

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1474**of 14 September 2021****extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China to imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not**

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 13 thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigation and existing measures**

- (1) In October 2009, by Council Regulation (EC) No 925/2009, ⁽²⁾ the Council imposed a definitive anti-dumping duty on imports of certain aluminium foil ('jumbo rolls') originating in, amongst others, the People's Republic of China ('PRC') following an anti-dumping investigation ('the original investigation'). The measures took the form of an ad valorem duty ranging between 6,4 % and 30,0 %.
- (2) In December 2015, by Implementing Regulation (EU) 2015/2384, ⁽³⁾ the European Commission ('the Commission') maintained the definitive measures ('the measures in force') on imports from the PRC following an expiry review pursuant to Article 11(2) of the basic Regulation ('the review investigation').
- (3) In February 2017, by Implementing Regulation (EU) 2017/271, ⁽⁴⁾ the Commission extended the measures in force to imports of slightly modified certain aluminium foil from the PRC, following an anti-circumvention investigation pursuant to Article 13(3) of the basic Regulation ('the previous anti-circumvention investigation').

1.2. Request

- (4) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of certain aluminium foil originating in the PRC by imports consigned from Thailand, whether declared as originating in Thailand or not, and to make such imports subject to registration.
- (5) The request was lodged on 9 November 2020. The applicant requested anonymity both at application stage and for the duration of the investigation. The applicant duly substantiated its request, which was accepted by the Commission as it considered there were sufficient grounds to grant confidentiality of its identity.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

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

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

⁽⁴⁾ Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil (OJ L 40, 17.2.2017, p. 51), and amended by Commission Implementing Regulation (EU) 2017/2213 of 30 November 2017 amending Commission Implementing Regulation (EU) 2017/271 extending the definitive anti-dumping duty imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China to imports of slightly modified certain aluminium foil (OJ L 316, 1.12.2017, p. 17).

- (6) The request contained sufficient evidence of a change in the pattern of trade involving exports from the PRC and Thailand to the Union that had taken place following the imposition of measures on jumbo rolls. This change appeared to stem from the consignment of jumbo rolls via Thailand to the Union after having undergone assembly operations in Thailand. The request also contained sufficient evidence showing that such assembly operations constituted circumvention as Chinese parts accounted for more than 60 % of the total value of the assembled product, while the value added during the assembly operation was lower than 25 % of the manufacturing cost.
- (7) Furthermore, the request contained sufficient evidence that the practice described above was undermining the remedial effects of the existing anti-dumping measures in terms of quantities and prices. In addition, there was sufficient evidence that the prices of jumbo rolls consigned from Thailand were dumped in relation to the normal value previously established for jumbo rolls.

1.3. Product concerned and product under investigation

- (8) The product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, classified on the date of entry into force of Implementing Regulation (EU) 2015/2384 under CN code ex 7607 11 19 (TARIC code 7607 11 19 10), aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 30), aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 40), aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 19 (TARIC code 7607 11 19 50), and/or aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, when presented with at least two layers, regardless of the width of the rolls, whether or not annealed, classified on the date of entry into force of Implementing Regulation (EU) 2017/271 under CN code ex 7607 11 90 (TARIC codes 7607 11 90 45 and 7607 11 90 80) and originating in the People's Republic of China ('the product concerned'). This is the product to which the measures in force currently apply.
- (9) The product under investigation is the same as that defined in the preceding recital, currently falling under CN codes ex 7607 11 19 (TARIC codes 7607 11 19 10, 7607 11 19 30, 7607 11 19 40, 7607 11 19 50) and ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, 7607 11 90 72), but consigned from Thailand, whether declared as originating in Thailand or not (TARIC additional code C601), ('the product under investigation').
- (10) The investigation showed that jumbo rolls exported from the PRC to the Union and jumbo rolls consigned from Thailand, whether originating in Thailand or not, have the same basic physical and chemical characteristics and have the same uses, and are therefore to be considered as like products within the meaning of Article 1(4) of the basic Regulation.

1.4. Initiation

- (11) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated an investigation by Commission Implementing Regulation (EU) 2020/2162 on 21 December 2020 ⁽⁵⁾ ('the initiating Regulation') and made imports of jumbo rolls consigned from Thailand, whether declared as originating in Thailand or not, subject to registration in accordance with Article 14(5) of the basic Regulation.

⁽⁵⁾ Commission Implementing Regulation (EU) 2020/2162 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 and Implementing Regulation (EU) 2017/271 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration (OJ L 431, 21.12.2020, p. 48).

1.5. Comments on initiation

- (12) After initiation, Dingheng New Materials Co., Ltd, Thai Ding Li New Materials Co., Ltd and their related companies (together 'the Dingsheng Group') argued that the initiation of the investigation was unwarranted. ⁽⁶⁾
- (13) According to the Dingsheng Group, the request leading to the opening of the investigation did not contain the required *prima facie* evidence. It claimed that the information in the request was outdated, as it was based on a period until December 2019, while the investigation was initiated in December 2020. The Dingsheng Group argued that this is in contrast with Article 6(1) of the basic Regulation, which states that the investigation period 'shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings'.
- (14) In addition, the Dingsheng Group claimed that the export statistics reported in the request were inaccurate and unreliable. These statistics were based on CN codes and HS codes ⁽⁷⁾, which include a number of different products other than those relevant to the investigation and thus cannot be considered sufficient evidence.
- (15) The Commission disagreed. With regard to the reference period used in the request, Article 6(1) of the basic Regulation concerns the investigation period to be used during the investigation, not the period on which the request is based. The Dingsheng Group has not argued that the use of more recent data would have led to a different conclusion with regard to the alleged circumvention practices. With regard to the customs statistics on which the request was based, the applicant provided those statistics that were reasonably available to it for the purpose of the request, as required by Article 5(2) of the basic Regulation. In any case, when analysing the request, the Commission cross-checked the data provided by the applicant against statistics at 10-digit TARIC level and including data until September 2020. This analysis confirmed the allegations in the request.
- (16) Following disclosure the Dingsheng Group reiterated its claim that the request was based on outdated information and that Article 6(1) in conjunction with Article 13(3) of the basic Regulation requires the Commission to carry out an overall examination of the accuracy of the request, including whether the information contained therein is up-to-date. Therefore, according to the Dingsheng Group, the Commission should have requested the applicant to update the figures contained in the request with more recent information. Otherwise, '*applicants requesting the initiation of an anti-circumvention investigation would be free to base the request on the period that suits better to them, without any limitation*'.
- (17) In addition, the Dingsheng Group claimed that, although the Commission cross-checked the information provided by the applicant with more recent TARIC level data, there is no trace in the file of such cross-check, nor is it mentioned in the initiating Regulation, which refers only to the evidence provided in the request. According to the Dingsheng Group the fact that the use of more recent data would have led to the same conclusion is irrelevant for the determination of whether the request satisfied the standard of evidence requested by the law to initiate the proceeding.
- (18) As explained in recital (15) above, the reference to Article 6(1) of the basic Regulation is irrelevant for the data used in the request, since it refers to the period used during the investigation, not the request. Furthermore, Article 13(3) of the basic Regulation requires that the initiation of the investigation is based on '*sufficient evidence*', the determination of which leaves a certain level of discretion to the Commission. In any event, as explained above in recitals (6)-(7), this criteria was fulfilled. Article 5(2) of the basic Regulation requires an applicant to base the request on those statistics reasonably available to the applicant. This does not open the door for applicants to pick and choose the most convenient period, as suggested by the Dingsheng Group. The cross-check of slightly more recent

⁽⁶⁾ On 15 March 2021 the Dingsheng group also filed an application with the EU General Court for the annulment of the initiating Regulation, partly based on the same reasoning as set out in Section 1.5 of the current Regulation. That Court case was still pending during the current investigation.

⁽⁷⁾ HS (Harmonized System) codes, developed by the World Customs Organization, are international standardised product classifications applied by over 200 countries in the world. The first six digits of a common tariff number (commodity code) is the same in all these countries. CN codes (Common Nomenclature) are the commodity codes used by the EU to classify products, These codes are eight digits long, of which the first six are identical to HS codes. A TARIC code is based on the CN code, with an additional two digits to reveal information concerning anti-dumping and other duties or quotas.

and specific data carried out by the Commission before initiation showed that there were no indications that the information used in the request was outdated, rather the contrary since using more recent data would have shown similar trends and would have led to the same conclusions. The Commission therefore rejected these claims.

- (19) The Dingsheng Group also claimed that the available evidence was not sufficient to demonstrate the existence of circumvention. Due to the alleged unreliability of the statistics mentioned in recital (14), the Dingsheng Group claimed that these statistics cannot constitute evidence of the change in the pattern of trade as required by Article 13(1) of the basic Regulation. In addition, it was argued that the requirement of the existence of injury in terms of both quantities and prices undermining the remedial effects of the original anti-dumping investigation was not fulfilled since the underlying analysis was based on the abovementioned allegedly unreliable data and therefore inconclusive. In addition, the calculations in the request were based on only one of the two relevant CN codes. Finally, the injury margin calculated in the request was negligible, according to the Dingsheng Group, and thus not convincing evidence of any undermining of the effects of the measures in force. The additional evidence provided by the applicant in the request, such as quotes from EU producers, was claimed to be an invalid basis for the injury calculations in the request.
- (20) The Commission disagreed. Regarding the alleged unreliability of the data used for the analysis, the applicant based its analysis on the data that was reasonably available to it, as set out in recital (15), and the evidence thus provided was considered sufficient to initiate the investigation. The fact that calculations were based on only one of the CN codes (7607 11 19) did not undermine the accuracy of the request. As pointed out by the applicant in its rebuttal of Dingsheng Group's submission, the General Court held that *'the basic regulation does not require, where the product concerned contains several types of products, as in the present case, that the complaint should provide information on all those product types'*.⁽⁸⁾ It was not contested by the Dingsheng Group that this particular CN code covered the most representative product types. In fact, import data from Comext at 10-digit TARIC level showed that during the investigation period there were no imports at all of the products falling under the other CN code (7607 11 90). Therefore, including that CN code would not have changed the outcome of the analysis in the request.
- (21) With regard to the level of the injury margin, the margin found by the applicant of 3,2 % was considered sufficient to conclude at initiation that the remedial effects of the duty are being undermined in terms of the prices of the like product. As the applicant set out in its comments to Dingsheng Group's submission, the product under investigation is very price sensitive, with competition largely based on price. In such a context, an injury margin of 3,2 % can be considered to undermine the remedial effect of the duties in terms of prices, in particular in a situation where the quantities of the imports increased significantly.
- (22) Concerning the data used for the undercutting calculations, the applicant based its calculations on the information that was reasonably available to it, which in this case were several quotes from suppliers in combination with London Metal Exchange ('LME') prices. In its submission, the Dingsheng Group did not put forward a more reasonable methodology for performing the calculations, which could have been available to the applicant. The Commission therefore considered that the methodology used was sufficiently reliable to perform the necessary calculations in the request.
- (23) Following disclosure, the Dingsheng Group claimed that the Commission, by stating that *'the Dingsheng Group did not put forward a more reasonable methodology for performing the calculations'*, tried to reverse the burden of proof onto the interested parties. Instead of examining the accuracy and adequacy of the information provided by the applicant, the Commission *'seemingly accepted the data provided in the request at face value, without any further examination'*.

⁽⁸⁾ Judgment of 15 December 2016 in Case RENV, Gul Ahmed Textile Mills v Council, T-199/04, paragraph 100.

- (24) The Commission rejected these claims. As with all requests for initiation of an investigation, the Commission thoroughly examined all data and other evidence provided by the applicant and considered that the data used was reasonable and sufficiently accurate to justify the initiation of the investigation. Moreover, the Commission objected to the inference made by the Dingsheng Group that it had tried to reverse the burden of proof. The Commission had simply taken note of the fact that the Dingsheng Group did not put forward an alternative method to substantiate its claim that the methodology used by the applicant had been unreliable.
- (25) The Dingsheng Group also argued that the normal value was calculated using the normal value of the review investigation, thus not taking into account the extended product scope of the previous anti-circumvention investigation. In addition, it stated that the export price used by the applicant in the request was based on Eurostat statistics for a CN code that did not concern jumbo rolls, but rather small rolls⁽⁹⁾. The Dingsheng Group thus claimed that the dumping margin in the request was unreliable as it was based on incorrect figures.
- (26) The Commission disagreed. To determine the existence of dumping, Article 13(1) of the basic Regulation requires a comparison with the normal value previously established for the like product. In accordance with this provision, the applicant used the normal value as established in the review investigation. Moreover, the inclusion of the normal values of the previous anti-circumvention investigation as well would only have increased the dumping margin, since these normal values were higher than the ones applied in the review investigation. Accordingly, the Commission considered the use of the normal value as established in the review investigation a conservative estimate for the calculation of the dumping margin.
- (27) After disclosure, the Dingsheng Group repeated its claim that the extended product scope should have been taken into account in the calculation of the normal value in the request, since Article 13(1) of the basic Regulation requires considering all normal values previously established, not only those of the last review investigation. However, Article 13(1) of the basic Regulation refers to *'the normal values previously established for the like product'*. There is no requirement that all normal values from all previous investigations need to be taken into account. In any event, as stated in recital (26), there was sufficient evidence based on the normal values from the review investigation alone, which represent the majority of imports (see recital (20)) to justify the initiation of the investigation. The Commission therefore rejected this claim.
- (28) The claim of the Dingsheng Group about the use of Eurostat statistics for small rolls to calculate the export price of jumbo rolls was factually incorrect. Indeed the applicant mistakenly referred to the CN code for small rolls in Annex 10 to the request, but a closer look at the Eurostat extraction that was part of the request in Annex 3 showed that the export price used was correctly based on the extraction for CN code 7607 11 19, which is jumbo rolls. As stated in recital (20) above, this code includes the most representative product types.
- (29) Based on the reasoning set out in recitals (12)-(28) above, the Commission rejected the arguments put forward by the Dingsheng Group and considered that the request contained sufficient evidence to warrant the initiation of the investigation.

⁽⁹⁾ With small rolls is meant aluminium foil of a thickness of 0,007 mm or more but less than 0,021 mm, not backed, not further worked than rolled, whether or not embossed, in low weight rolls of a weight not exceeding 10 kg. Imports of small rolls from the PRC are subject to anti-dumping measures (originally imposed by Council Implementing Regulation (EU) No 217/2013 of 11 March 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 69, 13.3.2013, p. 11). Imports of small rolls from Thailand are also subject to an anti-circumvention investigation (Commission Implementing Regulation (EU) 2020/2161 of 18 December 2020 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2019/915 on imports of certain aluminium foil in rolls originating in the People's Republic of China by imports of certain aluminium foil in rolls consigned from Thailand, whether declared as originating in Thailand or not, and making such imports subject to registration (OJ L 431, 21.12.2020, p. 42)).

1.6. Investigation period and reporting period

- (30) The investigation period covered the period from 1 January 2016 to 30 June 2020 ('the investigation period' or 'IP'). Data were collected for the IP to investigate, inter alia, the alleged change in the pattern of trade following the imposition of the measures on the product concerned as well as the extension of the measures to the slightly modified product by Implementing Regulation (EU) 2017/271, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 July 2019 to 30 June 2020 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

1.7. Investigation

- (31) The Commission officially informed the authorities of the PRC and Thailand, the exporting producers in those countries, the importers in the Union known to be concerned and the Union industry of the initiation of the investigation. Questionnaires/Exemption Claim Forms were made available to the producers/exporters in Thailand and the PRC and to the importers in the Union known to the Commission or which made themselves known within the deadlines specified in Article 3 of the initiating Regulation.
- (32) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.
- (33) One group of companies from Thailand, five unrelated importers in the Union, one unrelated importer outside the Union and the European Aluminium Foil Association made themselves known. No unrelated Chinese exporting producers came forward during the investigation.
- (34) The following companies, part of the Chinese-owned Dingsheng Group, submitted a complete exemption claim form:
- Dingheng New Materials Co., Ltd. ('Dingheng', an exporting producer in Thailand),
 - Thai Ding Li New Materials Co. ('Thai Dingli', a trader in Thailand), and
 - several related Chinese entities within the group.
- (35) The following Union unrelated importers, part of the SPHERE Group, submitted complete replies to the questionnaires:
- SPHERE FRANCE SAS, and
 - COMSET S.r.l.
- (36) In view of the outbreak of COVID-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at the premises of the cooperating legal entities. The Commission considered the information submitted by the parties, such as replies to questionnaires and replies to deficiency letters, in line with the Notice of 16 March 2020 on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations.⁽¹⁰⁾ No remote cross-check of the information was deemed necessary in light of the issues set out in recital (75) below.
- (37) Two unrelated importers in the Union, Cofresco Poland sp. z o.o. Manufacturing Sp. k. and Cuki Cofresco Srl., provided a highly deficient questionnaire reply within the set time limits. Neither company replied to additional questions or deficiency letters addressed to them. However, after informing both companies that their incomplete submissions would be disregarded under Article 18 of the basic Regulation, the companies provided full questionnaire replies and answered related follow-up questions. Nevertheless, since these replies were received only

⁽¹⁰⁾ Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

several months after the initial deadlines and could not benefit from a full deficiency process or a remote cross-check examination, the information provided was taken into account in the investigation only insofar as it was considered complete and reliable.

- (38) One unrelated importer from Switzerland, Transparent Paper Ltd. ("TPL"), also registered as an interested party and provided submissions. The applicant, however, claimed that an unrelated importer outside the Union should not be registered as an interested party, and that any comments made by TPL should be disregarded for two reasons. First, because TPL claimed that it did not import the product concerned or the product under investigation, but rather aluminium converter foil. Second, because, according to the applicant, it is unlikely that TPL did not import the product concerned or under investigation since there is a significant overlap between the products imported by TPL and the product under investigation. Therefore, according to the applicant, TPL should have reported its purchases.
- (39) The Commission disagreed. TPL has a legitimate interest in the outcome of the case. It was established in the previous anti-circumvention investigation that often the only way to distinguish between aluminium converter foil (the product imported by TPL) and jumbo rolls (the product under investigation) is by their end-use, i.e. either for household purposes or for other uses (such as conversion). To this end, any exemptions from the definitive anti-dumping duty on jumbo rolls are subject to the conditions laid down in the relevant customs provisions of the Union on end-use procedure, particularly Article 254 of the Union Customs Code. ⁽¹¹⁾ The extension of the existing anti-dumping duties in force on imports of jumbo rolls from the PRC to the imports of jumbo rolls consigned from Thailand, also extends the application of this end-use procedure. ⁽¹²⁾ Any importer of converter foil from Thailand, including TPL, who clears their products in the Union, will now have to resort to the end-use procedure or otherwise pay the extended anti-dumping duties.
- (40) As an importer of a product other than the product under investigation, TPL was under no obligation to provide the information the applicant referred to in its submission, such as its purchases of converter foil. The Commission had not requested this information from TPL either. TPL was entitled, however, to make submissions in its capacity as an interested party.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

- (41) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed successively in order to assess possible circumvention:
- whether there was a change in the pattern of trade between the PRC, Thailand and the Union,
 - if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,
 - if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and
 - whether there is evidence of dumping in relation to the normal values previously established for the product concerned.
- (42) In the present investigation, since the evidence provided by the applicant in the request pointed to assembly operations in Thailand, the Commission more specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:

⁽¹¹⁾ Recital (72) and Article 1(4) of Implementing Regulation (EU) 2017/271 (OJ L 40, 17.2.2017, p. 51).

⁽¹²⁾ On the application of the end-use procedure to imports from Thailand, see also recitals (76)-(78) below.

- whether the assembly operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and
- whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the added value of the parts brought in, during the assembly or completion operation, was greater than 25 % of the manufacturing costs.

2.2. Level of cooperation

- (43) The cooperating group of companies in Thailand, the Dingsheng Group, accounted for more than 95 % of all exports to the EU during the reporting period. The level of cooperation was thus considered high. There was no cooperation by exporting producers in the PRC, other than those companies in the PRC that were part of the Dingsheng Group. Therefore, findings with respect to imports of jumbo rolls from China into the Union and exports from China to Thailand were based on facts available in accordance with Article 18 of the basic Regulation. As such, the information provided by the cooperating group of companies was complemented by data extracted from databases such as the 14(6) database, which provides information at company-specific level, the Global Trade Atlas ⁽¹³⁾, Eurostat and other publically available information.

2.3. Change in the pattern of trade

- (44) Table 1 below shows the development of imports from the PRC and Thailand in the investigation period. ⁽¹⁴⁾

Table 1

Imports of jumbo rolls in the investigation period (tonnes)

	2016	2017	2018	2019	RP
PRC	8 948	7 484	17 982	26 814	26 466
<i>index (base = 2016)</i>	100	84	201	300	296
Share total imports	16 %	18 %	33 %	42 %	39 %
Thailand	18	28	1 027	2 659	5 801
<i>index (base = 2016)</i>	100	156	5 706	14 772	32 228
Share total imports	0,03 %	0,07 %	1,88 %	4,12 %	8,53 %
Total imports	55 887	41 929	54 735	64 531	67 947

Source: Eurostat

- (45) Between 2016 and the end of the reporting period there was a large increase in imports from Thailand, which went from only 18 tonnes to 5 801 tonnes. At the same time, its share of total imports increased from 0,03 % to 8,53 %. Imports from the PRC also increased but at a much smaller pace, from 8 948 to 26 466 tonnes. The Chinese share of total imports also increased, from 16 % to 39 %.
- (46) However, a closer look at the 14(6) database shows that the bulk of these imports were made by Chinese exporting producers that were exempted from the measures in the previous anti-circumvention investigation. At the time of the previous anti-circumvention investigation, it was determined that these exporting producers did not export aluminium household foil, but rather converter foil, which is not the product under investigation. ⁽¹⁵⁾

⁽¹³⁾ <https://www.gtis.com/gta/>

⁽¹⁴⁾ The import data presented in this Regulation cannot be compared as such to the data published in the regulations following the original or review investigations. The previous investigation used data related to the EU-28, including the United Kingdom, while the current investigation includes only the EU-27 following the United Kingdom's withdrawal from the Union in 2020.

⁽¹⁵⁾ Recitals 73 – 80 of Implementing Regulation (EU) 2017/271 (OJ L 40, 17.2.2017, p. 51). See also recital (33) above.

- (47) When the figures are examined without the imports from those four companies, there is a significant decrease in the import volumes to only 307 tonnes in the reporting period. This is also confirmed by the replies of one of the cooperating unrelated importers in the Union, who provided information showing that prior to 2017, they purchased their jumbo rolls in the PRC. However, from 2019 onwards, jumbo rolls were no longer sourced from the PRC but from Thailand. The other unrelated importers started importing from Thailand in 2019 and 2020.
- (48) Table 2 shows the development of exports of raw materials necessary for the production of jumbo rolls from the PRC to Thailand during the investigation period.

Table 2

Exports of raw materials from the PRC to Thailand in the investigation period ⁽¹⁶⁾ (tonnes)

	2016	2017	2018	2019	RP
Foil stock (tonnes)	50 111	52 950	62 799	68 755	71 668
index (base = 2016)	100	106	125	137	143

Source: Global Trade Atlas

- (49) The main raw material for the production of aluminium household foil is primary aluminium. This raw aluminium is then processed to produce foil stock, which in turn is further worked into jumbo rolls. The evidence available to the Commission from the request and from the cooperating Thai exporting producer shows that the jumbo rolls exported to the Union from Thailand are produced from foil stock.
- (50) Table 2 shows that since 2016, there has been a continuous increase in the exports of foil stock from the PRC to Thailand. In this respect, the Commission noted that foil stock was possibly not only used for the production of jumbo rolls in Thailand, but also, for example, for the production of small rolls. In addition, foil stock is used as a raw material in a number of other industries, such as the packaging industry or for isolation purposes. Therefore, only a portion of these foil stock imports is actually used in the jumbo rolls production process.
- (51) Nevertheless, the significant increase in foil stock import volumes from the PRC to Thailand indicated an increasing demand for such raw materials in Thailand. This can, at least in part, be explained by the increase in the production and exports of jumbo rolls in and from Thailand. This is also corroborated by the information provided by the cooperating Thai companies.
- (52) The cooperating Dingsheng Group accounted for almost all (more than 95 %) imports of the product under investigation from Thailand during the reporting period. The Thai entities consist of one exporting producer (Dingheng) and one trader (Thai Dingli) who claimed to sell to the Union only the products produced by Dingheng. Dingheng is a Chinese-owned company, which set up production facilities in Thailand in 2018 and sold its first products to the EU in the first half of 2019. In its questionnaire reply it stated that it purchased all raw materials (foil stock) from the PRC.
- (53) The increase of jumbo rolls exported from Thailand to the Union, the parallel decrease of jumbo rolls exported from the PRC to the Union, and the increase in exports of foil stock from the PRC to Thailand in the same period constitutes a change in the pattern of trade between the PRC, Thailand and the Union within the meaning of Article 13(1) of the basic Regulation. This is especially true for the cooperating Thai companies, which only started importing raw materials from the PRC and producing and exporting jumbo rolls to the Union after the extension of the measures following the previous anti-circumvention investigation.

⁽¹⁶⁾ The foil stock quantities have been adapted, in as far as possible, to reflect foil stock which can actually be used to produce aluminium household foil, and not, for example, for the printing industry, based on the specific product descriptions in the Global Trade Atlas.

2.4. Nature of circumvention practices for which there was insufficient due cause or economic justification

- (54) Article 13(1) of the basic Regulation requires that the change in the pattern of trade stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty. The practice, process or work includes the consignment of the product subject to the existing measures via third countries, and the assembly of parts/completion operations in a third country in accordance with Article 13(2) of the basic Regulation.
- (55) Dingheng produces jumbo rolls from foil stock. The production process, according to the company's exemption request, consists of operations such as further rolling, slitting, annealing and packaging. The Commission considered these operations as relatively minor.
- (56) The Dingsheng Group claimed that the aforementioned operations are not minor, since the foil stock undergoes different processes requiring different and specific machines and argued that its claim was further supported by the fact that the products manufactured by Dingheng are classifiable under a different customs heading compared to the input material.
- (57) The Commission acknowledged that the input material undergoes several processes before it is sold as the product under investigation by Dingheng. However, these cannot be seen as major operations, at least not when compared to the production process that takes place before the input material arrives at the Dingheng production site. The production process of aluminium foil stock involves melting aluminium ingots, casting, sawing, scalping, heating, several stages of hot- and cold rolling and annealing. The following steps to turn the foil stock into jumbo rolls are therefore comparatively relatively minor in scope and, as shown in recital (82) below, of a relatively limited added value, which is the relevant criterion in this respect. In addition, the change in customs heading cannot be considered as proof of the impact of the operations performed on the input material. In fact, Article 13(1)(a) of the basic Regulation explicitly mentions as a circumvention practice *'the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures'*. The claims made by the Dingsheng Group were therefore rejected.
- (58) As set out in recital (34), Dingheng is a subsidiary of a Chinese company, and as such, part of the Chinese-owned Dingsheng Group. This group is made up of, among others, companies that produce aluminium household foil and related products, provide raw materials for such production and/or trade such raw materials or finished products. In previous investigations concerning jumbo rolls it was found that certain Chinese entities within the Dingsheng Group were exporting jumbo rolls at dumped prices, ⁽¹⁷⁾ and circumventing the duties imposed by the original and review investigations by slightly modifying the product. ⁽¹⁸⁾ According to the 14(6) database, no imports from the relevant Chinese exporting producer in the Dingsheng Group were made since the previous anti-circumvention investigation, which coincides in time with when Dingheng started exporting to the Union from Thailand. The information provided by the Chinese entities in the Dingsheng group confirmed that no exports were made by these companies to the Union during this period.
- (59) Dingheng explained that the rationale for starting jumbo rolls production in Thailand was to establish a presence abroad of the Dingsheng Group, in line with 'its mission of globalization and transnational blueprint'. The public listing of Dingheng's mother company on the stock exchange in 2018 provided the necessary financial funds to allow for its expansion into Thailand. In addition, establishing a production site in Thailand would allow the group to hedge metal risks in international markets, to enable purchasing aluminium raw materials at LME price instead of the Shanghai market price and to expand its business in other, more profitable markets than the PRC. Dingheng also explained that, although during the investigation period it was producing jumbo rolls from aluminium foil stock, the intention according to its investment plan was to establish a casting line aimed at production from aluminium ingots. Once the casting line would be in operation, Dingheng would globally source aluminium ingots and significantly decrease the percentage of Chinese raw materials, thereby mitigating the risk to raw material volatility.

⁽¹⁷⁾ Section 4.4 of Regulation (EC) No 925/2009 (OJ L 262, 6.10.2009, p. 1), and recitals 80 – 82 of Implementing Regulation (EU) 2015/2384 (OJ L 332, 18.12.2015, p. 63).

⁽¹⁸⁾ Recitals 46 – 49 of Implementing Regulation (EU) 2017/271 (OJ L 40, 17.2.2017, p. 51).

- (60) The Commission noted that the situation during the reporting period did not reflect the company's intentions as laid out in its investment plan. In practice, during the reporting period Dingheng sourced all its raw materials from the PRC, and produced all jumbo rolls from imported aluminium foil stock. Moreover, Dingheng complemented its own production of jumbo rolls by jumbo rolls purchased from its related companies in the PRC, as its own production was not sufficient to satisfy the demand of its customers during the reporting period. Although Dingheng provided proof showing that the planned casting line was under construction, it was neither completed nor used during the reporting period.
- (61) In addition, the company's investment plan is in fact a feasibility study report, which analysed whether it would be economically feasible to add production capacity in the Dingheng production site, through among other things, the addition of a casting line. The report dates from August 2019, which is after Dingheng had already started the production of jumbo rolls from imported aluminium foil stock. In addition, the report mentions importing raw materials (aluminium ingots) from the PRC also in the future, which counters the company's argument of establishing production outside of the PRC to purchase raw materials at a lower price. Although the company might in practice indeed start purchasing its raw materials outside of the PRC, the Commission could not draw any conclusions about an unknown future situation on the basis of the facts available during the reporting period.
- (62) Moreover, the company could not provide any evidence of due cause or economic justification for exporting jumbo rolls from Thailand to the Union other than the aforementioned plans or intentions for future investments or production. The feasibility report presented as an investment plan dates from after the establishment of the production site in Thailand, and can thus not be presented as evidence of economic justification for exporting jumbo rolls from Thailand to the Union during the reporting period. In addition, an internet search revealed that the avoidance of paying anti-dumping duties was used by Dingheng as an argument to attract customers, where one website mentions '*We can provide you alu foil from our Thailand or Italy factory to avoid anti-dumping tax.*'⁽¹⁹⁾
- (63) After disclosure, the Dingsheng Group submitted a report from 2018 ('the 2018 report'), claiming that it was a first version of the 2019 feasibility study report ('the 2019 report'). The Dingsheng Group also emphasised that, although it was called a feasibility study report and not an investment plan, it was analysed by the Board of Directors of Dingsheng's main shareholder in the context of the approval of the investment of Thailand.
- (64) The Commission examined the 2018 report and found that it, although very similar to the 2019 report, is much more limited in scope of envisaged activities. Whilst the 2018 report mentions a rolling mill only and lists projected equipment that includes machinery meant only for rolling, winding, slitting and annealing, the 2019 report, on the other hand, mentions a rolling and casting line. The casting line is crucial since, according to the company's earlier submitted information, its establishment would eliminate the need for procuring foil stock from China as it would enable the production of foil stocks in Thailand by using raw materials (aluminium ingots) sourced globally (see also recital (59) above).
- (65) As explained in recital (61) above, the 2019 report dates from after the establishment of the Dingheng production site. The Dingsheng Group, however, claimed that the 2019 report was '*nothing else than an integration and a revision of the First Plan which was prepared in 2018 and which could not be implemented by the Dingsheng Group*'. In addition, the Dingsheng Group claimed that the 2019 report suggested to downsize the initial project, envisaging a production capacity of [40 000 – 60 000] tonnes per year instead of [50 000 – 70 000] tonnes per year. However, the Commission considered this claim to be factually incorrect given that the 2019 report explicitly mentions in several instances that the purpose of the report is to enable an additional production capacity of [40 000 – 60 000] tonnes to reach an annual output of [90 000 – 130 000] tonnes. In fact, the title of the report is '*Add [40 000 – 60 000] tons of aluminium foil production capacity project*'.
- (66) The Dingsheng Group has not provided any information demonstrating that at the time of the 2018 report and the investment decision, there was any intention of establishing a production site in Thailand that would not require importing aluminium foil stock from China. On the contrary, the information provided indicates an intention to establish a facility for producing jumbo rolls from imported foil stock by performing relatively minor operations

⁽¹⁹⁾ See <https://www.europages.co.uk/DING-HENG-NEW-MATERIALS-COLTD/00000005395623-719214001.html> (last accessed 26 April 2021).

only. The situation during the reporting period in fact reflected the production facility as envisaged in the 2018 report. The only document provided that mentions the possibility of establishing a casting line dates from 2019, which is after the establishment of the Dingheng production facility.

- (67) The Dingsheng Group also claimed that the fact that the 2019 report mentions importing raw materials (aluminium ingots) from China (as mentioned in recital (61) above), cannot be taken as a lack of economic justification for the setting up of operations in Thailand. In this context, the Dingsheng Group pointed to information provided to the Commission in a deficiency reply where it claimed it would be *'economically illogical'* to import raw material from China, since a 30 % export tax is levied on aluminium ingots from China. The Dingsheng Group thus claimed that this raw material will be sourced from other countries. In addition, the Group argued that the introduction of the planned casting line will eliminate the need to purchase foil stock from China.
- (68) However, both the 2018 and the 2019 reports mention sourcing raw materials from China, whether it concerns foil stock or ingots. The 30 % export tax on ingots from China was not mentioned anywhere in the report, even though, allegedly, this (or a similar) tax already existed at the time of those studies. In addition, the envisaged production of aluminium foil stock within the Dingheng production site is not enough to cover the planned aluminium foil production. In fact, the 2019 report states *'The annual production of aluminum foil blanks requires [70 000 – 90 000]t, part of which is produced by the newly-built casting and rolling workshop, and the rest is imported from China.'*
- (69) Whether Dingheng will in the future procure raw material from China or from other countries in the future and whether those choices would be economically logical or not are, in any event, not decisive for the current investigation. The Commission has to base its conclusions on the facts and figures that relate to the investigation period. As already stated in recital (61) above, it is impossible to draw any conclusions about an unknown future situation based on the facts available during the reporting period.
- (70) The Dingsheng Group also argued that an advertisement where the avoidance of anti-dumping duties is mentioned as a way to attract customers (see recital (62) above), is by nature *'subsequent to corporate business decisions'* and *'a mere statement of facts'*. It can therefore not *'shed any light in relation to the alleged lack of economic justification'*. The Dingsheng Group is correct in stating that the advertisement as such cannot be seen in itself as conclusive proof for the reason for establishing a production facility in Thailand. It does indicate, however, that the avoidance of anti-dumping duties played a role in the economic (marketing) decisions that the Dingsheng Group made. Decisions, for example, on how to ensure potential clients will purchase Dingsheng Group products from any of its production sites. No other argument was brought forward for clients to choose the Thai production site as their supplier, such as the quality or price of the product, rather than the other production sites. The advertisement, which has been removed in the period after disclosure, only mentioned the avoidance of the anti-dumping duties.
- (71) In addition, the Dingsheng Group provided arguments concerning due cause or economic justification for expanding its operations from China to Thailand in 2018. These included the ability to expand production capacity, the more lenient environmental regulations in Thailand, the need to establish a presence on other markets since the Chinese foil market is saturated, and the need to overcome recent fluctuations in aluminium futures markets. However, as the Dingsheng Group itself acknowledged, these arguments do not explain the current production situation and might be relevant for the future situation only, when Dingheng will allegedly start producing jumbo rolls from globally sourced aluminium ingots.
- (72) Finally, the Dingsheng Group claimed that the Commission should not base its analysis on a temporary situation but also take the future situation into account. However, as already mentioned in recital (69) above, the Commission is legally obliged to base its analysis on facts and figures that related to the investigation period. These facts showed that Dingheng produced jumbo rolls from foil stock imported from China and sold these mainly to international customers. Only in 2019, after the establishment of the production site, there was a first mention of changing the production process in Thailand and adding a casting line to the production site. Most of the aforementioned reasons for establishing a presence outside China have therefore yet to come to fruition and cannot be accepted as an economic justification for establishing the current production site in Thailand.

- (73) In view of the above, the claims put forward by the Dingsheng Group were rejected. The investigation did not reveal sufficient due cause or an economic justification of the establishment of a production site in Thailand as described above, other than to avoid the payment of the anti-dumping duties currently in force. ⁽²⁰⁾

2.5. Start or substantial increase of operations

- (74) Article 13(2) of the basic Regulation requires the assembly operation to have started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to anti-dumping measures.
- (75) Even though the information provided by the companies in the exemption request and two subsequent replies to deficiency letters was not perfect in all respects, the Commission considered that the information was sufficient to determine whether the criteria of Article 13 were fulfilled.
- (76) As shown in Table 2, imports of jumbo rolls from Thailand were negligible in 2016 and 2017. After the extension of the anti-dumping duties to the slightly modified product from the PRC in the previous anti-circumvention investigation in 2017, imports from Thailand started increasing significantly in 2018 and doubled in volume each year since. As already mentioned above, more than 95 % of all imports of jumbo rolls during the reporting period came from Dingheng and Thai Dingli, which were established in 2018.
- (77) After disclosure the Dingsheng Group claimed that the Commission was factually incorrect to assert that imports from Thailand increased in 2018, and that more than 95 % of all imports of jumbo rolls in the reporting period came from Dingheng and Thai Dingli. According to the Dingsheng Group, Dingheng only started commercial production in 2019 and cannot be responsible for 95 % of imports in 2018.
- (78) The Commission noted that Dingsheng Group's claim was based on an incorrect interpretation of what was stated above in recital (76). Dingheng and Thai Dingli accounted for 95 % of imports in the reporting period, meaning from 1 July 2019 to 30 June 2020 and not in 2018. During the reporting period, as the exemption request showed and as the Dingsheng Group confirmed in its submission, both Dingheng and Thai Dingli exported jumbo rolls to the Union. The data available to the Commission from the request, statistical databases and information provided by the Dingsheng Group itself, showed that other companies cannot be responsible for more than 5 % of imports into the Union during the reporting period. The claim was therefore rejected.
- (79) Even when assuming that only Dingheng's own produced jumbo rolls were exported to the Union during the reporting period (and not the ones purchased from the PRC), according to the information provided by Dingheng, 100 % of all raw materials (aluminium foil stock) was purchased from (related and unrelated) Chinese companies. Therefore, the Commission concluded that the assembly operation started since the initiation of the anti-dumping investigation, while the parts concerned are from the country subject to measures.

2.6. Value of parts and added value

- (80) Article 13(2)(b) of the basic Regulation states that, as far as assembly operations are concerned, another condition to establish circumvention is that the parts (of Chinese origin, in this case) constitute 60 % or more of the total value of the parts of the assembled product and that the added value of the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost.

⁽²⁰⁾ TPL also provided some arguments to explain why it believes that its (confidential) Thai supplier should be exempted from the scope of the measures, providing what, in TPL's opinion, is sufficient economic justification for setting up production in Thailand. However, TPL is not an importer of the product under investigation but of converter foil, and cannot in any event argue for an exemption on behalf of its supplier. Moreover, the relevant statements were based on TPL's 'best knowledge and market intelligence', and no further proof was provided to support the arguments. However, the arguments put forward by TPL are in part similar to those used by Dingheng, and are as such addressed in this Regulation.

- (81) As mentioned in recital (79), Dingheng produced the jumbo rolls sold to the Union from raw materials which were 100 % purchased in the PRC, thus well over 60 % threshold of the total value of the parts. It was therefore concluded that the first criterion set out in Article 13(2)(b) of the basic Regulation was met.
- (82) For carrying out the 25 % test, the value added to the parts brought in was determined as the sum of labour costs and factory overheads incurred by the assembler with respect to those parts. Selling, general and administrative expenses as well as profit were not considered for the purpose of this calculation. The value added thus established was then expressed as a percentage of the manufacturing cost which consists of the value of all parts, based on the factory-delivered, arm's length purchase prices of these parts plus the value added to the parts during the assembly or completion operation. The average value added thus established during the reporting period was found to be significantly below the 25 % threshold set by Article 13(2)(b) of the basic Regulation. It was therefore concluded that the second criterion set out in Article 13(2)(b) of the basic Regulation was also met.

2.7. Undermining of the remedial effects of the duty

- (83) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.
- (84) The increase of imports of jumbo rolls from Thailand was significant, as explained in recitals (44) and (45) above. These imports increased from less than 1 % of the total volume of imports of jumbo rolls in 2016 to almost 9 % during the reporting period. In comparison, the imports from Chinese companies that were not exempted during the last anti-circumvention investigation, decreased from 13 % in 2016, to less than 1 % during the reporting period.
- (85) Regarding prices, the Commission compared the average non-injurious price as established in the previous expiry review ⁽²¹⁾ with the weighted average export CIF prices determined on the basis of the information provided by the cooperating producer, duly adjusted to include conventional customs duties and post clearance costs. This price comparison showed the existence of underselling of 49 % and undercutting of 40 %.
- (86) The Commission concluded that the existing measures were undermined in terms of quantities and prices by the imports from Thailand subject to this investigation.
- (87) Following disclosure the Dingsheng Group argued that insufficient information had been provided to it to verify the accuracy of the calculations, since the non-injurious price and the target profit level to calculate underselling and undercutting levels had not been disclosed.
- (88) The Commission rejected this claim and considered that the information disclosed to the Dingsheng Group had been sufficient to allow it to effectively comment on the Commission's findings as set out in the disclosure documents. In this respect the Commission noted that the analysis performed in anti-circumvention investigations is limited to establishing whether the remedial effects of the duty are being undermined in terms of prices and/or quantities. This analysis is done by using the information on the non-injurious price level from the previous investigation, *in casu* the review investigation. The non-injurious price level was provided to the Dingsheng Group in the specific disclosure of 24 June 2021, and presented in ranges. From the information provided in the specific disclosure, it could also easily be determined that the target profit used was 6 %. The information provided was therefore considered sufficient to verify the accuracy and adequacy of the Commission's calculations. In addition, it should be noted that the one cooperating company in the review investigation is also part of the Dingsheng Group, and the Group was thus provided with more details at that point in time. The claims were therefore rejected.

⁽²¹⁾ Updated for the reporting period to reflect LME fluctuations.

2.8. Evidence of dumping

- (89) In accordance with Article 13(1) of the basic Regulation, the Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product.
- (90) To this end, export prices of the cooperating exporting producer were determined as described in recital (85) above and compared to the normal values established during the last expiry review (for the original like product) and anti-circumvention investigation (for the slightly modified product), and duly adjusted to London Metal Exchange (LME) fluctuations. In line with the calculations done in the last expiry review and the previous anti-circumvention investigation, this adjustment was necessary due to the fact that prices of aluminium products refer to price fluctuations of the basic raw material, primary aluminium. LME prices are considered the global benchmark for primary aluminium.
- (91) Following disclosure the Dingsheng Group claimed that the LME adjustment was incorrect. According to it the upward adjustment should have been a downward adjustment, as the LME price experienced a decreasing trend between the review investigation and the reporting period.
- (92) As required by Article 13(1) of the basic Regulation the calculations were based on the normal values previously established for the like product. This includes the LME values that were used at the time of those investigations. The LME values for the review investigation period cited by the Dingsheng Group in their submission are not in line with the values used in previous investigations and cannot serve therefore as a basis for comparison. Using the values established in the previous investigations and comparing these to the LME data from the same data source as originally used (Bloomberg) for the reporting period, i.e. applying the same methodology as in the previous investigations, showed that the upward adjustment done by the Commission was accurate. The Commission therefore rejected this claim.
- (93) Following disclosure, two unrelated Union importers requested the Commission to examine whether jumbo rolls are currently still being dumped, and provided some information regarding current import prices of jumbo rolls from the PRC into the United Kingdom. However, the Commission's analysis was limited to the information which related to the investigation and reporting periods, and not to information relating to a subsequent period, as follows from Article 6(1) of the basic Regulation. Moreover, the information provided by the unrelated importers pertain to current import prices from the PRC, which is not the country concerned, into the United Kingdom, which is not a Member State of the Union. The Commission therefore rejected this request.
- (94) The comparison of normal values and export prices at product-type level shows that jumbo rolls were imported at dumped prices during the reporting period by the cooperating companies.

3. REQUESTS FOR EXEMPTION

- (95) One exporting producer in Thailand requested an exemption from the possible extended measures in accordance with Article 13(4) of the basic Regulation and submitted a questionnaire reply.
- (96) As set out above, however, the investigation has confirmed that this producer circumvented the measures in place. It was therefore concluded to reject the request.

4. MEASURES

- (97) Based on the above findings, the Commission concluded that the anti-dumping duty imposed on imports of jumbo rolls originating in the PRC are being circumvented by imports of the product under investigation consigned from Thailand. Since the exports of the cooperating company constitute more than 95 % of the total imports of the product under investigation and no other exporting producer cooperated, this conclusion extends to the whole country.
- (98) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force should be extended to imports of the product under investigation.

- (99) Pursuant to Article 13(1), second paragraph of the basic Regulation, the measure to be extended should be the one established in Article 1(2) of Implementing Regulation (EU) 2015/2384 for 'all other companies' and previously extended by Article 1 of Implementing Regulation (EU) 2017/271, which is a definitive anti-dumping duty of 30 % applicable to the net, free-at-Union-frontier price, before customs duty.
- (100) Pursuant to Article 13(3) of the basic Regulation, which provide that any extended measure should apply to imports that entered the Union under registration imposed by the initiating Regulation, duties are to be collected on those registered imports of the product under investigation.
- (101) As explained in recital (39) above, the previous anti-circumvention investigation had established an end-use mechanism aimed at providing genuine importers of aluminium converter foil with the possibility to request an exemption from paying the anti-dumping duties. TPL, an unrelated importer of aluminium converter foil, argued that requiring genuine importers of aluminium converter foil in the current investigation to comply with such an end-use procedure would unfairly penalise importers of a product that falls outside the scope of the investigation. In this respect, TPL pointed to the recent creation of specific TARIC codes for converter foil, which were created after the previous anti-circumvention investigation.
- (102) However, a decision on whether or not to have an end-use procedure in place for imports of jumbo rolls from Thailand does not fall within the scope of the current investigation. The purpose of this anti-circumvention investigation is to determine whether or not to extend the measures in place to imports from Thailand of the like product. The investigation can change neither the level nor the form of the measures, and therefore cannot change the existence of the end-use procedure.
- (103) In any event, the possibility to distinguish between converter foil and household foil currently still depends on the declaration as to its end-use by the importer concerned, even if there are currently specific TARIC codes for converter foil. The description of TARIC code 7607 11 19 60, for example, includes the wording 'for other uses than household aluminium foil'. Imports under this code, which was created specifically to include converter foil, are subject to end-use provisions to enable the possibility to actually declare the imports under this code. The creation of specific codes for converter and household foil, therefore, did not remove the need for the end-use procedure. The existing end-use procedures thus appear still necessary.
- (104) Following disclosure TPL reiterated its request to not extend the end-use procedure established in the previous anti-circumvention investigation. According to TPL, the end-use procedure is not necessary since it was established only to ensure importers of converter foil were importing genuine converter foil and not slightly modified aluminium household foil. TPL argued that this distinction is not necessary in the current investigation, since the issue at hand now is the determination of whether the product exported from Thailand is of Thai or Chinese origin.
- (105) The Commission disagreed with this argumentation. Extending the anti-dumping measures inevitably includes the extension of the previously established end-use procedure as well. The fact that the end-use procedure is not a measure but a special customs procedure, as argued by TPL, does not detract from the fact that the application of the measures in the previous anti-circumvention investigation was explicitly combined with this end-use procedure. In addition, since the current investigation also included the slightly modified product, the differentiation between converter foil and household foil remains relevant, also for products imported from Thailand. As explained in recital (103), the difference between the two product types still depends on the declared end-use by the importer. Such declaration is an indispensable element to determine whether the product can be imported under the specific TARIC code for converter foil, or under one of the TARIC codes for aluminium household foil. The Commission therefore rejected the request by TPL.
- (106) Following disclosure, two unrelated Union importers provided evidence of a recent increase in the cost of raw materials and conversion costs faced by manufacturers of household foil in the Union, and requested to balance the interest of Union producers of jumbo rolls with those of Union producers of household foil and final customers. However, the data provided by those Union importers concerned the period after the investigation period of the current investigation and was therefore not taken into account. Moreover, an analysis regarding the effect of the measures does not fall within the scope of an anti-circumvention investigation, which is limited to establishing

whether the remedial effect of the original measures are being undermined by the circumvention practices. A full analysis, including the effect of the measures on the Union interest, may however be done in other types of investigations, such as interim or expiry reviews. ⁽²²⁾ The Commission therefore rejected this request.

5. DISCLOSURE

- (107) On 24 June 2021, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment. Comments were received from the cooperating producer in Thailand, two unrelated importers in the Union and one unrelated importer in Switzerland, TPL. The written comments submitted by the parties were taken into consideration where appropriate as described in the foregoing.
- (108) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foil originating in Brazil following an expiry review under Article 11(2) of Council Regulation (EC) No 1225/2009, and extended by Commission Implementing Regulation (EU) 2017/271 of 16 February 2017 to imports of slightly modified certain aluminium foil, is hereby extended to imports of:

- aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg,
- aluminium foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, whether or not annealed,
- aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, whether or not annealed,
- aluminium foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed,
- aluminium foil of a thickness of not less than 0,021 mm and not more than 0,045 mm, when presented with at least two layers, regardless of the width of the rolls, whether or not annealed,

currently falling under CN codes ex 7607 11 19 (TARIC codes 7607 11 19 10, 7607 11 19 30, 7607 11 19 40, 7607 11 19 50) and ex 7607 11 90 (TARIC codes 7607 11 90 44, 7607 11 90 46, 7607 11 90 71, 7607 11 90 72) and consigned from Thailand, whether declared as originating in Thailand or not (TARIC additional code C601).

2. The product described in paragraph 1 of this Article shall be exempted from the definitive anti-dumping duty if it is imported for other uses than household foil. An exemption shall be subject to the conditions laid down in the customs provisions of the Union on the end-use procedure, in particular Article 254 of the Union Customs Code.

3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Thailand, whether declared as originating in Thailand or not, registered in accordance with Article 2 of Implementing Regulation (EU) 2020/2162 and Articles 13(3) and 14(5) of Regulation (EU) 2016/1036, with the exemption of those which can demonstrate that they were used for other uses than household foil in accordance with paragraph 2.

⁽²²⁾ An expiry review investigation of the existing anti-dumping measures on the imports of jumbo rolls from China was initiated on 17 December 2020 (OJ C 436, 17.12.2020, p. 10).

4. The amount of anti-dumping duties to be retroactively collected shall be that resulting from applying the anti-dumping duty of 30,0 % applicable to 'all other companies'.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2020/2162.

Article 3

The exemption request submitted by Dingheng New Materials Co., Ltd. is rejected.

Article 4

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G Office:
CHAR 04/39
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulations (EU) 2015/2384 and (EU) 2017/271, from the duty extended by Article 1.

Article 5

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, 14 September 2021.

For the Commission
The President
Ursula VON DER LEYEN
