

**COMMISSION IMPLEMENTING REGULATION (EU) 2021/2287****of 17 December 2021****imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil 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) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union <sup>(1)</sup>, and in particular Article 15 and 24(1) thereof,

Whereas:

**1. PROCEDURE****1.1. Initiation**

- (1) On 4 December 2020, the European Commission ('the Commission') initiated an anti-subsidy proceeding with regard to imports of aluminium converter foil ('ACF') originating in the People's Republic of China ('China', 'PRC' or 'the country concerned') on the basis of Article 10 of Regulation (EU) 2016/1037 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ('the Notice of Initiation') <sup>(2)</sup>.
- (2) The Commission initiated the investigation following a complaint lodged on 21 October 2020 by six Union producers ('the complainants'), representing more than 50 % of the total Union production of aluminium converter foil. The complaint contained evidence of subsidisation and of a resulting injury that was sufficient to justify the initiation of the investigation.
- (3) Prior to the initiation of the anti-subsidy investigation, the Commission notified the Government of China ('GOC') <sup>(3)</sup> that it had received a properly documented complaint, and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. Consultations were held on 30 November 2020. However, no mutually agreed solution could be reached.
- (4) On 22 October 2020, the Commission initiated a separate anti-dumping investigation of the same product originating in the PRC ('the separate anti-dumping investigation'). <sup>(4)</sup> The injury, causation and Union interest analyses performed in the present anti-subsidy investigation and the separate anti-dumping investigation are mutatis mutandis identical, since the definition of the Union industry, the sampled Union producers, the period considered and the investigation period are the same in both investigations.

**1.1.1. Comments concerning initiation**

- (5) The GOC claimed before and after initiation that the investigation should not be initiated because the complaint did not satisfy the evidentiary requirements of Articles 11(2) and 11(3) of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement') and of Article 10(2) of the basic Regulation. According to the GOC, there was insufficient evidence of countervailable subsidies, injury and a causal link between the subsidised imports and the injury. In its submission following initiation, the GOC reiterated that the complaint, with regard to a number

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 55.

<sup>(2)</sup> OJ C 419, 4.12.2020, p. 32.

<sup>(3)</sup> The term 'GOC' is used in this Regulation in a broad sense, including the State Council, as well as all Ministries, Departments, Agencies, and Administrations at central, regional or local level.

<sup>(4)</sup> OJ C 352 I, 22.10.2020, p. 1.

of claimed subsidy schemes, did not contain sufficient evidence to meet the evidentiary standard and, regardless of what information might be reasonably available to the complainant, there always needs to be sufficient evidence regarding the existence and nature of a subsidy, material injury and a causal link. The GOC also reiterated this claim after the final disclosure.

- (6) In its submission following the initiation and also after the final disclosure, the GOC also claimed that the Commission memorandum on sufficiency of evidence and the anti-subsidy questionnaires went beyond the allegations raised in the complaint and that the Commission had added additional evidence to the complaint to justify the initiation of the investigation. The GOC claimed that by adding such elements the Commission broadened the scope of the investigation. More specifically, the GOC alleged that by adding references to documents such as a 2018 “report on Aluminium”, the “Made in China 2025” strategy, a U.S. DOC determination on aluminium products of 2018, and by adding the Chinese Export & Credit Insurance Corporation (‘Sinosure’) to the list of financial institutions to be investigated or asking information regarding the China Banking and Insurance Regulatory Commission (the ‘CBIRC’), the Commission had broadened the scope of the investigation.
- (7) The Commission rejected the claim of the GOC concerning sufficiency of evidence. Indeed, the evidence submitted in the complaint constituted the information reasonably available to the complainant at that stage. As shown in the memorandum on sufficiency of evidence, which contains the Commission’s assessment on all the evidence at the disposal of the Commission concerning the PRC, and on the basis of which the Commission initiated the investigation, there was sufficient evidence at initiation stage that the alleged subsidies were countervailable in terms of their existence, amount and nature. The complaint also contained sufficient evidence of the existence of injury to the Union industry, which was caused by the subsidised imports.
- (8) The Commission also rejected the claim concerning the scope of the investigation. The memorandum on sufficiency of evidence contains an examination of the elements available to the Commission, including, but not limited to, those brought forward by the complainant. The elements in the complaint were indeed analysed together and corroborated with other facts known by the Commission in accordance with established practice. As mentioned in the Notice of Initiation, in view of Articles 10(2) and 10(3) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission’s assessment on all the evidence at the disposal of the Commission concerning the PRC and on the basis of which the Commission initiated the investigation. Thus, the scope of the investigation is not narrowed to the evidence and allegations in the complaint, but can be complemented by other information available to the Commission. Furthermore, during the investigation, the Commission may examine all information that is relevant to the alleged subsidies and is not limited to the information contained in the complaint. This applies also to the financial institutions providing preferential financing such as Sinosure and relevant regulatory bodies such as the CBRC.
- (9) While the GOC reiterated its claims concerning sufficiency of evidence and the scope of the investigation also after final disclosure, it did not bring forward any new substantial arguments or evidence. Therefore, those claims were rejected.
- (10) In its submission following initiation, the GOC alleged that the complainant used Chinese laws selectively and misinterpreted their connection with respect to the ACF industry. The GOC stated that policy documents, such as the 10-13<sup>th</sup> Five Year Plans, the Catalogue for the Guidance of Industrial Structure Adjustment (2005) and the Nonferrous Metal Development Plan (2016-2020) are just guidance documents that are not binding. The GOC also stated that the Five Year Plans do not specifically refer to ACF.
- (11) The Commission noted that the GOC does not dispute the existence of such plans, programmes, or recommendations but only the extent to which they are binding for the ACF industry. The Commission further observed that the complainant provided evidence indicating that non-ferrous metals industries, of which the aluminium industry is part, are mentioned in several government documents. The GOC failed to produce any evidence showing that those documents would not be applicable to the product concerned.

- (12) The GOC also stated that State-owned enterprises ('SOEs'), State-owned banks ('SOBs') or Sinosure cannot be qualified as public bodies and that the complainant unjustifiably relied on formal indicia of control such as the GOCs ownership and alleged power to appoint or nominate management officials to draw an unwarranted conclusion that all SOEs/SOBs acted as public bodies. The GOC also claimed that the complainant relied on previous cases of the Commission or the Department of Commerce of the USA in evaluating the nature of functions that the banks performed and the nature and scope of the governmental authority vested in them. The GOC also claimed that past findings of the Commission for unrelated industries could not constitute sufficient evidence in the complaint and they also do not substantiate that State-owned banks and Sinosure acted as public bodies in the current investigation.
- (13) The Commission noted that this claim of the GOC is connected to the claim already mentioned above, and that the complaint, among others, mentioned the Bank Law in China, which the GOC does not dispute is Chinese legislation. The Commission highlights that recent EU anti-subsidy investigations related to the same subsidy programmes as those alleged in the complaint, that had also examined the whether SOEs/SOBs acted as public bodies, had concluded that this was the case<sup>(5)</sup>. The fact that these investigations covered industries unrelated to the ACF industry does not invalidate the qualification of the above institutions as public bodies. Moreover, evidence of government ownership may be considered to amount to evidence "tending to prove or indicating" that an entity is a public body capable of conferring a financial contribution.<sup>(6)</sup>
- (14) In its submission following initiation, the GOC furthermore submitted that substantial changes and reforms had occurred in the financial sector in recent years, and that the complaint could thus not rely on any pre-existing situation. However, the Commission noted that the complainant also provided additional evidence in the complaint of the continued existence of the subsidy programmes. The Commission further recalls that the GOC failed to provide evidence rebutting the continuation of the relevant programmes. Thus, at the stage of initiation, the evidence available tended to show that there was no relevant change in the subsidy programmes at issue.
- (15) In the same submission the GOC also claimed that some of the guidance documents including The Temporary Provisions on Promoting Industrial Structure Adjustment (Decision No 40 2005 of the State Council) ('Decision No 40') with reference to the "Eleventh Five-year Plans" are outdated and no longer applicable during IP.
- (16) Decision No 40, Chapter III refers to 'Catalogue for the Guidance of Industrial Structure Adjustment' which is composed of three kinds of contents, namely encouraged project contents, limited projects content and eliminated projects content.

<sup>(5)</sup> Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Commission Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case') and Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5) ('E-bikes case'), Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case').

<sup>(6)</sup> See Panel Report, United States – Countervailing Duty Measures on Certain Products from China, WT/DS437/R, adopted 16 January 2015, para. 7.152.

- (17) To the Commission's knowledge, the latest amendment of the Guiding Catalogue for Industry Restructuring was approved by Decree of the National Development and Reform Commission of the People's Republic of China No 29 of 27 August 2019 and entered into force on 1 January 2020 <sup>(7)</sup>. This new 'Guiding Catalogue for Industry Restructuring (2019 Version)' was adopted and entered into effect during the investigation period. Therefore, 'The Guiding Catalogue for Industry Restructuring' referred to in Decision No 40 was applicable during the investigation period.
- (18) After final disclosure the GOC reiterated its claim that the Commission had misinterpreted the role of the Chinese Government's plans and projects and maintained that these are purely guidance documents and not legally binding. It also disagreed with relying on facts established in previous investigations, as well as with the use of references from the 2017 Commission staff working document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations <sup>(8)</sup>, which the GOC considers to be inaccurate and not objective, as it was written specifically to facilitate the initiation of trade defence investigations. The GOC furthermore objected to the Commission's view that the laws, regulations and Government plans can reasonably be assumed to remain applicable unless it is demonstrated that they are repealed or replaced.
- (19) First, the Commission noted that the GOC did not bring forward any new substantial arguments or evidence concerning the general role of the Chinese Government's plans and projects, and their binding nature.
- (20) Second, concerning the use of information contained in the China Report, the fact that the document was issued bearing in mind its potential use in trade defence investigations does not render the objective evidence contained therein incorrect or impartial as such, as claimed by the GOC. The Commission also notes that it only referred twice to this document in the current investigation, once as a general introduction to the system of five-year plans, and once in the context of establishing a link between planning documents and encouraged sectors. These references were used in combination with and corroborated by other references, including documents issued by the GOC itself.
- (21) Third, the Commission maintains that established laws, regulations and Government plans can reasonably be assumed to remain applicable until it is demonstrated that they are repealed or replaced. Indeed, as part of the investigation the Commission sent to the GOC a list of reference documents concerning the general legal framework, rules and procedures applicable in the PRC, as well as some specific documents concerning the industry concerned. The GOC was requested to review the completeness and validity of these documents and to update or complement them wherever applicable. After receiving a substantiated reply and updated reference documents from the GOC, the Commission considered it could reasonably assume that those documents that were not repealed or replaced were still applicable.
- (22) Therefore, the claims of the GOC in this respect were rejected.
- (23) Following initiation, the GOC further argued that the complainant did not establish the conditions for applying an out-of-country benchmark for land use rights ('LUR'). The Commission found, however, that the allegations contained in the complaint are supported by recent EU anti-subsidy investigations concluding on those matters the need for external benchmarks adjusted to the prevailing conditions in the PRC <sup>(9)</sup>.
- (24) Furthermore, the GOC claimed that various subsidy schemes alleged by the complainant could not be considered a subsidy as the complaint did not provide for detailed evidence concerning the existence, amount and nature of these subsidies, or the direct relationship between the subsidy and the product concerned. The GOC further claimed, in relation to various subsidies, that the complainant failed to provide evidence of benefit and specificity.

<sup>(7)</sup> <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf>.

<sup>(8)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (the 'China Report').

<sup>(9)</sup> See the cases cited in footnote 5 before.

- (25) The Commission is of the view that the complainant provided sufficient evidence of the existence, amount, nature, benefit and specificity as was reasonably available to it. Furthermore, the Commission highlights that recent EU anti-subsidy investigations related to the same subsidy programmes alleged in the complaint had also examined benefit and specificity of the same programmes and had concluded differently on these matters<sup>9</sup>. In any event, the Commission examined the evidence in the complaint and provided its own assessment of all relevant elements in the memorandum of sufficiency of evidence, which was put on the open file upon initiation. The GOC reiterated its comments following initiation, but did not provide any further evidence.
- (26) Therefore, the Commission concluded that there was sufficient evidence provided in the complaint tending to show the existence of the alleged subsidisation by the GOC.
- (27) In its submission following initiation the GOC indicated that the tax scheme providing VAT rebates on domestically produced equipment had been terminated. The Commission took note of this comment, but highlighted the tax schemes relating to VAT rebates, or import tariff and VAT exemptions on imported equipment, could still procure ongoing benefits such as depreciation over the lifespan of the relevant equipment, possibly covering the investigation period.
- (28) Following initiation, the GOC also argued that the complainants incorrectly set aside the fact that the ACF industry in the Union benefits from several direct and indirect subsidies, support and incentives in various forms from the EU and Member State authorities and that the Commission should not apply double standards. After final disclosure the GOC also reiterated this claim.
- (29) This claim concerning subsidies in the EU had no weight on the Commission's assessment underlying the initiation of this case, as they do not fall within the factors considered for this purpose.

#### **1.2. Registration of imports, non-imposition of provisional measures and subsequent procedure**

- (30) The Union industry did not submit a request for registration of imports pursuant to Article 24(5) of the basic Regulation.
- (31) On 6 August 2021, in accordance with Article 29a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional countervailing measures and to continue the investigation. Since no provisional countervailing measures were imposed, the Commission did not register imports under Article 24(5a) of the basic Regulation. The Commission continued seeking and checking all information it deemed necessary for its definitive findings.

#### **1.3. Investigation period and period considered**

- (32) The investigation of subsidisation and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').
- (33) Both the current anti-subsidy investigation and the separate anti-dumping investigation mentioned in recital (4) have the same investigation period and the same period considered.

#### **1.4. Interested parties**

- (34) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the GOC, other known Union producers, the known exporting producers, known importers and users about the initiation of the investigation and invited them to participate.
- (35) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

- (36) Several parties requested a hearing with the Commission services. Parties who made a request within the stipulated deadlines were granted an opportunity to be heard. Xiamen Xiashun Aluminium Foil Co. Ltd. requested an intervention from the Hearing Officer, and a hearing with the Hearing Officer took place on 8 April 2021.

### 1.5. Sampling

#### 1.5.1. *Sampling of Union producers*

- (37) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the volume of production and sales of the like product in the Union during the investigation period. The sample consisted of three Union producers. The sampled Union producers accounted for more than 50 % of the estimated total production and 40 % of the estimated total Union sales volume of the like product. The Commission invited interested parties to comment on the provisional sample. No comments were received and therefore the sample was confirmed.

#### 1.5.2. *Sampling of importers*

- (38) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (39) Two unrelated importers provided the requested information and agreed to be included in the sample. Given the small number of replies, sampling of unrelated importers was not necessary.

#### 1.5.3. *Sampling of exporting producers in China*

- (40) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (41) Nine exporting producers or groups of exporting producers in the PRC provided the requested information and agreed to be included in the sample. In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of three groups of exporting producers on the basis of the largest representative volume of exports to the Union that could reasonably be investigated within the time available. These companies represented over 90 % of the estimated total Union imports of the product concerned.
- (42) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were given the opportunity to comment on the selection of the sample. No comments were received.
- (43) The sample of groups of exporting producers is the following:
- Nanshan Group, including Yantai Donghai Aluminum Foil Co., Ltd
  - Wanshun Group, including Jiangsu Zhongji Lamination Materials Co., Ltd
  - Daching Group, including Xiamen Xiashun Aluminium Foil Co., Ltd.

### 1.6. Individual examination

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

### 1.7. Questionnaire replies and verification visits

- (45) The Commission sent a questionnaire to the complainant and the questionnaires for the Union producers, importers, users, and exporting producers in China were made available online on the day of initiation <sup>(10)</sup>.
- (46) The Commission also sent a questionnaire to the GOC, which included specific questionnaires for Sinosure, the banks and other financial institutions that provided financing or export credits to the sampled exporting producers, and for the top 10 producers and distributors of the input materials used by the sampled exporting producers. The GOC was also asked for administrative convenience to gather any responses provided by these financial institutions and producers or distributors of input materials, and to send them directly to the Commission.
- (47) The Commission received a questionnaire reply from the GOC, which included a questionnaire reply from the Export-Import Bank of China ('EXIM bank') and Sinosure. However, no reply was received from any of the other banks or financial institutions, or from the main producers and distributors of the input materials.
- (48) The Commission also received questionnaire replies from all sampled exporting producer groups, from the three sampled Union producers, nine users and one unrelated importer.
- (49) Without prejudice to the application of Article 28 of the basic Regulation, the Commission sought and crosschecked all the information deemed necessary for the determination of subsidy, resulting injury and Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') <sup>(11)</sup>, the Commission was unable to carry out verification visits at the premises of the GOC, the sampled companies and the cooperating importers and users. Instead, the Commission performed a remote crosscheck ('RCC') of the information provided by the GOC, during which officials from the relevant ministries and other government authorities participated. The Commission furthermore carried out RCCs of the following companies via videoconference:
- (a) Union producers
- Carcano Antonio Spa, ('Carcano'), Italy
  - Eurofoil Luxembourg S.A. ('Eurofoil'), Luxembourg
  - Hydro Aluminium Rolled Products GmbH ('Hydro'), Germany
- (b) Users
- Manreal ('Manreal'), Spain
  - Walki Group Oy ('Walki'), Finland
- (c) Sampled exporting producers in China
- (1) Nanshan Group:
- Yantai Donghai Aluminium Foil Co., Ltd. ('Donghai Foil')
  - Yantai Jintai International Trade Co., Ltd.
  - Longkou Nanshan Aluminium New Material Co., Ltd.
  - Longkou Nanshan Aluminum Rolling New Material Co., Ltd.
  - Shandong Nanshan Aluminium Co., Ltd. ('Shandong Nanshan')
  - Nanshan Group Co., Ltd. ('Nanshan Group Co., Ltd.')
  - Nanshan Group Finance Co., Ltd. ('Nanshan Finance')
  - Longkou Donghai Alumina Co., Ltd
  - Shandong Yili Electric Industry Co., Ltd.

<sup>(10)</sup> Available at [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2501](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2501).

<sup>(11)</sup> Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (2020/C 86/06) OJ C 86, 16.3.2020, p. 6.

(2) Wanshun Group:

- Jiangsu Zhongji Lamination Materials Co., Ltd.
- Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.
- Anhui Maximum Aluminium Industries Co., Ltd
- Shantou Wanshun New Material Group Co., Ltd ('Shantou Wanshun')
- Jiangsu Huafeng Aluminium Industry Co., Ltd

(3) Daching Group and related companies:

- Xiamen Xiashun Aluminium Foil Co. Ltd ('Xiamen Xiashun')
- Xiamen Qishun Real Estate Co., Ltd
- Yunnan Yongshun Aluminum Co., Ltd ('Yongshun')
- Yunnan Yunlv Yongxin Metal Processing Co., Ltd ('Yongxin')
- Daching Enterprises Ltd.

- (50) The RCC scheduled with Manreal could not be finalized due to its insufficient cooperation. Manreal requested the intervention of the Hearing officer, who confirmed that the termination of the RCC did not violate Manreal's rights of defence. The questionnaire reply of Manreal was thus not considered for the definitive findings. However, this did not impact the conclusions on Union Interest. Despite the termination of the RCC, this company was still considered as an interested party and its comments in the investigation were taken into account.

### 1.8. Final disclosure

- (51) On 3 November 2021, the Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-subsidy duty on imports of the product concerned ('final disclosure').
- (52) All parties were granted a period within which they could make comments on the final disclosure. Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (53) The Commission addressed in this regulation comments submitted during the anti-subsidy procedure. Comments submitted in the context of the separate anti-dumping investigation were not addressed in this regulation unless the parties explicitly indicated that the comments submitted covered both procedures.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product concerned

- (54) The product concerned is aluminium converter foil of a thickness of less than 0,021 mm, not backed, not further worked than rolled, in rolls of a weight exceeding 10 kg ('the product concerned').
- (55) The following products are excluded:
- (a) Aluminium household 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.
  - (b) Aluminium household 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.
  - (c) Aluminium household 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.
  - (d) Aluminium household 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.

## 2.2. Like product

- (56) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned;
  - the product produced and sold on the domestic market of the country concerned; and
  - the product produced and sold in the Union by the Union industry.
- (57) The Commission decided at this stage that those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

## 2.3. Claims regarding product scope

- (58) Several parties submitted product exclusion requests concerning the following products: ACF of gauge below 6 microns ('ACF< 6') and ACF for electric car batteries ('car battery ACF').

### 2.3.1. ACF of gauge below 6 microns

- (59) Several users, Walki, Gascogne and Alupol, claimed that Union producers do not offer ACF < 6. This is allegedly evidenced by the fact that Union producers do not promote such products on their webpages, in their brochures and by their refusal of orders of such products. Neither are the Union producers interested in offering ACF< 6, since their production capacity is filled with other product orders, taking into account also the expected demand for automotive battery foil. Union producers are not in a position to provide the requested "commercial" quality, especially regarding porosity/permeability, measured in maximum pinholes per square meters. The use of thinner ACF is furthermore more environmentally friendly and should also for this reason be excluded from the scope.
- (60) In addition, Huhtamäki argued that the Union industry has supply constraints for thinner ACF.
- (61) The Commission has requested all nine users that cooperate with the investigation to specify their current demand for and sources of ACF< 6. Only one user confirmed to have purchased during the IP an amount of ACF< 6 that surpassed the quality threshold for commercial production, from a single Chinese producer. However, even for this user ACF< 6 represents a very small part of its ACF consumption. Other users only indicated requests from their respective customers for products that included ACF< 6, which have triggered trial orders both to the Union ACF industry and to Chinese producers post IP.
- (62) The replies indicated that the demand for ACF< 6 has only very recently started and is in an increasing trend. There was some limited demand for it over the past 10 years, but no clear pattern. This is in line with explanations from the Union producers that in the past there was also a gradual movement into thinner gauges of ACF, from the 7-8 microns range being the lower range in the past into 6 and 6,35 microns becoming the current standard for many applications.
- (63) While a survey amongst the Union producers has shown that, apart from direct negotiations, none of them currently actively markets ACF< 6, the Commission has collected ample evidence that the Union producers are capable to produce ACF< 6. This includes test roll production post IP, which according to testing documentation met the purchaser's technical demands. Furthermore, the Commission could confirm sales of ACF< 6 of various Union producers in commercial production quantities, even if on a limited scale, over a period of 10 years prior to the IP. The Commission could also observe investments in quality control. The Commission therefore concluded that the Union industry can provide quality to fit the market demand.

- (64) Second, the capacity to produce ACF< 6 is limited by the last step i.e. the rolling mills. Therefore, the Commission has analysed the capacity of various Union producers in this last step, also taking into account the demand for other products in the various production steps. All sampled Union producers have sufficient free capacity to enable them to provide ACF< 6, even if demand for car battery foil increases in the future. The Commission could therefore not confirm the risk of a supply shortage for a future increase in ACF< 6 demand.
- (65) Third, regarding the argument that the use of thinner ACF is more environmentally friendly, the Commission recalled that the intended effect of trade defence measures in the form of duties is not to prevent imports of a given product but to ensure that those imports are traded at non-injurious prices. The Commission also recalled the capability of the Union producers to manufacture ACF< 6.
- (66) Finally, as to the argument of Huhtamäki concerning the supply constraint, the investigation revealed that the production capacity of the Union industry of ACF< 6 is considerably greater than the demand.
- (67) In view of the above considerations, the Commission rejected the request for exclusion of ACF < 6 from the product scope of the product under investigation.
- (68) Gascogne requested that its arguments made in the separate anti-dumping procedure concerning the same product originating from the PRC were incorporated into this anti-subsidy investigation. The Commission already addressed the same arguments in recitals 25 to 28 Regulation (EU) 2021/2170.
- (69) Walki also requested that its arguments made in the separate anti-dumping investigation were incorporated into this anti-subsidy investigation. In this respect, the Commission refers to its findings in recitals 29 to 32 of Regulation (EU) 2021/2170.
- (70) In addition, Walki explained during its hearing after final disclosure, that post-IP in October 2021, there was still no active open market sales or marketing of European producers for ACF< 6. Walki submitted evidence that post-IP it did not receive a positive response to its requests for quotation on ACF< 6 and explained that only one Union producer would be in the position to accept orders of ACF< 6 in commercial quantity. The Commission already addressed the same arguments in recital 28 Regulation (EU) 2021/2170

### 2.3.2. ACF for car batteries

- (71) One interested party, Xiamen, requested the exclusion of aluminium car battery foil on the following grounds:
- Aluminium car battery foil is a very different product with a different usage, as it uses the 1050/1060/1100/3003 alloys while the major alloys to produce ACF for packaging are 8079/8011 alloys;
  - the production equipment and processes is different, resulting in two bright surfaces as opposed to the dull/bright surface of other ACF. This also leads to different cost of production and sales prices;
  - it is not manufactured by the Union producers; and
  - it is currently not exported to the EU.
- (72) In response, the Commission first noted that all the alloys named by the interested party share the same characteristic in that they all contain more than 98 % of aluminium and the complaint is not limited to a specific alloy. The use of different alloys for different product variations is not unusual and cannot serve as an exclusion criteria.
- (73) Second, the bright/dull surface is a consequence of rolling two layers of ACF together in the last rolling mill, where the sides of ACF facing each other during the rolling turn out dull. This production method was covered by the complaint, which explicitly stated that both surfaces of ACF can be bright if specified by the customer. The intended use of ACF for car batteries cannot therefore justify any exclusion from the product scope as the physical characteristics of the product are the same. The same applies to the higher cost due to single layer rolling.

- (74) Third, the car battery production in the Union is still in its starting phase. The Commission collected evidence demonstrating that the Union producers are preparing to meet the demand of this emerging market segment. Furthermore, the argument runs counter to the claim made by Walki related to the exclusion of ACF < 6, that the Union industry might focus so much on car battery foil that they would potentially not be interested in dedicating sufficient production capacity to ACF < 6.
- (75) Fourth, the fact that currently there are no major exports from the PRC reflects the fact that the electric car battery production in the EU is still in its infancy, and this is thus not a viable argument for an exclusion.
- (76) The analysis has shown that ACF for electric car batteries is technically ACF included in the defined scope of the investigation.
- (77) In view of the above considerations, the Commission rejected the request for exclusion of ACF for electric car batteries from the product scope of the product under investigation.
- (78) Following the final disclosure, Xiamen Xiashun argued that the four arguments by the Commission in support of the rejection of the exclusion are erroneous, do not respond to the arguments raised by Xiamen Xiashun and fail to provide the substantive data based on which the Commission reached those conclusions. The Commission failed to provide any factual evidence that responds to Xiamen Xiashun's exclusion request in its submissions and the hearing on 23 February. The refusal to indicate on which evidence the Commission based its rejection on infringes Xiamen Xiashun's rights of defence. Xiamen Xiashun further argued that a late submission of evidence by the complainant in respect of the battery foil exclusion request in the anti-dumping proceeding raises doubts as to what evidence was actually considered by the Commission in the anti-subsidy investigation. Xiamen Xiashun argued that a submission of the complainant dated 19 July 2021 was made after the deadline of the deadline of comments at the provisional stage of the anti-dumping investigation and should not be considered. Further, an excessive confidentiality in the submission renders it impossible for Xiamen Xiashun to meaningfully respond.
- (79) The Complainants' submission of 19 July 2021 was a reaction to Xiamen Xiashun's submission of 5 July 2021, in which Xiamen Xiashun provided arguments for the exclusion of ACF for electric car batteries from the scope. The open version of that submission was not redacted excessively. The redaction of the name of the company, which prepared the technical details of the submission as well as the redaction of details on their technical production were necessary not to reveal confidential details on the company's business. The Commission therefore rejects the argument that it infringed Xiamen Xiashun's rights by considering that submission. Further the Commission rejects the claim that it did not specify, which evidence it took into account. The Commission necessarily took into account all evidence on the case file.
- (80) Xiamen Xiashun had argued that due to different usage and technical characteristics aluminium foil for electric car batteries would be a new product for the industry, even if it is aluminium foil. The Commission however, had responded to all of these arguments, clearly stating that also ACF for electric car batteries shares the technical characteristics and production steps. The technical differences on which Xiamen Xiashun had elaborated did only show a distinction to other kinds of ACF, but did not demonstrate that ACF for electric car batteries would not share the characteristics defined in the product scope of the investigation. The Commission also responded to the argument that the Union industry would not be capable to produce ACF for electric car batteries. The Commission therefore rejected the claim.
- (81) Xiamen Xiashun argued that the Commission committed manifest errors of assessment and acted in breach of the principle of sound administration, as it did not examine with all due care and impartiality the evidence provided and did not take due account of all relevant evidence when making its determinations by not providing a meaningful summary on the plans of Union producers to increase their capacity to meet the demand for battery foil and dismissing the evidence provided by Xiamen Xiashun in respect of the expected demand for battery foil.

- (82) Xiamen Xiashun claimed that the Commission's statements that the "substantial spare capacity of the Union industry can meet the demand on the emerging battery foil market" contradicted its statement that "data showing the preparation of Union producers to meet the demand of battery foil is highly confidential and not susceptible of being summarised since these projects are not yet public and thus highly sensitive".
- (83) Xiamen Xiashun also claimed that the Commission dismissed its comprehensive overview on the expected demand on the basis that the realisation of several battery projects was indicated to take place at an undetermined moment in the future. Xiamen Xiashun claimed that this is inherent to data relating to planned projects.
- (84) The Commission's statement that the Union industry can meet the demand on the emerging battery foil market relates to the overall spare capacity in the rolling mills. The data showing the preparation of Union producers to meet the demand of battery foil relates to the efforts of the Union industry to be able to produce according to the specific characteristics requested by battery producers. By providing a summary of these efforts, the Commission would reveal business strategies of Union producers. There is no thus contradiction between the aforementioned statements. The Commission therefore rejected this claim.
- (85) In assessing the overview on the expected future demand that Xiamen Xiashun provided from a publically available source, the Commission differentiated between projects in a planning phase with a specific timeframe and intended projects for which there is no indication of the year in which they will become operational. This is not a dismissal of evidence provided by Xiamen Xiashun, but a thorough analysis of the actual demand to be expected. Indeed, the assessment of whether the Union industry can fulfil the expected future demand was appropriately based on battery projects, whose realisation is scheduled to take place at a specific year in the future. The claim was thus rejected.

#### 2.4. Withdrawal of the United Kingdom from the EU

- (86) This case was initiated during the transition period following the withdrawal of the United Kingdom ('UK') from the EU. During this transition period, the UK remained subject to Union law. The transition period ended on 31 December 2020. Consequently, as of 1 January 2021, companies and associations located in the UK no longer qualified as interested parties in this proceeding. In conclusion, as the UK is no longer subject to the Union law, the findings on subsidy and injury are based on the EU-27 market data.

### 3. SUBSIDISATION

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

- (87) Before analysing the alleged subsidisation in the form of subsidies or subsidy programmes, the Commission assessed government plans, projects, and other documents, which were relevant for the analysis of the investigated subsidy programmes. It found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC's central planning to encourage the ACF industry for the following reasons.
- (88) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist at all levels of government and cover all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(12)</sup>.

<sup>(12)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (the 'Report') – Chapter 4, p. 41-42, 83.

- (89) ACF is regarded as a key product by the GOC, as found in public policy documents and lists. Such categorisation is of significant importance as it qualifies given sectors for coverage by a variety of specific policies and support measures designed to spur development in each sector <sup>(13)</sup>. ACF is also integrated within the new materials in the Made in China 2025 strategy <sup>(14)</sup> and is included in numerous plans, directives and other documents, which are issued at national, regional and municipal level, and are mutually interlinked. Examples of such key policy documents include the following plans, projects and other documents.
- (90) The “10th Five Year Plan of Economic and Social Development (2001-2005)” indicates that the acceleration of industrial restructuring and reorganization would be undertaken with the objective of the development of industrial products, including the raw materials industry, and more specifically, alumina <sup>(15)</sup>.
- (91) The “National 11th Five-Year Plan of Economic and Social Development (2006-2010)” calls for the development of aluminium processing and enhancement of the “comprehensive utilization level of aluminium industrial resources.” <sup>(16)</sup>
- (92) The “National 12th Five-Year Plans of Economic and Social Development (2011-2015)” indicates that the restructuring of key industries should include new progress in R & D, integrated resources utilization, energy conservation, and emission reduction by the smelting and building material industries <sup>(17)</sup>.
- (93) The 13th Five Year Plan for National Economic and Social Development of the PRC (‘the 13th Five Year Plan’), which covers the period 2016-2020, highlights the strategic vision of the GOC for improvement and promotion of key industries. The 13<sup>th</sup> Five-Year Plan emphasised the GOC’s intention to strengthen the development of strategic high technologies and displays how the GOC favours “key” industries, which should be promoted and improved. This Plan identifies the nonferrous metals industry, of which the aluminium foil industry is a part, as one of such “key” industries for which the service supporting system, including finance, taxation, insurance, and investment platforms should be perfected <sup>(18)</sup>.
- (94) The “Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment for Implementation (Guo Fa (2005) No 40)” (‘Decision 40’) indicates that the “Catalogue for the Guidance of Industrial Structure Adjustment” is an important basis for investment guidance and government administration of policies such as public finance, taxation, and credit. Decision 40 further indicates that projects in “encouraged” industries shall be provided credit support in compliance with credit principles. <sup>(19)</sup>
- (95) The “Catalogue for the Guidance of Industrial Structure Adjustment” specifically includes aluminium, and the development of production technology within it, as encouraged <sup>(20)</sup>. This is confirmed in the Guiding Catalogue for Industry Restructuring (2019 Version), according to which aluminium rolling processing, vacuum aluminizing for packing and aluminium alloy processing are all encouraged.
- (96) The “Nonferrous Metal Development Plan (2016-2020)” describes the nonferrous metal industry as an important foundation of the manufacturing industry and support for the “realization of manufacturing power.” Further, priority is indicated for the development of aluminium foil <sup>(21)</sup>.

<sup>(13)</sup> Report – Chapter 2, p. 17.

<sup>(14)</sup> Made in China 2025 Roadmap – Chapter 9.

<sup>(15)</sup> See 10<sup>th</sup> Five-Year Plan, page 11.

<sup>(16)</sup> See 11th Five-Year Plan, page 16.

<sup>(17)</sup> See 12th Five-Year Plan, page 10.

<sup>(18)</sup> See 13th Five-Year Plan, page 1.

<sup>(19)</sup> See Decision of the State Council on Promulgating the Interim Provisions Promoting Industrial Structure Adjustment of 2 December 2005, Chapter III Articles 12, 13, 14, and 17.

<sup>(20)</sup> See Directory Catalogue on Readjustment of Industrial Structure Adjustment (Version 2005), VIII.7.

<sup>(21)</sup> See Development Planning of Non-ferrous Metals Industry (for 2016 to 2020), p 1. And 34.

- (97) The “Notice of Guidelines on Accelerating the Adjustment of Aluminium Industry Structure (2006)” indicates that, “Aluminium is an important raw material for the development of the national economy.”<sup>(22)</sup> This document indicates targeted financial support for the aluminium sector: “According to the national macro-control, industrial policy and credit requirements, the financial institutions shall conduct reasonable allocation of credit funds. For alumina enterprises and electrolytic aluminium enterprises that meet the national industrial policies, market access conditions and credit principles, it is required to continue to give credit support; for enterprises non-compliant with national industrial policy and market access conditions, with backward technology and listed in prohibited items or eliminated, they shall not be provided with any form of credit support.”<sup>(23)</sup>
- (98) The China High-Tech Products Catalogue issued by the Ministry of Science and Technology, the Ministry of Foreign Trade and the General Administration of Customs lists 1 900 high-tech products in categories, which are targeted for preferential export policies provided by the government. One of the categories is the so-called “New materials” category, which includes ACF<sup>(24)</sup>.
- (99) By being an encouraged industry in the Made in China 2025 strategy, the ACF industry is eligible to benefit from considerable State funding. A number of funds had been created to support the Made in China 2025 initiative<sup>(25)</sup> and hence the ACF industry<sup>(26)</sup>.
- (100) Furthermore, The Made in China 2025 Roadmap<sup>(27)</sup> gives 10 strategic sectors, which are the key industries for the GOC. It includes in Sector 9 ‘New materials’ and spells out the objectives to “actively develop special new materials for both military and civilian use, speed up two-way transfer and transformation of technologies and promote integrated military and civilian development of new material industry as well as accelerate the upgrading of basic materials”<sup>(28)</sup>. ACF as part of new materials fall under the development priorities of this sector. The new materials thus benefits from the advantages stemming from the support mechanisms listed in the document, including, among others, financial support policies, fiscal and taxation policy, and State council oversight and support.
- (101) The approach of the GOC to define encouraged industries and products in catalogues in order to allocate resources accordingly, based on their strategic or political importance as attributed by the GOC, and to implement and supervise the plans at each administrative level can be further observed by examining the Catalogue of Strategic and Emerging Products and Services of the National Development and Reform Commission (‘NDRC’) from 2016<sup>(29)</sup>. ACF is included under new materials.
- (102) Decision No 40, Chapter III refers to ‘The Guiding Catalogue for Industry Restructuring’ which is composed of three kinds of contents, namely encouraged project contents, limited projects content and eliminated projects content. According to Article XVII of the Decision, if “the investment project belongs to the encouragement content it shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles; the self-using equipment imported in the total amount of investment, with the exception of commodities in the Non-exempt Imported Commodities Content of Domestic Invested Projects (amended in 2000) issued by the Ministry of Finance, can be exempt from import duty and import links value-added tax, unless there are new regulations on the non-exempt investment projects content. Other favorite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations”.
- (103) Consequently, Decision No 40 read together with the Guiding Catalogue for Industry Restructuring provides for specific treatment of certain projects within certain encouraged industries.

<sup>(22)</sup> See Notice of Guidelines Accelerating the Adjustment of Aluminum Industry Structure, p. 1.

<sup>(23)</sup> See Notice of Guidelines Accelerating the Adjustment of Aluminum Industry Structure, p. 4.

<sup>(24)</sup> See Catalogue of high and new technology products (2006).

<sup>(25)</sup> See US-China Economic and Security Review Commission: The 13th Five-Year Plan, page 12.

<sup>(26)</sup> [https://www.ndrc.gov.cn/fzggw/jgsj/gjss/sjdt/201806/t20180612\\_1154987.html?code=&state=123](https://www.ndrc.gov.cn/fzggw/jgsj/gjss/sjdt/201806/t20180612_1154987.html?code=&state=123), last accessed on 21 September 2021.

<sup>(27)</sup> <https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf>, last accessed on 28 June 2021.

<sup>(28)</sup> Notice of the State Council on Promulgating “Made in China 2025” Plan, Sector 9 New materials.

<sup>(29)</sup> [https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/t20170204\\_961174.html?code=&state=123](https://www.ndrc.gov.cn/xxgk/zcfb/gg/201702/t20170204_961174.html?code=&state=123), last accessed on 21 September 2021.

- (104) Considering the above-mentioned plans and programmes, the ACF industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective. On the basis of the policy documents referred to in this section, the Commission concluded that the GOC intervenes in the ACF industry to implement the related policies and interferes with the free play of market forces in the ACF sector, notably by promoting and supporting the sector through various means.
- (105) Following final disclosure, the GOC claimed that the documents mentioned above in this section do not provide basis for specific support or encouragement for ACF industry. According to the GOC, there is insufficient evidence to prove that ACF industry is an encouraged industry and the documents that refer to nonferrous metals, aluminium industry and/or new materials do not cover ACF.
- (106) The Commission disagreed. Firstly it maintains that it can be reasonably assumed that the description of products such as new materials, nonferrous metals and aluminium industry also covers aluminium foil. Second, some of the documents listed above, such as the “Nonferrous Metal Development Plan (2016-2020)” referred to in recital (96) and the China High-Tech Products Catalogue in recital (98) also explicitly mention aluminium foil as such. Third, the investigation established that the cooperating exporting producers had benefited from subsidies that are only eligible to encouraged industries as stipulated in the Decision No 40 and analysed in detail in relevant sections below. The Commission therefore rejected the claims of the GOC.

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

- (107) Following final disclosure, the GOC made some general remarks concerning the Commission’s decision to apply the provisions of Article 28(1) of the basic Regulation with regard to preferential lending, export credit insurance, and input materials.
- (108) The GOC claimed that all of the Commission’s requests for information to which the GOC could not provide responses, were unreasonable, since these requests assumed the existence of legal powers which the GOC did not possess.
- (109) Furthermore, the GOC argued that the Commission did not properly evaluate the facts before it and did not provide a proper explanation of why the facts available reasonably replaced any necessary information that was missing.
- (110) As set out below in recital (118) the Commission was of the opinion that the GOC did have the legal power to obtain the requested information, as shareholder or responsible authority of the entities for which the Commission requested the information. The Commission did set out in its communication to the GOC, repeated in sections 3.2.1 to 3.2.3 below, why it had to rely on facts available. The Commission considered publicly available information to be a reasonable replacement for the information that was not provided by the GOC. The Commission therefore rejected the claims of the GOC.

#### 3.2.1. *Application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending*

- (111) For administrative convenience, the Commission requested the GOC to forward specific questionnaires to any financial institution that provided loans or export credits to the sampled companies.
- (112) At first, only a reply from EXIM bank and Sinosure was received. The GOC did not respond to the Commission’s request to provide questionnaires to all financial institutions that provided loans or export credits to the sampled companies. In the deficiency letter, the Commission therefore repeated its request with regard to the financial institutions with a view to maximising their engagement in the investigation by providing the necessary information for the Commission to make findings on the existence and extent of the alleged subsidisation.

- (113) Following the deficiency letter, the GOC indicated that it was not authorized to request information from commercial banks. The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the CBIRC.
- (114) In the end, the Commission only received information on corporate structure, governance and ownership from EXIM bank but not from any of the other financial institutions, which had provided loans to the sampled companies. Moreover, the Commission did not receive any verifiable company-specific information from any of the banks or financial institutions.
- (115) Since it has received no information in relation to most of the banks that provided loans to the sampled companies, the Commission considers that it has not received crucial information relevant to this aspect of the investigation.
- (116) Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential lending.
- (117) In reply, the GOC objected to the application of Article 28(1) of the basic Regulation. It argued that the GOC is not obliged to provide the requested information, that questions should be asked directly to the entities concerned, and not to the GOC in its capacity as investor or shareholder, and that the requested information does not constitute necessary information.
- (118) The Commission agrees that answers should be received from the entities directly concerned. However, the Commission requested the GOC for administrative convenience to forward specific questionnaires to all relevant financial institutions, which it did not do. Furthermore, as mentioned in recital (113) above, the Commission maintained its position that as the regulatory body, the GOC is the authority to request answers to the specific questions from the financial institutions that provided financing to the sampled exporting producers.
- (119) Finally, the Commission considered the requested information to be crucial to assess the control of the GOC over the conduct of the financial institutions with respect to its lending policies and assessment of risk, where they provided loans to the ACF industry.
- (120) The Commission thus concluded that it had to rely partially on facts available when examining the existence and the extent of the alleged subsidisation granted through preferential lending.

### 3.2.2. *Application of the provisions of Article 28(1) of the basic Regulation in relation to export credit insurance*

- (121) For administrative convenience, the Commission requested the GOC to forward a specific questionnaire to Sinasure.
- (122) Although a questionnaire reply was received, Sinasure failed to give the supporting documentation requested concerning Sinasure's corporate governance, such as its Articles of Association. Furthermore, no specific information about the export credit insurance provided to the ACF industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business were received from the GOC or Sinasure.
- (123) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through export credit insurance.

- (124) In its reply, and following final disclosure, the GOC maintained its position that Sinasure did not provide subsidies specific to the ACF industry and that it follows market-oriented principle to carry out relevant insurance business and has no specific preferential treatment concerning the ACF industry. In addition, export credit insurance was not included in the complaint, therefore the information requested was not necessary or crucial for the Commission's determinations.
- (125) As mentioned in recital (8) above, during the investigation, the Commission has the discretion to investigate all information that is relevant to the alleged subsidies and is not limited to the information contained in the complaint. The Commission furthermore notes that more broadly, schemes related to preferential financing and to direct transfer of funds, which encompass also export credit insurance, were included in the complaint and in the Notice of Initiation. The Commission also considered that the information that the GOC provided with regard to Sinasure was incomplete and did not allow the Commission to draw conclusions on crucial parts of the investigation regarding export credit insurance, specifically whether Sinasure is a public body and whether the premiums charged to the sampled companies were market-based. This claim was thus rejected.
- (126) The Commission thus concluded that it had to rely partially on facts available for its findings concerning export credit insurance.

### 3.2.3. *Application of the provisions of Article 28(1) of the basic Regulation in relation to input materials*

- (127) The Commission requested the GOC to forward a specific questionnaire to the top 10 producers and distributors of the input materials used in the production of ACF, as well as to any other suppliers of the materials in question, which have provided inputs to the sampled companies. In its reply to the questionnaire, the GOC claimed that it did not have control over the input materials suppliers to provide the confidential information requested in the questionnaire, and that it would be an unreasonable burden for the GOC to coordinate the process with a very significant number of input materials suppliers of the sampled companies.
- (128) The GOC did not provide an overview with the names and the ownership structure of Chinese suppliers of input materials under investigation, claiming that this was confidential information. Furthermore, the GOC failed to provide detailed information on most of the characteristics of the domestic market in China of input materials for ACF, among which: the share of SOE in the domestic production and consumption, the size of the domestic market, the State's and/or SOEs' pricing policies, actual prices of input materials in the domestic market, and statistics.
- (129) Since the Commission received no information from the GOC concerning all elements listed above, among which the domestic market structure, price-setting mechanisms and prices, and shareholding of companies, the Commission considered that it had not received crucial information relevant to the investigation.
- (130) The Commission thus concluded that it had to rely partially on facts available for its findings concerning input materials.

### 3.2.4. *Application of the provisions of Article 28(1) of the basic Regulation concerning Yongxin*

- (131) According to the subsidy questionnaire, related companies providing inputs and assets for the production process of the sampled exporting producers are required to provide a reply to sections A and E of the questionnaire. However, Yongxin, a related input supplier of the sampled exporting producer Xiamen Xiashun, initially did not provide such a reply. Xiamen Xiashun stated that due to the nature of the relationship, it had no way to compel Yongxin to reply to a questionnaire and that the lack of cooperation by Yongxin should not have any impact on the present investigation.

- (132) The Commission noted that Xiamen Xiashun and Yongxin had set up a joint venture company, Yongshun, due to which these companies were related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447<sup>(30)</sup>. Furthermore, the joint venture company Yongshun was an important provider of raw materials for the production of ACF by Xiamen Xiashun. Consequently, it should submit a subsidy questionnaire reply, as per instructions of the questionnaire and the deficiency letter of 19 February 2021.
- (133) Concerning the lack of impact on the investigation, the Commission noted numerous intercompany transactions between Yongxin and Yongshun, relating to land, raw materials and financing. The Commission thus considered that in the absence of a reply from Yongxin, it was impossible to determine the full extent of the subsidies received by the group.
- (134) Therefore, on 15 March 2021 the Commission informed Xiamen Xiashun that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through Yongxin. In response to the Commission's letter, Xiamen Xiashun requested a hearing with the Hearing Officer on 23 March 2021. The Hearing Officer suggested that Xiamen Xiashun make a further effort with Yongxin to provide the requested information. Finally, a reply to the Commission's specific questions was received from Yongxin on 7 May 2021, and the data received were verified during a remote cross check on 2 June 2021.

#### 3.2.5. *Application of the provisions of Article 28(1) of the basic Regulation concerning Nanshan Group*

- (135) According to the subsidy questionnaire, the sampled companies, as well as their related companies, were requested to provide data and supporting documentation as regards purchases of the LURs, including the LUR certificates and purchase contracts of the original transactions with the Land Bureau, specifying the conditions under which the LURs were received. However, the companies in the Nanshan Group had not provided the requested documentation, making it impossible for the Commission to verify the conditions, including the purchase price, of the LURs.
- (136) Also, some of the companies in the Nanshan Group had not filled in the requested tables concerning imported and domestic machinery and therefore not provided the requested information concerning purchases of imported and domestic machinery and the related VAT exemptions and import tariff rebates for the use of imported equipment and technology.
- (137) Finally, the cooperation by the parent company of the Nanshan Group, namely Nanshan Group Co., Ltd., was limited in terms of (i) availability of its staff to reply to the questions of the Commission and (ii) the documents provided. For example, documentation concerning purchase of land, attribution of a number of grants and loans was not provided at all, or it was incomplete. This limitation significantly impeded the investigation, notably since many of the companies within the Nanshan Group had received their LURs and financing through Nanshan Group Co., Ltd.
- (138) Therefore, by letter of 3 September 2021, the Commission informed Nanshan Group that it might have to resort to the use of facts available in accordance with Article 28(1) of the basic Regulation with respect to the missing information as mentioned in recitals (135) to (137) above.
- (139) In their comments to the abovementioned Article 28 letter, the Nanshan Group made several claims as described below.

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<sup>(30)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

- (140) As regards the LURs, the Nanshan Group claimed that, as the other companies of the group reported their purchases from Nanshan Group Co. Ltd., the price of these intra-company transactions should be used to determine the purchase price of the LURs purchased by Nanshan Group Co. Ltd. from third parties. It also claimed that the prices of intra-company land transfers were established based on the land value provided in the Land Appraisal Report made by an independent evaluator. The Nanshan Group also claimed that, alternatively, other land use transactions by other group companies could be used as proxy in order to determine the price of the transactions of Nanshan Group Co. Ltd.
- (141) As regards the requested information concerning purchases of imported and domestic machinery and the related VAT exemptions and import tariff rebates for the use of imported equipment and technology, the Nanshan Group claimed that it had provided fixed assets register for most of the companies. It further claimed that the VAT exemption programme was terminated already in 2009 and that any benefit potentially received in this context would be fully depreciated before the start of the investigation period.
- (142) As regards the fact that the cooperation by Nanshan Group Co., Ltd., was only limited, the Nanshan Group argued that it had acted to the best of its ability and that the lack of cooperation was due to the timing of the RCC and other challenging conditions. The Nanshan Group claimed that the Commission should not discard all the information provided by Nanshan Group Co., Ltd., and that the Commission should complement this data by data from comparable land and loan transactions by the company or other companies of the group. The Commission disagreed with the comments concerning the LURs. It is the price of the original transaction with the Land Bureau which determines the amount of subsidisation for the group, not the intra-company transfers of land, and in the absence of the necessary documentation from the company which was party to the original purchase transaction, i. e. Nanshan Group Co., Ltd., it was impossible to determine the full extent of the subsidies received by the group..
- (143) As regards the requested information concerning purchases of imported and domestic machinery and the related VAT exemptions and import tariff rebates, the Commission disagreed with the comments made by Nanshan Group. First, although Nanshan Group provided a fixed assets register for some of the group companies, it failed to provide comprehensive data about the VAT exemptions and import tariff rebates that the Commission had requested. Second, the Commission identified exemptions of both VAT and import duty during the investigation period in the sampled companies. These included exemptions for equipment purchased in previous years, but for which the benefit was amortized over the lifespan of that equipment and was thus partially allocated to the investigation period. Thus, the Commission established that the sampled companies still availed itself of benefits under this programme.
- (144) Finally, the claim that other transactions by Nanshan Group Co., Ltd., or other companies of the Nanshan Group, could be used as a proxy for transactions concerning LURs or equipment where no sufficient data was provided was unsubstantiated, since none of the companies in the group provided the complete information requested.

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

- (145) On the basis of the information contained in the complaint, the Notice of Initiation and the replies to the Commission's questionnaires, the following subsidies by the GOC were investigated:
- (a) Provision of preferential financing, direct credits and funding through equity, quasi-equity and other capital instruments (e.g. policy loans, credit lines, bank acceptance drafts, export financing)
  - (b) Preferential export credit insurance
  - (c) Grant Programmes
    - Technology, innovation, research and development grants and funds;
    - Industrial transformation and upgrading funds;
    - Ad hoc subsidies provided by municipal/provincial authorities.

- (d) Revenue foregone through Tax Exemption and Reduction programmes
- Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises;
  - Preferential pre-tax deduction of research and development expenses;
  - Accelerated depreciation of instruments and equipment used by High-Tech enterprises for High-Tech development and production;
  - Dividend exemption between qualified resident enterprises;
  - Exemption or waiving of real estate and land use taxes
  - VAT exemptions and import tariff rebates for the use of imported equipment and technology
  - VAT Rebates on Domestically-Produced Equipment.
- (e) Government provision of goods and services for less than adequate remuneration ('LTAR')
- Government provision of land use rights for less than adequate remuneration;
  - Provision of power for less than adequate remuneration;
  - Government provision of input materials (aluminium and steam coal) for less than adequate remuneration.

### 3.4. Preferential financing

#### 3.4.1. Financial institutions providing preferential financing

- (146) According to the information provided by the three sampled groups of exporting producers, 48 financial institutions located within the PRC had provided financing to them. Of these 48 financial institutions, 47 were State-owned. The remaining financial institutions were either privately owned or the Commission was not able to determine whether they were State-owned or privately owned. However, only one State-owned bank filled in the specific questionnaire, despite a request to the GOC that covered all financial institutions which had provided loans to the sampled companies.

##### 3.4.1.1. State-owned financial institutions acting as public bodies

- (147) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows <sup>(31)</sup>: "What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority."

<sup>(31)</sup> WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US – Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 – 4.10, 4.17 – 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

- (148) The Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way. For this purpose, the Commission had to partially rely on facts available due to the refusal of the GOC and the State-owned banks to provide evidence on the decision making process that had led to the preferential lending.
- (149) In order to carry out this analysis, the Commission first examined information from the State-owned bank that had filled in the specific questionnaire.

#### 3.4.1.2. Cooperating State-owned financial institutions

- (150) Only one State-owned bank, namely EXIM bank, provided a questionnaire reply.

#### 3.4.1.3. Ownership, formal indicia and exercise of control by the GOC

- (151) Based on the information received in the questionnaire reply, the Commission established that the GOC held, either directly or indirectly, more than 50 % of the shares in this financial institution.
- (152) Concerning the formal indicia of government control of the cooperating State-owned bank, the Commission qualified it as a 'key State-owned financial institution'. In particular, the notice 'Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions' <sup>(32)</sup> states that: "*The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors*".
- (153) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating State-owned bank's business activities.
- (154) In addition to these generally applicable indicia, the Commission found the following with respect to EXIM bank. EXIM bank was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM bank. According to its Articles of Association, the State directly nominates the management of EXIM bank. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' and other laws and regulations, and it is responsible to the State Council.
- (155) The Articles of Association also mention that the Party Committee of EXIM bank plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM bank. The Party's leadership is integrated into all aspects of corporate governance.
- (156) The Articles of Association also state that EXIM bank is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State's foreign trade and "going out" policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.

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<sup>(32)</sup> Decree of the State Council of the People's Republic of China (No 283).

- (157) Furthermore, in its annual report of 2019, EXIM bank stated that it fully implemented all major policies and decisions made by the CPC Central Committee and the State Council.
- (158) The Commission also found that State-owned financial institutions, including EXIM bank, have changed their Articles of Associations in 2017 to increase the role of the China Communist Party (‘CCP’) at the highest decision-making level of the banks <sup>(33)</sup>.
- (159) These new Articles of Association stipulate that:
- the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;
  - the CCP’s role is to ensure and supervise the Bank’s implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and
  - the opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.
- (160) This evidence shows that the GOC exercised meaningful control over the conduct of these institutions.
- (161) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of EXIM bank with respect to its lending policies and assessment of risk, where they provided loans to the ACF industry. The following regulatory documents have been taken into account in this respect:
- Article 34 of the Law of the PRC on Commercial Banks (‘Bank law’);
  - Article 15 of the General Rules on Loans (implemented by the People’s Bank of China);
  - Decision No 40;
  - Implementing Measures of the China Banking and Insurance Regulatory Commission (‘CBIRC’) for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1);
  - Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4); and
  - Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3)
  - Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022) (CBIRC, 28 August 2020) <sup>(34)</sup>
  - Notice on the Commercial banks performance evaluation method, (CBIRC, 15 December 2020)
  - Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43) <sup>(35)</sup>.
- (162) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC’s industrial policy objectives when taking financial decisions, for the following reasons.
- (163) With respect to EXIM bank, its public policy mandate is established in the notice of establishing EXIM bank as well as in its Articles of Association.

<sup>(33)</sup> <https://www.reuters.com/article/us-china-banks-party-idUSKBN1JN0XN>, last accessed on 13 August 2021.

<sup>(34)</sup> Official policy document of the China Banking and Insurance Regulatory Commission (‘CBIRC’) of 28 August 2020: Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022). <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 3 April 2021)

<sup>(35)</sup> China Banking and Insurance Regulatory Commission (cbirc.gov.cn), last accessed 21 October 2021

- (164) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that “commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State”. Although Article 4 of the Bank Law states that, “commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property”, the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.
- (165) In addition, Article 15 of the General Rules on Loans provides that “In accordance with the State’s policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas”.
- (166) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to ‘encouraged’ projects. As already explained in Section 3.1 and more specifically in recital (94), projects of the ACF industry belong to the ‘encouraged’ category. Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations.
- (167) The Commission also found that the CBIRC has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as <sup>(36)</sup>:
- approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the CBIRC is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and
  - a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organizational form, etc.
- (168) The Bank law is legally binding. The mandatory nature of the Five Year Plans and of Decision No 40 has been established above in Section 3.1. The mandatory nature of the CBIRC regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses which they contain.
- (169) Decision No 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of ‘other preferential policies on the encouraged projects’. On this basis, banks are required to provide credit support to the ACF industry.
- (170) Furthermore, even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. In fact, one of the State’s three overarching goals in relation to banking governance is now to strengthen the Party’s leadership in the banking and insurance sector, including in relation to operational and management issues in companies. In this respect, the Three Year Action Plan of the CBIRC for the years 2020 to 2022 instructs to ‘further implement the spirit embodied in General Secretary Xi Jinping’s keynote speech on advancing the

<sup>(36)</sup> According to the Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1), the Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4) and the Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3).

*reform of corporate governance of the financial sector*. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: *'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.'*

- (171) Also, the GOC has recently stipulated that even shareholders of financial institutions need to facilitate the exercise of the GOCs control via the institution's corporate governance framework, as follows: *'Large shareholders of bank and insurance institutions shall support bank and insurance institutions in establishing an independent and sound corporate governance structure with effective checks and balances, and encourage and support banks and insurance institutions to ensure the organic integration of Party leadership with corporate governance'* <sup>(37)</sup>.
- (172) Finally, the performance evaluation criteria of the CBIRC for commercial banks now, notably, take into account how financial institutions *'serve the national development objectives and the real economy'*, and in particular how they *'serve strategic and emerging industries'* <sup>(38)</sup>.
- (173) Therefore, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors of the cooperating State-owned bank, who are appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on this normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the ACF industry.
- (174) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete loans provided to the sampled exporting producers. In its questionnaire reply, the cooperating State-owned bank explained that it uses sophisticated credit risk assessment policies and models (rating system) when granting the loans at issue. EXIM bank further explained that there is no policy difference regarding the industry in which the borrower operates, the credit situation and capital status, etc.; nevertheless, such factors impact the credit rating assessment and the cost of the risk of the borrower. It may refer to relevant plans and policies in providing loans; however, in determining individual loan projects it applies a market-based assessment.
- (175) However, the cooperating State-owned bank refused to provide concrete examples of its credit risk assessment relating to the sampled companies on the ground that the information requested is of internal nature and contains business confidential information that is not permitted to be disclosed even though the Commission had a written consent from the sampled companies waiving their confidentiality rights.
- (176) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (161) to (169), in combination with the behaviour of the cooperating State-owned bank regarding loans provided to the sampled companies. The investigation revealed that this behaviour contrasted with the bank's official stance, as in practice the bank was not acting based on thorough market-based risk assessments.
- (177) In the course of the investigation, the Commission found that loans were provided to the three sampled groups of exporting producers at interest rates below or close to the People's Bank of China ('PBOC') Loan Benchmark Rate and below or close to the Loan Prime Rate as announced by the National Interbank Funding Center ('NIFC') that was introduced on 20 August 2019 <sup>(39)</sup>, regardless of the companies' financial and credit risk situation. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the sampled exporting producers.

<sup>(37)</sup> Article 13 of the Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43)

<sup>(38)</sup> See CBIRC's Notice on the Commercial banks performance evaluation method, issued on 15 December 2020. [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (last viewed on 12 April 2021)

<sup>(39)</sup> <http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125440/3876551/de24575c/index2.html>, last accessed on 3 August 2021.

- (178) The Commission therefore concluded that the GOC exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the ACF industry.
- (179) Following final disclosure, the GOC claimed that the Commission did not demonstrate that the cooperating State-owned bank, namely EXIM bank, is a public body and that the GOC exercised meaningful control over EXIM bank. The GOC claimed that the formal links are not sufficient to demonstrate meaningful control by the government and the existence of a public body. Also, the GOC claimed that the Commission did not demonstrate the lack of independence of the management of EXIM bank by arguing that the GOC exercises control over EXIM bank only in supervising the appointment of the management of the bank and its board. Further GOC claimed that the Commission relied excessively on Article 34 of the Chinese Banking law, which it considers to be only a guiding document without specificity to deduct that EXIM or other financial institutions would be vested with public authority.
- (180) The GOC further claimed it has not exercised meaningful control over EXIM bank or has been provided with governmental authority. GOC claimed that although Article 34 of the Chinese Bank Law requires that commercial banks act “under the guidance of the industrial policies” of the GOC, this provision should be considered a guiding principle for Chinese banks. Furthermore, the GOC claimed that also Article 15 of the General Rules on loans as well as Decision No 40 are not mandatory but only of a guidance nature. Finally, the GOC disagreed with the assertion that EXIM bank “provided loans at below or close to relevant benchmark rates” and claimed that the Commission has not provided the data to support this statement.
- (181) The Commission disagreed with the allegations of the GOC. The Commission did not rely only on “formal links” in order to qualify the cooperating State-owned EXIM bank as a public body but also demonstrated that the GOC exercised meaningful control over the bank for the following reasons.
- (182) As explained in recital (168) above, the Commission considered that the Chinese Bank law and Decision No 40 are of a mandatory nature. Furthermore, the findings of this investigation as well as the Commission’s findings in previous investigations concerning the same subsidy programme did not support the claim that banks do not take government policy and plans into account when making lending decisions. For example, the Commission found that the exporting producers benefited from preferential lending at below-market interest rates.
- (183) The investigation showed that Article 15 of the General Rules on Loans was actually applied in practice, and that Articles 4, 5 and 41 of the Bank law were applicable subject to Article 34 of the Bank Law, i.e. where the State establishes a public policy the banks implement it and follow State instructions. In fact, while Articles 4 and 5 of the Bank Law are part of Chapter I, which sets the general provisions, Article 34 is part of Chapter IV, which establishes the basic rules governing loans. The wording of Article 34: “*commercial banks carry out their loan business upon the needs of national economy and the social development and under the guidance of the State industrial policies*”, demonstrates that this provision is not of a guiding nature but has rather a mandatory character and provides a clear instruction to banks to take into account the State industrial policies when carrying out their loan business. The Commission also noted that the Decision No 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of “other preferential policies on the encouraged projects”. While Article 17 of the same Decision requires banks to respect credit principles, the Commission could not establish during the investigation that this was done in practice. To the contrary, loans were provided to the exporting producers irrespective of their financial situation and creditworthiness.

- (184) Moreover, as concerns specifically EXIM Bank, it is undisputable that this is a policy bank directly pursuing government policies by its own admission. As explained on its website <sup>(40)</sup>, EXIM is a State-funded and State-owned policy bank directly under the leadership of the State Council and dedicated to supporting, inter alia, China's foreign trade and implementing the 'going global' strategy. The Board of Directors <sup>(41)</sup>, the Board of Supervisors <sup>(42)</sup>, and top executives <sup>(43)</sup> of EXIM Bank contain members with high ranking in the CCP and/or representing a Ministry.
- (185) On that basis, the Commission maintains its position that the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the ACF industry as described in the recital (173) above. This is exemplified in recital (170) above, which clearly indicates that the GOC intervenes in all major decisions taken by the bank's management. This shows that the normative framework did not leave any margin of manoeuvre to the managers and supervisors of the bank as to whether to follow this framework or not with respect to the sampled exporting producers, thus putting the management of that bank in a position of dependence.
- (186) Finally, as mentioned in recital (177), in the course of the investigation, the Commission found that loans were provided to the three sampled groups of exporting producers at interest rates below or close to the People's Bank of China ('PBOC') Loan Benchmark Rate and below or close to the Loan Prime Rate, regardless of the companies' financial and credit risk situation. Therefore, considering the risk profile of the sampled exporting producers described in Section 3.4.2.3 below and that, according to the risk analysis performed by the Commission, the exporting producers should have received a lower credit rating and should thus have paid interest rates significantly above the risk-free rate, the Commission concluded that the loans at issue were provided below market rates. Due to the sensitive nature of the data the detailed information of these loans can be disclosed to only the respective exporting producers.
- (187) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the ACF industry.

#### 3.4.1.4. Conclusion on cooperating State-owned financial institutions

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

#### 3.4.1.5. Non-cooperating State-owned financial institutions

- (189) As set out in recital (146) above, none of the other State-owned financial institutions, which provided loans to the sampled companies, replied to the specific questionnaire. The GOC provided some information on the ownership of a number of banks, but not on their governance structure, risk assessment or examples relating to specific loans to the ACF industry.
- (190) Therefore, in line with the conclusions reached in Section 3.2.1, the Commission decided to use facts available to determine whether those State-owned financial institutions qualify as public bodies.

<sup>(40)</sup> See <http://english.eximbank.gov.cn/Profile/AboutTB/Introduction/> as last checked on 30 November 2021.

<sup>(41)</sup> See <http://english.eximbank.gov.cn/Profile/Organization/BoardOD/#heightXwyL> as last checked on 30 November 2021.

<sup>(42)</sup> See <http://english.eximbank.gov.cn/Profile/Organization/BoardOS/#heightXwyL> as last checked on 30 November 2021, also confirming that the board of supervisors reports directly to the State Council.

<sup>(43)</sup> See <http://english.eximbank.gov.cn/Profile/Organization/ExecutiveM/#heightXwyL> as last checked on 30 November 2021.

(191) In previous investigations <sup>(44)</sup>, the Commission established that the following banks, which had provided loans to the sampled groups of exporting producers in the investigation at hand, were partially or fully owned by the State itself or by State-held legal persons: Agricultural Bank of China, Bank of Beijing, Bank of China, Bank of Communications, Bank of Jiangsu, Bank of Kunlun, Bank of Nanjing, Bank of Ningbo, Bank of Qingdao, Bank of Shanghai, Bank of Tianjin, Bank of Yantai, CCB, China Bohai Bank, China CITIC Bank, China Construction Bank, China Development Bank, China Everbright Bank, China Guangfa Bank, China Industrial Bank, China Industrial International Trust Limited, China Merchants Bank, China Merchants Bank Financial Leasing Co., Ltd., China Minsheng Bank, Chongqing Rural Commercial Bank, Daye Trust Co., Ltd., Dongying Bank, EverGrowing Bank, Fudian Bank, Guangdong Development Bank, Guosen Securities Co., Hang Fung Bank, Ltd., Hangzhou Bank, Hankou Bank, Hengfeng Bank Co., Ltd., Huaxia Bank, Hubei Bank, Industrial and Commercial Bank of China (ICBC), Minsheng Securities Co.,Ltd., Postal Savings Bank, Qilu Bank, Shanghai Pudong Development Bank, Shanghai Rural Commercial Bank, Shenyang Rural Commercial Bank, Sinotruk Finance Co. Ltd. and Zheshang Bank. Since no information has been provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.

(192) Using publicly available information, such as their websites, annual reports, information available in bank directories or on the internet, the Commission found that the following financial institutions that had provided loans to the three sampled groups of exporting producers were partially or fully owned by the State itself or by State-held legal persons:

Bank of Yantai	6,4 % of the bank's shares are state owned.
Huishang Bank	32,45 % are state-owned (Anhui province energy group, Anhui province Guoyuan Financial Group etc.).
Nanyang Commercial Bank	On 30 May 2016, the bank became a wholly-owned subsidiary of China Cinda Group, which is fully owned by the GOC.

(193) The Commission further established, in the absence of specific information from the financial institutions at issue indicating otherwise, the GOC's ownership and control based on formal indicia for the same reasons as set out above in section 3.4.1.3. In particular, based on facts available, managers and supervisors in the non-cooperating State-owned financial institutions would appear to be appointed by the GOC and be accountable to the GOC in the same manner as in the cooperating State-owned bank.

(194) With regard to the exercise of control in a meaningful manner, the Commission considered that the findings concerning the cooperating State-owned financial institution can be considered representative also for the non-cooperating State-owned financial institutions. The normative framework analysed in section 3.4.1.3 above applies to them in an identical manner. Absent any indication to the contrary, based on facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the cooperating State-owned bank.

(195) Following final disclosure the GOC claimed the insufficiency of the Commission's arguments concluding that all State-owned financial institutions also constituted public bodies. The GOC argued that the Commission relied on previous anti-subsidy cases and its own conclusions with respect to the State-owned financial institutions and lacked to perform a case-by-case analysis giving particular relevance to the specific circumstances of each case and with respect to each of the financial institutions. The GOC further argued that the Commission did not provide sufficient proof to determine the existence of meaningful control over the State-owned financial institutions, and relied merely on formal links constituting of ownership and control.

<sup>(44)</sup> See the cases cited in footnote 5 before.

(196) In this respect, the Commission recalled that in the absence of cooperation from the other State-owned banks than EXIM, the Commission had to rely on facts available. As already mentioned in its questionnaires, and in the absence of any new information provided by the GOC, the Commission concluded that the information from previous investigations, combined with formal indicia of control and additional findings of the investigation itself regarding EXIM bank and regarding the actual conduct of the banks towards the exporting producers constituted the best facts available in this case. In any event, the normative framework analysed in section 3.4.1.3 above applies to all banks in an identical manner. Furthermore, the GOC failed to put forward any evidence or argument to rebut the Commission's findings concerning the fact that the other State-owned banks which provided loans to the sampled companies are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. The Commission thus maintained its position.

#### 3.4.1.6. Conclusion on all State-owned financial institutions

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

(198) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.5.1.2 below. Thus, their conduct would be attributed to the GOC in any event.

#### 3.4.1.7. Private financial institutions entrusted or directed by the State

(199) Overseas-Chinese Banking Corporation, Limited was considered to be privately owned, based on the findings established in previous anti-subsidy investigations<sup>(45)</sup> and complemented by publicly available information. The Commission analysed whether this financial institution had been entrusted or directed by the GOC to grant subsidies to the ACF sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(200) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body<sup>(46)</sup>. In both cases, the government uses a private body as a proxy to make the financial contribution, and "*in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement*"<sup>(47)</sup>. At the same time, Article 3(1)(a)(iv) does not allow Members to impose countervailing measures to products "*whenever the government is merely exercising its general regulatory powers*"<sup>(48)</sup> or where government intervention "*may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market*"<sup>(49)</sup>. Rather, entrustment or direction implies "*a more active role of the government than mere acts of encouragement*"<sup>(50)</sup>.

(201) The Commission noted that the normative framework concerning the industry mentioned above in recitals (161) to (168) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBIRC cover all Chinese-funded and foreign-invested banks under the management of the CBIRC.

<sup>(45)</sup> See the cases cited in footnote 5 before.

<sup>(46)</sup> WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMs) from Korea), Appellate Body Report of 21 February 2005, para. 116.

<sup>(47)</sup> Appellate Body Report, DS 296, para. 116.

<sup>(48)</sup> Appellate Body Report, DS 296, para. 115.

<sup>(49)</sup> Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.

<sup>(50)</sup> Appellate Body Report, DS 296, para. 115.

- (202) Furthermore, the majority of loan contracts with private financial institutions had similar conditions as the contracts with State-owned banks, and the lending rates provided by the private financial institutions were similar to the rates provided by the State-owned financial institutions.
- (203) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the ACF industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBIRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the ACF industry.
- (204) Following final disclosure, the GOC claimed that the Commission failed to demonstrate entrustment or direction by the GOC, in particular a link between the government and the specific conduct of all financial institutions. The GOC argues that exercising its general regulatory powers by giving a mere guidance or encouragement are not sufficient to show entrustment and direction. In addition, the GOC claimed that the Commission failed to its duty to conduct such an analysis for each entity.
- (205) The Commission disagreed with this view. Since the normative framework explained in recitals (161) to (173), which applies to all banks in China i.e. whether publicly-owned or private, is legally binding as further confirmed in recitals (182) and (183), it does not amount to a mere encouragement or guidance by the government. The Commission already established in recital (169) above that Decision No 40 instructs all financial institutions to provide credit support only to encouraged projects even though Article 17 of the same Decision also asks the bank to respect credit principles. Furthermore, the Commission established in recital (185) that the GOC relied on this normative framework in order to exercise control in a meaningful way over the financial institutions not leaving them any margin of manoeuvre as to whether to implement it or not. Therefore, there is a clear link between the GOC and the specific conduct of the private banks, which demonstrates entrustment and direction by the GOC.
- (206) In addition, the Commission recalled that in the absence of cooperation from the private banks, it had to rely on facts available. Since there was partial cooperation from only one State-owned bank, the Commission used the information available for this bank, which was proven to be a public body, and compared it with the lending conditions offered by the non-cooperating private banks. Moreover, the RCCs with the sampled companies did not reveal any significant differences between loan conditions or rates provided by the private financial institutions and those provided by State-owned financial institutions. The fact that there was an overlap in rates shows that the private banks also provided loans below market terms in compliance with the normative framework referred to above. Therefore, the GOC's claim that the Commission failed to its duty to conduct such an analysis for each entity is unfounded.
- (207) After final disclosure, the Nanshan Group also argued that since financial institutions varied their rates, conditions and types of products depending on the company to which they extended financing, this indicated that they are not being entrusted and directed by the State to offer specific or preferential lending conditions, but rather provide financing following market terms and the financial position of their customer.
- (208) The fact that the sampled companies benefitted from different types of loans during the investigation period with variances in respect of rates and other conditions, does not necessarily mean that these loans were received at market conditions. Indeed, as mentioned already in recital (177) above, the Commission found that loans were provided to the three sampled groups of exporting producers at interest rates below or close to the People's Bank of China ('PBOC') Loan Benchmark Rate and below or close to the Loan Prime Rate as announced by the National Interbank Funding Center ('NIFC') that was introduced on 20 August 2019 <sup>(51)</sup>, regardless of the companies' financial and credit risk situation. Hence, the loans were provided below market rates, and the claim is dismissed.

<sup>(51)</sup> <http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125440/3876551/de24575c/index2.html>, last accessed on 3 August 2021.

- (209) Consequently, the Commission confirmed its conclusion that, in so far as the ACF industry is concerned, all financial institutions, including private financial institutions, operating in China have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the ACF industry.

#### 3.4.1.8. Credit ratings

- (210) In previous anti-subsidy investigations, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund <sup>(52)</sup>, showing a discrepancy between international and Chinese credit ratings, combined with the findings of the investigation concerning the sampled companies. Indeed, according to the IMF, over 90 % of Chinese bonds are rated from AA to AAA by local rating agencies. This is not comparable to other markets, such as the Union or the USA. For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the high end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category <sup>(53)</sup>. According to the China bond market insight 2021 by Bloomberg <sup>(54)</sup>, five Chinese local rating agencies dominate the bond market: China Chengxin, Dagong, Lianhe, Shanghai Brilliance, and Golden credit rating, and around 90 % of the bonds are rated AAA by local rating agencies. However, many of the issuers have received a lower 'S&P' (Standard and Poor) global issuer rating of A and BBB <sup>(55)</sup>.
- (211) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas <sup>(56)</sup>.
- (212) The Commission also found further information to complement this analysis. First, the Commission determined that the State can exercise a certain influence over the credit rating market. According to the information provided by the GOC, during the investigation period, there were 12 domestic credit rating agencies active on China's bond market a majority of which are State-owned. In total, 60 % of all rated bonds in China had been rated by a State-owned ratings agency <sup>(57)</sup>.
- (213) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations <sup>(58)</sup>. The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. The Commission also found that during the investigation period, there were two foreign-owned and two Sino-foreign joint venture credit rating agencies operating on the Chinese market. However, these credit rating agencies follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained above.

<sup>(52)</sup> IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

<sup>(53)</sup> Livingston, M. Poon, W.P.H. and Zhou, L. (2017). Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry, in: *Journal of Banking & Finance*, p. 24.

<sup>(54)</sup> China bond market insight 2021, <https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet.pdf>, last accessed on 8 August 2021.

<sup>(55)</sup> China bond market insight 2021, Footnote 59, p. 31.

<sup>(56)</sup> Price, A.H., Brightbill T.C., DeFrancesco R.E., Claey's, S.J., Teslik, A. and Neelakantan, U. (2017). *China's broken promises: why it is not a market-economy*, Wiley Rein LLP, p. 68.

<sup>(57)</sup> Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A network Perspective on China's Corporate Debt Market*, Columbia Law and Economics Working Paper No 543, p. 20; Livingstone, *ibid*, p. 9

<sup>(58)</sup> See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No 50, 24 August 2007; Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd. and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No 547, 16 December 1997, and Announcement No 14 [2018] of the People's Bank of China and the China Securities Regulatory Commission on Issues Concerning the Provision of Bond Rating Services by Credit Rating Agencies on the Interbank Bond Market and the Stock Exchange Bond Market.

- (214) Finally, a 2017 study performed by the PBOC itself confirms the Commission's findings, stating in its conclusions that *"if the investment level of foreign bonds is set to international rating BBB-and above, then the domestic bond investment grade may be rated at AA-level and above, taking into account the difference between the average domestic rating and the international rating of 6 or more notches"* <sup>(59)</sup>.
- (215) In view of the situation described in recitals (210) to (214) above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. On this basis, even if some sampled companies were awarded a good credit rating by a Chinese rating agency, the Commission concluded that such ratings are not reliable. Those ratings were also distorted by the policy objectives to encourage key strategic industries, such as the ACF industry.
- (216) Following final disclosure, the GOC contested that the terms of loans and financing are always connected with credit ratings and claimed that more reliable, i.e. less favourable, credit ratings would not mean that the loan would be issued at higher interest rates. The GOC also disagreed with Commissions reference to PBOC Working Paper No 2017/5 mentioned in the recital (214) above, which confirmed the difference between the average domestic rating and the international ratings. The GOC argued that it is not a working paper issued by the PBOC, instead, it is an academic paper co-authored by a staff member of the PBOC, and thus does not represent the views of the PBOC.
- (217) Furthermore, according to the GOC, the paper tries to explain that there is a difference in notches regarding a Chinese company's credit rating between the domestic system and the international system, due to the fact that the former is based on the company's risk ranking among Chinese domestic companies, while the latter is based on the same company's risk ranking among all the companies of the world. Finally, the GOC argued that several Chinese companies had received higher credit ratings by international agencies.
- (218) The Commission noted first that the claim that difference in credit ratings would not impact the pricing of loans does not have any support in financial literature. Indeed, the basic rationale of credit ratings is to assist financial operators to correctly price the credit risk in their lending decisions. An absence of correlation between credit rating and the price (interest rate) of loans, would indeed indicate that the market is distorted and that the financial institutions are entrusted or directed to provide loans to the companies irrespective of their financial situation and creditworthiness.
- (219) Second, the fact that some companies received higher credit ratings by international agencies does not put into question the Commission's overall assessment as such. Indeed, as mentioned in recital (211) above, foreign rating agencies typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas.
- (220) Concerning the PBOC Working Paper No 2017/5, the Commission noted that it was found under the research section of the PBOC's website which indicates the following: *"Working Papers carry academic papers by the PBC staff. The views expressed in the papers are those of the authors and may not represent those of their organization. Reports and citations thereof should specify the source as "PBC working papers" <sup>(60)</sup>.*" Therefore, even though it may not represent as such the official view of the PBOC, it is correct to refer to it as a working paper of the PBOC. In addition, as these papers are released on the official website of the organization, one can reasonably assume that the PBOC at least considers that these papers meet the criteria for valid academic research.
- (221) The Commission also disagrees with the assumption that there is a difference in notches due to the fact that the domestic rating is based on a risk ranking among Chinese domestic companies, while the foreign rating is based on a risk ranking among all the companies of the world. Following this hypothesis, and in view of the fact that around 90 % of the bonds within China are rated AAA, this would lead to the conclusion that nearly all companies in China are ranked the same in terms of risk because they are all performing exceptionally well compared to each other, which seems highly unlikely in terms of economic reality.

<sup>(59)</sup> PBOC Working Paper No 2017/5, May 25, 2017, p. 28.

<sup>(60)</sup> Working\_Paper (pbc.gov.cn) (last accessed 28 November 2021)

- (222) In any event, the Commission noted that since none of the banks providing the loans to the exporting producers cooperated with the investigation, it could not verify whether and how the risk assessment and the credit rating is taken into account. Therefore, it had to rely on facts available, which confirmed that the interest rates for the loans provided were well below market rates and thus that these governmental policies and working paper did play a role in the setting of interest rates as not linked to the real underlying risk.
- (223) Finally, the Commission recalled that its assessment of appropriate credit rating is not based on a mechanistic approach but that the Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect their particularities, as described in recital (237).

#### 3.4.2. Preferential financing: loans

##### 3.4.2.1. Types of loans

###### (1) Short-term and long-term loans

- (224) The Commission established that companies in all three sampled groups used various short-term and long-term loans to finance their activities. These loans were mainly used for daily operations, working capital needs, for special projects, investments or to replace other loans. Each group also used short-term and long-term export credits.

###### (2) Loans with the specific purpose to replace other loans

- (225) In the course of the investigation, the Commission found that all sampled groups contracted loans with the specific purpose of replacing loans from other banks. The Commission established that with this practice some companies could rearrange their liabilities and obtain the funds without which they would not be able to meet their repayment obligations, evidencing therefore problems to repay debt.
- (226) Following final disclosure, the GOC claimed that revolving loans are not necessarily a sign of liquidity issues. It claimed that such operations are common by any commercial company, including those in the Union. GOC further claimed that there are various reasons for such refinancing and that there is nothing suggesting that companies making use of such operations would be unable to repay debt.
- (227) The Commission disagreed with the assessment made by the GOC. The Chinese authorities themselves consider revolving loans to be an additional factor of credit risk. As stated in the CBRC's 'Guidelines on risk-based loan classification', revolving loans should be reported at least as a 'concerned' loan<sup>(61)</sup>. A loan falling under this category means that even though a borrower can pay the principal and interest of the loan now, there are some factors, which may negatively affect the repayment thereof.
- (228) Revolving credit facilities do indeed exist in Europe, but their terms and conditions are very different from the Chinese revolving loans. Revolving credit facilities in the Union are basically credit lines, with a pre-determined maximum amount that can be withdrawn and repaid on several occasions during a pre-specified time period. In addition, such credit facilities entail an additional cost, be it a contractual margin on top of the usual short-term market rates, or a predetermined management fee.
- (229) On the other hand, the revolving loans found at the Chinese sampled companies did not have conditions different from other short-term loans. They were not labelled as being a credit line or a revolving credit facility and there were no extra fees or margins attached to it. At first sight, they appeared to be normal short-term loans. However, sometimes the purpose of the loan referred to 'repayment of loans'. In addition, when verifying the repayments of such loans during the RCCs, it became clear that the capital amount was actually being repaid by fresh loans received from the same bank for the same amount within a week before or after the maturity date of the initial loan. The Commission then extended its analysis to the other loans in the loan tables and found in most cases other instances with exactly the same characteristics. For all these reasons, the Commission maintained its position on revolving loans.

<sup>(61)</sup> Article X, point II of the CBRC's Guidelines on risk-based loan classification.

### 3.4.2.2. Specificity

- (230) As demonstrated in recitals (161) to (168), several legal documents, which specifically target companies in the sector, direct the financial institutions to provide loans at preferential rates to the ACF industry. These documents demonstrate that the financial institutions only provide preferential financing to a limited number of industries/companies, which comply with the relevant policies of the GOC. The Commission considered that the reference to the ACF industry is sufficiently clear as this industry is identified either by its name or by a reference to the product that it manufactures or the industry group that it belongs to.
- (231) Following final disclosure, the GOC disagreed with the Commission's finding of specificity within the meaning of Article 4(2)(a) of the basic Regulation. The GOC reiterated its claims that that the legal framework under which the financial institutions are entrusted or directed to provide loans to encouraged industries is only of non-binding nature and that the ACF industry is not encouraged.
- (232) First, the binding nature of the legal framework is already confirmed under recitals (182) and (183). Second, the fact that ACF industry is encouraged has also already been extensively discussed and confirmed in section 3.1..
- (233) The Commission therefore maintained its conclusion that subsidies in the form of preferential lending are not generally available to all industries but are specific within the meaning of Article 4(2)(a) of the basic Regulation.

### 3.4.2.3. Calculation of the subsidy amount

- (234) The Commission calculated the amount of the countervailable subsidy based on the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company has paid on the preferential loan and the amount that the company would have paid for a comparable commercial loan, which the company could have obtained on the market.
- (235) As explained in Sections 3.4.1 and 3.4.2 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.
- (236) The sampled groups of companies differed in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of maturity, collateral, guarantees and other conditions. For those two reasons, each company had an average interest rate based on its own set of loans received.
- (237) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential financing through loans established in the anti-subsidy investigation on hot-rolled flat steel products originating in the PRC, as well as in the anti-subsidy investigations on tyres originating in the PRC and certain woven and/or stitched glass fibre fabrics originating in the PRC <sup>(62)</sup>, as explained in the recitals below. As a result, the Commission calculated the benefit from the preferential financing through loans practices for each sampled group of exporting producers on an individual basis, and allocated such benefit to the product concerned.
- (238) Following the final disclosure, the Daching group claimed that there was no analysis by the Commission provided as to whether any calculation methodology used in these anti-subsidy investigations on tyres originating in the PRC and certain woven and/or stitched glass fibre fabrics originating in the PRC <sup>(63)</sup> should be legally and factually adequate to apply in the current investigation. Also, there was no indication that the calculation methodology was the same.

<sup>(62)</sup> See HRF case (recitals 152 to 244), Tyres case (recital 236) and GFF case (recital 300) cited in footnote 5.

<sup>(63)</sup> See HRF case (recitals 152 to 244), Tyres case (recital 236) and GFF case (recital 300) cited in footnote 5.

(239) The analysis of the preferential financing, as provided in the recitals (224) to (236) was comparative to the analysis made in the previous cases <sup>(64)</sup> mentioned in the recital (237). The calculation methodology followed the same principles, while the benefit from the preferential financing through loans practices for each sampled group of exporting producers was made on an individual basis, as explained in recital (237) and disclosed to these producers. The claim of the party was therefore rejected.

(a) Nanshan Group

(240) The Commission noted that Donghai Foil, the exporting producer in the Nanshan Group, had not received a credit rating for the period considered. Other companies within the Nanshan Group were awarded credit ratings ranging between AA+ and AAA- by Chinese credit rating agencies. In light of the overall distortions of Chinese credit ratings mentioned in Section 3.4.1.8, the Commission concluded that these ratings are not reliable.

(241) As mentioned in recitals (176) to (178) above, the Chinese lending financial institutions did not provide any creditworthiness assessment in this investigation. Therefore, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Nanshan Group were at market rates.

(242) Donghai Foil presented itself in a generally profitable financial situation with profit margins ranging between 0,5 % and 7,2 % according to its own financial accounts although the profit margins had declined in the recent years and since 2018 they remained below 1 %. This company only used short-term debt to finance its operations. The Commission assessed the short-term liquidity situation of the company.

(243) Regarding short-term liquidity, the Commission used liquidity ratios such as current ratio, quick ratio, cash ratio and cash flow ratio. These ratios measure the company's ability to pay short-term obligations, including short-term debt. The company presented an average current ratio of 1,6 during the IP. Although the current ratio is above 1, the company's current assets are just enough to pay the short-term obligations, which is not sufficient to justify a high credit rating, for which a company should present a ratio of at least 2. The quick ratio of the company was 1,3 in 2019 and 1,2 in 2020, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term. The cash ratio of the company was on average 0,01 in the IP; therefore, the company had insufficient cash at hand to pay its short-term debt. The company also showed a negative cash flow from operating activities ('CFO') in 2016, 2017 and 2019. The CFO ratio was extremely low, - 0,02 in 2019 and - 0,04 in 2020. A CFO ratio lower than 1 means that the company does not generate enough cash to cover its current liabilities.

(244) Considering the liquidity indicators described in recital (243), the Commission concluded that the company at issue presented short-term liquidity problems which results in having a high risk debtor profile.

(245) The Commission based the long-term solvency risk assessment on various solvency ratio such as debt ratios and coverage ratios. The solvency ratios measure the company's ability to meet its long-term debt obligations. They are used by lenders and bond investors when assessing the company's creditworthiness.

(246) Debt ratios measure the amount of liabilities, in particular long-term debt. The company had a high Debt-to-Assets ratio of 0,54, which means that 54 % of the assets of the company are financed by short-term debt. In addition, this ratio has been sharply increasing over the years. The Debt-to-Equity ratio also increased continuously from 0,3 in 2016 to 1,2 in 2020, which points to the fact the company is financing more and more of its activity mainly through debt. The higher the Debt-to-Assets and the Debt-to-Equity ratios are, the higher the financial risk of the company is, which means that the company may have a harder time servicing its existing debts.

<sup>(64)</sup> See HRF case (recitals 152 to 244), Tyres case (recital 236) and GFF case (recital 300) cited in footnote 5.

- (247) The coverage ratios measure the company's ability to serve its debt and meet its financial obligations. Since the company had a negative cash flow from operations in most years, the average CFO-to-Debt ratio of the company in the IP was also negative. This means that the company would not be able to repay its total debt with the operating cash flow it generates. The data from 2020 shows a slightly better situation. Nevertheless, it would still take the company 25 years to repay its debt, thus indicating serious problems of the company to generate enough cash in order to repay its debt.
- (248) Therefore, considering the liquidity and solvency issues described in recitals (242) to (247), the Commission considered that the company presented a fragile financial situation and a high risk profile for potential lenders and investors. In view of the precarious cash situation of the exporting producer, it is therefore not surprising to see that it had no external financing at all, but was financed exclusively via intercompany loans.
- (249) The Commission therefore also looked at the financial situation of the two parent companies of the group, Nanshan Group and Shandong Nanshan. Although their financial situation looked better at first sight, with higher profitability figures (around 8 to 10 %) and lower debt ratios (with a Debt-to-Assets ratio of around 25 % for both of them), similar liquidity issues could be observed. Indeed, the cash ratios of the parent companies stayed consistently below 1 and were on average 0,6 in the IP. Therefore, they had insufficient cash at hand to pay their short-term debt. The companies also showed a consistently low CFO-to-Debt ratio, amounting to 0,4 in the IP, meaning that they did not generate enough cash to cover their current liabilities.
- (250) Moreover, some companies in the group had contracted loans and bonds to repay preceding loans or loans from other banks. This type of loan is considered as an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to their short and long term financing. Finally, the Commission found that Shandong Nanshan had undergone a debt restructuring exercise in the past, and had benefited from a debt-to equity swap deal, as further explained below in Section (358).
- (251) Taking into account the serious liquidity and solvency problems that the financial analysis of the companies in the Nanshan Group, as described in recitals (242) to (247) pointed out, the Commission considered that the overall financial situation of the Nanshan Group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. 'Investment grade' means that bonds issued by the company are judged by rating agencies as likely enough to meet payment obligations and that banks are allowed to invest in them.
- (252) Based on publicly available data on Bloomberg, the Commission used as a benchmark the premium expected on bonds issued by firms with a BB rating, which was applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC <sup>(65)</sup> in order to determine the market rate.
- (253) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US BB rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the Loan Benchmark Rate published by the PBOC or, after 20 August 2019, to the Loan Prime Rate published by the NIFC, at the date when the loan was granted <sup>(66)</sup> and for the same duration as the loan in question. This was done individually for each loan provided to the group of companies
- (254) As for loans denominated in foreign currencies, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, BB rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.
- (255) The benefit was established by applying the benchmark described in recital (252) – (253) to the period of loan financing during the investigation period.

<sup>(65)</sup> See recital (177) above.

<sup>(66)</sup> In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

- (256) Following final disclosure, the GOC considered that the Commission incorrectly disregarded the credit rating of the cooperating exporting producers and disagreed with the methodology used by the Commission to establish a benchmark, which should be based on finding a comparable benchmark on the domestic market instead of applying “out-of-country credit ratings”. The Commission should instead have used comparable loans not affected by the market distortions in the country concerned. The GOC also considered that the Commission reached an arbitrary conclusion when stating that most of the sampled Chinese exporters should correspond to a BB rating.
- (257) The GOC furthermore objected to the use of the relative spread between AA and BB rated bonds as the mark-up and its addition to the PBOC rates. According to the GOC, the method of the relative spread is flawed as the level of the upward adjustment in the first place depends on the level of the going interest rates, and as the PBOC reference rates in the PRC during the relevant years were much higher than the reference rate in the US. Moreover, the use of a relative spread entails that the mark-up becomes a variable figure.
- (258) In response to these claims, the Commission noted the following.
- (259) First, on the use of a benchmark outside the country, as explained above, domestic credit ratings awarded to Chinese companies were considered distorted by the policy objectives of the GOC to encourage key strategic industries and therefore unreliable. As a result, the Commission had to look for a benchmark based on undistorted credit ratings, which can only be found outside the country.
- (260) Second, on the BB rating applied to the companies, the Commission recalls that it did not make an arbitrary decision, but performed an individual financial analysis of all the companies concerned, which pointed to a financial situation corresponding to a BB rating.
- (261) Third, the use of the relative spread was already explained in previous investigations <sup>(67)</sup>. Indeed, the relative spread captures changes in the underlying country specific market conditions, which are not expressed when following the logic of an absolute spread. Often, as in the present case, the country- and currency-specific risk varies over time, and the variations are different for different countries. As a result, the risk-free rates vary significantly over time, and are sometimes lower in the US, sometimes in China. These differences relate to factors such as observed and expected GDP growth, economic sentiment, and inflation levels. Because the risk-free rate varies over time, the same nominal absolute spread can signify a very different assessment of the risk. For example, where the bank estimates the company-specific risk of default at 10 % higher than the risk-free rate (relative estimation), the resulting absolute spread can be between 0,1 % (at a risk-free rate of 1 %) and 1 % (at a risk-free rate of 10 %). From an investor perspective, the relative spread is hence a better measure as it reflects the magnitude of the yield spread and the way it is affected by the base interest-rate level. (332) Third, the relative spread is also country-neutral. For instance, where the risk-free rate in the US is lower than the risk-free rate in China, the method will lead to higher absolute mark-ups. On the other hand, where the risk-free rate in China is lower than in the US, the method will lead to lower absolute mark-ups.
- (262) After final disclosure, the Nanshan group also contested the BB rating established by the Commission for the companies in the group, arguing that credit ratings should have been looked at separately for each company, that the analysis was incorrectly limited to the IP, and that there is no evidence that Nanshan actually defaulted on its financial obligations.
- (263) Furthermore, the Commission's benefit analysis is also defective because the benchmark used by the Commission: (A) fails to reflect the market conditions prevailing in China, (B) contradicts the Commission assertions that financial markets in China are distorted (because the starting point is the PBOC benchmark rate), and (C) is based on two separate financing tools (loans and bonds), which an unrealistic hybrid benchmark that does not reflect standard market practices.

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<sup>(67)</sup> HRF and Tyres cases, recitals (175) to (187) in the HRF case, and from recital (256) in the Tyres case

- (264) Nanshan Group also provided a list of RMB-dominated bonds issued in the Hong Kong market for foreign investors, obtained from Bloomberg, submitting that a Hong Kong-based benchmark (purely based on bond yield rates) would more closely reflect the market conditions in China than a constructed US-China loan-bond hypothetical model.
- (265) On Nanshan Group's credit ratings, the Commission noted that it did make an individual assessment of the main companies within the scope of the investigation, i.e. the exporting producer, and those with the largest proportion of financing in the group, i.e. the intermediate parent company and the ultimate parent company, as highlighted in recitals (242) and (249) to (250) above. Contrary to the assertions of the company, the Commission did take into account the evolution of the financial indicators over the entire period considered (i.e. 2017 to the IP). The Commission did not find any meaningful differences between the financial situation of these companies. It also did not find any meaningful differences in the interest rates. The fact that Nanshan did not default on its obligations does not in itself contradict the conclusions on the overall financial situation of Nanshan Group. Therefore, the Commission maintained its conclusions on the credit rating.
- (266) On the benchmark used for the calculation of the benefit, the Commission wishes to highlight that the use of the PBOC benchmark rate as a starting point for establishing the benchmark is exactly the way in which the benchmark is adjusted to prevailing market conditions in China, as it represents the risk-free rate in China, which is country-specific, as already mentioned in recital (261). Therefore, there is no contradiction as such. Furthermore, the Commission sees no issue with the combination of the risk-free rate on loans, and the use of a relative spread based on bonds. Indeed, the Commission does not simply add up the PBOC loan rate and the USD BB bond yield rate. Instead, it calculates a spread between AA and BB-rated bonds, which corresponds to a risk factor to be applied to the risk-free rate.
- (267) In addition, loans and corporate bonds are in principle similar financial debt instruments. In fact, a corporate bond is a kind of a loan used by large entities to raise capital. Both loans and corporate bonds are contracted/issued for a certain period of time and bear an interest/coupon rate. The fact that the financing through a loan is provided by a financial institution and that the financing through a corporate bond is provided by investors, which in most cases are also financial institutions, is irrelevant for the determination of the core characteristics of both instruments. Indeed, both instruments serve to finance business operations, bear the same kind of remuneration and have similar repayment term and conditions. One can thus reasonably assume that the risk factor between AA and BB rated companies remains the same, whether it be for the issuance of loans or bonds. This claim was thus rejected.
- (268) The Commission also examined the alternative benchmark proposed by the Nanshan Group. However, the RMB-denominated bonds issued in Hong Kong which were submitted concerned almost exclusively bonds issued by the government of China or financial institutions, and are thus not comparable to corporate bonds. Most of the bonds issued also did not provide any credit rating indication. The Commission thus found that this could not be used as a reasonable alternative for the benchmark currently used.
- (269) Finally, the Nanshan Group claimed that the Commission made some calculation errors for several companies in the group because of cell formatting, duplication of loans, incorrect initial amount of loans in the submitted tables or errors spotted in the formulas. The Commission indeed noticed that it had made some clerical errors and the calculation of the benefit from loans was thus adapted accordingly.

(b) Wanshun Group

- (270) The Commission noted that the Wanshun Group was awarded an AA+ rating by a Chinese credit rating agency in 2018.
- (271) As mentioned in recitals (176) to (178) above, the lending Chinese financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Wanshun Group were at market level.

- (272) The exporting producer of the Wanshun Group presented itself in a generally profitable financial situation according to its own financial accounts.
- (273) The exporting producer used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the company.
- (274) Regarding short-term liquidity, the Commission used liquidity ratios such as (a) current ratio, (b) cash ratio, (c) quick ratio, and (d) cash from operations ratio. These ratios measure the company's ability to pay short-term obligations, including short-term debt.
- (275) The company's current ratio was at 1,04 in 2018, decreased to 0,96 in 2019 and then increased again to 0,98 in 2020). Despite the AA+ rating attributed to the company in 2019, the company's current assets were thus not enough to pay the short-term obligations. This does not justify a high credit rating, for which a company should present a ratio of at least 2.
- (276) The cash ratio of the company was on average 0,1 in 2016-2019 and 0,2 by the end of the IP; therefore, the company had insufficient cash at hand to pay its short-term debt.
- (277) The quick ratio of the company was 0,11 in 2018 and 0,14 in 2019 and 2020, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term.
- (278) The company showed a positive cash flow from operating activities since 2017, after having doubled in 2018, it decreased by 90 % until 2020. The operating cash ratio was 0,25 in 2018, 0,04 in 2019 and 0,02 by 2020. An operating cash ratio lower than 1 means that the company has not generated enough cash to cover its current liabilities.
- (279) Considering the short-term liquidity indicators described in recital (297), the Commission concluded that the company at issue presented short-term liquidity problems which results in having a high-risk debtor profile.
- (280) The Commission based the long-term solvency risk assessment on various solvency ratios such as (a) debt ratios and (b) coverage ratios. These ratios measure the company's ability to meet its long-term debt obligations. They are used by lenders and bond investors when assessing the company's creditworthiness.
- (281) Debt ratios measure the amount of liabilities, in particular long-term debt. The company had a high debt to assets ratio of 0,5, which means that 50 % of the assets of the company are financed by debt. The debt to equity ratio was 0,5 in the IP, which points to the fact the company is financing its activity through debt. The higher the debt to assets and the debt to equity ratios are, the higher the financial risk of the company is, which means that the company may have a harder time servicing its existing debts.
- (282) The coverage ratios measure the company's ability to serve its debt and meet its financial obligations. The Commission based its assessment on the interest coverage ratio and the cash from operations to debt ratio, which shows the ability of the company to repay its debt with cash generated from operating activities. The average CFO-to-Debt ratio of the exporter in the IP was 0,03. This means that the company would need 33 years to repay its total debt with the operating cash flow it generates in the IP. Therefore, there are indications of serious problems of the company to generate enough cash in order to repay its debt.
- (283) Therefore, considering the long-term solvency ratios described in recital (303), the Commission considered that the company was not in a solid financial situation and had a risky profile for potential lenders and investors.
- (284) Moreover, the company has contracted loans with the purpose to repay loans from other banks. This type of loan is considered as an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing.

- (285) Following the above and in view of the overall distortions of Chinese credit ratings, mentioned in Section 3.5.2, the Commission concluded that the AA+ credit rating awarded to Wanshun Group is not reliable.
- (286) The Commission considered that the overall financial situation of the group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'.
- (287) The benefit was established by applying the methodology described in recitals (252) to (255) to the period of loan financing during the investigation period.
- (288) Following the final disclosure, the Wanshun Group requested the Commission to clarify the factual basis for the allegation that the company of the group "contracted loans with the purpose to repay loans from other banks". The party also claimed that:
- (a) the Commission relied on a number of ratios that were seemingly based on the financial statements of Jiangsu Zhongji Lamination Materials Co., Ltd., but not on the consolidated financial statements of the Wanshun group, which is erroneous, since Jiangsu Zhongji Lamination Materials Co., Ltd. ratios do not reflect the creditworthiness of the Wanshun group. The party also requested the Commission to confirm and disclose the basis on which the financial indicators were established.
  - (b) the Commission used the wrong date for calculating the benchmark for one of the loans provided to Shantou Wanshun.
  - (c) Jiangsu Huafeng Aluminium Industry Co., Ltd only borrowed from two group companies in the IP and that such intra-group borrowing should not be considered as a subsidy, since these group companies were neither public bodies, nor could they have been considered to be entrusted or directed by the GOC. In addition, countervailing both the loan from a commercial bank and the intra-group loan, resulted in double counting.
- (289) On the first point, the Commission confirmed that the indicators mentioned in this section are based on the financial statements of Zhongji Lamination Materials Co. Ltd. As already explained in recital (265), the Commission made an individual assessment of the main companies within the scope of the investigation, i.e. the exporting producer, and those with the largest proportion of financing in the group, i.e. the parent company. Indeed, this approach seems reasonable, as loans are provided to legal entities, not to the group as such. The Commission also took into account the evolution of the financial indicators over the entire period considered (i.e. 2017 to the IP).
- (290) In any event, the Commission did not find any meaningful differences between the financial situation of the companies in the group. Indeed, even taking into account the consolidated data provided by the company itself upon disclosure, we still see a fragile cash situation, with a low cash ration and cash from operations to debt ratio. The debt-to-assets ratio is also very similar to that of the sole exporting producer. The Commission also did not find any meaningful differences in the interest rates of the loans issued to the various companies in the group. This claim was thus rejected.
- (291) The Commission did not accept the claim presented under the second point, since the date proposed by the company post-dated the starting date of the loan, whereas the Commission used the benchmark figure for the date immediately preceding the starting date of the loan, and which was thus still applicable on that starting date.
- (292) The Commission agreed with the claim presented under the third point, and adapted the calculations accordingly.
- (c) Daching Group
- (293) The Commission noted that the Daching Group was awarded an AAA- rating by a Chinese credit rating agency in 2019.
- (294) As mentioned in recitals (176) to (178) above, the lending Chinese financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Daching Group were at market level.

- (295) The exporting producer Xiamen Xiashun presented itself in a generally profitable financial situation according to its own financial accounts.
- (296) Xiamen Xiashun used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the company.
- (297) Regarding short-term liquidity, the Commission used liquidity ratios such as (a) current ratio, (b) cash ratio, (c) quick ratio, and (d) cash from operations ratio. These ratios measure the company's ability to pay short-term obligations, including short-term debt.
- (298) The company's current ratio was at 0,9 in 2018, increased to 1,0 in 2019 and then decreased again to 0,9 by the end of the IP (first half of 2020). Despite the AAA- rating attributed to the company in 2019, the company's current assets was just enough to pay the short-term obligations. This is not sufficient to justify a high credit rating, for which a company should present a ratio of at least 2.
- (299) The cash ratio of the company was on average 0,1 in 2016-2019 and 0,2 by the end of the IP; therefore, the company had insufficient cash at hand to pay its short-term debt.
- (300) The quick ratio of the company was 0,4 in 2017-2018 and 0,5 in 2019-by the end of the IP, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term.
- (301) The company showed a positive cash flow from operating activities, however it decreased nearly by half from 2016 to 2019 and the end of the IP. An operating cash ratio was 0,2 in 2019 and by the end of the IP. An operating cash ratio lower than 1 means that the company has not generated enough cash to cover its current liabilities.
- (302) Considering the short-term liquidity indicators described in recital (297), the Commission concluded that the company at issue presented short-term liquidity problems which results in having a high risk debtor profile.
- (303) The Commission based the long-term solvency risk assessment on various solvency ratios such as (a) debt ratios and (b) coverage ratios. These ratios measure the company's ability to meet its long-term debt obligations. They are used by lenders and bond investors when assessing the company's creditworthiness.
- (304) Debt ratios measure the amount of liabilities, in particular long-term debt. The company had a high debt to assets ratio of 0,6, which means that 60 % of the assets of the company are financed by debt. The debt to equity ratio was 1,5 in the IP, which points to the fact the company is financing its activity through debt. The higher the debt to assets and the debt to equity ratios are, the higher the financial risk of the company is, which means that the company may have a harder time servicing its existing debts.
- (305) The coverage ratios measure the company's ability to serve its debt and meet its financial obligations. The Commission based its assessment on the interest coverage ratio and the cash from operations to debt ratio. The interest coverage ratio shows the ability of the company to finance interest costs. This ratio of the exporter was around 1,2 in the IP. Such a ratio of less than 1,5 indicates that the company has difficulties meeting its interest expenses. A cash from operations to debt ratio shows the ability of the company to repay its debt with cash generated from operating activities. The average cash from operations to debt ratio of the exporter in the IP was 0,1. This means that the company would need 10 years to repay its total debt with the operating cash flow it generates in the IP. Therefore, there are indications of serious problems to generate enough cash in order to repay debt.
- (306) Moreover, the company has contracted loans with the purpose to repay loans from other banks. This type of loan is considered as an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing.

- (307) Therefore, considering the long-term solvency ratios described in recital (276), the Commission considered that the company was not in a solid financial situation and had a risky profile for potential lenders and investors.
- (308) Taking into account the liquidity and solvency elements of the exporting producer, as described in recitals (297) to (305), the Commission considered that the overall financial situation of the Daching Group corresponds to a B/BB rating (where B rating was applied for loans with the purpose to repay loans from other banks), which is the highest rating that does no longer qualify as ‘investment grade’.
- (309) The benefit was established by applying the benchmark described in recitals (252) – (253) to the period of loan financing during the investigation period.
- (310) After final disclosure, the Daching group claimed that:
- (a) the PBOC Loan Benchmark Rate and the Loan Prime Rate rates apply to normal companies, which have a medium credit rating (the BBB rating), rather than to companies with the highest credit rating (the AA rating as used by the Commission). Therefore, in order to calculate a spread, the Commission should have compared the U.S. corporate bonds with the BBB rating against the rating assigned to the Daching group. The party re-evaluated its own rating using Bloomberg’s methodology;
  - (b) since the Commission derived the spread comparing the Bloomberg BB rated bonds and the AA rated bonds, it should have used the same credit rating methodology a Bloomberg (like Moody’s), rather than the Commission’s own methodology, to assign a credit rating to the companies in the group. The party added the valuation methodology of the Commission was highly questionable, because, based on the ratios used, such as current ratio, quick ratio, cash ratio and debt to asset ratio, the Commission concluded that the Daching group would not be able to pay off their debt, while these ratios needed to be judged according to the industry. Also, the Commission’s assessment was based on the assumption that the company was going to default and stop business activities ‘now’, while the group was operating on a going concern’ basis <sup>(68)</sup>, where it could pay off its debt by using its cash flow and profit before interest, taxes, and amortization;
  - (c) no spread should have been applied to the guaranteed loans of the Daching group, since they had much lower risk than loans which were not guaranteed loans. Even if the Commission considered to apply a spread to guaranteed loans, it should apply a negative spread, rather than a positive spread.
- (311) First, regarding the comment on the use of the Benchmark Interest Rate published by the PBOC or the Loan Prime Rate published by NIFC as a starting point in the calculation of the benchmark, the Commission pointed out that these rates are considered to be risk-free rates which, in a conservative approach, would be applied to companies having an AA rating. As found by the Commission in the current investigation, the PBOC Loan Benchmark Rate and the Loan Prime Rate published by NIFC rates applied to the best clients of these banks, thus the companies that were rated the highest. Indeed, as mentioned in the documentation submitted by the GOC during the course of the investigation, “LPR has been quoted by each LPR quoting bank in accordance with the loan rates issued **to their prime clients** (emphasis added) on the 20th of each month <sup>(69)</sup>” Also, the Commission noted that the rating of the companies in the group in the last four years, as re-evaluated by the party using Bloomberg’s methodology, was not classified as the ‘investment grade’.
- (312) Second, the credit rating methodology used by the Commission involved a number of ratios measuring the company’s current ability to pay the short-term obligations, which demonstrated to be not sufficient neither by selling the current assets (current ratio), nor using the cash at hand (cash ratio), not using the operating cash (operating cash ratio). All these ratios demonstrated short-term liquidity problems of the exporting producer, which resulted in having a high risk debtor profile, as explained in the recitals (296) – (302). At the same time the party did

<sup>(68)</sup> The company is continuing its business for the foreseeable future.

<sup>(69)</sup> “Promoting LPR Reform Orderly”, issued by the Monetary Policy Analysis Group of the People’s Bank of China, September 15, 2020, <http://www.pbc.gov.cn/en/3688110/3688172/4048269/4094018/2020091518070233600.pdf>, last accessed 30 November 2021.

not demonstrate why these ratios should have been treated in any other way specific to the ACF industry. In addition, these ratios indicate company's 'current' ability to pay the short-term obligations and are used for the purpose of the risk evaluation of the debtor only for the purpose of this investigation. This evaluation is separate and may be different from the assumption of the management in the preparation process of the financial statements, evaluating the company's ability of going concern.

- (313) Third, the guarantees provided to loans were provided by related parties in the group, to which the same credit rating applies. This should therefore have no impact as such on the Commission's assessment. The claims of the party were therefore rejected.
- (314) The Daching group further alleged that the Commission had used a wrong principal balance when calculating the loan interest benefit for the group on two loans. Namely, for the two loans initially borrowed, its principal was partially paid off and the principal applicable to the interest payment should have been less than the initial amount. Also, the actual interest payment for two other loans was paid after the IP and the Commission should have not treated the interest payment as zero in the calculation. The Commission reviewed the calculation and corrected it with regard to these claims.

#### 3.4.2.4. Conclusion on preferential financing: loans

- (315) The Commission established that all sampled groups of exporting producers benefited from preferential financing through loans during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered preferential financing through loans a countervailable subsidy.
- (316) The subsidy rates established with regard to the preferential financing through loans during the investigation period for the sampled groups of companies amounted to:

#### **Preferential financing: loans**

Company name	Subsidy amount
Nanshan Group	1,45 %
Wanshun Group	1,93 %
Daching Group	4,36 %

### 3.5. Preferential financing: other types of financing

#### 3.5.1. Credit lines

##### 3.5.1.1. General

- (317) The purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. Therefore, the Commission considered that in principle, all short-term financing of the sampled companies, such as short-term loans, bank acceptance drafts etc., should be covered by a credit line instrument.

##### 3.5.1.2. Findings of the investigation

- (318) The Commission established that Chinese financial institutions provided credit lines to each sampled group in connection with the provision of financing. These consisted of framework agreements, under which the bank allows the sampled companies to use various debt instruments, such as working capital loans, bank acceptance drafts and other forms of trade financing within a certain maximum amount.

- (319) As mentioned in recital (317) above, all short-term financing should be covered by a credit line. Therefore, the Commission compared the amount of the credit lines available to the cooperating companies during the investigation period with the amount of short-term financing used by these companies during the same period to establish whether all short-term financing was covered by a credit line. Where the amount of the short-term financing exceeded the credit line limit, the Commission increased the amount of the existing credit line by the amount actually used by the exporting producers beyond that credit line limit.
- (320) Under normal market circumstances, credit lines would be subject to a so-called 'arrangement' or 'commitment' fee to compensate for the bank's costs and risks at the opening of a credit line, as well as to a 'renewal fee' charged on a yearly basis for renewing the validity of the credit lines. However, the Commission found that each sampled group of companies benefited from credit lines provided free of charge. Therefore, a benefit was conferred to the investigated groups of companies within the meaning of Article 6(d) of the basic Regulation.

### 3.5.1.3. Specificity

- (321) As mentioned in recital (99), according to Decision No 40, financial institutions shall provide credit support to encouraged industries.
- (322) The Commission considered that credit lines are a form of a preferential financial support by financial institutions to encouraged industries such as the ACF sector. As specified in Section 3.1 above, the ACF sector is among the encouraged industries and is therefore eligible for all possible financial support.
- (323) Following final disclosure, the GOC claimed that the credit lines allegedly being provided to the ACF industry procure no benefit and that they are not specific. The GOC reiterated its arguments concerning the non-binding nature of Decision 40, as well as the reasoning contesting the qualification of Chinese financial institutions as public bodies. In this respect, the Commission noted that the GOC failed to demonstrate that companies in the PRC can equally benefit from the preferential conditions observed as regards the ACF industry. Moreover, as credit lines are intrinsically linked to other types of preferential lending such as loans and as they are part of the credit support specifically provided to encouraged industries, the public body analysis and the specificity analysis as developed in Sections 3.4.1.1 to 3.4.1.5, as well as Section 3.4.2.2 above for loans is also applicable to credit lines. As a result, these claims were rejected.

### 3.5.1.4. Calculation of the subsidy amount

- (324) In accordance with Article 6(d)(ii) of the basic Regulation, the Commission considered the benefit conferred on the recipients to be the difference between the amount that they paid as a fee for the opening or the renewal of the credit lines by Chinese financial institutions, and the amount that they would pay for a comparable commercial credit line obtained at an undistorted market rate.
- (325) The appropriate benchmarks for the arrangement fee and for the renewal fee were established at 1,5 % and 1,25 % respectively by reference to publicly available data <sup>(70)</sup> and benchmarks used in previous investigations <sup>(71)</sup>.
- (326) In principle, the arrangement fee and the renewal fee are payable on a lump sum basis at the time of the opening of a new credit line or the renewal of an existing credit line respectively. However, for calculation purposes, the Commission took into account credit lines which had been opened or renewed before the investigation period but which were available to the sampled groups during the investigation period and also the credit lines that were opened during the investigation period. Then, the Commission calculated the benefit based on the period within the investigation period during which the credit line was available.

<sup>(70)</sup> See <https://www.barclays.co.uk/current-accounts/bank-account/overdrafts/overdraft-charges/>, last accessed on 18 August 2021, fees for executive overdrafts – "overdrafts over GBP 15 000 have a set-up fee of 1,5 % of the arranged overdraft limit, and a renewal fee of 1,5 %".

<sup>(71)</sup> See GFF case cited in footnote 5 (recitals 354 and 355)

- (327) Following the final disclosure, the Daching group claimed that the Commission should not have calculated a subsidy benefit in respect of credit line agreements concluded by the Daching group, because:
- (a) the Commission provided no evidence with regard to countervailable subsidization of Daching Enterprises Ltd., since it was established and operating in Hong Kong, thus the assertions on ACF industry being treated specifically by the GOC did not apply and could not affect its' operations in Hong Kong;
  - (b) the creditworthiness of Daching Enterprises Ltd. must have been assessed separately and could not be amalgamated with the assertions on the creditworthiness of Xiamen Xiashun;
  - (c) a standard credit line agreement with Chinese Banks does not require any fee and there are no interest rates specified in such agreement. That is because the bank gives no guarantee or commitment to provide a bank loan when the customer wants to draw a loan, hence there is no funding cost incurred by the bank and no arrangement fee is charged. The absence of an arrangement fee in a credit line agreement did not apply to Daching Enterprises Ltd. in Honk Kong, where it applied to all industries and was sometimes waived and not significant, if charged.
- (328) First, the Commission noted that preferential financing to Daching Enterprises Ltd. was provided by the same Chinese banks, as in the analysis in section 3.4.1.5. Therefore, it considered that such preferential financing through loans was a countervailable subsidy. Second, the Commission has also noted that all the export turnover of Daching Enterprises Ltd was sourced from Xiamen Xiashun, thus the subsidy amount was calculated as a percentage of the turnover of Xiamen Xiashun and was linked to the creditworthiness assessment of Xiamen Xiashun. Third, the absence of an arrangement fee, as explained in recitals (320) was considered as the benefit conferred on the recipients. No evidence was collected during the investigation or provided by the claiming party that a bank incurs no cost or risks at the opening of a credit line and is, therefore, not charging any fee. The claims of the party were therefore rejected.
- (329) Following the final disclosure, the Nanshan Group claimed that the Commission should not have calculated a subsidy benefit in respect of credit line agreements concluded by the Nanshan group, because:
- (a) banks commonly waive that arrangement and renewal fee to secure large commercial clients or based on the client's borrowing history, regardless of the country where they are based. Thus the waiver has nothing to do with the provision of the subsidies to Chinese companies;
  - (b) the Commission partially quotes Barclays UK to establish the benchmark: "overdrafts over GBP 15 000 have a set-up fee of 1,5 % of the arranged overdraft limit, and a renewal fee of 1,5 %[.]" <sup>(72)</sup> leaving out the rest of the sentence which states that: "unless we agree different terms with you. Overdrafts are subject to application, financial circumstances and borrowing history." <sup>(73)</sup> Therefore, the common market practice is to negotiate the specific terms (including, if necessary, to waive the fees altogether). The Commission failed to prove that other financial institutions operate differently from Chinese ones.
  - (c) Alternatively, the Commission should use a more representative benchmark value in light of the size of Nanshan Group than HSBC UK price, because:
- (330) The renewal rate of 1,25 % and arrangement rate of 1,5 % cited in the Barclays price list used by the Commission apply to credit lines above 15 000 GBP. However, conditions applicable to credit lines of 40 000 GBP or even 100 000 GBP are not comparable to the conditions that would apply to the credit lines ranging from tens to hundreds of millions of USD taken out by Nanshan Group. It is thus apparent that the fees described in the Commission's price list for small businesses would be waived in the interest of securing a financing agreement of such size. The second source of benchmark provided by the commission in Annex 2.2 (HSBC UK) is also misleading because it does not contain any fees. As an alternative, Nanshan Group proposed to use fees charged by PNC Bank in the United States, which does not charge an arrangement fee and only charges an annual 0,25 % annual renewal fee for a committed credit line of between 100 001 and 3 million USD.

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<sup>(72)</sup> GDD, footnote 55

<sup>(73)</sup> GDD, footnote 55.

- (331) On the first and second points, the Commission noted that even though individual fees of clients may vary, no evidence was provided by the claiming party that a bank incurs no cost or risks at the opening of a credit line and is, therefore, not charging any fee.
- (332) On the third point, regarding the benchmark fees used by the Commission, as stated in recital (325), the Commission used findings in previous anti-subsidy cases and publicly available data to conclude that the application of an arrangement fee benchmark of 1,5 % and a renewal benchmark fee of 1,25 % was reasonable. In this respect, the Commission pointed out that for instance Barclays Bank charges a set-up fee of 1,5 % of the arranged overdraft limit, and a renewal fee of 1,5 % for overdrafts over GBP 15 000. In this case, the renewal fee benchmark used by the Commission is lower. A further search also showed that Barkley charges higher business overdraft fees, from 1,6 % up to 2,5 % of the limits for the business bands GBP 15 001 – GBP 20 000 and GBP 20 001 – GBP 25 000. Finally, the Commission noted that the alternative benchmark proposed by Nanshan Group specifically related to small business clients, which is not relevant according to the statements of the company itself, and to secured credit lines, i.e. credit lines with lower risk as they are secured by certain collateral. Therefore, the Commission reiterated its conclusion that the benchmark fees it has used are reasonable and based on available market data and thus rejected the claim.
- (333) Finally, Nanshan submitted that the Commission should not calculate a credit line benefit for Nanshan Finance because all short-term borrowings obtained by Nanshan Finance were related to re-discounted notes, which do not warrant a credit line. The Commission accepted this claim because the re-discounted bills were provided through inter-bank borrowings, and adjusted calculations accordingly.

### 3.5.2. Bank acceptance drafts

#### 3.5.2.1. General

- (334) Bank acceptance drafts are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is a form of short-term financing that might “*reduce fund cost and enhance capital efficiency*” of the drawer <sup>(74)</sup>. In addition, as stated by the PBOC on its website, “*the bank acceptance draft can guarantee the establishment and performance of the contract between the buyer and the seller, as well as promote the capital turnover via the intervention of Bank of China’s credit*” <sup>(75)</sup>. In addition, on its website DBS Bank advertises bank acceptance drafts as a means to “*improve working capital by deferring payments*” <sup>(76)</sup>.
- (335) The Commission already established in a previous investigation that bank acceptance drafts are largely used as a means of payment in commercial transactions as a substitute to a money order thus, facilitating the cash turnover and the working capital of the drawer <sup>(77)</sup>. From a cash point of view, the instrument *de facto* grants the drawer a deferred due date of payment of 6 months or 1 year because the actual cash payment of the transaction amount occurs at the maturity of the bank acceptance draft and not at the moment when the drawer had to pay its supplier. In the absence of such a financial instrument, the drawer would either use its own working capital, which has a cost, or contract a short-term working capital loan with a bank in order to pay its suppliers, which also has a cost. In fact, by paying with bank acceptance drafts, the drawer uses the supplied goods or services for a period of 3 months to 1 year without advancing any cash and without bearing any cost.
- (336) Under normal market circumstances, as a financial instrument, bank acceptance drafts would imply a cost of financing for the drawer. The investigation showed that all the sampled companies that used bank acceptance drafts during the investigation period only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft. However, none of the sampled companies bore a cost for the

<sup>(74)</sup> See website of the People’s Bank of China: [https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112\\_1324239.html](https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112_1324239.html), last accessed on 18 August 2021.

<sup>(75)</sup> Ibid.

<sup>(76)</sup> See website of DBS Bank: <https://www.dbs.com.cn/corporate/financing/working-capital/bank-acceptance-draft-bad-issuance>, last accessed on 18 August 2021.

<sup>(77)</sup> For a more specific description of the way in which bank acceptance drafts are generally used, see GFF case referenced in footnote 5 above, recitals 359 to 370

financing via bank acceptance drafts by deferring the cash payment of the supply of goods and services. Therefore, the Commission considered that the investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost.

- (337) Considering the above, the Commission concluded that the bank acceptance system put in place in the PRC provided all exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (354) to (356) below, in accordance with Article 3(1)(a)(i) and 3(2) of the basic Regulation.
- (338) The Commission established in a previous investigation <sup>(78)</sup> that bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, as they are used by companies to finance their current operations instead of using short-term working capital loans, and that consequently, they should bear a cost equivalent to a short-term working capital loan financing.
- (339) Following final disclosure, the GOC, Wanshun and Nanshan Group argued that bank acceptance drafts are actually credits provided by the supplier (i.e. the bearer of the draft) to the buyer (the drawer), not by a bank to the seller. This is due to the fact that the terms of payment of the contract clearly mention that the supplier agrees with the payment by way of a bank acceptance draft. Therefore, by signing such a contract, the supplier already anticipated that the payment will not be made at sight, but in a certain period of time (depending on the maturity of the bank acceptance draft). Any supplementary cost related to the late payment should already be included in the purchase cost. As such, the bank's acceptance is merely there to facilitate transactions between unacquainted parties. The role of the bank is to provide a guarantee, for which it charges a certain fee upon the opening of the bank acceptance draft. However, ultimately it is the money in the bank account of the company that will be used to pay for the transaction for which the bank acceptance draft was issued. The bank will only pay in case the company defaults on its obligation to have sufficient funds in its bank account for the payment.
- (340) The Commission observed that in fact, the bank acceptance draft is an actual means of payment acknowledged in the sales contract, and the payment obligation of the drawer towards the supplier is cancelled by the payment with a bank acceptance draft. The payment of the supplier by the drawer happens at the moment of the endorsement of the bank acceptance draft, while at maturity, the drawer honours its payment obligation towards the bank. In addition, as acknowledged by the GOC itself, the supplier has the option to endorse the draft towards other parties, and thus to use the bank acceptance draft immediately as a means of payment for its own purchases. Therefore, the bank acceptance draft cannot be classified as a credit by the supplier or as an additional guarantee of a future payment by the bank, and this claim was rejected.

#### 3.5.2.2. Specificity

- (341) Concerning specificity, as mentioned in recital (102) according to Decision No 40, financial institutions shall provide credit support to encouraged industries.
- (342) The Commission considered that bank acceptance drafts are another form of preferential financial support by financial institutions to encouraged industries such as the ACF sector. Indeed, as specified in Section 3.1 above, the ACF sector is among the encouraged industries and is therefore eligible for all possible financial support. Bank acceptance drafts, as a form of financing, are part of the preferential financial support system by financial institutions to encouraged industries, such as the ACF industry.
- (343) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions.

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<sup>(78)</sup> See GFF case mentioned in footnote 5, recital 385.

- (344) Following final disclosure, both the GOC, Wanshun Group and Nanshan Group argued that bank acceptance drafts are not specifically provided to the ACF industry, as they are available to any company in China and are widely used. Furthermore, the GOC repeated its arguments concerning the non-binding nature of Decision 40, as well as the reasoning contesting the qualification of Chinese financial institutions as public bodies.
- (345) In this respect, the Commission noted that the GOC and Nanshan Group failed to demonstrate that all companies in the PRC can equally benefit from the preferential conditions observed as regards the ACF industry. Moreover, similar to credit lines, bank acceptance drafts are intrinsically linked to other types of preferential lending such as loans and as they are part of the credit support specifically provided to encouraged industries, so the public body analysis and the specificity analysis as developed in Sections 3.4.1.1 to 3.4.1.5, as well as Section 3.4.2.2 above for loans is equally applicable. Furthermore, even if a form of financing could be in principle available to companies in other industries, the concrete conditions, under which such financing is offered to companies from a certain industry, such as the financing remuneration and the volume of financing, might make it specific. There was no evidence submitted by any of the interested parties demonstrating that the preferential financing through bank acceptance drafts of companies in the aluminium sector is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation. As a result, these claims were rejected.
- (346) Both the Wanshun and the Nanshan Group requested that, even if the Commission were to maintain its decision to treat the bank acceptance draft as a subsidy, there should be the following changes in the calculation of the benefit, namely:
- (a) the benchmark for the bank acceptance draft should be the same as for the credit lines, because the bank acceptance draft does not provide any funds to the company, but a promise of credit by the bank (i.e. a guarantee to pay the payees holding the bank acceptance draft;
  - (b) any charges and fees paid to the bank for the opening of the bank acceptance draft should be deducted from the amount of benefit;
  - (c) the deposit paid upon the opening of the bank acceptance draft should be deducted from the principal, since the company has paid a deposit upon opening the bank acceptance draft, which was frozen at the bank;
  - (d) the bank acceptance drafts issued to company's affiliates and company's own branches should be removed from the calculation, otherwise they would cause double counting, since other financing of company's affiliates is countervailed.
- (347) On the first point, the Commission already established in recital (338) that bank acceptance drafts have the same purpose and effects as short-term working capital loans and that consequently, they should bear a cost equivalent to a short-term working capital loan financing. The party did not substantiated further why the benchmark for the bank acceptance draft should be the same as for the credit line. Therefore, the claim was rejected.
- (348) On the second point, the Commission already noted in recital that the sampled companies that used bank acceptance drafts during the investigation period only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft. In fact, this commission paid for the processing of the bank acceptance draft by the bank, is a distinct element from the financing granted by the bank, for which the cooperating exporting producers did not bear any cost. This fee is paid in order to cover the bank's administrative costs of processing the bank acceptance drafts. Therefore, the claim was rejected.
- (349) On the third point, as the Commission concluded in previous investigations <sup>(79)</sup>, it should first be noted that it is common practice for banks to request guarantees and collaterals from their clients when granting financing. Furthermore, it should be noted that such guarantees are used to secure that the exporting producer will bear its financial responsibility vis-à-vis the bank and not vis-à-vis the supplier. The investigation also revealed that these guarantees are not systematically requested by Chinese banks and are not always linked to specific bank acceptance

<sup>(79)</sup> See *E-bikes* case, recital 316, and *GFF* case, recital 407, both cited in footnote 5.

drafts. In this respect, the alleged deposits do not amount to an advanced payment by the drawer to the banks but merely an additional guarantee requested at times by banks and which does not have any impact of the bank's decision to issue the bank acceptance drafts with no additional borrowing interests for the drawer. Furthermore, they can take various forms including term deposits and pledges. The deposits bear interests in favour of the drawer, and therefore, do not represent a cost for the drawer of the bank acceptance draft. On this basis, this claim was rejected.

- (350) On the last point, the Commission recalls that as stated above, a bank acceptance draft is a means of payment and therefore, it does not have the effect of extending the payment due date agreed with the supplier but it has the effect to defer the cash payment. As a means of payment, the bank acceptance draft can be endorsed by the payee (supplier) to settle its liabilities towards other parties. Therefore, there is no commensurate decrease in liquidity of the related parties that received the bank acceptance draft. There is also no double-counting, as bank acceptance drafts received as a means of payment were not countervailed at all in any of the companies. Consequently, the claim was dismissed.
- (351) Following final disclosure, the Nanshan Group also requested a correction of calculation errors due to formula errors. The Commission accepted the claim and adapted the calculations accordingly.

### 3.5.2.3. Calculation of the subsidy amount

- (352) For the calculation of the amount of the countervailable subsidy, the Commission assessed the benefit conferred on the recipients during the investigation period.
- (353) As mentioned in recitals (334) and (335), the Commission found that the sampled exporting producers used bank acceptance drafts to address their needs for short-term financing without paying a remuneration.
- (354) The Commission thus concluded that bank acceptance drawers should pay a remuneration for the period of financing. The Commission considered that the period of financing started on the date of the issuance of the bank acceptance draft and ended on the maturity date of the bank acceptance draft. Regarding bank acceptance drafts issued before the investigation period and bank acceptance drafts with a maturity date after the end of the investigation period, the Commission calculated the benefit only for the period of financing covered by the investigation period.
- (355) In accordance with Article 6(b) of the basic Regulation, considering that bank acceptance drafts are a form of short-term financing and that they effectively have the same purpose as short-term working capital loans, the Commission considered that the benefit thus conferred on the recipients is the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term financing interest rate.
- (356) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. The Commission considered, as established in previous investigations<sup>(80)</sup>, that bank acceptance drafts should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.4.2 above.

## 3.6. Convertible corporate bonds

- (357) Companies from two sampled groups have issued convertible corporate bonds before the investigation period. One company within the sampled groups (Shantou Wanshun) issued convertible corporate bonds before the investigation period, which were partly converted into capital during the investigation period. This convertible bond has a progressive interest rate structure with very low interest rates, ranging between 0,4 % and 2 %, which is far below the Loan Benchmark/Prime Rate set by the GOC.

<sup>(80)</sup> See GFF case mentioned in footnote 5, recital 399.

- (358) Another company (Shandong Nanshan) had issued convertible bonds before the investigation period, which had been converted into capital in 2015 as part of a debt-to-equity swap. The holders of the bonds of both companies were mainly state-owned financial institutions. The Commission also found that the convertible bonds of both companies were converted into capital at a significantly higher price than the prevailing market price of the shares at the time of conversion.
- (359) The Commission established that both sampled companies benefited from preferential financing in the form of convertible bonds.

#### 3.6.1.1. Legal basis/Regulatory Framework

- Law of the People's Republic of China on Securities (version 2014) ('Securities Law') <sup>(81)</sup>;
  - Administrative Measures on Issuance of Securities by Listed Companies (version 2008) <sup>(82)</sup>;
  - Administrative Measures on Sponsorship for Securities Issuance and Listing (version 2008) <sup>(83)</sup>;
  - Administrative Measures on Issue and Underwriting of Securities (version 2018);
  - Regulations on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011;
  - Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;
  - Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008.
- (360) The Regulations on the Administration of Corporate Bonds and the Administrative Measures for the Issuance and Trading of Corporate Bonds set the general legal framework applicable to corporate bonds. However, there is a set of specific legislation applicable to convertible corporate bonds, namely the Administrative Measures on Issuance of Securities by Listed Companies, the Administrative Measures on Issue and Underwriting of Securities and the Administrative Measures on Sponsorship for Securities Issuance and Listing.
- (361) Article 14 of the Administrative Measures on Issuance of Securities by Listed Companies defines 'convertible corporate bonds' as "*corporate bonds which are issued by an issuing company pursuant to law and which may be converted to shares during a certain period and under stipulated conditions*".
- (362) Pursuant to Article 11 of the Securities Law, which was applicable at the time of the issuance of the convertible bonds by the sampled companies, as well as Article 45 of the Administrative Measures on Issuance of Securities by Listed Companies and Article 2 of the Administrative Measures on Sponsorship for Securities Issuance and Listing, companies that want to issue convertible corporate bonds need to solicit the services of a securities sponsor, which acts as an underwriter. The sponsor organizes the issuance of the bonds, recommends the issuer, submits the application file to the CSRC for approval, negotiates the interest rates at which the bond will be presented to investors and is responsible for finding investors which would accept the agreed terms of issuance of the bond, including the interest rate.
- (363) In line with the regulatory framework, convertible bonds cannot be issued and traded freely in China. The issuance of each bond must be approved by the CSRC. Article 16 of the Securities Law stipulates that "*listed companies issuing convertible corporate bonds shall [...] satisfy the requirements stipulated in this Law for public offering of shares; and shall obtain the approval of the securities regulatory authorities of the State Council*". According to Article 3 of the

<sup>(81)</sup> Lastly amended on 28 December 2019 by Presidential Decree No 37 with effect from 1 March 2020.

<sup>(82)</sup> Lastly amended on 14 February 2020 pursuant to the Decision on Revision of the "Administrative Measures on Securities Issuance by Listed Companies" of the China Securities Regulatory Commission with effect from 14 February 2020.

<sup>(83)</sup> Replaced by Administrative Measures on the Sponsor Service for Securities Issuances and Listings, Decree No 170 of the China Securities Regulatory Commission of 12 June 2020 with effect from 12 June 2020.

Administrative Measures on Issue and Underwriting of Securities, which applies to convertible bonds, “the CSRC shall supervise and administer the offering and underwriting of securities to the law”. Furthermore, according to Article 10 of the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.

- (364) According to Article 16 of the Securities Law, the public issuance of bonds should satisfy the following requirements: “the usage purpose of the proceeds shall comply with State industrial policies” and “the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only”. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. Furthermore, Article 10(2) of the Administrative Measures for the Issuance of Securities by Listed Companies, which is a *lex specialis* applicable to convertible bonds, stipulates that “the purposes of use of the fund raised are in line with the industrial policies of the State”.
- (365) As explained in recital (100), Decision No 40 refers to ‘The Guiding Catalogue for Industry Restructuring’ and provides that if “the investment project belongs to the encouragement content it shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles”. It follows that the issuance of convertible corporate bonds, which, as shown, necessarily target an encouraged industry, corresponds with the practice of financial institutions to support those industries.
- (366) The interest rates on corporate bonds are also strictly regulated. Article 16 of the Administrative Measures for the Issuance of Securities by Listed Companies provides that “the interest rate of a convertible corporate bond shall be determined by the issuing company and the leading underwriter through negotiations, but it shall satisfy the relevant provisions of the State”. According to Article 16(5) of the Securities Law, “the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council”. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds, which is generally applicable to all bonds, provides further details by stating that, “the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity”.
- (367) According to Article 17 of the Administrative Measures for the Issuance of Securities by Listed Companies, “to publicly issue convertible corporate bonds, a company shall entrust a qualified credit rating agency to make credit ratings and follow-up ratings”. In addition, Article 18 of the generally applicable Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors.

### 3.6.1.2. Financial institutions acting as public bodies

- (368) According to the China bond market insight 2021 by Bloomberg, the bonds listed in the interbank bond market account for 88 % of the total trading volume of bonds <sup>(84)</sup>. According to the same study, most of the investors are institutional investors, including financial institutions. In particular, State-owned commercial banks represent 57 % of the investors and policy banks represent 3 % <sup>(85)</sup>. Furthermore, the Commission found that all of the investors of the convertible bonds issued by one of the sampled companies are institutional investors, a category of investors that includes financial institutions.
- (369) Furthermore, as an encouraged industry under the ‘Guiding Catalogue for Industry Restructuring’, the ACF industry is entitled to credit support by financial institutions based on Decision No 40. The fact that convertible bonds, such as the convertible bonds issued by the sampled companies, bear a low interest rate is a strong indication that financial institutions, which are the major investors in these bonds, are obliged to provide “credit support” to these companies and take into account other considerations than commercial considerations when taking the investment or financing decision, such as government policy objectives. Indeed, an investor operating in market conditions would be more sensitive to the financial return on the investment and would most probably not invest in

<sup>(84)</sup> See China bond market insight 2021, Footnote 59, p. 33.

<sup>(85)</sup> See China bond market insight 2021, Footnote 59, p. 33.

convertible bonds bearing very low interest rates. Moreover, the conclusions reached by the Commission about the financial situation of both groups of exporting producers in Section 3.4.2.3 above in terms of their liquidity and solvency profiles further indicate that investors operating in market conditions would not invest in financial instruments such as convertible bonds, offering low financial returns, while the issuer presents high liquidity and solvency risks. Therefore, in the Commission's view only investors having motivations other than a financial return on their investment, such as compliance with the legal obligation to provide financing to companies in encouraged industries, would make such an investment.

- (370) On the basis of the above, the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in the convertible bonds issued by the sampled companies, are financial institutions which have a legal obligation to provide credit support to ACF producers.
- (371) Furthermore, as described in Section 3.4.1 above, the financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework in which these financial institutions operate is also applicable to convertible bonds.
- (372) In Section 3.4.1 above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.4.1.7 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.
- (373) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of convertible bonds. It therefore examined the overall legal environment as set out above in recitals (360) to (367), in combination with the concrete findings of the investigation.
- (374) The Commission found that the convertible bonds were issued by the two groups of sampled exporting producers at very low and similar interest rates, regardless of the companies' financial and credit risk situation. The Commission also found that a meaningful amount of these bonds were converted into shares at a significantly higher price than the prevailing market price of the shares. Thus, even when the bonds were converted into shares, the rate of return remained below market value.
- (375) In light of the above considerations, the Commission concluded that the Chinese financial institutions, which are the major investor in the convertible bonds issued by the sampled companies, followed the policy orientations laid down in Decision No 40 by providing preferential financing to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.
- (376) By accepting to invest in convertible bonds with a very low rate of return irrespective of the risk profile of the issuer, including below the risk free reference rate offered by the PBOC or published by the NIFC as referred to in recital (387) below, and by agreeing to convert the bonds into shares at a price much higher than their current market value, the financial institutions provided a benefit to the sampled exporting producers.
- (377) Following final disclosure, the GOC claimed that the purchase of corporate bonds and convertible corporate bonds is a regular commercial practice that occurs in all major jurisdictions, including the European Union and the US. According to the GOC, the fact that many of the investors in bonds are institutional investors, including financial institutions, is also similar to the situation in the EU. The GOC argued that, in any event, even if the figures provided in the Disclosure are accepted, so that 57 % of the investors would be State-owned commercial banks, and 3 % would be policy banks, this would still leave a market share of 40 %, which should not be ignored.

- (378) According to the GOC, the Commission also failed to make a separate analysis of the roles carried out by financial institutions in the Chinese market for convertible bonds. As these are different types of instruments compared to loans, and the roles carried out by investing financial institutions are fundamentally different as well. The same reasoning was also applied to corporate bonds referred to in section 3.6.2 below.
- (379) The Commission disagreed with the statement of the GOC that it did not carry out a specific assessment of the conduct of financial institutions as public bodies for the function of buying bonds. In addition to the conclusions reached by the Commission in Section 3.4.1 above, the Commission also sought concrete proof of the exercise of control in a meaningful way based on the concrete issuances of convertible bonds and carried out a specific assessment in recitals (373) and (374). While the Commission agreed with the GOC that the purchase of corporate bonds and convertible bonds may be in principle a regular commercial practice that occurs in all major jurisdictions, it pointed out that the purchase of corporate bonds by Chinese financial institutions is characterised by a State interference as demonstrated in recital (375).

### 3.6.1.3. Specificity

- (380) The Commission considered that the preferential financing through convertible bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation. Convertible bonds cannot be issued without the approval of the CSRC, which checks if all the regulatory conditions for the issuance of the convertible bonds are met. As explained in recital (364), according to the Securities Law and the Administrative Measures on Issuance of Securities by Listed Companies specifically applicable to convertible bonds, the issuance of convertible bonds must be in line with the State's industrial policies. The Commission considered in recital (366) that "*in line with the industrial policies of the State*" means that the investment project falls under the 'encouraged' content in the Guiding Catalogue of Industry Restructuring to which the ACF industry belongs.
- (381) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from convertible bonds at the same preferential terms and conditions.
- (382) Following final disclosure, the GOC submitted that the criteria that must be met by a company in order to issue bonds are financial in nature and are not policy-oriented. The GOC disagreed with the stance that the issuance of convertible bonds must be in line with the State's industrial policies and repeated that the ACF industry is not an encouraged industry. The same reasoning was also applied to corporate bonds referred to in section 3.6.2 below.
- (383) In this respect, although the Commission agreed that bonds markets are regulated in every country and that most of the criteria that must be met by a company in order to issue bonds are financial in nature, it disagreed with the claim of the GOC that the issuance of convertible bonds is not policy-oriented in China. First, the Commission reiterated its stance that the ACF sector is an encouraged industry. Second, the Commission considered that the wording of the Securities Law of the PRC (version 2014) and the Administrative Measures on Issuance of Securities by Listed Companies specifically applicable to convertible bonds, according to which the issuance of convertible bonds must be in line with the State's industrial policies is clear enough. Finally, the Commission established in recital (376) that by accepting to invest in convertible bonds with a very low rate of return irrespective of the risk profile of the issuer, the financial institutions provided a benefit to the sampled exporting producers. Therefore, the claims of the GOC were rejected.

### 3.6.1.4. Calculation of the subsidy amount

- (384) Convertible bonds are a hybrid debt instrument which have features of a bond such as interest payments while also providing the opportunity to convert the invested amount into shares under certain conditions.

- (385) The Commission found that the interest rate on the convertible corporate bond issued by the sampled companies in the IP was at such a low level that only investors having motivations other than a financial return on investment, for example compliance with the legal obligation to provide financing to companies in encouraged industries, would invest in them. This was supported by the fact that a major proportion of the investors in the convertible bonds issued by the sampled companies is constituted by state-owned financial institutions.
- (386) The Commission found that the part of the convertible bonds of both the sampled companies that has not been converted into shares provided investors a return in the form of an interest similarly to loans or standard bonds. Since the calculation methodology for loans described in recital (248) is based on bonds, the Commission decided to follow the same methodology <sup>(86)</sup>. This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the Loan Benchmark Rates published by the PBOC or, after 20 August 2019, the Loan Prime Rate published by the NIFC <sup>(87)</sup>, to establish a market-based interest rate for bonds.
- (387) The benefit is the difference between the interest amount that the company should have paid by applying the market-based interest rate referred to in recital (419) and the actual interest paid by the company.
- (388) The Commission also found that a meaningful amount of these bonds were converted into shares. The Commission found that the convertible bonds of both companies were converted into capital at a significantly higher price than the prevailing market price of the shares. In this case, the Commission considered the debt converted into shares as a countervailable equity injection. The benefit of this capital injection was considered to be the difference between the stock price of the shares at the time of conversion, and the additional premium paid by the bondholders. This benefit was allocated to the IP using the average depreciation period of the assets of the companies.
- (389) Following final disclosure, the GOC and Wanshun Group objected the use of the same benchmark for bonds and convertible bonds as the one applied to loans, since the convertibility of a bond is an essential element thereof, which also makes it a substantially different loan instrument. The GOC also claimed that there is no basis for the Commission to use the PBOC benchmark as a starting point and then add a mark-up. According to the GOC, European ACF producers with a BB rating also issued bonds for a similar maturity period at significantly lower rates than the calculated benchmark rate during the same period. The same reasoning was also applied to corporate bonds referred to in section 3.6.2 below.
- (390) In addition, Wanshun pointed out that bonds are highly tradable in the market (a person holding the bond can sell it in the market without waiting for its maturity). By contrast, a loan is an agreement between two parties, where one party borrows money from the other. The loan is not generally tradable in the market. In addition, Shantou Wanshun's bond could be converted into shares, thus providing a further advantage to the bondholder. Accordingly, the interest rates for convertible bonds would logically be lower than for loans, as well as other types of bonds (investors would be willing to accept a lower coupon rate on a convertible bond because of its conversion feature). As an alternative, Wanshun proposed to use a Hong Kong-based benchmark based on bond yield rates, i.e. the same benchmark as the one proposed by the Nanshan Group for loans in recital (264).
- (391) The Commission pointed out that loans and corporate bonds are in principle similar financial debt instruments. In fact, a corporate bond is a kind of a loan used by large entities to raise capital. Both loans and corporate bonds are contracted/issued for a certain period of time and bear an interest/coupon rate. The fact that the financing through a loan is provided by a financial institution and that the financing through a corporate bond is provided by investors, which in most cases are also financial institutions, is irrelevant for the determination of the core characteristics of both instruments. Indeed, both instruments serve to finance business operations, bear the same

<sup>(86)</sup> As there were no data specific to convertible corporate bonds publicly available, the Commission used the data available for corporate bonds, which should also include convertible corporate bonds.

<sup>(87)</sup> See recital (177) above.

kind of remuneration and have similar repayment term and conditions. Furthermore, during the investigation, the Commission found out that the corporate bonds issued by the cooperating exporting producers had coupon rates and purposes which were very similar to the interest rates and purpose of loans with similar duration, and thus they could be considered interchangeable from the producer's perspective, thus justifying the application of the same benchmark for both instruments in the specific circumstances of this case.

- (392) Furthermore, the Commission considered the comments of the GOC referring to interest rates applicable to BB-rated companies in the European Union as unfounded since the risk-free rate in the European Union is not the same as the risk-free rate in the PRC and thus it is not possible to compare interest rates in absolute terms.
- (393) The Commission agreed that convertible corporate bonds are a hybrid debt instrument which also provides the opportunity to convert the invested amount into shares under certain conditions and are as such in principle different from corporate bonds. The Commission did look into the possibility to quantify this convertibility element. However, the benchmark proposed by Wanshun did not take into consideration such convertibility. In addition, it was not an appropriate benchmark in general for bonds for the reasons already set out in recital (268). No other possible benchmarks were submitted, and no further public information was available to provide for a more accurate benchmark for convertible bonds (e.g. indices for the premium on US AA rated convertible bonds and US BB rated convertible bonds) or for the convertibility aspect of these bonds. Moreover, the benchmark used as the basis for the conversion was in any event a risk-free rate. These claims were therefore rejected.
- (394) In relation to the convertible corporate bonds, the Wanshun Group claimed that:
- (a) the majority of investors of Shantou Wanshun convertible bonds were individuals operating on the Shenzhen Stock Market and not institutional investors (either public bodies or private bodies entrusted by the GOC). The Commission provided no evidence that all these investors were institutional investors. Thus, the Commission should not have treated these convertible bonds as a subsidy. Wanshun also made an identical claim as regards the equity injection (the conversion of some of Shantou Wanshun bonds into shares).
  - (b) the Commission did not deduct from its calculation the coupon payments from the benchmark interest payments, that were made by Shantou Wanshun and should had been deducted.
- (395) The Commission notes that Wanshun did not provide sufficient evidence to support its claim that a majority of investors of Shantou Wanshun convertible bonds were individuals operating on the Shenzhen Stock Market. Indeed, the source of this claim could not be verified, the supporting document did not provide a clear definition for what it considers to be private and state-owned investors, and it did not contain the individual names of the investors either. Therefore, this claim was rejected.
- (396) The Commission accepted the claim of Wanshun on the deduction of the coupon payments from the benchmark interest payments, and deducted the coupon payment regarding the investigation period from the benchmark interest payments.
- (397) The Wanshun Group further claimed that the Commission erred when countervailing the equity injection (the conversion of some of Shantou Wanshun bonds into shares), since:
- (a) The Commission could not have compared the initial conversion price set in July 2018 with the market stock price in June 2019, since the price per share was set at the time of investment, but the conversion (if it occurs) would take place at a later time. The investor then bore the risk, or had the advantages of evolutions in that share sales price over time,
  - (b) the bond conversion price used by the Commission was incorrect, since it changed from the beginning to the end of the IP.

- (398) The Commission disagreed with the comments regarding the initial conversion price set in July 2018. It noted that in case the stock market price of a given share at the moment of conversion is materially lower than its market price, a rational investor would refrain from converting the bonds into shares, and continue to keep the bonds instead. Thus, the rational investor would try to minimize the risk of an unfavourable price evolution.
- (399) The Commission disagreed also with the comment regarding the incorrect conversion price. From the information submitted to the Commission, it appeared that the price change claimed by the Wanshun Group actually only took place after the conversion of the shares. Therefore, the Commission maintained that it has used the correct conversion price when calculating the benefit.

### 3.6.2. Corporate bonds

- (400) One of the sampled groups benefited from preferential financing in the form of corporate bonds.

#### 3.6.2.1. Legal basis/Regulatory Framework

- Securities Law;
  - Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;
  - Regulations on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011;
  - Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008.
- (401) In line with the regulatory framework, bonds cannot be issued or traded freely in China. The issuance of each bond must be approved by various governmental authorities, such as the PBOC, the NDRC or the CSRC, depending on the type of bond and the type of issuer. In addition, according to the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.
- (402) Furthermore, according to Article 16 of the Securities Law applicable during the IP, a public offering of corporate bonds should satisfy the following requirements: *“the usage purpose of the proceeds shall comply with State industrial policies [...]”* and *“the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only”*. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. As explained in recitals (364) and (365), the issuance of corporate bonds under such conditions targets an encouraged industry such as the ACF industry and corresponds with the practice of financial institutions to support those industries.
- (403) According to Article 16(5) of the Securities Law, *“the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council”*. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds provides further details by stating that, *“the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity”*.
- (404) Furthermore, Article 18 of the Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors only at the sole discretion of the issuer. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors. Therefore, it results that most corporate bonds are issued to qualified investors which have been approved by the CSRC and which are Chinese institutional investors.

### 3.6.2.2. Financial institutions acting as public bodies

- (405) As explained in recitals (369) and (370) above, the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in convertible bonds issued by the sampled companies are financial institutions, which have a legal obligation to provide credit support to ACF producers. The same reasoning and conclusion also applies to corporate bonds as the conditions of issuance are very similar, in particular the condition to comply with the requirements of national laws, regulations and policy, and with the industrial policy of the State.
- (406) As described in recital (403), Article 16 of the Securities Law and Article 12 of the Regulations on the Administration of Corporate Bonds require that a public offering of corporate bonds complies with the industrial policies of the State. This has the effect that corporate bonds can only be issued for purposes that are in line with the targets of the planning of the GOC regarding encouraged industries as explained in recitals (357) and (359). The institutional investors, which are, as shown in recital (368), to a large extent commercial banks and policy banks, have to follow the policy orientations laid down in Decision No 40, which read together with the Guiding Catalogue for Industry Restructuring, provides for specific treatment of certain projects within certain encouraged industries, such as the ACF industry. The beneficial treatment to one of the sampled groups resulted in the decision to invest in corporate bonds issued with an interest rate that does not reflect market based criteria.
- (407) As described in Section 3.4.1 above, the financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework in which these financial institutions operate is also applicable to corporate bonds.
- (408) In Section 3.4.1 above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.4.1.7 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.
- (409) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of corporate bonds. It therefore examined the overall legal environment as set out above in recitals (402) to (405), in combination with the concrete findings of the investigation.
- (410) The Commission found that the corporate bonds were issued with an interest rate below the level that should have been expected given the companies' financial and credit risk situation, including below the risk free reference rate offered by the PBOC or published by the NIFC as referred to in recital (419) below.
- (411) In practice, interest rates on corporate bonds are influenced by the credit rating of the company, similar to loans. However, the Commission concluded in recital (215) that the local credit rating market is distorted and credit ratings are unreliable.
- (412) In light of the above considerations, the Commission concluded that the Chinese financial institutions followed the policy orientations laid down in Decision No 40 by providing preferential financing to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.
- (413) By organising the issuance of a corporate bonds with the interest rate below the market rate corresponding to the actual risk profile of the issuer and by accepting to invest in such corporate bond, the financial institutions provided a benefit to the sampled exporting producer.

### 3.6.2.3. Specificity

- (414) As described in recital (380) above, the Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law states that the issuance of bonds must comply with the State's industrial policies. As already mentioned in recital (104), the ACF industry is regarded as an encouraged industry in the Guiding Catalogue of Industry Restructuring.

### 3.6.2.4. Calculation of the subsidy amount

- (415) Since bonds are in essence another type of debt instrument, in principle similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation methodology for loans as described above in Section 3.4.2.3. This means that the relative spread between US AA corporate bonds and US BB corporate bonds with the same duration is applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate published by the NIFC, to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.
- (416) Following the final disclosure, the Wanshun Group and the Nanshan Group claimed that the Commission wrongly assumed that all bondholders are financial institutions acting as public bodies. Since the Bloomberg report referred to by the Commission itself found that State-owned banks represents 57 % of the investors and policy banks represent 3 % of the holders of convertible corporate bonds in China, only 60 % (57 % + 3 %) of the institutional investor bonds are countervailable.
- (417) The Commission pointed out that there is a body of corroborating evidence, according to which a major proportion of the investors in the bonds issued by the sampled companies is constituted by financial institutions which have a legal obligation to provide credit support to ACF producers. In addition, the Commission wishes to highlight that the Bloomberg report also indicates that 27 % of the bonds are held by "fund products", which are essentially funds managed by the same financial institutions. Taking into account 3 % "other" financial institutions, the total proportion of financial institutions investing in bonds is actually 90 %. Considering the high proportion of institutional investors, including financial institutions, the Commission was of the opinion that they have determined the characteristics of the corporate bonds at issue, in particular the low coupon rate, and that other investors, such as private investors only adhered to such conditions. Finally, the Commission considered that the Chinese financial supervision system with respect to corporate bonds and convertible bonds is only an element, which together with the normative framework governing financing by financial institutions described in section 3.4.1, as well as with the concrete behaviour of the financial institutions pointed to the interference from the GOC. Therefore, these claims of were rejected
- (418) Finally, the Nanshan Group claimed that the Commission did not deduct from its calculation the coupon payments that were made by Nanshan Group Co., Ltd. The Commission did not accept this point, as no information on coupon payments was provided in the tables provided by the company, neither before nor during the RCC. The Commission also recalls that this information is part of the missing information for which Article 28 was applied. In any event, it is impossible to verify at this stage of the investigation the additional information provided as an Annex to the comments on disclosure.

### 3.6.3. Conclusion on preferential financing: other types of financing

- (419) The Commission established that all sampled groups of exporting producers benefited from preferential financing in the form of credit lines, bank acceptance drafts and convertible and corporate bonds. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered these types of preferential financing a countervailable subsidy.

- (420) The subsidy rate established with regard to the preferential financing described above during the investigation period for the sampled groups of companies amounted to:

**Preferential financing: other types of financing**

Company name	Subsidy amount
Nanshan Group	7,78 %
Wanshun Group	3,20 %
Daching Group	2,82 %

3.6.4. *Preferential insurance: export credit insurance*

- (421) The Commission found that Sinosure provided export credit insurances to the sampled groups of companies. On its website, Sinosure states that it promotes Chinese exports of goods, especially the exporting of high-tech products. According to a study undertaken by the Organisation for Economic Cooperation and Development ("OECD"), the Chinese high-tech industry, of which the ACF industry is part, received 21 % of the total export credit insurance provided by Sinosure<sup>(88)</sup>. Furthermore, Sinosure has taken an active role in fulfilling the 'Made in China 2025' initiative, guiding enterprises to use national credit resources, carrying out scientific and technological innovation and technological upgrading, and helping "going out" enterprises become more competitive in the global market<sup>(89)</sup>.

3.6.4.1. *Legal basis/Regulatory Framework*

- Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance (Shang Ji Fa [2004] No 368), issued jointly by MOFCOM and Sinosure;
- 840 plan included in the Notice by the State Council of 27 May 2009;
- Notice on Cultivation and Development of the State Council on Accelerating Emerging Industries of Strategic Decision (GuoFa [2010] No 32 of 18 October 2010), issued by the State Council and its Implementing Guidelines (GuoFa [2011] No 310 of 21 October 2011)
- Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16 of the National Science and Technology Department (2006).

3.6.4.2. *Findings of the investigation*

- (422) The three sampled groups of companies had outstanding export insurance agreements with Sinosure during the investigation period.
- (423) As mentioned in recital (122) above, Sinosure failed to provide the supporting documentation requested concerning its corporate governance such as Articles of Association.
- (424) In addition, Sinosure did not provide more specific information about the export credit insurance provided to the ACF industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business.
- (425) Therefore, the Commission had to complement the information provided by facts available.

<sup>(88)</sup> OECD Study on Chinese export credit policies and programmes, page 7, para 32, available at [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG\(2015\)3&doclanguage=en](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG(2015)3&doclanguage=en), last accessed on 18 August 2021.

<sup>(89)</sup> See Sinosure website, Company profile, Supporting 'Made in China', <https://www.sinosure.com.cn/en/Responsibility/smic/index.shtml>, last accessed on 17 August 2021.

- (426) According to information provided in previous anti-subsidy investigations <sup>(90)</sup> and according to Sinosure's website <sup>(91)</sup>, Sinosure is a policy-oriented insurance company established and supported by the State to support the PRC's foreign economic and trade development and cooperation. The company is 100 % owned by the State. It has a board of directors and a board of supervisors. The GOC has the power to appoint and dismiss the company's senior managers. Based on this information, the Commission concluded that there is formal indicia of government control with respect to Sinosure.
- (427) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of Sinosure with respect to the ACF industry.
- (428) According to the Notice on the issuance of the 2006 edition of China's High-tech Products Export Catalogue No 16, "*products included in the 2006 edition of the Export Catalogue may enjoy preferential policies granted by the State for the export of high-tech products*". The Export Catalogue of High-Tech Products specifically mentions aluminium foil. <sup>(92)</sup>
- (429) Furthermore, according to the Notice on the Implementation of the Strategy of Promoting Trade through Science and Technology by Utilising Export Credit Insurance <sup>(93)</sup>, Sinosure should increase its support for key industries and products by strengthening its overall support for the export of high and new technology products, including 'new materials' products. It should treat high and new technology industries, such as the ACF industry, listed in the China's High-tech Products Export Catalogue, as its business focus and provide comprehensive support in terms of underwriting procedures, approval with limits, claims processing speed and rate flexibility. With regard to rate flexibility, it should give products the maximum premium rate discount within the floating range provided by the credit insurance company. As mentioned in recitals (89) and (98), the ACF industry is included in the more general category of 'new materials'. Furthermore, the Annual Report of Sinosure for 2019 states that Sinosure has "*supported steady development of key Industries*" and "*accelerated growth of strategic emerging Industries*" <sup>(94)</sup>.
- (430) On this basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by Sinosure's managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on such a normative framework in order to exercise control in a meaningful way over the conduct of Sinosure.
- (431) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete insurance agreements. However, no specific examples with respect to the ACF industry or the sampled companies were provided.
- (432) In the absence of concrete evidence, the Commission therefore examined the concrete behaviour of Sinosure with regard to the insurance provided to the sampled companies. This behaviour contrasted with Sinosure's official stance, as Sinosure was not acting based on market principles.
- (433) After comparing the total claims paid with the total insured amounts, based on the data in the Sinosure's Annual Report for 2019 <sup>(95)</sup>, the Commission concluded that on average Sinosure would need to charge 0,33 % of the insured amount as a premium to cover the cost of the claims (without even taking into account overhead expenses). However, in practice, the premiums paid by the sampled companies were lower than the minimum fee needed to cover operational costs.
- (434) Following final disclosure, the GOC repeated that Sinosure is not a public body, that it follows market principles in its business operations. In assessing the possibility of granting export credit insurance, Sinosure considers factors such as the national risks, industry risks, importer's credit risks in a comprehensive way. The GOC also noted again that the Commission should have used an in-country benchmark.

<sup>(90)</sup> See Tyres case cited in footnote 5, recital 429.

<sup>(91)</sup> <https://www.sinosure.com.cn/en/Sinosure/Profile/index.shtml>, last accessed on 18 August 2021.

<sup>(92)</sup> China's High-tech Products Export Catalogue, No 417.

<sup>(93)</sup> <http://www.mofcom.gov.cn/aarticle/b/g/200411/20041100300040.html>, last accessed on 12 August 2021.

<sup>(94)</sup> Sinosure Annual Report 2019, p. 11, <https://www.sinosure.com.cn/images/xwzx/ndbd/2020/08/27/38BBA5826A689D7D5B1DAE8BB66FACF8.pdf>, last accessed on 18 August 2019.

<sup>(95)</sup> Ibid, p. 38.

- (435) Since the GOC did not present any new evidence concerning the function of Sinosure as a public body, the Commission maintained its conclusions in this respect. Furthermore, as Sinosure held a predominant market position during the investigation period, the Commission could not find a market-based domestic insurance premium, as highlighted in section 3.6.4.3 below. This claim was thus also rejected.
- (436) Therefore, the Commission concluded that the legal framework set out above is being implemented by Sinosure in the exercise of governmental functions with respect to the ACF sector. Sinosure acted as a public body in the sense of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law. Furthermore, the sampled exporting producers received a benefit, since the insurance was provided at rates below the minimum fee needed for Sinosure to cover its operational costs.
- (437) The Commission also determined that the subsidies provided under the export insurance programme are specific, because they could not be obtained without exporting and are thus export contingent within the meaning of Article 4(4)(a) of the basic Regulation.

#### 3.6.4.3. Calculation of the subsidy amount

- (438) As Sinosure held a predominant market position during the investigation period, the Commission could not find a market-based domestic insurance premium. Therefore, in line with previous anti-subsidy investigations, the Commission used the most appropriate external benchmark for which information was readily available, i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries.
- (439) The Commission considered that the benefit conferred on the recipients is the difference between the amount that they had actually paid as insurance premium and the amount that they should have paid by applying the external benchmark premium rate mentioned in recital (438).
- (440) In relation to the export credit insurance, Wanshun Group claimed that the Commission should have examined whether the premium rates charged were adequate to cover the insurer's operating costs and losses. The party provided information that the annual premiums collected by Sinosure during these years were adequate to cover its long-term operating costs and losses.
- (441) Wanshun also claimed that the Commission should not only consider the insured amount and the claims paid to calculate an appropriate fixed premium rate, but should have also considered the recoveries of the claims. In addition, the party requested the Commission to disclose its exact calculation. It also stressed that not all companies paid insurance premiums at a fixed rate.
- (442) It further claimed that if the Commission maintains its decision to treat the export credit insurance given by Sinosure as a countervailable subsidy, it should revise the unreasonably high premium rate. The Commission did not provide any analysis or explanations as regards the reasonableness of the selected benchmark and invited the Commission to at least explain on what basis it considered the US EXIM rates to be more appropriate.
- (443) The Commission disagrees with the claims of Wanshun concerning export credit insurance. Sinosure did not cooperate in the investigation and did not submit any specific information about the export credit insurance provided to the ACF industry, the level of its premiums or detailed figures relating to the profitability of its export credit insurance business. Therefore, it was not possible to make a comparison between the premium rates charged by Sinosure and the insurer's operating cost and losses on the level of any given industry, let alone on the level of exporting producers. Therefore, any cross subsidisation between industries and companies could not be assessed. Also, due to non-cooperation by Sinosure, it was not possible to make a comparison between claims and recoveries of claims as suggested by Wanshun. Finally, Wanshun did not provide any evidence or substantiated arguments to support its claim that the external benchmark, i.e. the premium rates applied by the Export-Import Bank of the United States of America to non-financial institutions for exports to OECD countries as explained in the recital (438), would be unreasonable or manifestly erroneous. Therefore these claims were rejected.

- (444) The subsidy rate established with regard to the scheme described above during the investigation period for the sampled groups of companies amounted to:

**Preferential financing: export credit insurance**

Company name	Subsidy amount
Nanshan Group	0,11 %
Wanshun Group	0,27 %
Daching Group	0,13 %

**3.7. Grant programmes**

- (445) The Commission found that the sampled groups of companies benefitted from a variety of grants programmes such as grants related to technology, innovation and development, asset-related grants, interest discounts on loans and grants supporting exports. Grants related to technology, innovation and development constituted a significant part of the grants reported by the sampled groups of companies. Therefore, the Commission grouped the grants in two categories: (i) grants related to technology, innovation and development and (ii) other grants.

*3.7.1. Grants related to technology, innovation and development*

- (446) All sampled groups received grants related to research and development ('R&D') and industrialisation, technological upgrading and innovation during the investigation period.

*3.7.1.1. Legal basis/Regulatory Framework*

- The 13th Five-year Plan on Technological Innovation;
- Guiding Opinions on Promoting Enterprise Technology Renovation, State Council, Guo Fa (2012) 44;
- Industry Revitalization and Technology Renovation Work Plan, NDRC, MIIT, 2015
- Industry support funds and special funds for R & D and industrialization, Dong Ban Fa (2018) No 62;
- National High-Tech Research and Development Program (863) Management Measures;
- Notice on Issuing the First Batch of Provincial Industrial and Information Industry Transformation and Upgrading Special Fund Indicators in 2019;
- Notices on allocating special funds for technical renovation, special funds for industrial revitalization, special funds for technical transformation, and special funds for industrial development.

*3.7.1.2. Findings of the investigation*

- (447) The Commission found that the grants related both to technological upgrading, renovation or transformation of the manufacturing process as well as to research and development of high, 'advanced' and new technologies.
- (448) According to the Guiding Opinions on Promoting Enterprise Technology Renovation, central and local governments are called upon to further increase the amount of financial support and increase investment with a focus on industrial transformation and upgrading in key areas and critical issues of technology renovation. Furthermore, authorities should continuously innovate and improve fund management methods, flexibly carry out multiple types of support and raise the usage efficiency of fiscal funds.

- (449) The Industry Revitalization and Technology Renovation Work Plan implements the above mentioned Guiding Opinions in practice by setting up special funds for promoting technological progress and technological transformation projects. These funds include investment subsidies and loan discounts. The use of the funds must be in line with national macroeconomic policies, industrial policies and regional development policies
- (450) The grant programmes from which the sampled groups of companies benefitted are to a large extent similar in their design. Depending on the purpose, criteria are set upon which enterprises can apply and if the criteria are complied with, the financial support is granted.
- (451) For example, some of the grants that were provided to the sampled companies have their legal basis in the National High-Tech Research and Development Program which once more illustrate the functioning of State planning in the PRC as described above in recital (88). Article 2 states that "*The National High-Tech Research and Development Plan (863) is a science and technology program with clear national objectives, which is supported by central financial allocations.*" Article 29 of the same document establishes the procedure for the approval of projects that are eligible. It reflects the mechanism described above: after an application, the acceptance and evaluation of it, an expert group will put forward the proposals of the project and the project funding estimates and eventually a joint office will approve and sign the grant.

### 3.7.1.3. Specificity

- (452) The grants related to technology, innovation and development, including the grants for R & D projects described above, constitute subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, i.e. a transfer of funds from the GOC to the producers of the product concerned in the form of grants. As mentioned in recital (445) above, these funds are booked as government subsidies in the accounts of the sampled exporting producers.
- (453) These subsidies are specific within the meaning of Article 4(2)(a) of the basic Regulation because only companies operating in key areas or technologies, as listed in the guidelines, administrative measures and catalogues that are published on a regular basis, are eligible to receive them and ACF is among the eligible sectors. In any event, the grants reported by the companies and cross-checked by the Commission are company-specific.
- (454) Following final disclosure, the GOC argued that the Commission did not demonstrate that the R & D grants at issue are specific within the meaning of Article 4(2)(a), since attributing R & D grants is common across the world, and not limited to certain enterprises.
- (455) The Commission has already demonstrated the specificity of grants, since only companies operating in key areas or technologies as listed in the guidelines, administrative measures and catalogues are eligible. Furthermore, the cooperating exporting producers provided grants-related documents, such as legal documents and granting notices, which demonstrated that the grants were provided to companies belonging to certain specified industries or sectors and/or involved in specific industrial projects encouraged by the State. Therefore, the Commission reiterated its conclusion that these grants are only available to a clearly specified subset of certain enterprises and/or sectors of the economy. In addition, the Commission found that the eligibility conditions of these grants were not clear and objective and they did not apply automatically; consequently, they did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation.

#### 3.7.1.4. Calculation of the subsidy amount

- (456) In order to establish the benefit during the investigation period, the Commission considered grants received during the investigation period as well as grants received before the investigation period but for which the depreciation period continued during the investigation period. Regarding grants which are not depreciated, the benefit was considered the amount received during the investigation period. Concerning project-related grants and asset-related grants, the benefit was considered the portion of the total grant amount that was depreciated during the investigation period.
- (457) The Commission considered whether to apply an additional annual commercial interest rate in accordance with section F.a) of the Commission's Guidelines for the calculation of the amount of subsidy <sup>(96)</sup>. However, such an approach would have involved a variety of complex hypothetical factors for which there was no accurate information available. Therefore, the Commission found it more appropriate to allocate amounts to the investigation period according to the depreciation rates of the R & D projects and assets, in line with the calculation methodology used in previous cases <sup>(97)</sup>.

#### 3.7.2. Other grants

- (458) The Commission found that the three sampled groups of companies also received other grants, such as asset-related grants, interest discounts on loans, grants supporting exports, and other one-off or recurring grants from different levels of government authorities.

##### 3.7.2.1. Legal basis/Regulatory Framework

- (459) These grants were awarded to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the sampled companies, or specific in terms of geographical location or type of industry. The information regarding the legal basis under which these grants were awarded was not disclosed by all sampled companies. However, the Commission received from some companies a copy of documents issued by a government authority which awarded the funds, referred to as 'the notice'.

##### 3.7.2.2. Findings of the investigation

- (460) Examples of such other grants are asset-related grants, patent funds, science and technology funds and awards, business development funds, export promotion funds, grants for industry quality increase and efficiency enhancement, municipal commerce support funds, foreign economic and trade development funds and production safety awards.
- (461) Given the large amount of grants that the Commission found in the books of the sampled groups of companies, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by government authorities at various levels was initially provided by the three sampled groups. Detailed findings on these grants were provided to the individual companies in their specific disclosure documents.
- (462) These other grants constitute subsidies within the meaning of Article 3(1)(a)(i) and (2) of the basic Regulation as a transfer of funds from the government in the form of grants to the sampled groups of companies took place and a benefit was thereby conferred.

<sup>(96)</sup> OJ C 394, 17.12.1998, p. 6.

<sup>(97)</sup> Such as e.g. Council Implementing Regulation (EU) No 452/2011, OJ L 128, 14.5.2011, p. 18 (*Coated fine paper*), Council Implementing Regulation (EU) No 2013/215, OJ L 73, 11.3.2013, p. 16 (*Organic coated steel*), Commission Implementing Regulation (EU) 2017/366, OJ L 56, 3.3.2017, p. 1, (*Solar panels*), Commission Implementing Regulation (EU) No 1379/2014, OJ L 367, 23.12.2014, p. 22. (*Filament glass fibre*), Commission Implementing Decision 2014/918, OJ L 360, 16.12.2014, p. 65 (*Polyester Staple Fibers*).

- (463) The sampled groups of companies provided information as to the amount of the grants and the authority that awarded and paid each grant. The companies concerned also mostly booked this income under the heading 'subsidy income' in their accounts and had these accounts independently audited. The information on these grants has been taken by the Commission as positive evidence of a subsidy that conferred a benefit.
- (464) Following final disclosure, the GOC argued that the Commission has not sufficiently provided detail on which grants it refers to, since it did not point to specific grants or legal sources. As mentioned in recitals (459) and (461), the grants referred to in this section consisted of numerous small amounts, provided at various levels of the government, and for which in many cases no supporting documentation was provided by the sampled companies, except for some high-level designations. As such, the Commission is not in a position to provide a precise legal basis to the GOC. However, as mentioned in recital (461) above, detailed findings on these grants were provided to the individual companies in their specific disclosure documents.

### 3.7.2.3. Specificity

- (465) These grants are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, from the documents provided by the cooperating exporting producers, they appear to be limited to certain companies, certain industries, such as the ACF industry, or specific projects in specific regions. In addition, some of the grants are contingent upon export performance within the meaning of Article 4(4)(a) of the basic Regulation.
- (466) Furthermore, these grants do not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.
- (467) Following the final disclosure, the Nanshan Group claimed that regarding grants:
- (a) the Commission wrongly included non-depreciable subsidies received before the investigation period in the subsidy margin when calculating the benefit for grants. The company required the Commission to exclude non-depreciable grants received before the investigation period from the subsidy margin.
  - (b) for grants received by one of the companies of the Nanshan Group, the Commission used an incorrect depreciation period.
- (468) The Commission noted that the non-depreciable subsidies referred to in recital (467) are related to fixed assets. Consequently, the Commission has allocated the benefit to the same time period over which the fixed assets are depreciated. Therefore, the comment is rejected.
- (469) Following the comments by Nanshan Group the Commission reviewed the depreciation periods used in the calculations. In the cases where an incorrect period had been used, the calculation was corrected.
- (470) Following the final disclosure Wanshun Group claimed that the Commission had made an error when calculating the benefit of one grant to one of its group companies. More specifically, it claimed that one of the projects for which the grant was given only started from the third quarter of 2019 and therefore it was wrong to allocate one fifteenth of the value (corresponding to the depreciation period of 15 years) to the investigation period.
- (471) The Commission notes that according to the established practice, grants related to the investigation period are allocated using the number of calendar years as the basis of the calculation. Therefore this claim was rejected.

### 3.7.2.4. Calculation of the subsidy amount

- (472) The Commission calculated the benefit in accordance with the methodology described in recital (457) above.
- (473) The subsidy rates established with regard to all grants during the investigation period for the sampled exporting producers were as follows:

### Grants

Company name	Subsidy amount
Nanshan Group	1,22 %
Wanshun Group	0,42 %
Daching Group	0,25 %

### 3.8. Revenue foregone through tax exemptions and reduction programmes

#### 3.8.1. Direct tax exemptions and reductions

##### 3.8.1.1. EIT privileges for High and New Technology Enterprises

##### 3.8.1.2. Legal basis/Regulatory Framework

(474) The legal basis of this programme is Article 28 of the EIT Law <sup>(98)</sup> and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC <sup>(99)</sup>, as well as:

- Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing Administrative Measures for the Recognition of High-Tech Enterprises, G.K.F.H. [2016] No 32;
- Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the Guidelines for the Administration of Accreditation of High-tech Enterprises, Guo Ke Fa Huo [2016] No 195;
- Announcement [2017] No 24 of the State Administration of Taxation on the Application of Preferential Income Tax Policies to High-tech Enterprises;
- The 2016 Catalogue of High-tech Fields Supported by the State <sup>(100)</sup>; and
- Ministry of Finance and State Administration of Taxation Announcement [2019] No 68.

(475) Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which is a chapeau for Chapter IV, provides that "The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State". Article 28 of the EIT law provides that "the rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to 15 %".

(476) Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that:

"The important high and new technology enterprises to be supported by the state as referred to in Clause 2 of Article 28 of the Enterprise Income Tax Law refer to the enterprises which own key intellectual property rights and satisfy the following conditions:

1. Complying with the scope of the Key State Supported High and New Technology Areas;
2. The proportion of the research and development expense in the sales revenue shall be no less than the prescribed proportion;
3. The proportion of the income from high-tech technology/product/service in the enterprise's total revenue shall be no less than the prescribed proportion;

<sup>(98)</sup> [http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content\\_1471133.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471133.htm)

<sup>(99)</sup> Implementing Regulations of the Enterprise Income Tax Law of the People's Republic of China (Revised in 2019) – Order of the State Council of the People's Republic of China No 714.

<sup>(100)</sup> [http://kj.quanzhou.gov.cn/wsbs/xgz/201703/t20170322\\_431820.htm](http://kj.quanzhou.gov.cn/wsbs/xgz/201703/t20170322_431820.htm), last accessed on 17 August 2021.

4. *The proportion of the technical personnel in the enterprise's total employees shall be no less than the prescribed proportion;*
5. *Other conditions prescribed in the Measures for the Administration of High-Tech Enterprise Identification.*
6. *Measures for the Administration of High-Tech Enterprise Identification and Key State Supported High and New Technology Areas shall be jointly formulated by the technology, finance and taxation departments under the State Council and come into effect after approved by State Council".*

(477) The above-mentioned provisions clearly specify that the reduced enterprise income tax rate is reserved to “important high and new technology enterprises to be supported by the State” which own key intellectual property rights and satisfy certain conditions such as “complying with the scope of the Key State Supported High and New Technology Areas”.

(478) According to Article 11 of the Administrative Measures for the Recognition of High-Tech Enterprises, to be recognized as high-tech an enterprise must simultaneously meet certain conditions among which: “it has obtained the ownership of intellectual property rights, which plays a central role in technically supporting its main products (services), through independent research, transfer, grant, mergers and acquisitions, etc.” and “the technology that plays a central role in technically supporting its main products (services) is within the range predetermined in the high-tech fields supported by the state”.

(479) The key high technology fields supported by the State are listed in the 2016 Catalogue of High-tech Fields Supported by the State. This catalogue clearly mentions under ‘new materials’/‘metal materials’ aluminium foil as a high technology product supported by the State.

#### 3.8.1.3. Findings of the investigation

(480) The Commission found that companies within the sampled exporting producer groups qualified as high-tech companies during the investigation period and thus enjoyed a reduced EIT rate of 15 %.

(481) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(482) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State as demonstrated in recital (477) to (479). As pointed out in recital (479), the ACF industry is such a high technology priority.

#### 3.8.1.4. Calculation of the subsidy amount

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

(484) The subsidy rate established for this specific scheme was 0,55 % for the Nanshan Group, 0,43 % for the Wanshun Group and 0,47 % for the Daching Group.

#### 3.8.2. EIT offset for research and development expenses

(485) The tax offset for research and development entitles companies to preferential tax treatment for their R & D activities in certain high technology priority areas determined by the State when certain thresholds for R & D spending are met.

(486) More specifically, R & D expenditures incurred to develop new technologies, new products and new techniques, which do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 75 % deduction after being deducted in full in light of the actual situation. Where the above-mentioned R & D expenditures form intangible assets, they are subject to amortization based on 175 % of the intangible asset costs. Since January 2021, the additional pre-tax deduction for R & D expenses was increased to 100 % <sup>(101)</sup>.

### 3.8.2.1. Legal basis/Regulatory Framework

(487) The legal basis for the programme is Article 30(1) of the EIT Law, and Article 95 of the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

- Notice of the Ministry of Finance, the State Administration of Taxation and the Ministry of Science and Technology on Improving the Policy of Pre-tax Deduction of R & D Expenses (Cai Shui [2015] No 119);
- Circular on Raising the Proportion of Pre-tax Super Deduction of Research and Development Expenses (Cai Shui [2018] No 99)
- Announcement [2015] No 97 of the State Administration of Taxation on Relevant Issues concerning Policies of Additional Pre-tax Deduction of Research and Development Expenses of Enterprises;
- Announcement 2017 No 40 of the State Administration of Taxation on Issues Concerning the Eligible Scope of Calculation of Additional Pre-tax Deduction of Research and Development Expenses; and
- The 2016 Catalogue of High-tech Fields Supported by the State.

(488) In previous investigations <sup>(102)</sup>, the Commission established that the “*new technologies, new products and new crafts*”, which can benefit from the tax deduction, are part of certain high technology fields supported by the State. As mentioned in recital (480), the key high technology fields supported by the State are listed in the 2016 Catalogue of High-tech Fields Supported by the State.

(489) As set out in recital (479), Chapter IV of the EIT Law contains provisions regarding ‘Preferential Tax Treatment’, in particular Article 25. Article 30(1) of the EIT Law, which is also part of Chapter IV, provides that “*research and development expenses incurred by enterprises in the development of new technologies, new products and new techniques*” may be additionally deducted at the time of calculating taxable income. Article 95 of the Implementation Rules for the Enterprise Income Tax Law clarifies the meaning of “*R & D expenditures incurred for the purpose to develop new technologies, new products and new crafts*” laid down in Article 30(1) of the EIT Law.

(490) According to the Circular on Raising the Proportion of Pre-tax Super Deduction of Research and Development Expenses (Cai Shui [2018] No 99), “*with respect to research and development (R & D) expenses actually incurred by an enterprise from its R & D activities, an extra 75 % of the actual amount of expenses is deductible before tax, in addition to other actual deductions, during the period from January 1, 2018 till December 31, 2020, provided that the said expenses are not converted into the intangible asset and balanced into this enterprise’s current gains and losses; however, if the said expenses have been converted into the intangible asset, such expenses may be amortized at a rate of 175 % of the intangible asset’s costs before tax during the above-said period*”.

### 3.8.2.2. Findings of the investigation

(491) The Commission found out that the companies within the sampled groups enjoyed “*additional deduction on research and development expenses incurred from the research and development of new technologies, new products and new techniques*”.

<sup>(101)</sup> Announcement [2021] No 13 of the Ministry of Finance and the State Taxation Administration on Further Improvements to the Policy of Weighted Pre-tax Deduction for Research and Development Expenses.

<sup>(102)</sup> See HRF, Tyres and GFF cases cited in footnote 5, recitals 330, 521 and 560 respectively.

(492) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(493) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R & D expenses in certain high technology priority areas determined by the State, such as the ACF sector.

#### 3.8.2.3. Calculation of the subsidy amount

(494) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 75 % deduction of the actual expenses on R & D.

(495) The amount of subsidy established for this specific scheme was 1,24 % for Nanshan Group, 0,14 % for Wanshun Group and 0,37 % for Daching Group.

#### 3.8.3. Dividends exemption between qualified resident enterprises

(496) The EIT Law offers income tax preferences to Enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State and in particular, exempt from tax the income from equity investment, such as dividends and bonuses, between eligible resident enterprises.

##### 3.8.3.1. Legal basis/Regulatory Framework

(497) The legal basis for the programme is Article 26(2) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.

(498) Article 25 of the EIT, which is a chapeau for Chapter IV 'Preferential Tax Policies', provides that "*The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State*". Furthermore, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between "*eligible resident enterprises*", which appears to limit its scope of application to only certain resident enterprises.

##### 3.8.3.2. Findings of the investigation

(499) The Commission found that one company in one of the sampled groups received an exemption from tax of dividend income between qualified resident enterprises.

(500) The Commission considered that this scheme constitutes a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the company concerned. The benefit for the recipient is equal to the tax saving.

(501) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State, like the ACF industry.

(502) Following the final disclosure, the Nanshan Group claimed that the dividend tax exemption between resident enterprises is not a countervailable subsidy since it is not specific, is applicable to all enterprises and is aimed merely to avoid double taxation.

(503) Although the Commission agreed that the elimination of double taxation is a legitimate tax practice, Article 26(2) of the EIT is part of Chapter IV 'Tax Preferences', which provides for a number of preferential tax treatments that are exemptions to the general taxation rules. Furthermore, as explained in recital (491), Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that "*The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State*". In

addition, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between “eligible resident enterprises”, which appears to limit its scope of application to only certain resident enterprises. Therefore, the Commission considered that such preferential tax policy is limited to certain industries, which are specifically supported and encouraged by the State, such as the ACF industry, and is therefore specific within the meaning of Article 4(2)(a) of the basic Regulation. Consequently, the Commission confirmed its conclusion that this scheme is a countervailable subsidy. This claim is therefore rejected.

#### 3.8.3.3. 3. Calculation of the subsidy amount

- (504) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the dividend income that has been deducted from taxable income.
- (505) The amount of subsidy established for this specific scheme was 0,15 % for Nanshan Group.

#### 3.8.4. Land use tax exemption

- (506) An organisation or individual using land in cities, county towns and administrative towns and industrial and mining districts shall normally pay urban land use tax. Land use tax is collected by the local tax authorities where the land is used. However, certain categories of land, such as land reclaimed from the sea, land for the use of government institutions, people’s organisations and military units for their own use, land for use by institutions financed by government allocations from the Ministry of Finance, land used by religious temples, public parks and public historical and scenic sites, streets, roads, public squares, lawns and other urban public land are exempted from the land use tax.

##### 3.8.4.1. Legal basis/Regulatory Framework

- (507) The legal basis for this programme is:
- Provisional Regulations of the People’s Republic of China on Real Estate Tax (Guo Fa [1986] No 90, as amended in 2011);
  - Interim Regulations of the People’s Republic of China on Urban Land Use Tax (Revised in 2019), Order of the State Council of the People’s Republic of China No 709; and
  - Several Opinions on Vigorously Supporting the Sustainable and Healthy Development of the Private Economy’ (EFa [2018] No 33).

##### 3.8.4.2. Findings of the investigation

- (508) One company in one of the sampled groups benefited from a reduction in the land use tax amount of 50 % based on a special policy applicable to the high-tech companies in Shandong province pursuant to the ‘*Notice of the People’s Government of Shandong Province on Issuing Several Policies to Support the High-quality Development of the Real Economy*’.
- (509) The company at issue did not fall under any of the exempted categories set by Article 6 of the Interim Regulations of the People’s Republic of China on Urban Land Use Tax (Revised in 2019).

##### 3.8.4.3. Specificity

- (510) The Commission considered that the land use tax reduction for high-tech companies described above constitutes a subsidy within the meaning of either Article 3(1)(a)(i) or Article 3(1)(a)(ii), and Article 3(2) of the basic Regulation because there is a financial contribution in the form of either direct transfer of funds (refund of the tax paid) or revenue foregone by the GOC (the non-paid tax) that confers a benefit to the company concerned. The subsidy is specific as it targets only high-tech companies in Shandong.

- (511) The benefit for the recipients is equal to the amount refunded/tax saving.
- (512) Following the final disclosure, the Wanshun Group claimed that:
- (a) Jiangsu Zhongji Lamination Materials Co., Ltd. did not benefit from any tax exemption with respect to its land. The land class changed from one class to another, so the applicable tax rate also changed. Thus, the alleged partial payment of the land use tax by the company merely reflects the land class change,
  - (b) The land tax paid by Jiangsu Huafeng Aluminium Industry Co., Ltd during the IP was more than the normal land use tax payable, as calculated by the Commission. Therefore, the company obtained no benefit in this respect,
  - (c) The Commission made a clerical error when calculating the land tax paid by Shantou Whanshun,
- (513) The Commission disagrees with the first claim. Wanshun did not provide any documentation or further reasoning supporting its claim that the category of land had been changed from one class to another. This claim was therefore rejected.
- (514) As regards the second and third claim, the Commission accepted the claims and made a correction to the calculation of the benefit.

#### 3.8.4.4. Calculation of the subsidy amount

- (515) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipient during the investigation period. This benefit was considered the reduced amount during the investigation period. The amount of subsidy established for this specific scheme was 0,06 % for Nanshan Group and 0,01 % for Wanshun Group.

#### 3.8.5. *Indirect tax and tariff exemption programmes*

##### 3.8.5.1. VAT exemptions and import tariff rebates for the use of imported equipment and technology

- (516) This programme provides an exemption from VAT and import tariffs for imports of capital equipment used in their production. To benefit from the exemption, the equipment must not fall in a list of non-eligible equipment and the claiming enterprise has to obtain a Certificate of State-Encouraged project issued by the Chinese authorities in accordance with the relevant investment, tax and customs legislation.

##### 3.8.5.2. Legal basis/Regulatory Framework

- (517) The legal basis for this programme is:
- Circular of the State Council on Adjusting Tax Policies on Imported Equipment, Guo Fa [1997] No 37;
  - Notice of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation on the Adjustment of Certain Preferential Import Duty Policies;
  - Announcement of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation [2008] No 43;
  - Notice of the NDRC on the relevant issues concerning the Handling of Confirmation letter on Domestic or Foreign-funded Projects encouraged to develop by the State, [2006] No 316; and
  - Catalogue on Non-duty-exemptible Articles of importation for either FIEs or domestic enterprises, 2008.

##### 3.8.5.3. Findings of the investigation

- (518) Equipment imported in order to develop domestic or foreign investment projects in line with the policy of encouraging foreign or domestic investment projects may be exempted from payment of the VAT and/or import duty, unless the equipment category is listed in the catalogue of non-duty exemptible article.

- (519) The GOC claimed that with effect from 1 January 2009, only the import duty was exempted and VAT on importation of equipment for self-use was collected.
- (520) However, exemptions of both VAT and import duty during the investigation period were identified in the sampled companies. These included exemptions for equipment imported in previous years, but for which the benefit was amortized over the lifespan of that equipment and was thus partially allocated to the investigation period. While the Commission saw no evidence that this exemption was operating during the investigation period, the Commission established on the basis of the evidence on the file relating to the sampled companies that the sampled companies still availed themselves of benefits under this programme during that period.
- (521) This programme thus provides a financial contribution in the form of revenue forgone by the GOC within the meaning of Article 3(1)(a)(ii) of the basic Regulation as FIEs and other eligible domestic enterprises are relieved from payment of VAT and/or tariffs which would be otherwise due. It also confers a benefit on the recipient companies in the sense of Article 3(2) of the basic Regulation.
- (522) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation. The legislation pursuant to which the granting authority operates limits its access to enterprises that invest under specific business categories defined exhaustively by law and belonging either to the encouraged category or the restricted category B under the Catalogue for the guidance of industries for foreign investment and technology transfer or those which are in line with the Catalogue of key industries, products and technologies the development of which is encouraged by the State. In addition, there are no objective criteria to limit eligibility for this programme and there is no conclusive evidence to infer that eligibility is automatic under Article 4(2)(b) of the basic Regulation.
- (523) Following the final disclosure, the Wanshun group claimed that Anhui Maximum Aluminium Industries Co., Ltd did not benefit from the VAT exemption scheme, since it was terminated on 31 December 2008, while the machinery of Maximum was purchased in 2020. In addition, the difference between the VAT actually paid by the company the amount of VAT payable calculated by the Commission results from the fact that the purchase prices used by the Commission include other expenses.
- (524) The Commission accepted the claims made by Wanshun and adapted the calculations accordingly.
- (525) Nanshan Gropup also claimed that in establishing the benefit for the import duty exemptions on machinery, the Commission committed three errors which Nanshan Group elaborates upon below
- (526) the Commission wrongly allocated a benefit to the investigation period for certain equipment purchased far preceding the investigation period and thus fully depreciated.
- (527) for one of the companies in Nanshan Group, the Commission used the fixed asset registry for the entire company, which includes numerous machinery and devices used by other business units than those related to ACF. As such, the Commission should exclude import duty exemptions related to equipment not used for the product under investigation.
- (528) the Commission also improperly classified the equipment into imported and domestically procured.
- (529) The Commission accepted the claim concerning equipment that was fully depreciated before the investigation period and corrected the calculation accordingly. However, the Commission notes that Nanshan Group had not filled in the relevant part of the anti-subsidy questionnaire concerning its machinery and therefore Nanshan Group could not demonstrate by which business unit certain machinery was used nor could it provide sufficient evidence as regards the division between imported and domestically procured machinery. Therefore, these claims were rejected.

#### 3.8.5.4. Calculation of the subsidy amount

- (530) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is considered to be the amount of VAT and duties exempted on imported equipment. In order to ensure that the countervailable amount only covered the investigation period the benefit received was amortized over the useful life of the equipment according to the company's normal accounting procedures.
- (531) The subsidy rate established for this specific scheme was 0,47 % for Nanshan Group, 0,12 % for Wanshun Group and 0,21 % for Daching Group.

#### 3.8.6. Total for all tax exemption schemes and reduction programmes

- (532) Following final disclosure, the GOC claimed that all abovementioned tax programmes contain objective criteria that govern the eligibility for accessing the benefit. Once these criteria are met, the attribution of the benefit is automatic. However, as explained for each programme separately in the preceding sections, these schemes only apply to enterprises that are operating in certain high technology priority areas or encouraged industries. This claim was thus rejected.
- (533) The Nanshan Group also claimed that the Commission made a clerical error, and erroneously included a tax exemption for one of the group companies. This claim was accepted and the calculations were changed accordingly.
- (534) The total subsidy rate established with regard to all tax schemes during the investigation period for the sampled exporting producers was as follows:

#### Tax exemptions and reductions

Company name	Subsidy amount
Nanshan Group	2,51 %
Wanshun Group	0,70 %
Daching Group	1,06 %

### 3.9. Government provision of goods and services for less than adequate remuneration

#### 3.9.1. Provision of land for less than adequate remuneration

- (535) All land in the PRC is owned either by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships therein.
- (536) Pursuant to the PRC Constitution and the Land Law, companies and individuals may however purchase 'land use rights'. For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.
- (537) According to the GOC, Article 137 of the Property Law of the People's Republic of China stipulates that "*the land used for purposes of industry, business, entertainment or commercial dwelling houses, etc. or the land for which there are two or more intended users shall be transferred by means of auction, bid invitation or any other public bidding method.*" Furthermore, the GOC refers to Article 3 of the Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in Urban Areas. This Article provides that "*any company, enterprise, other organization and individual within or outside the People's Republic of China may, unless otherwise provided by law, obtain the right to the use of the land and engage in land development, utilization and management in accordance with the provisions of these Regulations.*"

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

#### 3.9.1.1. Legal basis/Regulatory Framework

- (539) The land-use right provision in China falls under Land Administration Law of the People's Republic of China. In addition, the following documents also are part of the legal basis
- (1) Property Law of the People's Republic of China (Order of the President of the People's Republic of China No 62);
  - (2) Land Administration Law of the People's Republic of China (Order of the President of the People's Republic of China No 28);
  - (3) Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No 18);
  - (4) Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (Decree No 55 of the State Council of the People's Republic of China);
  - (5) Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No 653);
  - (6) Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation (Announcement No 39 of the CSRC); and
  - (7) Notice of the State Council on the Relevant Issues Concerning the Strengthening of Land Control (Guo Fa (2006) No 31).

#### 3.9.1.2. Findings of the investigation

- (540) According to Article 10 of the Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation, local authorities set land prices according to the urban land evaluation system, which is updated every three years, and the government's industrial policy.
- (541) In previous investigations, the Commission found that prices paid for LURs in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the urban land evaluation system, which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.
- (542) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that most of the sampled companies obtained their LUR through allocation by local authorities and not through a bidding procedure.
- (543) For the plots of land that were provided through bidding, the Commission found that in each case, there was only one bidder for the land, and the price paid corresponded to the starting price of the bidding process. In the absence of additional detailed information concerning the actual process of the auction, it was uncertain that the initial price was set independently and corresponded to the market value of the LUR.
- (544) Moreover, the Commission also found that some companies received refunds from local authorities to compensate for the prices which they paid for the LURs. Furthermore, some of the LURs obtained only had to be paid several years after the land had been put into use. Concerning LURs owned by companies within the Nanshan Group, as mentioned in recitals (135) to (137), no evidence of any purchasing process could be provided for most of the plots of land in the group.

- (545) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of price determined by free market supply and demand. To the contrary, the findings of this investigation show that acquisition of LUR in the PRC was non-transparent and the prices were arbitrarily set by the authorities.
- (546) Following final disclosure, the GOC claimed that no benefit has been conferred to the sampled companies through the provision of land use rights because there is a free market for land in the PRC. In this respect, the GOC referred to Article 347 of the Civil Code of the PRC, according to which, “*where land is used for industrial, commercial, tourist or entertaining purposes, as commodity residence, or for other profit-making purposes, or there are two or more persons who are willing to use the same piece of land, the right to the use of land for construction shall be assigned through bid invitation, auction or other open bidding. The price of the land is established through market competition*”.
- (547) However, the Commission found that, although there are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land. In any event, as mentioned in recital (543) above, in the rare cases where land was provided through an auction process, the information provided was insufficient to conclude that prices were set independently and corresponded to the market value of the land.
- (548) Therefore, the provision of LURs by the GOC constitutes a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies. As explained in recitals (541) to (545) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recitals (551) to (554) below) demonstrates that the amount paid for LURs by the sampled exporting producers is well below the normal market rate.

### 3.9.1.3. Specificity

- (549) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government’s industrial policy, as mentioned above in recital (541). Within this industrial policy, the ACF industry is listed as an encouraged industry <sup>(103)</sup>. In addition, Decision No 40 requires that public authorities ensure that land is provided to encouraged industries. Article 18 of Decision No 40 makes clear that industries that are ‘restricted’ will not have access to LURs. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the ACF industry, and government practices in this area are unclear and non-transparent.
- (550) Following final disclosure, the GOC disagreed with the Commission that the measures are specific, but without providing any additional evidence. The Commission therefore maintained its conclusions.

### 3.9.1.4. Calculation of the subsidy amount

- (551) As in previous investigations <sup>(104)</sup> and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (‘Chinese Taipei’) were used as an external benchmark <sup>(105)</sup>. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for LURs and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.

<sup>(103)</sup> See section 3.1 above.

<sup>(104)</sup> See GFF, OCS, and Solar panels cases.

<sup>(105)</sup> Upheld by the General Court in Case T-444/11 Gold East Paper and Gold Huacheng Paper versus Council, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

- (552) For the plots of land of the Nanshan Group for which no supporting evidence could be provided, the price actually paid was considered to be 0.
- (553) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:
- the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;
  - the physical proximity of the PRC and Chinese Taipei;
  - the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;
  - the strong economic ties and cross border trade between Chinese Taipei and the PRC;
  - the high density of population in many of the provinces of the PRC and in Chinese Taipei;
  - the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and
  - the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.
- (554) Following the methodology applied in previous investigations <sup>(106)</sup>, the Commission used the average land price per square meter established in Chinese Taipei corrected for inflation and GDP evolution as from the dates of the respective LUR contracts. The information concerning industrial land prices as of 2015 was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan <sup>(107)</sup>. For the previous years, the prices were corrected using the inflation rates and evolution of GDP per capita at current prices in USD for Taiwan as published by the IMF for 2015.
- (555) Following the final disclosure, the GOC claimed that the Commission should have used a domestic benchmark for land. However, the GOC failed to provide any statistics or data that could be used for this purpose.
- (556) The GOC also maintained that prices in Chinese Taipei are not at all comparable to those in mainland China, for population and geographical reasons, but also because land in China is leased, not owned, whereas the Chinese Taipei land market is subject to purchasing rights. Therefore, the GOC claimed that an adjustment needs to be made to reflect these factors.
- (557) Furthermore, both the Wanshun Group and Nanshan Group claimed that the benchmark used by the Commission with respect to the land use rights was unreasonably high and did not reflect the prevailing market conditions in China. This was due to the fact that Taiwan was facing in recent years an exceptional situation of land shortage and industrial land-hoarding, inexistent in China. Therefore, such a high benchmark has artificially and unfairly increased the benefit with respect to the land use rights, and the whole subsidy amount determined for the group. They added that Taiwan did not have much available land for industry and was at a different economic level in comparison to China. Instead, the land prices in Thailand should be used as an appropriate benchmark with respect to the land use rights.
- (558) In this respect, the Commission noted that the selection of Chinese Taipei as a benchmark was based on the examination of several factors listed in recital (553). Although there are certain differences in the market conditions between land use rights in mainland China and sale of land in Chinese Taipei, these are not of such nature to invalidate the choice of Chinese Taipei as a reasonable benchmark. Moreover, looking closer at population density of the actual locations of the exporting producers, it appears that on average the population density figures are

<sup>(106)</sup> See GFF, OCS, and Solar panels cases.

<sup>(107)</sup> <https://idbpark.moeaidb.gov.tw/>, last accessed on 18 August 2021.

similar to Chinese Taipei. For example, the population density of Jiangyin was 1 600 people per m<sup>2</sup> in 2020 <sup>(108)</sup>; and the density of Xiamen was 3 036 people per m<sup>2</sup> <sup>(109)</sup>. The Commission also does not see the effects of the land crisis in the evolution of the benchmark prices. Although there was a steep increase in prices in the years 2015-2016, prices have remained rather stable in recent years. In any event, most land plots were acquired by the sampled companies long before that, and could thus not be affected by recent events. Therefore, the Commission considered that no adjustment was warranted.

- (559) The subsidy amount established with regard to LURs during the investigation period for the sampled exporting producers amounts to:

#### **Provision of land for less than adequate remuneration**

Company name	Subsidy amount
Nanshan Group	4,47 %
Wanshun Group	1,78 %
Daching Group	1,28 %

#### 3.9.2. Provision of electricity at reduced rate

##### 3.9.2.1. Legal basis/Regulatory Framework

- Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism, Fa Gua Yun Xing [2018] No 1027, issued on 16 July 2018;
- Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9);
- Notice on Fully Liberalizing the Electricity Generation and Consumption Plan for Commercially Operational Users (National Development and Reform Commission [2019] No 1105);
- Rules for Electricity Trading for Medium and Long Term Transactions in Jiangsu Province;
- Notice of the Price Bureau of Jiangsu Province about Reasonable Adjustment of the Electricity Price Structure, Su Jia Gong [2017] No 124; and
- Circular of the National Development and Reform Commission on Reducing Electricity Cost of Enterprises to Supporting Restoration of Work and Production Development and Reform Price [2020] No 258.

##### 3.9.2.2. Findings of the investigation

- (560) Two of the sampled groups of companies purchased their electricity. In addition, Nanshan Group produced electricity in its own in house coal-fired power plant.
- (561) The Commission established that investigated companies within these two sampled groups benefitted from reductions or refunds/adjustments of part of their electricity cost because these companies participated in the pilot programme for market-oriented electricity transactions.

<sup>(108)</sup> Jiangyin - Wikipedia

<sup>(109)</sup> Xiamen - Wikipedia

- (562) The Commission further found that certain investigated companies are allowed to purchase electricity directly from power generators by signing direct purchasing agreements, instead of buying from the grid. Such contracts provide for a certain quantity of electricity at a certain price, which is lower than the official prices set at provincial level for large industrial users.
- (563) The possibility to enter into such direct contracts is currently not open to all large industrial consumers. At national level, the Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System specify for example that “enterprises that do not conform to the national industrial policy and whose products and processes are eliminated should not participate in direct transactions”<sup>(110)</sup>. The same Opinions also stipulate that “after the access standards are determined, we should also upgrade the catalogues of local power generation enterprises and electricity retailers that meet the standards that are annually publicized by governments and implement dynamic regulation of the user catalogue. The power generation enterprises, electricity retailers and users included in the catalogue can voluntarily register with the trading institutions to become market players”. Therefore, in order to participate in the direct trading system, a company should meet certain standards and be included in the “user catalogue”.
- (564) In practice, direct electricity trading is executed by the provinces. Companies have to apply to provincial authorities for approval to participate in the direct electricity pilot scheme, and they have to fulfil certain criteria. For certain companies, there is no actual market-based negotiation or bidding process, since the quantities purchased under direct contracts are not based on the real supply and demand. Indeed, power generators and power users are not free to sell or purchase all of their electricity directly. They are restricted by quantitative quotas, which are allocated to them by the local government. Furthermore, although prices are supposed to be negotiated directly between the power generators and the power users or through intermediary service companies, the invoices to the companies are actually issued by the State Grid Company. Finally, all signed direct purchase contracts need to be submitted to the local government for the record.
- (565) In 2018, the GOC issued the Circular of the National Development and Reform Commission and the National Energy Administration on Actively Promoting the Market-oriented Power Transactions and Further Improving the Trading Mechanism. Although the Circular aims to increase the number of direct transactions on the electricity market, it specifically mentions certain industries, including high-tech industries such as the ACF industry, as supported and benefitting from liberalisation of the electricity market. In particular, Section III. ‘Opening up to allow entry of user fulfilling requirements’, point (2) provides that “supporting emerging industries with high added value, such as high-tech, internet, big data and high-end manufacturing industries, as well as enterprises with distinct advantages and characteristics and high technology content, to participate in transactions, free from voltage levels and power consumption restrictions”.
- (566) Furthermore, according to the Notice on Fully Liberalizing the Electricity Generation and Consumption Plan for Commercially Operational Users, which aims to further liberalise the electricity market, provides that “among the commercial electricity users, those who do not comply with the national industry policies shall provisionally not participate in market-oriented transactions, and the electricity users whose products and processes belong to the eliminated and restricted categories of the ‘Guidance Catalogue for the Industry’s Structural Adjustment’ shall strictly implement the current differential prices policy for electricity.”
- (567) Therefore, the legislation provides for a selective application of direct transactions on the electricity market limited to certain industries such as the industries which comply with the national industry policies, with a particular focus on high-tech industries. As a result, these industries pay lower prices for electricity.

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<sup>(110)</sup> Several Opinions of the Central Committee of the Communist Party of China and the State Council on Further Deepening the Reform of the Power System (Zhong Fa [2015] No 9), Section III (4).

- (568) The Commission therefore considered that the reduced electricity rate and the refunds/adjustments resulting from the direct electricity trading, in which the sampled companies participated constitute a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC (i.e. the operator of the grid) that confers a benefit to the companies concerned. The benefit for the recipients is equal to the electricity cost saving, either through reduced electricity prices or through refunds/adjustments, since the electricity was provided at a price below the normal grid price paid by other large industrial users that could not benefit from the direct supply or were not part of the pilot project for direct supply.
- (569) Following the final disclosure, the GOC claimed that the mere presence of state-owned enterprises in the power generation is not sufficient evidence of subsidisation, and that European ACF producers also received subsidies from respective EU Member States. The GOC also emphasized that in recent years China has proactively promoted electricity market reform. The main aspects of the reform include the expedited establishment of a competitive and effective structure and system for the electricity market, as well as market-oriented pricing mechanisms including the direct purchasing contracts. For the power plants selling the electricity directly to industrial and other users, the electricity price is established through negotiations and market bidding process between suppliers and users.
- (570) The GOC referred to several legal documents underlying its reasoning. However, most of these documents concerned the formation of the grid price in China, which is not at issue here. Similarly, possible subsidies received by European companies are also outside the scope of this investigation. The only document referring more specifically to direct power purchase transactions only contained a general statement on “reasonable price formation”. As highlighted in recitals (561) to (567) above, this general statement does not correspond to what the Commission found in practice. These claims were therefore rejected.

### 3.9.2.3. Specificity

- (571) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that conform with certain industrial policy objectives determined by the State and whose products or processes are deemed eligible.
- (572) Thus, the Commission concluded that the subsidy scheme was in place during the investigation period and that it is specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation.

### 3.9.2.4. Calculation of the subsidy amount

- (573) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total electricity price payable according to the standard electricity price and the total electricity price paid by the sampled groups of companies under the reduced rate and/or by deducting various forms of refunds/adjustments.
- (574) Following the final disclosure, the Daching group claimed that the power factor adjustment, as an evaluation mechanism to encourage the users to use power more efficiently, should not have been treated as a subsidy. The Commission confirmed that, indeed, as per final disclosure to the group, it was deducted from the benefit calculated.
- (575) The subsidy rate established with regard to this scheme during the investigation period for the sampled exporting producers amounts to:

### Provision of electricity at reduced rate

Company name	Subsidy amount
Wanshun Group	0,18 %
Daching Group	0,20 %

#### 3.9.3. Provision of input materials for less than adequate remuneration

- (576) As mentioned in section 3.2 above, the Commission informed the GOC that, given the absence of questionnaire replies from suppliers of input materials under investigation, namely primary aluminium and steam coal, it might have to base its findings on facts available pursuant to Article 28(1) of the basic Regulation as far as the information relating to suppliers of the above mentioned input materials was concerned. The Commission investigated whether the sampled companies received input materials for producing ACF at subsidised prices from the GOC.

##### 3.9.3.1. Provision of primary aluminium for less than adequate remuneration

- (577) In the complaint, the complainants provided evidence that Chinese ACF producers operate in an encouraged industry and that it is reasonable to conclude that the subsidies provided to producers of primary aluminium used in the production of ACF ultimately benefit ACF producers. This benefit would be accrued by ACF manufacturers directly, to the extent that they are vertically integrated, and indirectly, to the extent those subsidies result in lower prices for inputs on the Chinese domestic market than would otherwise be the case.
- (578) Since the investigated groups of companies were vertically integrated, the related raw material suppliers have been included in the investigation by the Commission, and the subsidies received at the level of these related suppliers have been integrated into the calculations for each subsidy scheme. The Commission also found that since the three groups of sampled exporting producers were vertically integrated, only very minor quantities of primary aluminium (aluminium ingots and slabs) were purchased from unrelated suppliers. Furthermore, in the separate anti-dumping investigation <sup>(11)</sup> the Commission found that primary aluminium had been purchased by the sampled companies at prices in line with international benchmarks.
- (579) In the absence of any evidence of material benefit conferred on the sampled exporting producers, the Commission therefore decided not to continue the investigation on this alleged subsidy scheme.

##### 3.9.3.2. Provision of steam coal for less than adequate remuneration

- (580) The complaint contained allegations on the provision of steam coal for less than adequate remuneration. Indeed, almost all smelters in China, including ACF producers, use coal for generating at least part of the electricity they need in their captive power plants. Evidence available in the complaint showed that Chinese SOEs had provided steam coal to ACF producers for LTAR at prices that are intended to provide downstream aluminium producers, such as ACF, with a comparative advantage.
- (581) As explained in section 3.2.3 above, the Commission requested the GOC to forward the specific questionnaire intended for suppliers of steam coal to known suppliers in China. The GOC did not do so. Furthermore, the Commission also requested GOC to provide data on prices and pricing mechanisms, as well as the name and ownership structure of the Chinese suppliers of steam coal. However, the GOC did not provide any of the requested information. On this basis, the Commission was unable to verify how prices were established, which Chinese producers were state-owned and which share of the Chinese production they accounted for.

<sup>(11)</sup> Commission Implementing Regulation (EU) 2021/983 of 17 June 2021, imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China, OJ L 216/142, 18 June 2021, recital 382.

(582) Only one of the sampled groups of companies purchased steam coal from unrelated suppliers. However, the Commission found that in view of the global price depression on the coal market caused by the Covid-pandemic during the IP, steam coal had been purchased by the sampled companies at prices in line with international benchmarks. In the absence of any evidence of material benefit conferred on the sampled exporting producers, the Commission therefore decided not to continue the investigation on this alleged subsidy scheme.

### 3.10. Conclusion on subsidisation

(583) Based on the information available, the Commission calculated the amount of countervailable subsidies for the sampled companies in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer for the investigation period. To calculate the overall subsidisation, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per tonne of the product concerned exported to the Union during the investigation period was then calculated, and the margins calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per tonne.

(584) Following the final disclosure, the Daching group claimed that the consolidated turnover of the exporting producer Xiamen Xiashun and its related company Daching Enterprises Ltd. should be used as the denominator for the calculation of the subsidy amount. The Commission noted that Daching Enterprises Ltd acted as a related exporter for the group, and that all the export turnover of Daching Enterprises Ltd was sourced from Xiamen Xiashun. The Commission thus considered that all subsidies found in Daching Enterprises Ltd. related to the goods exported by the exporting producer. Hence the subsidy amount was calculated as a percentage of the export turnover of Xiamen Xiashun. The claim of the party was therefore rejected.

(585) Following the final disclosure, the Wanshun Group claimed that the total company turnover of the exporting producer Jiangsu Zhongji used by the Commission was erroneous, since it failed to include the mark-up taken by Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., who resold the product of Jiangsu Zhongji Lamination Materials Co., Ltd. to overseas markets. Indeed, countervailing duties are collected based on the CIF export value (which includes the mark-up of Zhongji HK).

(586) The Commission disagreed with this claim. For export-related subsidies, the Commission indeed used the export turnover of the related trader. However, for non-export-related subsidies, in accordance with the Commission's consistent practice, the Commission uses the total turnover of the exporting producer. The Commission is trying to establish the benefit at the level of the exporting producer. The turnover of the exporting producer is thus the relevant point of reference to establish the benefit of the subsidisation at the level of the exporting producer. This claim was therefore dismissed.

(587) The Wanshun Group further claimed that the Commission had automatically and without further analysis added the subsidy amount for each company of the group, namely:

(a) the loans and credit line facilities that were granted to Jiangsu Zhongji Lamination Materials Co., (HK) Ltd., as both of the parties to these transactions are based outside of China with the financial institution involved being a Singaporean, not Chinese, bank, and

(b) the subsidies given to Shantou Wanshun, while this company had no activities in relation to the product under the investigation. In accordance with the WTO Appellate Body Report <sup>(112)</sup>, there is a requirement to conduct a pass-through analysis in cases where the subsidy is granted to a company, who is not an upstream input producer and is not providing anything in relation to the product concerned. Such pass-through analysis was not in the final disclosure. There are various alleged subsidies that by their nature cannot be passed through. This especially concerned the land of Shantou Wanshun used for production of other products and the grants

<sup>(112)</sup> Appellate Body Report, US – Softwood Lumber IV, paras. 142-143.

received by Shantou Wanshun for other products..Concerning the first point, the Commission noted that irrespective of the status of Hong Kong in this investigation, the real center of activities and control of the company Jiangsu Zhongji Hong Kong was actually located in Mainland China. Indeed, 99 % of the activities of the trader related to the resales of goods produced by the exporting producer in China. Furthermore, the company reported no personnel located in Hong Kong in its accounts or in the Commission's questionnaire reply, and the subsidies received and benefiting the product concerned were granted by Chinese entities. For example, the export credit insurance relating to the goods exported by Jiangsu Zhongji Hong Kong was taken out from Sinosure by the mother company in China. Moreover, as confirmed by the Appellate Body in United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea, subsidies bestowed on the recipient in countries other than the subsidising Member may be relevant in order to calculate the amount of ad valorem subsidisation <sup>(113)</sup>

(588) The financing in question was indeed provided via a Singaporean bank (OCBC), located in Singapore. However, the loan contracts also stipulated that the loan was secured by a letter of credit issued by the state-owned Bank of Ningbo (located in mainland China), and that “*the bank must receive the relevant SBLC (standby letter of credit) before it disburses a relevant advance proposed for drawdown by you*”. In addition, the contract specifically provided for the sharing of information with Bank of Ningbo related to the borrower, the borrower's accounts with OCBC, its credit standing and financial position, as well as the facilities granted to such entity. The loan was thus granted thanks to the intervention of a Chinese bank subject to the same normative framework as any other bank in the PRC. The claim was therefore rejected.

(589) Concerning the second point, the Commission found that Shantou Wanshun had taken out financing on behalf of its subsidiaries. For example, when reviewing loans and bonds, the Commission noted that the purpose of the financing also mentioned the financial needs of the subsidiaries. Furthermore, Shantou Wanshun acted as a guarantor for various loans taken out by the related companies in the group, and even provided intercompany loans itself. These transactions, as well as various other intercompany flows, show that there is a clear link between the subsidies received by Shantou Wanshun and the production and exportation of the product concerned. The fact that some of the subsidies received by Shantou Wanshun related to land or grants is in this respect irrelevant. The main point is that the benefits reaped from these subsidies could easily flow to the related companies in the group since money is fungible. In these circumstances, considering this close proximity between these group entities, the relevant WTO jurisprudence affirms that pass-through between related entities can be presumed, which is clearly the case here. The claim of the party was therefore rejected.

(590) Following the final disclosure, the Nanshan Group claimed that the Commission:

(a) erred in establishing the allocation key for Shandong Nanshan Aluminium Co., Ltd ('Company A') by excluding the turnover of the other divisions of the company.

(b) has wrongly carried out its pass-through analysis for Nanshan Group Co. Ltd, by dividing Nanshan Group Co. Ltd's subsidy amount by its consolidated turnover, and then allocating this subsidy margin to the exporting producer. Indeed, Nanshan Group Co. Ltd does not produce the product concerned and the Commission did not prove that it passed through any subsidy amount to the exporting producer, as there were no financial or other types of transactions during the IP between the parent company and its subsidiary. The Commission should at least, as was done in previous cases, allocate the subsidy based on the relevant intercompany percentage of shareholding, i.e. based on the percentage of equity it holds in Company A and then allocate such portion to the exporting producer.

(591) On the first point, the Commission noted that during the course of the investigation, the company presented the turnover of company A and the sales flows to related companies per division, instead of at the level of the full company. It was the Commission's understanding that Divisions A1 to A4 represented all relevant data of company A. However, it now seems that not all relevant information was submitted by the company during the course of the investigation. Indeed, the Commission cannot take into consideration the turnover of the missing divisions

<sup>(113)</sup> Appellate Body Report, United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea (WT/DS464/AB/R), 7 September 2016, para. 5.298.

producing other products, since the company did not provide the corresponding information on sales to related parties originating from these missing divisions let alone being able to verify it, despite this being a crucial element to determine the allocation key. Therefore, in the absence of all relevant information submitted by the company, the Commission had to maintain the calculation as it is.

- (592) On the second point, the Commission disagreed with the statement that there were no financial or other types of transactions between the parent company and its subsidiaries. Indeed, during the investigation, the Commission found that Nanshan Group Co. Ltd. had originally obtained almost all the titles to the land that the related companies were using, and had then distributed these land plots among its subsidiaries via intercompany transfers. Furthermore, Nanshan Group Co. Ltd. had also taken out financing on behalf of its subsidiaries. For example, when reviewing loans and bonds, the Commission noted that the purpose of the financing also mentioned the financial needs of the subsidiaries. Furthermore, Nanshan Group Co. Ltd. acted as a guarantor for various loans taken out by the related companies in the group. Finally, a large part of the financing of the group occurred through the in-house bank, Nanshan Finance. This entity is financed mainly via deposits of the companies of the group, of which Nanshan Group Co. Ltd. constitutes a significant part. Through this in-house vehicle, external financing can thus be passed on to its subsidiaries. Since Nanshan Group Co. Ltd.'s subsidies benefitted all the related companies in the group, the Commission considered that calculating the subsidies as a proportion of the consolidated turnover was the most adequate approach. Contrary to the assertions of the company, this methodology is also identical to the one used in the GFF case, where subsidies received by the ultimate parent company in the CNBM Group, which was at the same level in the organisational structure of the group as Nanshan Group Co. Ltd., were also divided by the consolidated turnover and then allocated to the exporting producer. These claims were therefore rejected.
- (593) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating companies not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings partially based on facts available to determine those amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach <sup>(14)</sup>.
- (594) Given the high rate of cooperation of Chinese exporting producers and the representativeness of the sample also in terms of subsidy eligibility, the Commission set the amount for 'all other companies' at the level of the highest amount established for the sampled companies.

Company name	Subsidy amount
Nanshan Group	18,2 %
Wanshun Group	8,6 %
Daching Group	10,1 %
Other cooperating companies	12,3 %
All other companies	18,2 %

<sup>(14)</sup> See also, *mutatis mutandis*, WT/DS294/AB/RW, US – Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, para 453.

## 4. INJURY

### 4.1. Definition of the Union industry and Union production

- (595) As indicated in recital (86), the transition period for the UK withdrawal from the EU ended on 31 December 2020 and the UK ceased to be subject to Union law as of 1 January 2021. Consequently, the Commission requested the interested parties to provide updated information on EU27 basis. The indicators below as well as undercutting and underselling margins were consequently calculated exclusively based on EU27 data.
- (596) The like product was manufactured by eleven producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.
- (597) The total Union production during the investigation period was established at around 209 000 tonnes. The Commission established this figure on the basis of all the available information concerning the Union industry, such as the data provided by the sampled Union producers, as well as the non-sampled Union producers. This data was cross-checked with the figures in the complaint for reliability and completeness. As indicated in recital (37), the three sampled Union producers represented above 50 % of the total Union production of the like product.

### 4.2. Determination of the relevant Union market

- (598) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.
- (599) In doing so, and to provide a picture of the Union industry that was as complete as possible, the Commission obtained data for the entire ACF activity and determined whether the production was destined for captive use or for the free market.
- (600) The Commission found that a part of the total Union producers' production was destined for the captive market, as shown in Table 1 below. The captive market increased over the period considered but remained at a relatively low level of around 15 % of consumption in the IP. However, the Commission has no conclusive evidence whether the companies using ACF for downstream production have a free choice of supplier or not, as the information on captive sales and production is based on data collected from companies outside the sample. The Commission considered that there might be competition between them, and consequently all the market shares are calculated on the basis of total EU consumption. At this stage, this is the most conservative approach and in any event, it does not alter the findings on injury.
- (601) The Commission examined certain economic indicators relating to the Union industry exclusively on the basis of data for the free market. These indicators are: sales volume and sales prices on the Union market, growth, export volume and prices, profitability, return on investment, and cash flow. Where possible and justified, the findings of the examination were compared with the data for the captive market in order to provide a complete picture of the situation of the Union industry.
- (602) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry. These are: production, production capacity, capacity utilisation, investments, stocks, employment, productivity, wages, and ability to raise capital. These indicators depend on the whole activity, whether the production is captive or sold on the free market.

### 4.3. Union consumption

- (603) The Commission established the Union consumption on the basis of the data provided by the sampled and non-sampled Union producers, as well as the imports based on the Eurostat data.

(604) Union consumption developed as follows over the period considered:

Table 1

**Union consumption (tonnes)**

	2017	2018	2019	IP
Total Union consumption	201 281	201 696	191 084	189 149
<i>Index</i>	100	100	95	94
Captive market	27 209	27 340	28 727	29 128
<i>Index</i>	100	100	106	107
Free market	174 073	174 356	162 358	160 021
<i>Index</i>	100	100	93	92

Source: sampled and non-sampled Union producers as well as Eurostat.

- (605) During the period considered, consumption first increased slightly by less than 1 % in 2018 before dropping by 5 % in 2019 and then by a further 1 % in the IP. As a result, consumption decreased by 6 % during the period considered. The decrease is at least partially caused by the general guidelines announced by the EU in 2019 for a Circular Economy including recyclability targets for basic materials such as aluminium, steel, glass etc. The laminates for which light gauge foils are used in combination with other basic materials like plastic films, paper, etc. are under severe scrutiny since they can hardly be recycled with the existing technologies. This had a negative effect on the demand for light gauge aluminium foil.
- (606) It appears that the consumption was not affected by the COVID-19 pandemic. According to the information supplied by the Union producers, food products stockpiling at the beginning of the pandemic actually initially increased the consumption, but then these products were consumed over the following months slightly decreasing the sales of the food packing.

#### 4.4. Imports from the country concerned

##### 4.4.1. Volume and market share of the imports from the country concerned

- (607) The Commission established the volume of imports on the basis of two TARIC codes <sup>(115)</sup> extracted from Eurostat database. The market share of the imports was established on the basis of import volume from the country concerned as compared to the volume of total Union consumption as shown in Table 2.
- (608) Imports from the country concerned developed as follows over the period considered:

Table 2

**Import volume and market share**

	2017	2018	2019	IP
Volume of imports from the country concerned (tonnes)	36 660	42 343	46 595	44 276
<i>Index</i>	100	115	127	121

<sup>(115)</sup> TARIC codes 7607 11 19 60 and 7607 11 19 93 (which was numbered 7607 11 19 95 until 17 February 2017).

Market share	18 %	21 %	24 %	23 %
Index	100	115	134	129

Source: Eurostat.

- (609) The volume of imports from the PRC increased by 21 % over the period considered and their market share increased by 5 percentage points, reaching 23 % in the IP. Prior to the pandemic, i.e. in 2019, the market share of Chinese imports even reached 24 %.

#### 4.4.2. Prices of the imports from the country concerned and price undercutting

- (610) The Commission established the prices of imports on the basis of Eurostat data, using the TARIC codes indicated in recital (607).
- (611) The weighted average price of imports from the country concerned developed as follows during the period considered:

Table 3

#### Import prices (EUR/tonne)

	2017	2018	2019	IP
Import price	2 869	2 893	2 801	2 782
Index	100	101	98	97

Source: Eurostat.

- (612) Average import prices from China decreased by 3 % over the period considered from 2 869 EUR/tonne to 2 782 EUR/tonne. Those prices remained significantly below the sampled Union producers' sales prices and cost of production during the period considered, as shown in Table 7.
- (613) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
  - the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (614) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a undercutting margins of between 3,9 % and 14,2 % by the imports from the country concerned on the Union market. The weighted average undercutting found was 10,8 %.

### 4.5. Economic situation of the Union industry

#### 4.5.1. General remarks

- (615) In accordance with Article 8(3) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

- (616) As mentioned in recital (37), sampling was used for the determination of possible injury suffered by the Union industry.
- (617) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the sampled producers and non-sampled producers, crosschecked with the data in the complaint. The Commission evaluated the microeconomic indicators on the basis of data provided by the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (618) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (619) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

#### 4.5.2. Macroeconomic indicators

##### 4.5.2.1. Production, production capacity and capacity utilisation

- (620) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

#### Production, production capacity and capacity utilisation

	2017	2018	2019	IP
Production volume (tonnes)	240 005	240 349	212 713	208 976
<i>Index</i>	100	100	89	87
Production capacity (tonnes)	296 161	283 091	281 091	278 319
<i>Index</i>	100	96	95	94
Capacity utilisation	81 %	85 %	76 %	75 %
<i>Index</i>	100	105	93	93

Source: sampled and non-sampled Union producers.

- (621) The production volume remained almost unchanged between 2017 and 2018 then it went down in 2019 and then further in the IP. The overall production volume decreased over the period considered by 13 %. Considering the situation on the free market and diminishing sales (see Table 5), in order to maintain production and dilute fixed costs, the Union producers increased their captive sales (see Table 5), as well as their export sales (see Table 12). Despite these efforts, the production volume still went down.
- (622) Production capacity decreased over the period considered by 6 %. This was a measured response to limit the injury when faced with the diminishing sales on the free market that pulled down the production over the period considered. As production decreased more sharply than production capacity, capacity utilisation dropped by 7 % over the period considered reaching 75 % in the IP.

## (c) Sales volume and market share

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

Table 5

**Sales volume and market share**

	2017	2018	2019	IP
Total sales volume on the Union market (tonnes)	148 840	144 726	130 060	132 227
<i>Index</i>	100	97	87	89
Market share	74 %	72 %	68 %	70 %
<i>Index</i>	100	97	92	95
Captive market sales (tonnes)	22 378	22 392	23 972	25 106
<i>Index</i>	100	100	107	112
Market share of captive market sales	11 %	11 %	13 %	13 %
<i>Index</i>	100	100	113	119
Free market sales (tonnes)	126 462	122 334	106 087	107 120
<i>Index</i>	100	97	84	85
Market share of free market sales	63 %	61 %	56 %	57 %
<i>Index</i>	100	97	88	90

*Source:* sampled and non-sampled Union producers.

(624) Total sales in the EU followed a downward trend over the period considered reaching (–11 %). Between 2018 and 2019 the drop was most significant (–10 %), followed by a slight increase by 2 %, which coincided with global supply chain disruptions due to the outbreak of the COVID-19 pandemic in the PRC.

(625) As mentioned in recital (600), a part of the total Union producers' production was destined for the captive market. That part accounted for 15 % of the Union consumption during the IP and increased over the period considered by 12 %. The growth occurred mainly between 2018 and 2019 and during the IP.

- (626) Total sales on the free market by the Union industry decreased by 15 % during the period considered. As a result, the market share of free market sales of the Union industry decreased from 63 % in 2017 to 57 % in the investigation period. After dropping by 5 percentage points in 2018-2019, it increased by 1 percentage point by the end of the IP.

#### 4.5.2.2. Growth

- (627) In a context of decreasing consumption, the Union industry not only lost sales volumes in the EU but also market share on the free market as demonstrated in recital (623).

#### 4.5.2.3. Employment and productivity

- (628) Employment and productivity developed over the period considered as follows:

Table 6

#### Employment and productivity

	2017	2018	2019	IP
Number of employees	2 220	2 151	2 072	2 003
<i>Index</i>	100	97	93	90
Productivity (tonne/FTE)	108	112	103	104
<i>Index</i>	100	103	95	97

Source: sampled and non-sampled Union producers.

- (629) Employment decreased by 10 % over the period considered as the Union industry tried to ensure its sustainability and align with the demand in the domestic market.
- (630) Consequently, its productivity first improved in 2018 from 108 to 112 tonnes/FTE before decreasing following the reduction of the production volume. Overall productivity thus deteriorated by 3 %. This is because in 2018 the employment was reduced whilst the production remained relatively stable. From 2019 to the end of the IP, however, production dropped quicker than employment due to the lower sales, which resulted in a corresponding decrease in productivity.

#### 4.5.2.4. Magnitude of the subsidy margin and recovery from past subsidisation

- (631) All subsidy margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of subsidisation on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (632) This is the first anti-subsidy investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past subsidisation.

#### 4.5.3. Microeconomic indicators

##### 4.5.3.1. 6. Prices and factors affecting prices

- (633) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

**Sales prices in the Union**

	2017	2018	2019	IP
Average unit sales price on the free market (EUR/tonne)	3 396	3 557	3 408	3 359
<i>Index</i>	100	105	100	99
Unit cost of production (EUR/tonne)	3 423	3 642	3 733	3 687
<i>Index</i>	100	106	109	108

*Source:* sampled Union producers.

- (634) Sales prices on the free market first increased from 3 396 to 3 557 EUR/tonne in 2018. Subsequently, they decreased to 3 408 in 2019 before dropping further to 3 359 EUR/tonne in the investigation period.
- (635) The unit cost of production of the sampled producers increased from 3 423 EUR/tonne by 6 % in 2018 and then further by 3 % in 2019, reaching 3 733 EUR/tonne. This figure remained more or less stable during the IP. One of the sampled Union producers incurred costs related to restructuring (mainly redundancy packages), which had an impact on cost of production in the IP. However, even without these costs, the unit cost of production of the sampled Union producers would be 3 % higher in the IP than in 2017.
- (636) The overall increase of the unit cost of production over the period considered was mainly caused by the drop in the production volume by 13 % (15 % for the sampled Union producers). Extraordinary restructuring costs aside, this is particularly visible in 2019, where these costs were minor but a production drop was very significant for the sampled Union producers (-19 %). Afterwards, all sampled Union producers started adapting, which resulted in the sales and production volume during the IP improving slightly also due to lower imports from the PRC following the outbreak of the pandemic. This elimination and dilution of some of the fixed costs resulted in lowering of unit cost of production in the IP (if the restructuring costs are not taken into consideration).

## 4.5.3.2. 7. Labour cost

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

Table 8

**Average labour costs per employee**

	2017	2018	2019	IP
Average labour costs per employee (EUR)	75 686	80 542	74 897	94 489
<i>Index</i>	100	106	99	125

*Source:* Sampled Union producers.

- (638) The average labour costs per employee increased by 6 % in 2018 and then decreased by 7 % in 2019. It then increased by 26 % in the IP, which is a factor of the restructuring costs a Union producer incurred. If these extraordinary costs are disregarded, the figure in the IP would be [77 000 – 81 000], which is a [2 – 7] % increase from 2017.

#### 4.5.3.3. Inventories

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

Table 9

#### Inventories

	2017	2018	2019	IP
Closing stocks (tonnes)	8 745	8 598	6 664	7 491
<i>Index</i>	100	98	76	86
Closing stocks as a percentage of production	7,9 %	7,9 %	7,3 %	8,2 %
<i>Index</i>	100	99	92	103

Source: sampled Union producers.

- (640) Closing stocks remained at a reasonable level throughout the period considered. Since the ACF industry generally operates on a production to order basis, this indicator is of a lesser importance in the overall injury analysis.
- (641) The percentage of closing stocks expressed on production shows a slight decrease in 2019 and a slight increase in the IP. These are however not extraordinary stock variations.

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

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

Table 10

#### Profitability, cash flow, investments and return on investments

	2017	2018	2019	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 1,9 %	- 1,0 %	- 8,1 %	- 9,6 %
Cash flow (EUR)	1 714 095	12 673 563	2 805 796	- 11 241 877
<i>Index</i>	100	739	164	- 656
Investments (EUR)	21 447 204	19 751 766	19 457 392	16 592 531

<i>Index</i>	100	92	91	77
Return on investments	- 2 %	- 5 %	- 19 %	- 24 %
<i>Index</i>	- 100	- 210	- 769	- 997

*Source:* sampled Union producers.

- (643) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (644) The sales of the Union industry to unrelated customers turned from loss making in 2017 to slightly less loss making in 2018, to significantly loss making in 2019 and even more loss making in the IP (-9,6 %). It is of note that one of the sampled Union producers started restructuring during the IP. The cost of this restructuring, including severance payments negatively impacted the second part of the IP. However, even without these extraordinary expenses, the sampled producers would still be loss making at the rate of -5,6 % in the IP.
- (645) It is clear that the Union industry was already injured in 2017. This is not surprising considering the market share of the Chinese imports (18 % in 2017) at prices not only below the Union industry's prices but also below its costs of production. The costs of the Union producers increased more than their prices, which led to the decrease in profitability of the Union industry. The Union industry was unable to raise prices at the same rate as costs were increasing because of the downward pressure caused by imports from the PRC (both in terms of volumes and low prices). Indeed, throughout the period considered, Chinese prices were consistently low and significantly below Union industry prices (see Tables 3 and 7), limiting price increases. This resulted in price suppression and decreasing profitability, which continued during the IP. Indeed, following a slight increase of 1 % in 2018, Chinese prices decreased by 3 % in 2019 and then 0,7 % in the IP. They remained far below the price level achieved by the Union industry. This is also evidenced by the significant undercutting margins stated in recital (614).
- (646) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed negatively over the period considered in line with the evolution of the profitability.
- (647) Investment decreased over the period considered by 23 %. Ambitious investment plans were halted due to the insufficient profitability. Less ambitious plans were implemented in their stead.
- (648) The return on investments is the profit in percentage of the net book value of investments. It developed negatively over the period considered from -2 % in 2017 to -24 % in the IP. Such development follows the decreasing profitability of the Union industry.
- (649) As follows from the indicators in recital (642), it is becoming increasingly difficult for the sampled Union producers to raise capital for investment. With returns on investments falling so quickly, the sampled producers' ability to raise capital in the future is in even greater jeopardy.

#### 4.6. Conclusion on injury

- (650) During the period considered, imports of ACF from the PRC, which were already significant in 2017, increased significantly both in absolute (+ 21 %) and relative terms (+ 5 percentage points in market share) while consumption in the EU decreased by 6 %. During the investigation period, the import prices of the sampled exporting producers undercut Union prices by 10,8 % on average. Regardless of the specific undercutting found, as

regards the sampled exporting producers, the Commission also observed that Chinese prices were consistently low and significantly below Union industry prices during the entire period considered (see Tables 3 and 7). The Union industry was unable to raise prices to the same extent as costs were increasing because of the downward pressure caused by imports from the PRC (both in terms of volumes and low prices).

- (651) Already at the beginning of the period considered, the Union industry showed signs of injury. This not surprising, considering the market share of Chinese imports of 18 % in 2017 and their price being significantly below the price of the Union industry (see Tables 3 and 7).
- (652) All macroeconomic indicators, such as production, capacity, capacity utilization, sales volume in the EU market, market share, employment and productivity, showed a negative trend over the period considered. Similarly, virtually all microeconomic indicators, such as sales prices in the EU free market, cost of production, labour costs, profitability, closing stocks, cash flow, investment and return on investments, showed a negative trend over the period considered. The same injury indicators also developed negatively when looking at the period 2017-2019, that is, before the start of the COVID-19 pandemic. For many indicators the situation in the IP was better than in 2019. This is mainly due to the lower level of imports from the PRC, that was caused by the pandemic outbreak at the end of 2019 and beginning of 2020. This further emphasises the impact these imports have on the overall situation of the Union industry.
- (653) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic Regulation.

## 5. CAUSATION

- (654) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from the country concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry and ensured that any possible injury caused by factors other than the subsidised imports from the country concerned was not attributed to the subsidised imports. The following potential factors were identified: consumption; COVID-19 pandemic; alleged lack of investment; restructuring of the Union industry; high production costs in the Union; imports from third countries; export performance of the Union industry.

### 5.1. Effects of the subsidised imports

- (655) The deterioration in the situation of the Union industry coincided with the significant penetration by imports from China, which consistently undercut the Union industry's prices and suppressed Union market price. As mentioned in recital (614), the import prices of the sampled exporting producers undercut Union prices by 10,8 % on average.
- (656) The volume of imports from the PRC increased (as shown in Table 2) from around 36 660 tonnes in 2017 to around 44 276 in the investigation period, an increase by 21 %. In turn, the market share increased by 29 %, i.e. from 18 % to 23 %. Over the same period (as shown in Table 5), the Union industry sales on the free market decreased by 15 % and its market share on the free market fell from 63 % to 57 %, a decrease by 10 %.
- (657) The situation in the period 2017-2019 is even more telling as Chinese imports increased by 27 % (from 36 660 tonnes to 46 595 tonnes) reaching a 24 % market share while the free market share of the Union industry dropped to 56 % (a fall of 12 %). Indeed, despite a decrease in consumption between 2018 and 2019, Chinese imports continued to increase and gain market share from the Union industry.

- (658) The prices of the subsidised imports decreased by 3 % over the period considered (as shown in Table 3) from 2 869 to 2 781 EUR/tonne. In comparison, the Union industry prices decreased only by 1 % over the same period, from 3 396 EUR/tonne in 2017 to 3 359 EUR/tonne in the investigation period. Hence, although starting from a lower price level in 2017, Chinese prices decreased more (-88 EUR/tonne) than Union industry prices (-37 EUR/tonne) over the period considered. Also, in the period 2017-2019, the decrease in Chinese prices amounted to 2 % while the Union industry prices increased by less than 1 % (12 EUR/tonne).
- (659) The pressure exerted by the subsidised imports thereby caused significant price suppression to the Union industry. The Union industry was unable to raise prices at the same rate as costs were increasing because of the downward pressure caused by imports from China (both in terms of volumes and low prices). Indeed, the degree of such downward pressure is, to the least, apparent from the fact that throughout the period considered, Chinese prices were consistently low and significantly below Union industry prices and cost of production, limiting the possibility of increasing prices (see recital (614)) This resulted in a drop of the profitability of the Union industry.
- (660) The difference between 2019 and the IP is particularly telling in terms of the nexus between the imports from the PRC and the situation of the Union industry. When the imports diminished following to the disruption of production and exports in the PRC due to the pandemic, production of the sampled Union procures, sales, unit cost of production and profitability of the Union industry improved slightly (disregarding extraordinary restructuring costs).
- (661) On the basis of the above, the Commission concluded that the imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

## 5.2. Effects of other factors

### 5.2.1. Consumption

- (662) One exporting producer argued that ACF being replaced in certain segments by other products could be the source of injury of the Union industry.
- (663) Indeed, as indicated in recital (605), the Union consumption contracted in 2019 and in the IP. Nevertheless, imports from the PRC increased throughout the period considered, whilst consumption decreased. Indeed, when demand is decreasing, one would normally expect all producers to be affected in a similar way or even exports to decrease more in comparison to domestic (Union) sales in view of the proximity between domestic producers and customers. Still, throughout the period considered, the imports from the PRC increased by 21 % (27 % in 2019) whilst the Union sales to the free market decreased by 15 % (16 % in 2019). Furthermore the slight improvement of some indicators discussed in recital (630) coincided with the continuous consumption contraction as seen in Table 2. The only significant difference between these two periods were lower levels of cheap imports from the PRC due to the pandemic.
- (664) Following the final disclosure the GOC argued that the market contraction should be considered a cause of injury as the market decreased by 6 % during the period considered. The Commission had already taken the market contraction into account and the GOC did not provide any evidence to rebut the Commission's conclusion in the previous recital. The Commission therefore rejected that claim.

### 5.2.2. COVID-19 pandemic

- (665) The COVID-19 pandemic that started in the first half of 2020 affected the situation on the EU market in various ways. As mentioned in recital (605) **Error! Reference source not found.**, the overall consumption was not affected while there was a slight decrease in the imports from the PRC.

- (666) As explained in recital (657), the subsidised Chinese imports had already increased steadily on a year-on-year basis in the period 2017-2019 leading to an increase of over 27 % until the start of the COVID-19 pandemic in the first half of 2020. In other words, the material injury caused to the Union industry by the subsidised imports had already materialised as evidenced by the negative development of all macro- and microeconomic indicators in the period 2017-2019 before COVID-19 came into the equation. Furthermore, as discussed in recital (636), lower volume of imports from the PRC due to the pandemic at the beginning of 2020 had positive impact on some of the injury indicators. This further exemplifies a strong nexus between the imports and the injurious situation of the Union industry.
- (667) In view of the above, the Commission concluded that the COVID-19 pandemic did not contribute to the material injury suffered by the Union industry.
- (668) Following the final disclosure the GOC argued that the Commission insufficiently investigated the effect of the COVID-19 pandemic. The GOC argued that the pandemic caused a demand side-crisis, which would also be visible in the 6 % Union GDP decrease in 2020. The Commission's own predictions in terms of an expected recovery of the economy would demonstrate the temporary effect of the pandemic.
- (669) With reference to recital (666), where the Commission summarises the COVID-19 pandemic impact, the Commission rejected this claim.

#### 5.2.3. *Lack of investment*

- (670) One exporting producer and two users argued that lack of investment by the Union industry in their production facilities is one of the reasons for the injury.
- (671) It is true that, as mentioned in recital (647), some ambitious investments of the sampled Union producers were halted. However, this was the result of the injurious situation of the Union industry, not its cause. Despite the dire situation of the Union industry throughout the period considered, the investigation has shown investments into inline quality control mechanisms and other upgrades to the existing machine park. Furthermore, several companies invested into R & D to produce thinner ACF and ACF for electric car battery production. This demonstrates that the Union industry adapted to market requirements, within their financial possibilities.
- (672) While it cannot be excluded that additional investments in the latest technology may be needed to ensure the long-term sustainability of the Union industry, the Commission concluded that the state of the Union industry's production equipment and the development of its operating costs do not attenuate the causal link established between the subsidised imports and the material injury suffered by the Union industry.
- (673) In view of the above, the Commission concluded that limited investment did not contribute to the material injury suffered by the Union industry.
- (674) The consortium of importers requested that its comments made in the separate anti-dumping investigation should be incorporated into this anti-subsidy investigation, and also commented on the final disclosure in this procedure. The consortium of importers claimed that the Commission reiterated its conclusions from the provisional Regulation without providing evidence capable of rebutting the consortium's argument that the Union industry's injury resulted from a lack of investments, which resulted in an inability to provide the thin foil. The consortium claimed that while it had provided all the evidence it could reasonably gather, it would be for the Commission to verify the accuracy of these claims and, if need be, to further investigate these issues by requesting additional information from the Union producers. The lack of investments in the new machinery and technologies resulted in the Union producers' lines of production becoming obsolete as the vast majority of aluminium foil plants in the EU are over 20 years old.

(675) Contrary to what the consortium alleged, the Commission has verified the quality testing results specifically for ACF< 6 during the RCCs regarding the sampled Union producers, as the consortium had claimed quality issues with the thinner foils. While the Commission has acknowledged that some investments were halted, it has also verified the investments made into existing machine parks and the resulting quality tests. The Commission therefore rejected the claim that it did not make the necessary effort to assess the claims of the consortium, further to the evidence provided.

#### 5.2.4. *Restructuring of the Union industry*

(676) One user pointed to Union producers exiting the market and restructuring as a reason for the Union industry's injurious situation.

(677) Most of the market exits noted by the user took place before the period considered. There were no reasons indicating that these closures would occur under fair market conditions. If anything, similarly to the situation regarding investments, closures of production facilities and business are a result of the injurious situation of the Union industry, not its cause. As part of restructuring and adaptation, such closures usually alleviate, not worsen the injury.

(678) It is true that cost of restructuring of one of the sampled Union producers in the second half of the IP may have had an impact on some indicators, such as cost of production, cost of employment and profitability. This is why the Commission also considered the injury picture disregarding those costs. Even without those cost elements, it is clear that the Union industry suffered injury throughout the period considered including in the IP. These claims were therefore rejected.

(679) In view of the above, the Commission concluded that restructuring of the Union industry did not contribute to the material injury suffered by the Union industry.

(680) Following the final disclosure Xiamen Xiashun argued that the restructuring of the Union industry and the ceasing of production by Novelis Lüdenscheid cannot be disregarded. Xiamen Xiashun claimed that the final disclosure did not specify how the restructuring costs were actually considered and accounted for and that the Commission did not provide more explicit reasoning.

(681) Contrary to Xiamen Xiashun's claim the Commission has clearly stated how it assessed the restructuring of the Union industry within the calculation of the injury indicators. As described in recitals of the final disclosure, in recital 510 of the final disclosure the Commission explained that first it regarded the restructuring as a part of the adaptation as a consequence of the injury and in principle included the restructuring in its calculation. Further in recital 511 of the final disclosure the Commission explained that the Commission made a parallel calculation fully disregarding the costs of restructuring of one of the sampled Union producers and assessing if this would have had an impact as repeated in recital (678) above. The Commission therefore rejected the claim by Xiamen Xiashun as it had not only described the applied method, but also stated that even if those costs were to be excluded the conclusion on the injury factors and causality would not change.

#### 5.2.5. *High wages, energy costs and lack of vertical integration*

(682) One user argued that high wages and energy prices are the reasons for the injurious situation of the Union industry.

(683) The Union producers reduced from 2017 to the IP the number of employees in production and administration, decreasing their overall labour cost substantially, to maintain competitiveness with a smaller market share. As demonstrated in Table 8, the average cost per employee increased in the IP, but this was mainly due to the restructuring of one of the sampled producers. Disregarding these extraordinary expenses, the average cost per employee remained relatively stable throughout the period considered whilst the sampled Union producers were still loss making.

- (684) As to the costs of energy, they represent a relatively low portion of the cost of production (around 3 %) and as such do not have a significant impact on the increase of cost of production indicated in Table 7. Whilst energy cost per tonne of ACF produced by the sampled Union producers increased by 12 % throughout the period considered, they are partly due to the decreased volume of production and in any case, considering the portion of energy cost in the cost of production, cannot be responsible for the cost of production increase in Table 7.
- (685) One user argued that the lack of vertical integration is a source of material injury to the Union industry.
- (686) The Commission noted that lack of vertical integration does not break the chain of causation as this factor has not changed throughout the period considered. Furthermore, not all Chinese exporting producers are vertically integrated either. This claim was therefore rejected.
- (687) In view of the above, the Commission concluded that wages, energy costs and lack of vertical integration did not contribute to the material injury suffered by the Union industry.
- (688) Following the final disclosure the GOC argued that the Commission did not sufficiently take into account the labour costs, which increased by 25 % from 2019 to the end of the IP.
- (689) Contrary to the claim of the GOC, the Commission analysed the effect of increased labour costs and concluded that this has to be seen together with the decrease in personal of the Union producers, which has resulted in extraordinary costs. Disregarding the extraordinary expenses for adapting the cost per employee remained relatively stable as indicated already above in recital (683). The Commission therefore rejected this claim.

#### 5.2.6. Imports from third countries

- (690) The volume of imports from other third countries developed over the period considered as follows:

Table 11

#### Imports from third countries

Country		2017	2018	2019	IP
Total of all third countries except the country concerned	Volume (tonnes)	10 950	9 680	9 675	8 625
	Index	100	88	88	79
	Market share	5 %	5 %	5 %	5 %
	Average price	3 192	3 386	3 474	3 575
	Index	100	106	109	112

Source: Eurostat.

- (691) Imports from third countries were relatively limited. Average prices of imports from third countries were consistently above the Chinese prices throughout the period considered. They were only slightly below the Union prices in 2017 and 2018 and then surpassed them in 2019 and the IP. Their volumes decreased (-21 %) over the period considered. Considering the contraction of the consumption, their market share remained at around 5 % throughout the period considered. Their prices increased by 12 % during the period considered.

- (692) On this basis, the Commission concluded that the evolution of imports from other countries over the period considered did not contribute to the material injury suffered by the Union industry.

#### 5.2.7. Export performance of the Union industry

- (693) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 12

#### Export performance of the sampled Union producers

	2017	2018	2019	IP
Export volume (tonnes)	57 956	74 277	69 027	61 811
<i>Index</i>	100	128	119	107
Average price (EUR/tonne)	3 498	3 632	3 475	3 400
<i>Index</i>	100	104	99	97

Source: sampled and non-sampled Union industry.

- (694) Exports of the Union industry increased by 7 % over the period considered from 57 356 tonnes in 2017 to around 61 811 tonnes in the investigation period.
- (695) The average price of these exports first increased by 4 % in 2018 before progressively decreasing to a lower level than in 2017 (-3 %) in the IP. The average price of these exports remained consistently above the price that the Union industry could achieve on the EU market.
- (696) In view of the price levels of the Union industry exports to third countries, the Commission concluded that the export performance did not contribute to the material injury suffered by the Union industry.

### 5.3. Conclusion on causation

- (697) There is a clear nexus between the deterioration of the situation of the Union industry and the increase of imports from the PRC.
- (698) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports. None of the factors contributed, alone or in combination, to the negative developments of the injury indicators observed in the period considered.
- (699) On the basis of the above, the Commission concluded at this stage that the subsidised imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the subsidised imports and the material injury.

## 6. UNION INTEREST

### 6.1. Interest of the Union industry and suppliers

- (700) There are eleven known groups of companies producing ACF in the Union. The Union industry employs over 2 000 workers directly with many more relying on it indirectly. The producers are widely spread throughout the Union.

- (701) The absence of measures is likely to have a significant negative effect on the Union industry in terms of further price suppression, lower sales and further deterioration of the profitability. The measures will allow the Union industry to reach its potential on the Union market, recover lost market share, and improve profitability to levels to be expected under normal conditions of competition.
- (702) Consequently, the Commission concluded that the imposition of measures is in the interest of the Union industry and its upstream suppliers.

## 6.2. Interest of users

- (703) Nine users representing the flexible packaging industry, as well as construction material industry, replied to the questionnaire. The nine companies account for around 27 % of the Chinese imports during the IP. Three other users provided comments, but did not provide questionnaire replies. Based on these replies, the Commission did not find a significant dependency on ACF imported from the PRC. For most of the cooperating users, ACF from the PRC represented between zero and 7 % of the costs of production of the products that consumed ACF. The exception to this were two users (one in the construction and another in the packaging sector), who import [80 – 95] % and [85 – 100] % of their ACF from the PRC, representing, respectively, [15 – 25] % and [20 – 30] % of their cost of the relevant production.
- (704) Six users argued that the Union producers could not provide the same quality ACF as the Chinese producers due to a lack of investment in new machinery and in-line quality check equipment. While it is true that Union producers in general have an older machine park than Chinese producers, the Union producers have made investments and also apply in-line quality detection tools. As export figures of the Union industry show, Union producers are also able to compete successfully in third country markets, proving that their product is generally not inferior when compared to the global standard. Whilst some Chinese market leaders have facilities capable of producing efficiently high quality product, the quality analysis provided by a user has shown that this is not true for all of the ACF industry in the PRC and all its exporting producers.
- (705) Three users argued that Union producers would not supply large widths or at least would have supply constraints for specific dimensions. The investigation found that Union producers could provide all widths requested by the market. Specific widths might be more cost efficient than others, depending on the maximum width of the rolling mill, which is then reflected in the price negotiations, however this is normal business practice.
- (706) Three users argued that Union producers would not be able to provide quality ACF with a gauge below 6 microns. As explained in recital (63) the Commission found that the Union industry not only has existing capacity and made commercial sales in this segment, but that it also invests in the production of gauges below 6 microns, which was a developing market segment with a relatively low consumption during the IP.
- (707) Two users argued that countervailing duties would cause supply chain interruptions. While peak demand in specific situations can cause higher lead times and Chinese producers can have more financial flexibility for stocking raw materials, it is important to note that interruptions in the supply chain from the PRC can equally occur, as has been the case due to COVID 19, which makes the survival of the Union producers an important factor for supply stability in Europe. In any event, as indicated in table 4, there is a substantial spare production capacity in the Union available to the users.
- (708) Two users argued that countervailing duties would jeopardise the competitiveness of the converter industry on the Union market, competing against producers from countries outside the Union, as cost increases could not be passed on to their customers. European converters could therefore shift production to outside of the Union. However, no specific evidence of inability to pass on the additional costs to the converters was provided.

- (709) Two users argued that the duties would contravene the European sustainability goal as the use of thinner ACF would help to reach these goals. However, while the Commission already concluded above (see recital (63)) that the Union industry is perfectly in position to produce thinner ACF, it should be noted that the European Union cannot build a sustainable green policy, of which greener insulation materials for construction represent an element, on heavily subsidised and injurious imports from the PRC.
- (710) One user argued that duties would distort the market as two of the largest ACF producers, who are also converters, would have a captive consumption greater than 70 % of their production. In view of the number of Union producers, it is highly unlikely that the captive consumption of two integrated ACF producers, who are also converters, would distort the market. Moreover, there is significant spare ACF capacity available in the EU. Finally, not imposing anti-subsidy measures for this reason would mean favouring one business model (non-integrated production) over the other.
- (711) One user argued that instead of imposing duties, state-aid could be offered to the Union industry. The Commission noted that financial aid is, however, not the right instrument to counter injurious subsidisation.
- (712) In light of the above, the Commission concluded that there is no uniform interest of users either in favour or against the imposition of the measures. Those users who argued against the imposition of the measures may face certain negative consequences.
- (713) Manreal argued that measures would not benefit the Union producers. Instead they would benefit the producers of ACF in Turkey, Thailand, Brazil or Russia as the users would buy from these countries instead of the Union producers.
- (714) However, Manreal did not substantiate why the Union producers would not be able to compete with producers from other countries under fair conditions.
- (715) In addition, Manreal argued that in case the users would pass on their cost to their customers, this would put into jeopardy the competitiveness of their customers. The company did, however, not substantiate this claim further beyond making this general remark.
- (716) Manreal further argued that in recital (354) of the Regulation (EU) 2021/983 the Commission indicated that it would impose measures in favour of integrated producers. It requested the Commission to investigate the likely effects of the measures “in the EU fair competition”.
- (717) This interpretation of Regulation (EU) 2021/983 is incorrect as the Commission merely stated that the non-imposition of measures would favour non-integrated users. Indeed, in the absence of measures they can purchase dumped ACF, whereas integrated users producing ACF in the Union would not benefit from this unfair advantage. As regards Manreal’s request to investigate the likely effects of the measures “in the EU fair competition”, the Commission understands that Manreal claims the duties would constitute an unfair competitive advantage for integrated Union producers towards non-integrated businesses. The Commission recalled that in accordance with Article 31(1) of the basic anti-subsidy Regulation the need to eliminate trade distorting effects of injurious subsidisation and to restore effective competition is given special consideration in the Commission’s assessment of the Union interest.
- (718) Manreal further claimed that the Commission breached its rights of defence as Manreal did not have access to the analysis mentioned in recital (704).
- (719) The Commission is under the obligation to protect confidential business information of the parties, balancing access to that information with the interest of other parties to exercise their rights. A detailed quality analysis of products from different suppliers from the PRC and the Union over multiple years can rightfully be claimed as a business secret, which is not shared with competitors. Therefore, not sharing business secrets did not cause a breach Manreal’s of rights of defence.

- (720) Two companies, Gascogne and Manreal, argued that the statement of the Commission that there would be no uniform interest of the user against measures in recital (712) would be incorrect as all comments submitted by users were against measures.
- (721) For its assessment the Commission may also rely on confidential data submitted by users as questionnaire replies. From the data it follows that there are two users, which purchase a high percentage of their ACF from China and for whom ACF from China represents a very high part of their raw material costs but the other users mainly purchase ACF from Union producers and would not be affected in the same way by the measures. Revealing details about which percentage individual users purchase from concrete ACF producers would expose their supply chains. The parties can, however, already make their argument based on the information that users rely to a different extent on imports from the PRC.
- (722) In light of the above, the Commission confirms its assessment that there is no uniform interest of users either in favour or against the imposition of the measures, even if users who argued against the imposition of the measures, in particular the two users, for whom ACF represents a high percentage of their cost of production may face certain negative consequences.
- (723) Walki argued that the general disclosure document did not portray the users' interest correctly or fairly. Walki further claimed that the conclusion of the Commission on the lack of "uniform interest" of users based on the fact that "users rely to a different extent on imports from the PRC" is a misleading and discriminatory analysis against users.
- (724) The Commission concluded that there was no uniform interest of users due to the highly different levels on which users rely on ACF originating in the PRC. With this statement, the Commission did not deny that all cooperating users opposed the imposition of anti-dumping duties.
- (725) Walki further claimed that the Commission has not responded to its request for a more adequately reasoned analysis relating to crucial elements of the Union interest. Walki requested a correction of the Commission's statement with regard the reference to the arguments of users on the fact that the Union industry cannot provide the same quality ACF as the Chinese producers due to a lack of investment. Walki argued that six users submitted a common statement claiming "*that the Applicant producers do not have the production capability to supply certain important specifications of ACF. Their inability to commercially supply these specifications to the Union Users is attributed most clearly to the Applicants' long-term failure to invest in the production equipment and technology necessary to extend their existing ACF production range in order to supply the thinner specifications needed by these Users.*"
- (726) Indeed, six users submitted a common statement claiming that the Union industry had failed to invest, further to the four users which had already provided this argument individually. However, the Commission already addressed this claim on substance in sections 5.2.3 and 6.2. of the Regulation 2021/983. At this stage, no user has provided new factual information, but just reiterated the same claim. The Commission therefore confirmed its conclusions.
- (727) Walki further claimed that the Commission wrongfully concluded that the Union's products are not inferior on the basis of the Union producers' general ability to export and compete successfully in third country markets. Walki argued that this would only apply to the ability to produce quality thicker foil above 20 microns. It also claimed that the Commission did not indicate this would include all the thinner foils, which are at the centre of the Union supply constraint issue.
- (728) Walki further claimed that the statement that not all Chinese producers can produce efficiently high-quality product, has no bearing on the users' argument that the Union industry is not capable of efficiently producing high quality thinner foil.
- (729) The Commission cross-checked sales data of the Union producers at hand, which shows that there are exports of ACF below 20 microns to third countries. Walki's argument that the Union producers would only be competitive with ACF above 20 microns does therefore not stand.

- (730) Walki further claimed that the Commission's assessment of the spare production capacity does not equate to an ability to produce quantities of quality thin ACF.
- (731) The Commission duly analysed the capacity to produce thinner foil, which is limited by the machines capable of the last rolling step. Some Union producers presented test results, showing that the test roll production for ACF< 6 was successfully meeting the requirements of the respective customer. The Commission further points to its assessment that ACF< 6 is a developing new market and due to the very small demand during the IP, naturally not all Union manufacturers adapted their machine park yet for this market segment.
- (732) Walki further claimed that key elements of positive evidence submitted by Walki during the latter course of the investigation have been totally ignored or mistakenly represented. The Commission considered that claim to be inaccurate. The Commission took all arguments and evidence into consideration, but for confidentiality reasons, some very specific information could not be disclosed in the regulation.
- (733) Manreal claimed that the Commission breached the principle of good administration. Manreal argued that the Commission disregarded, with no reasoning, all Manreal's comments, claiming that the Commission used an unfair rebuttal technique by pointing out that Manreal did not substantiate its claims sufficiently.
- (734) Contrary to Manreal's claim, the Commission fulfilled its obligation to assess, for each of Manreal's comments, whether it was sufficiently substantiated, and has explained the reasons why it was not in each case in the recitals mentioned by Manreal. The Basic Regulation does not foresee an obligation of the Commission to further investigate comments which are not sufficiently substantiated.
- (735) Therefore, the Commission rejected this claim.

### 6.3. End-use exemption request

- (736) In the separate anti-dumping investigation Effegidi requested an end-use exemption for ACF for the use in the production of films for cable shielding and wine bottle capsules. Effegidi extended this request to this procedure.
- (737) The request is based on the percentage of the costs ACF represents in the production costs of films for cable shielding and wine capsules and the impact the measures would have on the company. According to Effegidi, films for cable shielding and wine capsules are niche markets and their consumption of ACF is equally negligible. This implies that an exemption from the duties for final use would not undermine the overall effectiveness of the anti-dumping duty.
- (738) However, the investigation revealed that Effegidi does not only produce the two products for which it requested the end-use exemption, but its portfolio includes a variety of other products like cable films which do not incorporate ACF, as well as other food and non-food packaging, some of which incorporate ACF. The Commission could therefore not determine the overall impact of the anti-dumping duties on the profitability of the company based on the data provided by Effegidi. Consequently, in the final disclosure, the Commission rejected the end-use exemption.
- (739) Following final disclosure, Effegidi provided the Commission with its financial statements for the years 2019, 2020 and for the first half of 2021. Effegidi further requested guidance from the Commission on what further documents it needed to provide in order to be able to be granted the end-use exemption.
- (740) The Commission found that the information sent after the final disclosure was not sufficient to allow the Commission to assess the overall impact of a potential exemption on the effectiveness of the duty. Effegidi did not provide any information about the cable shield and wine capsules industry.

(741) The Commission could therefore not assess whether the end use exemption would be in the Union interest and therefore confirmed its rejection of Effegidi's exemption request.

#### 6.4. Interest of importers

(742) A consortium of five unrelated importers provided comments on initiation. However, only one unrelated importer, representing [15 – 25 %] of the imports from the PRC, submitted a reply to the importers' questionnaire.

(743) The consortium argued that the Union producers are not able to manufacture the full spectrum of ACF in the required quality and volume due to technical constraints originating in a lack of vertical integration of most Union producers. This would cause higher costs of production, lower quality, dependency on the raw material (foil stock) market and longer lead times due to a longer supply chain. They further claimed that a lack of investment, especially on in-line detection systems, has led to quality issues. Therefore, the consortium expects a supply shortage, especially for thin gauge ACF, if measures were imposed. This, together with higher prices, would undermine the competitiveness of the Union converters (users).

(744) As discussed in Section 4.5.2.1, the Union industry appears to have sufficient spare capacity, even taking into account the high level of captive use of two big Union producers. Contrary to the claim of the consortium of importers, investments in in-line quality control have been made and the data does not consistently demonstrate a higher quality of Chinese ACF.

(745) In light of the above, the Commission concluded that the imposition of measures would not necessarily be in the interest of importers. However, it further assessed their likely effects when weighing the different interests at stake (see Section 4.4).

(746) Following the final disclosure the consortium of importers reiterated the claim that the Union producers are not able to meet the existing ACF demand especially in the market segment of thin gauge ACF, in which they currently import from the PRC to meet the demand. The consortium claimed that it would take at least 2 years to make the production of thin gauge ACF effective and operational and that the Union producers do not appear to meet the demanded quality standards to replace current imports from China in this market segment.

(747) Further to the fact that the consortium has not substantiated why it would take 2 years to make the thin gauge ACF production operational, the Commission has already concluded in section 4.5.2.1 of Regulation (EU) 2021/983 that the Union industry appears to have sufficient spare capacity. Moreover, the Union industry has demonstrated with sales and test roll production to be able to meet the clients' demand as described in recitals (50) and (51) of Regulation (EU) 2021/983.

(748) In light of the above, the Commission confirmed its conclusion that the imposition of measures would not necessarily be in the interest of importers. However, it further assessed their likely effects when weighing the different interests at stake (see Section 6.4).

(749) Following the final disclosure, the consortium claimed that the Commission completely disregarded the fact that the gradual movement of the demand into thinner gauges of ACF resulted in an increase in demand for ACF of  $\leq 7$  microns. Furthermore, the Commission underestimated the fact that it would take at least two years to make the production of thin gauge ACF effective and operational in the EU.

(750) Further, the consortium claimed that the Commission failed to provide clarification on how the substantial spare capacity of the Union industry can satisfy the demand of thin gauge ACF.

- (751) The consortium also reiterated that the Union industry cannot meet the quality standards for thin gauge ACF in terms of porosity and runability and stressed that the rolling mills producing the ACF are the same as for the car battery industry, further reducing the capacity for ACF. It claimed that overlooking of those aspects led the Commission to the erroneous conclusion that the imposition of duties is in the Union interest.
- (752) As explained in recital (51) of Regulation (EU) 2021/983, the Commission assessed the capacity of the Union industry to produce thinner ACF, specifically ACF < 6 by assessing the capacity of the last rolling mill step, necessary to reach this thin gauge. The previous rolling steps proved to have sufficient spare capacity. Consequently the bottleneck for the production of ACF < 6 is in the last rolling step. The Commission has clarified how the Union industry can satisfy the demand of thin gauge ACF. The argument that it would take at least two years to make the production of thin gauge ACF effective and operational only applies to new capacities that the Union industry would install as a result of a restored fair price competition and a further increasing demand. As already the existing capacities can satisfy the expected demand in the near future, potential additional future capacities have not been taken into account in the Commission's calculation. It is not relevant that new capacities would require a period before becoming operational. The Commission therefore rejected the claim.

#### 6.5. Weighing of the competing interests

- (753) In line with Article 31(1) of the basic Regulation, the Commission assessed the competing interests and gave special consideration to the need to eliminate the trade distorting effects of injurious subsidy and to restore effective competition.
- (754) As far as an increase in prices is concerned, the investigation revealed that Chinese prices were undercutting Union prices on average by 10,8 % and that the price suppression lead to a deterioration of the situation of the Union industry. Should prices rise again to sustainable levels, the Commission considered that such increase would be limited in view of the level of competition on the Union market. As already mentioned in Section 4.5.2.1, the Union industry has sufficient spare capacity. Accordingly, the negative effect on users would also remain limited. None of the specific arguments raised by the users and importers and discussed in sections 6.2 and 6.4 change this conclusion.
- (755) When assessing the significance of negative effects for the importers, the Commission first noted that the level of cooperation was relatively low as only one out of the five cooperating importers provided data.
- (756) Manreal argued that the analysis of the market and of the Union interest undertaken in Regulation (EU) 2021/983 was no longer valid, as a result of the drastic increase of prices and speculation in the commodities market, which are consequences of the investigation and the Covid-19 pandemic. The converting packaging industry is strongly hit not only by a 40 % price increase for aluminium, but also by a 40 % price increase for kraft paper and by container transport costs which have increased by 400 %. The average supply time for paper deliveries has increased from 3-4 weeks to 4 months. In some supply contracts, suppliers claim force majeure and deliver with a delay of 6 months while asking for 20 % higher prices than at the time of the order.
- (757) Supporting Manreal's arguments, Walki, Gascogne, and Effegidi also emphasized that post IP the market situation has fundamentally changed leading to supply shortages not only in ACF, but also their other raw materials. According to Gascogne, the aluminium price on the London Metal Exchange increased by 30 % from October 2020 to May 2021. Also under the current situation only 1 major Union producer appears to be able to supply new orders without a lead time of several months. Effegidi claimed that, according to quotes from Union producers in July 2021, supply of ACF for its production would not be available before 2022.
- (758) Another user, Alupol, argued that starting from December 2020 they noticed poor interest in contracts from the Union producers and even a 2-year supply contract concluded with one of the Union producers was terminated by the producer after half a year, which shows capacity constraints. Walki provided additional evidence relating to requests of 6,35 micron ACF, demonstrating that the supply difficulties faced in 2021 are continuing.

- (759) Also the consortium of importers argued that since the beginning of the investigation ACF prices have increased by 25 % and delivery times have increased from an average of 2 months to 4 months. Also the current supply shortage situation leads to integrated companies supplying their related entities on a preferential basis, leaving less capacity for the open market. The consortium expects the duties to disrupt supply-chains and lead to a supply shortage for the entire range of ACF, but in particular for gauges below 6 microns.
- (760) While these changes in the market indeed have an impact on the different interests of producers, users and importers, they are caused by the exceptional situation of the COVID-19 pandemic and the following strong economic recovery, which has caused an international transport shortage and supply shortages. Accordingly, it may require certain time for the markets to adapt until the economic recovery and growth would normalize and demand and supply would be in balance again, including in the ACF sector.
- (761) Manreal further argued that in line with Article 11 TFEU protection against subsidised imports should be balanced with other goals of the Union, such as environmental protection, and concluded that the imposition of measures will have a very negative impact on the environment. Manreal argued that irrespective of possible negative impacts on jobs or industrial policy, the disappearance of more polluting Union producers would be good for the EU environment. Consequently, Manreal requested the Commission to include in the investigation the likely effects of the measures on the environment.
- (762) The Commission noted, first, that Manreal has not substantiated in which way Union producers are more polluting than Chinese producers. Moreover, while the Union sets high environmental standards for its producers, the purpose of Article 11 TFEU is not to prevent economic activity but to integrate environmental protection requirements into the policy guiding the economic activity. Manreal's suggestion to reduce emissions in the Union by allowing its industry to be wiped out by unfair competition is not only incompatible with the EU's environmental goals but would go against a number of other policies. Consequently, Manreal's request to investigate the environmental impact of such a scenario was rejected.
- (763) Manreal further pointed to recital (355) of the provisional Regulation in the anti-dumping procedure, in which the Commission stated, in reply to Manreal's previous argument that State aid could be a more suitable measure than imposing duties, that financial aid is not the right instrument to counter injurious dumping. Manreal argued that this is a policy choice that should not be adopted without consulting the Directorate-General for Competition ('DG COMP'). Manreal further claimed that the Commission's argument would presuppose that any aid granted to Union producers would not be authorised by DG COMP.
- (764) The Commission recalled that Article 15(1), first paragraph, of the basic Regulation stipulates that where the facts as finally established show that the existence of countervailable subsidies, and injury caused thereby, and the Union interest calls for intervention, a definitive countervailing duty shall be imposed by the Commission. Indeed, the Commission cannot abstain from countering demonstrated injurious subsidisation by Chinese exporters through the legal instruments at the Commission's disposal merely because Union producers may also benefit from State aid. Moreover, State aid is granted by the Member States, not the Commission.
- (765) Consequently, none of the arguments following Regulation (EU) 2021/983 raised by the users and importers also in the context of the anti-subsidy investigation changed the Commission's conclusion.
- (766) Several parties suggested that the Commission, together with the comments to the final disclosure, assessed a potential suspension of the duties according to Article 24(4) of the basic anti-subsidy Regulation. The potential suspension of the duties may be considered by the Commission in due course as provided by Article 24(4) of the basic anti-subsidy Regulation.
- (767) Following the final disclosure the GOC argued that the global and EU economy are facing ongoing grave supply chain disruptions. In view of this situation it would not be in the Union interest to impose measures at this time. The GOC also asked the Commission to assess a suspension of potential duties.

- (768) As explained above in recital (760) the COVID 19-pandemic has had negative effects on the supply chains. However, this is a temporary situation, it is not considered by the Commission to cause a permanent overriding interest against the imposition of measures.
- (769) Following the final disclosure the consortium of importers argued that the imposition of definitive countervailing duties in addition to anti-dumping duties is clearly against the interest of importers and users in the EU since there was an increasing demand in ACF of  $\leq 7$  microns, the increase of battery foil production would decrease available capacity for other ACF and this would cause a relocation of production capacities of the converting industry outside of the EU.
- (770) The Commission had already concluded that the spare capacities of the Union producers would allow to fulfil the demand of ACF for thinner gauges and for car battery foil in the upcoming years. Anti-dumping duties are not calculated in a way that would automatically remedy also the subsidisation of imports. Especially different exporters can be involved differently in dumped imports and subsidisation. The Commission therefore rejected the claim that it would be against the Union interest to impose countervailing duties, in case of the imposition of anti-dumping duties.
- (771) Following the final disclosure Xiamen Xiashun argued it would be in the Union interest to exclude electric car battery foil from the scope as the Union producers would not have the capacities to fill the demand in the short- to medium term.
- (772) As Xiamen Xiashun did not provide new evidence for this claim and the Commission had already analysed the capacity of the Union producers in light of the short- to medium term demand, the Commission rejected this claim.

#### 6.6. Conclusion on Union interest

- (773) On the basis of the above, the Commission concluded that there were no compelling reasons to conclude that it is not in the Union interest to impose definitive countervailing measures on imports of ACF originating in China.

#### 7. PRICE UNDERTAKING OFFER

- (774) Following final disclosure, within the deadline specified in Article 13(2) of the basic Regulation, one exporting producer submitted an offer for a price undertaking: Jiangsu Zhongji Lamination Materials Co., Ltd., together with its related trader Jiangsu Zhongji Lamination Materials Co., (HK) Limited.
- (775) According to Article 13 of the basic anti-subsidy Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of subsidisation and their acceptance must not be considered impractical. The Commission assessed the offer in view of these criteria and considered that its acceptance would be impractical for the following overarching reasons.
- (776) First, the company produces and sells various product types with significant differences in prices. Aluminium converter foil types cannot be easily distinguished from one another by a physical inspection. In particular, it would be very difficult to assess the thickness only by physical inspection. Without a detailed laboratory analysis the customs authorities would not be able to determine whether the imported product corresponds to what is being declared.
- (777) Second, the high number of product types entails a high risk of cross-compensation among the different product types, with more expensive product types possibly being misdeclared as cheaper product types also subject to the undertaking. This renders the undertaking unenforceable and thus impractical within the meaning of Article 13 of the basic Regulation. Third, Zhongji has a high number of related companies directly involved in production or sales of the product under investigation. Furthermore, Zhongji sells the product both directly and indirectly. Such a complex group structure implies a high risk of cross-compensation. The Commission would not be able to monitor and ensure compliance with the undertaking of the indirect sales via the related company in Hong Kong and possibly via the other related companies. This, on its own, would make the offer impractical.

- (778) The Commission also assessed the particular commitments of the undertaking offer that Zhongji had put forward to address the principal matters described above. As regards the various product types, the company had offered to export only the products types belonging to five PCNs. In addition, as regards the complex group structure, Zhongji offered to commit to exclusively sell to the Union directly through Zhongji Lamination Materials Co., Ltd, and not to sell any other product to the same customers in the Union to which the product under investigation is sold.
- (779) The Commission found that even these particular commitments put forward would not remove the elements making the undertaking offers unenforceable.
- (780) Even if Zhongji's commitment to export only five PCNs would reduce, but not eliminate, the risk of cross-compensation, it would be highly impractical to enforce. The customs authorities would not be able to determine whether the imported product corresponds to what is being declared only by physical inspection, without specific measuring tools.
- (781) For the same reason it would be extremely difficult to enforce Zhongji's commitment not to sell any other product than the product under investigation to the same customers in the EU. Moreover, Zhongji related companies export other aluminium products to the EU, that are also subject to anti-dumping measures and there are measures in force on aluminium products that are classified under the same CN code of the product under investigation <sup>(116)</sup>. Finally, the product concerned itself is also subject to anti-dumping measures in the separate anti-dumping case, and an undertaking offer submitted by the same company in that case has already been rejected.
- (782) The Commission sent a letter to the applicant, setting out the above reasons for rejecting the undertaking offer.
- (783) The applicant submitted comments thereto. These comments were made available to interested parties on the case file.
- (784) Zhongji reiterated its arguments laid down in the undertaking offer and claimed that the particular commitments explained in recital (778) above would be sufficient to make the undertaking offer workable. Also, Zhongji did not consider that distinguishing different product types from one another by a physical inspection would be difficult or that the price adjustment mechanism it had proposed would be complex.
- (785) The Commission disagrees. As explained in the recitals (779) to (781), the particular commitments put forward would not remove the fundamental elements making the undertaking offer unenforceable.
- (786) Therefore, the Commission considered the undertaking offer unenforceable and thus impractical within the meaning of Article 13 of the basic Regulation, and therefore rejected the offer.

## 8. DEFINITIVE COUNTERVAILING MEASURES

- (787) In view of the conclusions reached with regard to subsidisation, injury, causation, and Union interest, and in accordance with Article 15 of the basic Regulation, a definitive countervailing duty should be imposed.

### 8.1. Level of the definitive countervailing measures

- (788) Article 15(1), third subparagraph of the basic Regulation provides that the amount of the definitive countervailing duty shall not exceed the amount of countervailable subsidies established.

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<sup>(116)</sup> 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.

- (789) Article 15(1), fourth subparagraph states that “where the Commission, on the basis of all the information submitted, can clearly conclude that it is not in the Union’s interest to determine the amount of measures in accordance with the third subparagraph, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry”.
- (790) No such information has been submitted to the Commission, and therefore the level of the countervailing measures will be set with reference to Article 15(1), third subparagraph.
- (791) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Definitive countervailing duty
Daching Group, including Xiamen Xiashun Aluminium Foil Co., Ltd	10,1 %
Nanshan Group, including Yantai Donghai Aluminum Foil Co., Ltd.	18,2 %
Wanshun Group, including Jiangsu Zhongji Lamination Materials Co., Ltd.	8,6 %
Other cooperating companies listed in Annex	12,3 %
All other companies	18,2 %

- (792) The anti-subsidy investigation was carried out in parallel with a separate anti-dumping investigation concerning the same product concerned originating from the PRC, in which the Commission imposed anti-dumping measures at the level of the injury margin. The Commission made sure that the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping would not result in offsetting the effects of subsidisation twice (‘double-counting’) in accordance with Article 24(1) and Article 15(2) of the basic Regulation.
- (793) In the separate anti-dumping investigation, the normal value was constructed in accordance with Article 2(6a) of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union with reference to undistorted costs and profits in an appropriate external representative country. Consequently, in accordance with Article 15(2) of the basic Regulation and in order to avoid double counting, the Commission first imposed the definitive countervailing duty at the level of the established definitive amount of subsidisation and then imposed the remaining definitive anti-dumping duty, which corresponds to the relevant dumping margin reduced by the amount of the countervailing duty and up to the relevant injury elimination level established in the separate anti-dumping investigation. Since the Commission reduced the dumping margin found with the entire amount of subsidisation established in the PRC, there was no double counting issue within the meaning of Article 24(1) of the basic Regulation. Where the amount resulting from deducting the amount of subsidisation from the dumping margin is higher than the injury margin, the Commission capped the anti-dumping duty at the injury margin. Where the amount resulting from deducting the amount of subsidisation from the dumping margin is lower than the injury margin, the Commission set the level of the anti-dumping duty on the basis of the lower amount.
- (794) Given the high rate of cooperation of Chinese exporting producers, the Commission found that the level of the highest duty imposed on the sampled companies would be representative as the ‘all other companies’. The ‘all other companies’ duty will be applied to those companies, which did not cooperate in this investigation.

(795) As mentioned in Recital (594), the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amount of subsidies established for items, which are subject to the provisions of Article 28(1) of the basic Regulation. However, the Commission did not disregard findings based partially on facts available to determine those amounts. Indeed, the Commission considered that the facts available and used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a fair manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach.

(796) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Company	Amount of subsidisation	Dumping margin	Injury elimination level	Countervailing duty rate	Anti-dumping duty rate
Wanshun Group, including Jiangsu Zhongji Lamination Materials Co., Ltd.	8,6 %	81,5 %	28,5 %	8,6 %	28,5 %
Daching Group, including Xiamen Xiashun Aluminium Foil Co., Ltd	10,1 %	16,1 %	15,4 %	10,1 %	6,0 %
Nanshan Group, including Yantai Donghai Aluminum Foil Co., Ltd.	18,2 %	98,5 %	24,6 %	18,2 %	24,6 %
Other companies cooperating in anti-dumping and in anti-subsidy investigation listed in Annex I	12,3 %	69,5 %	23,6 %	12,3 %	23,6 %
Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in Annex II	18,2 %	69,5 %	23,6 %	18,2 %	23,6 %
All other companies	18,2 %	98,5 %	28,5 %	18,2 %	28,5 %

(797) The individual company countervailing duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during the investigation with respect to the company concerned. This duty rate (as opposed to the countrywide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned and produced by the company mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

- (798) A company may request the application of these individual duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate, which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate, which applies to it, an amending Regulation replacing the previous name with the new name will be adopted and published in the *Official Journal of the European Union*.
- (799) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(4) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.
- (800) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and should, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (801) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a countrywide duty.
- (802) In order to ensure a proper enforcement of the countervailing duty, the duty level for all other companies should not only apply to the non-cooperating exporting producers, but also to those producers, which did not have any exports to the Union during the investigation period.
- (803) Following the final disclosure, Xiamen Xiashun as well as Gascogne argued that the General Disclosure would not establish how the Commission would avoid double counting as provided by the basic regulation. Xiamen Xiashun referred to the Commission Regulation in GFF, in which the definitive countervailing duty was established at the level of the established definitive amount of subsidisation while the definitive anti-dumping duty was established at the level of the definitive dumping margin reduced by the definitive countervailing duty where the relevant dumping margin reduced by the countervailing duty is lower than the injury elimination level. Xiamen Xiashun requested the Commission to disclose the method it will apply in calculating the combined duties.
- (804) As acknowledged by Xiamen Xiashun, recital (555) of the General Disclosure Document establishes that, should anti-dumping duties be imposed, the Commission would make sure that the imposition of a cumulated duty reflecting the level of subsidisation and the full level of dumping would not result in offsetting the effects of subsidisation twice ("double counting"). As described in recital (793), the Commission followed the same approach that Xiamen Xiashun referred to from the GFF case. This is the standard practice of the Commission in the situation of anti-subsidy and anti-dumping investigations covering the same product. At the time of the final disclosure in this

case, no final duties have yet been imposed in the anti-dumping procedure. The Commission could therefore not possibly comment on amending imposed duties, as there were no duties formally in place at the time. However, Xiamen Xiashun and Gascogne had the full possibility of commenting on the avoidance of double counting in reaction to the final disclosure. In any event, parties have a possibility to make comments on potential double counting at this stage. The Commission therefore rejected the claim for a further disclosure.

- (805) Following the final disclosure, the consortium of importers and Nanshan requested the Commission to apply the lesser duty rule in Article 15(1) of the Basic Regulation and cap the combined anti-dumping and countervailing duties at the level of the injury margin, noting that there was ample information on file showing that the imposition of countervailing duties on top of the anti-dumping duties would disrupt the Union ACF market.
- (806) At the outset, the Commission recalls that the rationale for the rule under Article 15(1), fourth subparagraph of the basic Regulation in anti-subsidy proceedings is detailed in particular at recital (10) of Regulation 2018/825<sup>(117)</sup>, which sets out that “countervailable subsidies granted by third countries are particularly distortive of trade” and therefore “it is, in general, no longer possible to apply the lesser duty rule.” The default rule in countervailing duty proceedings is that the lesser duty rule does not apply, unless there is evidence that it is clearly in the Union interest to apply it. The standard of evidence to arrive to this conclusion is substantial and should specifically and positively demonstrate that it is in the Union interest to apply a lower level of duty than the amount of subsidisation found.
- (807) In the present case, the Commission has addressed all the arguments from the parties regarding Union interest, including those submitted by the consortium of importers and Nanshan, at Section 6 above. The Commission concluded that there are no compelling reasons to conclude that it is not in the Union interest to impose definitive countervailing measures setting the duty at the amount of countervailable subsidies established. The consortium of importers and Nanshan have provided no positive and specific evidence that would allow the Commission to conclude that it is clearly not in the Union interest to set the duty at such level, and instead that it should set it at the lower level capped by the injury margin. Therefore, the standard of evidence required in Article 15(1) fourth subparagraph is not met and the claim by these parties was rejected.

## 9. DISCLOSURE

- (808) Interested parties were informed on 3 November 2021 of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of ACF originating in the PRC. Interested parties were given the opportunity to provide comments on the accuracy of the calculations specifically disclosed to them.
- (809) Nine parties submitted comments on disclosure. Further, several interested parties had expressed their wish to incorporate the comments submitted in the context of the separate anti-dumping procedure into this anti-subsidy investigation. Upon request, hearings were held with the consortium of importers, Nanshan Group and Wanshun Group. The comments submitted by interested parties were duly considered, and, where appropriate, the findings have been modified accordingly.

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<sup>(117)</sup> OJ L 143, 7.6.2018, p. 1.

## 10. FINAL PROVISIONS

- (810) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(118)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (811) As explained in recitals (788) to (793), the Commission deducted from the dumping margin part of the subsidy amount in order to avoid double counting. Thus, should any modification or removal of the definitive countervailing duties occur, the level of anti-dumping duties should be automatically increased by the same proportion in order to reflect the actual extent of double counting as a result of this modification or removal. This change of the anti-dumping duties should take place as from the entry into force of this regulation.
- (812) The measures provided for in this Regulation are in accordance with the opinion of the Committee, established by Article 25(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union <sup>(119)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive countervailing duty is imposed on imports of aluminium converter foil of a thickness of less than 0,021 mm, not backed, not further worked than rolled, in rolls of a weight exceeding 10 kg, currently falling under CN code ex 7607 11 19 (TARIC codes 7607 11 19 60 and 7607 11 19 91) and originating in People's Republic of China.
2. The following products are excluded:
  - Aluminium household 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 household 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 household 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 household 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.
3. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Definitive countervailing duty	TARIC additional code
Xiamen Xiashun Aluminium Foil Co., Ltd	10,1 %	C687

<sup>(118)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(119)</sup> OJ L 176, 30.6.2016, p. 21, as last amended by Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 143, 7.6.2018, p. 1).

Yantai Donghai Aluminum Foil Co., Ltd.	18,2 %	C688
Jiangsu Zhongji Lamination Materials Co., Ltd.	8,6 %	C686
Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	12,3 %	See Annex I
Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in Annex II	18,2 %	See Annex II
All other companies	18,2 %	C999

4. The application of the individual countervailing duty rates specified for the companies mentioned in paragraph 3 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

6. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.

## Article 2

Implementing Regulation (EU) 2021/2170 is amended as follows:

(1) Article 1(3) is replaced by the following:

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

Company	Definitive anti-dumping duty	TARIC additional code
Xiamen Xiashun Aluminium Foil Co., Ltd	6,0 %	C687
Yantai Donghai Aluminum Foil Co., Ltd.	24,6 %	C688
Jiangsu Zhongji Lamination Materials Co., Ltd.	28,5 %	C686

Other companies cooperating in both anti-subsidy and anti-dumping investigation listed in Annex I	23,6 %	See Annex I
Other companies cooperating in anti-dumping investigation but not in anti-subsidy investigation listed in Annex II	23,6 %	See Annex II
All other companies	28,5 %	C999'

(2) a new Article 1(6) is inserted:

'6. Should the definitive countervailing duties imposed by Article 1 of Commission Implementing Regulation (EU) 2021/2170 be modified or removed, the duties specified in paragraph 2 or in Annexes I and II will be increased by the same proportion limited to the actual dumping margin found or the injury margin found as appropriate per company and from the entry into force of this Regulation.'

(3) a new Article 1(7) is inserted:

'7. In cases where the countervailing duty has been subtracted from the anti-dumping duty for certain exporting producers, refund requests under Article 21 of Regulation (EU) 2016/1037 shall also trigger the assessment of the dumping margin for that exporting producer prevailing during the refund investigation period.'

(4) the Annex is replaced by Annex I and II.

#### Article 3

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

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

Done at Brussels, 17 December 2021.

For the Commission  
The President  
Ursula VON DER LEYEN

## ANNEX I

**Other companies cooperating in both anti-subsidy and anti-dumping investigation**

Country	Name	TARIC additional code
People's Republic of China	Zhangjiagang Fineness Aluminum Foil Co., Ltd.	C689
People's Republic of China	Kunshan Aluminium Co., Ltd.	C690
People's Republic of China	Luoyang Wanji Aluminium Processing Co., Ltd.	C692
People's Republic of China	Shanghai Sunho Aluminum Foil Co., Ltd.	C693
People's Republic of China	Binzhou Hongbo Aluminium Foil Technology Co. Ltd.	C694

## ANNEX II

**Other companies cooperating in the anti-dumping investigation but not in the anti-subsidy investigation**

Country	Name	TARIC additional code
People's Republic of China	Suntown Technology Group Corporation Limited	C691