COMMISSION IMPLEMENTING REGULATION (EU) 2022/547

of 5 April 2022

imposing a definitive anti-dumping duty on imports of superabsorbent polymers originating in the Republic of Korea

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 18 February 2021, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of superabsorbent polymers ('SAP' or 'the product under investigation') originating in the Republic of Korea ('the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of initiation in the *Official Journal of the European Union* ([2]) ('the Notice of initiation').

(2) The Commission initiated the investigation following a complaint lodged by the European Superabsorbent Polymer Coalition, hereafter 'ESPC' ('the complainant'). The complaint was made on behalf of two Union producers, which together account for 65% of the total Union production of superabsorbent polymer, in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Comments on initiation

1.2.1. *Examination of Union interest in the complaint*

(3) After the initiation, the Coalition of users ([3]) claimed that the complaint ignored the interests of importers and users to conclude that it is in the interest of the Union to open an anti-dumping investigation on imports of SAP originating in the Republic of Korea, in breach of Article 21 of the basic Regulation.

(4) Similar claims were advanced by the cooperating exporting producer, LG Chem Ltd. ('LG Chem').

(5) The Commission recalls that in accordance with Articles 5(2) and 5(9) of the basic Regulation, the initiation of a proceeding is justified when sufficient evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury is provided in the complaint. The complainant is not required under those provisions to conduct a Union interest analysis in the complaint. Therefore the complaint was not deficient in this aspect.

(6) In this regard, the Commission examined the accuracy and adequacy of the evidence provided and determined that there was sufficient evidence to justify the initiation of the present investigation, in accordance with Article 5(3) of the basic Regulation.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Notice of initiation of an anti-dumping proceeding concerning imports of superabsorbent polymers originating in the Republic of Korea (OJ C 58, 18.2.2021, p. 73).

([3]) For the purposes of this investigation, the Commission granted confidential treatment to the identity of the Coalition members. The Commission received evidence that disclosing their identities would have significant adverse consequences upon the Coalition members due to the threat of commercial retaliations.

(7) Therefore, the claims were rejected.

1.2.2. *Complaint inflated dumping and undercutting margin*

(8) LG Chem claimed that the complainant, by considering SAP a homogeneous product, artificially inflated the dumping and undercutting margins presented in the complaint. In this regard, LG Chem mostly reiterated the comments already provided on the product scope addressed in Section 2.3.

(9) LG Chem further claimed that the export price provided in the Complaint was incorrectly computed. According to the source used in the complaint for the calculation of the export price – i.e. the Korean Trade Statistics Service – the export price should have been within 13% to 18% higher than the one submitted by the complainant. Therefore, the Commission erred when it accepted the evidence on export price submitted in the complaint.

(10) At the stage of the complaint it is sufficient to present dumping and undercutting margins on the basis of the information reasonably available to the complainant and for the product as a whole. The fact that LG Chem considers the product under investigation not to be homogeneous did not render the comparison as made by the complainants faulty for the purpose of the initiation. It is rather a part of the Commission's investigation to analyse if a claim for a more detailed analysis is justified.

(11) Concerning the export price used in the complaint, the Commission noted that the higher prices highlighted by LG Chem in exhibit 8 of the complaint actually included the total exports under commodity code 3906 90 90, including products which were not product concerned, whereas the export prices used for the dumping estimation in paragraph 46 of the complaint solely included the product concerned, as filtered out based on an additional extraction query in the TRASS system ([4]).

(12) The Commission therefore rejected the claims by LG Chem.

1.2.3. *Level of trade*

(13) LG Chem also claimed that the complainant failed to adjust the export price for differences in level of trade, as their export sales to the Union market are generally channelled through a related company. Therefore, both the dumping and undercutting margins presented in the complaint were artificially inflated.

(14) The Commission recalls that for deductions made to export prices, only transport costs were adjusted by the complainant. This is arguably a conservative approach because adjustment to export prices pursuant to Article 2(9) or additional deductions of sales commissions by related traders involved in the importation of the goods would only lower the export price and increase the dumping margin. Furthermore, even if no deductions were made for transport, dumping would still be significant, as is clear from the non-confidential version of the complaint. As regards the alleged inflated undercutting margin, the Commission considered that using an export price on the basis of import statistics amounts to evidence reasonably available at initiation stage for the complainants to show undercutting. Moreover, there are two other exporting producers in the Republic of Korea, selling directly in the Union market and LG Chem itself sells also directly part of its export sales. In any event, LG Chem failed to show how taking a different export price would result in a significant reduction of the undercutting mentioned in the complaint [10-30%].

(15) Therefore this claim was rejected.

([4]) To calculate the export price of SAP from the Republic of Korea during the IP, the Complainant relied on the Korean Trade Statistics Service (TRASS). TRASS allowed the identification of SAP exports to the European Union among products declared for exports under commodity code 3906 90 90 based on a specific query.

1.2.4. *Open version of complaint does not allow understanding of price undercutting information*

(16) LG Chem argued that the evidence submitted in the open version of the complaint to allege the price-depressive effects of the South Korean imports, i.e. 'Market Intelligence reports' Exhibits, did not permit a proper understanding of the information on price undercutting.

(17) First, the Commission recalled that the purpose of the non-confidential version of the complaint is to provide a meaningful summary of the information contained in the confidential version. When examining whether the summary is meaningful or not, one needs to consider the totality of the information contained in the non-confidential version on any given topic. In relation to the allegations on price undercutting and price underselling practised by Korean exporters, the Commission noted that section 5.3 of the non-confidential version of the complaint contains a comprehensive summary of the price comparisons underlying the allegations of undercutting and underselling, supported by meaningful summaries of the key information contained in Exhibits 5-1 to 5-3-3 to the complaint. The Commission considered that the narrative in the body of the complaint and the data summarised in the said annexes give a sufficient understanding of the allegations made in relation to price pressure. The Market reports are presented in the complaint as confirming the validity of the allegations. Furthermore, the Commission considered that the market intelligence reports on SAP imported to Europe contained a detailed analysis of potential strategies of market players. Even sharing a summary of the content would create an adverse effect against the service provider that collected the confidential information.

(18) It is recalled that Article 19 of the basic Regulation and Article 6.5 of the WTO Anti-Dumping Agreement ([5]) allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information, or upon a person from whom that person has acquired the information.

(19) The information provided in the confidential version of the complaint falls under those categories. Moreover, the complainant has provided sufficient summaries of the contents of the confidential segments of the complaint.

(20) Therefore, this claim was rejected.

1.2.5. *Aggressive pricing from Far East Asian imports in 2019*

(21) Concerning price depreciation effects in 2019, LG Chem commented on Exhibit 5-3-1-C of the complaint, which referred vaguely to "*aggressive price from Far East Asian imports*". LG Chem argued that the wording could have equally referred to imports from Japan or China.

(22) The Commission agrees that the wording "Far East Asian imports" does not exclusively refer to imports from the Republic of Korea. However, the wording clearly covers also South Korean imports. While that document alone would not relate to price pressure from the Republic of Korea specifically, it supports the other evidence provided as regards Korean imports.

(23) Therefore, the claim that that evidence did not support the complaint was rejected.

1.2.6. *Unjustified target profit in complaint*

(24) On price underselling, LG Chem claimed that there is no justification for the use of a target profit of 10% in the complaint.

([5]) "Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it."

(25) As a threshold matter, the Commission recalled that the complaint provided sufficient evidence that the imports from the Republic of Korea were undercutting the Union industry prices by a significant margin of [10% - 30%]. This in itself constitutes already sufficient evidence of the effect of the dumped imports on prices in the Union. This is clear from the wording of Article 3(3) of the basic Regulation which presents price undercutting and price depression as possible alternative effects that dumped imports can have on prices in the Union. The allegation in the complaint that prices were depressed by [30% - 60%] was therefore not necessary in order for there to have been sufficient evidence that SAP from the Republic of Korea are being imported at injurious prices. In any event, the target profit chosen by the complainant is not binding for the analysis of the Commission regarding its analysis of price underselling. Article 7(2c) of the basic Regulation indicates that the target profit shall not be lower than 6%. Even adjusted to a 6% target profit the calculation of the complainant still showed a high underselling margin. It is therefore not relevant that the complainant did not substantiate the chosen target profit of 10%.

(26) The Commission therefore rejected the claim that a missing justification for the chosen target profit constituted a fault in the complaint.

1.2.7. *Investment data in the complaint should not be treated as confidential*

(27) With regards to the investments declared in the complaint, LG Chem argued that there is no rationale as to why such data was treated as confidential by the complainants.

(28) As already recalled in recital (18), Article 19 of the basic Regulation and Article 6.5 of the WTO Anti-Dumping Agreement allow for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor.

(29) The information provided in the confidential version of the complaint falls under this category. Moreover, the complainant provided a range for the index development for the IP compared to 2017 for investments in the open version. It demonstrates how investments declined substantially over the period considered and is sufficient to understand that injury indicator. In any event, the relevant trends are disclosed in Table 10 below.

(30) The Commission therefore rejected the claim that it was necessary to include the detailed investment data in the open version of the complaint.

1.2.8. *Evidence for causal link to South Korean imports*

(31) LG Chem claimed that the complaint, in breach of Article 3(6) of the basic Regulation, failed in providing any demonstration of the causation link between the alleged dumped imports from the Republic of Korea and the injury of the Union industry. According to LG Chem, the Union industry solely alleged that "*the dumped imports from Korea exerted a downward price pressure on the EU sales prices (…) forcing the EU SAP industry to reduce their prices, thus resulting in dramatical loss*".

(32) Contrary to what LG Chem alleges, the complainant provided sufficient evidence of a causal link between imports from the country concerned and injury. The complainant's analysis of the injury indicators showed a coincidence in time between the increased volumes of low-priced South Korean imports and the deterioration in the Union industry performance, and thus how the South Korean imports in the Union market exerted a downward price pressure on the Union industry sales prices.

(33) Therefore, this claim was rejected.

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

(34) On 17 September 2021, in accordance with Article 19a(2) of the basic Regulation, the Commission informed Member States and all interested parties of its intention not to impose provisional duties on imports of superabsorbent polymers originating in the Republic of Korea and to continue the investigation.

(35) Since no provisional anti-dumping measures were imposed, the Commission did not register imports under Article 14(5a) of the basic Regulation. The Commission continued seeking and checking all information it deemed necessary for its definitive findings.

(36) Following the disclosure of the Commission's intention not to impose provisional measures, hearings took place with the two sampled Union producers (BASF Antwerpen NV ('BASF') and Nippon Shokubai Europe NV (BE) ('Nippon Shokubai Europe' or 'NSE'), a known Union producer (Evonik Operations GmbH ('Evonik')), , as well as with the exporting producer LG Chem, in which those parties commented on the non-imposition of provisional measures. The parties provided their presentations and additional post-hearing comments to the file.

1.4. **Investigation period and period considered**

(37) The investigation of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

1.5. **Interested parties**

(38) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, the authorities of the Republic of Korea, known importers, known traders and users, as well as associations known to be concerned about the initiation of the investigation, and invited them to participate.

(39) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Hearings took place with one sampled Union producer (BASF), a known Union producer (Evonik), the cooperating exporting producer LG Chem, and two known Union users (Procter & Gamble International Operations SA ('P&G') and FATER SpA ('Fater')).

1.6. **Sampling**

(40) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.6.1. *Sampling of Union producers*

(41) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the volume of production and sales of the like product, as well as the geographical location. That sample consisted of two Union producers. The sampled Union producers accounted for more than 50% of estimated Union production and sales in the investigated period, while ensuring a good geographical spread, and was considered representative of the Union industry. The Commission invited interested parties to comment on the provisional sample. No comments were received and therefore the sample was confirmed.

1.6.2. *Sampling of importers*

(42) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

(43) One unrelated importer provided the requested information. In view of the low number of replies, the Commission decided that sampling was not necessary and asked the cooperating importer to submit replies to the questionnaires.

1.6.3. *Sampling of exporting producers in the Republic of Korea*

(44) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the Republic of Korea to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Republic of Korea to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(45) One exporting producer in the country concerned provided the requested information and agreed to be included in the sample, consequently, sampling was deemed not necessary.

1.7. **Questionnaire replies and verification visits**

(46) The Commission sent questionnaires to the cooperating exporting producer, the cooperating unrelated importer and the two sampled Union producers. The same questionnaires were made available online ([6]) on the day of initiation.

(47) The Commission received questionnaire replies from the two sampled Union producers, one non-sampled Union producers (macro questionnaire), two users and the cooperating exporting producer. The sole unrelated importer which provided a sampling reply did not provide a questionnaire reply.

(48) The Commission sought and verified all the information deemed necessary for the determination of dumping, resulting injury and Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') ([7]), the Commission was unable to carry out verification visits at the premises of the cooperating and sampled companies pursuant to Article 16 of the basic Regulation. Instead, the Commission performed remote crosschecks ('RCCs') of the information provided by the following companies via videoconference:

Union producers

— BASF Antwerpen N.V. (BE)

— Nippon Shokubai Europe NV (BE)

Users

— Company B, whose identity will remain confidential for the purpose of the investigation ([8]).

Related importers and traders

— LG Chem Europe GmbH ('LG Chem Europe')

Exporting producers in the Republic of Korea

— LG Chem, Ltd.

1.8. **Definitive disclosure**

(49) On 24 January 2022, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of superabsorbent polymers originating in the Republic of Korea ('final disclosure'). In addition, the Commission sent two additional final disclosures on 4 February 2022 and 21 February 2022. All parties were granted a period within which they could make comments on the final disclosure, as well as on the additional final disclosures. The Commission received comments from the exporting producer LG Chem, from the Union industry, and from several users.

(50) Following final disclosure, interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.7 of the Notice of initiation. Hearings took place with LG Chem, with the Coalition for an Open and Competitive EU SAP Market, and with Evonik.

([6]) https://trade.ec.europa.eu/tdi/case_history.cfm?id=2516&init=2516

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

([8]) For the purposes of this investigation, the Commission granted confidential treatment to the identity of the Company B. The Commission received evidence that disclosing its identity would have significant adverse consequences upon Company B due to the threat of commercial retaliations.

(51) Following the 2nd additional disclosure document ('2nd ADD') LG Chem argued that the granting of only one day to comment on substantial changes to the Commission's findings, constitutes a breach of LG Chem's rights of defence, especially since the source of the error had not been disclosed.

(52) The Commission noted that LG Chem did not request any extension to the deadline for the provision of comments on the 2nd ADD. In addition, LG Chem was granted two hearings after the initial deadline for comments, in which it had the opportunity to present its comments on the 2nd ADD. During the hearing with the Hearing Officer following the 2nd ADD disclosure the Commission pointed out that LG Chem's commented on a discrepancy of the data provided in the complaint and the in the final disclosure as well as their own market intelligence in their reply to the final disclosure. The Commission diligently analysed LG Chem's comments and corrected the non-inclusion of the data of one company in the macro data due to a clerical error and proceeded with the 2nd ADD.

(53) LG Chem also claimed that the disclosure of the additional data led to a significant change compared to the previously disclosed macro data, since not only the dimensions changed substantially, but also the trends showed improvement for all indicators. Furthermore, LG Chem argued that the use of ranges, triggered by the addition of data pertaining to a single company in the 2nd ADD, prevented LG Chem from obtaining a reasonable understanding of the revised macro-economic indicators.

(54) The 2nd ADD amended the Macro data disclosed, and as a consequence also the market shares of the Union industry and of the importing countries. This change had been requested by LG Chem itself in its comments to the final disclosure prior to the 2nd ADD. Further to pointing out the dimensions of the data from the complaint, LG Chem even provided data from market intelligence, which shows similar values than the ranges provided in the 2nd ADD. Therefore, it cannot be considered that the amended data was not already anticipated in LG Chem's defence.

(55) In a market with a limited number of manufacturers, the additional of data of one manufacturer naturally adds a substantial figure to the absolute amounts, which was anticipated by LG Chem in its initial comments. However, the allegation that this led to improved trends for all indicators is misleading. Trends shown by all indicators went into the same directions as the indicators originally disclosed. The total production index stayed the same with only a minimal increase for the year 2018. The capacity utilisation index, the total sales index, the total employment index, the productivity index and the export index showed trends going in the same direction, even if not with the same magnitude. Contrary to what LG Chem alleges the trends were not improving, they continued to show the same injury, even if the magnitude of change was different.

(56) In addition,LG Chem stated in it comments to the 2nd ADD that the revised figures on market shares actually confirmed LG Chem's previous claim that imports from Korea never captured market shares from the Union industry. This claim demonstrates that the trends disclosed in the 2nd ADD did generally not lead to a change in assessment by LG Chem either. Since the analysis and the conclusions of the Commission did not change, all arguments made by the parties in response to the GDD also remained valid.

(57) Finally, the use of ranges in the macro data did not prevent LG Chem from understanding the revised macro-indicators. These were necessary in order to maintain the confidentiality of the precise sales and other statistics of the Union producer whose statistics had accidentally not been taken into account during the initial disclosure. Not only did the indexes provided show a clear picture of the evolution of the indicators, but also the ranges were set narrow enough to get a reasonable understanding of the dimensions of each indicator. The Commission therefore rejected the argument that the short deadline constituted a breach of LG Chem's rights of defence.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(58) The product concerned is "superabsorbent polymers", which is composed of irregular, round-shaped or agglomerated granules, in powdered form, white in appearance and insoluble in water, resulting from a polymerization of monomer molecules with cross-linkers to form cross-linked polymer networks, with a high

capacity to absorb and retain water and aqueous liquids, originating in the Republic of Korea, currently falling under CN code ex 3906 90 90 (TARIC code 3906 90 90 17), ('the product concerned'). The CN and TARIC codes are given for information only.

(59) Due to their exceptional absorption capacity, SAP are mainly used in disposable sanitary products, such as baby diapers and adult incontinence diapers, and other hygiene applications, such as feminine hygiene products and pads for breastmilk. SAP can also be used in food-related industries, such as refrigerant or freshness-keeping agents, and in household products, such as disposable heating packs or environment fragrance. In addition, SAP can be used in agriculture for water retention. The use of SAP in disposable sanitary products is, however, by far the predominant use compared to other applications.

2.2. **Like product**

(60) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the Republic of Korea; and

— the product produced and sold in the Union by the Union industry.

(61) The Commission concluded that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. **Claims regarding product scope**

(62) Based on the evidence provided in the complaint, the Commission originally defined the product under investigation according to the description submitted by the Union industry and provided a single product control number ('PCN') in the template questionnaires.

(63) On 8 March 2021, the cooperating exporting producer, LG Chem, submitted a set of comments claiming that SAP could not be considered a homogeneous product, as differences in terms of physical, technical and chemical characteristics affect the end-uses and interchangeability, as well as the manufacturing processes and the associated costs of production and sales prices, of the product under investigation. The same comments were also submitted by the Coalition of users on the product's end-uses, interchangeability, manufacturing process and distribution channels. In order to analyse those claims, the Commission decided to request updated information on a more detailed PCN basis, from the exporting producer and the Union producers, as shown in section 2.3.5.

2.3.1. *Exclusion request for spec-in products*

(64) First, LG Chem requested the exclusion from the investigation of the so-called "spec-in" products, namely SAP products that are customized to specifically meet customers' demands and needs. It explained that their physical, technical and chemical characteristics make such product types non-interchangeable with other SAP products.

(65) Similar claims were advanced for "co-developed" SAP products, namely products that have been developed jointly between LG Chem and a specific customer to meet requirements that are exclusive to such a customer. In addition to the characteristics already described for "spec-in" products, "co-developed" products present further differences in terms of distribution channels, manufacturing process and costs of production. Therefore, LG Chem requested the exclusion of "co-developed" SAP products from the scope of the investigation.

(66) LG Chem also requested the exclusion of specific distribution channels for long-term purchases and global allocation contracts from the scope of the product concerned as they do not compete on the Union market.

(67) LG Chem, however, did not allege that spec-in or co-developed products could only be produced by LG Chem and that there would be no competition between different suppliers. Instead, "spec-in" and "co-developed" products are produced by Union producers as well, upon specific customers' request, as described in recitals (64) and (65). Moreover, the Commission concluded that even the users of "spec-in" SAP or "co-developed" SAP still operate a

multi-sourcing strategy for supply stability including various different suppliers and different production locations, including Union suppliers. In addition, LG Chem did not request to include spec-in or co-developed products as one of the characteristics at the level of the PCN to take into account the alleged differences in cost of production or prices. Moreover, the Commission found no evidence that such differences existed.

(68) The Commission therefore rejected the request to exclude spec-in products or co-developed products.

2.3.2. *Exclusion request for odour-control SAP*

(69) Second, LG Chem requested to exclude odour-control SAP products from the scope of the investigation, as they differ from the other SAP products in terms of technical and chemical characteristics, manufacturing process, associated costs and end-uses. It explained that the odour control functionality is obtained by adding extra raw materials through a particular chemical composition, which results in a more expensive price to the final customers. On those grounds, it was claimed that odour-control products cannot be interchanged with other SAP products. LG Chem also commented that its imports of odour-control products were very limited and thus South Korean imports of odour-control products could not have caused injury to the Union odour-control SAP producers.

(70) The Commission verified several SAP supply contracts, which contained the option for the customer to choose between odour-control SAP and non-odour-control SAP without any price difference. This demonstrates that both ranges of SAP directly compete with each other, despite their technical and chemical differences.

(71) The Commission therefore rejected the exclusion request. However, as shown in section 2.3.5, the Commission included odour control as one of the characteristics at the level of the PCN to take into account possible differences in prices resulting from the addition of odour-control materials.

2.3.3. *Exclusion request for Bio SAP*

(72) Third, LG Chem requested the exclusion of organic SAP (so-called 'Bio SAP') products from the scope of the investigation, which chemically differ from non-bio SAP products because biodiesel, instead of crude oil, is used as raw material. LG Chem further explained that Bio SAP present a different manufacturing process and associated costs compared to non-bio SAP products, which result in a more expensive price to the final customers. On those grounds, it was claimed that Bio SAP cannot be interchanged with other SAP products. LG Chem also commented that South Korean producers do not supply Bio SAP products to the Union market and, as a result, imports of South Korean Bio SAP could not have caused injury to the Union industry. LG Chem reiterated these comments following the final disclosure.

(73) The complaint covered both non-bio SAP and Bio SAP, as the Union industry makes both. Furthermore, SAP is produced in a multitude of varieties, which differ in shape and characteristics. LG Chem did not sufficiently substantiate that Bio SAP would have a separate market and would not be in competition with SAP made from crude oil. The Commission therefore rejected the exclusion request.

2.3.4. *Exclusion request for industrial SAP*

(74) Fourth, LG Chem requested the exclusion of industrial SAP products from the scope of the investigation and argued that SAP for non-hygiene uses cannot be equated to SAP for hygiene uses. It explained that the two categories differ in physical, chemical and technical characteristics, as SAP products for industrial use tend to have smaller particle size. On those grounds, it was claimed that SAP for hygiene uses could not be interchanged with SAP for industrial uses. LG Chem also commented that South Korean imports of industrial SAP products corresponded to a niche market, representing around 1% to 3% of the total SAP market in the Union, and, as a result, they could not have caused injury to the Union industry.

(75) The complaint covers both SAP for hygiene use and for industrial use, as the Union industry makes both. Even though the end-uses differ, the manufacturing process and the overall chemical and technical characteristics broadly overlap. It is also not necessary that all product types within an investigation directly compete with each other. As shown in section 2.3.5, the Commission followed the request to differentiate between hygiene use and industrial use by introducing those categories into the PCN.

2.3.5. *PCN breakdown proposals*

(76) On 12 March 2021, LG Chem submitted comments and reiterated its claims on the non-homogeneous nature of the product concerned, opposing the complainant's statement that SAP was characterized by its functional capability rather than its chemical structure. In that regard, LG Chem emphasized that the use of a single PCN would not have allowed for a fair comparison among different types of SAP products, in accordance with Article 2(10) of the basic Regulation, and proposed a PCN breakdown. It differentiated SAP products in terms of raw materials used in the production process, shape, average centrifugal retention capacity ('CRC'), additives and additional functionalities – including foamed products, anti-caking, anti-discoloration and odour control – and uses.

(77) On 19 March 2021, the sampled Union producers, BASF and Nippon Shokubai Europe, submitted comments in response to LG Chem's submission. As a preliminary comment, they claimed that LG Chem's comments on the product scope were submitted beyond the deadline set in the Notice of Initiation and thus they should be disregarded and rejected.

(78) With regards to LG Chem's submission on the PCN breakdown as stated in recital (76), the Union producers claimed that, although it was correct to affirm that SAP was characterised by a number of different parameters that may vary depending on customers' requirements and preferences, none of the parameters was more relevant than the others in the differentiation of SAP products. In particular, they claimed, and submitted evidence in support, that differences in terms of shape, CRC, additives and additional functionalities did not impede product comparability and did not lead to significant price differences.

(79) With regards to the differentiation of SAP products on the grounds of uses, the Union producers concurred in affirming that SAP intended for hygiene uses should be distinguished from SAP for non-hygiene uses, as end-uses might induce differences in prices. However, the EU industry opposed any distinction made within the hygiene market segment proposed by LG Chem – i.e. baby care, adult care or feminine care products – and claimed that SAP products for hygiene uses were comparable to each other. On those grounds, BASF and Nippon Shokubai Europe opposed the PCN breakdown proposed by LG Chem and submitted that one single PCN would not prevent LG Chem to claim an adjustment under Article 2(10) of the basic Regulation.

(80) To summarize, the Union producers opposed LG Chem's request for product exclusion as described in sections 2.3.1 and claimed that LG Chem had failed to demonstrate substantive differences between SAP products for which the exclusion was requested in terms of technical and physical characteristics, uses, customers' perception or interchangeability, and other SAP products.

(81) Following the request for a differentiated PCN, the Commission decided to collect more data to analyse the request.

(82) Based on the evidence on file, the Commission submitted a Note to the file on 9 April 2021, inviting all interested parties to submit data and comment on a new PCN breakdown which would take into consideration differences among SAP products in terms of raw materials used in the production process, shape, CRC, foamed and non-foamed products, anti-caking, anti-discoloration, odour-control and uses.

(83) The sampled Union producers, BASF and Nippon Shokubai Europe, together with Union producer Evonik, reiterated the claims opposing a PCN breakdown, claiming that it was arbitrary and selective and would only serve to support LG Chem's individual interest in the investigation.

(84) On the other hand, two users, FATER and P&G, welcomed the decision to introduce a new PCN breakdown. Both users further requested to add one criterion of distinction, namely 'T20 – Dynamic Absorption Speed' in seconds, i.e. the speed by which the SAP absorbs liquids under pressure. In their submissions, the two users explained that the T20 method had been developed and significantly improved by P&G in the previous decade, and was currently used

by both P&G and FATER in 'Sap Generation 8' products, which were likely to transition to 'SAP Generation 9' products in 2022. Therefore, the introduction of that criterion was deemed essential by the two users, in order to ensure the greatest degree of product and price comparability with other SAP products.

(85) The Commission considered that the absorption speed is a general characteristic, which differs in all SAP. To differentiate all kinds of SAP would, however, prevent any comparison of prices. The Commission therefore rejected the request for introducing that criterion in its analysis.

(86) On 22 April 2021, the Commission, having considered all the comments received by the interested parties and based on the evidence on the file, decided to modify the PCN breakdown proposed in the Note to the file of 9 April 2021. The final PCN breakdown took into consideration differences among SAP products in terms of raw materials used in the production process, shape, CRC, odour-control and uses and, thus, the differences stemming from foamed and non-foamed products, anti-caking and anti-discoloration were discarded. The Commission requested the sampled Union producers and the exporting producer to resubmit the parts of the questionnaire replies that were PCN-based, by using the final PCN breakdown.

(87) Following the decision on the final PCN breakdown, on 27 May 2021 LG Chem argued that the comments by interested parties that justified the change of the final PCN breakdown were not added in a timely fashion to the non-confidential file of the investigation, in breach of Article 6(7) of the basic Regulation.

(88) The Commission granted LG Chem an extension of deadline to submit comments on those comments.

(89) LG Chem further argued that the data of other parties in response to the detailed PCN did not permit a reasonable understanding of the information submitted in confidence.

(90) The data referred to by LG Chem was considered by the Commission to be highly confidential as competitors could through the use of that data understand the business strategies of the Union Industry. The Commission considered the non-confidential summaries to be representative of the data provided in confidence, and allowed other interested parties to appropriately exercise their rights of defence. Therefore, the claim was rejected.

2.3.6. *Product exclusion request for SAP Generation 8 & 9*

(91) Following the disclosure of the final PCN breakdown, two users, FATER and P&G, requested the exclusion of the so-called 'SAP Generation 8 & 9' product types, on the grounds that there were specific physical, technical and chemical characteristics that would not allow the interchangeability with other SAP product types. In particular, as described above in recital (84), the users claimed that the T20 method differentiates 'SAP Generation 8 & 9' products from all other SAP products on the Union market.

(92) The Commission investigated the claims and concluded that all SAP products were subject to a certain extent to different technical or chemical specifications. However, in the end, they have the same end use and are exchangeable, still falling under the definition of the product concerned as mentioned in recital (58). Any minor differences in specifications are catered for by the additional information at the level of the PCN. Therefore, the T20 method used in 'SAP Generation 8 & 9' did not justify their exclusion from the product scope of the investigation. Therefore, the claims were rejected.

(93) In their comments after final disclosure, P&G and Fater claimed that the Commission inaccurately portrayed the absorption speed as a "general characteristic" which differs in all SAP products. They commented that, as a consequence, the five descriptors used in the final PCN breakdown could be equally considered "general characteristics" that differ in all SAP products. P&G and Fater thus suggested that the use of the T20 level as a threshold in the PCN breakdown would have enabled the Commission to arrive at a more accurate PCN analysis.

(94) They further claimed that the Commission failed to substantiate the reasons for which "the T20 method used in 'SAP Generation 8 & 9' did not justify their exclusion from the product scope". They also argued that the Commission failed to address the additional factors characterising the T20 method, such as the manufacturing process and

consumer perception, as well as its differences in terms of physical, technical and chemical characteristics, in concluding that all SAP products have "the same end use and are exchangeable" and that "any minor differences in specifications are catered for by the additional information at the level of the PCN".

(95) P&G and Fater also claimed that the Commission disregarded the evidence provided in support of the fact that the manufacturing process for SAP Generation 8 & 9 is fundamentally different from that of other types of SAP.

(96) Finally, P&G and Fater claimed that the exclusion of SAP Generation 8 & 9 products from the scope of this investigation would be in the Union interest, as it would avoid a detrimental impact on the prices of P&G and Fater's diapers to retailers while allowing the anti-dumping measures on imports of other SAP products to remain in place.

(97) As disclosed to interested parties, the Commission concluded that the technical differences alone did not justify the exclusion (see recital (92)). P&G and Fater did not dispute that the production of this kind of SAP is based on the same raw materials as other SAP and that the use in baby and adult hygiene products competes with other SAP used in the same kind of products. Moreover, the fact alone that specific users have tailored their production to a SAP with specific characteristics does not justify the exclusion. The Commission therefore rejected the claim that it failed to address any factors in its assessment. The Union interest is further addressed in section 6.

2.3.7. *Product exclusion request by Kimberly-Clark*

(98) In its submission after the final disclosure, Kimberly-Clark asked the Commission to exclude a specific type of SAP used in its manufacturing process from the product scope. .

(99) The Commission noted that Kimberly-Clark did not bring forward any evidence to support its claim concerning different technical characteristics. It also did not dispute that its specific type of SAP is based on the same raw materials as other SAP and that it competes with other SAP used in the same kind of products. In addition, due to the submission of this exclusion request at a very late stage of the procedure, the Commission was not in a position to verify the claims that certain producers would not be able to produce this type of SAP. The Commission therefore rejected the exclusion request.

3. **DUMPING**

3.1. **Normal value**

(100) Sampling was not applied for exporting producers in the Republic of Korea. LG Chem was the only cooperating exporting producer of the product concerned in the Republic of Korea.

(101) The Commission first examined whether LG Chem's total volume of domestic sales was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5% of its total export sales volume of the product concerned to the Union during the investigation period. On that basis, the total sales of LG Chem of the like product on the domestic market were representative.

(102) The Commission subsequently identified the product types sold domestically by LG Chem that were identical or comparable with the product types sold for export to the Union with representative domestic sales.

(103) The Commission then examined whether the domestic sales by LG Chem on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5% of the total volume of export sales of the identical or comparable product type to the Union.

(104) The Commission established that four product types were not sold by LG Chem on its domestic market. For those product types the normal value was constructed as explained in recitals (111) to (112).

(105) One product type was sold at volumes representing 4.3% of the total volume of export sales of LG Chem to the Union, only slightly below the 5% threshold. As its sales price was in line with the prices of comparable models sold on the domestic market, the Commission considered it representative for the market concerned.

(106) The Commission next defined the proportion of profitable sales to independent customers in the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.

(107) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:

(a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80% of the total sales volume of that product type; and

(b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

(108) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.

(109) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:

(a) the volume of profitable sales of the product type represents 80% or less of the total sales volume of that type: or

(b) the weighted average price of this product type is below the unit cost of production.

(110) The analysis of domestic sales showed that more than 80% ([9]) of all domestic sales of the product types that are identical or comparable with the product types sold for export to the Union were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, for those product types the normal value was calculated as a weighted average of the prices of all domestic sales during the IP.

(111) For those product types with no sales of the like product in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

(112) For the four product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

3.2. **Export price**

(113) LG Chem exported to the Union either directly to independent customers or indirectly through LG Chem Europe, a related importer in the Union.

(114) For sales of the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

(115) In its comments on final disclosure LG Chem contested the adjustment the Commission made to the allowance for credit cost for its direct sales to the Union using the 3 month interest rate in Korea and based on the currency of the accounts of the company (KRW). In its view the Commission should have used the LIBOR rate used by LG Chem in its questionnaire reply and based on the invoice currency (EUR).

(116) LG Chem argued that the allowance should reflect the cost based on the payment terms agreed at the time of sale. In its view the payment terms agreed are the currencies in which the invoices are denominated and therefore the Commission should have applied the LIBOR short-term interest rates for EUR.

([9]) The exact figure is not provided as this is company-specific data.

(117) The Commission disagreed with this view. As explained also in the questionnaire, "*credit refers to the cost of the time the buyer is given to pay the goods, i.e. agreed in the terms of payment*". Therefore, the terms agreed are the days the buyer is given to pay the invoice. As for the interest rate it should reflect the cost the company would have paid for its own short-term borrowing of the same amount of the invoice. Therefore, it should be based on KRW, which is the functional currency of the company.

(118) The export price for sales made through LG Chem Europe was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing.

(119) With respect to the profit margin used, LG Chem Europe claimed that its own profit margin should be used as, in its view, it was accurate and reasonable.

(120) However, the allocation method was found to be fully affected by the association between the two companies as it was directly allocated by LG Chem. The transfer price therefore was not a price that would have been established in a negotiation with an independent importer. The Commission therefore concluded that the profit margin of LG Chem Europe was not reasonable. Pursuant to Article 2(9) of the basic Regulation, it is considered appropriate to use a reasonable profit margin independent of the actual profit resulting from the transfer price in order to avoid any distorting effects that may arise from the transfer price, in line with established case-law of Union courts. Therefore, the claim was dismissed.

(121) In the absence of any cooperating unrelated importer the Commission decided to resort to the profit margin used in a previous proceeding concerning another chemical product manufactured by a similar industry and imported under similar circumstances, namely a profit margin of 6.89% ([10]) established in the polyvinyl alcohols (PVA) investigation. In the Commission's view that profit margin is the most objective basis available for the purpose of arriving at a satisfactory estimate of an arm's length export price.

(122) After final disclosure the company reiterated its claim and submitted a calculation aimed to demonstrate that the cost of LG Chem Europe's purchases from LG Chem was higher than the sales price of identical PCNs sold directly by LG Chem to unrelated customers in the Union. Hence, in its view, this demonstrated that LG Chem Europe profit margin was based on an arm's length cost of purchases and should therefore be used for the adjustment under Article 2(9).

(123) In its calculation, LG Chem compared the price of the LG Chem Europe (after deducting allowances, SGA and profit as established in the PVA investigation) with direct sales of LG Chem in the EU (after deducting allowances) and therefore did not provide any evidence contradicting the argument that the profit allocation was fully affected by the association between the two companies, as established during the investigation. In addition, the ex-works prices of LG Chem Europe plus SG&A and profit established in the PVA investigation were on average [5% - 8%] higher than the ex-work prices of the direct sales of LG Chem. In the Commission's view, this range is perfectly in line with the mark-up an unrelated importer would charge. The claim was therefore dismissed

(124) LG Chem also contested the use of the profit margin established in the PVA investigation. The company argued that it was established in a different period of time than the current investigation and that there were significant differences in the distribution of SAP as compared with PVA. In its view, first the market condition for PVA changed significantly reducing the profit margin of importers in the chemical sector when compared with the IP of the current investigation and second, SAP is a product co-developed between the producer and the client that is usually sold via long-term contracts, while PVA is a commodity product sold through spot sales.

(125) The Commission does not consider the profit margin established in the PVA investigation inappropriate. First, information collected form interested parties showed that the average profit margin of importers in the speciality chemicals sector ranged between 10% and 15% in 2020. Second, contrary to the argument of LG Chem, PVA is also a product that is often developed according to clients' specification and it is often sold via long-term contracts, as

([10]) Recital (352) of Commission Implementing Regulation (EU) 2020/1336, of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1).

confirmed in the PVA investigation. Third, the data collected showed that the profit of the cooperating unrelated importers in the PVA investigation remained in the same range also before the IP of the PVA investigation. Therefore, this claim was rejected.

3.3. **Undertaking offer**

(126) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, LG Chem, together with LG Chem Europe, submitted an offer for a price undertaking. The company offered two average minimum import prices (MIPs) subject to indexation.

(127) In a set of comments submitted to the Commission, the complainants and Evonik opposed LG Chem's offer for a number of reasons, such as the risk for price cross-compensation and the risk that the MIP could become a reference price on the Union market and thereby reduce competition. They requested that LG Chem's offer be rejected.

(128) Further, the complainants and Evonik argued that the Republic of Korea's lack of compliance with certain provisions of the ILO conventions could distort the costs of production of the Korean SAP and ultimately affect any price comparison between the Union industry prices and the Korean import prices. They requested the Commission to take such distortion into account in the present investigation, at the very least in the examination of any price undertaking offer submitted by the exporting producer.

(129) The Commission did not consider that it had sufficient evidence in the context of the present investigation regarding the non-compliance with certain provision of the ILO conventions in order to reach any conclusions with regard to distortions of labour costs. In any event, the undertaking offer presented by LG Chem had to be rejected on other grounds and an assessment was thus not necessary in that regard.

(130) According to Article 8 of the basic Regulation, price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical. The Commission assessed the offer in view of these criteria and concluded that its acceptance would be impractical and not eliminate the injurious effects of dumping for the following reasons.

(131) First, the price of the product concerned and of the raw materials on which the proposed indexation was based are volatile. Faced with such volatility, it cannot be guaranteed that a MIP would be sufficient to eliminate the injurious effects of dumping over the duration of measures.

(132) Second, LG Chem exported several different product types during the investigation period, with a price variation of [30% - 40%]. A weighted average MIP per category of the product concerned would result in a MIP which would be below the non-dumped price for some SAP product types, also taking into account the price volatility as explained above.

(133) Third, the proposed MIPs are indexed on the two principal raw materials for the price formula of SAP, propylene and caustic soda. However, other important factors such as energy costs are not taken into account in the indexation.

(134) Fourth, SAP product types and PCNs cannot be easily distinguished from one another by physical inspection. This entails a high risk of more expensive product types possibly being misdeclared as cheaper product types. This renders the undertaking difficult to monitor and thus impractical within the meaning of Article 8 of the basic Regulation.

(135) Fifth, LG Chem has a global structure composed by several related companies, inside and outside the Union, and sells a large number of other chemical products to global customers based in and outside the Union. SAP is often sold via global allocation contracts in which a customer located in several locations worldwide negotiates with LG Chem for volume and prices for all its related entities. Under these circumstances, it would be impossible for the Commission to effectively monitor these transactions since they would take place outside the Union and this would allow LG Chem to easily cross-compensate prices in the Union with prices outside the Union for global customers. This, on its own, would make the offer impractical.

(136) The Commission sent a letter to the applicant, setting out the above reasons for rejecting the undertaking offer. The applicant submitted comments thereto. These comments were made available to interested parties on the case file.

(137) In its comments, LG Chem contested the reasons the Commission put forward to reject its undertaking offer. In LG Chem's view the indexation mechanism proposed was capable of capturing the price volatility and ensuring that the MIP eliminated the margin of dumping over the entire duration of the measures. As regards the different product types, LG Chem claimed that the significant price variation of the different product types was caused by one single PCN exported in limited quantities, and it offered to revise its offer basing it on the three simplified PCNs used for undercutting purpose. It further argued that there was no risk of cross-compensation among the different product types, since the different characteristics can be easily verified by customs authorities through sales documents and technical data sheet which have to be prepared by LG Chem for each shipment. Finally, LG Chem argued that there was no risk of cross-compensation through the long term and global allocation contracts and offered to provide information on sales made to global customers inside and outside the EU to mitigate the risk.

(138) The Commission acknowledged that the proposed indexation could capture at least part of the observed price volatility. However, the proposed MIPs were only partially based on the price formula of raw materials while the fixed part, which accounts for around 50% of the price of SAP, was fixed. Moreover, also as regards the different product types, even if the single PCN exported in limited quantities was not taken into account, the price variation of the remaining nine PCNs would still be of around [15% - 30%]. As regards the risk of cross compensation, in the Commission's view the sales documents alone would not prevent the risk of misdeclaration since the custom authorities would only be able to rely on those declarations. Finally, the Commission acknowledges LG Chem's offer to provide information on sales made to global customers. However, in Commission's view, this would not mitigate the risk of cross-compensation as the Commission would not have the means to verify that all the relevant information have been provided and it would be extremely difficult to enforce LG Chem's commitment. The claim was therefore dismissed.

(139) Furthermore, LG Chem claimed that the reasons put forward by the Commission to reject its price undertaking offer were not consistent with the findings of the general disclosure document. The company argued that: *(i)* the Commission acknowledged that the price of the product concerned was volatile but, in its view, this was not consistent with the allegation that the Korean imports suppressed the prices of the Union industry, *(ii)* the Commission argued that LG Chem exported 10 different product types that could be identified by factors such as the shape of the product granules, the degree of porosity, the bulk density and the particle size distribution, contrary to the general disclosure document where the Commission based the undercutting and injury margin calculation on a simplified PCN, which only considers the inclusion of odour control and the use of the product (hygienic against industrial), *(iii)* in the general disclosure document the Commission did not consider the SAP price formula and the Union producers' costs as relevant factors causing injury to the Union industry, while it did consider it to reject the undertaking offer, *(iv)* the Commission took into account the relevance of long-term and global allocation contracts to reject LG Chem's undertaking offer, but did not consider it in the general disclosure document, especially as regards the export performance of the Union industry and the effects of imports from Japan.

(140) Those arguments had to be dismissed. First, the fact the prices were considered volatile, i.e. prices fluctuate in accordance with raw material prices, was already analysed by the Commission. It was found to have a negligible impact on profitability and prices of the Union industry, as explained in recitals (283) to (288), as, due to the dumped imports from Korea, the Union industry was unable to raise prices to the same extent as its costs of production (see also recital (249)). Second, the Commission considered the different characteristics of SAP in relation to the ability of custom officials to distinguish the different product types and the enforceability of the proposed undertaking. However, as explained in recital (182), in the Commission's view, the simplified PCN used in the undercutting calculation was sufficiently detailed to capture the cost and price influence of the main characteristics of SAP. Third, as for the previous point, the global allocation contracts were considered relevant as they pose a threat to the monitoring and enforceability of the undertaking due to the risk of cross-compensation. Moreover, LG Chem's comments as regards the impact of the global allocation contracts on the effects of imports from Japan, the export performance of the Union industry and the global price negotiation were analysed by the Commission in sections 5.2.3, 5.2.4 and 5.2.8.

(141) Therefore, the Commission considered the undertaking offer unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation, and therefore rejected the offer.

3.4. **Comparison**

(142) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis.

(143) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. The normal value was adjusted for transport, packing expenses, credit costs and expenses for technical assistance. The export price for handling, loading and ancillary costs, transport, insurance, packing expenses, import charges and duty drawback, credit costs, bank charges, expenses for technical assistance when they were found to be reasonable, accurate and supported by verified evidence.

(144) LG Chem claimed a level of trade adjustment on domestic sales. The company argued that the sales functions for export sales to the Union are carried out not only by its related importer LG Chem Europe, but also by the sales team in LG Chem's headquarters in the Republic of Korea. In its view, since the Commission adjusted the export price for the SG&A expenses of the related importer, in accordance with Article 2(9) of the basic Regulation, by analogy, the Commission should also deduct from the domestic price the selling expenses borne by the sales team in the Republic of Korea for its domestic sales.

(145) That claim had to be dismissed. First, the adjustment under Article 2(9) of the basic regulation aims at constructing a reliable export price not affected by the relationship between the exporter in the exporting country and the related importer in the Union. The adjustments must cover all costs incurred between importation and resale (and for profits accruing) insofar as those items are normally borne by an importer. LG Chem has not provided any evidence that the construction of the export price pursuant to Article 2(9) has gone beyond what is required under that provision. The fact that the determination of the normal value and of the export price is governed by different disciplines is not as such a factor that affects price comparability and that needs to be addressed under an adjustment under Article 2(10) of the basic Regulation. LG Chem has not adduced evidence that the adjustments performed under Article 2(10) as recalled in recital (143) are not adequate to perform a fair comparison between the export price and the normal value, or that they made sales to different types of customers on the domestic market compared to the Union market.

3.5. **Dumping margin**

(146) The Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(147) On that basis, the definitive weighted average dumping margin expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, amounts to 13.4% for the sole cooperating exporting producer.

(148) For all other exporting producers in the Republic of Korea, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To that end, the Commission determined the level of cooperation of the exporting producers.

(149) As there were two other producers in the Republic of Korea that did not cooperate in the investigation, the Commission considered cooperation to be low. Thus, the Commission considered it appropriate to set the residual dumping margin at the level of the highest dumping margin of a representative product type.

(150) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
LG Chem. Ltd.	13,4%
All other companies	18,8%

4. **INJURY**

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

(151) The like product was manufactured by five producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(152) The total Union production during the investigation period was established at around 346 590 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the replies to the anti-dumping questionnaires by the sampled Union producers as well as the reply to the macro questionnaire by a non-sampled Union producer. That data was cross-checked with the figures in the complaint for reliability and completeness. As indicated in recital (41), the two sampled Union producers represented more than 50% of the total Union production of the like product.

4.2. **Determination of the relevant Union market**

(153) The Commission found that the totality of the Union producers' production was destined for the free market, and thus subject to direct competition with imports from the country concerned. On those grounds, the Commission examined all economic indicators relating to the Union industry in their totality.

4.3. **Union consumption**

(154) The Commission established the Union consumption on the basis of the sampled Union producers' replies to the anti-dumping questionnaire, the macro questionnaire as well as the imports based on the Eurostat data.

(155) Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2017	2018	2019	IP
Total Union consumption	[630 000-665 000]	[630 000-665 000]	[630 000-665 000]	[630 000- 665 000]
Index	*100*	*100*	*100*	*100*

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

(156) During the period considered, the total free market consumption stayed stable with minimal fluctuations clearly below 1%..

4.4. **Imports from the country concerned**

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

(157) The Commission established the volume of imports on the basis of the CN code ([11]) extracted from the Eurostat database, adjusted by information from TRASS provided in the complaint, in order to single out imports of the product concerned. That adjustment was necessary as the Eurostat data for the CN code included a proportion of other products, which would distort both quantities and prices. The adjustment was not contested by any interested parties. The market share of the imports was established on the basis of import volume from the country concerned as compared to the volume of total Union consumption as shown in Table 2.

([11]) CN code 3906 90 90

(158) Following final disclosure, LG Chem requested additional disclosure on the methodology used to determine import volumes and values, as well as a disclosure of the detailed data extraction from TRASS. The Commission provided the following additional information:

(159) As explained in paragraph 18 of the complaint, CN code 3906 90 90 is not exclusively dedicated to SAP. The complainant has provided an estimation of the proportion of SAP contained in all volume cleared under CN code 3906 90 90 based on the TRASS data. As visible from the open version of Annex 5-1 "Imports of SAP to the EU" to the complaint, during the period considered, the volume of SAP exports to the EU corresponded to 84% of the total imports customs cleared under CN code 3906 90 90. The Annex further indicates that this information was used by the complainant to make adjustments to the Eurostat data.

(160) The Commission used the same methodology as the complainant, which was found appropriate and not contested, as mentioned in recital (119) of the General Disclosure Document ('GDD') of the final disclosure.

(161) The Commission further clarified that the TRASS database allows the denomination of the products to be selected. Thus, TRASS export volume and value from Korea to the EU made under HS code 3906 90 90 were filtered in order to only include product denominations corresponding to SAP. 15 products were selected.

(162) TRASS however only allows data extraction when data of at least 3 companies is available. For 2018 this was not the case. Since the ratio of SAP exports in TRASS to the Eurostat data under CN code 3906 90 90 was stable for the other years, the Commission calculated a value for 2018 using the average ratio of the other years.

(163) The underlying TRASS data is subject to copyright protection and cannot be disclosed by the Commission, but is available for purchase.

(164) Imports from the country concerned developed as follows over the period considered:

Table 2

Import volume (tonnes) and market share

	2017	2018	2019	IP
Volume of imports from the country concerned (tonnes)	83 499	94 343	114 896	110 903
Index	*100*	*113*	*138*	*133*
Market share	[12%-14%]	[13%-15%]	[16%-18%]	[16%-18%]
Index	*100*	*114*	*138*	*133*

Source: Eurostat and TRASS data

(165) Imports from the Republic of Korea increased from around 83 500 tonnes to around 110 900 tonnes over the period considered, representing an overall increase of 33% between 2017 and the IP. That increase was significantly higher than the increase in consumption.

(166) The most significant increase in volume of imports from the Republic of Korea was registered between 2018 and 2019, with a year-on-year increase of 22%, followed by a decrease of 3.5% between 2019 and the IP.

(167) As a result, the market share of imports of South Korean products increased from [12%-14%] to [16%-18%] over the period considered, representing an increase of 33% between 2017 and the investigation period. It should be noted that both volumes of imports and market share of the Republic of Korea showed an overall rapid increase during the period considered.

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

(168) The Commission established the prices of imports on the basis of Eurostat data, using the TARIC code indicated in recital (157) adjusted by the data from TRASS, as explained in recitals (157) to (162).

(169) Following final disclosure, LG Chem pointed out that Eurostat data contained prices on CIF basis. The Commission took this into account and thus converted the FOB import prices from the TRASS database to CIF by using the ratio between FOB to CIF value from the verified data of LG Chem. The adjusted figures are shown below in Table 3.

(170) The average price of imports from the country concerned developed as follows:

Table 3

Import prices (EUR/ tonnes)

	2017	2018	2019	IP
Import price	1 191	1 252	1 169	1 074
Index	*100*	*105*	*98*	*90*

Source: TRASS data provided in the complaint.

(171) Average import prices from the Republic of Korea decreased by 10% over the period considered from 1 191 EUR/tonne to 1 074 EUR/tonne. Those prices remained significantly below the sampled Union producers' sales prices and cost of production during the period considered, as shown in Table 7.

(172) Price undercutting of the imports was established on the basis of data of the cooperating exporting producer in the country concerned and domestic sales data provided by the Union industry for the period of investigation. The Commission determined the price undercutting during the investigation period by comparing:

— the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and

— the corresponding weighted average prices per product type of the imports from the cooperating South Korean producer to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for post-importation costs.

(173) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. The weighted average undercutting found was 14.7%.

(174) Following final disclosure, LG Chem argued that it had not been provided with its own detailed data in Annex 3b to the final disclosure, and that the magnitude of the ranges for confidential data was inadequate. The Commission acknowledged LG Chem's comments. Therefore, LG Chem was provided with its own confidential data, and ranges were narrowed. These changes were included in the additional sensitive disclosure provided to LG Chem and to the Union industry on 8 February 2022.

(175) LG Chem also claimed that information at PCN-specific level should be disclosed. However, in line with Article 19 of the basic Regulation, the Commission could not reveal the requested data per product type. Indeed, in the case at hand, there were only two Union producers and three PCNs. Therefore, a disclosure of such level of detail would make it possible to, either directly or with addition of market intelligence, reconstruct confidential sales or production data of individual Union producers LG Chem reiterated its argument after the additional final disclosure

(176) The Commission cannot disclose detailed data accumulated from two companies only, as this creates the risk that other interested parties may reconstruct confidential data of individual producers with the help of market intelligence. This is an objective risk existing in any market where there are only a few known producers active on the market or involved in the Commission's investigation. The Commission therefore rejected this claim.

(177) LG Chem further argued that the figures used for undercutting and underselling have no basis in the record of the investigation and that these discrepancies should be explained. In detail, LG Chem found that it could not exactly reconcile the CIF EU border export value disclosed in Annex 3b, as well as the detailed undercutting and injury calculations disclosed to LG Chem, with the figures reported in LGC's sales listings in tables EUSALUR and RLSALUR. Also LG Chem argued that the CIF EU border export value displayed in Korean won in Annex 2.1 to the final disclosure would result in a different value in EUR than the one used in Annex 3b.

(178) The Commission clarified that for the conversion of Korean won into Euro it converted the CIF values of each transaction by the respective monthly ECB exchange rate, whereas LG Chem indicated in its comments to have applied the annual ECB exchange rate. Due to monthly fluctuations in quantities, LG Chem's conversion based on the annual rate necessarily showed different values. The Commission therefore rejected the claim that the figures used for undercutting and underselling purposes show discrepancies compared to the data on file.

(179) LG Chem also claimed that the Commission did not explain how it determined the constructed CIF value, which was used for undercutting purposes.

(180) The Commission clarified that the constructed CIF for the sales made via LG Chem Europe was constructed deducting from the net invoice value the SG&A and profit established as explained above in recitals (118) to (125), and the allowances for all the costs incurred after importation. Moreover, contrary to what LG Chem alleges, Annex 3a of the final disclosure explains how the CIF price was determined as regards the adjustment for post-importation costs. The Commission therefore rejected this claim.

(181) LG Chem further argued that the Commission used a PCN for comparing prices of imports by LG Chem to prices of the sampled Union producers which was too simple and did not take into account all characteristics mentioned in LG Chem's submission of 28 April 2021, i.e. raw material, shape, CRC, odour control, foamed, anti-caking, anti-discoloration and use. In particular differences in CRC might explain, on its own, the undercutting margin of 14,7%.

(182) The Commission refers to section 2.3.5, which demonstrates that the Commission collected the data in a detailed form to be in the position to analyse the cost and price effect of the different characteristics proposed by LG Chem, including CRC. However, these data, together with the information collected and verified from users, did not confirm the alleged cost and price influence of the characteristics, other than the ones applied by the Commission. The Commission therefore rejected the claim that a more detailed PCN should have been used.

(183) LG Chem finally argued that adjusting the actual price charged by LG Chem Europe by a theoretical amount of SGA and profit for undercutting purposes constitutes a manifest error of assessment and is inconsistent with Articles 3(2) and 3(3) of the basic Regulation, since for an undercutting comparison, prices must be compared at the same level of trade following the *Jindal* judgement ([12]). The General court in *Hansol* ([13]) has confirmed that for undercutting purposes it is the prices negotiated between an undertaking and the customers and not prices at an intermediate stage which could determine the customer's acquisition decision.

(184) This claim had to be rejected. Firstly, Article 3(2) of the basic Regulation refers to the effect of dumped imports that may cause injury to the Union industry and not to the resale price of a company (related importer) within the Union to another customer.

([12]) Judgment of 10 April 2019, *Jindal Saw and Jindal Saw Italia v Commission*, T-301/16, EU:T:234, para. 184.
([13]) Judgement of 2 April 2020, *Hansol Paper v Commission*, T-383/17, EU:T:2020:139, paras. 196-203.

(185) Secondly, as far as undercutting margins are concerned, the basic Regulation does not provide any specific methodology of that concept. The Commission therefore has a margin of discretion in assessing this injury factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as required by Article 3(2) of the basic Regulation.

(186) When it comes to the elements taken into account for calculation of undercutting margins (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union industry in the Union market. This point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas customers. By contrast, resale prices of related importers do not reflect the point where real competition takes place. This is only the point where the established sales structure of the exporter tries to find customers but it is already after the point where the decision to import had been taken. Indeed, once the exporting producer has established its system of related companies in the Union, they have already decided that the source of their merchandise will be from overseas. Hence, the point of comparison should be right after the goods crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user.

(187) This approach also ensures coherence in cases where an exporting producer is selling the goods directly to an unrelated customer (whether importer or final user) because under this scenario, resale prices would not be used by definition. A different approach would lead to a discrimination between exporting producers based solely on the sales channel that they use.

(188) In this case, the import price cannot be taken at its face value because the exporting producer and the importer are related. Therefore, in order to establish a reliable import price at arm's length, such price has to be reconstructed by using the resale price of the related importer as a starting point. In order to carry out this reconstruction, the rules on the construction of the export price as contained in Article 2(9) of the basic Regulation are pertinent, just as they are pertinent for the determination of the export price for dumping purposes. The application of Article 2(9) of the basic Regulation allows for the arrival at a price that is fully comparable to the CIF price (Union border) that is used when examining sales made to unrelated customers.

(189) The Commission also noted that this approach had been endorsed by the General Court in *Severstal*. ([14])

(190) Finally, LG Chem did not provide any evidence showing any systematic price difference in sales to distributors and direct sales to users for similar product types. The Commission could also not find any evidence of differences in price setting between sales to distributors and sales to users on the side of the Union industry.

4.4.3. *Claim of no undercutting in 2018 due to price increases*

(191) Concerning price depreciation effects in 2018, LG Chem claimed that both prices of South Korean imports and of the Union industry increased as compared to 2017 levels. Therefore, no undercutting could have occurred.

(192) However, the analysis of the evolution of import prices on the Union industry prices is established with regard the period concerned as a whole, i.e. between 2017 and the investigation period. While price trends are assessed for the whole period considered, undercutting calculations are performed only for the investigation period (2020). Therefore, the increase of South Korean prices as well as Union industry prices in 2018 compared to their 2017 levels are not relevant for the calculation of the undercutting during the IP in this case. In addition, that fact alone does not suggest the absence of undercutting on the prices of the Union industry from the South Korean imports during the period concerned since that conclusion could only be reached on the basis of a detailed comparison between the actual export price and EU prices.

([14]) Judgment of 22 September 2021, *PAO Severstal v Commission*, T-753/16, EU:T:2021:612, para. 272.

(193) Indeed, the undercutting margin is defined as the amount by which the actual import price from the country concerned is lower than the actual price of the Union industry. The difference between both prices, after necessary adjustments have been made, is expressed as a percentage of the Union industry's price.

(194) In 2018, the average price of South Korean imports was still set at a lower level compared to the average prices of the Union industry. As a consequence, although both South Korean and Union industry prices increased during that period, the statistics suggest that undercutting would also have happened in 2018.

(195) Therefore, this claim was rejected.

(196) Following the Final Disclosure LG Chem claimed that it never argued that no undercutting could have occurred in 2018. This interpretation of LG Chem's claim was alleged to have violated LG Chem's right to sound administration.

(197) The Commission took note of LG Chem's clarification that it had not sought to make the above claim. Given that LG Chem did not point to any argument that the Commission had failed to address, the Commission did not consider that the Commission had violated the right to sound administration.

4.5. **Economic situation of the Union industry**

4.5.1. *General remarks*

(198) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(199) As mentioned in recital (41), sampling was used for the determination of possible injury suffered by the Union industry.

(200) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the sampled producers and non-sampled producers, crosschecked with the data in the complaint. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(201) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping. Following the Final disclosure, interested parties highlighted some discrepancies in the macro-indicators for production and sales between the complaint and the disclosure. After analysis, the Commission accepted these claims and corrected the figures. The Commission has thuds updated the macroeconomic figures with the figures of one company. For that reason, the absolute values were displayed as ranges in order to ensure confidentiality.

(202) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2017	2018	2019	IP
Production volume (tonnes)	[525 000 – 560 000]	[530 000 – 565 000]	[540 000 – 575 000]	[520 000 - 555 000]
Index	*100*	*102*	*105*	*98*
Production capacity (tonnes)	[540 000 – 580 000]	[600 000 – 640 000]	[650 000 – 690 000]	[650 000 – 690 000]
Index	*100*	*109*	*117*	*117*
Capacity utilisation	[93%-95%]	[88%-90%]	[84%-86%]	[78%-80%]
Index	*100*	*94*	*90*	*83*

Source: sampled and non-sampled Union producers

(204) The Union industry production volume increased by 5 percentage points between 2017 and 2019, then it went down by 7 percentage points between 2019 and the IP. The overall production volume decreased over the period considered by 2%.

(205) The production capacity increased steadily during the period considered, passing from [540 000 – 580 000] tonnes in 2017 to [650 000 – 690 000]tonnes in 2019 and stayed at that level in the investigation period, for an overall increase of 17%. The capacity increase of the EU SAP industry resulted from a major investment made by one Union producer during the period considered.

(206) As shown above in Table 4, while the Union production capacity increased significantly during the period considered, the Union capacity utilization significantly deteriorated, passing from a capacity utilisation of [93%-95%]in 2017 to [78%-80%]in the IP. That trend resulted in a total decrease of 17% of the Union capacity utilisation during the period considered.

4.5.2.2. Drop in capacity utilisation caused by increase of capacity

(207) LG Chem commented on the decline in capacity utilisation from the Union industry during the period considered, with particular reference to the investment project by one Union producer that increased production capacity in 2018. According to LG Chem, the additional capacities were never intended to supply the Union market, as the existing capacities in 2017 were already in excess of the demand in the Union market. Therefore, overcapacity of the Union producers could not have been caused by the South Korean imports.

(208) The Commission agreed that the drop in capacity utilisation over the period considered, while maintaining a relatively stable overall volume produced, was connected to the capacity increase by the Union producers. However, contrary to the statements of LG Chem, those additional capacities were not in excess of demand on the Union market. In 2017, the total production capacity of the Union industry only amounted to [86%-88%]% of Union consumption. After the increases in production capacity, it remained in line with the Union consumption with only an overcapacity of [1%-2%]. There is thus no evidence showing that additional capacities were not intended for the Union market.

(209) Following the 2nd additional final disclosure LG chem argued that the figures do not support the conclusion that the additional capacities of the Union industry built during the period considered were designed to serve the Union market.

(210) The Commission has concluded that the increases of capacity only lead to a minimal overcapacity. Since users as well LG Chem have pointed out in their arguments regarding the Union interest that not all capacity is automatically designed for the production of each type of SAP, the minimal overcapacity of [1%-2%] is no indication that it is not

destined for the Union market, but rather to create enough capacity for a flexible production of different kinds of SAP to keep up with the demand for different kinds of SAP. In addition, even after the capacity increase, actual production remained well below Union consumption. The Commission therefore rejected this argument.

4.5.2.3. Capacity of Sumitomo Seika not considered

(211) Moreover, LG Chem claimed that the overcapacity situation of the Union industry declared in the complaint was underestimated as it did not take into consideration the production capacity of the Union producer Sumitomo Seika. LG Chem asked the Commission to clarify why the capacities and injury indicators of the Union producer Sumitomo Seika were disregarded, as they could have influenced and distorted the injury picture depicted in the complaint.

(212) The Commission recalled that the company in question did not cooperate in the investigation. However, contrary to the assertions of LG Chem, this does not mean that the Commission disregarded the capacities and injury indicators of the company. The figure of 47 000 tonnes put forward by LG Chem was also used in the Commission's macro data for the production capacity, and estimations were made for the remaining injury indicators of that company

(213) Therefore, this claim was dismissed.

4.5.2.4. Sales volume and market share

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

Table 5

Sales volume and market share

	2017	2018	2019	IP
Total sales volume in the Union market (tonnes)	[350 000 – 380 000]	[370 000 – 400 000]	[370 000 – 400 000]	[320 000 – 350 000]
Index	*100*	*104*	*103*	*89*
Market share	[56%-58%]	[58%-60%]	[57%-59%]	[49%-51%]
Index	*100*	*105*	*103*	*88*

Source: sampled and non-sampled Union producers

(215) Total sales in the Union market overall decreased over the period considered, recording a 11% fall between 2017 and the IP. Between 2017 and 2018 the total volume of sales to the Union increased by 4%, and then steadily dropped until the IP. The most significant drop was registered between 2019 and the IP, when the total sales volume on the Union market decreased by 14%.

(216) Despite the stable Union consumption as shown in Table 1, the Union industry sales volume decreased steadily during the period considered and, thus, the market share consequently dropped by 12% between 2017 and the IP. Similarly for the trend of Union sales volume, the most significant drop in market share was registered between 2019 and the IP with a year-on-year decrease of 15%.

(217) Following the final disclosure LG Chem argued that the Commission cannot analyse the evolution of sales volumes on the Union market in isolation from sales on exports markets. Sales have been re-directed from the Union market to export markets rather than being "lost".

(218) The Commission necessarily must analyse the development on the Union market in order to determine an injury on the Union market. The increase in exports has been analysed in the section 5.2.4 to determine, if this was a cause for the injury incurred. The Commission therefore rejected the argument that it had analysed the evolution in isolation disregarding the exports of the Union industry.

4.5.2.5. Growth

(219) The Union consumption stayed stable during the period considered, while the sales volume of the Union industry in the Union market decreased by 12%.. The Union industry thus lost market share, by contrast with the market share of the imports from the country concerned which increased significantly during the same period.

4.5.2.6. Employment and productivity

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

Table 6

Employment and productivity

	2017	2018	2019	IP
Number of employees	[1 000 – 1 150]	[1 000 – 1 150]	[950 – 1 100]	[950 – 1 100]
Index	*100*	*98*	*92*	*91*
Productivity (tonnes/FTE)	492	510	564	529
Index	*100*	*104*	*115*	*108*

Source: sampled and non-sampled Union producers

(221) The level of the Union industry employment decreased over the period considered. This resulted in a reduction of workforce by 9 %, without taking into consideration any indirect employment.

(222) The productivity trend followed that of the Union production volumes, which increased until 2019, and then dropped between 2019 and the IP. Productivity increased by 15% between 2017 and 2019, before decreasing following the reduction of the production volume. Overall productivity thus increased by 8%. This is because, while the production volumes increased until 2019 and then dropped during the IP, the number of employees steadily and significantly decreased during the period considered. From 2019 to the end of the IP, however, production dropped faster than employment due to the lower sales, which resulted in a corresponding decrease in productivity (-6% from 2019 to the IP).

(223) Following the final disclosure LG Chem argued that the employment decreased due to modernization and that this does not illustrate injury. Despite the investment by NSE being expected to provide 70 extra jobs, these extra jobs have likely been compensated by the technical retrofitting completed by BASF an its Antwerp site in 2017 and its intention to pursue a strategy of digitization of its SAP business.

(224) While it cannot be excluded that modernisation may have contributed to the decrease in employment, even absent the decreases in employment, other indicators still indicated clear signs of injury. Moreover, in the absence of injury, modernization would have been expected to lead to an increase in productivity. This was not the case. The Commission therefore rejected this claim.

4.5.2.7. Magnitude of the dumping margin and recovery from past dumping

(225) LG Chem's dumping margin was significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(226) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

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

Table 7

Sales prices in the Union

	2017	2018	2019	IP
Average unit sales price in the Union (EUR/tonne)	[1 200 – 1 500]	[1 250 – 1 550]	[1 250 – 1 550]	[1 000 – 1 300]
Index	*100*	*104*	*103*	*85*
Unit cost of production (EUR/tonne)	[1 200 – 1 500]	[1 400 – 1 700]	[1 400 – 1 700]	[1 200 – 1 500]
Index	*100*	*121*	*118*	*105*

Source: sampled Union producers

(228) Sales prices on the Union market first increased by 4% in 2018. Subsequently, they decreased by 1%, before dropping further by 17% in the investigation period. Therefore, the average unit sales price in the Union registered an overall decrease of 15% during the period considered.

(229) The unit cost of production of the sampled producers increased by 5% during the period considered. It increased by 21% between 2017 and 2018. It subsequently dropped by 3% in 2019, and further by 11% in the IP. That trend can be explained by a sudden increase of raw materials' prices in 2018, which subsequently decreased until the IP.

(230) As shown in the Table7, average unit sales prices of the sampled Union producers partially adjusted to the fluctuations of the cost of production, but at a much slower pace. Therefore, sales prices remained well below the level of the unit cost of production from 2018 to the end of the IP.

(231) Following the Final Disclosure LG Chem argued that the analysis of imports from Korea breached LG Chem's rights of defence, since the ranges provided in Table 7, showing prices between 1 000 and 1 300 EUR/tonne during the investigation period ('IP'), i.e. 2020, were excessive and imports from Korea could equally be above, at comparable level or below the prices of sampled Union producers.

(232) The ranges shown in Table 7 do not violate LG Chem's rights of defence. Since the Commission disclosed in Recital (171) that the Korean prices remained significantly below the Union industry prices, it was clear to LG Chem for its defence that the Korean prices for 2020 were neither above nor equal or very close to the Union industry prices. The actual Union producer's price is sensitive business information and needed to be protected. However, even a narrower range would still necessarily not allow LG Chem to see the actual price difference and argue how high it is. A different range would therefore not have improved LG Chem's ability to comment. In addition, the ranges provided in Table7 for the cost of production allowed LG Chem to see that the Korean price was clearly below the Union industry's cost of production. The Commission therefore rejected this claim.

(233) LG Chem further argued that Table 7 includes all products of sampled Union producers, including Bio SAP and SAVIVA products, which do not compete with Korean imports.

(234) Table 7 should include all imports of the product concerned. As the Commission rejected LG Chem's request to exclude BIO SAP and SAVIVA from the product scope (see recital (73)) these products are rightly included in the figures. The Commission therefore rejected this claim.

4.5.3.2. Labour costs

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

Table 8

Average labour costs per employee

	2017	2018	2019	IP
Average labour costs per employee (EUR)	[110 000 – 125 000]	[110 000 – 125 000]	[110 000 – 125 000]	[110 000 – 125 000]
Index	*100*	*107*	*103*	*102*

Source: sampled Union producers

(236) The average labour costs per employee increased by 7% in 2018 and then decreased by 3.5% in 2019 and further by 1% in the IP, for an overall increase of 2% during the period considered.

4.5.3.3. Inventories

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

Table 9

Inventories

	2017	2018	2019	IP
Closing stocks (tonnes)	[50 000 – 60 000]	[50 000 – 60 000]	[70 000 – 80 000]	[75 000 – 85 000]
Index	*100*	*92*	*124*	*142*
Closing stocks as a percentage of production	[20% -25%]	[15% -18%]	[20% -25%]	[20% -25%]
Index	*100*	*87*	*105*	*121*

Source: sampled Union producers

(238) Closing stock levels decreased by 8% in 2018, before increasing steadily and significantly between 2018 and the end of the investigation period. They overall increased by 42% during the period considered.

(239) The totality of Union consumption is represented by free market consumption and thus Union industry sales on the Union market suffered direct competition from the imports originating in the Republic of Korea. The constant pressure of South Korean imports on the Union market, together with the decline of Union industry's sales and market share, can partially explain the growing trend for closing stocks represented in Table 9.

(240) Closing stocks as a percentage of production of the sampled Union producers decreased by 13% in 2018, before increasing above 2017 levels both in 2019 and the IP, with respective growth rates of 5% and 21% in relation to 2017.

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2017	2018	2019	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[- 2% to - 7%]	[- 10% to - 15%]	[- 5% to - 10%]	[- 15% to - 20%]
Index	*(- 100)*	*(- 469)*	*(- 324)*	*(- 756)*
Cash flow (EUR)	[- 5 000 to - 15 000]	[5 000 to 15 000]	[10 000 to 20 000]	[5 000 to 15 000]
Index	*(- 100)*	*126*	*182*	*73*
Investments (EUR)	[15 000 000 – 25 000 000]	[300 000 000 – 400 000 000]	[5 000 000 – 15 000 000]	[1 000 000 – 10 000 000]
Index	*100*	*1 749*	*37*	*19*
Return on investments	[- 1% to - 6%]	[- 5% to - 10%]	[- 5% to - 10%]	[- 10% to - 15%]
Index	*(- 100)*	*(- 630)*	*(- 508)*	*(- 1 281)*

Source: sampled Union producers

(242) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.

(243) The sales of the Union industry to unrelated customers turned from loss making in 2017 to significantly loss making both in 2018 and 2019 and even more loss making in the IP. Despite the slight improvement in profitability between 2018 and 2019, the sampled Union producers saw their profitability deteriorate significantly during the period considered, reaching a drop of more than seven times higher than 2017 levels.

(244) Net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow varied a lot during the period considered, mainly due to increased production costs and negative profitability.

(245) The return on investments is the profit in percentage of the net book value of investments. It developed negatively during the period considered following a decreasing trend similar to that on profitability. Over the same period, the Union industry reduced the level of its investments by 81% overall, with an increase in 2018 due to a major investment made by one Union producer, as stated in recital (205). The ability of the Union industry to raise capital has nevertheless been affected by the losses incurred over the period considered, as can be seen from the decrease in investments.

(246) Following the final disclosure, LG Chem argued that the Commission should have factored in that different trends are shown by the two sampled producers in terms of profitability. LG Chem commented that only NSE was loss-making in 2017, whereas BASF was still profitable and the profitability of NSE has improved over the period from 2018 to the IP.

(247) The Commission analysed the injury picture of the Union industry as a whole, and not at the level of individual producers. To get a balanced picture the Commission used a representative sample of the Union industry. However, in addition the Commission also analysed if individual facts like investments distorted the injury picture. Such factors were taken out of the injury analysis to the extent that they were not part of the ordinary course of business. Finally, not all companies forming part of a sample must incur the same trend for every indicator.. The claim was therefore rejected.

4.5.4. *Conclusion on injury*

(248) All main injury indicators showed a negative trend during the period considered. The production volume of the Union industry decreased by around 2% and its sales volume in the Union market decreased by 11%. Considering the stable consumption in the Union market, this translated into a decrease of market share on the Union market from [56%-58%] in 2017 to [49%-51%] in the IP, which corresponds to a drop of 7% during the period considered.

(249) Imports from the Republic of Korea increased by 33% between 2017 and the investigation period and gained considerably in market share, although the Union market consumption remained stable. Imports from the country concerned substantially increased their market share from [12%-14%] to [16%-18%]. In addition, South Korean import prices dropped by 10% throughout the period considered and were consistently below Union industry prices. During the investigation period, the import prices of the cooperating exporting producer undercut Union industry prices by 14.7% on average. Moreover, and regardless of any undercutting, the Commission further noted, on the basis of the trends contained in tables 2, 3, 5 and 7, that the dumped imports supressed the prices of the Union industry. Indeed, the Union industry was unable to raise prices to the same extent as its costs of production.

(250) The average prices of the Union industry dropped by 15% during the period considered and, since 2018, average sales prices in the Union market were set well below the correspondent unitary costs of production. The profitability of the Union industry went from [-2% -7%] in 2017 to [-15% -20%] during the IP. Moreover, Union industry's closing stocks increased overall by 42% during the period considered and represented 25% of production during the investigation period.

(251) Only the production capacity of the Union industry showed a positive trend during the period considered. As shown in Table 4, production capacity went from [540 000 – 580 000] tonnes in 2017 to [650 000 – 690 000] tonnes in the IP, for an overall increase of 17%. The capacity increase resulted from a major investment made by one Union producer in 2018, given the significantly high capacity utilisation rate of 2017 ([93%-95%]). However, the capacity utilisation went down by 17% during the period considered, passing from [93%-95%]in 2017 to [78%-80%] in the IP.

(252) In summary, although consumption on the Union market remained stable, the Union industry was not able to maintain its market share. Imports from the Republic of Korea were substantial throughout the period considered, at prices which were lower than the Union industry prices. Since 2018, the Union industry was selling at prices which no longer covered its costs and consequently the industry reduced its sales levels and prices.

(253) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

(254) Following the final disclosure, LG Chem argued that the conclusion that all injury indicators showed a negative trend during the period considered is partial, since there was a stable production, increased capacity, re-direction of part of sales to export markets, significant investments, employment was affected by modernisation and profitability simply reflects the massive investments made in 2017-2018. Contrary to LG Chem's allegation, the Commission analysed each of the factors and responded to LG Chem's arguments. The fact that the Commission did not agree with LG Chem's arguments did not render the analysis partial. The Commission therefore rejected the claim.

(255) Following the 2nd ADD, LG Chem argued that all revised indicators showed improved trends as compared to the indicators initially disclosed. In particular, the sales and employment figures showed a considerably more limited decline throughout the period considered and no longer support the conclusion of injury.

(256) The Commission demonstrated above that for each indicator, disclosed in the 2nd ADD, that the figures support or at least do not contradict the Commission's initial assessment of the existence of injury. The Commission therefore rejected the claim that these figures do not support the conclusion of injury.

(257) In its comments after final disclosure, the Coalition for an Open and Competitive SAP market ([15]) ('Coalition H') argued that, since the end of the investigation period, the prices for SAP increased. The Coalition H claimed, and provided evidence in support, that currently SAP prices are substantially higher than those registered in the investigation period due to higher transport costs, and that Korean prices have increased above those of the Union producers.

(258) The Commission noted that the Coalition H did not contest the Commission's analysis on SAP prices during the period considered. These claims refer to a period after the period considered and therefore do not contribute to the analysis of this period. Furthermore, as the Coalition H itself has stated, the price increase following the IP is caused by higher transport prices. These transport prices are linked to the current situation of the Covid19-pandemic. It cannot be confirmed that this is a long-term change in the prices and that thereby a further injury in the future could be excluded. The Commission therefore did not consider that this could alter its findings with respect to the injury found during the investigation period and rejected the claim.

5. **CAUSATION**

(259) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. Those factors are: imports from third countries, spec-in contracts, the export performance of the Union industry, the COVID-19 pandemic, the price formula in raw material supply contracts, the price formula in SAP supply contracts, costs of capacity increases and cost for R&D.

5.1. **Effects of the dumped imports**

(260) The volume of imports from the Republic of Korea increased (as shown in Table 2) by 33% from 2017 to the investigation period and, consequently, their market share increased by 33%, i.e. from [12%-14%] to [16%-18%]. This was at the detriment of the Union industry. Indeed, over the same period (as shown in Table 5), the Union industry sales decreased by 11% and its market share in the Union market decreased by 12%. In particular, the market share of the Union industry fell from [56%-58%] in 2017 to [49%-51%] in the IP.

(261) The prices of the dumped imports decreased by 10% over the period considered (as shown in Table 3). In parallel, the Union industry prices in the Union market fell by 15% over the same period. The South Korean imports, ever more present in the Union market throughout the period considered, were made at prices that continuously lower than those of the Union industry.

([15]) For the purposes of this investigation, the Commission granted confidential treatment to the identity of the Coalition H members. The Commission received evidence that disclosing their identities would have significant adverse consequences upon the Coalition H members due to the threat of commercial retaliation.

(262) The pressure exerted by the dumped imports also caused significant price suppression as evidenced by the fact that the Union industry was unable to raise prices at the same rate as costs. Indeed, as shown in Table 7, over the period considered, the costs of production increased by 5% whereas the Union industry's sales prices decreased by 15%. During the period considered, that inability to increase prices caused the profitability of the Union industry to significantly fall from [-2% - -7%] to [-15% -20%], which is clearly an unsustainable level.

(263) In parallel, imports from the Republic of Korea significantly increased in volume by 33% and their market share increased by 33%, while the market share of the Union industry dropped by 12%. Indeed, despite a stable Union market consumption between 2017 and the IP, South Korean imports continued to gain market share from the Union industry. In the same period, South Korean import prices decreased by 10% (Table 3), while the Union industry prices decreased more, by 15%, contrary to the cost of production, that increased by 5%. Therefore, already by 2018, the Union industry was suffering from material injury caused by the dumped imports.

(264) On the basis of the above, the Commission concluded that the imports from the Republic of Korea caused material injury to the Union industry. Such injury had both volume and price effects.

(265) Following the Final Disclosure LG Chem argued that the allegations of price pressure are not supported by facts, as recent specialized press reports state that at least two Union producers have implemented steep price increases for SAP.

(266) These reports refer to a period after the period considered and therefore did not contribute to the analysis of this period. In addition, such price increases could be connected to multiple short-term factors, including supply shortages caused by the international container shortage, as highlighted by the Coalition H. The Commission therefore did not consider that this could alter its findings with respect to the injury found during the investigation period and rejected this claim.

(267) LG Chem further claimed that most injury indicators started to decline between 2019 and the IP, whereas Korean imports only increased from 2017 to 2019, a period in which the Union industry incurred no injury volume-wise. A depreciation in sales and market shares took place in the IP, when the Union industry decided to increasingly focus on export markets, and when Japanese imports increased.

(268) In this claim LG Chem mixes two claims also made separately. The Commission addresses the claim that the Union industry decided to focus on export markets in section 5.2.4 and the claim that the Japanese import increase in the IP could have contributed to the injury in section 5.2.3LG Chem further claimed that there is no link between the evolution of the market share of Korean exports and the evoluation of the market share of the Union industry, as the Union industry lost most market shares in 2020, the year in which imports from Korea were also losing market share.

(269) This argument is closely linked to LG Chem's argument that the Japanese imports and not Korean imports were responsible for the loss of market shares in 2020 and was discussed and rejected in recitals (299) to (306).

(270) LG Chem further claimed that the imports from Korea never had any impact on investments, as shown by the continuous developments of new products by Union producers.

(271) While Union producers investments indeed increased from 2017 to 2019, they sharply decreased in the IP, due to the pricing pressure caused by the Korean imports. LG Chem did not include the IP in its analysis of a continuous development of new products. The Commission therefore rejected this claim.

5.2. **Effects of other factors**

(272) In its comments on initiation LG Chem requested the Commission to analyse whether the decline in sales and market shares of the Union industry was caused by imports from Japan, the worldwide allocation of spec-in contracts as well as capacity increase investments. LG Chem referred to the complaint, where the complainants stated that the Union producers' sales followed a fluctuating trend similar to that of the consumption until 2019

and that the Union industry's market share only declined against the Union consumptions trend during the IP. LG Chem argued that the major increase of imports from Japan caused the decline in market share of the Union industry, whereas the minor increase of imports from the Republic of Korea were caused by spec-in contracts.

(273) The Commission analysed if and how far those factors contributed to the injury.

5.2.1. *Increased demand of spec-in products*

(274) LG Chem argued that an increased demand of spec-in products, which were sourced from Korea has caused the increase in exports from Korea.

(275) Spec-in products are produced and sold in the Union by both Union and South Korean producers. The Commission did not find an increased demand for in-spec products as such. However, it found a shift between suppliers on a global basis, with more orders for spec-in products being awarded to the Korean producer over time.

(276) Furthermore, the Commission analysed the development of the contracted volumes supplied by Union producers over the period considered and found that although there were shifts in volumes among Union suppliers, the overall changes in volume supply over the period considered did not affect the trend of the injury indicators, and more particularly the profitability of the Union industry as a whole, over the period considered.

(277) Therefore, the Commission concluded that this factor did not contribute to the observed injury of the Union industry.

(278) Following the Final disclosure LG Chem argued that since SAP is not a commodity product, negotiations are not based on prices, but on quality. Users require specific SAP grades for specific applications. Contracts are therefore simply concluded with the producers that can best satisfy the customers' requirements.

(279) The Commission noted that SAP producers are normally able to produce a wide range of grades for specific applications, and that both Union and Korean producers produce such spec-in products. This is also reflected by the fact that many users, especially large users, apply a multi-sourcing strategy. This demonstrates that regularly there is not only one SAP producer with a specific grade that best satisfies the customers requirement, but various. Logically, users, as profit-oriented companies, will in this case balance the characteristic benefits of a certain SAP offered by several suppliers, with the most cost-efficient sourcing. This is different from a situation where users would be restricted from choosing the cheapest supplier due to quality or technical issues. The Commission therefore rejected the argument that negotiations would not be based on prices, but solely on quality.

5.2.2. *Price formula in raw material supply contracts*

(280) The Coalition of users argued that the Union industry suffered injury due to the price formula adopted in their supply contracts and thus the imposition of anti-dumping measures would not avoid price declines for the Union producers. They suggested that SAP prices of the Union industry follow an indexation mechanism towards raw material prices and, thus, fluctuate in line with the fluctuation of raw material prices, regardless of the volume of imports from the country concerned.

(281) Furthermore, both the Coalition of users and LG Chem claimed that the price formula mechanism adopted in supply contracts was sufficient for SAP suppliers to achieve sufficient profitability levels, since upward and downward movements in raw material costs were automatically reflected in the final price of SAP products.

(282) Therefore, the alleged profitability losses described in the complaint could not be caused by the decline of sales prices of the Union industry following the price cuts of South Korean imports, but rather by the increase in the costs of production structures of the Union producers.

(283) The Commission analysed the effect of the price formula on the profitability. It is a global standard that SAP sales contracts are concluded for a year or multiple years. In those contracts the price of SAP for a specific month is regularly linked to the price of the main raw materials in the preceding quarter. That delayed influence of the raw material price causes a lower or higher profit margin in the month in question. When the raw material price in the previous quarter was lower than in a current month, it influences the margin negatively. While over time generally positive effects can offset negative effects, the Commission found for the IP an overall negative effect. However, that effect was so small that it could only explain a very minor part of the losses incurred by the Union industry. Therefore, the Commission concluded that this factor could not contribute to the observed injury of the Union industry.

(284) Following the final disclosure, LG Chem argued that there was no price depression or suppression. LG Chem claimed that the price formulas for SAP, which reflect the evolution of raw material prices, rather than the Korean imports, had explanatory force for the downward trend in prices and therefore had a depressive or suppressive effect on domestic prices. The Commission was therefore faced with elements other than imports that may explain the significant depression or suppression of domestic prices. Furthermore, prices of Korean imports and prices of the Union industry followed the same trends.

(285) The Commission has taken into account the fact that price formulas for SAP reflect the price evolution of raw material prices. These formulas ensure that the profits of SAP producers in existing sales contracts made for a certain period, are not affected by increasing raw material prices. If the price formulas were the only explanatory force for the downward trend in prices, it should have resulted in a more stable profit margin for the European producers and only caused a minor price effect, as described in Recital (283), because prices are linked to raw material prices of the previous quarter. However, these price formulas cannot alone be responsible for price trends in re-negotiations or newly negotiated contracts, compared to existing older contracts.

(286) The Commission therefore analysed the pricing variations that occurred over the period considered in addition to the price trends linked to raw material prices. Over the period considered, the Union industry prices decreased more than the raw material prices. It is this additional decrease in sales prices that caused the injury, as this additional decrease was not profit-neutral. The fact that prices of Korean imports and prices of the Union industry followed trends in the same direction, at different rates, does not contradict the fact that on top of the profit-neutral trend caused by the raw material prices, there was an overlaying trend. The Commission therefore rejected the argument that it disregarded a factor with explanatory force for the price depression.

(287) LG Chem further argued that the decline in domestic prices does not result from a decline in the fixed element in the SAP sales contracts, but rather in the variable element reflecting the price changes of the raw materials C3 and NaOH. LG Chem argued that the majority of the price decrease of Union industry prices between 2017 and 2020 was caused by the C3 and NaOH prices, which decreased by 18% in the same period, whereas the fixed price element, according to LG Chem's calculations, only decreased by 12% in the same period. LG Chem also argued that the profitability of the Union producers on the Union market correlated with the profitability on the Union producers' export markets, which would be a further indication that external elements affecting the global SAP markets, namely the SAP price formula and cost constraints, were responsible.

(288) As mentioned above, the Commission took into account the fact that changes in raw materials influence the sales price. However, the price formulas connect the sales price exactly for the purpose of maintaining a stable profit level and keeping changes in raw material neutral regarding the profit margin. Therefore, the changes in the fixed amount of the price formula with regard to new contracts or renegotiations are the element that affects the profitability of the Union industry. If only the changes caused by raw material prices would have occurred, then the profitability level over the period considered would have been more stable. This demonstrates that the pricing pressure of the Korean imports on the negotiations of the price element of the contract is the causation for the decline in profitability and not the changing raw material prices. The fact that pricing pressure also occurs in parallel on export markets does not contradict the analysis conducted with respect to the Union market. The Commission therefore rejected the claim.

5.2.3. *Imports from third countries*

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

Table 11

Imports from third countries

Country		2017	2018	2019	IP
Japan	Volume (tonnes)	[85 000 – 95 000]	[60 000 – 70 000]	[45 000 – 55 000]	[105 000 – 115 000]
	Index	*100*	*72*	*47*	*122*
	Market share	[11% - 15%]	[8% - 11%]	[5% - 8%]	[14% - 18%]
	Index	*100*	*73*	*54*	*122*
	Average price (EUR/tonne)	[1 200 – 1 500]	[1 200 – 1 500]	[1 200 – 1 500]	[1 000 – 1 300]
	Index	*100*	*101*	*105*	*87*
Turkey	Volume (tonnes)	43 571	46 929	52 626	54 537
	Index	*100*	*108*	*121*	*125*
	Market share	[6%-8%]	[6%-8%]	[7%-9%]	[7%-9%]
	Index	*100*	*108*	*121*	*125*
	Average price (EUR/tonne)	1 140	1 155	1 088	981
	Index	*100*	*101*	*96*	*86*
USA	Volume (tonnes)	40 494	34 952	30 911	30 952
	Index	*100*	*87*	*77*	*76*
	Market share	[5%-7%]	[4%-6%]	[4%-6%]	[4%-6%}
	Index	*100*	*88*	*75*	*75*
	Average price (EUR/tonne)	3 646	3 936	4 522	4 431
	Index	*100*	*108*	*124*	*122*
Other third countries	Volume (tonnes)	32 587	29 109	29 046	28 594
	Index	*100*	*89*	*89*	*88*
	Market share	[4%-6%]	[3%-5%]	[3%-5%]	[3%-5%]
	Index	*100*	*90*	*89*	*88*
	Average price (EUR/tonne)	3 407	3 176	3 070	3 149
	Index	*100*	*93*	*90*	*92*

Source: Eurostat, Japanese figures adjusted by confidential market information.

(290) While imports from Japan have first decreased by 28% between 2017 and 2018 and by 25% between 2018 and 2019, they substantially increased by 75% in the IP. The imports from Japan were carried out by one of the sampled Union producers, Nippon Shokubai Europe, which in addition to its own production resells SAP produced by its mother company Nippon Shokubai Japan ('Nippon Shokubai'). Until 2019, Nippon Shokubai followed a strategy of decreasing Japanese imports in favour of its European production, which is reflected in higher production volume and investments, resulting in a significant European capacity increase in 2018. However, over time, Nippon Shokubai Europe was confronted more and more by customers demanding lower prices due to the pressure of low-priced South Korean imports. Therefore, as of the IP, Nippon Shokubai adapted its strategy.

(291) In order to remain competitive with the South Korean imports and not to lose sales volumes in Europe, Nippon Shokubai Europe increased its resales of SAP produced in Japan.

(292) While prices of Japanese and South Korean imports overall followed a largely similar trend (like those of the Union industry), there is one notable exception: South Korean import prices showed a significant drop in 2019 while Japanese prices still increased and Union industry prices remained nearly stable. This was not sustainable and as a consequence, both the Japanese and Union industry had to follow and drop their prices significantly in the IP.

(293) The development of market shares is also significant. The Republic of Korea increased its market share by 4 percentage points over the entire period considered. By contrast, Japanese imports first decreased significantly in the years 2018 and 2019 and only increased in the IP as a consequence of the pricing pressure from the South Korean imports, which rendered the European production unprofitable. As result, the quantities imported from Japan during the IP were higher than those imported at the beginning of the injury investigation period, and the market share held by Japan increased by 20% over the whole injury period.

(294) There is no evidence on file to suggest that Japanese imports were dumped. As a consequence, regardless of whether or not imports from Japan may have contributed to the injury of other Union producers, the effect of the South Korean exports was substantially higher over the period considered due to the lower price and higher volume increase throughout that period.

(295) In addition, Nippon Shokubai Europe also continued to suffer losses on the sales of its SAP produced in Europe.

(296) Imports from Turkey increased by 25% over the period considered. Their market share increased from [6%-8%] to [7%-9%] in that period. The average price of those imports followed the same trend of those from the Republic of Korea, despite being set at a lower level as of 2018 until the IP. During the investigation period, they undercut South Korean and the Union industry prices by 3% and 14% respectively. Turkish imports should therefore be considered as a contributing factor to the injury suffered by the Union industry.

(297) However, as the volume of such imports represented always less than half of those from the Republic of Korea, it is clear that imports from the Republic of Korea were a more important causation factor.

(298) The volume of imports and the market share of the USA both decreased by 24% during the period considered. In parallel, their average price increased by 22%. Thus, American imports could not have contributed to the injury suffered by the Union industry during this period.

(299) Following the final disclosure, LG Chem requested additional disclosures concerning the methodology used to determine import volumes and values from Korea and Japan. The Commission clarified in the additional disclosure of 8 February 2022 that Eurostat import data based on CN codes has been relied on for imports from third countries. For Japan, Eurostat information for the CN code 3906 90 90 regarding Japan was checked with the

confidential information in the case file. As explained in recital 195 of the GDD, the imports from Japan were carried out by one of the sampled Union producers. Due to the fact that the figures stem from one producer, they are confidential. For Korea, the Commission provided adjusted figures as discussed in recitals (159) to (163).

(300) With regard to LG Chem's comment that the ranges provided for Japanese imports do not allow any proper comparison with either Korean imports or prices of the Union industry, the Commission referred to the fact that the data is confidential and narrower ranges would not ensure the confidentiality of the data.

(301) LG Chem also claimed that injury was mainly caused by Japanese imports. In support of its claim, LG Chem stated that at their peak in 2019, the Korean imports did not prevent the Union industry from increasing the fixed element of their price. The fixed element only declined in 2020, when Korean imports declined but the prices of the Union industry declined more to follow the decline in prices of imports from Japan.

(302) LG Chem's argument only points to an isolated comparison of the years 2019 and 2020. This, however, disregards the fact that SAP contracts are negotiated regularly for at least a year, but also as multi-year contracts and the price negotiations regularly take place in the year preceding the start of the contract. This means that prices for contracts starting in in 2020 were negotiated in 2019 and multi-year contracts starting in 2019 were already negotiated in 2018.

(303) However, imports from Japan had decreased in 2018 by 28% and in 2019 even by 57% compared to 2017. Also, in 2019 the volume imported from Japan even at the upper end of the range displayed in Table 11 does not even constitute half of the imports from Korea in the same period. From a comparison of the imports from Japan displayed in recital (113) of the complaint for the period from July 2019 to June 2020, [63 000 – 67 000 tons] with the imports for the entire year 2020 displayed in Table 11, [105 000 – 115 000 tons], it is further visible that the increase in Japanese imports mostly took place only as of the second half of 2020.

(304) It is therefore, highly unlikely that the increase in Japanese imports in 2020 had an effect on the price negotiations for the sales in 2020, but rather logical that the additional effect of the 2020 Japanese imports, if any, will only materialize from 2021 onwards. Contrary to that, as LG Chem admits, Korean imports increased substantially in 2018 and with an increase of 38% reached its peak in 2019, the two years in which most price negotiations for 2020 took place. The fact that the Japanese imports only substantially increased in the second half of 2020 shows that these imports are a reaction to the pricing pressure exercised by the Korean importsas highlighted in recital (291) above. The Commission therefore rejected the argument that the increase in imports from Japan taking place in 2020 is causal factor of the price depression in 2020 on the Union market.

(305) LG Chem further argued that the prices of the sampled Union producers followed prices of imports from Japan and not from Korea.

(306) LG Chem did not demonstrate a correlation of the Union producers' prices with the Japanese import prices. Between 2017 and 2018, Union producer prices and prices of imports from Korea increased by a similar percentage, whereas Japanese import prices only increased marginally. Between 2018 and 2019 prices of imports from Japan clearly increased by 4 percentage points, whereas the Union producers' prices declined, as did the Korean import prices. Only from 2019 to the IP is there a clear correlation, which indicates that both Union producers and Japanese imports were under the pricing pressure of the record Korean imports in 2019.

(307) LG Chem also argued that NSE did not adapt its strategy as they maintained stable Union sales in the IP, on top of significant imports from Japan. Furthermore, according to LG Chem, suppliers cannot be switched overnight due to a lengthy on-boarding process of users. NSE implemented a long-term predatory strategy to supply the Union market both from Japanese and Union factories, by increasing capacities in the Union and sales to the detriment of other Union producers.

(308) The Commission noted that imports from Japan, including the imports of NSE, have decreased substantially from 2017 to 2019 and only increased in the IP. This demonstrates that a strategy adaptation took place, aiming to replace resales of Japanese imports by local production in the EU. Only in reaction to the competition from low-priced Korean imports, did Japanese imports increase at the end of 2020. Such adaptations can take place more quickly between subsidiaries of a multinational group , with shorter adaptation time required on the user's side. This also aligns with the fact that imports from Japan decreased while production capacities in the Union were increased. The Commission therefore rejected the claim.

(309) LG Chem further claimed that the Commission likely underestimated the market share of Japan by failing to consider other Japanese suppliers, such as Sumitomo Seika.

(310) The Commission has crosschecked the Eurostat data with the available data on file, including the information provided from users. The file did not give any indication that imports by other Japanese suppliers were underestimated. The Commission therefore rejected the claim.

(311) Finally, LG Chem claimed that insofar as Turkish imports caused injury to the Union industry, the Commission ought to have ensured that the injurious effects of Turkish imports are separated and not attributed to Korean imports.

(312) The Commission noted in recitals (296) and (297) that the Turkish imports have neither increased substantially over the period considered, nor can they compare in absolute figures to the Korean imports. The Commission therefore rejected that arguments that it has attributed effects of Turkish imports to the Korean imports.

5.2.4. *Export performance of the Union industry*

(313) In its comments on initiation LG Chem requested the Commission to analyse if a deliberate focus of the Union industry on exports had contributed to the injury.

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

Table 12

Export performance of the sampled Union producers

	2017	2018	2019	IP
Export volume (tonnes)	[90 000 – 105 000]	[95 000 – 110 000]	[115 000 – 130 000]	[135 000 – 150 000]
Index	*100*	*102*	*124*	*145*
Average price (EUR/tonne)	[1 000 – 1 300]	[1 200 – 1 500]	[1 200 – 1 500]	[1 000 – 1 300]
Index	*100*	*123*	*118*	*98*

Source: sampled Union producers

(315) The average price of those exports first increased by 23% in 2018. That level then decreased in 2019, remaining 18% higher than the 2017 level, and further in the investigation period to a level that was below the 2017 level (-2%). The average price of those exports was lower than that of the Union industry in the Union market throughout the period considered, and remained stable. Export volumes were consistently below the volume levels that the Union industry achieved in the Union market, even though they increased by 45% overall during the period considered.

(316) The export sales prices developed more closely in line with the raw material price evolution over the period considered, thus not showing the same magnitude of price depression over the period considered, as the sales on the Union market (shown in Table 5). In addition, given that export sales increased, they did not have any additional negative effects on the fixed costs per unit produced. Thus, the Commission concluded that the export performance did not contribute significantly to the material injury suffered by the Union industry.

(317) Given the spare production capacity of the Union producers as of 2018, there is also no indication that the Union producers had a deliberate strategy to give up market shares in the EU in favour of sales outside the EU. The spare capacity would have allowed the Union producers to increase sales outside the EU without losing market share in the EU.

(318) The Commission therefore rejected the argument that a deliberate focus of the Union industry on exports has contributed to the injury.

(319) Following the final disclosure LG Chem argued that sales on the Union market were not lost for the Union industry, but rather re-directed form the Union market to export markets. In addition LG Chem argued that in a 2007 investigation concerning pentaerythritol, the Commission held that a slight increase in export volumes at sales prices lower than the average sales prices on the Union market had a negative effect on the financial situation of the Union industry.

(320) The Commission observed that the capacity utilisation of the Union industry during the IP was only [78%-80%]. This confirms that the Union industry could have increased the exports sales also without selling less on the Union market. Contrary to the pentaerythritol investigation as described in recital (316), the increased export sales thus did not contribute significantly to the material injury.

(321) The claim was therefore rejected.

5.2.5. *COVID-19 pandemic*

(322) LG Chem also argued that the economic downturn of the COVID-19 pandemic should be taken into consideration as a factor that could have potentially caused injury to the Union industry in the period between mid-2019 and 2020. It asked the Commission to investigate to what extent that factor contributed to the injury situation of the Union industry.

(323) SAP is mainly used for basic hygienic needs and was thus not negatively affected by the COVID-19 pandemic. While in the beginning of 2020, fear in the market led to an increased demand for hygienic products and thereby SAP, it equalized over the year. There were also no major production stops caused by the pandemic. No other negative effect of COVID-19 pandemic was observed for the SAP manufacturers. The Commission therefore rejected the argument that the COVID-19 pandemic has contributed to the injury.

5.2.6. *Injury caused by costs of capacity increases*

(324) The Coalition of users and LG Chem further argued that the losses in profitability claimed in the complaint by the Union industry could be the result of extraordinary expenses, rather than normal commercial considerations. They suggested that the investments in new capacities by the Union industry – already described in recital (205) – could have played a role in that regard by dragging up the costs of production.

(325) LG Chem added that such extraordinary expenses could also relate to investments in the development of new technologies by the Union industry, which – similarly to investments in production capacity – contributed to the increase of the costs of production.

(326) The Commission noted that it is a part of the normal course of business that SAP manufacturers invest into new production facilities, especially in a situation of close to full capacity utilisation, which was a given in the beginning of the period considered. The capacity increases were also not of an unreasonable dimension, especially taking into

account production efficiencies connected to a higher capacity. In addition, the Commission requested the sampled Union producers to exclude any extraordinary effect from impairments or extraordinary write-off from the injury indicators.

(327) The Commission therefore rejected the argument that the cost of capacity increases contributed to the injury.

5.2.7. *Significant R&D costs*

(328) LG Chem claimed that the Union producers have focused on the developments of new materials, which implied significant R&D costs that also necessarily drove up costs to a material extent.

(329) It is a part of the normal course of business that SAP manufacturers invest into the development of new kinds of SAP. LG Chem also regularly invests in the development of new kinds of SAP and explicitly stressed the importance of such investment in the context of spec-in SAP. The fact that R&D creates costs is therefore a usual part of the business. During the verification of the sampled Union producers no unreasonably high R&D costs were found.

(330) The Commission therefore rejected the argument that R&D costs contributed to the injury of the Union Industry.

5.2.8. *Global price negotiations*

(331) Following the Final Disclosure LG Chem argued that with a small number of global buyers, prices are determined at the global level, rather than based on individual trends in the Union market.

(332) First, not all users of SAP operate on a global level as demonstrated by various users, who came forward in the procedure and have their entire production in the Union. LG Chem did not detail or substantiate in its argument to which share of sales in the Union the principle of global price negotiations applies. Second, even in cases where prices are negotiated on a global level, these price negotiations necessarily take into account the price level on the Union market. No global player would pay a higher global price, if a cheaper supply on the Union market would be possible. At the same time, if a supplier within a global contract agrees to supply the Union at dumped and injurious prices, then the global contract is no justification for such dumping. The Commission therefore rejected this claim.

5.3. **Conclusion on causation**

(333) A comparison of the situation of imports with that of the Union industry at the beginning and the end of the period considered clearly shows a substantial increase of imports from the country concerned and the deterioration of the situation of the Union industry. More specifically, the situation deteriorated significantly in 2019 and 2020. South Korean prices decreased importantly in 2019 while the Union industry (and Japan) maintained their price levels. However, this was at the expense of their sales volume as the Republic of Korea considerably expanded its sales. In response, the Union industry followed the price trend set by the Republic of Korea and decreased their sales prices in 2020 but they continued to lose important sales quantities in the market. The dumped imports from the Republic of Korea caused material injury to the Union industry since 2017 because of the massive market penetration achieved at the expense of the Union industry. In terms of prices, the increasing market share of imports continuously undercut those of the Union industry and created substantial price pressure and prevented the market price increases in line with raw material cost increases that were necessary for the Union industry to achieve reasonable profit levels.

(334) Other factors, such as sales volume losses and shifts for spec-in SAP or raw material price fluctuations did not contribute to the observed injury of the Union industry.

(335) Imports from Japan and Turkey in turn had a limited impact on the industry. Imports from Turkey were at similar prices to the South Korean imports but at much lower volumes and thus such imports did not attenuate the causal link between the dumped imports and the injury of the Union industry Similarly, Japanese imports did not attenuate the causal link between the dumped imports and the injury of the Union industry. Such imports decreased during the period considered and only substantially increased in the IP. However, imports from Japan maintained a

higher price level than the South Korean imports. The South Korean imports at prices much lower than those of the Union industry are the main reason why the Union industry lost sales and could not raise its prices in line with its cost of production, which led to severe profitability losses.

(336) On the basis of the above, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from the country concerned while other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

(337) On the basis of the above, the Commission concluded that the dumped imports from the country concerned caused material injury to the Union industry. The injury is clear in the evolution of production, capacity utilisation, sales volume in the Union market, market share, employment, average unit sales price in the Union market, cost of production, closing stocks, profitability and return on investments, when seen in light of the evolution of South Korean import volumes and prices (both absolute and in comparison with other market players).

6. **UNION INTEREST**

(338) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry and users. As the product is mostly sold directly to the customer, no unrelated importers participated in the procedure.

6.1. **Interest of the Union industry**

(339) The imposition of measures will improve market conditions for the Union producers that will be able to improve their competitive position in the market, and recover lost sales volume and market share. As the price pressure from unfair imports would be lifted, the Union industry will be able to increase its sales prices and reach a sustainable profitability.

(340) The absence of measures would have significant negative effects for the Union industry, as imports would continue to increase and lead to further price depression in the Union. This would have a negative impact on the Union industry's production and sales volume as well as market share. This in turn would negatively affect the Union industry's financial indicators and in particular, the already loss making situation would be further aggravated with negative consequences for investments and employment in the Union.

(341) Therefore, the imposition of measures would clearly be in the interest of the Union industry.

6.2. **Interest of users**

(342) Several users came forward in the investigation, but only two of them provided a reply to the questionnaire. Both produced predominantly adult healthcare products. The reply of both users was significantly deficient and only one of the companies replied to the Commission's request to provide additional information within the given deadline and the reply was still deficient. As a result, for one of the users, the Commission was not able to assess the impact of the anti-dumping duties at all. For the second user, despite the incomplete questionnaire response, the Commission was able to estimate the impact of measures. For that company SAP represented [5 - 15%] of its cost of production, but only around one third of this SAP originated from South Korean supplies. The company also demonstrated that for important key markets, multi-year contracts with the public health sector and insurance firms prevent a passing on of additional production costs. The company also provided evidence for various countries reducing costs in the health sector, putting pressure on the company to reduce its sales prices. Despite those challenges and in particular the cost cuttings in the public health sector that impacted users' sales, the company showed a healthy profit of [10% - 20%]. The Commission therefore concluded that measures of 14.7% on [5% - 15%] of its cost of production could be absorbed or at least passed on to consumers.

(343) Four further users, including Procter & Gamble, FATER and Essity, as well as a Coalition of users, consisting of four users, put forward their arguments during hearings and submissions. All users strongly opposed measures.

(344) Procter & Gamble argued that access to all SAP suppliers, including South Korean suppliers, was vital for maintaining a multiple supply strategy, to ensure supply stability especially for in-spec SAP, which cannot be produced by all SAP producers. The capacity of the Union producers to produce the specific Generation 8 SAP required by Procter & Gamble is not enough to provide the volume required. If Procter & Gamble were to be forced to use other SAP not fulfilling the Generation 8 specifications, it could trigger important costs for adjusting packaging, transport and would have a negative impact on the environment by increasing the amount of waste. In addition a change in SAP will require an adaptation process of at least six months.

(345) FATER brought forward similar arguments regarding supply stability and insufficient production capacity for Generation 8 and 9 SAP, and a required adaptation period of six to nine months. FATER estimated the negative impact of the company in case it was required to use other types of SAP as leading to de-standardisation and triggering additional costs of a seven -digit EUR amount.

(346) A third user brought forward similar arguments regarding supply stability, adaptation costs for change of SAP and environmental impact.

(347) The Coalition of users as well as another user suggested that, in view of the risk that one of the Union producers considering selling its SAP business, the imposition of anti-dumping measures would reinforce a duopoly and jeopardize the competition on the Union market.

(348) The cooperating exporting producer also commented on the risk that the anti-dumping measures could undermine fair competition on the Union market.

(349) Similar claims were advanced by another SAP user, Essity. It claimed that, without the threat of competition, the Union industry would have little incentive to diversify its production and develop new solutions to meet evolving customer needs, hence hampering Essity's drive to diversification and making it dependent on only a few Union producers.

(350) The Commission considers that the Coalition of users did not provide sufficient evidence in support of its claims on the possibility that the Union market would become a duopoly should the anti-dumping duties be imposed. In particular, the coalition did not consider that the dumped imports and the caused decline of profitability of the Union industry might not increase the risk of a market exit of one Union producer.

(351) Moreover, the information collected during the investigation showed no evidence of any anti-competitive practices carried out by the Union industry. On the contrary, specific evidence that the industry was capable and willing to supply any user of the product concerned was collected.

(352) The Commission concluded that the measures will increase the production costs of the users and are not in the interest of the users. Taking into account that the intended amount of duties will not have a prohibitive effect as SAP only represents [5% - 15%] of the cost of production of adult or baby diapers, the Commission concluded that the interest of the users to have access to all worldwide SAP suppliers without duties does not prevail over the interest of the Union Industry to be protected against dumped imports.

(353) In their comments after the final disclosure, P&G and Fater disagreed with the statement in recital (351) with regards the capability of the Union industry to supply any user of the product concerned. They claimed that the Union Industry is unable to supply the requested amounts of SAP Generation 8 & 9, as it is lacking production capacity for this specific SAP product.

(354) Similar claims were advanced by Coalition H in their submission following disclosure. It also disagreed with the Commission's conclusion on the capability of the Union industry to supply any user of the product concerned. It argued, and provided evidence, that SAP users systematically experienced supply chain disruptions in the Union

market and were not able to secure the quality and quantity of SAP needed for their production. The Coalition concluded that, giving the existing supply chain disruptions, the Union industry would not be able to compensate for the loss of competitive SAP imports from outside the EU.

(355) The evidence brought forward by P&G, Fater and the Coalition H to substantiate a supply shortage mostly concern the period following the IP, but also the second and third quarter of the IP. The evidence provided for In the IP shows that there was a temporary impact of the COVID-lockdown in the period March to June 2020 on one of the European suppliers. However, the data also showed that this was a temporary and exceptional situation, as supplies resumed rapidly after the lockdown. In addition, the data did not show the same difficulties for the entire EU industry. To the contrary, the data seems to indicate that shortage of supply by one Union producer was partly alleviated by increased supply from other Union producers (in combination with imports from outside the EU). The Commission thus concluded that there was insufficient evidence during the IP to conclude that the EU industry would not be able supply users concerned under normal business circumstances.

(356) All the remaining evidence concerned The post IP-period, which was affected by supply disruptions from overseas and the global transport shortage caused by the COVID-19 pandemic, thus leading to an increased demand for European SAP. However, these were temporary and not structural phenomena which were expected to disappear as supply chains were adjusting to the impact of the COVID-19 pandemic. Indeed, as argued by various users, the adaptation to a new supplier can often not take place immediately and supply contracts are regularly concluded for a period of at least one year. This structure of long-term contracts gives the Union industry some time to adjust, especially taking into account their proven ability to make substantial investments. In addition, the supporting evidence provided by the Coalition H did not point to any major structural issues affecting the European producers ability or willingness to supply under normal market conditions. For example, e-mails relating to Nippon Shokubai only highlighted issues concerning supply from its Japanese plant, not from the European plant. All the evidence submitted with relation to BASF only concerned an unexpected and temporary issue affecting a single SAP grade. Similarly, evidence concerning the other two European producers did not bring to light any structural supply problems.

(357) As for P&G, it did not argue that Union producers cannot produce the Generation 8 & 9 SAP, but only that the production capacities currently adapted and dedicated to this SAP are not sufficient for P&G's demand. However, the Union industry has demonstrated its willingness to invest during the investigation period, which indicates that existing spare capacity can be adapted or extended if necessary. The Commission therefore rejected the claim that, it did not take into account the evidence provided by P&G, Fater and Coalition H.

(358) P&G and Fater further claimed that the Commission failed to substantiate which "specific evidence" was collected to conclude that the Union industry was capable and willing to supply any user of the product concerned, as stated in recital (351) . Similar claims were advanced by the Coalition H in their submission following disclosure.

(359) The Commission clarifies that the specific evidence collected relate to spare capacities, investments to adapt to needs of new clients and the acceptance of new clients.

(360) Following the final disclosure, LG Chem argued that the supply situation has changed since 2020, including prices and availability of SAP supplies in the Union, supporting the arguments made by P&G and other users. Also, LG Chem argues that SAP price are increasing, as prices for propylene and caustic soda are picking up.The Commission considered the fact that users have provided evidence that the COVID-19 pandemic and the resulting transport shortages overseas have caused a temporary shortage in SAP supply and led to increasing prices. The Commission however considered that this is only a temporary change (see further recital (355)). Furthermore, the increase of SAP prices due to raw material increases is also not likely to improve the profitability of the Union industry long-term. The Commission therefore considered that the Union interest of imposing measure to counter the injurious dumping that had been established was not affected by the temporary supply shortages.

(361) In its comments after the final disclosure, Coalition H disagreed with the Commission's methodology. In particular, it commented that the conclusions on Union interest are based on limited and inaccurate information which were described by the Commission as deficient in recital (342).

(362) Coalition H further disagreed with the Commission's conclusion in recital (352), according to which SAP represents [5% - 15%] of the cost of production of adult or baby diapers. It claimed, and provided evidence, that the cost of SAP accounted for up to [20-30%] of the total cost of production.

(363) It also claimed that the Commission based its conclusion on the data provided by only one user and therefore failed to take into account the evidence provided on the difficulties of passing the additional burden of the duties to its customers. In particular, it was explained that SAP users would typically not be able to pass the price increases on to their own customers for a variety of different reasons, such as long term contracts, fierce competition from non-EU competitors and price sensitivity of customers.

(364) In assessing all documents provided by all interested parties the Commission did not base its assessment on limited and inaccurate information. To the extent that the interested parties cooperated, the Commission verified the provided information. This included the percentage of SAP in the cost of production for baby and adult hygiene products. The Commission therefore rejected these claims of Coalition H.

(365) In its comments after the final disclosure, Kimberly-Clark argued that SAP prices in the Union market are largely driven by the inflation of manufacturing costs, rather than by the imports from Korea. It claimed that SAP prices absorbed the impact of inflation on commodity, distribution, labour and energy costs throughout 2021 and, as a result, SAP prices increased. To conclude, Kimberly-Clark argued that the anti-dumping measures would further exacerbate the trend of increasing prices for both the downstream users and the final customers of products including SAP.

(366) In response, the Commission noted that Kimberly-Clark correctly pointed out that the Union SAP producers were absorbing manufacturing cost increases as they were not able to increase their sales prices accordingly. However, this only demonstrated the price pressure on the market and the fact that the manufacturers were not in a position to pass on increased manufacturing costs to their clients. The Commission therefore rejected the claim.

(367) In its comments after final disclosure, Kimberly-Clark also disagreed with the Commission's conclusion that the duties will not have a prohibitive effect as SAP only represents [5%-15%] of the cost of production of adult or baby diapers, as stated in recital (352).It claimed that this method of calculation did not account for the fact that SAP are not fungible commodity products.

(368) In its assessment the Commission accounted for the fact that SAP is produced with different properties and that users choose a specific kind of SAP that suits their product best. However, the technical differences alone did not justify adding additional PCN categories. The Commission had initially collected more detailed data and came to the conclusion that only a distinction of the use and according to odour-control additives was justified. The Commission therefore rejected the claim.

(369) Coalition H further argued that the Commission failed to correctly assess the concerns submitted by several SAP users with regards the imposition of duties, which led to incorrect conclusions on the Union interest. It claimed that the Commission missed the opportunity to provide guidance to the users on how to present their submissions in a more complete and useful manner and did not make a sufficient effort to collaborate with those users so that the information ultimately collected would allow a proper assessment of the Union interest. It further claimed that, among Coalition H members, only three SAP users appear to have received a questionnaire from the Commission and that the Commission only used the information provided in one of two questionnaire responses, while disregarding the arguments put forward in hearings and submissions of at least eight other SAP users.

(370) The Commission sent the notice of initiation with the link to the relevant user questionnaire to all known users and all users that came forward were informed of the procedure. All information provided by users was taken into account in the assessment. The Commission further approached all users that had provided a response to the user's questionnaire to verify their data. Via deficiency letters, guidance about the necessary data was provided. The Commission therefore rejected the argument that it did not sufficiently take into account or provide assistance to users in this procedure.

6.3. **Other factors**

(371) Several users indicated that an increase of production cost for health care products will increase the cost of consumers of health care products. In addition a limitation for the access to the Generation 8 and Generation 9 SAP, might lead to less quality products for consumers.

(372) The Commission considered that the additional production costs that can result from the measures will increase the price for health care product consumers. However, the Commission considers that the level of this increase will not be so high that the consumer interest in access to reasonably priced healthcare products prevailed over the interest of the Union Industry to be protected from dumped imports. Further the measures would not have the effect to prevent users from continuing to produce health care products including Generation 8 and Generation 9 SAP.

(373) In its comments following disclosure, Fater claimed that the Commission failed to address its concerns over the possibility that the anti-dumping measures could affect the customers' capability to access healthcare products at a reasonable price. It reiterated that its production of medical devices relies on the cooperation with Korean exporters and that the measures would entail additional technical work and re-design of its products, which would result in an increased price to the final customers.

(374) The Commission has addressed the potential cost increase for health care product consumers in recital (372) and balanced it against the interest of the Union industry for protection against dumped imports. The Commission therefore rejected Fater's claim.

6.4. **Conclusion on Union interest**

(375) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of SAP originating in the Republic of Korea.

7. **LEVEL OF MEASURES**

(376) Based on the conclusions reached by the Commission on dumping, injury, causation and Union interest, definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

(377) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

7.1. **Injury elimination level (injury margin)**

(378) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia to the basic Regulation, and was able to obtain a reasonable profit ('target profit') by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

(379) In accordance with Article 7(2c) of the basic Regulation, to establish the target profit, the Commission took into account the level of profitability before the increase of imports from the country concerned and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6%.

(380) The Commission established a basic profit covering full costs under normal conditions of competition. During the entire period considered the Union industry incurred losses. As this was lower than the minimum 6% required by Article 7(2c) of the basic Regulation, that profit margin was replaced by 6%.

(381) No claims were made that the Union industry's level of investments, research and development (R&D) and innovation during the period considered would have been higher under normal conditions of competition.

(382) Likewise, no claims were made concerning the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party and that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2), in accordance with Article 7(2d) of the basic Regulation.

(383) On that basis, the Commission calculated a non-injurious price of the like product for the Union industry by applying the target profit margin of 6% to the cost of production of the sampled Union producers during the investigation period and then adding the adjustments under Article 7(2d) of the basic Regulation on a type-by-type basis.

(384) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the sampled exporting producers in the country concerned on a type-by-type basis, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the free Union market during the investigation period. Any difference resulting from that comparison was expressed as a percentage of the weighted average import CIF value.

(385) The injury elimination level for 'all other companies' is defined in the same manner as the dumping margin for the cooperating company.

Company	Definitive dumping margin	Definitive injury margin
LG Chem Ltd.	13,4%	34,4%
All other companies	18,8%	101,2%

(386) Following the Final Disclosure LG Chem argued that the injury margin determination is affected by the same error as the undercutting calculations, and their considerations made for the undercutting apply mutatis mutandis. Also the injury margin should be adjusted by the impact of the other factors put forward by LG Chem.

(387) The Commission referred to its arguments in recitals (184) to (188) as well as its rebuttal of LG Chem's arguments on the impact of imports from other countries, the SAP price formula and the investments of the Union industry, set forth in the respective sections of the causation analysis. Those claims were thus rejected also with regard to the injury margin determination.

(388) In their submission following final disclosure, the complainants and Evonik argued that the target profit of 6% did not reflect the profit that would be achieved by the EU producers in the absence of unfair trade practices. In particular, they claimed that the Commission did not take into account the information provided by the Union industry that allowed it to define such profit at a higher level. Therefore, they asked the Commission to increase the profit margin to the average of the target profits that Union sampled producers could reasonably achieve under normal conditions of competition, i.e. [14% - 19%].

(389) Furthermore, the complainants and Evonik disagreed with the Commission's statement in recital (382) and argued that claims under Article 7(2d) of the basic Regulation were made in their replies to the Union producers questionnaire and to the macro questionnaire. They requested the Commission to take into account the future costs in the calculation of the target price and provided a weighted average annual cost increase per tonne of SAP produced, stemming from the EU emission allowances. The complainant and Evonik thus requested the Commission to increase the target price of the Union producers by EUR [30 – 45] per tonne of SAP.

(390) The Commission could not confirm the target profit proposed by the complainants and Evonik to be reasonably achieved in comparison with the data available on the file. The Commission took into account profits achieved during the period considered, including adjustments to be made for reaching normal circumstances of competition. The profits thus calculated did not amount to the figures claimed by the Union industry, even at the start of the period considered, when there was less pressure from Korean imports.

(391) The Commission also disagreed with the statements made concerning the future costs of emission allowances. The Commission did indeed take into account the future costs stemming from the EU emissions allowances, according to the verified information provided by the sampled companies. This resulted in an increase of the target price of [16 - 18] EUR per tonne of SAP. These claims were therefore rejected.

8. **DEFINITIVE MEASURES**

(392) Definitive anti-dumping measures should be imposed on imports of superabsorbent polymers originating in the Republic of Korea.

(393) Therefore, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty
LG Chem Ltd.	13,4%	34,4%	13,4%
All other companies	18,8%	101,2%	18,8%

(394) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of this investigation. Therefore, it reflected the situation found during this investigation with respect to the single cooperating exporting producer. That duty rate is exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entity. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to the individual anti-dumping duty rate.

(395) A company may request the application of its individual anti-dumping duty rate if it changes the name of the entity subject to that duty. The request must be addressed to the Commission. The request must contain all the relevant information enabling it to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the Official Journal of the European Union.

(396) Should the exports by any company benefiting from a lower individual duty rate increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. That investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(397) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

(398) In their submission following final disclosure, the Union industry argued that there is no production of SAP in Turkey and therefore any volumes of SAP imported from Turkey can only be of another origin. They requested to include a special monitoring clause in the final Regulation to minimise any risks of potential circumvention from Turkey.

(399) The Commission clarifies that special monitoring clauses normally only apply to imports of the country concerned. However, the Commission took note of the parties' comments and will, as always, be vigilant to act in line with its monitoring practice on measures in force.

9. **FINAL PROVISIONS**

(400) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([16]) 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.

(401) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion and a simple majority of its component members opposed the draft Commission implementing Regulation. The Commission then resubmitted the draft Commission implementing Regulation to the Appeal Committee in accordance with Article 5(5) of Regulation (EU) No 182/2011 of the European Parliament and of the Council ([17]).

(402) In accordance with Article 6(3) of Regulation (EU) No 182/2011, the appeal committee did not deliver an opinion.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of superabsorbent polymers ('SAP'), consisting of irregular, round-shaped or agglomerated granules, in powdered form, white in appearance and insoluble in water, resulting from a polymerization of monomer molecules with cross-linkers to form cross-linked polymer networks, with a high capacity to absorb and retain water and aqueous liquids, originating in the Republic of Korea, currently falling under CN code ex 3906 90 90 (TARIC code 3906 90 90 17),

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

Company	Definitive anti-dumping duty rate (%)	TARIC additional code
LG Chem Ltd.	13,4%	C766
All other companies	18,8%	C999

3. The application of the individual duty rates specified for the company mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

([16]) 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).

([17]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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, 5 April 2022.

For the Commission
The President
Ursula VON DER LEYEN