

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1776**of 14 September 2023****imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 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⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE**1.1. Previous investigation and measures in force**

- (1) Following an investigation ('the original investigation'), the Council imposed, by Council Implementing Regulation (EU) No 457/2011 ⁽²⁾, definitive anti-dumping measures on imports of melamine originating in the People's Republic of China ('the PRC' or 'China').
- (2) By Commission Implementing Regulation (EU) 2017/1171 ⁽³⁾, the Commission re-imposed definitive anti-dumping measures on imports of melamine originating in the People's Republic of China following an expiry review ('the previous expiry review').
- (3) The measures currently in force have the form of a fixed duty of 415 EUR/tonne on all imports from the PRC with the exception of three cooperating Chinese exporting producers whose exports are subject to a minimum import price of 1 153 EUR/tonne.
- (4) Following the publication of a notice of impending expiry of the measures in force ⁽⁴⁾, the Commission received a request for the initiation of an expiry review pursuant to Article 11(2) the basic Regulation.
- (5) The request was submitted on 31 March 2022 by Borealis Agrolinz Melamine GmbH, OCI Nitrogen BV and Grupa Azoty Zakłady Azotowe Pulawy SA ('the applicants') on behalf of the Union industry of melamine, within the meaning of Article 5(4) of the basic Regulation.

1.2. Initiation of an expiry review

- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 1 July 2022 the Commission initiated an expiry review of the anti-dumping measures applicable to imports of melamine, originating in the People's Republic of China, on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁵⁾ ('the Notice of Initiation').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China (OJ L 124, 13.5.2011, p. 2).

⁽³⁾ Commission Implementing Regulation (EU) 2017/1171 of 30 June 2017 imposing definitive anti-dumping duties on imports of melamine, originating in the People's Republic of China (OJ L 170, 1.7.2017, p. 62).

⁽⁴⁾ Notice of impending expiry of certain anti-dumping measures (OJ C 396, 30.9.2021, p. 12).

⁽⁵⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of melamine, originating in the People's Republic of China (OJ C 252, 1.7.2022, p. 6).

1.3. Review investigation period and period considered

- (7) The investigation of continuation or recurrence of dumping covered the period from 1 July 2021 to 30 June 2022 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2019 to the end of the review investigation period ('the period considered').

1.4. Interested parties

- (8) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, other known Union producers, the known exporting producers in the PRC, the PRC authorities, known importers, users, traders, as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.
- (9) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. None of the interested parties requested a hearing.

1.5. Claims on initiation

- (10) China Chamber of Commerce for Metals, Minerals and Chemicals Importers & Exporters ('CCCMC') submitted comments further to the expiry review request or the aspects regarding the initiation of the present investigation as provided under point 5.2 of the Notice of Initiation.
- (11) CCCMC provided comments concerning the application of Article 2(6a) of the basic Regulation, the existence of significant distortions in the PRC and the selection of an appropriate representative country. Those comments are addressed below in Sections 3.2.2, 3.2.2.1, and 3.2.2.2.
- (12) Furthermore, CCCMC argued that the request contained an incorrectly calculated dumping margin. In this respect, CCCMC claimed that although the applicants constructed the normal value for two different production technologies used in the PRC, they failed to take into account different production processes (e.g. fully integrated melamine producers *versus* producers using purchased urea) and different raw materials (melamine produced from natural gas or coal as the two potential ultimate raw materials). With regard to the export price, according to CCCMC, the applicants were wrong to use prices of melamine originating in the PRC when exported to third countries as those prices were influenced by the situation on the respective local markets and thus not representative of pricing decisions for exports to the Union.
- (13) The Commission noted that CCCMC did not identify any actual errors in the dumping margin calculation. It merely claimed that the information used for the construction of the normal value was insufficient as it did not cover all potential production processes and raw materials used in production. In this respect, the Commission carried out its examination of the request in accordance with Article 11(2) of the basic Regulation and came to the conclusion that the requirements for initiation of an expiry review were met, i.e. that there was sufficient evidence to initiate the proceeding. According to Article 5(2) of the basic Regulation, by analogy, a request shall contain such information as is reasonably available to the applicants. The legal standard of evidence required for the purpose of initiating a review ('sufficient' evidence) is different from what is necessary for the purpose of a preliminary or final determination of the existence of dumping. Therefore, evidence which is insufficient in quantity or quality to justify a preliminary or final determination of dumping may nevertheless be sufficient to justify the initiation of an investigation ⁽⁹⁾.
- (14) Furthermore, with regard to the export price, the Commission noted that in the light of the considerations explained in recital (13), the applicants were not incorrect when relying on export prices to third countries for the determination of recurrence of dumping in a situation where the export price to the Union is guided by a minimum import price.

⁽⁹⁾ Judgment of the General Court of 11 July 2017, *Viraj Profiles Ltd v Council of the European Union*, Case T-67/14, ECLI:EU:T:2017:481, para. 98.

- (15) Consequently, the Commission rejected CCCMC's claim of incorrectly calculated dumping margin in the expiry review request.
- (16) CCCMC further submitted that the allegations concerning the likelihood of recurrence of dumping in the expiry review request were without merit. In particular, CCCMC addressed the existence of spare capacity in the PRC and the level of export prices to third countries.
- (17) In this respect, CCCMC argued that the applicants wrongly assumed that Chinese producers would mobilise their large spare capacity should the measure lapse. According to CCCMC, it would require years-long transitional period for additional producers to meet the technical requirements of Union customers and to gain experience with trading practices in the Union. In addition, CCCMC claimed that one of the Chinese companies referenced in the request was building a new plant only to replace its existing production capacity. Therefore, CCCMC requested the Commission to verify the accuracy, reliability and probability of the planned production capacity increases listed in the request ⁽⁷⁾.
- (18) Moreover, CCCMC criticised the applicants' assumption that should the measures lapse, Chinese producers would redirect their low-priced exports from third countries to the Union market at the same price. According to CCCMC, the applicants failed to explain why the Chinese export prices to third countries were a reliable indicator of future export prices to the Union. The association further claimed that the Chinese producers would sell at the current high export price to the Union even if measures were terminated and that they would not abandon already developed reliable export markets of third countries.
- (19) The Commission noted that CCCMC did not provide any evidence supporting its claims related either to spare capacity or to the export price to third countries. On the contrary, the evolution of imports originating in the PRC in the period 2018–2021, as demonstrated by Table 9 of the request, pointed to the fact that Chinese producers are well able and willing to either mobilise their spare capacity or redirect their exports from third countries to the Union depending on the price on the Union market. Finally, the Commission noted that the analysis provided by the applicants in the request must also be examined in the light of the requirements on sufficient evidence laid down in Articles 11(2) and 5(2) of the basic Regulation. When examining the request, the Commission concluded that the analysis of spare capacity in the PRC and of export prices to third countries constituted sufficient evidence of likelihood of recurrence of dumping for the purpose of the expiry review request.
- (20) Therefore, the Commission rejected CCCMC's claims concerning the likelihood of recurrence of dumping analysis included in the expiry review request.
- (21) Furthermore, CCCMC submitted comments concerning the likelihood of recurrence of injury. In that regard, CCCMC referred to the arguments made by the applicants in the expiry review request. CCCMC first attempted to rebut the significance of an increase in market shares of Chinese imports from 5 % to 6 % between 2018 and 2021, as summarized in Table 14 of the request. Secondly, CCCMC claimed that any difference between Union industry sales prices and Chinese import prices was caused by a difference in costs of production incurred. Thirdly, CCCMC questioned that Union producers profit rates could turn negative if Union industry prices dropped to the same levels as Chinese import prices.
- (22) The Commission noted that the applicant merely pointed at the fact that imports from China had been increasing, which indeed was the case from 2018 to 2021, without emphasizing the significance of that increase. However, the Commission also noted that the same table showed that the increase was significantly more pronounced if 2019 or 2020 was used as the starting point. The claim by CCCMC was therefore rejected. As to the claim on any difference between Union industry sales prices and Chinese import prices, the Commission noted that first, the claim by CCCMC was not substantiated by any evidence on cost of production incurred by Chinese exporting producers and second, cost of production of melamine are mainly driven by the cost of urea, which in turn is driven mainly by the cost of natural gas. Both urea and natural gas are commodities, the prices of which are, in the absence of state distortions, largely aligned in world markets. The claim was therefore rejected. As to the third claim, the Commission noted that as Union producers' cost of production were at about the same levels as or above Chinese import prices, Union producers' profit rates could indeed turn negative or at best only trail around break-even if Union industry prices dropped to the same levels as Chinese import prices.

⁽⁷⁾ See paragraph 103 and Figure 1 of the expiry review request.

1.6. Sampling

- (23) 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*

- (24) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers, located in three different Member States. The Commission selected the sample on the basis of the volume of production and sales of the like product in the Union during the period from 1 July 2021 to 30 June 2022 reported by the Union producers in the context of the pre-initiation standing assessment analysis. The sample accounted for 82 % of the estimated production in the Union of the like product. The Commission invited interested parties to comment on its provisional sample. No comments were received and the sample was considered representative of the Union industry.

1.6.2. *Sampling of unrelated importers*

- (25) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Only one unrelated importer, namely Borghi SpA, Grandate/Italy, came forward. Consequently, the Commission decided that sampling was not necessary and requested Borghi SpA to complete the questionnaire for unrelated importers. However, Borghi SpA did not submit any questionnaire reply.

1.6.3. *Sampling of exporting producers in the PRC*

- (26) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (27) One producer in the country concerned, the company Xinjiang Xinlianxin Energy Chemical Co., Ltd. ('Xinjiang XLX'), provided the requested information and agreed to be included in the sample. The producer represented less than 3 % of total imports of melamine originating in the PRC in the review investigation period.
- (28) Considering the low level of cooperation, the Commission considered it appropriate to apply Article 18 of the basic Regulation to the non-cooperating exporting producers in the PRC and to base its country-wide findings on the likelihood of continuation and/or recurrence of dumping and injury on facts available.
- (29) In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned, and the authorities of the country concerned, were consulted on the Commission's considerations. In addition, the Commission informed Xinjiang XLX that for the sake of administrative economy, the Commission might not conduct the deficiency process and verification of the questionnaire reply. Any information provided by the company might be however used as fact available where appropriate. No comments were made.

1.7. Replies to the questionnaire

- (30) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').

- (31) The Commission sent questionnaires to the one cooperating exporting producer, to sampled Union producers, to the one unrelated importer that came forward in the course of the sampling procedure, and to all known users of melamine. All applicable questionnaires were made available on DG Trade's website ⁽⁸⁾ on the day of initiation. In the course of the investigation, the Commission sent a questionnaire to the applicants requesting macroeconomic data of the Union industry.
- (32) Questionnaire replies were received from the one cooperating exporting producer, the three sampled Union producers, the applicants, one unrelated importer and three users.

1.8. Verification

- (33) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest.
- (34) Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

- Borealis Agrolinz Melamine GmbH, Linz, Austria;
- Grupa Azoty Zakłady Azotowe, Pulawy, Poland;
- OCI Nitrogen B.V., Geleen, The Netherlands.

- (35) Remote crosscheck of the information used in the expiry review request for the construction of the normal value was conducted online with the following Union producer:
- OCI Nitrogen B.V., Geleen, The Netherlands.

1.9. Subsequent procedure

- (36) On 14 June 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were set a deadline within which they could make comments on the disclosure and request a hearing.
- (37) Comments were received from Xinjiang XLX and from the CCCMC. The comments were considered by the Commission and taken into account, where appropriate. The sampled Union producers welcomed the Commission's conclusion and made no further comments. No party requested a hearing.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (38) The product subject to this review is melamine ('the product under review'), currently falling under CN code 2933 61 00.
- (39) Melamine is a white crystalline powder produced predominantly from urea and is used mainly for producing laminates, resins, wood adhesives, moulding compounds and paper/textile treatments.

2.2. Product concerned

- (40) Product concerned by this investigation is the product under review (see recital (38)) originating in China.

⁽⁸⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2609>.

2.3. Like product

(41) As shown in the investigation leading to the imposition of the measures in force ⁽⁹⁾, the following products have the same basic physical and technical characteristics as well as the same basic uses:

- the product concerned when exported to the Union;
- the product under review produced and sold on the domestic market of the country concerned (China); and
- the product under review produced and sold in the Union by the Union industry.

These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (42) During the period considered, imports of melamine from the PRC continued. In the first half of the period considered, they were at volumes lower than in the investigation period of the original investigation (i.e. from 1 January 2009 to 31 December 2009). In the second half of the period considered, however, the import volumes increased considerably and by far exceeded the volumes recorded in the investigation period of the original investigation. In the review investigation period, the imports of melamine from the PRC were almost four times higher than in the investigation period of the original investigation. At the same time, they were eightfold in comparison to the review investigation period of the previous expiry review.
- (43) According to Eurostat (the Comext database) imports of melamine from the PRC accounted for about 15 % of the Union market in the review investigation period (see Table 3) compared to 6,5 % market share during the original investigation and 2 % during the previous expiry review. In absolute terms, the volume of imports of melamine originating in the PRC first decreased from 17 434 tonnes in the investigation period of the original investigation to 7 938 tonnes in the review investigation period of the first expiry review only to grow again to 64 673 tonnes in the review investigation period of the present expiry review.
- (44) As mentioned in recital (27), only one producer from the PRC cooperated in the investigation representing less than 3 % of imports of the product concerned during the RIP. Therefore, the Commission informed the authorities of the PRC that due to this very limited level of cooperation, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the determination of likelihood of continuation or recurrence of dumping. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (45) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular information contained in the expiry review request, readily available information from Turkish producers of products in the ammonia value chain, information from the Turkish Statistical Institute, Kocaeli City Water and Sewerage General Directorate, and Global Trade Atlas.

3.2. Continuation of dumping during the review investigation period

3.2.1. *Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of melamine originating in the PRC*

- (46) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.

⁽⁹⁾ See footnote 2.

- (47) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (48) The comments submitted by CCCMC are addressed in Section 3.2.2.1.
- (49) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. It also specified that a possible representative third country for the PRC in this case was Türkiye, but that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (50) On 24 February 2023, the Commission issued a note on the sources for the determination of the normal value ('Note on sources').
- (51) In the Note on sources, the Commission informed interested parties that in the absence of cooperation, it would need to rely on facts available according to Article 18 of the basic Regulation. Therefore, the Commission intended to use the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation in accordance with Article 18(5) of the basic Regulation.
- (52) By the Note on sources, the Commission also informed interested parties that it intended to use Türkiye as representative country and about the relevant sources it intended to use for the determination of the normal value with Türkiye as the representative country.
- (53) In the Note on sources, the Commission informed interested parties that, given the absence of cooperation it would base other direct costs and manufacturing overheads on the information regarding the Union industry provided in the expiry review request.
- (54) It further informed interested parties that it would establish selling, general and administrative expenses ('SG&A') and profit based on publicly available information for three Turkish producers of products in the ammonia value chain, namely Ege Gübre Sanayii A.Ş., Tekfen Holding A.Ş., and Bağfaş Bandırma Gübre Fabrikaları A.Ş.
- (55) Finally, by the Note on sources, the Commission invited interested parties to comment on the sources and the appropriateness of Türkiye as a representative country and to suggest other countries, provided they would submit sufficient information on the relevant criteria.
- (56) The Commission received comments from CCCMC. The association maintained that the Commission should use the questionnaire reply of Xinjiang XLX as fact available, take into account the various production processes and raw materials for the construction of the normal value and criticised undistorted values of certain inputs, SG&A and profit. Those comments are addressed in Sections 3.2.2.2, 3.2.2.3.1, 3.2.2.3.2, and 3.2.2.3.5 of this Regulation.

3.2.2. Normal value

- (57) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.

- (58) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (59) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the absence of cooperation by the GOC and of meaningful cooperation by the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.
- (60) In accordance with Article 2(6a) of the basic Regulation, the normal value was constructed. In the expiry review request, the applicants constructed the normal value for two production technologies, the Tsinghua technology used exclusively in the PRC and the Eurotecnica technology used in the PRC but also by the producers in the Union. For the purpose of this investigation, the Commission limited its findings to the Eurotecnica technology, for which the list of factors of production and their consumption quantities could be properly crosschecked with the applicants that provided the information for the expiry review request. The Commission considered that a normal value constructed based on average consumption quantities, drawn from a brochure of the manufacturer of the equipment used in the production process, as provided in the expiry review request, was more representative in terms of utilisation rates for the purpose of country-wide findings than the individual consumptions of the one cooperating exporting producer achieved in its specific conditions of operation.

3.2.2.1. Existence of significant distortions

3.2.2.1.1. Introduction

- (61) Article 2(6a)(b) of the basic Regulation stipulates that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.
- (62) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) of the basic Regulation must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.

- (63) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.
- (64) Pursuant to this provision, the Commission has issued a country report concerning the PRC ('the Report') ⁽¹⁰⁾, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage. The request also contained some relevant evidence complementing the Report.
- (65) More specifically, the request, referring to the Report, indicated that structural distortions in many Chinese industrial sectors have contributed to the particularly low cost of natural gas and state interference in the urea market, one of the main components of melamine. The low price of natural gas has allowed melamine producers to produce the product under review at an artificially low cost. The request further outlines various types of state intervention in the urea market, such as the existence of strict import quotas for urea, high export taxes during the peak season, the exemption of the domestic sale of urea from VAT and the strategic stockpiling of urea by the Chinese government through the state fertiliser system. Moreover, the request pointed towards different findings of the United States on GOC's interventions favouring the Chinese Melamine industry, such as preferential lending, income tax programmes, tax programmes on tariff exemptions, VAT rebates, exemptions from administrative charges, government provisions and several grants, as well as export subsidy programs for the melamine market identified by the United States authorities. Furthermore, the request pointed out that policies of GOC, such as those detailed in the national 14th FYP, have confirmed the continued involvement of the state in the petrochemical and chemical sector which are categorized as 'a pillar industry of the national economy', as well as previous FYPs, such as the Guiding Opinions on promoting the high-quality development of the petrochemical and chemical industry during the 14th FYP, which refer to the socialist market economy as an overarching principle and objective, aiming to create Chinese national champions. In addition, referring back to the Report, the request noted significant distortions through the inadequate use of bankruptcy, corporate and property laws, as well as access to capital through the financial system. According to the request, those policies are likely to have a distortive impact on the melamine industry.
- (66) The Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC.

3.2.2.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (67) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The state-owned economy is the 'leading force of the national economy' and the state has the mandate 'to ensure its consolidation and growth' ⁽¹¹⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and

⁽¹⁰⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

⁽¹¹⁾ Report – Chapter 2, p. 6–7.

is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the state with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the state ownership ⁽¹²⁾.

- (68) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese state and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the state are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the basic system of the People's Republic of China' a new second sentence was inserted which reads: '[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China' ⁽¹³⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of the PRC. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (69) The Chinese state engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽¹⁴⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (70) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.2.1.5 below) ⁽¹⁵⁾.
- (71) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.2.2.1.8 below) ⁽¹⁶⁾. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the state and the CCP ⁽¹⁷⁾.
- (72) Third, on the level of regulatory environment, the interventions by the state into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies.

⁽¹²⁾ Report – Chapter 2, p. 10.

⁽¹³⁾ Available at: www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml (accessed on 2 May 2022).

⁽¹⁴⁾ Report – Chapter 2, p. 20–21.

⁽¹⁵⁾ Report – Chapter 3, p. 41, 73–74.

⁽¹⁶⁾ Report – Chapter 6, p. 120–121.

⁽¹⁷⁾ Report – Chapter 6, p. 122–135.

However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽¹⁸⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both state and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining state control over key sectors or bolstering domestic industry ⁽¹⁹⁾.

- (73) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²⁰⁾.

3.2.2.1.3. Significant distortions according to Article 2(6a)(b), first indent of the basic Regulation: the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country

- (74) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.

- (75) An analysis of the biggest Chinese melamine producers, namely Henan Zhongyuan Dahua Co., Ltd. ⁽²¹⁾, Henan Haohua Junhua Co., Ltd. ⁽²²⁾, Sichuan Golden-Elephant Sincerity Chemical Co., Ltd. ⁽²³⁾ and Xinjiang Xinlianxin Chemical Energy Co., Ltd. ⁽²⁴⁾, shows considerable state interference. While Henan Zhongyuan Dahua Co., Ltd., is a State Owned Enterprise ('SOE') wholly owned by Henan Energy and Chemical Industry Group (an SOE under SASAC ⁽²⁵⁾), the GOC maintains a 35 % stake in Henan Haohua Junhua Co. Ltd., ⁽²⁶⁾ which is held by Sinochem Holding an SOE under the supervision of SASAC, through its subsidiary Haohua Chemical Co. Sinochem Holding ⁽²⁷⁾. Beyond formal ownership, state authorities can control and supervise companies through informal channels, as illustrated by the privately owned melamine-producing company Sichuan Golden-Elephant Sincerity Co., Ltd. ⁽²⁸⁾ which, according to public sources, received financial support through a preferential loan by the Meishan City Market Supervision Administration and the Meishan Central Sub-branch of the People's Bank of China ⁽²⁹⁾ 'to promote quality development, stabilize the economy, and stabilize market players' ⁽³⁰⁾. The cooperating exporting producer, Xinjiang XLX ⁽³¹⁾, does also stress on its website that 'under the policy guidance and strong support of the autonomous region, state, county party committee, and government, Xinlianxin Company has achieved leapfrog development, and it has also witnessed the major development achievements of our district [...] under the strong leadership of the Party Central Committee with Comrade Xi Jinping as the core, and with the full support of the autonomous region, the district, the county committee, and the government ⁽³²⁾. In addition, given that CCP interventions into operational decision making have become the norm also in private companies ⁽³³⁾, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the state by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the state and Party structures have grown together in the PRC.

⁽¹⁸⁾ Report – Chapter 7, p. 167–168.

⁽¹⁹⁾ Report – Chapter 8, p. 169–170, 200–201.

⁽²⁰⁾ Report – Chapter 2, p. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108–9.

⁽²¹⁾ See at: <http://www.hnzydhjt.com/> (accessed on 2 May 2023).

⁽²²⁾ See at: https://www.sohu.com/a/427199857_120109837 (accessed on 2 May 2023).

⁽²³⁾ See at: <http://scaffi.com/news/2492.html> (accessed on 2 May 2023).

⁽²⁴⁾ See at: <https://www.hnxx.com.cn/About/subcompany/cid/155/id/87?btwaf=23932495> (accessed on 2 May 2023).

⁽²⁵⁾ See at: https://aiqicha.baidu.com/company_detail_30432795595614 (accessed on 2 May 2023).

⁽²⁶⁾ See at: https://aiqicha.baidu.com/company_detail_31950371346728 (accessed on 2 May 2023).

⁽²⁷⁾ Ibid.

⁽²⁸⁾ See at: <http://www.jxgf.com/> (accessed on 2 May 2023).

⁽²⁹⁾ See at: <https://sichuan.scol.com.cn/ggwx/202209/58612536.html> (accessed on 2 May 2023).

⁽³⁰⁾ See at: https://www.sohu.com/a/575647079_120952561 (accessed on 2 May 2023).

⁽³¹⁾ See at: <http://www.xjxl.com.cn/> (accessed on 2 May 2023).

⁽³²⁾ See at: <http://www.xjxl.com.cn/News/detail/fid/3/cid/470/id/5404.html> (accessed on 2 May 2023).

⁽³³⁾ See for example Article 33 of the CCP Constitution, Article 19 of the Chinese Company Law or General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era (see below for full reference).

- (76) This is apparent also at the level of the China Petrochemical and Chemical Industry Federation ('CPCIF') the sectoral industry association. According to Art. 3 of CPCIF's Articles of Association, the organisation 'accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management' ⁽³⁴⁾.
- (77) Consequently, even privately owned producers in the sector of the product under review are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance as also set out in Section 3.2.2.1.5 below.

3.2.2.1.4. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: State presence in firms allowing the state to interfere with respect to prices or costs

- (78) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through state presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant state authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³⁵⁾, CCP cells in enterprises, state-owned and private alike, represent another important channel through which the state can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁶⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle ⁽³⁷⁾, including exercising pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³⁸⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³⁹⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under review and the suppliers of their inputs.
- (79) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era (the Guidelines) ⁽⁴⁰⁾ was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.' The Guidelines thus emphasise and seeks to increase the role of the CCP in companies and other private sector entities ⁽⁴¹⁾.
- (80) The investigation confirmed that overlaps between managerial positions and CCP membership/Party functions are commonplace in the melamine sector. Indeed, the respective chairmen of the board of directors of Henan Zhongyuan Dahua Co., Ltd., Henan Haohua Junhua Co., Ltd., Sichuan Golden Elephant Sincerity Co., Ltd. and Xinjiang Xin Lian Xin Chemical Energy Co., Ltd. are also Party Committees Secretaries in their respective companies.

⁽³⁴⁾ See at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (accessed on 2 May 2023).

⁽³⁵⁾ Report – Chapter 5, p. 100–1.

⁽³⁶⁾ Report – Chapter 2, p. 26.

⁽³⁷⁾ See for example: Blanchette, J. – Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, Vol. 100, No 4, July/August 2021, pp. 10–19.

⁽³⁸⁾ Report – Chapter 2, p. 31–2.

⁽³⁹⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 2 May 2023).

⁽⁴⁰⁾ General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era. Available at: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 15 November 2022).

⁽⁴¹⁾ Financial Times (2020). Chinese Communist Party asserts greater control over private enterprise, available at: <https://on.ft.com/3mYxP4j> (accessed on 2 May 2023).

- (81) The state's presence and intervention in the financial markets (see also Section 3.2.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁴²⁾. Thus, the state presence in firms, in the melamine and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

3.2.2.1.5. Significant distortions according to Article 2(6a)(b), third indent of the basic Regulation: public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces

- (82) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴³⁾.
- (83) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product under review.
- (84) To start with, the 14th FYP on raw materials ⁽⁴⁴⁾ outlines that 'the intensive development of chemical industrial parks will be significantly improved, thus giving rise to a group of petrochemical industrial bases' ⁽⁴⁵⁾. The plan further urges the industry to 'strictly control the new production capacity of urea', one of the main components of melamine, and 'increase the standards for eliminating obsolete production capacity, and use comprehensive standards to promote the exit of obsolete production capacity in accordance with laws and regulations' ⁽⁴⁶⁾. Furthermore, 'all localities need to strengthen compliance with this Plan and integrate the Plan's main contents and major projects into in their key local tasks. Petrochemical and chemical, [...] shall formulate specific implementation opinions focussing on the objectives and tasks of this Plan and taking into account the actual conditions prevailing in the aforesaid sectors' ⁽⁴⁷⁾. Moreover, the 14th FYP on the green development of industry ⁽⁴⁸⁾ outlines that 'new capacity should be brought under strict control in industries such as urea' ⁽⁴⁹⁾. This is in line with the 2019 Guiding Catalogue for industry structural adjustment ⁽⁵⁰⁾, which lists Urea production facilities among the facilities 'to be eliminated' and thus kept under control ⁽⁵¹⁾. On the province level, the Jiangsu 14th FYP on high-end development of chemical industry ⁽⁵²⁾ outlines the local authorities' intention to 'continue to control new production capacity in excess industries such as oil refining, urea, ammonium phosphate, caustic soda, polyvinyl chloride, soda ash, calcium carbide, and yellow phosphorus' ⁽⁵³⁾. The Shandong 14th FYP on the development of chemical industry ⁽⁵⁴⁾ specifies to 'improve the added value and refinement of products, and accelerate the formation of a coal-based chemical industry system with three main categories: coal-based oxygen-containing chemicals, coal-based chemical intermediates, and coal-based chemical new materials' as well as to 'focus on developing the industrial chain of coal-based fine chemicals' ⁽⁵⁵⁾.

⁽⁴²⁾ Report – Chapters 14.1 to 14.3.

⁽⁴³⁾ Report – Chapter 4, p. 41–42, 83.

⁽⁴⁴⁾ 14th FYP on raw materials. Available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 2 May 2023).

⁽⁴⁵⁾ Ibid., Section II.3.

⁽⁴⁶⁾ Ibid., Section IV.I.

⁽⁴⁷⁾ Ibid., Section VIII.1.

⁽⁴⁸⁾ 14th FYP on the Green Development of Industry. Available at: http://www.gov.cn/zhengce/zhengceku/2021-12/03/content_5655701.htm (miit.gov.cn) (accessed on 2 May 2023).

⁽⁴⁹⁾ Ibid., Section III.2.

⁽⁵⁰⁾ See Section I.1.39., as well as Section I.1.56. of the Annex to the Guiding Catalogue, available at: www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf (accessed on 2 May 2023).

⁽⁵¹⁾ Section III of the Guiding Catalogue.

⁽⁵²⁾ Jiangsu 14th FYP on high-end development of chemical industry. Available at: <https://huanbao.bjx.com.cn/news/20210906/1175114.shtml> (accessed on 2 May 2023).

⁽⁵³⁾ Ibid. Section 2.2.2.

⁽⁵⁴⁾ The Shandong 14th FYP on the development of chemical industry. Available at: <https://huanbao.bjx.com.cn/news/20211201/1191133.shtml> (accessed on 2 May 2023).

⁽⁵⁵⁾ Ibid., Section III.4.

- (85) In addition, the Guiding Opinion to promote the high-quality development of the petrochemical and chemical industries during 14th FYP ⁽⁵⁶⁾ quantifies further parameters of the sector's planned development: 'By 2025, the petrochemical and chemical industry will basically form a high-quality development pattern with strong indigenous innovation capabilities, a reasonable structural layout, a green, safe, low-carbon development. It will also greatly improve capabilities to ensure high-end product, significantly enhance core competitiveness, and take resolute steps towards high-level self-reliance and self-improvement' ⁽⁵⁷⁾ and several targets for the chemical sector: '[t]he production concentration level of bulk chemicals production will be further increased, and the capacity utilization rate will reach more than 80 % [...] about 70 chemical industry parks with competitive advantages will be established' ⁽⁵⁸⁾. It also emphasizes the need to: 'strengthen the coordination of fiscal, financial, regional, investment, import and export, energy, ecological environment, price and other policies with industrial policies' as well as to '[g]ive full play to the role of the national industry-finance joint cooperation platform, and promote bank-enterprise connections and industry-finance cooperation' ⁽⁵⁹⁾.
- (86) The Notice on Doing a Good Job in the Signing and Performance of Mid- and Long-Term Coal Contracts in 2021 ⁽⁶⁰⁾ of the National Development and Reform Commission further requires that the relevant market players: 'strengthen the construction of industry self-discipline. All relevant industry associations should guide enterprises to strengthen self-discipline, implement the requirements of medium and long-term contracts, and may not sign unfair contracts by taking advantage of the market supply and demand situation and the industry's dominant position. Large-scale enterprises should play an exemplary role and consciously regulate their decisions to sign contracts' ⁽⁶¹⁾. Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (87) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector of melamine. Such measures impede market forces from operating freely.

3.2.2.1.6. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws

- (88) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the state in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁶²⁾.

⁽⁵⁶⁾ Guiding Opinion to Promote the High-Quality Development of the Petrochemical and Chemical Industries during 14th FYP. Available at: http://www.gov.cn/zhengce/zhengceku/2022-04/08/content_5683972.htm#msdyntrid=WRmyf07ph0z74SHmXoOLKjRWl09BdZ4lGdYp9fiI9xU (accessed on 2 May 2023).

⁽⁵⁷⁾ Ibid., Section I.3.

⁽⁵⁸⁾ Ibid.

⁽⁵⁹⁾ Ibid., Section VIII.

⁽⁶⁰⁾ Notice on Doing a Good Job in the Signing and Performance of Mid- and Long-Term Coal Contracts in 2021. Available at: http://www.gov.cn/zhengce/zhengceku/2020-12/09/content_5568450.htm (accessed on 2 May 2023).

⁽⁶¹⁾ Ibid.

⁽⁶²⁾ Report – Chapter 6, p. 138–149.

- (89) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁶³⁾. All land is owned by the state (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the state. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁶⁴⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁶⁵⁾.
- (90) Much like other sectors in the Chinese economy, the producers of the product under review are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the melamine sector. The present investigation revealed nothing that would call those findings into question.
- (91) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product under review.

3.2.2.1.7. Significant distortions according to Article 2(6a)(b), fifth indent of the basic Regulation: wage costs being distorted

- (92) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation (ILO), in particular those on freedom of association and on collective bargaining ⁽⁶⁶⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the state authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁶⁷⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁶⁸⁾. Those findings lead to the distortion of wage costs in the PRC.
- (93) No evidence was submitted to the effect that the melamine sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

3.2.2.1.8. Significant distortions according to Article 2(6a)(b), sixth indent of the basic Regulation: access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state

- (94) Access to capital for corporate actors in the PRC is subject to various distortions.
- (95) Firstly, the Chinese financial system is characterised by the strong position of state-owned banks ⁽⁶⁹⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the state not only through ownership but also via personal relations (the top executives of large state-owned financial institutions are ultimately appointed by the CCP) ⁽⁷⁰⁾ and,

⁽⁶³⁾ Report – Chapter 9, p. 216.

⁽⁶⁴⁾ Report – Chapter 9, p. 213–215.

⁽⁶⁵⁾ Report – Chapter 9, p. 209–211.

⁽⁶⁶⁾ Report – Chapter 13, p. 332–337.

⁽⁶⁷⁾ Report – Chapter 13, p. 336.

⁽⁶⁸⁾ Report – Chapter 13, p. 337–341.

⁽⁶⁹⁾ Report – Chapter 6, p. 114–117.

⁽⁷⁰⁾ Report – Chapter 6, p. 119.

again just like non-financial SOEs, the banks regularly implement public policies designed by the GOC. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the state ⁽⁷¹⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷²⁾.

- (96) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (97) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the state's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues ⁽⁷³⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries' ⁽⁷⁴⁾.
- (98) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁷⁵⁾.
- (99) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷⁶⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (100) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

⁽⁷¹⁾ Report – Chapter 6, p. 120.

⁽⁷²⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

⁽⁷³⁾ See official policy document of the China Banking and Insurance Regulatory Commission ('CBIRC') of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*, available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 2 May 2023). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.'

⁽⁷⁴⁾ See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. Available at http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed 2 May 2023).

⁽⁷⁵⁾ See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparuso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

⁽⁷⁶⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

- (101) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ⁽⁷⁷⁾. Official media in the PRC have recently reported that the CCP called for 'guiding the loan market interest rate downwards' ⁽⁷⁸⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (102) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (103) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (104) No evidence was submitted in the present investigation demonstrating that the sector of the product under review is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.2.1.9. Systemic nature of the distortions described

- (105) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.2.1.2 to 3.2.2.1.5 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.2.1.6 – 3.2.2.1.8 and in Part II of the Report.
- (106) The Commission recalls that in order to produce the product under review, certain inputs are needed. When the producers of melamine purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (107) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (108) The Commission received comments from the CCCMC, representing three Chinese melamine producers Sichuan Golden-Elephant Sincerity Chemicals Co., Ltd, Shandong Holitech Chemical Industry Co., Ltd and Henan Junhua Development Ltd ⁽⁷⁹⁾.

⁽⁷⁷⁾ See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris. p. 29. Available at: https://doi.org/10.1787/eco_surveys-chn-2019-en (accessed on 2 May 2023).

⁽⁷⁸⁾ See: http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 2 May 2023).

⁽⁷⁹⁾ Henan Haohua Junhua holds 81 % of Henan Junhua Development. See https://aiqicha.baidu.com/company_detail_31229783116721 (last viewed 5 June 2023).

- (109) First, CCCME submitted that Article 2.2 of the WTO Antidumping Agreement ('ADA') does not recognize the concept of significant distortions. Moreover, even if the concept of significant distortions would fall under Article 2.2 ADA, which is not the case in CCCMC's view, the EU's calculation of the constructed normal value would also need to be in conformity with Article 2.2.1.1 of the ADA and with the Appellate Body's interpretation thereof, provided in the *EU – Biodiesel (Argentina)* (DS473) case. Accordingly, constructing normal value would, according to CCCMC, only be permitted in the situations of no sales of the like product in the 'ordinary course of trade' or of a 'particular market situation'. The alleged significant distortions in the exporting country would therefore need to fall under one of those categories for the Commission to be able to proceed with the expiry review according to Article 2(6a) of the basic Regulation. This is not the case in CCCMC's view, since the methodology pursuant to 2(6a) of the basic Regulation allows the construction of the normal value upon finding significant distortions rather than in line with the concepts foreseen by Article 2.2 ADA. Moreover, CCCMC submitted that there is no article in the ADA allowing use, for the purposes of determining the normal value, of data from a third country which does not appropriately reflect the prices or cost level in the country of origin. The normal value in anti-dumping investigations is required to be determined based on the sales prices or costs of the companies in the country of origin or at least based on prices or costs that can reflect the price or cost level in the country of origin. In this respect, CCCMC pointed in particular to the WTO Panel report in the *EU – Cost Adjustment Methodologies II (Russia)* (DS494) case as an example of a successful legal challenge to the WTO compatibility of the methodology under Article 2(6a) of the basic Regulation. For all the reasons above, CCCME considered that Article 2(6a) of the basic Regulation was inconsistent with the ADA and should not be applied in this case.
- (110) Concerning CCCMC's arguments of WTO compatibility of the methodology pursuant to Article 2(6a) of the basic Regulation, the Commission considers that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCMC. At the outset, the Commission notes that the existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Moreover, the WTO Report on *EU – Biodiesel* did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. In any event, WTO law as interpreted by the Appellate Body in *EU – Biodiesel*, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Furthermore, in relation to the *EU – Cost Adjustment Methodologies II* dispute, the Panel Report specifically considered the provisions in Article 2(6a) of the basic Regulation to be outside the scope of the dispute. Moreover, the Commission recalls that both the EU and the Russian Federation appealed the findings of the Panel, which are not final and therefore, according to standing WTO case-law, have no legal status in the WTO system, since they have not been endorsed by the Dispute Settlement Body through a decision by the WTO Members. Consequently, CCCMC's arguments could not be accepted.
- (111) Second, concerning the evidence demonstrating the existence of significant distortions, CCCMC alleged that the applicants has provided inadequate evidence to justify any findings of 'significant distortions' in the Chinese melamine industry and that the Commission's own analysis in the course of the investigation would therefore require significantly greater substantiation, not least to complement the allegation distortions by the Union industry which, according to CCCMC could not be verified due to their general nature without inadequate citation of underlying sources. As an example, CCCMC refers to the fact that the Union industry's reference to the 14th FYP merely claims that it 'aims to create Chinese national champions'. Similarly, CCCMC criticizes the Union industry' reference to Guiding Opinions on promoting the high-quality development of the petrochemical and chemical industry during the 14th FYP. According to CCCMC, the Guiding Opinions are a guiding document not setting out binding rules, which in addition states a number of goals not mentioned by the Union industry, including the goals to 'give full play to the decisive role of the market in resource allocation, better play to the role of the government' and to 'create a market-oriented, legalized and internationalize business environment [...], promote efficient global allocation of factor resources, and strengthen upstream and downstream coordination of the industrial chain and coupled development between related industries'. Against this background, CCCMC drew a parallel between the Guiding Opinions and the current EU industrial policy initiatives.
- (112) In this connection, CCCMC also emphasized that the Report is no longer up to date, in particular given the substantial economic developments both in the EU and in China since its publication. CCCMC pointed out the obligation by the Commission pursuant to Article 2(6a)(c) of the basic Regulation to regularly update the Report and submitted that repeated slavish references to the Report – whether by the EU industry or in Commission's

determinations – would not be adequate. The CCCME referred in this respect to the WTO Appellate Body's ruling in the *US – Countervailing Measures* (DS437) case, stating that the claim on prices being distorted must be on a case-by-case basis and must be established and adequately explained in the investigating authority's report.

- (113) As for CCCMC's arguments related to analysis of sufficiency of evidence, the Commission disagreed. First, concerning the alleged inadequacy of evidence in the Union industry's submission(s), in the course of the present investigation, the Commission has been indeed collecting further information to complement the available sources, including the request and the Report, in order to verify the allegations made at initiation and, ultimately, to determine whether significant distortions in the sense of Article 2(6a) of the basic Regulation Commission are present in the melamine sector. The results of the Commission's investigation are laid out in recitals (67) to (104) and interested parties have the opportunity to further comment on them. In any event, concerning sufficiency of evidence at initiation stage, the Commission recalls that point 4.1 of the Notice of Initiation referred to a number of elements in the Chinese melamine market, to substantiate that the market was affected by distortions. The Commission considers that the evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. Indeed, while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation only occurs at the time of the final disclosure, Article 2(6a)(e) of the basic Regulation lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case, the Commission deemed the evidence submitted in the request sufficient to initiate the investigation on this basis. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation.
- (114) Second, concerning the argument on the Chinese policy documents, the Commission points out, that the Chinese economy is covered by a complex web of FYPs, driving decisions by public authorities at all levels. Contrary to the argument put forward by the CCCMC, the Commission considers FYPs binding documents, as the national 14th FYP dedicates, for example, a whole section to 'improving the planning implementation mechanism' stating that: 'As regards the binding indicators, major engineering projects, and tasks in public services, environmental protection, safety, and other fields set out in this Plan, it is necessary to clarify the responsibilities parties and schedule requirements, to allocate public resources, guide and control social resources, and ensure completion as scheduled. As regards the expected indicators and tasks in the fields of industrial development and structural adjustment set out in this Plan, it is necessary to mainly rely on the role of market players to achieve them. Governments at all levels must create a favourable policy environment, institutional environment, and legal environment' ⁽⁸⁰⁾. Furthermore, the Guiding Opinion on promoting the high-quality development of the petrochemical and chemical industry during the 14th FYP, does also point towards concrete state intervention, further to the argument brought forward in the request, outlining that Chinese enterprises shall 'accelerate the transformation and upgrading of traditional industries, and vigorously develop new chemical materials and fine chemicals. Accelerate the digital transformation of the industry, improve the level of intrinsic safety and clean production, accelerate the quality, efficiency and power transformation of the petrochemical industry, and promote China's progress from a large petrochemical country to a strong petrochemical country' ⁽⁸¹⁾.
- (115) Third, concerning the alleged similarities of the current EU industrial policies with policies in China, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in China in accordance with Article 2(6a) of the basic Regulation.
- (116) Fourth, with regard to the claim concerning the outdated character of the evidence contained in the Report, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Chinese authorities, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. As it was made publicly available already in December 2017, any interested party had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based, and no parties have submitted arguments or evidence rebutting the sources and information included in the Report.

⁽⁸⁰⁾ 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035. Available at: http://www.gov.cn/xinwen/2021-03/13/content_5592681.htm (accessed on 2 May 2023).

⁽⁸¹⁾ Ibid., Section 1.1.

- (117) Fifth, with respect to *US – Countervailing Measures (China)*, the Commission recalls that it did not concern the application of Article 2(6a) of the basic Regulation which is the relevant legal basis for the determination of normal value in this investigation. That dispute concerned a different factual situation and concerned the interpretation of the WTO Agreement on Subsidies and Countervailing Measures.
- (118) Finally, the Commission recalled that the GOC had the opportunity to comment on the alleged distortions described in the Report and in the expiry review and provide evidence countering the allegations. As explained in recital (47), the GOC failed to reply to the respective questionnaire and thus the Commission based its findings concerning the existence of significant distortions on the Chinese market on facts available pursuant to Article 18 of the basic Regulation.
- (119) Upon disclosure, CCCMC reiterated its arguments, making explicit reference to its previous submission. Moreover, Xinjiang XLX submitted identical arguments to those of CCCMC.
- (120) First, CCCMC and Xinjiang XLX insisted that Article 2(6a) of the basic Regulation is inconsistent with WTO law and inconsistent specifically with Article 2.2 ADA and they criticized the Commission for not explaining how its practice in applying Article 2(6a) of the basic Regulation accords with the reasoning set out in several consistent WTO Appellate Body determinations that have found similar EU and other members' practices in constructing normal value to be inconsistent with the obligations of Article 2.2 ADA. Moreover, CCCMC and Xinjiang XLX requested the Commission not to merely dismiss their argument by claiming that the WTO allows the use of data from a third country, but instead to explain how the Commission carried out the adaptation required by Article 2.2 ADA to arrive at the cost of production 'in the country of origin'. CCCMC and Xinjiang XLX referred in that respect to the Appellate Body's findings in the *EU – Biodiesel (Argentina)* (DS473) and in the *Ukraine – Anti-Dumping measures on ammonium nitrate* (DS493) disputes. Consequently, as long as the Commission constructed normal value based on cost of production in Turkey without any adjustment or explanation how that data has finally been adapted to reflect the cost of production in the country of origin – China, CCCMC and Xinjiang XLX argued the methodology applied by the Commission in the present investigation is incompatible with the EU's obligations under Article 2.2 ADA. According to CCCMC and Xinjiang XLX, it is thus incumbent on the Commission to fundamentally revise its normal value methodology and related conclusions.
- (121) These arguments cannot be accepted. As the Commission recalled already in recital (110) above, the Appellate Body jurisprudence invoked by CCCMC and Xinjiang XLX does not relate to the application of Article 2(6a) of the basic Regulation. Consequently, the argument that the Commission's methodology to construct normal value pursuant to that Article would not be compatible with WTO law in view of the Appellate Body reasoning is therefore misplaced. In that respect, the Commission is not merely dismissing the parties' arguments but expressing its legal position that the provisions of Article 2(6a) are fully consistent with the European Union's WTO obligations. Consequently, the Commission cannot agree with CCCMC and Xinjiang XLX in their request to revise the methodology mandated by Article 2(6a) of the basic Regulation.
- (122) Second, CCCMC and Xinjiang XLX considered the Commission's reasoning concerning significant distortions and the related evidence referred to by the Commission inadequate. More specifically, CCCMC and Xinjiang XLX expressed their concern that the Commission continues to substantially rely on the Report which was published in December 2017 and which, consequently, is now quite dated, with the world economy, including notably both the EU and Chinese economies, experiencing substantial economic upheaval and already implementing important policy and structural changes intended to adapt to the new domestic and global circumstances. CCCMC and Xinjiang XLX pointed out in this connection that the EU's own industrial strategy, adopted in March 2020, had to be updated already in May 2021 to take account of the new 'crisis' circumstances. Accordingly, CCCMC and Xinjiang XLX took the view that the elements described in the Report as relevant for finding significant distortions must now be re-examined and updated with specific new conclusions as to whether they remain valid today. CCCMC and Xinjiang XLX referred in this context also to Article 2(6a)(c) of the basic Regulation according to which the Commission is, inter alia, obliged to regularly update the Report.

- (123) Moreover, with respect to the ‘Guiding Opinions on promoting the high-quality development of the petrochemical and chemical industry during the 14th Five Year Plan’, CCCMC and Xinjiang XLX submitted that the Commission failed to take into account that (i) this document is a guidance document, not a binding regulation setting out detailed obligations or rules for the sectors concerned, as well as that (ii) it includes aims or goals – goals such as ‘give full play to the decisive role of the market in resource allocation, better play the role of the government’ or ‘create a market-oriented, legalized, and internationalized business environment’ – which are at odds with the Commission’s conclusions on distortions. Similarly, with respect to the FYPs quoted by the Commission, CCCMC and Xinjiang XLX contested the Commission’s interpretation of the system of plans in China, pointing out that those FYPs do not show that public authorities would drive binding decisions but rather that the FYPs seek to clarify the respective responsible parties whereas the role of governments is separately specified to be to ‘create a favourable policy environment, institutional environment, and legal environment’ – which is the role of governments everywhere including in the EU. In the same vein, CCCMC and Xinjiang reiterated the argument that the Guiding Opinions on promoting the high-quality development of the petrochemical and chemical industry during the 14th FYP leave it to the Chinese enterprises to take the appropriate actions to transform and upgrade the sector, in a fashion similar to the EU industrial policies. Further, CCCMC and Xinjiang XLX submitted that the Commission did not address the argument raised earlier, namely that according to the Appellate Body’s finding in US – Countervailing Measures, the existence of price distortion resulting from government intervention has to be established and adequately explained by the investigating authority in its report. CCCMC and Xinjiang XLX understand this to be a requirement for the Commission to bring forward current factual data and detailed analysis of the alleged Chinese government intervention which results in consequent market effects and bears on behaviour at the producer level. Finally, CCCMC and Xinjiang XLX emphasized their position that Commission is bound to produce evidence of specific governmental exercise of any alleged powers to intervene in the melamine market and which has resulted in actual and demonstrable distortion of the respective melamine producers’ pricing and that the Commission’s references to Chinese government plans, guiding opinions or other Chinese government policy initiatives cannot be equated to actual government intervention.
- (124) These arguments could not be accepted. As to the Commission’s reliance on the Report and the fact that it was published in 2017, the Commission reiterates its position explained in recital (116). Moreover, the Commission recalls that a determination concerning the presence of significant distortions pursuant to Article 2(6a) of the basic Regulation is not conditional upon the existence of the Report, let alone on the date of its publication. The Commission notes further that the basic axioms of the Chinese economy, such as the paradigm of Socialist Market Economy, the system of planning or the CCP leadership over the economy – combined with the Party’s presence within individual market operators entailing the power to interfere with managerial decisions – have not changed since the publication of the Report, other than being arguably even more distinct. While the findings of the Report therefore remain largely valid, the Commission has in any event supplemented them in the present investigation by further evidence, as described in detail for example in recitals (76), (77), (79), (80) and (84) – (86) above. In view of this, also the argument of CCCMC and Xinjiang XLX concerning the Commission’s obligation to update the Report in line with Article 2(6a)(c) of the basic Regulation is groundless, as the Commission has indeed examined the relevant circumstances concerning the presence of significant distortions specifically for the purposes of this investigation, taking into account the most recent evidence available ⁽⁸²⁾.
- (125) As to the parallels which CCCMC and Xinjiang XLX draw between the Chinese policy documents and the EU’s industrial strategies, the Commission notes that the parties do not adduce any additional arguments, other than insisting on the alleged relevance of the EU’s industrial policies in the context of the assessment of significant distortions pursuant Article 2(6a) of the basic Regulation in China. Consequently, the Commission reiterates its position expressed already in recital (115).
- (126) Concerning the set of arguments on to what extent the Chinese policy documents referred to by the Commission, such as those quoted in recitals (84) – (86) above, are guidance document, how much the nature of the Chinese planning system and economic setup results in the public authorities binding decisions and to what extent the relevant policy document leave it to individual enterprises to take appropriate actions, the Commission notes that CCCMC and Xinjiang XLX disregard the unequivocal requirements contained in the relevant Chinese policy

⁽⁸²⁾ Such approach was confirmed by the General Court in its judgement of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission*, T-326/21, EU:T:2023:347, para. 104.

documents to be implemented by the recipient authorities, as described for example in recital (84) above. In combination with the existence of specific numerical targets on how a sector should develop ⁽⁸³⁾, it remains largely irrelevant whether individual market operators, in order to achieve the set policy objectives and development goals, can choose the operational methods and therefore pursue those policy objectives in an efficient, 'market-based' manner. The Commission further recalls the structures in place in China for an all-encompassing environment of government interventions into the economy, comprehensively described in Sections 3.2.2.1.1 to 3.2.2.1.9 above. In that environment, individual market operators, such as Xinjiang XLX, as well as industry associations pledge their allegiance to the CCP and to the development goals set by the Party/state ⁽⁸⁴⁾ and, in exchange, they can expect support in their business operation, including through fiscal, financial, investment, zoning and other policies by the government authorities, state-controlled banks, etc. Consequently, the state authorities exercise their power to shape the melamine market, including within individual economic operators. This conclusion holds true irrespective of the specific legal nature of individual policy documents, such as the Guiding Opinions on promoting the high-quality development of the petrochemical and chemical industry during the 14th FYP.

(127) As to the reference by CCCMC and Xinjiang XLX to the Appellate Body's finding in US – Countervailing Measures, the Commission notes that this argument was already addressed in recital (117).

(128) In view of the above, CCCMC's and Xinjiang XLX's arguments were rejected.

3.2.2.1.10. Conclusion

(129) The analysis set out in Sections 3.2.2.1.2 to 3.2.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the sector of the product under review showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

(130) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2.2. Representative country

(131) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁸⁵⁾;
- Production of the product under review in that country ⁽⁸⁶⁾;
- Availability of relevant public data in the representative country;
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

⁽⁸³⁾ See for example recital (85) above.

⁽⁸⁴⁾ See recitals (75) and (76) above.

⁽⁸⁵⁾ World Bank Open Data – Upper Middle Income. Available at <https://data.worldbank.org/income-level/upper-middle-income> (last viewed 3 July 2023).

⁽⁸⁶⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (132) As explained in recital (50), the Commission issued a Note on sources that described the facts and evidence underlying the relevant criteria, and informed interested parties of its intention to use Türkiye as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.
- (133) In the Note on sources, the Commission explained that, due to the absence of meaningful cooperation, it would rely on facts available according to Article 18 of the basic Regulation. The choice of representative country was based on the information contained in the expiry review request, combined with other sources of information deemed appropriate according to the relevant criteria laid down in Article 2(6a) of the basic Regulation in accordance with Article 18(5) of the basic Regulation, including import statistics, national statistics of the representative country, market intelligence sources, fees charged by suppliers of utilities in the representative country, and financial information of producers in the representative country.
- (134) Regarding production of the product under review, in the expiry review request, the applicants examined seven countries (India, Iran, Japan, Qatar, Russia, Trinidad & Tobago, and the United States of America) where production of melamine took place ⁽⁸⁷⁾.
- (135) Regarding the level of economic development, only Russia qualified as a country at a level of development similar to the PRC in the RIP. However, given the recent geopolitical and economic developments in Russia, together with the sanctions in force, as well as the fact that Russia decided not to publish detailed import and export data as from April 2022, the Commission did not consider that Russia would constitute a suitable representative country.
- (136) In this respect, the applicants identified Türkiye as a country at a level of economic development similar to the PRC with production in the same general category of products, namely products in the ammonia value chain, of which melamine is also a part ⁽⁸⁸⁾.
- (137) Regarding the availability of relevant public data in the representative country, according to the request, data on important factors of production was readily available with regard to Türkiye. Furthermore, relevant data on SG&A and profit was publicly available for the same general category of products. The applicants identified one producer in the same general category of products, the company Ege Gübre Sanayii A.Ş. ('Ege Gübre'). In the Note on sources, the Commission identified two other producers in the same general category of products, the companies Tekfen Holding A.Ş. ('Tekfen') and Bağfaş Bandırma Gübre Fabrikaları A.Ş. ('Bağfaş'). All three companies were producers of nitrogen fertilisers ⁽⁸⁹⁾, had publicly available financial information covering the review investigation period, and were profitable in that period.
- (138) In its comments on the Note on sources, CCCMC submitted that the Commission should take into account the various production processes and raw materials used in melamine production. In addition, CCCMC argued that the Commission should use the questionnaire reply by Xinjiang XLX as facts available.
- (139) The Commission noted that without cooperation from Chinese producers of melamine using the various production processes and raw materials referred to by CCCMC, it based its findings on facts available. As explained in recital (60), in the present case, the Commission found it more appropriate to base its findings on the information in the request rather than on the data of a single Chinese company. In addition, the Commission indeed used certain elements of the Chinese producer's questionnaire reply as facts available. The claims were, therefore, dismissed.

⁽⁸⁷⁾ Paragraphs 59 and 60, and Table 1 of the expiry review request.

⁽⁸⁸⁾ Section 5.2.3 of the expiry review request.

⁽⁸⁹⁾ The ultimate raw materials used in the production of melamine and nitrogen fertilisers are natural gas or coal. Natural gas or coal are used to make ammonia. Ammonia can be further processed into urea or nitric acid. Nitric acid is used to produce ammonium nitrate, which is a nitrogen fertiliser. It can be further mixed to make other types of nitrogen fertilisers, e.g. urea ammonium nitrate ('UAN'; ammonium nitrate mixed with urea) or calcium ammonium nitrate ('CAN'; ammonium nitrate mixed with calcium from limestone). Urea, with an addition of ammonia, can also be used to produce melamine. Nitrogen fertilisers, urea and melamine are often produced by the same vertically integrated companies.

3.2.2.3. Undistorted costs and benchmarks and sources used to establish them

- (140) Considering all the information in the expiry review request, and after analysing the comments from interested parties, the following factors of production, their sources and undistorted values have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of melamine

Factor of Production	Commodity Code in Türkiye	Undistorted value (CNY)	Unit of measurement	Source of information
Raw materials				
Urea	310210	4,41	kg	Global Trade Atlas ('GTA') ⁽¹⁾
Ammonia	281410	5,91	kg	GTA
Energy/Utilities				
Electricity	n/a	0,56	kWh	Turkish Statistical Institute
Natural gas	n/a	53,58	GJ	Turkish Statistical Institute
Steam	n/a	199,04	tonne	Expiry review request
Water	n/a	9,78	m ³	Kocaeli City Water and Sewerage General Directorate
Labour				
Skilled and unskilled labour	n/a	35,53	hour	Turkish Statistical Institute
By-product				
Ammonia	281410	5,89	kg	GTA

⁽¹⁾ Available at <https://connect.ihsmarkit.com/gta/home> (last viewed 6 February 2023).

3.2.2.3.1. Raw materials

- (141) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in GTA to which import duties ⁽⁹⁰⁾ and transport costs ⁽⁹¹⁾ were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members to the WTO ('non-WTO countries'), listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽⁹²⁾.

⁽⁹⁰⁾ International Trade Centre, Market Access Map. Available at <https://www.macmap.org/en/query/customs-duties> (last viewed 5 April 2023).

⁽⁹¹⁾ Doing Business 2020. Economy profile Turkey, p. 51. Available at <https://archive.doingbusiness.org/content/dam/doingBusiness/country/t/turkey/TUR.pdf> (last viewed 9 February 2023). Trading across Borders methodology. Available at <https://archive.doingbusiness.org/en/methodology/trading-across-borders> (last viewed 9 February 2023).

⁽⁹²⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

- (142) The Commission decided to exclude imports from the PRC into the representative country as it concluded in Section 3.2.2.1 that it was not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC and non-WTO countries into the representative country, the volume of imports from other third countries remained representative.
- (143) The Commission examined whether the inputs, for which import statistics were used as the source of undistorted cost, were subject in Türkiye to export restrictions that could potentially distort the domestic prices and therefore also the import prices ⁽⁹³⁾. The Commission found that Türkiye did not apply any export restrictions on exports of urea and ammonia in the RIP.
- (144) The Commission further examined whether the import prices might have been distorted by imports from the PRC and non-WTO countries ⁽⁹⁴⁾. The Commission found that less than 14,5 % of imports of urea originated in the PRC and non-WTO countries in the RIP. With regard to ammonia, the share of imports originating in the PRC and non-WTO countries did not exceed 0,01 % in the RIP. The Commission thus concluded that the import prices were likely not affected by imports from the PRC and non-WTO countries.
- (145) In its comments on the Note on sources, CCCMC argued that the Commission should not use import prices to establish the undistorted cost of raw materials in Türkiye as those prices were affected by various factors, e.g. imported quantity, distance to the country of origin, and thus did not reflect domestic prices of the raw materials in Türkiye.
- (146) The Commission disagreed. Imported raw materials compete in terms of price with domestic raw materials on Turkish market. Therefore, the Commission considered that the weighted average import price sufficiently reflected the domestic price of raw materials in Türkiye.
- (147) Furthermore, in its comments on the Note on sources, CCCMC submitted that if the Commission continued using import prices as a proxy to domestic prices of raw materials in the representative country, it should reduce their value by the value of ocean freight and insurance included in the import statistics recorded at CIF level.
- (148) The Commission disagreed. As established in recital (146), import prices reflect the price level prevailing on the domestic market of the representative country. Nevertheless, total cost of a raw material borne by a producer in the representative country includes all cost incurred for acquiring the raw material and transporting it to the gate of the factory. This is also the point where prices of imported and domestic raw materials compete. Therefore, the import price of raw material at CIF level was further increased by the applicable import duty and transport cost in the representative country as mentioned in recital (141).
- (149) Finally, in its comments on the Note on sources, CCCMC claimed that the weighed average import price of urea was not an appropriate benchmark and should be thus adjusted for the following three reasons:
- The weighted average import price of urea in Türkiye more than doubled during the period considered as a consequence of the Russia's unprovoked and unjustified war of aggression against Ukraine (from 264 USD/tonne in 2019 to 568 USD/tonne in the RIP ⁽⁹⁵⁾);
 - Imports from the United States of America ('the US') distorted the average import price with an excessively high unit price of approximately 1 500 CNY/kg. Imports from the US should thus be excluded ⁽⁹⁶⁾;

⁽⁹³⁾ Global Trade Alert. Available at https://www.globaltradealert.org/data_extraction (last viewed 6 February 2023).

⁽⁹⁴⁾ Azerbaijan, Belarus, North Korea, Turkmenistan, Uzbekistan.

⁽⁹⁵⁾ CCCMC used the UN Comtrade database.

⁽⁹⁶⁾ See Annex III to the Note on sources.

— Imports from Qatar distorted the average import price as they were subject to anti-dumping measures imposed by India. Similarly to the previous point, imports from Qatar should be excluded ⁽⁹⁷⁾.

- (150) With regard to the evolution of the import price of urea in Türkiye, the Commission found that it perfectly followed the evolution of the import price of urea in the top 5 markets importing urea (India, Brazil, the US, the Union, Australia) representing 60 % of world's imports of urea ⁽⁹⁸⁾. The import price of urea in those five markets first slightly decreased in 2020, then steadily grew in 2021 and in the RIP. In the RIP, it reached more than double the value of 2019.
- (151) Therefore, the Commission concluded that the import price of urea in Türkiye was not distorted. It rather followed the global price trends concerning urea.
- (152) With regard to the import price of urea originating in the US, the Commission noted that the excessively high unit price only concerned 8 kg out of almost 2 million tonnes of urea imported to Türkiye in the RIP. Therefore, it had no effect on the weighted average import price used as a benchmark for the undistorted value of urea.
- (153) With regard to imports originating in Qatar being subject to anti-dumping duties in India, the Commission noted that first, CCCMC did not provide any evidence proving that the findings of dumping made by Indian authorities should be extended to Qatar's exports to Türkiye. Second, the measures imposed by India concerned melamine and not urea, the raw material at issue.
- (154) Following the considerations recounted in recitals (150) to (153), the Commission dismissed CCCMC's claims described in recital (149).
- (155) Following final disclosure, CCCMC reiterated that imports from Qatar should be excluded from the calculation of undistorted cost of urea since Qatar's exports were subject to anti-dumping measures in India. The party referred to the expiry review of anti-dumping measures concerning imports of certain stainless steel tube and pipe butt-welding fittings originating in the PRC where the Commission rejected Malaysia as a potential representative country on the grounds that the US had anti-dumping measures in place on imports of such fittings originating in Malaysia ⁽⁹⁹⁾.
- (156) First, the Commission noted that each investigation has to be assessed on its own merits and a decision taken in one investigation does not create a precedent universally valid for any other subsequent investigation. Second, in the case, to which CCCMC referred, Malaysia was considered as one of the potential representative countries. Findings of dumping made by another jurisdiction were relevant since the pricing decisions of fittings producers in Malaysia, influenced by their dumping behaviour, might have distorted their SG&A and the profitability levels. In the present case, Qatar was not used as a source of financial information, i.e. SG&A and undistorted profit. It was merely one of the countries of origin of urea imported to Türkiye and as such contributed to the value of the undistorted cost of urea. It follows that the two situations were completely non-analogous. There was no indication (and no arguments put forward by the claimants to that effect) that the alleged dumping behaviour to a third market would have a distortive effect on the prices of Qatari exports of urea to Türkiye. Consequently, the claim was rejected.
- (157) Following final disclosure, CCCMC further reiterated that the Commission should deduct ocean freight and insurance from the import price of raw materials. According to CCCMC, the Commission failed to clarify why the import prices reflected the price level prevailing on the domestic market of the representative country. In this respect, CCCMC argued that the cost of a company in the representative country only included the cost of raw material and domestic freight.

⁽⁹⁷⁾ See <https://www.dgtr.gov.in/anti-dumping-cases/anti-dumping-investigation-concerning-imports-melamine-originating-or-exported> (last viewed 5 April 2023).

⁽⁹⁸⁾ Import statistics retrieved from GTA available at <https://connect.ihsmarkit.com/gta/home> (last viewed 4 April 2023).

⁽⁹⁹⁾ Recital (103) of Commission Implementing Regulation (EU) 2023/809 of 13 April 2023 imposing a definitive anti-dumping duty on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 101, 14.4.2023, p. 22).

- (158) The Commission disagreed. When a producer of the product under review in the representative country examines whether it should source a raw material from a domestic or foreign supplier, it compares the total cost of the raw material at the gate of its factory. For a raw material supplied by a domestic supplier in the representative country, such total cost normally includes the price of the raw material and domestic freight. Where the raw material is supplied by a foreign supplier, the total cost normally includes the price of the raw material, domestic freight in the exporting country, handling and loading (i.e. price at FOB level), ocean freight and insurance (i.e. price at CIF level available in import statistics), import duty (i.e. landed price), and domestic freight. A producer in the representative country will generally decide to source from abroad only when the import price at the gate of its factory is competitive with the price of a domestic supplier. Therefore, the Commission considered that the import prices at CIF level, i.e. including ocean freight and insurance, of raw materials were a suitable proxy for domestic prices (at EXW level) of those raw materials in the representative country. Consequently, the Commission rejected the claim.

3.2.2.3.2. Energy/utilities

- (159) The Commission intended to use the average electricity prices applicable to industrial users in second half of 2021 and first half of 2022 as published by the Turkish Statistical Institute ⁽¹⁰⁰⁾. The Commission used tariffs applicable to consumption band 70 000 to 150 000 MWh. To determine the applicable consumption band, the Commission used the electricity consumption reported by Xinjiang XLX as facts available.
- (160) The electricity prices reported by the Turkish Statistical Institute included all taxes. Therefore, the Commission deducted the VAT of 18 % from the electricity price reported in the national statistics.
- (161) The Commission intended to use the average natural gas prices applicable to industrial users in second half of 2021 and first half of 2022 as published by the Turkish Statistical Institute ⁽¹⁰¹⁾. The Commission used tariffs applicable to consumption band 26 100 000 to 104 000 000 m³. To determine the applicable consumption band, the Commission used the natural gas consumption reported by Xinjiang XLX as facts available.
- (162) The unit of measurement used in the Turkish statistics was cubic meter. The consumption reported in the expiry review request was however measured in gigajoules (GJ). The Commission used the conversion factor of 0,0373 GJ/m³ to arrive at undistorted cost of one gigajoule in Türkiye.
- (163) The natural gas prices reported by the Turkish Statistical Institute included all taxes. Therefore, the Commission deducted the VAT of 18 % from the natural gas price reported in the national statistics.
- (164) To determine the undistorted cost of steam, the Commission applied the approach used in the expiry review request. The applicants determined the undistorted cost of steam by multiplying the undistorted cost of natural gas by a factor based on empirical relation between the cost of natural gas and the cost of steam observed by the applicants.
- (165) The Commission used the applicable prices of water in Türkiye as charged by the Kocaeli City Water and Sewerage General Directorate ⁽¹⁰²⁾, which is responsible for water supply, sewage collection and treatment in the Kocaeli province, to industrial users. The applicable prices were readily available on the website of the Turkish authority.

⁽¹⁰⁰⁾ Elektrik ve Doğal Gaz Fiyatları, I. Dönem: Ocak-Haziran 2022 (Electricity and Natural Gas Prices, First Semester: January-June 2022), Table 1. Available at <https://data.tuik.gov.tr/Bulten/Index?p=Elektrik-ve-Dogal-Gaz-Fiyatlari-I.-Donem:-Ocak-Haziran-2022-45567> (last viewed 20 January 2023).

⁽¹⁰¹⁾ Elektrik ve Doğal Gaz Fiyatları, I. Dönem: Ocak-Haziran 2022 (Electricity and Natural Gas Prices, First Semester: January-June 2022), Table 3. Available at <https://data.tuik.gov.tr/Bulten/Index?p=Elektrik-ve-Dogal-Gaz-Fiyatlari-I.-Donem:-Ocak-Haziran-2022-45567> (last viewed 20 January 2023).

⁽¹⁰²⁾ Available at <https://www.isu.gov.tr/sufiyatlari/> (last viewed 30 January 2023).

- (166) In its comments on the Note on sources, CCCMC argued that the cost of electricity and natural gas in Türkiye were distorted as they had been growing considerably throughout the review investigation period. CCCMC claimed the energy price hikes were caused by the natural gas price pressure following Russia's unprovoked and unjustified war of aggression against Ukraine quoting the Melamine (Europe) report published by the Independent Commodity Intelligence Services ('ICIS') ⁽¹⁰³⁾ on 23 March 2022.
- (167) At the outset the Commission noted that the report quoted by CCCMC did not provide any comprehensive analysis of the evolution of energy prices in Europe, in particular in comparison to the PRC. It merely mentioned the growing natural gas prices in the context of melamine price negotiations for second quarter of 2022, i.e. the last quarter of the RIP.
- (168) In addition, Russia's unprovoked and unjustified war of aggression against Ukraine disrupted the energy markets worldwide ⁽¹⁰⁴⁾. Therefore, the trend of growing energy prices in Türkiye could as such be hardly considered an isolated occurrence purely applicable to the Turkish market.
- (169) Although the initially determined undistorted cost of electricity and natural gas represented only 5 % of the constructed normal value, the undistorted cost of steam was linked to the cost of natural gas and it amounted to 15 % of the constructed normal value.
- (170) Therefore, the Commission further examined the evolution of energy prices paid by industrial users in Türkiye. The undistorted cost of electricity was initially determined at the level of 0,65 CNY/kWh and of natural gas at the level of 80,91 CNY/GJ.
- (171) The Commission found that in the review investigation period, the electricity and natural gas prices increased at a rate that by far outpaced the already high inflation rate (78,6 % ⁽¹⁰⁵⁾) in Türkiye. The energy prices grew in particular in the first half of 2022 where the electricity cost 3,5 times and the gas six times more than in the first half of 2021.
- (172) Therefore, taking into account the significant share of electricity, natural gas and steam on the constructed normal value, the Commission found it appropriate to adjust the initially determined undistorted cost of electricity and natural gas. The Commission used the price of electricity and natural gas applicable to Turkish industrial users in the second half of 2021 as the starting point and increased those tariffs in line with the energy price growth found at Xinjiang XLX ⁽¹⁰⁶⁾ to determine the benchmark for the first half of 2022. Subsequently, the Commission calculated average undistorted cost of electricity, gas and steam using the actual prices applicable in Türkiye in the second half of 2021 and the adjusted values for the first half of 2022. Following those adjustments, the share of electricity, natural gas and steam on the constructed normal value dropped to 15 %.

3.2.2.3.3. Labour

- (173) In the expiry review request, the applicants used information on salaries for skilled (engineer in industrial sector) and unskilled labour (factory worker) in Türkiye published by the Economic Research Institute ⁽¹⁰⁷⁾. However, the information available either in the open version of the expiry review request or at the respective website did not make it possible to confirm the period, which the data covered. Furthermore, the benchmark used by the applicants only contained salaries but no additional labour cost, e.g. social contributions.

⁽¹⁰³⁾ See <https://www.icis.com/explore/commodities/chemicals/melamine/> (last viewed 11 April 2023).

⁽¹⁰⁴⁾ See for example <https://www.weforum.org/agenda/2022/11/russia-ukraine-invasion-global-energy-crisis/> (last viewed 9 June 2023); <https://blogs.worldbank.org/developmenttalk/energy-shock-could-sap-global-growth-years> (last viewed 9 June 2023); <https://www.reuters.com/business/energy/year-russia-turbocharged-global-energy-crisis-2022-12-13/> (last viewed 9 June 2023).

⁽¹⁰⁵⁾ Consumer Price Index, March 2023, Table 2. Available at <https://data.tuik.gov.tr/Bulten/Index?p=Consumer-Price-Index-March-2023-49652&dil=2> (last viewed 11 April 2023).

⁽¹⁰⁶⁾ The Commission acknowledges that the evolution of energy prices observed in Xinjiang XLX was based on distorted costs and prices. Since in the present expiry review, the aim is not to calculate a precise dumping margin but to establish whether dumping continued, the Commission found it acceptable to use the increase in energy prices experienced by Xinjiang XLX as a conservative proxy for the adjustment of the undistorted cost of electricity and natural gas.

⁽¹⁰⁷⁾ Available at <https://www.erieri.com/salary> (last viewed 6 February 2023).

- (174) Therefore, the Commission decided to use the information on labour cost in the relevant industrial sector available from the Turkish Statistical Institute ⁽¹⁰⁸⁾. The Commission used the most recent hourly labour cost ⁽¹⁰⁹⁾ recorded in Division 20 – Manufacture of chemicals and chemical products of the Statistical classification of economic activities in the European Community (NACE Rev. 2) ⁽¹¹⁰⁾. Since the most recent data only covered year 2020, the Commission adjusted the labour cost using the labour cost index applicable to manufacturing in the third and fourth quarter 2021 and first and second quarter 2022 ⁽¹¹¹⁾ as published by the Turkish Statistical Institute.

3.2.2.3.4. By-products

- (175) According to the information in the expiry review request, only one by-product, ammonia, is obtained in the production of melamine. To establish its undistorted price, the Commission also added import duties and internal transport costs to the average import price to Türkiye, following the same methodology as for raw materials.
- (176) Ammonia obtained as by-product is reintroduced in the production process in the urea plant. According to the expiry review request, the efficiency of such ammonia in the urea plant is lower than the efficiency of ammonia originally produced to be used in the urea plant. Therefore, the applicants reduced the undistorted value of the by-product by a percentage based on their previous experience. The Commission applied the same adjustment coefficient.

3.2.2.3.5. Manufacturing overheads, SG&A, and profit

- (177) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overheads needs to be established to cover costs not included in the factors of production referred to above.
- (178) In the expiry review request, the applicants estimated fixed cost based on the fixed cost incurred by one of the applicants in the production of 1 tonne of melamine. The estimated fixed cost was adjusted downwards to reflect the difference in the level of development between Türkiye and the Member State where the applicant is located.
- (179) The Commission included those fixed cost in the calculation of the undistorted cost of production as manufacturing overheads following the methodology applied by the applicants. The actual value of fixed cost was updated based on the verified questionnaire reply submitted by the applicant mentioned in recital (178) and adjusted for the difference in the level of economic development.
- (180) As explained in recital (137), there were no producers of melamine in Türkiye. Therefore, SG&A and profit were established based on the financial information of three Turkish producers in the same general category of products. In the present investigation, this refers to producers of products in the ammonia value chain, of which melamine is also a part, namely nitrogen fertilisers.
- (181) The Commission used the financial information covering the RIP published by the companies Ege Gübre ⁽¹¹²⁾, Tekfen ⁽¹¹³⁾ and Bağfaş ⁽¹¹⁴⁾ on their websites or via an online public disclosure platform. Where available, the Commission relied on data reported for a segment closest to the product under review. Income and expenses from investment activities were disregarded.

⁽¹⁰⁸⁾ Available at <https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucet-108&dil=2> (last viewed 6 February 2023).

⁽¹⁰⁹⁾ Table *Monthly average labour cost and components by economic activity, 2020* available at <https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucet-108&dil=2> (last viewed 6 February 2023).

⁽¹¹⁰⁾ Statistical classification of economic activities in the European Community available at <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF> (last viewed 6 February 2023).

⁽¹¹¹⁾ Table *Labour Cost Indices (2015=100)* available at <https://data.tuik.gov.tr/Kategori/GetKategori?p=istihdam-issizlik-ve-ucet-108&dil=2> (last viewed 6 February 2023).

⁽¹¹²⁾ Available at <http://www.egegubre.com.tr/mali.html> (last viewed 7 February 2023).

⁽¹¹³⁾ Available at <https://www.tekfen.com.tr/en/financial-statements-4-22> (last viewed 7 February 2023).

⁽¹¹⁴⁾ Available at <https://www.kap.org.tr/en/sirket-finansal-bilgileri/4028e4a240f2ef4701410810f53601c4> (last viewed 7 February 2023).

- (182) All three companies had financial information available for periods covering the RIP. Moreover, all three companies were profitable in the RIP. Therefore, the Commission calculated a weighted average SG&A and profit to determine the undistorted SG&A and profit in the representative country.
- (183) The applicable weighted average SG&A and profit were established as a percentage of the cost of goods sold at 16,5 % and 21,6 % respectively.
- (184) In its comments on the Note on sources, CCCMC argued that nitrogen fertilisers represent a products with physical and chemical characteristics different from melamine, different final use and targeted customers. Therefore, financial data of melamine producers in Türkiye should be used. If such data is not available, the Commission should revert to SG&A and profit of the applicants as actual producers of melamine. And finally, should the Commission insist on using the financial information of the Turkish companies, only SG&A and profit of Tekfen should be taken into account as the other two companies did not have audited financial information.
- (185) The Commission noted that nitrogen fertilisers being produced in the ammonia value chain could be well considered in the same general category of products. SG&A and profit of the Union producers could not be used in the present case considering the different level of economic development between the PRC and the Union. Finally, neither the Commission, nor CCCMC could determine whether the financial information of Ege Gübre and Bağfaş were audited or not. Since in the present investigation, the Commission relied on financial information of companies that did not actually produce the product under review, a weighted average of all three producers was considered more appropriate and representative.
- (186) Consequently, the Commission dismissed CCCMC's claims concerning undistorted SG&A and profit.
- (187) Following final disclosure, Xinjiang XLX and CCCMC reiterated that the Commission should exclude Ege Gübre and Bağfaş from the determination of SG&A and profit, as it was not clear whether the financial statements of the two companies were audited.
- (188) In this respect, the Commission conducted further research and could confirm that the financial information of both companies, Ege Gübre ⁽¹¹⁵⁾ and Bağfaş ⁽¹¹⁶⁾, was audited in the periods used to establish the SG&A and profit. The claim is therefore rejected.

3.2.2.4. Calculation of the normal value

- (189) On the basis of the above, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (190) Since melamine is a commodity without further product types, the normal value was constructed for one product (type) only.
- (191) The Commission established the undistorted cost of manufacturing. In the absence of meaningful cooperation by the exporting producers, the Commission relied on the information provided by the applicants in the expiry review request on the usage of each factor of production when manufacturing melamine using the Eurotecnica technology.
- (192) The undistorted cost of manufacturing was reduced by the undistorted value of by-product adjusted downwards for the loss of efficiency (see recitals (175) and (176)).
- (193) The Commission then added manufacturing overheads to the undistorted costs of manufacturing to arrive at undistorted cost of production. The applicants reported manufacturing overheads as fixed cost in the expiry review request. The value of fixed cost was updated in line with the injury questionnaire reply of the respective applicant and adjusted downwards for the difference in the level of economic development.

⁽¹¹⁵⁾ See audit reports for 1 January – 31 December 2021 and 1 January – 30 June 2022 available at <https://www.kap.org.tr/Bildirim/1004178> and <https://www.kap.org.tr/tr/Bildirim/1056023> (last viewed 28 June 2023).

⁽¹¹⁶⁾ See audit reports for 1 January – 31 December 2021 and 1 January – 30 June 2022 available at <https://www.kap.org.tr/tr/Bildirim/1007098> and <https://www.kap.org.tr/tr/Bildirim/1057306> (last viewed 28 June 2023).

- (194) Further, the Commission added undistorted SG&A and profit at the level of 16,5 % and 21,6 % respectively to the undistorted cost of production (see recital (180) to (183)).
- (195) Finally, the Commission found that in the PRC, the value added tax ("VAT") applied on exports of melamine (13 %) was only refunded partially (10 %). The difference between the VAT paid or payable and the refund increased the cost of the producers in the PRC when producing melamine for exports. The Commission therefore added further 3 % to the undistorted value of melamine determined in line with recitals (191) to (194).
- (196) On that basis, the Commission constructed the normal value on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.2.3. *Export price*

- (197) In the absence of meaningful cooperation by exporting producers from the PRC, the export price of all melamine imports was determined based on import data from Eurostat, which was recorded at CIF level, adjusted to ex-works level by deducting sea freight, insurance and domestic transport costs in the PRC.
- (198) The average sea freight and insurance cost was based on the analysis of import statistics available in GTA ⁽¹¹⁷⁾. The Commission established the value of sea freight and insurance as the difference between the unit import price in the Union of melamine originating in the PRC (recorded at CIF level) and the unit export price of melamine exported from the PRC to the Union (recorded at FOB level) in the review investigation period.
- (199) The domestic transport in the PRC was based on the country report of the PRC by Doing Business ⁽¹¹⁸⁾.

3.2.4. *Comparison and dumping margins*

- (200) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and export price on an ex-works basis as established above. On this basis, the weighted average dumping margin, expressed as a percentage of the CIF Union frontier price, duty unpaid, was above 40 %.
- (201) Therefore, the Commission concluded that dumping continued during the review investigation period.

3.3. **Likelihood of continuation of dumping**

- (202) Further to the findings of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC and the attractiveness of the Union market.

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

- (203) In the absence of cooperation, the Commission established production capacity and spare capacity in the PRC on the basis of information provided in the expiry review request ⁽¹¹⁹⁾. The annual production capacity was estimated based on the production capacity in 2020 and capacity expansion projects ongoing in 2021 as reported by the applicants ⁽¹²⁰⁾. In addition, the Commission identified further capacity expansion projects (not included in the CEH report) based on information published by Eurotecnica ⁽¹²¹⁾. Consequently, the annual production capacity already available in the review investigation period of [2 600 000 – 2 800 000] tonnes is likely to increase to [3 000 000 – 3 200 000] tonnes in the upcoming years.

⁽¹¹⁷⁾ Available at <https://connect.ihsmarkit.com/gta/home> (last viewed 22 February 2023).

⁽¹¹⁸⁾ Economy Profile China. Doing Business 2020, p. 84, 88. Available at <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/china/CHN.pdf> (last viewed 22 February 2023).

⁽¹¹⁹⁾ Section 5.3.1, Annexes 8.1 and 8.2 of the expiry review request. Annexes 8.1 and 8.2 include *Chemicals Economics Handbook – Melamine 2020* ('CEH report') and the corresponding *Data Workbook*. Since the CEH report is covered by third party copyright, the information contained in the report and the Data Workbook is provided in ranges.

⁽¹²⁰⁾ Annex 8.2 of the expiry review request. See tables *China-Producers* and *China-Additional capacity*.

⁽¹²¹⁾ References list 2023. Available at <https://www.eurotecnica.it/images/PDF/reflist.pdf> (last viewed 12 April 2023).

- (204) Capacity utilisation was estimated at the level of [40 – 45] % in the RIP and is expected to increase to [45 – 55] % until 2025 ⁽¹²²⁾. Consequently, production volume amounted to [1 040 000 – 1 260 000] tonnes in the RIP and is likely to increase to [1 350 000 – 1 760 000] tonnes up to 2025.
- (205) The spare capacity in the PRC thus amounted to more than 1 500 000 tonnes in the RIP and could fluctuate between 1 400 000 and 1 600 000 tonnes in the near future. This is almost four times the Union consumption in the review investigation period.
- (206) Based on the above, the Commission concluded that Chinese exporting producers have significant spare capacities, which could be mobilised for exports to the Union, making an increase of exports at dumped prices highly likely were the measures allowed to lapse.

3.3.2. *Attractiveness of the Union market*

- (207) To determine the attractiveness of the Union market, the Commission examined the Chinese export prices to the Union as compared to the export prices to third country markets, the size of the Union market, and the existing measures imposed by third countries closing their markets to Chinese melamine.
- (208) In the absence of meaningful cooperation, the Commission used the GTA ⁽¹²³⁾ for Chinese exports under HS subheading 2933 61 (Melamine) to compare Chinese export prices to the Union with those to third markets as well as with the average sales price of the Union producers on the Union market.
- (209) In the RIP, Chinese producers exported 588 thousand tonnes of melamine, i.e. approximately half of their estimated production. The most important third country export markets were India (14 %), Türkiye (12 %), Russia (8 %), Brazil (8 %), Vietnam (6 %) and Thailand (6 %).
- (210) The weighted average Chinese export price (at FOB level) to the Union in the review investigation period was 10 % higher than the weighted average export price to the top six export destinations mentioned in recital (209). In addition, the export price to the Union was up to 12 % higher than the export price to India, the second most important export market (following the Union with a 15 % share).
- (211) The Commission further adjusted the Chinese export prices to third markets listed in recital (209) (at FOB level) to Union CIF border level by adding the average sea freight and insurance cost from the PRC to the Union (see recital (198)). Such export prices to third countries were 27 % lower than the average sales price of the Union producers on the Union market. Should the measures be repealed, the Chinese exporting producer would have an incentive to export to the Union at prices higher than those charged to customers in third countries, yet lower than the sales price of the Union producers thus, exerting additional pressure on the price in the Union.
- (212) Moreover, the Union consumption in the review investigation period amounted to approximately 430 thousand tonnes and thus represented [35 – 40] % of the estimated melamine production in the PRC.
- (213) The imports originating in the PRC held a significant market share on the Union market in the second half of the period considered. The market share increased in 2021 (6,4 %) and in the review investigation period (14,9 %) in particular. This evolution correlated with the surge in the price of melamine on the Union market showing that the combination of the Union market size and prices attracts an influx of Chinese melamine, which was found to be exported at dumped prices in the review investigation period.

⁽¹²²⁾ Annex 8.2 of the expiry review request. See table *China-Supply Demand*.

⁽¹²³⁾ Available at <https://connect.ihsmarkit.com/gta/home> (last viewed 12 April 2023).

- (214) Finally, two third country markets – the US and the Eurasian Economic Union ('EAEU') – maintained trade defence measures partially or entirely closing their markets to imports from the PRC. The US imposed anti-dumping and countervailing measures on imports of melamine originating in the PRC in 2015 and extended their application for another five years in 2021 ⁽¹²⁴⁾. Chinese exports of melamine to the US are subject to a country-wide anti-dumping duty of 363,31 % and a residual anti-subsidy duty of 154,58 %. In April 2022, the EAEU imposed definitive anti-dumping duties on melamine from the PRC ranging from 15,22 % to 19,08 % ⁽¹²⁵⁾.
- (215) The US and Russia (as the largest member of the EAEU) each represented [3–5] % of global melamine consumption in 2020 ⁽¹²⁶⁾. Considering the high level of the measures, Chinese melamine producers almost completely ceased to export to the US; the exports amounted to only 80 tonnes in the RIP and even less than 50 tonnes in the previous years of the period considered. Following the imposition of the measures by the EAEU, the average monthly volume of Chinese melamine exports to the region dropped from 3 900 tonnes in the RIP (3 360 tonnes in 2021, 2 200 tonnes in 2020, 2 950 tonnes in 2019) to approximately 230 tonnes in the second half of 2022.
- (216) As demonstrated in recitals (214) and (215), trade remedies had a deterring effect on Chinese exports of melamine to the US and Russia. It is likely that the Chinese producers would attempt to compensate the loss of the two export markets by seeking new export opportunities in the Union should the measures currently under review be terminated.
- (217) Consequently, the Commission concluded that the Union market would likely attract increased volumes of dumped imports of melamine originating in the PRC for the following reasons:
- The Chinese export price to the Union was higher than the export price to third countries in the RIP;
 - Were the exports to third countries redirected to the Union, the Chinese exporting producers would be able to charge higher export prices while still remaining below the sales prices of the Union producers on the Union market thus creating additional price pressure;
 - The Union market is attractive in terms of its size amounting to approximately [35 – 40] % of Chinese melamine production and representing the top export destination in the RIP;
 - The Chinese producers seek alternative export opportunities following the closure of two export markets after the US and the EAEU introduced trade remedies on imports of melamine from the PRC.
- (218) Following final disclosure, Xinjiang XLX and CCCMC pointed out that the finding of higher Chinese export price to the Union in comparison to third countries was factually correct, yet not particular to the exports of melamine. They argued that the higher export prices to the Union reflect the generally higher sales prices in the Union due to higher costs of production related to labour, energy and environmental costs. In addition, lower level of economic development of a third country would not permit high export price.
- (219) The Commission noted that, whatever the reasons for a higher export price to the Union, it did not change the fact that the Chinese producers of melamine were able to charge higher price on the Union market as compared to the other major export markets and thus achieve a higher profitability of sales. The Commission concluded that the parties did not present any arguments that would reverse its findings that the higher Chinese export price to the Union was an indicator of the attractiveness of the Union market. In fact, the comments from the parties confirmed the Commission findings in this regard.

⁽¹²⁴⁾ Melamine From the People's Republic of China: Antidumping Duty and Countervailing Duty Orders. Available at <https://www.federalregister.gov/documents/2015/12/28/2015-32632/melamine-from-the-peoples-republic-of-china-antidumping-duty-and-countervailing-duty-orders> (last viewed 10 May 2023).

⁽¹²⁵⁾ Notice of the Department for Internal Market Defence of the Eurasian Economic Commission 'On the application of anti-dumping measures against melamine originating from the People's Republic of China and imported into the customs territory of the Eurasian Economic Union'. Available at http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD34_notice_dated05042022.pdf (last viewed 10 May 2023).

⁽¹²⁶⁾ Annex 8.2 of the expiry review request. See tables 'World consumption of melamine by region and Central and Eastern European consumption of melamine by country'.

- (220) Following final disclosure, Xinjiang XLX and CCCMC further submitted that Chinese producers of melamine were not interested in redirecting their exports from third countries to the Union. According to the parties, over the years, Chinese producers developed sound export markets in a number of third countries and would not abandon existing customers in those markets, inter alia, for the sake of risk diversification. Even if some of the exports were redirected to the Union, the producers would not be motivated to decrease their export prices to the Union.
- (221) The Commission noted that the parties did not provide any evidence supporting their arguments. It considered that targeting a market with higher prices would be a sound business decision. Chinese producers would actually be able to increase their export prices (in comparison to the export prices to third countries) while staying below the prices in the Union, which would give them a competitive advantage. The Commission dismissed the claim.
- (222) In addition, following final disclosure, Xinjiang XLX and CCCMC confirmed that the Union market was attractive for Chinese melamine producers in terms of its size.
- (223) Finally, the parties disagreed that the closure of the US and EAEU/Russian markets following the imposition of anti-dumping measures by the respective jurisdictions would lead to increased exports to the Union. They referred to the fact that after the US measures were adopted in 2015, the Chinese export volumes to the Union remained rather low.
- (224) The Commission noted that when the US measures were introduced, the Union market was already protected by the minimum import price and/or the fixed residual duty. In addition, the prevailing international prices of melamine in that period ⁽¹²⁷⁾ did not create an opportunity for Chinese producers to penetrate the Union market in order to make up for the loss of the US market. As soon as the melamine price increased internationally well above the level of the minimum import price (2021 and the RIP), the Chinese exports of melamine to the Union surged. The period of 2021 and RIP effectively simulate to a situation where there are no anti-dumping measures applied to imports of melamine originating in the PRC for the three major exporting producers subject to the minimum import price.
- (225) Consequently, the Commission concluded that the imposition of the US measures did not lead to immediate increase in exports to the Union due to the low international price of melamine in that period, which enabled the protection of the Union market through the minimum import price and/or the fixed residual duty. Therefore, the Commission confirmed its findings with regard to the attractiveness of the Union market following the closure of the US and EAEU/Russian markets.

3.3.3. *Conclusion on the likelihood of continuation of dumping*

- (226) In view of its findings on the continuation of dumping during the review investigation period as established in recital (201) and on the likely development of exports should the measures lapse as explained in recitals (202) to (217), the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures on imports from the PRC would result in the continuation of dumping.

4. INJURY

4.1. Definition of the Union industry and Union production

- (227) Based on the information available in the request, the like product was manufactured, during the review investigation period, by the three applicants and two other producers. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. The two other Union producers, BASF AG, Ludwigshafen/Germany and S.C. Azomures S.A., Targu Mures/Romania, remained silent.

⁽¹²⁷⁾ For example, the Chinese export prices to the six major export markets were in the range of approximately 750 EUR/tonne to 850 EUR/tonne in 2015 and 2016. Source: Global Trade Atlas. Available at <https://my.ihs.com/> (last viewed 28 June 2023).

(228) The total Union production during the review investigation period was established at 382 186 tonnes. The figure was computed on the basis of the questionnaire replies from the three sampled Union producers and the macro-indicators questionnaire reply submitted by the applicants.

(229) As mentioned in recital (24), sampling was applied for the determination of possible continuation of injury suffered by the Union industry. The Union producers selected in the sample represented approximately 82 % of the total estimated Union production of the like product. The three sampled producers are the applicants.

4.2. Union consumption

(230) The Commission established the Union consumption on the basis of: (a) The applicants' data concerning Union industry's sales of the like product, partly cross-checked with the sales volumes reported by sampled Union producers; and (b) imports of the product under investigation into the Union from all third countries as reported in the Comext database (Eurostat).

(231) Based on this, Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2019	2020	2021	RIP
Total Union consumption	390 729	364 168	427 309	432 773
Index (2019 = 100)	100	93	109	111

Source: Eurostat, Applicant.

(232) The review showed that Union consumption increased by 11 % during the period considered. Union consumption was negatively affected by the outbreak of the COVID-19 pandemics in 2020, but strongly rebounded in 2021 and in the review investigation period.

4.3. Imports from the country concerned

4.3.1. Volume and market share of the imports from the country concerned

(233) The Commission established the volume of imports from the country concerned based on Eurostat statistics, as duly explained in recital (229). The Chinese market share was established by comparing imports to the Union consumption as set out in Table 2.

(234) Imports from the PRC developed as follows:

Table 3

Import volume and market share

	2019	2020	2021	RIP
Volume of imports from the PRC (tonnes)	6 704	1 222	27 270	64 673
Index (2019 = 100)	100	18	407	965
Market share of imports from the PRC (%)	1,7	0,3	6,4	14,9
Index (2019 = 100)	100	20	372	871

Source: Eurostat.

- (235) The volumes of imports from China dropped significantly by 82 % from 2019 to 2020, which may be explained by the production halts in China following the outbreak of the COVID-19 pandemics and sharp decrease in Union consumption. The volume of Chinese imports rebounded exponentially in 2021 to a quantity more than four times greater than the quantity imported in 2019. The volume of imports rose significantly again in the review investigation period to a quantity more than twice greater than the quantity imported in 2021.
- (236) In their comment on the final disclosure, Xinjiang XLX and CCCMC claimed that the increase of Chinese imports into the Union was caused by supply shortages at the level of the Union industry combined with strong demand by users post COVID-19, i.e. in 2021 and the review investigation period. Therefore, the Union industry was not able to satisfy that demand and users had to shift to imports from China. Xinjiang XLX added that, in addition, the Union industry increased prices substantially in that period and that users therefore had to seek alternative sources of supply.
- (237) The Commission noted that spare capacities of the sampled Union producers amounted in each year of the period considered to at least 80 000 tonnes (see Table 6), clearly exceeding the total volume of Chinese imports into the Union (see Table 3). It follows that the Union industry was certainly able to replace the total imports from China observed and subsequently able to satisfy demand to that extent on the Union market during the period considered. With regard to the prices charged by the Union industry, the Commission noted that these price increases, as applied by the Union industry, were perfectly in line with market signals in a context of strong demand and significant cost increases as observed in 2021 and the review investigation period. The claims were therefore rejected.

4.3.2. *Prices of the imports from China and price undercutting.*

4.3.2.1. *Prices*

- (238) The Commission established the average prices of imports from China based on Eurostat statistics.
- (239) The weighted average price of imports from China developed as follows:

Table 4

Import prices (EUR/tonne)

	2019	2020	2021	RIP
China	1 155	958	1 627	2 224
<i>Index (2019 = 100)</i>	<i>100</i>	<i>83</i>	<i>141</i>	<i>193</i>

Source: Eurostat.

- (240) Average prices of melamine imports from China increased during the period considered by 93 %, showing that Chinese producers partly followed the generally positive price trend on the Union market, as shown by Table 8.

4.3.2.2. *Price undercutting*

- (241) Since the export prices of the sole cooperating exporting producer could not be considered representative given the underlying export quantities represented less than 3 % of the total exports from China into the Union during the review investigation period (see recital (27)), the Commission determined the price undercutting by comparing (a) the weighted average statistical prices of imports from the PRC during the review investigation period, as explained

in recital (196), established on a CIF basis, with appropriate adjustments for the conventional rate of customs duty, anti-dumping duty ⁽¹²⁸⁾ and post-importation costs; and (b) the weighted average sales prices of the three Union producers charged to unrelated customers in the Union market, adjusted to an ex-works level. The thus calculated undercutting margin amounted to 12,6 %.

4.4. Volumes and prices of imports from third countries

(242) The Commission established the volumes and prices of imports from third countries applying the same methodology as for the PRC (see Section 4.3.1).

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

Table 5

Imports from third countries

Country		2019	2020	2021	RIP
Qatar	Import volume (tonnes)	33 941	26 256	35 622	31 725
	Index (2019 = 100)	100	77	105	93
	Market share (%)	8,7	7,2	8,3	7,3
	Index (2019 = 100)	100	83	96	84
	Average price (EUR/tonne)	1 011	824	1 548	2 479
	Index (2019 = 100)	100	81	153	245
Trinidad and Tobago	Import volume (tonnes)	13 719	8 370	14 112	12 507
	Index (2019 = 100)	100	61	103	91
	Market share (%)	3,5	2,3	3,3	3,0
	Index (2019 = 100)	100	65	94	84
	Average price (EUR/tonne)	1 091	850	1 572	2 485
	Index (2019 = 100)	100	78	144	227
Japan	Import volume (tonnes)	13 699	9 195	9 499	7 576
	Index (2019 = 100)	100	67	69	55
	Market share (%)	3,5	2,5	2,2	1,8
	Index (2019 = 100)	100	72	63	50
	Average price (EUR/tonne)	1 076	912	1 295	2 046
	Index (2019 = 100)	100	85	120	190

⁽¹²⁸⁾ With regard to the anti-dumping duty added, the measures consist of minimum import prices for three exporting producers and a fixed specific duty for all other exporting producers. The imports by the three parties with minimum import prices were, if above the minimum price, free of anti-dumping duty whereas the applicable anti-dumping duties on imports from these parties below the minimum import prices varied depending on the net invoice value before importation. There were also imports from other exporting producers to which the residual specific duty of EUR 415 per tonne applied. In view of this mixed picture, the amount of anti-dumping duties added was established on the basis of the melamine imports data reported by Member States pursuant to Article 14(6) of the basic Regulation, as that dataset included the amounts paid.

Other third countries	Import volume (tonnes)	37 825	28 238	22 673	21 480
	<i>Index (2019 = 100)</i>	100	75	60	57
	Market share (%)	9,7	7,8	5,3	5,0
	<i>Index (2019 = 100)</i>	100	80	55	51
	Average price (EUR/tonne)	940	816	1 671	2 447
	<i>Index (2019 = 100)</i>	100	87	178	260
Total imports excluding China	Import volume (tonnes)	99 183	72 059	81 907	73 288
	<i>Index (2019 = 100)</i>	100	73	83	74
	Market share (%)	25,4	19,8	19,2	17,0
	<i>Index (2019 = 100)</i>	100	78	76	67
	Average price (EUR/tonne)	1 004	835	1 557	2 427
	<i>Index (2019 = 100)</i>	100	83	155	242

Source: Eurostat.

- (244) The most important sources of imports outside China included Qatar, Trinidad and Tobago and Japan. Imports from each of these countries decreased during the period considered, by at least 7 % and up to 45 %, whereas the total imports from third countries, excluding China, decreased by 26 %.
- (245) In the review investigation period, the average import prices of the two countries other than China with an individual market share of more than 2 % during the review investigation period, Qatar (7,3 %) and Trinidad and Tobago (3 %), were more than EUR 200 per tonne above the average import prices from the PRC.
- (246) Xinjiang XLX and CCCMC claimed that the above table showed that the Commission had not assessed the role of Russia's imports of melamine into the Union. Russia's imports were significant up until Russia's unprovoked and unjustified war of aggression against Ukraine, and thereafter, Xinjiang XLX and CCCMC claimed, Russian imports were replaced by imports from China, a factor that would also explain the increase of Chinese imports since then.
- (247) The Commission disagreed. It certainly did individually assess Russia's imports as part of the imports made by 'other third countries' (see Table 5). However, Russian imports are not individually reported in the above table as Qatar, Trinidad and Tobago and Japan were the three export countries with the highest export volumes to the Union outside the country concerned during the review investigation period. The market share of Russia was, in the review investigation period, 1,4 % and its highest level in the period considered was in 2020, when they reached a market share of 4,3 %. The market share loss of Russia since that peak year (minus 2,9 percentage points) is thus dwarfed by the market share increase of China (plus 14,6 percentage points). The claim that the market share loss of Russian imports contributed to a significant extent to the market share increase of Chinese imports was therefore rejected.
- (248) After final disclosure, Xinjiang XLX and CCCMC observed that average prices of Chinese imports during the review investigation period were at levels above the corresponding prices from Japan and Russia and that all exporting countries largely followed the trend of increasing prices in 2021 and the review investigation period.

- (249) The Commission agreed that average prices of imports from Japan and Russia indeed were below the average prices of imports from China during the review investigation period according to Eurostat data. However, their combined market share of 3,2 % was much lower than that of imports from China. Furthermore, the Commission observed that the parties in question did not make any claims emanating from these facts. Consequently, the claim was rejected.
- (250) Based on the above, i.e. the development of import volumes from third countries and the prices of imports from the most important sources other than China, the Commission concluded that imports from third countries did not have an injurious effect on the Union industry.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (251) 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 assessment of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (252) For the sake of assessing injury, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission assessed the macroeconomic indicators based on data and information contained in the questionnaire reply of the applicants, duly cross-checked with the information in the request and the questionnaire replies of the sampled Union producers, and Eurostat statistics. The Commission assessed the microeconomic indicators based on data contained in the questionnaire replies from the sampled Union producers.
- (253) 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.
- (254) The microeconomics indicators are: average unit sales prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.5.2. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2019	2020	2021	RIP
Production volume (tonnes)	403 513	401 780	396 575	382 187
<i>Index (2019 = 100)</i>	100	100	98	95
Production capacity (tonnes)	480 383	480 578	477 621	472 494
<i>Index (2019 = 100)</i>	100	100	99	98
Capacity utilisation (%)	84,0	83,6	83,0	80,9
<i>Index (2019 = 100)</i>	100	100	99	96

Source: Applicants.

- (256) The production of the Union industry decreased by 5 % over the period considered. The production capacity of the Union industry remained almost stable over the period considered, with a minor decrease of 2 %. As a consequence, the capacity utilisation decreased by 4 %.

4.5.3. Sales volume and market share

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

Table 7

Sales volume and market share

	2019	2020	2021	RIP
Total sales volume on the Union market – unrelated customers	284 842	290 888	318 133	294 513
<i>Index (2019 = 100)</i>	100	102	112	103
Market share (%)	72,9	79,9	74,5	68,1
<i>Index (2019 = 100)</i>	100	110	102	93

Source: Eurostat, Applicants.

(258) Sales volumes of the Union industry to unrelated customers increased by 12 % from 2019 to 2021 but it fell by 9 percentage points between 2021 and the review investigation period to a level 3 % above the level in 2019.

(259) From 2019 to 2020, the Union industry could increase its market share by 10 %, filling the gap that lower import quantities from China had left subsequent to the COVID-19 pandemics (see recital (234) and Table 3). Between 2020 and the review investigation period, the Union industry lost significant market shares, close to 12 percentage points, and as compared to 2019 the Union industry lost 4,8 percentage points of market share in the review investigation period.

4.5.4. Growth

(260) During the period considered, the Union consumption increased by 11 % (see Table 2), whereas the Union industry's volume of sales to unrelated customers in the Union increased by 8 % (see Table 7). Consequently, the Union industry grew in absolute terms but it shrank in relative terms. In other words, the Union industry could not benefit from market growth to the same extent as imports from China did.

4.5.5. Prices and factors affecting prices

(261) The weighted average unit sales prices of the Union producers to unrelated customers in the Union and the unit cost of production developed over the period considered as follows:

Table 8

Sales prices in the Union and cost of production

	2019	2020	2021	RIP
Weighted average unit sales price in the Union	1 149	928	1 863	2 811
Weighted average unit sales price in the Union (<i>Index, 2019 = 100</i>)	100	81	162	245
Unit cost of production	980	906	1 611	2 250
Unit cost of production (<i>Index, 2019 = 100</i>)	100	92	164	230

Source: Sampled Union producers.

- (262) After a drop by 8 % from 2019 to 2020, unit cost of production grew exponentially to a level that was in the review investigation period 130 % above the level in 2019. This sharp increase in cost of production was caused by the very strong rise in gas prices starting in 2021.
- (263) Sales prices followed a similar trend. From 2019 to 2020, unit sales prices fell by 19 %, following the economic downturn in relation to the COVID-19 pandemics. However, from 2020 to the review investigation period, unit sales prices rose threefold.

4.5.6. *Employment and productivity*

- (264) Employment, productivity and average labour costs of the Union producers developed over the period considered as follows:

Table 9

Employment and productivity

	2019	2020	2021	RIP
Number of employees	647	632	642	641
<i>Index (2019 = 100)</i>	100	98	99	99
Labour Productivity (tonne/employee)	515	524	508	498
<i>Index (2019 = 100)</i>	100	102	99	97
Average labour costs per employee	71 772	73 491	77 431	76 913
Average labour costs per employee (<i>Index, 2019 = 100</i>)	100	102	108	107

Source: Applicants, Sampled Union producers.

- (265) The average labour costs increased by 7 % during the period considered. The number of employees and labour productivity remained stable during the period considered. The Union industry was employing close to 650 staff throughout the period considered, with an output per employee of around 500 tonnes.

4.5.7. *Inventories*

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

Table 10

Inventories

	2019	2020	2021	RIP
Closing stocks	20 615	12 151	5 372	24 530
<i>Index (2019 = 100)</i>	100	59	26	119
Closing stocks as a percentage of production	5,2	3,1	1,4	6,3
<i>Index (2019 = 100)</i>	100	59	26	121

Source: Sampled Union producers.

- (267) Stock levels varied significantly over the period considered. In the review investigation period, the level was 19 % above the level in 2019. This is an additional indication that the Union industry had increasing difficulties towards the end of the period considered to sell its output in the face of dramatically increasing imports from China.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2019	2020	2021	RIP
Profitability of sales in the Union to unrelated customers (%)	8,0	– 4,1	12,3	17,3
Profitability of sales in the Union to unrelated customers (<i>Index, 2019 = 100</i>)	100	– 51	154	216
Cash flow	46 403 891	12 158 042	95 868 270	118 352 455
Cash flow (<i>Index, 2019 = 100</i>)	100	26	207	255
Investments	42 800 119	25 704 881	32 880 347	33 110 890
Investments (<i>Index, 2019 = 100</i>)	100	60	77	77
Return on investments (%)	14,5	– 10,2	46,2	88,4
Return on investments (<i>Index, 2019 = 100</i>)	100	– 70	319	610

Source: Sampled Union producers.

- (269) The Commission established the profit of the sampled Union producers by expressing the pre-tax net profit of its melamine sales to unrelated customers in the Union as a percentage of the turnover of the underlying sales. The profitability thus established rose from 8 % in 2019 to 17,3 % in the review investigation period. In 2020, due to the economic downturn caused by the COVID-19 pandemics, the Union industry was heavily lossmaking, but subsequently it rapidly and strongly recovered.
- (270) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow development during the period considered was positive, with cash flow generated from its operations at 155 % higher during the review investigation period as compared to 2019.
- (271) The Union industry's level of investment was on a decreasing trend during the period considered (– 13 % between 2019 and the review investigation period). As seen above under capacity utilization (Table 6), the Union industry has no immediate need to invest in new production capacity.
- (272) The return on investments is the profit in percentage of the net book value of investments, and the trend followed that of the analysed profitability rates.
- (273) None of the sampled Union producers reported any difficulties in their ability to raise capital. As shown in Table 11, the available cash flow exceeded the investments made by far with the year 2020 being the only exception.

4.5.9. Conclusion on the situation of the Union industry

- (274) In a context of increasing consumption, the Union industry increased its sales volumes over the period considered. However, the Union industry lost significant market shares to the PRC in 2021 and the review investigation period, as a result of which its market share, at the end of the period considered, was close to 5 percentage points below its level at the beginning of it. Indeed, in view of the exceptionally favourable market conditions in the Union, caused by a catch-up effect after the due to COVID-19 pandemics sluggish demand year 2020, prices in the Union were significantly above the minimum import prices to which the exporting producers cooperating in the original investigation are subject. This resulted immediately in a return of high volumes of imports from those exporting producers. These imports undercut the Union industry prices significantly.

- (275) Whilst the Union industry thus lost significant market shares to China, its financial indicators did not suffer from this surge of Chinese imports as it could still obtain exceptionally good prices in 2021 and in the first half of 2022. Profits of the Union industry remained at healthy levels and reached a peak in the review investigation period, which shows that Union producers were able to pass on cost increases in their sales prices. Under these circumstances, the measures in force provided a floor when prices were still lower (in 2019 and 2020) and thus ensured a level playing field on the Union melamine market. When the prices subsequently reached unprecedentedly high levels, not observed since the original investigation, the Union industry lost significant market shares but it continued to enjoy healthy profits. As a matter of fact, the measures did not foreclose Chinese producers from the Union market, in particular when prices were surging, which therefore continued to be present and benefitted from growing consumption.
- (276) On balance, most injury indicators, such as production, sales, employment, profitability and cash flow developed positively and/or were at satisfactory levels. However, some indicators point to a less favourable situation of the Union industry. In particular, the Union industry lost market shares to the benefit of Chinese imports. Likewise, total production and capacity utilisation rates dropped during the period considered, and stock levels increased.
- (277) Based on the above, the Commission concluded that overall the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the period considered.

5. LIKELIHOOD OF RECURRENCE OF INJURY IF THE MEASURES WERE TO BE REPEALED

- (278) As the Commission concluded that the Union industry did not suffer from material injury during the review investigation period (see recital (276)), the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from China if the measures were allowed to lapse.
- (279) In that regard, the Commission relied on the information made available by cooperating parties and any other information on the file on production capacity and spare capacity in China to examine the attractiveness of the Union market, and the likely impact of imports from China should the measures be allowed to lapse.
- (280) As concluded in recitals (204) and (205), spare capacities in China are significant and represent approximately four times the annual consumption in the Union. Moreover, as concluded in recital (216), the Union market is an attractive market for Chinese producers in view of the prices on the Union market and its size. Based on that, the expiry of the anti-dumping measures is very likely to result in an increase of Chinese exports to the Union.
- (281) In their comments on the final disclosure, Xinjiang XLX and CCCMC claimed that the Commission made no analysis of the likely scale of any increase of Chinese export sales to the Union nor the likely timeframe over which this increase is to incur although both factors would have a direct bearing on the magnitude of any resulting injury.
- (282) The Commission recalled that in accordance with Article 11(2) it is not necessary to establish the magnitude of continuing or recurring injury. It is sufficient to establish that based on such injury is likely to continue or to recur.
- (283) CCCMC added that the Commission did not address comments earlier submitted by CCCMC bearing directly on the non-likelihood of Chinese producers with new or increased capacity being able to quickly or easily exploit that capacity and begin exporting to the Union market. CCCMC also referred to its comments on likelihood of recurrence of dumping, which, according to CCCMC would also refute concerns about the arrival of new imports from China due to Chinese redirection from other existing export markets or from closure of other markets due to the imposition of anti-dumping measures.

- (284) The Commission clarified that it had addressed all comments made. Where comments concerned both the likelihood of continuation of dumping and recurrence of injury, they were addressed under Section 3.3 above and were valid *mutatis mutandis* for the recurrence of injury. With regard to the comments made by CCCMC pursuant to initiation, the Commission refers to the rebuttals under recital (22) above.
- (285) This notwithstanding, the Commission confirmed that the total spare capacities in China as specified under recitals (202) to (204) are of such magnitude as to make the recurrence of injury likely should measures be allowed to lapse.
- (286) As to CCCMC's claim refuting concerns about arrival of new imports from China, the Commission referred to its rebuttal under Section 3.3, recital (220).
- (287) The Commission analysed the likely effects of such increase of imports by examining their likely price levels should measures be allowed to lapse. In this regard, the Commission considered, with regard to China, the import price levels during the review investigation period to be a reasonable basis as Chinese imports held a significant market share of 14,9 % in the review investigation period. Based on that, and as explained in recital (240), the Commission established significant undercutting of the Union industry prices by 12,6 %. This undercutting would even be higher, that is 15,6 %, if the applicable anti-dumping duty is not added to the export price.
- (288) In their comments on the final disclosure, Xinjiang XLX claimed that the Commission should not have relied on the level of undercutting calculated for the period considered to justify likelihood of recurrence of injury because the Union industry prices were exceptionally high as of 2021 which in turn made the undercutting higher than without such a high level of prices.
- (289) The Commission recalled the notion of undercutting, as it is constantly used in anti-dumping investigations under the basic Regulation is objective by nature and consists of a simple comparison between the actual Union industry prices and the export prices from the country concerned, duly adjusted where warranted. Moreover, the claim by Xinjiang XLX was neither further substantiated nor quantified and was therefore rejected.
- (290) With regard to the volume and prices of imports from China, the Commission further noted that according to the latest statistical data available in Eurostat, Chinese import volumes continued to increase strongly, whereas prices of these imports started to drop significantly ⁽¹²⁹⁾. In the nine months following the review investigation period, that is from 1 July 2022 to 31 March 2023, Chinese export volumes to the Union reached a level of 93 345 tonnes, which is, extrapolated to 12 months, 92,4 % more than in the review investigation period ⁽¹³⁰⁾, at an average price of EUR 1 585, which is 28,8 % less than in the review investigation period.
- (291) In addition, the Commission analysed for the same periods the evolution of imports from third countries other than China. Imports from countries other than China amounted to 61 668 tonnes in the nine months following the review investigation period, which, extrapolated to 12 months, represents an increase by 12,2 % as compared to the review investigation period ⁽¹³¹⁾. Average prices of imports from third countries dropped by 20,4 % to EUR 1 931/tonne as compared to the review investigation period which is still significantly higher than the average price from China.
- (292) Consequently, in the nine months following the review investigation period, imports from the PRC increased dramatically and their prices dropped significantly, to a much greater extent than imports from third countries.
- (293) Following final disclosure, Xinjiang XLX claimed that the Commission's analysis on factors post period considered was deficient because it did not take into account the impact of a continuing energy crisis in the Union and the market effects of Russia's unprovoked and unjustified war of aggression against Ukraine.

⁽¹²⁹⁾ Full extraction available in TRON t23.002667.

⁽¹³⁰⁾ $93\,345/(9/12) = 124\,459$. $124\,459/64\,673 = 192,4\%$.

⁽¹³¹⁾ $61\,668/(9/12) = 82\,223$. $82\,223/73\,288 = 112,2\%$.

- (294) The Commission recalled that in the first place it is under no obligation to conduct any analysis on injury factors occurring after the period considered. In the present investigation, it chose to do so with regard to the import volumes and prices from the country concerned in order to complement the conclusions taken with regard to an analysis of all relevant injury factors during the period considered. In any event, the Commission noted that energy sources are commodities traded at world market price levels. Energy prices would therefore, to the extent that melamine producers paid undistorted world market prices, equally affect these producers worldwide.
- (295) On 23 May 2023, the Applicants submitted details regarding the development of the injury indicators after the review investigation period ⁽¹³²⁾. The provided data showed the immediate significant negative impact that the further strong increase of imports from the PRC and their market share, at rapidly declining prices, had on the situation of the Union industry. In particular, the data showed that this resulted in a very pronounced decline in sales volumes and strong price depression, resulting in loss of market share and profitability by the Union industry.
- (296) Based on the above, the Commission concluded that the absence of measures would in all likelihood result in a further significant increase of dumped imports from China at injurious prices, and material injury would be likely to recur.

6. UNION INTEREST

6.1. Introduction

- (297) In accordance with Article 21 of the basic Regulation, the Commission examined whether the maintenance of the measures would be against the Union interest as a whole. The determination of the Union interest was based on an appreciation of the various interests involved, namely those of the Union industry, of importers and users.
- (298) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (299) On this basis, the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and the likelihood of recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

6.2. Interest of the Union industry

- (300) As concluded in recital (276), the Union industry is no longer suffering from material injury. However, as concluded in recital (295), the Union industry would not be able to cope with a removal of the measures, as that is likely to result in a strong increase of imports from China which undercut the Union industry's prices. A repeal of the measures would therefore put the industry's long term financial viability at stake. The continuation of the measures, therefore, is in the interest of the Union industry.

6.3. Interest of unrelated importers and users

- (301) All known unrelated importers and users were informed about the initiation of the review.
- (302) One unrelated importer in Italy replied to the sampling form but failed to provide a full questionnaire reply.
- (303) Three users provided questionnaire replies. These users' aggregate total purchases, including purchases from Union producers, imports from China and imports from other countries only represented around 3 % of the total consumption. Only one of the users concerned purchased melamine from China and in the review investigation period these imports represented only 1 % – 4 % (range given for reasons of confidentiality) of total Union imports from the PRC. Based on these purchase volumes, cooperation from users could not be considered as representative for all users.

⁽¹³²⁾ TRON reference: t23.002400 dated 23 May 2023.

- (304) Nevertheless, their replies were analysed. The reply of the user that also purchased small volumes from China did not provide key data needed, like purchase prices from China, sales prices of products with melamine content and customer names. On that basis, no meaningful conclusion could be drawn other than that the company was enjoying a very healthy profit and that its purchases of melamine, both from the Union (bulk) as from other countries, represented only a minor part of its raw material costs (< 5 %). The questionnaire replies of the two other users could not be meaningfully analysed, as they only submitted the requested tables and did not reply to the other questions.
- (305) One of these users urged not to extend the anti-dumping measures because manufacturing capacities in the Union were limited, current melamine price levels were jeopardising the particle board industry and therefore imports could stabilise the price situation and secure supply. The Commission rejected the claim. The measures in force are not such as to foreclose imports from China which is demonstrated by the Chinese market share in 2021 and the review investigation period.
- (306) Therefore, the Commission concluded that there were no indications that the maintenance of the measures would have a negative impact on the users and/or importers outweighing the positive impact of the measures.

6.4. Conclusion on Union interest

- (307) Based on the above, the Commission concluded that there were no compelling reasons showing that it was not in the Union interest to maintain measures on imports of melamine originating in China.

7. ANTI-DUMPING MEASURES

- (308) Based on the conclusions reached by the Commission on likelihood of continuation of dumping, likelihood of recurrence of injury and Union interest, the anti-dumping measures on melamine originating in the People's Republic of China should be maintained.
- (309) To minimize the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual minimum import prices. The companies subject to minimum import prices must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(4) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (310) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the minimum import prices, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(4) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the minimum import prices is justified, in compliance with customs law.
- (311) Should the exports by one of the companies benefiting from minimum import prices 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. This investigation may, inter alia, examine the need for the removal of minimum import prices and the consequent imposition of a country-wide duty.

- (312) The minimum import prices provided in Article 1(2) of this Regulation are exclusively applicable to imports of the product under review originating in China and produced by the named legal entities. Imports of the product under review 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'.
- (313) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽¹³³⁾. The request must contain all the relevant information demonstrating 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*.
- (314) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. All parties were also granted a period to make representations subsequent to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The submissions and comments were duly taken into consideration.
- (315) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽¹³⁴⁾, 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.
- (316) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 delivered a positive opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of melamine currently falling under CN code 2933 61 00 and originating in the People's Republic of China.
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	Minimum import price (EUR/tonne net product weight)	Duty (EUR/tonne net product weight)	TARIC additional code
Sichuan Golden-Elephant Sincerity Chemical Co., Ltd	1 153		A 986
Shandong Holitech Chemical Industry Co., Ltd	1 153		A 987
Henan Junhua Development Company Ltd	1 153		A 988
All other companies	—	415	A 999

⁽¹³³⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

⁽¹³⁴⁾ 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).

3. For the individually named producers, the amount of the definitive anti-dumping duty applicable to the product described in paragraph 1 shall be the difference between the minimum import price and the net, free-at-Union-frontier price, before duty, in all cases where the latter is less than the minimum import price. For these individually named producers, no duty shall be collected where the net free-at-Union-frontier price, before duty, is equal to or higher than the corresponding minimum import price.

4. The application of the minimum import price specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, 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 melamine sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

5. For the individually named producers and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of Commission Implementing Regulation (EU) 2015/2447 ⁽¹³⁵⁾, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Union-frontier price, before customs clearance.

6. For all other companies and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of Implementing Regulation (EU) 2015/2447, the amount of the anti-dumping duty, calculated on the basis of paragraph 2 above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

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

Article 3

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

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

Done at Brussels, 14 September 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽¹³⁵⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).