

Milan-London, the 21<sup>st</sup> of February 2022

Trade Remedies Authority

Department for International Trade

UK Government

To the kind attention of Mr. Oliver Griffiths

Subject: observations on behalf of GuangDong HaoMei New Materials Co., Ltd, and GuangDong King Metal Light Alloy Technology Co., Ltd. Anti-dumping proceeding concerning imports of aluminium extrusions originating in the People's Republic of China. Investigation No. AD0012

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## I. Glossary of abbreviations

- Commission Staff Working Document on Significant Distortions in the Economy of the PRC  
**Commission report**
- European Aluminium.....**EA**
- Five-years plan.....**FYP**
- GuangDong HaoMei New Materials Co., Ltd.....**Haomei**
- GuangDong King Metal Light Alloy Technology Co., Ltd.....**King Metal**
- London Metal Exchange.....**LME or London**
- “Measuring distortions in international markets – The aluminium value chain”, report issued by the Organization for Economic Cooperation and Development.....**OECD report**
- Notice of initiation of an anti-dumping proceeding concerning imports of aluminium extrusions originating in the People’s Republic of China.....**Notice**
- Trade Remedies (Dumping and Subsidisation) EU Exit Regulations 2019.....**Basic Regulation**
- Shanghai Metal Exchange.....**SME or Shanghai**
- SOE.....**State-owned enterprise**

## II. Abstract

1. After the adoption of the provisional and definitive antidumping measures against the Chinese aluminium extrusions by the European Union, price of aluminium has ramped up both within the Continent and the UK<sup>1</sup>. The internal demand both for industrial and non-industrial use is increasing due to the high demand, the incapacity of European and UK extruders to satisfy it and the outstanding price of the raw materials<sup>2</sup>. Such *status quo* shall be carefully considered in the light of the aim of the ongoing procedure before the TRA.
2. As the proceeding is subject to a *rebus sic stantibus* clause, in comparing two fixes period of times and the persistence of the conduct, the assessment of injury will be necessarily affected.
3. As a second preliminary observation, there are not distortions in the price making process of Haomei and King Metal: their prices are positively influenced by relevant level of technology and economy of scope and are, in any case, in line with the market.
4. Haomei and King Metal do not benefit from any relevant State aid, bearing in mind their outcome and the very small aid received in 2020 and 2021. Nor VAT rebates in China are capable of raising distinctly their exports and, actually, VAT does apply on their export of bars and rods.
5. General information inserted in Hydro complaint need a re-evaluation, as they assume that there are not differences in the production processes; and, above all, the Normal Value calculation can take in consideration the internal price in China of the two defendants, which is not influenced by any distortion inasmuch as the complaint alleges.
6. On the other hand, there is no injury, because the market share of Haomei and King Metal is extremely small in UK. Causality seems to lack of adequate investigation by Hydro: the complaint states that there is no interference in the causation of injury by other States but a whole theory of the price-making process is nor expressed neither referred to and the actual situation of European economy needs to be taken in consideration.

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<sup>1</sup> See file attached *Aluminium Products Monitor August 2021*, table 2 pg. 27

<sup>2</sup> See file attached *Aluminium Products Monitor August 2021* pgg 12-13

7. The request for non-application of the lesser duty rule is utterly disproportionate and linked to a non-existent premise, the validity only of the London Metal Exchange price for raw materials.
8. As a conclusion, antidumping duties cannot be established on solid factual and juridical grounds and that they could produce, in the short and medium term, huge damages for the British economy, as an unwanted corollary in line with the experience of economic protectionism.

### III. Procedural premise and note on confidentiality:

9. T  
The following observations are submitted according to the principle of good cooperation and transparency between the Investigating Authority and the Interested Parties, under International law.
10. All economic and quantity data exposed in the observations are meant confidential and can be released to the other parts only in accordance with the underwritten attorneys.

### IV. Preliminary considerations on on-going upward trend of prices of aluminium

11. The current proceeding has commenced on the 21<sup>st</sup> of June 2021 and its foundations must necessarily be assessed in the light of the on-going situation concerning the European aluminium extrusions market after the EU has levied the definitive duties against the Chinese products. In fact, if it is true that United Kingdom is no longer member of the European Union, it is nevertheless undisputed that both the territories are very similar for what concerns the incapacity of the local manufacturers to supply the internal demand and their need of integrating their production with external sources. The elimination from the EU markets of the Chinese competitors has led to the above-mentioned rally of the prices and to massive delays of the deliveries within the UE.
12. Hydro is misrepresenting the reality of the UK market and is profoundly wrong when they state that “ *The UK aluminium extrusions industry is capable of supplying all sectors of the market.*”<sup>3</sup> and, leaving alone the non-existence of dumping and injury for Hamoei and King Metal that we shall further highlight, the TRA should focus on the fact that, given the actual market conditions, any duty levied against the Chinese products would result in a financial burden that UK’s transformation industries and final consumers should bear.
13. Eventually, it is to be noted that the European Commission has deliberated a “Request for post-IP data in view of assessing the conditions under Article 14(4) of the basic Regulation” concerning the aluminum flat rolled products imported from China<sup>4</sup>, as “*in the context of the ongoing anti-dumping proceeding concerning imports of aluminium flat- rolled products, we are hereby referring to the Commission’s General disclosure document (‘GDD’) and paragraph (367) thereof in particular. In this paragraph of the GDD, the Commission reckons the severity of the post-IP material shortage for several specific product types and a general price increase.*”<sup>5</sup> The assessment has led to the suspension of the duties levied by the European Union against the Chinese aluminium FRP. We expect the same initiative to be undertaken at any moment towards the aluminium extrusions imported from China, since the conditions and assumptions are identical and the actual situation of the European downstream industry using aluminium extrusion is dramatic.

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<sup>3</sup> See *Hydro Aluminium Ltd Anti-dumping application* pg. 12

<sup>4</sup> EC anti-dumping procedure AD668

14. The ongoing paradox in the EU lies in the fact that, in order to favour a few minor European extrusion manufacturers and a gigantic Norwegian one, an entire transformation/downstream industry – much more valuable – is now on its knees.

## V. The firms

15. A  
further description of the two enterprises is needed to understand their competitive advantages.

### Haomei

16. Located in Taiji Industrial Town of Qingyuan Hi-Tech Development Zone, Haomei is a large-scale aluminium profiles manufacturer integrating research and development, manufacturing and sales. Haomei is a privately-owned company, entirely hold by private investors. Company is no way controlled by SOE's and does not receive State aids.
17. Through many years of development, Haomei has been committed to expanding its business to upstream and downstream industrial chain, seeking for hi-tech integration, high brand value and high value added, and transforming from a traditional aluminium product manufacturer to a national hi-tech enterprise specialized in innovation and industrialized application of energy-saving aluminium alloy doors & windows system and lightweight materials. The Haomei profiles are applied to well-known buildings, rail transits, machineries and electronic appliances both at home and abroad.
18. Coving over 500,000 m<sup>2</sup>, it possesses an industrial chain of aluminium profiles from casting, die design, manufacturing, extruding to painting and further processing. Its special profiles project is listed by National Development and Reform Commission as a key project for industry revitalization, a major construction project of Guangdong Province 2011 and evaluated by Guangdong Provincial Commission of Economy and Information Technology as one of 23 major projects.
19. Foreign experts and professors in the sector are invited to help carry out technological innovation and R&D in the laboratory that passed National Laboratory (CNAS) Certification and was evaluated as one of National Enterprise Technology Centres. In 2012, Haomei was ranked the 3rd among Top 20 China's Construction Aluminium Profiles Manufacturers, the event of which was organized by China Nonferrous Metals Fabrication Industry Association.
20. The Group is capable of producing different types of building profiles, industrial profiles and decoration profiles as well as aluminium profiles of special alloy designation and special specification.
21. In addition to general aluminium profiles, Haomei focuses on high-quality, environmentally-friendly and energy-saving aluminium profiles, with over 10,000 product varieties, of which industrial profiles are applied to such different fields as telecommunications, LED, machinery, automobile, computers, shipping, aviation & aerospace, rail transit and durables; construction profiles are also used across the world, particularly Guangzhou's landmark, 610-meter-high New TV Tower exclusively using their aluminium profiles.
22. The  
high-quality aluminium profiles Haomei manufactured with high-quality processes and state-of-the-art technologies have been recognized in European and American markets, and well sold to the U.S., Germany, Canada, UK, Switzerland, Singapore, Brunei and Italy, with its export volume far exceeding its peers due to its quality assurance highly recognizable.

23. Haomei has developed into a large-scale enterprise with solid business strength, complete product specification, improved R&D infrastructure and outstanding innovation capability, and its unique advantage in the lightweight industry, and has independently developed a power-driven full-aluminium frame, the first set in China, reducing traditional body weight by 40% and industrializing energy-saving practice. With high information level, stable production quality and perfect marketing and after-sale service systems, the company, which is rapidly developing, is expected to be a global manufacturer of aluminium profiles. Based on market demands, guided by research and development of high-quality new profiles and aiming at improving its product grade, Haomei integrating precision mould manufacturing, sales and R&D, seizes market opportunities and expands international exchange and cooperation, to further improve its internationalization level in terms of markets, brands, products, technologies, networks, mechanism and idea, to create a path of globalizing national brand and to build a long-lasting enterprise having international competition.
24. Haomei group is divided into a) building aluminium profiles; and (b) industrial aluminium profiles, according to the use, and the building aluminium profiles, and industrial aluminium profiles are managed separately, run independently, manufacturing more professionally, gaining obvious cost advantage and stronger competitive advantage.
25. Haomei profile division focuses on the development of building profiles, equipped with a complete production chain from smelting, casting, extrusion, oxidation, electrophoresis, powder spraying, spray painting, glue injection insulation materials, deep processing, fine processing, mould processing and design.
26. The company has a production model of the whole industry chain of aluminium processing. Compared with UK manufacturers, it saves logistics and transportation costs and carbon emissions, and reduces the cost of in-process metal inventory. In terms of delivery time, it has reduced the transit waiting time for purchasing raw materials and semi-finished products, such as transportation, repeated inspection and so on, highlighting the advantages of the production mode of the whole industrial chain.
27. The industrial know-how of Haomei explains its significant economic success which is actually independent from the export price of the extrudes, because the enterprise manages not to compete on the price but on the speciality of its product.

### **King Metal**

28. King Metal is, as well, privately-owned company, focuses instead on the manufacture of industrial hard alloy bars, including five categories of bars, hard alloy directed bars, super hard alloy directed bars, hard alloy undirected bars, super hard alloy undirected bars, drawn rod.
29. The machine layout includes directed extrusion and undirected extrusion. The tonnage of the extruder ranges from 1450T to 10000T. Equipped with two professional production bar directed extruders, simultaneously undirected extruder and drawn line joint production, realizing the short process, online quenching.
30. The company produces products 20-320 mm round stick, side length of 15-250 mm and equivalent area of flat stick. The UK manufacturer specification round stick usually does not exceed 250 mm, the side length of the stick does not exceed 160 mm, comparatively speaking, the company produces a wider range of products, thereby meeting accurately the needs of consumers.

## **VI. Lack of distortions in the price mechanism**

31. This section is dedicated to considering that the complaint lacks adequate evidence of distortion in the price mechanism and, what is more, that the prices of Haomei and King Metal are not in any way distorted<sup>6</sup>
32. Hydro assumes significant distortions in PRC so that a) domestic prices of PRC would not be appropriate to be used and b) the normal value should be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks (i.e. the “Fair Value”).
33. *“Since the market for aluminium extrusions, as well as the markets for the different factors of production for aluminium extrusions in China, are distorted, the Applicant has constructed the normal value”* states Hydro, with the alleged distortions notably reported in a) Commission Staff Working Document on Significant Distortions in the Economy of the PRC and b) a report by OECD, *“Measuring distortions in international markets – The aluminium value chain”*.
34. Referring to the Reports, alleged distortions would be: a) lack of free market forces; b) significant extent of State owned enterprises (SOE); c) lack of adequate enforcement of bankruptcy laws, corporate or property laws; d) wage cost are distorted because of no negotiation; e) moreover, the government directs and controls virtually every aspect of the development and functioning of the sector.
35. Consequently, prices and costs in China would not be considered appropriate to establish Normal Value.
36. The two Reports should be considered by articles 7(2)(b) and 7(4)(c) of the Basic Regulation.
37. When they are read together, significant distortions occur when reported prices or costs, including the cost of raw material and energy, are not the result of free market forces because they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
  - 1) the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
  - 2) state presence in firms allowing the state to interfere with respect to prices or costs.
  - 3) public policies or measure discriminating in favour of domestic suppliers or otherwise influencing free market forces;
  - 4) the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
  - 5) wage costs being distorted;
  - 6) access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state.

**VI.1. The complaint refers to a generic, macro-economic frame, not relevant in the case.**

38. First of all, it must be stressed that the alleged subsidies should be implemented, moreover towards the International markets, in order to facilitate export of overcapacity of Chinese production. On the contrary, in the products concerned, as regards Haomei and King Metal, the intervention of PRC is of minimum amount and aimed at very different purpose, which

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<sup>6</sup> See *Hydro Aluminium Ltd Anti-dumping application* pgs. 26-44

is the achievement of technological progress<sup>7</sup> in a way that is not different from intervention of UK government and/or other European States.

39. Moreover, this technological progress, if denied, would undermine the development of the UK industry as well.
40. Furthermore, under art. 7 of the Basic Regulation, the TRA can well consider domestic costs, but only to the extent that they are positively established not to be distorted, on the basis of accurate and appropriate evidence and **the assessment shall be done for each exporter and producer separately**. Instead, the complaint refers in very general terms.
41. Regarding this approach, it seems that Hydro has not appropriately referred to the two Reports, which must be considered in their whole meaning and whose results are not automatically applicable to the defendants.

## **VI.2. Commission Report**

The **Commission Report** states (pages 377 to 398) that: “*unlike the 12<sup>th</sup> FYP, the 13<sup>th</sup> FYP does not contain specific provisions on aluminium*” (p. 377). There is an approach on non-ferrous metal industry in general, without addressing exclusively the aluminium market. In any case, we insist that the Commission report is an unofficial document that was never promulgated by the European Union as per the formal procedures. Its use in the European Commission’s antidumping case is currently confuted in the legal actions Haomei Group has undertaken before the European Courts, since its broad, not circumstantiated, and biased allegations against the Chinese economy collide with the most basic principle of legality to which the European system adhere and, due to the abovementioned lack of formality, cannot be the foundation of the Regulation that levies duties against the Chinese aluminium extrusions. Furthermore, we respectfully believe that, being the Commission report a non-official act of the European Commission should not be used by the TRA, in the light of the recent exit of the United Kingdom from the European Union.

## **VI.3. The OECD Report.**

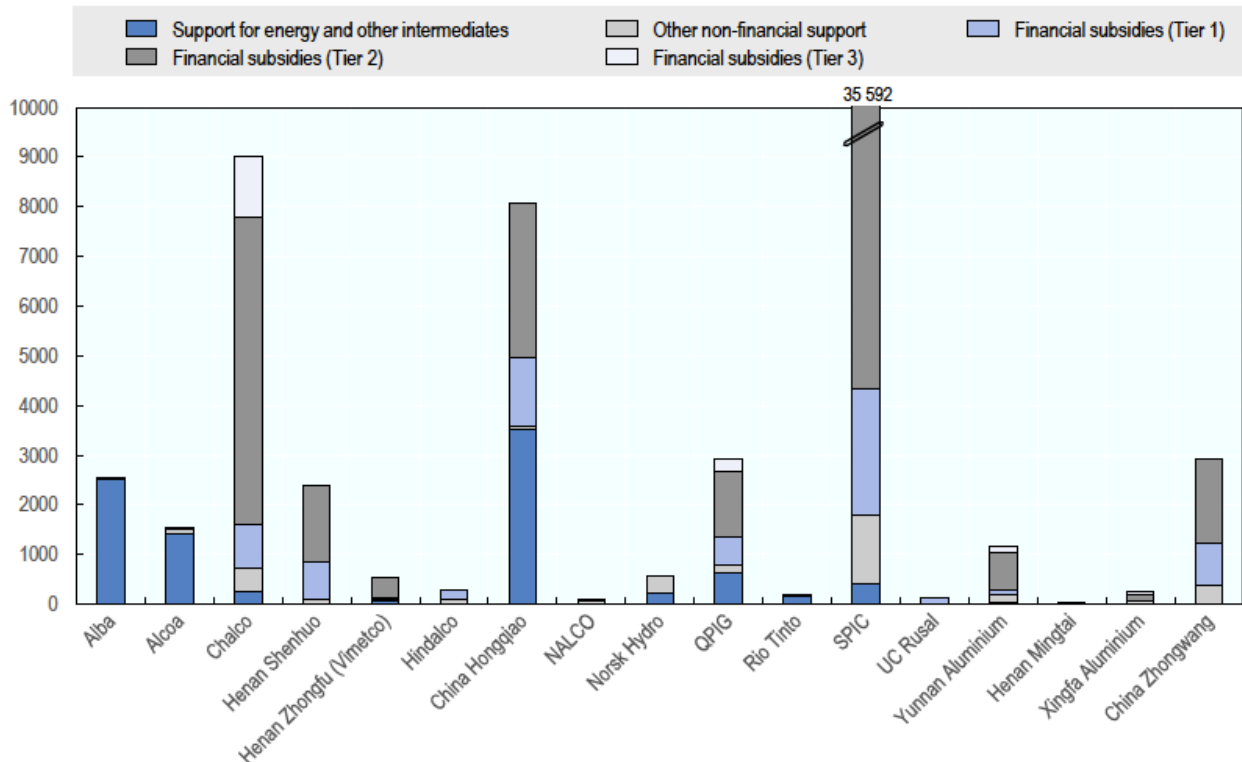
42. **With reference to the OECD Report**, this is focused on the analysis of seventeen world enterprises, which have received financial aids from the State or any other incentives the complaint reports it is to be underlined how the OECD examined 17 of the largest firms operating along the aluminium value chain, which together make up more than half of global smelting capacity. The OECD found that the total government support for the 17 firms reached up to USD 70 billion over the 2013-17 period. The top 5 recipients - all Chinese firms – receive 85% of all support, most of it at the smelting stage of the value chain, as in the figure reported below:

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<sup>7</sup> See point 38. below

**Figure 1.7. Government support for firms studied reached between USD 20-70 billion over the period 2013-17, depending on how financial support is estimated**

Total government support by type, 2013-17 (USD millions, current)



43. It is remarkable that Haomei and King Metal are not encompassed by the analysis because their numbers are smaller. Relevant information have not been collected for them.
44. In fact, Haomei total subsidies in 2019 amount to xxxxxxxxx, which is xxxxxxxx USD, much lower than the financial subsidies envisaged in the OECD report (it is remarkable that in the period from 2013 to 2017 Hongqiao, Chalco and Zhongwang enjoyed billions of USD in financial subsidies) and anyway focused on technology and IT upgrades. In the period March 2020 – June 2021, only rough amount of xxxxxx GBP has been granted to Haomei by Chinese public Authorities, while King Metal only received, in the same period, a rough amount of xxxxxx GBP.<sup>8</sup>
45. Not surprisingly the OECD report admits that specialised producers of aluminium semis (such as Haomei and King Metal) do not seem to receive as much support as smelters (OECD report, pag. 16):

Overall, specialised producers of aluminium semis do not seem to receive as much support as smelters. The three Chinese companies in the sample specialised in the production of semis<sup>4</sup> did not receive large non-financial subsidies from Chinese authorities (less than USD 100 million a year on average). Similarly, for Hindalco and Norsk Hydro support related to the production of semis seems modest (e.g. small subsidies to Hindalco from the states of Kentucky and New York) or non-existent (Norsk Hydro). However, estimates of support for semis do not consider any implicit support that subsidies for, and export restrictions on, primary aluminium may confer on producers downstream.

<sup>8</sup> See attached file *Haomei Group Rewards Hi Tech etc.*



#### 4 China Zhongwang, Xingfa Aluminium, and Henan Mingtai.

46. Going through the OECD report, it is confirmed that the aluminium value chain distortions are referred to major corporation and smelters with an annual capacity of thousands of tons, enlisted in the chart below, who are endowed with billions of financial aids, as stated by OECD (OECD report, p. 43):

**Table 2.2. Top 20 producers of primary aluminium, by capacity**

Rank	Firm name	Annual capacity (kt)	Parent country
1	China Hongqiao Group	7 802	CHN
2	UC Rusal	4 402	RUS
3	Xinfa Group	4 322	CHN
4	Aluminium Corporation of China (Chalco)	3 987	CHN
5	Alcoa	3 402	USA
6	Rio Tinto	3 389	GBR
7	State Power Investment Corporation (SPIC)	3 103	CHN
8	Emirates Global Aluminium	2 600	ARE
9	Henan Shenhua Group	2 402	CHN
10	Yunnan Aluminium Co. Ltd.	2 216	CHN
11	East Hope Group	2 079	CHN
12	Norsk Hydro	2 060	NOR
13	Hangzhou Jinjiang Group	2 037	CHN
14	Vedanta Resources	1 570	IND
15	Jiuquan Iron and Steel Co. Ltd. (JISCO)	1 555	CHN
16	Hunan Zengshi Group	1 506	CHN
17	Qinghai Provincial Investment Group Co. Ltd.	1 374	CHN
18	Hindalco	1 343	IND
19	Shaanxi Youser Group	1 220	CHN
20	Vimetco N.V.	1 178	NLD

*Note:* Capacity estimates for Chinese companies may differ from the numbers reported by the companies themselves for reasons explained in Box 3.1.

*Source:* OECD estimates on the basis of latest information from the US Geological Survey, industry sources, satellite imagery, and company-level information (e.g. company websites and annual reports).

47. The main finding of the OECD Report is that the Chinese enterprises with an annual capacity of thousands of tons have received advantages by the State.

#### **VI.4. Absence of relevant financial State-aids to Haomei and King Metal.**

48. As stated before<sup>9</sup>, in the period March 2020 – June 2021, only a rough amount of xxxxxx GBP has been granted to Haomei by the Chinese public Authorities, while King Metal only received, in the same period, a rough amount of xxxxxx GBP.<sup>10</sup>
49. The aforementioned sums, that are not to be considered public subsidies, but mere rewards for the implementation of High Tech, Ecological, Employment policies etc. are much lower than the financial subsidies envisaged in the OECD report.
50. These numbers are far from being eligible to significant access to public finance incentives according to the meaning of art. 20- 22 of the Basic Regulation. That provision, in fact requires access to finance, granted – by institutions which implement public policy objectives

<sup>9</sup> See point 33

<sup>10</sup> See attached file *Haomei Group Rewards Hi Tech etc.*

or otherwise not acting independently of the state – in a way the export price becomes distorted.

#### **VI.5. Production process and price of the raw material<sup>11</sup>.**

51. Differences between products and industrial processes. Competitive advantage of the industrial methodology of Haomei and King Metal.
52. The complaint does not look into the difference in the production processes.
53. The features of the production lines make the two defendants production line not only extremely sophisticated and advanced but above all extremely asked for by the UK clients due to a competitive difference in the technological level.
54. On the contrary, as a plain exam of Hydro complaint shows, the UK producers avoid describing their technology development grade, but this is crucial to meet the consumers' needs, notwithstanding the ill-founded hypothesis of market distortion.
55. Haomei and King Metal are able to compete because of the technology involved in their production line, not because of their price. This information needs to be taken into account for a thorough examination of the market situation.
56. Recent and important development of technological applications have been put in place and deeply influence the outcome of the two enterprises.
57. What is even more important, whereas the traditional production processes are separated, Haomei and King Metal entail an integrated process which gives to the client a “*tailored*” product for a vast number of industrial and non-industrial needs.
58. This commercial and industrial point is the key-difference and permits at the same time: (i) a competitive price and (ii) an increased satisfaction for the client, whose needs are met more quickly and more precisely.
59. It is consequently a matter of concurrence and not a matter of dumping.
60. The complainant may be affected not by actually a lower price, with regards to Haomei and King Metal but, on a previous level, by their lower level of R&D, technology, and economies of scope.
61. The Commission Report states (pages 377 to 398) that:

*“the 13<sup>th</sup> FYO for the non-ferrous metals Industry provides the implementation of smelting and casting of large standard aluminium-lithium alloy ingots shall be speeded up”*, going towards a stable supply of high-performance light alloys.
62. This is an example of the aforementioned objectives of Chinese political economy lines, which is focused on planning and evaluating the advantages of a major aluminium alloys scale, in a constant search of efficiency, as made clear by the provisions of the FYP.
63. Coherently, “other objectives impacting the aluminium sector include: the development of, inter alia, high performance light alloy materials, non-ferrous metals for electrical materials, non-ferrous metals for new energy material; raising the quality and homogeneity of materials; lowering cost; raising the mid & high range effective supply capacity and level”.
64. This is a set of industrial policy objectives, which do make the difference in fixing the price.
65. And, on the other hand, it also implies that the products, notwithstanding what reported in the complaint, are not “like”. The Commission Report states:

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<sup>11</sup> We reserve the production of supplementary data and support evaluation on price mechanism of raw material, energy cost and wages.

*“at the same time, the Plan encourages companies in the aluminium sector to set up collaborative R&D platform to make full use of the functionality derived from Internet, e.g. e-commerce, big data, cloud platform”*. This is a traditional collectivist approach which becomes up-to-dated to the applies of the sharing economy born in the U.S. Far from imposing distortion, the Plan encourages innovation.

66. Some supporting measures envisaged by the Plan are: *“production-line monitoring, smart manufacturing, and logistics systems; foster a number of leading enterprises and non-ferrous metal fine products, with optimal quality and prices as well as improved marketing services; guide enterprises to speed up innovation and to improve and stabilise product quality; consider those companies having established a brand reputation and international competitiveness ad pillars”*. Again, we see capitalistic industrial policy objectives but not refers to distortions’ mechanisms.

67. IT has a key-role in the Plan, as recognized below:

In addition, with regard to IT development and industrialisation, the Plan envisages to:<sup>1331</sup>

- promote the establishment of standards for IT development and industrialisation comprehensive technologies,
- ensure the expansion of applications such as on-(production)-line monitoring, smart optimisation of the production process, simulation and modelling, etc.
- ensure that digitalisation (NC command) of dressing and smelting and of other key processing technologies shall exceed 80%,
- raise the share of enterprises integrating comprehensive technologies from 12% to 20%;
- raise the share of enterprises integrating management and control technologies from 13% to 18%;
- raise in the share of integrating production, supply and sales technologies from 16% to 22%.

## **VI.6. Energy Cost<sup>12</sup>**

68. Commission, as recalled by Hydro complainant, recognizes there are not any benefits in the energy regime in general *“Aluminium production is energy-intensive and unlike other major aluminium producing countries, China does not enjoy a particular comparative advantage resulting in lower energy cost”*.

69. Haomei and King Metal are not granted by any significant aid and/or advantage in this field.

## **VI.7. Wage costs of the aluminium workers**

70. It is not (if it has ever been in the past) a problem of a lower labour cost, of alleged distortions in the relationship with workers and of alleged lack of reformation in some sector of the Law.

71. Distortion in wage costs of the aluminium workers lack of any support.

## **VI.8. Vat rebates policy and fiscal treatment.**

72. Some clarification on Vat rebates policy and on tax in general is needed.

73. In general, in Europe VAT does not apply to export and a tax rebate policy cannot be seen per se as an advantage because, at the same time, it is a disadvantage for the countries that choose not to put it in place.

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<sup>12</sup> We reserve the production of supplementary data and support evaluation on price mechanism of raw material, energy cost and wages.

74. Moreover, with specific reference to Haomei and King Metal, whereas a normal exemption of VAT is due to the general production, bars and rods do not enjoy such normal fiscal advantage and are thereby penalized in the international commerce.
75. On the other hand, extrudes enjoy a tax abatement in the measure of 10% on corporate income tax: even admitting this is an advantage given to a segment of the value chain from the Chinese State, there is no evidence that this determines any dumping.
76. The average price difference between Haomei Group's products sold both within the domestic and the Chinese market has been, during the I.P. of xxxxxxxx p/ton, within a range varying from a positive difference of xxxxxxxx USD p/ton to xxxxxxxx USD p/ton<sup>13</sup>. The difference in price is not affected at all by the Chinese tax abatement.
77. In fact, by deducting a 10% from the European price, we still have a price higher to the Chinese price; or, by deriving from the Chinese price a price that includes a 10% abatement, we still have a price lower than the European price.
78. Haomei and King Metal are granted with a 10% tax abatement concerning the PRC Enterprise Income Tax, as per Law 2600 promulgated on the 14th of April 2008.
79. The aforementioned tax abatement intends to support and encourage the development of Hi-tech enterprises (art. 1), that may apply for such favourable tax treatment as per art. 4. The Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation shall form the National Steering Committee for the Administration of the Recognition of Hi-tech enterprises (art. 6) which, to be recognized as such, shall satisfy the conditions stated in art. 10. Among them, are to be recalled the:
  - a. ownership of property rights concerning the core technology of its principal products (art. 10 (1));
  - b. employment of science and technology personnel with at least an undergraduate degree for at least 30% of its total workforce during the relevant years and the employment of research and development personnel accounting for at least 10% of its total workforce during the relevant years (art. 10 (3));
  - c. investments that are to be undertaken in order to achieve new scientific and technological knowledge that, for enterprises with sales revenues of at least Rmb 200 million during the last year, must amount, at least, to the 3% of such sum (art. 10 (4(iii)));
  - d. revenues from Hi-tech products that must account, at least, for the 60% of the enterprise's total revenue for the relevant years.
80. The tax abatement regulated by Law 2600/2008 shall apply to every Hi-tech enterprise registered in China (excluding Hong Kong, Macao and Taiwan) as per art. 2 and 10 (1) and, being linked to a specific purpose such as the development of new technologies, it implements neither a form of State aid nor a form of support to export whatsoever.
81. Overall, the described tax abatement is only a measure to encourage technological process in the same sense envisaged by competition laws.

## **VII. Haomei and King Metal finance-data reliability**

82. A further confirmation is given at pag. 81 of the OECD Report, reported below:

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<sup>13</sup> See sheet "*Comparison*" of the attached file "*DOMESTIC SALES;UK SALES;COMPARATION AVERAGE PRICES 16-FEB-21*"

#### Box 5.1. Challenges in using company data: the example of the China Hongqiao Group

The Shandong-based China Hongqiao Group ("Hongqiao") has moved in 20 years from producing jeans and denim to being the world's largest producer of primary aluminium by volume and capacity. This growth has been fast by industry standards, raising questions as to its drivers and sustainability.

An anonymous short-seller report released in November 2016 asserted that the high profit margins reported by Hongqiao (on average 18% over the 2011-15 period; see Figure 3.1 for an industry benchmark) were hiding costs and debt that had been moved off the company's books (Anonymous, 2016<sub>[48]</sub>). The report noted in particular what it perceived as inconsistencies in the financials, whereby Hongqiao was able to post record-high profit margins while at the same time reporting massively debt-funded, negative cash-flow (*ibid*).

This was followed by the release in February 2017 of another report by short-seller Emerson Analytics, which also alleged that Hongqiao had been "under-reporting debt and receiving related-party subsidies" in order to appear more profitable (Emerson Analytics Co. Ltd., 2017<sub>[49]</sub>). The release of that report caused Hongqiao's stocks to collapse, prompting the company to halt public trading at the Hong Kong stock exchange (Reuters, 2017<sub>[50]</sub>). Hongqiao reacted by issuing a report of its own in which the firm sought to explain why its electricity costs were lower than those of its Chinese competitors (e.g. Chalco), and how it was able to obtain inputs such as coal and alumina for below-market prices (China Hongqiao Group Limited, 2017<sub>[5]</sub>).

Hongqiao's refusal to submit to an independent investigation to counter the allegations led Ernst & Young to resign as Hongqiao's auditor (Ernst & Young had assumed that role when Deloitte resigned in 2015). Unable to produce an annual report for 2016 in the spring of 2017, the company turned to Hong-Kong-based auditing firm Baker Tilly Hong Kong Risk Assurance Limited (BT Risk Assurance), which also subsequently resigned (Aluminium Insider, 2017<sub>[51]</sub>). Hongqiao eventually hired a fourth auditing firm, Shinewing (HK) CPA Limited, to complete its 2016 annual report and financials.

The present study does not seek to endorse any view in the allegations made against Hongqiao. The above example serves, however, to highlight that the use of firm-level data is not immune to data-quality problems.

83. With refers to Haomei and King Metal, there are not any data-reliability problems such as the ones quoted above. Audits are regularly conducted by certified public accountants and the budgets are transparent and publicly accessible.
84. As well as, as stated before, subsidies granted to China Hongqiao Group, amounting to billions of USD, are absolutely not comparable to the very small ones given to the two defendants (1-2 million of USD per year in 2019).
85. Overall, the main assumption of OECD is that government interventions appear widespread all along the aluminium value chain, though some stages in the chain seem to attract more support than others but especially with the top aluminium smelters: this is not the case of Haomei and King Metal that are mostly concentrated on manufacturing of semi-fabricated products of aluminium.

### VIII. Comparing European Treaties and directives incentivizing technological progress.

86. Even if UK is no more part of the European Union, its industries benefitted of the European discipline on state aids and European financing schemes and programmes. The aforementioned aids to Haomei and King Metal are comparable to the ones granted to UK producers from the Government and from the European Union in order to achieve aims of public interest, such as upgrading technological transformation and digitalization.
87. For an example of such approach in Europe, see Law-Decree 25 January 2010, n.3, "Salva-Alcoa", which endowed a number of measures aimed at granting supply of energy at affordable cost, mainly for the Alcoa producer sited in Sardinia.
88. The effect of the aids, in the present case, is not to distort international competition but to enhance Haomei and King Metal through more update technologies.
89. The 2014 Commission communication, applied to several UK producers, contains several references to the possibility of incentivizing businesses for reasons of technological progress. European countries, even through the cooperation, have the objective to strengthen thier scientific and technological bases and consequently State aid were allowed in certain cases. Indeed, a goal of the Europe 2020 strategy is to reinvest 3% of GDP in Research and Development. Regulation 651/2014 provides two specific exemption categories of

financeable aids, for industrial research and experimental development, with an aid intensity of up to 50% and 25% of the eligible costs. The amount of the aid authorized to the “aluminium related industry” in UK is for sure higher than the incentives received by Haomei and KM. As a consequence if Chinese incentives schemes are considered competitive advantages even aids to UK producers should be considered unlawful state aids to be restored by the UK Government in light of the EU law and the WTO agreement.

90. What is more, the basic principles on competition law, in UK and EU, forbids any practice such as agreements and abuse of a dominant position which limit or control technical development to the prejudice of the consumers: Indeed the behavior of Hydro and the European Aluminum industry looks like a cartel that Haomei and King Metal will probably bring to the attention of the competition authorities in UK and EU.

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91. On the whole the distortions remain lacking support in the complaint as the two Reports demonstrate a much higher complexity than the factual situation described in the complaint.
92. With specific reference to the defendants, Haomei and King Metal prices and costs are not affected by substantial government distortions, substantial aid from the State of financial, fiscal or any other measure and the significant distortions as enlisted. Nor any state or political organism is involved with the trend of technological and economic development of the two enterprises.

#### **IX. Furthermore, in alternative, Turkey can't be Taken as representative country.**

93. Notwithstanding the previous conclusion, which lead to the conclusion that there is no need to apply Art. 10, some argument must be added as far as the Fair Value calculation is concerned in the complaint.
94. Hydro assumes that Normal value is the value calculated with refers to Turkey.
95. According to complainant meet the criteria in Article 10 of the Basic regulation, i.e. they are countries with a similar level of economic development under the condition that appropriate data are swiftly available. When there is more than one appropriate representative country, preference is given to the country with the highest level of social and environmental protection (7).
96. **Hydro uses Turkey as representative country**, because it has a level of economic development similar to PRC..
97. The choice of Turkey is not agreeable.
98. The representativeness is explained for the level of economic development and classification in the World Bank: the assumption is largely insufficient.
99. The choice of the third country is due similar level of development but data such as the internal demand and the amount of population make the difference in the comparison.
100. Lack of adequate representativeness comes from the enormous difference in the internal demand and the amount of population: due to a basic principle of economy of scale, the more the production grows (to primarily satisfy a higher internal demand) the more the fixed cost increment decreases.
101. In 2020, in Turkey there is a population of 84 million inhabitants, in China 1 billion 437 million inhabitants (source: UN DATA): there is consequently an enormous difference in the internal demand for aluminium, which goes primarily to national industrial needs and constructions.

102. More generally the given information on Turkey do not constitute a documented and reliable element of analysis.
103. The dumping methodology and data calculation do not seem correct and are not applicable to Haomei and King Metal:
  - Turkish data are not in any way representative compared to Haomei assumed that the price-making process is utterly different and influenced by an immense difference in the internal demand;
104. Given the aims of the proceeding a divulcation of precise data is given: otherwise inly the lower value can be taken in account;
105. Consequently, the Turkish Normal Value is totally unreliable, and a brand-new calculation is in any case needed.

## **X. Comparison of London index to Shanghai index**

106. On the price mechanism some data need to be added to the complaint.
107. In Europe, including UK, the price derives from the metal base price (taken by the London Metal Exchange) and the premium, as an add-on for the working and processing of the aluminium and is negotiated between buyer and seller.
108. In China, aluminium base prices are set by the Shanghai Futures Exchange.
109. The Complainant, recalling the European Commission reports, takes into consideration basically the London Metal Exchange, for the price of raw material.
110. The comparison of London index to Shanghai index should therefore demonstrate a lower component of the price, assuming that UK Producers are totally referred to London Index.
111. The index prices are influenced by a sum of variables, such as the internal demand of goods, the gross domestic product, and the trend of purchases of titles by international investors.
112. The point is that index prices are in any case not distorted prices because they are subject to free-market forces, even in China. It derives that Shanghai index needs to be considered for the formation of a fair price of the raw material or, at least, that an average measure between London and Shanghai needs to be taken into consideration.
113. If titles are offered to the public in the market, their price tend by definition non-distorted because the public can purchase it or not and make the price.
114. Considering the Shanghai index price an element of distortion would be on the contrary a logical error.
115. Since at least 2015 the Shanghai price has become an international benchmark, alongside with London and New York: metal traders have been looking at this index as recognized by the Financial Times (*Commodities explained: Metals trading in China, Importance of Shanghai Futures Exchange is rising*, Financial Times, 2 April 2015):

Metals volumes on the SHFE, a commodities exchange which was launched in 1999, have been increasing over the past few years.

Last week's launch of the new contracts takes its offerings in industrial metals to six, equal to those traded on the LME, the world's largest centre of metals trading. The LME was bought by Hong Kong Exchanges and Clearing [for £1.4bn in 2012](#).

Many traders believe the SHFE has now taken its place alongside New York Mercantile Exchange's Comex and the LME as a key price centre for the world's metals trade.

#### **Do we really care about SHFE, or Chinese exchanges for that matter?**

Daily liquidity on SHFE is surpassing that of the LME and Comex put together. The highest monthly trading volumes for copper and zinc last year were on the SHFE, according to Macquarie.

116. The Commission report, recalled by Hydro in its complaint, assesses (pag. 392) that “in anti-dumping investigations, the European Commission consistently concluded that the government interferes with the price setting mechanism in SHFE, and thus creates a distortion in the primary aluminium downstream markets by depressing prices. In the same vein, the Australian anti-dumping investigating authority has determined that the aluminium prices paid in the SHFE did not reasonably reflect competitive market costs and that, aluminium being a globally traded commodity product, the nature and correlation of prices identified between the SHFE and the LME was not consistent with the forces of supply and demand”.

117. This assumption is based on not recent antidumping European and Australian proceedings of 2010, 2011 and 2012 and it is not any more reliable as in the foregoing years daily liquidity of Shanghai has surpassed LME and Comex one.

118. On this base it can be anticipated that the request of the non-application of the lesser duty rule needs surely to be rejected, as it considers only the London Metal Exchange in its motivation.

#### **XI. The internal value in the calculation of the Normal Value.**

119. Since prices and costs of Haomei and King Metal are not distorted, their prices in internal Chinese Market can be considered in the calculation of Normal Value.

120. Thereby, internal market value must be considered for calculation of the Normal Value, under the Basic regulation. On this base the Normal Value calculation can take in consideration the Chinese domestic average price.

121. On this base the Normal Value calculation can take in consideration the Chinese domestic average price.

122. Considering data included in the questionnaire, prices there is no dumping margin as the Chinese Domestic average price is inferior to the export price in UK.

#### **XII. Injury and Threat of Further Injury**

123. Hydro is of the view that its industry suffered material injury caused by dumped imports from China. The injury would be caused by heavy undercutting and underselling by Chinese imports. This would have had an impact on the situation of the UK producers which lost market share over the period considered, have increasing stocks and are making a profit



which is barely above break even. This would put the industry's investments at risk and threatens the long-term viability of the UK industry.

124. Haomei and King Metal do not entail any injury to the UK producers.
125. Considering the total quantity, the Haomei Volume in 2020 exported to UK is a negligible percentage of the total.
126. Regarding the performance of UK industries, the complainant adds that, from a macroeconomic perspective, the increase of imports from China comes at a time that the consumption in the EU decreased in the IP for the first time in many years while EU industry had made investment and increased its capacity to cope with an expected growth in demand.
127. Thereby are exposed data on (i) apparent consumption, (ii) production and capacity, (iii) sales, (iv) employment, and (v) market shares which should support the aforementioned statements.
128. It is relevant that the source of these data is mostly confidential as pointed: again, divulgation and proper and certified assessment of the data are needed.
129. If the data are not divulgated to the interested parties they cannot be used to prove any decrease in their capacity and sales.
130. Also with regards to the micro-indicators of the performance of European industries, the complaint lacks of documental support.
131. In this paragraph the complainant explores other economic data, whose source is "*confidential replies by the companies*".
132. These data are:
  - a) Production, capacity and utilization rate. On this topic the complainant alleges that their production does not follow the evolution of UK consumption – growing over the period considered - because of the Chinese imports;
  - b) Sales volume and prices in the Union. The data should demonstrate that companies related to UK producers have started to lose markets due to the unfair competition of low-priced extrusions from China;
133. Moreover, the economic performance of the complainant is not as difficult as exposed in the complaint and the seven complainant should produce the most recent sheet of balance to prove the economic condition described.
134. Looking into the economical situation of the complaint it is likely that the gross revenue, the rate of growth of the sales revenue of the complainants and the profit are actually not negative as they say, on the contrary they are pretty brilliant and further evaluation on the topic is needed, with burden of the proof in the complainant.
135. So in the worst-case scenario the UK producers are not making as much as profit as they would but there is not any evidence of injury.
136. On this profile, the complaint does need greater reliability and support because the EU industries look much more healthy than they want to appear.
137. As a consequence there are not any undercutting nor underselling.
138. In order to prove the injury, complainants calculate the margins of undercutting and underselling by Chinese imports.

139. Nevertheless sources of complainant calculations are confidential replies by companies and, again, a complete divulgation is needed to assess the properness of the data.
140. There should be an impact on the situation of the UK producers, which are described as losing markets share over the period considered, increasing stocks and are making profits barely above break even.
141. Haomei and King Metal have given their Average CIF import price and Average landed price and are not in anyway undercutting or underselling in comparison with UK prices;
142. Haomei and King Metal do not mean to be compared to gigantic Chinese manufacturers and their outcomes, as their history and subsidies are totally different.
143. They are not in anyway invading the UK market, because they are above all concentrated on the domestic market, and are therefore not severely endangering UK producers. Furthermore, the quantity of extrusions sold by KM in the UK market is extremely low.
144. From the absence of any significant injury comes there are not any serious risk in the future and a balanced assessment could be made by agreeing on that fact.

### **XIII. Causality**

145. In this paragraph Hydro considers that there are no other factors affecting its situation. In particulars other countries (Turkey; Russia; Switzerland; Norway) export far smaller amounts and do not present significant differences in prices with UK.
146. Causality could be seen, though, as the *great absent* in the current enquiry.
147. In contemporary economy prices of goods are influenced by a high number of factors, which are not studied in the complaint.
148. Indeed, in the complainant, we can read that “On 29 March 2021 the EU imposed anti-dumping duties on the import of aluminium extrusions originating in China for a period of 5 years. Appendix 21 on causation examines the growth of trade from China into the EU 28 and the EU 27 alongside the imports into the UK. The Applicant considers that exporting producers and importers will divert their trade from the EU into the UK”.
149. In other words, Hydro thinks that Chinese producers could export to UK what they cannot export to EU. According to Hydro, UK demands should be the same of the EU one? This is of course unrealistic.
150. Anyway, there is absence of injury even to EU market. The Eurozone economy has in fact been in a downtrend since mid-2018. In line with this shift, the European Central Bank has expected growth of 1.1% for 2019, while the estimate of the European Commission is slightly higher at 1.2%.
151. The near-term outlook for the European economy is clouded by external factors including global trade tensions and significant trade policy uncertainty. These factors have continued to weigh on confidence in manufacturing — the most exposed sector to international trade, and growth is projected to fade for the rest of the year. Despite weaker growth projections for the big four Eurozone economies, that contribute 75% of the Eurozone GDP as a whole, Spain continues to buck the trend showing remarkable strength compared with its peers. In France, consumer and business confidence are recovering from the ‘gilets jaunes’ crisis and although growth is well below trend, it is still positive. By contrast, the economy contracted in Germany and the Italian economy has only managed to grow in one of the last five quarters, as shown in the chart below. Recent Eurozone flash Q2 GDP estimates slowed sharply to 0.2%, half the Q1 pace. Available leading indicators suggest the Eurozone economy remains weak at the start of Q3. In normal conditions, the top-down view of Eurozone GDP growth is that it is slowing down to trend somewhere between 1.0% and

1.2% in the medium term and ~1.0% in the long-term, as mature economies of Europe reach their capacity of development. However, in the near term we believe there are more downside risks to European economy.

152. When assessing the Eurozone economy, it is apparent that the overall weakness is mainly driven by the industrial sectors and this has been on a downward trend since Q3 2018, especially in the automotive and chemical segments.
153. The major cause of the slowdown is the US-China trade war, which has negatively impacted external demand for European exports. The weakness in GDP in 2019 is arising from a weaker performance from net trade.
154. In addition, the risk of economic disruption in the UK is growing. The UK's departure from the EU threatens supply chains that are deeply embedded across the Eurozone if a deal cannot be reached.
155. In addition, there are industry-specific challenges such as a new emission standard for diesel-powered vehicles that caused disruption in automobile production primarily in Germany (the worldwide light vehicles test procedure, or WLTP).
156. It is evident that the complaint endorses a prejudicial thesis against the specific category of exporters of Chinese extrudes to EU, neglecting the far greater importance of the structure of the economical growth in the EU.
157. Being in force a Five Years Plan in China of such detailed character as seen above, it is questionable whether analogous approach is needed in the EU and, of course, in the UK.

#### **XIV. WTO Rules.**

158. The complaint is against the principles of WTO treaty, as will be demonstrated in following steps of the procedure.

#### **XV. Conclusions.**

159. According to Hydro, Chinese exporters are dumping and causing material injury to UK extrusion industry. A relevant threat would be concerning the very existence of European aluminium producers.
160. It has been shown that Haomei and King Metal do not practice any dumping; that UK industries do not suffer any injury. The complaint is not adequately supported on causality and does not consider prejudice which will be suffered by the UK economy if Chinese extrudes exporters are penalized.
161. The upward actual trend of the aluminium price will then affect the persistence of the European interest, as adding protectionist measures in a period of global recession could only worsen it.
162. Literature on the topic is of the same advice: *“The actual threat of tariff war between U.S.A. and China involves the rest of the world not only concerning the specific outcomes it may produce in the space of application of the measure. What really matters will be instead the general effect that this tariff war will bring, notwithstanding the imposition of single duties or restrictive measures. Indeed, history teaches us that a point remain still: the decrease of the global volume of the exchanges and their protectionist ensbrinement will generate with certainty a diminishment of the global wealth of world economy and might generate a run to catch advantage position by some at the expense of the condition of others”* (Mazzoni, Malaguti, Diritto del commercio internazionale – Fondamenti e prospettive, Torino, 2019, 178).
163. This might already be the case of PV panels producers, pursuing the imposition of anti-dumping duties on that industrial sector, given by the strong connection of the two

economies (imposition of duties; reduction of Chinese investments; closure or failure of EU plants; acquisition of European plants and increase of plants in China).

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The underwritten attorneys ask therefore for a total exemption or non-application of any provisional or definitive measure for Haomei and King Metal, insist on:

- 1) rejection of the complaint
- 2) application of the domestic price of Haomei and King Metal in the Normal Value Calculation and on
- 3) complete disclosure of all the documents and data of the proceeding

We remain at total disposition of the TRA for any further information and/or clarification.

With full reserve of all rights granted by the Basic Regulation.

Yours faithfully

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