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## Legislation

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<sup>(1)</sup> Text with EEA relevance.

# EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.



## II

(Non-legislative acts)

## REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2020/866

of 28 May 2020

**amending Delegated Regulation (EU) 2016/101 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for prudent valuation under Article 105(14) of Regulation (EU) No 575/2013**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of 26 June 2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012<sup>(1)</sup>, and in particular the third subparagraph of Article 105(14) thereof,

Whereas:

- (1) Article 9(5), Article 10(6) and Article 11(3) of Commission Delegated Regulation (EU) 2016/101<sup>(2)</sup> provide that, with regard to institutions that calculate additional valuation adjustments (AVAs) under the core approach set out in that Regulation, individual AVAs related to market price uncertainty, close-out costs and model risk are to be determined with reference to a 90 % level of certainty based on the applicable market conditions at the time of the calculation. That Regulation also specifies an aggregation approach for the calculation of the total category level AVAs based on those individual AVAs, which takes account of overlaps among individual AVAs that occur in the aggregation of those categories of AVAs.
- (2) The expansion of the COVID-19 pandemic has triggered levels of extreme volatility throughout financial markets worldwide, affecting multiple asset classes. This has generated exceptional increases in asset price dispersion and bid-offer spreads. It is therefore expected that individual AVAs computed at the level of valuation exposures will significantly increase in comparison with their levels in normal times.
- (3) The adjustment of individual AVAs to new market conditions is a normal process. It is to be expected, however, that due to the COVID-19 pandemic and the decisions of public authorities to halt economic activity in a large number of areas, the aggregation of significantly increased individual AVAs will have a disproportionate impact on aggregated AVA amounts. The rules for prudent valuation should therefore be revised so that, in addition to providing for an aggregation factor to be used under normal market conditions, they also provide that institutions should apply a higher aggregation factor for this specific period of extreme volatility in market prices and systemic shock due to the COVID-19 pandemic.
- (4) It is to be expected that the extreme market volatility arising as a result of the COVID-19 pandemic will decrease with the subsiding of the pandemic expected in the next months. The higher aggregation factor should therefore only apply for the expected duration of that extreme market volatility combined with systemic shock, which is currently assessed to last until 31 December 2020.
- (5) Delegated Regulation (EU) 2016/101 should therefore be amended accordingly.

<sup>(1)</sup> OJ L 176, 27.6.2013, p. 1.

<sup>(2)</sup> Commission Delegated Regulation (EU) 2016/101 of 26 October 2015 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for prudent valuation under Article 105(14) (OJ L 21, 28.1.2016, p. 54).

- (6) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission. Due to the urgency caused by the COVID-19 pandemic, the European Banking Authority has deemed that the carrying out of a public consultation and cost-benefit analysis would be disproportionate. However, the European Banking Authority informed the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(3)</sup>.
- (7) In order to react swiftly to the consequences of the COVID-19 pandemic, this Regulation should enter into force on the day following that of its publication,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Delegated Regulation (EU) 2016/101 is replaced by the text in the Annex to this Regulation.

*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, 28 May 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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<sup>(3)</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

## ANNEX

**Formulae to be used for the purpose of aggregating AVAs under Article 9(6), Article 10(7) and Article 11(7)****Formula for Method 1**

$$\begin{aligned} \text{APVA} &= (\text{FV} - \text{PV}) - \alpha \cdot (\text{FV} - \text{PV}) \\ &= (1 - \alpha) \cdot (\text{FV} - \text{PV}) \end{aligned}$$

$$\text{AVA} = \Sigma \text{APVA}$$

**Formula for Method 2**

$$\begin{aligned} \text{APVA} &= \max \{0, (\text{FV} - \text{PV}) - \alpha \cdot (\text{EV} - \text{PV})\} \\ &= \max \{0, \text{FV} - \alpha \cdot \text{EV} - (1 - \alpha) \cdot \text{PV}\} \end{aligned}$$

$$\text{AVA} = \Sigma \text{APVA}$$

Where:

- FV = The valuation exposure-level fair value after any accounting adjustment applied in the institution's fair value that can be identified as addressing the same source of valuation uncertainty as the relevant AVA,
- PV = The valuation exposure-level prudent value determined in accordance with this Regulation,
- EV = The expected value at a valuation exposure level taken from a range of possible values,
- $\alpha$  = The aggregation factor,
- APVA = The valuation exposure-level AVA after adjusting for aggregation,
- AVA = The total category-level AVA after adjusting for aggregation.

Institutions shall set the aggregation factor 'α' at 66 % until 31 December 2020, after which they shall set the aggregation factor at 50 %.'

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**COMMISSION IMPLEMENTING REGULATION (EU) 2020/867****of 18 June 2020****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Aprutino Pescarese' (PDO))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs <sup>(1)</sup>, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the specification for the protected designation of origin 'Aprutino Pescarese', registered under Commission Regulation (EC) No 1263/96 <sup>(2)</sup>.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* <sup>(3)</sup>, as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Aprutino Pescarese' (PDO) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth 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, 18 June 2020.

*For the Commission,  
On behalf of the President,  
Janusz WOJCIECHOWSKI  
Member of the Commission*

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<sup>(1)</sup> OJ L 343, 14.12.2012 p. 1.

<sup>(2)</sup> Commission Regulation (EC) No 1263/96 of 1 July 1996 supplementing the Annex to Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92 (OJ L 163, 2.7.1996, p. 20).

<sup>(3)</sup> OJ C 44, 10.2.2020, p. 37.

**COMMISSION IMPLEMENTING REGULATION (EU) 2020/868**  
**of 18 June 2020**  
**repealing Implementing Regulation (EU) 2016/1140 concerning the classification of certain goods in**  
**the Combined Nomenclature**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code <sup>(1)</sup>, and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

- (1) By Implementing Regulation (EU) 2016/1140 <sup>(2)</sup>, the Commission classified within the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 <sup>(3)</sup> two products, one in the form of a self-heating patch and the other in the form of a self-heating belt to relieve pain, under CN code 3824 90 96 as other chemical products or preparations.
- (2) In its judgement in Case C-182/19 <sup>(4)</sup>, the Court of Justice ruled that Implementing Regulation (EU) 2016/1140 is invalid.
- (3) For reasons of legal certainty, an act which has been declared invalid by the Court of Justice should be formally removed from the legal order of the Union.
- (4) Implementing Regulation (EU) 2016/1140 should therefore be repealed.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee.
- (6) Since Implementing Regulation (EU) 2016/1140 cannot be applied after the ruling of the Court of Justice on 26 March 2020, in order to ensure legal certainty and legal clarity, this Regulation should enter into force as a matter of urgency.

HAS ADOPTED THIS REGULATION:

*Article 1*

Implementing Regulation (EU) 2016/1140 is repealed.

*Article 2*

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

<sup>(1)</sup> OJ L 269, 10.10.2013, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2016/1140 of 8 July 2016 concerning the classification of certain goods in the Combined Nomenclature (OJ L 189, 14.7.2016, p. 1).

<sup>(3)</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

<sup>(4)</sup> Judgment of the Court of Justice of 26 March 2020, Pfizer Consumer Healthcare Ltd, C-182/19, ECLI:EU:C:2020:243.

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

Done at Brussels, 18 June 2020.

*For the Commission,  
On behalf of the President,  
Philip KERMODE  
Acting Director-General  
Directorate-General for Taxation and Customs Union*

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**COMMISSION IMPLEMENTING REGULATION (EU) 2020/869****of 24 June 2020****amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances beflubutamid, benalaxyl, benthiavalicarb, bifenazate, boscalid, bromoxynil, captan, cyazofamid, dimethomorph, ethephon, etoxazole, famoxadone, fenamiphos, flumioxazine, fluoxastrobin, folpet, formetanate, metribuzin, milbemectin, *Paecilomyces lilacinus* strain 251, phenmedipham, phosmet, pirimiphos-methyl, propamocarb, prothioconazole and S-metolachlor****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC <sup>(1)</sup>, and in particular the first paragraph of Article 17 thereof,

Whereas:

- (1) Part A of the Annex to Commission Implementing Regulation (EU) No 540/2011 <sup>(2)</sup> sets out the active substances deemed to have been approved under Regulation (EC) No 1107/2009.
- (2) Commission Implementing Regulation (EU) 2019/707 <sup>(3)</sup> extended the approval periods of the active substances famoxadone and flumioxazine until 30 June 2020 and the approval periods of the active substances beflubutamid, benalaxyl, benthiavalicarb, bifenazate, boscalid, bromoxynil, captan, cyazofamid, dimethomorph, ethephon, etoxazole, fenamiphos, fluoxastrobin, folpet, formetanate, metribuzin, milbemectin, *Paecilomyces lilacinus* strain 251, phenmedipham, phosmet, pirimiphos-methyl, propamocarb, prothioconazole and S-metolachlor until 31 July 2020.
- (3) Applications for the renewal of the approval of those substances were submitted in accordance with Commission Implementing Regulation (EU) No 844/2012 <sup>(4)</sup>.
- (4) Due to the fact that the assessment of all those substances has been delayed for reasons beyond the control of the applicants, the approvals of those active substances are likely to expire before a decision has been taken on their renewal. It is therefore necessary to extend their approval periods.
- (5) Furthermore, an extension of the approval period is required for the active substances boscalid, captan, dimethomorph, ethephon, folpet, formetanate, milbemectin, phenmedipham, phosmet, pirimiphos-methyl and propamocarb to allow the time necessary to carry out an assessment relating to endocrine disrupting properties in accordance with the procedure set out in Articles 13 and 14 of Implementing Regulation (EU) No 844/2012.

<sup>(1)</sup> OJ L 309, 24.11.2009, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation (EC) No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances (OJ L 153, 11.6.2011, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2019/707 of 7 May 2019 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval periods of the active substances alpha-cypermethrin, beflubutamid, benalaxyl, benthiavalicarb, bifenazate, boscalid, bromoxynil, captan, cyazofamid, desmedipham, dimethoate, dimethomorph, diuron, ethephon, etoxazole, famoxadone, fenamiphos, flumioxazine, fluoxastrobin, folpet, foramsulfuron, formetanate, metalaxyl-m, methiocarb, metribuzin, milbemectin, *Paecilomyces lilacinus* strain 251, phenmedipham, phosmet, pirimiphos-methyl, propamocarb, prothioconazole, s-metolachlor and tebuconazole (OJ L 120, 8.5.2019, p. 16).

<sup>(4)</sup> Commission Implementing Regulation (EU) No 844/2012 of 18 September 2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 252, 19.9.2012, p. 26).

- (6) As regards cases where a Regulation is to be adopted providing that the approval of an active substance referred to in the Annex to this Regulation is not renewed because the approval criteria are not satisfied, the expiry date should be set at the same date as before this Regulation was adopted or at the date of the entry into force of the Regulation providing that the approval of the active substance is not renewed, whichever date is later. Where a Regulation is adopted providing for the renewal of an active substance referred to in the Annex to this Regulation, it is appropriate to set, as possible under the circumstances, the earliest possible application date.
- (7) Taking into account that some of the approvals of the active substances expire on 30 June 2020, this Regulation should enter into force as soon as possible.
- (8) Implementing Regulation (EU) No 540/2011 should therefore be amended accordingly.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with the Annex to this Regulation.

*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, 24 June 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended as follows:

- (1) in the sixth column, expiration of approval, of row 35, Famoxadone, the date is replaced by '30 June 2021';
  - (2) in the sixth column, expiration of approval, of row 39, Flumioxazine, the date is replaced by '30 June 2021';
  - (3) in the sixth column, expiration of approval, of row 46, Cyazofamid, the date is replaced by '31 July 2021';
  - (4) in the sixth column, expiration of approval, of row 84, Benalaxyl, the date is replaced by '31 July 2021';
  - (5) in the sixth column, expiration of approval, of row 85, Bromoxynil, the date is replaced by '31 July 2021';
  - (6) in the sixth column, expiration of approval, of row 88, Phenmedipham, the date is replaced by '31 July 2021';
  - (7) in the sixth column, expiration of approval, of row 97, S-metolachlor, the date is replaced by '31 July 2021';
  - (8) in the sixth column, expiration of approval, of row 99, Etoxazole, the date is replaced by '31 July 2021';
  - (9) in the sixth column, expiration of approval, of row 109, Bifenazate, the date is replaced by '31 July 2021';
  - (10) in the sixth column, expiration of approval, of row 110, Milbemectin, the date is replaced by '31 July 2021';
  - (11) in the sixth column, expiration of approval, of row 141, Fenamiphos, the date is replaced by '31 July 2021';
  - (12) in the sixth column, expiration of approval, of row 142, Ethephon, the date is replaced by '31 July 2021';
  - (13) in the sixth column, expiration of approval, of row 145, Captan, the date is replaced by '31 July 2021';
  - (14) in the sixth column, expiration of approval, of row 146, Folpet, the date is replaced by '31 July 2021';
  - (15) in the sixth column, expiration of approval, of row 147, Formetanate, the date is replaced by '31 July 2021';
  - (16) in the sixth column, expiration of approval, of row 150, Dimethomorph, the date is replaced by '31 July 2021';
  - (17) in the sixth column, expiration of approval, of row 152, Metribuzin, the date is replaced by '31 July 2021';
  - (18) in the sixth column, expiration of approval, of row 153, Phosmet, the date is replaced by '31 July 2021';
  - (19) in the sixth column, expiration of approval, of row 154, Propamocarb, the date is replaced by '31 July 2021';
  - (20) in the sixth column, expiration of approval, of row 156, Pirimiphos-methyl, the date is replaced by '31 July 2021';
  - (21) in the sixth column, expiration of approval, of row 158, Beflubutamid, the date is replaced by '31 July 2021';
  - (22) in the sixth column, expiration of approval, of row 163, Benthiavalicarb, the date is replaced by '31 July 2021';
  - (23) in the sixth column, expiration of approval, of row 164, Boscalid, the date is replaced by '31 July 2021';
  - (24) in the sixth column, expiration of approval, of row 166, Fluoxastrobin, the date is replaced by '31 July 2021';
  - (25) in the sixth column, expiration of approval, of row 167, *Paecilomyces lilacinus* strain 251, the date is replaced by '31 July 2021';
  - (26) in the sixth column, expiration of approval, of row 168, Prothioconazole, the date is replaced by '31 July 2021'.
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**COMMISSION IMPLEMENTING REGULATION (EU) 2020/870****of 24 June 2020****imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of continuous filament glass fibre products originating in Egypt, and levying the definitive countervailing duty on the registered imports of continuous filament glass fibre products originating in Egypt**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 15 and Article 16(4) thereof,

Whereas:

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

- (1) On 7 June 2019, the European Commission ('the Commission') initiated an anti-subsidy investigation with regard to imports into the European Union ('the Union') of continuous filament glass fibre products ('GFR') originating in Egypt on the basis of Article 10 of the basic Regulation.
- (2) The Commission published a Notice of initiation in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of initiation').
- (3) The Commission initiated the investigation following a complaint lodged on 24 April 2019 by the European Glass Fibre Producers Association ('the complainant' or 'APFE') on behalf of producers representing 71 % of total Union production.
- (4) During the investigation, the Commission found additional evidence of relevant subsidies, which were not fully included in the Notice of initiation. Therefore, the Commission decided in accordance with Article 10(7) of the basic Regulation to include these subsidies within the scope of the current investigation and to amend accordingly the Notice of initiation.
- (5) On 12 February 2020, the Commission published a Notice amending the Notice of initiation in the *Official Journal of the European Union* <sup>(3)</sup>. A note to the file was added in this respect and the Government of Egypt ('GOE') was invited for consultations on those additional subsidies.

**1.2. Provisional measures**

- (6) On 7 March 2020, the Commission imposed provisional countervailing duties on imports into the Union of GFR originating in Egypt by Commission Implementing Regulation (EU) 2020/379 <sup>(4)</sup> ('the provisional Regulation').
- (7) As stated in recital 27 of the provisional Regulation, the investigation of subsidisation and injury covered the period from 1 April 2018 to 31 March 2019 ('the investigation period' or 'IP') and the examination of trends relevant for the assessment of injury covered the period from 1 January 2016 to the end of the investigation period ('the period considered').

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

<sup>(2)</sup> OJ C 192, 7.6.2019, p. 30.

<sup>(3)</sup> OJ C 48, 12.2.2020, p. 18.

<sup>(4)</sup> Commission Implementing Regulation (EU) 2020/379 of 5 March 2020 imposing a provisional countervailing duty on imports of continuous filament glass fibre products originating in Egypt (OJ L 69, 6.3.2020, p. 14).

### 1.3. Subsequent procedure

- (8) On the basis of the publication of a Notice amending the Notice of initiation in the *Official Journal of the European Union* (see recital 4 above), the Commission sent a request for information to the GOE, to the exporting producer and the Government of the People's Republic of China ('GOC').
- (9) The request for information to the GOE was sent in order to fully investigate the cooperation between the GOE and the GOC to benefit the exporting producer. In view of the GOC's involvement and close cooperation with the GOE as regards the subsidisation granted to GFR originating in Egypt ('the product under investigation'), the Commission identified the GOC as an interested party to the investigation and forwarded the request for information sent to the GOE to the GOC with an invitation to cooperate with the investigation. However, the GOC never replied to the invite of the Commission and did not register as an interested party to the investigation.
- (10) Following the publication of the Notice amending the Notice of initiation and the request for information received by the GOE, the GOE noted first that it could not be requested to provide information or coordinate the response of entities, either governmental or private, which are outside of its jurisdiction.
- (11) Secondly, the GOE noted that the information requested by the Commission were located outside of its jurisdiction. According to the GOE, the Commission placed an unreasonable burden on it by requesting to provide information which is not necessary to the investigation.
- (12) Thirdly, the GOE claimed that the Commission was in fact including the People's Republic of China ('PRC' or 'China') in the scope of this investigation without inviting it to consultation prior to initiation.
- (13) Fourthly, the GOE noted that the basic anti-subsidy Regulation provides that a subsidy exists only if 'there is a financial contribution by a government in the country of origin or export'. The GOE noted that the Notice amending the Notice of initiation concerned subsidies allegedly granted by the Government of the PRC ('GOC'). Consequently the Commission via the Notice amending the Notice of initiation violated the basic anti-subsidy Regulation by including in the investigation financial contributions that cannot be considered as subsidies under EU law.
- (14) Finally, the GOE argued that the request for information was in reality the initial questionnaire to be sent to the GOC. Therefore, by granting 15 days to reply instead of 30, the Commission had violated Article 12.1.1 of the Agreement on Subsidies and Countervailing Measures ('SCM Agreement') and Article 11(2) of the basic Regulation.
- (15) The Commission disagreed with the views of the GOE. Concerning the lack of jurisdiction of the GOE and the *de facto* inclusion of the GOC in the investigation as the country of export, the Commission considered that, the subsidies investigated by the Commission are granted in the framework of a cooperation between the GOE and the GOC. Therefore, the subsidies may have been attributable to Egypt by virtue of the acknowledgment and adoption of the GOC's measures by Egypt as its own. The findings on this point are developed at length in Section 3.2.2 below.
- (16) Moreover, the Commission noted that it asked the GOE to provide the information relating to the general legal framework of the banking sector in China as well as concerning financial institutions in China because the GOE is the government concerned by this investigation and these subsidies may have been attributed to them as explained in Section 3.2.2 below. The information so requested was thus necessary for the Commission to establish the existence of subsidisation.

- (17) In addition, the Commission also gave a direct opportunity to the GOC to register as interested party and to provide directly the requested information on these issues. Indeed, as explained in recitals 96 and 97 below, the GOE together with the GOC have established a management mechanism with three administrative levels provided in Article 8 of the 2016 Agreement on Egypt Suez Economic and Trade Cooperation Zone between the Ministry of Commerce of the PRC and the General Authority for the Suez Canal Economic Zone. This mechanism is set up, inter alia, to deal with the issues which may affect the operation of the Cooperation Zone (thereby including the imposition of countervailing duties on exports from that zone).
- (18) Therefore, even if some of the information requested to the GOE was not in its possession, the Commission considered that the GOE had all the necessary means to obtain the requested information from the GOC.
- (19) Furthermore, the Commission disagreed with the GOE concerning the qualification of the request for information. The sending of such a request occurred months after sending the initial questionnaire intended for the GOE. The request for information responded to the need of the Commission to gather additional data which had become necessary following the additional evidence it had gathered in the course of the investigation. In this context, the Commission noted that the GOE had already received the initial questionnaire and was given 37 days to reply.
- (20) Furthermore, the Commission noted that the actual content of the request of information was limited to other relevant subsidies found in the course of the investigation, and the level and amount of information request is in no way comparable to that of an initial questionnaire. The Commission finally noted that the total time granted to the GOE, following an extension request, to reply to this additional request for information amounted to 22 days despite the very late stage of the proceeding.
- (21) Thus, when comparing the amount of time allotted to the GOE to reply to the most extensive request for information in the initial questionnaire with the period granted for the additional request for information, the Commission considered that the GOE had been granted sufficient time.
- (22) In light of the above considerations, these claims by the GOE were rejected.
- (23) Following the disclosure of the essential facts and considerations on the basis of which provisional countervailing duties were imposed ('provisional disclosure'), the GOE and the Egyptian exporting producer made written submissions making their views known on the provisional findings.
- (24) The GOE and the Egyptian exporting producer were granted an opportunity to be heard.
- (25) The GOE also had a hearing with the Hearing Officer in trade proceedings.
- (26) The Commission considered the comments submitted by interested parties and addressed them as detailed in this Regulation.
- (27) Due to the threat of the COVID-19 transmission and the consequent measures taken to deal with the outbreak <sup>(5)</sup>, the Commission was unable to fully verify the data submitted by the exporting producer and the GOE. Given that this situation occurred at a very late stage of the proceeding and that another solution (such as organising a session to cross-check remotely the information submitted with other verifiable sources in accordance with the COVID-19 Notice issued by the Commission) was no longer possible, the Commission exceptionally used the information submitted by these parties for the subsidy calculation, which was verified on the basis of all available information.

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<sup>(5)</sup> See Note to the file on the consequences of the coronavirus outbreak on anti-dumping and anti-subsidy investigations, reference t20.001226 and the Commission Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

#### 1.4. Final disclosure

- (28) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive countervailing duty on imports into the Union of GFR originating in Egypt ('final disclosure').
- (29) Following final disclosure, the GOE, Jushi Group, the complainants and a group of European users and distributors of GFR made written submissions making their views known on the definitive findings.
- (30) The parties who so requested were granted an opportunity to be heard. After final disclosure, the Commission services had hearings with the GOE and Jushi Group.
- (31) The Commission considered the comments submitted by interested parties following final disclosure and addressed them in this Regulation.

#### 1.5. Investigation period and period considered

- (32) In the absence of comments concerning the investigation period and period considered, recital 27 of the provisional Regulation was confirmed.

### 2. PRODUCT CONCERNED AND LIKE PRODUCT

#### 2.1. Claims regarding the product scope

- (33) In the absence of any comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals 44 and 48 of the provisional Regulation.

### 3. SUBSIDISATION

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

- (34) On the basis of the information contained in the complaint, the Notice of initiation, the Notice amending the Notice of initiation and the replies to the Commission's questionnaire and to the request for additional information, the alleged subsidisation through the following subsidies by the GOE were investigated:
- (a) Preferential policy loans, credit lines, other financing, insurance and guarantees.
  - (b) Government provision of goods and services for less than adequate remuneration ('LTAR')
    - Government provision of power for less than adequate remuneration;
    - Government provision of land for less than adequate remuneration.
  - (c) Revenue foregone through Direct Tax Exemption and Reduction programmes
    - EIT privileges for Enterprises located in a Special Economic Zone.
  - (d) Revenue foregone through Indirect Tax and Import Tariff Programmes
    - Value Added Tax ('VAT') exemptions and import tariff rebates for the use of imported equipment;
    - VAT exemptions and import tariff waivers for imported input materials used in exported finished goods.

### 3.2. The Suez Economic and Trade Cooperation Zone ('SETC-zone')

- (35) The alleged subsidisation in Egypt concerns a company in the China-Egypt Suez Economic and Trade Cooperation Zone ('SETC-Zone'). The zone covers an area of 7,34 km<sup>2</sup>, which is divided into a starting area of 1,34 km<sup>2</sup> and an expansion area of 6 km<sup>2</sup>.
- (36) This special economic zone was set up together by China and Egypt, and its history goes back to the 1990s. At that time, the then Egyptian President visited China's special economic zones, and expressed the wish to draw on China's experience concerning such zones, in order to establish a similar setup in Egypt. As a result, in 1997, the Prime Ministers of China and Egypt signed a memorandum of understanding, in which the two countries *'agree to cooperate in developing the free economic zone in the north of the Gulf of Suez, by sharing the Chinese experience in establishing special economic zones, participating in modernizing the studies relating to the zone and encouraging relevant business sector in China to provide contributions for the projects to be established within the zone'* <sup>(6)</sup>.
- (37) In the wake of this agreement, China appointed Tianjin Teda Investment Holding Co., Ltd. ('Tianjin TEDA'), an SOE under the Tianjin Municipal Government, to undertake the task on the Chinese side. Tianjin TEDA then joined the Egyptian Suez Canal Administration, the National Bank of Egypt, and four more Egyptian State-owned enterprises to create the Egypt China Joint Venture Company ('ECJV'), in order to develop and construct the economic zone. The Chinese side held 10 % of the shares of the ECJV, and the Egyptian side 90 %. In 1998, the corresponding land in the Northwest Gulf of Suez Zone was transferred from the Suez Governorate to the ECJV. However, after that, the project did not advance much for several years <sup>(7)</sup>.
- (38) In 2002, the wider area of 20 km<sup>2</sup>, in which the SETC-Zone was located, the Northwest Gulf of Suez Economic Zone, was officially classified as a special economic zone ('SEZone') by the GOE <sup>(8)</sup>. As such, the provisions of the Egyptian Law No 83/2002 on Economic Zones of a Special Nature ('Law 83/2002') were now also applicable to the SETC-Zone.
- (39) A new impetus started in 2006, when China decided to further encourage the 'Go Global Policy' for Chinese companies to invest abroad. In this context, the Ministry of Commerce of China ('MOFCOM') proposed the establishment of so-called *'overseas trade and cooperation zones'*, and the SETC-Zone became one of the first of 18 officially approved zones <sup>(9)</sup>. At the Beijing Summit of the Forum on China-Africa Cooperation in 2006, Chinese President Hu Jintao announced that *'three to five overseas economic and trade cooperation zones will be established in African countries in the next three years.'* <sup>(10)</sup>
- (40) In 2007, MOFCOM organized a tender to appoint developers for the second batch of officially approved overseas trade and economic cooperation zones. Tianjin TEDA won the bid for the SETC-Zone. In October 2008, Tianjin TEDA established a joint venture with the China-Africa Development Fund to set up China-Africa TEDA Investment Co., Ltd. ('China-Africa TEDA'), as the main Chinese investment entity in the cooperation zone. China-Africa TEDA united with the ECJV to create a new company, called Egypt TEDA Investment Co. ('Egypt TEDA') in order to drive the development of the SETC-Zone in Egypt. This time, the Chinese side held 80 % of the shares, and the Egyptian side (represented by the ECJV) 20 %. After the company was formally established in 2008, work in the zone advanced rapidly. On 7 November 2009, the then Prime Ministers of the two countries inaugurated the starting area, and listed the SETC-Zone as an important cooperation project of economy and trade between the two countries <sup>(11)</sup>. By the end of 2011, all the infrastructure in the starting area had been completed <sup>(12)</sup>.

<sup>(6)</sup> Memorandum of Understanding Between the Arab Republic of Egypt and the People's Republic of China, April 18<sup>th</sup>, 1997.

<sup>(7)</sup> Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019 ('State Council Report').

<sup>(8)</sup> Presidential Decree No. (35) of the Arab Republic of Egypt, dated 15/2/2003.

<sup>(9)</sup> TEDA 10 Years Summary Report (2008-2018), p. 4.

<sup>(10)</sup> Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019 ('State Council Report').

<sup>(11)</sup> TEDA 10 Years Summary Report (2008-2018), p. 11.

<sup>(12)</sup> State Council Report.



- (41) In 2012, after the civil unrest in Egypt, President Morsi paid a State visit to China, during which he referred to the Zone as a key project of the bilateral cooperation between the two countries, and hoped that more and more Chinese enterprises would invest in Egypt through the zone and through subsequent projects, and thus participate in Egypt's Recovery program <sup>(13)</sup>.
- (42) In 2013, Egypt TEDA and the Egyptian authorities signed a contract for the land of the 6 km<sup>2</sup> expansion area. As of 2013, the overseas trade and economic cooperation zones, such as the SETC-Zone, have also been further developed under the umbrella of the 'Belt and Road Initiative'. Overseas parks have thus become an important carrier for the 'going out' investments of Chinese companies. As a result, especially since 2013, the SETC-zone has been included in almost all important cooperation texts between the two governments <sup>(14)</sup>.
- (43) In 2014, Egypt launched the 'Suez Canal Corridor Development Plan'. In the context of this Plan, the SE Zone was officially incorporated into the wider Suez Canal Economic Zone ('SCZone') in 2015, comprising the whole area around the Suez Canal of 461 km<sup>2</sup>. The entire area is now considered as an 'economic area of special nature' in accordance with Law 83/2002 and amendments thereof <sup>(15)</sup>.
- (44) In December 2015, President Sisi paid a visit to China, where he declared Egypt's acceptance of President Xi Jinping's offer to cooperate in the 'One Belt, One Road' initiative and to further develop projects in Egypt. On 21 January 2016, the two Presidents officially inaugurated the SETC-zone expansion project for the expansion area of 6 km<sup>2</sup>. During the State visit of Xi Jinping in Egypt, the two governments also signed the 'Agreement between the Ministry of Commerce of the People's Republic of China and the General Authority for the Suez Canal Economic Zone of the Arab Republic of Egypt on the Suez Economic and Trade Cooperation Zone' of 21 January 2016 ('the Cooperation Agreement'). The Cooperation Agreement further clarified the significance and legal status of the SETC-Zone <sup>(16)</sup>.
- (45) The main purpose of the Cooperation Agreement was to provide a clear written framework for this cooperation and to formalize it within the framework of the 'One Belt, One Road' initiative, including the GOC support to companies abroad. However, no further details were provided on the preparatory works of the Cooperation Agreement despite explicit requests from the Commission.
- (46) According to the Cooperation Agreement, the governments jointly develop the SETC-Zone. They do so in line with their respective national strategies (Belt & Road Initiative for China on the one hand, and the Suez Canal Corridor Development Plan for Egypt on the other hand). For that purpose, the GOE provides the land, the labour and certain tax breaks, whereas the Chinese companies operating in the zone run the production facility with their assets and managers. Compensating for a lack of Egyptian funds, the GOC also supports this project by making the necessary financial means available to Egypt TEDA and to the Chinese firms operating in the SETC-Zone.
- (47) The GFR producer operating in the SETC-Zone, Jushi Egypt, is incorporated under Egyptian law and was established by Jushi Group, a Chinese parent company. The parent company of the GFR producer is owned by the State-owned assets Supervision and Administration Commission ('SASAC'). It has received approval from relevant Chinese government authorities <sup>(17)</sup> for setting up a subsidiary in Egypt. The daughter company is financed with funds coming from China, it is using input materials and equipment imported from China, it is directed by Chinese managers and it is using Chinese know-how. It produces GFR in Egypt, which is exported to the EU from the SETC-Zone.
- (48) In order to ensure the smooth implementation of the above-mentioned Cooperation Agreement, the two governments also established a three-level consultation mechanism. In this context, the General Authority for the Suez Canal Economic Zone of the Arab Republic of Egypt and the Tianjin Municipal Commission for Commerce of the People's Republic of China signed a 'Cooperation Agreement on Establishment of the Administration

<sup>(13)</sup> TEDA 10 years Summary Report (2008-2018), p. 53.

<sup>(14)</sup> State Council Report.

<sup>(15)</sup> Decree of the President of the Arab Republic of Egypt No 330 of the year 2015 On the establishment of the Suez Canal Economic Zone, August 19th, 2015.

<sup>(16)</sup> Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019.

<sup>(17)</sup> By the National Development and Reform Commission ('NDRC') and by the Ministry of Commerce ('MOFCOM').

Commission for the China-Egypt Suez Economic and Trade Cooperation Zone' for the first-level inter-governmental consultations. At the second level, the Suez Economic and Trade Cooperation Management Committee was set up to ensure discussions at technical level between China Tianjin Municipality Government's competent administration departments and the Egypt Suez Canal Economic Zone Authority's relevant competent departments. Regular meetings of these Commissions have taken place since 2017. At the third level, Egypt TEDA and the relevant Egyptian counterparts report the problems and difficulties arising to the governmental levels above.

### 3.2.1. *Partial non-cooperation and use of facts available in relation to the SETC-Zone*

#### 3.2.1.1. Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOE

- (49) The Commission requested the GOE in its questionnaire, in the request for information and during the verification visit to provide certain information relating to the Suez Economic and Trade Cooperation Zone in Egypt. Those information requests included among others questions on the legal and institutional framework, and the existence of intergovernmental agreements between China and Egypt.
- (50) In particular, following the amendment of the Notice of initiation, the Commission asked the GOE information about the functioning of the SETC-Zone and the legal basis that underpins it with particular reference to the cooperation between the GOE and the GOC in setting up and shaping the SETC-Zone as a business environment able to attract investors from China. Moreover, the Commission asked information about the control and administration of the SETC-Zone by the Egypt-TEDA Investment Company, by TEDA holding and by the Egyptian-Chinese Joint Working Group as well as about the role of the China-Africa Development fund ('CAD') in the context of Chinese outward investment. Finally, the Commission also asked the GOE about the status of the SETC-Zone as an overseas economic and cooperation zone approved by MOFCOM.
- (51) In replying to the request for information, the GOE only provided some of the information demanded while it left a substantial part of the request unanswered.
- (52) The GOE provided the information concerning the legal underpinning of the SETC-Zone by providing the international agreements stipulated by the GOE and the GOC that form the legal basis of their cooperation aimed at benefitting companies that are established in the SETC-Zone, such as the exporting producer.
- (53) However, the Commission is still missing information relating to any agreements, memoranda of understanding or other documents signed between the GOC and the GOE in relation to the SETC-Zone. As an example, the Commission found publicly available references to the 2016 Five-Year Implementation guidelines for Enhancing the Comprehensive Strategic Partnership between the PRC and the Arab Republic of Egypt.
- (54) Furthermore, a joint management committee of the China-Egypt TEDA Suez Economic and Trade Cooperation Zone was formally established in April 2017. In July of 2017, the Intergovernmental Coordination Committee was established and held its first joint meeting. The Commission did not receive written documentation concerning the meetings held under these various consultation mechanisms, except for one meeting held by the Administration Commission.
- (55) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.
- (56) Therefore, the Commission informed the GOE that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation for companies located in the SETC-Zone. The GOE objected and stressed that it had fully cooperated with the Commission. However, the Commission considered that information about the precise collaboration between the two governments in the set-up and administration of the SETC-Zone was crucial for the legal assessment of the case as explained in the next Section 3.2.2. Unfortunately, it had only received some relevant documents after the respective verification with the consequence that it could not verify the authenticity thereof. Moreover, it could not engage in any follow-up discussion with the GOE about significant details, which could shed light on the extent and, degree of cooperation between the two governments in the zone.

- (57) In light of the above considerations, the Commission applied Article 28 of the basic Regulation and relied on facts available with respect to these points.

### 3.2.2. Legal assessment

- (58) The operation of the SETC-Zone constitutes a close cooperation between the GOE and the GOC, a cooperation that finds expression notably in a joint venture of Egypt and China within the territory of the exporting country. The governments of Egypt and China have pooled their resources to provide the GFR manufacturer in the SETC-Zone with favourable conditions that confer benefits to it. This pooling of resources via such close cooperation serves a common purpose and benefits a common beneficiary Jushi Egypt.

### 3.2.3. Financial contribution of a government or a public body

- (59) According to Article 3(1)(a) of the basic Regulation, a subsidy exists if there is a financial contribution by a government in the country of origin or export. Similarly, Article 1.1(a)(1) of the SCM Agreement states that a subsidy shall be deemed to exist 'if there is a financial contribution by a government or any public body'.
- (60) The GOE has provided to Jushi Egypt land and offered several tax breaks. These subsidies are thus operated and granted directly by the government of Egypt.
- (61) However, ever since the conclusion of the MoU in 1997, the GOE has actively sought to support the zone not only directly by the provision of land and tax breaks but also indirectly, through agreed assistance of the Chinese government for the development of the SETC-Zone in its territory. Indeed, under the terms of the MoU, the GOE expressly '*encourag(ed) relevant business sector in China to provide contributions for the projects to be established within the zone*'. Following the visit of President Morsi to China in August 2012, the SETC Zone received '*unprecedented attention and support from the Egyptian government*'<sup>(18)</sup>. Under Article 1 of the Cooperation Agreement 2016, both sides agreed to develop the zone '*in accordance with (...) existing laws and regulations of the two countries*'.
- (62) Article 1 of the legislation implementing the Cooperation Agreement further specifies that '*The Management Committee [responsible for coordinating and handling daily work of the Cooperation Zone] is established in line with multilateral and bilateral agreements and existing laws and regulations signed or participated by the People's Republic of China and the Arab Republic of Egypt*'. Under Article 4 of the Cooperation Agreement, both sides promise '*support and facilitation for the construction, business facilitation and operation of the Cooperation Zone*'. For that purpose, Egypt has agreed that China designates it as '*overseas trade and cooperation zone*'.
- (63) China confirmed in Article 4(1) of the Cooperation Agreement that the zone in question '*is entitled to relevant policy support and facilitation provided by the Chinese Government for overseas economic and trade cooperation zones*'. In addition, in Article 5 of the Cooperation Agreement the GOC explicitly committed that it '*shall support*' the zone by, among others, '*encouraging relevant financial institutions to provide financial facility*' for companies and investments in the zone.
- (64) Moreover, under Article 2(IV) of Cooperation Agreement on the Establishment of Management Committee for China-Egypt Economic and Trade Cooperation Zone it is the management committee responsibility to '*Try the utmost efforts to implement all incentive policies of the Chinese and Egyptian laws and regulations in smooth manner*' and under Article 2(V) to '*Coordinate and facilitate relevant financial institutions, including but not limited to banking institutions, insurance institutions and various funds which provide credit support for the Cooperation Zone and residential enterprises, and help the Cooperation Zone and residential enterprises to explore more financing channels*'. Finally, under Article 7 of the same Agreement, both GOE and GOC committed themselves that any existing or future laws, which grant more favourable treatment than the Cooperation Agreement, shall prevail over the latter. The GOC's preferential financing for the GFR producer in the zone are the result of those engagements and should be seen in that context.

<sup>(18)</sup> TEDA 10 Years Summary Report, p. 41.

- (65) The joining forces by the GOE and the GOC served several purposes.
- (66) For the Egyptian side, as expressed at the highest political level <sup>(19)</sup>, the aim was to attract Chinese investments, know-how and capital in order to promote the economic development of the Suez Canal Economic Zone and create jobs. According to the 2022 Egyptian Perspective Long-Term Planning, published by the Planning Department of Egypt in November 2013, the SETC-Zone will play a great role for Egypt's industry upgrade, earning foreign exchange through export, creating taxation, and solving unemployment <sup>(20)</sup>.
- (67) For the Chinese side, the motivation was different. From the perspective of the companies itself, Egypt has certain advantages in terms of lower labour costs and shorter delivery times to main markets, such as the EU. In addition, as mentioned in the bond prospectus issued by Jushi Group in 2014: *'trade protective barriers have increased the market prices of China's fiberglass exports in disguise, which has a negative impact on Jushi Group's fiberglass exports. ... after the launch of Jushi Egyptian Glass Fiber Co., Ltd. in 2013, the product demand of the above three regions <sup>(21)</sup> will be met by Jushi Egypt. The above three regions will not impose anti-dumping duties on Jushi Egyptian products, and the impact of anti-dumping policies on Jushi Group will be greatly reduced. The preliminary pricing principle of Jushi Egyptian fiberglass products for the customers in the above three regions is to share the tariff savings with the customers and to enjoy the savings of anti-dumping duties and shipping costs in full by the issuer'*. Indeed, since 2011 <sup>(22)</sup> and the end of 2014 <sup>(23)</sup> imports of GFR originating in China have been subject to anti-dumping and countervailing duties in the EU and the EU is one of the 'three regions' that is referred to in the bond prospectus.
- (68) From the perspective of the GOC, according to MOFCOM's 13<sup>th</sup> Five-Year Plan for the Development of Foreign Trade, one of the main tasks under this plan is to enhance the trade cooperation with countries along the 'One Belt and One Road' initiative in order to promote and expand exports of, among others, high-tech products, such as GFR. The plan contains the following statement: *'Stabilize exports of advantageous products such as labor-intensive products to the aforesaid countries, seize the opportunities of constructing infrastructure for such countries, and impel exports of large-sized complete sets of equipment, technologies, standards and services. Adapt to the trend of transformation and upgrade of industries of these countries, and accelerate exports of electromechanical and high-tech products. ... Intensify the expansion of emerging markets, and after comprehensively considering economic scale, growth speed, resource endowment, risk degree and other factors, select several emerging markets for primary expansion. Expand exports of advanced technical equipment, and promote exports of high-quality, high-grade and comparatively advantageous industries and products'*. Envisaged measures to achieve these tasks include the *'development of State-level economic and technological development zones and various parks'*.
- (69) As expressed in one article, *'Under the government departments' guidance in the framework of the "One Belt, One Road", and in connection with the host country strategy at the highest level, overseas cooperation zones have become a vehicle to implement the "One Belt, One Road" and international production capacity cooperation'* <sup>(24)</sup>.
- (70) Overseas zones thus serve several strategic objectives for China. First, they could help increase demand for Chinese-made machinery and equipment. Second, by producing overseas and exporting to Europe or North America, Chinese companies would be able to avoid trade frictions and barriers imposed on exports from China. Third, they could assist China's efforts to boost its own domestic restructuring and move up the value chain at home <sup>(25)</sup>.

<sup>(19)</sup> Comments of President Morsi during his visit to China from August 2012, TEDA 10 Years Summary Report, p. 47 & 53; Comments of President Sisi during his visit to China in December 2016, TEDA 10 Years Summary Report (2008-2018), p. 94.

<sup>(20)</sup> TEDA 10 Years Summary Report (2008-2018), p. 59.

<sup>(21)</sup> The three regions referred to in the text are the EU, India and Turkey.

<sup>(22)</sup> Council Implementing Regulation (EU) No 248/2011 of 9 March 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 67, 15.3.2011, p. 1).

<sup>(23)</sup> Commission Implementing Regulation (EU) No 1379/2014 of 16 December 2014 imposing a definitive countervailing duty on imports of certain filament glass fibre products originating in the People's Republic of China and amending Council Implementing Regulation (EU) No 248/2011 imposing a definitive anti-dumping duty on imports of certain continuous filament glass fibre products originating in the People's Republic of China (OJ L 367, 23.12.2014, p. 22).

<sup>(24)</sup> Annual Report on Development in Africa, No 19 (2016-2017, Yellow Books of Africa, p. 13).

<sup>(25)</sup> D. Brautigam & Xiaoyang Tang: Going Global in Groups: Structural transformation and China's Special Economic Zones overseas, World Development Vol. 63, 2014, pp. 78-91.

- (71) It follows from the above that the Egyptian government was expecting and welcoming Chinese financing for the close cooperation within the SETC-Zone, in order to boost the development of one of its poorest regions. The Chinese government was hoping that Chinese companies could operate outside Chinese territories and expand their exports under the 'One Belt, One Road' initiative (possibly to avoid being caught by trade defence measures).
- (72) Under these circumstances, the Commission considered that the term 'by the government' in Article 3(1)(a) of the basic Regulation should include not only measures directly emanating from the GOE but also those measures by the GOC which can be attributed to the GOE on the basis of the available evidence.
- (73) As the Appellate Body ('AB') held in the US-Gasoline case <sup>(26)</sup>, WTO law cannot be read in clinical isolation from general international law. In particular, general international law principles thus form part of the WTO legal order, which is not a self-contained regime <sup>(27)</sup>. In line with Article 3.2 DSU and Article 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), '[a]ny relevant rules of international law applicable in the relations between the parties' must be taken into account in the assessment of the context of the terms of a treaty.
- (74) These 'rules' include customary international law <sup>(28)</sup>, which are by definition binding on all WTO members, including Egypt, China and the European Union. An important branch of customary international law is the rules on State responsibility, which have been codified by the International Law Commission (ILC Articles on the Responsibility of States for Internationally Wrongful Acts) <sup>(29)</sup> in accordance with its mandate under Article 13(1)(a) of the UN-Charter.
- (75) The rules in the ILC Articles are also 'relevant' within the meaning of Article 31(3)(c) VCLT because they provide guidance for the interpretation of the notion of attribution, i.e. when certain acts or omission can be attributed to one State, even when those acts or omissions do not emanate from that State directly. In this respect, the notion of attribution becomes relevant to interpret the terms 'by the government' in the chapeau of Article 1.1(a)(1) of the SCM Agreement, and more in particular, to determine the correct attribution of a conduct in a situation of cooperation between two States with respect to subsidies, as in the case at hand <sup>(30)</sup>.
- (76) The ILC Articles can thus be used to interpret the terms 'by the government' in the chapeau of Article 1.1(a)(1) of the SCM Agreement in order to attribute the conduct (granting of a subsidy) to the GOE, even in cases where the financial contribution has not been made directly by the GOE.
- (77) In this respect, the Commission noted that Article 11 of the ILC Articles provides, in particular, that '*conduct which is not attributable to a State under the preceding articles shall nevertheless be considered an act of that State under international law if and to the extent that the State acknowledges and adopts the conduct in question as its own*'. The commentary of the ILC to Article 11 explains that '*instances of the application of the principle [of State attribution through acknowledgement and adoption of behavior] can be found in judicial decisions and State practice*' <sup>(31)</sup>. As recalled in recital 6 of the same commentary, it is required that a State '*identifies the conduct in question and makes it its own*'.
- (78) From the inception of the project in 1997, the Egyptian government made Chinese financing of Jushi Egypt part of its own policy for the zone. President Morsi publicly welcomed Chinese investment and capital during his visit to China in August 2012, and the Planning Department of Egypt acknowledged in November 2013 that the Chinese financed SETC-Zone will play a great role for Egypt's industry upgrade. On another visit to China in December

<sup>(26)</sup> WT/DS2/AB/R – US – Reformulated Gasoline, Appellate Body Report adopted on 20 May 1996, p. 17.

<sup>(27)</sup> See in detail J. Pauwelyn, The Role of Public International Law in the WTO – How far can we go?, *American Journal of International Law* (2001), pp. 535 and following; Graham Cook, *Digest of WTO Jurisprudence on Public International Law Concepts and Principles* (CUP 2015).

<sup>(28)</sup> WT/DS379 – United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, Appellate Body Report adopted on 11 March 2011, §§308; M.E. Villiger, 'Commentary on the 1969 Vienna Convention on the Law of Treaties' (Martinus Nijhoff, 2009), p. 433.

<sup>(29)</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No 10 (A/56/10), chp.IV.E.1.

<sup>(30)</sup> WT/DS379/AB/R, paras. 304 – 322.

<sup>(31)</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, November 2001, Supplement No 10 (A/56/10), p. 52, recital 3 to Article 11.

2014, President Sisi 'expressed that the proposal from President Xi Jinping of jointly establishing the "One Belt and One Road" provided a significant opportunity for Egyptian recovery and Egyptian party was ready for active involvement and giving support. Egyptian party wished to cooperate with China in developing the projects of Suez Canal Corridor, Suez Economic and Trade Cooperation Zone and so on, and attract Chinese enterprises to invest in Egypt' <sup>(32)</sup>.

- (79) The characteristics of the Chinese 'One Road One Belt' initiative are public knowledge. Articles 30 to 36 of the Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation of 13 May 2015 list all the policy support that companies 'going abroad' can receive. They include fiscal and tax support policies, concessional loans, financial support through syndicated loans, export credits, and project financing, equity investment, and finally export credit insurance. Article 31 thereof refers to 'concessional loans' which shall 'support enterprises to participate in the export of large-scale complete sets of equipment, project contracting and large-scale investment projects'. In practice, this policy has led to numerous preferential financing by banks or the specifically set-up 'Silk Road Fund' under Article 35 of the Guiding Opinions, as recently established by the Commission in another case <sup>(33)</sup>.
- (80) As the Presidents of Egypt were no doubt aware that the Chinese 'One Belt and One Road' initiative involves heavy State financing through preferential financing and other financial instruments, there was hence a clear act of acknowledgment and adoption at the highest political level of such financing support from the GOC by jointly setting up the SETC-Zone with China.
- (81) The fact that Egypt acknowledged and adopted Chinese preferential financing is further sustained by the text of the 2016 Cooperation Agreement. As laid down in Article 1 of the Cooperation Agreement, Egypt explicitly accepted that China may apply its laws with respect to operators in the SETC-Zone or relating to operations in the SETC-Zone. For that purpose, the Egyptian government was also in agreement that China designated the SETC-Zone as an 'overseas investment area' under its laws. Since 'overseas investment areas' are a vehicle of the One-Road One Belt initiative, referred to in recital 66, and since this initiative uses preferential financing as a tool, such designation in Article 4 of the Cooperation Agreement where China also confirmed that the zone in question 'is entitled to relevant policy support and facilitation provided by the Chinese Government for overseas economic and trade cooperation zones', had the consequence that Jushi Egypt became eligible to ask for preferential lending from Chinese policy banks and preferential export insurance terms. Egypt also signed off to Article 5, according to which the Chinese Government shall also support the Cooperation Zone by 'encouraging relevant financial institutions to provide financing facility for ... investment projects located within the Cooperation Zone, provided that the lending conditions and the loan use requirements are met'. As already found in a previous investigation, the Chinese preferential financing is not operated by clearly prescribed funding programs with strict eligibility criteria, but rather by the identification at the highest level of a number of encouraged industries <sup>(34)</sup>. The official designation of the SETC-Zone in Egypt as overseas investment area for Chinese companies in the aftermath of a common agreement between the two Presidents and the 'encouragement' in Article 5 fits perfectly well into the usual Chinese pattern of activating preferential financing by its policy banks.
- (82) The Chinese preferential measures in favour of the Chinese entities established in Egypt were thus 'identified' and 'made its own' by Egypt.
- (83) Moreover, Egyptian officials were continuously present in the three level implementation mechanism mentioned in recital 45. The task of the implementation mechanism is to 'coordinate and facilitate relevant financial institutions, including but not limited to banking institutions, insurance institutions and various funds which provide credit support for the Cooperation Zone and residential enterprises, and help the Cooperation Zone and residential enterprises to explore more financing channels' under Article 2(V) of the Implementing Agreement. Article 2(4) of the same document mandates

<sup>(32)</sup> TEDA 10 Years Summary Report (2008-2018), p. 94.

<sup>(33)</sup> 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), recitals 409 to 412.

<sup>(34)</sup> Implementing Regulation (EU) 2018/1690, recital 377.

the officials to 'try the utmost efforts to implement all incentive policies of the Chinese and Egyptian laws and regulations in a smooth manner'. This records the shared understanding of Egypt and China that the Chinese side is not providing money at market rates, which Jushi Egypt could receive from international market investors, but proactively provides State incentives, which is another word for benefits or preferences.

- (84) By implementing this provision, Egypt has also expressed its full endorsement of the Chinese preferential financing for the benefit of the GFR producer in the zone. In view of the partial non-cooperation of the GOEs on this crucial aspect of the investigation, the Commission could not establish more details in this respect; however, the evidence available points to the fact that the two governments cooperated as described above for the benefit of the GFR's exporting producer located in the zone.
- (85) It follows from the evidence that the financial contributions in the form of preferential financing from Chinese public bodies to Jushi Egypt can be attributed to the GOE as the government of the country of origin or export under Article 3.1 (a) of the basic Regulation. The evidence showed that the GOE endorsed the preferential financial support to the GFR producer in the zone by the GOC in line with the agreed commitments to develop and support the economic activities within the zone.
- (86) In this context, the Commission further noted that the possibility for governments to provide a financial contribution indirectly through private bodies is neither exogenous to the basic Regulation nor the SCM Agreement <sup>(35)</sup>. Indeed, in cases where governments entrust or direct private bodies into a particular conduct, a key issue is that there must be 'a demonstrable link' between the government act and the conduct of the private body <sup>(36)</sup>. Similarly, in this case, there is a clear and explicit link between the affirmative actions taken by China in order to provide the agreed financial support to the GFR's exporting producer and the GOE.
- (87) Consequently, the Commission considered that the preferential financing granted by the GOC to the GFR's exporting producer in the zone amount to financial contributions by the GOE in the sense of Article 3(1)(i) of the basic Regulation <sup>(37)</sup>.

#### 3.2.4. Benefit

- (88) The Commission then considered whether these financial contributions attributable to the GOE would confer a benefit on Jushi Egypt under Article 3(2) of the basic Regulation. It recalled that this company is operating in Egypt and incorporated under Egyptian law. Hence, it was in principle appropriate to inquire whether the recipient of the financing received better terms than it would have received on the Egyptian financial market. The Commission verified this point and was satisfied that this was the case by a high margin.
- (89) However, the Commission also took into consideration the exceptional circumstances of this case. As noted in recital 44, the exporting producer is ultimately owned by SASAC. Chinese public bodies granted the preferential financing after negotiation and signature of the relevant documents in China, and the recipients received them directly or indirectly through the channel of their parent company in China (inter-company loans). Moreover, as laid down in Article 1 of the Cooperation Agreement, the Egyptian government accepted that those entities receive preferential support, thus including cheap loans in line with Chinese law, i.e. under Chinese conditions. The Chinese public bodies provided such financing in line with Article 5 of the Cooperation Agreement according to the preferential financing policies implemented in China. As explained in recital 42 above, these provisions of the Cooperation Agreement codified prior established practice.
- (90) The Commission therefore concluded that the adoption and acknowledgement by the Egyptian government of the financial contributions from the Chinese public bodies to Jushi Egypt included also the benefit element thereof. It hence established market rates for the preferential financing and calculated the benefit accordingly. It noted that this reasonable approach resulted in lower subsidy amounts than the ones derived from applying a hypothetical Egyptian benchmark.

<sup>(35)</sup> See Article 3(1)(a)(iv) of the basic Regulation and Article 1.1(a)(1)(iv) of the SCM Agreement.

<sup>(36)</sup> Appellate Body Report, US – DRAMS, (WT/DS296/AB/R), para. 112.

<sup>(37)</sup> Incidentally, the facts at issue may also be considered from the angle of Article 16 of the ILC Articles. The close cooperation between the GOE and the GOC not only resulted in acknowledgment and adoption of Chinese acts by the GOE, but also served to potentially circumvent actual and potential duties imposed by the EU on Chinese exports of the product concerned made from Egypt.

### 3.2.5. Specificity

- (91) Concerning the third point on specificity, the Commission examined whether these subsidies were specific as required by Articles 4(2) through (4) of the basic Regulation.
- (92) By way of acknowledgment and adoption, the GOE was the granting authority with respect to the preferential financing. In particular, the GOE has acknowledged and adopted the designation by the GOC of the SETC Zone as an overseas investment territory under Article 4 of the Cooperation Agreement and endorsed the fully-fledged implementation thereof by, inter alia, the GOC's provision of preferential financing.
- (93) These subsidies are only available to Jushi Egypt because the company is operating in the SCZone (of which the SETC-Zone is a part). Consequently, the Commission concluded that they were regional subsidies within the meaning of Article 4(3) of the basic Regulation and falling within the jurisdiction of the granting authority in accordance with Articles 4(2) through (4) of the basic Regulation.

### 3.2.6. Conclusion

- (94) In conclusion, the Commission found that both the subsidies granted to companies operating in the SETC-Zone directly by Egypt (provision of land, tax breaks) as well as the subsidies granted indirectly through the GOC's preferential financing are countervailable under Articles 2-4 of the basic Regulation. The latter are attributable to Egypt by virtue of the acknowledgment and adoption of the GOC's measures by Egypt as its own, for example through the Cooperation Agreement, the close cooperation and the various levels of cooperation mechanisms. The financial contributions also conferred benefits and were specific. The Commission examined all the relevant subsidies in more details below.
- (95) Following definitive disclosure<sup>(38)</sup>, the GOE and the exporting producer contested these findings by making five points. First, it was impossible under international law to attribute sovereign acts of the Government of China to the Government of Egypt. Second, the Commission had disregarded its own basic Regulation, according to which the granting authority must be an entity within the territory of the country of origin or export, not outside. Third, the attribution of Chinese acts to Egypt also violated WTO law, which could not be interpreted in light of Article 11 of the ILC Articles on State Responsibility. Fourth, Article 11 of the ILC Articles was not even applicable to the facts at hand. Fifth, the financial contributions to Jushi did not meet the requirements of specificity under Article 3 of the basic Regulation.
- (96) The GOE and the exporting producer stressed in their first point the principle of sovereignty in international law. From their perspective, an act can only be attributed to a State when that act is vested with authority of that State. Therefore, acts of entities vested with Chinese authority are only attributable to the Chinese State.
- (97) The Commission rejected this claim. The principle of sovereign equality in international law, as enshrined in Article 2(1) of the UN-Charter, prohibits that one State exercises its powers on the territory of another State against the will of the territorial State. However, States are free to authorize action of another State within their territory. Action of the invited State on the territory of the host State may then become attributable to the host State. For example, this rule follows directly from Resolution 3314 (XXIX) of the UN General Assembly of 1974 on the definition of aggression, which is widely regarded as codification of customary international law. Under Article 3 lit. (f) of that Resolution, aggression by one State against another State is defined not only as direct attacks through its own State organs, but also as *'the action of a State in allowing its territory, which it has placed at the disposal of another State to be used by that other State for perpetrating an act of aggression against a third State'*. Clearly, if Cuba had allowed the Soviet Union to attack the United States with Russian missiles from Cuban territory in 1962, this would have triggered the international responsibility of Cuba for acts of aggression against the United States. Accordingly, international law recognizes the possibility to attribute action of an invited State to the host State and even sanctions the host State for doing so, if the action of the invited State harms a third State.

<sup>(38)</sup> 'Definitive disclosure' is the same as 'final disclosure' referred to in Section 1.4 above.



- (98) Second, the GOE and the exporting producer argued that there is no room for attributing conduct of the Chinese government to Egypt under the EU's basic Regulation. The definition of 'government' under Article 2(b) of the basic Regulation was expressly linked to the territory of the granting authority. The words 'within the territory' in that provision were aimed at providing legal security and could not be interpreted away in light of WTO or international law.
- (99) In this respect, the Commission noted that Article 2(b) of the basic Regulation provides: "Government" means a government or any public body within the territory of the country of origin or export.' The Commission agreed that this provision covers action of the government from whose territory the subsidized products are exported to the European Union. This is the case here. The product under consideration is manufactured in Egypt and exported from Egypt to the European Union. The Government of Egypt, as the granting authority, is situated within the territory of Egypt.
- (100) However, Article 2(b) of the basic Regulation does not speak to the separate question which action the government may authorize on its territory and acknowledge as its own. Just like with the notion of 'public body', the notion of 'government' is open to interpretation, taking into account its context and object and purpose. Thus, the actions attributable to the government of the country of origin or export may not only be actions directly emanating from such a government but also actions imputable to such a government. This is further confirmed by the terms in Article 3(1)(a) of the basic Regulation when referring to a financial contribution 'by' a government. For the same reasons, the arguments by the GOE invoking several provisions of the SCM Agreement (e.g. Articles 1.1(a)(1), 13, 18.1(a) and footnote 63) are of no avail. While it is true that the basic Regulation 'must be interpreted, as far as possible, in the light of the corresponding provisions of the SCM Agreement' <sup>(39)</sup>, these provisions do not argue against the proposition that a financial contribution may be provided by another state which the territorial government acknowledges and adopts as its own.
- (101) Consequently, the second claim derived from the alleged strict notion of territoriality under Article 2(b) of the basic Regulation and Article 1.1(a)(1) of the SCM Agreement was rejected.
- (102) The third objection related to the significance of the ILC's Articles on State Responsibility in this respect. In the view of the GOE and of the exporting producer, there is no authority to rely on Article 11 of the ILC Articles since the Appellate Body in *US – Anti-Dumping and Countervailing Duties (China)* <sup>(40)</sup> had only referred to Articles 4, 5 and 8 thereof.
- (103) The Commission rejected this claim. There is no ground for the assertion that only certain principles of customary international law, as enshrined in Articles 4, 5 or 8 of the ILC Articles on State Responsibility, are relevant for the interpretation of WTO rules, but not others. The WTO Appellate Body has always applied the concepts of general customary law, which were relevant to assess the facts at issue. Next to the rules on attribution, the principles of estoppel or good faith are also part of the WTO legal order, for example. In the present case, the GOE has not contested the factual circumstances of having invited, acknowledged and facilitated the implementation of Chinese preferential financing to companies operating in Egypt. For this set of circumstances, interpretative guidance can be drawn from Article 11 of the ILC Articles, which has also been referred to in international investment jurisprudence <sup>(41)</sup>. Article 11 of the ILC Articles is hence a relevant rule of international law within the meaning of Article 31(3)(c) of the Vienna Convention on the Law of Treaties for interpreting the notion of 'by the government' in the SCMA.
- (104) According to the fourth objection, Article 11 of the ILC Articles is not applicable to the facts at issue. Under this Article, a State may assume responsibility for conduct as a successor State following the acquisition of land. A government may also acknowledge private conduct of its citizens as its own. However, the Article does not foresee that a State adopts acts of a foreign sovereign as its own.

<sup>(39)</sup> Case T-300/16 Judgment of the General Court (First Chamber, Extended Composition) of 10 April 2019, *Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission* ECLI:EU:T:2019:235, para 101; also T 67/14 *Viraj Profiles v Council*, judgment of 11 July 2017, not published, EU:T:2017:481, para 88.

<sup>(40)</sup> WT/DS379/AB/R, Appellate Body Report, *US – AD and CVD (China)*, para 309.

<sup>(41)</sup> *Mondev International Ltd. v. United States of America (ICSID Additional Facility Case No. ARB(AF)/99/2*, Award of 11 October 2002, para. 115 and note 47.

- (105) The Commission also rebutted this objection. The title of Article 11 of the ILC Articles is 'conduct acknowledged and adopted by a State as its own', with no qualification as to the author of the original act. This rule follows directly from Resolution 3314 (XXIX) of the UN General Assembly of 1974 on the definition of aggression, which is widely regarded as codification of customary international law. Under Article 3 lit. (f) of that Resolution, aggression by one State against another State is defined not only as direct attacks through its own State organs, but also as *'the action of a State in allowing its territory, which it has placed at the disposal of another State to be used by that other State for perpetrating an act of aggression against a third State'*.
- (106) Next to the UN General Assembly in Resolution 3314 (XXIX) of 1974 (see recital 97 above) also the International Court of Justice has affirmed the freedom of States to adopt foreign acts as their own <sup>(42)</sup>. International practice thus does not support Egypt's view that attribution under Article 11 of the ILC Articles is confined to cases of territorial succession or the Government acknowledging and adopting private wrongful acts on the State's own territory.
- (107) In its fifth objection, the GOE and the exporting producer maintained that the financial contributions by the GOC to entities in Egypt were not specific. They quoted Article 4(2) of the basic Regulation, according to which the recipient of the financial contribution must fall 'within the jurisdiction of the granting authority'. In their view, the wording 'granting authority' does not mean an 'acknowledging and adopting authority'. In addition, in past investigations, the granting authority for Chinese entities was always the Chinese government. The GOE concluded that the financial contribution of the GOC cannot be specific 'since enterprises located in Egypt are not within the jurisdiction of China'.
- (108) The Commission reiterated that it considered the GOE as the granting authority by virtue of its adoption and acknowledgment of the Chinese preferential lending. As Jushi Egypt is operating in the Special Economic Zone, they fell also within the jurisdiction of the GOE. The receipt of this financial support was also specifically restricted to the companies operating in this zone, and therefore specific.
- (109) Even if it was necessary to show that the GOC had exercised jurisdiction over these companies before the GOE could adopt the Chinese conduct on its own, quod non, the result would not change. By signing Articles 1 and 4(1) of the Cooperation Agreement, the GOE had agreed that the companies operating in the Zone would be receiving 'relevant policy support and facilitation provided by the Chinese government for overseas economic and trade cooperation zones' and that developing of the zone would be done in accordance with the laws of 'both countries'. In addition to exercising its own territorial jurisdiction, the GOE therefore also allowed China to provide specific aid for companies only located in 'overseas economic and trade cooperation zones'. Therefore, this claim is rejected.
- (110) In conclusion, the Commission reaffirmed its finding that the GOE acknowledged and adopted as its own the support for capital investment, the loans for Jushi Egypt and the provision of land by TEDA Egypt and thus provided specific subsidies within the meaning of Articles 2-4 of the basic Regulation.

### 3.3. Preferential financing

#### 3.3.1. Loans from policy banks to Jushi Egypt

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

#### ***Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOE***

- (111) As mentioned in recital 8 above, the Commission sent a request for information to the GOE in order to fully investigate the cooperation between the GOE and the GOC to benefit the exporting producer.

<sup>(42)</sup> ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 27 February 2007, para. 414. In that case, the International Court of Justice started from the premise that it was legally possible for the Federal State of Serbia and Montenegro to acknowledge and adopt acts of genocide committed by the organized military forces of the 'Republik Srpska', the de facto Serbian State on the territory of Bosnia Herzegovina during the civil war in that country from 1991 to 1995. It found, though, that such acknowledgment and adoption had not occurred in practice.

- (112) In particular, part of the request for information dealt with the conduct of the State-owned Chinese financial institutions and in particular their conduct as public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law when providing loans to the exporting producer in the framework of the cooperation between the GOC and the GOE.
- (113) To this aim, the Commission asked the GOE information about the overview of the financial sector of China, the role of policy banks such as CDB and EXIM in providing loans or export credits to Jushi Group. The Commission asked the GOE directly or through the GOC to forward the Appendix A to the request of information to the abovementioned banks.
- (114) The GOE did not provide any of the information requested, and it claimed that it was not in possession of any information regarding entities located in China and rules applicable in China and that it had no jurisdiction to request such information. In the view of the GOE, by requesting such information from the GOE, the Commission violated the GOE's rights of defence and the principle of sovereignty of states.
- (115) The Commission disagreed with this view. As stated before, the GOE and the GOC decided to jointly cooperate to set-up the STEC-Zone so that the GOC's subsidies could be attributed to the GOE. The Commission further noted that the GOE together with the GOC have established a management mechanism with three administrative levels via Article 8 of the 2016 Agreement on Egypt Suez Economic and Trade Cooperation Zone between the Ministry of Commerce of the PRC and the General Authority for the Suez Canal Economic Zone. This provision refers to the duty to cooperate with respect to issues affecting the operation of the zone (which may include situations where exports from that zone may be subject to countervailing duties by third countries). This mechanism provided the GOE with the ability to gather the requested information from the GOC. The Commission also considered that, in accordance to international law (Article 27 of the 1969 Vienna Convention on the Law of the Treaties), the GOC was deemed to honour its commitments with the GOE in good faith by replying to the request of information forwarded by the GOE.
- (116) Therefore, the Commission considered that the GOE was in a position to retrieve the requested information from the GOC but failed to do so. Even if some of the requested information could only be provided by the GOC, the Commission considered that the lack of cooperation by the GOE and the GOC in this respect implied that the Commission could only base its conclusions on this aspect of the investigation on the information available. Neither the GOE nor any interested party (including the GOC) disputed the facts on the basis of which the Commission based its assessment (but only the legal characterisation of those facts).
- (117) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.

### 3.3.1.2. EXIM and CDB bank

- (118) In light of the non-cooperation of the GOE and the GOC explained in Section 3.2.1, the Commission resorted to the provisions of Article 28 of the basic Regulation in order to assess the conduct of EXIM and CDB as public bodies.
- (119) In this respect, the applicable test to establish that a State-owned undertaking is a public body is as follows <sup>(43)</sup>: *'What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an*

<sup>(43)</sup> WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US – Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 – 4.10, 4.17 – 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.'

- (120) The Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way. For this purpose, the Commission had to fully rely on facts available due to the refusal of the GOE and the State-owned banks to provide any evidence.

#### **Ownership and formal indications of control**

- (121) As regards ownership and formal indicia of control by the GOC, in previous anti-subsidy investigations <sup>(44)</sup>, the Commission found out that EXIM was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM. According to its Articles of Association, the State directly nominates the management of EXIM. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' (State Council Decree No 282) and other laws and regulations, and it is responsible to the State Council.
- (122) The Articles of Association also mention that the Party Committee of EXIM plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM. The Party's leadership is integrated into all aspects of corporate governance. The Articles of Association further state that EXIM is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State's foreign trade and 'going out' policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.
- (123) Moreover, according to its website <sup>(45)</sup>, EXIM is 'a state-funded and state-owned policy bank with the status of an independent legal entity. It is a bank directly under the leadership of the State Council and dedicated to supporting China's foreign trade, investment and international economic cooperation'.
- (124) With regard to CDB, in previous anti-subsidy investigations the Commission established that this bank is fully owned by the State itself <sup>(46)</sup>. Since no information has been provided indicating otherwise concerning CDB, the Commission maintained the same conclusion in the present investigation.

<sup>(44)</sup> See recitals 183 to 185 of 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) ('Ebikes from China'), recital 91 of Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF from China') and recitals 175 to 177 of Implementing Regulation (EU) 2018/1690 ('Tyres from China').

<sup>(45)</sup> <http://english.eximbank.gov.cn/Profile/AboutTB/Introduction/> accessed on 14 April 2020.

<sup>(46)</sup> See (HRF from China, recital 132, Tyres from China, recital 210).

***Exercise of control in a meaningful manner***

- (125) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of the State-owned bank with respect to its lending policies and assessment of risk, where they provided loans to the GFR industry. Because of the lack of cooperation from the GOE, the Commission resorted to best facts available and in particular to publicly available information and the findings in previous anti-subsidy investigations <sup>(47)</sup>.
- (126) The following regulatory documents have been taken into account in this respect:
- Article 34 of the Law of the PRC on Commercial Banks ('Bank law');
  - Article 15 of the General Rules on Loans (implemented by the People's Bank of China ('PBOC'));
  - The Temporary Provisions on Promoting Industrial Structure Adjustment (Decision No 40 2005 of the State Council) ('Decision No 40');
  - Implementing Measures of the China Banking Regulatory Commission ('CBIRC') for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1);
  - Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4);
  - Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3).
- (127) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives when taking financial decisions, for the following reasons.
- (128) With respect to EXIM, its public policy mandate is established in the notice of establishing the Import Export Bank of China as well as in its Articles of Association.
- (129) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that '*Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State*'. Although Article 4 of the Bank Law states that, '*Commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property*', the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.
- (130) In addition, Article 15 of the General Rules on Loans provides that '*In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas.*'
- (131) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. Decision No 40 Chapter III refers to 'The Guiding Catalogue of the Industrial Restructuring' which is composed of three kinds of contents, namely encouraged project contents, limited projects content and eliminated projects content. According to Article XVII of the Decision, if '*the investment project belongs to the encouragement content shall be examined and approved and put on records according to the relevant national regulations on investment; all financial institutions shall provide credit support according to the credit principles; the self-using equipment imported in the*

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<sup>(47)</sup> See Ebikes from China, recitals 195 to 202, HRF from China, recitals 100-101, Tyres from China, recitals 188 to 192.

*total amount of investment, with the exception of commodities in the Non-exempt Imported Commodities Content of Domestic Invested Projects (amended in 2000) issued by the Ministry of Finance, can be exempt from import duty and import links value-added tax, unless there are new regulations on the non-exempt investment projects content. Other favorite policies on the encouraged industrial projects shall be implemented according to relevant national Regulations’.*

- (132) The Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) <sup>(48)</sup> lists under ‘Category I Encouragement’: ‘XII. Building Materials: [...] 6. Technology development and production of alkali free glass fiber tank kiln wire drawing and high-performance glass fiber and products with an annual yield of 50 000 ton’.
- (133) Projects relating to the production of GFR are therefore part of the ‘encouraged’ category.
- (134) Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations. The Commission also found that the China Banking and Insurance Regulatory Commission (‘CBIRC’) has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as <sup>(49)</sup>:
- approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches.
  - Approval of the CBIRC is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and
  - a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organizational form, etc.
- (135) On that basis, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the GFR industry.
- (136) In addition to the general legal framework, the following legal context applied to the loans provided by EXIM and CDB to Jushi Egypt.
- (137) China-Africa TEDA and EXIM signed a strategic cooperation MOU on 6 November 2009, putting forward a package plan with a total amount of up to 6 billion CNY to carry out overall strategic cooperation in overseas trade and economic cooperation zones.
- (138) On 7 November 2009, six African cooperation zones of economy and trade, among which the SETC-Zone, signed the Joint Meeting Pact between the Chinese Overseas (African) Economy and Trade Cooperation Zones and the China Africa Development Fund (‘CADF’), a subsidiary of CDB.
- (139) Furthermore, in 2013, MOFCOM issued a ‘Notice on Aspects related to the China Development Bank support to the establishment and development of overseas economic and trade cooperation zones’. According to this Notice, MOFCOM and CDB will ‘provide policy support for investment and financing for enterprises and enterprises entering the zone in eligible cooperation zones’. CDB will ‘clarify the basic conditions for priority financing in the cooperation zone in accordance with the requirements of the Ministry of Commerce and the Ministry of Finance’, and CDB will ‘selectively support the projects under construction and cooperation projects that MOFCOM has paid close attention to with the host governments of the cooperation zone.’

<sup>(48)</sup> Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) (Issued by Order No 9 of the National Development and Reform Commission on March 27, 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on February 16, 2013).

<sup>(49)</sup> According to the Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1), the Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4) and the Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3).

- (140) Article 4 of the Cooperation Agreement between China and Egypt 2016 states that *'the Chinese Government identifies the Cooperation Zone as China's overseas economic and trade cooperation zone. The Cooperation Zone ... is entitled to relevant policy support and facilitation provide by the Chinese Government for overseas economic and trade cooperation zones'*. In addition, according to article 5, the Chinese Government shall also support the Cooperation Zone by *'encouraging relevant financial institutions to provide financing facility for ...investment projects located within the Cooperation Zone, provided that the lending conditions and the loan use requirements are met'*.
- (141) Article 2(IV) of the 'Cooperation Agreement on the Establishment of a Management Committee for China-Egypt Suez Economic and Trade Cooperation Zone' implementing the above-mentioned agreement, further specifies that the Management Committee established between the relevant functional departments of Tianjin People's Government and the General Authority for Suez Canal Economic Zone shall *'try the utmost efforts to implement all incentive policies of the Chinese and Egyptian laws and regulations in a smooth manner'* and article 2(V) adds that it shall *'coordinate and facilitate relevant financial institutions, including but not limited to banking institutions, insurance institutions and various funds which provide credit support for the Cooperation Zone and residential enterprises, and help the Cooperation Zone and residential enterprises to explore more financing channels'*.
- (142) The Commission established that all State-owned Chinese financial institutions, including EXIM and CDB, implemented the legal framework set out above in the exercise of governmental functions with respect to the GFR sector. Therefore, they were public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

#### 3.3.1.3. State-owned banks acting as public bodies

- (143) In line with the conclusions reached in recitals above, the Commission decided to use facts available to determine whether those State-owned banks qualify as public bodies.
- (144) In previous anti-subsidy investigations <sup>(50)</sup>, the Commission established that the following banks, which had provided loans to the sampled groups of exporting producers in the investigations at hand, were partially or fully owned by the State itself or by State-held legal persons: China Development Bank, China Construction Bank, Industrial and Commercial Bank of China, Bank of Communications, China Everbright Bank, Postal Savings Bank, China Merchants Bank, Shanghai Pudong Development Bank, China Industrial Bank, Shenyang Rural Commercial Bank, Bank of Shanghai, Ningbo Bank, China CITIC Bank, China Guangfa Bank, China Bohai Bank, Huaxia Bank, Hankou Bank, Hubei Bank, Huishang Bank, Dongying Bank, Bank of Tianjin, Bank of Kunlun, Shanghai Rural Commercial Bank, China Industrial International Trust Limited, Daye Trust Co., Ltd., Sinotruk Finance Co., Ltd. Since no information has been provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.
- (145) The Commission further established, absent specific information from the financial institutions at issue indicating otherwise, GOC ownership and control based on formal indicia for the same reasons as set out in Section 3.3.1.2 above. In particular, based on facts available, managers and supervisors in State-owned banks would appear to be appointed by the GOC and be accountable to the GOC in the same manner as in EXIM.
- (146) With regard to the exercise of control in a meaningful manner, the Commission considered the normative framework analysed in Section 3.3.1.2 above applies to them in an identical manner. Absent any indication to the contrary, based on facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner, so that the analysis on the concrete application of the normative framework in Section 3.3.1.2 above applies to them in an identical manner.
- (147) On that basis, the Commission concluded that the other State-owned banks, which provide loans to the sampled companies, are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

#### 3.3.1.4. Conclusion on State owned financial institutions

- (148) In light of the above considerations, the Commission established that all State-owned Chinese financial institutions that provided loans or financial leasing to the exporting producer or to its group are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

<sup>(50)</sup> See HRF and Tyres cases, recital 132 and recital 211 respectively.

(149) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established that they would be considered entrusted and directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in recitals 131 to 133 below. Thus, their conduct would be attributed to the GOC in any event.

#### 3.3.1.5. Entrustment or direction of private financial institutions

(150) The Commission then turned to the remaining financial institutions. The following financial institutions were considered to be privately owned, based on the findings established in previous anti-subsidy investigations <sup>(51)</sup>, and complemented by publicly available information: China Minsheng Bank, Sumitomo Mitsui Banking (China) Co., Ltd, Standard Chartered Bank, Ping An Bank. The Commission analysed whether these financial institutions had been entrusted or directed by the Government of China to grant subsidies to the GFR sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.

(151) According to the WTO Appellate Body, 'entrustment' occurs where a government gives responsibility to a private body and 'direction' refers to situations where the government exercises its authority over a private body <sup>(52)</sup>. In both cases, the government uses a private body as a proxy to make the financial contribution, and '*in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement*' <sup>(53)</sup>. At the same time, paragraph (iv) does not allow Members to impose countervailing measures to products '*whenever the government is merely exercising its general regulatory powers*' <sup>(54)</sup> or where government intervention '*may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market*' <sup>(55)</sup>. Rather, entrustment or direction implies '*a more active role of the government than mere acts of encouragement*' <sup>(56)</sup>.

(152) The Commission noted that the normative framework concerning the industry mentioned in Section 3.3.1.2 above applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBIRC cover all Chinese-funded and foreign-invested banks under the management of the CBIRC.

(153) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the GFR industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the CBIRC have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the GFR industry.

(154) In addition, the normative framework applying to all banks in China is much wider than only the two regulations governing the CBIRC, as shown in recital 106 above.

(155) With regard to the exercise of control in a meaningful manner, the Commission considered that the normative framework analysed in Section 3.3.1.2 above applies to them in an identical manner. Absent any indication to the contrary, based on facts available, the lack of concrete evidence of creditworthiness assessments is valid for them in the same manner as for the cooperating State-owned bank, so that the analysis on the concrete application of the normative framework in Section 3.3.1.2 above applies to them in an identical manner.

(156) On that basis, the Commission concluded that the other State-owned banks, which provide loans to Jushi Egypt, are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.

<sup>(51)</sup> See HRF and Tyres cases.

<sup>(52)</sup> WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMs) from Korea), Appellate Body Report of 21 February 2005, para.116.

<sup>(53)</sup> Appellate Body Report, DS 296, para. 116.

<sup>(54)</sup> Appellate Body Report, DS 296, para. 115.

<sup>(55)</sup> Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.

<sup>(56)</sup> Appellate Body Report, DS 296, para. 115.



## 3.3.1.6. Credit ratings

- (157) In previous anti-subsidy investigations <sup>(57)</sup>, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund <sup>(58)</sup>, showing a discrepancy between international and Chinese credit ratings, combined with the findings of the investigation concerning the sampled companies. Indeed, according to the IMF, over 90 % of Chinese bonds are rated AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the US. For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category <sup>(59)</sup>.
- (158) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas <sup>(60)</sup>. Fitch for example clearly indicates, where applicable, that such guarantees are a key driver underlying its credit ratings of Chinese companies <sup>(61)</sup>.
- (159) On the basis of publicly available information, the Commission first determined that the State can exercise a certain influence over the credit rating market. According to two studies published in 2016, there were around 12 credit rating agencies active on the Chinese market, a majority of which are State-owned. In total, 60 % of all rated corporate bonds in China had been rated by a State-owned ratings agency <sup>(62)</sup>.
- (160) In previous investigations <sup>(63)</sup>, the GOC confirmed that there were 12 credit rating agencies active on China's bond market, among which 10 domestic rating agencies, including Global Credit Rating Co. Ltd, Shanghai Brilliance Credit Rating & Investors Service Co. Ltd, Golden Credit Rating International Co. Ltd, China Chengxin Securities Rating Co. Ltd, Pengyuan Credit Rating Co. Ltd, Shanghai Fareast Credit Rating Co., Ltd, China Bond Rating Co. Ltd, China Securities Index Co. Ltd, Shanghai Credit Information Services Co. Ltd. There were also 2 Sino-foreign joint venture credit rating agencies, namely China Lianhe Credit Rating Co. Ltd, and China Chengxin International Credit Rating Co., Ltd. In the absence of information to the contrary, the Commission considered that the situation has not changed.
- (161) Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations <sup>(64)</sup>. The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. However, during the investigation period, no foreign credit rating agency had been admitted yet <sup>(65)</sup>. Nevertheless, in the meantime, foreign agencies did establish joint ventures with some local credit rating agencies, which provide credit ratings for domestic bond issues. However, these ratings follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained above.

<sup>(57)</sup> Ebikes case, recitals 238 to 244, Tyres case, recitals 237 to 242.

<sup>(58)</sup> IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

<sup>(59)</sup> Livingston, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*, p. 24.

<sup>(60)</sup> Price, A.H., Brightbill T.C., DeFrancesco R.E., Claeys, S.J., Teslik, A. and Neelakantan, U. (2017). *China's broken promises: why it is not a market-economy*, Wiley Rein LLP, p. 68.

<sup>(61)</sup> For an example, see Reuters. (2016). *Fitch Rates Shougang's USD Senior Notes Final 'A-'* <https://www.reuters.com/article/idUSFit982112>, (accessed on 21 October 2017).

<sup>(62)</sup> Lin, L.W. and Milhaupt, C.J. (2016). *Bonded to the State: A Network Perspective on China's Corporate Debt Market*. Columbia Law and Economics Working Paper No 543, p. 20; Livingstone, M. Poon, W.P.H. and Zhou, L. (2017). *Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry*, in *Journal of Banking & Finance*, p. 9.

<sup>(63)</sup> Ebikes case, recital 241, Tyres case, recital 240.

<sup>(64)</sup> See Tentative Measures for the Administration of the Credit Rating Business Regarding the Securities Market Promulgated by Chinese Securities Regulatory Commission, Order of the China Securities Regulatory Commission [2007] No 50, 24 August 2007; Notice of the People's Bank of China on Qualifications of China Cheng Xin Securities Rating Co., Ltd. and other Institutions Engaged in Corporate Bond Credit Rating Business, Yinfa [1997] No 547, 16 December 1997, and Announcement No 14 [2018] of the People's Bank of China and the China Securities Regulatory Commission on Issues Concerning the Provision of Bond Rating Services by Credit Rating Agencies on the Interbank Bond Market and the Stock Exchange Bond Market.

<sup>(65)</sup> See 'Announcement of PBOC on Issues concerning the Credit Rating Business Carried out by Credit Rating Agencies on the Interbank Bond Market', effective on July 1, 2017.

- (162) Finally, a recent study performed by the PBOC itself confirms the Commission's findings, stating in its conclusions that *'if the investment level of foreign bonds is set to international rating BBB-and above, then the domestic bond investment grade may be rated at AA-level and above, taking into account the difference between the average domestic rating and the international rating of 6 or more notches'* <sup>(66)</sup>.
- (163) In view of the situation described in recitals 137 to 142 above, the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. On this basis, even the company of the exporting producer or its group were awarded a good credit rating by a Chinese rating agency, the Commission concluded that such ratings are not reliable. Those ratings were also distorted by the policy objectives to encourage key strategic industries, like GFR.

#### 3.3.1.7. Benefit and calculation of the subsidy amount

- (164) As noted in recital 85, the Commission considered that, in principle, for the beneficiary located in Egypt, it would be appropriate to inquire whether these recipients of the loans received better terms than they would have received on the Egyptian financial market. The Commission verified this point and confirmed that the amount of subsidisation would be higher when using comparable borrowing rates in Egypt (17,8 %) <sup>(67)</sup>. However, in view of the exceptional circumstances mentioned in recital 86 above, the Commission calculated the amount of the countervailable subsidy taking into account the fact that the recipients obtained the preferential financing in China. For this calculation, the Commission assessed the benefit conferred on the recipients during the investigation period. According to Article 6 (b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company pays on the preferential loan and the amount that the company would pay for a comparable commercial loan obtainable on the market.
- (165) The Commission decided to establish the market rates for the preferential loans of EXIM and CDB with respect to hypothetical benchmarks for Chinese market investors in accordance with Article 6(b) of the basic Regulation. Because of lack of cooperation, no further details were provided by this bank(s). Therefore, the Commission decided to use the same calculation methodology as for other loans denominated in foreign currencies, and issued by Chinese financial institutions in the PRC, and added the risk premium linked to the investment in Egypt as follows.
- (166) The Commission thus first established the credit rating of Jushi Egypt, reflecting the financial situation of the company. The Commission noted that the various companies in the CNBM Group were awarded ratings ranging between AA- and AA+ by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in recitals 137 to 143, the Commission concluded that this rating is not reliable.
- (167) Thus, the Commission considered that the overall financial situation of the Jushi Group corresponds to a BB rating, which is the highest rating that does no longer qualify as 'investment grade'. In view of the existence of revolving loans, the Commission concluded that the use of US B (instead of BB) corporate bonds would be more appropriate to determine the market-based benchmark.
- (168) In line with other loans denominated in foreign currencies and issued by Chinese financial institutions in the PRC, B rated corporate bonds issued in USD were thus used to determine an appropriate benchmark. Jushi Egypt is located in a country which was subject to civil and political unrest, as well as various terrorist attacks at the time when the loans were granted, and thus has a credit risk different from Chinese companies related to the external conditions prevailing in the country itself. As a result, the Commission added a mark-up to the benchmark rate in order to integrate the country risk into the market rate.
- (169) The premium related to country risk was determined based on the OECD classification of country risk for export credits, as well as the corresponding minimum premium rate set by the OECD <sup>(68)</sup>. The country risk for loans provided by EXIM bank was established at 2,37 % and 2,44 % for loans provided by CDB.

<sup>(66)</sup> PBOC Working Paper No 2017/5, May 25, 2017, p. 28.

<sup>(67)</sup> Statistics of the Central Bank of Egypt: Average interest rates on EGP Loans for the investigation period, based on the weighted average interest rates for a sample of banks whose deposits represent around 80 % of total deposits of the banking system and calculated on a monthly basis, see <https://www.cbe.org.eg/en/EconomicResearch/Statistics/Pages/MonthlyInterestRatesHistorical.aspx>

<sup>(68)</sup> For further details see Arrangement on Officially Supported Export Credits, January 2019, TAD/PG(2019)1 and Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits.

- (170) Following final disclosure, Jushi Egypt claimed that the Commission should have used two offers provided by an Egyptian bank in 2013 and 2016 to the company as a benchmark for calculating the benefit on loans. The Commission reviewed those offers, but decided that they were not representative of a comparable commercial loan, which the firm could actually obtain on the market.
- (171) The Commission found that the offers do not provide any description of the actual financial product offered to the company, but refer to an interest rate for the provision of 'credit facilities' in general. As such, it is impossible for the Commission to determine whether the offer actually refers to a loan as such or to other financial products, such as e. g. the opening of a credit line, trade financing (letters of credit, bills of exchange, factoring, etc. ...). Even if the offer were considered to relate to a loan, other crucial information is missing, such as the duration of the alleged loan offered by the bank, and the extent of the credit facilities offered (i.e. the maximum amount that the bank would be willing to extend to the company). In this respect, the Commission noted that the loans provided by CDB and EXIM were long-term loans for major fixed assets projects, amounting to several hundreds of million USD. Therefore, the Commission considered that it could not use the proxy provided by Jushi Egypt.
- (172) Finally, the Commission observed that even if the Commission would take into account the benchmark provided by the company, it would not result in any significant change in the benefit calculation, since the proposed rate of the Egyptian bank was in line with the base rate established by the Commission for the benchmark, corresponding to a USD loan provided by a Chinese bank to a domestic (Chinese) BB-rated customer. Thus, if anything, those loans confirmed that Jushi Egypt indeed benefit from lower interest rates compared to market benchmarks. Therefore, the company's claim was rejected.

### 3.3.2. *Loans from policy banks to Jushi Egypt via the parent company Jushi in China*

- (173) Over the period 2014 – end of investigation period, Jushi (China) provided a series of inter-company loans to Jushi Egypt for a total amount of around 281.5 million USD.
- (174) The Commission found, however, that Jushi (China) had itself financed these intercompany loans via external financing from Chinese financial institutions. In other words, rather than Jushi Egypt getting the loans directly from the Chinese banks, Jushi (China) obtained the preferential financing from these institutions and then allocated the benefit of those loans to its manufacturing activities in Egypt (Jushi Egypt). The loans provided directly by EXIM and CDB, are not in themselves sufficient to provide the total amount of external financing needed to develop the manufacturing activities in the SETC-Zone. Thus, the additional indirect financing through inter-company loans was needed. The Commission could not find a specific bank loan directly linked to the project in Egypt. However, in 2014, Jushi (China) issued a bond to replace various bank loans in order to improve its debt structure. This bond, which makes various references to the capital needs for the project in Egypt, confirms that Jushi (China) was in need of external financial assistance to assist its manufacturing activities in Egypt. Therefore, the Commission considered that the underlying preferential loans channelled through Jushi (China) are also attributable to the GOE in the same way as the direct loans provided to Jushi Egypt by the Chinese financial institutions.
- (175) Since all of these loans can in essence be assimilated to loans provided by the GOC to a Chinese company, which then allocates the benefits to its manufacturing activities elsewhere, the Commission decided to treat these loans as any other domestic Chinese loan to a Chinese GFR producer. In this context, as mentioned in recital 128 above, the Commission found that all State-owned Chinese financial institutions that provided loans to Jushi (China) and Jushi Egypt were public bodies in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a) (i) of the basic Regulation and in accordance with the relevant WTO case-law.
- (176) The Commission then calculated the amount of the countervailable subsidy. In this respect, the Commission noted that the nominal interest rate charged by Jushi (China) to Jushi Egypt was 7,5 %. However, none of the financing provided to Jushi (China) had such a high interest rate. In fact, the average interest rate charged to Jushi (China) during the investigation period amounted to around 4 %. The Commission thus compared the average interest rate that Jushi (China) pays on the outstanding amount of the intercompany loan during the investigation period with the amount that the company would have to pay for a comparable commercial loan obtainable on the market.

- (177) In order to take into account the increased risk exposure of the banks highlighted by the existence of revolving loans, the Commission thus decided to move down one notch in the risk rating scale and to use US B (instead of BB) corporate bonds to determine the market-based benchmark.
- (178) All the elements concerning this financing described above in this section clearly show that Jushi (China) allocated all the benefits from the preferential financing received from the Chinese financial institutions to Jushi Egypt. For all these reasons the benefit thus calculated was attributed to Jushi Egypt.
- (179) Following final disclosure, Jushi Egypt argued that the Commission should not have downgraded Jushi Egypt's credit rating from AA to B based on the fact that Jushi Egypt did not honour its repayment schedule to its parent company or that, in some instances, Jushi Egypt's parent company repaid loans on its behalf. The fact that Jushi Egypt's corporate group decided that it was better for another entity in the group to bear the costs so as to preserve cash flow in another entity does not indicate that this other entity would not have honoured its obligation had this obligation been towards a banking institution.
- (180) First, the Commission noted that it did not find any credit rating awarded by any external party to Jushi Egypt, and that Jushi Egypt did not provide any evidence to this end either. Jushi Egypt therefore never had an 'AA' credit rating as a starting point. The Commission thus had to determine Jushi Egypt's credit rating using the facts available in the case. In view of the significant amount of the intercompany loans from the parent company, as well as the fact that Jushi Group had operated as a guarantor for the loans from CDB and EXIM, the Commission determined that Jushi Egypt's credit rating was closely linked to the rating of its parent company, which had been set at 'BB', as mentioned in recital 168 above. This BB credit rating was thus the starting point for the Commission.
- (181) Second, as explained in recital 178 above, the Commission decided to move down one notch in the rating scale, i.e. from BB to B, in view of the lack of repayment of its liabilities over the years. Indeed, the Commission noted that although the loans to CDB and EXIM were repaid according to schedule, the total liabilities of the company actually increased over the years. As such, Jushi Egypt replaced external debt by intragroup debt, but did not actually honour its liabilities towards the banking institutions itself. Contrary to the statements of Jushi Egypt, there are also indications that the company would not have been able to honour its obligations if all of its debtors had been external banking institutions. For example, although the company was loss-making in the years 2015 and 2016, and had a negative equity in 2016, it still made large capital repayments to CDB, totalling 54 million USD (around 546 million EGP) in these years. The company would thus not have been in a position to honour its external obligations without financial support from the parent company.
- (182) In view of the above considerations, the Commission rejected these claims.
- (183) All subsidies found were established for the total turnover of the company. The subsidy amount was then allocated to the turnover of the product concerned sold to the Union.
- (184) The subsidy amounts found for preferential financing through loans from Chinese policy banks, directly or via the parent company Jushi (China), amounted to 6,46 % for Jushi Egypt.

### 3.3.3. *Support for capital investment*

- (185) In addition to the direct loans and intercompany loans, Jushi Egypt needed to cover its financial needs also by increasing its capital.
- (186) Previous investigations found that substantial subsidies were received at the level of the parent companies of Chinese groups to support foreign investment under the Belt & Road Initiative, in the form of grants, preferential financing and equity injections. This was notably the case in the recently concluded anti-subsidy investigation on Tyres ('the Tyres case')<sup>(69)</sup>.

<sup>(69)</sup> Implementing Regulation (EU) 2018/1690, Section 3.7.

### 3.3.3.1. Legal basis

- 13<sup>th</sup> Five-Year Plan for the Development of Foreign Trade, issued by MOFCOM, 26 December 2016;
- Guiding Opinions of the State Council on the Promotion of International Production Capacity and Equipment Manufacturing Cooperation, issued in 2015 ('Guiding Opinions');
- Building Materials Industry Development Plan 2016-2020, Ministry of Industry and Information Technology, GXBG [2016] No 315;
- The 13<sup>th</sup> Five-Year Plan for Fibre and Composite Materials Industry;
- Made in China 2025, State Council, July 7, 2015.

### 3.3.3.2. Application of the provisions of Article 28(1) of the basic Regulation in relation to the Jushi group

- (187) In the request for information referred to in recital 8, the Commission requested information from the Jushi Group, inter alia, concerning any changes in the capital structure, including capital increases and changes in shareholder rights, Jushi Egypt and a number of direct and indirect parent companies belonging to the Jushi Group, itself member of the China National Building Materials Group ('CNBM Group').
- (188) The investigation revealed that China National Building Material Co. Ltd. ('CNBM') is a Chinese state-owned enterprise owned directly and indirectly as to 41,27 % by China National Building Material Group Co., Ltd., which is in turn wholly owned by SASAC. CNBM is the biggest shareholder with a 26,97 % stake in China Jushi Co., Ltd. ('China Jushi'), which is the sole shareholder of Jushi Egypt <sup>(70)</sup>.
- (189) Initially, Jushi Egypt provided very limited information in respect of the direct and indirect parent companies.
- (190) As a consequence, on 18 March 2020 the Commission sent a letter to Jushi Egypt identifying the shortcomings, and informing Jushi Egypt about the possible application of the provisions of Article 28 of the basic Regulation. Among others, the Jushi Group did not provide the information requested concerning the rationale for the changes in capital structure and information about how the capital increases were financed for Jushi Egypt, the Jushi Group, China Jushi Co. Ltd. and CNBM.
- (191) In response to this letter, Jushi Egypt provided a submission addressing some of the shortcomings, in particular how the changes in the capital structure were reflected in the financial statements of the various group companies. However, the information provided in respect of the involvement of government and non-government entities (e.g. state-owned commercial banks) were mere statements without supporting evidence, and the information concerning the underlying reasons for the changes and the financial details was very limited.
- (192) However, as stated above, the significant state ownership, in CNBM is significant. In addition, according to publically available information on the CNBM website <sup>(71)</sup>, the whole management team of CNBM holds party functions such as Secretary of the Party Committee, Deputy Secretary of the Party Committee or Party Committee Standing Member. Furthermore, Mr Cao Jianglin, Executive Director of CNBM and Party Committee Standing Member also serves as Chairman of China Jushi since 2002 <sup>(72)</sup>. Therefore, the statement that all decisions concerning the capital increases of the companies concerned were made independently by the relevant board of directors without any involvement of government or other non-governmental entities in the process is not credible given the state ownership and party involvement of the management.
- (193) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.
- (194) The Commission thus concluded that it had to rely partially on facts available for its findings concerning the Jushi Group, China Jushi Co. Ltd. and CNBM.

### 3.3.3.3. Findings of the investigation

- (195) During the investigation period, Jushi Egypt benefited from grants channelled by CNBM, a State-controlled entity, through equity injections, specifically via paid-in capital.

<sup>(70)</sup> <http://cnbm.wsfg.hk/index.php?SectionID=FinancialReports&PageID=2019&Language=eng> (last viewed on 20 November 2019).

<sup>(71)</sup> <http://www.cnbm.com.cn/EN/0000001600070008002/>, accessed on 24 April 2020.

<sup>(72)</sup> Annual Report 2019, CNBM.

- (196) In 2012 there was a significant shareholders' contribution of 42.6 million USD for the funding of Jushi Egypt. Since then, the capital of Jushi Egypt significantly increased up to 162 million USD until the investigation period. At the end of the investigation period the capital of Jushi Egypt was approximately four times larger than in 2012.
- (197) Jushi Egypt is fully owned by Jushi Group, which is fully owned by China Jushi. The principal shareholder of China Jushi is CNBM holding, which continuously held more than 25 % of its shares since 2010.
- (198) In parallel to the increase of capital in Jushi Egypt, the participation of CNBM in the capital structure of China Jushi has increased in a similar order of magnitude. Specifically, CNBM increased sixfold its paid-in capital contribution into China Jushi from 2011 to the end of 2018, from 190 million CNY (30,2 million USD) in 2011 to 944 million CNY (140,9 million USD) in 2018.
- (199) This similar trend and magnitude in the increase of capital in both Jushi Egypt and China Jushi strongly suggests that CNBM raised funds in order to increase the capital of Jushi Egypt through China Jushi up to the investigation period.
- (200) In addition to the paid-in capital increases, there have been substantive amounts of funds transferred from CNBM to China Jushi and Jushi Group through other types of capital accounts.
- (201) In order to determine the nature of the transfers and the circumstances in which the ownership capital within the companies concerned evolved, the Commission sought to have access to the relevant information originated in CNBM. However, as explained in Section 3.3.3.2, Jushi Egypt did not fully cooperate with the investigation and it did not provide the necessary information. In the absence of this information and following the application of the provisions of Article 28 of the basic Regulation, the Commission had to rely partially on facts available for its findings. In particular, the Commission had to use facts available in order to identify the source of financing of the capital provided by CNBM to Jushi Egypt, inter alia, via China Jushi.
- (202) To reach this conclusion, the Commission established the existence of a clear commitment from CNBM to invest overseas in encouraged industries. In this respect, CNBM advertises itself as an *'active practitioner of the Belt & Road Initiative'* in its annual report, on its website, and on site in the plants. For example, it *'undertook 312 cement projects in 75 countries and regions globally, more than 60 fiberglass projects, the implementation of 33 investment projects, the construction of 5 overseas warehouses, operated 14 overseas building materials supermarket chains, and managed more than 30 factories globally'* <sup>(73)</sup>.
- (203) More specifically, within the context of GFR, CNBM established Jushi Egypt in 2012, a producer of GFR in Egypt, and a subsidiary of the Chinese exporting producer Jushi. In the subsequent years, several important investment projects were undertaken to expand the production capacity of Jushi Egypt.
- (204) Furthermore, Jushi Group has established a number of overseas production and trading subsidiaries in South Africa, South Korea, Italy, Spain, France, Canada, India, Singapore, Japan, USA and Hong Kong. In 2016, the CNBM Group raised over 5 billion CNY (USD 747,38 million) for its globalization strategy in the 13<sup>th</sup> five years plan (2016 to 2020), among which the Egyptian projects mentioned above, as well as a USD 300 million investment in a factory in the USA, for production starting in 2018 <sup>(74)</sup>. In India, the plan is to put up a manufacturing facility with a capacity of 100 000 tonnes by mid-2020.
- (205) All of these overseas projects fit within the wider context of China's 'going out' policy. In this respect, Song Zhiping, the Chairman of CNBM, stated for example: *'The signing of the Jushi US project is a milestone in the strategic development of China Jushi's globalization, and in the meantime a critical step forward in its pursuit for higher goals. It also has a referential significance for the globalization of CNBM and even of China's building materials industry as a whole'*.

<sup>(73)</sup> Information panel at the entrance of the Jushi Egypt plant.

<sup>(74)</sup> China Jushi Online News Center, as well as article 'Jushi plans to establish a factory in India', JEC Composites News, 4 Aug 2016, <http://www.jeccomposites.com/knowledge/international-composites-news/jushi-plans-establish-factory-india> (last accessed on 3 February 2020).

- (206) Furthermore, GFR is also an encouraged industry under the Made in China 2025 initiative <sup>(75)</sup>, and thereby eligible to benefit from considerable State funding. A number of funds had been created to support the Made in China 2025 initiative and hence indirectly the GFR industry such as the National Integrated Circuit fund, the Advanced Manufacturing Fund and the Emerging Industries Investment Fund <sup>(76)</sup>.
- (207) GFR is often referred to under the umbrella of 'new materials'. The Made in China 2025 Roadmap <sup>(77)</sup> 10 strategic sectors, which are the key industries for the GOC. It describes in Sector 9 'new materials' and its subcategories, including advanced fundamental materials (point 9.1), key strategic materials (point 9.2) including high performance fibres and composite materials, new energy materials <sup>(78)</sup>. New materials thus benefit from the advantages stemming from the support mechanisms listed in the document, including, among others, Financial Support Policies, Fiscal & Taxation Policy, State Council Oversight and Support <sup>(79)</sup>.
- (208) For these key industries, the plan 'Made in China 2025' explicitly mentions in its Chapter 3.9 that China will:
- *'Support enterprises to perform mergers, equity investment and venture capital investment overseas.*
  - *Actively participate in and promote international industrial cooperation and implement major strategic plans like the Silk Road Economic Belt and the 21st-Century Maritime Silk Road to accelerate building interconnected infrastructure with surrounding countries and deep industrial cooperation.*
  - *Make use of "opening up" along borders and build a number of overseas manufacturing cooperation parks in eligible countries.*
  - *Encourage the overseas transfer of high-end equipment, advanced technology and strong industry'.*
- (209) In another interview, Song Zhiping mentioned that from the enterprise point of view, CNBM paid special attention to the national 'Belt and Road' related policies, and that 'Belt and Road' *'is really a once-in-a-lifetime opportunity for China's building materials group'*. He also pointed out that 'going out' is linked to financial cooperation, it only works when *'we combine finance, sovereign fund cooperation, buyer's credit, financial leasing and other ways, have a mutual cooperation "going out"'*. Along the same line, Song Zhiping further stated that *'International capacity cooperation must be combined with the "Belt and Road" national policy, especially the country's financial policy. We used to make simple investments, borrowing money and lending investments, and that's not going to be massive. I would like to adopt a model similar to that of China's Guoxin Holdings, where companies contribute 10 per cent and the state foreign exchange contributes 90 per cent. We need to change our old reliance on loans and look for new financing business models and organizational models. I think we should give full play to the country's current strong financial advantages, raise the establishment of building materials investment funds, mobilize more capital to participate in investment, to support building materials enterprises to "go out"'*.
- (210) This vision is supported by the Chinese government, as can be seen in a speech given by Xiao Yaqing, director of the State Council's SASAC at a conference organized by CNBM: *'central enterprises are the backbone of the national economy, and should be closely integrated with the "Belt and Road" national strategy, making use of advantageous production capacity, highlighting key areas, and promoting international production capacity and equipment cooperation. They take the lead in creating a new business card for the "going out" of the country .... In recent years, China Building Materials and China Materials Group have accelerated the pace of "going out", they have achieved outstanding results, and restructuring of the group to lead the internationalization of China's building materials industry is of great significance.... After the reorganization, the new company's initial planned investment projects in countries along the Belt and Road, will amount to an investment of more than 90 billion yuan'* <sup>(80)</sup>.

<sup>(75)</sup> [http://www.gov.cn/zhengce/content/2015-05/19/content\\_9784.htm](http://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm)

<sup>(76)</sup> See US-China Economic and Security Review Commission: The 13<sup>th</sup> Five-Year Plan, page 12.

<sup>(77)</sup> <https://www.cae.cn/cae/html/files/2015-10/29/20151029105822561730637.pdf>

<sup>(78)</sup> See Made in China 2025 Roadmap. p. 142, 152.

<sup>(79)</sup> See Made in China 2025, Chapter 4: Strategic Support and Supply.

<sup>(80)</sup> 'Xiao Yaqing: to build a "going out" national new business card after the reorganization of the enterprise', Source: Sina Finance Author: Sina Finance Published: 2016-08-29.

- (211) The investigation revealed that China National Building Material ('CNBM') is a Chinese state-owned enterprise owned directly and indirectly as to 41,27 % by CNBM Parent, which is in turn wholly owned by SASAC. CNBM owns 26,97 % stake in China Jushi Co., Ltd., which is the sole shareholder of Jushi <sup>(81)</sup>.
- (212) Therefore, CNBM Building is a Chinese State-owned enterprise owned directly and indirectly by CNBM Parent, which is in turn wholly owned by SASAC. SASAC is the key vehicle through which the Chinese government controls in several ways State-owned enterprises as a means to implement its government policies and plans rather than to follow a market logic in its business operations <sup>(82)</sup>. Without prejudice to the conclusion on the public body nature of CNBM within the meaning of Article 3 of the basic Regulation, on the basis of all of the above evidence it can be concluded that CNBM and the Jushi group at large pursue industrial and governmental policies including with regard to the 'Belt and Road' initiative and the 'going out' policies in the production and export of the product concerned.
- (213) It is in this context that CNBM received a financial contribution from the government in order to implement these policies, including to fund its investment in Egypt for the production of the product concerned. Due to the lack of complete cooperation of Jushi Egypt on this point, the Commission was unable to identify the actual source of financing and substantiate in detail whether this financial contribution was made by SASAC or by the Silk Road Fund ('SRF') as the vehicle to implement the 'Belt and Road' strategy. However, on the basis of the facts available pursuant to Article 28 of the basic Regulation the Commission concluded that both SASAC <sup>(83)</sup> and the SRF <sup>(84)</sup> are considered public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation when providing the financial contribution to CNBM. In any event, even if they would not constitute public bodies, both SASAC and the SRF would be considered as entrusted and directed by the government to carry out governmental policies and functions in accordance with Article 3(1)(iv) of the basic Regulation <sup>(85)</sup>.
- (214) Likewise due to the lack of cooperation, based on all the above evidence on the funding under the 'Belt and Road' initiative of projects outside of China including Egypt, as well as on the findings in the Tyres case, the Commission concluded that CNBM received a financial contribution in the form of grants that were then used for successive capital contributions to increase the capital available to Jushi Egypt for its operations in Egypt.
- (215) In the absence of further evidence provided by CNBM, and based on the publicly available evidence, the Commission decided to countervail the successive capital increases of Jushi Egypt as equity injections supported by the State, with the aim of setting up and expanding the production facilities of CNBM in Egypt. Such support would equally fall under the items agreed upon between China and Egypt in the Cooperation Agreement to set up the SETC-Zone, attributed to Egypt for the same reasons explained in recital 91 above and can thus be allocated to the products exported from Egypt.

#### 3.3.3.4. Benefit

- (216) The Commission then analysed whether the financial contribution provided by GOC via SASAC and/or the SRF conferred a benefit to Jushi Egypt. Once again, due to the non-cooperation of Jushi Egypt, the Commission had to base its findings on the provisions of facts available according to Article 28 of the basic Regulation.
- (217) The body of evidence in the subsection above has shown that the mandate and objective of both SASAC and the SRF is to implement governmental policies and plans, including by providing financial support and funding for the encouraged sectors among which GFR in order to enact the going-out strategy. SASAC and the SRF do not follow market principles and behaviour when providing funding, but operate to implement the respective government policies. A notable example of their operations delinked from a market perspective was found in the Tyres case, where the SRF had provided a grant of the group parent company for an acquisition of a subsidiary in the EU.

<sup>(81)</sup> <http://cnbm.wsfg.hk/index.php?SectionID=FinancialReports&PageID=2019&Language=eng> (last viewed on 20 November 2019).

<sup>(82)</sup> See among others the Commission Staff Working Document on significant distortions in the economy of the People's Republic of China for the purposes of trade defence investigation, SWD(2017) 483 final/2 of 20.12.2017, available at:[https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

<sup>(83)</sup> The evidence substantiating the conclusion on the public body nature of SASAC can be found, inter alia, in Section 5 of the Commission Staff Working Document SWD (2017) 483, see previous footnote.

<sup>(84)</sup> The evidence substantiating the conclusion on the public body nature of the SRF can be found, inter alia, in the Tyres case, Implementing Regulation (EU) 2018/1690, in particular Section 3.7 recitals 341 through 360 of that Regulation.

<sup>(85)</sup> See also recital 358 of the tyres Regulation.



Furthermore, in the Tyres case the Commission established that such projects followed a similar pattern <sup>(86)</sup>. It is thus reasonable to assume that CNBM, as a major central SOE, would follow the same pattern and would benefit from similar subsidies.

- (218) The Commission further noted that the amount of successive parallel capital increases of Jushi Egypt received via China Jushi corresponded approximately to the amount of the funding gap for the investment project in Egypt left after the funding via the preferential financing. As explained above in recitals 171 to 174, the successive magnitude and scale of capital increases of CNBM into Jushi Group and China Jushi substantially mirrored the capital increases into Jushi Egypt precisely to close this funding gap. This was fully coherent with the purpose of the functioning and funding of SASAC and the SRF.
- (219) Based on the evidence on file and in accordance with Article 28 of the basic Regulation, the Commission concluded that the financial contribution provided by SASAC and/or the SRF conferred a benefit within the meaning of Article 3(2) of the basic Regulation.

#### 3.3.3.5. Calculation of the subsidy amount

- (220) As explained in Section 3.3.3.2 above, Jushi Egypt did not provide a full reply to the request of information. Therefore, it was impossible to verify the subsidies received at the level of the parent company in connection with the group's foreign investments related to the product concerned, and to determine an accurate benefit amount.
- (221) The Commission therefore resorted to facts available in application of Article 28 of the basic Regulation to determine the subsidy amount conferred by the financial contribution by SASAC or the SRF in the form of grants. As explained above, the Commission found parallel capital increases in the various group companies in China and ultimately channelled to Jushi Egypt in the same magnitude and over the same period. Because CNBM received these funds from SASAC and/or SRF earmarked for the investment in Egypt under the Belt and Road Initiative and the going out policy, it was used simply to channel those funds all the way down to Jushi Egypt without keeping any benefit to itself as this would be inconsistent with the earmarking. The fact that the amount of the funding gap in the Egyptian investment of Jushi Egypt by and large corresponded to the amount of the capital increases further confirms this.
- (222) In order to determine the amount of funds channelled by CNBM to Jushi Egypt as equity injections, the Commission analysed and traced the successive increases in equity in the companies concerned, namely Jushi Egypt, Jushi Group and China Jushi of which CNBM is the main shareholder.
- (223) When following the trail of funds, the Commission examined not only the increases in paid-in capital, but also the increases in other equity instruments. Specifically, substantive amount of funds were discovered in the form of capital surpluses in the intermediate companies China Jushi and Jushi Group. With regard specifically to these intermediate companies, the Commission noticed that in certain equity increases the amount of funds transferred to these companies were larger than the amounts the company would later register under paid-in capital. The company would therefore have access to these funds without the expected change on the share of company's ownership. By taking into consideration the equity injections via paid-in capital and the amounts found under other type of capital accounts, such as capital surplus, the Commission could determine that more than 87 % of the equity of Jushi Egypt could have been imputable to CNBM. The total amount of the benefit to the recipient using this approach would therefore be (142,8 million USD).
- (224) However, due to the limited access to more detailed information, the Commission could not determine the exact origin of all these funds, and it thus could not establish with a sufficient standard of likelihood that the all amounts contained in other capital accounts of Jushi Egypt, were channelled and transferred by CNBM.
- (225) Therefore, the Commission adopted a more prudent approach, focusing exclusively on the evolution of the paid-in capital amounts that matched the standard of likelihood as to their source from CNBM. More specifically, the Commission simply took into consideration the increase of paid-in capital of CNBM in China Jushi since 2011 and parallel development of capital increases into Jushi Egypt since 2012. As a result, the Commission considered that 51 % of the equity in Jushi Egypt (or 81,8 million USD) was provided by CNBM through the financial contribution received by SASAC or the SRF.

<sup>(86)</sup> See Implementing Regulation (EU) 2018/1690.

- (226) Once the full amount of the grants were established, the Commission proceeded to calculate the benefit conferred to Jushi Egypt during the investigation period according to Articles 6 and 7 of the basic Regulation. The benefit of the grants via equity increases should be allocated to the IP considering the amortization period of equity, which is not a fixed asset and therefore would normally be subject to the allocation provisions under Article 7(4) of the basic Regulation.
- (227) Due to the absence of cooperation from Jushi Egypt in replying to the request for information, the Commission did not have any further information on any specific agreement concerning the use of the grant linked to the equity investments with SASAC or the SRF. In the tyres case, the Commission amortised the grant amount over a period of seven years because this was in line with the average investment duration of SRF investment and with another concurring loan taken out for that transaction<sup>(87)</sup>. However, in the absence of cooperation and specific shareholders agreement in this case, the Commission decided to follow a conservative approach and decided to use the average useful life of the assets of Jushi Egypt on the assumption that the funding was used to fill the gap for the investment project in line with Article 7(3) in conjunction with Article 7(4) of the basic Regulation, which provides that a different amortisation period can be used if the circumstances so justify. On this basis, the Commission used an amortization period of 12 years.
- (228) All subsidies found were established for the total turnover of the company. The subsidy amount was then allocated to the turnover of the product concerned sold to the European Union.
- (229) This resulted in a subsidisation amount of 2,01 %.

#### 3.3.3.6. Comments on the support for capital investment

- (230) Following final disclosure the exporting producer claimed that the Commission failed to demonstrate that the equity is attributable to CNBM and more specifically, that it did not originate from China Jushi or Jushi Group's profits. In this line the company also claimed that the Commission failed to explain why funds were given by CNBM every year to China Jushi since 2010 but that funds only passed on to Jushi Group and Jushi Egypt during some of those years. Similarly, it argued that the Commission failed to establish that the support for capital investment is attributable to any public body and, as a result, it cannot constitute a subsidy. Finally, the exporting producer requested that, should the Commission maintain its approach, it must disclose how it considers that there is any pattern between the support for capital from CNBM to China Jushi and that between Jushi Group and Jushi Egypt.
- (231) Firstly, concerning the origin of the funds, the Commission noted that the company did not provide any additional evidence to substantiate the claim. The Commission nonetheless, analysed further the accounts of the concerned companies to identify whether increases in equity were sourced by their profits. The Commission observed that none of the increases in equity were originated from the profits or retained earnings accounts. The Commission, nonetheless, identified that certain equity increases of China Jushi taking place in the years 2012 and 2016 could be attributed to capital reserves. However, the company failed to provide information on the origin of the funds of the capital reserve accounts. The Commission therefore concluded that undistributed profit or retained earnings were not the attributable source of the funds used for the equity increases in Jushi Egypt since 2012.
- (232) Secondly, concerning the moment when the funds were transferred to Jushi Group and Jushi Egypt, the Commission noted that the exporting producer failed to provide any further evidence to substantiate or explain CNBM equity increases scheduling. Similarly, the Commission noted that in addition to the time lags on equity transfers from company to company, equity increases also responded to the different capital requirements in Jushi Egypt linked to the investments over the period analysed.
- (233) Thirdly, concerning whether the origin of the funds supporting the capital increase can be attributable to a public body, the Commission noted in recital 215 that, even if they would not constitute public bodies, both SASAC and the SRF would be considered as entrusted or directed by the government to carry out governmental policies and functions in accordance with Article 3(1)(iv) of the basic Regulation.

<sup>(87)</sup> See Tyres case, recital 418.

- (234) Finally, regarding the disclosure on the establishment of the pattern between the support for capital from CNBM to China Jushi and between Jushi Group and Jushi Egypt, the Commission noted that this information was provided. Recitals 186 above to 231 above explained in detail the findings and the methodology used to calculate the subsidy amount. Similarly, in the specific disclosure, the exporting producer was provided with complete information concerning the evidence at the Commission's disposal and its analysis regarding the capital support from CNBM to China Jushi and for Jushi Group to Jushi Egypt.
- (235) Following all the above-mentioned arguments, the Commission rejected these claims.
- (236) The exporting producer also claimed that the Commission failed to establish the amount of the benefit and must demonstrate why each provision of equity capital is not in line with the usual investment practice.
- (237) The Commission recalled that during the investigation the case team sought to have access to the relevant information in CNBM. However, as explained in Section 3.3.3.2, neither CNBM nor the Jushi Group cooperated fully with the investigation and the Commission had to rely on facts available for its findings. Moreover, recitals 218 to 221 described how the benefit is established. In essence, it explains that SASAC and SRF did not follow market principles when providing funding, but operated to implement the respective government policies. The Commission therefore rejected the claim.
- (238) The exporting producer further argued that it cannot be considered that all funds provided by CNBM originated from public bodies since CNBM is a publicly listed company with several other means of raising funds. As a result, the Commission cannot conclude that the entirety of the alleged capital support from CNBM to China Jushi constitutes a subsidy. Therefore, the company argued that the benefit cannot be higher than the subsidy rate found for CNBM in China in the investigation on Glass Fibre Fabrics Regulation <sup>(88)</sup>, multiplied by the amount of capital support. The exporting producer also claimed that the Commission failed to calculate the benefit as it did not consider that the support for capital investment from CNBM came in exchange of shares and, thus, dividends.
- (239) First, the Commission noted that the company has not provided any additional evidence to substantiate the claim. Similarly, the Commission recalled that neither CNBM nor the Jushi Group cooperated fully with the investigation and the Commission had to rely on facts available for its findings. In this respect, the Commission recalled that the subsidy rate found for CNBM in Section 3.4 and 3.8 of the glass fibre fabrics Regulation was based on loans and grants visible in the publicly available audit report of CNBM, and thus it limited its findings in a very prudent manner only to certain subsidies within specific subsidy schemes, which could be easily identified and which are not related to the subsidy scheme at hand in this investigation. Therefore, if anything the Commission erred on the side of caution.
- (240) Finally, the Commission noted that it did not analyse whether the funds transferred from CNBM were done in exchange of shares. In fact, no evidence was provided that indeed CNBM received shares in exchange. On the contrary, the investigation established that CNBM received financial contributions from the government in order to implement its policies, and that these financial contributions were received in the form of grants that were then used for capital contributions to finance the operations of Jushi Egypt.
- (241) Following all the above-mentioned arguments, the Commission rejected the claim.

<sup>(88)</sup> Commission implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 1).

### 3.4. Provision of goods for less than adequate remuneration

#### 3.4.1. Provision of power for less than adequate remuneration

- (242) No benefit was found for the provision of electricity for less than adequate remuneration since electricity rates are set at national level in Egypt, and the exporting producer pays the usual rate for industrial users within a certain voltage range.
- (243) No benefit was found for the provision of gas for less than adequate remuneration. Rates for gas are set for certain industrial sectors, but the exporting producer falls within the residual category of industrial users, which does not benefit from the lowest rate. Hence, there is no specificity, and no benefit.

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

##### 3.4.2.1. Purchase of land by Jushi Egypt

###### (a) Legal basis

- (244) The legal bases of this programme are:
- Law No 83/2002 on Economic Zones of a Special Nature ('Law 83/2002');
  - Decree of the President of the Arab Republic of Egypt on Law No 27/2015 Amending some Provisions of Law of Economic Zone of Special Nature issued by Law No 83/2002 ('Law 27/2015');
  - Law No 8 of 1997 On Investment Guarantees and Incentives ('Law 8/1997');
  - Investment Law as Enacted by Law No 72 of 2017;
  - The Prime Minister's Draft Resolution No. (2310) of 2017 Concerning issuing the Executive Regulations of Investment Law Issued by virtue of Law No 72 of 2017.
- (b) Partial non-cooperation and use of facts available in relation to TEDA Investment Co. Ltd. – application of the provisions of Article 28(1) of the basic Regulation in relation to the GOE
- (245) The Commission sent to the GOE a request for information intended for Tianjin TEDA and asked information necessary to assess the involvement of the GOE or GOC in the control of the company. The Commission considered the request for information necessary in light of the role that the company has had in the in developing and construct the SETC-Zone, as explained in recital 34 above.
- (246) In replying to the request for information, TEDA only provided data concerning Egypt TEDA Investment Co., Ltd. which had been already submitted as a reply to the initial questionnaire.
- (247) However, the Commission ascertained that very limited information concerning Tianjin TEDA was provided.
- (248) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation.
- (249) Therefore, the Commission informed the GOE that it might have to resort to the use of facts available under Article 28 of the basic Regulation when examining the existence and the extent of the alleged subsidisation for companies located in the SETC-Zone. The GOE objected and stressed that it had fully cooperated with the Commission and that it could not provide information about a company outside of its jurisdiction.
- (250) However, the Commission considered that the information provided about Tianjin TEDA was not sufficient and that the GOE, as explained in recital 16 above, was in a position to provide the information.
- (251) In light of the above considerations, the Commission applied Article 28 of the basic Regulation and relied on facts available with respect to this point.

## (c) Findings of the investigation

- (252) According to Article 5 of the Law 83/2002, as amended in 2015, in the SCZone, *'the ownership of land shall be vested in the Authority within the zone'*. Since 2015, it is not possible anymore to purchase the full ownership of land from the General Authority. Currently, the General Authority only provides usufruct rights of the land to the Main Development Company ('MDC'), an Egyptian developer. The MDC then puts the usufruct of the land up for bidding to sub-developers such as TEDA. These sub-developers subsequently rent out the land to the companies located in the zone.
- (253) However, when Jushi Egypt started to build its plant in 2011, it was still possible to acquire full ownership of land from the Egyptian authorities. At the time, Jushi Egypt bought a plot of land from Egypt TEDA. TEDA in turn bought this plot in 1998 through its predecessor, the Egypt China Joint Venture Company, from the Suez Governorate at an extremely low price (less than 1 USD/m<sup>2</sup>), and without any bidding procedure. Following the initial purchase in 1998, TEDA invested in basic infrastructure to make the undeveloped desert land viable for industrial projects.
- (254) In this respect, the Commission ascertained whether the ECJV and TEDA were public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. In view of the lack of cooperation of the GOE, the Commission had to rely on facts available. The Commission thus sought information about State ownership as well as formal indicia of government control in these entities. It also analysed whether control had been exercised in a meaningful way.
- (255) First, the Commission found that ECJV and TEDA were related entities, and that they were both fully State-owned. Indeed, as mentioned in recital 33 above, Tianjin TEDA is an SOE under the Tianjin Municipal Government, which formed a joint venture with the Egyptian Suez Canal Administration, the National Bank of Egypt, and four more Egyptian State-owned enterprises to create the ECJV, in order to develop and construct the economic zone. The Chinese side held 10 % of the shares of the ECJV, and the Egyptian side 90 %<sup>(89)</sup>. Furthermore, as mentioned in recital 36 above, in October 2008, Tianjin TEDA established a joint venture with the China-Africa Development Fund, a subsidiary of the China Development Bank, to set up China-Africa TEDA Investment Co., Ltd. ('China-Africa TEDA'), as the main Chinese investment entity in the cooperation zone. China-Africa TEDA united with the ECJV to create a new company, TEDA, in order to drive the development of the SETC-Zone in Egypt. This time, the Chinese side held 80 % of the shares, and the Egyptian side (represented by the ECJV) 20 %.
- (256) The Commission further established the existence of formal indicia of control by the State of those investors. Since both entities are fully State-owned, the Chinese and Egyptian governments formally have full control over them. In particular, in the absence of specific information indicating otherwise, the Commission considered that managers and supervisors in the entities at issue are assumed to be appointed by and accountable to the State as is the case for State-owned companies in those countries.
- (257) The initial allocation of the land to the ECJV for a purchase price of less than 1 USD/m<sup>2</sup> in accordance with the applicable legal framework thus certainly involved a financial contribution by the GOE<sup>(90)</sup>. The subsequent transfer of land between the ECJV and TEDA was in fact a transaction between related companies, based on a transfer price involving the same actors on both sides of the transaction.
- (258) Finally, concerning the sale of the land by Egypt TEDA to Jushi Egypt, the Commission noted that the majority shareholder of Egypt TEDA, owning 75 % of the shares, is the China Africa TEDA Investment Company, who also holds the majority of the seats on the Board of Directors of TEDA. The ultimate controller of the China Africa TEDA Investment Company is the China Development Bank, which has already been designated as a public body. Furthermore, TEDA itself describes its vision and mission as follows: *'Vision: becoming an investment and operation player of an international industrial park supporting China, starting from Egypt, and facing Africa and even the whole world. Mission: pushing forward Chinese enterprises going outside, then pushing forward the internalization process of Chinese enterprises'*<sup>(91)</sup>. TEDA also extensively refers in its publications to the attention, motivation and support from MOFCOM and Tianjin Municipal Government in the execution of its activities.

<sup>(89)</sup> Report of the State Council Development and Research Center, 'The sustainable development experience in the China-Egypt Suez Economic and Trade Cooperation Zone', 6 August 2019 ('State Council Report').

<sup>(90)</sup> Article 38(bis A) of the Law 83/2002, as amended in 2015; Article 20(bis) and Article 28 of Law 8/1997.

<sup>(91)</sup> TEDA 10 Years Summary Report (2008-2018), p. 4.

- (259) In light of the above considerations, the Commission established that the state controlled entities that provided land to Jushi Egypt are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. Indeed, the actions taken by TEDA under the direct control of the GOC and in the context of the GOE-GOC close cooperation can be attributed to the GOE as explained before in Section 3.2.3 as part of the set of preferential support to the GFR producer in Egypt.
- (260) In addition, even if the State-controlled entities were not to be considered as public bodies, on the basis of the evidence in recitals 219 to 224 as well as the evidence relating to the close cooperation between the GOC and the GOE, the Commission established that they would be considered entrusted and directed by the GOC and the GOE to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. Thus, their conduct would be attributed to the GOE in any event.
- (261) Following final disclosure, both the GOE and the exporting producers stated that the Commission cannot consider that conducts of Chinese public bodies or private bodies entrusted or directed by the GOC constitute subsidies under the basic Regulation, as these conducts are not attributable to the government of the country of origin or export.
- (262) However, as already mentioned in recitals 258 to 262 above, the Commission considered that TEDA is not solely a Chinese public body, but a public body jointly controlled by the GOC and the GOE, and that actions under direct control of the GOC can be attributed to the GOE as well in view of the close cooperation of the GOC and the GOE. In this respect, the Commission noted that the shareholders of TEDA also include state-owned Egyptian public bodies, such as the the Egyptian Suez Canal Administration and the National Bank of Egypt, which are represented in the Board of Directors of TEDA. This shows that the GOE was in a position to acknowledge and adopt actions of TEDA. Finally, as mentioned in recital 263 above, even if TEDA were not to be considered a public body, the Commission considered that it would be entrusted or directed by the GOC and the GOE.
- (263) In addition to the provision of the land in 2011, Jushi Egypt purchased an adjacent plot of land from an Egyptian development company in 2016. This Egyptian developer in turn also had bought this land from the same plot of land of land awarded to the Egypt China Joint Venture Company in 1998. The Commission analysed whether the Egyptian developer had been entrusted or directed by the GOE to grant land to Jushi Egypt at preferential terms within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (264) In this respect, the Commission noted that there was a clear involvement of the authorities of the SCZone in the sales transaction to Jushi Egypt. Indeed, the Egyptian developer needed to sell its plot because it did not have sufficient means to develop the land according to the industrial development clauses of its initial purchase contract with the GOE. In this context, article 3 of the purchase contract states that if the contract *'is not approved by the General Authority for Suez Canal Special Economic Zone within six months, Party B (Jushi Egypt) shall have the right to consider Party A's (the developer) breach of this Contract and then this Contract shall be automatically cancelled'*. Furthermore, according to article 7 *'Party B shall submit a written application to the General Authority for Suez Canal Special Economic Zone for the establishment of an industrial project by Party B on behalf of Party A and obtain approvals .... The General Authority for Suez Canal Special Economic Zone agrees to conduct land registration in the name of Party B, examine and approve the final land sales contract, and apply for land certificate in the notary office in the name of Party B.'*
- (265) The GOE thus used a private body as a vehicle to carry out a financial contribution whereby the private body had no choice but to sell the land to Jushi Egypt and at the price and other conditions stipulated by the GOE. Therefore, the Commission concluded that, the Egyptian developer had 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 also enshrined in the Cooperation Agreement and provide land at a preferential price to Jushi Egypt.

- (266) The Commission requested the GOE to provide statistics on land prices applicable in the SCZone, as well as the tender procedures relating to the purchase transactions by the developers. However, the GOE could not provide any statistics or any tender procedures relating to the period or the transactions considered. The GOE was only able to provide information relating to the tender procedures for the award of usufruct to TEDA of another piece of land in 2016.
- (267) Following final disclosure, the GOE and the exporting producers claimed that the Commission relied on incorrect facts in order to conclude that Wadi Degla was entrusted or directed by the GOE. More specifically, they claimed that:
- (1) Wadi Degla is not a developer, but a producer of polyethylene pipes and fittings; and
  - (2) The General Authority of the Suez Canal Economic Zone did not participate in the negotiations between Jushi Egypt and Wadi Degla but, simply, approved the sale of land and put its stamp on it.
- (268) On the first point, according to the information available to the Commission on the company's website <sup>(92)</sup>, Wadi Degla is a real estate developer with projects in various locations, including Ain Sokhna, not a producer of pipes and fittings.
- (269) On the second point, the Commission acknowledged that Wadi Degla wanted to sell its land among other reasons because it had not developed it in line with its legal obligations. However, the company could also have sold its land on the free market for a better price. The investigation revealed that Jushi management does not only explain why Wadi Degla wanted to sell its land, but also clearly indicates that the General Authority of the SCZone was involved in the negotiations for the sales transactions as the contract was approved by the Chairman of the SCZone.
- (a) Conclusion
- (270) The findings of this investigation show that prices for land provision and acquisition in the SCZone are determined by the Egyptian authorities, and that the pricing applicable in the SCZone is non-transparent. Land was awarded at preferential terms by public bodies or by private bodies entrusted or directed by the State.
- (271) The provision of land for less than adequate remuneration by the GOE should therefore be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods which confers a benefit upon the recipient companies.
- (272) The programme is specific within the meaning of Article 4(2)(a) of the basic Regulation, since the provision of land to companies in the SETC-Zone for less than adequate remuneration is reserved to certain companies in a particular geographical area.
- (b) Calculation of the subsidy amount
- (273) The amount of countervailable subsidy is calculated in terms of the benefit conferred on the recipients, which is found to exist during the investigation period. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by the exporting producer for land and the amount that should normally have been paid on the basis of a market-based benchmark. The benefit for the purchase of land by Jushi Egypt was calculated as follows.
- (274) The GOE was not able to provide any information or statistics on purchase prices for land. The GOE only provided information on transactions regarding land usufruct. Indeed in 2016, a real estate valuation was performed by a committee of experts in order to establish a pricing map for the usufruct of land in the SCZone. Based on this study, the average yearly value of the land usufruct in the wider Suez Canal Economic Zone was determined. On the

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<sup>(92)</sup> <http://www.wadidegla.com/Wadi-Degla-Holding/en/spage/page/223> (last accessed 15/05/2020).

other hand, TEDA signed a land usufruct contract with the MDC in 2016 to further expand the existing SETC-Zone by 6 km<sup>2</sup>. The Commission multiplied the average yearly value of the land usufruct in the SCZone by the duration of the land usufruct contract signed with TEDA for the expansion zone of 6 km<sup>2</sup>. The Commission considered that this represented the total purchase value of undeveloped land for the developer.

- (275) In order to take into account the cost for the developer of developing the land, TEDA's investment cost per m<sup>2</sup> was then calculated based on publicly available information. According to this information <sup>(93)</sup>, an investment of 230 million USD was foreseen for the expansion area of 6 km<sup>2</sup>. A profit for the developer was also added.
- (276) The resulting price per m<sup>2</sup> of developed land was applied to the area bought by Jushi Egypt, and compared with the purchase price actually paid by Jushi Egypt. For the plot of land bought in 2011, the 2016 purchase price was corrected for inflation and GDP evolution. This evolution was calculated on the basis of inflation rates and evolution of GDP per capita at current prices in USD for Egypt as published by the IMF for 2016. For the plot of land bought in 2016, a markup was made to take into account the convenient geographical location of the plot for the buyer (next to Jushi Egypt's existing facilities).
- (277) In accordance with Article 7(3) of the basic Regulation on allocating subsidy amounts for assets which are not depreciated, the subsidy amount has been allocated to the investigation period by applying an available appropriate Egypt's lending interest rate during the investigation period, as published by the World Bank <sup>(94)</sup>, on an interest-free loan.
- (278) Following the final disclosure, Jushi Egypt claimed that the Commission made several errors in determining the benchmark for the sale of land, namely:
- (1) The value of a usufruct over the duration of a usufruct is not comparable to the full ownership of the land as an usufruct is by nature different from full ownership.
  - (2) The hypothetical land valuation commissioned by the General Authority of the Suez Canal Economic Zone is not a comparable benchmark as it is a hypothetical price at which the General Authority of the Suez Canal Economic Zone has not managed to sell any parcel of land.
  - (3) The full value of the usufruct right over a parcel of land is not the yearly rental price of the usufruct multiplied by the total duration of the usufruct, but the yearly rental price of the usufruct divided by the average return on investment. This is so because the initial yearly amount of the usufruct will lose value each year due to inflation. As a result, the Commission must divide the yearly price per square meter in USD by the average profit to be expected by TEDA for the land.
  - (4) The investment cost of 230 million USD announced by TEDA Egypt consists of the price of the usufruct of the land as well as investment for building residential areas, services area and factories. The parcels of land purchased by Jushi Egypt contained none of these, as Jushi Egypt purchased bare land.
  - (5) The Commission must use the exchange rate applicable at the time of sales to convert the benchmark in USD into EGP.
- (279) On the first point, the Commission acknowledged that full ownership is different from usufruct, but since the GOE was not able to provide any information or statistics on purchase prices for land, the Commission considered that this was the best available information to determine the benchmark.
- (280) On the second point, the Commission recalled that the valuation in question consisted of an independent study commissioned by the GOE, which provided the intrinsic value of the land, namely the price at which land should normally be sold. The fact that land parcels were not actually sold at this price by the GOE does not affect its intrinsic value.

<sup>(93)</sup> Public Go-Global Service of the Department of Commerce of Guangdong Province, <http://go.gdcom.gov.cn/article.php?typeid=31&contentId=13961> (last accessed on 2 January 2020), as well as 'China-Egypt TEDA Suez Economic and Trade Cooperation Zone', Presentation on <http://www.bern-cci.ch/export/fr1/marche.html> (last accessed on 2 January 2020).

<sup>(94)</sup> World Bank Report of Doing Business 2020, Egypt, Arab Rep.



- (281) On the third point, the Commission deemed that the value of a usufruct is normally determined as a percentage of the market value of the underlying asset (i.e. the value of the full ownership) depending on the duration of the usufruct, i.e. the longer the usufruct, the closer the value of the usufruct will be to the value of full ownership. Since full ownership of land is per definition indefinite in time, by multiplying the yearly usufruct rate by 50 years, the resulting benchmark calculated by the Commission would therefore always be below the actual value of the full ownership. In addition, the Commission noted that in the concrete example of the usufruct contract signed by TEDA in 2016, the full amount of the usufruct had to be paid as a lump sum at the start date of the usufruct right. As there were no yearly rentals as such in practice, the claim thus becomes void.
- (282) On the fourth point, the Commission noted that Jushi Egypt indeed purchased land without buildings on it. However, this land already had access to all necessary utilities, roads, sewage treatment, public lighting, security, and other service facilities provided by TEDA. The price for a piece of land in a well-connected and developed zone cannot be compared with the price of a bare piece of desert. In addition, revenues of real estate developers, such as TEDA, normally stem from the sale of land and rental of the buildings and infrastructure provided within the zone. If the development cost was not factored into the market price of the land, then there would be no incentive for developers to make any investment in the first place.
- (283) On the last point, the Commission noted that it adjusted the 2016 price based on the evolution of the Egyptian GDP in real terms since 2011. This means that inflation caused by the devaluation of the EGP compared to the USD was already factored into the GDP adjustment. Further adjustments for the exchange rate changes would thus result in double counting.
- (284) Based on the above arguments, the claims of the company were rejected.
- (285) All subsidies found were established for the total turnover of the company. The subsidy amount was then allocated to the turnover of the product concerned sold to the European Union.
- (286) The subsidy amount found for the provision of land for less than adequate remuneration amounted to 2,02 %.

### 3.5. Revenue foregone

#### 3.5.1. Revenue foregone through Direct Tax Exemption and Reduction programmes

- (287) Following provisional and final disclosures, the GOE and the exporting producer noted that the 2016 special tax rule for treating foreign exchange losses as a tax loss cannot constitute a subsidy as it does not confer a benefit and is not specific. First, as this tax rule was taken to offset a loss caused by the government, no benefit is conferred. Second, as all entities similarly affected by the loss caused by the government could have recourse to this tax treatment, this scheme cannot be considered to be specific.
- (288) The Commission acknowledged in its provisional findings that this legislation was generally applicable to all companies in Egypt and was meant to offset the negative effects of the devaluation of the Egyptian currency. However, the Commission also stated that companies that are mainly export oriented and operate their business almost entirely in foreign currencies such as USD or EUR benefited disproportionately from this legislation. Indeed, these companies did not incur any significant actual losses as a consequence of the devaluation of the EGP, since the exchange rate losses suffered on their purchases/liabilities in USD could be offset by the exchange rate gains on their sales in USD. As a result, instead of offsetting a loss caused by the government, the legislation actually created a tax benefit, which specifically applied to this type of companies. Therefore, the Commission rejected the claim.
- (289) Accordingly, the recitals 93 to 102 of the provisional Regulation are hereby confirmed.

### 3.5.2. Revenue foregone through Indirect Tax and Import Tariff Programmes

#### 3.5.2.1. Value Added Tax ('VAT') exemptions and import tariff rebates for the use of imported equipment

##### (a) Findings of the investigation

- (290) Following provisional disclosure, the GOE and the exporting producer raised various issues. First, it is not because Jushi Egypt did not always receive full timely VAT reimbursements from the GOE in the past (when they were not within the Suez Canal Economic Zone) that there is now a revenue foregone with respect to the tax treatment that applies to them under the Suez Canal Economic Zone.
- (291) Second, the Commission compared the challenged tax treatment with a hypothetical tax treatment extrapolated from Jushi Egypt's situation before it entered the Suez Canal Economic Zone, instead of comparing the challenged tax treatment with Egypt's VAT rules on the importation of equipment and raw materials.
- (292) Third, the Commission did not raise any question to, or discuss with, the GOE regarding the administration of VAT in Egypt during the verification visit.
- (293) Fourth, the GOE recalled that Article 27 of the SCM Agreement calls for a special and differential treatment of developing country Members of the WTO. The fact that the GOE did not always have the resources to pay back the due amount of VAT credit in time should thus not be punished by the Commission.
- (294) Fifth, the GOE recalled that the subsidy benchmark identified by the Commission is the situation of companies before joining the Suez Canal Economic Zone. Companies not under the Suez Canal Economic Zone eventually receive from the GOE part of the VAT paid, although not in a timely fashion and not in full. Therefore, the full amount of VAT normally payable cannot constitute the benefit as Jushi Egypt should receive part of this VAT payable back from the GOE. Furthermore, as Jushi Egypt's VAT credit balance is now decreasing since Jushi Egypt receives more VAT receivable, the full amount of VAT normally payable would have been partially offset against this VAT receivable. Finally, in early 2020, the amounts due for VAT on imports by Jushi Egypt for the period 2017-2018 have been settled and offset against Jushi Egypt's VAT credit by the GOE. As a result, there is no more benefit.
- (295) Finally, since the Commission correctly considered that no import duties should have been paid with regard to inputs for exported products, the Commission should have applied the same reasoning with regard to VAT on inputs for exported products. It follows that the Commission must, in order to calculate the benefit, allocate the amount of VAT due during the investigation period to the quantities of materials used for the production of goods sold on the domestic market only.
- (296) In response to these claims, the Commission would like to clarify that its aim is not to punish the GOE for a lack of resources or to criticize the VAT system in Egypt as such. At the same time, the Commission noted that Article 27 of the SCM Agreement does not play a role in the claim by the GOE in this context. The most relevant provision applicable in countervailing duty proceedings is paragraph (10) of Article 27, which only deals with certain *de minimis* thresholds, whereas the other provisions of Article 27 mainly deal with export subsidies of developing countries. In this case, the GOE is relying on Article 27 to justify the lack of repayment of VAT credits to taxpayers, for which this provision is irrelevant.
- (297) As for the claim concerning information requests on the VAT system, the Commission requested information on the working of the VAT system in Egypt from the start of the investigation, through the questionnaire. Furthermore, general questions on the amount of taxes collected from the exporting producers were raised during the verification visit. The Commission therefore deemed that it had received sufficient information during the investigation on the VAT framework as such.

- (298) However, the Commission noted that the VAT treatment is different for companies in the SCZone. Indeed, companies in the SCZone do not have to pay VAT upfront ('scenario 1'). In contrast, comparably situated tax payers, namely companies outside the SCZone, do have to pay VAT upfront ('scenario 2'). Whether this VAT is eventually due or has to be refunded is at that point in time irrelevant. What is important is that no revenue will initially be collected by the GOE in scenario 1, whereas revenue will initially be collected to the GOE in all cases in scenario 2.
- (299) According to the relevant normative framework in Egypt, at the settlement date, the final settlement amount would be due by the companies in scenario 1, whereas part of the revenue collected by the GOE would revert back to the companies in scenario 2 (in case VAT has to be refunded). If this settlement process is swift and reliable, then the benefit of not having to pay upfront under scenario 1 would be equal to the cash-flow advantage for all the time that it would have taken for the repayment. The Commission noted in this respect that the statutory deadline for such a settlement is 6 months from the date a credit is created.
- (300) However, the Commission found that in practice the settlement and the corresponding refund for companies operating under scenario 2 in Egypt occurred at best with very significant delays, and that the criteria for obtaining a refund were unclear. The Commission noted in this respect that the GOE did not dispute this fact as such. The cash-flow benefit for the companies within the SCZone thus stems from the fact that no VAT revenue is collected by the GOE at all from companies within the SCZone until the final settlement, the date of which is uncertain (scenario 1), in contrast to companies outside the SCZone, where revenue is collected immediately and refunded at a much later, uncertain date in time (scenario 2). As a result, companies within the SCZone benefit from a preferential VAT treatment compared to companies outside the SCZone. The amount not collected by the GOE with respect to companies within the SCZone amount to revenue foregone or not collected in the sense of Article 3(1)(a) (ii) of the basic Regulation.
- (301) To further illustrate this, in addition to the relevant VAT framework in Egypt, the Commission looked at the situation of the exporting producers before and after adhering to the SCZone. Indeed, before adhering to the SCZone, their situation was comparable to companies outside the SCZone during the investigation period as per scenario 2. In this respect, the GOE did not dispute the fact that Jushi Egypt had accumulated a very significant VAT credit before it adhered to the SCZone, and that the GOE was not in a position to reimburse this credit. The VAT credit situation of Jushi Egypt, which was created before it adhered to the SCZone, thus shows that the situation described in the previous recital corresponds to reality for companies outside the SCZone during the IP.
- (302) Concerning the fifth point raised by the GOE and the exporting producers, the final destination of the goods on which VAT is applied and the fact that Jushi Egypt could offset some VAT payables against its original VAT credit over time does not alter the findings of the Commission, as they do not affect the initial difference in treatment between companies in and outside of the zone, and in any event these offsets are not linked to a proactive refund by the GOE but rather to a VAT liability which happened to have been incurred by the company.
- (303) The Commission took note that the new VAT law in Egypt was only enacted shortly before the investigation period, and that the implementing legislation was not fully in place yet during the investigation period. In view of this transitional phase, the Commission understood the GOE's argument that the settlement period for VAT reimbursements may be significantly delayed, given that the GOE is a developing country with a sub-optimal number of administration personnel in charge of the new system and with possible budgetary shortfalls that make it difficult to issue VAT reimbursements within the prescribed times. Therefore, taking into account these exceptional and hopefully temporary circumstances in Egypt, the Commission decided to take into account only the cash flow advantage to the exporting producer for the calculation of the benefit on VAT exemptions. The calculation methodology for calculating the benefit, as described in recital 258, was adapted accordingly.

- (304) Following final disclosure, the complainant claimed that the Commission's findings are that companies outside the SCZone received VAT and tax refunds 'at best with very significant delays' and under unclear criteria, which the GOE did not dispute. In their understanding, any refund request to the Egyptian authorities is assessed and decided upon by a governmental committee specifically established to review refund requests. Under such conditions, and as the GOE stresses that as a developing country its systems are far from perfect, it is reasonable to conclude that the refund process is highly bureaucratic and arbitrary, and that only companies which have the necessary political connections receive a refund within a reasonable time or at all. According to the complainant, there is no evidence on the open file that 'normal' companies, i.e. without political connections, receive VAT and import tax repayments at all (or within any reasonable amount of time). The fact that Jushi Egypt has finally in 2020 received a refund for import duties and VAT paid before it became included in the SCZone is not such evidence, but rather supports the conclusion that only political connections allow companies to receive refunds. In other words, the Commission should treat both the SCZone exemption and the refund Jushi Egypt received for the periods before it was in the SCZone as subsidies in the form of revenue foregone.
- (305) On this point, the Commission reiterated that it decided to only take into account the cash flow advantage to the exporting producer for the calculation of the benefit on VAT exemptions in light of the fact that the new VAT law in Egypt was only enacted shortly before the investigation period, and that the implementing legislation was not fully in place yet during the investigation period. In view of this transitional phase, the Commission understood the GOE's argument that the settlement period for VAT reimbursements may be significantly delayed, given that the GOE is a developing country with a sub-optimal number of administration personnel in charge of the new system and with possible budgetary shortfalls that make it difficult to issue VAT reimbursements within the prescribed times. Therefore, the claim was rejected.
- (306) In light of the above considerations and in the absence of other comments, the Commission confirmed its findings in recitals 53-66 of the provisional Regulation.

(b) Calculation of the subsidy amount

- (307) Concerning the revenue foregone in the form of a de facto VAT exemption, the benefit was initially calculated by taking the full amount of VAT normally payable but not paid during the investigation period on the purchases of imported equipment (during the IP). However, as mentioned in recital 256 above, following the comment on the provisional disclosure, the Commission decided to take into account only the cash flow advantage to the exporting producers for the calculation of the benefit on VAT exemptions. The calculation methodology for calculating the benefit was adapted accordingly. As a result, the cash flow benefit on the VAT withheld was considered to be equivalent to the average interest rate on deposits in Egypt during the IP (12,03 %), applied to the VAT amounts which were withheld for goods purchased since 2017.
- (308) The modified amount of subsidy established with regard to this type of subsidies concerning machinery during the investigation period for the exporting producers was 0,02 % for VAT exemptions and 0,17 % for import tariff waivers.

3.5.2.2. VAT exemptions and import tariff waivers for imported input materials used in exported finished goods

(a) Findings of the investigation

- (309) Following provisional disclosure, the GOE and the exporting producer argued that Jushi Egypt had paid a deposit for customs duties at the start of 2019. They also provided additional evidence, according to which all customs duties for the years 2017 and 2018 had now been settled and paid. Furthermore, they claimed that even if the amounts due for customs duties had not been settled in 2020, the Commission could not request a perfect tax administration from a developing country, such as Egypt. In this regard, the GOE showed particular diligence in setting up the duty drawback system for Jushi Egypt as consumption reports were already established and monitored by the GOE within a few months after Jushi Egypt entered the Suez Canal Economic Zone. Three years later, the GOE recovered all customs duties and VAT due from Jushi Egypt. As a result, the GOE submitted that it had a proper duty drawback system in place so that no excess remission occurred.

- (310) Furthermore, according to the GOE, pursuant to Article 377 of the Egyptian Civil Code and the ruling of the Monetary Court No 915/43, the GOE has 5 years to recover import duties. As a result, there could be no revenue forgone from the GOE as long as this period had not expired, as the GOE was still entitled to and did recover the customs duties due on time.
- (311) Finally, Jushi Egypt argued that sales to Hengshi Egypt, a company buying GFR from Jushi Egypt and also established in the SCZone, are treated under Egyptian law in the same way as export sales in respect of import duties on raw materials, because Hengshi Egypt is located in the Suez Canal Economic Zone. Furthermore, Hengshi Egypt had no domestic sales at all as it exported all of its production. As a result, had Jushi Egypt not been exempted for import duties on raw materials, it would still not have incurred import duties on raw materials for domestic sales to Hengshi Egypt.
- (312) The Commission reviewed the evidence provided on the payment of the customs duties, and found that the GOE had initiated a verification at the premises of the exporting producer at the end of 2019, due to the Commission's investigation. As a result of this verification, the GOE reclaimed a certain amount of customs duties on imported materials from the company, relating to the years 2017, 2018 and 2019. Based on the evidence provided, and given the impossibility to verify on spot this new evidence due to travelling restrictions linked to the COVID-19 pandemic, the Commission accepted the claim and deducted the amount of customs duties paid on imported materials relating to the investigation period in accordance with Article 15(1) of the basic Regulation.
- (313) However, the Commission did not consider that these settlements put into question the findings on the subsidy scheme as such. In this respect, the Commission noted that the recovery of the customs duties was triggered by the Commission's investigation activities, rather than by the GOE's own monitoring and verification framework for the collection of customs duties. The GOE also did not dispute the fact that there was no such framework in place during the investigation period. Concerning the temporary nature of the lack of a monitoring and verification, the Commission noted that although Jushi Egypt only joined the SCZone in 2017, the last legislative change in the framework for the collection of the customs duties already happened in 2015, when the responsibility for collecting customs duties was transferred to the General Authority of the SCZone. In addition, the detailed report of the Customs Authority, provided by the GOE as annex I of its comments on provisional disclosure, confirmed that the overall legislation for the collection of customs duties was already in place since 2006. The GOE thus had ample time to implement a functioning system for collecting customs duties.
- (314) Concerning sales from Jushi Egypt to Hengshi Egypt, the Commission noted that sales of inputs between companies located within the special zone were never subject to any taxes, thus showing that the SCZone was a special zone with several specific features that distinguish it from other zones.
- (315) Therefore, the fact that Hengshi Egypt only has export sales is in this sense irrelevant, and does not alter the Commission's conclusions. The claims of the GOE and of the exporting producer concerning the validity of the Commission's findings in general, and on the sales to Hengshi Egypt more specifically, were thus rejected.
- (316) Following the final disclosure, the complainant claimed that this is not a case where a government terminates a defined subsidy scheme as a consequence of an anti-subsidy investigation and that scheme is consequently no longer available. According to the complainant, the GOE has simply collected funds from Jushi Egypt in order to provide a benefit to the latter in the EU investigation, but without putting in place a proper collection framework. As there is no legal framework in place, it cannot be ensured that the GOE will collect future duties and VAT from Jushi Egypt *suo moto*, or even that the GOE will not pay back the collected funds to Jushi Egypt as soon as the Commission's investigation is concluded. In other words, in the context of a cooperation agreement between China and Egypt, the GOE's actions simply reflect an established and ongoing pattern of *ad hoc* benefits granted to Jushi Egypt, and in no way justify a different valuation of the benefit received by Jushi Egypt.
- (317) On this point, the Commission reiterated that it reviewed the evidence provided on the payment of the customs duties, and based on the evidence provided, and given the impossibility to verify on spot this new evidence due to travelling restrictions linked to the COVID-19 pandemic, the Commission accepted the claim and deducted the amount of customs duties paid on imported materials relating to the investigation period in accordance with Article 15(1) of the basic Regulation. In addition, it is factually not correct that there is no legal framework in place as evidenced by the legal basis described in recital 70 of the provisional Regulation. Also, the legislation is currently

being implemented as explained in recitals 78-82 of the provisional Regulation. Finally, the claims that the GOE will pay back the collected funds to Jushi Egypt was not backed by any evidence. Consequently, these claims were rejected.

- (318) Following final disclosure, Jushi Egypt repeated the same comments regarding the calculation of VAT and import duty exemptions, ignoring the factual information and explanations disclosed by the Commission. As the comments submitted had already been dealt with, no further explanation was required.
- (319) In light of the above considerations and in the absence of other comments, the Commission confirmed its findings in recitals 69-86 of the provisional Regulation.

(b) Calculation of the subsidy amount

- (320) Following provisional disclosure, the Commission adapted the calculation methodology for the calculation of the benefit on the de facto VAT exemption, as mentioned in recital 256 above. As a result, the cash flow benefit on the VAT withheld was considered to be equivalent to the average interest rate on deposits in Egypt during the IP (12,03 %), applied to the VAT amounts which were withheld for materials purchased since 2017, and calculated pro rata for VAT amounts which were withheld during the IP. Since no information was available on the amount of the materials purchased before the IP, the Commission considered that this amount would be equivalent to the amounts found during the IP, adjusted by the difference in the cost of goods sold between the two periods.
- (321) The amount of subsidy established with regard to this type of subsidies concerning materials during the investigation period for the exporting producers was 1,08 % for VAT exemptions and 0,24 % for import tariff waivers.

### 3.6. Conclusion on subsidisation

- (322) The definitive subsidy rates with regard to the set of measures described above expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

#### Definitive subsidy rates

Company	Definitive subsidy rate
Jushi Egypt for Fiberglass Industry S.A.E.	13,1 %
All other companies	13,1 %

## 4. INJURY

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

- (323) In the absence of any comments with respect to the definition of the Union industry and Union production, the Commission confirmed its conclusions set out in recitals 106 to 109 of the provisional Regulation.

### 4.2. Union consumption

- (324) In the absence of any comments with respect to Union consumption, the Commission confirmed its conclusions set out in recitals 110 to 112 of the provisional Regulation.

### 4.3. Imports from Egypt and price undercutting

- (325) The Commission received comments from the Egyptian exporting producer Jushi Egypt regarding price undercutting after provisional disclosure.

- (326) Jushi Egypt noted that when the Commission had calculated undercutting, they had removed sales costs and a reasonable amount of profit from the sales price of their related sales companies to the independent customer in the Union.
- (327) Jushi Egypt stated that they considered that this methodology did not comply with the judgement of the General Court in the case T-301/16, *Jindal Saw Ltd and Jindal Saw Italia v European Commission*, paragraph 187 (*Jindal Saw*)<sup>(95)</sup>.
- (328) The Commission disagreed with the relevance given by Jushi Egypt to the judgement in *Jindal Saw* in this case. In *Jindal Saw*, the General Court considered that the Commission had committed an error by deducting the selling expenses of Jindal's related importers in the Union from the sales to the first independent buyer, while the selling expenses of the Union industry related selling entities were not deducted from the Union industry sales prices to the first independent customer.
- (329) The Court therefore considered that the two prices were not compared symmetrically at the same level of trade in a situation where the exporting producers mostly sold into the Union through related selling entities, compared to the situation how the Union producers sold the product concerned.
- (330) The Commission noted that a comparison between this case and the *Jindal* case is not relevant, as the respective configuration of the export sales was different. While the sales of Jushi Group are predominantly direct sales from Egypt to the first independent customer in the Union, in the *Jindal* case almost all of the export sales of that exporting producer were made via related entities established in the EU.
- (331) Indeed, in this case two of the three sampled Union producers do not have related sales companies, and the third has a centralised sales and invoicing system with products shipped directly from the manufacturing plants. The Commission therefore considered that in this case there was no asymmetry with the sales channels of the exporting producer, and therefore the *Jindal* case is not applicable. Moreover, the use of the prices of the Jushi Group related sales entities would not have any relevant impact on the price effect analysis<sup>(96)</sup>.
- (332) Furthermore, the Commission also refers to recital 157 of the provisional Regulation that dealt with the conclusion that there was clear price depression during the investigation period. Therefore, in any event this claim is irrelevant as this finding of price depression would already be in itself sufficient to show the adverse price effects of subsidised imports according to Article 8(2) of the basic Regulation.
- (333) The Commission therefore confirmed its conclusions set out in recitals 122 and 123 of the provisional Regulation that the imports from Egypt during the investigation period significantly undercut the sales of the Union industry, and noted that in any event the finding on price depression set out at recital 157 of the provisional Regulation rendered this claim irrelevant.
- (334) Following final disclosure, Jushi Egypt repeated the same comments regarding the calculation of undercutting, ignoring the factual information and explanations disclosed by the Commission. As the comments submitted had already been dealt with, no further explanation was required.

#### 4.4. Economic situation of the Union industry

##### 4.4.1. General remarks

- (335) In the absence of comments, the Commission confirmed recitals 124 to 129 of the provisional Regulation.

<sup>(95)</sup> Case T-301/16, *Jindal Saw and Jindal Saw Italia v. Commission*, ECLI:EU:T:2019:234, para. 187.

<sup>(96)</sup> The comparison between the Union industry's prices and the exporting producer's selling prices, both direct and via their related entities, to independent customers in the Union shows that these latter prices are significantly below the Union industry's prices (14,89 %). Therefore, no matter how the price comparison would be made, the subsidised imports prices remain significantly below the Union industry's prices, showing that the argument made by this party does also not have any practical impact in this case in addition to bearing no legal relevance.

#### 4.4.2. Macroeconomic indicators

##### 4.4.2.1. Production capacity and capacity utilisation

- (336) In the absence of any comments with respect to production, production capacity and capacity utilisation, the Commission confirmed the conclusions set out in recitals 131 to 132 of the provisional Regulation.

##### 4.4.2.2. Sales volume and market share

- (337) In the absence of any comments with respect to sales volume and market share, the Commission confirmed the conclusions set out in recital 134 of the provisional Regulation.

##### 4.4.2.3. Employment and productivity

- (338) In the absence of comments with respect to employment and productivity, the Commission confirmed the conclusions set out in recital 136 of the provisional Regulation.

##### 4.4.2.4. Magnitude of the amount of countervailable subsidies and recovery from past subsidisation or dumping

- (339) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 138 and 139 of the provisional Regulation.

#### 4.4.3. Microeconomic indicators

- (340) Following final disclosure, Jushi Egypt commented on the calculation of the microeconomic indicators that were set out in the provisional Regulation, and requested more information on how these indicators were calculated.

- (341) The Commission referred Jushi Egypt to recital 126 of the provisional Regulation, which made clear that the microeconomic indicators were based on the data from the sampled Union producers, verified and then aggregated together.

- (342) The object of the aggregation was to ensure that the sample was treated as one data source, and not as three separate data sources with company-specific trends to explain. Aggregation allowed the Commission to take the entire sample as representative of the Union industry and use the data as a guide to the performance of all producers.

##### 4.4.3.1. Prices and factors affecting prices

- (343) In the absence of any comments, the Commission confirmed its conclusions set out in recitals 141 to 142 of the provisional Regulation.

##### 4.4.3.2. Labour costs

- (344) In the absence of any comments, the Commission confirmed its conclusions set out in recital 144 of the provisional Regulation.

##### 4.4.3.3. Stocks

- (345) In the absence of any comments, the Commission confirmed its conclusions set out in recital 146 of the provisional Regulation.

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

- (346) In the absence of any comments on profitability, cash flow, investment, return on investments and ability to raise capital, the Commission confirmed its conclusions set out in recitals 149 to 153 of the provisional Regulation.



#### 4.4.4. *Conclusion on injury*

- (347) In the absence of any comments, the Commission confirmed its conclusions on injury set out in recitals 154 to 161 of the provisional Regulation.

### 5. CAUSATION

#### 5.1. **Effects of the subsidised imports from Egypt**

- (348) In the provisional Regulation, the Commission provisionally concluded that the subsidised imports from Egypt were causing material injury to the Union industry.
- (349) The Commission concluded that the increase of imports during the investigation period and the undercutting and depression of Union industry prices by the subsidised imports caused the Union industry to lose market share and profitability.
- (350) In the absence of comments the Commission confirmed its conclusions set out in recital 164 of the provisional Regulation.

#### 5.2. **Other known factors**

##### 5.2.1. *Imports from third countries*

- (351) In the absence of comments the Commission confirmed its conclusions set out in recitals 167 to 171 of the provisional Regulation.

##### 5.2.2. *Export performance of the Union industry*

- (352) The Commission received no comments on the exports of the Union industry.
- (353) In the absence of comments the Commission confirmed its conclusions set out in recital 174 of the provisional Regulation.

#### 5.3. **Conclusion on causation**

- (354) The Commission confirmed its conclusions on causation set out in recitals 175 to (176) of the provisional Regulation.

### 6. UNION INTEREST

#### 6.1. **Interest of the Union industry**

- (355) In the absence of comments, the Commission confirmed its conclusions set out in recitals 185 to 186 of the provisional Regulation.

#### 6.2. **Interest of unrelated importers**

- (356) In the absence of any further comments, the Commission confirmed its conclusions set out in recital 192 of the provisional Regulation.

#### 6.3. **Interest of users**

- (357) In the absence of any further comments, the Commission confirmed its conclusions set out in recital 207 of the provisional Regulation.

#### 6.4. **Trade distorting effects of subsidies and restoring effective competition**

- (358) In the absence of any further comments, the Commission confirmed its conclusions set out in recital 209 of the provisional Regulation.

## 6.5. Conclusion on Union interest

(359) In the absence of any further comments, the Commission confirmed its conclusions set out in recitals 210 to 213 of the provisional Regulation.

## 7. RETROACTIVE LEVYING OF COUNTERVAILING DUTIES ON THE REGISTERED IMPORTS

(360) As mentioned in recital 220 of the provisional Regulation, the Commission made imports of GFR subject to registration during the period of pre-disclosure under the requirements of Article 24(5a) of the basic Regulation by publishing Commission Implementing Regulation (EU) 2020/199 <sup>(97)</sup> ('the registration Regulation').

(361) As set out in recital 222 of the provisional Regulation, the Commission has to decide whether anti-subsidy measures shall be retroactively collected on imports during the three week period of registration, given that there are imports of GFR from Egypt that have been registered.

(362) The criteria for whether duties can be collected for the three weeks of pre-disclosure are set out in Article 16(4) of the basic Regulation. The Article states that duties can only be collected if:

(a) The imports have been registered in accordance with Article 24(5);

(b) The importers concerned have been given an opportunity to comment by the Commission;

(c) There are critical circumstances where, for the subsidised product in question, injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies under the terms of this Regulation; and

(d) It is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports.

(363) The Commission considers that the registration Regulation complies with criterion (a), namely that the imports of GFR originating in Egypt have been registered in accordance with Article 24(5) of the basic Regulation.

(364) The Commission considers that importers have been given an opportunity for comment under criterion (b) with the publication of the provisional Regulation and with the publication of the registration Regulation.

(365) Following final disclosure, the Commission received comments from European users and distributors of GFR, stating that they considered that such opportunity to comment was not based on the Commission's decision to register, but on the Commission's proposal to collect duties.

(366) While the Commission agrees that criterion (b) of Article 16(4) must be interpreted as giving an opportunity to parties to comment on the retroactive collection of duties on imports registered during the pre-disclosure period at this stage, the Commission notes that it disclosed the full analysis justifying the retroactive collection with all the most recent data available in Section 7 of the definitive disclosure. By doing so the Commission therefore gave all parties, including these users and distributors, an opportunity to comment as provided for by this provision, as also shown by the arguments and rebuttals detailed at recitals 322 to 326. Therefore the Commission rejected this claim.

(367) For the purposes of the test in criterion (c) of Article 16(4) of the basic Regulation, the Commission started by analysing statistics on imports of GFR from Egypt taken from the Surveillance 2 database. The purpose of this analysis was to see whether 'massive imports' under the terms of criterion (c) had been identified for the period of registration. The latest available data is given in Table 2 below.

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<sup>(97)</sup> Commission Implementing Regulation (EU) 2020/199 of 13 February 2020 making imports of continuous filament glass fibre products originating in Egypt subject to registration (OJ L 42, 14.2.2020, p. 10).

Table 2

**Imports of GFR from Egypt**

	Tonnes per week	Tonnes per month	Import price EUR per tonne
Investigation period (April 2018 to March 2019)	2 805	12 156	904
Post-investigation period (April 2019 to January 2020)	2 598	11 358	882
Period of registration (14 February to 6 March 2020)	3 858	15 432	813

Source: Surveillance 2 database, extracted on 26 March 2020.

- (368) A total of 11 574 tonnes of GFR was imported from Egypt during the three weeks of pre-disclosure. Given that this is a non-standard period, and in itself not comparable to other periods, the comparison has been done in terms of weeks (so 21 days divided by 3) and in terms of months (considering that a month is on average 4 weeks). Note that although the pre-disclosure period is 21 calendar days, the Surveillance 2 database contains only 15 data points, making daily calculations impractical.
- (369) Table 2 shows that in terms of quantity, imports of the product concerned were massive. The period of three weeks before the imposition of provisional measures shows a sharp upward trend, compared to those imports during the investigation period, and also during the period between April 2019 and January 2020, that is after the investigation period up until registration.
- (370) Therefore, the Commission concluded that imports during the three weeks of pre-disclosure were significantly higher on average than those during the investigation period. This finding supports the conclusion that imports during the three week period of pre-disclosure can be considered as massive under criterion (c).
- (371) Table 2 above also shows that imports continued after the end of the investigation period, in massive quantities.
- (372) The Commission also took note of the daily import data from the Surveillance 2 database.
- (373) The data shows that on one day of the three week pre-disclosure period, just over 3 000 tonnes of GFR was imported from Egypt, which is significantly higher than the average weekly importation during the investigation period.
- (374) This led further support to the conclusion that imports during the three week period of pre-disclosure can be considered to be massive under criterion (c) above.
- (375) The next stage of the test under criterion (c) is whether these imports, now considered massive, can have caused 'injury which is difficult to repair'.
- (376) The Commission first noted that imports during the investigation period undercut and depressed the prices of the Union industry. The volume and prices of the imports of the product concerned have had a negative impact on the quantities sold and level of the prices charged in the Union market and the market share held by the Union industry. This resulted in substantial adverse effects on the overall performance and the financial situation of the Union industry. Thus, imports of the product concerned have been found to cause the injury suffered by the Union industry during the investigation period.
- (377) As shown in Table 2 above, the import price of GFR from Egypt continued to fall after the end of the investigation period, and in particular during the three weeks of pre-disclosure. The Commission therefore considered that imports during the pre-disclosure period were made at increased volumes and even at lower prices than during the investigation period, thereby causing further injury to the Union industry which will be difficult to repair but for the collection of those duties.

- (378) The Commission also found that given the quantities of GFR from Egypt imported into the Union during the three weeks prior to imposition of provisional duties, it could also be considered that importers were stockpiling Egyptian GFR, knowing on February 14 that provisional measures were to be imposed on March 6.
- (379) The Commission therefore considered that imports during the three-week period of pre-disclosure caused injury to the Union industry, which is difficult to repair, both in terms of quantity and in terms of price.
- (380) The Commission therefore concluded that criterion (c) was met and that in order to preclude the recurrence of injury these imports should have duties retroactively collected as per criterion (d).
- (381) Following final disclosure, the Commission received comments from importers and distributors of GFR, challenging several aspects of the Commission's assessment above.
- (382) First, those importers and distributors disputed that the imports during the three-week period of pre-disclosure could be considered massive. Their submission suggested that the Commission should consider 'massive imports' to mean 'there should be an increase of imports that is both sudden and dramatic' and by comparing various data to the three-week period of pre-disclosure, including comparing monthly peak imports to other peak imports. On this basis, the submission suggests that no such increase has taken place.
- (383) Second, they also claimed that the Commission had not defined 'injury which is difficult to repair' and suggested their own definition, 'permanent and irreparable harm to the Union industry'.
- (384) Third, the importers and distributors noted that the increase in imports during the three week period of pre-disclosure is equivalent to 0,4 % of yearly Union consumption. Given that the registration period is so short, this is to be expected and does not therefore enter into the analysis of whether injury is caused or otherwise.
- (385) Fourth, they further alleged that the reason that import prices fell after the end of the investigation period was because of price-cutting by the Union industry in order to maintain market share.
- (386) Fifth, those importers and distributors disagreed with the Commission's finding that given the quantities of GFR from Egypt imported into the Union during the three weeks prior to imposition of provisional duties, it appeared that importers were stockpiling Egyptian GFR, having been informed on February 14 that provisional measures were to be imposed on March 6.
- (387) They stated that this was not the case, because imports in December and January were much lower, and therefore the imports just before the imposition of provisional duties were to make up for the lower imports previously.
- (388) According to their arguments set out above, the Commission should consider whether or not it is necessary to collect duties on the registered imports, as set out in Article 16(4)(d).
- (389) They asked the Commission to consider that, given that registration during the pre-disclosure period is in effect mandatory, that collection of duties on those registered imports should not also be in effect mandatory, otherwise the benefit of the pre-disclosure period for importers and distributors would be lost.
- (390) These comments are addressed below.
- (391) In relation to the first claim, the Commission disagrees with those parties' interpretation of the term 'massive imports', which is legally baseless. The basic Regulation does not refer to an increase of imports, let alone placing any condition on 'massive imports' having to be 'sudden and dramatic.' As shown in Table 2 above, the Commission has compared already at a very granular level average quantities imported from Egypt per month and per week in order to determine whether imports were massive or not.

- (392) All the data confirm that these imports were massive and on an upward trend, as clearly explained in recitals 315 to 317. The Commission sees no reason to base its methodology on a comparison between peaks to other peaks. In any event, the fact that there may have been some peaks and troughs as selectively singled out by these parties in no way affects the conclusion that the requisite standard of 'massive imports' was met in these circumstances.
- (393) Furthermore, whether or not the massive imports during the three week period of pre-disclosure were 'to compensate' for the lower imports in December 2019 and January 2020 as also argued by these parties is irrelevant, as the basic Regulation does not discriminate regarding the motive for such massive imports.
- (394) The Commission therefore maintained its conclusion that the imports during the three-week period of pre-disclosure were massive under Article 16(4)(c) of the basic Regulation. This finding is further confirmed by the reasons described in recitals 402-405 below.
- (395) With regard to the second claim, once again, these parties suggested a definition that does not correspond to what is written in the basic Regulation. They then built their arguments on this incorrect standard. Specifically, injury that is difficult to repair as stated in the basic Regulation cannot be arbitrarily interpreted as meaning 'permanent and irreparable injury'. This claim is therefore without legal basis. In any event, the Commission explained in recital 376 in conjunction with the analysis of various elements in the injury assessment how this requirement was considered to be met in this case.
- (396) In addition, the third claim concerning the market share of imports and questioning their potential for causing injury to the Union industry in such a short period is misleading.
- (397) First, the figure of 0,4 % presented by the parties as the imports market share for the registration period is completely speculative, since there is no information available in the file on the EU consumption after the investigation period. For the sake of argument, even considering that EU consumption had not changed after the investigation period as proposed by these parties, which again is speculative, imports during the three-week period of pre-disclosure would account for 1,12 % of EU consumption during the three-week period alone. This level of market share is normally considered not negligible and capable of causing injury during a whole year. In any event, already the absolute level of imports in itself as indicated in Table 2 above, which is a verified figure, is certainly not negligible.
- (398) Thus, the assertion that import volumes equivalent to 1,12 % market share in the period of merely three weeks could not be considered massive and would be insufficient to cause injury to the Union industry is in clear contradiction with the basic Regulation and the Commission's consistent practice regarding negligible imports.
- (399) Secondly, the Commission restates its findings at recital 376 above and refers to all the elements proving how these massive imports from Egypt caused injury difficult to repair. This analysis is a holistic one based on an assessment of all the relevant evidence.
- (400) On the basis of this assessment, the Commission concluded that the quantities imported, in particular considering the significant volumes imported in this short period of time, were in absolute and relative terms significant enough to be considered massive within the meaning Article 16(4)(c) of the basic Regulation and thus able to cause injury difficult to repair.
- (401) With regard to the fourth claim of price-cutting by the Union industry in order to maintain market share, the Commission found that injury has been caused to the Union industry by the imports from Egypt taking market share from the Union industry, forcing them to cut prices to compete, even at the expense of their profitability. Therefore, the Commission cannot accept the justification that import prices have decreased as a response to a decrease in price by Union producers when in fact it found that subsidised imports were the cause of price depression in the Union market. On this basis, this claim had to be dismissed.

- (402) Finally, regarding the fifth claim, the Commission has no need to put the massive imports during the pre-disclosure period into a context and, therefore, the fact that import volumes just before the imposition of provisional duties were to make up for lower import volumes in December and January is irrelevant.
- (403) The Commission also disagrees with the premise by these parties that registration during the pre-disclosure period is in effect mandatory and that collection of duties on those registered imports should not also be in effect mandatory, and with their subsequent conclusion that this means that the benefit of the pre-disclosure period for importers and distributors would be lost. First, the registration during the pre-disclosure period is not 'in effect' mandatory, but it is subject to the strict conditions listed in Article 16(4) based on all data and evidence available at the time of pre-disclosure. This has been confirmed in practice, when there was no registration in the pre-disclosure period when these conditions were not met <sup>(98)</sup>.
- (404) Second, the Commission is well aware that the retroactive collection of duties registered in the pre-disclosure period is also not mandatory, but is strictly subject to the fulfilment of all the relevant conditions laid down in Article 16(4) of the basic Regulation on the basis of the most recent data available at definitive stage. This can also be confirmed in practice <sup>(99)</sup>.
- (405) Third, the Commission refers to recital 4 of the Modernisation Regulation <sup>(100)</sup> last amending the basic Regulation, which gives the reason for both the pre-disclosure period and the registration thereof. The recital directly states that 'in order to limit the risk of a substantial rise in imports in the period of pre-disclosure, the Commission should register imports where possible' considering 'a prospective analysis of the risks associated and the likelihood that these circumstances would undermine the remedial effects of the measures.'
- (406) Even where the registration in this pre-disclosure period is not possible for instance because the relevant legal conditions are not met, the Commission should afterwards reflect the additional injury caused to the Union industry by a further substantial rise in imports during this period according to the same recital and Article 15(1), fifth subparagraph of the basic Regulation.
- (407) Therefore, the retroactive collection of duties in these situations, far from being automatic, is subject to massive imports during the pre-disclosure period, or to the additional injury caused by such increase in the absence of registration, and also the other conditions listed in Article 16(4) of the basic Regulation.
- (408) Contrary to what these parties argued, the rationale and the benefit of the pre-disclosure for importers and distributors introduced by the Modernisation Regulation was 'to improve the transparency and predictability' for the parties affected by the investigations, 'in particular importers' <sup>(101)</sup>. The rationale for pre-disclosure was thus certainly not to give them an instrument to massively increase imports during the pre-disclosure period to benefit from the last window before the imposition of duties as they suggest. Therefore, this argument was also dismissed.
- (409) On the basis of all the above the Commission sees no evidence to change the conclusion that duties should be levied on the registered imports.

<sup>(98)</sup> Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15), recital 4.

<sup>(99)</sup> Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21), recitals 285 to 288.

<sup>(100)</sup> Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidised imports from countries not members of the European Union (OJ L 143, 7.6.2018, p. 1).

<sup>(101)</sup> Regulation (EU) 2018/825, recital 4.

- (410) In accordance with Article 16(3) of the basic Regulation, the level of the duty to be collected retroactively should be set at the level of the provisional duties imposed by Implementing Regulation (EU) 2020/379, because the definitive countervailing duty imposed by this Regulation is higher than the provisional duty.

## 8. DEFINITIVE COUNTERVAILING MEASURES

- (411) In view of the conclusions reached with regard to subsidisation, injury, causation and Union interest, definitive countervailing duties should be imposed to remove the material injury caused to the Union industry by the subsidised imports from Egypt.

### 8.1. Level of countervailing measures

- (412) Article 15(1), third subparagraph of the basic Regulation states that the amount of the countervailing duty shall not exceed the amount of countervailable subsidies established.
- (413) Article 15(1), fourth subparagraph then states that *'Where the Commission, on the basis of the information submitted, can clearly conclude that it is not in the Union's interest to determine the amount of measures in accordance with the third subparagraph, the amount of the countervailing duty shall be less if such lesser duty would be adequate to remove the injury to the Union industry.'*
- (414) No such information has been submitted to the Commission, and therefore the level of the countervailing measures will be set with reference to Article 15(1), third subparagraph.
- (415) Given that the definitive measures in this case will be based on the amount of countervailable subsidies established, the injury margin was not established.

### 8.2. Definitive measures

- (416) Definitive countervailing measures should be imposed on imports of GFR originating in Egypt in accordance with the rules in Article 15(1) of the basic Regulation, which states that the definitive duty shall correspond to the total amount of countervailable subsidies established.
- (417) On the basis of the above, the definitive countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Company	Countervailing duty
Jushi Egypt for Fiberglass Industry S.A.E.	13,1 %
All other companies	13,1 %

- (418) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during that investigation with respect to those companies. Those duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of the product concerned originating in Egypt and produced by those companies. Imported products concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from those rates and shall be subject to the duty rate applicable to 'all other companies'.
- (419) A company may request the continued application of those individual duty rates despite subsequently changing its name or the name of one of its entities. The request must be addressed to the Commission. The request must contain all the relevant information enabling the company to demonstrate that the change does not affect the right of the company to benefit from the individual duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.

- (420) Should developments after the investigation period lead to a change in circumstances of a lasting nature, appropriate action in accordance with Article 19 of the basic Regulation may be taken.
- (421) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(102)</sup>, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

### 8.3. Definitive collection of the provisional duties

- (422) Article 16(2) of the basic Regulation states that it is for the Commission to decide what proportion of the provisional duty is to be definitively collected.
- (423) Given the findings of this case, the amounts secured by way of the provisional countervailing duty, imposed by the provisional Regulation, should be definitively collected.
- (424) 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 <sup>(103)</sup>,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive countervailing duty is imposed on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling under CN codes 7019 11 00, ex 7019 12 00, 7019 31 00 (TARIC codes 7019 12 00 22, 7019 12 00 25, 7019 12 00 26 and 7019 12 00 39), and originating in Egypt.

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

Company	Definitive countervailing duty rate	TARIC additional code
Jushi Egypt for Fiberglass Industry S.A.E.	13,1 %	C540
All other companies	13,1 %	C999

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

#### Article 2

1. A definitive countervailing duty is levied on imports of chopped glass fibre strands, of a length of not more than 50 mm; glass fibre rovings, excluding glass fibre rovings which are impregnated and coated and have a loss on ignition of more than 3 % (as determined by the ISO Standard 1887); and mats made of glass fibre filaments excluding mats of glass wool, currently falling under CN codes 7019 11 00, ex 7019 12 00, 7019 31 00 (TARIC codes 7019 12 00 22, 7019 12 00 25, 7019 12 00 26 and 7019 12 00 39), and originating in Egypt, which were registered under Implementing Regulation (EU) 2020/199.

<sup>(102)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(103)</sup> 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).



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

Company	Definitive duty rate applicable to registered imports	TARIC additional code
Jushi Egypt for Fiberglass Industry S.A.E.	8,7 %	C540
All other companies	8,7 %	C999

*Article 3*

The amounts secured by way of the provisional countervailing duty under Implementing Regulation (EU) 2020/379 shall be definitively collected.

*Article 4*

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, 24 June 2020.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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# DECISIONS

## COMMISSION IMPLEMENTING DECISION (EU) 2020/871

of 23 June 2020

on authorising methods for grading pig carcasses in Lithuania

(Only the Lithuanian text is authentic)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 <sup>(1)</sup>, and in particular Article 20(p) thereof,

Whereas:

- (1) Point 1 of Section B.IV of Annex IV to Regulation (EU) No 1308/2013 provides that, for the classification of pig carcasses, the lean-meat content has to be assessed by means of grading methods authorised by the Commission and only statistically proven assessment methods based on the physical measurement of one or more anatomical parts of the pig carcass may be authorised. The authorisation of grading methods should be subject to compliance with a maximum tolerance for statistical error in assessment. That tolerance is defined in Part A of Annex V to Commission Delegated Regulation (EU) 2017/1182 <sup>(2)</sup>.
- (2) Commission Decision 2008/364/EC <sup>(3)</sup> authorises the use of four methods for grading pig carcasses in Lithuania.
- (3) Unless explicitly authorised by Commission Implementing Decision, modifications of the apparatus or grading methods should not be allowed.
- (4) Lithuania has requested the Commission to withdraw the authorisation of the methods 'Hennessy Grading Probe (HGP7)' and 'IM-03' from the list of methods authorised to grade pig carcasses on its territory, since the methods are no longer in use there.
- (5) Lithuania has also requested the Commission to authorise one new method (Fat-O-Meat'er II). For that purpose, Lithuania has presented a detailed description of the dissection trial, indicating the principles on which this new method is based, the results of its dissection trial and the equations used for assessing the percentage of lean meat in the protocol provided for in Article 11(3) of Delegated Regulation (EU) 2017/1182. Lithuania has also requested the Commission to authorise updated formulas for two methods (Fat-O-Meat'er S70 and Manual method-ZP) already authorised by Decision 2008/364/EC for grading pig carcasses on its territory.
- (6) Examination of that request has revealed that the conditions for authorising the new grading method and updating equations for the other two are fulfilled. These grading method and formulas should therefore be authorised in Lithuania.
- (7) For reasons of clarity and legal certainty Decision 2008/364/EC should therefore be repealed.

<sup>(1)</sup> OJ L 347, 20.12.2013, p. 671.

<sup>(2)</sup> Commission Delegated Regulation (EU) 2017/1182 of 20 April 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the Union scales for the classification of beef, pig and sheep carcasses and as regards the reporting of market prices of certain categories of carcasses and live animals (OJ L 171, 4.7.2017, p. 74).

<sup>(3)</sup> Commission Decision 2008/364/EC of 28 April 2008 authorising methods for grading pig carcasses in Lithuania (OJ L 125, 9.5.2008, p. 32).

- (8) In order to allow operators sufficient time to adapt to the technical requirements of introducing new devices and new equations, the methods for grading pig carcasses authorised under Decision 2008/364/EC should continue to apply until 30 April 2021.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The use of the following methods is authorised for grading pig carcasses pursuant to Point 1 of Section B.IV of Annex IV to Regulation (EU) No 1308/2013 in Lithuania:

- (a) the 'Fat-O-Meat'er S70 (FOM S70)' apparatus and the assessment methods related thereto, details of which are set out in Part I of the Annex;
- (b) the 'Fat-O-Meat'er II (FOM II)' apparatus and the assessment methods related thereto, details of which are set out in Part II of the Annex;
- (c) the 'manual method (ZP)' with a ruler and the assessment methods related thereto, details of which are set out in Part III of the Annex.

2. The manual method ZP with a ruler, referred to in point (c) of paragraph 1, shall only be authorised for slaughterhouses:

- (a) where the number of pigs slaughtered per week does not exceed 500, calculated as an annual average; or
- (b) only in case of failure of the grading methods referred to in point (a) and (b) of paragraph 1, where the number of pigs slaughtered per week exceeds 500, calculated as an annual average.

*Article 2*

Modifications of the authorised apparatuses or grading methods shall not be allowed unless explicitly authorised by Commission Implementing Decision.

*Article 3*

Decision 2008/364/EC is repealed with effect from 1 May 2021.

*Article 4*

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 23 June 2020.

*For the Commission*  
Janusz WOJCIECHOWSKI  
*Member of the Commission*

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## ANNEX

## METHODS FOR GRADING PIG CARCASSES IN LITHUANIA

## PART I

**Fat-O-Meat'er S70 (FOM S70)**

1. The rules provided for in this part shall apply when the grading of pig carcasses is carried out by means of the apparatus known as 'Fat-O-Meat'er S70 (FOM S70)'.
2. The apparatus shall be equipped with a probe of 6 millimetres diameter containing a photodiode of the Siemens SFH 950/960 type and having an operating distance of between 3 and 103 millimetres. The results of the measurements shall be converted into estimated lean meat content by means of a computer.
3. The lean meat content of a carcass shall be calculated according to the following formula:

$$\text{LMP}_{\text{FOMS70}} = 57,2500 - 0,2516 \times \text{F1} - 0,3926 \times \text{F2} + 0,1620 \times \text{M2}$$

where:

$\text{LMP}_{\text{FOMS70}}$  = the estimated percentage of lean meat in a carcass;

F1 = fat depth (including rind) in millimetres, measured between the 3rd and 4th vertebrae, 8 cm from the slaughter line;

F2 = fat depth (including rind) in millimetres, measured between 3rd and 4th last rib, 6 cm from the slaughter line;

M2 = Lean meat depth in millimetres, measured between the 3rd and 4th last rib, 6 cm from the slaughter line.

4. This formula shall be valid for carcasses weighing between 50 and 110 kilograms.

## PART II

**Fat-O-Meat'er II (FOM II)**

1. The rules provided for in this part shall apply when the grading of pig carcasses is carried out by means of the apparatus known as 'Fat-O-Meat'er II (FOM II)'.
2. The FOM II consists of an optical probe with a knife, a depth measurement device having an operating distance of between 0 and 125 millimetres and a data acquisition and analysis board. The results of the measurements shall be converted into estimated lean meat content by the FOM II apparatus itself.
3. The lean meat content of a carcass shall be calculated according to the following formula:

$$\text{LMP}_{\text{FOMII}} = 61,4200 - 0,6891 \times \text{F2} + 0,0977 \times \text{M2}$$

where:

$\text{LMP}_{\text{FOMII}}$  = the estimated percentage of lean meat in a carcass;

F2 = fat depth (including rind) in millimetres, measured between 3rd and 4th last rib, 6 cm from the slaughter line;

M2 = lean meat depth in millimetres, measured between the 3rd and 4th last rib, 6 cm from the slaughter line.

4. This formula shall be valid for carcasses weighing between 50 and 110 kilograms.

## PART III

**Manual method (ZP)**

1. The rules provided for in this Part shall apply when the grading of pig carcasses is carried out by use of the 'manual method (ZP)' measuring by ruler.
2. This method may be implemented using a ruler, with the grading determined on the basis of the prediction equation. It is based on the manual measurement on the midline of the split carcass of the thickness of the fat and of the thickness of the muscle.
3. The lean meat content of carcasses shall be calculated according to the following formula:

$$\text{LMPZP} = 54,89 - 0,4751 \times F + 0,1204 \times M$$

where:

LMPZP = the estimated percentage of lean meat in the carcass,

F = fat depth (including rind) in millimetres, measured at the thinnest location above the musculus gluteus medius of the carcass at the slaughter line;

M = Thickness of the loin muscle in millimetres, measured as the shortest connection of the front (cranial) end of the musculus gluteus medius to the upper (dorsal) edge of the spinal canal of the carcass at the slaughter line.

4. This formula shall be valid for carcasses weighing between 50 and 110 kg.
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