at the maturity date of the bank acceptance draft.

(365) Once accepted by the bank, the drawer endorses the bank acceptance draft and transfers it to the payee, who is also the supplier in the underlying commercial transaction, as a payment of the invoice. Consequently, the payment obligation of the buyer (drawer) towards the supplier (payee) is cancelled. A new payment obligation of the buyer is created towards the accepting bank for the same amount (the drawer has the obligation to pay the bank in cash before the maturity of the bank acceptance draft). Therefore, the issuance of a bank acceptance drafts has the effect to replace the obligation of the drawer towards its supplier by an obligation towards the bank.

(366) The maturity of bank acceptance drafts varies depending on the conditions set by each bank and can go up to 1 year.

(367) The payee (or bearer) of the bank acceptance draft has three options before the maturity:

— wait until maturity to be paid in cash the full amount of the face value of the draft by the accepting bank;

— endorse the bank acceptance draft, i.e. use it as a means of payment for its liabilities towards other parties; or

— discount the bank acceptance draft with the accepting bank or another bank and obtain the cash proceeds against the payment of a discounting rate.

([95]) See website of the People's Bank of China: https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112_1324239.html

(368) The issuance date of the bank acceptance draft generally corresponds to the payment due date agreed with the supplier but can also be a date prior or posterior to the payment due date. The investigation found that, as far as the sampled companies are concerned, the issuance date was generally on or before the due date of the payment with the supplier and in some cases even after the payment due date. The Commission established that the maturity of the bank acceptance drafts of the sampled companies is in most cases from 6 months up to 12 months after the payment due date of the invoice.

(369) Regarding the accounting treatment of bank acceptance drafts, they are recognized as liabilities to the bank in the accounts of the drawers, i.e. the sampled exporting producers.

(370) The Credit Reference Center of the People's Bank of China ('CRCP') recognises bank acceptance drafts as "unsettled credit" provided by banks at the same level as loans, letters of credit or trade financing. It should also be noted that the CRCP is fed by the financial institutions, which grant various types of loans, and that such financial institutions have thus recognised bank acceptance drafts as liabilities to them. Furthermore, the bank acceptance agreements collected during the investigation provide that, should the buyer not make the full payment on the expiry date of the bank acceptance drafts, the bank would treat the amount unpaid as an overdue loan to the bank.

(371) Following definitive disclosure, one exporting producer from CNBM Group claimed that the CRCP does not recognise bank acceptance drafts as a liability towards the bank in the credit reports. This interested party referred to the note to the liabilities in the CRCP Credit Report where it is specified that *"The debt balance includes the unsettled advances, loans, class loans, trade financing, factoring, bills discounting, guarantees and third-party compensated debts, and the debts handled by asset management company at the time of statistics"*. It further added that in one of the group companies the 'Summary information' in the credit report refers to a 'current balance of liability', which did not include the bank acceptance drafts amounts but only the loans amount.

(372) In this respect, the Commission points out that the credit reports list bank acceptance drafts in the 'Summary of unsettled credit information' at the same level as loans, letters of credit, discounted bills, factoring or trade financing. The fact that bank acceptance draft are not counted in the 'debt balance' or in the 'current balance of liability' at the specific time when the report was issued does not affect their classification as credit, which is clearly recognized by the CRCP in the credit reports.

(373) As already mentioned in recital (358), bank acceptance drafts are a form of a short-term financing. In addition, as stated by the People's Bank of China on its website, *"the bank acceptance draft can guarantee the establishment and performance of the contract between the buyer and the seller, as well as promote the capital turnover via the intervention of Bank of China's credit"* [96]. In addition, on its website DBS Bank advertises bank acceptance drafts as a means to *"improve working capital by deferring payments"* [97].

(374) The Commission found that bank acceptance drafts are largely used as a means of payment in commercial transactions as a substitute to a money order thus facilitating the cash turnover and the working capital of the drawer. From a cash point of view, the instrument *de facto* grants the drawer a deferred due date of payment of 6 months or 1 year because the actual cash payment of the transaction amount occurs at the maturity of the bank acceptance draft and not at the moment when the drawer had to pay its supplier. In the absence of such a financial instrument, the drawer would either use its own working capital, which has a cost, or contract a short-term working capital loan with a bank in order to pay its suppliers, which also has a cost. In fact, by paying with bank acceptance draft, the drawer uses the supplied goods or services for a period of 6 months to 1 year without advancing any cash and without bearing any cost. As an illustration of the use of bank acceptance drafts as a substitute of short-term loans, the Commission established that one of the sampled exporting producers did not have any loans. However, the bank acceptance drafts issued by this exporting producer during the IP represented 70 % of its operating cost. Similarly, bank acceptance drafts at the end of the IP accounted for more than 53 % of its total liabilities.

[96] See footnote 71.

[97] See website of DBS Bank: https://www.dbs.com.cn/corporate/financing/working-capital/bank-acceptance-draft-bad-issuance

(375) Under normal market circumstances, as a financial instrument, bank acceptance drafts would imply a cost of financing for the drawer. The investigation showed that all the sampled companies that used bank acceptance drafts during the investigation period only paid a commission for the acceptance service provided by the bank, which varied between 0,05 % and 0,1 % of the face value of the draft. However, none of the sampled companies bore a cost for the financing via bank acceptance drafts by deferring the cash payment of the supply of goods and services. Therefore, the Commission considered that the investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost.

(376) Considering the above, the Commission concluded that the bank acceptance system put in place in the PRC provided all exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (395) to (399) below, in accordance with Article 3(1)(a)(i) and 3(2) of the basic Regulation.

(377) Following definitive disclosure, both cooperating exporting producers made a comment that bank acceptance drafts do not constitute a loan or any other form of financial assistance and that the Commission made an incorrect assumption that the use of bank acceptance drafts has the same effect as of a short-term loan. They argued that the extended payment due date that the use of a bank acceptance draft implies is not an interest-free short-term loan granted by a bank, but rather an extension of the payment due date that the seller decides to grant. Yuntianhua Group claimed that the Commission did not demonstrate the existence of a financial contribution in case of bank acceptance drafts. Both cooperating exporting producers insisted that the bank acceptance drafts do not involve any financing because no money has been transferred from the bank to any party.

(378) One company from the CNBM Group argued that the bank's acceptance is merely to facilitate transactions between unacquainted parties, in a way that the bank adds its own guarantee that the payment will be made when the maturity date is due. In addition, the bank acceptance draft does not change the date of payment as originally provided in the sales contract and therefore, a bank does not, by accepting a draft, provide a short-term loan. It further stated that the way the bank acceptance drafts are booked in the company's internal ledgers does not alter the conclusion that bank acceptance drafts are not a kind of short-term financing. This party also claimed that since according to the sales contract, the seller only receives the payment in 6 months or 1 year, the buyer does not need to use its own working capital or contract a short-term loan in order to pay at sight, because the seller already accepts that the payment will be a deferred one.

(379) In this respect, the Commission pointed out that it did not establish that bank acceptance drafts constitute a loan. However, the Commission concluded that they have economic effects similar to short-term financing.

(380) As pointed out in recital (374), the Commission established that bank acceptance drafts are largely used as a means of payment in commercial transactions, as a substitute to a money order, thus facilitating the cash turnover and the working capital of the drawer. The Commission also found that from a cash point of view, the instrument defers the cash payment at the maturity of the bank acceptance draft. In fact, the supplier is paid with bank acceptance draft at the payment due date agreed in the contract, instead of cash. The cash payment at maturity is a payment by the drawer to the bank under the contractual relation created between the drawer and the bank in the framework of the bank acceptance draft. Suppliers can also endorse bank acceptance drafts to pay other providers (instead of cash). Therefore, as pointed out in recital (374), the use of bank acceptance drafts allowed the drawers to use the supplied goods or services for a period of 6 months to 1 year without advancing any cash and without bearing any cost. The Commission also reiterated that the People's Bank of China presents bank acceptance drafts as an instrument that might *"reduce fund cost and enhance capital efficiency"* of the drawer *'as well as promote the capital turnover via the intervention of Bank of China's credit'* [98] and the DBS Bank advertises bank acceptance drafts as a means to *"improve working capital by deferring payments"* [99]. Furthermore, the GOC has not disputed the conclusion of the Commission that bank acceptance drafts are a form of financing. In addition, recently, the CBIRC issued a notice in which it states that in order to strengthen credit support to downstream enterprises in core enterprises, banking financial institutions may provide credit support for downstream enterprises to obtain goods and pay for goods by opening bank acceptance bills, domestic letters of credit, advance financing, etc [100]. This is yet another evidence showing that the GOC perceives the bank acceptance drafts as another form of credit support.

[98] See footnote 73.
[99] See footnote 75.
[100] http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=895429&itemId=928

(381) The fact that there is no transfer of money from the bank to any party at the moment of the issuance of the bank acceptance draft does not alter the above reasoning and conclusions. As already explained, bank acceptance drafts, as put in place in the PRC, are a means of payment in commercial transactions that favour the drawers by facilitating their cash turnover and their working capital. From economic and financial point of view, the use of this instrument allows the drawer to pay its liabilities without using financial resources of the company and therefore, it constitutes a form of financing of its economic operations. Contrary to what the cooperating exporting producers claim, this financing is not granted by the supplier but by the bank. As explained in recital (365), once the bank acceptance draft is accepted by the bank and endorsed to the payee (i.e. the supplier) the payment obligation of the buyer (drawer) towards the supplier (payee) is cancelled. Indeed, the payee (supplier) is paid by bank acceptance draft at the moment agreed in the sales contract (i.e. the payment due date). This was further confirmed by the GOC during the verification visit, namely that once the company pays the supplier with the bank acceptance draft they no longer have an obligation in relation to the supplier but to the bank because the one who requested the bank acceptance draft to be issued will need to pay the bank in full on maturity date. Furthermore, as a means of payment, the bank acceptance draft can be used by the supplier to pay its own liabilities towards other parties. Therefore, the supplier does not grant an extension of the payment due date. On the contrary, the bank grants an extension of the actual cash payment of the transaction covered by the bank acceptance draft by 6 months or 1 year and thus allows the drawer to avoid any cost of financing.

(382) The Commission disagreed with the comment that since according to the sales contract, the seller only receives the payment in 6 months or 1 year, the buyer does not need to use its own working capital or contract a short-term loan in order to pay at sight. The Commission also disagreed with the statement that the way the sampled exporting producers book the bank acceptance drafts in their internal ledgers is irrelevant. In fact, as already mentioned above, bank acceptance drafts are a means of payment used by the drawer to honour its obligations towards the payee. The statement that *"the seller only receives the payment in 6 months or 1 year"* is factually incorrect because the seller receives the payment with bank acceptance draft at the payment due date agreed in the contract. As already pointed out in recital (374), bank acceptance drafts are stipulated as a means of payment in commercial transactions instead of a cash payment and this is agreed by both the seller and the buyer. However, the cash payment of the goods and services is deferred to the maturity date of the bank acceptance draft and this deferral is granted by the bank. As already explained in recital (365), when the seller is paid by bank acceptance draft the liability of the drawer towards the seller is cancelled and two new liabilities are created: a liability of the drawer towards the accepting bank and a liability of the accepting bank towards the seller (payee) or the bearer of the bank acceptance draft. Contrary to what is claimed, the way the sampled exporting producers book the bank acceptance drafts in their internal ledgers is an important element that shows that, from one side, the liability towards the seller is cancelled with the payment by means of bank acceptance draft and, on the other side, a new liability of the drawer towards the bank is created. This is an additional evidence that through the use of bank acceptance drafts as a means of payment, which is allowed by the bank that accepted the draft, the drawer does not need to pay in cash the supplier (payee) at the payment due date agreed in the contract. Rather the drawer is obliged to pay in cash to the bank at the maturity date of the bank acceptance draft, which is 6 months or 1 year later. This was further confirmed by the GOC during the verification visit as it stated that bank acceptance drafts *"are interesting to alleviate the burden on the company's cash flow"*.

(383) The Commission also disagreed with the comment that by accepting the bank acceptance draft, the bank in a way merely adds its own guarantee that the payment will be made when the maturity date is due. First, as stated before, the bank acceptance draft is a means of payment, by which the drawer honours its liability towards the payee (the supplier). Therefore, the payment of the supplier by the drawer happens at the moment of the endorsement of the bank acceptance draft, while at maturity, the drawer honours its payment obligation towards the bank. Second, the bank acceptance draft cannot be classified merely as an additional guarantee of a future payment because the bank acceptance draft is a means of payment, acknowledged in the sales contracts, and the payment obligation of the drawer towards the supplier is cancelled by the payment with bank acceptance draft. The cash payment due to the bank at maturity is not an extension of the payment due date granted by the supplier, it is instead an obligation towards the bank. In addition, this was confirmed by the GOC during the verification visit where it stated that legally speaking the difference between the bank guarantee and the bank acceptance draft is that *"with the guarantee it is company A who is in the 1st line liable for the payment, whereas for bank acceptances, it is the issuing bank"*.

(384) Considering the above, the Commission reiterated its conclusion that in terms of their effects bank acceptance drafts are a form of a short-term financing in the way that they allowed the exporting producers to finance their purchases. The benefit provided to the cooperating exporting producers is the financing cost savings due to the fact that the use of financing through bank acceptance drafts was not remunerated.

(385) Considering that bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, and that they have been extensively used by the cooperating exporting producers to finance their current operations instead of using short-term working capital loans, they should bear a cost equivalent to a short-term working capital loan financing. This conclusion was further confirmed by the GOC during the verification visit where it stated that, regarding the choice for a company between bank acceptance draft and a short-term loan, it is up to the company to decide but *"by nature they are similar"*.

(386) In light of the above considerations, the Commission rejected the claims that bank acceptance drafts are not a form of short-term financing.

(b) Specificity

(387) Concerning specificity, as mentioned in recital (165), according to Decision No. 40, financial institutions shall provide credit support to encouraged industries.

(388) The Commission considered that bank acceptance drafts are another form of preferential financial support by financial institutions to encouraged industries such as the GFF sector. Indeed, as specified in Section 3.1 above, the GFF sector is among the encouraged industries and is therefore eligible for all possible financial support. No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions.

(389) Following definitive disclosure, CNBM Group claimed that the bank acceptance draft is a common commercial practice in the PRC available to all industries and that the only statutory limit to the user of a bank acceptance draft is indicated in Article 6 of Law of the People's Republic of China on Negotiable Instruments, i.e. *"if a person having no capacity or limited capacity for civil acts signs a negotiable instruments, the signature shall be null and void"*. It also claimed that it is not the responsibility of exporting producers to rebut a presumption that an alleged subsidy program is specific and that it is the Commission's responsibility to substantiate its determination of specificity on the basis of positive evidence, in particular by comparing the terms offered to the sampled companies with those offered to other Chinese companies. Finally, one company from CNBM Group asked the Commission to explain why a similar system in Canada, that the Commission has referred to in the e-bikes case, is not considered as a specific subsidy program, while it considers the system in the PRC as a specific subsidy.

(390) In this respect, the Commission referred to Recital (165) where it presented evidence that according to Decision No 40, financial institutions are required to provide credit support to encouraged industries. Bank acceptance drafts, as a form of financing, are part of the preferential financial support system by financial institutions to encouraged industries, such as the GFF industry.

(391) The Commission pointed out that it based its assessment regarding the specificity of the subsidy scheme on available governmental documents, such as plans and regulations, on encouraged industries. In this respect, the Commission noted that the GOC has clearly defined which industries are encouraged limiting the specific preferential financing benefits only to those ones. Therefore, even if a number of other industries specifically defined as encouraged also enjoy the same or similar preferential conditions as the GFF industry, this does not render preferential financing and in particular, bank acceptance drafts generally available to all industries.

(392) Furthermore, even if a form of financing could be in principle available to companies in all industries, the concrete conditions, under which such financing is offered to companies from a certain industry, such as the financing remuneration and the volume of financing, might make it specific. In fact, in the case of the cooperating exporting producers, as mentioned above, the Commission established that all of them benefitted from short-term financing through bank acceptance drafts without bearing any cost and that some of them benefitted from a substantial volume of bank acceptance drafts in comparison with other short-term financing such as short-term loans. There was no evidence submitted by any of the interested parties demonstrating that the preferential financing through bank acceptance drafts of companies in the GFF industry is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

(393) Regarding the comment about the bank acceptance drafts system in Canada, the Commission pointed out that according to Article 4(2) of the basic Regulation, the assessment of the specificity of a subsidy programme is made only with respect to the subsidies under investigation. Therefore, the Commission is not required to demonstrate that similar systems in other countries are also specific.

(394) Considering the above arguments, the claims of the cooperating exporting producers regarding specificity of the bank acceptance drafts were rejected.

(c) Calculation of the benefit

(395) For the calculation of the amount of the countervailable subsidy, the Commission assessed the benefit conferred on the recipients during the investigation period.

(396) As already mentioned in recitals (358) and (373), bank acceptance drafts are a form of short-term financing that enhance the capital efficiency of the drawer by facilitating its working capital and meeting its cash needs as they are largely used as a means of payment in commercial transactions instead of cash. The Commission found that the sampled exporting producers used bank acceptance drafts to address their needs for short-term financing without paying a remuneration. In addition, as stated in recital (346), the Commission considered that all short-term financing of the sampled companies, including bank acceptance drafts, should be covered by a credit line. The benefit relating to credit lines was established in Section 3.4.3.1 above.

(397) The Commission thus concluded that bank acceptance drawers should pay a remuneration for the period of financing. For calculation purposes, the Commission considered that the period of financing started, either on the payment due date agreed with the supplier, in cases where the bank acceptance draft was issued before the payment due date, or on the date of the issuance of the bank acceptance draft in cases where the bank acceptance draft was issued on or after the payment due date. The period of financing was deemed to end on the maturity date of the bank acceptance draft.

(398) In accordance with Article 6(b) of the basic Regulation, the Commission considered that the benefit thus conferred on the recipients is the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term financing interest rate.

(399) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. In this respect, as mentioned in recital (358), bank acceptance drafts are a form of short-term financing. They effectively have the same purpose as short-term working capital loans. Therefore, the Commission considered that bank acceptance drafts should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.4.2.4 above.

(400) Following definitive disclosure, one company from CNBM Group made a comment that as the bank acceptance draft is a credit provided by the seller to the buyer, the Commission should calculate the benefit in the context of the subsidy program 'provision of good and services for less than adequate remuneration (LTAR)' and it should first determine whether the suppliers account for 'public bodies' within the meaning of Article 2(b) of the basic Regulation.

(401) As already explained in recitals (379) to (383), the Commission disagreed that bank acceptance drafts are a credit provided by the seller and concluded that bank acceptance drafts are a form of preferential financing provided by the bank to the drawer. Therefore, the above comment was rejected.

(402) Another company from CNBM Group claimed that the Commission should have deducted the actual payment term granted from the supposed period of bank financing.

(403) As explained in recital (397), the Commission had considered the payment due date agreed with the supplier in the calculation of the period of financing. In the case of the CNBM Group company that made the claim, the investigation showed that in practice the payment due date of the underlying invoices had either already expired when the corresponding bank acceptance drafts were issued, or that no link could be found between the invoices provided and the bank acceptance drafts. Consequently, this claim was rejected.

(404) One company from CNBM Group claimed that the Commission should deduct the fees actually paid by the sampled producers from the alleged benefit. In addition, Yuntianhua Group claimed that under Article 7(1)(a) of the basic Regulation, the Commission has to deduct any application fee or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy.

(405) The Commission already noted in recital (375) that the cooperating exporting producers have paid a commission for the acceptance service provided by the bank, which varied between 0,05 % and 0,1 % of the face value of the bank acceptance draft. In fact, this commission, paid for the processing of the bank acceptance draft by the bank, is a distinct element from the financing granted by the bank, for which the cooperating exporting producers did not bear any cost. This fee is paid in order to cover the bank's administrative costs of processing the bank acceptance drafts. The Commission countervailed only the financing part of the bank acceptance drafts (namely, the part equivalent to short-term financing); it did not analyse whether the acceptance commission also involved a countervailable subsidy. In any event, the impact of the fee on the subsidy amount ranges from 0,01 % to 0,04 %, depending on the exporting producer and therefore it is immaterial. Therefore, the Commission did not consider it necessary to analyse this claim in its merit and also to assess the countervailability of this benefit.

(406) One company from CNBM Group claimed that the basis for the calculation of the benefit should be reduced by the amount of the deposits that it made as a guarantee for the bank acceptance drafts.

(407) In this regard, as the Commission concluded in previous investigations ([101]), it should first be noted that it is common practice for banks to request guarantees and collaterals from their clients when granting financing. Furthermore, it should be noted that such guarantees are used to secure that the exporting producer will bear its financial responsibility vis-à-vis the bank and not vis-à-vis the supplier. The investigation also revealed that these guarantees are not systematically requested by Chinese banks and are not always linked to specific bank acceptance drafts. In this respect, the alleged deposits do not amount to an advanced payment by the drawer to the banks but merely an additional guarantee requested at times by banks and which does not have any impact of the bank's decision to issue the bank acceptance drafts with no additional borrowing interests for the drawer. Furthermore, they can take various forms including term deposits and pledges. The deposits bear interests in favour of the drawer, and therefore, do not represent a cost for the drawer of the bank acceptance draft. On this basis, this claim was rejected.

(408) One company from CNBM Group claimed that the Commission should exclude from its calculations the bank acceptance drafts issued to related parties since the extension of a payment term to a related party via a bank acceptance draft confers no benefit on the payee in terms of increased liquidity because it reduces the liquidity of the related counterparty by a commensurate amount.

(409) In this respect, the Commission recalls that as stated above, a bank acceptance draft is a means of payment and therefore, it does not have the effect of extending the payment due date agreed with the supplier but it has the effect to defer the cash payment. As a means of payment, the bank acceptance draft can be endorsed by the payee (supplier) to settle its liabilities towards other parties. Therefore, there is no commensurate decrease in liquidity of the related parties that received the bank acceptance draft. Consequently, the claim was rejected.

([101]) See E-bikes case cited in footnote 7, recital 316

(410) Yuntianhua Group claimed that in the calculation of the bank acceptance drafts for some related companies, the Commission did not use the data as provided in the reply to the questionnaire.

(411) The Commission noted that the calculation was based on the last submission of data provided by the companies and verified during the on spot verification. The claim was therefore rejected.

(412) Finally, one company from CNBM Group made a specific claim regarding bank acceptance drafts issued by a related company to avoid double counting. The Commission rejected the claim. However, since the details of this claim are confidential, the Commission addressed it in a disclosure specific to the company concerned.

3.4.3.3. Discounted instruments

(413) The investigation showed that Chinese financial institutions discounted receivables to certain sampled companies in return for cash.

(414) Through this operation, financial intermediaries advanced to companies amounts of receivables before their due date. The companies received early funds by transferring the rights of future receivables to financial institutions after the deduction of fees and the applicable discount rates.

(415) The applicable discount rate should specifically compensate for the risk of default, which is highly influenced by the credit rating of the last entity liable to meet the payment obligation.

(416) The discounted receivables encountered during the investigation had different forms such as bills, bonds, factoring, bank acceptances and commercial acceptances. Each form operates under specific conditions and, similarly, they also involve different degrees of underlying risk. In the case of bank acceptance drafts, the last liable entity is the issuer of the bank acceptance, that is, a Bank. However, in other type of receivables e.g. bills, letter of credit the last liable entity would normally be a commercial company.

(417) Under normal market circumstances, the applicable discount rate should compensate for the bank's costs and risks. However, the Commission found that certain sampled companies might have been provided with preferential rates, which would confer a countervailable benefit.

(418) The benefit thus conferred on the recipients would be the difference between the discount rate applied by Chinese financial institutions and the discount rate applicable for a comparable operation on the market, for instance short-term loans.

(419) However, the information contained in the file does not allow discerning between the different applicable discount rates. Additionally the Commission estimated that the benefit conferred by this form of subsidisation was negligible in this investigation. Therefore, it decided not to countervail it.

3.4.3.4. Equity programmes

3.4.3.4.1. *Debt-to-equity swap*

(a) General

(420) The Commission established on the basis of publically available information that CNBM had carried out during the investigation period a debt-to-equity swap for 4 billion RMB from Agricultural Bank of China ('ABC') and Bank of Communications ('COMM'). As indicated in recitals (208) to (217) above, CNBM failed to provide a questionnaire reply and to cooperate with the investigation. Therefore, the Commission had to resort to facts available as far as its assessment on this transaction is concerned.

(421) ABC and COMM are both State-owned banks, considered public bodies and/or entrusted or directed according to Section 3.4.1.4 above. In addition, both ABC and COMM were found to be public bodies in previous anti-subsidy investigations or entrusted or directed to carry out functions normally vested in the government ([102]). There is no evidence on the file of the current investigation, which would contradict those previous findings.

([102]) See HRF and Tyres cases cited in footnote 7 above, recitls (96-140) and (178)-(218) respectively.

(422) The Commission considered that a bank would not convert its debt to equity under normal market conditions without further compensation. Indeed, equity is a much riskier instrument than debt, because there is no assurance that the bank will get its capital investment back. In addition, equity does not necessarily guarantee a return on investment contrary to an interest rate on a loan. The increased risk the banks undertake thanks to this debt-to-equity swap is supported by evidence of weak financial situation contained in the annual report of the company for the financial year 2018: the company has very high net debt ratio (between 120 %-145 %), the short term loans to be repaid within one year amount to double of the company's annual gross profit, and overall liabilities represent 2/3 of its annual turnover. Finally, a press article on CNBM website specicifcallty indicated industrial policy objectives and the great importance of the strategic cooperation between CNBM and the two banks as a reason for the swap. In particular, the press article says that the swap will help CNBM to achieve the 'structural reform of the supply side' as an industrial objective.

(423) In light of the above considerations, the Commission concluded that during the investigation period the debt-to-equity swap conferred a benefit to CNBM as it was provided at preferential conditions by public bodies or entities otherwise entrusted or directed by the State in pursue of industrial policy objectives.

(b) Specificity

(424) The Commission considered that the preferential financing through debt-to-equity swap is specific within the meaning of Article 4(2)(a) of the basic Regulation since the investors are entities, which operate under the guidelines of the State's policies that list GFF as an encouraged industry. In any event, the information available points towards the granting of this ad hoc subsidy to CNBM, which makes the subsidy specific to an enterprise.

(c) Calculation of the benefit

(425) In the absence of further evidence due to non-cooperation, the Commission did not have access to the agreements between CNBM and the banks. Thus, the Commission could not assess whether the significant risks the banks undertake have been somehow compensated. However, all the elements explained in recital (422) point to a difficult financial situation of CNBM and to the industrial objectives pursued with this transaction, supporting the conclusion that it did not have market logic reflecting the significant actual risks involved. Consequently, the Commission considered the transaction as equivalent to debt forgiveness, and treated it as a grant during the investigation period. Since the grant was taken completely in the investigation period, it was calculated on the basis of the total turnover of the entire group. This resulted in a subsidisation amount of 1,83 %.

3.4.3.4.2 *Other forms of equity injections*

(a) General

(426) During the investigation period, a sampled company (Yunnan Yuntianhua Group Co., Ltd) benefited from funds provided by State controlled entities through special forms of equity injections.

(427) These funds were transferred in the form of equity increases that, however, did not automatically provide the investors with full shareholders rights. In this sense, the funds were transferred in exchange of a future equity share in the recipient company, which would become effective only after an undetermined period of time.

(428) The investigation established that when the company received the funds, they were booked as other equity instruments without the expected change on the share of company's ownership. The investors, despite having transferred the funds, did not gain full access to shareholding rights, nor received any payment of interest in exchange. Only after an undetermined period of time, but usually longer than a year, and upon the approval of SASAC, part of the funds were transferred to paid-in-capital equity. Only at that moment in time, did the investors receive full shareholders' rights.

(429) The Commission also established that the period between the capital injection and the conferral of shareholders' rights could be longer than a year. In this regard, the Commission identified substantive amounts of equity injections that did not confer any shareholders' rights during the entire investigation period.

(430) Consequently, in practice, until the shareholders' rights are recognised, for a period longer than a year, the company has at its disposal funds in exchange of a future transfer of ownership but without incurring any cost.

(431) Under normal market circumstances, to compensate for the use of funds, a company would transfer a portion of the company's ownership shortly after the funds had arrived, or it would register the funds as a debt. However, given the particular circumstances of these arrangements in this case, this hybrid form of financing is in fact closer to a classic interest-free shareholder loan for a long period of time than to an equity instrument.

(432) In light of the above considerations, the Commission considered that during the investigation period the company Yunnan Yuntianhua Group Co., Ltd., part of the Yuntianhua Group, benefited from access to substantive amounts of financing for a prolonged period, for which it did not bear any cost. Since this special form of equity injections in question did not automatically confer shareholders rights to the investors, the Commission considered that they had the effect similar to a loan at free interest.

(b) State-controlled investing companies acting as public bodies

(433) In order to determine whether the investors could be considered public bodies or entrusted or directed by the GOC, the Commission requested to Yuntianhua Group specific information about the shareholders that provided funds via other equity instruments. The investors were: Kunming Heze Investment Center; Yunnan Jinrun Zhonghao Investment Center; and Yunnan State-owned Enterprise Reform No.2 Equity Investment Fund Partnership (Fund for State-owned enterprise reform).

(434) The information requested by the Commission comprised corporate information, such as names of principal shareholders and the composition and rules of the board of directors of each investor. The Commission also enquired information about the investment policies of the said investors and further details about the specific transfers of funds via other equity instruments.

(435) Furthermore, the Commission contacted the GOC and solicited the same information as described in recital (434). The GOC answered that it did not have or hold information about specific companies and for all entities in China in which it may have a shareholding. Therefore, it refused to answer directly but deferred its answer to the one to be provided by the concerned sampled company.

(436) In the absence of a complete reply, in line with the recitals (218) to (220), the Commission decided to use facts available to determine whether those investors qualify as public bodies.

(437) Using publicly available information, such as, annual reports, information available in business directories or on the investors' websites or publically available databases, the Commission found that the investors that had provided funds via other equity instruments to the Yuntianhua Group were partially or fully owned by the State.

(438) Concerning Kunming Heze Investment Center, the Commission established that more than 98 % of the shares ultimately held by the local government and SOEs ([103]). Specifically, among its shareholders, the Commission found more than 24 % of the shares held by the SOE Yunnan State Owned Capital Operations Ltd (Yunnan guoyou ziben yunying youxian gongsi). The Commission also found that more than 74 % of the shares of Kunming Heze Investment Center were held by China Fortune International (Huaxin International Trust), which is a financial company of the SOE China Huadian Group Co., Ltd. Moreover, Kunming Heze Investment Center is managed by an investment fund dedicated to invest in public provincial companies. In addition, in the entity and in the shareholders of the entity, the Commission found legal representatives and member of the boards, which held former executive position in Yunnan SASAC, as well as members of the CCP ([104]).

([103]) See: www.cfitc.com/; www.qixin.com/; http://hdcw.chd.com.cn/; www.chd.com.cn; www.gsxt.gov.cn/index.html
([104]) www.qixin.com/; www.yngyzb.com/ynzb/index.do?url=display&id=935

(439) Concerning Yunnan Jinrun Zhonghao Investment Center, ([105]) the Commission established that at least 46 % of the shares were ultimately held by the local government and SOEs. In particular, the Commission found among its shareholders ownership structure the China Construction Bank Trust and the Yunnan Province State-owned capital operations Jinrun equity investment fund management.

(440) Similarly, the Commission established that the Yunnan State-owned Enterprise Reform No.2 Equity Investment Fund Partnership (Fund for State-owned enterprise reform) owned by the SOE Yunnan Energy Investment Group.

(441) The Commission further established the existence of formal indicia of control by the State of those investors. In particular, in the absence of specific information indicating otherwise, the Commission considered that managers and supervisors in the State-owned companies owning the entities at issue are assumed to be appointed by and accountable to the State based on the conclusions reached in Sections 3.4.1.5 and 3.4.1.6.

(442) Moreover, as explained in recital (431) the Commission established that their operations did not follow a purely market logic and not reflect the actual market risks associated with the transactions investigated. Rather, in line with the governmental policies to encourage specific industries, as established in Section 3.1 above, those investors acted irrationally by supporting financially the exporting producer.

(443) In light of the above considerations, the Commission established that the State controlled entities that provided funds via other equity instrument to the Yuntianhua Group are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

(444) In addition, even if the State controlled entities were not to be considered as public bodies, the Commission established that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3 (1)(a)(iv) of the basic Regulation for the same reasons, as set out in recital (269). Thus, their conduct would be attributed to the GOC in any event.

(c) Specificity

(445) The Commission considered that the preferential financing through equity injections is specific within the meaning of Article 4(2)(a) of the basic Regulation since the investors are entities, which operate under the guidelines of the State's policies that list GFF as an encouraged industry. In any event, the information available points towards the granting of this ad hoc subsidy to Yunnan Yuntianhua Group Co., Ltd, which makes the subsidy specific to an enterprise.

(d) Calculation of the benefit

(446) As explained in recital (432), the Commission considered that Yunnan Yuntianhua Group Co., Ltd. benefitted from substantive financing through equity injections, which had an effect similar to loan financing at free interest. Therefore, the Commission decided to follow the calculation methodology for loans as described above in Section 3.4.2. This means that the relative spread between US AA corporate bonds and the applicable US BB or US B corporate bonds with the same duration is applied to the benchmark interest rates published by the PBOC to establish a market-based interest for loans, which is then compared with the actual interest rate paid by the company in order to determine the benefit. This resulted in a subsidisation amount of 0,3 %.

3.4.3.5. Bonds

(447) All of the sampled companies benefited from preferential financing in the form of bonds.

(a) State-owned institutions acting as public bodies

(448) In China, the players on the bond market are essentially the same entities as those, which are active on the loan market. Companies that want to issue bonds need to solicit the services of a financial institution, acting as an underwriter. Underwriters organize the issuance of bonds and propose the interest rates at which the bond will be presented to investors. These underwriters are the same State-owned banks that also provide the preferential loans discussed in Section 3.4.2 above. Furthermore, investors buying the bonds are also mainly Chinese (State-owned) banks, since more than 95 % of the total trading volume of bonds happens on the interbank market ([106]).

([105]) www.xin.baidu.com/; www.qichacha.com/

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

(449) As described in Section 3.4.1.1 above, these financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them.

(450) The general legal framework, in which these financial institutions operate, and which was already described in Section 3.4.1 above, is also applicable to bonds. In addition, the following regulatory documents apply specifically to bonds:

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

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

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

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

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

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

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

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

(455) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issues of bonds. It therefore examined the overall legal environment as set out above in recitals (450) to (454), in combination with the concrete findings of the investigation.

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

(457) In practice, interest rates on bonds are influenced by the credit rating, similar to loans. However, as described above in recitals (279) to (285), the local credit rating market is distorted and credit ratings are unreliable. This was illustrated by the fact that the bond prospectuses and credit rating reports for the bonds issued by the sampled companies did not correspond to the actual situation of the companies.

(458) In one case for example, the detailed bond prospectus warned that the profit levels of the company had been declining, that a significant portion of the net assets had been pledged for internal financing guarantees, that there was a high pressure created by short-term debt repayment, and that the company had foreseen some extensive capital-intensive projects even though it had already a high debt-to-assets ratio. Nevertheless, the report then concluded by providing a AA+ credit rating to the bond offering.

(459) In light of the above considerations, the Commission found that the Chinese financial institutions organizing the issuance of bonds for the sampled companies are public bodies or are entrusted or directed by the government within the meaning of Articles 3 and 2(b) of the basic Regulation as explained in Sections 3.4.1.5 and 3.4.1.6. Furthermore, a benefit was provided to the sampled exporting producers, since the bonds were issued at rates below the market rates corresponding to their actual risk profile.

(b) Specificity

(460) The Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law of the PRC states that the issuance of bonds must comply with the State's industrial policies. As already mentioned in recitals (140) to (177), the GFF industry is regarded as key/strategic industry.

(c) Calculation of the benefit

(461) Since bonds are in essence just another type of debt instrument, similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation methodology for loans as described above in Section 3.4.2. This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the benchmark interest rates published by the PBOC to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

(462) As explained in recital (291), the Commission found that certain companies issued bonds with the purpose of debt restructuring. On these cases, as explained in Section 3.4.2.2, the Commission considered that the companies concerned are in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing. Therefore, in order to take into account the increased risk exposure, the Commission moved down one notch in the risk rating scale and adapted the relative spread calculation also for their financing, including bonds, by making a comparison between US AA corporate bonds and US B.

3.4.3.6. Conclusion on preferential financing: other types of financing

(463) The investigation showed that all sampled groups of exporting producers benefited from preferential financing in the form of bank acceptance drafts and bonds, and two of the sampled companies benefited from preferential financing the form of equity injections during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered these types of preferential financing a countervailable subsidy.

(464) Concerning CNBM, since this company did not cooperate, the benefit for other types of preferential financing at the level of CNBM was established by using the methodology explained in each of the sections above, applied to the publicly available information in the 2018 annual report of this company, such as bond issuances, and outstanding amounts for notes payable.

(465) The subsidy amount established with regard to the preferential financing described above during the investigation period for the sampled groups of companies amounts to:

**Preferential financing: other types of financing**

| Company/Group | Overall Subsidy amount |
|---|---|
| Yuntianhua Group | 6,92 % |
| CNBM Group | 10,61 % |

3.5. **Preferential insurance: export credit insurance**

(466) The complainant alleged that Sinosure provides short-, medium- and long-term export credit insurance, investment insurance and bond guarantees, among other services, on a concessional basis to encouraged industries. According to a recent study undertaken by the Organisation for Economic Co-operation and Development ('OECD'), the Chinese hi-tech industry, of which the GFF industry is part, received 21 % of the total export credit insurance provided by Sinosure ([107]). Furthermore, Sinosure has taken an active role in fulfilling the 'Made in China 2025' Initiative, guiding enterprises to use national credit resources, carrying out scientific and technological innovation and technological upgrading, and helping "going out" enterprises become more competitive in the global market ([108]).

(a) Legal basis

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

(2) 840 plan included in the Notice by the State Council of 27 May 2009;

(3) Notice on Cultivation and Development of the State Council on Accelerating Emerging Industries of Strategic Decision (GuoFa [2010] No. 32 of 18 October 2010), issued by the State Council and its Implementing Guidelines (GuoFa [2011] No. 310 of 21 October 2011)

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

(5) Notice on Compilation of Guide Catalogue of Chinese High-tech Products from the Ministry of Science and Technology, G.K.B.J. [2009] No 61 of 9 October 2009

(b) Findings of the investigation

(467) The two sampled groups of companies had outstanding export insurance agreements with Sinosure during the investigation period.

(468) As mentioned in recital (201) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance such as Articles of Association.

(469) In addition, as pointed out in recital (200), Sinosure did not provide more specific information about the export credit insurance provided to the GFF industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.

(470) Therefore, the Commission had to complement the information provided by facts available.

(471) According to information provided in previous anti-subsidy investigations ([109]), Sinosure is a State-owned policy insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The Government has the power to appoint and dismiss the company's senior managers. Based on this information, the Commission concluded that there is formal indicia of government control with respect to Sinosure.

(472) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of Sinosure with respect to the GFF industry. In this context, the Commission noted that the Export Catalogue of High and New Technology Products of China specifically lists glass fibre products, including GFF, as encouraged to be exported ([110]).

([107]) OECD Study on Chinese export credit policies and programmes, page 7, para 32.
([108]) See Sinosure website, Company profile, Supporting 'Made in China'.
([109]) See Tyres case cited in footnote 7, recital 429.
([110]) Export Catalogue of High and New Technology Products, No 531 to 545.

(473) Furthermore, according to the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance, Sinosure should increase its support for key industries and products by strengthening its overall support for the export of high and new technology products. It should treat industries such as 'new materials' and other high and new technology industries listed in the Export Catalogue of High and New Technology Products of China, as its business focus and provide comprehensive support in terms of underwriting procedures, approval with limits, claims processing speed and rate flexibility. With regard to rate flexibility, it should give products the maximum premium rate discount within the floating range provided by the credit insurance company. As mentioned in recitals (148) and (162), the GFF industry is included in the more general category of 'new materials'. Furthermore, the Annual Report of Sinosure for 2017 states that Sinosure has actively insured transactions of strategic emerging industries such as new materials ([111]).

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

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

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

(477) After comparing the total claims paid with the total insured amounts, based on the data in the Sinosure's Annual Report for 2017 ([112]), the Commission concluded that on average Sinosure would need to charge 0,26 % of the insured amount as a premium to cover the cost of the claims (without even taking into account overhead expenses). However, in practice, the premiums paid by the sampled companies were much lower than the minimum fee needed to cover operational costs.

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

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

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

(c) Calculation of the subsidy amount

(481) During the verification visit, Sinosure stated that there are five market players on the market and that it does not have information regarding its market share. However, according to information provided in a previous anti-subsidy investigation, for which the investigation period was 1 July 2016 to 30 June 2017 ([113]), Sinosure represented around 90 % of the domestic market for export insurance in the PRC at that time and hence had a predominant market position The Commission could not find a market-based domestic insurance premium. Therefore, in line with previous anti-subsidy investigations, the Commission thus used the most appropriate external benchmark, for which information was readily available, i.e. the premium rates applied by the Export-Import Bank ('Ex-Im Bank') of the United States of America to non-financial institutions for exports to OECD countries.

([111]) Sinosure Annual Report 2017, p. 6.
([112]) Sinosure Annual Report 2017, p. 20.
([113]) See Tyres case cited in footnote 7, recital 427.

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

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

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

| Company/Group | Subsidy Rate |
|---|---|
| Yuntianhua Group | 0,43 % |
| CNBM Group | 0,23 % |

### 3.6. **Government provision of goods at less than adequate remuneration**

#### 3.6.1. *Raw materials for less than adequate remuneration*

(484) Since the investigated groups of companies were vertically integrated, the main raw material suppliers have been included in the investigation by the Commission, and the subsidies received at the level of these related suppliers have been integrated into the calculations for each subsidy scheme.

(485) On the other hand, the Commission did not find sufficient evidence to substantiate the allegation of provision of goods for less than adequate remuneration by unrelated suppliers to the GFF producers.

#### 3.6.2. *Land use rights (LUR)*

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

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

(488) According to the GOC, Article 137 of the Property Law of the People's Republic of China stipulates that *"the land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method."* Furthermore, the GOC refers to Article 3 of the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas. This Article provides that *"any company, enterprise, other organization and individual within or outside the People's Republic of China may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations."*

(489) The GOC considers that there is a free market for land in the PRC, and that the price paid by an industrial enterprise for the leasehold title of the land reflects the market price.

(a) Legal basis

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

(1) Property Law of the People's Republic of China (Order of the President of the People's Republic of China No. 62)

(2) Land Administration Law of the People's Republic of China (Order of the President of the People's Republic of China No. 28)

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

(4) Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (Decree No. 55 of the State Council of the People's Republic of China);

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

(6) Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation (Announcement No. 39 of the CSRC);

(7) Notice of the State Council on the Relevant Issues Concerning the Strengthening of Land Control (Guo Fa (2006) No. 31).

(b) Findings of the investigation

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

(492) During the verification visit, the GOC stated that in May 2019 the Ministry of Finance issued Guidelines on the usage of industrial land use to provide better information on LUR for market participants, and ensure supply in accordance with the need of the market. These Guidelines state that a level playing field is created and all market players have access on the same terms to industrial land. However, these Guidelines were not applicable during the investigation period and at the time of acquisition of the LUR by the sampled exporting producers.

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

(494) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that, only some of the sampled exporting producers had gone through bidding or a similar public offering process for their LURs, even for the land use rights obtained recently. For most of the sampled companies, LURs were allocated by local authorities at negotiated prices.

(495) The Commission noted that there is also a dynamic land monitoring system in addition to the urban land monitoring system. In the expiry review on Solar Panels originating in the People's Republic of China ([114]), the Commission found that these prices are higher than the minimum benchmark prices set by the urban land evaluation system and used by local governments, because the latter were updated only every three years, while the dynamic monitoring prices were updated quarterly. However, there was no indication of land prices being based on the dynamic monitoring prices. In fact, the GOC had confirmed during the investigation on solar panels that the urban land price dynamic monitoring system monitored the fluctuations of the price levels of land in certain areas (i.e. 105 cities) in the PRC and was designed to assess the evolution of land prices. However, the starting prices in biddings and auctions were based on the benchmarks established by the land evaluation system. This situation was still applicable during the IP. In addition, in this case, most of the sampled groups of companies received their plots of land through allocation.

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

(496) For the plots of land that were provided through bidding, the Commission found that in each case, there was only one bidder for the land, and the price paid corresponded to the starting price of the bidding process. In the absence of additional detailed information concerning the actual process of the auction, it was uncertain that the initial price was set independently and corresponded to the market value of the land-use right.

(497) Following definitive disclosure, the GOC claimed that in a bidding mechanism, the price eventually obtained does not only reflect the price at which a seller is willing to sell or the initial price at which a bid is made, but also reflects the price that purchasers are willing to pay and the price eventually reached through such mechanism thus reflects both demand and supply. If, after the bidding mechanism has been completed, the end price *"corresponded to the starting price of the bidding process"*, then this simply means that this is the price that reflects demand and supply at that moment in time. The Commission agreed with the GOC on the basic principles of bidding mechanisms described, but noted that such a mechanism can only work when there are several bidders for a certain piece of land. However, the Commission did not find a single instance in this investigation, or even in previous investigations, where there had been more than one bidder for the land, and where the interplay of demand and supply could thus have been observed. Consequently, this claim was rejected.

(498) Moreover, the Commission also found that some companies received refunds from local authorities to compensate for the prices, which they paid for the LURs. Furthermore, some of the LURs obtained by companies in the CNBM Group only had to be paid several years after the land had been put into use.

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

(c) Conclusion

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

(501) Therefore, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies. As explained in recitals (491) to (499) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (506) to (515) below) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.

(502) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (493). Within this industrial policy, the GFF industry is listed as an encouraged industry ([115]). In addition, Decision No. 40 of the State Council requires that public authorities ensure that land is provided to encouraged industries. Article 18 of Decision No. 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the GFF sector, and government practices in this area are unclear and non-transparent.

(503) Following definitive disclosure, the GOC reiterated the comments provided on Section 3.1 above also in relation to LUR, stating that none of the documents referred to by the Commission have a direct link to GFF, and none of them restrict the allegedly preferential provision of LURs to certain enterprises. In addition, Decision No. 40 of the State Council does not mention that public authorities should ensure that land is provided to encouraged industries.

([115]) See Section 3.1 above.

(504) In response, the Commission referred back to the arguments already developed in Section 3.1 above, highlighting that GFF is indeed an encouraged industry. Furthermore, Decision No. 40 of the State Council does mention in Article XII that *'The Guiding Catalogue for Industry Restructuring'* is an important reference for guiding the investment, government's management of investment projects and the formulation and implementation of policies of tax, credits, *land* (*emphasis added*) and import and export". Furthermore, the introduction of the Decision No. 40 states that "*All departments concerned shall accelerate the steps in formulating and amending the relevant policies in tax, credit, land (emphasis added) and import and export, etc., and strengthen the coordination with industrial policies so as to further perfect the policy system of promoting the industrial restructuring*". *A contrario*, Article XVIII of Decision No. 40 states that for industries falling into the limited category "The departments governing investment shall not examine, approve or put on record, no financial institution may grant any loan, *no* other *departments governing land management*, city planning and construction, environmental protection, quality inspection, firefighting, customs, industry and commerce, etc., *may go through relevant procedures*" (emphasis added). There is thus a clear link between the industrial policies for encouraged industries and the policy for the provision of land. The GOC's claims were therefore rejected.

(505) Consequently, the Commission considered this subsidy countervailable.

(d) Calculation of the subsidy amount

(506) As in previous investigations ([116]) and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ([117]). The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.

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

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

— the physical proximity of the PRC and Chinese Taipei;

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

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

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

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

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

(508) Following the methodology applied in previous investigations ([118]), the Commission used the average land price per square meter established in Chinese Taipei corrected for inflation and GDP evolution as from the dates of the respective land use right contracts. The information concerning industrial land prices as of 2015 was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan ([119]). For the previous years, the prices were corrected using the inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF for 2015.

([116]) See, amongst others, Council Implementing Regulation (EU) No 452/2011, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 215/2013, 15.3.2013, OJ L 73, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) 1379/2014, OJ L 367, 23.12.2014, p. 22. ((*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 17.12.2014, p. 65 (*Polyester Staple Fibers*).

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

([118]) See recital (499).

([119]) http://lvr.land.moi.gov.tw/login.action

(509) After definitive disclosure, several parties claimed that Chinese Taipei was not a suitable external benchmark. One party suggested the use of India instead of Chinese Taipei for the following reasons:

— The industrial land prices were collected by a wide number of different industrial areas in the states of Bihar, Maharashtra and Tamil Nadu,

— These three states are highly industrialised and display a high level of economic development and industrial infrastructure similar to China

— These three states are geographically close to each other and to China,

— There are well-established economic ties and cross-border trade between India and China,

— The 22 cities have similar population densities as Chinese industrialised cities,

— Both China and India have vast vacant lands available for future use, unlike Taiwan that is confined on an isolated island

— Finally, data relating to industrial land prices are publicly available in India.

(510) However, the claim of this party ignored one crucial element in its analysis, namely the level of economic development of these provinces. According to public sources, the level of GDP per capita of these Indian provinces is far below that of the cities / provinces where the exporting producers are based. As a matter of fact, the GDP per capita of Maharastra ([120]), which is the highest of the three provinces quoted, amounted to only 3 000 USD in 2018-2019 while the GDP level found for the Zhejiang province (used for comparison purposes by the claimant) amounted to 14 907 USD in 2018 ([121]). Considering the above and the factors listed in recital (507), this claim had to be rejected.

(511) Furthermore, the GOC submitted that in-country prices should be used in this case because private companies are also engaged in sub-letting or transferring LURs in China, and the GOC is thus not the only player on that market. In order to examine this claim, the Commission would need to establish first the nature and the size of the land market for private players compared to the government-led market as well as any possible interference by the central and local authorities in that allegedly privately operated land market. Furthermore, comprehensive and up to date data on the pricing of the transactions would need to be available. However, the GOC failed to provide any statistics or data to allow the Commission to examine the proposal, and the Commission could not find any publicly available data on the subject either. In addition, even if such information were to be received, it would only concern a secondary market of transfers, since there is only one player on the primary market (i.e. the original allocation of LUR is always performed by the GOC). Indeed, the primary market of original allocation for 50 years is different from rent in the secondary market, which normally should be for a much shorter period, or at least with different clauses for revaluation, termination, etc. Therefore, the Commission continued to rely on the information available for the primary market, which is the market under investigation in this case.

(512) The GOC also argued that in case the Commission would choose to proceed with an external benchmark, an adjustment should be made for the population density factor, which in turn affects the demand and consequently prices. Indeed, between 2015 and 2018, the population density in Chinese Taipei was 4,4 times higher than it was in China. Particularly, while the population density for China between 2015 and 2018 was approximately 147 people per square kilometer of land, the population density for Chinese Taipei was approximately 650 people per $km^2$ of land in the same period. The land situation and the prices in these two countries are thus incomparable.

([120]) https://en.wikipedia.org/wiki/Economy_of_Maharashtra
([121]) https://en.wikipedia.org/wiki/Zhejiang

(513) However, the Commission noted that the GOC compared population density figures at the level of the entire country. Looking closer at population density of the actual locations of the exporting producers, it appears that population density figures are actually quite similar. For example, the population density of Zhejiang was 560 people per $m^2$ in 2018, and the population density of Shandong was 640 people per $km^2$ ([122]). Therefore, the Commission considered that no adjustment was warranted.

(514) The GOC also requested the Commission to provide additional information on the similarity between the type of land and transactions used for constructing the relevant benchmark, as mentioned in recital (507) above. The Commission highlighted in this respect that in both cases, the transactions concern industrial land of a certain size located in industrial areas.

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

(516) Following definitive disclosure, Yuntianhua Group claimed that there was a clerical error on the value used in a specific LUR contract. The Commission accepted the claim and corrected the value accordingly.

(517) Following definitive disclosure, the CNBM Group argued that one LUR contract should be removed because it had been received after the investigation period. In addition, the benefit for LUR purchased in 2018 should be calculated pro rata for the investigation period. Finally, the CNBM Group stated that for another plot of land, which had been purchased by a related company in 1998 and invested in the exporting producer in 2004, the Commission should have used the data of the 2004 transaction to calculate the benefit. The Commission dismissed the first claim, as the purchase contract for the LUR in question had already been signed in 2018, and ownership had thus passed to the company during the investigation period. The Commission accepted the second claim on the calculation pro rata, and adjusted the benefit calculation accordingly for all companies, which had purchased LUR in 2018. The last claim was rejected, since the transaction dating back to 2004 concerned an intercompany transfer, and thus did not reflect the real value at which the land was originally acquired by the group.

(518) Following the additional definitive disclosure, the CNBM Group asserted that the Commission should have used the date at which the plots of land were received as the starting point for the benefit calculation. However, as mentioned in the preceding recital, ownership of the land, with the corresponding rights and obligations, had already accrued to the company as of the date of the purchasing contract. In addition, the price of the land, on which the benefit calculation is based, was determined by the purchasing contract as well. The company's claims were thus rejected.

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

**Provision of Land use rights at less than adequate remuneration**

| Company/Group | Subsidy Rate |
|---|---|
| Yuntianhua Group | 4,08 % |
| CNBM Group | 3,63 % |

### 3.7. **Government revenue that is forgone or not collected**

#### 3.7.1. *Provision of electricity at reduced rates*

(520) All sampled companies purchased their electricity.

([122]) https://en.wikipedia.org/wiki/Zhejiang

(521) Regarding same of the sampled companies, the purchase prices of electricity followed the officially established price levels set at provincial level for large industrial clients. As found in previous investigations ([123]), this level did not confer a specific advantage for these large industrial clients. However, the Commission established that investigated companies within the two sampled groups benefitted from reductions or refunds of part of their electricity cost in the form of grants.

(a) Legal basis

— Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism, Fa Gua Yun Xing [2018] No 1027, issued on 16 July 2018

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

— Notice on Taking Efforts on the Construction of Power Market in 2017 of Shandong Economy and Information Technology Committee, LJXDL [2017] No. 93

— Notice on Amending the 2017 Direct Electricity Trading Rules of the National Energy Administration Shandong Supervision Office, LJNSC [2017] No. 36

(b) Findings of the investigation

(522) The Commission found that some key large industrial users of electricity are allowed to purchase electricity directly from power generators instead of buying from the grid, either by signing direct purchasing agreements or being qualified to participate in the *'Market-oriented electricity trading system'*. Some of the sampled companies had such direct electricity purchasing agreements or were qualified to participate in the 'Market-oriented electricity trading system' during the investigation period. For most of the investigated companies, the prices received through such contracts/trading system were lower than the fixed prices set at provincial level for large industrial clients.

(523) The possibility to enter into such direct contracts or to be qualified to participate in the *'Market-oriented electricity trading system'* is currently not open to all large industrial consumers. At national level, the Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System specifies for example that *'enterprises that do not conform to the national industrial policy and whose products and processes are eliminated should not participate in direct transactions.'* ([124])

(524) In practice, direct electricity trading is executed by the provinces. Companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil certain criteria.

(525) For example, in Shandong Province, the Notice on Amending the 2017 Direct Electricity Trading Rules of the National Energy Administration Shandong Supervision Office provides that *'users participating in direct electricity trading shall be confirmed according to 2017 access conditions approved by Shandong Economy and Information Technology Committee. To take part in direct electricity trading, the electricity selling enterprises shall put forward registration application to Shandong Electric Power Trading Center, and could participate in direct electricity trading after being reviewed and publicized by the Center'*. In that respect, a list of eligible enterprises that qualify to participate in the market-oriented electricity trading system is established and announced in a notice of the Shandong Economic and Information Technology Commission ([125]).

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

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

([125]) For example, Notice on Announcement of the List of Pilot Users of Direct Power Transaction in 2015 of the Shandong Economic and Information Technology Commission, L.J.X.D.L [2015] No.9 and Notice on Announcement of the List of Pilot Users of Direct Power Transaction in 2017 of the Shandong Economic and Information Technology Commission, L.J.X.D.L. [2017] No 117

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

(527) Furthermore, although prices are supposed to be negotiated directly between the power generators and the power user or through intermediary service companies, the invoices to the companies are actually issued by the State Grid Company. For instance the Notice on Amending the 2017 Direct Electricity Trading Rules of the National Energy Administration Shandong Supervision Office stipulates that, the '*State Grid Shandong Electric Power Company will charge the electricity direct trading charge*' and that the '*State Grid Shandong Electric Power Company shall issue VAT invoice to users, and power generation enterprises*'.

(528) Finally, all signed direct purchase contracts need to be submitted to the local government for the record.

(529) In 2018, the GOC issued the Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism (Fa Gai Yun Xing [2018] No. 1027). However, the Commission notes that this legislation was issued during the investigation period and has not been implemented yet. Furthermore, although the Circular aims to increase the number of direct transactions on the electricity market it specifically mentions certain industries, including the building materials industry and high-tech industries, as supported and benefitting from liberalization of the electricity market. In particular, the Circular provides that '*supporting users with annual electricity consumption of more than 5 million kWh to conduct direct electricity transactions with power generation enterprises. In 2018, electricity generation plans for coal, iron and steel, non-ferrous metals, <u>building materials</u> and other four industries will be liberalized*'. In addition the Circular points out that '*supporting emerging industries with high added value, <u>such as high-tech</u>, internet, big data and high-end manufacturing industries, as well as enterprises with distinct advantages and characteristics and <u>high technology content</u>, to participate in transactions, free from voltage levels and power consumption restrictions*'.

(530) Therefore, the legislation provides for a selective application of direct transactions on the electricity market to certain industries such as the building materials and high-tech industries. This selective application has the result of applying cheaper prices for electricity by the State to companies from these industries.

(c) Conclusion

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

(532) Thus, the Commission concluded that the subsidy scheme was in place during the investigation period and that it is specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation.

(533) Following disclosure, the GOC claimed that the Commission failed to show that the entities providing electricity at allegedly reduced rates, i.e. that power generators and state grid companies, are public bodies or are entrusted or directed by the government.

(534) In this respect, as explained in recitals (523) to (528), the Commission noted that the direct electricity trading system and the conditions under which companies are allowed to participate are established by the State and executed by the provinces. Indeed, companies have to obtain the approval of provincial authorities to participate in the direct electricity pilot scheme. Furthermore, as pointed out in recital (527), although prices are supposed to be negotiated directly between the power generators and the power user or through intermediary service companies, the invoices to the companies are issued by the State Grid Company. Considering that the direct electricity trading system is designed and controlled by the State through its implementation by provincial authorities, and that the State Grid Company issues the invoices, the Commission concluded that the negotiated reduced rates are provided by public bodies. Therefore, the claim of the GOC was rejected.

(535) Furthermore, the GOC considered that the Commission failed to show how the provision of electricity at allegedly reduced rates is specific within the meaning of Article 2 of the SCM Agreement. The GOC claimed that the Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System, to which the Commission referred to, do not limit the access to this alleged subsidy to certain enterprises, since they are not mandatory but only a guideline. Furthermore, the GOC considered that the claim of the Commission about specificity is incoherent because on the one hand, the Commission stated that GFF is an encouraged industry and on the other hand, it stated that only some sampled companies were eligible for the direct electricity trading system.

(536) In this regard, as stated in recital (523), the possibility to enter into direct contracts or to be qualified to participate in the *'Market-oriented electricity trading system'* is currently not open to all large industrial consumers. Indeed, companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil certain criteria such being *"conform to the national industrial policy"*. The fact that the Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System might not have *de jure* mandatory character is irrelevant because the investigation showed that only certain companies have received an approval to participate in the direct electricity trading system and thus benefitted from reduced electricity prices. Furthermore, the fact that companies are subject to specific approval in order to benefit from the reduced electricity prices also points to the specific character of this scheme. Therefore, these claims were rejected.

(537) Following definitive disclosure, one of the companies from CNBM Group contested the Commission's conclusion that the fact that certain companies are approved to participate in the "market oriented electricity system" by purchasing electricity directly from electricity providers instead of via the State Grid, constitutes "revenue foregone" by the GOC. This interested party pointed out that Article 3 of the basic Regulation defines a subsidy as *"government revenue that is otherwise due is forgone or not collected"* and that since the GOC was explicitly not reselling any electricity to the exporting producers via the State grid, no revenue was due to the GOC for use of the State grid.

(538) The Commission disagreed with this claim. As already mentioned in recital (527), although prices are supposed to be negotiated directly between the power generators and the power user or through intermediary service companies, the invoices to the companies are always issued by the State Grid Company. Therefore, in recital (534) the Commission concluded that since the direct electricity trading system is designed and controlled by the State through its implementation by provincial authorities, and that the invoices are issued by the State Grid Company, the negotiated reduced electricity rates are provided by public bodies. Therefore, by selectively applying reduced electricity rates to certain industrial users, while the officially established prices generally applicable to all industrial users are higher, the State, through the intermediary of the State Grid Company, did not collect the revenue from electricity sales at the level of the officially established prices. This practice qualifies as *"government revenue that is otherwise due is forgone or not collected"* in the sense of Article 3 of the basic Regulation. Consequently, this claim was rejected.

(d) Calculation of the subsidy amount

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

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

**Provision of electricity at reduced rate**

| Company/Group | Subsidy Rate |
|---|---|
| Yuntianhua Group | 0,05 % |
| CNBM Group | 0,28 % |

3.7.2. *Tax exemption and reduction programmes*

3.7.2.1. EIT privileges for High and New Technology Enterprises

(541) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law') ([126]), high and new technology enterprises to which the State needs to give key support benefit from a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) Legal basis

(542) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC ([127]), as well as:

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

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

— Announcement [2017] No.24 of the State Administration of Taxation on the Application of Preferential Income Tax Policies to High-tech Enterprises; and

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

(b) Findings of the investigation

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

([126]) Order No. 23 of the President of the People's Republic of China

([127]) Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China (Issued by Order No. 512 of the State Council on December 6, 2007; amended in accordance with the Decision of the State Council to Amend Some Administrative Regulations by Order No. 714 of the State Council on April 23, 2019)

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

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

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

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

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

(546) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned.

(547) The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State, such as some key technologies within the GFF sector.

(548) Following definitive disclosure, the GOC claimed that EIT privileges for High and New Technology Enterprises is not specific because the legislation, pursuant to which this program operates, clearly sets out objective criteria for eligibility [128] and these criteria are applied automatically, i.e. the authorities concerned do not have any discretion in providing this specific tax rate when the conditions for eligibility are met. The GOC refers to footnote 2 of the SCM Agreement according to which, eligibility criteria are considered objective if they are neutral, do not favour certain enterprises over others, are economic in nature and horizontal in application. The GOC considered that this is the case of the eligibility criteria for this preferential tax rate, since the access to this lower rate is open to all enterprises and does not favour certain enterprises over others because companies from all sectors, covering the entire economy are eligible to obtain a High and New Technology certificate. Furthermore, the GOC referred to the General Court's judgment in Case T-586/14 Xinyi PV products v Commission [129], as it explained that: "*…those incentives were awarded by the competent authorities, not on a discretionary basis, but where their objective conditions for award were met, namely that the undertaking at issue belonged to the high-tech sector (…) In any event, it is apparent from Article 28 of the Corporate Income Tax Law of the People's Republic of China and from Article 93 of the implementing regulation for that law that the tax incentives awarded to undertakings in the high-tech sector, such as the applicant, which is not disputed by the Commission, are only awarded if certain objective conditions are met, namely, inter alia, that the undertakings at issue operate in the new advanced technologies sector, that they are the holders of intellectual property rights, that their goods or services are in high-tech sectors which are specifically supported by the State, that research and development costs reach a certain percentage of the whole of their revenue and that the number of technicians represents a certain percentage of all the employees.*"

(549) The Commission disagreed with the view of the GOC for the following reasons. Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which stands as a chapeau for Chapter IV, provides that "*The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State*". Article 28 of the law, which is also part of this Chapter, provides that "*the rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to 15 %*". Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that:

[128] Administrative Measures for the Determination of High and New Technology Enterprise.
[129] Case T-586/14, Judgment of the General Court (Fourth Chamber) of 16 March 2016, Xinyi PV Products (Anhui) Holdings Ltd v European Commission, paras 70-71.

*'"The important high and new technology enterprises to be supported by the State" as referred to in Clause 2 of Article 28 of the Enterprise Income Tax Law refer to the enterprises, which own key intellectual property rights and satisfy the following conditions:*

1. *Complying with the scope of the Key State Supported High and New Technology Areas;*

2. *The proportion of the research and development expense in the sales revenue shall be no less than the prescribed proportion;*

3. *The proportion of the income from high-tech technology/product/service in the enterprise's total revenue shall be no less than the prescribed proportion*

4. *The proportion of the technical personnel in the enterprise's total employees shall be no less than the prescribed proportion;*

5. *Other conditions prescribed in the Measures for the Administration of High-Tech Enterprise* Identification.'

(550) The above-mentioned provisions clearly specify that the reduced enterprise income tax rate is reserved to *"important high and new technology enterprises to be supported by the State"* which own key intellectual property rights and satisfy certain conditions such as *"complying with the scope of the Key State Supported High and New Technology Areas"*.

(551) As stated in recital (543), the high technology fields supported by the State are listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries and these guidelines clearly mention manufacturing technology and key raw materials for glass, including GFF, as a priority area.

(552) Considering that the reduced enterprise income tax rate is reserved only to important high and new technology enterprises to be supported by the State, which comply with the scope of the Key State Supported High and New Technology, the Commission concluded that this measure does not apply on the basis of objective criteria or conditions which do not favour certain enterprises over others. This conclusion is further confirmed by the fact that the 'Key Priority Developmental Areas in the High Technology Industries' are a selection of areas in the high technology industries according to the priorities at a certain point of time and are likely to be changed over time. Therefore, contrary to the COG's claim, the legislation applicable to the reduced enterprise income tax rate does not establish objective criteria for eligibility.

(553) Regarding the findings of the Court Case T-586/14, the Commission observed that the judgment was set aside by the ECJ in C-301/16 P ([130]). Moreover, the statement made by the General Court was made in the context of Article 2(7) of the basic anti-dumping Regulation, and thus in a different context.

(554) In light of the above considerations, the Commission confirmed the specificity of the measure and rejected the claims of the COG.

(c) Calculation of the subsidy amount

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

(556) The amount of subsidy established for this specific scheme was 0,88 % for the Yuntianhua Group and 2,98 % for the CNBM Group.

3.7.2.2. EIT offset for research and development expenses

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

([130]) C-301/16 P European Commission v Xinyi PV Products (Anhui) Holdings Ltd, Judgment of the Court (Second Chamber) of 28 February 2018.

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

(a) Legal basis

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

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

— Announcement [2015] No. 97 of the State Administration of Taxation on Relevant Issues concerning Policies of Additional Pre-tax Deduction of Research and Development Expenses of Enterprises;

— Announcement 2017 No. 40 of the State Administration of Taxation on Issues Concerning the Eligible Scope of Calculation of Additional Pre-tax Deduction of Research and Development Expenses; and

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

(b) Findings of the investigation

(560) During previous investigations ([131]), the Commission established that the *"new technologies, new products and new crafts"*, which can benefit from the tax deduction, are part of certain high technology fields supported by the State, as well as of the current priorities on high technology fields supported by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries.

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

(562) Following definitive disclosure, the GOC submitted that the additional R&D expenses deduction program is not specific. The GOC made reference to Article 2.1(b) of the SCM Agreement, which provides that specificity shall not exist if the granting authority or the legislation, pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of the subsidy, provided that (i) eligibility is automatic, (ii) that such criteria or conditions are strictly adhered to and (iii) that they are clearly spelled out in law, regulation or other official documents, so as to be capable of verification. In the GOC's view, the legislation, pursuant to which this program operates, clearly sets out objective criteria for eligibility and these criteria are applied automatically. In other words, the authorities concerned do not have any discretion in providing this specific tax rate when the conditions for eligibility are met.

(563) The Commission referred to Chapter IV of the EIT Law, which contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which stands as a chapeau for Chapter IV, provides that *"The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State"*. Article 30(1), which is also part of this Chapter, provides that *"research and development expenses incurred by Enterprises in the development of new technologies, new products and new crafts"* may be additionally deducted at the time of calculating taxable income. Article 95 of the Implementation Rules for the Enterprise Income Tax Law clarifies the meaning of *"R&D expenditures incurred for the purpose to develop new technologies, new products and new crafts"* laid down in Article 30(1) of the EIT Law.

([131]) See HRF and Tyres cases cited in footnote 7 above, recitals 330 and 521 respectively

(564) The above-mentioned provisions clearly specify that the additional deduction of R&D expenses is reserved to enterprises involved in *"the development of new technologies, new products and new crafts"* and *"engaged in industries or projects the development of which is specially supported and encouraged by the State"*

(565) As stated in recital (560), the high technology fields supported by the State, as well as the current priorities on high technology fields supported by the State are listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries. As specified in recital (543), these guidelines clearly mention manufacturing technology and key raw materials for glass, including GFF, as a priority area.

(566) Considering that the additional deduction of R&D expenses is reserved only to enterprises engaged in industries which are specifically supported and encouraged by the State, as listed in the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries, the Commission concluded that this measure does not apply on the basis of objective criteria or conditions which do not favour certain enterprises over others (even not to all high and new technologies enterprises). This conclusion is further confirmed by the fact that the 'Key Priority Developmental Areas in the High Technology Industries' are a selection of areas in the high technology industries according to the priorities at a certain point of time and are likely to change over time. Contrary to the COG's claim, the legislation applicable to the additional deduction of R&D expenses does not establish objective criteria or conditions governing the eligibility. Therefore, the Commission confirmed the specificity of the measure and rejected the claims of the COG.

(c) Calculation of the subsidy amount

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

(568) The amount of subsidy established for this specific scheme was 1,06 % for the Yuntianhua Group and 0,17 % for the CNBM Group.

3.7.2.3. Dividends exemption between qualified resident enterprises

(569) The EIT Law offers income tax preferences to Enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State and in particular, exempt from tax the income from equity investment, such as dividends and bonuses, between eligible resident enterprises.

(a) Legal basis

(570) The legal basis for the programme is Article 26(2) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.

(b) Findings of the investigation

(571) The Commission found that some companies in the sampled groups received an exemption from tax of dividend income between qualified resident enterprises.

(572) In the reply to the questionnaire, the GOC claimed that this scheme does not constitute a subsidy because it relates to the profit after tax and the exemption is to avoid double taxation, thus it does not confer a benefit. The GOC further claimed that the scheme is not specific as it is generally and uniformly applied based on objective criteria since all resident companies in the PRC are qualified to invest in other resident companies and be exempted from the tax.

(573) In this regard, reference is made to Article 25 of the EIT, which is part of the same Chapter as Article 26(2); i.e. 'Chapter IV Preferential Tax Policies' and stands as a chapeau for this chapter. Such Article provides that *"The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State"*. Furthermore, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between *"eligible resident enterprises"*, which appears to limit its scope of application to only certain resident enterprises.

(574) On this basis, in line with conclusions in previous anti-subsidy investigations ([132]), it is considered that such preferential tax policy is limited to certain industries and projects, i.e. industries which are specifically supported and encouraged by the State such as the GFF industry, and therefore specific. The evidence on file also showed that the companies that benefited from this scheme had a New and High technology certificate. Based on the above, the claims of the GOC had to be rejected.

(575) The Commission considers that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises which have the major support of, and the development of which is encouraged by, the State.

(c) Calculation of the subsidy amount

(576) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the dividend income that has been deducted from taxable income.

(577) The amount of subsidy established for this specific scheme was 0,02 % for the Yuntianhua Group and 2,10 % for the CNBM Group.

3.7.2.4. Accelerated depreciation of equipment used by High-Tech enterprises

(578) According to Article 32 of the EIT law, *"where accelerated depreciation of fixed assets of an enterprise is really necessary due to technological advancement or other reasons, the number of years for the depreciation may be lessened or the accelerated depreciation method may be adopted"*.

(a) Legal basis

(579) The legal basis for the programme is Article 32 of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

— Notice of the Ministry of Finance and the State Administration of Taxation on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No. 54);

— Notice of the Ministry of Finance and the State Administration of Taxation on Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No. 75); and

— Notice of the Ministry of Finance and the State Administration of Taxation on Further Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No. 106)

(b) Findings of the investigation

(580) According to the Notice on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No. 54), *"where the unit value of a piece of equipment or appliance newly purchased by an enterprise during the period from January 1, 2018 to December 31, 2020 does not exceed RMB five million, the enterprise is allowed to include such value in the cost and expenses of the current period on a lump-sum basis for deduction upon calculation of its taxable income, and is no longer required to calculate depreciation on an annual basis"*. This legislation is not industry specific.

([132]) See Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

(581) As regards assets with unit value above 5 million RMB, the Notice on Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No. 75) and the Notice on Further Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No. 106) continue to apply. According to theses notices, fixed assets purchased by companies in 10 key industries may opt for the accelerated depreciation method.

(582) The Commission established that, during the investigation period, the sampled companies have not applied accelerated depreciation for assets with unit value that exceeds 5 million RMB. Therefore, since those assets did not fall under Notice Cai Shui [2014] No. 75 and Notice Cai Shui [2015] No. 106, the Commission found that the exporting producers did not benefit from countervailable subsidies.

(c) Conclusion

(583) The Commission considered that the exporting producers did not benefit from countervailable subsidies under this programme.

3.7.2.5. Land use tax exemption

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

(a) Legal basis

(585) The legal basis for this programme is:

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

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

(b) Findings of the investigation

(586) One of the sampled groups of companies benefited from refunds of the payment of land use taxes by the local Land Use Bureau, even though they did not fall under any of the exempted categories as set by the national legislation above.

(c) Conclusion

(587) The Commission considers that the tax exemption at issue is a subsidy within the meaning of either Article 3(1)(a)(i) or Article 3(1)(a)(ii), and Article 3(2) of the basic Regulation because there is a financial contribution in the form of either direct transfer of funds (refund of the tax paid) or revenue foregone by the GOC (the non-paid tax) that confers a benefit to the companies concerned. The benefit for the recipients is equal to the amount refunded/tax saving. This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the companies received a tax reduction although they did not fit into any of the objective criteria mentioned in recital (584).

(588) Following definitive disclosure, the GOC submitted that the Commission failed to demonstrate that the exemption from land use tax is specific because the companies received a tax reduction although they did not fit into any of the objective criteria mentioned in recital (584), i.e. *"the criteria established by law to benefit from this exemption"*.

(589) In this respect, as explained in recital (584), the Commission observed that the rule established by law is that an organization or individual using land in cities, county towns and administrative towns and industrial and mining districts shall normally pay urban land use tax. The exception to this rule is that certain categories of land ([133]) are exempted from the land use tax. The investigation showed that the land used by the cooperating exporting producer, which benefitted from the land use tax exemption, does not fall under any of the categories of land that are exempted from land use tax by law. Therefore, it cannot be concluded that these exporting producers fitted into any of the objective criteria established by the regulations on land use tax. Consequently, the measure exempting these exporting producers from land use tax is specific within the meaning of Article 4(2)(a) of the basic Regulation. The claim was thus rejected.

(d) Calculation of the subsidy amount

(590) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was considered to be the refunded amount during the investigation period.

(591) The amount of subsidy established for this specific scheme was 0,17 % for CNBM Group.

3.7.2.6. Total for all tax exemption schemes and reduction programmes

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

**Tax exemptions and reductions**

| Company/Group | Subsidy Amount |
|---|---|
| Yuntianhua Group | 1,91 % |
| CNBM Group | 5,42 % |

### 3.8. **Grant programmes**

3.8.1. *Grants related to technological upgrading, renovation or transformation*

(593) The sampled companies benefited from a variety of grants related to R&D, technological upgrading and innovation, such as e.g. promotion of R&D tasks under the Science and Technology Support Plans, promotion of investments for Key Industry Adjustment, Revitalisation and Technology Renovation, etc.

(a) Legal basis

— The 13th Five-year Plan on Technological Innovation;

— Guiding Opinions on Promoting Enterprise Technology Renovation, State Council, Guo Fa [2012] 44;

— Industry Revitalization and Technology Renovation Work Plan, issued by NDRC and MIIT, 2015;

— NDRC Notice on 2015 industrial technology R&D Fund allocation plan to high-tech industries;

— Medium to Long-Term Programme on Technological and Scientific Development (2006-2020) promulgated by the State Council in 2006;

— Administrative Measures for National Science and Technology Support Plan as revised in 2011;

— Administrative Measures for National High Technology Research and Development Plan (863 Plan) as revised in 2011;

([133]) Such as land reclaimed from the sea, land for the use of government institutions, people's organizations and military units for their own use, land for use by institutions financed by government allocations from the Ministry of Finance, land used by religious temples, public parks and public historical and scenic sites, streets, roads, public squares, lawns and other urban public land.

— Measures for the Administration of Special Funds for the Transformation of Independent Innovation Achievements in Shandong Province;

— Interim Measures for the Management of Industrial Transformation and Upgrading (Cai Jian [2012] 567);

— Interim Management Measure on Industrial Upgrading and efficiency Iproving Special Fund (Lu Cai Qi 2014, No 24)

— Management Measures for Industrial Transformation and Upgrade of Made in China 2025 Funds/Intelligent Manufacturing;

— Notice of the State Council on Issuing the "Made in China (2025)" (No. 28 [2015])

— Intelligent Manufacturing Pilot Demonstration Project; and

— At local/provincial level: notices on allocating special funds for technical renovation, special funds for industrial revitalization, special funds for technical transformation, and special funds for industrial development.

(b) Conclusion

(594) According to the Guiding Opinions on Promoting Enterprise Technology Renovation (at 3.2), central and local governments are called upon to further increase the amount of financial support and increase investment with a focus on industrial transformation and upgrading in key areas and critical issues of technology renovation. Furthermore, authorities should continuously innovate and improve fund management methods, flexibly carry out multiple types of support and raise the usage efficiency of fiscal funds.

(595) The Industry Revitalization and Technology Renovation Work Plan implements the above mentioned Guiding Opinions in practice by setting up special funds for promoting technological progress and technological transformation projects. These funds include investment subsidies and loan discounts. The use of the funds must be in line with national macroeconomic policies, industrial policies and regional development policies.

(596) The grants provided under this program confer subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

(597) The Commission also determined that these subsidies are specific within the meaning of Article 4(2)(a) of the basic Regulation because only companies operating in key areas or technologies as listed in the guidelines, administrative measures and catalogues that are published on a regular basis are eligible to receive them and GFF is among the eligible sectors. In any event, the grants found are company specific.

(c) Calculation of the subsidy amount

(598) The benefit was calculated as the amount received in the investigation period, or allocated to the investigation period, where the amount was depreciated over the useful life of the fixed asset to which the grant was related. The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's Guidelines for the calculation of the amount of subsidy ([134]). However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the investigation period according to the depreciation rates of the related fixed assets, in line with the calculation methodology used in previous cases ([135]).

([134]) OJ C 394, p. 6, 17.12.1998.

([135]) Such as e.g. Council Implementing Regulation (EU) 452/2011, OJ L 128, 14.5.2011, p. 18 *(Coated fine paper)*, Council Implementing Regulation (EU) 2013/215, 11.3.2013, OJ L 73, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) 1379/2014, OJ L 367, 23.12.2014, p. 22. (*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

3.8.2. *Environmental protection grants - Energy saving, conservation and emission grants*

(599) The two sampled groups of companies benefited from a variety of grants related to environmental protection and reduction of emissions, such as *e.g.* incentives for Environmental Protection and Resource Conservation, Promotion of synergistic resource utilization, Incentive funds for energy conservation projects, Promotion of Energy Management Demonstration Centres, grants related to Air Pollution Improvement Projects, incentives for circular economy projects.

(a) Legal basis

— Law of the People‘s Republic of China on Energy Conservation, version revised and adopted on October 28, 2007, and version amended on July 2, 2016;

— Cleaner Production Promotion Law of the People’s Republic of China, Order No. 54 of the President of the People’s Republic of China, as amended on 29 February 2012;

— Measures on Clean Production Inspection, Decree No. 38 of the NDRC and Ministry of Environmental Protection, promulgated on 1 July 2016;

— Notice on Printing and Distributing the Interim Measures on the Administration of Subsidy for Energy Saving and Emission Reduction, Ministry of Finance [2015] No. 161;

— Key Points of Energy Conservation and Comprehensive Utilization in Industry in 2015, issued by the MIIT on 3 April 2015;

(b) Conclusion

(600) The energy saving, conservation and emission program confers subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation i.e. a transfer of funds from the GOC in the form of grants to the producers of the product concerned.

(601) The Commission also found that this subsidy program is specific within the meaning of Article 4(2)(a) of the basic Regulation since only companies operating in key technologies or in the production of key products as listed in the guidelines and catalogues that are published on a regular basis are eligible to receive them. In particular, the MIIT document of 2015 specifically mentions the building material industry, which includes GFF, as an industry for specific incentives related to energy conservation.

(c) Calculation of the subsidy amount

(602) The benefit was calculated in accordance with the methodology described in recital (598) above.

3.8.3. *Ad hoc grants provided by municipal/regional authorities*

(603) In its complaint, the complainant provided evidence, which showed that the GFF industry in the PRC may receive various one-off or recurring grants from different levels of government authorities, i.e. local, regional and national.

(604) The investigation revealed that the two sampled groups of companies received significant one-off or recurring grants from various government levels resulting in the receipt of benefits during the investigation period. The sampled companies had already reported some of these grants in their respective questionnaire replies, while others were found during the verification visits. The GOC has disclosed none of them in its questionnaire reply.

(a) Legal Basis

(605) These grants were given to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled companies, or specific in terms of location or type of industry. The level of legal detail for the exact law, under which these benefits were granted, if there was any legal basis for them at all, was not disclosed by all sampled companies. However, the Commission was sometimes given a copy of a document issued by a government authority, which accompanied the grant of funds (referred to as ‘the notice’).

(b) Findings of the investigation

(606) Given the large amount of grants contained in the complaint and/or found in the books of the sampled companies, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC was initially supplied by the two sampled companies. Detailed findings on these grants were provided to the individual companies in their specific disclosure documents.

(607) Examples of such grants were patent funds, science and technology funds and awards, business development funds, export promotion funds, grants for industry quality increase and efficiency enhancement, municipal commerce support funds, foreign economic and trade development fund, production safety awards, support funds provided at district or provincial level, interest discounts on loans for imported equipment.

(c) Conclusion

(608) These grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the GOC in the form of grants to the producers of the product concerned took place and a benefit was thereby conferred.

(609) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that from the related documents provided by the cooperating exporting producers they are limited to certain companies or specific projects in specific regions and/or the GFF industry. In addition, some of the grants are contingent upon export performance within the meaning of Article 4(4)(a). These grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.

(610) In all cases, the companies provided information as to the amount of the grant, and from whom the grant was received. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had had these accounts independently audited. This has been taken as a positive evidence of a subsidy that conferred a benefit.

(611) Therefore, the Commission decided that the verified findings represented a reasonable indicator of the level of subsidisation in this respect. As those grants share common features, they were awarded by a public authority and were not part of separate subsidy programme, but individual grants to this encouraged industry, the Commission assessed them together.

(d) Calculation of the subsidy amount

(612) The benefit was calculated in accordance with the methodology described in recital (598) above.

3.8.4. *Other grants*

(613) No financial contribution was received by the sampled exporting producers from the remaining grant programmes mentioned in Section 3.3(v) above during the investigation period.

3.8.5. *Comments on grants*

(614) Following definitive disclosure, the GOC submitted that the Commission failed to demonstrate that the various grants related to technological upgrading, renovation or transformation, environmental protection and ad hoc grants provided by municipal/regional authorities that the sampled companies allegedly received are specific. According to the GOC, the Commission failed to point out any specific provision explicitly mandating the granting of benefits to the GFF industry and thus failed to meet the requirement set out by the Panel in 'EC – Aircraft', according to which, finding of specificity requires the establishment of an explicit limitation of the alleged subsidy only to "*certain enterprises*", that "*…does not make the subsidy sufficiently broadly available throughout the economy*" and that a limitation must "*…distinctly express all that is meant, leaving nothing merely implied or suggested.*"

(615) The GOC further submitted that with respect to ad hoc grants provided by municipal/regional authorities, the Commission failed to provide any argument or evidence of the specificity of these grants but merely stated that they "*…appeared to be specific to the sampled companies, or specific in terms of location or type of industry*". According to the GOC, the mere appearance of specificity cannot constitute sufficient evidence that a measure is, in fact, specific.

(616) In this regard, the GOC recalled that, as held by the Appellate Body in 'US – DRAMs' (CVD), the Commission is required to "*…provide a reasoned and adequate explanation for its conclusions*" and to ensure that "*the underlying rationale behind those conclusions be set out in the investigating authority's determination*." The GOC stressed that the Commission's reference to the fact that the companies concerned mostly booked this income under the heading 'subsidy income' does not qualify as a reasoned and adequate explanation.

(617) The GOC further noted that the mere fact that a subsidy is granted by a regional authority does not make it specific and referred to the Appellate Body held in 'US – CVD (China)' that a subsidy available to all enterprises in a region will not be specific if the granting authority in that region is a regional government.

(618) The Commission has already demonstrated the specificity of grants in recitals (597), (601) and (609) above. Indeed, only companies operating in key areas or technologies as listed in the guidelines, administrative measures and catalogues are eligible. Furthermore, the cooperating exporting producers provided grants-related documents, such as legal documents and granting notices, which demonstrated that the grants have been provided to companies belonging to certain specified industries or sectors and/or involved in specific industrial projects encouraged by the State. Therefore, the Commission reiterated its conclusion that these grants are only available to "*certain enterprises*" and are not "*broadly available throughout the economy*". In addition, the investigation showed that the eligibility conditions of these grants were not clear and objective and they did not apply automatically; consequently, they did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation.

(619) Regarding ad hoc grants, the GOC did not provide any further evidence backing its claim that they are non-specific. Consequently, the Commission reiterated that on the basis of the evidence at its disposal it concluded that these grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation.

(620) In the light of the above, the Commission rejected the claims of the GOC.

3.8.6. *Total for all grants*

(621) Since the parent company CNBM did not cooperate, the benefit for grants provided at the level of CNBM was established by using the methodology explained in Sections 3.8.1 to 3.8.3 above, based on the publicly available information in the 2018 annual report of this company, such as amounts recorded under government subsidies, government funding and other income.

(622) The total subsidy amounts established with regard to all grants during the investigation period for the sampled exporting producers were as follows:

**Grants**

| Company/Group | Subsidy Amount |
|---|---|
| Yuntianhua Group | 1,09 % |
| CNBM Group | 3,15 % |

### 3.9. **Conclusion on subsidisation**

(623) Based on the information available at this point of the investigation, the Commission calculated the amount of countervailable subsidies for the sampled companies in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of

subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per tonne of product concerned exported to the Union during the investigation period was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(624) Following the definitive as well as the additional definitive disclosures, the CNBM Group claimed that by calculating the total benefit in percentage based on the subsidy amounts for the exporting producers taken together and applying this total benefit in percentage to the value of GFF exported to the EU by both exporting producers taken together, the Commission wrongly allocated the alleged subsidies received by one of the exporting producers (Jushi Group) to the turnover of both exporting producers taken together (Jushi Group and Hengshi). This inflated the subsidy rate of the group. According to the CNBM Group, the Commission should first have calculated the subsidy amount per unit exported to the EU separately per company. Only then should the subsidy amount of each company be combined for the purposes of calculating a joint subsidy rate.

(625) As mentioned in recital (97) above, the Commission recalled that in order to ensure that measures can be enforced effectively, particularly to avoid channelling exports through a related company with the lowest duty, it is the Commission's practice to establish the relationship between exporting producers through the criteria laid down in Article 127 of the Union Customs Code Implementing Act. Moreover, the calculation of the amount of countervailable subsidies on the basis of the product concerned exported into the Union implies that, when companies are related, since money is fungible, they can use those benefits for the product concerned indistinctly, and thus, regardless of the exporting producer in particular. In this case, since Henghsi and Jushi Group both manufacture and export the product concerned, and since Jushi Group also produces the main raw material which is used in the product exported by Hengshi, the amount of countervailable subsidies granted upon them should take into account the fact that, because of their relationship, they are capable of channelling those benefits to the product concerned exported to the Union as they see fit. Consequently, the benefits granted to those exporting producers with respect to the product concerned should result in one single amount for the group.

(626) The methodology proposed by the CNBM disregards this fact, and would lead to erroneous results. As an example, one can take the case of two related GFF producers (companies A&B), where all subsidies would be granted to company A, and none to company B. It is further assumed that company A sold its entire GFF production domestically to B, and B re-exported all of A's products on top of all of its own products. According to the calculation methodology proposed by CNBM, this scenario would result in a 0 % amount of subsidisaton, since the subsidy amount per unit exported to the EU would be 0 for A, and since subsidies granted to A could not be allocated to the products exported by B. The Commission thus rejected the claim of the CNBM Group.

(627) The CNBM Group also submitted that the Commission made various errors when establishing a pass through of subsidies between related companies. First, the Commission wrongly summed up percentage values containing different denominators, since subsidy amounts allocated over Jushi Group's turnover were added with subsidies amounts allocated over Jushi and Hengshi's combined turnover.

(628) Second, the Commission determined that subsidies received by China Jushi and Zhengshi Holding Group were passed through to the exporting producers on the basis of "investments in subsidiaries". However, there is no basis under which an existing shareholding ipso facto passed through any alleged benefit to Jushi Group. Second, the Commission should not only have taken into account China Jushi's long-term equity investments in its subsidiaries, but also in its "associate and joint ventures". Third, if the Commission wanted to carry out a pass-through analysis, the Commission would in any event have had to allocate the alleged subsidies that China Jushi received over China Jushi's total turnover. Fourth, if the presumption would be that a parent company passes on all of the subsidies received to its subsidiaries, Jushi Group must have passed on all of its subsidies to its own subsidiaries. Therefore, the Commission would have to calculate a 0 % subsidy rate for Jushi Group.

(629) Third, following the additional definitive disclosure, the CNBM Group submitted that the Commission did not demonstrate how the subsidies allegedly received by Zhengshi Holding benefited the exports of GFF to the Union. Without a link between the subsidies allegedly provided by the government and the production and exportation of the product concerned, it could thus not be shown that the exported product benefited from those subsidies. In this context, the CNBM Group noted that, as explained by Zhengshi Holding in its questionnaire response, its main business is to purchase raw materials for a related company, which is a stainless steel producer. Furthermore, Zhengshi Holding had a significant turnover amount, which should have been used as an allocation key instead.

(630) Fourth, the benefit allegedly passed through to Jushi Group was based on Jushi Group's shareholding in Hubei Hongija, although Hubei Hongjia is a provider of input materials for the GFF producers.

(631) Fifth, the allocation key for Jushi Hong Kong was based on the turnover and assumed that all sales were made to Jushi Group.

(632) Sixth, the Commission provided no explanation as to how the alleged benefits received by CNBM were passed through to Jushi Group and Hengshi. The Commission should have proceeded in the same way as it did concerning Jushi Group's related companies and carried out a pass-through analysis based on sales. If the Commission insists that a pass through analysis between related entities would be unnecessary (quod non), then the subsidies received should have been allocated over the total turnover of all companies in the purported corporate group.

(633) In order to respond to these comments, the Commission first explained how subsidies in the various related companies of the CNBM Group were aggregated. For each related company, the Commission first determined the amount of subsidies received. The Commission then used an allocation key to determine which part of these subsidies were linked to the exporting producers. For example, for providers of materials, inputs or assets used in the production process, this allocation key was based on the part of the turnover of these providers with the exporting producers. The allocation key was then applied to the subsidy amount received. The resulting "allocated" subsidy amount was added to the subsidy amount of the exporting producers. Finally, the total subsidy amount of the exporting producer (including subsidy amounts allocated from related companies) was divided by the turnover of the exporting producer to calculate a percentage of subsidization, i.e. a subsidy rate.

(634) As a result, concerning the first point claimed by the CNBM Group, there was in fact no addition of percentage values containing different denominators: there was only an an allocation and subsequent addition of subsidy amounts. Only one denominator was used in the end to calculate the subsidy percentage.

(635) Concerning the holding companies China Jushi and Zhengshi Holding Group mentioned in the second point above, the allocation key was indeed based on the part of the exporting producer in the investments made by the holding company. In the case of holding companies, allocation keys based on turnover are often meaningless, as the core business of such companies is not to sell goods or to provide inputs, but to invest.

(636) The case of China Jushi is unique in this respect, because the company combines several functions. On one hand, it acts as the central purchasing entity for most raw materials used by the exporting producers in the group. On the other hand, it resells the finished goods of the exporting producers on the domestic market. On top of this, China Jushi exercises some headquarter functions as a parent company, such as e.g. a central financing function for the exporting producers or providing the administrative building for the management functions of the Jushi Group. As such, using turnover as an allocation key is not possible, because it would result in circular reference. Indeed, a certain percentage of the subsidies would have to be allocated to the exporting producers based on the sales of materials to the producers, but subsequently also a certain part of the subsidies of the producers would have to be re-allocated to China Jushi based on the sales of finished goods to China Jushi.

(637) Since China Jushi was at the same time also the main investor of Jushi Group, and was exercising some functions, which are typical for holding/parent companies, the Commission considered that an allocation based on investments would better represent the reality of the links between China Jushi and the exporting producer. However, the Commission acknowdged that investments in associated companies and joint ventures should also have been taken into account, and adapted the allocation key accordingly.

(638) Following the additional definitive disclosure, the CNBM Group added that China Jushi's main business is that of a trading company, based on its actual business activities, its audited accounts, and its large income from trading activities. Circular issues should not be an issue, since they also arise for intercompany transactions between the exporting producer and other related companies. Moreover, the Commission did not demonstrate that China Jushi had significant investment activities, or that there were specific headquarter activities, financing activities or financial transfers which would suggest that China Jushi was funnelling its subsidies to its subsidiaries. On the contrary, the exporting producer actually paid dividends to China Jushi in the investigation period. Furthermore, the Commission did not demonstrate that there was any link between the subsidies received by China Jushi and the production and exportation of the product concerned. Finally, since China Jushi is also the parent company of the other Jushi companies which it controls through its 100 % ownership of Jushi Group, it must be presumed that subsidies were not only transferred to Jushi Group but also to its many other subsidiaries.

(639) The Commission disagreed with the analysis made by the CNBM Group. China Jushi indeed had a large turnover from trading activities, as already described in recital (636) above. However, China Jushi also had significant investment activities, as shown in its asset, income and cash flow accounts. In fact, 94 % of its operating profits were derived from income on investments. In addition, as already mentioned, China Jushi was also exercising some functions, which are typical for holding/parent companies, such as a central financing activity. For example, the Commission noted that the purpose of one of the bonds issued by China Jushi was to "*repay bank loans of the issuer and its subsidiary Jushi Group*". Furthermore, the investigation found that loans were taken out "*on behalf of China Jushi and of its subsidiaries*", and in one case, the repayment of the capital of a loan issued to China Jushi was to be made by its subsidiary Jushi Group. Therefore, the Commission maintained its position with regards to the use of investment as an allocation key. At the same time, these transactions also showed that there is a clear link between the subsidies received by China Jushi and the production and exportation of the product concerned. Finally, the fact that Jushi Group also has some subsidiaries is irrelevant as such, since investments were not used as an allocation key at the level of the exporting producer. The company's claims were thus rejected.

(640) Concerning Zhengshi Holding, the Commission agreed with the fact that Zhengshi Holding's turnover mainly consists of the re-sales of purchased raw materials to its related steel producer, a company which is not linked in any way to GFF or to this investigation. However, the Commission also found that Zhengshi Holding holds the land use rights for a plot of land, which is used by another related company subject to this investigation. In this respect, there is a clear link between the subsidies received by Zhengshi Holding and the production and exportation of the product concerned. Since the sales of Zhengshi Holding are completely disconnected from the existing link with the GFF production, and since Zhengshi Holding is at the same time also a holding company with significant investment activities, as shown in its asset, income and cash flow accounts, the Commission considered that an allocation based on its investments would better represent the reality of the links between Zhengshi Holding and the GFF producer. Nevertheless, when reviewing the subsidies for preferential financing received by Zhengshi Holding, the Commission noticed that it had made an error in its assessment, since all of the financing had been clearly earmarked for the benefit of the stainless steel production. The calculation of the benefit was thus adapted accordingly.

(641) Concerning Hubei Hongjia, the allocation key should indeed have been on sales of the materials produced by Hubei Hongjia. The allocation key was therefore changed accordingly. Concerning Jushi Hong Kong, the Commission also accepted the company's comments, and changed to a more precise allocation key, namely the proportion of the goods sold by Jushi Hong Kong, which were purchased from Jushi Group.

(642) Following the additional definitive disclosure, the CNBM Group asserted that if there were no sales from Jushi Hong Kong to Jushi Group, then Jushi Hong Kong should have been excluded. The Commission reminds that Jushi Hong Kong is the related trader of the exporting producer Jushi Group, and is as such exporting the GFF produced by Jushi Group. Since there is a direct link between the subsidies received by Jushi Hing Kong and the exportation of the product concerned, it makes sense to use the proportion of exports sourced from Jushi Group (compared to the exportation of products coming from other sources) as an allocation key. The Commission therefore did not accept this claim.

(643) On the last point, relating to the pass through of the subsidy amounts of CNBM, the Commission recalls that CNBM did not cooperate in the investigation, and that a determination of the amount of subsidies had to be made based on facts available. Under these circumstances, the Commission decided that the most reasonable approach would be to calculate the subsidies received by CNBM in proportion of the total consolidated turnover of the corporate group. In fact, the Commission thus used the calculation methodology proposed by the CNBM Group itself. This claim was thus rejected.

(644) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings partially based on facts available to determine those amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach ([136]).

(645) Given the high rate of cooperation of Chinese exporting producers and the representativeness of the sample also in terms of subsidy eligibility, the Commission set the amount for 'all other companies' at the level of the highest amount established for the sampled companies. The 'all other companies' amount was applied to those companies which did not cooperate in the investigation.

| Company name | Amount of countervailable subsidies |
|---|---|
| Yuntianhua Group | 17,02 % |
| CNBM Group | 30,73 % |
| Other cooperating companies | 24,85 % |
| All other companies | 30,73 % |

## 4. SUBSIDISATION: EGYPT

### 4.1. Subsidies and subsidy programmes within the scope of the current investigation

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

(i) Preferential policy loans, credit lines, other financing, insurance and guarantees;

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

— EIT privileges for Enterprises located in a Special Economic Zone;

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

— Value Added Tax ('VAT') exemptions and import tariff rebates for the use of imported equipment;

— VAT exemptions and import tariff waivers for imported input materials used in exported finished goods;

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

— Government provision of power for less than adequate remuneration;

— Government provision of land for less than adequate remuneration.

([136]) See also, *mutatis mutandi*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

4.2. **The Suez Economic and Trade Cooperation Zone ('SETC-zone')**

4.2.1. *Introduction and factual context*

(647) The alleged subsidisation in Egypt concerns two related companies in the China-Egypt Suez Economic and Trade Cooperation Zone ('SETC-Zone'). The zone covers an area of 7,34 $km^2$, which is divided into a starting area of 1,34 $km^2$ and an expansion area of 6 $km^2$.

(648) This special economic zone was set up together by China and Egypt, and its history goes back to the 1990s. At that time, the then Egyptian President visited China's special economic zones, and expressed the wish to draw on China's experience concerning such zones, in order to establish a similar setup in Egypt. As a result, in 1997, the Prime Ministers of China and Egypt signed a memorandum of understanding, in which the two countries "*agree to cooperate in developing the free economic zone in the north of the Gulf of Suez, by sharing the Chinese experience in establishing special economic zones, participating in modernizing the studies relating to the zone and encouraging relevant business sector in China to provide contributions for the projects to be established within the zone*" ([137]).

(649) In the wake of this agreement, China appointed Tianjin Teda Investment Holding Co., Ltd. ('Tianjin TEDA'), an SOE under the Tianjin Municipal Government, to undertake the task on the Chinese side. Tianjin TEDA then joined the Egyptian Suez Canal Administration, the National Bank of Egypt, and four more Egyptian State-owned enterprises to create the Egypt China Joint Venture Company ('ECJV'), in order to develop and construct the economic zone. The Chinese side held 10 % of the shares of the ECJV, and the Egyptian side 90 %. In 1998, the corresponding land in the Northwest Gulf of Suez Zone was transferred from the Suez Governorate to the ECJV. However, after that, the project did not advance much for several years ([138]).

(650) In 2002, the wider area of 20 $km^2$, in which the SETC-Zone was located, the Northwest Gulf of Suez Economic Zone, was officially classified as a special economic zone ('SEZone') by the GOE ([139]). As such, the provisions of the Egyptian Law No. 83/2002 on Economic Zones of a Special Nature ('Law 83/2002') were now also applicable to the SETC-Zone.

(651) A new impetus started in 2006, when China decided to further encourage the 'Go Global Policy' for Chinese companies to invest abroad. In this context, MOFCOM proposed the establishment of so-called *"overseas trade and cooperation zones"*, and the SETC-Zone became one of the first of 18 officially approved zones ([140]). At the Beijing Summit of the Forum on China-Africa Cooperation in 2006, Chinese president Hu Jintao announced that "*three to five overseas economic and trade cooperation zones will be established in African countries in the next three years.*" ([141])

(652) In 2007, MOFCOM organized a tender to appoint developers for the second batch of officially approved overseas trade and economic cooperation zones. Tianjin TEDA won the bid for the SETC-Zone. In October 2008, Tianjin TEDA established a joint venture with the China-Africa Development Fund to set up China-Africa TEDA Investment Co., Ltd. ('China-Africa TEDA'), as the main Chinese investment entity in the cooperation zone. China-Africa TEDA united with the ECJV to create a new company, called Egypt TEDA Investment Co. ('Egypt TEDA') in order to drive the development of the SETC-Zone in Egypt. This time, the Chinese side held 80 % of the shares, and the Egyptian side (represented by the ECJV) 20 %. After the company was formally established in 2008, work in the zone advanced rapidly. On 7 November 2009, the then Prime Ministers of the two countries inaugurated the starting area, and listed the SETC-Zone as an important cooperation project of economy and trade between the two countries ([142]). By the end of 2011, all the infrastructure in the starting area had been completed ([143]).

([137]) Memorandum of Understanding Between the Arab Republic of Egypt and the People's Republic of China, April 18th, 1997
([138]) Report of the State Council Development and Research Center, "The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone", 6 August 2019 ('State Council Report')
([139]) Cfr. Presidential Decree No. (35) of the Arab republic of Egypt, Dated 15/2/2003
([140]) TEDA 10 Years Summary Report (2008-2018), p. 4.
([141]) State Council Report, see also footnote 104.
([142]) TEDA 10 Years Summary Report (2008-2018), p. 11.
([143]) State Council Report, cfr footnote 104.

(653) In 2012, after the civil unrest in Egypt, President Morsi paid a State visit to China, during which he referred to the Zone as a key project of the bilateral cooperation between the two countries, and hoped that more and more Chinese enterprises would invest in Egypt through the zone and through subsequent projects, and thus participate in Egypt's Recovery program [144].

(654) In 2013, Egypt TEDA and the Egyptian authorities signed a contract for the land of the 6 $km^2$ expansion area. As of 2013, the overseas trade and economic cooperation zones, such as the SETC-Zone, have also been further developed under the umbrella of the 'Belt and Road Initiative'. Overseas parks have thus become an important carrier for the "going out" investments of Chinese companies. As a result, especially since 2013, the SETC-zone has been included in almost all important cooperation texts between the two governments [145].

(655) In 2014, Egypt launched the 'Suez Canal Corridor Development Plan'. In the context of this Plan, the SE Zone was officially incorporated into the wider Suez Canal Economic Zone ('SCZone') in 2015, comprising the whole area around the Suez Canal of 461 $km^2$. The entire area is now considered as an "economic area of special nature" in accordance with Law 83/2002 and amendments thereof [146].

(656) In December 2015, President Sisi paid a visit to China, where he declared Egypt's acceptance of President Xi Jinping's offer to cooperate in the 'One Belt, One Road' initiative and to further develop projects in Egypt. On 21 January 2016, the two Presidents officially inaugurated the SETC-zone expansion project for the expansion area of 6$km^2$. During the State visit of Xi Jinping in Egypt, the two governments also signed the 'Agreement between the Ministry of Commerce of the People's Republic of China and the General Authority for the Suez Canal Economic Zone of the Arab Republic of Egypt on the Suez Economic and Trade Cooperation Zone' of 21 January 2016 ('the Cooperation Agreement'). The Cooperation Agreement further clarified the significance and legal status of the SETC-Zone [147].

(657) During the verification visit at the GOE, the latter confirmed that this Cooperation Agreement codified established practice in the zone since 2006. The main purpose of the Cooperation Agreement was thus to provide a clear written framework for this cooperation and to formalize it within the framework of the 'One Belt, One Road' initiative, including the GOC's support to companies abroad. However, no further details were provided on the preparatory works of the Cooperation Agreement despite explicit requests from the Commission.

(658) According to the Cooperation Agreement, the governments jointly develop the SETC-Zone. They do so in line with their respective national strategies (Belt & Road Initiative for China on the one hand, and the Suez Canal Corridor Development Plan for Egypt on the other hand). For that purpose, the GOE provides the land, the labour and certain tax breaks, whereas the Chinese companies operating in the zone run the production facility with their assets and managers. Compensating for a lack of Egyptian funds, the GOC also supports this project by making the necessary financial means available to Egypt TEDA and to the Chinese firms operating in the SETC-Zone.

(659) The GFF producers operating in the SETC-Zone, Jushi Egypt and Hengshi Egypt, are incorporated under Egyptian law and have been established by Chinese parent companies (Jushi China and Hengshi China). The parent companies of the GFF producers are related and the ultimate parent company of these two companies is owned by the State-owned assets Supervision and Administration Commission (SASAC). They have received approval from relevant Chinese government authorities [148] for setting up a subsidiary in Egypt. The daughter companies are financed with funds coming from China, they are using input materials and equipment imported from China, they are directed by Chinese managers and they are using Chinese know-how. They produce GFF in Egypt, which is exported to the EU from the SETC-Zone.

(144) TEDA 10 years Summary Report (2008-2018), p. 53.
(145) State Council Report, cfr footnote 104.
(146) Decree of the President of the Arab Republic of Egypt No.330 of the year 2015 On the establishment of the Suez Canal Economic Zone, August 19th, 2015.
(147) Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019.
(148) By the National Development and Reform Commission ('NDRC') and by the Ministry of Commerce ('MOFCOM').

(660) In order to ensure the smooth implementation of the above-mentioned Cooperation Agreement, the two governments also established a three-level consultation mechanism. In this context, the General Authority for the Suez Canal Economic Zone of the Arab Republic of Egypt and the Tianjin Municipal Commission for Commerce of the People's Republic of China signed a 'Cooperation Agreement on Establishment of the Administration Commission for the China-Egypt Suez Economic and Trade Cooperation Zone' for the first-level intergovernmental consultations. At the second level, the Suez Economic and Trade Cooperation Management Committee was set up to ensure discussions at technical level between China Tianjin Municipality Government's competent administration departments and the Egypt Suez Canal Economic Area Authority's relevant competent departments. Regular meetings of these Commissions have taken place since 2017. At the third level, Egypt TEDA and the relevant Egyptian counterparts report the problems and difficulties arising to the governmental levels above.

4.2.2. *Partial non-cooperation and use of facts available in relation to the SETC-Zone*

4.2.2.1. Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOE

(661) The Commission requested the GOE in its questionnaire, in the deficiency letter, and during the verification visit to provide certain information relating to the Suez Economic and Trade Cooperation Zone in Egypt. Those information requests included among others questions on the legal and institutional framework, and the existence of intergovernmental agreements between China and Egypt.

(662) The GOE provided in this context the 2016 Agreement between the Ministry of Commerce of the PRC and the General Authority for the Suez Canal Economic Zone of the Arab Republic of Egypt on the Suez Economic and Trade Cooperation Zone. However, the Commission is still missing information relating to any previous agreements, memoranda of understanding or other documents signed between the GOC and the GOE in relation to the SETC-Zone. For example, the Commission found publicly available references to a 1997 Memorandum of Understanding between the Government of the People's Republic of China ('GOC'), represented by Premier Li Peng and the GOE, represented by Prime Minister Kamal alGanzouri, on the establishment of a free trade zone in Egypt.

(663) The Commission is also missing documentation relating to the implementation of the 2016 Agreement, and the consultation mechanisms put into place by the GOE and the GOC. As an example, the Commission found publicly available references to a Cooperation Agreement on Establishment of the Administration Commission for China-Egypt Suez Economic and Trade Cooperation Zone, signed by the General Authority of the Suez Canal Economic Zone and the Tianjin Commission of Commerce of the PRC. Furthermore, a joint management committee of the China-Egypt TEDA Suez Economic and Trade Cooperation Zone was formally established in April 2017. In July of 2017, the Intergovernmental Coordination Committee was established and held its first joint meeting. The Commission did not receive written documentation concerning the meetings held under these various consultation mechanisms, except for one meeting held by the Administration Commission.

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

4.2.2.2. Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOC

(665) The Commission also requested the GOC in its questionnaire, in the deficiency letter, and during the verification visit to provide information relating to overseas investment in general, to overseas economic and trade cooperation zones in general, and more specifically to the SETC Zone in Egypt. Those information requests included among others questions on the legal and institutional framework for overseas economic and trade cooperation zones approved by the Chinese Ministry of Commerce, the existence of intergovernmental agreements between China and Egypt, as well as the role and the functioning of various Chinese State-owned entities in the SETC Zone.

(666) The GOC reiterated several times that it considered the requests of the Commission to be inconsistent with Articles 1, 2, 4, 11.2 and 11.3 of the SCM Agreement as well as Articles 2, 3, 4, 10(2) and 10(3) of the Regulation (EU) 2016/1037 ('the basic Regulation'), among other provisions, and therefore did not reply to any of the questions asked by the Commission. The Commission disagreed. In view of its involvement in the operations within the SETC-Zone and agreements with the GOE, the Commission considered that the GOC should have engaged also in this part of the investigation in order to provide further clarity.

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

(668) Therefore, the Commission informed the GOE and the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation for companies located in the SETC-Zone. The GOE and the GOC objected and stressed that they had fully cooperated with the Commission. However, the Commission considered that information about the precise collaboration between the two governments in the set-up and administration of the SETC-Zone was crucial for the legal assessment of the case as explained in the next Section 4.2.3. Unfortunately, it had only received two relevant documents after the respective verification with the consequence that it could not verify the authenticity thereof. Moreover, it could not engage in any follow-up discussion with the GOE about significant details, which could shed light on the extent and, degree of cooperation between the two governments in the zone.

(669) Therefore, the Commission applied Article 28 of the basic Regulation and relied on facts available with respect to these points.

4.2.3. *Legal assessment*

(670) The operation of the SETC-Zone constitutes a close cooperation between the GOE and the GOC within the territory of the exporting country. The governments of Egypt and China have pooled their resources to provide the companies manufacturing in the SETC-Zone with favorable conditions that confer benefits to them. This pooling of resources via such close cooperation serves a common purpose and benefits a common beneficiary (Jushi Egypt and Hengshi Egypt).

(671) In its comments of 7 August 2019, the GOC stated that the Commission cannot legally investigate the Chinese part of this close cooperation, i.e. the alleged financial contributions by Chinese banks to the companies operating in Egypt. Under Article 1.1(a) of the SCM Agreement, a subsidy only exists where there is a financial contribution by a government – or a public body – within the territory of the WTO member. Thus, according to the GOC, any alleged direct transfer of funds by a financial institution operating in China to producers/exporters of GFF in third countries *"cannot be attributed to China or considered a financial contribution given by the GOC"* [149]. In the GOC's view, the Commission itself had supported a *"territorial limit of subsidization"* in the HRF case, when it declared *"that there must be a financial contribution by a government or a public body within the territory of the subsidizing country"* under recital 5 of the Basic Regulation [150]. Moreover, the context of Article 1.1(a)(1) of the SCM Agreement, such as Articles XVI GATT, 2.1 and 2.2. SCMA on specificity, Article 14 SCMA on benefit calculations, Article 25.2 SCMA on notification requirements all contain references that the beneficiary should be located in the territory of the subsidizing WTO Members; in the same vein, also Section 10 of China's Accession Protocol requires the country to notify any subsidy *"granted or maintained on its territory"* [151]. Finally, the negotiating history of the Agreement demonstrates – in the GOCs view – that payments given by a government outside its territory would not be covered by the agreement.

(672) The Commission observed that these comments tackle the question of whether the GOC is accountable under the SCM Agreement for granting subsidies for the production of goods overseas, which are exported to third WTO members. However, they do not speak to the separate question whether, in specific cases, the government of the exporting country is accountable under the SCM Agreement for having actively sought, acknowledged and adopted such subsidies for the benefit of the products made therein.

(673) The Commission was therefore entitled to verify whether the resources provided to Jushi and Hengshi Egypt can be qualified as countervailable subsidies granted by the GOE within the meaning of Articles 2, 3 and 4 of the basic Regulation.

4.2.3.1. Financial contribution of a government or a public body

(674) According to Article 3(1)(a) of the basic Regulation, a subsidy exists if there is a financial contribution by a government in the country of origin or export. Similarly, Article 1.1(a)(1) of the SCM Agreement states that a subsidy shall be deemed to exist *"if there is a financial contribution by a government or any public body"*.

(149) GOC, Comments of 7 August 2019, § 72.
(150) HRF case cited in footnote 7, recital 396.
(151) GOC, Comments of 7 August 2019, §§ 74-84.

(675) The GOE has provided to the two companies land and offered several tax breaks. These subsidies are thus operated and granted directly by the government of Egypt.

(676) However, ever since the conclusion of the MoU in 1997, the GOE has actively sought to support the zone not only directly by the provision of land and tax breaks but also indirectly, through agreed assistance of the Chinese government for the development of the SETC-Zone in its territory. Indeed, under the terms of the MoU, the GOE expressly *"encourag(ed) relevant business sector in China to provide contributions for the projects to be established within the zone"*. Following the visit of President Morsi to China in August 2012, the SETC Zone received *"unprecedented attention and support from the Egyptian government"* ([152]). Under Article 1 of the Cooperation Agreement 2016, both sides agreed to develop the zone *"in accordance with (…) existing laws and regulations of the two countries"*. Article 1 of the legislation implementing the Cooperation Agreement further specifies that *"The Management Committee* [responsible for coordinating and handling daily work of the Cooperation Zone] *is established in line with multilateral and bilateral agreements and existing laws and regulations signed or participated by the People's Republic of China and the Arab Republic of Egypt"*. Under Article 4 of the Cooperation Agreement, both sides promise *"support and facilitation for the construction, business facilitation and operation of the Cooperation Zone"*. For that purpose, Egypt has agreed that China designates it as *"overseas trade and cooperation zone"*. China confirmed in Article 4(1) of the Cooperation Agreement that the zone in question *"is entitled to relevant policy support and facilitation provided by the Chinese Government for overseas economic and trade cooperation zones"*. In addition, in Article 5 of the Cooperation Agreement the GOC explicitly committed that it *"shall support"* the zone by, among others, *"encouraging relevant financial institutions to provide financial facility"* for companies and investments in the zone. Finally, under Article 7 of the same Agreement, both GOE and GOC committed themselves that any existing or future laws, which grant more favourable treatment than the Cooperation Agreement, shall prevail over the latter. The GOC's preferential financing for the two GFF producers in the zone are the result of those engagements and should be seen in that context.

(677) The joining forces by the GOE and the GOC served several purposes.

(678) For the Egyptian side, as expressed at the highest political level ([153]), the aim was to attract Chinese investments, know-how and capital in order to promote the economic development of the Suez Canal Area and create jobs. According to the 2022 Egyptian Perspective Long-Term Planning, published by the Planning Department of Egypt in November 2013, the SETC-Zone will play a great role for Egypt's industry upgrade, earning foreign exchange through export, creating taxation, and solving unemployment ([154]).

(679) For the Chinese side, the motivation was different. From the perspective of the companies itself, Egypt has certain advantages in terms of lower labour costs and shorter delivery times to main markets, such as the EU. In addition, as mentioned in the bond prospectus issued by Jushi China in 2014: "*trade protective barriers have increased the market prices of China's fiberglass exports in disguise, which has a negative impact on Jushi Group's fiberglass exports. … after the launch of Jushi Egyptian Glass Fiber Co., Ltd. in 2013, the product demand of the above three regions will be met by Jushi Egypt. The above three regions will not impose anti-dumping duties on Jushi Egyptian products, and the impact of anti-dumping policies on Jushi Group will be greatly reduced. The preliminary pricing principle of Jushi Egyptian fiberglass products for the customers in the above three regions is to share the tariff savings with the customers and to enjoy the savings of anti-dumping duties and shipping costs in full by the issuer*". Indeed, since 2011 ([155]) and the end of 2014 ([156]) imports of GFR (the main input for making GFF, representing around 70 % of its manufacturing costs) originating in China have been subject to anti-dumping and countervailing duties in the EU and the EU is one of the "three regions" that is referred to in the bond prospectus.

([152]) TEDA 10 Years Summary Report, p. 41.

([153]) Comments of President Morsi during his visit to China from August 2012, TEDA 10 Years Summary Report, p. 47 & 53; Comments of President Sisi during his visit to China in December 2016, TEDA 10 Years Summary Report (2008-2018), p. 94.

([154]) TEDA 10 Years Summary Report (2008-2018), p. 59

([155]) Council Implementing Regulation (EU) No 248/2011 of 9 March 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 67, 15.3.2011, p. 1).

([156]) Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the People's Republic of China and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 367, 23.12.2014, p. 22).

(680) From the perspective of the GOC, according to MOFCOM's 13th Five-Year Plan for the Development of Foreign Trade, one of the main tasks under this plan is to enhance the trade cooperation with countries along the 'One Belt and One Road' initiative in order to promote and expand exports of, among others, high-tech products, such as GFF. The plan contains the following statement: "*Stabilize exports of advantageous products such as labor-intensive products to the aforesaid countries, seize the opportunities of constructing infrastructure for such countries, and impel exports of large-sized complete sets of equipment, technologies, standards and services. Adapt to the trend of transformation and upgrade of industries of these countries, and accelerate exports of electromechanical and high-tech products. … Intensify the expansion of emerging markets, and after comprehensively considering economic scale, growth speed, resource endowment, risk degree and other factors, select several emerging markets for primary expansion. Expand exports of advanced technical equipment, and promote exports of high-quality, high-grade and comparatively advantageous industries and products*" Envisaged measures to achieve these tasks include the "*development of State-level economic and technological development zones and various parks*".

(681) As expressed in one article, '*Under the government departments' guidance in the framework of the 'One Belt, One Road', and in connection with the host country strategy at the highest level, overseas cooperation zones have become a vehicle to implement the 'One Belt, One Road' and international production capacity cooperation*' ([157]).

(682) Overseas zones thus serve several strategic objectives for China. First, they could help increase demand for Chinese-made machinery and equipment. Second, by producing overseas and exporting to Europe or North America, Chinese companies would be able to avoid trade frictions and barriers imposed on exports from China. Third, they could assist China's efforts to boost its own domestic restructuring and move up the value chain at home ([158]).

(683) It follows from the above that the Egyptian government was expecting and welcoming Chinese financing for the close cooperation within the SETC-Zone, in order to boost the development of one of its poorest regions. The Chinese government was hoping that Chinese companies could operate outside Chinese territories and expand their exports under the 'One Belt, One Road' initiative (possibly to avoid being caught by trade defence measures).

(684) Under these circumstances, the Commission considered that the term 'by the government' in Article 3(1)(a) of the basic Regulation should include not only measures directly emanating from the GOE but also those measures by the GOC which can be attributed to the GOE on the basis of the available evidence.

(685) As the Appellate Body ('AB') held in the US-Gasoline case ([159]), WTO law cannot be read in clinical isolation from general international law. In particular, general international law principles thus form part of the WTO legal order, which is not a self-contained regime ([160]). In line with Article 3.2 DSU and Article 31(3) (c) of the Vienna Convention on the Law of Treaties (VCLT), "*[a]ny relevant rules of international law applicable in the relations between the parties*" must be taken into account in the assessment of the context of the terms of a treaty.

(686) These "rules" include customary international law ([161]), which are by definition binding on all WTO members, including Egypt, China and the European Union. An important branch of customary international law is the rules on State responsibility, which have been codified by the International Law Commission (ILC Articles on the Responsibility of States for Internationally Wrongful Acts) ([162]) in accordance with its mandate under Article 13(1) (a) of the UN-Charter.

([157]) Annual Report on Development in Africa, No.19 (2016-2017, Yellow Books of Africa, p. 13.

([158]) D. Brautigam & Xiaoyang Tang; Going Global in Groups: Structural transformation and China's Special Economic Zones overseas, World Development Vol. 63, 2014, pp. 78–91.

([159]) WT/DS2/AB/R – *US – Reformulated Gasoline*, Appellate Body Report adopted on 20 May 1996, p. 17.

([160]) See in detail J. Pauwelyn, The Role of Public International Law in the WTO – How far can we go?, *American Journal of International Law* (2001), pp. 535 and following; Graham Cook, *Digest of WTO Jurisprudence on Public International Law Concepts and Principles* (CUP 2015).

([161]) WT/DS379 – United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, Appellate Body Report adopted on 11 March 2011, §§308; M.E. Villiger, "Commentary on the 1969 Vienna Convention on the Law of Treaties" (Martinus Nijhoff, 2009), p. 433.

([162]) International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.

(687) The rules in the ICL Articles are also "relevant" within the meaning of Article 31(3) (c) VCLT because they provide guidance for the interpretation of the notion of attribution, i.e. when certain acts or omission can be attributed to one State, even when those acts or omissions do not emanate from that State directly. In this respect, the notion of attribution becomes relevant to interpret the terms "*by the government*" in the chapeau of Article 1.1(a)(1) of the SCM Agreement, and more in particular, to determine the correct attribution of a conduct in a situation of cooperation between two States with respect to subsidies, as in the case at hand ([163]).

(688) The ILC Articles can thus be used to interpret the terms *"by the government"* in the chapeau of Article 1.1(a)(1)of the SCM Agreement in order to attribute the conduct (granting of a subsidy) to the GOE, even in cases where the financial contribution has not been made directly by the GOE.

(689) In this respect, the Commission noted that Article 11 of the ILC Articles provides, in particular, that *"conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own"*. The commentary of the ILC to Article 11 explains that *"instances of the application of the principle [of State attribution through acknowledgement and adoption of behavior] can be found in judicial decisions and State practice"* ([164]). As recalled in recital 6 of the same commentary, it is required that a State *"identifies the conduct in question and makes it its own"*.

(690) From the inception of the project in 1997, the Egyptian government made Chinese financing of Jushi Egypt and Hengshi Egypt part of its own policy for the zone. President Morsi publicly welcomed Chinese investment and capital during his visit to China in August 2012, and the Planning Department of Egypt acknowledged in November 2013 that the Chinese financed SETC-Zone will play a great role for Egypt's industry upgrade. On another visit to China in December 2014, President Sisi *"expressed that the proposal from President Xi Jinping of jointly establishing the 'One Belt and One Road' provided a significant opportunity for Egyptian recovery and Egyptian party was ready for active involvement and giving support. Egyptian party wished to cooperate with China in developing the projects of Suez Canal Corridor, Suez Economic and Trade Cooperation Zone and so on, and attract Chinese enterprises to invest in Egypt"* ([165]).

(691) The characteristics of the Chinese 'One Road One Belt' initiative are public knowledge. Articles 30 to 36 of the Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation of 13 May 2015 list all the policy support that companies 'going abroad' can receive. They include fiscal and tax support policies, concessional loans, financial support through syndicated loans, export credits, and project financing, equity investment, and finally export credit insurance. Article 31 thereof refers to "concessional loans" which shall *"support enterprises to participate in the export of large-scale complete sets of equipment, project contracting and large-scale investment projects"*. In practice, this policy has led to numerous preferential financing by banks or the specifically set-up 'Silk Road Fund' under Article 35 of the Guiding Opinions, as recently established by the Commission in another case ([166]).

(692) As the Presidents of Egypt were no doubt aware that the Chinese 'One Belt and One Road' initiative involves heavy State financing through preferential financing and other financial instruments, there was hence a clear act of acknowledgment and adoption at the highest political level of such financing support from the GOC by jointly setting up the SETC-Zone with China.

([163]) WT/DS379/AB/R, paras. 304 – 322.
([164]) International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, November 2001, Supplement No. 10 (A/56/10), p. 52, recital 3 to Article 11.
([165]) TEDA 10 Years Summary Report (2008-2018), p. 94.
([166]) Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1), Recitals 409-412.

(693) The fact that Egypt acknowledged and adopted Chinese preferential financing is further sustained by the text of the 2016 Cooperation Agreement. As laid down in Article 1 of the Cooperation Agreement, Egypt explicitly accepted that China may apply its laws with respect to operators in the SETC-Zone or relating to operations in the SETC-Zone. For that purpose, the Egyptian government was also in agreement that China designated the SETC-Zone as an "overseas investment area" under its laws. Since "overseas investment areas" are a vehicle of the One-Road One Belt initiative as noted in recital (681), and since this initiative uses preferential financing as a tool as described in recital (691), such designation in Article 4 of the Cooperation Agreement where China also confirmed that the zone in question "*is entitled to relevant policy support and facilitation provided by the Chinese Government for overseas economic and trade cooperation zones*", had the consequence that Jushi Egypt and Hengshi Egypt became eligible to ask for preferential lending from Chinese policy banks and preferential export insurance terms. Egypt also signed off to Article 5, according to which the Chinese Government shall also support the Cooperation Zone by "*encouraging relevant financial institutions to provide financing facility for …investment projects located within the Cooperation Zone, provided that the lending conditions and the loan use requirements are met*". As already found in a previous investigation, the Chinese preferential financing is not operated by clearly prescribed funding programs with strict eligibility criteria, but rather by the identification at the highest level of a number of encouraged industries ([167]). The official designation of the SETC-Zone in Egypt as overseas investment area for Chinese companies in the aftermath of a common agreement between the two Presidents and the "encouragement" in Article 5 fits perfectly well into the usual Chinese pattern of activating preferential financing by its policy banks.

(694) The Chinese preferential measures in favour of the Chinese entities established in Egypt were thus "identified" and "made its own" by Egypt.

(695) Moreover, Egyptian officials were continuously present in the three level implementation mechanism mentioned in recital (660). The task of the implementation mechanism is to "*coordinate and facilitate relevant financial institutions, including but not limited to banking institutions, insurance institutions and various funds which provide credit support for the Cooperation Zone and residential enterprises, and help the Cooperation Zone and residential enterprises to explore more financing channels*" under Article 2(V) of the Implementing Agreement. Article 2(4) of the same document mandates the officials to "*try the utmost efforts to implement all <u>incentive policies of the Chinese</u> and Egyptian <u>laws and regulations</u> in a smooth manner*". This records the shared understanding of Egypt and China that the Chinese side is not providing money at market rates, which Jushi Egypt and Hengshi Egypt could have received from international market investors, but proactively provides State incentives, which is another word for benefits or preferences.

(696) By implementing this provision, Egypt has also expressed its full endorsement of the Chinese preferential financing for the benefit of the GFF producers in the zone. In view of the partial non-cooperation of both governments (see Section 4.2.2) on this crucial aspect of the investigation, the Commission could not establish more details in this respect; however, the evidence available points to the fact that the two governments cooperated as described above for the benefit of the GFF's exporting producers located in the zone.

(697) It follows from the evidence that the financial contributions in the form of preferential financing from Chinese public bodies to Jushi and Hengshi Egypt can be attributed to the GOE as the government of the country of origin or export under Article 3.1 (a) of the basic Regulation. The evidence showed that the GOE endorsed the preferential financial support to the GFF producers in the zone by the GOC in line with the agreed commitments to develop and support the economic activities within the zone.

(698) In this context, the Commission further noted that the possibility for governments to provide a financial contribution indirectly through private bodies is neither exogenous to the basic Regulation nor the SCM Agreement ([168]). Indeed, in cases where governments entrust or direct private bodies into a particular conduct, a key issue is that there must be "a demonstrable link" between the government act and the conduct of the private body ([169]). Similarly, in this case, there is a clear and explicit link between the affirmative actions taken by China in order to provide the agreed financial support to the GFF's exporting producers and the GOE.

([167]) Commission Implementing Regulation (EU) 2018/1690, Recital 377.
([168]) See Article 3(1)(a)(iv) of the basic Regulation and Article 1.1(a)(1)(iv) of the SCM Agreement.
([169]) Appellate Body Report, *US – DRAMs*, (WT/DS296/AB/R), para. 112.

(699) Consequently, the Commission considered that the preferential financing granted by the GOC to the GFF's exporting producers in the zone amount to financial contributions by the GOE in the sense of Article 3(1)(i) of the basic Regulation ([170]).

4.2.3.2. Benefit

(700) The Commission then considered whether these financial contributions attributable to the GOE would confer a benefit on Jushi and Hengshi Egypt under Article 3(2) of the basic Regulation. It recalled that these two companies were operating in Egypt and incorporated under Egyptian law. Hence, it was in principle appropriate to inquire whether these recipients of the financing received better terms than they would have received on the Egyptian financial market. The Commission verified this point and was satisfied that this was the case by a high margin.

(701) However, the Commission also took into consideration the exceptional circumstances of this case. As noted in recital (659), the exporting producers are related to Chinese mother companies, who are ultimately held by SASAC. Chinese public bodies granted the preferential financing after negotiation and signature of the relevant documents in China, and the recipients received them directly or indirectly through the channel of their mother company in China (inter-company loans). Moreover, as laid down in Article 1 of the Cooperation Agreement, the Egyptian government accepted that those entities receive preferential support, thus including cheap loans in line with Chinese law, i.e. under Chinese conditions. The Chinese public bodies provided such financing in line with Article 5 of the Cooperation Agreement according to the preferential financing policies implemented in China as detailed in Section 3.4. As explained in recital (657) above, these provisions of the Cooperation Agreement codified prior established practice.

(702) The Commission therefore concluded that the adoption and acknowledgement by the Egyptian government of the financial contributions from the Chinese public bodies to Jushi and Hengshi Egypt included also the benefit element thereof. It hence established market rates for the preferential financing and calculated the benefit accordingly (see below Section 4.3). It noted that this reasonable approach resulted in lower subsidy amounts than the ones derived from applying a hypothetical Egyptian benchmark.

4.2.3.3. Specificity

(703) Concerning the third point on specificity, the Commission examined whether these subsidies were specific as required by Articles 4(2) through (4) of the basic Regulation.

(704) By way of acknowledgment and adoption, the GOE was the granting authority with respect to the preferential financing. In particular, the GOE has acknowledged and adopted the designation by the GOC of the SETC Zone as an overseas investment territory under Article 4 of the Cooperation Agreement and endorsed the fully-fledged implementation thereof by, inter alia, the GOC's provision of preferential financing.

(705) These subsidies were limited to companies operating in the Suez Canal area (of which the SETC-Zone is a part). Consequently, the Commission concluded that they were regional subsidies within the meaning of Article 4(3) of the basic Regulation and falling within the jurisdiction of the granting authority in accordance with Articles 4(2) through (4) of the basic Regulation.

4.2.3.4. Conclusion

(706) In conclusion, the Commission found that both the subsidies granted to companies operating in the SETC-Zone directly by Egypt (provision of land, tax breaks) as well as the subsidies granted indirectly through the GOC's preferential financing are countervailable under Articles 2-4 of the basic Regulation. The latter are attributable to Egypt by virtue of the acknowledgment and adoption of the GOC's measures by Egypt as its own, for example through the Cooperation Agreement, the close cooperation and the various levels of cooperation mechanisms. The financial contributions also conferred benefits and were specific. The Commission examined all the relevant subsidies in more details below.

([170]) Incidentally, the facts at issue may also be considered from the angle of Article 16 of the ILC Articles. The close cooperation between the GOE and the GOC not only resulted in acknowledgment and adoption of Chinese acts by the GOE, but also served to potentially circumvent actual and potential duties imposed by the EU on Chinese exports of the product concerned made from Egypt.

(707) Upon disclosure, the GOE contested these findings by making five points: First, it was impossible under international law to attribute sovereign acts of the Government of China to the Government of Egypt. Second, the Commission had disregarded its own basic Regulation, according to which the granting authority must be based within its own territory. Third, the attribution of Chinese acts to Egypt also violated WTO law, which could not be interpreted in light of Article 11 of the ILC Articles on State Responsibility. Fourth, Article 11 of the ILC Articles was not even applicable to the facts at hand. Fifth, the financial contributions to Jushi and Hengshi China did not meet the requirements of specificity under Article 3 of the basic Regulation.

(708) The GOC equally took issue with the Commission's treatment of loans provided by Chinese financial institutions to Egyptian companies located in the SETC-zone and intra-company loans between companies located in Egypt and their parent as countervailable subsidies. It first argued that a subsidy could not be "created" for China and then "lumped on" to Egypt, as this would countervail legitimate foreign investment. The GOC considered next that the text, context, object and purpose of the SCM Agreement does not permit the stretching of the scope of "a government or public body" to a third country. Third, the GOC argued that Article 11 of the ILC Articles on State Responsibility could not be relied on as relevant context as it did not relate to the same subject matter as Article 1.1(a)(1) of the SCM Agreement. Even if Article 11 of the ILC Articles was relevant, there would be a clear inconsistency with Article 1.1(a)(1) of the SCM. In that case, the GOC maintains as its fourth point, the latter would prevail over the former as *lex specialis*.

(709) At the outset, the Commission observed that neither the GOC nor the GOE made any comment on the accuracy of the facts regarding the cooperation between these two governments as described in Section 4.2.1 above.

(710) The Commission noted that the objections from the GOE and the GOC partially overlapped and partially invoked separate arguments. The Commission analysed the overlapping points together and tackled the remaining arguments made by each government one by one.

(711) In the GOC's opening view, it argues that the Commission had been unable to establish a Chinese financial contribution in the context of companies operating in Egypt. It was thus "creating" a subsidy by the GOC which it could later on "lump on" Egypt, trying to "legalize" this technique by virtue of wrongfully applying Article 11 of the ILC Articles to a situation, where there was no countervailable subsidy from China in the first place. By this impermissible construction, the EU would start tackling "legitimate foreign investment".

(712) The Commission observed that this political argument is based on two questionable legal premises: First, Chinese action must satisfy all the criteria of a subsidy under the SCM Agreement to trigger liability. Second, if this is not the case, the SCM Agreement does not allow the countervailing by the EU of any support received by companies operating in Egypt. However, this argument mixes a factual and a normative dimension. As explained before, the GOE expected and welcomed the (fact of) preferential lending by Chinese financial institutions to the companies in Egypt, and acknowledged and adopted as its own such preferential lending. Whether or not such preferential lending triggered (from a normative point of view) also the international responsibility of China for a breach of the SCM Agreement is irrelevant. In other words, the Commission attributed Chinese "conduct" (namely, the granting of the preferential lending) to the GOE and not "wrongful acts". Therefore, the Commission rejected the GOC's first claim that it had to first show that the GOC had handed out a subsidy within the meaning of the SCM Agreement, and failing to do so had erroneously "created" a GOC subsidy for the benefit of the exporting producers of the product concerned.

(713) The GOE stressed in its first point the principle of sovereignty in international law. From its perspective, an act can only be attributed to a State when that act is vested with authority of that State. Therefore, acts of entities vested with Chinese authority are only attributable to the Chinese State. In the hearing of 18 March 2020, the GOE specified its reasoning by citing the example of military forces of one state stationed with the consent of another state in the latter's territory. In the view of the GOE, any action of the invited military forces could only be attributed to the invited state, but would not trigger the responsibility of the host State.

(714) The Commission rejected this claim. The principle of sovereign equality in international law, as enshrined in Article 2(1) of the UN-Charter, prohibits that one State exercises its powers on the territory of another State against the will of the territorial State. However, States are free to authorize action of another State within their territory. Action of the invited State on the territory of the host State may then become attributable to the host State. In the example mentioned by GOE during the hearing, this rule follows directly from Resolution 3314 (XXIX) of the UN General Assembly of 1974 on the definition of aggression, which is widely regarded as codification of customary international law. Under Article 3 lit. (f) of that Resolution, aggression by one State against another State is defined not only as direct attacks through its own State organs, but also as *"the action of a State in allowing its territory, which it has placed at the disposal of another State to be used by that other State for perpetrating an act of aggression against a third State"*. Clearly, if Cuba had allowed the Soviet Union to attack the United States with Russian missiles from Cuban territory in 1962, this would have triggered the international responsibility of Cuba for acts of aggression against the United States. Accordingly, international law recognizes the possibility to attribute action of an invited State to the host State and even sanctions the host State for doing so, if the action of the invited State harms a third State.

(715) Second, the GOE and the GOC argued that there is no room for attributing conduct of the Chinese government to Egypt under the EU's basic Regulation. The definition of "government" under Article 2(b) of the basic Regulation was expressly linked to the territory of the granting authority. The words "within the territory" in that provision were aimed at providing legal security and could not be interpreted away in light of WTO or international law.

(716) Article 2(b) of the basic Regulation provides: *'"Government" means a government or any public body within the territory of the country of origin or export.'* The Commission agreed with the GOE that this provision covers action of the government from whose territory the subsidized products are exported to the European Union. This is the case here. The product under consideration is manufactured in Egypt and exported from Egypt to the European Union. The government of Egypt is situated on the territory of Egypt. However, Article 2(b) of the basic Regulation does not speak to the separate question which action the government may authorize on its territory and acknowledge as its own. Just like with the notion of "public body", the notion of "government" is open to interpretation, taking into account its context, object and purpose. Thus, the actions attributable to the government of the country of origin or export may not only be actions directly emanating from such a government but also actions imputable to such a government. This is further confirmed by the terms in Article 3(1)(a) of the basic Regulation when referring to a financial contribution "by" a government. For the same reasons, the arguments by the GOE invoking several provisions of the SCM Agreement (e.g. Articles 1.1(a)(1), 13, 18.1(a) and footnote 63) are of no avail. While it is true that the basic Regulation *"must be interpreted, as far as possible, in the light of the corresponding provisions of the SCM Agreement"* [171], these provisions do not argue against the proposition that a financial contribution may be provided by another state which the territorial government acknowledges and adopts as its own.

(717) Consequently, the second claim of the GOE and the GOC derived from the alleged strict notion of territoriality under Article 2(b) of the basic Regulation and Article 1.1(a)(1) of the SCM Agreement was rejected.

(718) The GOE's third objection related to the significance of the ILC's Articles on State Responsibility in this respect. In its view, there is no authority to rely on Article 11 of the ILC Articles since the Appellate Body in US – Anti-Dumping and Countervailing Duties (China) [172] had only referred to Articles 4, 5 and 8 thereof. In a similar vein, the GOC argued that Article 11 of the ILC Articles and 1.1(a)(1) SCMA did not concern the same subject matter, as required by Article 31(3)(c) of the Vienna Convention on the Law of Treaties. Even assuming that the Article 11 of the ILC Articles was relevant, Article 1.1(a)(1) SCMA would be in any case *lex specialis* and prevail.

[171] Case T-300/16 Judgment of the General Court (First Chamber, Extended Composition) of 10 April 2019. Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission ECLI:EU:T:2019:235, para 101; also T 67/14 Viraj Profiles v Council, judgment of 11 July 2017, not published, EU:T:2017:481, para 88.

[172] WT/DS379/AB/R, Appellate Body Report, US – AD and CVD (China), para 309.

(719) The Commission rejected this claim. There is no ground for the assertion that only certain principles of customary international law, as enshrined in Articles 4, 5 or 8 of the ILC Articles on State Responsibility, are relevant for the interpretation of WTO rules, but not others. The WTO Appellate Body has always applied the concepts of general customary law, which were relevant to assess the facts at issue. Next to the rules on attribution, the principles of *estoppel* or good faith are also part of the WTO legal order, for example. In the present case, the Government of Egypt has not contested the factual circumstances of having invited, acknowledged and facilitated the implementation of Chinese preferential financing to companies operating in Egypt. For this set of circumstances, interpretative guidance can be drawn from Article 11 of the ILC Articles, which has also been referred to in international investment jurisprudence ([173]). Article 11 of the ILC Articles is hence a relevant rule of international law within the meaning of Article 31(3)(c) of the Vienna Convention on the Law of Treaties for interpreting the notion of "by the government" in the SCMA. It follows that there is also no room for applying the notion of "*lex specialis*". This is a conflict rule, when two rules of international law contain conflicting normative answers governing the same facts. This is not the case here, as Article 11 of the ILC Articles does not say the opposite of Article 1.1(a)(1) of the SCM Agreement, but helps to draw a proper line when attributing conduct from one government to another one, which acknowledges and adopts such a conduct as its own.

(720) According to the GOE's fourth objection, Article 11 of the ILC Articles is not applicable to the facts at issue. Under this Article, a State may assume responsibility for conduct as a successor State following the acquisition of land. A government may also acknowledge private conduct of its citizens as its own. However, the Article does not foresee that a State adopts acts of a foreign sovereign as its own.

(721) The Commission also rebutted this objection. The title of Article 11 of the ILC Articles is "conduct acknowledged and adopted by a State as its own", with no qualification as to the author of the original act. Next to the UN General Assembly in Resolution 3314 (XXIX) of 1974 (see recital (714) above) also the International Court of Justice has affirmed the freedom of States to adopt foreign acts as their own ([174]). International practice thus does not support Egypt's view that attribution under Article 11 of the ILC Articles is confined to cases of territorial succession or the Government acknowledging and adopting private wrongful acts on the State's own territory.

(722) In its fifth objection, the GOE maintained that the financial contributions by the GOC to entities in Egypt were not specific. It referred to the basic Regulation, according to which, the recipient of the financial contribution must fall *"within the jurisdiction of the granting authority"*. In its view, the wording "granting authority" does not mean an *"acknowledging and adopting authority"*. In addition, in past investigations, the granting authority for Chinese entities was always the Chinese government. The GOE concluded that the financial contribution of the GOC cannot be specific *"since enterprises located in Egypt are not within the jurisdiction of China"*. Similarly, as part of its second objection, the GOC maintained that jurisdiction under Article 2.2 of the SCM Agreement should be assessed within the context of a State's "territorial jurisdiction".

(723) The Commission reiterated that it considered the GOE as the granting authority by virtue of its adoption and acknowledgment of the Chinese preferential lending. As Jushi Egypt and Hengshi Egypt are operating in the Special Economic Zone, they fell also within the jurisdiction of the Government of Egypt. The receipt of this financial support was also specifically restricted to the companies operating in this zone, and therefore specific.

([173]) Mondev International Ltd. v. United States of America (ICSID Additional Facility Case No. ARB(AF)/99/2), Award of 11 October 2002, para. 115 and note 47.

([174]) ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*, judgment of 27 February 2007, para. 414. In that case, the International Court of Justice started from the premise that it was legally possible for the Federal State of Serbia and Montenegro to acknowledge and adopt acts of genocide committed by the organized military forces of the "Republik Srpska", the de facto Serbian State on the territory of Bosnia Herzegovina during the civil war in that country from 1991 to 1995. It found, though, that such acknowledgment and adoption had not occurred in practice.

(724) Even if it was necessary to show that the GOC had exercised jurisdiction over these companies before the GOE could adopt the Chinese conduct on its own, *quod non*, the result would not change. By signing Articles 1 and 4(1) of the Cooperation Agreement, the GOE had agreed that the companies operating in the Zone would be receiving *"relevant policy support and facilitation provided by the Chinese government for overseas economic and trade cooperation zones"* and that developing of the zone would be done in accordance with the laws of "both countries". In addition to exercising its own territorial jurisdiction, the GOE therefore also allowed China to provide specific aid for companies only located in *"overseas economic and trade cooperation zones"*. Therefore, this claim is rejected.

(725) In conclusion, the Commission reaffirmed its finding that the GoE acknowledged and adopted as its own the support for capital investment, the loans for Jushi Egypt and the provision of land by TEDA Egypt and thus provided specific subsidies within the meaning of Articles 2-4 of the basic Regulation.

## 4.3. **Preferential financing**

### 4.3.1. *Loans from policy banks to Jushi Egypt*

#### 4.3.1.1. State-owned banks acting as public bodies

(726) In 2012 and 2016 respectively, CDB and EXIM granted two loans to Jushi Egypt for a total amount of 200 million USD. The first loan was used to finance the start-up of the plant and the second loan corresponded to an expansion project for an additional production line.

(727) The Commission first ascertained whether these banks were public bodies within the meaning of Articles 3 and 2 (b) of the basic Regulation. The Commission thus sought information about State ownership as well as formal indicia of government control in the State-owned banks. The Commission also sought information about whether the GOC exercised meaningful control over the conduct of the State-owned banks with respect to their lending policies and assessment of risk. As mentioned in Sections 3.4.1.1 and 3.4.1.4 above, both EXIM and CDB are Chinese State-owned banks and there are formal indicia of control of the GOC over these banks. Furthermore, in Sections 3.4.1.3 and 3.4.1.5. above, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors, appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the State-owned banks whenever it was providing loans to the GFF industry.

(728) In addition to the general legal framework set out in Section 3.4.1.1 above, the following legal context applied to the loans provided by EXIM and CDB to Jushi Egypt.

(729) China-Africa TEDA and EXIM signed a strategic cooperation MOU on 6 November 2009, putting forward a package plan with a total amount of up to 6 billion RMB to carry out overall strategic cooperation in overseas trade and economic cooperation zones.

(730) On 7 November 2009, six African cooperation zones of economy and trade, among which the SETC-Zone, signed the Joint Meeting Pact between the Chinese Overseas (African) Economy and Trade Cooperation Zones and the China Africa Development Fund ('CADF'), a subsidiary of CDB.

(731) Furthermore, in 2013, MOFCOM issued a 'Notice on Aspects related to the China Development Bank support to the establishment and development of overseas economic and trade cooperation zones'. According to this Notice, MOFCOM and CDB will *"provide policy support for investment and financing for enterprises and enterprises entering the zone in eligible cooperation zones"*. CDB will "*clarify the basic conditions for priority financing in the cooperation zone in accordance with the requirements of the Ministry of Commerce and the Ministry of Finance*", and CDB will "*selectively support the projects under construction and cooperation projects that MOFCOM has paid close attention to with the host governments of the cooperation zone.*"

(732) Article 4 of the Cooperation Agreement between China and Egypt 2016 states that "*the Chinese Government identifies the Cooperation Zone as China's overseas economic and trade cooperation zone. The Cooperation Zone … is entitled to relevant policy support and facilitation provide by the Chinese Government for overseas economic and trade cooperation zones*". In addition, according to article 5, the Chinese Government shall also support the Cooperation Zone by "*encouraging relevant financial institutions to provide financing facility for …investment projects located within the Cooperation Zone, provided that the lending conditions and the loan use requirements are met*".

(733) Article 2(IV) of the 'Cooperation Agreement on the Establishment of a Management Committee for China-Egypt Suez Economic and Trade Cooperation Zone' implementing the above-mentioned agreement, further specifies that the Management Committee established between the relevant functional departments of Tianjin People's Government and the General Authority for Suez Canal Economic Zone shall "*try the utmost efforts to implement all incentive policies of the Chinese and Egyptian laws and regulations in a smooth manner*" and article 2(V) adds that it shall "*coordinate and facilitate relevant financial institutions, including but not limited to banking institutions, insurance institutions and various funds which provide credit support for the Cooperation Zone and residential enterprises, and help the Cooperation Zone and residential enterprises to explore more financing channels*".

(734) The Commission established that all State-owned Chinese financial institutions, including EXIM and CDB, implemented the legal framework set out above in the exercise of governmental functions with respect to the GFF sector. Therefore, they were public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

(735) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.4.1.6 above.

#### 4.3.1.2. Benefit and calculation of the subsidy amount

(736) As noted in recital (700), the Commission considered that, in principle, for the beneficiaries located in Egypt, it would be appropriate to inquire whether these recipients of the loans received better terms than they would have received on the Egyptian financial market. The Commission verified this point and confirmed that the amount of subsidisation would be higher when using comparable borrowing rates in Egypt (18,3 %) ([175])). However, in view of the exceptional circumstances mentioned in recital (701), the Commission calculated the amount of the countervailable subsidy taking into account the fact that the recipients obtained the preferential financing in China. For this calculation, the Commission assessed the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.

(737) As mentioned in Section 3.4.2.4 above, the Commission decided to establish the market rates for the preferential loans of EXIM and CDB with respect to hypothetical benchmarks for Chinese market investors in accordance with Article 6(b) of the basic Regulation. At the verification visit at GOC, the Commission found that one of the banks extending the financing to Jushi Egypt specifically considered the country risk linked to the investment in Egypt in the pricing of the financing. Because of lack of cooperation, no further details were provided by this bank(s). Therefore, the Commission decided to use the same calculation methodology as for other loans denominated in foreign currencies, and issued by Chinese financial institutions in the PRC, and added the risk premium linked to the investment in Egypt as follows.

(738) According to the calculation methodology described in Section 3.4.2.4 above, the Commission thus first established the credit rating of Jushi Egypt, reflecting the financial situation of the company. As mentioned in recital (306) above, the Commission considered that the overall financial situation of the Jushi Group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. This analysis was further refined in recitals (749) and (750) below. In view of the existence of revolving loans and debt forgiveness, the Commission concluded that the use of US B (instead of BB) corporate bonds would be more appropriate to determine the market-based benchmark.

([175]) Statistics of the Central Bank of Egypt: Average interest rates on EGP Loans for the year 2018, based on the weighted average interest rates for a sample of banks whose deposits represent around 80% of total deposits of the banking system and calculated on a monthly basis, see https://www.cbe.org.eg/en/EconomicResearch/Statistics/Pages/MonthlyInterestRatesHistorical.aspx

(739) In line with other loans denominated in foreign currencies and issued by Chinese financial institutions in the PRC, B rated corporate bonds issued in USD during the investigation period were thus used to determine an appropriate benchmark.

(740) Indeed, all other loans provided by Chinese financial institutions were granted to Chinese companies located in the domestic Chinese market. Jushi Egypt on the contrary is located in a country which was subject to civil and political unrest, as well as various terrorist attacks at the time when the loans were granted, and thus has a credit risk different from Chinese companies related to the external conditions prevailing in the country itself. As a result, the Commission added a mark-up to the benchmark rate established for the Chinese sampled companies, in order to integrate the country risk into the market rate.

(741) The premium related to country risk was determined based on the OECD classification of country risk for export credits, as well as the corresponding minimum premium rate set by the OECD ([176]). The country risk for loans provided by EXIM bank was established at 2,37 % and 2,44 % for loans provided by CDB.

(742) Following final disclosure, Jushi Egypt claimed that the Commission should have used two offers provided by an Egyptian bank in 2013 and 2016 to the company as a benchmark for calculating the benefit on loans. The Commission reviewed these offers, but decided that they were not representative of a comparable commercial loan, which the firm could actually obtain on the market.

(743) The Commission found that the offers do not provide any description of the actual financial product offered to the company, but refer to an interest rate for the provision of “credit facilities” in general. As such, it is impossible for the Commission to determine whether the offer actually refers to a loan as such or to other financial products, such as e.g. the opening of a credit line, trade financing (letters of credit, bills of exchange, factoring, etc…). Even if the offer were considered to relate to a loan, other crucial information is missing, such as the duration of the alleged loan offered by the bank, and the extent of the credit facilities offered (i.e. the maximum amount that the bank would be willing to extend to the company). In this respect, the Commission noted that the loans provided by CDB and EXIM were long-term loans for major fixed assets projects, amounting to several hundreds of million USD. Therefore, the Commission considered that it could not use the proxy provided by Jushi Egypt.

(744) Finally, the Commission observed that even if the Commission would take into account the benchmark provided by the company, it would not result in any significant change in the benefit calculation, since the proposed rate of the Egyptian bank was in line with the base rate established by the Commission for the benchmark, corresponding to a USD loan provided by a Chinese bank to a domestic (Chinese) BB-rated customer. Thus, if anything, those loans confirmed that Jushi Egypt indeed benefit from lower interest rates compared to market benchmarks. Therefore, the company’s claim was rejected.

4.3.2. *Loans from policy banks to Jushi Egypt via the parent company Jushi in China*

(745) Over the period 2014-2018, Jushi (China) provided a series of inter-company loans to Jushi Egypt for a total amount of 260 million USD.

(746) The Commission found, however, that Jushi (China) had itself financed these intercompany loans via external financing from Chinese financial institutions. In other words, rather than Jushi Egypt getting the loans directly from the Chinese banks, Jushi (China) obtained the preferential financing from these institutions and then allocated the benefit of those loans to its manufacturing activities in Egypt (Jushi Egypt). This is confirmed by Jushi China’s income tax statement, where the interest income from Jushi Egypt’s loan under the heading “overseas income” is set off against the interest paid by Jushi (China) on its external financing. Moreover, the official documents relating to the start-up and expansion projects in Egypt, such as for example the government approvals from the National Development and Reform Commission (‘NDRC’) and MOFCOM and the various feasibility studies, indicate that two thirds of the Egyptian project are financed via external financing (as opposed to self-generating revenue by the company). The loans provided directly by EXIM and CDB mentioned in Section 4.3.1.1 above, are not in themselves sufficient to provide the total amount of external financing needed to develop the manufacturing

([176]) For further details see Arrangement on Officially Supported Export Credits, January 2019, TAD/PG(2019)1 and Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits.

activities in the STEC-Zone. Thus, the additional indirect financing through inter-company loans was needed. The Commission could not find a specific bank loan directly linked to the project in Egypt. However, in 2014, Jushi (China) issued a bond to replace various bank loans in order to improve its debt structure. This bond, which makes various references to the capital needs for the project in Egypt, confirms that Jushi (China) was in need of external financial assistance to assist its manufacturing activities in Egypt. Therefore, the Commission considered that the underlying preferential loans channelled through Jushi (China) are also attributable to the GOE in the same way as the direct loans provided to Jushi Egypt by the Chinese financial institutions.

(747) Since all of these loans can in essence be assimilated to loans provided by the GOC to a Chinese company, which then allocates the benefits to its manufacturing activities elsewhere, the Commission decided to treat these loans as any other domestic Chinese loan to a Chinese GFF producer. In this context, as mentioned in recital (266) above, the Commission found that all State-owned Chinese financial institutions that provided loans to Jushi (China) and Jushi Egypt were public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

(748) The Commission then calculated the amount of the countervailable subsidy. In this respect, the Commission noted that the nominal interest rate charged by Jushi (China) to Jushi Egypt was 7,5 %. However, none of the financing provided to Jushi (China) had such a high interest rate. In fact, the average interest rate charged to Jushi (China) during the IP amounted to 4,4 %. This is again confirmed by Jushi (China's) income tax statement, in which the financing cost deducted from the taxable income corresponded to an interest rate of 4,3 %. The Commission thus compared the average interest rate that Jushi (China) pays on the outstanding amount of the intercompany loan during the IP with the rate that the company would have to pay for a comparable commercial loan obtainable on the market, in line with the calculation methodology developed in Section 3.4.2.4 above.

(749) The Commission furthermore found that during the investigation period, Jushi Egypt did not honour its debt repayment schedule to the parent company. Indeed, 91 million USD, which was supposed to have been repaid to Jushi (China) during 2018, was still outstanding at the end of the investigation period. In addition, the Commission found several instances in which the funds received via Jushi (China) were provided to repay the outstanding capital on the loans with EXIM and CDB.

(750) In order to take into account the increased risk exposure of the banks highlighted by the existence of revolving loans and debt forgiveness, the Commission thus decided to moved down one notch in the risk rating scale and to use US B (instead of BB) corporate bonds to determine the market–based benchmark, in line with recital (339) above.

(751) All the elements concerning this financing described above in this section clearly show that Jushi (China) allocated all the benefits from the preferential financing received from the Chinese financial institutions to Jushi Egypt. In addition, after Jushi Egypt did not honour the debt repayment schedule towards Jushi (China), this latter company did not adjust the interest rate accordingly and did not take any measures to reflect the real risk of the inter-company loan, whose amount kept increasing over the years. For all these reasons, the benefit thus calculated was attributed to Jushi Egypt ([177]).

(752) Following definitive disclosure, Jushi Egypt claimed that, contrary to what was stated in the footnote in the preceding recital, the Commission countervailed the loans attributed to Jushi Egypt both in Jushi (China) and in Jushi Egypt. This is factually incorrect, since the benefit calculated on the intercompany loan allocated to Egypt was deducted from the benefit on loans calculated for Jushi (China), as can be seen in Annex 2.3 of the specific disclosure provided to the Chinese company. Therefore, the claim was rejected.

(753) Jushi Egypt also argued that the Commission should not have downgraded Jushi Egypt's credit rating from AA to B based on the fact that Jushi Egypt did not honour its repayment schedule to its parent company or that, in some instances, Jushi Egypt's parent company repaid loans on its behalf. The fact that Jushi Egypt's corporate group decided that it was better for another entity in the group to bear the costs so as to preserve cash flow in another entity does not indicate that this other entity would not have honoured its obligation had this obligation been towards a banking institution. In addition, Jushi Egypt argued that the Commission downgraded Jushi Egypt by four notches, from AA to B, even though recital (750) above stated that Jushi Egypt would only be moved down one notch in the risk rating scale.

([177]) For the sake of clarity, the Commission confirmed that the loans received by Jushi (China) the benefits of which were ultimately allocated to Jushi (Egypt) were not accounted for in the amount of subsidisation established for Jushi (China).

(754) First, the Commission noted that it did not find any credit rating awarded by any external party to Jushi Egypt, and that Jushi Egypt did not provide any evidence to this end either. Jushi Egypt therefore never had an "AA" credit rating as a starting point. The Commission thus had to determine Jushi Egypt's credit rating using the facts available in the case. In view of the significant amount of the intercompany loans from the parent company, as well as the fact that Jushi Group had operated as a guarantor for the loans from CDB and EXIM, the Commission determined that Jushi Egypt's credit rating was closely linked to the rating of its parent company, which had been set at "BB", as mentioned in recital (306) above. This BB credit rating was thus the starting point for the Commission.

(755) Second, as explained in recital (750) above, the Commission decided to move down one notch in the rating scale, i.e. from BB to B, in view of the lack of repayment of its liabilities over the years. Indeed, the Commission noted that although the loans to CDB and EXIM were repaid according to schedule, the total liabilities of the company actually increased over the years. As such, Jushi Egypt replaced external debt by intragroup debt, but did not actually honour its liabilities towards the banking institutions itself. Contrary to the statements of Jushi Egypt, there are also indications that the company would not have been able to honour its obligations if all of its creditors had been external banking institutions. For example, although the company was loss-making in the years 2015 and 2016, and had a negative equity in 2016, it still made large capital repayments to CDB, totalling 54 million USD (around 546 million EGP) in these years. The company would thus not have been in a position to honour its external obligations without financial support from the parent company.

(756) In view of the above considerations, the Commission rejected these claims.

(757) The subsidy amounts found for preferential financing through loans from Chinese policy banks, directly or via the parent company Jushi (China), are thus confirmed, and amounted to 4,87 % for Jushi Egypt.

4.3.3. *Support for capital investment*

(758) In addition to the direct loans and intercompany loans, Jushi Egypt needed to cover its financial needs also by increasing its capital.

(759) Previous investigations found that substantial subsidies were received at the level of the parent companies of Chinese groups to support foreign investment under the Belt & Road Initiative, in the form of grants, preferential financing and equity injections. This was notably the case in the recently concluded anti-subsidy investigation on Tyres ('the Tyres case') ([178]).

(a) Legal basis

(1) 13th Five-Year Plan for the Development of Foreign Trade, issued by the Ministry of Commerce ('MOFCOM'), 26 December 2016;

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

(3) Building Materials Industry Development Plan 2016-2020, Ministry of Industry and Information Technology, GXBG [2016] No. 315

(4) The 13th Five-Year Plan for Fibre and Composite Materials Industry

(5) Made in China 2025, State Council, July 7, 2015

(b) Findings of the investigation

(760) During the investigation period, Jushi Egypt benefited from grants channelled by CNBM, a State-controlled entity, through equity injections, specifically via paid-in capital.

(761) In 2012, there was a significant shareholders' contribution of 42,6 million USD for the founding of Jushi Egypt. Since then, the capital of Jushi Egypt significantly increased up to 162 million USD until the investigation period. At the end of the IP, the capital of Jushi Egypt was approximately four times larger than in 2012.

([178]) See the Tyres case cited in footnote 7 above, Section 3.7.

(762) Jushi Egypt is fully owned by Jushi Group, which is fully owned by China Jushi. The principal shareholder of China Jushi is CNBM holding, which continuously held more than 25 % of its shares since 2010

(763) In parallel to the increase of capital in Jushi Egypt, the participation of CNBM in the capital structure of China Jushi has increased in a similar order of magnitude. Specifically, CNBM increased sixfold its paid-in capital contribution into China Jushi from 2010 to the end of 2018, i.e. during the IP, from 154 million RMB (23,3 million USD) in 2010 to 944 million RMB (142,8 million USD) in 2018.

(764) This similar trend and magnitude in the increase of capital in both Jushi Egypt and China Jushi strongly suggests that CNBM raised funds in order to increase the capital of Jushi Egypt through China Jushi up to the IP.

(765) In addition to the paid-in capital increases, there have been substantive amounts of funds transferred from CNBM to China Jushi and Jushi Group through other types of capital accounts.

(766) In order to determine the nature of the transfers and the circumstances in which the ownership capital within the companies concerned evolved, the Commission sought to have access to the relevant information originated in CNBM. However, as explained in Section 3.2.2, CNBM did not cooperate with the investigation. In the absence of any reply from CNBM, and following the application of the provisions of Article 28 of the basic Regulation, the Commission had to rely partially on facts available for its findings concerning CNBM. In particular, the Commission had to use facts available in order to identify the source of financing of the capital provided by CNBM to Jushi Egypt *inter alia* via China Jushi.

(767) To reach this conclusion, the Commission established the existence of a clear commitment from CNBM to invest overseas in encouraged industries. In this respect, CNBM advertises itself as an "*active practitioner of the Belt & Road Initiative*" in its annual report, on its website, and on site in the plants. For example, it "*undertook 312 cement projects in 75 countries and regions globally, more than 60 fiberglass projects, the implementation of 33 investment projects, the construction of 5 overseas warehouses, operated 14 overseas building materials supermarket chains, and managed more than 30 factories globally*" ([179]).

(768) More specifically, within the context of GFF, CNBM established Jushi Egypt in 2012, a vertically integrated producer of GFF in Egypt, and a subsidiary of the Chinese exporting producer Jushi. In the subsequent years, several important investment projects were undertaken to expand the production capacity of Jushi Egypt. Furthermore, in 2015, CNBM established Hengshi Egypt, a subsidiary of the Chinese exporting producer Hengshi. This non-vertically integrated producer of GFF in Egypt sources its main raw materials from its related company, Jushi Egypt. In addition, according to publicly available information, contracts have been signed to establish a new company related to Taishan (another one of the exporting producers in the CNBM Group) in Egypt in the near future.

(769) Furthermore, China Jushi has established a number of overseas production and trading subsidiaries in South Africa, South Korea, Italy, Spain, France, Canada, India, Singapore, Japan, USA and Hong Kong. In 2016, the CNBM Group raised over 5 billion RMB (USD 747,38 million) for its globalization strategy in the 13th five years plan (2016 to 2020), among which the Egyptian projects mentioned above, as well as a USD 300 million investment in a factory in the USA, for production starting in 2018 ([180]). In India, the plan is to put up a manufacturing facility with a capacity of 100 000 tonnes by mid-2020. Further plans for a GFF facility in Turkey were also well underway during the investigation period.

(770) All of these overseas projects fit within the wider context of China's "going out" policy. In this respect, Song Zhiping, the Chairman of CNBM, stated for example: "*The signing of the Jushi US project is a milestone in the strategic development of China Jushi's globalization, and in the meantime a critical step forward in its pursuit for higher goals. It also has a referential significance for the globalization of CNBM and even of China's building materials industry as a whole*".

([179]) Information panel at the entrance of the Jushi Egypt plant.

([180]) China Jushi Online News Center, as well as article "Jushi plans to establish a factory in India", JEC Composites News, 4 Aug 2016, http://www.jeccomposites.com/knowledge/international-composites-news/jushi-plans-establish-factory-india (last accessed on 3 February 2020).

(771) Furthermore, as mentioned in recital (148) above, the Made in China 2025 Roadmap ([181]) identifies 10 strategic sectors, which include GFF. For these key industries, the plan 'Made in China 2025' explicitly mentions in its Chapter 3.9 that China will:

(a) '*Support enterprises to perform mergers, equity investment and venture capital investment overseas.*

(b) *Actively participate in and promote international industrial cooperation and implement major strategic plans like the Silk Road Economic Belt and the 21st-Century Maritime Silk Road to accelerate building interconnected infrastructure with surrounding countries and deep industrial cooperation.*

(c) *Make use of "opening up" along borders and build a number of overseas manufacturing cooperation parks in eligible countries.*

(d) *Encourage the overseas transfer of high-end equipment, advanced technology and strong industry*'.

(772) In another interview, Song Zhiping mentioned that from the enterprise point of view, CNBM paid special attention to the national 'Belt and Road' related policies, and that 'Belt and Road' "*is really a once-in-a-lifetime opportunity for China's building materials group*". He also pointed out that "going out" is linked to financial cooperation, it only works when '*we combine finance, sovereign fund cooperation, buyer's credit, financial leasing and other ways, have a mutual cooperation "going out"*'. Along the same line, Song Zhiping further stated that '*International capacity cooperation must be combined with the "Belt and Road" national policy, especially the country's financial policy. We used to make simple investments, borrowing money and lending investments, and that's not going to be massive. I would like to adopt a model similar to that of China's Guoxin Holdings, where companies contribute 10 per cent and the state foreign exchange reserves contributes 90 per cent. We need to change our old reliance on loans and look for new financing business models and organizational models. I think we should give full play to the country's current strong financial advantages, raise the establishment of building materials investment funds, mobilize more capital to participate in investment, to support building materials enterprises to "go out"*'.

(773) This vision is supported by the Chinese government, as can be seen in a speech given by Xiao Yaqing, director of the State Council's SASAC at a conference organized by CNBM: '*central enterprises are the backbone of the national economy, and should be closely integrated with the "Belt and Road" national strategy, making use of advantageous production capacity, highlighting key areas, and promoting international production capacity and equipment cooperation. They take the lead in creating a new business card for the "going out" of the country"…. In recent years, China Building Materials and China Materials Group have accelerated the pace of "going out", they have achieved outstanding results, and restructuring of the group to lead the internationalization of China's building materials industry is of great significance…. After the reorganization, the new company's initial planned investment projects in countries along the Belt and Road, will amount to an investment of more than 90 billion yuan*' ([182]).

(774) As explained in recital (93) the investigation revealed that CNBM Building is a Chinese State-owned enterprise owned directly and indirectly by CNBM Parent, which is in turn wholly owned by SASAC. SASAC is the key vehicle through which the Chinese government controls in several ways State-owned enterprises as a means to implement its government policies and plans rather than to follow a market logic in its business operations ([183]). Without prejudice to the conclusion on the public body nature of CNBM within the meaning of Article 3 of the basic Regulation, on the basis of all of the above evidence it can be concluded that CNBM and the Jushi Group at large pursue industrial and governmental policies including with regard to the 'Belt and Road' initiative and the 'going out' policies in the production and export of the product concerned.

([181]) https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf
([182]) 'Xiao Yaqing: to build a "going out" national new business card after the reorganization of the enterprise', Source: Sina Finance Author: Sina Finance Published: 2016-08-29.
([183]) See among others the Commission Staff Working Document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigation, SWD(2017) 483 final/2 of 20.12.2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf.

(775) It is in this context that CNBM received a financial contribution from the government in order to implement these policies, including to fund its investment in Egypt for the production of the product concerned. Due to the complete non-cooperation of the CNBM and of the GOC on this point, the Commission was unable to identify the actual source of financing and substantiate in detail whether this financial contribution was made by SASAC or by the Silk Road Fund ('SRF') as the vehicle to implement the 'Belt and Road' strategy. However, on the basis of the facts available pursuant to Article 28 of the basic Regulation the Commission concluded that both SASAC ([184]) and the SRF ([185]) are considered public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation when providing the financial contribution to CNBM. In any event, even if they would not constitute public bodies, both SASAC and the SRF would be considered as entrusted or directed by the government to carry out governmental policies and functions in accordance with Article 3(1)(iv) of the basic Regulation ([186]).

(776) Likewise due to the lack of cooperation, based on all the above evidence on the funding under the 'Belt and Road' initiative of projects outside of China including Egypt, as well as on the findings in the Tyres case, the Commission concluded that CNBM received a financial contribution in the form of grants that were then used for successive capital contributions to increase the capital available to Jushi Egypt for its operations in Egypt.

(777) In the absence of further evidence provided by CNBM, and based on the publicly available evidence, the Commission decided to countervail the successive capital increases of Jushi Egypt as equity injections supported by the State, with the aim of setting up and expanding the production facilities of CNBM in Egypt. Such support would equally fall under the items agreed upon between China and Egypt in the Cooperation Agreement to set up the SETC-Zone, attributed to Egypt for the same reasons explained in recital (706) above and can thus be allocated to the products exported from Egypt.

(c) Benefit

(778) The Commission then analysed whether the financial contribution provided by GOC via SASAC and/or the SRF conferred a benefit to Jushi Egypt. Once again, due to the non-cooperation of CNBM the Commission had to base its findings on the provisions of facts available according to Article 28 of the basic Regulation.

(779) The body of evidence in subsection (b) above has shown that the mandate and objective of both SASAC and the SRF is to implement governmental policies and plans, including by providing financial support and funding for the encouraged sectors among which GFF in order to enact the going-out strategy. SASAC and the SRF do not follow market principles and behaviour when providing funding, but operate to implement the respective government policies. A notable example of their operations delinked from a market perspective was found in the Tyres case, where the SRF had provided a grant to the group parent company for an acquisition of a subsidiary in the EU. Furthermore, in the Tyres case the Commission established that such projects followed a similar pattern ([187]). It is thus reasonable to assume that CNBM, as a major central SOE, would follow the same pattern and would benefit from similar subsidies.

(780) The Commission further noted that the amount of successive parallel capital increases of Jushi Egypt received via China Jushi corresponded approximately to the amount of the funding gap for the investment project in Egypt left after the funding via the preferential financing as described at Section 4.3 above. As explained above in recitals (763) to (766), the successive magnitude and scale of capital increases of CNBM into Jushi Group and China Jushi substantially mirrored the capital increases into Jushi Egypt precisely to close this funding gap. This was fully coherent with the purpose of the functioning and funding of SASAC and the SRF, as also explicitly stated by CNBM representatives and SASAC and SRF officials.

([184]) The evidence substantiating the conclusion on the public body nature of SASAC can be found inter alia in Section 5 of the Commission Staff Working Document SWD (2017) 483, see previous footnote.
([185]) The evidence substantiating the conclusion on the public body nature of the SRF can be found inter alia in the Tyres case, as quoted in footnote 7 above, in particular Section 3.7 recitals (341) through (360) of that Regulation.
([186]) See also recital (358) of the tyres regulation.
([187]) See Tyres case cites in footnote 7.

(781) Based on the evidence on file and in accordance with Article 28 of the basic Regulation, the Commission concluded that the financial contribution provided by SASAC and/or the SRF conferred a benefit within the meaning of Article 3(2) of the basic Regulation.

(d) Calculation of the subsidy amount

(782) As explained in recitals (207) to (217) above, the parent company of CNBM failed to provide a response to the questionnaire reply. Therefore, it was impossible to verify the subsidies received at the level of the parent company in connection with the group's foreign investments related to the product concerned, and to determine an accurate benefit amount.

(783) The Commission therefore resorted to facts available in application of Article 28 of the basic Regulation to the determine the subsidy amount conferred by the financial contribution by SASAC or the SRF in the form of grants. As explained above, the Commission found parallel capital increases in the various group companies in China and ultimately channelled to Jushi Egypt in the same magnitude and over the same period. Because CNBM received these funds from SASAC and/or SFR earmarked for the investment in Egypt under the Belt and Road Initiative and the going out policy, it was used simply to channel those funds all the way down to Jushi Egypt without keeping any benefit to itself, as this would be inconsistent with the earmarking. The fact that the amount of the funding gap in the Egyptian investment of Jushi Egypt by and large corresponded to the amount of the capital increases further confirms this.

(784) In order to determine the amount of funds channelled by CNBM to Jushi Egypt as equity injections, the Commission analysed and traced the successive increases in equity in the companies concerned, namely Jushi Egypt, Jushi Group and China Jushi of which CNBM is the main shareholder.

(785) When following the trail of funds, the Commission examined not only the increases in paid-in capital, but also the increases in other equity instruments. Specifically, substantive amount of funds were discovered in the form of capital surpluses in the intermediate companies China Jushi and Jushi Group. With regard specifically to these intermediate companies, the Commission noticed that in certain equity increases the amount of funds transferred to these companies were larger than the amounts the company would later register under paid-in capital. The company would therefore have access to these funds without the expected change on the share of company's ownership. By taking into consideration the equity injections via paid-in capital and the amounts found under other type of capital accounts, such as capital surplus, the Commission could determine that more than 87 % of the equity of Jushi Egypt could have been imputable to CNBM. The total amount of the benefit to the recipient using this approach would therefore be 142,8 million USD.

(786) However, due to the limited access to more detailed information, the Commission could not determine the exact origin of all these funds, and it thus could not establish with a sufficient standard of likelihood that the all amounts contained in other capital accounts of Jushi Egypt, were channelled and transferred by CNBM.

(787) Therefore, the Commission adopted a more prudent approach, focusing exclusively on the evolution of the paid-in capital amounts that matched the standard of likelihood as to their source from CNBM. More specifically, the Commission simply took into consideration the increase of paid-in capital of CNBM in China Jushi since 2010 and parallel development of capital increases into Jushi Egypt since 2012. As a result, the Commission considered that 51 % of the equity in Jushi Egypt (or 82,7 Million USD) was provided by CNBM through the financial contribution received from SASAC or the SRF.

(788) Once the full amount of the grants were established, the Commission proceeded to calculate the benefit conferred to Jushi Egypt during the investigation period according to Articles 6 and 7 of the basic Regulation. The benefit of the grants via equity increases should be allocated to the IP considering the amortization period of equity, which is not a fixed asset and therefore would normally be subject to the allocation provisions under Article 7(4) of the basic Regulation.

(789) Due to the absence of cooperation from CNBM, the Commission did not have any further information on any specific agreement concerning the use of the grant linked to the equity investments with SASAC or the SRF. In the tyres case, the Commission amortised the grant amount over a period of seven years because this was in line with the average investment duration of SRF investment and with another concurring loan taken out for that transaction ([188]). However, in the absence of cooperation and specific shareholders agreement in this case, the Commission decided to follow a conservative approach and decided to use the average useful life of the assets of Jushi Egypt on the assumption that the funding was used to fill the gap for the investment project in line with Article 7(3) in conjunction with Article 7(4) of the basic Regulation, which provides that a different amortisation period can be used if the circumstances so justify. On this basis, the Commission used an amortization period of twelve years. This resulted in a subsidisation amount of 1,65 %.

(e) Comments on the support for capital investment

(790) Following definitive disclosure the CNBM group claimed that the Commission failed to demonstrate that the equity is attributable to CNBM and more specifically, that it did not originate from China Jushi or Jushi Group's profits. In this line the company also claimed that the Commission failed to explain why funds were given by CNBM every year to China Jushi since 2010 but that funds only passed on to Jushi Group and Jushi Egypt during some of those years. Similarly, it argued that the Commission failed to establish that the support for capital investment is attributable to any public body and, as a result, it cannot constitute a subsidy. Finally, CNBM Group requested that, should the Commission maintain its approach, it must disclose how it considers that there is any pattern between the support for capital from CNBM to China Jushi and that between Jushi Group and Jushi Egypt.

(791) Firstly, concerning the origin of the funds, the Commission noted that the company did not provide any additional evidence to substantiate the claim. The Commission nonetheless, has analysed further the accounts of the concerned companies to identify whether increases in equity were sourced by their profits. The Commission observed that none of the increases in equity were originated from the profits or retained earnings accounts. The Commission, nonetheless, has identified that certain equity increases of China Jushi taking place in the years 2012 and 2016 could be attributed to capital reserves. However, the company has not provided information on the origin of the funds of the capital reserve accounts. Furthermore, the investigation established that one of the companies of the CNBM Group had received and booked government subsidies under the capital reserves account. The Commission therefore concluded that undistributed profit or retained earnings are not the attributable source of the funds used for the equity increases in Jushi Egypt since 2012.

(792) Secondly, concerning the moment when the funds were transferred to Jushi Group and Jushi Egypt, the Commission noted that the CNBM Group has not provided any further evidence to substantiate or explain its equity increases scheduling. Similarly, the Commission noted that in addition to the time lags on equity transfers from company to company, equity increases also respond to the different capital requirements in Jushi Egypt linked to the investments over the period analysed.

(793) Thirdly, concerning whether the origin of the funds supporting the capital increase can be attributable to a public body, the Commission noted in recital (775), that, even if they would not constitute public bodies, both SASAC and the SRF would be considered as entrusted or directed by the government to carry out governmental policies and functions in accordance with Article 3(1)(iv) of the basic Regulation

(794) Finally, regarding the disclosure on the establishment of the pattern between the support for capital from CNBM to China Jushi and between Jushi Group and Jushi Egypt, the Commission noted that this information was provided. Recitals (758) to (789) explained in detail the findings and the methodology used to calculate the subsidy amount. Similarly, in the specific disclosure, the company was provided with complete information concerning the evidence at the Commission's disposal and its analysis regarding the capital support from CNBM to China Jushi and for Jushi Group to Jushi Egypt.

(795) Following all the above-mentioned arguments, the Commission rejected these claims.

([188]) Recital (418) of the Tyres Regulation.

(796) CNBM Group also claimed that the Commission failed to establish the amount of the benefit and must demonstrate why each provision of equity capital is not in line with the usual investment practice.

(797) The Commission recalled that during the investigation the case team sought to have access to the relevant information in CNBM. However, as explained in Section 3.2.2, CNBM did not cooperate with the investigation and the Commission had to rely on facts available for its findings concerning CNBM. Moreover, recitals (778) to (781) described how the benefit is established. In essence, it explains that SASAC and SRF did not follow market principles when providing funding, but operated to implement the respective government policies. The Commission therefore rejected the claim.

(798) CNBM Group further argued that it cannot be considered that all funds provided by CNBM originated from public bodies. As a result, the Commission cannot conclude that the entirety of the alleged capital support from CNBM to China Jushi constitutes a subsidy. Therefore, the company argued that the benefit cannot be higher than the subsidy rate found for CNBM in China, multiplied by the amount of capital support. CNBM Group also claimed that the Commission failed to calculate the benefit as it did not consider that the support for capital investment from CNBM came in exchange of shares and, thus, dividends.

(799) First, the Commission noted that the company has not provided any additional evidence to substantiate the claim. Similarly, the Commission recalls that CNBM did not cooperate with the investigation and the Commission had to rely on facts available for its findings concerning CNBM. In this respect, The Commission recalled that the subsidy rate found for CNBM in Sections 3.4 and 3.8 above was based on loans and grants visible in the publicly available audit report of CNBM, and thus it limited its findings in a very prudent manner only to certain subsidies within specific subsidy schemes, which could be easily identified and which are not related to the subsidy scheme at hand. Therefore, if anything the Commission erred on the side of caution.

(800) Finally, the Commission noted that the investigation does not discuss whether the funds transferred from CNBM were done in exchange of shares. On the contrary, the investigation established that CNBM received financial contributions from the government in order to implement its policies, and that these financial contributions were received in the form of grants that were then used for capital contributions to finance the operations of Jushi Egypt.

(801) Following all the above-mentioned arguments, the Commission rejected the claim.

(802) The CNBM Group further asserted that the Commission failed to take into account the value of the EGP at the time when the support for capital investment took place. As the EGP substantially devaluated in late 2016, this, in turn, artificially inflated Jushi Egypt's benefit under this scheme. The Commission acknowledged that the EGP substantially devaluated in 2016. It also noted that the successive capital increases were indeed recorded in Jushi Egypt's financial statements during the IP at the historical exchange rates. Following the methodology used in Jushi Egypt's financial statements, the Commission therefore adapted the exchange rate for the provision of capital accordingly.

(803) Finally, the CNBM Group claimed that the benefit of the support for capital investment should not be allocated over time. The company argued that there is no evidence that links the capital investments received by Jushi with the acquisition of fixed assets.

(804) The Commission noted that no further evidence has been provided to support the claim. In addition, the Commission recalled that the set-up of a new production plant involves the acquisition of fixed assets. Furthermore, the investigation collected substantive evidence that since the establishment of Jushi Egypt, the company has engaged in the acquisition and construction of fixed assets. The Commission therefore rejected the claim.

### 4.4. **Export credit insurance**

(805) During the investigation period, Jushi Egypt also benefited from an export credit insurance with Sinosure in the framework of an agreement signed by Jushi China, which covered also exports made by Jushi Egypt. The premium to be paid for exports from Egypt did not differ from the premium requested for exports from the PRC.

(806) As mentioned in Section 3.5 above, Sinosure is owned by the Chinese Government, which exercises meaningful control and hence constitutes a public body. In any event, it is entrusted or directed by the GOC. Furthermore, Section 3.5 above already established that the premiums paid by the GFF producers in China were based on preferential terms. The fact that the premium requested for exports from Egypt does not differ from the premium for exports from China clearly shows that country risk was not taken into account by Sinosure when determining its price for the export credit insurance, and that the findings applicable to the exports from Jushi China also apply to Jushi Egypt.

(807) Consequently, the Commission concluded that Sinosure was a public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law or was entrusted or directed by the GOC. Furthermore, a benefit was provided to the Jushi Egypt, since the insurance was provided at rates below the minimum fee needed for Sinosure to cover its operational costs.

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

(809) However, without prejudice to a finding of countervailability of this programme, given that the potential resulting countervailable benefit would be insignificant, the Commission decided not to assess this programme further.

### 4.5. **Provision of goods for less than adequate remuneration**

#### 4.5.1. *Provision of power for less than adequate remuneration*

(810) No benefit was found for the provision of electricity for less than adequate remuneration since electricity rates are set at national level in Egypt, and the exporting producers pay the usual rate for industrial users within a certain voltage range.

(811) No benefit was found for the provision of gas for less than adequate remuneration. Rates for gas are set for certain industrial sectors, but the exporting producers fall within the residual category of industrial users, which does not benefit from the lowest rate. Hence, there is no specificity, and no benefit.

#### 4.5.2. *Provision of land for less than adequate remuneration*

##### 4.5.2.1. Purchase of land by Jushi Egypt

(a) Legal basis

(812) The legal bases of this programme are:

— Law No. 83/2002 on Economic Zones of a Special Nature ('Law 83/2002')

— Decree of the President of the Arab Republic of Egypt on Law No. 27/2015 Amending some Provisions of Law of Economic Zone of Special Nature issued by Law No. 83/2002 ('Law 27/2015')

— Law No. 8 of 1997 On Investment Guarantees and Incentives ('Law 8/1997')

— Investment Law as Enacted by Law No. 72 of 2017

— The Prime Minister's Draft Resolution No. (2310) of 2017 Concerning issuing the Executive Regulations of Investment Law Issued by virtue of Law No. 72 of 2017.

(b) Findings of the investigation

(813) According to Article 5 of the Law 83/2002, as amended in 2015, in the SCZone, "*the ownership of land shall be vested in the Authority within the zone*". Since 2015, it is not possible anymore to purchase the full ownership of land from the General Authority. Currently, the General Authority only provides usufruct rights of the land to the Main Development Company ('MDC'), an Egyptian developer. The MDC then puts the usufruct of the land up for bidding to sub-developers such as TEDA. These sub-developers subsequently rent out the land to the companies located in the zone.

(814) However, when Jushi Egypt started to build its plant in 2011, it was still possible to acquire full ownership of land from the Egyptian authorities. At the time, Jushi Egypt bought a plot of land from TEDA. TEDA in turn bought this plot in 1998 through its predecessor, the Egypt China Joint Venture Company, from the Suez Governorate at an extremely low price (less than 1 USD/$m^2$), and without any bidding procedure. Following the initial purchase in 1998, TEDA invested in basic infrastructure to make the undeveloped desert land viable for industrial projects.

(815) In this respect, the Commission ascertained whether the ECJV and TEDA were public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. The Commission thus sought information about State ownership as well as formal indicia of government control in these entities. It also analysed whether control had been exercised in a meaningful way.

(816) First, the Commission found that ECJV and TEDA were related entities, and that they were both fully State-owned. Indeed, as mentioned in recital (649) above, Tianjin TEDA is an SOE under the Tianjin Municipal Government, which formed a joint venture with the Egyptian Suez Canal Administration, the National Bank of Egypt, and four more Egyptian State-owned enterprises to create the ECJV, in order to develop and construct the economic zone. The Chinese side held 10 % of the shares of the ECJV, and the Egyptian side 90 % ([189]). Furthermore, as mentioned in recital (651) above, in October 2008, Tianjin TEDA established a joint venture with the China-Africa Development Fund, a subsidiary of the CDB, to set up China-Africa TEDA Investment Co., Ltd. ('China-Africa TEDA'), as the main Chinese investment entity in the cooperation zone. China-Africa TEDA united with the ECJV to create a new company, TEDA, in order to drive the development of the SETC-Zone in Egypt. This time, the Chinese side held 80 % of the shares, and the Egyptian side (represented by the ECJV) 20 %.

(817) The Commission further established the existence of formal indicia of control by the State of those investors. Since both entities are fully State-owned, the Chinese and Egyptian governments formally have full control over them. In particular, in the absence of specific information indicating otherwise, the Commission considered that managers and supervisors in the entities at issue are assumed to be appointed by and accountable to the State as is the case for State-owned companies in those countries.

(818) The initial allocation of the land to the ECJV for a purchase price of less than 1 USD/$m^2$ in accordance with the applicable legal framework thus certainly involved a financial contribution by the GOE ([190]). The subsequent transfer of land between the ECJV and TEDA was in fact a transaction between related companies, based on a transfer price involving the same actors on both sides of the transaction.

(819) Finally, concerning the sale of the land by TEDA to Jushi Egypt, the Commission noted that the majority shareholder of TEDA, owning 75 % of the shares, is the China Africa TEDA Investment Company, who also holds the majority of the seats on the Board of Directors of TEDA. The ultimate controller of the China Africa TEDA Investment Company is the CDB, which has already been designated as a public body in recital (257) above. Furthermore, according to the information provided by TEDA in the questionnaire reply, the business activity of the China Africa TEDA Investment Company consists of "*investments in various projects within and outside the country* (i.e. China)…*Such projects are subject to approval in accordance with the law and may be subject to business activities after the approval of the relevant departments*". This wording refers to the approvals required from MOFCOM and the NDRC for any Chinese outward investment, and shows that the China Africa TEDA Investment Company carries out the GOC's industrial policies by investing in industrial projects approved and encouraged by the GOC. TEDA itself describes its vision and mission as follows: "*Vision: becoming an investment and operation player of an international industrial park supporting China, starting from Egypt, and facing Africa and even the whole world. Mission: pushing forward Chinese enterprises going outside, then pushing forward the internalization process of Chinese enterprises*" ([191]) . TEDA also extensively refers in its publications to the attention, motivation and support from MOFCOM and Tianjin Municipal Government in the execution of its activities.

([189]) Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019 ('State Council Report').
([190]) Article 38(bis A) of the Law 83/2002, as amended in 2015; Article 20(bis) and Article 28 of Law 8/1997.
([191]) TEDA 10 Years Summary Report (2008-2018), p. 4.

(820) In light of the above considerations, the Commission established that the state controlled entities that provided land to Jushi Egypt are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. Indeed, the actions taken by TEDA under the direct control of the GOC and in the context of the GOE-GOC close cooperation can be attributed to the GOE as explained before in Section 4.2.3.1 as part of the set of preferential support to the GFF producers in Egypt.

(821) In addition, even if the State-controlled entities were not to be considered as public bodies, on the basis of the evidence in recitals (815) to (820) as well as the evidence relating to the close cooperation between the GOC and the GOE, the Commission established that they would be considered entrusted or directed by the GOC and the GOE to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. Thus, their conduct would be attributed to the GOE in any event.

(822) Following definitive disclosure, both the GOE and the exporting producers stated that the Commission cannot consider that conducts of Chinese public bodies or private bodies entrusted or directed by the GOC constitute subsidies under the basic Regulation, as these conducts are not attributable to the government of the country of origin or export.

(823) However, as already mentioned in recitals (816) to (820) above, the Commission considered that TEDA is not solely a Chinese public body, but a public body jointly controlled by the GOC and the GOE, and that actions under direct control of the GOC can be attributed to the GOE as well in view of the close cooperation of the GOC and the GOE. In this respect, the Commission noted that the shareholders of TEDA also include state-owned Egyptian public bodies, such as the the Egyptian Suez Canal Administration and the National Bank of Egypt, which are represented in the Board of Directors of TEDA. This shows that the GOE was in a position to acknowledge and adopt actions of TEDA. Finally, as mentioned in recital (821) above, even if TEDA were not to be considered a public body, the Commission considered that it would be entrusted or directed by the GOC and the GOE.

(824) In addition to the provision of the land in 2011, Jushi Egypt purchased an adjacent plot of land from an Egyptian development company in 2016. This Egyptian developer in turn also had bought this land from the same plot of land of land awarded to the Egypt China Joint Venture Company in 1998. The Commission analysed whether the Egyptian developer had been entrusted or directed by the GOE to grant land to Jushi Egypt at preferential terms within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(825) In this respect, the Commission noted that there was a clear involvement of the authorities of the SCZone in the sales transaction to Jushi Egypt. Indeed, the Egyptian developer needed to sell its plot because it did not have sufficient means to develop the land according to the industrial development clauses of its initial purchase contract with the GOE. The internal correspondence of Jushi Egypt shows that the sale of the plot of land was negotiated with and approved by the General Authority of the SCZone. The management of Jushi Egypt also assessed in this correspondence that the Egyptian developer would probably have gotten a better price for its land if it had been allowed to offer it freely on the market. This is particularly relevant given the fact that the plot owned by the Egyptian developer was adjacent to the plot already owned by Jushi Egypt, and thus would allow Jushi Egypt to expand its production activities within a single location. In this context, article 3 of the purchase contract states that if the contract *"is not approved by the General Authority for Suez Canal Special Economic Zone within six months, Party B (Jushi Egypt) shall have the right to consider Party A's (the developer) breach of this Contract and then this Contract shall be automatically cancelled"*. Furthermore, according to article 7 *"Party B shall submit a written application to the General Authority for Suez Canal Special Economic Zone for the establishment of an industrial project by Party B on behalf of Party A and obtain approvals…The General Authority for Suez Canal Special Economic Zone agrees to conduct land registration in the name of Party B, examine and approve the final land sales contract, and apply for land certificate in the notary office in the name of Party B."*

(826) In addition, Jushi Egypt offered to pay any penalties, which were due by the Egyptian developer to the General Authority of the SCZone. However, this penalty fee was reimbursed to Jushi Egypt by the General Authority afterwards.

(827) The GOE thus used a private body as a vehicle to carry out a financial contribution whereby the private body had no choice but to sell the land to Jushi Egypt and at the price and other conditions stipulated by the GOE. Therefore, the Commission concluded that, the Egyptian developer had been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies also enshrined in the Cooperation Agreement and provide land at a preferential price to Jushi Egypt.

(828) The Commission requested the GOE to provide statistics on land prices applicable in the SCZone, as well as the tender procedures relating to the purchase transactions by the developers. However, the GOE could not provide any statistics or any tender procedures relating to the period or the transactions considered. The GOE was only able to provide information relating to the tender procedures for the award of usufruct to TEDA of another piece of land in 2016.

(829) Following final disclosure, the GOE and the exporting producers claimed that the Commission relied on incorrect facts in order to conclude that Wadi Degla was entrusted or directed by the GOE. More specifically, they claimed that:

— Wadi Degla is not a developer, but a producer of polyethylene pipes and fittings;

— Wadi Degla did not purchase the land in question from the GOE, but from the Egyptian Chinese Company;

— The General Authority of the Suez Canal Economic Zone did not participate in the negotiations between Jushi Egypt and Wadi Degla but, simply, approved the sale of land and put its stamp on it;

— Internal discussions between Jushi Egypt's staff only explain why Wadi Degla wanted to sell its land quickly. Wadi Degla wanted to sell its land quickly and was willing to accept a low price because it had not developed the land in line with its legal obligations. As a result, Wadi Degla was fined by the GOE for failing to respect its obligations. The GOE refunded the fine paid by Jushi Egypt because Jushi Egypt did develop the land. As Jushi Egypt respected its legal duty to develop the land, there was no reason to hand down a sanction. Therefore, Wadi Degla's action of selling the land was a mere side effect resulting from the GOE fining Wadi Degla, which does not constitute entrustment or direction.

(830) On the first point, according to the information available to the Commission on the company's website ([192]), Wadi Degla is a real estate developer with projects in various locations, including Ain Sokhna, not a producer of pipes and fittings.

(831) On the second point, the Commission does not dispute that Wadi Degla purchased the land in question from the Egyptian Chinese Company. However, the transaction under consideration is a different one, namely the sale from Wadi Degla to Jushi Egypt. Furthermore, if the history of all transactions should be taken into account, it must be added that the Egyptian Chinese Company purchased the land from the GOE in the first place.

(832) On the third and fourth points, the Commission acknowledged that Wadi Degla wanted to sell its land among other reasons because it had not developed it in line with its legal obligations. However, as stated in recital (825), the company could also have sold its land on the free market for a better price. The internal correspondence of Jushi management does not only explain why Wadi Degla wanted to sell its land, but also clearly indicates that the General Authority of the SCZone was involved in the negotiations for the sales transactions. More specifically, these e-mails state among others that Jushi Egypt "*reached consensus*" with Wadi Degla and the Chief legal counsel of the SCZone, that the contract "*has already been approved by the Chairman of SCZone*", and that the SCZone would "*submit a special application to the Office of the Prime Minister*" for the reimbursement of the fine. Consequently, these claims were rejected.

([192]) http://www.wadidegla.com/Wadi-Degla-Holding/en/spage/page/223 (last accessed 2.4.2020)

4.5.2.2. Rental of buildings by Hengshi Egypt

(833) The Commission also found that Hengshi Egypt rents buildings from TEDA. As mentioned above, TEDA initially purchased the land for these buildings from a related company, which in turn bought it at a preferential price from the Egyptian authorities. The investigation revealed that even though TEDA is making profits on its rental contracts, the rental prices charged by TEDA are still less than half of the average price charged by competitors in the Suez Canal Economic Zone. Thus, as concluded in recitals (820) and (821), the Commission considered that the renting of buildings by TEDA for less than adequate remuneration to Hengshi Egypt is attributable to the GOE.

(834) Following definitive disclosure, Hengshi Egypt stated that the Commission countervailed buildings rented out by Nile Group Plastic Industry to Hengshi Egypt (SN4 and 6 of Annex 2.3 sheet 'Hengshi Egypt') without establishing that Nile Group Plastic Industry is a public body or a private body entrusted or directed by the government of the exporting country. In addition, the price requested by Nile Group Plastic Industry was consistently lower than TEDA's prices.

(835) In fact, the transactions referred to by the company relate to buildings owned by TEDA and rented by TEDA to Nile Group Plastic Industry. These buildings were sublet for a short, temporary period of 2 months by Nile Group Plastic Industry to Hengshi Egypt according to a friendly agreement between the two companies. Indeed, Hengshi Egypt took over the rental from TEDA of the buildings initially occupied by Nile Group Plastic Industry, but moved into the premises slightly before the end of the rental contract between Nile Group Plastic Industry and TEDA. After this short transition period, Hengshi Egypt continued to rent the same space directly from TEDA. Furthermore, the rental price set between Nile Group Plastic Industry and Hengshi Egypt followed the price list set by TEDA for similar buildings in 2017. Since the transaction concerned a temporary arrangement, under which TEDA remained the owner of the buildings rented out, and since the rental prices remained within the rental price range set by TEDA, the Commission did not accept the company's claim in this respect.

4.5.2.3. Conclusion

(836) The findings of this investigation show that prices for land provision and acquisition in the SCZone are determined by the Egyptian authorities, and that the pricing applicable in the SCZone is non-transparent. Land was awarded or rented at preferential terms by public bodies or by private bodies entrusted or directed by the State.

(837) The provision of land for less than adequate remuneration by the GOE should therefore be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies.

(838) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation, since the provision of land to companies in the SETC-Zone for less than adequate remuneration is reserved to certain companies in a particular geographical area.

4.5.2.4. Calculation of the subsidy amount

(839) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by the exporting producer for land and the amount that should normally have been paid on the basis of a market-based benchmark. The benefit for the purchase of land by Jushi Egypt was calculated as follows:

(840) As mentioned in recital (828) above, the GOE was not able to provide any information or statistics on purchase prices for land. The GOE they only provided information on transactions regarding land usufruct. Indeed, in 2016, a real estate valuation was performed by a committee of experts in order to establish a pricing map for the usufruct of land in the SCZone. Based on this study, the average yearly value of the land usufruct in the wider Suez Canal Economic Zone was determined. On the other hand, TEDA signed a land usufruct contract with the MDC in 2016 to further expand the existing SETC-Zone by 6 $km^2$. The Commission multiplied the average yearly value of the land usufruct in the SCZone by the duration of the land usufruct contract signed with TEDA for the expansion zone of 6 $km^2$. The Commission considered that this represented the total purchase value of undeveloped land for the developer.

(841) In order to take into account the cost for the developer of developing the land, TEDA's investment cost per $m^2$ was then calculated based on publicly available information. According to this information ([193]), an investment of 230 million USD was foreseen for the expansion area of 6 $km^2$. A profit for the developer was also added.

(842) The resulting price per $m^2$ of developed land was applied to the area bought by Jushi Egypt, and compared with the purchase price actually paid by Jushi Egypt. For the plot of land bought in 2011, the 2016 purchase price was corrected for inflation and GDP evolution. This evolution was calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Egypt as published by the IMF for 2016. For the plot of land bought in 2016, a mark-up was made to take into account the convenient geographical location of the plot for the buyer (next to Jushi Egypt's existing facilities).

(843) In accordance with Article 7(3) of the basic Regulation on allocating subsidy amounts for assets, which are not depreciated, the subsidy amount has been allocated to the investigation period by applying to an interest-free loan a publicly available and appropriate lending interest rate in Egypt during the investigation period, as published by the World Bank ([194]).

(844) Following the definitive and the additional definitive disclosures, Jushi Egypt claimed that the Commission made several errors in determining the benchmark for the sale of land, namely:

(1) The internal correspondence concerning the purchase of the plot of land from Wadi Degla shows that Jushi Egypt evaluated the price of the land at 1 000 to 1 200 EGP/$m^2$. This price should have been taken as a benchmark in the first place.

(2) The value of an usufructus over the duration of an usufructus is not comparable to the full ownership of the land as an usufructus is by nature different from full ownership.

(3) The hypothetical land valuation commissioned by the General Authority of the Suez Canal Economic Zone is not a comparable benchmark as it is a hypothetical price at which the General Authority of the Suez Canal Economic Zone has not managed to sell any parcel of land.

(4) The full value of the usufructus right over a parcel of land is not the yearly rental price of the usufructus multiplied by the total duration of the usufructus, but the yearly rental price of the usufructus divided by the average return on investment. This is so because the initial yearly amount of the usufructus will lose value each year due to inflation. As a result, the Commission must divide the yearly price per square meter in USD by the average profit to be expected by TEDA for the land.

(5) The investment cost of 230 million USD announced by TEDA Egypt consists of the price of the usufructus of the land as well as investment for building residential areas, services area and factories. The parcels of land purchased by Jushi Egypt contained none of these, as Jushi Egypt purchased bare land.

(6) The Commission must use the exchange rate applicable at the time of sales to convert the benchmark in USD into EGP.

(845) On the first point, the Commission could not use the price proposed by the CNBM Group, since it concerned a subjective internal assessment of the exporting producer in question, not corroborated by any supporting evidence based on market parameters, and could thus not be considered a reliable proxy for the value of the plot of land.

(846) On the second point, the Commission acknowledges that full ownership is different from usufructus, but since the GOE was not able to provide any information or statistics on purchase prices for land, the Commission considered that this was the best available information to determine the benchmark.

([193]) Public Go-Global Service of the Department of Commerce of Guangdong Province, http://go.gdcom.gov.cn/article.php?typeid=31&contentId=13961 (last accessed on 2 January 2020), as well as "China-Egypt TEDA Suez Economic and Trade Cooperation Zone", Presentation on http://www.bern-cci.ch/export/fr1/marche.html (last accessed on 2 January 2020).

([194]) World Bank Report of Doing Business 2020, Egypt, Arab Rep., see also https://data.worldbank.org/indicator/FR.INR.LEND?locations=EG

(847) On the third point, the Commission recalled that the valuation in question consisted of an independent study commissioned by the GOE, which provided the intrinsic value of the land, namely the price at which land should normally be sold. The fact that land parcels were not actually sold at this price by the GOE does not affect its intrinsic value.

(848) On the fourth point, the Commission deemed that the value of a usufruct is normally determined as a percentage of the market value of the underlying asset (i.e. the value of the full ownership) depending on the duration of the usufruct, i.e. the longer the usufruct, the closer the value of the usufruct will be to the value of full ownership. Since full ownership of land is per definition indefinite in time, by multiplying the yearly usufruct rate by 50 years, the resulting benchmark calculated by the Commission would therefore always be below the actual value of the full ownerhip. In addition, the Commission noted that in the concrete example of the usufruct contract signed by TEDA in 2016, the full amount of the usufruct had to paid as a lump sum at the start date of the usufruct right. As there were no yearly rentals as such in practice, the claim thus becomes void.

(849) On the fifth point, the Commission noted that Jushi Egypt indeed purchased land without buildings on it. However, this land already had access to all necessary utilities, roads, sewage treatment, public lighting, security, and other service facilities provided by TEDA. The price for a piece of land in a well-connected and developed zone cannot be compared with the price of a bare piece of desert. In addition, revenues of real estate developers, such as TEDA, normally stem from the sale of land and rental of the buildings and infrastructure provided within the zone. If the development cost was not factored into to the market price of the land, then there would be no incentive for developers to make any investment in the first place.

(850) On the last point, the Commission noted that it adjusted the 2016 price based on the evolution of the Egyptian GDP in real terms since 2011. This means that inflation caused by the devaluation of the EGP compared to the USD was already factored into the GDP adjustment. Further adjustments for the exchange rate changes would thus result in double counting.

(851) Based on the above arguments, the claims of the company were rejected. However, when reviewing the company's claims, the Commission noted that it made a clerical error in the interest rate used for the benefit calculation. This was adjusted accordingly.

(852) The benefit for the rental of land by Hengshi Egypt was calculated by comparing the average rental price charged by competitors in the Suez Canal Economic Zone, based on a market study commissioned by TEDA in 2018, to the rental price actually paid by Hengshi Egypt in 2018.

(853) Following the definitive and the additional definitive disclosures, the GOE and Hengshi Egypt argued that the Commission failed to establish that the leasing of buildings to Hengshi Egypt conferred a benefit because (i) the Commission did not compare TEDA's rental prices to Hengshi Egypt with that of a competitor in the Suez Canal Economic Zone, as it used the prices of IDG "6th of October", which is not located in the Suez Canal Economic Zone, but in a free zone in West Cairo (ii) the Commission relied on an internal indicative study; and (iii) the Commission failed to establish that TEDA Egypt's prices are more advantageous than the market prices in the same geographical area, because other companies set up in the vicinity, but outside TEDA's zone, decided not to rent from TEDA even if prices were low.

(854) Concerning the first point, the Commission notes that the company erroneously thought that the Commission based the benchmark rental price on the price of IDG "6th of October". As mentioned in recital (845) above, the Commission actually used the average rental price, i.e. 88 EGP/$m^2$, charged by several competitors in the Suez Canal Economic Zone during the year 2019, based on a market study commissioned by TEDA. This price was then adjusted by the annual price increase of 10 % mentioned in the same study to bring it back to the investigation period. The resulting benchmark of 80 EGP/$m^2$ happens to be equivalent to the price charged by IDG "6th of October", but was not based on the price charged by IDG as such.

(855) Concerning the comparability of the competitors in the study in terms of location, the Commission noted that according to its website, IDG has several projects located in various areas, of which one is indeed located in the West Cairo area. However, it also has a project in Port Said in the Suez Canal Economic Zone. On the other hand, another competitor mentioned in the study, SIDC, is 100 % located in the Suez Canal Economic Zone ([195]). In the end, the Commission considered that all prices for all locations included in the study were comparable, as TEDA itself decided to compare its rental conditions with these companies/projects. In this sense, the Commission disagreed with the second point raised by Hengshi Egypt, namely that an internal study, used to decide on the yearly increase of rental prices, should not have been used to set a benchmark price. The Commission noted that the chapter under which the price comparison was made is called "market study". TEDA thus considered that it was making a study of the market on which it operates. Furthermore, TEDA included its own rental data in the table, which was used by the Commission, thus showing that it was referencing itself compared to other developers. Finally, in the conclusions, TEDA mentioned that one of the positive points of raising its prices for the year 2019 was to "adapt with the market prices". Based on this evidence, the Commission concluded that the internal study was a reliable proxy for comparable prices on the market from the perspective of TEDA, and that the claim should consequently be rejected.

(856) With regards to the third point raised by the GOE and Hengshi Egypt, the Commission deemed that the fact that other companies in the vicinity decided not to rent from TEDA is not a reliable indicator of the lack of competitiveness of its rental prices. Indeed, no further evidence was provided on the ownership of the land used by these companies (purchase, usufruct, rental) or on the underlying reasons for their decision to set up outside the TEDA Zone. For example, Saint Gobain is a company located on large premises with a manufacturing activity that would probably have required more space and specific features that could not be offered by TEDA's standard rental factories. In this respect, the Commission also wishes to highlight that all of the manufacturing entities in the zone managed by TEDA are either fully or partially owned by Chinese legal or natural persons, and that the mission of TEDA is to push forward Chinese enterprises going outside, as mentioned in recital (819) above. To the knowledge of the Commission, none of the companies in the vicinity mentioned by Hengshi Egypt is Chinese-owned.

(857) Finally, Hengshi Egypt objected to the fact that the Commission had used the same rental price for factories and warehouses, as well as for contracts started before the investigation period. The Commission recalls that the market study made by TEDA only provided a price for "factories & warehouses" taken as a whole. As such, the Commission as well could not make a distinction between prices for factories and warehouses. Furthermore, the Commission noted that it used the prices actually charged by TEDA during 2018. The fact that TEDA had not adapted its rental prices in 2018 for certain contracts is in this sense irrelevant. These claims were thus rejected.

(858) As a result, the final subsidy amount found for the provision of land for less than adequate remuneration amounted to 1,93 %.

### 4.6. **Revenue foregone**

#### 4.6.1. *Enterprise income tax privileges*

(a) Legal basis:

— The Income Tax Law as enacted by law 91 of 2005; and,

— Ministry of Investment Decree No. 16 of 2017 adding an addendum (A) entitled 'The effects of changes in currencies exchange rates' to Egyptian Accounting Standard No. 13.

(b) Findings of the investigation

(859) Jushi and Hengshi Egypt are subject to the normal Egyptian income tax of 22,5 %.

(860) In 2016, the Egyptian government decided to change the fixed exchange rate of the Egyptian pound ('EGP') into a floating exchange rate, based on a recommendation from the International Monetary Fund. As a result, the Egyptian pound lost around half of its value against other major currencies such as the USD and the EUR within a month. In order to address this sudden currency fluctuation, the GOE issued a special accounting standard, as well as a special tax rule for treating foreign exchange differences. As a result, companies were allowed to deduct foreign exchange differences due to the devaluation of the EGP from their taxable income more extensively.

([195]) For further details, see : https://www.idg-egypt.com/ for IDG and https://sidc.com.eg/ for SIDC (last accessed on 1.4.2020).

(861) Although this legislation was generally applicable to all companies in Egypt and was meant to offset the negative effects of the devaluation of the Egyptian currency, it *de facto* created a substantial benefit for a limited number of companies in Egypt, i.e. companies that are export oriented and operate their business almost entirely in foreign currencies such as USD or EUR. This particular category of companies did not incur any actual loss as a consequence of the devaluation of the EGP, but could benefit from the special accounting standard issued by the GOE for tax purposes. As a consequence, companies operating their business in a foreign currency appear to be loss making for tax purposes even though their financial situation can show healthy profits. On the contrary, Egyptian companies operating their business in EGP have suffered actual losses that had a real impact on their business, which was addressed by the special tax rule issued by the GOE.

(862) Jushi and Hengshi Egypt benefitted from this measure, since the investigation showed that they operate their business almost exclusively in USD or EUR and have almost no transactions in Egyptian pounds. Indeed, they are almost exclusively export-oriented, import almost all of their equipment, and their loans as well as a major part of their material purchases are denominated in foreign currencies. Indeed, as a result, the losses registered by Jushi and Hengshi Egypt because of the devaluation of the EGP, in particular because of the significant foreign currency loans, are not actual and are only used for tax purposes to decrease the taxable income.

(863) In addition, the tax deduction was supposed to be a temporary measure, applicable only to transactions affected at the time of the devaluation. Nevertheless, in the investigation period, Jushi and Hengshi Egypt still deducted substantial amounts from its taxable income under realized and unrealized foreign exchange differences. As a result, they were less profitable or even loss-making according to their income tax statements, even though their financial statements showed a healthy and sustainable profit.

(c) Conclusion

(864) In light of the above considerations, the Commission concluded that these tax benefits constitute revenue foregone by the GOE in the sense of Article 3(1)(a)(ii) of the basic Regulation and provided a benefit under Article 3(2) of the basic Regulation.

(865) In addition, they are *de facto* specific to the exporting producers Jushi and Hengshi Egypt, in accordance with Article 4(2)(c) of the basic Regulation, as they are used predominantly by a limited group of companies operating almost exclusively in foreign currencies.

(866) Following final disclosure, the GOE and the exporting producers noted that the 2016 special tax rule for treating foreign exchange losses as a tax loss cannot constitute a subsidy, as it does not confer a benefit and is not specific. First, as this tax rule was adopted to offset a loss caused by the government, no benefit is conferred. Second, as all entities similarly affected by the loss caused by the government could have recourse to this tax treatment, this scheme cannot be considered to be specific

(867) The Commission acknowledged in recital (861) above that this legislation was generally applicable to all companies in Egypt and was meant to offset the negative effects of the devaluation of the Egyptian currency. However, the Commission also stated that companies that are mainly export oriented and operate their business almost entirely in foreign currencies such as USD or EUR benefited disproportionately from this legislation. Indeed, these companies did not incur any significant actual losses as a consequence of the devaluation of the EGP, since the exchange rate losses suffered on their purchases/liabilities in USD could be offset by the exchange rate gains on their sales in USD. As a result, instead of offsetting a loss caused by the government, the legislation actually created a tax benefit, which specifically applied to this type of companies. The claim was therefore rejected.

(d) Calculation of the subsidy amount

(868) The benefit to the exporting producers was established on the basis of the information contained in the 2018 income tax declaration. Firstly, the amount deducted from the taxable income under the provision mentioned above was established. Secondly, the generally applicable tax rate of 22,5 % was applied to this deducted amount. Finally, this amount was expressed as a percentage of the total turnover of the exporting producers in the investigation period.

(869) The subsidy amount found for this tax programme is 1,43 %.

4.6.2. *VAT exemptions and import tariff rebates for imported equipment*

(870) This programme provides an exemption from VAT and import tariffs for imports of equipment used in the production process of the companies located in the SCZone.

(a) Legal basis

(871) The legal bases of this programme are:

— Law No. 83/2002 on Economic Zones of a Special Nature ('Law 83/2002');

— Decree of the President of the Arab Republic of Egypt on Law No. 27/2015 Amending some Provisions of Law of Economic Zone of Special Nature issued by Law No. 83/2002 ('Law 27/2015');

— Investment Law as Enacted by Law No. 72 of 2017;

— The Prime Minister's Draft Resolution No. (2310) of 2017 Concerning issuing the Executive Regulations of Investment Law Issued by virtue of Law No. 72 of 2017:

— VAT Law as Enacted by Law No. 67 of 2016;

— Executive Regulations of the VAT Law, Decree of the Ministry of Finance No. 66/2017.

(b) Findings of the investigation

(872) According to Article 22 of Law 83/2002, as amended by Law 27/2015, the SCZone is part of a separate customs area by virtue of a decree issued by the Minister of Finance. This separate customs area functions under the supervision of a supreme customs committee, established by the Chairman of the Authority of the zone.

(873) Furthermore, according to article 42 of Law 83/2002, imported equipment, tools, or apparatus shall be exempted from taxes and duties as long as they are allocated to produced goods or services for the licensed activity within the SCZone. On the other hand, as the SCZone is not an export only zone, all taxes and duties need to be paid for any products released into the domestic market outside of the SCZone.

(874) Finally, according to the relevant laws, companies located outside of the SCZone pay import VAT upfront and net it against the VAT on their domestic salesor, if applicable, apply for a refund when finished goods are exported. For companies located in the SCZone, VAT is withheld and is thus initially not charged in accordance with the letter of understanding on this point between the Ministry of Finance and the General Authority of the SCZone.

(875) The Commission found that VAT and import duties on imported equipment had indeed been withheld in the sampled companies since 2017 and throughout the investigation period. Before 2017, the companies actually paid their import duties and VAT/general sales tax ('GST') on imported equipment, since they had not yet adhered to the SCZone regime. However, through the 2017 opt-in of the company to the SCZone's tax and administrative regime, the exporting producers benefited from the preferential tax treatments within the zone, including the VAT and tariff exemptions.

(876) As a general rule in Egypt, companies buying machines subject to the 5 % VAT rate should utilize the amounts as a credit against future payments ([196]). However, where the credit balance is retained for more than 6 consecutive tax periods (months), which is the case of companies heavily engaging in exports that cannot offset any input VAT as a credit against future payments, the registered person shall apply in writing, showing the amount of the credit balance. The Egyptian Tax Authority should check the correctness of the balance and refund within 45 days of the date of submitting the application.

([196]) Art 22, law 67 of 2016.

(877) However, the investigation revealed that in practice, the GOE does not reimburse the VAT paid upfront so that the tax constitutes an actual cost for such companies. Indeed, an analysis of the GST/VAT credits of Jushi Egypt listed in the 2016 - 2018 Annual Reports showed that amounts due by the GOE to Jushi Egypt were still outstanding after several years ([197]) and Jushi Egypt confirmed that it did not expect to receive the reimbursements ([198]). In the case of Hengshi Egypt, the company applied for a refund of VAT/GST on equipment and materials. A refund was finally received for equipment purchased up to 3 years earlier, but the amounts reimbursed did not cover the amounts requested, and no evidence was provided on the reasons for reimbursing some items, but not others. This shows that reimbursement of VAT by the GOE is at best received with a significant delay, and in any case arbitrary and not transparent.

(878) It also needs to be considered that since equipment used in the manufacturing of products, including the product under investigation, will in all likelihood be used for its entire useful life within the Egyptian territory without being re-exported or sold domestically, there is no rationale for granting an exemption from customs duties and VAT on its purchase, other than benefiting the companies located in the SCZone. This therefore constitutes revenue foregone in the form of customs duties and VAT not payable without any justification, as this equipment is used for the local production of the product under investigation on which customs duty and VAT are normally due for producers located outside of the SCZone.

(879) Therefore, since the exporting producers became subject to the preferential treatment under the legal regime of the SCZone in 2017, they benefitted from a *de facto* VAT exemption on the import of machinery. This exemption constitutes revenue foregone because, as stated in the preceding paragraphs, even though VAT should eventually be refunded, in essence there is no evidence that the GOE reimbursed Jushi Egypt the VAT paid on machinery in the past. The evidence available indeed showed that Jushi Egypt was not obtaining those refunds when it was located outside the zone.

(880) Companies located in the SCZone, which do not have to pay VAT upfront, receive a *de facto* VAT exemption that saves them from incurring an actual cost in addition to saving the administrative burden of having to claim VAT reimbursements or offsetting VAT credits. The same conclusion applies even more clearly with respect to the exemption of paying import tariffs on imported equipment.

(881) Following final disclosure, the GOE and the exporting producers raised various issues. First, it is not because Jushi Egypt and Hengshi Egypt did not always receive full timely VAT reimbursements from the GOE in the past (when they were not within the Suez Canal Economic Zone) that there is now a revenue forgone with respect to the tax treatment that applies to them under the Suez Canal Economic Zone.

(882) Second, the Commission compared the challenged tax treatment with a hypothetical tax treatment extrapolated from Jushi Egypt and Hengshi Egypt's situation before theyentered the Suez Canal Economic Zone, instead of comparing the challenged tax treatment with Egypt's VAT rules on the importation of equipment and raw materials.

(883) Third, the Commission did not raise any question to, or discuss with, the GOE regarding the administration of VAT in Egypt during the verification visit.

(884) Fourth, the GOE recalled that Article 27 of the SCM Agreement calls for a special and differential treatment of developing country Members of the WTO. The fact that the GOE did not always have the resources to pay back the due amount of VAT credit in time should thus not be punished by the Commission.

(885) Fifth, the Commission itself recognized that Jushi Egypt and Hengshi Egypt eventually received from the GOE part of the VAT paid before joining the Suez Canal Economic Zone. Therefore, the full amount of VAT normally payable could not constitute the benefit. Furthermore, as Jushi Egypt's VAT credit balance is now decreasing since Jushi Egypt receives more VAT receivable, the full amount of VAT normally payable would have been partially offset against this VAT receivable. Finally, in early 2020, the amounts due for VAT on imports by Jushi Egypt for the period 2017-2018 have been settled and offset against Jushi Egypt's VAT credit by the GOE. As a result, there is no more benefit.

([197]) Indeed the majority of the VAT/other indirect tax receivables reported in the 2016-2018 Annual Reports refer to foreign purchases under the 10 % GST regime, which was in force until July 2016.

([198]) The World Bank report 'Doing Business in Egypt 2020' ranks Egypt in 156th place out of 190 in tax matters.

(886) Sixth, the VAT credit incurred by the exporting producers concerned VAT for machinery and not for raw materials. Due to their large initial investment for fixed assets, the GOE was not in a position to fully reimburse them the VAT incurred on machinery in a timely fashion. However, this was not the case for raw materials so that the VAT exemptions on raw materials did not constitute a subsidy.

(887) Finally, since the Commission correctly considered that no import duties should have been paid with regard to inputs for exported products, the Commission should have applied the same reasoning with regard to VAT on inputs for exported products. It follows that the Commission must, in order to calculate the benefit, allocate the amount of VAT due during the investigation period to the quantities of materials used for the production of goods sold on the domestic market only.

(888) In response to these claims, the Commission would like to clarify that its aim is not to punish the GOE for a lack of resources or to criticize the VAT system in Egypt as such. At the same time, the Commission noted that Article 27 of the SCM Agreement does not play a role in the claim by the GOE in this context. The most relevant provision applicable in countervailing duty proceedings is paragraph (10) of Article 27, which only deals with certain *de minimis* thresholds, whereas the other provisions of Article 27 mainly deal with export subsidies of developing countries. In this case, the GOE is relying on Article 27 to justify the lack of repayment of VAT credits to taxpayers, for which this provision is irrelevant.

(889) As for the claim concerning information requests on the VAT system, the Commission requested information on the working of the VAT system in Egypt from the start of the investigation, through the questionnaire as well as during the deficiency process. Furthermore, general questions on the amount of taxes collected from the exporting producers were raised during the verification visit. The Commission therefore deemed that it had received sufficient information during the investigation on the VAT framework as such.

(890) However, the Commission noted that the VAT treatment is different for companies in the SCZone. Indeed, companies in the SCZone do not have to pay VAT upfront ('scenario 1'). In contrast, comparably situated tax payers, namely companies outside the SCZone, do have to pay VAT upfront ('scenario 2'). Whether this VAT is eventually due or has to be refunded is at that point in time irrelevant. What is important is that no revenue will initially be collected by the GOE in scenario 1, whereas revenue will initially be collected to the GOE in all cases in scenario 2.

(891) According to the relevant normative framework in Egypt, at the settlement date, the final settlement amount would be due by the companies in scenario 1, whereas part of the revenue collected by the GOE would revert back to the companies in scenario 2 (in case VAT has to be refunded). If this settlement process is swift and reliable, then the benefit of not having to pay upfront under scenario 1 would be equal to the cash-flow advantage for all the time that it would have taken for the repayment. The Commission noted in this respect that, as already mentioned in recital (876) above, the statutory deadline for such a settlement is 6 months from the date a credit is created.

(892) However, the Commission found that in practice the settlement and the corresponding refund for companies operating under scenario 2 in Egypt occurred at best with very significant delays, and that the criteria for obtaining a refund were unclear. The Commission noted in this respect that the GOE did not dispute this fact as such. The cash-flow benefit for the companies within the SCZone thus stems from the fact that no VAT revenue is collected by the GOE at all from companies within the SCZone until the final settlement, the date of which is uncertain (scenario 1), in contrast to companies outside the SCZone, where revenue is collected immediately and refunded at a much later, uncertain date in time (scenario 2). As a result, companies within the SCZone benefit from a preferential VAT treatment compared to companies outside the SCZone. The amount not collected by the GOE with respect to companies within the SCZone amount to revenue foregone or not collected in the sense of Article 3(1)(a)(ii) of the basic Regulation.

(893) To further illustrate this, in addition to the relevant VAT framework in Egypt, the Commission looked at the situation of the exporting producers before and after adhering to the SCZone. Indeed, before adhering to the SCZone, their situation was comparable to companies outside the SCZone during the investigation period as per scenario 2. In this respect, the GOE did not dispute the fact that Jushi Egypt had accumulated a very significant VAT credit before it adhered to the SCZone, and that the GOE was not in a position to reimburse this credit. The VAT credit situation of Jushi Egypt, which was created before it adhered to the SCZone, thus shows that the situation described in the previous recital corresponds to reality for companies outside the SCZone during the IP.

(894) Concerning the fifth point raised by the GOE and the exporting producers, the final destination of the goods on which VAT is applied and the fact that Jushi Egypt could offset some VAT payables against its original VAT credit over time does not alter the findings of the Commission, as they do not affect the initial difference in treatment between companies in and outside of the zone, and in any event these offsets are not linked to a proactive refund by the GOE but rather to a VAT liability which happened to have been incurred by these companies.

(895) At the same time, the Commission also acknowledged that one of the two exporting producers did receive once a tax refund concerning some of its equipment purchases, albeit outside the IP and after a delay of several years. In addition, the Commission took note that the new VAT law in Egypt was only enacted shortly before the investigation period, and that the implementing legislation was not fully in place yet during the investigation period. In view of this transitional phase, the Commission understood the GOE's argument that the settlement period for VAT reimbursements may be significantly delayed, given that the GOE is a developing country with a sub-optimal number of administration personnel in charge of the new system and with possible budgetary shortfalls that make it difficult to issue VAT reimbursements within the prescribed times. Therefore, taking into account these exceptional and hopefully temporary circumstances in Egypt, the Commission decided to take into account only the cash flow advantage to the exporting producers for the calculation of the benefit on VAT exemptions. The calculation methodology for calculating the benefit, as described in recital (899) below, was adapted accordingly.

(896) On the sixth point, the Commission noted that although Hengshi Egypt did receive at some point in time a refund of VAT paid upfront on machinery, it never received any refund for the VAT paid on materials, even though the company applied for it. The findings for VAT on machinery thus apply a fortiori to the VAT on materials. This claim was thus rejected.

(c) Conclusion

(897) In light of the above, the Commission concluded that this programme provides a financial contribution in the form of revenue forgone by the GOE within the meaning of Article 3(1)(a)(ii) as eligible enterprises are relieved from payment of VAT and/or tariffs, which would be otherwise due. It also confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation, since they are placed in a better financial position than they would be absent the scheme. In fact, without the scheme they would have paid the VAT and import tariffs upon importation of the equipment.

(898) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation, as it is not generally applicable in Egypt, and applies only to the companies located in Economic Zones of a Special Nature, such as the SCZone. The legislation pursuant to which the granting authority operates limits its access to enterprises that are located within the SCZone.

(d) Calculation of the subsidy amount

(899) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be:

(1) the amount of customs duties exempted on the imported equipment. In order to ensure that the countervailable amount only covered the investigation period the benefit received was amortized over the useful life of the equipment according the company's normal accounting procedures, except for one of the asset categories, where the amortization period was adapted to better reflect the actual useful life, as verified by the Commission services.

(2) Concerning the revenue foregone in the form of a *de facto* VAT exemption, the benefit was initially calculated by taking the full amount of VAT normally payable but not paid during the investigation period on the purchases of imported equipment (during the IP). However, as mentioned in recital (895) above, following the comment on the final disclosure, the Commission decided to take into account only the cash flow advantage to the exporting producers for the calculation of the benefit on VAT exemptions. The calculation methodology for calculating the benefit was adapted accordingly, As a result, the cash flow benefit on the VAT withheld was considered to be equivalent to the average interest rate on deposits in Egypt during the IP (12,32 %), applied to the VAT amounts which were withheld for goods purchased since 2017.

(900) Following definitive disclosure, Jushi Egypt stated that the Commission applied a customs duty of 5 % on imports of bushing in 2018, although they were subject to a 2 % customs duty in 2018. The company also argued that the Commission should have allocated the VAT on imports of machinery based on depreciation during the investigation period in accordance with Article 7.3 of the basic Regulation. The Commission accepted these claims and adapted the calculation of the subsidy amount accordingly.

(901) The amount of subsidy established with regard to this type of subsidies during the investigation period for the exporting producers was 0,13 %.

4.6.3. *VAT exemptions and import tariff rebates for imported materials*

(902) Pursuant to Law 83/2002, entities operating in a Special Economic Zone are allowed to import raw materials without paying any customs duties, sales taxes or any other taxes or duties, which would otherwise be due, to the extent that these imported products are re-exported as such or as processed into a downstream product which is then exported.

(a) Legal basis

(903) The legal bases of this programme are:

— Law No. 83/2002 on Economic Zones of a Special Nature ('Law 83/2002')

— Prime Ministerial Decree No. 1625 of 2002 Issuing The Executive Regulations for the Law of Economic Zones of a Special Nature

— Decree of the President of the Arab Republic of Egypt on Law No. 27/2015 Amending some Provisions of Law of Economic Zone of Special Nature issued by Law No. 83/2002 ('Law 27/2015')

— Investment Law as Enacted by Law No. 72 of 2017

— The Prime Minister's Draft Resolution No. (2310) of 2017 Concerning issuing the Executive Regulations of Investment Law Issued by virtue of Law No. 72 of 2017

— VAT Law as Enacted by Law No. 67 of 2016;

— Executive Regulations of the VAT Law, Decree of the Ministry of Finance No. 66/2017.

(b) Findings of the investigation

(904) As mentioned in recital (872) above, the SCZone is part of a separate customs area. According to article 42 of Law 83/2002, imported raw materials, supplies, spare parts, and any other material or components imported from overseas shall be exempted from taxes and duties as long as they are allocated to produced goods or services for the licensed activity within the SCZone. On the other hand, all taxes and duties need to be paid for any products released into the domestic market outside of the SCZone.

(905) During the investigation, the Commission found that, in line with the provisions of the above-mentioned article of Law 83/2002, both exporting producers had received waivers of VAT and import duties on imports of input materials used in the production of exported finished goods (and in particular, the product concerned).

(906) Concerning the waiver for import duties, such a setup corresponds to a duty drawback scheme as described in Annex I(i) of the basic Regulation. Pursuant to point (i) of Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

(907) In order to determine whether such excess remission existed, in accordance with Annex III, point II of the basic Regulation, the Commission requested additional information from the GOE on the duty drawback scheme in general, and more specifically on the existence and effective application of the accompanying monitoring and verification procedures.

(908) Based on the information initially received, it appeared that the GOE had put a legislative framework in place for monitoring the duty drawback system, including where applicable the refund of import duties paid. However, during the verification visits at the exporting producers, it was found that this framework was not effectively applied in practice. None of the exporting producers paid any import duties or VAT on any of their material purchases in the investigation period, be they used for domestic or for export sales of goods. Normally, a deposit needs to be made on a blocked account of the customs authorities, from which duties can be paid periodically. However, during the investigation period, no deposit was made, and no amounts were collected by the authorities.

(909) After the investigation period, Jushi Egypt made a small deposit to the Egyptian authorities, allegedly to cover excess remission for domestic sales. However, no evidence was provided that this payment was indeed made for excess remission of domestic sales, or related to domestic sales made during the investigation period. Yet, there was also evidence that Jushi Egypt received reimbursement of import duties paid in previous periods, before obtaining a waiver for import duties.

(910) After further exchanges with the GOE, the Commission received additional information, showing that in fact the monitoring and verification framework for the collection of customs duties in the SCZone was still being set up during the investigation period. For example, the Committee for the Adjustment of Import Duties Balances was only established in 2019 according to the Decree of the Head of Customs Authority No. 158, the setup of a customs inspection committee was still ongoing in 2019, and executive procedures had not been issued yet. Thus, the Commission concluded that there was no effective and proper duty drawback system in place.

(911) In addition, as mentioned in recital (876) above, VAT on imported goods is withheld instead of being paid upfront in the SCZone. Tax authorities only retain a right to reclaim VAT afterwards.

(912) The investigation also revealed that for certain inputs that Jushi Egypt used in the production process from Egyptian based suppliers, VAT was charged at the standard rate regardless of the fact that the company was based in the special zone where VAT was not normally due. These transactions did give rise to a VAT credit for Jushi Egypt. Conversely, sales of inputs between companies located within the special zone were not subject to domestic VAT regardless of whether the goods produced with such inputs would be exported or sold domestically.

(913) All these elements show that this special zone is not a classical export-processing zone, and is also different from other special free zones existing within Egypt, but it is a unique and hybrid kind of special zone with several specific features that distinguish it from other zones. The applicable laws and regulations do not appear to be applied in practice in the zone, so the Commission based its findings on its understanding of how operations in the zone work in practice.

(914) In addition and importantly, the absence of administrative authorities in charge of the administration, monitoring and enforcement of the tax system and any of the tax obligations relating to the special tax system applicable in the zone make it a unique area where the companies established therein are entirely free to follow or disregard the tax rules without any possible consequence whatsoever. Therefore, in view of the special circumstances of this zone, and on the basis of the information available, the Commission decided to consider the VAT exemptions on imported inputs as a *de facto* exemption to pay such VAT, regardless of whether the inputs are later on incorporated into finished products exported or sold domestically.

(c) Conclusion

(915) The Commission thus concluded that the GOE's duty drawback monitoring system was not effectively applied and could not be qualified as such for all the reasons explained in the previous section and summarised at recital (913). In fact, as explained in recitals (908) to (914), the investigation showed that the GOE had not even set up an authority in charge of administering and enforcing any tax obligation for entities located in the zone, including customs duties and VAT due on imported materials.

(916) Furthermore, the Commission determined that the purported duty drawback system for inputs used in exported finished goods led to revenue forgone, which constitute a countervailable subsidy within the meaning of Article 3(1)(a)(ii) of the basic Regulation, as it results in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed. The GOE did not provide a further examination of the transactions at issue either.

(917) These excess remissions are also specific within the meaning of Article 4(2)(a) of the basic Regulation as they are not generally applicable in Egypt, and apply only to the companies located in the SCZone.

(918) Furthermore, the *de facto* VAT exemption on imported materials constitutes a financial contribution in the form of revenue forgone by the GOE within the meaning of Article 3(1)(a)(ii) of the basic Regulation as eligible enterprises are relieved from payment of VAT, which would be otherwise due. It also confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation. The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation, since the legislation limits the VAT exemption only to enterprises that are located within the SCZone.

(919) Following definitive disclosure, the GOE and the exporting producers argued that Jushi Egypt had paid a deposit for customs duties at the start of 2019. They also provided additional evidence, according to which all customs duties for the years 2017 and 2018 had now been settled and paid. Furthermore, they claimed that even if the amounts due for customs duties had not been settled in 2020, the Commission could not request a perfect tax administration from a developing country, such as Egypt. In this regard, the GOE showed particular diligence in setting up the duty drawback system for Jushi Egypt as consumption reports were already established and monitored by the GOE within a few months after Jushi Egypt entered the Suez Canal Economic Zone. Three years later, the GOE recovered all customs duties and VAT due from Jushi Egypt and Hengshi Egypt. As a result, the GOE submitted that it had a proper duty drawback system in place so that no excess remission occurred.

(920) Furthermore, according to the GOE, pursuant to Article 377 of the Egyptian Civil Code and the ruling of the Monetary Court No. 915/43, the GOE has 5 years to recover import duties. As a result, there could be no revenue forgone from the GOE as long as this period had not expired, as the GOE was still entitled to and did recover the customs duties due on time.

(921) Finally, Jushi Egypt argued that sales to Hengshi Egypt are treated under Egyptian law in the same way as export sales in respect of import duties on raw materials, because Hengshi Egypt is located in the Suez Canal Economic Zone. Furthermore, Hengshi Egypt had no domestic sales at all as it exported all of its production. As a result, had Jushi Egypt not been exempted for import duties on raw materials, it would still not have incurred import duties on raw materials for domestic sales to Hengshi Egypt. Jushi Egypt reiterated this argument following the additional definitive disclosure.

(922) The Commission reviewed the evidence provided on the payment of the customs duties, and found that the GOE had initiated a verification at the premises of the exporting producer at the end of 2019, due to the Commission's investigation. As a result of this verification, the GOE reclaimed a certain amount of customs duties on imported materials from the company, relating to the years 2017, 2018 and 2019. Based on the evidence provided, and given the impossibility to verify on spot this new evidence due to travelling restrictions linked to the COVID-19 pandemic, the Commission accepted the claim and deducted the amount of customs duties paid on imported materials relating to the investigation period in accordance with Article 15(1) of the basic Regulation.

(923) However, the Commission did not consider that these settlements put into question the findings on the subsidy scheme as such. In this respect, the Commission noted that the recovery of the customs duties was triggered by the Commission's investigation activities, rather than by the GOE's own monitoring and verification framework for the collection of customs duties. The GOE also did not dispute the fact that there was no such framework in place during the investigation period. Concerning the temporary nature of the lack of a monitoring and verification, the Commission noted that although Jushi Egypt only joined the SCZone in 2017, the last legislative change in the

framework for the collection of the customs duties already happened in 2015, when the responsibility for collecting customs duties was transferred to the General Authority of the SCZone. In addition, the detailed report of the Customs Authority, provided by the GOE as Annex I of its comments on definitive disclosure, confirmed that the overall legislation for the collection of customs duties was already in place since 2006. The GOE thus had ample time to implement a functioning system for collecting customs duties.

(924) Concerning sales from Jushi Egypt to Hengshi Egypt, the Commission already noted in recitals (912) to (913) above that sales of inputs between companies located within the special zone were never subject to any taxes, thus showing that the SCZone was a special zone with several specific features that distinguish it from other zones. The fact that Hengshi Egypt only has export sales is in this sense irrelevant, and does not alter the Commission's conclusions. The claims of the GOE and of the exporting producers concerning the validity of the Commission's findings in general, and on the sales to Hengshi Egypt more specifically, were thus rejected.

(d) Calculation of the subsidy amount

(925) Concerning the import duties, the benefit conferred on the recipient is considered to be the difference between the amount of import duties due during the investigation period, and the actual amount of import duties paid during the investigation period.

(926) In order to determine the amount of import duties due, the Commission considered that the average consumption ratio for all types of finished goods is the same, since they all belong to the same general category of products. The Commission based the consumption ratio on the records of the exporting producers. Then, it first established the quantity of materials imported during the investigation period. Second, it calculated the ratio between the domestic sales in comparison with the total sales of the exporting producers. Third, the Commission applied this domestic sales ratio to the total volume of imported materials and it determined the quantity of imported materials for which import duties would be due.

(927) Finally, in order to establish the amount of benefit, the Commission calculated the amount of import duty payable for the quantities of materials used for the production of goods sold on the domestic market.

(928) Concerning the revenue foregone in the form of a *de facto* VAT exemption, the benefit was originally calculated by taking the full amount of VAT normally payable but not paid during the investigation period on the purchases of imported inputs.

(929) Following definitive disclosure, the Commission adapted the calculation methodology for the calculation of the benefit on the de facto VAT exemption, as mentioned in recital (895) above. As a result, the cash flow benefit on the VAT withheld was considered equivalent to the average interest rate on deposits in Egypt during the IP (12,32 %), applied to the VAT amounts, which were withheld for materials purchased since 2017, and calculated pro rata for VAT amounts, which were withheld during the IP. Since no information was available on the amount of the materials purchased before the IP, the Commission considered that this amount would be equivalent to the amounts found during the IP, adjusted by the difference in the cost of goods sold between the two periods.

(930) The amount of subsidy established with regard to this type of subsidies during the investigation period for the exporting producers was 0,95 %.

### 4.7. **Conclusion on subsidisation**

(931) Based on the information available at this point of the investigation, the Commission calculated the amount of countervailable subsidies in accordance with the provisions of the basic Regulation for the exporting producers by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per tonne of product concerned exported to the Union during the investigation period was then calculated, and the margins below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(932) Given that Jushi & Hengshi Egypt are related companies, a single subsidy amount was established for these exporting producers. Following the definitive as well as the additional definitive disclosures, the CNBM Group raised the same arguments as those, which were raised for the Chinese entities of the Group in recitals (624) to (626) above, concerning the calculation methodology for establishing single subsidy amounts for related companies. This claim was rejected in line with the arguments developed for the Chinese part of the Group.

(933) The CNBM Group also specifically requested the Commission to highlight which cells in the calculation showed that a weighted average of the individual subsidy amounts of the two related exporting producers had been carried out. In this respect, the Commission referred to the information provided in the definitive and in the additional definitive disclosure. The Commission could not accept this claim, since it considered that the Excel sheets provided contain all necessary information, including the formulas used to calculate each cell, and thus allowed the company to follow the calculation methodology used.

(934) Furthermore, since the cooperating Egyptian exporting producers are the sole producers of GFF in Egypt, the Commission set the amount for 'all other companies' at the level of the highest amount established for the cooperating exporting producers:

| Company name | Amount of countervailable subsidies |
|---|---|
| CNBM Group Egypt | 10,9 % |
| All other companies | 10,9 % |

## 5. INJURY

### 5.1. Definition of the Union industry

(935) The like product was manufactured by 16 producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

(936) The total Union production of GFF during the investigation period was established at almost 115,000 tonnes. The Commission established the figure based on the verified questionnaire reply of the complainant, cross-checked and, where appropriate, updated with the verified questionnaire replies of the sampled Union producers. As indicated in recital (83), the sample was made up of four Union producers representing more than 40 % of the total Union production of the like product.

### 5.2. Union consumption

(937) The Commission relied on adjusted Eurostat data in order to establish Union consumption and the import volumes, following the methodology suggested by the complainant. Based on the 10 digit-level (TARIC) data, small portion of inputs were removed from the import statistics used. The Commission checked and confirmed the estimations of the complainant regarding the proportion of the product concerned in volumes imported under the CN codes ([199]) mentioned in the Notice of Initiation ([200]) based on the information received from the cooperating exporting producers in the PRC and in Egypt.

(938) The volumes and value of imports from other third countries were established during the investigation based on direct knowledge of companies producing GFF in other third countries and importing into the Union. For all third countries, further to the figures mentioned in the complaint, the complainant provided updated market intelligence information for the investigation period.

(939) The Commission established the Union consumption on the basis of the sales volumes of the Union industry in the Union market plus imports from all third countries as recorded in the Comext database of Eurostat, adjusted as described in recitals (937) and (938) above.

([199]) Combined Nomenclature codes.
([200]) CN codes 7019 39 00, 7019 40 00, 7019 59 00 and 7019 90 00.

(940) The Union consumption developed as follows:

*Table 2*

**Union consumption (in tonnes)**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Total Union consumption | 153 287 | 175 827 | 181 464 | 168 270 |
| *Index* | *100* | *115* | *118* | *110* |

*Source:* Comext, Complaint.

(941) The Union consumption increased over the period considered from roughly 153 000 tonnes in 2015 to around 168 000 tonnes in the investigation period, namely by 9,8 %.

(942) In their comments on the final disclosure, one of the CNBM Group (China) exporting producers requested additional disclosure to clarify the underlying import and consumption data and the detailed methodology used to establish it. They argued that this was necessary, as the figures used in the complaint are different for the figures disclosed.

(943) The claim that relevant figures were not disclosed is wrong. The figures used in establishing the consumption of GFF in the Union were disclosed to all interested parties in the final disclosure of 27 February 2020. Differences to the figures used in the complaint are not a result of a methodology change but, on the one hand, of the different time periods between the complaint and the investigation as explained above and, on the other hand, the availability of more detailed data collected during the investigation. Whilst the complainant had to rely on market intelligence to remove imports under the relevant CN codes that were not GFF, the Commission has access to TARIC-level import data. As mentioned in recital (937), the Commission used this data to remove products that were imported under TARIC codes for other products. In addition to the difference in periods, the Commission had access to actual data of the sampled Union producers, which, in certain cases, the verification of this data lead to revisions of the figures reported.

(944) In their comments on the final disclosure, the GOC reiterated that the complainants' adjustments to the import data likely led to the import volumes from Russia being vastly understated, while the methodology applied to the PRC was different and disadvantageous for the PRC.

(945) As outlined in recital (18), Russian import data were based on Eurostat data cross-checked with the imports from the two know GFF producers in Russia. The export volume of GFF reported by the cooperating Chinese exporting producers during the investigation represented the totality of the imports recorded in Eurostat under the relevant TARIC codes and all exports were therefore considered to be product concerned.

(946) The claim that the methodologies applied to determine import volumes lead to biased results, was therefore rejected.

### 5.3. **Imports from the countries concerned**

#### 5.3.1. *Cumulative assessment of the effects of imports from the countries concerned*

(947) The Commission examined whether imports of GFF originating in the countries concerned should be assessed cumulatively, in accordance with Article 8(3) of the basic Regulation.

(948) The provision stipulates that the imports from more than one country must be cumulatively assessed only if it is determined that:

(a) the amount of countervailable subsidies established in relation to the imports from each country is above the *de minimis* threshold laid down in Article 14(5) of the basic Regulation and the volume of imports from each country is not negligible; and

(b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products and the conditions of competition between imported products and the like product in the Union.

(949) The amount of countervailable subsidies established in relation to the imports from the PRC and Egypt were above the *de minimis* threshold laid down in Article 14(5) of the basic Regulation. The volume of imports was not negligible within the meaning of Article 10(9) of the basic Regulation. Indeed, the market shares in the investigation period were 22,3 % (37,558 tonnes) for imports from the PRC and 9,1 % (15,334 tonnes) for imports from Egypt.

(950) The conditions of competition between the subsidized imports from the PRC and Egypt and between those imports and the sales of the like product in the Union were similar. More specifically, the imported products competed with each other and with the GFF produced in the Union because they are sold through the same sales channels and to similar categories of customers. Regarding import prices, table 4 shows that although the overall price levels were different for each country concerned, the trends were largely the same, namely showing an overall decrease over the period considered, with stabilisation in 2017 and the investigation period, both significantly undercutting the Union industry's sales prices on the Union market.

(951) In their comments to the final disclosure, the GOC re-iterated that the requirements for a cumulative assessment of the effects of the subsidised imports from the countries concerned was not met since it would contravene the practice of the Commission to require a similarity of the imports of the countries concerned in terms of their overall volume, market share and price, which according to GOC would not be given for the imports from the PRC and Egypt in the current case. In support of this assertion, the GOC referred to previous anti-dumping investigations [201] and the WTO panel in the Tubes and Pipes fitting case [202]. The GOC further claimed that Chinese imports on their own did not cause any injury as they showed similar trends than the Union industry sales volumes.

(952) In their comments to the final disclosure, the GOC claimed further that, in the current investigation, Egyptian imports to the Union did not exist until 2017 and therefore for most of the investigation period did not compete with Chinese imports. Furthermore, the GOC argued that between 2015 and 2018 Egyptian and Chinese import volumes and market shares followed opposite trends. Finally, the GOC argued that Egyptian import prices were consistently lower than Chinese import prices. Therefore, the GOC concluded there were no similar conditions of competition between imports from China on the one hand and imports from Egypt on the other hand which should consequently not be cumulated.

(953) The Commission recalls that the analysis concerning the facts whether the conditions for a cumulative assessment are met in a specific case is taken on a case-by-case basis, taking into account the specificities and facts of each case.

(954) Contrary to what the GOC claimed, Art 8(3) of the basic Regulation does not stipulate a requirement for similarity of imports in terms of volume, market share and price but sets out that a cumulative assessment of the effects of imports is appropriate in the light of the conditions of competition between imported products and the condition of competition between imported products and the like product in the Union. This analysis may include elements such as the import volume, market share and import price, which does however not mean that those elements need to be similar in absolute terms.

(955) In the present case, and as already outlined in recital (33), between 2015 and 2017, China and Egypt showed both increasing import trends, while this increase was more pronounced for imports from Egypt, in particular between 2016 and 2017. However, this does not devaluate the conclusion that imports from both countries were competing with each other and with the sales of the Union industry on the Union market. The fact the Chinese imports were partly overtaken by Egyptian imports also showed that there were under similar conditions of competition. In addition, despite the decrease in import volume from China in the IP, the overall import levels remained significant throughout the period considered, and showed an overall increasing trend throughout the same period.

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[201] Certain hot-rolled flat products of iron, non-alloy or other alloy steel (Brazil, Iran, Russia, Ukraine), 2017 O.J. (L258) 24, at recitals 234-240, WTO Panel Report, *EC – Tube or Pipe Fittings*, paras. 7.245-7.267.

[202] WTO Panel Report, *Mexico — Steel Pipes and Tubes*, para. 7.56.

(956) Regarding import prices, likewise as already outlined in recital (950), in contrast to what is claimed by the GOC, despite the on average lower import prices from Egypt, the overall trends for both, China and Egypt were similar, i.e. they decreased during the entire period considered and consistently undercut the Union industry sales prices on the Union market.

(957) The Commission therefore rejected the GOC's arguments against a cumulative assessment of the effects of the subsidised imports from the PRC and Egypt. Consequently, the argument raised by the GOC that Chinese imports on their own would not have caused injury is irrelevant.

(958) Taking into consideration the above, it was concluded that the criteria set out in Article 8(3) of the basic Regulation were met and imports from the PRC and Egypt were examined cumulatively for the purposes of the injury determination.

5.3.2. *Volume and market share of the imports from the countries concerned*

(959) As explained in recitals (937) and (938) above the Commission established import volumes and prices on the basis of adjusted Eurostat data. The market share of the imports was established by comparing the volume of imports with the Union consumption. In their comments to the final disclosure, and as mentioned in recital (944), the GOC submitted that the methodology to determine import volumes from China was biased. For the reasons set out in recital (945), the arguments provided in this regard were rejected.

(960) Imports into the Union from the PRC and Egypt developed as follows.

*Table 3*

**Import volume and market share**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Imports from the PRC in tonnes | 34 470 | 42 507 | 44 278 | 37 558 |
| *Index* | *100* | *123* | *129* | *109* |
| Imports from Egypt in tonnes | 108 | 417 | 6 092 | 15 334 |
| *Index* | *100* | *386* | *5 641* | *14 198* |
| Imports from countries concerned in tonnes | 34 578 | 42 924 | 50 370 | 52 892 |
| *Index* | *100* | *124* | *145* | *153* |
| Market share the PRC | 22,5 % | 24,2 % | 24,4 % | 22,3 % |
| *Index* | *100* | *108* | *109* | *99* |
| Market share Egypt | 0,1 % | 0,2 % | 3,4 % | 9,1 % |
| *Index* | *100* | *337* | *4 765* | *12 934* |
| Market share countries concerned | 22,6 % | 24,4 % | 27,8 % | 31,4 % |
| *Index* | *100* | *108* | *123* | *139* |

*Source:* Comext, sampling form replies of the exporting producers from countries concerned.

(961) Imports of the countries concerned increased by 53 % during the period considered from nearly 35 000 tonnes in 2015 to almost 53 000 tonnes in the investigation period. The market share of the countries concerned increased thus from 22,6 % in 2015 to 31,4 % in the investigation period by nearly 9 percentage points. This increase was continuous throughout the period considered, both in absolute terms and in relative terms.

5.3.3. *Prices of the imports from the countries concerned and price undercutting*

(962) As explained in recital (937), the Commission established the trends of import prices based on Eurostat data.

(963) On that basis, the average price of imports into the Union from the countries concerned developed as follows:

*Table 4*

**Import prices (EUR/kg)**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Import price PRC | 1,78 | 1,75 | 1,69 | 1,63 |
| *Index* | *100* | *99* | *95* | *91* |
| Import price Egypt | 1,36 | 1,40 | 1,32 | 1,32 |
| *Index* | *100* | *103* | *98* | *97* |
| Import price countries concerned | 1,78 | 1,75 | 1,64 | 1,54 |
| *Index* | *100* | *99* | *92* | *86* |

*Source:* Comext.

(964) Import prices of the countries concerned were always below the average sales price of the sampled Union producers, as shown in Table 8. The average import prices from the countries concerned decreased from 1,78 EUR/kg to 1,54 EUR/kg in the period considered, namely by nearly 14 %.

(965) The Commission also determined the price undercutting during the investigation period by comparing:

— the weighted average prices per product type of the imports from the sampled cooperating Chinese and Egypt producers to the first independent customer on the Union market ([203]), established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties for the PRC only and post-importation costs for both countries; and

— the corresponding weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level.

(966) The price comparison was made on a product type-by-type basis, duly adjusted where necessary, and after deduction of rebates and discounts. The Commission found it reasonable not to include the kits in the quantification of the undercutting. Given the unique combination of kits, a comparison would most likely result in comparing different kits. The result of the comparison was expressed as a percentage of the hypothetical turnover during the investigation period. It is obtained by multiplying the average Union industry sales price per product type by the quantities of the comparable product type exported to the Union. It showed significant undercutting ranging from 15,4 % to 55,8 % for the PRC and from 30,5 % to 54,9 % for Egypt, resulting in a weighted average margin of 32,3 % for the sampled co-operating exporting producers in the PRC and of 31,5 % for the cooperating exporting producers in Egypt.

([203]) GFF is mostly produced on demand by customer specifications; therefore, the vast majority of sales were sales made directly to independent end-customers. Sales to wholesalers represented [1 to 5 %] of the total sales of the countries concerned (whereas the rest were made to end-users). [95 to 99]% of the sales made by the Chinese exporting producers and the Egyptian exporting producers were made directly into the Union (the rest being made via related importers). The sampled Union's producers also sell predominantly directly to the same type of end-customers representing [90 to 95 %] of their sales and only [5 to 10 %] of their sales to wholesalers.

(967) In their comments to the final disclosure, one of the CNBM Group (China) exporting producers made a general reference to their comments regarding the calculation of undercutting and underselling margins provided to the final disclosure in the separate anti-dumping investigation. They re-iterated those same comments in the present anti-subsidy investigation. These comments were, however, tailored to the specific aspects of an anti-dumping investigation and were referring to specific Articles in Regulation (EU) 2016/1036 of the European Parliament and of the Council on protection against dumped imports from countries not members of the European Union ([204]), and CNBM Group (China) did not further specify which comments precisely would be applicable to the current anti-subsidy investigation. The Commission addressed all comments provided in this regard in Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt ([205]) ('Regulation (EU) 2020/492'). Therefore, only those comments that were specifically linked to the calculation of the undercutting margins are addressed in this Regulation.

(968) When it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union industry in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas customers. By contrast, resale prices of related importers do not reflect the point where real competition takes place. This is only the point where the established sales structure of the exporter tries to find customers but it is already after the point where the decision to import had been taken. Indeed, once the exporting producer has established its system of related companies in the Union, they have already decided that the source of their merchandise will be from overseas. Hence, the point of comparison should be right after the good crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user of the good.

(969) This approach also ensures coherence in cases where an exporting producer is selling the goods directly to an unrelated customer (whether importer or final user) because under this scenario, resale prices would not be used by definition. A different approach would lead to a discrimination between exporting producers based solely on the sales channel that they use.

(970) In this case, the import price cannot be taken at its face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length, such price has to be reconstructed by using the resale price of the related importer as a starting point.

(971) The Commission also notes that in this particular case the majority of sales on both the Union industry side and the exporting producers' side are done directly (i.e. without traders or importers). These direct sales represent [more than 95 %] of sales of the Union industry and [more than 95 %] of sales of the exporting producers.

(972) Whilst the Commission stands by the reasoning outlined above, for the sake of completeness additional undercutting calculations were undertaken.

(973) The Commission took into consideration only the direct sales made by the Union industry and the exporting producers, which, as mentioned above, represent the vast majority of sales on both sides. Based on this calculation, the prices of the CNBM Group (China), CNBM Group (Egypt) and Yuntianhua Group were found to undercut Union industry's prices by 45,4 %, 30,8 % and 14,7 %, respectively.

(974) In conclusion, undercutting margins do not differ significantly regardless of the way it is calculated. All claims in this regard were therefore rejected.

(975) Following the final disclosure, Yuntianhua Group requested additional disclosure concerning the detailed undercutting per product type, referring to their comments provided in the separate anti-dumping investigation in reply to the additional final disclosure provided in that latter investigation mentioned in recital (121). In this submission, Yuntianhua Group requested that sales quantities and prices of all product types sold by the Union industry should be disclosed to them, regardless how many sampled Union producers were selling a specific product type. They

([204]) Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 21) ('the basic anti-dumping Regulation').

([205]) OJ L 108, 6.4.2020, p. 1. Recitals (387) to (400)

dismissed the Commission's view that if sales data related to a certain product type pertained to only two or less Union producers, a third party would be able to track the data back to the individual Union producer. Since Yuntianhua Group would not have the relevant market knowledge to do so, they further claimed, there would be no reason to keep this data confidential. Alternatively, Yuntianhua Group argued that the Commission should at least provide a meaningful non-confidential summary of the calculations by providing ranges for sales data pertaining to product types tat were produced by two or less Union producers.

(976) Data pertaining to only one or two Union producers cannot be disclosed for confidentiality reasons. The same treatment is afforded to exporting producers, which do not have their individual information make available, even on an anonymous basis. The investigation has shown that the GFF market is relatively transparent with large quantity users sourcing from a limited number of certified producers in the Union and China. It is therefore reasonable to assume that GFF producers in the Union and in the countries concerned often know who is providing a particular product type. Thus, by disclosing a data range would bear the high risk of disclosing business confidential data that the Commission seeks to protect. In any event, the Commission disclosed detailed calculations for all product types that were produced by three or more Union producers that covered around 70 % of the volume sold by Yuntianhua Group to the Union and more than 70 % of the volume of corresponding product types sold by the Union industry. Yuntianhua Group raised no issues with regard to these calculations. This claim was therefore rejected.

(977) In their comments to the final disclosure, Yuntianhua Group, claimed that undercutting calculations would not have been based on a price comparison at the same level of trade, referring in general terms to their submissions made in the separate anti-dumping investigation following the final and additional final disclosure in that investigation without, however specifying any further to which specific claims reference was made. A similar claim was also made by the GOC following the final disclosure.

(978) As mentioned in recital (971), [more than 95 %] of sales of the Union industry were direct sales. Furthermore, as noted in recitals (973), undercutting margins calculations based on sales to end users and only on direct sales all show undercutting margins for all exporting producers including Yuntianhua Group. This comment was therefore rejected.

(979) In their comments to the final disclosure, Yuntianhua Group also re-iterated its claim that a segment specific injury alanysis should have been performed. To substantiate this claim Yuntianhua Group referred as above, only in very general terms to the submissions provided in the separate anti-dumping investigation following the final and additional final disclosure in that investigation without, however specifying any further to which specific claims or arguments reference was made. Yuntianhua Group claimed in particular, that the sampled Union producers were specialising and producing GFF types specifically for a given user. They argued that these were OEM customer specific products for which no price undercutting was calculated. No measures should be imposed on those products.

(980) The exporting producer's assumption is factually wrong. The investigation has shown that GFF was not produced on OEM basis. The Commission found that for most applications GFF are produced to order according to customers' specifications and, as a result, the vast majority of sales (both of Union producers and exporting producers) are made directly to independent end-customers. Thus, sales according to customers' specifications is a characteristic of the GFF market and in no way suggest the existence of a separate OEM segment. This is also visible from the data disclosed to Yuntianhua Group. Around 70 % of the product types exported by Yuntianhua Group to the Union were produced by 3 or 4 of the sampled Union producers. The Commission further notes that during the investigation period there was a 92 % matching between the sales of the Union industry and Yuntianhua Group. This also contradicts that there would be a particular specialisation in the market and that Union producers would produce one or several types for a given user. Furthermore, the statement that sales prices of those product types produced by only one or two Union producers were not undercutting the Union industry sales prices is incorrect. The Commission found undercutting for four out of the seven product types for which

detailed calculation could not be disclosed because of confidentiality issues. That means that, out of the 18 matching product types, only four (accounting for a low percentage of Yuntianhua Group exports volumes) were found not to undercut the sales of the Union industry. Needless to say, the establishment of price undercutting at the level of product types is only an intermediary and preparatory step of the price comparison required by Article 8(2) of the basic Regulation, that is, the determination of the price undercutting in relation to the product concerned as a whole. On the basis of the above, the claim that a separate analysis based on different segments should have been carried out was rejected.

(981) In their comments to the final disclosure, Yuntianhua Group argued that the Commission included in the injury findings products that are not product concerned claiming that one of their product types was imported under a CN code that was not part of this investigation.

(982) As stated by the Commission in the Notice initiating this proceeding '[t]he CN and TARIC codes are given for information only'. They do not constitute the description of the product under investigation. Indeed, in this particular case it was already noted in Commission Implementing Regulation (EU) 2020/44 of 20 January 2020 making imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt subject to registration ([206]), that imports of the product under investigation, even after the initiation of the proceeding were widely misdeclared.

(983) Furthermore, during the investigation the sampled exporting producers were asked to report their exports to the Union of the product matching the description given in the Notice initiating the proceeding. In this framework, Yuntianhua Group reported the specific product type in question as a product concerned. In any case, it was verified and confirmed during on-site verification that all product types reported in the questionnaire were falling under the scope of the investigation. This claim was therefore rejected.

### 5.4. **Economic situation of the Union Industry**

#### 5.4.1. *General remarks*

(984) In accordance with Article 8(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(985) As mentioned in recital (83), sampling was used for the determination of possible injury suffered by the Union industry.

(986) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the amount of the countervailable subsidies and recovery from past subsidisation.

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

#### 5.4.2. *Macroeconomic indicators*

##### 5.4.2.1. Production, production capacity and capacity utilisation

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

*Table 5*

**Production, production capacity and capacity utilisation**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Production volume (kg) | 124 892 518 | 134 134 913 | 130 312 563 | 114 509 129 |
| *Index* | *100* | *107* | *104* | *92* |

([206]) OJ L 16, 21.1.2020, p. 1

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Production capacity (kg) | 196 926 458 | 200 135 505 | 199 124 465 | 193 699 831 |
| *Index* | *100* | *102* | *101* | *98* |
| Capacity utilisation | 63 % | 67 % | 65 % | 59 % |
| *Index* | *100* | *106* | *103* | *93* |

*Source:* Complaint, verified questionnaire replies of the sampled Union producers.

(989) The total Union industry's production fluctuated but decreased by 8 % over the period considered. As the production capacity was kept almost at the same level throughout the period considered, capacity utilisation went down from 63 % to 59 %.

(990) In their comments on the final disclosure, the GOC argued that the downturn in production and production capacity only occurred in the last year of the period considered and cannot be considered as an overall trend. A negative trend would thus only visible in the investigation period on the basis of which it cannot be concluded that the Union industry suffered material injury. The Commission's analysis would thus undermine the purpose of selecting a three-year-period for the analysis of the injury trends.

(991) In contrast to what was claimed by the GOC, from 2016 until the investigation period, namely for three consecutive years, production, production capacity and capacity utilisation have consistently decreased, and therefore the decrease was not only observed in the last year of the period considered. The Commission considered that the fact that there has been an increase of production volume and production capacity between 2015 and 2016 does not put into question this overall downward trend. In any event, the periods prior to the investigation period serve as reference to which the investigation period is compared in order to assess whether or not the Union industry is materially injured in the present. There is no requirement that there is a consistent downward trend covering the whole period considered. In fact, it is usual that negative factors are more acute and concentrated, and therefore showing material injury, in the investigation period.

(992) This argument was therefore rejected.

5.4.2.2. Sales volume and market share

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

*Table 6*

**Sales volume and market share**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Total sales volume on the Union market (tonnes) | 112 925 | 125 056 | 123 108 | 106 723 |
| *Index* | *100* | *111* | *109* | *95* |
| Market share | 73,7 % | 71,1 % | 67,8 % | 63,4 % |
| *Index* | *100* | *97* | *92* | *86* |

*Source:* Complaint, verified questionnaire replies of the sampled Union producers.

(994) The sales volume of the Union industry decreased by 5 % over the period considered, while the imports from the PRC and Egypt accumulated increased by 53 %. Considering the increase in consumption, this translated in a decrease of market share from 73,7 % in 2015 to 63,4 % during the investigation period, namely a decrease of over 10 percentage points for the Union industry, while the PRC and Egypt increased their market share from 22,6 % in 2015 to 31,4 % during the investigation period, namely an increase of nearly 9 percentage points.

(995) In their comments on final disclosure, the GOC argued that the Union industry's sales volumes on the Union market did not show a clear downward trend as it increased by 9 % between 2015 and 2017 and only decreased between 2017 and 2018. Additionally, the GOC argued that overall, the sales volumes of the Union industry decreased by only 5 % between 2015 and 2018, a decrease that mostly occurred in 2018, which did therefore not show a clear downward trend over the period considered.

(996) In contrast to the GOC's claim, the Union industry's sales volumes decreased consistently between 2016 to the investigation period, namely for three consecutive years. This is a clear downward trend despite the initial increase between 2015 and 2016. Furthermore, this trend should also be seen in the context of the overall increasing consumption over the period considered, as shown in recital (940) that translated in an even higher loss in the market share of the Union industry during the period considered.

(997) This claim was therefore rejected.

(998) In their comments on final disclosure, the GOC argued that the Union industry's imports of GFF from its related companies India and Russia should be included in the Union industry's sales and market share as these imports would reflect the Union industry's deliberate decision to move production out of the Union.

(999) Sales volume of the Union industry on the Union market only includes products produced by the Union producers for sales on the Union market. Market share of the Union industry is based on the Union industry's sales of its own produced like product on the Union market. Therefore, imports from the Union industry even if from companies related to Union producers should not be considered as sales by Union industry, but as imports from other third countries. Imports from other third countries are considered under the causation analysis, specifically in recitals (1044) to (1050).

(1000) This argument was therefore rejected.

5.4.2.3. Growth

(1001) The above figures in respect of production, sales, volume and market share demonstrate that the Union industry was not able to grow in a growing market, neither in absolute terms nor in relation to the consumption, over the period considered.

5.4.2.4. Employment and productivity

(1002) Employment and productivity developed over the period considered as follows:

*Table 7*

**Employment and productivity**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Number of employees | 1 184 | 1 221 | 1 207 | 1 197 |
| *Index* | *100* | *103* | *102* | *101* |
| Productivity (kg/employee) | 105 504 | 109 839 | 108 001 | 95 665 |
| *Index* | *100* | *104* | *102* | *91* |

*Source:* Complaint, verified questionnaire replies of the sampled Union producers.

(1003) During the period considered, employment in the Union remained relatively stable with only a minor increase of 1 %. Indeed, the growth in consumption could not be matched with a similar growth in employment as sales and production volumes decreased. As production fell by 8 %, productivity of the Union industry fell by 9 % over the period considered.

(1004) In their comments to the final disclosure, the GOC argued that the stable employment showed that the Union industry would be confident that the decrease in production and sales volume from 2018 to the investigation period would be only temporary and did therefore not call for a decrease in the workforce. The GOC concluded that this would show that the Union industry did not suffer any material injury.

(1005) The statement of the GOC was not supported by any supporting evidence. The alleged strategy of the Union industry with regard to its employment figures was therefore considered as purely speculative. In addition, the facts of the investigation did not support such assumption as the Union industry suffered material injury as explained throughout this section. This argument was therefore rejected.

5.4.2.5. Magnitude of the amount of countervailable subsidies and recovery from past subsidisation

(1006) The subsidy amounts found were significantly above the *de minimis* level. The impact of the magnitude of the actual amounts of subsidisation on the Union industry was substantial, given the volume and prices of imports from the PRC and Egypt.

5.4.3. *Microeconomic indicators*

5.4.3.1. Prices and factors affecting prices

(1007) The weighted average unit sales prices of the sampled Union producers to customers in the Union developed over the period considered as follows:

*Table 8*

**Average sales prices in the Union (EUR/kg)**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Average ex-works sales price per kg in the Union to unrelated customers | 2,20 | 2,11 | 2,10 | 2,05 |
| *Index* | *100* | *96* | *96* | *93* |
| Cost of production per kg | 2,18 | 2,15 | 2,15 | 2,25 |
| *Index* | *100* | *99* | *99* | *103* |

*Source:* verified questionnaire replies of the sampled Union producers.

(1008) Whereas the Union industry's cost of production increased by 3 % over the period considered, mainly due to the loss of high volume contracts from the wind turbine industry, the Union industry's average unit sales price to unrelated customers in the Union decreased by 7 % during the investigation period. This demonstrates the severe price suppression caused by the significantly increasing volume of imports of the product concerned. As explained in recitals (1016) and (1030), this had a significant impact on the financial situation of the Union industry, which became loss making during the investigation period.

(1009) In their comment to the final disclosure, the GOC argued that there was no relation between the imports from the countries concerned and the increase in production cost as these would only reflect an increase in labour costs.

(1010) While the increase in labour costs contributed to the increased production costs, the increase in the production cost was to a large part due to the loss of production and sales volume of the Union industry as a consequence of the subsidised low priced imports. The reduction in production volume led to an increase in the unit cost of production as fixed costs were distributed to less production volume. In addition, smaller orders are more work intensive for machine adjustments and require more man-hours, which had an impact on the unit labour cost.

(1011) This argument was therefore rejected.

5.4.3.2. Labour costs

(1012) The average labour costs of the sampled Union producers developed over the period considered as follows:

*Table 9*

**Average labour costs per employee (EUR)**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Average labour costs per employee | 50 005 | 51 591 | 52 483 | 53 092 |
| *Index* | *100* | *103* | *105* | *106* |

*Source:* Questionnaire replies of the sampled Union producers.

(1013) Between 2015 and the investigation period, the average labour costs per employee of the sampled Union producers increased by 6 %.

5.4.3.3. Inventories

(1014) Stock levels of the Union producers developed over the period considered as follows:

*Table 10*

**Inventories**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Closing stocks (kg) | 5 426 656 | 6 841 685 | 6 941 733 | 6 822 739 |
| *Index* | *100* | *126* | *128* | *126* |
| Closing stocks as a percentage of production | 4,3 % | 5,1 % | 5,3 % | 6,0 % |
| *Index* | *100* | *117* | *122* | *137* |

*Source:* Verified questionnaire replies of the sampled Union producers.

(1015) Despite the fact that under normal market conditions, GFF is produced mostly to order and not on stock, there was a sharp increase in stock over the period considered of 26 %. This is explained by the fact that the Union industry was forced to compensate for the loss of high volume orders to its competitors from the countries concerned. In an attempt to maintain average unit cost at lower levels, the Union industry kept downtimes for machines at a minimum and produced GFF that could not be sold immediately to the customers.

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

(1016) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

*Table 11*

**Profitability, cash flow, investments and return on investments**

| | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) | 2,5 % | 2,2 % | 2,0 % | – 3,4 % |
| *Index* | *100* | *88* | *80* | *– 139* |
| Cash flow (EUR) | 8 928 397 | 5 507 539 | 8 100 306 | 1 257 171 |
| *Index* | *100* | *62* | *91* | *14* |
| Investments (EUR) | 4 572 837 | 5 164 214 | 3 963 173 | 5 050 438 |
| *Index* | *100* | *113* | *87* | *110* |
| Return on investments | 15 % | 14 % | 13 % | – 17 % |
| *Index* | *100* | *93* | *89* | *– 118* |

*Source:* Verified questionnaire replies of the sampled Union producers.

(1017) 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. Profitability followed a decreasing trend over the period considered and became negative during the investigation period.

(1018) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed negatively over the period considered. It shows a constant deterioration, in particular at the end of the investigation period.

(1019) Investments increased slightly by 10 % over the period considered, but show changing trends within the period considered. Most of the investment concerned production line maintenance. There was no investment in new GFF capacity, which reflects the decreasing market share.

(1020) The return on investments is the profit expressed as a percentage of the net book value of investments. It developed negatively over the period considered resulting in a negative value in the investigation period.

(1021) In their comments to the final disclosure, CNBM Group (China) asked the Commission to explain the discrepancy between profitability and sales prices of the Union industry in the complaint and in the final disclosure.

(1022) The findings of the Commission, which were disclosed to the parties, are based on precise micro-economic data of the sampled Union producers, verified on spot by the Commission. The complaint, on the other hand, as noted by the exporting producer in the comments on the final disclosure, indeed “*does not cover the [investigation period] nor is it subject to the same level of evidentiary and disclosure obligations*”. Other elements that likely lead to the difference are revisions of the sales data following the verification visits, and the inclusion into the sample of Union producers of a company that did not participate in the preparation of the complaint.

(1023) In their comments on the final disclosure, the GOC noted that, while profitability, cash flow, and return on investments have diminished between 2015 and 2018, this decrease is mostly due to the decline in 2018.

(1024) As explained in recital (1017), profitability showed a clearly decreasing trend over the entire period considered. This trend was particularly pronounced from 2018 to the investigation period. The observation of the GOC do not put into question this analysis. The same is true for return on investments. The observation of the GOC does not put into question the analysis of the Commission set out in recital (1020).

(1025) Regarding cash flow, the statement of the GOC is, however, factually incorrect. Cash flow showed already a significant decrease between 2015 and 2016 and not only between 2018 and the investigation period. This statement was therefore rejected.

(1026) Finally, the GOC argued that investments have increased between 2018 and the investigation period, while at the same time profitability, cash flow, and return on investment decreased. The GOC argued, considering the stable employment during the same period, this would indicate that the Union industry has not suffered material injury, but is confident in the future.

(1027) As above in recitals (1004) and (1005), this statement was not supported by any evidence and it was therefore considered purely speculative. As mentioned in recital (1019) most of the investment concerned production line maintenance and there was no investment in new GFF capacity, which reflects the decreasing market share.

(1028) On the basis of the above, all arguments related to profitability, cash flow, investments and return on investments were therefore rejected.

### 5.5. **Conclusion on injury**

(1029) All main injury indicators showed a negative trend during the period considered. Production volume and sales volume decreased by some 8 % and 5 %, respectively. Considering the increase in consumption, the loss in sales volume translated in a decrease of market share from 73,7 % in 2015 to 63,4 % during the investigation period, namely a decrease of over 10 percentage points.

(1030) Likewise, the main financial indicators also showed a negative trend which reflects the significant price suppression on the Union market as reflected in Table 8. Thus, over the period considered, unit sales prices decreased by 7 %, while at the same time the unit cost of production of the Union industry increased by 3 %. The increase in the average unit cost was due to the decrease in production volume as especially high volume purchases from the wind turbine industry were lost to Chinese and Egyptian producers. As a result, the profitability of the Union industry turned from a profit of 2,5 % in 2015 to a loss of -3,4 % in the investigation period. Similar negative effects are seen in cash flow and return on investment.

(1031) Following the final disclosure the GOC argued that the acquisition of the glass fibre enforcement business (i.e. the GFF production) of one of the sampled Union producers, namely Ahlstrom-Munksjö by the Vitrulan Group in November 2019, would require a revaluation of that Union producer's submissions made during the investigation. The GOC argued that that the new owner's apparent intentions would be to use the GFF production for captive use only and that these products will therefore not compete anymore with the production of the remaining Union producers on the Union market. The GOC also argued that the new owner has reported the acquisition as being expected to bring significant growth to its group, which would be in contradiction to the Commission's findings of the Union industry having suffered material injury.

(1032) The acquisition of the GFF business of one of the sampled Union producers in question occurred after the investigation period and therefore, as such, did not have an impact of the data provided by this Union producer (and verified by the Commission) which pertained to the investigation period and the period considered. Since the scope of the investigation is limited to the analysis of the development of the situation of the Union industry is during the period considered, any development after the investigation period cannot be taken into consideration and this argument was rejected.

(1033) The public statement of the purchaser that the acquisition is expected to bring significant growth to its company that was not further substantiated with any evidence, cannot put into question the detailed analysis of the Commission of all injury indicators for the entire Union industry during the period considered. This analysis has clearly shown that the Union industry suffered material injury and this conclusion cannot be put into question by such unsubstantiated comment. This argument was therefore rejected.

(1034) In their comments on the final disclosure, the GOC argued that the Commission mainly based its findings on injury on the last year of the period considered (i.e. trends from 2018 to the investigation period), ignoring the previous years of the period considered that showed either positive or stable trends and in some cases less pronounced negative trends. The GOC claimed that on this basis, the Commission erred in concluding that the Union industry suffered material injury.

(1035) These comments were addressed in recitals (991), (996) and (1023) to (1028). As outlines in these recitals, this claim was unfounded and therefore rejected.

(1036) Finally, in its comments on the final disclosure the GOC claimed that it is unlikely that the Union industry will suffer material injury in the future.

(1037) Trends of the injury indicators mentioned in Article 8(4) of the basic Regulation were established during the period considered of the current investigation. Data of the Union industry were collected and verified pertaining to this period and clear downward trends showing material injury were established on that basis. There is no requirement to extend the investigation beyond this fixed period. In fact, Article 11(1) of the basic Regulation (last paragraph) provides that as a rule information relating to a period subsequent to the investigation period should not be taken into account. The GOC did not provide any information or any other evidence that would put into question the Commission's findings or justify a departure from the general rule of Article 11(1). The claim was therefore considered speculative and rejected.

(1038) On that basis, the Commission concluded that the Union industry clearly suffered material injury.

## 6. **CAUSATION**

(1039) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from the PRC and Egypt caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from the PRC and Egypt was not attributed to the subsidised imports. These factors were imports from other third countries, decrease in demand of GFF in the period 2017 to 2018, the development of raw material costs, a self-inflicted injury due to a lack of supply flexibility, and a decrease in installation of wind turbines between 2017 and 2018.

### 6.1. **Effects of the subsidised imports**

(1040) Volume of imports from the PRC and Egypt and their accumulated market share increased by 53 % and 39 %, respectively, over the period considered. This increase exceeds substantially the increase of consumption during the same period, which was nearly 9 %. At the same time, the Union industry lost over 5 % of their sales volume and over 10 percentage points of market share. Furthermore, the prices of imports from the PRC and Egypt fell on average by nearly 14 % during the period considered, and undercut Union industry prices, during the investigation period, by between 15,4 % and 55,8 % and by 32,3 % on average. These low prices of imports from the PRC and Egypt exercised significant price pressure during the investigation period, which did not allow the Union industry to increase their prices above the average cost of production. To the contrary, prices of the Union industry decreased by nearly 7 % during the period considered. Consequently, the profitability of the Union industry was constantly declining and reached -3,4 % losses during the investigation period.

(1041) The analysis of the injury indicators in recitals (935) to (1038) shows that the economic situation of the Union industry worsened during the period considered and this coincided with an increase of subsidised imports from the PRC and Egypt, which were found to undercut Union industry prices during the investigation period.

(1042) One user claimed that there is no coincidence in time between the material injury suffered by the Union industry and the increase of imports from the countries concerned. That user argued that when the situation of the Union industry worsened between 2017 and the investigation period, the volume of imports from the countries concerned and their market share had in fact decreased.

(1043) However, as shown in Table 3 in recital (960), imports from the countries concerned increased from 50 370 tonnes to 52 892 tonnes and their market share from 27,8 % to 31,4 % from 2017 to the investigation period. That claim was therefore rejected.

6.2. **Effects of other factors**

6.2.1. *Imports from other third countries*

(1044) The volume of imports from other third countries developed over the period considered as follows:

*Table 12*

**Imports from third countries**

| Country | | 2015 | 2016 | 2017 | Investigation Period |
|---|---|---|---|---|---|
| India | Import volume (in tonnes) | 1 057 | 2 495 | 3 290 | 3 095 |
| | *Index* | *100* | *236* | *311* | *293* |
| | Market share | 0,7 % | 1,4 % | 1,8 % | 1,8 % |
| | *Index* | *100* | *206* | *263* | *267* |
| | Import price (EUR/kg) | 1,45 | 1,46 | 1,42 | 1,34 |
| | *Index* | *100* | *101* | *98* | *93* |
| Russia | Import volume (in tonnes) | 2 071 | 2 013 | 2 047 | 2 352 |
| | *Index* | *100* | *97* | *99* | *114* |
| | Market share | 1,4 % | 1,1 % | 1,1 % | 1,4 % |
| | *Index* | *100* | *85* | *84* | *103* |
| | Import price (EUR/kg) | 1,47 | 1,41 | 1,39 | 1,31 |
| | *Index* | *100* | *96* | *94* | *89* |
| Other third countries (excl. India and Russia) | Import volume (in tonnes) | 2 657 | 3 339 | 2 649 | 3 208 |
| | *Index* | *100* | *126* | *100* | *121* |
| | Market share | 1,7 % | 1,9 % | 1,5 % | 1,9 % |
| | *Index* | *100* | *110* | *84* | *110* |
| | Import price (EUR/kg) | 2,39 | 2,20 | 2,16 | 2,12 |
| | *Index* | *100* | *92* | *90* | *89* |

*Source:* Comext, Questionaire replies Union producers, market intelligence provided by the Complainant.

(1045) Imports from other third countries were mainly from two countries, namely India and Russia. These two countries had individually a market share above 1 % during the investigation period, while the imports of the remaining third countries each represented less than 1 % market share and together accounted for 1,9 %.

(1046) The Indian exporters are related to the Union industry. The market share of Indian imports gradually increased throughout the period considered from 0,7 % to 1,8 %; however, these intra-company sales did not put any pressure on Union prices as they were made at transfer price level. The imports in question are semi-finished products that are used in the manufacturing of the final product, based on a technology of a specific European producer and are not sold in the open market. Therefore, the Commission concluded that these imports have not contributed to the injury suffered by the Union industry.

(1047) The market share of Russian imports stayed stable over the period considered and even decreased between 2015 and 2017, before reaching similar levels in the investigation period as in 2015. Even though the prices of the imports from Russia were on average undercutting the Union producers' prices, considering the overall market share and the trend, it is unlikely that they had any impact on the injury suffered. Rather, the prices were a reaction to the price pressure from the PRC and Egypt. Therefore, Russian imports have not contributed to the loss of market shares by the Union industry throughout the period considered. In addition, the investigation found that the Russian exporters are Union industry's related companies and, therefore, these imports put no pressure on Union prices, as these were intra-company sales made at transfer prices.

(1048) Therefore, the Commission concluded that imports from other third countries were not the source of injury described in recitals (984) to (1038) above.

(1049) In their comments on the final disclosure, the GOC argued that by outsourcing production to Russia and India the Union industry would self-inflict the injury. However, the GOC did not address the Commission's analysis in recitals (1046) and (1047) of this regulation, which clearly concluded that imports from India and Russia were not a cause of injury to the Union industry.

(1050) The Commission found that imports from India were in fact of a semi-finished product, which were used for the production of the like product by a Union producer. Likewise, imports from Russia, although on average cheaper than the Union industry product, have been stable during the period considered and found not to be a cause of injury to the Union industry. As a result, imports from these two countries cannot be considered self-inflicted injury. Therefore, this claim was rejected.

6.2.2. *Decrease of GFF demand in the Union between 2017 and the investigation period*

(1051) One user claimed that the injury of the Union industry was caused by the decrease in consumption between 2017 and the investigation period and another user claimed that the injury was caused by the decrease of the installations of wind turbines during this same period. The decrease of consumption from 2017 to 2018 of -7,3 % does not explain the sales volume loss of the Union producers of -13,3 % in the same period, especially taking into account that imports from the countries concerned increased by 5 % from 50 370 tonnes to 52 892 tonnes and their market share went from 27,8 % to 31,4 % in the same period between 2017 and the investigation period.

(1052) That the injury was not caused by a decrease of consumption in 2018 gets even clearer looking at the entire period considered and not just comparing the last two years. The consumption in the Union increased during the period considered, while the market share of the Union industry continuously decreased during the same period and market shares of the countries concerned continuously increased. The Union industry could not benefit from the overall increase in consumption because of the subsidised imports from the countries concerned that were consistently and substantially undercutting the Union industry's sales prices. While the Union industry became lossmaking only in the investigation period, the other years already showed a continuous decrease in their profits over the years from 2015-2017 as shown in recital (1016).

(1053) Those claims were therefore rejected.

(1054) In their comments on the final disclosure, the GOC argued that the situation of the Union industry depended on the development of the Union consumption rather than imports from third countries. The GOC argued that this would be demonstrated by the fact that during the increase of consumption between 2015 and 2016 the Union industry benefited most by increasing their sales volume by roughly 12 000 tonnes. Furthermore, the GOC argued that the Commission disregarded the correlation between the decrease in the Union industry's sales volume and the decrease in demand in the Union by concluding that the decrease in the Union industry's sales volumes exceeded the decrease in the Union consumption between 2017 and 2018.

(1055) While a decrease in consumption should have an equal effect on the Union industry and the imports from the countries concerned, the investigation has shown that despite the decrease in consumption between 2018 and the investigation period, imports from the countries concerned managed to increase their import volume by 8 % and their market share by 3,6 percentage points from 27,8 % to 31,4 %, while the Union industry lost sales volume and market share. It is recalled that the investigation established that imports from the countries concerned were subsidised and entering the Union market at prices that were significantly undercutting the Union industry sales prices on the Union market. Likewise, between 2015 and 2016, when consumption increased, imports from the countries concerned increased by 24 % and market share 1,8 percentage points, while the Union industry's sales volume increased by only 11 % in comparison and market share even decreased by by 2,6 percentage points. The assertion that the Union industry mostly benefitted from such increase in consumption is therefore incorrect.

(1056) In their comments on the final disclosure, the GOC also argued that there has been a significant increase in wind turbine installations in 2019, an increase that is to be expected to continue in future. Since the wind industry is the main driver of the GFF consumption, that would have a positive impact on the Union industry. In support of its claim, the GOC referred to a publication of Wind Europe showing statistics concerning the development of wind turbine installations up to 2019 and including some prognosis for the future development of wind turbine installations.

(1057) As mentioned above, a positive development of the Union consumption of GFF does not necessarily have a positive impact on the Union industry's situation. As shown in recital (1055), the increase in consumption between 2015 and 2016 lead to an increase in import volume and market share from the countries concerned, while the Union industry could not fully benefit from such increase and even lost market share during this period. While the statistics of Wind Europa indeed showed a positive trend in wind turbine installations in 2019, they also revealed that the installations in 2019 remained still lower than those in 2017. In 2017, consumption showed already a decreasing trend and the situation of the Union industry deteriorated. In conclusion, the mere fact that wind turbine installations increased in 2019 does not allow any conclusion as to the development of the import volume of the countries concerned and the situation of the Union industry during that year.

(1058) All above arguments had therefore to be rejected.

6.2.3. *Increase of raw material cost*

(1059) Both cooperating users argued that the increase of the cost of the main raw material (GFR) imported from the PRC by imposing definitive countervailing duties on these products as well as the increase in energy cost was the cause for the injury. Average unit cost of the Union industry increased only slightly by 3 % over the period considered, while import prices from the countries concerned decreased by nearly 14 % and undercut the Union prices by 32,3 %. Therefore, the injury suffered cannot be attributed to the increase in cost but to the pressure exercised by the subsidised imports, which prevented the Union industry from increasing its prices in view of the increased costs.

(1060) Those claims were therefore rejected.

6.2.4. *Lack of flexibility of the Union industry*

(1061) Users argued that the Union industry has a lack of flexibility and would only provide large quantities upon long-term commitments, which bear, however, significant financial risks to the users (wind industry) that chose other suppliers instead. However, the investigation found that the wind industry has a policy of diversifying its supply and always integrates Union GFF producers in its supply chain. The investigation has also shown that it is possible for a wind energy producer to have a multi-sourcing strategy only with Union GFF producers. This demonstrates that there are Union GFF producers that provide the wind industry with the product quality under the condition the wind industry requires as further elaborated in recital (1081).

(1062) These arguments were therefore rejected.

(1063) In their comments on the final disclosure, the GOC argued that the Chinese producers have a legitimate competitive advantage by providing the integrated kitting service, whereas the Union industry failed to adequately change their business strategy to meet this demand.

(1064) As demonstrated in recital (1107) the Union industry has specialized kitting companies, which fulfil this function. Thereby the users are able to receive the same kind of kits from Union sourcing than from Chinese producers. While the Chinese producers might have a logistic advantage of one less transport between GFF production and kitting, the GOC has not demonstrated how this could have a major effect in a market, which is driven by price competition and product quality.

(1065) This claim was therefore rejected.

(1066) In their comments on the final disclosure, the GOC argued that the Union industry failed to adequately adjust their business strategy to their reduced sales by reducing employment levels and that the Union industry even increased investments.

(1067) The Commission noted that letting employees go might result in higher costs in short term and the fact that the Union industry would have to focus on smaller orders, which are more labour intensive due to more frequent machine adjustments. With regards to the investments, as mentioned in recital (1019), the verifications have shown that these were related mainly to necessary maintenance and replacements and not to production capacity increase.

(1068) This claim is therefore rejected.

### 6.3. **Conclusion on causation**

(1069) The Commission concluded that there was a clear coincidence in time between the substantial increase of imports from the countries concerned and the deterioration of the situation of the Union industry.

(1070) The Commission has also investigated other factors of injury and has not found at this stage of the proceedings any other factors, which contributed to the material injury suffered by the Union industry. In fact, none of the other factors, either individually or collectively, put into question that there is a genuine and substantial relationship between the subsidised imports from the PRC and Egypt and the material injury suffered by the Union industry.

(1071) In their comments to the final disclosure, the GOC claimed that the Commission failed to take into consideration that other factors such as the decrease in consumption had contributed to the material injury. In this context, the GOC referred to the *WTO Appellate Body Ruling in US – Hot Rolled Steel* claiming that the Commission should have separated and distinguished the injurious effect from other factors from the injurious effect of the subsidised imports. As set out in recitals (1044) to (1068), and in view of the conclusions reached in recital (1070) that none of the other factors was found to have contributed to the injury suffered by the Union industry, this claim was rejected.

## 7. UNION INTEREST

(1072) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt countervailing measures corresponding to the total amount of countervailable subsidies in this case, despite the determination of injurious subsidisation. The determination of the Union interest was based on an appreciation of all various interests involved, including those of the Union industry, importers, users, suppliers and ancillary industry namely cutters/kitters.

### 7.1. **Interest of the Union industry**

(1073) The investigation has shown that the Union industry is suffering material injury because of the effects of subsidised imports, which undercut Union's prices and exercise price pressure causing significant loss of market share and leading to losses during the investigation period, as elaborated in recitals (984) to (1069) above.

(1074) The Union industry will benefit from measures, which would likely prevent a further surge of imports from the PRC and Egypt at very low prices. Without measures, Chinese and Egyptian producers will continue to export GFF on the Union market at subsidised levels and exert further price pressure, preventing the Union industry from selling GFF at an adequate profit and thus causing further material injury to the Union industry.

### 7.2. **Interest of the users**

(1075) Wind turbine producers are the biggest users of GFF accounting for around 60-70 % of the GFF demand in the Union. The other users include boat (around 11 %), truck (around 8 %) and sport equipment (around 2 %) producers, as well as pipe rehabilitation system providers (around 8 %).

(1076) Upon initiation, 25 known users in the Union were contacted and invited to cooperate. Two wind turbine producers came forward opposing potential measures on GFF. Three wind turbine producers came forward but did not express their views, despite being invited to do so in the notice of investigation and in the users' questionnaires, they replied to. The two wind turbine producers opposing measures were supported by an association representing the European wind energy industry However, one of its members, a French wind energy association explicitly expressed to remain neutral about potential duties. Five wind turbine producers, including Vestas and SGRE, provided a questionnaire reply. One wind turbine producer declared to source GFF exclusively from various Union producers. Various ski equipment producers and various kitting companies came forward in support of the potential measures.

#### 7.2.1. *Wind turbine producers*

(1077) Two main types of wind turbines are (i) off-shore, which are generally bigger and meant to operate off coastal lines, and (ii) on-shore, which are meant to operate on land.

(1078) Wind park projects in the Union are traditionally carried out by project developers, who are either energy companies or investors, and not by the wind turbine producers themselves. Whereas originally Member States guaranteed a feed-in price for the produced energy from wind parks, as of 2014 the support has moved to tender based projects, in which various project developers compete, most recently on energy-neutral basis (namely wind can compete with solar energy).

(1079) Vestas and SGRE are among the biggest wind turbine producers in the Union, together consuming above 20 % of the entire Union demand of GFF. They together import above 30 % of all imports from the countries concerned. Both companies put forward several claims, namely (i) the loss of supply stability; (ii) the loss competitiveness of the wind energy industry; (iii) risk of relocation part of their production, and (iv) the compatibility with the Union renewable energy goals, in case measures are imposed.

(i) Supply stability

(1080) Vestas and SGRE argued that the GFF used in turbine blades undergo a sophisticated certification process, with intense and lengthy testing phases. They further argued that only the Chinese GFF producers can supply high volumes of homogeneous quality on short notice due to their vertical integration. They also argued that the production volume of the Union producers is insufficient as it is below total Union consumption. According to the users, for these reasons, the wind turbine industry cannot quickly switch suppliers and even if it could, there is not enough GFF being produced in the Union.

(1081) Whilst the majority of Union producers are not vertically integrated, the investigation has shown that, to prevent supply difficulties, the wind turbine producers usually have a multi-sourcing strategy, regularly purchasing the same kind of GFF from a Union producer and a Chinese or Egyptian producer. However, the Commission also received data from a third wind turbine producer, which multi-sources exclusively from Union producers. The fact that the multi-sourcing of a specific GFF includes regularly Union producers, both vertically integrated and non-integrated, demonstrates that non-integrated producers can equally provide the required GFF for the wind turbine production.

(1082) With regard to the production capacity in the Union, as shown in Table 5, whilst the Union production is currently lower than consumption as shown in Table 2, the total Union production capacity exceeds it. The investigation has shown that there is currently a high spare capacity available of over 40 %, which is due to the increase of subsidised and low priced imports from the PRC and Egypt that have taken over market share from the Union industry. That spare capacity is spread between 16 Union producers, rendering the Union a competitive market with varied internal sources of supply. Furthermore, additional capacity can be easily built, as only low investments would be required. The Union industry is already suppling the wind turbine industry and is therefore already a certified supplier; it can therefore easily increase its supply under fair market conditions.

(1083) Moreover, in medium to long term, wind turbine producers would be able to certify additional GFF producers either from the Union or from other non-subsidised sources. As mentioned in recital (1076) one of the wind turbine producers developed a multi-sourcing strategy based on several Union producers. Furthermore, there is sufficient spare capacity in the Union to do so at a scale needed by large wind turbine producers.

(1084) Those claims were therefore rejected.

(ii) Competitiveness of the wind energy industry

(1085) The cooperating wind turbine producers argued that any price increase of GFF would severely affect their competiveness. They claimed that the proportion of GFF costs has to be assessed at the level of the production of blade and not an entire wind park. They further argued that the increase in costs due to the potential duties could not be passed on to the wind park developers due to the long-time lap between making an offer for a wind park project and the actual implementation. According to the wind turbine producers, the cost increase due to the duties will affect the long-term technological survival of the entire wind industry in the Union, since important research and development investments are essential to staying in the lead for the most efficient technology.

(1086) The investigation has shown that turbine blades are not sold separately, but as a part of a wind turbine. Further to this, the project developers for wind parks regularly purchase additional wind park infrastructure from the wind turbine producers. Therefore, regarding the competitiveness of the wind turbine producers the cost for GFF should be set in relation to either the entire wind turbine or to the full wind park technology sold by the wind turbine producers and not just in relation to the manufacturing of blades as claimed, as this would not reflect the realities of the market.

(1087) GFF together with epoxy raisin are the two main components used in the production of blades for wind turbines. Thus, GFF represents [10 %-35 %] of the raw material costs of a blade depending on the proportion of GFF on the one hand and other materials on the other hand used. However, the investigation has also shown that blade manufacturing is labour intensive and therefore the proportion of GFF in the total manufacturing costs of a blade is significantly lower and represents only [4 %-14 %]. This proportion further drops to between [0,1 %-2 %] in the total cost of a wind turbine and in the total costs of building of an entire wind park.

(1088) Given the only minor part of GFF in the cost of a wind park [0,1 % to 2 %], the impact of the definitive duties on the GFF in the total cost of a wind park is considered to be negligible, especially since a large part of the GFF is sourced in the Union. The investigation has shown that the Union wind turbine producers also have considerable bargaining power to pass on the additional cost to wind park developers since collectively they are the main wind turbine suppliers on the Union market. Taking the minor part of GFF in the cost of a wind park, the profitability should stay at a level to maintain the level of research and development investments, which are essential to staying in the lead for the most efficient technology.

(1089) Even though it cannot be excluded that the competitive nature of indirectly participating in the tendering process may make such pass-on difficult, it should be taken into consideration that unlike GFF producers, the cooperating wind turbine producers are in healthy financial condition with profit margins where the small impact of the duties would be easily absorbed. Furthermore, both cooperating wind turbine producers are not only selling the wind turbines but also associated follow-up maintenance services to wind park developers. These contracts are very lucrative. The attractiveness of the service part of the business is also reflected by the recent acquisition of the service department of an insolvent competitor ([207]) by one of the cooperating users.

(1090) Therefore, the Commission established that any cost increase due to countervailing duties that could not be passed on to wind park developers could be easily absorbed by the wind turbine producers. In addition, as stated in recital (1083), wind turbine producers should also be able to change their suppliers to a GFF source not affected by subsidisation, be it in the Union or elsewhere.

([207]) Acquisition of selected assets of Senvion by Siemens Gamesa in October 2019.

(1091) Given the above, all claims with regard to the competiveness of the wind turbine producers were rejected.

(iii) Relocation of the blade production

(1092) The cooperating users further claimed that any increase in the production cost of blades would lead to the re-location of this production step outside the Union with thousands of job losses in the Union.

(1093) As far as on-shore blade production is concerned, the investigation has shown that the relocation of this production is already taking place without the application of measures on GFF. This is due to the market growth of wind park projects outside the Union, combined with a decline of new wind park project development in the Union, and hitting, for instance, a 20-year low in Germany. Another reason is the high cost of labour involved in the production of blades. The investigation has shown that the production of blades is labour intensive and that labour costs exceed the cost of GFF by [300 %-700 %]. Lower labour costs in third countries are therefore a high incentive to relocate the blade production. The imposition of duties on GFF would play a minor role, if any at all.

(1094) The investigation revealed further that for offshore blades transport costs play a more important role than the raw material costs of the blades, such as GFF. Offshore blades are longer and heavier than onshore blades, which makes transport more complex and expensive. Relocating production of offshore blade is therefore not likely to be caused by countervailing duties on the product concerned.

(1095) Therefore, the claims with regard to the relocation of the blades production to other third countries was rejected.

(iv) Renewable energy policy

(1096) One user argued that the imposition of measures would contradict the objectives set by the Union in its renewable energy policies, as it would increase significantly the production costs of wind turbines. It referred in support to the Commission's European Industrial Initiative on wind energy, which includes the objective to reduce the manufacturing costs of wind turbines and their components by 20 % by 2020.

(1097) As shown in recitals (1085) to (1090), the investigation does not support this claim, as it found that any countervailing measures would only have a negligible impact on the costs of wind turbine producers. In addition, that user also failed to demonstrate how countervailing measures on GFF, representing only a fraction of the costs of wind park technology, would prevent the steadily growing proportion of wind energy in Europe or prevent reaching the 2020 goal. That claim was therefore rejected.

7.2.2. *Ski producers and other users*

(1098) Several users from the skiing industry argued that the existence of GFF producers in the Union was essential to their supply stability, as they required a local partner for close cooperation and tailor-made GFF in lower volumes currently not produced outside the Union. Furthermore, they emphasised that the GFF industry in the Union was an essential partner in the improvement of their products and the development of new solutions. The research and development cooperation with the GFF producers in recent years has led to several efficiency gains, improved product performances and the development of new and more environmentally friendly products. Those users argued that Union ski producers cannot enter into the same level of cooperation with Chinese or Egyptian suppliers of GFF, as they would lose the ability to stay at the forefront of (green and sustainable) innovations and would themselves become more exposed to unfairly competing imports.

(1099) The Commission found the arguments put forward compelling, especially as far as research and development is concerned in an R&D driven industry. No counter arguments on the points raised were received from the exporting producers. However, the Commission also noted that ski producers are less voluminous GFF users than the wind turbine producers.

(1100) Other Union users did not come forward in the investigation.

(1101) Therefore, the Commission concluded that there were no compelling reasons from the users not to impose countervailing measures, but rather that the survival of the Union GFF industry is important for several groups of users.

7.3. **Suppliers**

(1102) Two Union producers of GFR, the main input for GFF, as well as an association representing the Union GFR producers came forward and argued in favour of the imposition of countervailing measures. They claimed that it would be detrimental for the Union GFR producers to lose their main customers as this would threaten their own survival in the Union.

(1103) Therefore, the Commission concluded that the imposition of measures is clearly in the interest of the Union GFR producers as suppliers for the GFF producers.

7.4. **Importers**

(1104) As mentioned in recital (85), only one independent importer came forward, but that imported only negligible volumes below 25 tonnes of GFF from the PRC. Since most high volume users require specific GFF made to order, it is not a product that is regularly imported in high volumes by independent traders.

(1105) Therefore, the Commission concluded that there were no compelling reasons from unrelated importers not to impose measures as they only import negligible volumes of GFF.

7.5. **Cutting and kitting service providers**

(1106) Increasingly users, especially the wind turbine industry, demand GFF in form of kits, which are cut to shape and put together by sewing various layers of GFF, thereby enabling a faster production of the downstream industry. Over the last years, this has created a market for service providers in the Union. One cutting company came forward and argued in favour of the imposition of countervailing measures. Since Chinese and Egyptian exporting producers increasingly integrate these additional services, as opposed to the Union industry, the service providers would lose a substantial part of their business, if the Union producers would disappear from the market. According to estimates from cutters, the Union cutting industry employs more than 2 000 people.

(1107) Therefore, the Commission concluded that the imposition of measures is clearly in the interest of the Union kitting and cutting service providers for the GFF producers.

7.6. **Other claims**

(1108) In their comments on the final disclosure, the GOE recalled that the European Union has helped Egypt to foster development under the Association Agreement and the Neighbourhood Policy and that measures would run counter this policy. The Commission noted that this is not a consideration that can be addressed under the analysis of the Union interest in accordance with Article 31 of the basic Regulation. In any event, the investigation did not put in question the efforts of Egypt to develop, modernize and support the income growth and the levels of employment.

7.7. **Conclusion on Union interest**

(1109) The Commission found that the imposition of measures is clearly in the interest of the Union GFF industry, whose survival is threatened by the subsidised imports of the product concerned. The survival of the Union GFF industry is important for the supply stability of their customers in the Union, especially for users who depend on a close local cooperation and require lower volumes of specific GFF, which cannot be purchased from the PRC or Egypt. For some users it is also essential to maintain the development of new GFF in the Union so that they themselves are not put in a disadvantageous position when competing with imports from outside the Union. Further, the survival of the Union GFF industry is also essential for the survival of their Union GFR suppliers and Union service providers for cutting and kitting.

(1110) However, the imposition of measures, as shown in recitals (1077) to (1097) above would not have significant adverse effects for the wind turbine producers.

(1111) On that basis, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose countervailing measures on imports of GFF originating in the PRC and Egypt.

## 8. DEFINITIVE COUNTERVAILING MEASURES

(1112) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, and in accordance with Article 15 of the basic Regulation, a definitive countervailing duty should be imposed.

### 8.1. Level of the definitive countervailing measures

(1113) Article 15(1), third subparagraph of the basic Regulation provides that the amount of the definitive countervailing duty shall not exceed the amount of countervailable subsidies established.

(1114) Article 15(1), fourth subparagraph states that *"where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures in accordance with the third subparagraph, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry"*.

(1115) No such information has been submitted to the Commission, and therefore the level of the countervailing measures will be set with reference to Article 15(1), third subparagraph.

(1116) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

| Country concerned | Company | Countervailing duty rate |
| --- | --- | --- |
| The PRC | CNBM Group | 30,7 % |
| | Yuntianhua Group | 17,0 % |
| | Other cooperating companies | 24,8 % |
| | All other companies | 30,7 % |
| Egypt | CNBM Group | 10,9 % |
| | All other companies | 10,9 % |

(1117) The anti-subsidy investigation was carried out in parallel with a separate anti-dumping investigation concerning the same product concerned originating from the PRC and Egypt, in which the Commission imposed anti-dumping measures limited to the injury elimination level. The Commission made sure that the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping would not result in offsetting the effects of subsidisation twice ('double-counting') in accordance with Article 24(1) and Article 15(2) of the basic Regulation, as well as the relevant applicable jurisprudence.

(1118) In the case of the PRC, the normal value was constructed in accordance with Article 2(6a) of 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 [208] with reference to undistorted costs and profits in an appropriate external representative country. Consequently, in accordance with Article 15(2) of the basic Regulation and in order to avoid double counting, the Commission first imposed the definitive countervailing duty at the level of the established definitive amount of subsidisation and then imposed the remaining definitive anti-dumping duty, which corresponds to the relevant dumping margin reduced by the amount of the countervailing duty and up to the relevant injury elimination level established in the separate anti-dumping investigation. Since the Commission reduced the dumping margin found with the entire amount of subsidisation established in the PRC, there was no double counting issue within the meaning of Article 24(1) of the basic Regulation.

(1119) In the case of Egypt, the Commission considered whether some of the subsidy schemes are export contingent subsidies, which have the effect to reduce export prices and thus increase accordingly the dumping margins, in order to decide whether it needs to reduce the dumping margin by the subsidy amounts found in relation to export contingent subsidies in accordance with Article 24(1) of the basic Regulation. Consequently, since the Commission did not countervail any export contingent subsidy schemes, it imposed the definitive countervailing duty at the level of the established definitive amount of subsidisation in addition to the anti-dumping duty established by Regulation (EU) 2020/492.

[208] This methodology was introduced by Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 338, 19.12.2017, p. 1).

(1120) Given the high rate of cooperation of Chinese and Egyptian exporting producers, the Commission found that the level of the highest duty imposed on the sampled companies would be representative as the 'all other companies'. The 'all other companies' duty will be applied to those companies, which did not cooperate in this investigation.

(1121) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items, which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings based partially on facts available to determine those amounts. Indeed, the Commission considered that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach.

(1122) On the basis of the above, the rates at which such duties will be imposed are set as follows:

| Country concerned | Company | Dumping margin (*) | Amount of subsidisation | Injury elimination level | Countervailing duty rate | Anti-dumping duty rate |
|---|---|---|---|---|---|---|
| PRC | CNBM Group | 99,7 % | 30,7 % | 108,9 % | 30,7 % | 69,0 % |
| | Yuntianhua Group | 64,7 % | 17,0 % | 37,6 % | 17,00 % | 37,6 % |
| | Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex I | 64,7 % | 24,8 % | 37,6 % | 24,8 % | 37,6 % |
| | Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in the Annex II | 64,7 % | 30,7 % | 37,6 % | 30,7 % | 34,0 % |
| | All other companies | 99,7 % | 30,7 % | 108,9 % | 30,7 % | 69,0 % |
| Egypt | CNBM Group | 20,0 % | 10,9 % | 63,9 % | 10,9 % | 20,0 % |
| | All other companies | 20,0 % | 10,9 % | 63,9 % | 10,9 % | 20,0 % |

(*) Established in the anti-dumping investigation.

(1123) In accordance with the methodology set out above in this section, in the case of CNBM Group and all other non-cooperating companies, the relevant dumping margin reduced by the definitive amount of subsidisation was lower than the injury elimination level established in the anti-dumping investigation. Therefore, the definitive countervailing duty was established at the level of the established definitive amount of subsidisation and a definitive anti-dumping duty was imposed at the level of the relevant dumping margin reduced by the amount of the countervailing duty. In the case of Yuntianhua Group, the definitive countervailing duty was established at the level of the established definitive amount of subsidisation and a definitive anti-dumping duty was imposed at the injury elimination level because this was lower than the relevant dumping margin reduced by the amount of the countervailing duty. With regard to Egypt, as clarified above at recital (1119) there was no potential issue of double counting.

(1124) The individual company countervailing duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during the investigation with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(1125) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate, which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate, which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

(1126) Further to the definitive disclosure, the complainant marked its overall agreement with the findings. At the same time, it noted that that disclosure did not address the interaction of the countervailing duties with the anti-dumping duties in the parallel proceeding. The complainant pointed out that there is no legal basis nor economic justification for simply limiting the overall level of combined anti-dumping and anti-subsidy measures, and that if the non-application of the lesser duty rule in the anti-subsidy proceeding has any meaning the fully countervailing duty must be imposed regardless of the application of the lesser duty rule in the anti-dumping proceeding. As for the Chinese exporting producers, the complainant submitted that anti-subsidy and anti-dumping duties can be cumulated even if the normal value is established in a representative country as explained at recital (1118), apart from the instances of export subsidies. In this respect, it argued that there is no necessary relation between degree of dumping and amount of government support and subsidies, if at all, and that subsidisation has major effects going beyond the impact on costs of production. The calculation of normal value based on a representative country cannot address the full impact of subsidisation and the distortions in the Chinese economy as a whole, and merely puts Chinese exporting producers on par with the other countries where this methodology does not apply and cumulation is allowed.

(1127) The complainant added that there is no legal basis for a presumption that all costs and prices in the representative country are free of company-specific subsidies, and that it thus makes no sense in these cases to carry out anti-subsidy and anti-dumping investigations. In this context it referred to the relevant jurisprudence of the World Trade Organisation ('WTO'), namely the dispute WT/DS 379 *United States – Definitive Anti-dumping and Countervailing Duties on Certain Products from China* ([209]) ('DS 379') where the WTO Appellate Body held that the offsetting of the same subsidisation twice by the concurrent imposition of anti-dumping duties calculated on the basis of an external representative country and countervailing duties was inconsistent with Article 19(3) of the WTO Agreement on Subsidies and Countervailing Measures. The complainant highlighted that the WTO Appellate Body also found that double counting would not "necessarily result in every instance of such concurrent application of duties", but this would rather depend on whether and to what extent it is established that domestic subsidies have lowered the export price of a product in a particular case ([210]).

(1128) Furthermore, the complainant referred to the situation concerning the PRC where the applicable anti-dumping duty is based on the injury margin because it is lower than the dumping margin, that is the case of Yuntianhua Group. In addition to all the arguments explained in the previous recitals, it argued that there is simply no possibility of double counting in this case, as an anti-dumping duty based on the injury margin is set entirely without reference to the normal value established on the basis of an external representative country. As a result, the issue of double counting does not even arise, and also the WTO jurisprudence in DS 379 is not applicable. The complainant concluded that since the repeal of the lesser duty rule in anti-subsidy proceedings, the combined anti-dumping and countervailing duties could no longer be limited by the injury margin.

(1129) Following definitive disclosure, Yuntianhua Group claimed that the Commission failed to perform a double counting analysis to determine whether or to what degree the same subsidies would be offset twice by imposing anti-dumping measure and countervailing duties. The absence of the analysis would be in breach of the company's rights of defence.

(1130) With regard to possible double counting, the Yuntianhua Group also referred to the WTO case DS 379 similar to the complainant. It highlighted that according to that ruling among the factors taken into account to establish the appropriate amount of anti-subsidy duty, an investigating authority must consider evidence of whether and to

([209]) WT/DS379/AB/R (US – Anti-Dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011,.

([210]) See WT/DS379/AB/R, paragraphs 583 and 599.

what degree the same subsidies are being offset twice when anti-dumping and anti-subsidy duties are simultaneously imposed. This party referred to the Commission's acknowledgment of the issue of double counting in recital (747) of the General Disclosure Document to infer that the facts in DS 379 are no different than those in this proceeding. On this basis, it concluded that the burden of proof to demonstrate the absence of double counting is on the Commission and that so far it has failed to disclose such analysis, thereby rendering deficient and incomplete the disclosure.

(1131) According to Yuntianhua Group, the obligation to carry out a double counting analysis is not affected by the application of the lesser duty rule in the parallel anti-dumping proceeding, to the extent that the dumping margin completely overlaps with the subsidy margin. In this respect, this party argued that there is only one injury elimination level for both proceedings, meaning that the usual approach of combining first countervailing and then the anti-dumping duty reduced by the injury margin should apply. Therefore, if the Commission would impose the countervailing duty in full and only reduce the anti-dumping duty by the injury elimination level margin, that will be contrary to the basic anti-dumping Regulation and to the Commission's findings in the parallel anti-dumping case, which concluded that a duty at the level of the injury elimination level is sufficient to eliminate the injury to the Union industry.

(1132) The GOC also submitted comments on potential double counting to rebut the comments made by the complainant as set out at recitals (1126) to (1128) above. The GOC also relied on the WTO DS 379 ruling ([211]) to conclude that double remedies are inconsistent with the relevant WTO rules and corresponding provisions of the basic Regulation referred to at recital (1127). With regard to this proceeding, the GOC argued that double counting would arise if the Commission would not cap the total countervailing and anti-dumping duty by the injury elimination level, because the same subsidisation would be addressed first via the dumping margin, and then again via the subsidy margin. The GOC highlighted that as concerns the CNBM Group the construction of normal value in the anti-dumping proceeding is based on undistorted numbers not affected by macro and micro subsidisation, and thus it already addresses the subsidisation in the PRC. With regard to the Yuntianhua Group, since their anti-dumping duty is based on the injury elimination level, if the countervailing duty would reflect the full amount of subsidisation, there would also be double counting because both investigations cover the same exports and the same alleged material injury, and the logic of domestic subsidies is that they equally affect the domestic and export sales. On the latter point, the GOC reasoned that the export price used as the basis for the injury margin calculation is lower to the extent of the amount of subsidisation found for the domestic subsidies. Thus, the alleged amount of subsidisation would be accounted for twice, that is also indirectly via the injury margin in the imposition of the anti-dumping duty. The GOC finally noted that the injury margins so established may also be inflated to the extent the Commission did not take into account the difference in the level of trade between the sales of the Chinese exporting producers and the EU industry. With respect to this last claim, the Commission noted that it has been addressed at recitals (977) and (978).

(1133) As for the claims by the complainant, the Yuntianhua Group and the GOC concerning the breach of their right of defence due to the failure to disclose the analysis on the interaction of the anti-dumping and countervailing duties and on potential double counting, the Commission noted at the outset that it did not do so because at the time of disclosure in this proceeding the anti-dumping proceeding was still ongoing and there were no anti-dumping measures formally in force. Therefore, such an analysis would have pre-judged the outcome of the anti-dumping proceeding, and would in any event have been based on hypothetical levels of measures still subject to comments and analysis. The Commission could not possibly have performed the analysis requested by the parties in time for the disclosure of this proceeding, but did raise the attention of all parties and commit to looking into this issue as per recital (747) of the General Disclosure Document. In any event, the Commission noted that this section fully addresses these issues and all the comments raised by the parties so far, and that this section has been disclosed to the parties to afford in full their right of defence. Therefore, the claims of all parties on this issue were rejected.

([211]) In particular, GOC referred to paras. 143-158, 541 and 543 of the final report.

(1134) With regard to the issue of possible double counting and the reference to the relevant parts and context of the WTO ruling in DS 379 raised by the complainant, the Yuntianhua Group and the GOC, the Commission recalled that Article 19(3) of the WTO Agreement on Subsidies and Countervailing Measures is mirrored in the provision of Article 15(2) of the basic anti-subsidy Regulation. Therefore, it concluded that the WTO jurisprudence on that provision, and in particular its ruling in DS 379, constitutes relevant interpretation for the application of Article 15(2) of the basic Regulation in this proceeding. The Commission further recalled that the current investigations constitute the first parallel anti-dumping and countervailing investigations since the legislative changes introducing a new calculation methodology in anti-dumping cases under Article 2(6a) of the basic anti-dumping Regulation ([212]), and new provisions on the application of the lesser duty rule in anti-dumping and anti-subsidy proceedings as part of the modernisation of trade defence investigations ([213]). The Commission also noted that in any event, even in past combined anti-subsidy and anti-dumping proceedings before these legislative changes this issue did not arise in practice ([214]).

(1135) As concerns the DS 379 ruling, the Commission took note of all the references submitted by the parties. It first noted that the WTO Appellate Body clarified that double counting (or 'double remedy') refers to situations where the simultaneous application of countervailing and anti-dumping duties on the same imported products results in offsetting, at least to some extent, the same subsidisation twice, and this is likely to occur when the dumping margin is calculated by reference to a methodology relying *inter alia* to costs or prices from a third country ([215]). In these cases, the anti-dumping duty *may* remedy or offset a domestic subsidy, to the extent that such subsidy has contributed to a lowering of the export price ([216]). Double remedies *may* also occur when countervailing and anti-dumping duties are imposed on the same product in the context of domestic subsidies granted within market economies when an unsubsidised, constructed, or third country normal value is used in the anti-dumping investigations ([217]). In situations of double counting, a countervailing duty would not be imposed "in the appropriate amounts" under Article 19(3) of the WTO SCM Agreement. The Commission also noted that the WTO Appellate Body specifically rejected the proposition that double counting necessarily arises in every instance of concurrent duties where the normal value is established on the basis of third country costs and prices. Instead, it ruled that this depends on whether and to what extent domestic subsidies have lowered the export price of a product, and on whether the investigating authority has taken the necessary corrective steps to adjust its methodology to take account of the factual situation ([218]). The Appellate Body concluded that the obligation to assess if a countervailing duty reflects "an appropriate amount" encompasses a requirement for the investigating authority to conduct a sufficiently diligent investigation into, and solicitation of, relevant facts, and to base its determination on positive evidence in the record ([219]).

(1136) By applying these principles to the interpretation of Article 15(2) of the basic Regulation in the present investigation, the Commission noted that its approach to deduct in full the subsidy amount from the dumping margin as it applied the methodology based on Article 2(6a) of the basic anti-dumping Regulation when constructing normal value was fully in line with these principles. The Commission acknowledged the complainant's argument that it would be in principle possible to cumulate countervailing and anti-dumping duties even in this situation. However, it noted that there was no positive evidence in the file showing whether and to what extent the domestic subsidies in the PRC had an effect on the export price. There was also no evidence in the file that the undistorted values in the representative country used to construct normal value in the anti-dumping proceeding had benefited from domestic subsidisation, which could be an equally relevant element in this analysis. On this basis, the Commission rejected the claims of the complainant and accepted the claims by the Yuntianhua Group and the GOC on this aspect.

(1137) With regard to the arguments by the complainant, the Yuntianhua Group and the GOC concerning the situation where the applicable anti-dumping duty is based on the injury elimination level because it is lower than the dumping margin pursuant to Article 9(4), second subparagraph of the basic anti-dumping Regulation, the

([212]) *Ibid* footnote 182.
([213]) These changes were introduced by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018, OJ L 143, 7.6.2018, p. 1.
([214]) See for instance the Council Implementing Regulation imposing a definitive anti-subsidy duty on imports of coated fine paper originating in the People's Republic of China, OJ L 128, 14.5.2011, p. 18, recitals (269)-(274).
([215]) DS 379, paras. 541-542.
([216]) DS 379, para. 543.
([217]) DS 379, para. 543.
([218]) DS 379, para. 599.
([219]) DS 379, para. 602.

Commission noted the following. First, it clarified that the situations of possible double counting covered in Articles 15(2) and 24(1) of the basic Regulation must be kept distinct from the application of the lesser duty rule, which has a different object and purpose. It then pointed out that the ruling in DS 379 is only relevant in the interpretation of Articles 15(2) and has no bearing with regard to the application of the lesser duty rule in accordance with Article 9(4) of the basic anti-dumping Regulation and Article 15(1) of the basic Regulation.

(1138) As for this proceeding, the Commission first analysed whether there was an issue of double counting under Articles 15(2) and 24(1) of the basic Regulation, following the approach described above in this Section by fully deducting the subsidy amount from the dumping margin. The Commission then analysed whether the lesser duty rule was applicable in each proceeding further to the legislative changes mentioned at recital (1134). In the current anti-subsidy proceeding, since the lesser duty rule was not applicable pursuant to Article 15(1) of the basic Regulation, there was no need to analyse and even establish the injury elimination level. Therefore, the Commission applied in full the amount of subsidisation found. By contrast, in the parallel anti-dumping proceeding, the lesser duty rule applied pursuant to Article 9(4) of the basic anti-dumping Regulation. Therefore, the Commission calculated the injury elimination level, and after deducting the full amount of subsidisation from the dumping margin, it capped the applicable anti-dumping duty by the injury elimination level, which was the situation for the Yuntianhua Group.

(1139) With regard to the arguments by the Yuntianhua Group and the GOC that there is only one and the same injury elimination level for both proceedings as they cover the same imports, and therefore imposing a combined duty going beyond this injury elimination level would imply double counting, the Commission noted that this argument mixes the two steps of preventing double counting of the respective subsidy amounts and dumping *margins* found, with the second step of analysing whether and how the lesser duty rule is relevant in this proceeding. As explained in the previous recital, further to the legislative changes in 2018 in this anti-subsidy investigation the Commission concluded that Article 15(1), fourth subparagraph of the basic Regulation was not applicable, whereas the lesser duty rule applied in the separate anti-dumping investigation concerning the same product. The rationale for the rule under Article 15(1), fourth subparagraph of the basic Regulation in anti-subsidy proceedings is detailed in particular at recital (10) of Regulation 2018/825, which sets out that *"countervailable subsidies granted by third countries are particularly distortive of trade"* and therefore *"it is, in general, no longer possible to apply the lesser duty rule."* Therefore, the proposition by these parties that the combined countervailing and dumping duty should be capped by the injury elimination level as established for the purpose of the anti-dumping proceeding would be contrary to Article 15(1) of the basic regulation in conjunction with recital (10) of Regulation 2018/825. As for the argument raised by the GOC of 'indirect' double counting due to the fact that the export price used as the basis for the injury margin calculation is lower to the extent of the subsidy amount for the domestic subsidies found, the Commission noted once again an attempt to mix the issue of double counting of the respective subsidy amounts and dumping *margins* found with the separate step of the calculation of the injury elimination level for the purpose of the lesser duty rule. The lesser duty rule is relevant only in the separate anti-dumping investigation, and the export price used for the calculation of the injury elimination level is the actual price at CIF level with the necessary adjustments as explained at recitals (270)-(272) of Regulation (EU) 2020/492 in line with the practice in all anti-dumping (and anti-subsidy) proceedings where the lesser duty rule applies, without any adjustments made for the domestic subsidies found. Therefore, the Commission rejected the arguments made by the Yuntianhua Group and the GOC on this point.

(1140) In light of all these considerations, the Commission confirmed the applicable duties to the various exporting producers as detailed in the table at recital (1122) and in Articles 1 and 2 of this Regulation.

(1141) Following the additional definitive disclosure, the cooperating related Egyptian exporting producers noted that the benefit amounts transferred by Jushi Egypt to Hengshi Egypt had already been addressed by the Commission in the parallel anti-dumping proceeding. They submitted that in that proceeding when constructing normal value the Commission disregarded Hengshi Egypt's recorded purchase price of rovings from Jushi Egypt and replaced it with Jushi Egypt's sales price of rovings to unrelated domestic customers pursuant to Article 2(5) of the basic anti-dumping Regulation. According to these parties, this constitutes a breach of Article 24(1) of the basic anti-subsidy Regulation preventing double counting when export subsidies are at stake in parallel proceedings, because the Commission has already dealt with the amount of subsidy passed from Jushi Egypt to Hengshi Egypt through the sales of rovings in the anti-dumping proceeding.

(1142) The Commission noted at the outset that it did not countervail any export contingent subsidy in Egypt as explained at recital (1119), and thus Article 24(1) is not applicable in this situation. Therefore, this claim could be dismissed already on this basis. In any event, the Commission noted that the adjustment made in the anti-dumping case concerned the fact that the sales price of rovings between these related entities did not reflect an arm's length price. Hence, the price between the related entities was adjusted in line with the prevailing domestic market price from unrelated transactions in the Egyptian market because it did not reflect the market conditions, as explained in detail at recitals (310) to (332) of the definitive anti-dumping Regulation. The anti-subsidy investigation in Egypt does not deal at all with the subsidised provision of inputs, namely rovings, for less than adequate remuneration, let alone with an export subsidy for these rovings. Therefore, the legal basis for the adjustment, that is Article 2(5) of the basic anti-dumping Regulation, and its underlying context and circumstances have nothing to do with the situation of possible double counting as per Article 24(1) of the basic anti-subsidy Regulation. Therefore, the claim of this party is entirely baseless not only from both a factual and legal point of view, but even from a purely theoretical point of view. On this basis, the Commission dismissed this claim.

(1143) Further to the additional definitive disclosure, the complainant disagreed with the methodology followed by the Commission on the combination of the duties. This party argued that the definitive disclosure did not address the complainant's point that where an anti-dumping duty is based on the injury margin, there is already in any event no risk of double counting, as the explanation at recital (1136) was considered insufficient. According to the complainant, there is no factual risk of double counting in cases where the dumping duty is limited to the injury margin, and therefore for exporting producers whose anti-dumping duty is based on the injury margin, the legally required combined duty level is the total of the countervailing duty plus the anti-dumping duty based on the injury margin with no deductions or adjustments. The complainant argued that this methodology led to the arbitrary result that exporting producers which did not cooperate in the anti-subsidy investigation were effectively rewarded with a lower combined duty rate, as they were subject to an anti-dumping duty of 33,6 % (dumping margin minus countervailing margin) lower than the injury elimination level of 37,6 %. Instead, the complainant suggested that their combined duty should be a total of 68,7 %, resulting from 31,1 % countervailing duty plus 37,6 % injury margin, leading to a total of 68,7 %. This would be a reward to (partial) non-cooperation.

(1144) Furthermore, the complainant argued that by accepting the claims by the Yuntianhua Group and the GOC as per recital (1136), the Commission essentially rewarded (partial) non-cooperation and accepted unsubstantiated claims. According to this party, the absence of the relevant evidence as explained in the same recital cannot per se justify the application of the most conservative methodology especially in cases of (partial) non-cooperation, thereby raising the risk that the duties would not have the necessary remedial effect especially given the predatory character of the activities of the Chinese exporting producers as shown by their aggressive stockpiling. The complainant based its claim on the absence of company-specific data to show any actual impact of double counting at company level put forward by the Yuntianhua Group and the GOC, and on their comments being abstract and not specific and lacking any relevant factual evidence. While recognising that the WTO in DS 379 ruled that it is for the Commission as investigating authority to carry out a proper investigation to avoid the risk of double counting, the complainant argued that it is evidently for the exporting producers to provide evidence that double counting would result from the combination of their specific duties on the basis of their specific factual circumstances, which they have failed to do. The complainant also referred to the case of the CNBM Group, which did not even raise any double counting claims and would therefore essentially be rewarded for (partial) non-cooperation with no legal or factual justification.

(1145) Based on the above arguments, the complainant requested that: (i) for companies cooperating only in the anti-dumping investigation, the Commission should impose combined duties equal to the total of the countervailing duty and the injury margin; (ii) for the CNBM Group and all non-cooperating exporting producers, the Commission should impose the full countervailing duty and anti-dumping duty based on the dumping margin as the company has not made any substantiated, company-specific claim supported by evidence concerning double counting; (iii) for the Yuntianhua Group and the exporting producers cooperating in both investigations, the combined duty levels are appropriate but the Commission should revise and clarify its methodology.

(1146) The Commission disagreed with the claims raised by the complainant. With regard to the claim that the definitive disclosure did not address the argument raised by the complainant, the Commission reiterated that the explanations in this entire section, in particular at recitals (1135)-(1138) and specifically recital (1136) fully addressed this argument. Furthermore, the Commission noted that the injury margin is calculated in parallel with the dumping margin so that a comparison can be made in order to apply the lesser duty rule. When a duty is based on the injury margin, it does not mean that there was no dumping or that the dumping margin was completely irrelevant, as one of the required conditions to apply anti-dumping duties is that there be dumping above *de minimis* levels. Therefore, in situations where the injury margin is used to establish the actual

duty because it is lower than the dumping margin in accordance with Article 9(4) of the basic anti-dumping Regulation and/or Article 15(2) of the basic anti-subsidy Regulation where relevant, it does not eliminate the actual existence of dumping (or subsidy) at a level higher than the injury elimination level. Therefore, also in these situations the potential for double counting is equally present where the relevant factual situation and the applicable jurisprudence show that this is the case This claim was therefore rejected.

(1147) As for the claim concerning the Chinese exporting producers cooperating in the anti-dumping but not in the anti-subsidy proceeding, the complainant is suggesting essentially to add to the full subsidy margin the higher injury margin rather than the dumping margin. This party did not specify the legal or factual basis as well as the reason for this suggestion. The Commission noted that this suggested methodology would be contrary to Article 9(4) second subparagraph of the basic anti-dumping Regulation as applied in the anti-dumping proceeding per Sections 7.1 and 7.2 of the definitive anti-dumping Regulation, without there being any legal or factual justification put forward by the complainant other than the need not to reward non-cooperation. In this respect, the Commission recalled that partial or full non-cooperation is legally irrelevant for the application of the lesser duty rule pursuant to Article 9(4) of the basic anti-dumping Regulation, and that in any event these parties had cooperated in the anti-dumping investigation and not in the anti-subsidy investigation. Therefore, the Commission confirmed the validity of its methodology as explained at recitals (1117)-(1118) and (1136)-(1137) above for these exporting producers cooperating only with the anti-dumping investigation and rejected the claim by the complainant.

(1148) With regard to the claims by the complainant concerning the treatment of the Yuntianhua Group and CNBM Group, which failed to submit company-specific evidence to show the actual impact of double counting at company level and effectively were rewarded despite their partial non-cooperation, the Commission noted the following. As the complainant itself admits and as is abundantly clear from the WTO DS 379 ruling explained in details at recitals (1135)-(1136), the Commission did not have any evidence on file showing that there was no potential double counting by the cumulation of anti-dumping and countervailing duty. Among the relevant elements for this purpose, some of which are listed at recital (1136), the predatory behaviour of the Chinese exporting producers shown by the aggressive stockpiling leading to a possible insufficient remedial effect of the duties as claimed by the complainant is not a relevant element for this purpose. Therefore, in the absence of any other relevant evidence on file for this purpose, the Commission rejected this claim.

(1149) With regard to the last generic request by the complainant for the Yuntianhua Group and the exporting producers cooperating cooperating in both investigations to revise and clarify its methodology, the Commission noted that the complainant did not provide any further detail and did not explain how the Commission should revise and clarify this methodology. Furthermore, the Commission highlighted the inconsistency of this generic request with the agreement of principle by the complainant on the appropriateness of the combined duty. Therefore, the Commission dismissed this claim.

(1150) The complainant finally asked the Commission to state in the definitive regulation that any claims for double counting adjustments could be accepted when determining the combined level of anti-dumping and countervailing duties only if supported by factual company-specific evidence that double counting would result, and that in the absence of such evidence a claim by an exporting producer claim of double counting must be rejected as unsubstantiated. In this respect, the Commission first stated that as a matter of principle regulations imposing provisional and/or definitive measures concern the specific product under investigation and the findings of the investigation, and thus cannot be used to make general policy statements or statements of principle applying in future investigations upon request by the parties. At the same time, the Commission reiterated that the relevant rules and jurisprudence in WTO DS379 as explained in detail at recitals (1135)-(1136) and (1148) above with regard to this investigation require a determination on the actual existence of double counting in parallel cases where a methodology like the one set out in Article 2(6a) of the basic anti-dumping Regulation is used on the basis of positive evidence in the record. The fact that in this specific case there exists no such evidence as the exporting producers have not been requested to submit the relevant evidence by any of the parties does not mean that in any future case this evidence could not be requested and constitute relevant evidence in the record for the Commission to make its determination on the potential existence of double counting in similar parallel proceedings.

(1151) Following the additional definitive disclosure, the Yuntianhua Group also requested the Commission to disclose the exact dumping margin for Yuntianhua Group free of the double counting, and to clarify the deduction of the subsidies established in the PRC.

(1152) Furthermore, the Yuntianhua Group referred to recital (85) of the additional disclosure and the fact that double counting should be addressed under Article 24(1) of the basic Regulation. This party argued that anti-dumping and anti-subsidy duties deal with one and the same situation, and therefore there is no legal basis to impose both duties in parallel.

(1153) The Yuntianhua Group also took issue with the statement at recital (745) of the definitive disclosure that no information has been submitted to the Commission to justify the application of the injury margin in this case. This party argued that the Commission made a determination under Article 7(2b) of the basic anti-dumping Regulation to the effect that it is not in the Union interest not to apply the injury margin, and that while the Union interest assessment is identical in the definitive disclosure of the anti-subsidy proceeding the Commission reached the different conclusion not to apply the injury margin. This party further referred to the regulation imposing a provisional anti-dumping duty in the *Hot-rolled Stainless Steel* case ([220]), where the Commission found that for the Union interest to justify an application of the injury margin it is sufficient that there is an impact on supply chains. Since in the anti-subsidy proceeding there is also a negative impact of the anti-subsidy duties on the users in the EU, although insufficient to justify a non-imposition of the countervailing duties, this party concludes that the Commission should at least apply the injury margin to The Yuntianhua Group in this anti-subsidy proceeding in analogy with the decision in the *Hot-rolled Stainless Steel* case.

(1154) With regard to the Yuntianhua Group's request for the disclosure of the "exact dumping margin", the Commission noted that there has been no change to the dumping margins as stated in the regulation imposing anti-dumping measures. In addition to what explained above at recital (70), Yuntianhua Group's dumping *margin* remains the one established during the anti-dumping investigation and disclosed to the group in the context of that proceeding. However, for certain parties, including the Yuntianhua Group, as explained above the concomitant imposition of anti-dumping and countervailing measures could result in double counting and/or the results of the application of the lesser duty rule must be taken into account from the date of imposition of the countervailing measures. Thus, the Commission must amend the anti-dumping *rate* accordingly in those cases. By the same logic, the Commission also notes that if in the future countervailing measures were to be repealed, the applicable anti-dumping duty rate would have to be amended proportionally in line with the margins imposed by the anti-dumping Regulation, as as per Article 2(3) of this Regulation.

(1155) As for the calculation of the dumping duty for this party, as explained in recitals (1117)-(1118), in cases were the normal value was constructed according to Article 2(6a) of the basic anti-dumping Regulation the Commission fully avoided double counting. To that end, the Commission first imposed the full countervailing duty in the anti-subsidy investigation, and then amended the definitive antidumping duty. To calculate the amended antidumping duty, the Commission deducted from the established dumping margin the subsidy margin established in this proceeding. Specifically for the Yuntianhua Group, the Commission first imposed the countervailing duty at a level of 17,0 %. Then, in order to avoid double counting, the Commission deducted the full countervailing duty of 17,0 %, from the dumping margin of 64,7 % as established in the anti-dumping proceeding. This would result in an anti-dumping duty of 47,7 %. However, in accordance with the lesser duty rule, as set out in Article 7(2) of the basic anti-dumping Regulation, the final amount of the duty imposed in the anti-dumping investigation for the Yuntianhua Group was capped by the injury elimination level of 37,6 %.

(1156) With regard to the second argument by the Yuntianhua Group based on Article 24(1) of the basic Regulation, the Commission recalled that, as explained at Recitals (1117)-(1118), in order to avoid double counting the Commission reduced the dumping duty rate established by the entire amount of subsidisation. Consequently, there was no double counting either the meaning of Article 24(1) of the basic Regulation as this party argued, or within the meaning of Article 15(2) of the basic Regulation. Therefore, the Commission dismissed this claim.

([220]) Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

(1157) As for the last claim of the Yuntianhua Group concerning the injury margin, the Commission referred to its statements at Recitals (1114) and (1139), where it explained that the injury margin is not relevant in this anti-subsidy investigation as the default rule under Article 15(1), fourth subparagraph is that the lesser duty rule is not applicable unless it can clearly conclude that the countervailing duty should be set at the injury elimination level if lower *"on the basis of all the information submitted"*. Since no party submitted any information to this effect under Article 15(1) of the basic Regulation, the Commission did not have to undertake any assessment in this respect as the countervailing duty must be based on the amount of countervailable subsidies established. Therefore, the requested application of the injury margin in this anti-subsidy proceeding would lack any legal basis and would be simply unlawful. This claim could therefore be already dismissed on this basis. In any event, the Commission noted that the reference to the precedent concerning the *Hot-rolled Stainless Steel* is both legally and factually irrelevant. From a legal point of view, this was an anti-dumping proceeding and the relevant analysis quoted by the party was based on Article 7(2b) of the basic anti-dumping Regulation. The legal framework for the application of the lesser duty rule has changed as a result of the legislative changes of 2018, and the conditions of application under Article 7(2) to 7(2b) of the basic anti-dumping Regulation are now different from those under Article 15(1) of the basic anti-subsidy Regulation. Furthermore, this party is mixing the particular Union interest test carried out in the context of Article 7(2b) of the basic anti-dumping Regulation, with the ordinary Union interest test carried out in accordance with Article 21 of the basic anti-dumping Regulation and its mirror provision Article 31 of the basic anti-subsidy Regulation, which are different given their context and purpose, and on whose latter provision this party relied for its argument. For all these reasons, the Commission rejected this claim.

### 8.2. **Special monitoring clause**

(1158) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing 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 countervailing duty applicable to 'all other companies'.

(1159) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and should, 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.

(1160) 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 23(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a countrywide duty.

(1161) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers, which did not have any exports to the Union during the investigation period.

## 9. **REGISTRATION**

(1162) As mentioned in Section 1.2, the Commission made imports of GFF originating in the countries concerned subject to registration. Registration took place with a view to possibly collecting duties retroactively under Article 16(4) of the basic Regulation.

(1163) Since no provisional duties were imposed, no retroactive application could occur. Thus, the registration of imports should be discontinued.

## 10. DISCLOSURE

(1164) Interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in the People's Republic of China and Egypt. Interested parties were given the opportunity to provide comments on the accuracy of the calculations specifically disclosed to them.

(1165) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council [221], 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.

(1166) As explained in recitals (1117) - (1119) above, the Commission deducted from the dumping margin part of the subsidy amount in order to avoid double counting. Thus, should any modification or removal of the definitive countervailing duties occur, the level of anti-dumping duties should be automatically increased by the same proportion in order to reflect the actual extent of double counting as a result of this modification or removal. This change of the anti-dumping duties should take place as from the entry into force of this regulation.

(1167) 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 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 [222],

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is imposed on imports of fabrics of woven and/or stitched continuous filament glass fibre rovings and/or yarns with or without other elements, excluding products which are impregnated or pre-impregnated (pre-preg), and excluding open mesh fabrics with cells with a size of more than 1,8 mm in both length and width and weighing more than 35 $g/m^2$ originating in the People's Republic of China and Egypt currently falling under CN codes ex 7019 39 00, ex 7019 40 00, ex 7019 59 00 and ex 7019 90 00 (TARIC codes 7019 39 00 80, 7019 40 00 80, 7019 59 00 80 and 7019 90 00 80).

2. The definitive countervailing 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 concerned | Company | Definitive countervailing duty | TARIC additional code |
|---|---|---|---|
| PRC | Jushi Group Co. Ltd;<br>Zhejiang Hengshi Fiberglass Fabrics Co. Ltd;<br>Taishan Fiberglass Inc. | 30,7 % | C531 |

(221) 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)

(222) OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 143, 7.6.2018, p. 1).

| Country concerned | Company | Definitive countervailing duty | TARIC additional code |
|---|---|---|---|
| | PGTEX China Co. Ltd;<br>Chongqing Tenways Material Corp. | 17,0 % | C532 |
| | Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex I | 24,8 % | See Annex I |
| | Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in the Annex II | 30,7 % | See Annex II |
| | All other companies | 30,7 % | C999 |
| Egypt | Jushi Egypt For Fiberglass Industry S.A.E;<br>Hengshi Egypt Fiberglass Fabrics S.A.E. | 10,9 % | C533 |
| | All other companies | 10,9 % | C999 |

3. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 2 or in Annexes I or II shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/ her name and function, drafted as follows: *'I, the undersigned, certify that the (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 the (country concerned). I declare that the information provided in this invoice is complete and correct.'* If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

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

5. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.

*Article 2*

Implementing Regulation (EU) 2020/492 is amended as follows:

(1) Article 1(2) and (3) is replaced by the following:

'2. 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 concerned | Company | Definitive anti-dumping duty | TARIC additional code |
|---|---|---|---|
| PRC | Jushi Group Co. Ltd;<br>Zhejiang Hengshi Fiberglass Fabrics Co. Ltd;<br>Taishan Fiberglass Inc. | 69,0 % | C531 |
| | PGTEX China Co. Ltd;<br>Chongqing Tenways Material Corp. | 37,6 % | C532 |
| | Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in the Annex I | 37,6 % | See Annex I |
| | Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in the Annex II | 34,0 % | See Annex II |
| | All other companies | 69,0 % | C999 |
| Egypt | Jushi Egypt For Fiberglass Industry S.A.E;<br>Hengshi Egypt Fiberglass Fabrics S.A.E. | 20,0 % | C533 |
| | All other companies | 20,0 % | C999 |

3. The application of the individual duty rates specified for the companies listed in paragraph 2 or in Annexes I or II shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: *"I, the undersigned, certify that the (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.'

(2) A new Article 1(5) is inserted:

'5. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2020/776 (*) be modified or removed, the duties specified in paragraph 2 or in Annexes I or II will be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.

(*) Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1).'

(3) A new Article 1(6) is inserted:

'6. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.'

(4) The Annex is replaced by Annex I and Annex II.

*Article 3*

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Implementing Regulation (EU) 2020/44.

2. No definitive countervailing duty will be levied retroactively for registered imports.

3. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/44 shall no longer be kept.

*Article 4*

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, 12 June 2020.

*For the Commission*

*The President*

Ursula VON DER LEYEN

*ANNEX I*

**Other companies cooperating in both anti-subsidy and anti-dumping investigation**

| Name of the Company | TARIC additional code |
|---|---|
| Changshu Dongyu Insulated Compound Materials Co., Ltd | B995 |
| Changzhou Pro-Tech Industry Co., Ltd | C534 |
| Jiangsu Changhai Composite Materials Holding Co., Ltd; | C535 |
| Neijiang Huayuan Electronic Materials Co., Ltd | C537 |
| NMG Composites Co., Ltd | C538 |
| Zhejiang Hongming Fiberglass Fabrics Co., Ltd | C539 |

*ANNEX II*

**Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation**

| Name of the Company | TARIC additional code |
|---|---|
| Jiangsu Jiuding New Material Co., Ltd | C536 |