

COMMISSION IMPLEMENTING REGULATION (EU) 2020/1081**of 22 July 2020****imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 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 ⁽¹⁾ ('the basic Regulation'), and in particular Article 18 thereof,

Whereas:

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

- (1) In May 2014, the Commission imposed definitive anti-subsidy countervailing duties on imports of solar glass originating in the People's Republic of China ('China' or 'the PRC') by Commission Implementing Regulation (EU) No 471/2014 ⁽²⁾ ('the original investigation').
- (2) The individual countervailing duties currently in force range from 3,2 % to 17,1 %. All other companies are subject to a country-wide duty of 17,1 % ('the measures in force').
- (3) In separate proceedings, the Commission also imposed anti-dumping duties ranging from 0,4 % to 36,1 % in May 2014 ⁽³⁾. In August 2015, following an absorption reinvestigation, the Commission amended the anti-dumping measures by Commission Implementing Regulation (EU) 2015/1394 ⁽⁴⁾.

1.2. Initiation of an expiry review

- (4) Following the publication of a notice of impending expiry of the countervailing measures in force ⁽⁵⁾, EU ProSun Glass ('the applicant'), representing more than 25 % of the total Union production of solar glass, requested the initiation of an expiry review on 13 February 2019 ('review request'). It argued that the expiry of the original measures would be likely to result in continuation or recurrence of subsidisation and a continuation or recurrence of injury to the Union industry.
- (5) In accordance with Article 10(7) the basic Regulation, the Commission notified the Government of the People's Republic of China ('GOC') prior to the initiation of the proceeding that it had received a properly documented review request. The Commission invited the GOC for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOC accepted the offer of consultations which were subsequently held on 10 May 2019. During the consultations, no mutually agreed solution could be arrived at. The GOC did not cooperate further.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) No 471/2014 of 13 May 2014 imposing definitive countervailing duties on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 23).

⁽³⁾ Commission Implementing Regulation (EU) No 470/2014 of 13 May 2014 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China (OJ L 142, 14.5.2014, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1394 of 13 August 2015 amending Regulation (EU) No 470/2014, as amended by Regulation (EU) 2015/588, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of solar glass originating in the People's Republic of China following an absorption reinvestigation pursuant to Article 12 of Council Regulation (EC) No 1225/2009 (OJ L 215, 14.8.2015, p. 42).

⁽⁵⁾ Notice of the impending expiry of certain anti-subsidy measures (OJ C 345, 27.9.2018, p. 10).

- (6) On 14 May 2019 the Commission announced, by a notice published in the *Official Journal of the European Union* ⁽⁹⁾ ('the Notice of Initiation'), the initiation of an expiry review of the countervailing measures applicable pursuant to Article 18 of the basic Regulation.

1.3. Investigation

1.3.1. Review investigation period and period considered

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

1.3.2. Interested parties

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

1.3.3. Sampling

- (13) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.3.3.1. Sampling of Union producers

- (14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of two Union producers. The Commission selected the sample based on the largest volume of production and sales of the like product that could be reasonably investigated within the time available. The sample consisted of two Union producers

⁽⁹⁾ Notice of initiation of an expiry review of the countervailing measures applicable to imports of solar glass originating in the People's Republic of China (OJ C 165, 14.5.2019, p. 22).

accounting for more than 80 % of the Union production of the product under review. The Commission invited interested parties to comment on the provisional sample. The only comment received by the applicant was in favour of the sample. The sample is representative of the Union industry. It consists of the following two companies:

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

1.3.3.2. Sampling of importers

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

1.3.3.3. Sampling of exporting producers in the PRC

- (17) To decide whether sampling was necessary with regard to the exporting producers and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (18) No company from the PRC came forward within the time limit. One company sent a belated submission, but eventually did not cooperate.
- (19) Consequently, the Commission informed the authorities of the PRC by Note Verbale of 24 May 2019 that it intended to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the continuation or recurrence of subsidisation. The authorities of the PRC did not respond to the Note Verbale.

1.3.4. Questionnaires and verification visits

- (20) The Commission sent questionnaires to the GOC and to the two sampled Union producers. The GOC did not provide any reply to the questionnaire. Both sampled Union producers provided questionnaire replies.
- (21) Without prejudice to the application of Article 28 of the basic Regulation, the Commission verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of subsidisation and injury, and of the Union interest. Verification visits were carried out at the premises of the two sampled Union producers.

1.3.5. Subsequent procedure

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

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (24) The product under review is solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300–2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of $\Delta 150\text{K}$ (measured according to EN 12150) and having a mechanical strength of 90 N/mm² or more (measured according to EN 1288-3), currently falling under CN code ex 7007 19 80 (TARIC codes 7007 19 80 12, 7007 19 80 18, 7007 19 80 80 and 7007 19 80 85) and originating in the People's Republic of China ('product under review', commonly referred to as 'solar glass').
- (25) Solar glass can be patterned or non-patterned, with either a transparent or diffuse surface or a variety of edgeworks. There can be different patterns on both sides of the glass or it can be just single-sided patterned. Solar glass may have drillings and can also be printed through the application of, for example, ceramic colours. The surface of the glass may be treated using different technologies. The most common is an anti-reflective coating applied before or after the tempering process. Other technologies allow the solar glass to be coated with thin functional layers providing increased transmittance, self-cleaning, anti-soiling or hardness properties.
- (26) Solar glass is one of the components for making crystalline silicon photovoltaic modules and thin film photovoltaic modules to produce electricity, as well as flat photothermal energy collectors used, for example, in generating hot water. It can also be used in the construction of greenhouses (so-called 'horticultural glass' or 'greenhouse glass').

2.2. Like product

- (27) As established in the original investigation, solar glass produced and sold by the Union industry in the Union and solar glass produced and sold on the domestic market of the PRC and solar glass imported into the Union from the PRC share the same basic physical and chemical characteristics and the same end uses. They are therefore considered to be like products within the meaning of Article 2(c) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

- (28) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined first whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of subsidisation.

3.1. Introduction: status of the Chinese solar glass industry

- (29) The 13th Five Year Plan for National Economic and Social Development of the PRC ('the 13th FYP'), which covers the period 2016–2020 and thus the RIP, highlights the strategic vision of the GOC for improvement and promotion of key industries, such as the solar energy industry. The 13th FYP is the successor of 12th FYP, in which the solar glass industry had been endorsed as a key field for development of manufacturing.
- (30) Chapter 30 of the 13th FYP expresses the GOC's commitment to '[building] a Modern Energy System'. Section 1 of that Chapter, in particular, provides strong evidence to the fact that the GOC still views the solar glass industry as an encouraged industry. Indeed, Section 1 reads that '[the GOC] will continue to give impetus to the development of (...) photovoltaic power', and that '[the GOC] will improve supportive policies for power generation from (...) solar (...) energy'. Further, 'the development of (...) photovoltaic energy in the northern, north-eastern and north-western regions and in coastal areas' will be optimised in the context of Energy Development Projects. These excerpts demonstrate that the GOC continues to support the solar energy industry for which the solar glass is essential and thus forms an integral part for the development of the solar power industry.
- (31) The 13th Plan on Building Materials also mentions different types of glass, including high-purity quartz glass and products, high-performance multi-functional coated glass, preparation technology for electric/thermochromic glass, preparation technology for glass products integrating photovoltaic and photothermal structure and function.

- (32) In 2018, the GOC issued new regulatory measures for PV installations, the 2018 Photovoltaic Power Generation Notice (referred to as '531 policy', as it was announced on 31 May 2018), maintaining subsidies with, however, some reductions. Under this policy, the Chinese government significantly decreased the quota of new solar capacity per year that is eligible for state subsidies.
- (33) Green development is also encouraged in the Made in China 2025 ('MIC2025') strategy. Glass is supported under MIC2025 and in particular it is included in the 2016 Catalogue of 'Four Essential' Industry Developments (MIC2025), in Chapter 9 'New Materials', subsection II 'Key basic materials': number 24 lists glass-based materials and number 29 lists high purity quartz glass and products.
- (34) Furthermore, 'Decision No 40 of the State Council on Promulgating and Implementing the 'Temporary Provisions on Promoting the Industrial Structure Adjustment' (which, together with the 'Temporary Provisions on Promoting the Industrial Structure Adjustment' is referred to as 'Decision No 40') states that the GOC will actively support the development of new energy industries and expedite the development of solar energy⁽⁷⁾; instructs all financial institutions to provide credit support only to encouraged projects; and promises the implementation of 'other preferential policies on the encouraged projects'⁽⁸⁾.
- (35) Additionally, 'Decision No 9 of the State Council on Promulgating and Implementing the Guidance Catalogue for the Industrial Structure Adjustment' ('Decision No 9') 'actively encourages' the GOC and public agencies to 'guide the development of relevant industries, optimise the upgrading of the industrial structure'. Point 12(2) of Decision No 9 specifically mentions the encouragement of 'ultra-clear float glass for solar energy industry' production. This decision, in force until 2020, was replaced in 2019 by the 'Decision No 29 of the National Development and Reform Commission on Promulgating and Implementing the Guidance Catalogue for the Industrial Structure Adjustment (2019 Edition)', with the same mention in Point 12(2).
- (36) Finally, the National Outline for the Medium and Long-term Science and Technology Development (2006–2020), covering the RIP, promises to 'give the first place to policy finance', 'encourage financial institutions to grant preferential credit support to major national scientific and technological industrialisation projects', to 'encourage financial institutions to improve and strengthen financial services to high-tech enterprises' and to 'implement the preferential tax policies to promote the development of high-tech enterprises'. Since at least some of the solar glass-exporting producers qualify as a 'High and New Technology Enterprise' ('HNTE'), this National Outline only adds to the status of the solar glass industry as an encouraged industry.
- (37) In conclusion, the GOC still regards the solar glass industry as one to be encouraged.

3.2. Non-cooperation and the use of facts available in accordance with Article 28(1) of the basic Regulation

- (38) As mentioned above in Section 1.3.3.3 only one exporting producer made itself known to the Commission (belatedly) but did eventually decide not to cooperate. The Commission therefore used facts available under Article 28(1) of the basic Regulation.

⁽⁷⁾ Chapter II, Article 5 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

⁽⁸⁾ Chapter III, Article 17 of the Temporary Provisions on Promoting the Industrial Structure Adjustment.

- (39) On 14 June 2019, the Commission sent a questionnaire to the GOC and informed the GOC of the lack of cooperation from exporting producers. The questionnaire also included specific questions for the Export Import Bank of China ('EXIM') and China Export & Credit Insurance Corporation ('Sinosure'). In addition, the GOC was asked to forward an appendix to the banks mentioned in the complaint and other financial institutions known by the GOC to have provided loans to the Chinese producers of solar glass investigated in the original investigation.
- (40) The Commission received no reply to the requests above from either the GOC, EXIM or Sinosure. Consequently, the Commission, by Note Verbale of 24 July 2019, informed the GOC that it intended to use facts available under Article 28(1) of the basic Regulation with regard to the information requested from GOC, EXIM and Sinosure as well as the relevant financial institutions. The GOC was informed that a finding based on facts available may be less favourable.
- (41) No comments in this regard were received. The Commission, in accordance with Article 28 of the basic Regulation, considered the use of facts available necessary in order to make any determinations with regard the continuation of subsidy practices of China in the solar glass industry.
- (42) Accordingly, the Commission used for its analysis all facts available to it, in particular:
- the request for an expiry review by the European Commission pursuant to Article 18 of the basic Regulation of 13 February 2019 ('the review request'),
 - findings of the original investigation,
 - findings of the most recent anti-subsidy investigations carried out by the Commission concerning encouraged industries in China, such as electric bicycles ⁽⁹⁾ ('e-bikes investigation'), certain organic steel products ⁽¹⁰⁾ ('COSP expiry review'), certain coated fine paper ('CFP expiry review') ⁽¹¹⁾, lorry tyres ('tyres investigation') ⁽¹²⁾ or hot-rolled steel ('HRF investigation') ⁽¹³⁾,
 - Commission Staff Working Document on significant distortions in the economy of the PRC for the purpose of trade defence investigation ('the Report on China') ⁽¹⁴⁾.

3.3. Subsidy and subsidy programmes examined in the current investigation

- (43) The Commission examined whether there was continuation of subsidisation by analysing whether the subsidies countervailed in the original investigation continued to confer benefit to the solar glass industry.

⁽⁹⁾ 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).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

⁽¹¹⁾ Commission Implementing Regulation (EU) 2017/1187 of 3 July 2017 imposing a definitive countervailing duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 171, 4.7.2017, p. 134).

⁽¹²⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1).

⁽¹³⁾ 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).

⁽¹⁴⁾ http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

- (44) The Commission decided that, in view of the findings of this Section confirming the existence of continued subsidisation with respect to the subsidies countervailed in the original investigation, there was no need to investigate all the other subsidies alleged to exist by the applicant. Once the Commission establishes that there is evidence of continued subsidisation pursuant to Article 18 of the basic Regulation, it is not necessary to establish the exact amount of subsidisation.
- (45) No comment was received following disclosure to the interested parties.

3.3.1. *Direct transfer of funds* ⁽¹⁵⁾

3.3.1.1. **Preferential lending and interest rates**

(a) ***Findings of the original investigation***

- (46) In the original investigation ⁽¹⁶⁾, the Commission concluded that state-owned banks or banks where the state has a controlling interest in terms of shareholding, both referred to as 'SOCBs', are public bodies per Article 2(b) of the basic Regulation. Furthermore, it concluded that Article 34 of *The Law of the PRC on Commercial Banks* (the banking law) requires banks in the PRC to carry out their loan business according to the needs of national economy. The Commission also concluded that Decision No 9 and Decision No 40 had force of law and that these Decisions require banks to provide credit support to encouraged industries. Consequently, the Commission concluded that SOCBs granted financial contributions under Article 3(1)(a)(i) of the basic Regulation.
- (47) The Commission also concluded that Article 34 of the banking law applies to privately owned banks in China ⁽¹⁷⁾. Therefore, the lending strategy of both SOCBs and privately owned banks is ultimately decided by the GOC. The Commission consequently held that the GOC entrusts and directs private banks to grant financial contributions in the sense of Article 3(1)(a)(iv) of the basic Regulation by lending to encouraged industries.
- (48) Concerning specificity ⁽¹⁸⁾, the Commission held that the GOC directed preferential lending to a limited number of industries including the solar glass industry. The Commission concluded that this was evident from the 12th Five Year Plan and Decision No 40. As a result, the financial contributions granted by the SOCBs and entrusted or directed private banks pursuant to Article 34 of the banking law were found to be specific in the sense of Article 4 (2)(a) basic Regulation.
- (49) Finally, the Commission recalled that loans in the sense of Article 3(1)(a)(i) of the basic Regulation confer a benefit on the recipient thereof insofar as they are granted on terms more favourable than the recipient could actually obtain on the market ⁽¹⁹⁾. The Commission concluded that this was indeed the case after application of facts available.
- (50) The subsidy rate established in the original investigation for the preferential lending to the sampled solar glass-exporting producers varied from 0 % to 6,2 % with the rate for non-cooperating companies being at a level of 6,2 %.

(b) ***Continuation of the subsidy programmes***

- (51) In the review request and corresponding annexes ⁽²⁰⁾, the applicant provided evidence that Chinese solar glass producers continued to benefit from preferential lending and below-market interest rates from domestic banks in China. Solar glass is an encouraged industry in the 13th Five-Year Plan ⁽²¹⁾, which led the Commission to conclude that both SOCBs and private banks are still obliged to provide preferential financing to the Chinese solar glass industry pursuant to Article 34 of the banking law.

⁽¹⁵⁾ Article 3(1)(a)(i) of the basic Regulation.

⁽¹⁶⁾ Implementing Regulation (EU) No 471/2014, recitals (71) to (87).

⁽¹⁷⁾ Implementing Regulation (EU) No 471/2014, recitals (88) to (95).

⁽¹⁸⁾ Implementing Regulation (EU) No 471/2014, recitals (96) to (98).

⁽¹⁹⁾ Implementing Regulation (EU) No 471/2014, recitals (99) to (111).

⁽²⁰⁾ See pages 26–29, Annexes 23 and 35 of the review request.

⁽²¹⁾ See section 3.1 of this Regulation and pages 16 and 27–28 of the review request.

- (52) The applicant provided evidence that SOCBs continue to be public bodies under the test set up by the Appellate Body ⁽²²⁾ because they perform governmental functions and, in doing so, exercise government authority. Specifically, the applicant referred to findings in the e-bikes investigation ⁽²³⁾ and the CFP expiry review ⁽²⁴⁾, which confirmed the position taken by the Commission in the original investigation.
- (53) The review request also contained evidence that private banks are still entrusted or directed by the GOC when making loan determinations, as they too are included in the scope of Article 34 of the banking law. The applicant cited the recent e-bikes investigation in which the Commission held that the 13th Five-Year Plan cannot be viewed as a ‘mere [act] of encouragement’, and that ‘all financial institutions (including private financial institutions) operating in China under the supervision of the CBRC 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 electric bicycle industry’ ⁽²⁵⁾.
- (54) In the absence of cooperation from the GOC and exporting producers of solar glass producers, no arguments were presented which would challenge the evidence presented by the applicant with regard to the current situation of the Chinese banking system.
- (55) Furthermore, the recent COSP expiry review ⁽²⁶⁾, the tyres investigation ⁽²⁷⁾, the HRF investigation ⁽²⁸⁾ and the Report on China ⁽²⁹⁾ confirmed the conclusion that SOCBs should be viewed as public bodies, which provide preferential financing under Article 34 of the banking law and private bodies are entrusted and directed to do precisely the same.

(c) **Benefit**

- (56) In Annex 23 to the review request, the applicant provided an example of a Chinese solar glass-exporting producer benefitting or having benefitted from preferential lending based on its (semi-)annual reports. In addition, other publicly available annual reports of exporting producers indicated that they also benefited or had benefited from preferential lending ⁽³⁰⁾.
- (57) In the absence of cooperation from the solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the RIP could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation, which is therefore considered to have continued at a level above *de minimis*.

⁽²²⁾ 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.

⁽²³⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electrical bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5), recitals (176), (208) and (215).

⁽²⁴⁾ Commission Implementing Regulation (EU) 2017/1187 of 3 July 2017 imposing a definitive countervailing duty on imports of certain coated fine paper originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 171, 4.7.2017, p. 134), recital (67).

⁽²⁵⁾ Implementing Regulation (EU) 2019/72, recitals (222) and (229).

⁽²⁶⁾ Implementing Regulation (EU) 2019/688, recitals (109) to (114).

⁽²⁷⁾ Implementing Regulation (EU) 2018/1690, recitals (167) to (223).

⁽²⁸⁾ Implementing Regulation (EU) 2017/969, recitals (84) to (148).

⁽²⁹⁾ See Chapter 6.3 of the report available at http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

⁽³⁰⁾ CNBM Annual Report 2018, <http://cnbm.wsfg.hk/index.php?SectionID=FinancialReports&PageID=2020&Language=eng>; Luoyang Glass Annual Report 2018, <https://webb-site.com/dbpub/docs.asp?p=4910>; Dongguan CSG Annual Report 2018, https://www.csgholding.com/Home/Investor/report/cat_id/43/year/2019/.html; for each as consulted in May 2020.

(d) **Specificity**

- (58) The subsidy programme in question was still specific within the meaning of Articles 4(2)(a) and 4(2)(b) of the basic Regulation, given that the legal situation had not changed and the GOC continues to encourage the solar glass industry ⁽³¹⁾.

(e) **Conclusion**

- (59) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued receiving preferential lending as a countervailable subsidy during the RIP.

3.3.1.2. Grants and ad hoc subsidies

(a) **Findings of the original investigation**

- (60) In the original investigation ⁽³²⁾, the Commission concluded that the sampled companies received significant one-off grants from various government authorities at many levels of government resulting in the receipt of a benefit during the IP. The grants at issue were given to the companies by national, provincial, city, county or district government authorities and all appeared to be specific to the companies concerned, or specific in terms of location or type of industry.
- (61) The GOC failed to provide any further information on these one-off grants and declined to enter into consultations on the matter. Therefore, the Commission concluded, based on evidence collected as to the receipt of these grants by the sampled companies and in the absence of any other information, that these grants were direct transfer of funds conferring a benefit on the recipients thereof, and thus subsidies in the sense of Article 3(1)(a)(i) and (2) of the basic Regulation.
- (62) As to specificity, the Commission noted that the grants were specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that they appeared to be limited to certain companies or specific projects in specific regions. The Commission also stated that there was no evidence that the grants belonged to an overarching subsidy programme and that they did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation.
- (63) The subsidy rate established in the original investigation for the grants to the sampled solar glass-exporting producers varied from 1,1 % to 3,0 % with the rate for non-cooperating companies being at a level of 3,0 %.

(b) **Continuation of the subsidy programmes**

- (64) In the review request and corresponding annexes ⁽³³⁾, the applicant provided evidence that solar glass-exporting producers continued to benefit from grants and ad hoc subsidies.
- (65) The applicant first cited a report by the United States Trade Representative, which identified the role of provincial and local governments in implementing China's industrial policies by directing subsidies towards sectors with excess capacity. The applicant submits that the solar glass sector is precisely such a sector ⁽³⁴⁾.
- (66) The applicant provided examples of instances of ad hoc subsidisation by referring to the specific lines of the audited annual reports of several exporting producers. It was shown that one solar glass-exporting producer received an increase of RMB 2,68 million in government grants during the RIP, which resulted in a closing balance worth around RMB 550 million of government grants. Similarly, another solar glass-exporting producer reported government grants upwards of RMB 14 million during the RIP.

⁽³¹⁾ See Section 3.1 of this Regulation and pages 16 and 27–28 of the review request.

⁽³²⁾ Implementing Regulation (EU) No 471/2014, recitals (121) to (136).

⁽³³⁾ See pages 28 to 31, Annexes 23, 36 and 37 of the review request.

⁽³⁴⁾ See pages 20, 28, 29, 33, 36 of the review request.

- (67) In the absence of cooperation from the GOC and the solar glass-exporting producers, no arguments were presented which could challenge the evidence presented by the applicant in the review request. The facts available to the Commission have thus shown that the grants and ad hoc subsidies for solar glass-exporting producers as part of an encouraged industry ⁽³⁵⁾ have continued during the RIP. These grants and ad hoc subsidies represent direct transfer of funds in the sense of Article 3(1)(a)(i) of the basic Regulation.

(c) **Benefit**

- (68) In Annex 23 to the review request, the applicant provided examples of Chinese solar glass-exporting producers benefitting or having benefitted from grants and ad hoc subsidies based on their (semi-)annual reports.
- (69) In the absence of cooperation from solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation.

(d) **Specificity**

- (70) The grants and ad hoc subsidies in question are still specific within the meaning of Articles 4(2)(a) and 4(2)(b) of the basic Regulation, as nothing contradicts the fact available that the Commission found these grants to be specific in the original investigation.

(e) **Conclusion**

- (71) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued receiving grants and ad hoc subsidies as countervailable subsidies during the RIP.

3.3.2. *Revenue foregone*

3.3.2.1. Preferential tax policies for companies that are recognised as high or new technology enterprises

(a) **Findings of the original investigation**

- (72) In the original investigation ⁽³⁶⁾, the Commission concluded that some but not all of the sampled companies were found to be benefitting from preferential tax policies for companies recognised as 'High and New Technology Enterprise' ('HNTE'). The Commission found that such recognition depended on a fulfilling a certain set of criteria, which, if fulfilled, yielded a reduction to 15 % on the corporate income tax, as compared to the standard rate of 25 %.
- (73) The Commission determined that the legal basis of this programme was:
- Article 28(2) of the Enterprise Income Tax Law of 2008 (the EIT law),
 - the 'Administrative Measures for the Determination of High and New Technology Enterprises' (Guo Ke Fa Huo [2008] No 172),
 - Article 93 of the Regulations on the Implementation of Enterprise Income Tax Law, and
 - the Notice of the State Administration of Taxation on the issues concerning the Payment of Enterprise Income Tax by High and New Technology Enterprises (Guo Shui Han [2008] No 985).

⁽³⁵⁾ See Section 3.1 of this Regulation.

⁽³⁶⁾ Implementing Regulation (EU) No 471/2014, recitals (143) to (146).

- (74) The Commission qualified this tax scheme as a government revenue otherwise due being foregone or not collected in the sense of 3(1)(a)(ii) of the basic Regulation. Subsequently, the Commission held that the preferential tax policies for recognised HNTes conferred a benefit on the beneficiaries equal to the tax saving.
- (75) With regards to specificity, the Commission concluded that the subsidy was specific as defined in Article 4(2)(a) of the basic Regulation since it was limited to the enterprises that received the certification of HNTe and complied with all the requirements of the 2008 administrative measures. It was furthermore found that the eligibility for these tax preferences was not automatic and that no objective criteria were established by the legislation or the granting authority. The Commission found that eligibility depended on the grant of a HNTe certificate after a discretionary procedure.
- (76) The subsidy rate established in the original investigation for the solar glass-exporting producers benefitting from the preferential tax policies for recognised HNTes varied from 0,4 % to 1,8 % with the rate for non-cooperating companies being at a level of 1,8 %.

(b) Continuation of the subsidy programmes

- (77) In the review request and corresponding annexes ⁽³⁷⁾, the applicant provided evidence that the solar glass-exporting producers continued to benefit from preferential tax policies for HNTes.
- (78) The applicant cited (interim) reports of three major solar glass-exporting producers noting their status as a recognised HNTe and thus benefitting from a reduced corporate income tax of 15 %.
- (79) The applicant also referred to the Administrative Measures for Recognition of High and New-Technology Enterprises (GuoKeFaHuo [2016] No 32 (Circular 32)), a summary of which can be found in Annex 24 to the review request. Circular 32 modifies the criteria that companies applying for HNTe status must fulfill and represents a continued commitment by the GOC to subsidise encouraged industries like solar glass ⁽³⁸⁾.
- (80) In addition to the evidence brought forward by the applicant, the Commission has confirmed the continuation of preferential tax policies for recognised HNTes in encouraged industries in the recent e-bikes investigation ⁽³⁹⁾, the tyres investigation ⁽⁴⁰⁾ as well as in the COSP expiry review ⁽⁴¹⁾. In e-bikes, the Commission found that the legal basis of this programme is:

— Article 28(2) of the EIT law,

— Article 93 of the Regulations on the Implementation of Enterprise Income Tax Law,

— 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,

— Notification of the Ministry of Science and Technology, Ministry of Finance and State Administration of Taxation concerning Revising, Printing and Issuing the Guidance for the Recognition Management of High and New Tech Enterprises, GKFH [2016] No 195, and

— the Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science and Technology, the Ministry of Commerce and the National Intellectual Property Office.

⁽³⁷⁾ See review request and Annexes 15, 23, 24 to the review request.

⁽³⁸⁾ See Annex 15 to the review request.

⁽³⁹⁾ Implementing Regulation (EU) 2019/72, recitals (534) to (542).

⁽⁴⁰⁾ Implementing Regulation (EU) 2018/1690, recitals (510) to (517).

⁽⁴¹⁾ Implementing Regulation (EU) 2019/688, recitals (175) to (188).

- (81) In the absence of cooperation from the GOC and the solar glass-exporting producers, no arguments were presented which would challenge the evidence presented by the applicant and the recent findings by the Commission. The facts available to the Commission have thus shown that the preferential tax policies for solar glass-exporting producers recognised as HNTes countervailed in the original investigation have continued during the RIP. These tax policies represent government revenue otherwise due being foregone or not collected in the sense of Article 3(1)(a)(ii) of the basic Regulation.

(c) **Benefit**

- (82) The preferential tax policies for recognised HNTes confer a benefit in the sense of Article 3(2) of the basic Regulation equal to the tax saving. As aforementioned, the applicant provided evidence of at least three solar glass-exporting producers enjoying these benefits in Annex 23.
- (83) In the absence of cooperation from the solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation.

(d) **Specificity**

- (84) As in the original investigation, the preferential tax policies for recognised HNTes are specific within the meaning of Article 4(2)(a) of the basic Regulation given that the legislations pursuant to which the granting authority operated to grant HNTe status limited the access to the schemes only to certain enterprises and industries.

(e) **Conclusion**

- (85) In light of the above considerations, the Commission concluded that there is sufficient evidence showing that at least some exporting producers continued to be subsidised during the RIP by way of preferential tax policies for HNTes.

3.3.2.2. R & D expenses tax offset

(a) **Findings of the original investigation**

- (86) In the original investigation ⁽⁴²⁾, the Commission concluded that one sampled company received R & D expenses offsets and found that the provincial government authority limited the refund to newly established HNTe enterprises.
- (87) The Commission held that the legal basis for the R & D tax expenses offset was Article 30 of the Chinese EIT law and that it was a form of government revenue otherwise due being foregone or not collected in the sense of Article 3(1)(a)(ii) of the basic Regulation. The Commission further found that the R & D tax expenses offset conferred a benefit on the recipient equal to the tax saving.
- (88) With regards to specificity, the Commission stated that Article 30 of the EIT law should be read together with Article 25 of the EIT law, which stated that the tax exemption was reserved to industries and projects encouraged by the State. Thus, only encouraged industries and projects could have access to this scheme, and the solar glass industry was found to be such an encouraged industry. Therefore, the Commission concluded that the subsidy was specific as defined in Article 4(2)(a) of the basic Regulation.
- (89) The subsidy rate established in the original investigation for the solar glass-exporting producer benefitting from the R & D tax expenses offset was 0,7 %, which was also the residual rate.

⁽⁴²⁾ Implementing Regulation (EU) No 471/2014, recitals (161) to (170).

(b) ***Continuation of the subsidy programmes***

- (90) In the review request and corresponding annexes ⁽⁴³⁾, the applicant set out the legal framework of the R & D tax expenses offset by referring to, amongst others, Article 25 and 30 of the EIT law as found in the original investigation. The applicant further submitted evidence in Annex 23 to the review request that at least two solar-glass exporting producers have reported their R & D spending and that they enjoy HNTE status, key conditions to the enjoying of the R & D tax expenses offset.
- (91) In addition to the evidence brought forward by the applicant, the Commission recently confirmed the existence of the R & D tax expenses offset as a subsidy in the e-bikes ⁽⁴⁴⁾ and tyres ⁽⁴⁵⁾ investigations. In that investigation, the Commission found that R & D expenditures incurred to develop new technologies, new products and new crafts that do not form intangible assets and are accounted into the current term profit and loss, are subject to an additional 50 % deduction after being deducted in full in light of the actual situation. Where the abovementioned R & D expenditures form intangible assets, they are subject to amortisation based on 150 % of the intangible asset costs. Furthermore, the Commission identified the legal basis for the programme as:
- Article 30(1) of the EIT law,
 - the Implementation Rules for the Enterprise Income Tax Law of the PRC,
 - 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),
 - Notice of the State Administration of Taxation on Issues Concerning Policy of Pre-tax Deduction of R & D Expenses of Enterprises, and
 - Guidelines of the Latest Key Priority Developmental Areas in the High Technology Industries (2011), issued by the NDRC, the Ministry of Science of Technology, the Ministry of Commerce and the National Intellectual Property Office.
- (92) In the absence of cooperation from the GOC and the solar glass-exporting producers, no arguments were presented which would challenge the evidence presented by the applicant and the recent findings by the Commission. The facts available to the Commission have thus shown that the R & D tax expenses offset as found in the original investigation have continued during the RIP. The R & D tax expenses offset represents government revenue otherwise due being foregone or not collected in the sense of Article 3(1)(a)(ii) of the basic Regulation.

(c) ***Benefit***

- (93) The R & D tax expenses offset confers a benefit the sense of Article 3(2) of the basic Regulation equal to the tax saving.
- (94) In the absence of cooperation from the solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation.

(d) ***Specificity***

- (95) 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.

⁽⁴³⁾ See pages 21, 22, Annexes 22, 23 and 26 of the review request.

⁽⁴⁴⁾ Implementing Regulation (EU) 2019/72, recitals (543) to (550).

⁽⁴⁵⁾ Implementing Regulation (EU) 2018/1690, recitals (518) to (524).

(e) **Conclusion**

- (96) Accordingly, the Commission concluded that there is sufficient evidence showing that at least some exporting producers were subsidised during the RIP by way of the R & D tax expenses offset.

3.3.2.3. Dividend tax exemption between qualified resident enterprises

(a) **Findings of the original investigation**

- (97) In the original investigation ⁽⁴⁶⁾, the Commission concluded that one of the sampled companies received an exemption from the tax of dividend income between qualified resident enterprises.
- (98) The Commission held that the legal basis of the dividend tax exemption is Articles 25–26 of the EIT Law and Article 83 of the Regulations on the Implementation of EIT Law and that the exemption constituted government revenue otherwise due being foregone or not collected under Article 3(1)(a)(ii) of the basic Regulation. The Commission further found that the R & D tax expenses offset conferred a benefit on the recipient equal to the tax saving.
- (99) With regards to specificity, the Commission found that this subsidy scheme only applied to enterprises that were resident in the People's Republic of China and that had made investments in other resident enterprises. In addition, the Commission concluded, akin to the situation in the R & D expenses tax offset, that Article 25 of the EIT law reserved this tax exemption to industries and projects encouraged by the State. Therefore, the Commission concluded that the subsidy was specific as defined in Article 4(2)(a) of the basic Regulation.
- (100) The subsidy rate established in the original investigation for the solar glass-exporting producer benefitting from the R & D tax expenses offset was 5,8 %, which was also the residual rate

(b) **Continuation of the subsidy**

- (101) In the review request and corresponding annexes ⁽⁴⁷⁾, the applicant provided evidence on the existence of solar-glass exporting producers benefitting from the exemption. The legal basis of the exemption Article 25 and 26(2) of the EIT law and Article 83 of the Regulations on the Implementation of Enterprise Income Tax Law, as brought forward by the applicant ⁽⁴⁸⁾ and confirmed and expanded by the Commission in the recent e-bikes investigation ⁽⁴⁹⁾ and CFP expiry review ⁽⁵⁰⁾.
- (102) Article 2 of the EIT law defines 'the term "resident enterprise" as [...] an enterprise which is set up under Chinese law within the territory of China, or set up under the law of a foreign country (region) but whose actual management organ is within the territory of China'. Further, Article 26(2) of the EIT law states that '[d]ividends, bonuses and other equity investment gains generated between qualified resident enterprises' are regarded as tax-free. In other words, the dividend exemption between qualified resident enterprises will apply to a resident (i.e. Chinese) solar-glass exporting producer if that exporting producer holds shares in a resident enterprise ⁽⁵¹⁾.

⁽⁴⁶⁾ Implementing Regulation (EU) No 471/2014, recitals (153) to (160).

⁽⁴⁷⁾ See page 25, Annexes 22, 23 of the review request.

⁽⁴⁸⁾ See page 25 of and Annex 22 to the review request.

⁽⁴⁹⁾ Implementing Regulation (EU) 2019/72, recitals (551) to (557).

⁽⁵⁰⁾ Implementing Regulation (EU) 2017/1187, recitals (86) to (94).

⁽⁵¹⁾ Implementing Regulation (EU) 2017/1187, recital (89).

- (103) The applicant provided evidence of at least one solar-glass exporting producer with multiple subsidiaries ⁽⁵²⁾, while the Commission found more exporting producers in a similar situation. In the absence of cooperation from the GOC and the solar glass-exporting producers, no arguments were presented which would challenge the evidence presented by the applicant and the findings by the Commission in this and previous investigations. The facts available to the Commission have thus shown that the dividend exemption for solar glass-exporting producers that hold shares in a resident enterprise has continued during the RIP. This dividend exemption constitutes government revenue otherwise due being foregone or not collected in the sense of Article 3(1)(a)(ii) of the basic Regulation ⁽⁵³⁾.

(c) **Benefit**

- (104) The benefit in the sense of Article 3(2) of the basic Regulation for a solar glass-exporting producer enjoying the dividend exemption is equal to the tax saving.
- (105) In the absence of cooperation from the solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation.

(d) **Specificity**

- (106) This subsidy is specific in the sense of Article 4(2)(a) of the basic Regulation because the legal basis of the dividend exemption limits the access to this subsidy in two different ways. First, the subsidy is only available to companies holding shares in resident enterprises, to the exclusion of those investing in non-resident enterprises ⁽⁵⁴⁾. Second, Article 26(2) of the EIT law resides under the same Chapter as Article 25 of the EIT law, namely 'Chapter IV Preferential Tax Treatments'. Article 25 of the EIT law, the introductory Article to this Chapter, states that '[t]he important industries and projects whose development is supported and encouraged by the state shall enjoy the preferential treatments in enterprise income tax', clearly limiting the availability of the subsidy in Article 26(2) of the EIT law to encouraged industries, such as the solar glass industry ⁽⁵⁵⁾.

(e) **Conclusion**

- (107) Accordingly, the Commission concluded that there is sufficient evidence showing that at least some exporting producers of solar glass were subsidised during the RIP by way of the dividend exemption between qualified resident enterprises.

3.3.3. *Government provision of land-use rights*

(a) **Findings of the original investigation**

- (108) In the original investigation ⁽⁵⁶⁾, the Commission found that companies could not purchase land outright in the PRC, but could only purchase land use rights (LUR) from local authorities. The legal basis for this system was the Land Administration Law of the PRC, which stated that all land belongs to the people and could not be bought by or sold to businesses unless by bidding, quotation or auction under the conditions specified in the law. It was found that in practice, however, the GOC set the price and the company paid this set price. The Commission concluded that this construction was a provision of goods in the sense of Article 3(1)(a)(iii) of the basic Regulation.

⁽⁵²⁾ See page 25 of and Annex 23 to the review request.

⁽⁵³⁾ Implementing Regulation (EU) 2017/1187, recital (91) and Implementing Regulation (EU) 2019/72, recital (554).

⁽⁵⁴⁾ Implementing Regulation (EU) 2017/1187, recital (91) and Articles 2 and 26(2) of the EIT law.

⁽⁵⁵⁾ Implementing Regulation (EU) 2019/72, recital (556) and Section 3.1 of this Regulation.

⁽⁵⁶⁾ Implementing Regulation (EU) No 471/2014, recitals (172) to (195).

- (109) The Commission stated that the benefit conferred on the solar glass-exporting producers in the sense of Article 3(2) of the basic Regulation by the LUR is the difference between the price paid for the land use right and an appropriate external benchmark. The Commission opted for Chinese Taipei as an appropriate external benchmark, noting that land use right prices in the PRC, if market conditions prevailed for solar glass-exporting producers, would be very similar to land prices in Chinese Taipei. The Commission concluded that the prices paid by the solar glass-exporting producers equalled either the starting price set by the GOC or five CNY more per square metre than that price, which constituted less than adequate remuneration when compared to the external benchmark and therefore conferred a benefit on the solar glass-exporting producers.
- (110) With regards to specificity, the Commission found that Decision No 40 requires that public authorities ensure that land is provided to encouraged industries, of which solar glass is one ⁽⁵⁷⁾. Furthermore, Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. As a result, the Commission concluded that the subsidy was specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation.
- (111) The subsidy rate established in the original investigation for the sampled solar-glass exporting producers benefitting from the government provision of LUR varied between 3,2 % and 17,1 % with the rate for non-cooperating companies being at a level of 17,1 %.

(b) Continuation of the subsidy programmes

- (112) In the review request and corresponding annexes ⁽⁵⁸⁾, the applicant adduced evidence to the fact that at least one solar glass-exporting producer was granted land for free by the local government concerned in order to encourage projects in high-tech industries. The applicant furthermore submitted that the market structure as described in the original investigation prevailed during the RIP.
- (113) In addition to the arguments brought forward by the applicant, the Commission recently identified the provision of LUR as a subsidy in the e-bikes investigation ⁽⁵⁹⁾, the tyres investigation ⁽⁶⁰⁾ the COSP expiry review ⁽⁶¹⁾ and the CFP expiry review ⁽⁶²⁾. In all three of the cases, the Commission confirmed that the legal situation and market structure described in the original investigation have not changed. In the e-bikes and tyres investigations, the Commission identified the legal basis for the provision of LUR more specifically as:
- The Land Administration Law of the People's Republic of China, as indicated in the original investigation and by the applicant,
 - The 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),
 - 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,
 - 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),
 - Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation,
 - State Council's Notice regarding Strengthening Regulation of Land (GF [2006] No 31).

⁽⁵⁷⁾ See Section 3.1 of this Regulation.

⁽⁵⁸⁾ See page 32, Annexes 17, 31 and 38 of the review request.

⁽⁵⁹⁾ Implementing Regulation (EU) 2019/72, recitals (503) to (533).

⁽⁶⁰⁾ Implementing Regulation (EU) 2018/1690, recitals (474) to (493).

⁽⁶¹⁾ Implementing Regulation (EU) 2019/688, recitals (80) to (90).

⁽⁶²⁾ Implementing Regulation (EU) 2017/1187, recitals (120) to (128).

- (114) In the absence of cooperation from the GOC and the solar glass-exporting producers, no arguments were presented which would challenge the evidence presented by the applicant and the recent findings by the Commission. The facts available to the Commission have thus shown that the government provision of LUR as found for in the original investigation have continued during the RIP. The government provision of LUR constitutes a provision of goods in the sense of Article 3(1)(a)(iii) of the basic Regulation.

(c) **Benefit**

- (115) The government provision of LUR confers a benefit the sense of Article 3(2) of the basic Regulation as the LUR are granted to the solar glass-exporting producers for less than adequate remuneration in the sense of Article 6(d) of the basic Regulation. In this regard, the Commission concluded in the recent e-bikes and tyres investigations, as in the original investigation, that the market for LUR in the PRC is still non-existent as prices are arbitrarily set by the authorities. As a result thereof, the conclusion stands that the prices for LUR constitute less than adequate remuneration when compared to an external benchmark and therefore conferred a benefit on the solar glass-exporting producers.
- (116) In the absence of cooperation from the solar glass-exporting producers, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period could be calculated. However, for the finding of continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. The evidence in the review request indicates that those amounts would still be significant. Nothing on the record indicated that the level of subsidisation had decreased when compared to the original investigation.

(d) **Specificity**

- (117) With regards to specificity, Article 18 of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. 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 LUR is limited to companies belonging to certain industries and government practices in this area are unclear and non-transparent.

(e) **Conclusion**

- (118) Accordingly, the Commission concluded that there is sufficient evidence showing that at least some exporting producers were subsidised during the RIP by way of the provision of LUR.

3.4. Conclusion on the continuation of the subsidisation

- (119) In light of the above considerations, the Commission concluded that the solar glass producers in the PRC continued to benefit from countervailable subsidies during the RIP. Given the lack of cooperation in this case, the Commission had no indication that the level of continued subsidisation had decreased as compared to the original investigation. It also concluded that the level of continued subsidisation was above *de minimis*. The evidence in the review request indicates that benefit under those subsidies would still be significant.

3.5. Likely development of imports should the measures lapse

- (120) The existence of continued subsidisation during the RIP is an indication of the likelihood of continuation of subsidisation should measures lapse. Furthermore, the Commission also analysed whether there was a likelihood that volumes of the subsidised exports would increase should the measures be allowed to lapse. In order to do this, the Commission analysed the following elements: the production capacity and spare capacity in the PRC, pricing behaviour of Chinese exporting producers in other markets, and the attractiveness of the Union market. As a consequence of non-cooperation of producers/exporters in the PRC, the Commission based its assessment on the facts available in accordance with Article 28 of the basic Regulation.

3.5.1. *Production capacity and spare capacity in the PRC*

- (121) Due to the lack of cooperation, none of the Chinese exporters/producers provided information as to the production capacity in China. The applicant asserted that the production capacity of the Chinese solar glass industry is in excess of 750 million m² per year ⁽⁶³⁾. The review request contains evidence that this amounts to 78 % of the global solar glass production capacity ⁽⁶⁴⁾. Furthermore, the applicant submitted that domestic demand for solar glass in China was only 600 million m² in 2016 and has weakened further in the second half of the RIP as a result of the implementation of the 531 policy ⁽⁶⁵⁾. This impact was confirmed for instance by the annual report of a Chinese exporting producer ⁽⁶⁶⁾. In comparison, in the RIP the Union industry had a production capacity of [33–38] million m² (recital (150)) and demand in the Union was [13–18] million m² (recitals (134) and (135)). The Chinese production capacity thus far outstrips Union demand (by a factor of around thirty seven) and may show an increased focus on the Union market as a result of the 531 policy.
- (122) Based on the 14(6) database, the Commission moreover found that one Chinese exporting producer accounted for very large majority of exports of the product under review during the RIP into the Union. On the exporting producer's website, a production capacity of [15–25] thousand m² per day, or [5,5–9] million m² per year is mentioned. During the RIP, only [10–20] % of that production capacity was used for the Union market. It is very likely that a combination of the 531 policy and a termination of the measures in force will result in more of that production capacity being utilised for the Union market.
- (123) In conclusion, the combination of the large production capacity, changes in Chinese demand, a relatively limited Union demand and the company data available makes an increase in the volume of the subsidised exports from the PRC likely should the measures be allowed to lapse.

3.5.2. *Exports to third countries*

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

3.5.3. *Attractiveness of the Union market*

- (125) The applicant submitted that the Union industry is the only sizeable market for solar glass left outside of the PRC, with the latter market already saturated as a result of the 531 policy ⁽⁶⁷⁾. The Chinese market share was still 9 % during the RIP despite the measures in force, therefore the Union market remains an attractive export market for Chinese solar glass producers. The Union market is also expected to grow, as indicated in Section 6.2.3. No price comparison with data relating to Chinese exports to other countries could be done accurately due to the GTA issue mentioned above.
- (126) The Commission also noted that other countries, namely India and Turkey have trade defence measures in place regarding the product under review, which makes it more likely that the flow of exports from the PRC may be directed to the Union.
- (127) On the basis of the above, the Commission concluded that the Union is an attractive market for Chinese exports.

⁽⁶³⁾ Page 22 of the review request.

⁽⁶⁴⁾ See Annex 21A to the review request.

⁽⁶⁵⁾ Page 34 of the review request and Annex 8A to the review request.

⁽⁶⁶⁾ Xinyi Solar Holdings Limited, Annual Report 2019, <https://www.xinyisolar.com/en/qynb/list.aspx> as consulted in May 2020. 'The year [2019] was a transitional period for the Chinese PV market. PV projects evolved from solely subsidy-driven to a mix of both "subsidy-free" and "FiT-supported". [...] The belated release of policies and approval of projects has dampened PV installation sentiment in China during the year. [...] The robust global PV demand during the year was mainly driven by countries other than China.'

⁽⁶⁷⁾ Page 35 of the review request.

3.5.4. Conclusion on the likely development of imports should the measures lapse

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

3.6. Conclusion on the likelihood of continuation of subsidisation

- (129) The Commission concluded that there is sufficient evidence that subsidisation of the solar glass industry in the PRC continued during the review investigation period and is likely to continue in the future. The Commission also found that the repeal of the countervailing measures would likely result in a redirection of volumes of subsidised imports of the product under review to the Union market. The Commission concluded, based on facts available, that there is a strong likelihood that the expiry of the countervailing measures would result in the continuation of subsidisation.

4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY

4.1. Union production and Union industry

- (130) The like product was manufactured by 11 producers in the Union during the RIP. They constitute the 'Union industry' pursuant to Article 9(1) of the basic Regulation.
- (131) The total Union production during the RIP was established at around 12 million m². The Commission established the figure based on all available information such as the review request and questionnaire replies of the sampled companies. As indicated in recital (14), Union producers were selected in the sample representing more than 80 % of the total Union production of the like product.

4.2. Preliminary remark

- (132) In order to protect confidentiality of business sensitive information under Article 29 of the basic Regulation, the data relating to the two sampled Union producers is presented in indexed form or in ranges.

4.3. Consumption in the Union

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

Table 1

Union consumption

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

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

- (135) During the period considered, the consumption of the product under review in the Union decreased by 35 %. The biggest decrease (of 19 percentage points) occurred between 2017 and RIP. The decrease was caused by a lower demand from Union producers of PV modules.
- (136) On the Union market, the solar glass started to be increasingly used for the greenhouse construction market. The demand (and the linked consumption) remained however project-based and limited compared to the current consumption of the solar glass in the PV or solar thermal modules markets.

4.4. Imports from the PRC to the Union

4.4.1. Volume of imports from the PRC and market share

- (137) The Commission established the volume of imports based on the 14(6) database and cross-checked with the data from Eurostat. The market share was established based on the Union consumption as determined in Table 1. During the period considered imports from the PRC into the Union and market share developed as follows:

Table 2

Volume of imports from the PRC and market share

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

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

- (138) Volume of imports from the PRC decreased during the period considered by 76 % from more than 5 million m² in 2015 to 1,2 million m² in the RIP. In the same period, the market share of the imports from the PRC decreased from 24 % to 9 % (a decrease of 64 %). The biggest decrease in market share (74 %) occurred between 2015 and 2016, after the adoption of anti-absorption measures in August 2015 ⁽⁶⁸⁾, when the country-wide anti-dumping duty rate increased from 25 % to 67,1 %. However, as from 2016 until the RIP, the market share of imports from the PRC increased by 3 percentage points to reach 9 % in the RIP.

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

- (139) Due to absence of cooperation of the Chinese exporting producers, the Commission established the average import price of imports from the PRC based on the facts available in accordance with Article 28 of the basic Regulation i.e. based on the information contained in the 14(6) database. The data was cross-checked with the data from Eurostat. During the RIP, the average import price was 6,34 EUR/m².

Table 3

Average prices of imports from the PRC

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

Source: the 14(6) database, Eurostat.

- (140) In the period considered, the average import price increased by 26 %. In the same period, the price on the Union market increased by 19 % (see Table 8).

⁽⁶⁸⁾ See recital (2).

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

4.5. Imports from third countries

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

Table 4

Import from third countries

	2015	2016	2017	RIP
Imports from all third countries (1 000 m²)	579	943	1 492	1 704
<i>Index(2015 = 100)</i>	100	163	258	294
Market share of imports from all third countries (%)	3	5	8	12
<i>Index(2015 = 100)</i>	100	183	306	451
Price of imports from all third countries (EUR/m ²)	6,08	6,37	7,10	7,31
<i>Index(2015 = 100)</i>	100	105	117	120

Imports from main third countries

Imports from Turkey (1 000 m²)	356	785	478	240
<i>Index(2015 = 100)</i>	100	221	134	67
Market share of imports from Turkey (%)	2	4	3	2
<i>Index(2015 = 100)</i>	100	248	159	103
Price of imports from Turkey (EUR/m ²)	5,97	6,54	6,54	6,38
<i>Index(2015 = 100)</i>	100	110	110	107
Imports from Malaysia (1 000 m²)	/	/	691	927
<i>Index(2015 = 100)</i>	/	/	100	134
Market share of imports from Malaysia (%)	/	/	4	7
<i>Index(2015 = 100)</i>	/	/	100	173
Price of imports from Malaysia (EUR/m ²)	/	/	8,16	8,43
<i>Index(2015 = 100)</i>	/	/	100	103

Imports from India (1 000 m²)	101	130	173	462
<i>Index(2015 = 100)</i>	100	130	172	460
Market share of imports from India (%)	0	1	1	3
<i>Index(2015 = 100)</i>	100	146	204	704
Price of imports from India (EUR/m ²)	5,51	4,48	5,03	5,43
<i>Index(2015 = 100)</i>	100	81	91	99
Imports from Taiwan (1 000 m²)	119	21	98	0
<i>Index(2015 = 100)</i>	100	18	83	0
Market share of imports from Taiwan (%)	1	0	1	0
<i>Index(2015 = 100)</i>	100	20	98	0
Price of imports from Taiwan (EUR/m ²)	6,76	7,59	6,43	4,45
<i>Index(2015 = 100)</i>	100	112	95	66
Imports from Ukraine (1 000 m²)	3	5	40	68
<i>Index(2015 = 100)</i>	100	183	1 477	2 527
Market share of imports from Ukraine (%)	0	0	0	0
<i>Index(2015 = 100)</i>	100	206	1 754	3 870
Price of imports from Ukraine (EUR/m ²)	5,25	6,27	6,45	7,24
<i>Index(2015 = 100)</i>	100	119	123	138
<i>Source: the 14(6) database.</i>				

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

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (146) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry in the period considered. For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators.

- (147) The Commission evaluated the macroeconomic indicators based on data contained in the review request and the verified questionnaire replies. These data related to all Union producers and concern: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the subsidy margin and recovery from past subsidisation.
- (148) The Commission evaluated the microeconomic indicators based on data contained in the verified questionnaire replies from the sampled Union producers. These data related to the sampled Union producers and concern: average unit prices, unit cost, average labour costs, inventories, profitability, cash flow, investments and return on investments, and ability to raise capital. Both sets of data were found to be representative of the economic situation of the Union industry.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

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

Source: Review request, verified questionnaire replies.

- (151) The improvement in production volume, capacity and capacity utilisation between 2015 and 2016 corresponded to the imposition of higher anti-dumping duties following the absorption reinvestigation ⁽⁶⁹⁾ whilst the decrease after that date followed a decrease in the Union consumption as described in recital (134).
- (152) In 2016, the total Union production increased by 3 % before declining two years in a row, resulting in a drop of 26 % between 2015 and the RIP. A similar pattern occurred with regard to production capacity and capacity utilisation of the Union industry. An important reason for these decreases is the bankruptcy of one large Union producer in 2017 (Ducatt, which represented, in 2015, around 20 % of the Union production and around 15 % of the capacity).

4.6.2.2. Sales volume and market share in the Union

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

⁽⁶⁹⁾ See recital (2).

Table 6

Sales volume and market share in the Union

	2015	2016	2017	RIP
Sales volume (1 000 m ²)	14 000–17 000	15 000–18 000	14 000–17 000	9 000–12 000
<i>Index (2015 = 100)</i>	100	108	97	71
Market share (%)	73	89	84	79
<i>Index (2015 = 100)</i>	100	122	115	108

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

- (154) Between 2015 and 2016, sales volumes of the Union industry increased by 8 %. In 2017, it dropped by 11 % year-on-year and ended 3 % below the 2015 level. In the RIP, the drop in the Union's industry sales was more significant and ended up 29 % below 2015 levels during the RIP. In terms of market share, the pattern is similar but the Union industry increased its market share from 73 % in 2015 to 79 % in the RIP due to the 35 % drop of the Union consumption in the same period (see Table 1).

4.6.2.3. Growth

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

4.6.2.4. Employment and productivity

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

Table 7

Employment and productivity

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

Source: Review request, verified questionnaire replies.

- (157) During the period considered the employment in the Union industry decreased by 26 %. This decrease corresponds to a decrease of 29 % of the production in the same period (see Table 5).

4.6.2.5. Magnitude of subsidisation and recovery from past subsidisation

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

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

4.6.3. Microeconomic indicators

4.6.3.1. Prices

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

Table 8

Sales price and cost of production

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

Source: Verified questionnaire replies.

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

4.6.3.2. Labour costs

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

Table 9

Labour costs

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

Source: Verified questionnaire replies.

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

4.6.3.3. Inventories

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

Table 10

Inventories

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

Source: Verified questionnaire replies.

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

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

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

Table 11

Profitability, cash flow, investments, return on investment

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

Source: Verified questionnaire replies.

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

4.6.4. Conclusion on injury

- (169) In the period considered, the economic indicators of the Union industry were influenced by a decline in the Union consumption of solar glass by 35 % between 2015 and the RIP.
- (170) Despite the decrease in consumption, the Union industry maintained, between 2015 and 2017, a relatively stable production volume. The production volume declined more importantly (by 25 %) between 2017 and the RIP. The market share of the Union industry went from 73 % in 2015 to 79 % in the RIP.
- (171) Despite the initial decrease of the market share of the Chinese imports after anti-absorption measures in August 2015, the market share of the Chinese imports remained relatively important in the RIP (at 9 %).
- (172) The macroeconomic indicators reflected a fragility of the Union industry. They improved after the adoption of anti-absorption measures in 2015 but subsequently deteriorated because of the weakened Union consumption. As explained above in Section 4.6, this pattern can be observed with regard to Union production/production capacity, capacity utilisation, sales volume and market share and productivity. The number of employees declined steadily during the period considered.
- (173) The microeconomic indicators, on the contrary, showed an improving situation for the Union industry. In the period considered, unit cost of production was stable while prices on the Union market increased. This positive situation was reflected in a profitability, which increased from [-10 %-0 %] in 2015 to [5 %-15 %] in the RIP.
- (174) Based on the above, the Commission considered that the Union industry has largely recovered from the material injury caused by subsidised imports from PRC within the meaning of Article 8(4) of the basic Regulation. Nevertheless, in view of the decreased Union consumption and relatively big market share of the Chinese subsidised imports, the situation of the Union industry remained fragile.

5. LIKELIHOOD OF RECURRENCE OF INJURY

5.1. Preliminary remarks

- (175) Since the Union industry did not continue to suffer material injury anymore, the Commission examined whether there is a likelihood of recurrence of injury should the measures expire, in accordance with Article 18(2) of the basic Regulation.
- (176) To establish the likelihood of the recurrence of injury, the following elements were analysed: the production capacity and spare capacities in the PRC and the attractiveness of the Union market.
- (177) In view of the absence of cooperation of the Chinese exporting producers, the analysis of the production capacities and spare capacities in the PRC was based on facts available in accordance with Article 28 of the basic Regulation. In this regard, the Commission relied on the 14(6) database, Eurostat and the evidence submitted by the applicant in the review request.
- (178) The Commission further analysed the effects on the Union industry of the likely recurrence of the subsidised imports. The analysis took also into account the likely future increase in consumption of the solar glass in the Union and the profitable situation of the Union industry at the end of the period considered.

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

5.2.1. *Production capacity and spare capacities in the PRC*

- (179) China is the largest producer of the solar glass in the world. Since 2015, its production capacity grew substantially from 460 million m² in 2015 to almost 770 million m² in the RIP. Such a capacity largely exceeded the domestic consumption, negatively influenced since 2018 by the '531' policy of the Chinese government referred to in recital (32).
- (180) At the same time, an evidence shows that capacities of some of the Chinese exporting producers are expanding ⁽⁷⁰⁾.

5.2.2. *The attractiveness of the Union market*

- (181) The Union market has a relatively big size and there is a likelihood of a future growth ⁽⁷¹⁾. Despite the initial decrease between 2015 and 2016, since 2016, the imports of the Chinese exporting producers have been growing and reached 9 % in the RIP. This shows that despite the measures in force, the Union market remained attractive for the Chinese exporting producers.
- (182) Furthermore, in the RIP, the Union prices were relatively higher compared to the prices of the current Chinese imports (see Tables 4 and 9). Chinese import prices undercut Union industry's sales prices during the RIP. This makes the Union market attractive in terms of prices. Thus, it is very likely that, if the measures lapse, Chinese exports would make significant inroads in Union consumption simply by virtue of their low prices.
- (183) In addition, trade defence measures against the imports of the product under review in India and Turkey, other important markets, limit the possibilities of the Chinese exporting producers to export to these countries and further increases the attractiveness of the Union market where these exports may be redirected in case the measures on imports of solar glass into the Union are not prolonged.

5.2.3. *Conclusion*

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

5.3. Effect on the Union industry situation

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

⁽⁷⁰⁾ Review request, Chapter 3.5.

⁽⁷¹⁾ Review request, Chapter 3.5. See also analysis under Section 6 Union interest.

- (188) The Commission assessed the above scenarios to see if they were realistic. Between 2009 and 2012 (i.e. before the imposition of the measures), the imports of solar glass to the Union surged from 1,2 million m² in 2009 to 8,35 million m² in 2012. The sharp increase in low-priced imports led to price decreases, loss of market share and a deterioration of the profitability of the Union industry, and caused the Union industry to suffer material injury ⁽⁷²⁾.
- (189) In this context, the Commission analysed the likely impact of the low priced imports on the current Union industry's situation taking, as starting point, the verified information of the Union producers. It took the view that if low priced Chinese solar glass reappears on the Union market, they would potentially first gain market share at the expense of the Union industry, before taking over the market share of the exports from third countries producers to the Union.
- (190) In this context, the Commission analysed the likely impact of the low priced imports on the current Union industry's situation taking, as starting point, the verified information of the Union producers. It assumed, on the basis of what was observed in the original investigation, that if low priced Chinese solar glass imports were to increase again on the Union market, they would potentially first gain market share at the expense of the Union industry, before taking over the market share of the exports from third countries producers to the Union.
- (191) On this basis the Commission calculated that if low priced Chinese imports increased by 3,5 million m² at the expense of Union sales, the consequent decrease in the Union production and consequent increase in the unit cost of production due to fixed costs would result in a drop of the Union industry profitability to the break-even point (that is to revenues equaling to total of fixed and variable costs).
- (192) This calculation is conservative. Given the large production capacity of the Chinese companies and their current low prices, that significantly undercut Union industry prices, the Chinese exporting producers are likely to export volumes bigger than 3,5 million m² and push down Union prices, resulting in further losses and an injurious situation of the Union industry.
- (193) Furthermore, since the Union industry does not produce for stocks, it has to be organised based on contracts or orders from customers (see Section 4.6.3.3 Inventories). Therefore, any important decreases in the companies' sales volumes could lead to unsustainable losses and to bankruptcy.

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

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

6. UNION INTEREST

- (195) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of the likely recurrence of the injurious subsidisation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and users.

6.1. Interests of the Union industry

- (196) It was concluded in recital (194) that the Union industry would be likely to experience a serious deterioration of its situation in case the countervailing measures were allowed to lapse. Therefore, the continuation of the measures would benefit the Union industry, enabling it to maintain its sales volumes, market share, profitability and to further improve its economic situation.
- (197) By contrast, the discontinuation of the measures is likely to trigger a considerable increase of Chinese imports to the Union market at subsidised, undercutting prices that would cause recurrence of injury to the Union industry and threaten its viability.

⁽⁷²⁾ Implementing Regulation (EU) No 470/2014.

6.2. Interest of users

- (198) More than 40 users were contacted at the initiation stage. Four users provided questionnaire replies.
- (199) Several users of solar glass (producers of PV and photothermal modules) expressed their opposition to the continuation of the measures.
- (200) The arguments of the users related to increased production costs, ability of the solar glass producers to meet the demand, the planned investment into solar panels production and the environmental aspects. They also pointed out that after termination of the anti-dumping and anti-subsidy duties on imports of PV modules and cells from China, the Union industry had suffered from unfair competition from China. Users found unfair that while no trade defence measures are currently in place on solar cells and modules, the imports of one of the PV modules components, solar glass, are still subject to duties ⁽⁷³⁾. Following disclosure, EU ProSun reiterated that there was a lack of a coherent approach towards the sector. While the measures on imports of solar modules and cells have expired, the Commission was prepared to maintain the measures on solar glass. Similarly, following disclosure, the Union solar industry association ESMC submitted that maintaining import duties on solar glass would be difficult for current Union solar module manufacturers as it increases their costs for glass, while modules imported into the Union are not subject to such tariffs, even where Chinese glass is used.
- (201) The Commission recalled that the non-continuation of measures against solar modules in September 2018 does not translate into a right of solar module producers that measures on upstream products cease as well. Rather, in accordance with Article 31 of the basic Regulation, the Commission has to carry out a Union interest test for each investigation on its own merits. The Commission therefore verified whether the continuation of measures on solar glass would have a disproportionate negative effect on the users as further detailed below.

6.2.1. Costs of production

- (202) Several users argued that the measures had a negative effect on their business since they increased their costs of production. The fact that they had to pay higher prices than their competitors outside the Union constituted in their view a direct competitive disadvantage for the Union solar panels producers vis-à-vis imported solar panels. The users also argued that while the various components of PV modules became significantly cheaper in the recent years, the price of solar glass remained at the same level and therefore its relative cost within the PV modules increased. Accordingly, solar glass constitutes now the second largest cost factor within the solar panel.
- (203) Furthermore, the users noted that, although the majority of the modules they produce are so-called 'glass/foil' modules, i.e. having the glass front and plastic foil at the back, they are increasingly producing so-called 'glass/glass' modules, i.e. modules having glass on both sides. Since the 'glass/glass' module requires using two glass sheets instead of one, the share of the solar glass within the production costs doubles.
- (204) EU ProSun, representing several users, argued that the share of the costs of solar glass within the solar panel was 10 %. Two other users submitted that the share of the glass within their costs was, respectively, 7 % and 10 % for a 'glass foil' module and 14 % and 22 % for a 'glass/glass' module.
- (205) In EU ProSun's view, the cost impact of the measures would amount to 3 % for the 'glass/foil' module and 6 % for the 'glass/glass' module.

⁽⁷³⁾ The anti-dumping and anti-subsidy measures on solar panels were imposed at end of 2013 for a period of 2 years. In March 2017, the measures were prolonged for a period of 18 months (<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1904>).

- (206) EU ProSun Glass, representing the Union industry of solar glass, claimed that the cost impact of the duties on the production costs of the module was limited. They presented calculations showing that, based on the current Union prices of the solar glass, the share of the costs of the solar glass within the PV module was 4 %. The additional costs due to the measures in place, based on the current Chinese price offers, represented according to their calculation 1,5 % of a final module cost. In their view, the additional cost impact on the users was even more limited since most of the users in the Union were active on the residential segment of the market and were selling, apart from the module, a complete set including installation and battery. If selling a complete set, a fraction of the glass within the module represented less than 0,5 %.
- (207) In the original case, it was considered that solar glass constituted only a limited part (around 6–8 %) of the costs of the solar modules ⁽⁷⁴⁾. Moreover, because the users were buying significant quantities of solar glass from the Union producers and because the users could buy the glass from countries other than the PRC, it was concluded that the impact of the original measures on the costs of the solar modules was less than 1 %.
- (208) However, since the original investigation, the level of the anti-dumping measures increased from 25 % to 67 %, which represented an additional cost impact compared to the situation in the original investigation.
- (209) The Commission found that, despite the arguments of the users, the cost structure of solar modules did not change considerably since the original investigation. According to a study of an independent institute, based on price levels in 2017–2018, the relative share of the cost of solar glass within a module was 9 % in average ⁽⁷⁵⁾, and therefore, not considerably higher than 6 %–8 % established in the initial investigation. The Commission observed that this corresponded to the information of the users that the cost share of the glass within the module was between 7 % – 10 % (see recital (204)).
- (210) With regard to the increasing share of ‘glass/glass’ module on the market, the Commission found that in the RIP, such type represented around 10 % of Union consumption and, therefore, its relative share on the market was still limited. Although its share was increasing, it is not expected that it would become more than 30 % within the next five years ⁽⁷⁶⁾.
- (211) Finally, the users were still purchasing the majority of the glass on the Union market and several users claimed they would continue to do so even in case the measures would lapse.
- (212) Based on the above elements the Commission observed that the small relative increase of the share of solar glass within the production costs of solar modules referred to in recital (209), the increasing production of ‘glass/glass’ modules and the increase of the level of the measures translated in a higher impact of the measures on the costs of users than that established in the original investigation. The Commission estimated that the cost impact of the measures on PV modules producers was between 2 %–3 %.
- (213) After disclosure, EU ProSun argued that the information on the share of the costs of solar glass within solar module from the Fraunhofer Institute für Solare Energiesysteme ISE (‘Fraunhofer Institute’), established by the Commission in recital (209), was outdated. According to new information received by EU ProSun from the Fraunhofer Institute, the share of the costs of solar glass within solar module cost increased since 2019 from 9 % to 11 %. Moreover, EU ProSun argued that according to the same source, the future share of the ‘glass/glass’ modules would be higher than that indicated by the Commission in recital (210) because the study referred to by the Commission in the same recital referred to the world market, and not to the Union market only. According to the Fraunhofer Institute, on the Union market, the share of the glass/glass module was expected to be higher. EU ProSun further submitted that today the share of the ‘glass/glass module was 18,5 % rather than the 10 % indicated in the study.
- (214) EU ProSun also claimed that the margins of the solar panel industry were mostly below 5 % or even negative. It thus argued that the Union solar module market was highly price sensitive and therefore, the further increase by 2 %–3 % of the costs would lead to further shutdowns and lay-offs.

⁽⁷⁴⁾ Commission Regulation (EU) No 1205/2013 of 26 November 2013 imposing a provisional anti-dumping duty on imports of solar glass from the People's Republic of China (OJ L 316, 27.11.2013, p. 8), recital (157).

⁽⁷⁵⁾ Source: A multidimensional optimisation approach to improve module efficiency, power and costs, Jibran Shahid, Max Mittag, Martin Heinrich, Fraunhofer Institute for Solar Energy Systems ISE, https://www.ise.fraunhofer.de/content/dam/ise/de/documents/publications/conference-paper/35-eupvsec-2018/Shahid_5DO83.pdf

⁽⁷⁶⁾ Source: The Mechanical Engineering Industry Association (VDMA), <https://pv-manufacturing.org/wp-content/uploads/2019/03/ITRPV-2019.pdf>

- (215) The Commission took note of the information transmitted to EUProSun by the Fraunhofer Institute on the increase of the share the costs of solar glass within solar module cost since 2019. It noted that this development does not fall within the review investigation period and may only be relevant when assessing the future burden for solar modules manufacturers. With regard the share of the 'glass/glass' modules on the market, it further took note of the information that the study referred to in recital (210) concerned a world market and the situation and the future prospects may differ in the Union. With regard the exact share, it however considered that the 18,5 % share by EU ProSun was not substantiated by any evidence. When analysing the verified data of the Union producers in the investigation period, the Commission found that the current share of the glass/glass modules on the market stood only at 14 %. Since the two verified producers represented more than 80 % of the sales on the market of the solar glass in the review investigation period, the Commission concluded that the proportion was representative of the situation on the market.
- (216) Moreover, even if the proportion of glass/glass modules had slightly increased after the review investigation period, it would not change the conclusions that the cost impact on users by retaining the measures at their current level would remain limited. As confirmed by EU ProSun and several users, the latter were buying significant quantities of solar glass from the Union producers and this would not change according to the users in the future. Furthermore, users could import solar glass from other countries not subject to measures and in the review investigation period, the imported glass from such countries represented 12 % of the market share (see Table 4).
- (217) With regard the argument of the users that the further increase of the costs by 2 %–3 % would lead to further shutdowns and lay-offs, the Commission recalled that maintaining the measures should not lead to further price increases as it only maintains the already existing duties on solar glass from China. As recalled in recital (216), because of the geographical proximity, the users will continue sourcing the majority of solar glass from the Union producers and/or could import solar glass from other countries not subject to measures such as Turkey, Malaysia and India.
- (218) On this basis, the Commission concluded that maintaining the measures would now likely result in higher production costs for the users compared to the costs of the original measures given that the relative cost for glass in the total production costs has slightly increased. However, compared to the total overall production costs, the Commission concluded that the cost impact on the users would still remain limited and would thus not become critical for keeping their business in the Union.

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

- (219) In the view of the users, the Union's solar glass industry does not have sufficient production capacity to meet the demand for solar glass on the market. They further argued that the Union solar glass producers did not increase their capacities, nor do they plan doing it. In their view, the current production capacities are lower than the current demand for solar glass. In view of the users, this situation forces them to use the imported glass from other countries like Malaysia or Turkey, or import the glass from China at higher costs. According to them, the imported glass from those countries is however not always of a sufficient quality.
- (220) The Union industry, on the contrary, considered that the supply of the solar glass of the market was sufficient to cover the demand. They argued that they never refused to supply any of the Union solar panel producers because of the alleged lack of available capacity. On the contrary, they were ready to discuss potential additional orders and confirmed their ability to supply higher volumes.
- (221) The Commission first observed that the consumption of the solar glass in the RIP was [13–18] million m² (see Table 1). Second, the total production of the Union industry verified by the Commission was at the level of [11–14] million m². Third, the total verified capacity of the two Union producers was [14–18] million m².
- (222) Therefore, the Commission concluded that in the RIP, only the two verified producers of solar glass had a spare capacity of [5–8,5] million m², which could be supplied without any additional investments. The Commission thus found this argument of the users unfounded.

- (223) After disclosure, EU ProSun argued that the production capacity of the solar glass producers did not cover the demand of solar glass by the users already after the review investigation period, since two of the users invested, in 2019/2020, in new capacities of altogether of 950 MW. On this basis, EU ProSun argued that there was a lack of supply of solar glass on the market already today. In response to the argument, EU ProSun Glass, representing the Union producers, reiterated after disclosure that a few important solar panel producers presented by EU ProSun as operating on the market had already closed down their production. Therefore, the newly created capacities replaced the existing one.
- (224) The Commission first observed that according to the information from EU ProSun, solar modules producers had a combined capacity of over 5 GW in 2019. However, it also observed that a few of the solar modules producers had indeed already ceased production. The combined capacities of the companies that closed their production exceeded 1 GW ⁽⁷⁷⁾. Therefore, the findings of the Commission confirmed that the newly built capacities partially replaced the investments in 2019/2020 by a few of the companies referred to by EU ProSun.
- (225) Secondly, the Commission considered that the existing and the newly built capacities did not necessarily correspond to the solar module production output. According to data by EU ProSun, in 2019, less than half of the solar modules production capacity was utilised. Therefore, the Commission considered that the newly built capacities did not automatically translate in the equivalent production output and growth of the demand for solar glass, at least not immediately after their implementation.
- (226) Thirdly, the Commission recalled that in the review investigation period, in addition to the two verified solar glass producers, other producers of solar glass existed. According to the information from the Union solar glass industry, the total capacity of the solar glass producers was between [33–38] million m² (see Table 5) ⁽⁷⁸⁾. The total capacity of solar glass on the market thus exceeds its current production with almost 3 times.
- (227) On this basis, the Commission rejected the argument of EU ProSun that there was currently a lack of supply of solar glass on the Union market.

6.2.3. Future market growth

- (228) All interested parties agreed that the demand for solar panels and consequently for solar glass was growing and will substantially grow in the years to come. Primary drivers include the Union's 2030 target on renewable energies, its potential upwards revision, and the European Green Deal in general that aims at climate neutrality and boosting the EU green technologies industry, including renewables and other low carbon technologies. Growth is expected in all the segments of the market (residential, commercial, industrial and utility), depending on the development of public policies in each Member State.
- (229) Currently, solar module production in the Union is 1,7 GW ⁽⁷⁹⁾. In expectation of the higher future demand, several users situated in Austria, France, Germany, Italy and Slovenia announced that they were preparing to expand their production capacities. Altogether, and in case the new capacity plans are fully implemented and used, the planned investments by the users would, in addition to the 900 MW referred to in Section 6.2.2, amount to 2,9 GW of additional production within the next 2–3 years, thus tripling the production of the PV modules. In addition to that, EU ProSun argued that one of the planned investments would represent, in the 2nd phase of its implementation, an additional capacity of 2 GW. It also referred to a Swiss-German company willing to invest to a GW size production.
- (230) On this basis, EU ProSun and some of the users argued that if the measures are maintained, their planned investments were jeopardised because they would have to bear additional costs and because there would not be enough supply of solar glass on the market.

⁽⁷⁷⁾ One of the biggest companies that ceased its production was Solarworld having according to EU ProSun capacity of 700 MW. It ceased its production in 2018 (<https://www.pv-magazine.com/2019/02/11/investor-search-for-solarworld-failed-module-factory-to-be-auctioned-off/>).

⁽⁷⁸⁾ The website of F-Solar indicates a capacity of 750 tons/day <https://www.fsolar.de/en> Depending on the product mix, this volume can correspond to between 20 and 30 million m². Apart from F-Solar, several other smaller producers exist on the market such as Petra Glass (Austria), Pressglass (Poland), Sunarc (Denmark), Lambert (Germany), Onyxsolar (Spain), Covexglass (Poland), DA Glass (Poland), Schollglass (Poland), tvitec (Spain), Hecker (Germany), Ertex solar (Austria), ILVA Glass (Italy).

⁽⁷⁹⁾ Source: EU ProSun

- (231) The Union industry of solar glass was of the opinion that the new announced capacity increase would be beneficial for its industry. However, in its view, the new planned capacities replaced to a certain extent the capacities of previously closed productions. In addition, they considered that as it was the case in the past, the new investments may not materialise as announced. Furthermore, they argued that any new plants to be constructed would not be operational at full capacity from the start of its operation.
- (232) To examine these claims, the Commission reassessed its findings. It reiterated the following: firstly, the evidence on file does not indicate that the planned investments would be conditioned on the removal of the countervailing measures in place. As a matter of fact, the evidence on file rather shows that many of the announced projects were mainly driven by the perspective of the future growth of the market for solar panels, rather than by an existence or not of measures on solar glass. Therefore, the decision on whether the measures on solar glass would be maintained or not cannot be considered as a decisive factor for the design or the materialisation of the abovementioned expansion projects.
- (233) Secondly, the Commission recalled that the cost impact analysis under Section 6.2.1 showed that the costs of measures for the users concerned were fairly low. The planned investments do not put that conclusion into question as the costs for this additional production in the user sector would be of the same limited magnitude.
- (234) Thirdly, based on the analysis under Section 6.2.2, the Commission further reiterated that the current capacity of the Union industry is likely to meet the increased demand induced by the planned investments. Furthermore, any demand increase would in any event be progressive, which would allow the solar glass industry to accommodate to it and increase its capacity if need be, as they claim. Moreover, users could continue sourcing the glass from other countries such as Turkey, Malaysia and India, as they did in the RIP.
- (235) After disclosure, EU ProSun further argued that the solar glass producers did not have the capacity to satisfy the future demand for solar glass. It also claimed that the users could not import the glass since the quality of the imported glass was not sufficient. To support this argument, it provided a report of one of the users that indicated that a particular order of a Malaysian company was deficient.
- (236) The Commission was not convinced that the quality of solar glass from other third countries not subject to measures was so inferior that it could not qualify as a credible alternative for a European module manufacturer. In its anti-dumping investigation on imports of solar glass from Malaysia, all parties had agreed that those imports stood in effective competition with solar glass made in the Union. As noted above, imports of solar glass into the Union from Malaysia had increased and reached, in the review investigation period, a market share of 7 %. This indicates that the Malaysian solar glass is generally of sufficient high quality even if in individual cases a delivery of imported solar glass from that country had defects and did not correspond fully to agreed terms and specifications. Consequently, the Commission rejected this claim.
- (237) Following disclosure, EU ProSun also argued that the injury potentially caused by maintaining the measures on solar glass would immediately affect more than 1 000 jobs and about 50 million EUR of investments and up to more than 4 000 jobs and one billion EUR in investments to be taken during the next two years.
- (238) The Commission rejected the argument and recalled that many of the expansion plans already took place while the measures were already in place, without regard of the decision to maintain the measures or not. Based on the conclusions summarised above in Sections 6.2.1–3, it took the view that maintaining the measures did not prevent the planned investments of several users from materialising.

6.2.4. *Conclusion on the interests of users*

- (239) While the comments received after disclosure have further substantiated that the continuation of measures is against the interests of users, they have also confirmed that the sector is only at the beginning of an ongoing investment process. The Commission concluded that the impact of the measures on the cost structure of users is currently not out of proportion, that their security of supply is not threatened because of the spare capacities available in the Union and also of alternative sources of imports, and also that their investment plans have not yet sufficiently materialised.

- (240) In any event, if this turns out to be the case and there are changed circumstances of a lasting nature, the Commission recalled that the users' industry may lodge a request to review the form and/or the level of the measures, limited to the injury suffered by the Union industry combined with the supply situation for the users' industry according to Article 19(3) of the basic Regulation, which could lead to a new assessment of the Union interest.

6.3. Environmental aspects

- (241) The users argued that maintaining the measures on solar glass was not in line with the Commission goals regarding the use of clean energies. On the contrary, extending the measures on solar glass would have for a consequence that the Union industry of solar modules could not undertake new investments. Furthermore, while the Union market for solar module installations is expected to grow, the Union solar module industry would be forced out of the market as it would not undertake planned new investments due to lack of solar glass supply and would therefore not be competitive.
- (242) In the context of the broader European Green Deal, in March 2020, the Commission proposed a binding European Climate Law, which aims to enshrine the 2050 climate neutrality objective ⁽⁸⁰⁾. The European Green Deal moreover contains an explicit objective with regard to 'supplying clean, affordable and secure energy' ⁽⁸¹⁾, namely through a potential upwards review of the Union 2030 renewable energy target.
- (243) On both markets, that of horticultural glass (greenhouse glass) and that of PV and photothermal modules, the Union producers of solar glass are developing new innovative solutions how to enhance the use of green energy, cooperate with research institutions and universities, and are investing in research and development. In this context, the Commission considered that the continuation of the measures is crucial to ensure the existence of a viable solar glass industry and enhance research and development in the area.
- (244) The Commission furthermore considered that if the measures lapse, the viability of the Union solar glass industry would be threatened and the users (mainly PV module producers) would become dependent on imports, most likely from China. The lapse of the measures would also have as consequence that the solar glass industry could not invest in innovation and research and development. Therefore, from the environmental perspective, the Commission considered it crucial to maintain the solar glass industry viable.
- (245) At the same time, the Commission's green policy also supports the use of renewable energy in the Union. The main innovative potential lies in the production of cells by the downstream industry. By maintaining the measures, this part of the 'green' industry, i.e. mainly the producers of solar modules would have to bear some additional costs. In view of analysis in Section 6.2.1, the Commission however concluded that the additional costs of the users were not significant enough prevent their operation or future expansion.
- (246) Therefore, the Commission concluded that, overall, maintaining the measures does not harm the Union's environmental policies.

6.4. Interest of unrelated traders

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

⁽⁸⁰⁾ See the Annex to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal, Brussels, 11.12.2019 COM(2019) 640 final, https://ec.europa.eu/info/sites/info/files/european-green-deal-communication-annex-roadmap_en.pdf for the broader framework.

⁽⁸¹⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Green Deal, Brussels, 11.12.2019 COM(2019) 640 final, https://ec.europa.eu/info/sites/info/files/european-green-deal-communication_en.pdf, p. 6.

6.5. Interest of unrelated importers

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

6.6. Conclusion on Union interest

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

7. COUNTERVAILING MEASURES

- (250) It follows from the above that, as provided for by Article 18 of the basic Regulation, the countervailing measures applicable to imports of solar glass originating in China should be maintained.
- (251) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the proper application of the individual 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(3) of this Regulation. Imports not accompanied by that invoice should be subject to the countervailing duty applicable to 'all other companies'.
- (252) 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 should not be the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.
- (253) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 23(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided the conditions for so doing are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (254) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product concerned originating in the PRC and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.
- (255) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽⁸²⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name should be published in the *Official Journal of the European Union*.
- (256) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁸³⁾, 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.

⁽⁸²⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽⁸³⁾ 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).

(257) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁸⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is imposed on imports of solar glass consisting of tempered soda-lime-flat-glass, with an iron content of less than 300 ppm, a solar transmittance of more than 88 % (measured according to AM1,5 300–2 500 nm), a resistance to heat up to 250 °C (measured according to EN 12150), a resistance to thermal shocks of Δ 150 K (measured according to EN 12150) and having a mechanical strength of 90 N/mm² or more (measured according to EN 1288-3), currently falling under CN code ex 7007 19 80 (TARIC codes 7007 19 80 12, 7007 19 80 18, 7007 19 80 80 and 7007 19 80 85) and originating in the People's Republic of China.

2. The rates of the 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 in the table, shall be as follows:

Company	Countervailing duty	TARIC additional code
Xinyi PV Products (Anhui) Holdings Ltd	3,2 %	B943
Zhejiang Hehe Photovoltaic Glass Technology Co., Ltd	17,1 %	B944
Zhejiang Jiafu Glass Co., Ltd; Flat Solar Glass Group Co., Ltd; Shanghai Flat Glass Co., Ltd	12,8 %	B945
Henan Yuhua New Material Co., Ltd	16,7 %	B946
Other cooperating companies listed in Annex I	12,4 %	
All other companies	17,1 %	B999

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

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

Article 2

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

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

Done at Brussels, 22 July 2020.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁸⁴⁾ 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 (OJ L 176, 30.6.2016, p. 21).

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Name	TARIC additional code
Avic Sanxin Sol-Glass Co. Ltd and Avic (Hainan) Special Glass Material Co., Ltd	B949
Wuxi Haida Safety Glass Co., Ltd	B950
Dongguan CSG Solar Glass Co., Ltd	B951
Pilkington Solar Taicang Limited	B952
Novatech Glass Co., Ltd	B954

ANNEX 2

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

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