

COMMISSION IMPLEMENTING REGULATION (EU) 2019/915**of 4 June 2019****imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Measures in force**

- (1) In March 2013, following an anti-dumping investigation ('the original investigation'), the Council imposed by Implementing Regulation (EU) No 217/2013 ⁽²⁾ ('the definitive Regulation'), a definitive anti-dumping duty on imports of certain aluminium foils in rolls currently falling under CN codes ex 7607 11 11 and ex 7607 19 10 and originating in the People's Republic of China ('the PRC').
- (2) The definitive Regulation imposed an anti-dumping duty at rates ranging between 14,2 % and 15,6 % on imports from the sampled cooperating exporting producers, 14,6 % on the non-sampled cooperating companies and a duty rate of 35,6 % on all other exporting producers in the PRC.

1.2. Initiation of an expiry review

- (3) On 14 June 2017, the Commission published a notice of impending expiry of the anti-dumping measures in force on the imports of certain aluminium foil in rolls originating in the PRC in the *Official Journal of the European Union* ⁽³⁾.
- (4) On 14 December 2017, eight Union producers (ALEURO Converting Sp. Z o.o., CeDo Sp. z o.o., Cuki Cofresco SpA, Fora Folienfabrik GmbH, ITS BV, Rul-Let A/S, SPHERE SA and Wrapex Ltd) ('the applicants'), representing more than 40 % of the total production of certain aluminium foil in rolls in the European Union ('the Union'), lodged a request for review under Article 11(2) of the basic Regulation.
- (5) The applicants based their request on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.
- (6) Having determined that sufficient evidence existed for the initiation of an expiry review, on 13 March 2018 the Commission published a notice of initiation in the *Official Journal of the European Union* ⁽⁴⁾ ('the Notice of Initiation').

1.3. Review investigation period and period considered

- (7) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 January 2017 to 31 December 2017 ('the review investigation period' or 'RIP').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 69, 13.3.2013, p. 11).

⁽³⁾ OJ C 188, 14.6.2017, p. 21.

⁽⁴⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain aluminium foil in rolls originating in the People's Republic of China (OJ C 95, 13.3.2018, p. 8).

- (8) The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2014 to the end of the review investigation period ('the period considered').

1.4. Interested parties

- (9) The Commission invited in the Notice of Initiation all interested parties to contact it in order to participate in the investigation. The Commission specifically informed the applicants, known Union producers and their associations; known importers of certain aluminium foil in rolls in the Union, the authorities in the PRC and known exporting producers in the PRC of the initiation of the expiry review and invited them to cooperate.
- (10) All interested parties had the 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. No interested party requested a hearing.

1.5. Sampling

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

1.5.1. Sampling of Union producers

- (12) The Commission stated in the Notice of Initiation that it had provisionally selected a sample of Union producers.
- (13) In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of production of the like product, which could reasonably be investigated within the time available.
- (14) The provisionally selected sample consisted of three Union producers accounting for around 66 % of the total production volume of the cooperating Union producers. The Commission invited interested parties to comment on the provisional sample and received comments only from Sphere SA, which sought confirmation that only its production company Sphere France SAS would be included in the sample. The sample was thus found to be representative of the Union Industry.

1.5.2. Sampling of unrelated importers

- (15) The Commission invited in the Notice of Initiation importers and their representative associations to make themselves known and to provide specific information necessary to decide whether sampling was necessary and, if so, to select a sample.
- (16) No unrelated importer provided the requested information and agreed to be included in the sample. One company replied that it is neither an importer nor user of the product under review.

1.5.3. Sampling of exporting producers in the PRC

- (17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the cooperation of the Mission of the PRC to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (18) Four groups of Chinese producers submitted sampling replies. In view of the low number of replies, the Commission decided that sampling was not necessary and requested all Chinese producers that submitted sampling replies to complete the questionnaire.

1.5.4. Users

- (19) The Commission invited in the Notice of Initiation the users and their representative associations, and representative consumer organisations to make themselves known and cooperate. No users in the Union or their associations came forward.

1.5.5. Questionnaires and verification visits

- (20) The Commission sent questionnaires to the three sampled Union producers. As mentioned in recital 18 questionnaires were also sent to four groups of producers in the PRC.
- (21) The three sampled Union producers submitted a questionnaire reply. However, none of the Chinese producers that had submitted sampling replies subsequently submitted a completed questionnaire response. The Commission informed the exporting producers of the consequences of the lack of cooperation; yet, no exporting producer cooperated in the investigation.
- (22) The Commission sought and verified all the information deemed necessary for the determination of a likelihood of continuation or recurrence of dumping and injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following Union producers:
- CeDo Sp. z o.o., Katy Wrocławskie, Poland;
 - ITS BV, Apeldoorn, The Netherlands;
 - SPHERE SA, Paris, France.

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

- (23) In view of the sufficient evidence available at the initiation of the investigation tending to show the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission considered it appropriate to initiate the investigation on the basis of Article 2(6a) of the basic Regulation.
- (24) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide the information requested in Annex III to the Notice of Initiation regarding the inputs used for producing the product under review. Four groups of Chinese producers provided information in this regard.
- (25) In order to obtain information it deems necessary for its investigation with regard to the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission also sent a questionnaire to the Government of the People's Republic of China ('GOC'). No reply was received from the GOC.
- (26) In the Notice of Initiation, the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the appropriateness of the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of this Notice in the *Official Journal of the European Union*. No submissions or additional evidence were received in that respect from the GOC or the exporting producers.
- (27) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (28) On 19 April 2018, the Commission published a first note for the file ('the Note of 19 April 2018') seeking the views of the interested parties on the relevant sources that the Commission may use for the determination of the normal value. In the Note of 19 April 2018, the Commission provided a list of all factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. In addition, taking into account the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified, at that stage, Turkey as a potential representative country. The Commission further indicated that it had identified a producer, Sedat Tahir A.S., whose financial statements were publically available and which was producing the product under review in the potential representative country.
- (29) The Commission gave the opportunity to all interested parties to comment, within 10 days, but no comments were received.

- (30) In a 'Second note on the sources for the determination of the normal value' of 3 October 2018 ('the Note of 3 October 2018'), the Commission confirmed its intention to use Turkey as the representative country, confirmed the specific customs codes and sources of data for the factors of production and confirmed the selling, general and administrative costs ('SG&A') and profit figures relating to the Turkish company Sedat Tahir A.S., which, if appropriate, it intended to use for the construction of normal value.
- (31) The Commission gave the opportunity to all interested parties to comment, within 10 days, but no comments were received.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (32) The product under review is the same as in the original investigation, namely aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 10 and 7607 19 10 10) ('the product under review').
- (33) The product under review is generally used as a consumer product for packaging and other household/catering applications ('aluminium household foil').

2.2. Like product

- (34) It was considered that the product under review produced in the PRC and exported to the Union, the product produced in the representative country Turkey and the product produced and sold in the Union by the Union industry have the same basic physical and technical characteristics, and the same basic uses. No interested parties commented on the determination of the like product.
- (35) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (36) The Commission did not receive any claims regarding the product scope.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

3.1. Preliminary remarks

- (37) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.
- (38) As mentioned in recital 21, none of the Chinese exporting producers cooperated in the investigation. Thus, the exporting producers failed to submit questionnaire replies, including any data on export prices and costs, domestic prices and costs, capacity, production, investments, etc. Likewise, the GOC and the exporting producers failed to address the evidence on the case file, including the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations' ⁽⁵⁾ ('the Report'), and the additional evidence provided by the applicants, showing that such prices and costs were affected by substantial government interventions. Therefore, the Commission resorted to the use of facts available in accordance with Article 18 of the basic Regulation.
- (39) The Commission notified the Chinese authorities and the exporting producers mentioned in recital 18 of the application of Article 18 of the basic Regulation and gave them the opportunity to comment. The Commission did not receive any comments. Accordingly, pursuant to Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular, the information contained in the request for the expiry review, in the submissions by interested parties, and the statistics available in the Article 14(6) database/Eurostat.

⁽⁵⁾ SWD(2017) 483 final/2.

3.2. Continuation of dumping of imports during the review investigation period

- (40) For the review investigation period, the statistical data from Eurostat shows that the product under review continued to be imported into the Union from the PRC. It amounted to 1 519 tonnes and constituted 1,8 % of the total Union consumption during the review investigation period. In this respect, the Commission noted that such a level is not unusually low in the context of expiry reviews as effective measures seeking to counter the injurious effects of dumped imports logically are expected to reduce imports from the previous injuriously-dumped level. In fact, the volume of imports from the PRC during the RIP amounts to 22,9 % of all imports. Moreover, as noted in recital 165, calculating dumping on the basis of export prices to third countries during the RIP also show similar levels of dumping. This confirms that the conclusions reached on the basis of the import volumes into the EU during the RIP are also representative. Consequently, the Commission concluded that the actual imports in the review investigation period were representative and, therefore, examined whether dumping continued during the review investigation period.

3.3. Normal value

- (41) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (42) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'*. As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.3.1. Existence of significant distortions

3.3.1.1. Introduction

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

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

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

- (45) Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. That file contained, in particular, allegations and evidence from the applicants on the existence of significant distortions in the Chinese aluminium market. The file also contained a copy of the

Report, produced by the Commission, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as aluminium). The Report was placed in the investigation file at the initiation stage.

- (46) On the basis of the evidence available on the file, including the evidence contained in the Report, the Commission thus decided to examine whether it is appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. That analysis covered the examination of the substantial government interventions in its economy in general, but also the specific market situation in the relevant sector (i.e. aluminium), including the product under review.
- (47) As specified in recitals 25-26, neither the GOC nor the exporting producers commented or provided evidence supporting or rebutting the existing evidence on the investigation file, including the Report, and the additional evidence provided by the applicants, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

3.3.1.2. Allegations by the applicants and evidence provided to support those allegations

- (48) The request contained some relevant evidence supporting the allegations on significant distortions and complementing the Report.
- (49) Firstly, the applicants indicated in Section III A.1.a of the request that the Commission had already noted in the investigation that led to the adoption of the Initial Regulation ⁽⁶⁾ that 'the price of the upstream basic raw material, aluminium, was distorted' and that 'these distortions were also found in the price of the intermediate raw material, aluminium jumbo foil in rolls'.
- (50) In this regard, in the investigation that led to the adoption of the Initial Regulation, the Commission first noted that primary aluminium accounts for ca. 60-70 % of the costs of production of the product under review and it is thus the main cost-driver in its production. Second, the Commission noted that the prices of aluminium on the Chinese market (so-called 'SHFE price') ⁽⁷⁾ diverged greatly from the LME price ⁽⁸⁾, which is the worldwide reference price. Third, the Commission considered that the situation could be explained by a 'series of state-driven factors and significant interference by the State in the domestic market with a number of tools' ⁽⁹⁾. On the basis of the above, in the Initial Regulation, the Commission concluded in this regard that these factors have essentially led to a situation where Chinese primary aluminium prices and the prices of downstream aluminium products are the result of state intervention independent from price fluctuations on international markets.
- (51) Secondly, the applicants indicated in Section III A.1.b of the request for review that, in addition to referring to the evidence contained in the Report, the distortions highlighted by the Commission in the Initial Regulation still exist. In this regard, they indicate that market-distortions in the Chinese non-ferrous metals industry were highlighted in a report prepared for WV Metalle, the German non-ferrous metals industry association, dated 24 April 2017 ('WV Metalle Report') (Annex 5 of the request). The WV Metalle Report confirmed in particular that the non-ferrous metal sector constitutes a core element of government planning in the context of the Strategic Emerging Industry Initiative, the Made in China 2025 Plan, as well as other high-level programmes. It indicates that the GOC directly intervenes in the pricing of capital, labour, land, raw materials and basic inputs to the production process.
- (52) According to the applicants, the WV Metalle Report further indicates that the contemporary debt-equity swaps initiative is not market-driven, that the non-ferrous metal sector has consistently benefited and continues to benefit from generous financial and non-monetary support, that China's non-ferrous metal sector has received substantial subsidies including energy subsidies, particularly directed towards state-owned enterprises and that the GOC strictly controls volumes and prices of products of the non-ferrous metals industry, including through export duties, quotas, licenses, export restrictions, promotional subsidies, taxes and tax rebates.

⁽⁶⁾ Definitive Regulation, recital 13 confirming recitals 27 to 53 of Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the People's Republic of China ('the Initial Regulation'), OJ L 251, 18.9.2012, p. 29. See in particular recital 31.

⁽⁷⁾ Shanghai Futures Exchanges (<http://www.shfe.com.cn/en/>).

⁽⁸⁾ Initial Regulation, recital 33.

⁽⁹⁾ *Ibid.*, recital 34.

- (53) Thirdly, in Annex 6 of the request, the applicants indicated that the preliminary affirmative findings of the US Department of Commerce, in its countervailing duty investigation of certain aluminium from China, indicated that 37 % of domestic aluminium consumption in China is by State-owned enterprises and that the GOC imposes a 30 % export tariff on primary aluminium, resulting in distortions of the Chinese downstream domestic market for aluminium. On 5 March 2018, the US Department of Commerce confirmed the provisional findings in the Final Determination.
- (54) In addition, the applicants considered that the US Department of Commerce established that Chinese aluminium foil producers benefited from a number of countervailable subsidies, and therefore, the applicants considered that the Chinese aluminium market is served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country, that public policies influence and distort free market forces on the Chinese aluminium market and that Chinese producers have access to finance granted by institutions which implement public policy objectives or otherwise do not act independently of the State. This would allegedly result in distortions of the SHFE prices.

3.3.1.3. Significant distortions affecting the domestic prices and costs in the People's Republic of China

- (55) The very foundation of the Chinese economic system, i.e. the concept of the so called 'socialist market economy', is at odds with the notion of free play of market forces. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle of that system is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The State-owned economy is considered the 'leading force of the national economy' and the State has the mandate 'to ensure its consolidation and growth' ⁽¹⁰⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over private ownership permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example of this causal relationship: It refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership shall play a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with State ownership ⁽¹¹⁾.
- (56) In addition, according to relevant Chinese legislation, the socialist market economy shall be developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by a finding reaffirmed in the text of Article 1 of the Constitution. Following the existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: 'The defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.' ⁽¹²⁾ This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise broad macroeconomic control within the boundaries of which free market forces are at play.
- (57) The Chinese State undertakes an interventionist economic policy in pursuance of goals which coincide with the political agenda set by the CCP, rather than reflecting the prevailing economic conditions in a free market ⁽¹³⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as various facets of the regulatory environment.
- (58) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans cover a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level tend to be fairly detailed while national plans tend to set somewhat broader targets. Plans also specify the tool box in order to support the relevant industries/sectors as well as the

⁽¹⁰⁾ The Report – Chapter 2, p. 6-7.

⁽¹¹⁾ The Report – Chapter 2, p. 10.

⁽¹²⁾ <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law>, accessed on 25 January 2019.

⁽¹³⁾ The Report – Chapter 2, p. 20-21.

timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under those plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the formally binding nature of the plans. Crucially, the relevant Chinese authorities at all level of government adhere to the system of plans and they use their vested powers accordingly, thereby forcing the economic operators to comply with the priorities set out in the plans (see also point 3.3.1.5 below) ⁽¹⁴⁾.

- (59) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also point 3.3.1.8 below) ⁽¹⁵⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets, etc. Even though of lesser significance than the banking sector, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽¹⁶⁾.
- (60) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, public procurement rules are regularly used to pursue policy goals other than economic efficiency, thereby undermining market based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽¹⁷⁾. Similarly, in the area of investment, the Chinese government maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽¹⁸⁾.
- (61) In sum, the Chinese economic model is based on certain basic axioms which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽¹⁹⁾.

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

- (62) Against the above background of the dominance of State ownership in the Chinese economic model, State owned enterprises ('SOEs') represent an essential part of the Chinese economy. The government and the CCP maintain structures that ensure their continued influence over SOEs. The state-party not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but also claims its rights to participate in operational decision-making of SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also point 3.3.1.4 below), as well as through shaping the corporate structure of the SOE sector ⁽²⁰⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²¹⁾.

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

⁽¹⁵⁾ The Report – Chapter 6, p. 120-121.

⁽¹⁶⁾ The Report – Chapter 6, p. 122-135.

⁽¹⁷⁾ The Report – Chapter 7, p. 167-168.

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

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

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

⁽²¹⁾ The Report – Chapter 5, p. 104-9.

- (63) In this connection, an OECD study published in January 2019 ('OECD Study')⁽²²⁾ refers to SOEs in the aluminium sector which specifically emphasize in their regulatory filings how State ownership influences relevant industrial policies and how State ownership translates into government support. More specifically, one SOE mentions in its 2016 bond prospectus that it is one of the 52 backbone State-owned enterprises, that it plays a key role in the formulation and implementation of policies in the power sector and that it receives comprehensive and sustainable support from the GOC. Another SOE refers in its 2017 bond prospectus to the fact that the respective provincial government can exert significant influence on the group⁽²³⁾.
- (64) This is all the more important given that the PRC is the largest aluminium producer in the world, with several large SOEs amongst the top individual producers worldwide. According to estimates, SOEs account for more than 50 % of the total primary aluminium output in the PRC⁽²⁴⁾. A recent study of the non-ferrous metal industry in the PRC also points in the direction of SOEs accounting for a dominant share of the domestic market⁽²⁵⁾. While an increase in capacity in recent years is attributed partly to privately-owned companies, such capacity increase would usually also entail various forms of (local) government involvement, such as tolerating illegal capacity expansion⁽²⁶⁾. Moreover, the aluminium production capacity amongst the main SOEs has also increased, though to a lesser extent⁽²⁷⁾.
- (65) With a high level of government intervention in the aluminium industry and a high share of SOEs in the sector, even privately owned aluminium producers are prevented from operating under market conditions. Indeed, both public or privately owned enterprises in the aluminium sector are also subject to policy supervision and guidance as set out in section 3.3.1.5 below.
- (66) State control and intervention in the production of the product concerned (aluminium household foils) takes place within the general framework described. Indeed, according to the information available to the Commission, many of the major producers of the product under review are State-owned. The evidence available thus suggests that aluminium foil producers in the PRC are subject to the same ownership, control or policy supervision and guidance by the Chinese government and thus do not operate in accordance with market principles.

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

- (67) Apart from exercising control over the economy by means of ownership of SOEs, the Chinese State is in a position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as foreseen in the Chinese legislation, can be considered to reflect the corresponding ownership rights⁽²⁸⁾, CCP cells in enterprises, State-owned and private alike, represent another channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution⁽²⁹⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears to not have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure

⁽²²⁾ OECD (2019), 'Measuring distortions in international markets: the aluminium value chain', OECD Trade Policy Papers, No 218, OECD Publishing, Paris, <https://doi.org/10.1787/c82911ab-en>.

⁽²³⁾ OECD Study, p. 29.

⁽²⁴⁾ Australian Anti-Dumping Commission, *Aluminium Extrusions from China*, REP 248, p. 79 (13 July 2015).

⁽²⁵⁾ Taube, M. (2017). *Analysis of Market Distortions in the Chinese Non-Ferrous Metals Industry*, Think!Desk, 24 April 2017, p. 51.

⁽²⁶⁾ See for example a report concerning Shandong provincial government's failure to curb aluminium capacity expansion: https://mp.weixin.qq.com/s?__biz=MzI2OTUyMzA0Nw==&mid=2247494318&idx=1&sn=9690ca50845c19f38eaff659516817a&chksm=eaddaba6ddaa22b071a5e2588aa787ed6f6a1a964ccae55c4d85c6f7ccbfc5cedd3cdceac9d&scene=0&pass_ticket=JfPlYZoDqNTFmOPYUGJbMwF0XlC1N3hAJ3EYPpsKx6rkt4fSeZ4TwlvB5BffX4du#rd (accessed on 22 February 2019).

⁽²⁷⁾ The Report – Chapter 15, p. 387-388.

⁽²⁸⁾ The Report – Chapter 5, p. 100-1.

⁽²⁹⁾ The Report – Chapter 2, p. 26.

on private companies to put ‘patriotism’ first and to follow party discipline ⁽³⁰⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decision within their respective companies ⁽³¹⁾. These rules apply in general in the Chinese economy, including to the producers of the product under review and the suppliers of their inputs.

- (68) The following example illustrates well the above trend of an increasing level of intervention by the GOC in the aluminium sector:
- (69) In 2017, a Chinese state-owned aluminium producer, China Aluminium International Engineering Corporation Limited (‘Chalieco’), amended its Articles of Association giving more prominence to the role of party cells within the company. It included a whole chapter on the Party Committee, and Article 113 thereof states: ‘*In deciding major corporate issues, the Board shall consult the Party Committee of the Company in advance.*’ ⁽³²⁾ Furthermore, in their 2017 Annual Report ⁽³³⁾ the Aluminum Corporation of China (‘Chalco’) states that a number of directors, supervisors, and senior management – including the Chairman and Executive Director, and the Chairman of the Supervisory Committee – are members of the CCP.
- (70) The State’s presence and intervention in the financial markets (see also section 3.3.1.8 below) as well as in the provision of raw materials and inputs further have a distorting effect on the market. Thus, the State presence in firms, including SOEs, in the aluminium and other sectors (such as the financial and input sectors) allow the government to interfere with respect to prices and costs.

3.3.1.6. Significant distortions according to Article 2(6a)(b) of the basic Regulation, third indent: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (71) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors, the objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽³⁴⁾.
- (72) For instance, the government plays a key role in the development of the Chinese aluminium sector (including the product under review). There are numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, clearly showing the high degree of intervention of the Chinese government. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the aluminium sector.
- (73) These policies and targets for the aluminium sector have an important direct or indirect impact on the production costs of the product under review.
- (74) Although the 13th Five-Year Plan on Economic and Social Development ⁽³⁵⁾ does not contain specific provisions on aluminium, for the non-ferrous metal industry in general it envisages a strategy of promoting cooperation on international production capacity and equipment manufacturing. To achieve these goals, the plan confirms that it will enhance supporting systems related to taxation, finance, insurance, investment and financing platforms, as well as risk assessment platforms ⁽³⁶⁾.
- (75) The corresponding sectoral plan, the Non-Ferrous Metal Industry Development Plan (2016-2020) (‘Plan’) sets out specific policies and targets that the government aims to achieve for a number of non-ferrous metals industries ⁽³⁷⁾, including aluminium.

⁽³⁰⁾ The Report – Chapter 2, p. 31-2.

⁽³¹⁾ See <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU>, accessed on 25 January 2019.

⁽³²⁾ The Report – Chapter 15, p. 388.

⁽³³⁾ <http://www.chalco.com.cn/chalcoen/rootfiles/2018/04/19/1524095189602052-1524095189604257.pdf>, accessed on 8 March 2019

⁽³⁴⁾ The Report – Chapter 4, p. 41-2, 83.

⁽³⁵⁾ The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020), <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>.

⁽³⁶⁾ The Report – Chapter 15, p. 377.

⁽³⁷⁾ The Report – Chapter 12, p. 275-282 and Chapter 15, p. 378-382.

- (76) The Plan aims at upgrading the range of product types produced by the Chinese aluminium industry, inter alia, through supporting innovation. It calls for swift development of the mixed ownership system and a boost to SOE's vitality. It further provides for the possibility of stock-piling non-ferrous metals, improving the security of resources, including aluminium and sets specific quantitative targets for reducing power consumption, increasing the ratio of recycled aluminium in production and increasing capacity utilisation ⁽³⁸⁾.
- (77) The Plan further provides for structural adjustments with stricter control on new smelting facilities and elimination of outdated capacity. It provides for geographical distribution of processing plants, focuses on projects to increase bauxite and alumina resource exploitation and covers electricity supply and pricing policy ⁽³⁹⁾.
- (78) With this wide range of measures and policies, the Plan represents a continuation of the 2009 Non-Ferrous Metals Industry Adjustment and Revitalization Plan which was adopted to alleviate the negative effects on the non-ferrous metal industry of the financial crisis. The key objectives, set out in the plan include, inter alia, production volume control, restructuring, raw material sourcing, export tax policy, security of resources, stockpiling, technological innovation, financial policy and planning and implementation ⁽⁴⁰⁾.
- (79) Another policy document targeting the aluminium sector is the Standard Conditions applicable to the Aluminium Industry issued by the Ministry of Industry and Information Technology ('MIIT') on 18 July 2013, in order to speed up structural adjustment and curb disorderly expansion of the aluminium smelting capacities. The Standard Conditions introduce minimum production quantities for new plants, quality standards and security of supply for imported and domestically sourced bauxite and alumina. The Standard Conditions indicate that MIIT is the authority in charge of the standardisation and management of the aluminium industry, as well as publication of the list of companies authorised to operate in the aluminium industry ⁽⁴¹⁾.
- (80) Moreover, Entry Conditions Applicable to the Aluminium Industry, issued by the National Development and Reform Commission ('NDRC') in October 2007 and formally in force until 2016, had as its main objective to promote the development of the aluminium industry and to reduce greenhouse gas emissions ⁽⁴²⁾.
- (81) Finally, the Guidelines for Accelerating the Restructuring of the Aluminium Industry ('Restructuring Guidelines') ⁽⁴³⁾, issued by the NDRC in April 2006, regard aluminium as a fundamental product in the development of the national economy.
- (82) The Restructuring Guidelines state that, in implementing the Industrial Development Policy approved by the State Council, specific objectives shall be achieved in certain areas. These areas are:
- Enhance the concentration in the industry;
 - Access to financial capital (see also section 3.3.1.8 below);
 - Organisation of the industry;
 - Strict control of exports of electrolytic aluminium; and
 - Elimination of outdated capacity.
- (83) With respect to organisation of the industry and elimination of outdated capacity, the objectives stated in the Restructuring Guidelines have been pursued also by more recent policies, such as by the Plan which encourages non-ferrous metal enterprises to develop upstream and downstream alliances and restructuring within the sector and across sectors, to increase the level of concentration of the sector and to strengthen business integration and process re-engineering (see also recitals 74-76).

⁽³⁸⁾ The Report – Chapter 12, p. 275-282.

⁽³⁹⁾ The Report – Chapter 15, p. 378-382, 390.

⁽⁴⁰⁾ The Report – Chapter 15, p. 384-385.

⁽⁴¹⁾ The Report – Chapter 15, p. 382-383.

⁽⁴²⁾ The Report – Chapter 15, p. 385-386.

⁽⁴³⁾ The Report – Chapter 15, p. 386.

- (84) Thus, the numerous plans, directives and other documents pertaining to aluminium, issued at the national, regional and municipal level, clearly show the high degree of intervention of the Chinese government in the aluminium sector ⁽⁴⁴⁾. Through these and other instruments, the government directs and controls virtually every aspect of the development and functioning of the sector.
- (85) Beyond the plans, the government's intervention in the sector has taken the form, inter alia, of export-related measures, including export duties, export quotas, export performance requirements and minimum export price requirements on different raw materials for aluminium.
- (86) The GOC further discourages exports of primary aluminium and its inputs, aiming at promoting higher added-value aluminium products. This objective is pursued by granting full or partial VAT rebates on downstream aluminium products in combination with incomplete VAT rebates and export taxes on primary aluminium ⁽⁴⁵⁾.
- (87) Moreover, the price of key inputs such as energy and electricity are found to be influenced by different types of government intervention ⁽⁴⁶⁾. Other types of government intervention leading to market distortions include the stockpiling policy through the State Reserve Bureau and the role of the SHFE ⁽⁴⁷⁾. In addition, several trade defence investigations have established that the Chinese government has consistently granted different types of State support measures to aluminium producers ⁽⁴⁸⁾. The extensive intervention of the GOC in the aluminium sector has led to overcapacity ⁽⁴⁹⁾, which is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.
- (88) The OECD Study also identified additional government support influencing market forces in the aluminium sector. Such support would typically take the form of inputs, in particular electricity ⁽⁵⁰⁾ and primary alumina, sold at below-market prices ⁽⁵¹⁾. The OECD Study further describes how the GOC objectives for the aluminium sector are translated into industrial policies and specific actions on the provincial and local level, including for example capital injections, priority possession rights to mineral resources, governmental grants and subsidies or tax incentives ⁽⁵²⁾.
- (89) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the product under review and the raw materials used for producing it. Such measures impede market forces from operating normally.

3.3.1.7. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (90) The Chinese bankruptcy system appears inadequate to deliver on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on similar principles as corresponding laws in other countries, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵³⁾.

⁽⁴⁴⁾ The Report – Chapter 15, pp. 377-387.

⁽⁴⁵⁾ The Report – Chapter 15, p. 378 and 389; OECD Study, p. 25-26.

⁽⁴⁶⁾ The Report – Chapter 15, pp. 390-391.

⁽⁴⁷⁾ The Report – Chapter 15, pp. 392-393.

⁽⁴⁸⁾ The Report – Chapter 15, pp. 393-394.

⁽⁴⁹⁾ The Report – Chapter 15, pp. 395-396.

⁽⁵⁰⁾ Provision of discounted electricity is reported also by other sources. See for example: *Economic Information Daily*: Worrying over growth downturns, western region releasing preferential policies to support high energy consumption industries http://jjckb.xinhuanet.com/2012-07/24/content_389459.htm (accessed on 22 February 2019), reporting on how western Chinese provinces like Shaanxi, Ningxia, Qinghai and Gansu have continued to provide cheap electricity to attract more investments.

⁽⁵¹⁾ *Ibid.*, p. 16, p. 30. However, the Chinese authorities interfere with respect to other inputs, too. A typical example is coal where the government retains the power to subdue coal price rises. See: https://policy.cn.com/policy_ticker/coal-price-unlikely-to-jump-during-heating-season/?iframe=1&secret=c8uthafuthetra4e (accessed on 22 February 2019).

⁽⁵²⁾ *Ibid.*, p. 16-18.

⁽⁵³⁾ The Report – Chapter 6, p. 138-149.

- (91) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁵⁴⁾. All land is owned by the State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁵⁵⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁵⁶⁾.
- (92) Therefore, the Chinese bankruptcy and property laws do not appear to properly work, resulting in distortions when maintaining insolvent firms afloat and in relation to the land provision and acquisition in the PRC. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the aluminium sector and more specifically with respect to the product under review.
- (93) This finding is supported by the provisional affirmative determination of the US Department of Commerce, in the Countervailing Duty Investigation of certain Aluminium Foil from The People's Republic of China, which found, using adverse facts available, that the Government of the PRC's provision of land for Less Than Adequate Remuneration constitutes a financial contribution within the meaning of Section 771 (5)(D) of the Tariff Act of 1930, as amended ⁽⁵⁷⁾.

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

- (94) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation (ILO), in particular those on freedom of association and on collective bargaining ⁽⁵⁸⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁵⁹⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁶⁰⁾. Those findings lead to the distortion of wages costs in the PRC.
- (95) The Commission did not receive any evidence that the aluminium sector, including the product under review, would not be subject to the Chinese labour law system as described above. The aluminium sector is thus affected by the distortions of wage costs both directly (when making the product under review) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

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

- (96) Access to capital for corporate actors in the PRC is subject to various distortions.
- (97) Firstly, the Chinese financial system is characterised by the strong market position of State-owned banks ⁽⁶¹⁾, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership

⁽⁵⁴⁾ The Report – Chapter 9, p. 216.

⁽⁵⁵⁾ The Report – Chapter 9, p. 213-215.

⁽⁵⁶⁾ The Report – Chapter 9, p. 209-211.

⁽⁵⁷⁾ Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of certain Aluminium Foil from The People's Republic of China, published by the International Trade Administration, Department of Commerce, on 7 August 2017, IX.E. p. 30, available at <https://enforcement.trade.gov/frn/summary/prc/2017-17113-1.pdf> (last accessed on 11 March 2019).

⁽⁵⁸⁾ The Report – Chapter 13, p. 332-337.

⁽⁵⁹⁾ The Report – Chapter 13, p. 336.

⁽⁶⁰⁾ The Report – Chapter 13, p. 337-341.

⁽⁶¹⁾ The Report – Chapter 6, p. 114-117.

but also via personal relations (the top executives of the large State-owned financial institutions are ultimately appointed by the CCP)⁽⁶²⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State⁽⁶³⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁶⁴⁾.

- (98) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (99) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the Chinese government and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings.
- (100) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important⁽⁶⁵⁾. In the aluminium sector, the Restructuring Guidelines have mandated provision of loans to companies which meet the relevant state industry policies⁽⁶⁶⁾. Such interventions into capital allocation result in a bias for lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market. There is indeed evidence, including for the aluminium sector, that SOEs receive privileged treatment from banks in forms of loan interest rates, amounts, and terms, which results in a competitive advantage for SOEs⁽⁶⁷⁾.
- (101) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the recent growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (102) In this respect, the OECD Study refers to anecdotal evidence that certain aluminium producers in the PRC have obtained financing on preferential terms, with cost of financing being seemingly decoupled from the corresponding level of corporate leverage. According to the study, one state-owned aluminium producer explicitly stated in its 2016 bond prospectus that it attracts considerable financial support from Chinese policy banks bearing interest rate below benchmark. Similarly, the 2017 bond prospectus of another state-owned producer refers to the strong ties which the company maintains with Chinese banks, including policy banks that have provided that company with low-cost financing sources. The OECD Study concludes in this connection that while there can be many reasons why interest rates are low for these firms, the contrast between poor financial indicators and low interest rates may suggest some potential under-pricing of the risk associated with those borrowers⁽⁶⁸⁾.
- (103) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government induced distortions. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.

⁽⁶²⁾ The Report – Chapter 6, p. 119.

⁽⁶³⁾ The Report – Chapter 6, p. 120.

⁽⁶⁴⁾ The Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁶⁵⁾ The Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁶⁶⁾ The Report – Chapter 15, p. 386.

⁽⁶⁷⁾ See for example: China Economic Daily: Chinese Academy of Fiscal Sciences reports indicates SOEs are getting loans at rates 1,5 percent lower than private companies http://www.ce.cn/xwzx/gnsz/gdxw/201708/01/t20170801_24724804.shtml (accessed on 22 February 2019).

⁽⁶⁸⁾ OECD Study, p. 21.

- (104) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the Chinese government has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (105) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant systemic issues and distortions resulting from the continuing pervasive role of the state in the capital markets.
- (106) No evidence was submitted to the effect that the aluminium sector, including the product under review, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.3.1.10. Systemic nature of the distortions described

- (107) The Commission noted that the distortions described in the Report are not limited to the aluminium sector in general or the product under review in particular. On the contrary, the evidence available shows that the facts and features of the Chinese system as described above in sections 3.3.1.1-3.3.1.5 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in sections 3.3.1.6-3.3.1.8 above and in Part II of the Report.
- (108) In order to manufacture the product under review, a range of inputs is needed. There is no evidence in the investigation file that those inputs are not sourced in the PRC. When the Chinese aluminium foil producers purchase/contract those inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned above. For instance, suppliers of inputs employ labour that is subject to the distortions; Suppliers in the PRC can borrow money that is subject to the distortions on the financial sector/capital allocation; they are subject to a system of land-use rights that distorts the cost of using land; and, above all, they are subject to the planning system which applies across all levels of government and sectors, thus also permeating their production process in a directly and indirectly.
- (109) As a consequence, not only can the domestic sales prices of the product under review not be used, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are equally tainted by significant distortions within the meaning of Article 2(6a) of the basic Regulation because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is likely exposed to significant distortions within the meaning of Article 2(6a) of the basic Regulation. The Commission received no evidence – nor did it establish counter-evidence – that would dispute this finding. The same applies for the input to the input and so forth. No evidence or argument has been put forward by the GOC or the exporting producers in the present investigation to the contrary.

3.3.1.11. Conclusion

- (110) The analysis laid out in sections 3.3.1.2-3.3.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the aluminium sector (including the product under review) showed that prices or costs, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation. On that basis, and in the absence of any cooperation from the GOC and the exporting producers, the Commission concluded that it is not appropriate to use domestic prices and costs to establish the normal value in this case.
- (111) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of

corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section. The Commission recalled that no exporting producer cooperated with the investigation after submitting the sampling forms and that no claim was presented that some domestic costs would be undistorted under the third indent of Article 2(6a)(a) of the basic Regulation.

3.3.2. Representative country

3.3.2.1. General remarks

- (112) According to Article 2(6a)(a), first indent of the basic Regulation, the normal value was constructed on the basis of costs of production and sale in an appropriate representative country.
- (113) The choice of the representative country was based on the following criteria:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income similar to the PRC on the basis of the database of the World Bank;
 - Production of the product under review in that country ⁽⁶⁹⁾;
 - Availability of relevant public data in that country;
 - Where there is more than one possible representative country, preference shall be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (114) As explained in recitals 28 to 29, in the Note of 19 April 2018, the Commission informed interested parties that it had identified only Turkey as a possible representative country and invited interested parties to comment and suggest other countries. No comments were received on this aspect.
- (115) As indicated in recitals 30 to 31, in the Note of 3 October 2018, the Commission confirmed its intention to use Turkey as the potential representative country and requested comments. No comments were subsequently received on this aspect either.

3.3.2.2. A level of economic development similar to the PRC

- (116) Turkey is regarded by the World Bank as a country with a similar level of economic development to the PRC, i.e. it is classified as an 'upper-middle income' country on a gross national income ('GNI') basis ⁽⁷⁰⁾, similarly to the PRC.

3.3.2.3. Production of the product under review in the representative country

- (117) In the Note of 19 April 2018, the Commission indicated that it had identified a producer of the product under review in Turkey, Sedat Tahir A.Ş. Interested parties were invited to comment and to propose other producers in other representative countries which fulfilled the criteria of Article 2(6a)(a) first indent of the basic Regulation. No comments or proposals were received, either on the appropriateness of the representative country, or to suggest countries other than Turkey as representative countries.

3.3.2.4. Availability of the relevant public data in the representative country

- (118) In the Note of 19 April 2018, the Commission indicated that both the main input raw material (i.e. aluminium foil in so-called jumbo rolls of a weight exceeding 10 kg) and the product under review (i.e. aluminium foil in small rolls of a weight not exceeding 10 kg) are classified in the same HS codes, namely 7607 11 and 7607 19. In order to ensure a correct identification of the input material, only countries which further differentiate between the main input material and the product under review can be considered appropriate representative countries in order to properly calculate the normal value. At that stage, it was considered that it is only in Turkey that the main input material is classified in different codes from the product under review and a complete set of public data is available.

⁽⁶⁹⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

⁽⁷⁰⁾ <https://data.worldbank.org/income-level/upper-middle-income>, accessed on 25 January 2019.

(119) Interested parties were invited to comment on the appropriateness of Turkey, inter alia, in line with the above criteria. No comments were received.

(a) Data on factors of production

(120) With regard to Turkey, import data with regard to the main raw materials used in the production of the product under review was readily available in Global Trade Atlas, while data on other important factors of production, such as labour and electricity costs were also readily available from the Turkish Statistical Institute website.

(b) Financial data (manufacturing overheads, SG&A and profits)

(121) The investigation showed that financial data is publicly available for the Turkish producer, Sedat Tahir A.Ş., for the year 2017.

3.3.2.5. Conclusion

(122) Under Article 2(6a)(a) first indent of the basic Regulation, the objective is find, in a possible representative country, all or as many of the corresponding undistorted factors of production used by the cooperating Chinese producers and of undistorted amounts for manufacturing overheads, SG&A and profits as possible.

(123) In view of the above analysis, Turkey met all the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country. In particular, Turkey has production of the product under review and a complete set of data available for all factors of production, manufacturing overheads, SG&A and profit.

(124) Having established that Turkey is an appropriate representative country in this case, there was no need to analyse further the level of social and environmental protection in Turkey.

3.3.3. Manufacturing overhead costs, SG&A and profits

(125) According to Article 2(6a)(a), fourth paragraph of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.

(126) As mentioned in recitals 28 to 31, the Commission indicated that it had identified a producer, Sedat Tahir A.S., whose financial statements were publically available and which was producing the product under review in the prospective representative country. It further indicated that it intended to use the Profit and Loss account figures of Sedat Tahir A.Ş. for 2017 as a basis for the establishment of the SG&A and profit percentages to construct the normal value. No comments were received on this aspect within the stipulated 10-days deadline.

(127) Manufacturing overheads are not separately identified in the available Profit and Loss account figures of Sedat Tahir A.Ş. and the Commission therefore considered them to be included in the cost of goods sold or cost of manufacturing.

(128) The Commission then used the Profit and Loss account figures of Sedat Tahir A.Ş. for 2017 as a basis for the establishment of the SG&A and profit percentages of cost of manufacturing to be applied to the constructed cost of manufacturing in order to build up the constructed normal value.

3.3.4. Sources used to establish undistorted costs

(129) According to Article 2(6a)(a) of the basic Regulation, 'the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices and benchmarks' and 'shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'.

- (130) In the Note of 19 April 2018, the Commission stated that it intended to use Global Trade Atlas ('GTA') database to establish the undistorted costs for the first five input raw materials identified in table 1 below. The Commission further stated that it intended to use the Turkish Statistical Institute as the source of labour costs and electricity costs. It further stated that it planned to use the Orbis database as the source of publically available financial statements to establish a reasonable amount for administrative, selling and general costs and for profits.

3.3.4.1. Factors of production

- (131) As already stated in recital 28, in the Note of 19 April 2018, the Commission established an initial list of factors of production and Turkish sources intended to be used for all factors of production such as materials, energy and labour used in the production of the product under review.
- (132) Given the lack of cooperation from exporting producers, the Commission used the consumption quantities of the various factors of production, used in producing the product under review, obtained from a large sampled Union producer and applied those to the Turkish unit costs obtained from the various sources indicated in recitals 130 to 144 for the different factors of production used to produce the product under review, in order to establish the Cost of Production. Indeed, based on the information available from the original investigation, the production process of the Chinese exporting producers and the materials used appear to be identical to the one provided by the Union producer in question.
- (133) Considering all the information submitted by interested parties and the results of the verification visit at the premises of one of the applicants, the following factors of production, HS codes, and 12-digit Turkish tariff codes, where applicable, have been identified.

Table 1

| Factor of Production | Tariff code | Unit import value |
|---|--------------------------------------|-------------------|
| Aluminium foil, not backed, rolled but not further worked (jumbo rolls) | 7607 11 19 00 11 7607 11 19 00 12 | 3,83 EUR/kg |
| Colour box/carton box for single roll | 4819 20 | 3,20 EUR/kg |
| Paper core | 4822 90 | 1,25 EUR/kg |
| Outer case used to pack 24 rolls | 4819 20 | 3,20 EUR/kg |
| Labour (direct and indirect labour), Wages in the manufacturing sector | [N/A] | 8,15 EUR/Man hour |
| Electricity | [N/A] | 0,06 EUR/kWh |

3.3.4.2. Materials

- (134) With regard to aluminium foil, the applicants indicated that the standard raw material used is aluminium foil, not backed, rolled but not further worked, falling into HS code 7607 11. This was supported by two out of the four Chinese producers that provided replies to Annex III to the Notice of Initiation. One of the applicants provided further information that the 12-digit Turkish tariff codes for jumbo rolls are 7607 11 19 00 11 and 7607 11 19 00 12. On the basis of those figures, the Commission then calculated the weighted average import value in euros per kg for aluminium jumbo rolls, to be used as the relevant raw material cost in the cost of production.
- (135) With regard to colour box/carton box for single roll, the applicants indicated that the applicable HS code was 4819 10 while one Chinese producer indicated the applicable HS code to be 4819 20. HS code 4819 10 includes '... boxes of corrugated paper or paperboard', whereas HS code 4819 20 includes '... boxes of non-corrugated paper or paperboard'. As the applicable boxes are non-corrugated, the Commission decided to

examine HS code 4819 20. The Turkish nomenclature was examined at a more detailed level within that HS code but no more precise appropriate description was determined. Therefore, the Commission decided to use the referred HS code at 6 digit level for the purpose of establishing the cost of that element of the cost of production to be used for constructing the normal value.

- (136) With regard to the paper core, the applicants indicated the same HS code 4819 10 as for the colour box/carton box. On review of its description, the Commission concluded that the product should be classified as 'other spools of paperboard' under HS code 4822 90. The Turkish nomenclature was examined at a more detailed level within that HS code but no more precise appropriate description was determined and therefore the Commission decided to use HS code 4822 90 at 6 digit level for the purpose of establishing the cost of that element of the cost of production to be used for constructing the normal value.
- (137) One of the applicants provided information that it is necessary to include an outer case (which is used to pack 24 rolls of aluminium foil) as a factor of production. On review of its description, the Commission concluded that the product should be classified as well under HS code 4819 20. The Turkish nomenclature was examined at a more detailed level within that HS code but no more precise appropriate description was determined and therefore the Commission decided to use HS code 4819 20 at 6 digit level for the purpose of establishing the cost of that element of the cost of production to be used for constructing the normal value.
- (138) For aluminium foil, the Commission extracted the import value in EUR and the quantity in kilograms from the rest of the world, excluding the PRC, to Turkey, in the year 2017, for the Turkish tariff codes 7607 11 19 00 11 and 7607 11 19 00 12. On the basis of those figures, the Commission then calculated the weighted average import value in euros per kg for aluminium jumbo rolls, to be used as the relevant raw material cost in the cost of production.
- (139) With regard to the colour box/carton box and with regard to the outer case, the Commission extracted the import value in EUR and the quantity in kilograms from the rest of the world, excluding the PRC, to Turkey in the year 2017 for HS code 4819 20. On the basis of those figures, the Commission then calculated the weighted average import value in EUR per kg for colour box/carton box and for the outer case to be used as the relevant raw material costs in the cost of production.
- (140) For the paper core, the Commission extracted the import value in EUR and the quantity in kilograms from the rest of the world, excluding the PRC, to Turkey in the year 2017 for HS code 4822 90. On the basis of those figures, the Commission then calculated the weighted average import value in euros per kg for the paper core, to be used as the relevant raw material cost in the cost of production.
- (141) With regard to aluminium foil scrap, according to one of the applicants, waste can be considered to be zero and therefore, no value should be included in the constructed cost of production for scrap. In the absence of any other comments, the Commission decided to adopt that approach.
- (142) In order to establish the undistorted price of raw materials as delivered at the gate of the exporting producer's factory, the Commission considered whether it is appropriate to add the import duty of the representative country, Turkey, and costs for domestic transport of materials to the import price. The Commission established that Turkey did not apply an import duty to the imports of the main raw material, aluminium foil in jumbo rolls, from the countries other than the PRC from which most imports were sourced. As far as domestic transport of materials is concerned, since no Chinese producer cooperated, such information is not readily available. However, as indicated in recital 153 the normal value not adjusted for such import duties and transport costs already shows that export sales are dumped at very high levels. Therefore, an examination of the domestic transport costs of materials and import duties, with the consequence that the normal value would need to be adjusted upwards for such costs, could only have led to an increase of the normal value and hence of the dumping margin. In light of the above, the Commission did not consider it necessary in the case at hand to adjust the raw materials costs for import duty and domestic transport costs.

3.3.4.3. Labour

- (143) With regard to labour costs, in its Note of 3 October 2018, the Commission indicated that it intended to use the data published by the Turkish Statistical Institute. In particular, the Commission indicated that it intended to use the hourly labour costs in the manufacturing sector for 2016, for the economic activity C.24 (manufacture of basic metals ⁽⁷¹⁾) according to NACE Rev.2 ⁽⁷²⁾, which are the most recent statistics available ⁽⁷³⁾. It further indicated that the values would be properly adjusted for inflation using the domestic producer price index ⁽⁷⁴⁾ published by the Turkish statistical institute. In the absence of any comments, the Commission adopted that approach.

3.3.4.4. Electricity

- (144) With regard to electricity costs, in its Note of 3 October 2018, in the absence of information on consumption levels in the PRC, the Commission indicated that it intended to apply the average electricity unit price for industrial users, provided in a press release issued by the Turkish statistical institute ⁽⁷⁵⁾. In the absence of any comments, the Commission adopted that approach.

3.3.5. Calculations

- (145) In order to establish the constructed normal value, the Commission followed the following two steps.
- (146) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission then multiplied the usage factors as observed at the level of one of the applicants' production process for materials, labour, energy by the undistorted costs per unit observed in the representative country Turkey.
- (147) Second, to the manufacturing costs identified above the Commission applied the Sedat Tahir A.Ş.'s manufacturing overhead costs, SG&A and profit. They were identified on the basis of Sedat Tahir A.Ş.'s annual report of 2017.
- (148) On that basis, the Commission constructed the normal value per product type on an ex-work basis in accordance with Article 2(6a)(a) of the basic Regulation. Due to the fact no exporting producers cooperated, the normal value was established on a countrywide basis and not for each exporter and producer separately.

3.4. Export price

- (149) As mentioned in recital 21, the Commission did not receive any questionnaire reply from producers in the PRC. The Commission therefore established one weighted average export price for all types of aluminium household foil on the basis of Eurostat import statistics ('Comext').

3.5. Comparison

- (150) The Commission compared the normal value and the export price on an ex-works basis.
- (151) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. An upwards adjustment of 2 % was made to the normal value for non-refundable VAT costs, and a downwards adjustment of 1 %-3 % was made to the export price for international freight, insurance and domestic transport costs.

3.6. Dumping margin

- (152) The Commission compared the weighted average normal value of the like product with the weighted average price of all exports to the Union, in accordance with Articles 2(11) and (12) of the basic Regulation.

⁽⁷¹⁾ The category 'basic metals' includes aluminium under code C24.4.2.

⁽⁷²⁾ The NACE codes can be found at http://ec.europa.eu/competition/mergers/cases/index/nace_all.html.

⁽⁷³⁾ The labour costs are available at http://www.turkstat.gov.tr/PreIstatistikTablo.do?istab_id=2088.

⁽⁷⁴⁾ The press release publishing the annual change for the domestic producer price index for the manufacturing sector is available at http://www.turkstat.gov.tr/PreTabloArama.do?metod=search&araType=hb_x.

⁽⁷⁵⁾ The press release publishing electricity prices in Turkey can be found at <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=27665>.

- (153) On this basis, the Commission found a dumping margin, expressed as a percentage of the CIF Union frontier price duty unpaid, at a level above 150 %. The Commission therefore concluded that dumping continued during the review investigation period.

3.7. Likelihood of a continuation of dumping should the measures be repealed

- (154) Further to the finding of dumping during the review investigation period, the Commission analysed whether there was a likelihood of continuation of dumping should the measures be repealed.
- (155) As a consequence of non-cooperation of producers from the PRC, this examination was based on the information available to the Commission, that is, information supplied in the request for review and information from other independent available sources, such as official import statistics and information obtained from interested parties during the investigation.
- (156) In order to examine the likely development of imports should measures be repealed, the Commission analysed spare capacity in the PRC and the attractiveness of the Union market.

3.7.1. Spare capacity in the PRC

- (157) In the request for review, the applicants recalled that aluminium jumbo rolls simply need to be cut to become the product under review, so the excess Chinese capacity for aluminium jumbo rolls is relevant in determining the excess capacity for the product under review.
- (158) As mentioned in the request for review, in the Commission Implementing Regulation of 17 December 2015 extending anti-dumping measures on aluminium foil jumbo rolls following an expiry review ⁽⁷⁶⁾, it was estimated that the Chinese production capacity for all types of aluminium foil was 450 000 tonnes larger than the total domestic Chinese consumption. It was also estimated that this production capacity would increase from 2,5 million tonnes in 2014 to 2,8 million tonnes in 2018, whereas the increase in domestic consumption would unlikely be sufficient to absorb the increasing capacity ⁽⁷⁷⁾. The Union consumption of the product under review is around 85 600 tonnes.
- (159) In the final determination in the anti-dumping and countervailing investigations on aluminium foil jumbo rolls, based on responses from exporters and producers in the PRC, the US International Trade Commission projected spare capacity of aluminium foil in the PRC for 2017 and 2018 as 161 233 tonnes and 157 305 tonnes respectively ⁽⁷⁸⁾, thereby significantly exceeding EU demand.
- (160) In addition, the responses received from the four groups of producers in the PRC which submitted sampling replies, confirmed that they have a spare capacity of around 25 % on average.
- (161) On that basis, the Commission found that there are substantial excess capacities available in the PRC and as a consequence, there is a strong likelihood that import volumes will significantly increase and exercise increased price pressure, should the anti-dumping measures be repealed.
- (162) The information provided by the applicants in this regard was not contested by interested parties. The Commission found no evidence which contradicted this information.

3.7.2. Attractiveness of the Union market

- (163) In order to establish the possible development of imports in case measures are repealed, the Commission considered the attractiveness of the Union market with regard to prices.

⁽⁷⁶⁾ Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009, OJ L 332, 18.12.2015, p. 63 recital 31.

⁽⁷⁷⁾ Idem., recitals 83-84.

⁽⁷⁸⁾ US International Trade Commission, Aluminium Foil from China, Investigation Nos 701-TA-570 and 731-TA-1346 (Final), April 2018, Table VII-4.

- (164) In this regard an analysis of Chinese export price statistics is not useful, since both the raw material and the finished product are reported under the same HS codes in the PRC.
- (165) However, an analysis of the sampling replies provided by the Chinese producers shows that – on average – they charge higher prices to the EU market than to other third country markets and to the domestic market, despite the measures in force. Indeed, prices to the EU market were on average 5 %-10 % higher than prices to other third countries, and on average 20 %-25 % higher than prices on the domestic market.
- (166) As indicated in the request for review, both Turkey and India have applied anti-dumping measures against aluminium foil from the PRC since 2014 and 2017 respectively. Should the EU measures on aluminium household foil be allowed to lapse, the existence of measures against imports to those other markets and the attractiveness of the EU market in terms of price, would make redirection of sales to the EU market highly likely.
- (167) The significant export volumes and market shares from the PRC during the original investigation period (12 994 tonnes, 13,4 %) and the continuing export of the product under review from the PRC to the Union market during the period considered (1 519 tonnes, 1,8 %), allow the Commission to conclude that the Union market is attractive for producers of the product under review in the PRC.
- (168) Consequently, should the measures be allowed to lapse, the imports from the PRC to the Union are likely to increase significantly and at dumped prices.

3.7.3. Conclusion on the likelihood of continuation of dumping

- (169) Based on the above, in particular given the dumping margin established in the review investigation period, the significant spare capacity available in the PRC, the attractiveness of the Union market, the Commission expects that a repeal of the measures would likely result in a continuation of dumping, and that dumped exports will enter the Union market in significant quantities. It is therefore considered that there is a likelihood of continuation of dumping should the current anti-dumping measures be allowed to lapse.

3.7.4. Likelihood of recurrence of dumping

- (170) The investigation showed that Chinese imports continued to enter the Union market at dumped prices during the review investigation period. Despite the relatively low import volumes compared to Union consumption, the dumping margins found are confirmed by the analysis of export prices to other third countries, which appear to be even lower as described in recital 165. In view of the elements examined in sections 3.7.1 and 3.7.2, the Commission also concluded that it is highly likely that Chinese producers would export significant quantities of aluminium household foil to the Union at dumped prices, should the measures lapse. Thus, there is evidence of likelihood of continuation of dumping and, in any event, of likelihood of recurrence of dumping should the measures lapse.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

4.1. Definition of the Union industry and Union production

- (171) During the review investigation period, the like product was produced by 20 known producers in the Union. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

4.2. Preliminary remarks

- (172) The Commission assessed injury on the basis of trends concerning production, production capacity, capacity utilisation, sales, market share, employment, productivity and growth, which it collected at the level of the total Union industry and trends concerning prices, profitability, cash flow, ability to raise capital and investments, stocks, return on investment and wages, which it collected at the level of the sampled Union producers.

4.3. Union consumption

- (173) The Commission established the Union consumption by adding together the sales volume in the Union by the Union industry and the total imports into the Union as reported by Eurostat.

(174) The Union consumption of the product under review developed as follows:

Table 2

Union Consumption (tonnes)

| | 2014 | 2015 | 2016 | RIP |
|---------------------------|---------|--------|--------|--------|
| Total consumption | 104 521 | 93 058 | 88 707 | 85 666 |
| <i>Index (2014 = 100)</i> | 100 | 89 | 85 | 82 |

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies from the sampled Union producers

(175) The Union consumption decreased gradually by 18 % in the period considered. A year-by-year analysis shows this gradual decrease throughout the period, faster between 2014 and 2015 and then levelling off between 2016 and the review investigation period.

4.4. Imports from the PRC

4.4.1. Volume and market share of the imports from the PRC

(176) The Commission established the volume of imports from the PRC into the Union on the basis of Eurostat data at TARIC level and the market shares of the imports by comparing these import volumes with the Union consumption as shown in Table 2.

(177) Market share and imports from the PRC developed as follows:

Table 3

Import volume and market share

| | 2014 | 2015 | 2016 | RIP |
|---|-------|-------|-------|-------|
| Volume of imports from the PRC (tonnes) | 3 510 | 2 549 | 2 650 | 1 519 |
| <i>Index (2014 = 100)</i> | 100 | 73 | 75 | 43 |
| Market share of PRC imports (%) | 3,4 | 2,7 | 3,0 | 1,8 |
| <i>Index (2014 = 100)</i> | 100 | 82 | 89 | 53 |

Source: Eurostat

(178) Imports from the PRC were at a peak in 2014, with a significant fall in 2015, a slight recovery in 2016 and another significant drop in the review investigation period, resulting in an overall decrease by 57 % during the period considered. The market share of the imports fell from 3,4 % to 1,8 % during the review investigation period.

(179) It is relevant for the analysis of injury to note that imports from the PRC continued to enter the Union, with duties paid, throughout the period considered.

4.4.2. Prices of imports from the PRC

(180) The Commission used the prices of imports from the PRC reported by Eurostat.

(181) The average prices of imports from the PRC into the Union developed as follows:

Table 4

PRC import prices

| | 2014 | 2015 | 2016 | RIP |
|--|-------|-------|-------|-------|
| Average PRC import price (EUR per tonne) | 2 340 | 2 934 | 2 827 | 2 413 |
| <i>Index (2014 = 100)</i> | 100 | 125 | 121 | 103 |

Source: Eurostat

(182) Average prices of imports from the PRC increased by 25 % between 2014 and 2015, decreased slightly in 2016 and then dropped almost to the level of 2014 in the review investigation period.

(183) During the period considered the average per tonne import prices from the PRC remained significantly lower than both the average per tonne sales price and the average per tonne cost of production of the Union industry as reported in Table 10.

4.4.3. Price undercutting

(184) The Commission determined the price undercutting during the review investigation period by comparing the weighted average sales prices of the sampled Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level, with the import price data from Eurostat for the product under review from the PRC at a CIF level, adjusted to a landed price, including an amount of conventional customs duty.

(185) The result of the comparison was expressed as a percentage of the sampled Union producers' average price during the review investigation period.

(186) The comparison showed for imports from the PRC an average undercutting of 29,3 % in the Union market during the review investigation period.

4.5. Imports from third countries other than the PRC

(187) The volume of imports into the Union as well as the market share and the price trends for imports of the product under review from other third countries are shown in Table 5. The volume and price trends are based on Eurostat data.

Table 5

Imports from third countries other than the PRC

| | 2014 | 2015 | 2016 | RIP |
|--------------------------------------|-------|-------|-------|-------|
| Volume of imports (tonnes) | 4 011 | 2 525 | 4 029 | 5 119 |
| <i>Index (2014 = 100)</i> | 100 | 63 | 100 | 128 |
| Market share (%) | 3,8 | 2,7 | 4,5 | 6,0 |
| <i>Index (2014 = 100)</i> | 100 | 71 | 118 | 156 |
| Average import price (EUR per tonne) | 2 621 | 2 685 | 2 653 | 2 888 |
| <i>Index (2014 = 100)</i> | 100 | 102 | 101 | 110 |

Source: Eurostat

- (188) Import volumes from other third countries fluctuated over the period considered. They dropped by 37 % from 2014 to 2015 but then doubled in the review investigation period showing an overall increase of 28 % during the period considered.
- (189) Since the total Union consumption decreased over the period considered, this increase translated in an increase of the market share of the imports from other third countries over the same period from 3,8 % in 2014 to 6,0 % during the review investigation period.
- (190) Average prices of imports from third countries other than the PRC increased by 10 % during the period considered but remain well below the price levels of the Union industry as reported in Table 10.
- (191) During the period considered, imports of the product under review from other third countries were mainly from Turkey, Norway and Thailand.
- (192) The applicants claimed in their request for review that imports from Norway increased considerably in the period considered without there being any production of the product under review according to their market knowledge. The applicants claimed also that transshipment practices of the product under review are taking place in Thailand and Indonesia and suspects these products to originate in the PRC.
- (193) The Commission analysed Eurostat data in respect of the imports in question. The volume of imports into the Union from Norway, Thailand and Indonesia developed as follows:

Table 6

Imports from Norway, Thailand and Indonesia

| | 2014 | 2015 | 2016 | RIP |
|---|------|------|------|-------|
| Volume of imports from Norway (tonnes) | 233 | 86 | 790 | 1 186 |
| <i>Index (2014 = 100)</i> | 100 | 37 | 339 | 509 |
| Volume of imports from Thailand (tonnes) | 0 | 0 | 70 | 654 |
| <i>Index (2016 = 100)</i> | 0 | 0 | 100 | 934 |
| Volume of imports from Indonesia (tonnes) | 0 | 0 | 0 | 196 |

Source: Eurostat

- (194) The Commission is not aware of any production of the product under review in Norway. The Commission also found that in the review investigation period, imports from Norway, Thailand and Indonesia entirely compensated the decrease of imports from the PRC. The applicants brought forward a claim of possible circumvention of existing anti-dumping measures on imports from the PRC through transshipment practices in Norway, Thailand and Indonesia. However, the Commission was unable to verify the evidence received in support of this claim.

4.6. Economic situation of the Union industry**4.6.1. General remarks**

- (195) In accordance with Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry during the period considered.
- (196) As referred to in recital 12 the Commission used sampling for the determination of possible injury suffered by the Union industry.
- (197) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.

- (198) The Commission evaluated the macroeconomic indicators on the basis of data submitted by the Union industry and the verified questionnaire replies from the sampled Union producers. The data related to all Union producers.
- (199) The Commission evaluated the microeconomic indicators on the basis of verified data in the questionnaire replies from the sampled Union producers.
- (200) The Commission found both sets of data to be representative of the economic situation of the Union industry.
- (201) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment and productivity.
- (202) The microeconomic indicators are: average unit prices, average unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments and ability to raise capital.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

- (203) The total Union industry's production, production capacity and capacity utilisation developed over the period considered as follows:

Table 7

Production, production capacity and capacity utilisation of Union producers

| | 2014 | 2015 | 2016 | RIP |
|------------------------------|---------|---------|---------|---------|
| Production volume (tonnes) | 104 344 | 96 478 | 89 070 | 86 254 |
| <i>Index (2014 = 100)</i> | 100 | 92 | 85 | 83 |
| Production capacity (tonnes) | 160 145 | 163 178 | 144 653 | 147 950 |
| <i>Index (2014 = 100)</i> | 100 | 102 | 90 | 92 |
| Capacity utilisation (%) | 65 | 59 | 62 | 58 |
| <i>Index (2014 = 100)</i> | 100 | 91 | 95 | 89 |

Source: Data submitted by the Union industry and verified questionnaire replies from the sampled Union producers

- (204) The production volume of the Union industry decreased by 17 % over the period considered and followed the decrease of the Union consumption. The decrease became less pronounced between 2016 and the end of the review investigation period.
- (205) The production capacity of the Union industry decreased by 8 % over the period considered, showing that the Union industry was not fully able to reduce capacity to deal with the reduction in production during the period considered.
- (206) Capacity utilisation fluctuated over the period considered, but is at its lowest in the review investigation period when compared to 2014. Overall, the capacity utilisation rate decreased by 11 % over the period considered.

4.6.2.2. Sales volume and market share

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

Table 8

Sales volume and market share of Union producers

| | 2014 | 2015 | 2016 | RIP |
|------------------------------------|--------|--------|--------|--------|
| Sales volume in the Union (tonnes) | 97 000 | 87 984 | 82 028 | 79 028 |
| <i>Index (2014 = 100)</i> | 100 | 91 | 85 | 81 |
| Market share (%) | 92,8 | 94,5 | 92,5 | 92,3 |

Source: Data submitted by the Union industry and verified questionnaire replies from the sampled Union producers

- (208) The sales volume of the Union industry in the Union market decreased by 19 % over the period considered. The decrease followed the decline in Union consumption.
- (209) The Union industry was able to gain market share between 2014 and 2015 but lost it again in 2016. During the review investigation period the Union industry's market share is even slightly lower than at the beginning of the period considered.

4.6.2.3. Growth

- (210) During the period considered the production of the Union industry decreased by 17 % while Union consumption decreased by 18 % and the sales volume of the Union industry on the Union market decreased by 19 %. The drop in sales volume of the Union Industry over the period considered should be seen in the context of the declining consumption over the same period. The market share of the Union slightly declined.

4.6.2.4. Employment and productivity

- (211) Employment and productivity of the Union industry developed over the period considered as follows:

Table 9

Employment and productivity of Union producers

| | 2014 | 2015 | 2016 | RIP |
|---|-------|-------|-------|-----|
| Number of employees (Full Time Equivalent or FTE) | 1 048 | 1 033 | 1 015 | 977 |
| <i>Index (2014 = 100)</i> | 100 | 99 | 97 | 93 |
| Productivity (tonnes per employee) | 100 | 93 | 88 | 88 |
| <i>Index (2014 = 100)</i> | 100 | 94 | 88 | 89 |

Source: Data submitted by the Union industry and verified questionnaire replies from the sampled Union producers

- (212) Due to reduced production, employment of the Union industry also declined by 7 % during the period considered. This reduction in employment is however lower than the reduction in production of 17 % over the period considered. This affected the productivity of the Union producers, which declined by 11 % over the period considered.

4.6.3. Microeconomic indicators

4.6.3.1. Prices and factors affecting prices

- (213) The average sales prices and cost of production of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 10

Average sales prices in the Union and unit costs

| | 2014 | 2015 | 2016 | RIP |
|--|-------|-------|-------|-------|
| Average sales price per tonne (EUR) | 3 723 | 3 844 | 3 596 | 3 703 |
| <i>Index (2014 = 100)</i> | 100 | 103 | 97 | 99 |
| Average cost of production per tonne (EUR) | 3 539 | 3 719 | 3 549 | 3 802 |
| <i>Index (2014 = 100)</i> | 100 | 105 | 100 | 107 |

Source: verified questionnaire replies from the sampled Union producers

- (214) The Union industry's average sales price per tonne to unrelated customers in the Union slightly decreased by 1 % during the period considered whilst its cost of production per tonne increased by 7 % over the same period.

4.6.3.2. Labour costs

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

Table 11

Average labour costs per employee

| | 2014 | 2015 | 2016 | RIP |
|---|--------|--------|--------|--------|
| Average labour costs per employee (EUR per FTE) | 26 187 | 26 509 | 26 383 | 25 348 |
| <i>Index (2014 = 100)</i> | 100 | 101 | 101 | 97 |

Source: verified questionnaire replies from the sampled Union producers

- (216) The average labour costs per worker of the Union industry decreased slightly over the period considered.

4.6.3.3. Stocks

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

Table 12

Stocks

| | 2014 | 2015 | 2016 | RIP |
|---------------------------|-------|-------|-------|-------|
| Closing stock (tonnes) | 1 378 | 1 321 | 1 598 | 1 285 |
| <i>Index (2014 = 100)</i> | 100 | 96 | 116 | 93 |

Source: verified questionnaire replies from the sampled Union producers

(218) The level of closing stocks fluctuated during the period considered. Overall, it decreased by 7 % over this period.

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

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

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

Table 13

Profitability, cash flow, investments and return on investments

| | 2014 | 2015 | 2016 | RIP |
|---|-------|-------|-------|-------|
| Profitability of sales to unrelated customers (% of sales turnover) | 5,1 | 5,5 | 1,4 | - 2,8 |
| <i>Index (2014 = 100)</i> | 100 | 109 | 27 | - 55 |
| Cash flow ('000 EUR) | 3 306 | 6 758 | 2 085 | 612 |
| <i>Index (2014 = 100)</i> | 100 | 204 | 63 | 19 |
| Investments ('000 EUR) | 1 818 | 2 068 | 2 074 | 1 887 |
| <i>Index (2014 = 100)</i> | 100 | 114 | 114 | 104 |
| Return on investments (%) | 256 | 254 | 78 | - 115 |
| <i>Index (2014 = 100)</i> | 100 | 99 | 30 | - 45 |

Source: verified questionnaire replies from the sampled Union producers

(221) Overall, the profitability of the Union industry dropped sharply by 155 % over the period considered. Although it improved by 9 % between 2014 and 2015, it collapsed to a lossmaking level during the review investigation period.

(222) The net cash flow, the Union industry's ability to self-finance its activities, decreased by 81 % over the period considered. It doubled between 2014 and 2015 but then declined sharply in 2016 and the review investigation period.

(223) During the period considered the annual investments in the like product made by the Union industry increased by 4 % over the period considered.

(224) The Union industry's return on investment, the profit as a percentage of the net book value of assets, dropped by 145 % over the period considered and became negative in the review investigation period.

4.6.4. Conclusion on the situation of the Union industry

(225) The investigation showed that most of the injury indicators developed negatively and the economic and financial situation of the Union industry deteriorated during the period considered.

(226) With measures in place, the Union industry was able to maintain its price levels and market share in a declining market.

- (227) The Union industry's production and sales volume followed the same negative trend as the Union consumption. However, the negative trends of its profitability, cash flow and return on investments are not correlated with the negative development of the consumption. These indicators developed positively in the beginning of the period considered, after the imposition of measures, but started to deteriorate quickly as a result of the significant decrease in consumption and increase in cost of production. The Union industry became loss-making in the review investigation period.
- (228) At the same time, imports from third countries have increased both in absolute volumes and market share during the period considered and, as explained in recital 194, have entirely compensated the decrease of imports from the PRC. Although average prices of the imports from third countries were at lower levels than the Union industry prices, the Commission could not conclude whether these imports were a cause of injury to the Union industry as their product mix was unknown. However, the average unit price from third countries is still much higher than the prices at which the imports from the PRC entered the Union market during the review investigation period. Consequently, the worsening economic and financial situation of the Union industry coincides with the continued presence at representative volumes of dumped imports from the PRC on the Union market, which continue to undercut the Union industry's prices and therefore have continued to put an unfair competitive pressure on the Union industry.
- (229) The Commission concluded that, upon an overall assessment of the injury factors, the Union industry has not improved its economic and financial situation and has not recovered from the material injury that the Commission found in the original investigation.

4.7. Likelihood of continuation of injury

- (230) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether material injury from imports from the PRC would continue should the measures against the PRC be allowed to lapse. The investigation has shown that the imports from the PRC were made at dumped price levels during the review investigation period (recital 153) and that there was a likelihood of continuation of dumping should measures be allowed to lapse (recital 169).
- (231) To establish the likelihood of continuation of injury if the measures against the PRC were repealed the Commission analysed (i) the spare capacity available in the PRC, (ii) the attractiveness of the Union market and (iii) the impact of Chinese imports on the situation of the Union industry should measures be allowed to lapse.
- (i) Spare capacity in the PRC
- (232) As explained in recitals 157 to 162, there are substantial excess capacities in the PRC, which largely exceed the total Union consumption during the review investigation period. In addition, the Commission has found no elements that could indicate any significant increase of domestic demand of the product under review in the PRC or in any other third country market in the near future. The Commission therefore concluded that domestic demand in the PRC or in other third country markets could not absorb the available spare capacity in the PRC.
- (ii) Attractiveness of the Union market
- (233) As explained in recitals 165 to 167, the Union market is an attractive market for exporting producers from the PRC. The market share of imports from the PRC was 13,4 % during the original investigation period (2010 – 2011), showing the possible level of imports from the PRC should the measures lapse.
- (234) Imports from the PRC excluding the anti-dumping duty would have undercut the Union industry's sales prices by 29,3 % in the review investigation period. This is an indication of the likely price level of imports from the PRC should measures be repealed. On this basis, it is likely that the price pressure on the Union market would increase should the measures be repealed, thus leading the Union industry to suffer further injury.
- (235) On this basis, in the absence of measures, exporting producers from the PRC will likely increase their presence in the Union market, in terms of both volume and market share, and at dumped prices that would significantly undercut the Union industry's sales prices.

(iii) Impact on the Union industry

- (236) The continuous presence of dumped imports from the PRC in the Union market and their low pricing policy have prevented the Union industry to benefit fully from the existing anti-dumping measures and recover from past injurious dumping practices. Due to the presence of these dumped imports the Union industry has not been able to reflect its increased costs into its sales prices, which caused a considerable deterioration of its profitability to loss-making levels in the review investigation period.
- (237) If the measures are repealed, the Union industry would not be able to maintain its sales volume and market share against low priced imports from the PRC. It is highly likely that the market share of the PRC would increase rapidly if the measures are allowed to lapse. Losing sales volume would lead to an even lower utilisation rate and an increase in the average cost of production. Together with increased price pressure this would lead to a further deterioration of the already precarious financial situation of the Union industry and ultimately the closures of production sites, and eventually the disappearance of the industry.
- (238) Therefore, the Commission concluded that there is a strong likelihood that the expiry of the existing measures would lead to a continuation of injury from imports from the PRC and that the already precarious situation of the Union industry will be likely to further deteriorate.

4.8. Conclusion

- (239) The repeal of the measures would in all likelihood result in a significant increase of dumped imports from the PRC at prices undercutting the Union industry prices. The Commission therefore concluded that there is a strong likelihood of continuation of injury should measures be repealed.

4.9. Likelihood of recurrence of injury

- (240) In addition, the Commission found that the repeal of the measures would in all likelihood result in recurrence of further injury should measures be repealed. Indeed, even if the continuous injury suffered by the Union industry could not be attributed to the subject imports, the Commission found that there is strong likelihood of recurrence of injury on the basis of the lower export prices to third countries (see recital 165, the significant levels of spare capacity in the PRC as well as the attractiveness of the EU market (see section 4.7)).

5. UNION INTEREST

- (241) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as a whole.
- (242) The Commission based the determination of the Union interest on an appreciation of all the various interests involved, including those of the Union industry, importers and users. All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (243) On this basis, the Commission examined whether, despite the conclusions on the likelihood of a continuation of dumping and injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

5.1. Interest of the Union industry

- (244) The investigation has shown that should the measures be repealed, the fragile situation of the Union industry is very likely to significantly deteriorate further.
- (245) Therefore, the Commission concluded that the continuation of the measures against the PRC would benefit the Union industry.

5.2. Interest of importers and users

- (246) As indicated in recitals 16 and 19 no importer nor user came forward and cooperated in this investigation. As found in previous investigations with such non-cooperation, the Commission concluded that the continuation of measures would not negatively affect the Union importers and users.

5.3. Conclusion on Union interest

- (247) In view of the above, the Commission concluded that there are no compelling reasons to conclude that it is not in the Union interest to extend the existing anti-dumping measures on imports of the product under review originating in the PRC.

6. ANTI-DUMPING MEASURES

- (248) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the anti-dumping measures in force. They were also granted a period within which they could submit comments to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No comments or submissions, or requests for hearings, were received.
- (249) It follows from the above considerations that the anti-dumping measures applicable to imports of certain aluminium foils in rolls originating in the PRC imposed by the definitive Regulation should be maintained.
- (250) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product under review produced by these companies and thus by the specific legal entities mentioned. Imports of the product under review manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from those rates and shall be subject to the duty rate applicable to 'all other companies'.
- (251) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission ⁽⁷⁹⁾ immediately with all relevant information. In particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefitting from individual duty rates.
- (252) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁸⁰⁾, 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.
- (253) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg, currently falling under CN codes ex 7607 11 11 and ex 7607 19 10 (TARIC codes 7607 11 11 10 and 7607 19 10 10) and originating in the People's Republic of China.

⁽⁷⁹⁾ European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

⁽⁸⁰⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

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

| Company | Duty | TARIC additional code |
|--|--------|-----------------------|
| CeDo (Shanghai) Ltd, Shanghai | 14,2 % | B299 |
| Ningbo Favored Commodity Co. Ltd, Yuyao City | 14,6 % | B301 |
| Ningbo Times Aluminium Foil Technology Co. Ltd, Ningbo | 15,6 % | B300 |
| Able Packaging Co. Ltd, Shanghai | 14,6 % | B302 |
| Guangzhou Chuanlong Aluminium Foil Product Co. Ltd, Guangzhou | 14,6 % | B303 |
| Ningbo Ashburn Aluminium Foil Products Co. Ltd, Yuyao City | 14,6 % | B304 |
| Shanghai Blue Diamond Aluminium Foil Manufacturing Co. Ltd, Shanghai | 14,6 % | B305 |
| Weifang Quanxin Aluminium Foil Co. Ltd, Linqu | 14,6 % | B306 |
| Zhengzhou Zhuoshi Tech Co. Ltd, Zhengzhou City | 14,6 % | B307 |
| Zhuozhou Haoyuan Foil Industry Co. Ltd, Zhouzhou City | 14,6 % | B308 |
| Zibo Hengzhou Aluminium Plastic Packing Material Co. Ltd, Zibo | 14,6 % | B309 |
| Yuyao Caelurn Aluminium Foil Products Co. Ltd, Yuyao | 14,6 % | B310 |
| All other companies | 35,6 % | B999 |

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- it did not export to the Union the product described in Article 1.1 in the period between 1 October 2010 to 30 September 2011;
- it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation;
- it has actually exported to the Union the product described in Article 1.1 or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period;

the Commission may amend Article 1.2 by adding the new exporting producer to the cooperating companies not included in the sample of the original investigation and thus subject to the weighted average duty of 14,6 %.

Article 3

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

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

Done at Brussels, 4 June 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1.3:

- (1) the name and function of the official of the entity issuing the commercial invoice;
- (2) the following declaration:

'I, the undersigned, certify that the (volume) of certain aluminium foils in rolls, sold for export to the European Union covered by this invoice, was manufactured by (company name and registered seat) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature'.
