

COMMISSION IMPLEMENTING DECISION (EU) 2021/1788**of 8 October 2021****suspending the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 14(4) thereof,

After consulting the Committee established by Article 15(1) of the basic Regulation,

Whereas:

1. PROCEDURE

- (1) On 14 August 2020, the European Commission ('the Commission') initiated an anti-dumping investigation ('the investigation') with regard to imports of aluminium flat-rolled products ('AFRPS' or 'the product under investigation') originating in the People's Republic of China ('the PRC', 'China' or the 'country concerned') on the basis of Article 5 of the basic Regulation ⁽²⁾.
- (2) On 12 April 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/582 ⁽³⁾ ('the provisional Regulation').
- (3) On 13 July 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China ('final disclosure'). Furthermore, interested parties received an additional disclosure on 13 August 2021 ('first additional final disclosure') and on 3 September 2021 ('second additional final disclosure'). All parties were granted a period within which they could make comments on the final and additional disclosures.
- (4) Following final disclosure, Airoidi Metalli S.p.a. ('Airoidi'), Valeo Systèmes Thermiques SAS ('Valeo') and related companies, and TitanX Engine Cooling AB ('TitanX') provided information on a change of market conditions which occurred after the investigation period ('IP') (1 July 2019-30 June 2020), and submitted that such changes would justify the suspension of the measures, in accordance with Article 14(4) of the basic Regulation.
- (5) On 28 July 2021, on its own motion, the Commission decided to request interested parties in the Union to provide comments by 12 August 2021 on the possibility to suspend definitive measures in due course. The sampled Union producers and their association were also requested to provide post-investigation period information for certain injury indicators. Comments were received from the three sampled Union producers, from the EA, from 12 users

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 268, 14.8.2020, p. 5.

⁽³⁾ Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 124, 12.4.2021, p. 40).

and their association and from five importers and their association. The sampled Union producers and European Aluminium ('EA') also provided the requested information relating to certain indicators. After the deadline for comments, on 20 August 2021 EA also addressed a letter to the Commission expressing its opposition to a possible suspension of the measures. Euranimi and Airoidi commented on EA's letter.

- (6) On 1 September 2021, the Commission disclosed its intention to suspend measures for nine months as of the date of their imposition and asked parties to provide comments by 6 September 2021.
- (7) Following disclosure, EA claimed that the time to answer to the request for comments mentioned in recital (5) was in breach of Article 6(2) of the basic Regulation as the sampled Union producers and EA were only given 15 days to reply instead of the 30 days mentioned in such provision.
- (8) The Commission considered that, contrary to what applies in the context of investigations, such as those initiated pursuant to Article 5, 11(2) or 11(3) of the basic Regulation, Article 6(2) does not apply in the context of Article 14(4), where the Commission assesses whether duties should be suspended. Article 14(4) does not contain any reference to specific deadlines or other provisions of the basic Regulation in this respect. In any case, the Commission considered that the deadline set to provide the requested information was reasonable in view of the limited scope (6 open questions and only a limited number of indicators when compared to a standard questionnaire) and the period that it covered (12 months). Furthermore, the Commission tried to accommodate the Union industry's request for an extension by granting 2-4 additional working days (depending on the nature of the information) to the sampled Union producers to provide their complete replies. On this basis, the Commission considered that the Union industry had sufficient time to provide the requested information and this claim was rejected.
- (9) Following disclosure, EA and Elval Halcor S.A. ('Elval') claimed that the requesting parties were not representative of Union users and importers. They argued that a procedure to suspend anti-dumping duties is a different specific procedure which should benefit from the same procedural rights and guarantees as initial investigations and reviews. In particular, they claimed that the annual consumption of AFRPs by the two users requesting the suspension of the measures accounted for less than 5 % of the Union market and that a decision to suspend would be disproportionate to their representativeness on the total Union market.
- (10) Furthermore, EA claimed that the Commission did not ensure that EA was made aware of the substance of these requests and was therefore in breach of its obligation to ensure that all parties had access to the same information in a timely manner. In particular, it argued that the requests were either filed at a late stage or were vague, without reference to Article 14(4) and not supported by any evidence. On this basis, EA claimed that the Commission's lack of good administration excluded parties from the possibility to rebut the claims of certain applicants and thus gave preference to the latter. Furthermore, EA claimed that the requests for suspension should have been submitted to the 'Complaints Office' to determine if they met the criteria for examination. On this basis, EA claimed it was treated in a discriminatory fashion in breach of Article 19(2), as it was not aware of the requests.
- (11) The Commission firmly rejected these claims. Contrary to Article 4(1) of the basic Regulation, Article 14(4) does not foresee any legal requirement in the form of representativity percentage or standing for a party to request the suspension of definitive measures. On the contrary, this Article provides for the possibility for the Commission to consider such a matter on its own initiative. As indicated in recital (5) above, the Commission started collecting information on its own initiative with a view to taking a decision as to whether suspension as provided in Article 14(4) was appropriate. In any case, the users and importers at stake represent far more than was portrayed by EA overall and in terms of share of import volumes from the country concerned. Moreover, Article 14(4) does not refer to the need for interested parties to lodge their suspension request with the 'Complaints Office'; nor does such a provision mandate a specific internal procedure for the Commission services to decide examining whether the elements in Article 14(4) are met. On this basis, these claims were rejected.

- (12) As far as the access to the requests for suspension is concerned, Article 14(4) of the basic Regulation does not foresee the possibility for parties to comment on requests for suspension. In any case, the Commission considered that EA had ample opportunity to comment on the possible suspension of measures following the disclosure of the Commission's definitive findings where reference was made to such possibility (see recital (367) of the final disclosure) and following the Commission's request to provide comments on the possibility to suspend definitive measures as referred to in recital (5).
- (13) Furthermore, EA also had the opportunity to comment on the requests for suspension following the comments filed by Airoldi on 30 July 2021 and revised comments filed by Valeo on 27 August 2021 where they requested the suspension of the measures as mentioned in recital (4). In addition, the Commission considered that on substance these suspension requests were based on other claims, already provided by the parties making the requests, in the course of the investigation. Thus, EA had ample opportunity to comment on these claims. Also, the Commission noted that these elements were pointing to temporarily changed market conditions, which the Union industry, itself, had taken into account during the investigation as mentioned in recital (528) of the definitive Regulation.
- (14) EA added that the absence of due process was compounded by the three working days time limit to comment and claimed that the deadline to provide comments on the suspension disclosure document breached Article 20(5) of the basic Regulation. Moreover, its deadline extension request was rejected without proper justification. EA claimed that the deadline to provide comments should have been at least 10 days.
- (15) The Commission considered that Article 20(5) of the basic Regulation does not apply in the context of Article 14(4). Indeed, Article 14(4) does not refer to Article 20(5) as far as comments are concerned and, contrary to other Articles of the basic Regulation, does not specify the number of days to be given to consult the Union industry. Furthermore, Article 14(4) merely requires the Commission to give the Union industry an 'opportunity to comment', without specifying any mandatory deadline in this respect. Having three working days at its disposal, allowed the Union industry to make meaningful comments.
- (16) The Commission had already asked in its questionnaire of 28 July the view of the Union industry on the possibility to suspend and had included a section on the 'Union industry position' in its disclosure document of 1 September. Against that background, it was not unreasonable to receive three working days to make comments concerning the Commission's assessment of previously submitted information and views. Therefore, giving an extension of the deadline was also not warranted. On this basis, this claim was rejected.
- (17) On 8 September 2021, EA repeated its concerns in a hearing before the Hearing Officer and asked her to make an operational finding that the Commission would be impeded by law to take such suspension decision at this stage because of significant procedural errors, and also substantive errors contained in the draft decision. After a contradictory hearing, the Hearing Officer concluded that Article 14(4) of the basic Regulation did not contain specific deadlines or procedural rules, which had been allegedly breached. She noted that EA had clearly been aware of a possible suspension since receipt of the questionnaire sent on 28 July. She also recommended that the Commission establish an effective post-decision monitoring system so that if circumstances changed, the Commission could react rapidly.
- (18) On 11 October 2021, by Commission Implementing Regulation (EU) 2021/1784 ⁽⁴⁾ ('the definitive Regulation'), the Commission imposed a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (the product concerned). The rates of the anti-dumping duty range from 14,3 % to 24,6 %.
- (19) Having determined on the basis of the information available that the imposition of anti-dumping duties was warranted, the Commission further examined whether the suspension of the anti-dumping measures imposed on the product concerned would be warranted in view of the conditions under Article 14(4) of the basic Regulation.

⁽⁴⁾ Commission Implementing Regulation (EU) 2021/1784 of 8 October 2021 imposing a definitive duty on imports of aluminium flat-rolled products originating in the People's Republic of China (see page 6 of this Official Journal).

2. EXAMINATION OF CHANGED MARKET CONDITIONS

- (20) Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension.
- (21) The investigation leading to the definitive Regulation showed that, during the period considered (2017-June 2020), Chinese imports had increased by 70 % and led to significant losses in production (– 11 %), sales (– 14 %), market share (– 3 %) and profitability (from 3,1 % in 2017 to – 1,8 % in the investigation period) for the Union industry. On this basis, the Commission concluded that the Union industry had suffered material injury as a consequence of the dumped imports.
- (22) The second half of the investigation period also coincided with the COVID-pandemic, where the economy slowed down leading to a decrease in demand and a consequent decrease in capacity, production and sales by the Union industry. The Commission found, however, that this element did not attenuate the causal link between material injury and dumped imports because the dumped imports originating in China had already increased significantly between 2017 and 2019, before the COVID-pandemic, and led to the deterioration of the vast majority of the injury indicators. In the context of that investigation, the Commission concluded that there were no compelling reasons to conclude that it was not in the Union interest to impose definitive duties on imports of AFRPs originating in China. In particular, the Commission noted that the elements available at the time pointed to a temporary post-COVID situation having an impact on prices, and where such recovery could not be anticipated and required some time for the market to adapt until the economic recovery and growth would normalise and demand and supply would be in balance again.
- (23) The analysis of the additional information requested by the Commission in order to examine in due course the possibility of suspending the duties showed that, following the investigation period, the situation of the Union industry improved significantly. In the first semester of 2021, Union producers' sales in the Union to unrelated parties increased by over 55 % in comparison with the investigation period and by 34 % in comparison with 2017, which was the best year in the period considered. Also, production volume and production capacity developed positively in the same period with respective increases by 11 % and 25 % in comparison with 2017. Average sales prices to unrelated customers in the Union increased by 2,4 % in the first semester of 2021 when compared to 2017 and by 6,5 % when compared with the investigation period. Profitability reached 1,9 % in the first semester of 2021 whereas the Union industry was loss making in the IP (– 1,8 %). Also, several interested parties provided evidence that Union producers could not supply the requested products because they had reached capacity for orders in 2021 and for at least the first half of 2022. On this basis, the Commission observed that the situation of the Union industry overall improved after the investigation period.
- (24) Following disclosure, EA claimed that the Union industry was still suffering material injury based on the level of profit achieved in 2021. Furthermore, EA and Elval referred to the performance of the Valeo Group ^(⁹) for the first semester of 2021 (in terms of EBITDA, sales, cash flow, order intake) and to its outlook for the year 2021. On this basis, they argued that the users industry is in a healthy state, which contrasts with the Union industry and its much more fragile situation.
- (25) In this regard, the Commission considered that the assessment of the injury situation of the Union industry after the IP was based on an assessment on the various injury indicators referred to in recital (23) and not solely on the level of profits. In the present case, all indicators for which the Commission requested post-IP information showed a significant improvement when comparing the first semester of 2021 with the IP. The same is true when comparing the first semester of 2021 data with that of 2017 with the exception of capacity utilization and profitability. The

⁽⁹⁾ https://www.valeo.com/wp-content/uploads/2021/07/PR_Valeo_H1_2021_Results_EN.pdf, consulted on 8 September 2021

Commission noted that profitability for sales to unrelated customers in the Union had initiated a positive trend since the end of the investigation period, was above the 2018 level and was progressively approaching the 2017 profit level, which was the highest in the period considered. Against that background, it is unlikely that the positive trend as regards profits would be impeded by the suspension of the measures.

- (26) The Commission considered that the reference to the Valeo Group performance and outlook was inappropriate, as the corresponding data did not relate either to the sector using the product under investigation or to the EU activities, exclusively. Furthermore, the Commission did not consider that the Valeo Group's performance was representative for the users industry, which includes economic operators in many other sectors (building and construction, packaging and other industrial applications). The Commission also noted that considering the Valeo Group as representative of the users industry contradicted EA's claim in recital (9). On this basis, the Commission rejected this claim.
- (27) The analysis of the comments received by the various parties following the Commission's request revealed that these post-IP developments were explained by several factors.
- (28) Demand in and outside the Union increased because of the post-COVID economic recovery. Furthermore, users that used to buy from the PRC turned to the Union industry after the initiation of the investigation, leading to an additional increase in demand.
- (29) While the Union industry increased its capacity after the investigation period, it has not been in a position to meet the increased demand over the last months, partially because of its previous downsizing of capacity. Furthermore, the post-IP period was characterised by a temporary shortage of semi-finished and primary aluminium (strike, production breakdowns in or outside the Union, high demand for Russian aluminium slabs).
- (30) All in all, the temporarily changed market conditions in the first semester of 2021 resulted in an imbalance between supply and demand. In practice, this led to significantly longer lead times (from 4-12 weeks in normal times to 6-10 months) and a significant increase in prices for aluminium flat-rolled products as a consequence of the increase in the LME aluminium price (over 10 % between the IP and the following 12-month period), aluminium premium (over 13 % between the IP and the following 12-month period) and the conversion fees. The increase in aluminium premium was also influenced by the announcement of an imposition of a 15 % export tax on Russian primary aluminium.
- (31) However, the Commission considered the following facts:
- the efforts deployed by the Union industry in order to increase its supply by further increasing production, capacity and capacity utilization will continue during the suspension period,
 - the shortage of semi-finished and primary aluminium was mainly caused by exceptional events,
 - the duration of the strong sudden and unexpected rebound of demand is uncertain and is expected to diminish over time, and
 - the export tax on Russian primary aluminium is expected to expire in December 2021.
- (32) Following disclosure, EA claimed that the data on which the suspension decision was taken, had not been verified and were not to be found in the file open for inspection by interested parties.
- (33) The Commission considered that the information on file, including the comments on the possibility to suspend definitive measures submitted following the Commission request for information mentioned in recital (5) left no doubt with regard to the post-IP situation on the Union market and the temporarily changed market conditions. These comments and the evidence attached thereto, such as a statement by an important Union producer in terms of sales volume that it could not temporarily meet its contractual obligations, supported the claims made by the

cooperating parties. Indeed, they only confirmed the findings of the investigation pointing to a post-IP temporary imbalance between demand and supply as reckoned by the Union industry (see recital (528) of the definitive Regulation). On this basis, the Commission considered that its decision was based on reliable facts and rejected this claim. In any event, there is no absolute obligation to carry out on-spot verifications to accept data provided if the Commission is able to satisfy itself as to its reliability.

- (34) Following disclosure, EA and Elval claimed that there was no imbalance between supply and demand. In this respect EA and Elval argued that, the increase in production, capacity and sales in the Union during the post-IP period demonstrated that the Union industry had been able to supply the market. Also, EA argued that such figures quantified the increase in supply and the capacity available for even greater supply. On this basis, EA claimed that the Commission's conclusion mentioned in recital (29) that the Union industry 'has not been in a position to meet the increased demand over the last months' was not supported by the facts on file on which the suspension decision is based.
- (35) In particular, EA claimed that the Commission's assessment mentioned in recital (29) that the Union industry had previously downsized its capacity contradicted the findings reported in Table 6 of the definitive Regulation pointing to a slight decrease in capacity between 2018 and the IP. On this basis, it claimed that the Commission's finding was based on a manifest error of assessment of the evolution of the Union production capacity and that the production capacity had increased by an additional 15 % after the investigation period, leading to a spare capacity of 490 thousand tonnes on an annual basis. Furthermore, EA claimed that there are many other sources of supply than China.
- (36) The Commission disagreed with EA's claims for several reasons. First, the reported capacity for the period considered, and the investigation period in particular, concerned theoretical capacity. The theoretical capacity was higher than the active/manned capacity as it did not take into account reductions in actual capacity caused by, for instance, the reduction in employment due to the Covid-19 pandemic lockdowns, and as reported by certain major Union producers. In particular, the Union industry reported that it reduced the number of shifts during the Covid-19 pandemic, while when demand rebound, it took the companies longer to rehire and train the necessary staff in order to use the available capacity. Second, as mentioned in recital (31), the imbalance between supply and demand also finds its cause in the shortage of semi-finished and primary aluminium, which reduces the actual available capacity. Third, the Union industry itself recognised that there was a temporary imbalance between supply and demand as mentioned in recital (528) of the definitive Regulation. This temporary imbalance was also confirmed by several interested parties in their replies to the requests for information on suspension and in their comments on the disclosure reporting that lead times had increased significantly after the investigation period and that Union producers had reached capacity for orders in 2021 and, for at least the first half of 2022 (see recitals (23) and (30) above). Some of the above elements such as increased lead times are also confirmed by independent market sources⁽⁶⁾. Fourth, the information on file does not point to the existence of available spare capacity in other countries and EA did not provide any evidence in this regard. On this basis, the Commission considered that its conclusion relating to the imbalance between supply and demand was accurate and rejected EA's claim.
- (37) EA also contested the Commission's finding that the Union industry had not been in a position to meet the increased demand over the last months. In particular, EA referred to the increased orders intake for all AFRPs (including products falling outside the scope of the investigation) in late 2020/early 2021 and to the increase in production volume and deliveries in Q1 and Q2 2021 for the product under investigation. It also argued that, since Q2 2021, the level of the orders intake had decreased to a level close to Q1 2020 and that this pointed to a stabilization of demand and that this indicator was the best estimate on the file of rapid change in post-IP demand. On this basis, it argued that the Union industry had been able to quickly react to the post-COVID economic recovery and meet the increased demand.

⁽⁶⁾ CRU Aluminium products Monitor, August 2021 report.

- (38) In this regard, it should be first recalled that the scope of the orders intake referred to by EA covers a much broader product and geographical scope than that of this investigation. As a result, it cannot be directly compared with the production and sales developments of the product under investigation. In particular, the corresponding orders intake volume represents approximately two times the total sales volume of the product under investigation by the Union industry in the Union. On this basis, the Commission considered that comparing indicators which differ so significantly in product and geographical scope and volume was meaningless. For the same reasons of difference in product and geographical scope and volume, the reference to the development of the orders intake in Q2 2021; i.e. a forward looking indicator concerning future production and deliveries, to justify the ability of the Union industry to supply the product under investigation in the period following the end of the IP was not considered appropriate.
- (39) Furthermore, the Commission considered that EA's claim that the Union industry could meet the current demand over the last months contradicted EA's statement mentioned in recital (528) of the definitive Regulation that there was a temporary imbalance between demand and supply, and with the abundant evidence on file pointing to increased lead times, impossibility to go beyond contractual agreements and the fact that certain Union producers had reached capacity for orders in 2021 and the first half of 2022. On this basis, the Commission rejected EA's claim.
- (40) Following disclosure, EA raised doubts concerning the Commission's finding that lead times had increased as mentioned in recital (30) and requested the source used to arrive at this conclusion. EA also argued that the Union industry had not been requested to provide such information and was not given the opportunity comment on these claims.
- (41) In this regard, the comments, open for inspection by interested parties, filed by certain users and importers further to the Commission's request as mentioned in recital (5), pointed to increased lead times. Some of them were also supported with sensitive evidence in the form of email exchanges and were confirmed by the 5 August 2021 CRU publication on Aluminium products. On this basis, the Commission considered that the Union industry had had the opportunity to comment on other parties' comments. However, the Union industry did not provide supporting evidence contesting these increased lead times. On the contrary, as mentioned in recital (528) of the definitive Regulation, the Union industry had already acknowledged the existence thereof. On this basis, this claim was rejected.
- (42) Following disclosure, EA and Elval claimed that the evolution of the aluminium price and aluminium premium had only been partially reflected in the average sales price to unrelated customers in the Union and that the Union industry had absorbed part of the price increase and that an increase by 2,4 % when comparing 2017 with the first semester of 2021 was reasonable and could not justify a finding of changed market conditions.
- (43) The Commission agreed with the fact that the Union industry had not fully passed on the increase in aluminium price and aluminium premium to its customers. However, in order to meaningfully compare the post-IP prices with those existing during the IP, the Commission considered that the comparison should be made in particular between the end of the investigation and the most recent period. On this basis, as mentioned in recital (23), the Commission calculated a price increase of 6,5 % between the investigation period and the first semester of 2021. Considering that the average of the IP was higher than the price at the end of the IP in view of the evolution of the LME, the conservative price increase of 6,5 % was considered significant. Furthermore, as the majority of the sales are made pursuant to long-term contracts, it was considered that such a price increase did not fully reflect the extent of the price increase to be expected in view of the evidence on price increases provided by various interested parties. On this basis, the Commission considered that the calculated price increase justified a finding of temporarily changed market conditions and rejected EA's claim.
- (44) Following disclosure, EA claimed that the Commission had assessed the demand and supply situation for AHX AFRPs for the period 2021-26 and that such an assessment included *a fortiori* an examination of the post-IP situation whereby the projected demand could be absorbed by the projected Union industry's capacity and projected imports from third countries.

- (45) The Commission disagreed with this claim. In fact, as mentioned in recital (56) of the definitive Regulation, the Union industry, itself, acknowledged the existence of temporary capacity issues linked to the sudden and strong post-Covid-19 recovery. Furthermore, users in the AHEX AFRPs sector provided evidence, in the framework of both the main investigation and the suspension investigation, pointing to the existence of a temporary imbalance between supply and demand after the investigation period. On this basis, this claim was rejected.
- (46) On this basis, the Commission concluded that indeed market conditions changed after the period considered in the definitive Regulation. However, the changed market conditions were temporary in nature (as opposed to structural changes) and it is likely that supply and demand would align again after the temporary suspension of the measures.

3. LIKELIHOOD OF RECURRENCE OF INJURY IN THE EVENT OF SUSPENSION

- (47) The significant increase in sales by the Union industry has led to a significant increase in market share as Chinese imports have decreased significantly. Considering the level of demand, the fact that many users have switched to the Union industry and the nature of the contracts (very few spot orders), it is unlikely that the Union industry would lose significant business to Chinese exporters if measures were to be suspended for 9 months.
- (48) Furthermore, the Commission considered that the 9-month suspension would give users that requested the exclusion of certain products an additional period to (re) validate Union producers and ensure a smooth transition from a Chinese to a Union source of supply, if necessary.
- (49) Even though the industry did not achieve yet the level of profit achieved in 2017, the positive trend initiated in 2021 is likely to continue for a while until the market conditions adapt to the post-Covid-19 situation. As a matter of fact, the annualized order in-take ⁽⁷⁾ of the Union industry was at its highest level in the first quarter of 2021 since 2015. The annualized order in-take in the second quarter of 2021 was lower than the first quarter but still equivalent to the 2017/2018 level. Furthermore, as mentioned in recital (23), according to information submitted by several users, several Union producers reported that they were already fully booked until, at least, the first half of 2022. This provides reassurance concerning the level of activity of the Union industry in the coming months. In addition, as the majority of the sales are made pursuant to contracts which contain price mechanisms, the level of revenue for the Union industry will not be impacted by increasing imports originating in the PRC during the period of suspension of the measures, as those volumes will capture demand that, to a large extent, cannot currently be filled by the Union industry. Finally, as far as the evolution of prices for primary material and finished products is concerned, the Commission considered that the price setting mechanisms applicable in the vast majority of the contracts would allow the Union industry to transfer price increases to their buyers, if need be. The broad use of hedging mechanisms to take account of primary material price evolution is another guarantee that the Union industry would not suffer significantly from price variations in primary materials. Therefore, the Commission concluded that the overall performance of the Union industry in the coming months would not be impacted by the suspension of the measures.
- (50) Following disclosure, EA claimed that the Commission made a manifest error of assessment by suspending the measures via a hasty investigation process neglecting the rules of due process, good administration and verification of the facts. Furthermore, EA considered that the imminent damage to the Union industry was clearly foreseeable as Union producers would have to decrease their prices at loss-making levels to compete with dumped imports from China and lose market share to producers in China. EA also claimed that the suspension would impede the utilisation of the unused production capacity of the Union industry, generate uncertainty and lack of visibility triggering the revision of investment decisions and leading to fewer jobs, less turnover and profit. In support of this claim, EA provided a statement by a Union producer referring to an alleged price offer for a delivery in January 2022.

⁽⁷⁾ The order in-take is a means to assess future revenues as it corresponds to the volume of orders processed within a given accounting period. In the case at hand, this indicator is not limited to the EU and covers out of scope products.

- (51) The Commission disagreed with EA's claim that it had made a manifest error of assessment and had neglected rules of due process, good administration and verification of the facts. In this regard, reference is made to recitals (9) to (14) where the Commission rebutted the claims on the rights of interested parties, and to recital (33) as far as verification aspects are concerned.
- (52) As far as the assessment of the facts, the Commission noted that EA neither contested nor provided supporting evidence undermining the reasoning of the Commission mentioned in recitals (47) to (49) with regard to the likelihood of recurrence of injury during the period of suspension. With regard to the alleged foreseeable imminent damage, as mentioned in recital (49), the Commission considered that the Union industry would not be impacted by increasing imports originating in the PRC during the period of suspension of the measures, as those volumes would capture demand that, to a large extent, cannot currently be filled by the Union industry. Furthermore, the Commission considered that the statement by one Union producer was not indicative of the impact on the Union industry as a whole during the period of suspension.
- (53) Importantly, the suspension of the measures is limited in time to a period of nine months and measures can be reinstated quickly if imports originating in China enter the Union in increased quantities causing injury to the Union industry. On the basis of the above, this claim was rejected.
- (54) Following disclosure, Elval claimed that the decision to suspend contradicted the findings in the final disclosure. The final disclosure had concluded that the Union producers had already suffered injury over a significant period. In Elval's view, the decision to suspend would allow the inflow of Chinese imports and would cause considerable damage to the supply chain in the future.
- (55) The Commission considered that this claim was without merit as the period of analysis for the main investigation (2017 – June 2020) and that of the suspension decision (July 2020 – June 2021) differed and therefore the Commission may reach different conclusions on the basis of the data considered in each period. Furthermore, as mentioned in recitals (47) to (49), the Commission concluded that the overall performance of the Union industry in the coming months, on the basis of the positive trends observed for the period July 2020 – June 2021) would not be impacted by the suspension of the measures. In the absence of more specific elements in this regard, this claim was rejected.
- (56) Based on the above, the Commission concluded that there is no likelihood of recurrence of injury during the 9 months, should measures be suspended.

4. CONSULTATION OF THE UNION INDUSTRY

- (57) Further to the Commission's invitation to comment on the possible suspension of measures, the Union industry claimed that the increase in demand was temporary and that there were signs of economic slowdown especially in the car sector. The Union industry also argued that the suspension of measures would lead to massive stock piling and undermine the remedial effects of the measures. Consequently, it claimed that the suspension of the measures would jeopardize the initiated restoration efforts.
- (58) Considering the development of the main injury indicators of the Union industry after the investigation period, the expected capacity utilization and the order books, the Commission considered that the suspension was not likely to be detrimental to the Union industry or jeopardize the initiated restoration efforts.
- (59) Furthermore, in view of the current high level of prices and high demand in and outside the Union, the Commission considered that there was only a limited risk of stockpiling imports from China. The significant increase in sea-freight costs that followed the post-COVID recovery also make stockpiling less attractive.
- (60) Most importantly, should imports originating in China enter the Union in increased quantities causing injury to the Union industry, measures could be reinstated quickly in accordance with Article 14(4) of the basic Regulation. The Commission will monitor the development of imports of the product concerned and immediately respond to any changes in the situation described in this decision as appropriate.

- (61) In this respect, access to the open file through TRON will remain available after the adoption of the draft implementing acts to allow for the timely submission of new information.

5. UNION INTEREST

- (62) Following disclosure, EA claimed that the Commission had failed to determine that it was in the Union interest to suspend the definitive anti-dumping measures by assessing the consequences of applying or not applying the measures in the interest of the Union industry itself and the interest of downstream users. Furthermore, EA claimed that any attempt to address this manifest error of law in the application of Article 14(4) of the basic Regulation would be arbitrary and in breach of due process.
- (63) The Commission disagreed. An assessment under Article 14(4) is inherently concerned with an assessment of the Union interest. In this regard, the Commission assessed the Union interest by balancing the interest of the downstream users, based on elements mentioned in recitals (30) and (48), and the interest of the Union industry as mentioned in recitals (49) and (54), relating to the likelihood analysis. On this basis, the Commission concluded that the suspension of the measures would be in the Union interest. Consequently, the Commission did carry out a Union interest analysis as required by Article 14(4). Reference is also made to previous suspension decisions⁽⁸⁾ where the Commission followed the same approach. On this basis, this claim was rejected.

6. THE RELATIONSHIP BETWEEN SUSPENSION AND THE IMPOSITION OF MEASURES

- (64) Following disclosure, EA claimed that there was no legal requirement to suspend the collection of the duties on the same date as the imposition of duties resulting from the conclusion of the investigation initiated pursuant to Article 5 of the basic Regulation. In the same regard, it claimed that such a practice was diminishing its rights as an interested party.
- (65) The Commission agreed with the starting point of EA's claim. Under Article 14(4) the Commission has discretion as to when it decides to suspend measures. Therefore, there is no obligation to suspend on the same day when the investigation leading to the imposition of duties is terminated. However, this discretion also does not prevent the Commission from suspending the measures on the same day as they are imposed. In other words, the Commission considered that, provided the conditions under Article 14(4) are met, it enjoys full discretion with regard to the appropriate timing to act in this regard. In the same vein, and as mentioned in recital (8), the Commission considered that the deadlines for comments were reasonable and that EA's rights as an interested party were not diminished.
- (66) Following disclosure, EA reiterated that the suspension decision was not motivated by the Union interest and claimed that main motivation for the suspension decision appeared to be the will to find an alternative approach to unsuccessful requests by several users to exclude certain sub categories of AFRPs from the product scope. In this regard, EA referred to Valeo's suspension request. Furthermore, EA claimed that the suspension would open up the market to the supply of dumped goods, not only for the products for which an exclusion was sought but also for other in scope products.
- (67) The Commission disagreed with EA's claim. As mentioned in recital (63), the Commission's decision to suspend the measures is indeed motivated by Union interest grounds, which rely on temporarily changed market conditions and the absence of likelihood of recurrence of injury upon suspension of the measures. Furthermore, the Commission noted that the temporary change in market conditions did not apply exclusively to certain product sub-categories of AFRPs but to the AFRP market as a whole. On this basis, this claim was rejected.
- (68) Following disclosure, EA and Elval claimed that the suspension would send the signal that the Commission is not discouraging the imports of coal-based high CO₂ footprint aluminium to the benefit of more environment-friendly Union producers and that this decision was jeopardizing the efforts made by the EU industries to meet the objectives of the Green Deal, through loss of investment.

⁽⁸⁾ OJ L 126, 13.2.2010 at recital (10) and OJ L 120, 15.5.2009 at recital (7)

- (69) The Commission disagreed with EA's claim and considered that the decision to suspend the measures was made in the Union interest in order to address temporarily changed market conditions and ensure that demand and supply would be in balance again in the short term. On this basis, the Commission did not consider that the suspension would jeopardize the efforts made by the EU industries and the Union AFRP industry in particular since, as mentioned in recital (54), the Commission concluded that there was no likelihood of recurrence of injury as a consequence of the temporary suspension of the measures. Moreover, the suspension decision will be monitored closely in order to be lifted immediately if such a suspension is used to increase import volumes in a manner which would cause further injury to the Union industry during the suspension period. On this basis, this claim was rejected.

7. COMMENTS FROM OTHER PARTIES

- (70) Following disclosure, the users Valeo, TitanX, Airoidi and TDK Hungary Components Kft ('TDK HU'), the sampled exporting producer Xiamen Xiashun Aluminium Foil Co., Ltd ('Xiamen Xiashun'), the European Association of Non-Integrated Metal Importers (EURANIMI), and the importer O. Wilms GMBH ('Nilo') expressed their support for suspending the measures.
- (71) Several of these parties took issue with the nine months duration of the suspension arguing that more time will be needed in order to address the temporary market circumstances identified in recitals (30)-(31) above, as they are not likely to be solved within nine months. In particular, they argued that the circumstances in question may not be temporary but may continue long after the nine months period. The Commission observed that the nine months duration is the maximum period provided for in Article 14(4) of the basic Regulation. Only if all the conditions stipulated in the same Article are still fulfilled after that period, can the duration be further prolonged.
- (72) Following disclosure, Xiamen Xiashun argued that the proposal for suspension and in particular the Commission's findings in recital (30) above regarding the current imbalance between demand and supply on the Union market confirm that a segmented analysis for foil stock should have been conducted and, as a result, foil stock should be excluded from the product scope of the definitive measures. The Commission first referred to its findings in Section 2.2.8 of the definitive regulation where it considered that a segmented analysis is not justified and refused this product exclusion request. The current imbalance between supply and demand identified by the Commission concerns the product under investigation as a whole and not a particular product type, such as foil stock, and the post IP period was not analysed in the definitive regulation. Also, the Commission established that the imbalance in question was only temporary and is thus best tackled by the suspension of the measures. Consequently, this claim was rejected.
- (73) Following disclosure, several users and importers agreed with the Commission's findings regarding the identified temporary change in market conditions mentioned in recitals (23) to (28); its assessment concerning the limited risk of stockpiling (recital (59) above); and its conclusion regarding the likelihood of recurrence of injury during the suspension period (recital (54) above). In particular, several users referred to the fact that there are new long-term contracts with Union producers after the IP, which, in conjunction with the other positive trends on the market (increase of demand and capacity utilization and improved profitability), would prevent injury to recur. In addition, several users expressed doubts whether additional capacity of the Union industry will become available during the suspension period and also argued that the period in question may not be sufficient to complete the validation process.
- (74) Regarding the findings on additional capacity, the Commission considered that the apparent slowdown of the automotive sector in the coming months would allow the Union industry to allocate more capacity to the production of the product under investigation and consequently allow a rebalancing between supply and demand.
- (75) Regarding the claim that there is insufficient time to complete the validation process, the Commission observed that, as specified in recital (133) of the definitive regulation, certain major users did not wait for the suspension of the measures to start shifting from Chinese suppliers to Union producers and have therefore initiated the (re)validation of Union producers. Moreover, the Commission referred to its conclusions in recital (136) and (137) of the definitive regulation concerning respectively the existence of equivalent alloys and dual sourcing. Moreover, most

users purchase the majority of their AFRPs in the EU and enjoy therefore already a business relationship with one or several Union producers. These elements support the determination that the suspension period would allow for a smooth shift from suppliers from the PRC to Union producers in terms of validation or revalidation of Union producers. Therefore, the (re)validation is likely to take less time than a fully-fledged new validation process. Consequently, this claim was rejected.

- (76) Following disclosure, TDK HU argued that the issue of lack of capacity of the product under investigation used for the production of aluminium electrolytic capacitors will remain after the nine months period as there is currently no Union production of this specific product type. Furthermore, it is unlikely that the Union industry will be able to establish one and the validation process may take a long time. The Commission observed that the conclusions made in recitals (217) to (240) of the definitive regulation remain valid also for the findings of this decision. In particular, no new evidence has been provided to modify the conclusions made therein that in the absence of questionnaire replies and the accompanying necessary evidence, the Commission was unable to conduct a meaningful assessment of the claims of TDK HU and the other parties concerned on the basis of a standard set of sufficient timely filed information. Consequently, the Commission rejected the claim.

8. CONCLUSION

- (77) Given the temporary nature of the change in market conditions concerning demand and supply, and in particular the current imbalance between demand and supply on the Union market, together with the Union industry's prospects for the coming months, it is considered that the injury linked to the imports of the product concerned originating in the People's Republic of China is unlikely to resume as a result of the suspension. Consequently, the Commission concluded that it is in the Union interest that the anti-dumping measures imposed by the definitive regulation be suspended for a period of nine months.
- (78) Should the situation which led to the suspension change subsequently, the Commission may repeal the suspension of the anti-dumping measures forthwith. Following the recommendation issued by the Hearing Officer at the hearing of 8 September 2021, the Commission also decided to establish an operational post-monitoring system, in which interested parties may draw to its attention relevant developments in the market on a regular basis,

HAS ADOPTED THIS DECISION:

Article 1

The definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China is hereby suspended for a period of nine months.

Article 2

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

Done at Brussels, 8 October 2021.

For the Commission
The President
Ursula VON DER LEYEN
