

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1080

of 22 July 2020

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

THE EUROPEAN COMMISSION,

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

Having regard to Council 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 May 2014, the Commission imposed a definitive anti-dumping duty on imports of solar glass originating in the People's Republic of China ('the PRC' or 'China'), by Commission Implementing Regulation (EU) No 470/2014 ⁽²⁾ ('the original measures').
- (2) In August 2015, following an absorption reinvestigation under Article 12 of the basic Regulation, the Commission amended the original measures by Commission Implementing Regulation (EU) 2015/1394 ⁽³⁾. The individual anti-dumping duties range from 17,5 % to 75,4 %. All other companies are subject to a country-wide anti-dumping duty of 67,1 % ('the measures in force').
- (3) In separate proceedings, the Commission imposed countervailing duties ranging from 3,2 % to 17,1 % in May 2014 ⁽⁴⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21).

⁽²⁾ Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) 2015/1394 of 13 August 2015 amending Regulation (EU) No 470/2014, as amended by Regulation (EU) 2015/588, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China following an absorption reinvestigation pursuant to Article 12 of Council Regulation (EC) No 1225/2009 (OJ L 215, 14.8.2015, p. 42).

⁽⁴⁾ Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 23).

1.2. Initiation of an expiry review

- (4) Following the publication of a notice of impending expiry of the measures in force ⁽⁵⁾, EU ProSun Glass (‘the applicant’), representing more than 25 % of the total Union production of solar glass, requested the initiation of an expiry review on 13 February 2019 (‘review request’). It argued that the expiry of the original measures would be likely to result in continuation or recurrence of dumping and a continuation or recurrence of injury to the Union industry.
- (5) On 14 May 2019, the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽⁶⁾ (‘the Notice of Initiation’), the initiation of an expiry review of the measures in force pursuant to Article 11(2) of the basic Regulation.

1.3. Investigation

1.3.1. Review investigation period and period considered

- (6) The review investigation period (‘RIP’) covered the period from 1 January 2018 to 31 December 2018. The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the RIP (‘the period considered’).

1.3.2. Interested parties

- (7) In the Notice of Initiation, the Commission invited all interested parties to participate in the investigation. In particular, it contacted the applicant, the known producers in the Union, the known exporting producers in the PRC, the known unrelated importers, users of the product under review in the Union and the authorities of the PRC.
- (8) All interested parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties were also granted the opportunity to request a hearing with the Commission investigation services and/or with the Hearing Officer in trade proceedings (‘the Hearing Officer’).
- (9) One of the Union producers requested that its name is kept confidential on the grounds that the participation of the group it belongs to in the proceedings could have repercussions on the group’s business in China and may lead to retaliation by its customers. The Commission examined the request. It considered that the mere presence of the group in China described an abstract danger and was not sufficient to translate into a concrete threat of retaliation. No concrete element of proof was brought to the attention of the Commission services in this respect. Furthermore, none of the group’s businesses in China related to the solar glass business. On this basis the Commission decided to reject the request.
- (10) The company turned to the Hearing Officer on the issue. The Hearing Officer endorsed the Commission’s rejection because it considered that the request for anonymity had been based on assumptions of possible retaliation rather than on actual threats to the company or the group and because the company had not provided any new facts or information that would justify a change of the earlier decision.
- (11) Several parties requested a hearing with the Commission services. A hearing between the Commission and the two sampled Union producers took place on 9 January 2020. A hearing with the REC Group, Solitek and EU ProSun, an association representing several users, took place on 11 February 2020. The hearings concerned arguments of the different parties further detailed in Sections 4 to 6 on injury and on Union interest.

⁽⁵⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 345, 27.9.2018, p. 9).

⁽⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of solar glass originating in the People’s Republic of China (OJ C 165, 14.5.2019, p. 6).

1.3.3. *Sampling*

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

1.3.3.1. *Sampling of Union producers*

- (13) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample based on the largest volume of production and sales of the like product that could be reasonably investigated within the time available. The sample consisted of two Union producers accounting for more than 80 % of the Union production of the product under review. The Commission invited interested parties to comment on the provisional sample. The only comment received by the applicant was in favour of the sample. The sample is representative of the Union industry. It consists of the following two companies:

- Saint-Gobain Glassolutions Isolierglass-Center GmbH ('Saint Gobain Solar'),
- Interfloat and GMB Glasmanufaktur Brandenburg GmbH ('Interfloat Group').

1.3.3.2. *Sampling of importers*

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation, and invited them to participate in this investigation.
- (15) No unrelated importers in the Union cooperated.

1.3.3.3. *Sampling of exporting producers in the PRC*

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the Mission of the People's Republic of China to the European Union to identify other exporting producers, if any, that could be interested in participating in the investigation.
- (17) No company from the PRC came forward within the time limit. A company from the PRC sent a belated submission, but eventually did not cooperate.
- (18) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 24 May 2019 that it intended to resort to the use of facts available under Article 18 of the basic Regulation when examining the continuation or recurrence of dumping. The authorities of the PRC did not respond to the Note Verbale.

1.3.4. *Questionnaires and verification visits*

- (19) The Commission sent questionnaires to the government of the PRC ('GOC') and to the two sampled Union producers. The GOC did not provide any reply to the questionnaire. Both sampled Union producers provided questionnaire replies.
- (20) Without prejudice to the application of Article 18 of the basic Regulation, the Commission verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and injury, and of the Union interest. Verification visits were carried out at the premises of the two sampled Union producers.

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

- (21) Given the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation. In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline.
- (22) In point 5.3.2 of the Notice of Initiation the Commission also specified that, in view of the evidence available, it had provisionally selected Turkey as 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. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (23) On 14 June 2019, the Commission informed by a note ('the Note of 14 June') the interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of solar glass. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission confirmed its intention to choose Turkey as an appropriate representative country. The Commission received no comments on the Note of 14 June.
- (24) On 17 February 2020, the Commission informed by a second note ('the Note of 17 February') the interested parties on the relevant sources it intended to use for the determination of the normal value, with Turkey as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the company Sisecam/Trakya, a producer in the representative country. No comments were received.

1.3.6. Subsequent procedure

- (25) On 26 May 2020, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure. The applicant, EU ProSun and the association of Union PV manufacturing industry, European Solar Manufacturing Council ('ESMC'), submitted comments.
- (26) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. A hearing between the Commission services and EU ProSun took place on 9 June 2020.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (27) The product under review is solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300–2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of $\Delta 150\text{K}$ (measured according to EN 12150) and having a mechanical strength of 90 N/mm² or more (measured according to EN 1288-3), currently falling under CN code ex 7007 19 80 (TARIC codes 7007 19 80 12, 7007 19 80 18, 7007 19 80 80 and 7007 19 80 85) and originating in the People's Republic of China ('product under review', commonly referred to as 'solar glass').

- (28) Solar glass can be patterned or non-patterned, with either a transparent or diffuse surface or a variety of edgeworks. There can be different patterns on both sides of the glass or it can be just single-sided patterned. Solar glass may have drillings, and can also be printed through the application of, for example, ceramic colours. The surface of the glass may be treated using different technologies. The most common is an anti-reflective coating applied before or after the tempering process. Other technologies allow the solar glass to be coated with thin functional layers providing increased transmittance, self-cleaning, anti-soiling or hardness properties.
- (29) Solar glass is one of the components for making crystalline silicon photovoltaic modules and thin film photovoltaic modules to produce electricity ('PV modules'), as well as flat photothermal energy collectors used, for example, in generating hot water ('photothermal modules'). It is also used for the construction of greenhouses (so-called 'horticultural glass' or 'greenhouse glass').

2.2. Like product

- (30) As established in the original investigation, solar glass produced and sold by the Union industry in the Union and solar glass produced and sold on the domestic market of the PRC and solar glass imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (31) In accordance with Article 11(2) of the basic Regulation, and as stated in the Notice of Initiation, 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.

3.1. Non-cooperation from the sampled companies and the GOC

- (32) No Chinese exporting producer cooperated in the investigation. They failed to submit any information regarding the alleged significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. Likewise, no exporting producers submitted any questionnaire reply.
- (33) The GOC did not provide any questionnaire reply nor did it address the evidence on the case file provided by the applicant, including the 'Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations' ('the Report') ⁽⁷⁾.
- (34) On 24 May and 25 June 2019, the Commission informed the GOC that, due to the absence of any cooperation from exporters/producers in the PRC, it intended to base its findings on facts available in accordance with Article 18 of the basic Regulation. The Commission stressed also that a finding based on facts available may be less favourable to the party concerned and invited them to comment. The GOC did not provide any comments.
- (35) Therefore, in accordance with 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 Commission relied on the information contained in the request for review and the statistics based on the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('14(6) database'), and Eurostat. In addition, the Commission used other sources of publicly available information such as the Global Trade Atlas ⁽⁸⁾ ('GTA') and the Orbis Bureau van Dijk ⁽⁹⁾ ('Orbis') databases.

⁽⁷⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

⁽⁸⁾ Global Trade Atlas – GTA (https://www.gtis.com/gta/secure/htscty_wta.cfm).

⁽⁹⁾ <https://orbis4.bvdinfo.com/version-201866/orbis/Companies>

3.2. Dumping during the review investigation period

3.2.1. Normal value

- (36) 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'*.
- (37) 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'*.
- (38) As further explained below in Section 3.2.2, the Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.2. Existence of significant distortions

3.2.2.1. Introduction

- (39) Article 2(6a)(b) of the basic Regulation defines *'significant distortions are 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'.
- (40) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. Indeed, as that list is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (41) 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'*.

- (42) Pursuant to this provision, the Commission has issued a country report concerning China (see recital (33), footnote 7), 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 steel and chemicals). The Report was placed in the investigation file at the initiation stage. Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation of which the Report was an integral part. No comments were received.
- (43) The review request submitted by the applicant provided additional evidence on significant distortions in the solar glass sector within the meaning of Article 2(6a)(b), complementing the Report. This evidence relates to various distortions and can be found below in Sections 3.2.2.2 to 3.2.2.8.
- (44) As indicated in recital (33), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, 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.
- (45) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review.

3.2.2.2. Significant distortions affecting the domestic prices and costs in the PRC

- (46) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle 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 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 the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation. Chinese property law is a prime example as it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership⁽¹¹⁾.
- (47) In addition, under Chinese law, the socialist market economy is 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 being reaffirmed in the text of Article 1 of the Constitution. Following the already 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: '*[t]he 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 China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within which the boundaries of free market forces are at play.

⁽¹⁰⁾ Report – Chapter 2, pp. 6–7.

⁽¹¹⁾ Report – Chapter 2, p. 10.

⁽¹²⁾ <http://en.pkulaw.cn/display.aspx?cgid=311950&lib=law> (accessed on 28 February 2020).

- (48) The Chinese State engages in 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 the level of the regulatory environment.
- (49) 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 are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the 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 the 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 binding nature of the plans but also because the relevant Chinese authorities at all level of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.2.5 below) ⁽¹⁴⁾.
- (50) Second, on the level of allocation of financial resources, the financial system of China 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 Section 3.2.2.8 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. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximising the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽¹⁶⁾.
- (51) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of 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⁾.
- (52) 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⁾.

3.2.2.3. 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 or guidance of the authorities of the exporting country

- (53) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.

⁽¹³⁾ Report – Chapter 2, p. 20–21.

⁽¹⁴⁾ Report – Chapter 3, pp. 41, 73–74.

⁽¹⁵⁾ Report – Chapter 6, pp. 120–121.

⁽¹⁶⁾ Report – Chapter 6, pp. 122–135.

⁽¹⁷⁾ Report – Chapter 7, pp. 167–168.

⁽¹⁸⁾ Report – Chapter 8, pp. 169–170, 200–201.

⁽¹⁹⁾ Report – Chapter 2, pp. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, pp. 108–109.

- (54) In the absence of any cooperation from China, the Commission has limited information concerning the ownership structure of companies active in the solar glass sector in the PRC.
- (55) With regard to State ownership, while the two largest Chinese solar glass producers, Xinyi Solar Holdings and Flat Glass Group, are private entities, several of the other major producers are State-owned enterprises, including Dongguan CSG (under CSG Holding), Luoyang Glass and CNBM.
- (56) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises (SOEs). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision-making in SOEs. This is typically done through rotation of cadres between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies, 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⁾. The elements that point to the existence of government control over enterprises in the solar glass sector is further developed in Section 3.2.2.4 below.
- (57) As concerns policy supervision and guidance by the State in the solar glass sector, the analysis is set out in Sections 3.2.2.4 and 3.2.2.5 below. With the high level of government control and intervention in the solar glass sector as described below, even privately owned solar glass producers are prevented from operating under free market conditions.
- (58) With the high level of government intervention in the solar glass industry and an important share of SOEs in the sector, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the solar glass sector are also subject to policy supervision and guidance as set out in Section 3.2.2.5 below.

3.2.2.4. 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

- (59) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in 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 provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽²²⁾, CCP cells in enterprises, state-owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽²³⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽²⁴⁾. 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 ⁽²⁵⁾. These rules are of general application throughout the Chinese economy, across all sectors, including the solar glass sector. Hence, it was determined that these rules apply also to the producers of solar glass and the suppliers of their inputs.

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

⁽²¹⁾ Report – Chapter 5, p. 104–109.

⁽²²⁾ Report – Chapter 5, p. 100–101.

⁽²³⁾ Report – Chapter 2, p. 26.

⁽²⁴⁾ Report – Chapter 2, pp. 31–32.

⁽²⁵⁾ <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 27 March 2019).

- (60) The State's presence and intervention in the financial markets (see also Section 3.2.2.8 below) as well as in the provision of raw materials and inputs have an additional distorting effect on the market ⁽²⁶⁾.
- (61) The State's presence and intervention in the financial markets (see also Section 3.2.2.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽²⁷⁾. Thus, the State presence in firms, including SOEs, in the solar glass and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

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

- (62) 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 China 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 ⁽²⁸⁾.
- (63) The 13th Five Year Plan for National Economic and Social Development of the PRC ('the 13th FYP'), which covers the period 2016–2020 and thus the RIP, highlights the strategic vision of the GOC for improvement and promotion of key industries, such as the solar energy industry. The 13th FYP is the successor of 12th FYP, in which the solar glass industry had been endorsed as a key field for development of manufacturing.
- (64) Chapter 30 of the 13th FYP expresses the GOC's commitment to '[building] a Modern Energy System'. Section 1 of that Chapter, in particular, provides strong evidence that the GOC still views the solar glass industry as an encouraged industry. Indeed, Section 1 reads that '[the GOC] will continue to give impetus to the development of (...) photovoltaic power', and that '[the GOC] will improve supportive policies for power generation from (...) solar (...) energy'. Further, 'the development of (...) photovoltaic energy in the northern, north-eastern and north-western regions and in coastal areas' will be optimised in the context of Energy Development Projects. These excerpts demonstrate that the GOC continues to support the solar glass industry as well, which is essential to the development of the solar power industry.
- (65) The 13th Plan on Building Materials also mentions different types of glass, including high-purity quartz glass and products, high-performance multi-functional coated glass, preparation technology for electric/thermochromic glass, preparation technology for glass products integrating photovoltaic and photothermal structure and function.
- (66) In 2018, the GOC issued new regulatory measures for PV installations, the 2018 Photovoltaic Power Generation Notice (referred to as '531 policy', as it was announced on 31 May 2018), maintaining subsidies with however, some reductions. Under this policy, the Chinese government significantly decreased the quota of new solar capacity per year that is eligible for state subsidies.
- (67) Green development is also encouraged in the Made in China 2025 ('MIC2025') strategy. Glass is supported under MIC2025 and in particular it is included in the 2016 Catalogue of 'Four Essential' Industry Developments (MIC2025), in Chapter 9 'New Materials', subsection II 'Key basic materials': number 24 lists glass-based materials and number 29 lists high purity quartz glass and products.

⁽²⁶⁾ Report – Chapters 6 and 12.

⁽²⁷⁾ Report – Chapters 14.1 to 14.3.

⁽²⁸⁾ Report – Chapter 4, pp. 41–42, 83.

- (68) Solar glass is therefore regarded as forming part of an encouraged industry.
- (69) Furthermore, 'Decision No 40 of the State Council on Promulgating and Implementing the "Temporary Provisions on Promoting the Industrial Structure Adjustment"' (which, together with the 'Temporary Provisions on Promoting the Industrial Structure Adjustment' is referred to as 'Decision No 40') states that the GOC will actively support the development of new energy industries and expedite the development of solar energy ⁽²⁹⁾; instructs all financial institutions to provide credit support only to encouraged projects; and promises the implementation of 'other preferential policies on the encouraged projects' ⁽³⁰⁾.
- (70) Additionally, 'Decision No 9 of the State Council on Promulgating and Implementing the Guidance Catalogue for the Industrial Structure Adjustment' ('Decision No 9') 'actively encourages' the GOC and public agencies to 'guide the development of relevant industries, optimise the upgrading of the industrial structure'. Point 12(2) of Decision No 9 specifically mentions the encouragement of 'ultra-clear float glass for solar energy industry' production. This decision, in force until 2020, was replaced in 2019 by 'Decision No 29 of the National Development and Reform Commission on Promulgating and Implementing the Guidance Catalogue for the Industrial Structure Adjustment (2019 Edition)', with the same mention in Point 12(2).
- (71) Finally, the National Outline for the Medium and Long-term Science and Technology Development (2006–2020), covering the RIP, promises to 'give the first place to policy finance', 'encourage financial institutions to grant preferential credit support to major national scientific and technological industrialisation projects', to 'encourage financial institutions to improve and strengthen financial services to high-tech enterprises' and to 'implement the preferential tax policies to promote the development of high-tech enterprises'. Since at least some of the solar glass-exporting producers qualify as a 'High and New Technology Enterprise' (HNTE), this National Outline only adds to the status of the solar glass industry as an encouraged industry.
- (72) It appears that the GOC guides the development of the solar power industry overall and thus also the solar glass industry, in accordance with a broad range of policy tools and directives. Through these policy tools and directives, the GOC directs and controls virtually every aspect in the development and functioning of the solar glass sector.
- (73) 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 solar glass. Such measures impede market forces from operating freely.

3.2.2.6. 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

- (74) According to the information on file, the Chinese bankruptcy system delivers inadequately 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 principles that are similar to those applied in corresponding laws in countries other than China, 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 ⁽³¹⁾.

⁽²⁹⁾ Chapter II, Article 5 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

⁽³⁰⁾ Chapter III, Article 17 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

⁽³¹⁾ Report – Chapter 6, pp. 138–149.

- (75) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China ⁽³²⁾. All land is owned by the Chinese 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 ⁽³³⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽³⁴⁾.
- (76) Much like other sectors in the Chinese economy, the producers of solar glass are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. The present investigation revealed nothing that would call those findings into question. As such, the Commission preliminarily concluded that the Chinese bankruptcy and property laws do not work properly, thus generating distortions when maintaining insolvent firms afloat and when allocating land use rights in the PRC. Those considerations, based on the evidence available, appear to be fully applicable also in the solar glass sector. In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the solar glass sector.

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

- (77) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China 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 ⁽³⁵⁾. 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 ⁽³⁶⁾. 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 ⁽³⁷⁾. Those findings lead to the distortion of wages costs in China.
- (78) No evidence was submitted to the effect that the solar glass sector would not be subject to the Chinese labour law system described. Solar glass sector is thus affected by the distortions of wage costs both directly (when making the product under review or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.2.2.8. 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

- (79) Access to capital for corporate actors in China is subject to various distortions.

⁽³²⁾ Report – Chapter 9, p. 216.

⁽³³⁾ Report – Chapter 9, p. 213–215.

⁽³⁴⁾ Report – Chapter 9, pp. 209–211.

⁽³⁵⁾ Report – Chapter 13, pp. 332–337.

⁽³⁶⁾ Report – Chapter 13, p. 336.

⁽³⁷⁾ Report – Chapter 13, pp. 337–341.

- (80) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks ⁽³⁸⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽³⁹⁾ 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 ⁽⁴⁰⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁴¹⁾.
- (81) 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 ⁽⁴²⁾, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (82) 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.
- (83) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁴³⁾. This results in a bias in favour of 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.
- (84) 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.
- (85) Thirdly, although nominal interest rate liberalisation 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 utilisation of capital.

⁽³⁸⁾ Report – Chapter 6, pp. 114–117.

⁽³⁹⁾ Report – Chapter 6, p. 119.

⁽⁴⁰⁾ Report – Chapter 6, p. 120.

⁽⁴¹⁾ Report – Chapter 6, pp. 121–122, 126–128, 133–135.

⁽⁴²⁾ See for instance Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1), Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

⁽⁴³⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

- (86) Overall credit growth in China 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.
- (87) In essence, despite the recent steps that have been taken to liberalise the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the State in capital markets.
- (88) No evidence was submitted to the effect that the solar glass sector would be exempted from the above-described government interventions in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.2.9. Systemic nature of the distortions described

- (89) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.2.2–3.2.2.5, as well as in Part A 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 3.2.2.6–3.2.2.8 and in Part B of the Report.
- (90) In order to produce solar glass, a broad range of inputs is needed. In the absence of any cooperation from China, limited information was available on inputs purchased by producers in China. Should the producers of solar glass purchase/contract inputs in China the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system which applies across all levels of government and sectors.
- (91) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B 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 China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary was adduced by the GOC or the exporting producers in the present investigation.

3.2.2.10. Conclusion

- (92) The analysis laid out in Sections 3.2.2.2 to 3.2.2.9, which includes an examination of all the available evidence relating to China's intervention in its economy in general, as well as in the solar glass sector specifically, 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 as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (93) 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.

3.2.3. Representative country

3.2.3.1. General remarks

- (94) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁴⁴⁾,
 - Production of the product under review in that country;
 - Availability of relevant public data in the representative country,
 - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (95) The Commission informed interested parties that it intended to use Turkey as an appropriate representative country with the Note of 14 June and the Note of 17 February mentioned above in Section 1.3.5. No comments were received from the interested parties.

3.2.3.2. A level of economic development similar to the PRC

- (96) Turkey is classified as a country with a similar level of economic development as the PRC, as it classified as an 'upper-middle income' country by the World Bank. The only other country that also qualifies as 'upper-middle income' in which the product under review is manufactured is Malaysia, which has two producers of the product under review. However, contrary to Turkey, neither company in Malaysia had publicly available financial data.

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

- (97) The facts available to the Commission showed that there was one producer of the product under review in Turkey, namely Sisecam/Trakya. Moreover, the Commission was able to obtain publicly available financial statements from this company through Orbis.

3.2.3.4. Availability of relevant public data in the representative country

- (98) The Commission carefully analysed all relevant data available in the file for the factors of production in Turkey and noted the following:
- The Commission analysed the import statistics of all factors of production listed in the Note of 14 June, as updated by the Note of 17 February, and concluded that there were imports of all the factors of production necessary for the production of the product under review in the RIP.
 - Energy statistics (industrial prices for natural gas and electricity) for the RIP were readily available in the form of data provided by the Turkish Statistical Institute (TurkStat) ⁽⁴⁵⁾.
 - The source for labour cost are the statistics available on the website of the TurkStat for average labour cost in Sector 23 of the Statistical Classification of Economic Activities, commonly referred to as NACE, which includes costs for labour in the glass manufacturing sector ⁽⁴⁶⁾.
- (99) According to Article 2(6a)(a) of the basic Regulation, the constructed normal value shall include an undistorted and reasonable amount for SG&A and for profits. In addition, a value for manufacturing overheads needs to be established to cover costs not included in the factors of production. As aforementioned, the Commission held that Turkish exporting producer Sisecam/Trakya had publicly available financial statements that could be used as a proxy to determine an undistorted and reasonable amount for SG&A and profits.

⁽⁴⁴⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽⁴⁵⁾ <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=30608>

⁽⁴⁶⁾ http://web.turkstat.gov.tr/PreTablo.do?alt_id=1008

3.2.3.5. Conclusion on representative country

- (100) In view of the above analysis, and the data available on the file, the Commission used the data of Turkey and the Turkish company Sisecam/Trakya for establishing corresponding costs of production and sale in an appropriate representative country in accordance with Article 2(6a)(a) of the basic Regulation.

3.2.4. Factors of production

- (101) As mentioned in the Note of 14 June and the Note of 17 February, the Commission analysed all the available data for the factors of production and decided to use the following sources and values in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production for solar glass

Factor of Production	HS Code	Source of import data that the Commission intends to use	Unit of measurement
Sand	250510	Global Trade Atlas (GTA) ⁽⁴⁷⁾	KG
Disodium carbonate	283620	Global Trade Atlas (GTA)	KG
Dolomite, not calcined or sintered	251810	Global Trade Atlas (GTA)	KG
Marble granules	251741	Global Trade Atlas (GTA)	KG
Sodium nitrate	310250	Global Trade Atlas (GTA)	KG
Disodium sulphate	283311	Global Trade Atlas (GTA)	KG
Sodium pyroantimonate	284190	Global Trade Atlas (GTA)	KG
Coating material ⁽⁴⁸⁾	382499	Global Trade Atlas (GTA)	KG
Packing material ⁽⁴⁹⁾	441510	Global Trade Atlas (GTA)	KG
Packing material ⁽⁵⁰⁾	441520	Global Trade Atlas (GTA)	KG
Packing material ⁽⁵¹⁾	480439	Global Trade Atlas (GTA)	KG

3.2.4.1. Raw materials

- (102) Solar glass typically necessitates a range of low-iron raw materials in its production process. This process starts when these raw materials are melted with cullets in a refractory tank at temperatures of about 1 500 °C. The liquid glass is then formed (rolled) between two water cooled steel/alloy rollers. These rollers can have a negative pattern that is imprinted into the liquid glass. Alternatively, it is formed on a liquid tin bath (float). A continuous, infinite glass ribbon is formed. This ribbon is cut either continuously or discontinuously (online or offline) to individual sizes. After cutting of the unrefined glass, the glass edge is grinded, and the glass is washed and afterwards tempered. Either before or after tempering, a functional layer can be applied on the glass through various methods. This layer can increase transmittance or abrasive resistance as well as reduce soiling. The finished product can have an anti-reflective (AR) coating or not. The cost structure of solar glass is heavily influenced by the costs of the raw materials, especially sand, and energy.

⁽⁴⁷⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽⁴⁸⁾ Chemical products or preparations, predominantly composed of organic compounds, in liquid form at 20 °C, n.e.s.

⁽⁴⁹⁾ Wood boxes.

⁽⁵⁰⁾ Pallets and pallet collars, of wood.

⁽⁵¹⁾ Paper.

- (103) The Commission decided to exclude imports from the PRC into the representative country as it concluded in Section 3.2.2 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. Similarly, import data on imports in the representative country from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755⁽⁵²⁾ were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible. After excluding the PRC, the imports from other third countries remained largely representative ranging from 70 % to 100 % of total volumes imported to Turkey, with the exception of one raw material⁽⁵³⁾ still representative at 21 %.
- (104) In order to establish the normal value according to the Commission's methodology, the import duties of the factors of production and the materials imported into Turkey, as well as the domestic transport costs should normally be added to these import prices. Considering the finding in recitals (116)–(117) as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period rather than finding its exact magnitude, the Commission decided that adjustments for import duties and domestic transport were unnecessary, as such adjustments would only result in increasing the normal value and hence of the dumping margin.

3.2.4.2. Labour

- (105) TurkStat publishes detailed information on wages in different economic sectors in Turkey. The Commission used the latest available statistics (2016) for average labour cost in Sector 23 of the Statistical Classification of Economic Activities, commonly referred to as NACE, which includes costs for labour in the glass manufacturing sector⁽⁵⁴⁾.

3.2.4.3. Electricity

- (106) The price of electricity for companies (industrial users) in Turkey is published by TurkStat in its regular press releases. The Commission used the data on the industrial electricity prices in the corresponding consumption band in Kuruş/kWh⁽⁵⁵⁾ as published on 26 March 2019 (covering the review investigation period)⁽⁵⁶⁾.

3.2.4.4. Natural gas

- (107) The price of natural gas for companies in Turkey is published by the TurkStat in its regular press releases. The Commission used the corresponding pricing for industrial users from the publication of 26 March 2019 (covering the review investigation period)⁽⁵⁷⁾.

3.2.4.5. Manufacturing overhead costs, SG&A, profits and depreciation

- (108) According to Article 2(6a)(a), second subparagraph of the basic Regulation, *'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'*. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (109) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data of Siscam/Trakya, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the model produced.

⁽⁵²⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

⁽⁵³⁾ Accounting for less than 3 % of total raw materials.

⁽⁵⁴⁾ http://web.turkstat.gov.tr/PreTablo.do?alt_id=1008

⁽⁵⁵⁾ <http://www.turkstat.gov.tr/ZipGetir.do?id=27666&class=onceki>, as last accessed on 11 March 2019. 100 Kuruş = 1 Turkish Lira.

⁽⁵⁶⁾ <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=30608>

⁽⁵⁷⁾ <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=30608>

- (110) For establishing an undistorted and reasonable amount for manufacturing overheads, SG&A, profit and depreciation, the Commission relied on the financial data for 2018 for Sisecam/Trakya as extracted from Orbis.

3.2.5. Calculation

- (111) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (112) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of solar glass. These consumption rates provided by the applicant were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country Turkey.
- (113) Once the undistorted manufacturing cost established, the Commission applied the manufacturing overheads, SG&A, profit and depreciation as noted in recitals (108)–(110). They were determined based on the financial statements of Sisecam/Trakya (see Section 3.2.3). The Commission added the following items to the undistorted cost of manufacturing:
- Manufacturing overheads and depreciation, as explained in recital (109), which accounted in total for 39 % of the costs of materials of Sisecam/Trakya,
 - SG&A and other costs, which accounted for 41 % of the cost of materials for Sisecam/Trakya, and
 - Profits amounting to 30,8 % of the total cost of production based on the profits achieved by Sisecam/Trakya.

3.2.6. Export price

- (114) As a consequence of non-cooperation, export prices were established on the basis of the facts available in accordance with Article 18 of the basic Regulation. The Commission used import data on Chinese imports reported in the 14(6) database to determine export prices.
- (115) As these prices are reported on a Cost, Insurance, Freight ("CIF") basis, they were adjusted to an ex-works level by deducting an appropriate amount for transportation and insurance costs between the PRC and the Union border. In the absence of cooperation from the Chinese exporting producers, the Commission used the same percentage for adjustment as in the original anti-dumping investigation (11,7 %).

3.2.7. Comparison and dumping margin

- (116) The Commission compared the constructed normal value as established in accordance with Article 2(6a)(a) of the basic Regulation on an ex-works basis with the export price at ex-works level to the Union.
- (117) The dumping margin found, expressed as a percentage of the CIF Union frontier price, duty unpaid, was 33 %.
- (118) After disclosure, EU ProSun argued that the figures used by the Commission to calculate the dumping margin did not match to the real price/cost experience of solar glass manufacturers and could not be reconciled by the fact that the prices of the Union industry were lower than the calculated normal value and sometimes also below the import prices.
- (119) The Commission recalled that the dumping margin was established by comparing a constructed normal value based on data from a representative third country under Article 2(6a) of the basic Regulation with the average statistical Chinese export prices to the Union, adjusted back to ex-works level. Hence, the prices of the Union industry have no impact on the calculation of a dumping margin.

3.2.8. Conclusion on continuation of dumping

(120) The Commission therefore concluded that dumping continued during the RIP.

3.3. Likely development of imports should the measures lapse

(121) The existence of continued dumping during the RIP is an indication of the likelihood of continuation of dumping should measures lapse. Furthermore, the Commission also analysed whether there was a likelihood that volumes of the dumped exports would increase should the measures be allowed to lapse. In order to do this, the Commission analysed the following elements: the production capacity and spare capacity in the PRC, pricing behaviour of Chinese exporting producers in other markets, and the attractiveness of the Union market. As a consequence of non-cooperation of producers/exporters in the PRC, the Commission based its assessment on the facts available in accordance with Article 18 of the basic Regulation.

3.3.1. Production capacity and spare capacity in the PRC

(122) Due to the lack of cooperation, none of the Chinese exporters/producers provided information as to the production capacity in China. The applicant asserted that the production capacity of the Chinese solar glass industry is in excess of 750 million m² per year⁽⁵⁸⁾. The review request contains evidence that this amounts to 78 % of the global solar glass production capacity⁽⁵⁹⁾. Furthermore, the applicant submitted that domestic demand for solar glass in China was only 600 million m² in 2016 and has weakened further in the second half of the RIP as a result of the implementation of the 531 policy⁽⁶⁰⁾. This impact was confirmed for instance by the annual report of a Chinese exporting producer⁽⁶¹⁾. In comparison, in the RIP the Union industry had a production capacity of [33–38] million m² (recital (151)) and demand in the Union was [13–18] million m² (recital (135)–(136)). The Chinese production capacity thus far outstrips Union demand (by a factor of around thirty seven) and may show an increased focus on the Union market as a result of the 531 policy.

(123) Based on the 14(6) database, the Commission moreover found that one Chinese exporting producer accounted for very large majority of exports of the product under review during the RIP into the Union. On that exporting producer's website, a production capacity of [15–25] thousand m² per day, or [5,5–9] million m² per year is indicated. During the RIP, only [10–20]% of that production capacity was used for the Union market. It is very likely that a combination of the 531 policy and a termination of the measures in force will result in more of that production capacity being utilised for the Union market.

(124) In conclusion, the combination of the large production capacity, changes in Chinese demand, a relatively limited Union demand and the company data available makes an increase in the volume of the dumped exports from the PRC likely should the measures be allowed to lapse.

3.3.2. Exports to third countries

(125) Since there was no cooperation from Chinese exporting producers, the Commission had to rely on facts available in order to establish export prices from China to other third country markets. In the absence of any other reliable information, the Commission used export data from GTA. This data was only available at the six-digit 'tariff code' level and thus included several other glass products apart from the product under review. The Commission concluded that this data was not accurate enough to be used in the investigation.

⁽⁵⁸⁾ Page 22 of the review request.

⁽⁵⁹⁾ See Annex 21A to the review request.

⁽⁶⁰⁾ Page 34 of the review request and Annex 8A to the review request.

⁽⁶¹⁾ Xinyi Solar Holdings Limited, Annual Report 2019, <https://www.xinyisolar.com/en/qynb/list.aspx>, as consulted in May 2020. 'The year [2019] was a transitional period for the Chinese PV market. PV projects evolved from solely subsidy-driven to a mix of both "subsidy-free" and "FiT-supported". [...] The belated release of policies and approval of projects has dampened PV installation sentiment in China during the year. [...] The robust global PV demand during the year was mainly driven by countries other than China.'

3.3.3. *Attractiveness of the Union market*

- (126) The applicant submitted that the Union industry is the only sizeable market for solar glass left outside of the PRC, with the latter market already saturated as a result of the 531 policy ⁽⁶²⁾. The Chinese market share was still 9 % during the RIP despite the measures in force, therefore the Union market remains an attractive export market for Chinese solar glass producers. The Union market is also expected to grow, as indicated in Section 6.2.3. No price comparison with data relating to Chinese exports to other countries could be done accurately due to the GTA issue mentioned above.
- (127) The Commission also noted that other countries, namely India and Turkey have trade defence measures in place regarding the product under review, which makes it more likely that the flow of exports from the PRC may be directed to the Union.
- (128) On the basis of the above, the Commission concluded that the Union is an attractive market for Chinese exports.

3.3.4. *Conclusion on the likely development of imports should the measures lapse*

- (129) Based on the significant production capacity in the PRC and the attractiveness of the Union market for Chinese exporting producers, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in an increase in dumped volumes.

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

- (130) In view of its findings on the continuation of dumping during the RIP and on the likely development of imports should the measures lapse, the Commission concluded, based on facts available, that there is a strong likelihood that the expiry of the anti-dumping measures would result in the continuation of dumping.

4. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY**

4.1. **Union production and Union industry**

- (131) The like product was manufactured by 11 producers in the Union during the RIP. They constitute the 'Union industry' pursuant to Article 4(1) of the basic Regulation.
- (132) The total Union production during the RIP was established at around 12 million m². The Commission established the figure based on all available information such as the review request and questionnaire replies of the sampled companies. As indicated in recital (13), Union producers were selected in the sample representing more than 80 % of the total Union production of the like product.

4.2. **Preliminary remark**

- (133) In order to protect confidentiality of business sensitive information under Article 19 of the basic Regulation, the data relating to the two sampled Union producers is presented in indexed form or in ranges.

4.3. **Consumption in the Union**

- (134) The Commission established the Union consumption by adding the sales volumes of the Union industry on the Union market to imports from the PRC and third countries based on the figures from the 14(6) database. The sales volumes of the Union producers were cross-checked and updated where necessary as regards verified information from sampled Union producers. The imports volume was cross-checked with the data from Eurostat.

⁽⁶²⁾ Page 35 of the review request. See also Section 3.2.2.5.

(135) During the period considered the Union consumption developed as follows:

Table 2

Union consumption

	2015	2016	2017	RIP
Consumption (1 000 m ²)	20 000–25 000	17 000–22 000	16 000–21 000	13 000–18 000
Index (2015 = 100)	100	89	84	65

Source: Review request, the 14(6) database, Eurostat.

(136) During the period considered, the consumption of the product under review in the Union decreased by 35 %. The biggest decrease (of 19 percentage points) occurred between 2017 and RIP. The decrease was caused by a lower demand from Union producers of PV modules.

(137) On the Union market, solar glass started to be increasingly used for the greenhouse construction market. The demand (and the linked consumption) remained however project-based and limited compared to the current consumption of the solar glass in the PV or solar thermal modules markets.

4.4. Imports from the PRC to the Union

4.4.1. Volume of imports from the PRC and market share

(138) The Commission established the volume of imports based on the 14(6) database and cross-checked with the data from Eurostat. The market share was established based on the Union consumption as determined in Table 2. During the period considered imports from the PRC into the Union and market share developed as follows:

Table 3

Volume of imports from the PRC and market share

	2015	2016	2017	RIP
Volume of imports from the PRC (1 000 m ²)	5 133	1 169	1 423	1 208
Index (2015 = 100)	100	23	28	24
Market share of imports from the PRC (%)	24	6	8	9
Index (2015 = 100)	100	26	33	36

Source: Review request, the 14(6) database, Eurostat.

(139) Volume of imports from the PRC decreased during the period considered by 76 % from more than 5 million m² in 2015 to 1,2 million m² in the RIP. In the same period, the market share of the imports from the PRC decreased from 24 % to 9 % (a decrease of 64 %). The biggest decrease in market share (74 %) occurred between 2015 and 2016, after the adoption of anti-absorption measures in August 2015⁽⁶³⁾, when the country wide anti-dumping duty rate increased from 25 % to 67,1 %. However, as from 2016 until the RIP, the market share of imports from the PRC increased by 3 percentage points to reach 9 % in the RIP.

⁽⁶³⁾ See recital (2).

4.4.2. Price of the imports from the PRC and price undercutting

- (140) Due to absence of cooperation of the Chinese exporting producers, the Commission established the average import price of imports from the PRC based on the facts available in accordance with Article 18 of the basic Regulation i.e. based on the information contained in the 14(6) database. The data was cross-checked with the data from Eurostat. During the RIP, the average import price was 6,34 EUR/m².

Table 4

Average prices of imports from the PRC

	2015	2016	2017	RIP
Average import price (EUR/m ²)	5,02	7,66	5,79	6,34
Index (2015 = 100)	100	153	115	126

Source: the 14(6) database, Eurostat

- (141) In the period considered, the average import price increased by 26 %. In the same period, the price on the Union market increased by 19 % (see Table 9).
- (142) The Commission found that import prices undercut the Union industry prices. It determined the price undercutting during the RIP by comparing the weighted average sales price of the sampled Union producers to unrelated customers on the Union market at ex-works level, and the corresponding weighted average price of the imports from the PRC, established on a cost, insurance, freight (CIF) basis, adjusted by the customs duty and post-importation costs.
- (143) The result of the comparison was expressed as a percentage of the hypothetical turnover during the RIP. It is obtained by multiplying the average Union industry sales price by the quantities exported to the Union. The price comparison showed a weighted average undercutting margin of almost 10 % by the imports from the PRC on the Union market.

4.5. Imports from third countries

- (144) The volume of imports from all other third countries and their market share developed over the period considered as follows:

Table 5

Import from third countries

	2015	2016	2017	RIP
Imports from all third countries (1 0000 m²)	579	943	1 492	1 704
Index (2015 = 100)	100	163	258	294
Market share of imports from all third countries (%)	3	5	8	12
Index (2015 = 100)	100	183	306	451
Price of imports from all third countries (EUR/m ²)	6,08	6,37	7,10	7,31

<i>Index (2015 = 100)</i>	100	105	117	120
Imports from main third countries				
Imports from Turkey (1 000 m²)	356	785	478	240
<i>Index (2015 = 100)</i>	100	221	134	67
Market share of imports from Turkey (%)	2	4	3	2
<i>Index (2015 = 100)</i>	100	248	159	103
Price of imports from Turkey (EUR/m ²)	5,97	6,54	6,54	6,38
<i>Index (2015 = 100)</i>	100	110	110	107
Imports from Malaysia (1 000 m²)	/	/	691	927
<i>Index (2015 = 100)</i>	/	/	100	134
Market share of imports from Malaysia (%)	/	/	4	7
<i>Index (2015 = 100)</i>	/	/	100	173
Price of imports from Malaysia (EUR/m ²)	/	/	8,16	8,43
<i>Index (2015 = 100)</i>	/	/	100	103
Imports from India (1 000 m²)	101	130	173	462
<i>Index (2015 = 100)</i>	100	130	172	460
Market share of imports from India (%)	0	1	1	3
<i>Index (2015 = 100)</i>	100	146	204	704
Price of imports from India (EUR/m ²)	5,51	4,48	5,03	5,43
<i>Index (2015 = 100)</i>	100	81	91	99
Imports from Taiwan (1 000 m²)	119	21	98	0
<i>Index (2015 = 100)</i>	100	18	83	0
Market share of imports from Taiwan (%)	1	0	1	0
<i>Index (2015 = 100)</i>	100	20	98	0

Price of imports from Taiwan (EUR/m ²)	6,76	7,59	6,43	4,45
<i>Index (2015 = 100)</i>	100	112	95	66
Imports from Ukraine (1 000 m²)	3	5	40	68
<i>Index (2015 = 100)</i>	100	183	1 477	2 527
Market share of imports from Ukraine (%)	0	0	0	0
<i>Index (2015 = 100)</i>	100	206	1 754	3 870
Price of imports from Ukraine (EUR/m ²)	5,25	6,27	6,45	7,24
<i>Index (2015 = 100)</i>	100	119	123	138

Source: the 14(6) database.

- (145) The import volumes from all other third countries increased by 194 % during the period considered. The market share of these imports during the RIP accounted for 12 %, up from 3 % in 2015. The main country exporting to the Union not subject to measures is Malaysia, which entered the market only in 2017 but already reached a market share of 7 % during the RIP. Indian exports also increased considerably to reach a market share of 3 % in the RIP. Turkey's market share underwent a decline from around 4 % in 2016 to 2 % during the RIP. Finally, the average price of all imports from third countries not subject to measures increased by 20 % during the period considered, to reach 7,31 EUR/m² during the RIP.
- (146) In the period considered and with the exception of 2016, the average price of the imports from the other third countries was higher than the average price of the Chinese imports. In the RIP, the average import price of the Chinese producers (of 6,34 EUR/m²), was around 13 % lower than the average price of the imports from other third countries (of 7,31 EUR/m²).

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (147) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry in the period considered. For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.
- (148) The Commission evaluated the macroeconomic indicators based on data contained in the review request and the verified questionnaire replies. These data related to all Union producers and concern: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin and recovery from past dumping.
- (149) The Commission evaluated the microeconomic indicators based on data contained in the verified questionnaire replies from the sampled Union producers. These data related to the sampled Union producers and concern: average unit prices, unit cost, average labour costs, inventories, profitability, cash flow, investments and return on investments, and ability to raise capital. Both sets of data were found to be representative of the economic situation of the Union industry.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

- (150) The Commission established the production volume and the capacity based on the data in the review request. The data was cross-checked and updated where necessary as regards verified information from sampled Union producers.
- (151) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 6

Production, production capacity and capacity utilisation

	2015	2016	2017	RIP
Production volume (1 000 m ²)	15 000–18 000	15 000–18 000	15 000–18 000	11 000–14 000
<i>Index (2015 = 100)</i>	100	103	99	74
Production capacity (1 000 m ²)	38 000–42 000	38 000–42 000	36 000–41 000	33 000–38 000
<i>Index (2015 = 100)</i>	100	102	95	89
Capacity utilisation (%)	35-43	35-43	36-44	30-37
<i>Index (2015 = 100)</i>	100	101	104	83

Source: Review request, verified questionnaire replies.

- (152) The improvement in production volume, capacity and capacity utilisation between 2015 and 2016 corresponded to the imposition of higher anti-dumping duties following the absorption reinvestigation ⁽⁶⁴⁾ whilst the decrease after that date followed a decrease in the Union consumption as described in recital (135).
- (153) In 2016, the total Union production increased by 3 % before declining two years in a row, resulting in a drop of 26 % between 2015 and the RIP. A similar pattern occurred with regard to production capacity and capacity utilisation of the Union industry. An important reason for these decreases is the bankruptcy of one large Union producer in 2017 (Ducatt, which represented, in 2015, around 20 % of the Union production and around 15 % of the capacity).

4.6.2.2. Sales volume and market share in the Union

- (154) The Commission established the sales volume based on the data in the review request. The data was cross-checked and updated where necessary as regards verified information from sampled Union producers. Union industry sales and market share within the Union evolved as follows over the period considered:

Table 7

Sales volume and market share in the Union

	2015	2016	2017	RIP
Sales volume (1 000 m ²)	14 000–17 000	15 000–18 000	14 000–17 000	9 000–12 000

⁽⁶⁴⁾ See recital (2).

<i>Index (2015 = 100)</i>	100	108	97	71
Market share (%)	73	89	84	79
<i>Index (2015 = 100)</i>	100	122	115	108

Source: Review request, verified questionnaire replies, the 14(6) database, Eurostat.

- (155) Between 2015 and 2016, sales volumes of the Union industry increased by 8 %. In 2017, it dropped by 11 % year-on-year and ended 3 % below the 2015 level. In the RIP, the drop in the Union's industry sales was more significant and ended up 29 % below 2015 levels during the RIP. In terms of market share, the pattern is similar but the Union industry increased its market share from 73 % in 2015 to 79 % in the RIP due to the 35 % drop of the Union consumption in the same period (see Table 2).

4.6.2.3. Growth

- (156) Between 2015 and the RIP, the consumption of the solar glass dropped by 35 %. The drop in the consumption had a negative impact on the Union industry production and sales volume. However, the production volume only decreased by 26 %, and the sales volume by 29 %. The market share of the Union industry in the opposite increased by 8 %.

4.6.2.4. Employment and productivity

- (157) The Commission established the data relating to employment and productivity based on the data in the review request. The data was cross-checked and updated where necessary as regards verified information from sampled Union producers. The period considered saw an evolution of employment and productivity in the Union industry as follows:

Table 8

Employment and productivity

	2015	2016	2017	RIP
Number of employees (full-time equivalents)	546	514	458	403
<i>Index (2015 = 100)</i>	100	94	84	74
Productivity (m ² /employee)	29 896	32 840	35 189	29 917
<i>Index (2015 = 100)</i>	100	110	118	100

Source: Review request, verified questionnaire replies.

- (158) During the period considered the employment in the Union industry decreased by 26 %. This decrease corresponds to a decrease of 29 % of the production in the same period (see Table 6).

4.6.2.5. Magnitude of dumping and recovery from past dumping

- (159) As explained in Section 4.4, the market share of the Chinese imports increased since 2016 to reach 9 % in the RIP. The dumping continued during the review investigation period at a significant level, as explained under Section 3 above and the Chinese exporting producers' prices continued to undercut Union industry's sales prices to a significant extent.

- (160) The analysis of the injury indicators shows that the higher duty rate imposed in 2015 following an anti-absorption re-investigation had a positive impact on the Union industry, which recovered from the past dumping. However, the dumped imports continued to exercise pressure on the Union industry. The combined impact of the increasing volume of low-priced dumped imports from the PRC and the actual margins of dumping did not allow the Union industry to recover fully from past dumping.

4.6.3. Microeconomic indicators

4.6.3.1. Prices

- (161) The average sales prices of the Union industry to unrelated customers in the Union developed as follows during the period considered:

Table 9

Sales price and cost of production

	2015	2016	2017	RIP
Unit price at Union market (EUR/m ²)	5–8	6–9	7–10	7–10
<i>Index (2015 = 100)</i>	100	111	117	119
Unit cost of production (EUR/m ²)	5–8	5–8	5–8	5–8
<i>Index (2015 = 100)</i>	100	96	94	98

Source: Verified questionnaire replies.

- (162) Over the period considered, the unit average sales prices per square metre increased by 19 %. The costs of production, on the other hand, remained more or less stable.

4.6.3.2. Labour costs

- (163) The average labour costs of the Union industry developed as follows over the period considered:

Table 10

Labour costs

	2015	2016	2017	RIP
Average labour costs per employee (EUR)	36 259	38 171	40 781	42 931
<i>Index (2015 = 100)</i>	100	105	112	118

Source: Verified questionnaire replies.

- (164) Between 2015 and the RIP the average labour costs per employee of the sampled Union producers increased by 18 %.

4.6.3.3. Inventories

(165) Stock levels of the Union industry developed as follows over the period considered:

Table 11

Inventories

	2015	2016	2017	RIP
Closing stocks (1 000 m ²)	1 200–1 500	1 300–1 600	1 300–1 600	1 400–1 700
<i>Index (2015 = 100)</i>	100	125	131	132
Closing stocks as a percentage of production (%)	12,5	14,4	13,7	16,2
<i>Index (2015 = 100)</i>	100	115	109	129

Source: Verified questionnaire replies.

(166) The level of stocks increased by 32 % in absolute terms and by 29 % in relative terms during the period considered. However, in view of the differences of the product under review in terms of size, patterns, coating, etc. for each customer, the sampled Union producers only produced per order. The inventories at these companies therefore recorded products whose production was spread within the given year but which was dedicated to a specific customer to which it will be sold later.

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

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

Table 12

Profitability, cash flow, investments, return on investment

	2015	2016	2017	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	–10 %–0 %	5 %–15 %	5 %–15 %	5 %–15 %
<i>Index (2015 = 100)</i>	–100	192	236	214
Cash flow (1 000 EUR)	2 000–5 000	10 000–13 000	15 000–18 000	13 000–16 000
<i>Index (2015 = 100)</i>	100	437	581	465
Investments (1 000 EUR)	4 000–7 000	0–3 000	1 000–4 000	1 000–4 000
<i>Index (2015 = 100)</i>	100	12	23	25
Return on investments (% of net assets)	–10–0	20–30	40–50	30–40
<i>Index (2015 = 100)</i>	–100	355	549	481

Source: Verified questionnaire replies.

- (168) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered the profitability of the Union industry increased from [-10 %-0 %] to [5 %-15 %] while the cash flow improved by 365 %. Nominal investments dropped by 75 % during the period considered. The return on investment, expressed as a percentage of the net book of fixed assets, increased strongly during the period considered.
- (169) The trend of cash-flow, which is the ability of an industry to self-finance its activities was positive during the period concerned. Due to the improvements in profitability and cash-flow, the Union industry' ability to raise capital increased considerably between 2015 and the RIP.

4.6.4. Conclusion on injury

- (170) In the period considered, the economic indicators of the Union industry were influenced by a decline in the Union consumption of solar glass by 35 % between 2015 and the RIP.
- (171) Despite the decrease in consumption, the Union industry maintained, between 2015 and 2017, a relatively stable production volume. The production volume declined more importantly (by 25 %) between 2017 and the RIP. The market share of the Union industry went from 73 % in 2015 to 79 % in the RIP.
- (172) Despite the initial decrease of the market share of the Chinese imports after anti-absorption measures in August 2015, the market share of the Chinese imports remained relatively important in the RIP (at 9 %).
- (173) The macroeconomic indicators reflected a fragility of the Union industry. They improved after the adoption of anti-absorption measures in 2015 but subsequently deteriorated because of the weakened Union consumption. As explained above in Section 4.6, this pattern can be observed with regard to Union production/production capacity, capacity utilisation, sales volume and market share and productivity. The number of employees declined steadily during the period considered.
- (174) The microeconomic indicators, on the contrary, showed an improving situation for the Union industry. In the period considered, unit cost of production was stable while prices on the Union market increased. This positive situation was reflected in a profitability, which increased from [-10 %-0 %] in 2015 to [5 %-15 %] in the RIP.
- (175) Based on the above, the Commission considered that the Union industry has largely recovered from the material injury caused by dumped imports from PRC within the meaning of Article 3(5) of the basic Regulation. Nevertheless, in view of the decreased Union consumption and relatively big market share of the Chinese dumped imports, the situation of the Union industry remained fragile.

5. LIKELIHOOD OF RECURRENCE OF INJURY

5.1. Preliminary remarks

- (176) Since the Union industry did not continue to suffer material injury anymore, the Commission examined whether there is a likelihood of recurrence of injury should the measures expire, in accordance with Article 11(2) of the basic Regulation.
- (177) To establish the likelihood of the recurrence of injury, the following elements were analysed: the production capacity and spare capacities in the PRC and the attractiveness of the Union market.
- (178) In view of the absence of cooperation of the Chinese exporting producers, the analysis of the production capacities and spare capacities in the PRC was based on facts available in accordance with Article 18 of the basic Regulation. In this regard, the Commission relied on the 14(6) database, Eurostat, the databases referred to in recital (35) and the evidence submitted by the applicant in the review request.

- (179) The Commission further analysed the effects on the Union industry of the likely recurrence of the dumped imports. The analysis took also into account the likely future increase in consumption of the solar glass in the Union and the profitable situation of the Union industry at the end of the period considered.

5.2. Likelihood of re-direction of dumped imports to the Union market in case the measures lapse

5.2.1. Production capacity and spare capacities in the PRC

- (180) China is the largest producer of the solar glass in the world. Since 2015, its production capacity grew substantially from 460 million m² in 2015 to almost 770 million m² in the RIP. Such a capacity largely exceeded the domestic consumption, negatively influenced since 2018 by the '531' policy of the Chinese government referred to in recital (66).
- (181) At the same time, an evidence shows that capacities of some of the Chinese exporting producers are expanding ⁽⁶⁵⁾.

5.2.2. The attractiveness of the Union market

- (182) The Union market has a relatively big size and there is a likelihood of a future growth ⁽⁶⁶⁾. Despite the initial decrease between 2015 and 2016, since 2016, the imports of the Chinese exporting producers have been growing and reached 9 % in the RIP. This shows that despite the measures in force, the Union market remained attractive for the Chinese exporting producers.
- (183) Furthermore, in the RIP, the Union prices were relatively higher compared to the prices of the current Chinese imports (see Tables 4 and 9). Chinese import prices undercut Union Industry's sales prices during the RIP. This makes the Union market attractive in terms of prices. Thus, it is very likely that, if the measures lapse, Chinese exports would make significant inroads in Union consumption simply by virtue of their low prices.
- (184) In addition, trade defence measures against the imports of the product under review in India and Turkey, other important markets, limit the possibilities of the Chinese exporting producers to export to these countries and further increase the attractiveness of the Union market where these exports may be redirected in case the measures on imports of solar glass to the Union lapse.

5.2.3. Conclusion

- (185) Given the high spare capacities in China, the attractiveness of the Union market and the relatively high Union prices, it is likely that, should the measures lapse, significant volumes of dumped Chinese solar glass would be exported to the Union at prices that undercut the Union industry's prices.

5.3. Effect on the Union industry situation

- (186) The Commission examined how injury indicators would likely be impacted if measures were allowed to lapse.
- (187) According to the Union producers, the likely increase of dumped imports from China would have a severe negative effect on their financial situation. In their view, the users would likely start purchasing low-priced solar glass from China, instead of keeping the Union industry as the main suppliers. They were of the opinion that the sales of the solar glass sold to their customers would consequently decrease by 30 %-75 % depending on the company and the customer. Based on the low priced Chinese price offers at their disposal, they considered that there would be a pressure on the Union industry prices, which would consequently decrease by 0,9-2,6 EUR/m² depending on the customer and the product. Furthermore, the Union producers considered that horticultural glass would be impacted to a lesser extent since the solar glass used to construct a greenhouse is cut to a specific shape, the orders are project based, and timely delivery plays an important role.

⁽⁶⁵⁾ Review request, Chapter 3.5.

⁽⁶⁶⁾ Review request, Chapter 3.5. See also analysis under Section 6 Union interest.

- (188) Based on the above assumptions, the Union industry envisaged different scenarios of the likely impact of the measures on their financial situation and simulated the effect of the sales and/or price decrease on their cost structure. One of the scenarios took into account the forecast market growth. In all the different scenarios, the simulations showed that the lapse of the measures would result in considerable losses of the Union industry.
- (189) The Commission assessed the above scenarios to see if they were realistic. Between 2009 and 2012 (i.e. before the imposition of the measures), the imports of solar glass to the Union surged from 1,2 million m² in 2009 to 8,35 million m² in 2012. The sharp increase in low-priced imports led to price decreases, loss of market share and a deterioration of the profitability of the Union industry, and caused the Union industry to suffer material injury ⁽⁶⁷⁾.
- (190) In this context, the Commission analysed the likely impact of the low priced imports on the current Union industry's situation taking, as starting point, the verified information of the Union producers. It assumed, on the basis of what was observed in the original investigation, that if low priced Chinese solar glass imports were to increase again on the Union market, they would potentially first gain market share at the expense of the Union industry, before taking over the market share of the exports from third countries producers to the Union.
- (191) On this basis the Commission calculated that if low priced Chinese imports increased by 3,5 million m² at the expense of Union sales, the consequent decrease in the Union production and consequent increase in the unit cost of production due to fixed costs would result in a drop of the Union industry profitability to the break-even point (that is to revenues equaling to total of fixed and variable costs).
- (192) The calculation takes into consideration the nature of solar glass production, which involves a particularly high share of fixed production costs. Moreover, the production process cannot be stopped and in case the sales drop, there are limited possibilities to minimise the input ⁽⁶⁸⁾. Therefore, maintaining a minimum production to cover the fixed costs and maintaining the minimum sales volumes is of a crucial importance for the industry.
- (193) This calculation is conservative. Given the large production capacity of the Chinese companies and their current low prices, that significantly undercut Union industry prices, the Chinese exporting producers are likely to export volumes bigger than 3,5 million m² and push down Union prices, resulting in further losses and an injurious situation of the Union industry.
- (194) Furthermore, since the Union industry does not produce for stocks, it has to be organised based on contracts or orders from customers (see Section 4.6.3.3 Inventories). Therefore, any important decreases in the companies' sales volumes could lead to unsustainable losses and to bankruptcy.

5.4. Conclusion on likelihood of recurrence of injury of the Union industry

- (195) Therefore, the Commission concluded that the expiry of measures on the imports from the PRC would likely result in a recurrence of material injury to the Union industry in a short period of time.

⁽⁶⁷⁾ Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 1).

⁽⁶⁸⁾ The solar glass production requires the heating up and running of a furnace without interruptions (24 hours/7 days). Due to its technical nature, this process cannot be stopped.

6. UNION INTEREST

- (196) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of the likely recurrence of the injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and users.

6.1. Interests of the Union industry

- (197) It was concluded in recital (195) that the Union industry would be likely to experience a serious deterioration of its situation in case the anti-dumping measures were allowed to lapse. Therefore, the continuation of the measures would benefit the Union industry, enabling it to maintain its sales volumes, market share, profitability and to further improve its economic situation.
- (198) By contrast, the discontinuation of the measures is likely to trigger a considerable increase of Chinese imports to the Union market at dumped, undercutting prices that would cause recurrence of injury to the Union industry and threaten its viability.

6.2. Interest of users

- (199) More than 40 users were contacted at the initiation stage. Four users provided questionnaire replies.
- (200) Several users of solar glass (producers of PV and photothermal modules) expressed their opposition to the continuation of the measures.
- (201) The arguments of the users related to increased production costs, ability of the solar glass producers to meet the demand, the planned investment into solar panels production and the environmental aspects. They also pointed out that after termination of the anti-dumping and anti-subsidy duties on imports of PV modules and cells from China, the Union industry had suffered from unfair competition from China. Users found unfair that while no trade defence measures are currently in place on solar cells and modules, the imports of one of the PV modules components, solar glass, are still subject to duties⁽⁶⁹⁾. Following disclosure, EU ProSun reiterated that there was a lack of a coherent approach towards the sector. While the measures on imports of solar modules and cells have expired, the Commission was prepared to maintain the measures on solar glass. Similarly, following disclosure, the Union solar industry association ESMC submitted that maintaining import duties on solar glass would be difficult for current Union solar module manufacturers as it increases their costs for glass, while modules imported into the Union are not subject to such tariffs, even where Chinese glass is used.
- (202) The Commission recalled that the non-continuation of measures against solar modules in September 2018 does not translate into a right of solar module producers that measures on upstream products cease as well. Rather, in accordance with Article 21 of the basic Regulation, the Commission has to carry out a Union interest test for each investigation on its own merits. The Commission therefore verified whether the continuation of measures on solar glass would have a disproportionate negative effect on the users as further detailed below.

6.2.1. Costs of production

- (203) Several users argued that the anti-dumping duties had a negative effect on their business since they increased their costs of production. The fact that they had to pay higher prices than their competitors outside the Union constituted in their view a direct competitive disadvantage for the Union solar panels producers vis-à-vis imported solar panels. The users also argued that while the various components of PV modules became significantly cheaper in the recent years, the price of solar glass remained at the same level and therefore its relative cost within the PV modules increased. Accordingly, solar glass constitutes now the second largest cost factor within the solar panel.

⁽⁶⁹⁾ The anti-dumping and anti-subsidy measures on solar panels were imposed at end of 2013 for a period of 2 years. In March 2017, the measures were prolonged for a period of 18 months (<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1904>).

- (204) Furthermore, the users noted that, although the majority of the modules they produce are so-called 'glass/foil' modules, i.e. having the glass front and plastic foil at the back, they are increasingly producing so-called 'glass/glass' modules, i.e. modules having glass on both sides. Since the 'glass/glass' module requires using two glass sheets instead of one, the share of the solar glass within the production costs doubles.
- (205) EU ProSun, representing several users, argued that the share of the costs of solar glass within the solar panel was 10 %. Two other users submitted that the share of the glass within their costs was, respectively, 7 % and 10 % for a 'glass foil' module and 14 % and 22 % for a 'glass/glass' module.
- (206) In EU ProSun's view, the cost impact of the measures would amount to 3 % for the 'glass/foil' module and 6 % for the 'glass/glass' module.
- (207) EU ProSun Glass, representing the Union industry of solar glass, claimed that the cost impact of the duties on the production costs of the module was limited. They presented calculations showing that, based on the current Union prices of the solar glass, the share of the costs of the solar glass within the PV module was 4 %. The additional costs due to the measures in place, based on the current Chinese price offers, represented according to their calculation 1,5 % of a final module cost. In their view, the additional cost impact on the users was even more limited since most of the users in the Union were active on the residential segment of the market and were selling, apart from the module, a complete set including installation and battery. If selling a complete set, a fraction of the glass within the module represented less than 0,5 %.
- (208) In the original case, it was considered that solar glass constituted only a limited part (around 6–8 %) of the costs of the solar modules ⁽⁷⁰⁾. Moreover, because the users were buying significant quantities of solar glass from the Union producers and because the users could buy the glass from countries other than the PRC, it was concluded that the impact of the original measures on the costs of the solar modules was less than 1 %.
- (209) However, since the original investigation, the level of the anti-dumping measures increased from 25 % to 67 %, which represented an additional cost impact compared to the situation in the original investigation.
- (210) The Commission found that, despite the arguments of the users, the cost structure of solar modules did not change considerably since the original investigation. According to a study of an independent institute, based on price levels in 2017–2018, the relative share of the cost of solar glass within a module was 9 % in average ⁽⁷¹⁾, and therefore, not considerably higher than 6–8 % established in the initial investigation. The Commission observed that this corresponded to the information of the users that the cost share of the glass within the module was between 7–10 % (see recital (205)).
- (211) With regard to the increasing share of 'glass/glass' module on the market, the Commission found that in the RIP, such type represented around 10 % of Union consumption and, therefore, its relative share on the market was still limited. Although its share was increasing, it is not expected that it would become more than 30 % within the next five years ⁽⁷²⁾.
- (212) Finally, the users were still purchasing the majority of the glass on the Union market and several users claimed they would continue to do so even in case the measures would lapse.
- (213) Based on the above elements the Commission observed that the small relative increase of the share of solar glass within the production costs of solar modules referred to in recital (205), the increasing production of 'glass/glass' modules and the increase of the level of the measures translated in a higher impact of the measures on the costs of users than that established in the original investigation. The Commission estimated that the cost impact of the measures on PV modules producers was estimated between 2–3 %.

⁽⁷⁰⁾ Commission Regulation (EU) No 1205/2013 of 26 November 2013 imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China (OJ L 316, 27.11.2013, p. 8), recital (157).

⁽⁷¹⁾ Source: A multidimensional optimisation approach to improve module efficiency, power and costs, Jibrán Shahid, Max Mittag, Martin Heinrich, Fraunhofer Institute for Solar Energy Systems ISE, https://www.ise.fraunhofer.de/content/dam/ise/de/documents/publications/conference-paper/35-eupvsec-2018/Shahid_5DO83.pdf

⁽⁷²⁾ Source: The Mechanical Engineering Industry Association (VDMA), <https://pv-manufacturing.org/wp-content/uploads/2019/03/ITRPV-2019.pdf>

- (214) After disclosure, EU ProSun argued that the information on the share of the costs of solar glass within solar module from the *Fraunhofer Institute für Solare Energiesysteme ISE* ('Fraunhofer Institute'), established by the Commission in recital (210), was outdated. According to new information received by EU ProSun from the Fraunhofer Institute, the share of the costs of solar glass within solar module cost increased since 2019 from 9 % to 11 %. Moreover, EU ProSun argued that according to the same source, the future share of the 'glass/glass' modules would be higher than that indicated by the Commission in recital (211) because the study referred to by the Commission in the same recital referred to the world market, and not to the Union market only. According to the Fraunhofer Institute, on the Union market, the share of the glass/glass module was expected to be higher. EU ProSun further submitted that today the share of the 'glass/glass module was 18,5 % rather than the 10 % indicated in the study.
- (215) EU ProSun also claimed that the margins of the solar panel industry were mostly below 5 % or even negative. It thus argued that the Union solar module market was highly price sensitive and therefore, the further increase by 2–3 % of the costs would lead to further shutdowns and lay-offs.
- (216) The Commission took note of the information transmitted to EUProSun by the Fraunhofer Institute on the increase of the share the costs of solar glass within solar module cost since 2019. It noted that this development does not fall within the review investigation period and may only be relevant when assessing the future burden for solar modules manufacturers. With regard the share of the 'glass/glass' modules on the market, it further took note of the information that the study referred to in recital (211) concerned a world market and the situation and the future prospects may differ in the Union. With regard the exact share, it however considered that the 18,5 % share by EU ProSun was not substantiated by any evidence. When analysing the verified data of the Union producers in the investigation period, the Commission found that the current share of the glass/glass modules on the market stood only at 14 %. Since the two verified producers represented more than 80 % of the sales on the market of the solar glass in the review investigation period, the Commission concluded that the proportion was representative of the situation on the market.
- (217) Moreover, even if the proportion of glass/glass modules had slightly increased after the review investigation period, it would not change the conclusions that the cost impact on users by retaining the measures at their current level would remain limited. As confirmed by EU ProSun and several users, the latter were buying significant quantities of solar glass from the Union producers and this would not change according to the users in the future. Furthermore, users could import solar glass from other countries not subject to measures and in the review investigation period, the imported glass from such countries represented 12 % of the market share (see Table 5).
- (218) With regard to the argument of the users that the further increase of the costs by 2–3 % would lead to further shutdowns and lay-offs, the Commission recalled that maintaining the measures should not lead to further price increases as it only maintains the already existing duties on solar glass from China. As recalled in recital (217), because of the geographical proximity, the users will continue sourcing the majority of solar glass from the Union producers and/or could import solar glass from other countries not subject to measures such as Turkey, Malaysia and India.
- (219) On this basis, the Commission concluded that maintaining the measures would now likely result in higher production costs for the users compared to the costs of the original measures given that the relative cost for glass in the total production costs has slightly increased. However, compared to the total overall production costs, the Commission concluded that the cost impact on the users would still remain limited and would thus not become critical for keeping their business in the Union.

6.2.2. *Production capacity of solar glass in the Union*

- (220) In the view of the users, the Union's solar glass industry does not have sufficient production capacity to meet the demand for solar glass on the market. They further argued that the Union solar glass producers did not increase their capacities, nor do they plan doing it. In their view, the current production capacities are lower than the current demand for solar glass. In view of the users, this situation forces them to use the imported glass from other countries like Malaysia or Turkey, or import the glass from China at higher costs. According to them, the imported glass from those countries is however not always of a sufficient quality.

- (221) The Union industry, on the contrary, considered that the supply of the solar glass of the market was sufficient to cover the demand. They argued that they never refused to supply any of the Union solar panel producers because of the alleged lack of available capacity. On the contrary, they were ready to discuss potential additional orders and confirmed their ability to supply higher volumes.
- (222) The Commission first observed that the consumption of the solar glass in the RIP was [13–18] million m² (see Table 2). Second, the total production of the Union industry verified by the Commission was at the level of [11–14] million m². Third, the total verified capacity of the two Union producers was [14–18] million m².
- (223) Therefore, the Commission concluded that in the RIP, only the two verified producers of solar glass had a spare capacity of [5–8,5] million m², which could be supplied without any additional investments. The Commission thus found this argument of the users unfounded.
- (224) After disclosure, EU ProSun argued that the production capacity of the solar glass producers did not cover the demand of solar glass by the users already after the review investigation period, since two of the users invested, in 2019/2020, in new capacities of altogether 950 MW. On this basis, EU ProSun argued that there was a lack of supply of solar glass on the market already today. In response to the argument, EU ProSun Glass, representing the Union producers, reiterated after disclosure that a few important solar panel producers presented by EU ProSun as operating on the market had already closed down their production. Therefore, the newly created capacities replaced the existing one.
- (225) The Commission first observed that according to the information from EU ProSun, solar modules producers had a combined capacity of over 5 GW in 2019. However, it also observed that a few of the solar modules producers had indeed already ceased production. The combined capacities of the companies that closed their production exceeded 1 GW ⁽⁷³⁾. Therefore, the findings of the Commission confirmed that the newly built capacities partially replaced the investments in 2019/2020 by a few of the companies referred to by EU ProSun.
- (226) Secondly, the Commission considered that the existing and the newly built capacities did not necessarily correspond to the solar module production output. According to data by EU ProSun, in 2019, less than half of the solar modules production capacity was utilised. Therefore, the Commission considered that the newly built capacities did not automatically translate in the equivalent production output and growth of the demand for solar glass, at least not immediately after their implementation.
- (227) Thirdly, the Commission recalled that in the review investigation period, in addition to the two verified solar glass producers, other producers of solar glass existed. According to the information from the Union solar glass industry, the total capacity of the solar glass producers was between [33–38] million m² (see Table 6) ⁽⁷⁴⁾. The total capacity of solar glass on the market thus exceeds its current production with almost 3 times.
- (228) On this basis, the Commission rejected the argument of EU ProSun that there was currently a lack of supply of solar glass on the Union market.

6.2.3. Future market growth

- (229) All interested parties agreed that the demand for solar panels and consequently for solar glass was growing and will substantially grow in the years to come. Primary drivers include the Union's 2030 target on renewable energies, its potential upwards revision, and the European Green Deal in general that aims at climate neutrality and boosting the EU green technologies industry, including renewables and other low carbon technologies. Growth is expected in all the segments of the market (residential, commercial, industrial and utility), depending on the development of public policies in each Member State.

⁽⁷³⁾ One of the biggest companies that ceased its production was Solarworld having according to EU ProSun capacity of 700 MW. It ceased its production in 2018 (<https://www.pv-magazine.com/2019/02/11/investor-search-for-solarworld-failed-module-factory-to-be-auctioned-off/>).

⁽⁷⁴⁾ The website of F-Solar indicates a capacity of 750 tons/day <https://www.fsolar.de/en> Depending on the product mix, this volume can correspond to between 20 and 30 million m². Apart from F-Solar, several other smaller producers exist on the market such as Petra Glass (Austria), Pressglass (Poland), Sunarc (Denmark), Lambert (Germany), Onyxsolar (Spain), Covexglass (Poland), DA Glass (Poland), Schollglass (Poland), tvitec (Spain), Hecker (Germany), Ertex solar (Austria), ILVA Glass (Italy).

- (230) Currently, solar module production in the Union is 1,7 GW ⁽⁷⁵⁾. In expectation of the higher future demand, several users situated in Austria, France, Germany, Italy and Slovenia announced that they were preparing to expand their production capacities. Altogether, and in case the new capacity plans are fully implemented and used, the planned investments by the users would, in addition to the 900 MW referred to in Section 6.2.2, amount to 2,9 GW of additional production within the next 2–3 years, thus tripling the production of the PV modules. In addition to that, EU ProSun argued that one of the planned investments would represent, in the 2nd phase of its implementation, an additional capacity of 2 GW. It also referred to a Swiss-German company willing to invest to a GW size production.
- (231) On this basis, EU ProSun and some of the users argued that if the measures are maintained, their planned investments were jeopardised because they would have to bear additional costs and because there would not be enough supply of solar glass on the market.
- (232) The Union industry of solar glass was of the opinion that the new announced capacity increase would be beneficial for its industry. However, in its view, the new planned capacities replaced to a certain extent the capacities of previously closed productions. In addition, they considered that as it was the case in the past, the new investments may not materialise as announced. Furthermore, they argued that any new plants to be constructed would not be operational at full capacity from the start of its operation.
- (233) To examine these claims, the Commission reassessed its findings. It reiterated the following: firstly, the evidence on file does not indicate that the planned investments would be conditioned on the removal of the anti-dumping measures in place. As a matter of fact, the evidence on file rather shows that many of the announced projects were mainly driven by the perspective of the future growth of the market for solar panels, rather than by an existence or not of measures on solar glass. Therefore, the decision on whether the measures on solar glass would be maintained or not cannot be considered as a decisive factor for the design or the materialisation of the abovementioned expansion projects.
- (234) Secondly, the Commission recalled that the cost impact analysis under Section 6.2.1 showed that the costs of measures for the users concerned were fairly low. The planned investments do not put that conclusion into question as the costs for this additional production in the user sector would be of the same limited magnitude.
- (235) Thirdly, based on the analysis under Section 6.2.2, the Commission further reiterated that the current capacity of the Union industry is likely to meet the increased demand induced by the planned investments. Furthermore, any demand increase would in any event be progressive, which would allow the solar glass industry to accommodate to it and increase its capacity if need be, as they claim. Moreover, users could continue sourcing the glass from other countries such as Turkey, Malaysia and India, as they did in the RIP.
- (236) After disclosure, EU ProSun further argued that the solar glass producers did not have the capacity to satisfy the future demand for solar glass. It also claimed that the users could not import the glass since the quality of the imported glass was not sufficient. To support this argument, it provided a report of one of the users that indicated that a particular order of a Malaysian company was deficient.
- (237) The Commission was not convinced that the quality of solar glass from other third countries not subject to measures was so inferior that it could not qualify as a credible alternative for a European module manufacturer. In its anti-dumping investigation on imports of solar glass from Malaysia, all parties had agreed that those imports stood in effective competition with solar glass made in the Union. As noted above, imports of solar glass into the Union from Malaysia had increased and reached, in the review investigation period, a market share of 7 %. This indicates that the Malaysian solar glass is generally of sufficient high quality even if in individual cases a delivery of imported solar glass from that country had defects and did not correspond fully to agreed terms and specifications. Consequently, the Commission rejected this claim.

⁽⁷⁵⁾ Source: EU ProSun

- (238) Following disclosure, EU ProSun also argued that the injury potentially caused by maintaining the measures on solar glass would immediately affect more than 1 000 jobs and about 50 million EUR of investments and up to more than 4 000 jobs and one billion EUR in investments to be taken during the next two years.
- (239) The Commission rejected the argument and recalled that many of the expansion plans already took place while the measures were already in place, without regard of the decision to maintain the measures or not. Based on the conclusions summarised above in Sections 6.2.1–3, it took the view that maintaining the measures did not prevent the planned investments of several users from materialising.

6.2.4. Conclusion on the interests of users

- (240) While the comments received after disclosure have further substantiated that the continuation of measures is against the interests of users, they have also confirmed that the sector is only at the beginning of an ongoing investment process. The Commission concluded that the impact of the measures on the cost structure of users is currently not out of proportion, that their security of supply is not threatened because of the spare capacities available in the Union and also of alternative sources of non-dumped imports, and also that their investment plans have not yet sufficiently materialised.
- (241) In any event, if this turns out to be the case and there are changed circumstances of a lasting nature, the Commission recalled that the users' industry may lodge a request to review the form and/or the level of the measures, limited to the injury suffered by the Union industry combined with the supply situation for the users' industry according to Article 11(3) of the basic Regulation, which could lead to a new assessment of the Union interest.

6.3. Environmental aspects

- (242) The users argued that maintaining the measures on solar glass was not in line with the Commission goals regarding the use of clean energies. On the contrary, extending the measures on solar glass would have for a consequence that the Union industry of solar modules could not undertake new investments. Furthermore, while the Union market for solar module installations is expected to grow, the Union solar module industry would be forced out of the market as it would not undertake planned new investments due to lack of solar glass supply and would therefore not be competitive.
- (243) In the context of the broader European Green Deal, in March 2020, the Commission presented its proposal for a binding European Climate Law which aims to enshrine the 2050 climate neutrality objective ⁽⁶⁾. The European Green Deal moreover contains an explicit objective to supply clean, affordable and secure energy ⁽⁷⁾, namely through a potential upwards review of the EU 2030 renewable energy target.
- (244) On both markets, that of horticultural glass (greenhouse glass) and that of PV and photothermal modules, the Union producers of solar glass are developing new innovative solutions how to enhance the use of green energy, cooperate with research institutions and universities, and are investing in research and development. In this context, the Commission considered that the continuation of the measures is crucial to ensure the existence of a viable solar glass industry and enhance research and development in the area.
- (245) The Commission furthermore considered that if the measures lapse, the viability of the Union solar glass industry would be threatened and the users (mainly PV module producers) would become dependent on imports, most likely from China. The lapse of the measures would also have as consequence that the solar glass industry could not invest in innovation and research and development. Therefore, from the environmental perspective, the Commission considered it crucial to maintain the solar glass industry viable.

⁽⁶⁾ See the Annex to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal, Brussels, 11.12.2019 COM(2019) 640 final, https://ec.europa.eu/info/sites/info/files/european-green-deal-communication-annex-roadmap_en.pdf for the broader framework.

⁽⁷⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal, Brussels, 11.12.2019 COM(2019) 640 final, https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf, p. 6.

- (246) At the same time, the Commission's green policy also supports the use of renewable energy in the Union. The main innovative potential lies in the production of cells by the downstream industry. By maintaining the measures, this part of the 'green' industry, i.e. mainly the producers of solar modules would have to bear some additional costs. In view of analysis in Section 6.2.1, the Commission however concluded that the additional costs of the users were not significant enough prevent their operation or future expansion.
- (247) Therefore, the Commission concluded that, overall, maintaining the measures does not harm the Union's environmental policies.

6.4. Interest of unrelated traders

- (248) The group active in the distribution of the solar glass for greenhouses construction expressed its support to continuation of the measures. The group was not a direct user but it was in a close cooperation with the users/farmers to find suitable glass for greenhouses construction. It claimed that low-iron-content glass of high quality and of a variety of patterns was necessary to ensure the effectiveness of greenhouses. Provision of such a glass and close operation with producers to find innovative solutions would not, in its view, be possible if the measures were allowed to lapse thus negatively affecting solar glass production in the Union. According to that group, it was not possible to import similar glass since the producers abroad could not offer the same range of relevant patterns and variations to complete successfully their projects in the usual timeframes.

6.5. Interest of unrelated importers

- (249) No importer cooperated with the investigation. In the absence of data, there was no evidence that the imposition of the measures would be against the interest of these parties.

6.6. Conclusion on Union interest

- (250) Based on the information available concerning the Union interest, the Commission concluded that there are no compelling reasons against the maintenance of the definitive anti-dumping measures on imports of solar glass originating in the PRC.

7. ANTI-DUMPING MEASURES

- (251) It follows from the above that the anti-dumping measures applicable to imports of solar glass originating in China should be maintained.
- (252) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (253) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it should not be the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.

- (254) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided the conditions for so doing are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (255) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the PRC and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (256) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁷⁸⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (257) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁷⁹⁾, 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.
- (258) 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 imposed on imports of solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300–2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm² or more (measured according to EN 1288-3), currently falling under CN code ex 7007 19 80 (TARIC codes 7007 19 80 12, 7007 19 80 18, 7007 19 80 80 and 7007 19 80 85) and originating in the People's Republic of China.

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

Company	Anti-dumping duty	TARIC additional code
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	71,4 %	B945
Xinyi PV Products (Anhui) Holdings Ltd	75,4 %	B943

⁽⁷⁸⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁷⁹⁾ 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).

Company	Anti-dumping duty	TARIC additional code
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	35,3 %	B944
Henan Yuhua New Material Co., Ltd	17,5 %	B946
Henan Ancai Hi-Tech Co., Ltd	55,9 %	B947
Henan Succeed Photovoltaic Materials Corporation	55,9 %	B948
Avic Sanxin Sol-Glass Co. Ltd; Avic (Hainan) Special Glass Material Co., Ltd	60,6 %	B949
Wuxi Haida Safety Glass Co., Ltd	60,6 %	B950
Dongguan CSG Solar Glass Co., Ltd	60,6 %	B951
Pilkington Solar Taicang, Limited	60,6 %	B952
Zibo Jinxing Glass Co., Ltd	55,9 %	B953
Novatech Glass Co., Ltd	60,6 %	B954
All other companies	67,1 %	B999

3. The application of the individual anti-dumping 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 Annex I. 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

The Commission may amend Article 1(2) by adding a new exporting producer, subject to the duty applied to not sampled cooperating producers where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product described in Article 1(1) in the period between 1 January 2012 to 31 December 2012 (the original investigation period) or in the period between 1 December 2013 to 30 November 2014 (the absorption investigation period);
- (b) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation; and
- (c) it has actually exported to the Union the product under review 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.

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, 22 July 2020.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX 1

The valid commercial invoice referred to in Article 1(3) must contain the following:

- (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 (area in m²) of solar glass sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'
 - (3) Date and signature of the official of the entity issuing the commercial invoice.
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