



2023/2180

17.10.2023

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/2180**

**of 16 October 2023**

**amending Implementing Regulation (EU) 2021/607 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following a 'new exporter' review pursuant to Article 11(4) 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 <sup>(1)</sup> ('basic Regulation'), and in particular Article 11(4) thereof,

Whereas:

**1. MEASURES IN FORCE**

- (1) By Regulation (EC) No 1193/2008 <sup>(2)</sup> the Council imposed anti-dumping duties on imports of citric acid, originating in the People's Republic of China ('PRC', 'China or the 'country concerned') ('the original measures'). The investigation that led to the imposition of the original measures will be referred to as 'the original investigation'. The measures took the form of an *ad valorem* duty ranging from 6,6 % to 42,7 %.
- (2) By Decision 2008/899/EC <sup>(3)</sup> the European Commission ('the Commission'), accepted price undertakings offered by six Chinese exporting producers (including a group of exporting producers) together with the China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCME').
- (3) By Decision 2012/501/EU <sup>(4)</sup>, the Commission withdrew the undertaking offered by one exporting producer, i.e. Laiwu Taihe Biochemistry Co. Ltd. ('Laiwu Taihe').
- (4) By Regulation (EU) 2015/82 <sup>(5)</sup> the Commission extended the definitive anti-dumping measures on imports of citric acid originating in the PRC for five years following an expiry review.
- (5) By Regulation (EU) 2016/32 <sup>(6)</sup>, the Commission, extended the anti-dumping measures on imports of citric acid originating in China to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Council Regulation (EC) No 1193/2008 of 1 December 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duties imposed on imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 1).

<sup>(3)</sup> Commission Decision 2008/899/EC of 2 December 2008 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 323, 3.12.2008, p. 62).

<sup>(4)</sup> Commission Decision 2012/501/EU of 7 September 2012 amending Decision 2008/899/EC accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 244, 8.9.2012, p. 27).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2015/82 of 21 January 2015 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 and of partial interim reviews pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 15, 22.1.2015, p. 8).

<sup>(6)</sup> Commission Implementing Regulation (EU) 2016/32 of 14 January 2016 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2015/82 on imports of citric acid originating in the People's Republic of China to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 10, 15.1.2016, p. 3).

- (6) By Regulation (EU) 2016/704 <sup>(7)</sup>, the Commission withdrew undertakings of two additional Chinese exporting producers, because of breaches of the undertakings.
- (7) By Implementing Regulation (EU) 2021/607 <sup>(8)</sup>, the Commission extended the definitive anti-dumping measures on imports of citric acid originating in the PRC for five years following an expiry review (the 'previous expiry review').

## 2. CURRENT PROCEDURE

### 2.1. Request for a new exporter review

- (8) On 17 May 2022, the Commission received a request to initiate a 'new exporter' review pursuant to Article 11(4) of the basic Regulation. The request was lodged by Seven Star Lemon Technology co., Ltd. ('the applicant'), an exporting producer of citric acid in the PRC.
- (9) The applicant claimed that it did not export the product concerned to the Union during the original investigation period i.e. 1 July 2006 to 30 June 2007.
- (10) Furthermore, the applicant claimed that it was not related to any of the exporting producers of the product concerned which were subject to the abovementioned anti-dumping measures.
- (11) The applicant further claimed that it had begun exporting the product concerned to the Union after the end of the original investigation period, namely from June 2021.

### 2.2. Initiation of a new exporter review

- (12) The Commission examined the evidence submitted by the applicant and considered it sufficient to justify the initiation of a new exporter review in accordance with Article 11(4) of the basic Regulation.
- (13) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of a new exporter review, the Commission initiated, on 30 January 2023, by Regulation (EU) 2023/185 <sup>(9)</sup> ('Initiation Regulation') a review of Implementing Regulation (EU) 2021/607 with regard to the applicant.
- (14) Pursuant to Regulation (EU) 2023/185, the anti-dumping duty of citric acid imposed by Implementing Regulation (EU) 2021/607 was repealed with regard to imports of the product concerned produced and sold for export to the Union by the applicant. Simultaneously, pursuant to Article 14(5) of the basic Regulation, customs authorities were directed to take appropriate steps to register those imports.

### 2.3. Product under review and product concerned

- (15) The product under review is citric acid and trisodium citrate dihydrate.
- (16) The product concerned by this investigation is the product under review originating in China currently falling under CN codes 2918 14 00 and ex 2918 15 00 (TARIC code 2918 15 00 11 and 2918 15 00 19).

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<sup>(7)</sup> Commission Implementing Regulation (EU) 2016/704 of 11 May 2016 withdrawing the acceptance of the undertaking for two exporting producers and amending Implementing Decision (EU) 2015/87 accepting the undertakings offered in connection with the anti-dumping proceeding concerning imports of citric acid originating in the People's Republic of China (OJ L 122, 12.5.2016, p. 19).

<sup>(8)</sup> Commission Implementing Regulation (EU) 2021/607 of 14 April 2021 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 129, 15.4.2021, p. 73).

<sup>(9)</sup> Commission Implementing Regulation (EU) 2023/185 of 27 January 2023 initiating a 'new exporter' review of Implementing Regulation (EU) 2021/607 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration (OJ L 26, 30.1.2023, p. 11).

#### 2.4. Parties concerned

- (17) The Commission informed the Union industry, the applicant and the representatives of the exporting country of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to be heard.
- (18) The Commission sent an anti-dumping questionnaire to the applicant and received a reply within the deadline.
- (19) The Commission sought to verify all the information it deemed necessary for the determination of the new exporter status and dumping, and a verification visit was carried out at the premises of the applicant in the PRC.
- (20) Two Union producers, N.V. Citrique Belge S.A. and Jungbunzlauer Austria AG, registered as an interested party and submitted comments.
- (21) One hearing was held on 7 June 2023 with the Union producer N.V. Citrique Belge S.A..

#### 2.5. Review investigation period and period considered

- (22) The review investigation period of dumping covered the period from 1 January 2022 to 31 December 2022 ('review investigation period').

#### 2.6. Disclosure

- (23) On 3 August 2023, the Commission informed all interested parties of the essential facts and considerations on the basis of which it was intended to impose an anti-dumping duty of 31,5 % on imports of the product concerned from the applicant and to amend Implementing Regulation (EU) 2021/607 accordingly ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.
- (24) The Commission received comments from the applicant and from the two Union producers mentioned in recital (20).
- (25) Following final disclosure, interested parties were granted an opportunity to be heard. No hearing was requested.

### 3. RESULTS OF THE INVESTIGATION

#### 3.1. 'New exporter' qualification

- (26) The investigation confirmed that the company had not exported the product concerned during the original investigation period and that it had started exporting to the Union after that period.
- (27) The company was also able to demonstrate that it did not have any links, direct or indirect, with any of the Chinese exporting producers subject to the anti-dumping measures in force with regard to the product concerned.
- (28) Accordingly, it is confirmed that the company should be considered a 'new exporter' in accordance with Article 11(4) of the basic Regulation and thus an individual margin should be determined for it.

#### 3.2. Dumping

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

- (29) In the context of the previous expiry review, the Commission reached the conclusion that prices and costs of the product under review, including the costs of raw materials, energy and labour, were not the result of free market forces, because they were affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation. On that basis, the Commission concluded that it was not appropriate to use domestic prices and costs to establish normal value.

- (30) On 15 June 2023, the Commission informed by a note ('the Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of citric acid. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission stated that it would use Colombia as a representative country, following the previous expiry review investigation. The Commission received no comments on the choice of representative country.

### 3.2.2. Normal value

- (31) 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'*.
- (32) 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')'*.
- (33) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in line with the previous expiry review, the application of Article 2(6a) of the basic Regulation was appropriate.

### 3.2.2.1. Existence of significant distortions

#### 3.2.2.1.1. Introduction

- (34) Article 2(6a)(b) of the basic Regulation defines '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'.
- (35) According to Article 2(6a)(b) of the basic Regulation, the assessment of the existence of significant distortions within the meaning of Article 2(6a)(a) shall take into account, amongst others, the non-exhaustive list of elements in the former provision. Pursuant to Article 2(6a)(b) of the basic Regulation, in assessing the existence of significant distortions, regard shall be had to the potential impact of one or more of these elements on prices and costs in the exporting country of the product under review. Indeed, as that list is non-cumulative, not all the elements need to be given regard to 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) 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.

- (36) 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'*.
- (37) Pursuant to this provision, the Commission has issued a country report concerning China (hereinafter 'the Report' or 'the China report') <sup>(10)</sup>, 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.
- (38) The Government of China ('GOC') did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.

#### 3.2.2.1.2. Significant distortions affecting the domestic prices and costs in China

- (39) 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 China. 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' <sup>(11)</sup>. 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 is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to China being in the primary stage of socialism and entrusts the State with upholding the basic economic system under which public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with State ownership <sup>(12)</sup>.
- (40) 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.'* <sup>(13)</sup> This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the government exercises general macroeconomic control within the boundaries of which free market forces are at play.
- (41) 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 <sup>(14)</sup>. 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.

<sup>(10)</sup> 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 (hereafter 'Report').

<sup>(11)</sup> Report – Chapter 2, p. 6-7.

<sup>(12)</sup> Report – Chapter 2, p. 10.

<sup>(13)</sup> Available at: Constitution of the People's Republic of China (npc.gov.cn) (last viewed 17 July 2023).

<sup>(14)</sup> Report – Chapter 2, p. 20-21.

- (42) 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 while this was a regular feature in previous planning cycles. 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) <sup>(15)</sup>.
- (43) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial 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) <sup>(16)</sup>. 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 other than the banking 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 <sup>(17)</sup>.
- (44) 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 designated by State policies. However, the nature of these goals remains undefined, thereby leaving a broad margin of appreciation to the decision-making bodies <sup>(18)</sup>. 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 <sup>(19)</sup>.
- (45) 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 <sup>(20)</sup>.

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

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

<sup>(15)</sup> Report – Chapter 3, p. 41, 73-74.

<sup>(16)</sup> Report – Chapter 6, p. 120-121.

<sup>(17)</sup> Report – Chapter 6, p. 122-135.

<sup>(18)</sup> Report – Chapter 7, p. 167-168.

<sup>(19)</sup> Report – Chapter 8, p. 169-170, 200-201.

<sup>(20)</sup> Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.

- (47) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises ('SOEs'). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through the presence of party members on SOEs executive bodies and of party cells in companies (see also section 3.2.2.1.4), as well as through the shaping of the corporate structure of the SOE sector <sup>(21)</sup>. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance <sup>(22)</sup>. The elements that point to the existence of government control over enterprises in the citric acid sector is further developed in section 3.2.2.1.4 below.
- (48) Specifically in the citric acid sector, a certain degree of ownership by the GOC is evident. The investigation showed that one of the largest exporters of citric acid, COFCO is part of the COFCO Group, an SOE under SASAC <sup>(23)</sup>. The two other main exporters of citric acid, Seven Star Lemon Technology Co. Ltd. <sup>(24)</sup> and Weifang Ensign Co. Ltd. <sup>(25)</sup>, are both private companies, but do cultivate close links to the state. An article published on the Yishui district government website confirms, for example, financial and regulatory support given by the local district government to Seven Star Lemon Technology <sup>(26)</sup>. Furthermore, Weifang Ensign has been made a 'core enterprise' by the two industry associations, China Light Industry Federation and China Bio Fermentation Industry Association, involving the company in the decision-making process of the Industry Associations which are subject to policy guidance by the State see recital 57) <sup>(27)</sup>.
- (49) In addition, given that CCP interventions into operational decision making have become the norm also in private companies <sup>(28)</sup>, 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.
- (50) This is apparent also at the level of the China Starch Industry Association <sup>(29)</sup> and the China Biotech Fermentation Industry Association <sup>(30)</sup>. According to Article 3 of the Articles of Association, both organisations '[adhere] to the overall leadership of the Communist Party of China. In accordance with the provisions of the Constitution of the Communist Party of China, it establishes an organization of the Communist Party of China, carries out Party activities and provides the necessary conditions for the activities of the Party organization [...]' <sup>(31)</sup> <sup>(32)</sup>. The Articles of Association of China Biotech Fermentation Industry Association further outlines that: 'The Association accepts the business guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building as well as by relevant administrative departments in charge of industry management.' <sup>(33)</sup> Article 3 of The Articles of Association of the China Petrochemical and Chemical Industry Association, another major industry association in the citric acid industry, does further outline that 'In accordance with the provisions of the Constitution of the Communist Party of China, the Association establishes an organization of the Communist Party of China, carries out Party activities, and provides the necessary conditions for the activities of the Party organization [...]' further proving the control and policy supervision of the CCP of industry associations <sup>(34)</sup>.

<sup>(21)</sup> Report – Chapter 3, p. 22-24 and Chapter 5, p. 97-108.

<sup>(22)</sup> Report – Chapter 5, p. 104-9.

<sup>(23)</sup> COFCO Biotechnology Annual Report 2022. 2022 August. Page 51 & 82. Available at: [https://pdf.dfcfw.com/pdf/H2\\_AN202208231577503135\\_1.pdf?1661273401000.pdf](https://pdf.dfcfw.com/pdf/H2_AN202208231577503135_1.pdf?1661273401000.pdf) (last viewed 13 July 2023).

<sup>(24)</sup> See further: <http://www.7lemonstar.com/> (last viewed 13 July 2023).

<sup>(25)</sup> See further: [http://www.ensignworld.com/about.aspx?newsCatId=74&baseinfo\\_Id=74&CatId=74&ViewCatId=74&Prid=73&Yhid=70](http://www.ensignworld.com/about.aspx?newsCatId=74&baseinfo_Id=74&CatId=74&ViewCatId=74&Prid=73&Yhid=70) (last viewed 13 July 2023).

<sup>(26)</sup> See further: <http://www.csmcity.cn/zlzx/info.php?id=7374> (last viewed 13 July 2023).

<sup>(27)</sup> See further: [http://www.ensignworld.com/about.aspx?newsCatId=74&baseinfo\\_Id=74&CatId=74&ViewCatId=74&Prid=73&Yhid=70](http://www.ensignworld.com/about.aspx?newsCatId=74&baseinfo_Id=74&CatId=74&ViewCatId=74&Prid=73&Yhid=70) (last viewed 13 July 2023).

<sup>(28)</sup> See for example Art. 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).

<sup>(29)</sup> See further: <https://www.siacn.org/dl/DyZXItsx00.html> (last viewed 13 July 2023).

<sup>(30)</sup> See further: <http://www.cfia.org.cn/> (last viewed 13 July 2023).

<sup>(31)</sup> See further: <https://www.siacn.org/dl/IOa-252B22.html> (last viewed 13 July 2023).

<sup>(32)</sup> Charter of the China Biofermentation Industry Association. Available at: <http://www.cfia.org.cn/site/term/5.html> (last viewed 13 July 2023).

<sup>(33)</sup> Ibid.

<sup>(34)</sup> Charter of the China Petroleum and Chemical Industry Federation. Available at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (last viewed 13 July 2023).

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

- (51) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in a 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 <sup>(35)</sup>, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to Chinese company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(36)</sup>) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to always have been followed or to have been strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to have exercised pressure on private companies to put 'patriotism' first and to follow party discipline <sup>(37)</sup>. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for CCP organisations to have a final say over the business decisions within their respective companies <sup>(38)</sup>. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of citric acid and the suppliers of their inputs.
- (52) The investigation has revealed that links between the CCP and senior management persist in the citric acid sector. The general manager of COFCO Biotech <sup>(39)</sup> and the Chairmen of the Board of Directors of COFCO are both holding positions in the companies' party branches, as Deputy Secretary of the Party Committee <sup>(40)</sup> and as Secretary of the Party Organisation, respectively <sup>(41)</sup>. Furthermore, the annual report of COFCO concretely outlines Party building activities to be held in the company: *'Adhere to the leadership of the Party and strengthen the Party building's leadership over the enterprise's development. Continue to follow the guidance of Xi Jinping's Thought on Socialism with Chinese Characteristics for the New Era, deepen the responsibility system concerning the Party building work as well as comprehensively and strictly enforce the Party's main responsibilities; while integrating innovation into business management and while seeking concrete results in promoting business development keep consolidating and improving the quality of Party building work.'* <sup>(42)</sup>
- (53) Furthermore, an article on the website of Weifang Ensign outlines party building activities to *'commemorate the ninety-ninth anniversary of the founding of the Party, strengthen the company's Party members' Party spirit education and learning, and better involve exemplary Party members as leaders'*. <sup>(43)</sup>
- (54) CCP interference in prices can also be observed through the China Petrochemical and Chemical Industry Federation which outlined in a special commission that its role was to *'Guide and regulate market and industry development. Maintain fair market competition, assist the government to regulate market behaviours such as prices and trading platforms, strengthen self-discipline of enterprises and provide consulting services for the healthy development of enterprises'*. <sup>(44)</sup>

<sup>(35)</sup> Report – Chapter 5, p. 100-1.

<sup>(36)</sup> Report – Chapter 2, p. 26.

<sup>(37)</sup> Report – Chapter 2, p. 31-2.

<sup>(38)</sup> *Exclusive: In China, the Party's push for influence inside foreign firms stirs fears*. Reuters. 2017, 24 August. Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 13 July 2023).

<sup>(39)</sup> See further: <http://www.cofco.com/en/BrandProduct/COFCOBiochemical> (last viewed 13 July 2023).

<sup>(40)</sup> See at: [http://stockdata.stock.hexun.com/2009\\_gg\\_000930\\_3.shtml](http://stockdata.stock.hexun.com/2009_gg_000930_3.shtml) (last viewed 13 July 2023).

<sup>(41)</sup> See at: <https://www.cofco.com/cn/AboutCOFCO/Management/> (last viewed 13 July 2023).

<sup>(42)</sup> COFCO Biotechnology Co., Ltd. Annual Report 2021, page 29 Available at: <http://img.zlahsh.com/Uploads/Zlsh/File/2022/10/12/u634675f3b11eb.PDF> (last viewed 17 July 2023).

<sup>(43)</sup> See further: <http://www.ensignworld.com/newsinfo.aspx?NewsId=499&CatId=15> (last viewed 17 July 2023).

<sup>(44)</sup> See further: <http://www.ensignworld.com/newsinfo.aspx?NewsId=499&CatId=15> (last viewed 13 July 2023). [www.cpcif.org.cn/detail/4d477309-96db-4b64-ac0c-e87f00027bb2](http://www.cpcif.org.cn/detail/4d477309-96db-4b64-ac0c-e87f00027bb2) (last viewed 13 July 2023).



- (55) 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 <sup>(45)</sup>. Thus, the State presence in firms, including SOEs, in the citric acid 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

- (56) 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 and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of 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 China 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 <sup>(46)</sup>.
- (57) While the citric acid industry in itself is not a key industry in China, the raw materials used in the production of citric acid are heavily regulated in China. The main raw material, corn, is subject to intensive regulation.
- (58) China holds large amounts of corn stockpiles allowing the government to artificially lower or raise the prices of this commodity by purchasing or selling large amounts of corn on the market. The China Starch Industry Association's 14<sup>th</sup> FYP outlines for example, that *'The production capacity of corn starch and deep-processing products has serious overcapacities'* and further *'Due to the continuous increase of new production capacities, the problems of corn starch processing overcapacity and tight supply of raw materials will gradually become prominent.'* <sup>(47)</sup>
- (59) Even though China started tackling the problem of excessive corn reserves in 2016, it still holds very large stockpiles, which have a distortive effect on prices <sup>(48)</sup>. Furthermore, the government is controlling the various aspects of the entire corn value chain on all level of policymaking. This can be exemplified by looking at different FYPs mentioning corn and related products. The 14<sup>th</sup> FYP on promoting the modernization of agriculture and rural areas 2021/25 outlines among others to *'Improve grain production support policies. Stabilize grain farmers' subsidies, improve the minimum purchase price policy for rice and wheat, and the subsidy policy for corn and soybean producers; Improve the support policy system for major grain-producing counties[and] expand the planting area of corn in advantageous areas'*. <sup>(49)</sup>
- (60) The 14th FYP on developing the planting sector at national level specifies further that: *'During the "14th Five-Year Plan" period, [China] will explore potential expansion, increase production capacity, optimize structure, promote diversified development, and improve supply security capabilities. By 2025, the sown area will reach more than 630 million mu [42 million ha], increase the output to more than 530 billion jin [265 million tons], and strive to reach 555 billion jin [277.5 million tons].'* China will also *'Improve the investment guarantee mechanism for the planting industry [...] improve corn and soybean producer subsidies [...] improve the support policy system for major grain (oil) producing counties, and improve the interest compensation mechanism for major grain producing areas [as well as] Expand the coverage of food crop full cost insurance and planting income insurance'*. <sup>(50)</sup>

<sup>(45)</sup> Report – Chapters 14.1 to 14.3.

<sup>(46)</sup> Report – Chapter 4, p. 41-42, 83.

<sup>(47)</sup> Corn deep processing market analysis. 2023, 17 February. Section II.2.3. Available at: <https://finance.sina.cn/2023-02-17/detail-imfywyyp2069106.d.html?source=nfquote> (last viewed 17 July 2023).

<sup>(48)</sup> Report – Chapter 12, p. 319.

<sup>(49)</sup> 14<sup>th</sup> FYP on promoting the modernization of agriculture and rural areas 2021/25. Section II.1. Available at: [https://www.gov.cn/zhengce/content/2022-02/11/content\\_5673082.htm](https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm) (last viewed 13 July 2023).

<sup>(50)</sup> 14TH FYP on developing the planting sector at national level. Section V.2. Available at: [http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113\\_6386808.htm](http://www.moa.gov.cn/govpublic/ZZYGLS/202201/t20220113_6386808.htm) (last viewed 13 July 2023).

- (61) The 14<sup>th</sup> FYP on the development of bio-economy outlines a broader approach to ‘*build national biotechnology strategic science and technology capacities, improve the biotechnology scientific research mechanism, accelerate the breakthrough in bottlenecks of the development of the bio-economy, achieve self-reliance and power in science and technology, and improve the security and stability of the industry and supply chain.*’<sup>(51)</sup> The FYP also outlines to ‘*Strengthen the position of key corporate innovation stakeholders. Involve leading enterprises in the biological field, guide large enterprises to open and share resources such as technological innovation, supply chain and financial services with the upstream and downstream industry chain, and promote integration and innovation with small and medium-sized enterprises. Focus on key fields with large scale and wide influence such as biomedicine, bio-agriculture, and bio-manufacturing and encourage bio-innovative enterprises to further develop subsectors, cultivate their development advantages and foster them to turn into individual champions with global competitiveness.*’<sup>(52)</sup>
- (62) The Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five-Year Plan Period incites economic actors to ‘*Actively develop biochemical industry, encourage the development of enzymes needed for biomass utilization and biorefining based on biological resources.*’<sup>(53)</sup>
- (63) On the provincial level, the Hebei Province 14<sup>th</sup> FYP on Strategic and Emerging Industries outlines to: ‘*Accelerate the pace of innovation and development of the bio-industry [...] Vigorously develop the industries of biological fermentation, bio-based products, and specific biological products, and promote the integrated application of biotechnology in the fields of medicine, chemical industry, materials, food deep processing, and new energy. Consolidate and improve the advantages of amino acids, starch sugars, enzyme preparations, vitamins and other products, and develop new biological materials such as bio-based fibers, bio-based chemicals, bio-based plastics, and bio-based rubber.*’<sup>(54)</sup>
- (64) Measures discriminating in favour of domestic suppliers can also be observed on the level of specific companies. COFCO has for example received regulatory support through the Yushu Municipality, which has also stated to focus on the construction of provincial-level biochemical industrial parks, for the development of specific COFCO projects<sup>(55)</sup>. The company has also benefitted from financial governmental support by the State of RMB 56,9 million in 2022 and RMB 17,7 million in 2021<sup>(56)</sup>. This involvement of the government in the entire value chain has, at least potentially, a distortive effect on prices.
- (65) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives to support encouraged industries, including the production of corn; corn being the main raw material used in the manufacturing of citric acid. 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

- (66) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives, such as the fair settlement of claims and debts and the safeguarding of 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 China, 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

<sup>(51)</sup> 14th FYP on the development of bio-economy. Section II.2. Available at: [https://www.ndrc.gov.cn/xxgk/jd/jd/202205/t20220509\\_1324417.html](https://www.ndrc.gov.cn/xxgk/jd/jd/202205/t20220509_1324417.html) (last viewed 13 July 2023).

<sup>(52)</sup> Ibid., Section III.6.

<sup>(53)</sup> Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five-Year Plan Period. Section 11. Available at: [https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art\\_4ef438217a4548cb98c2d7f4f091d72e.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html) (last viewed 13 July 2023).

<sup>(54)</sup> Hebei Province 14<sup>th</sup> FYP on Strategic and Emerging Industries. Section IV.3. Available at: <http://lvsefazhan.cn/index.php/guozijianguan/408.html> (last viewed 13 July 2023).

<sup>(55)</sup> See further: [http://www.yushu.gov.cn/ywdt/ywzx/202306/t20230608\\_3152637.html](http://www.yushu.gov.cn/ywdt/ywzx/202306/t20230608_3152637.html)

<sup>(56)</sup> COFCO Biotechnology Co., Ltd. Semi-Annual Report 2022. Page 150. Available at: [https://pdf.dcfw.com/pdf/H2\\_AN202208231577503135\\_1.pdf?1661273401000.pdf](https://pdf.dcfw.com/pdf/H2_AN202208231577503135_1.pdf?1661273401000.pdf) (last viewed 13 July 2023).

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 a direct influence on the outcome of the proceedings <sup>(57)</sup>.

- (67) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China <sup>(58)</sup>. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). 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 <sup>(59)</sup>. Moreover, authorities often pursue specific political goals, including the implementation of the economic plans, when allocating land <sup>(60)</sup>.
- (68) The Commission preliminarily concluded that the Chinese bankruptcy, corporate and property laws do not work properly, thus generating distortions by maintaining insolvent firms afloat and through the allocation of land use rights in China. Like other sectors in the Chinese economy, the producers of citric acid are subject to these laws, and are thus subject to the top-down distortions arising from their discriminatory application or inadequate enforcement. The present investigation revealed nothing that would call those findings into question.
- (69) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the citric acid sector, including with respect to 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

- (70) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collectively organise. China 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 <sup>(61)</sup>. Under national law, only one trade union organisation is active. However, this organisation lacks independence from State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(62)</sup>. 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 <sup>(63)</sup>. Those findings lead to the distortion of wage costs in China.
- (71) No evidence was submitted to the effect that the citric acid sector is not subject to the Chinese labour law system described above. The citric acid sector is thus affected by the distortions of wage costs both directly (when producing the product under review 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 China).

#### 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 are otherwise not acting independently of the State

- (72) Access to capital for corporate actors in China is subject to various distortions.

<sup>(57)</sup> Report – Chapter 6, p. 138-149.

<sup>(58)</sup> Report – Chapter 9, p. 216.

<sup>(59)</sup> Report – Chapter 9, p. 213-215.

<sup>(60)</sup> Report – Chapter 9, p. 209-211.

<sup>(61)</sup> Report – Chapter 13, p. 332-337.

<sup>(62)</sup> Report – Chapter 13, p. 336.

<sup>(63)</sup> Report – Chapter 13, p. 337-341.

- (73) First, the Chinese financial system is characterised by the strong position of State-owned banks <sup>(64)</sup>, 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) <sup>(65)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. 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 <sup>(66)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(67)</sup>.
- (74) 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.
- (75) 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 <sup>(68)</sup>.
- (76) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(69)</sup>. 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.
- (77) 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 recent 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.
- (78) 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. Indeed, the share of lending at or below the benchmark rate still represents 45 % of all lending and recourse to targeted credit appears to have been stepped up, since this share has increased markedly since 2015 in spite of worsening economic conditions. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (79) Overall credit growth in China 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 in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so called 'zombie' companies, or by transferring 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.
- (80) In essence, despite the recent steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.

<sup>(64)</sup> Report – Chapter 6, p. 114-117.

<sup>(65)</sup> Report – Chapter 6, p. 119.

<sup>(66)</sup> Report – Chapter 6, p. 120.

<sup>(67)</sup> Report – Chapter 6, p. 121-122, 126-128, 133-135.

<sup>(68)</sup> See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

<sup>(69)</sup> Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (81) No evidence was submitted to the effect that the citric acid sector, and/or the suppliers of this sector, would be exempted from the above-described government intervention in the financial system. 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

- (82) 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 3.2.2.1.1 – 3.2.2.1.5 as well as in Part A 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 above and in Part B of the Report.
- (83) The Commission recalls that in order to produce citric acid, a broad range of inputs is needed, including corn, dried sweet potatoes, sulphuric acid, hydrochloric acid, coal etc. According to evidence on the file, most of the sampled exporting producers sourced all their inputs in China, and the imported inputs constitute a negligible proportion of the raw materials of those exporting producers who source some inputs abroad. When the producers of citric acid purchase or contract for these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned above. For instance, suppliers of inputs employ labour that is subject to distortions. They may have borrowed funds that are subject to the distortions in the financial sector. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (84) As a consequence, not only are the domestic sales prices of citric acid not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, all the input costs (including raw materials, energy, land, financing, labour, etc.) are 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 China. This means, for instance, that any input produced in China, even if it combines several factors of production, is exposed to significant distortions. The same applies to the input of the input, and so on. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (85) In their comments following final disclosure, the applicant submitted a number of comments concerning the application of Article 2(6a)(a) of the basic Regulation. First, the applicant argued that the Commission made its determinations based on outdated references. In the applicant's view, this was because: (i) the Report was outdated and non-objective, given that the past few years have witnessed significant changes in global economics in view of which it is inadequate to draw conclusions based on findings which do not reflect the current situation; (ii) the Commission failed to clarify the relation between the Report and the citric acid sector, with the Report having a much broader scope, including a number of other sectors.
- (86) Second, the applicant took the view that the Commission's reasoning is inadequate to conclude the existence of significant distortions in China. In the applicant's opinion, the Commission failed to demonstrate the actual existence of governmental intervention and/or its distortive effect on the price and cost of production of the product under review. In this respect, (i) the applicant referred to the Appellate Body's reasoning in *US – Countervailing Measures (China)*, according to which *'the existence of price distortion resulting from government intervention has to be established and adequately explained'* and *'the determination must be made on a case-by-case basis, taking into account the characteristics of the market being examined'*; (ii) the applicant considered that the Commission misinterpreted the nature of (the 14<sup>th</sup>) FYP which, according to the applicant, should be merely read as a guidance document not complemented by compulsory national instruments or punishments for producers failing to comply with the FYP's objectives; (iii) the applicant argued that the Commission also misrepresented the position and power of the CCP organization in the daily management of a company, since the CCP organization does not play a role in the decision-making processes even if the members of the CCP organization and board members may overlap.

- (87) As to the applicant's first argument, the Commission pointed out at the outset that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. While the Report was indeed published in 2017, the Commission noted, irrespective of any alleged changes in global economics, 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 have not changed since the Report's publication. The evidence contained in the Report therefore remain largely valid and they were, in any event, supplemented by further evidence in the course of the present investigation, as detailed in recitals (48), (50), (52) – (54) and (58) – (64) and as recognized also by the applicant in point 13 of its comments. In view of this, the applicant's argument that the Commission is drawing conclusion based on evidence which do not reflect the current situation is unfounded. In addition, the Commission recalled 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 its scope in terms of sectors covered. The Commission has shown not only the extent of significant distortions in the Chinese economy in general – see in particular sections 3.2.2.1.2 and 3.2.2.1.9 – but also their direct relation to the sector of the product under review – see in particular sections 3.2.2.1.3 to 3.2.2.1.8. Consequently, the applicant's argument cannot be accepted.
- (88) With regard to the applicant's second argument, the Commission disagreed. First of all, the applicant's reference to *US – Countervailing Measures (China)* is misplaced, as that dispute 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 the present investigation – but the interpretation of the WTO Agreement on Subsidies and Countervailing Measures. In addition, the Commission recalled that the planning system in the Chinese economy goes well beyond the national 14<sup>th</sup> FYP. Instead, the whole economy is subject to a complex web of FYPs, driving decisions by public authorities at all levels, as laid out already in recital (42). The Commission also considers the FYPs binding documents, as is apparent from the respective sections on implementation within the plans. For example, the national 14<sup>th</sup> FYP contains a section on *'improving the planning implementation mechanism'* stating that: *'[a]s 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'*. Similarly, the 14<sup>th</sup> FYP on promoting the modernization of agriculture and rural areas 2021/25 (see recital (59)) sets out in its Section 5 various follow-up implementation mechanisms, linking the implementation of the plan to the authorities' support for other policies. Moreover, with respect to the CCP' role, the Commission reiterated its view laid out in recitals (49) and (50). In particular, concerning the Guidelines on stepping up the United Front work in the private sector for the new era, the Commission recalled that Section II.4 of the Guidelines states: *'[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'* while Section III.6 contains the following language: *'[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'*. In the same vein, the Commission finds it difficult to follow the applicant's argument that despite overlaps between members of the board and of the CCP organisation, a company would not be under policy guidance and State control, given that the applicant did not seek to otherwise disprove the Commission's findings, in particular those in recitals (50), and (52) – (54). In view of the above, the Commission rejected this argument.

#### 3.2.2.1.10. Conclusion

- (89) 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 Chinese intervention in its economy in general as well as in the citric acid sector (including the product under review) showed that prices and 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, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.

- (90) 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

#### 3.2.2.2.1. General remarks

- (91) 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 <sup>(70)</sup>;
  - Production of the product under review in that country <sup>(71)</sup>;
  - 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.
- (92) As explained in recital (30), on 15 June 2023, the Commission informed by a Note all interested parties on the relevant sources it intended to use for the determination of the normal value.

#### 3.2.2.2.2. A level of economic development similar to the PRC

- (93) In the Note, the Commission referred to the previous expiry review, which identified Colombia, Brazil and Thailand as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under review was known to take place.
- (94) As regards Thailand, in the previous expiry review investigation, the Commission concluded that it would not be an appropriate representative country. This was due to the fact that producers of the product under review were loss-making and/or were subsidiaries of Chinese companies, and export restrictions (export licencing requirements) existed for certain factors of production. In addition, the companies manufacturing the product under review did not show a reasonable level of SG&A and profit.
- (95) In the current review investigation period, the Commission noted that although according to financial data from 2021, two of the three producers have returned to profitability, their ultimate ownership has not changed, i.e. they were still related to Chinese companies. Moreover, the identified export restrictions had not been lifted.
- (96) As regards Brazil, in the previous expiry review investigation the Commission also concluded that it would not be an appropriate representative country. This was due to the fact that Brazilian imports of corn, which is the main factor of production (representing more than 70 % of the cost of input materials), were in low quantities relative to the domestic production and at prices that differed significantly from international prices. Moreover, the sole company producing citric acid in Brazil for which financial data was available, was a conglomerate producing a wider range of products and showed a low profitability during at least part of the then period considered. As for Thailand, export restrictions (exporting licencing requirements) existed for certain factors of production.

<sup>(70)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

<sup>(71)</sup> 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.

- (97) In the current investigation, the Commission noted that based on information from Global Trade Atlas ('GTA') for 2022, Brazilian imports of corn remain very low in comparison to domestic production <sup>(72)</sup>, and prices still differ significantly from international prices. As regards Brazilian producers of citric acid, no reliable financial data was available after 2020. Finally, the identified export restrictions for certain factors of production had not been lifted.
- (98) By contrast for Colombia, in the previous expiry review investigation, imports of corn were in representative quantities and at prices which were in line with international prices. Moreover, while the Colombian producer of citric acid, Sucroal SA, also showed a low or negative profitability in at least part of the period considered of the previous expiry review, the Commission identified seven other companies producing products in a close category of products to citric acid, that is ingredients for the beverage, cleaning, food, health and pharmaceutical industry, for which reliable financial data were available and which showed a reasonable level of profit. In addition, no relevant export restrictions were identified in Colombia. On the basis of the above, in the context of the previous expiry review investigation, the Commission concluded that Colombia would be the appropriate representative country.
- (99) In the current investigation, the Commission noted that based on information from GTA for 2022, imports of corn into Colombia were in representative quantities and at prices which were in line with international prices. As regards Sucroal SA, its profitability had turned positive only in 2020 and 2021 (the last two years for which financial data were available at the time of the filing of the Note), and only at marginal levels.
- (100) In the light of the above, the Commission considered that there had been no significant change of circumstances which would lead to a different conclusion in the present case as regards the choice of appropriate representative country. Therefore, the Commission informed the interested parties that it intended to use Colombia as an appropriate representative country and the seven Colombian companies producing products in a close category of products to citric acid.
- (101) Interested parties were invited to comment on the appropriateness of Colombia as a representative country and of the aforementioned companies as producers in the representative country.
- (102) No comments were received concerning the selection of Colombia as an appropriate representative country.
- (103) As regards the companies to be used for the calculation of SG&A and profit, the applicant argued that their product scope was too broad and that the Commission had not shown that their SG&A and profit were at the same level as those of producers of citric acid. Moreover, the SG&A and/or profit of some of these companies were unreasonably high and therefore, these companies should not be taken into account in the calculation of the normal value. Therefore, the applicant suggested to use data from citric acid producers, where profitability was positive.
- (104) Since publishing the Note, no publicly financial information for 2022 was made available for the Brazilian and Thai citric acid producers. However, financial data for 2022 became publicly available for Sucroal SA, the Colombian producer of citric acid. According to these data, Sucroal SA continued showing profitability also in 2022, and at levels which were no longer marginal. Therefore, the Commission considered that data from Sucroal SA would be the most appropriate basis to establish reasonable levels of SG&A and of profit margin. The claims made in relation to the SG&A and profit of the Colombian companies producing products in a close category were therefore void and not addressed.

<sup>(72)</sup> Quantity of corn imported into Brazil in 2022 is reported by GTA at 2,63 million tonnes. The estimated domestic production was around 120 million tonnes (see for instance <https://www.fas.usda.gov/data/brazil-grain-and-feed-update-23>)



### 3.2.2.2.3. Level of social and environmental protection

- (105) Having established that Colombia was the only available appropriate representative country in this case, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

### 3.2.2.2.4. Conclusion

- (106) In view of the above analysis, Colombia met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

### 3.2.2.3. Sources used to establish undistorted costs

- (107) In the Note, the Commission listed the factors of production such as materials, energy and labour used in the production of citric acid by the exporting producers. The list of these factors of production was slightly revised during the on-spot verification visit.
- (108) Furthermore, in the Note the Commission also stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA <sup>(73)</sup> to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use information from the International Labour Organization ('ILO') for establishing undistorted costs of labour <sup>(74)</sup> and public tariffs from a major electricity supplier <sup>(75)</sup> for establishing undistorted costs of labour and electricity respectively. Moreover, to establish undistorted costs of steam, the Commission explained that it would use the methodology suggested by the U.S. Department for Energy <sup>(76)</sup> which was based on the cost of gas required to produce it, and adding reasonable margins for other operating costs, SG&A and profit.
- (109) In addition, in the Note the Commission stated that for concentrated sulfuric acid further analysis was necessary in order to determine whether Colombian import prices or alternative appropriate undistorted international prices, costs, or benchmarks in accordance with Article 2(6a)(a) of the basic Regulation should be used.
- (110) In its comments to the Note, the applicant argued that for concentrated sulfuric acid the quantities of imports into Colombia were very low, and therefore, the import prices into Colombia were not representative. According to the applicant, for this raw material Brazilian import prices were more appropriate for the calculation of the normal value.
- (111) In view of the low quantities imported into Colombia (around 200 tonnes in Colombia vs 660 000 tonnes in Brazil), the Commission agreed that import prices were not representative and accepted the argument that Brazilian import prices would be more appropriate for the calculation of normal value, in line with the previous expiry review.

### 3.2.2.3.1. Undistorted costs and benchmarks

#### *Factors of production*

- (112) Considering all the information available, i.e. the information in the request and the subsequent information submitted by the applicant, by other interested parties, as well as the information collected and verified during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

<sup>(73)</sup> <http://www.gtis.com/gta/secure/default.cfm>

<sup>(74)</sup> <https://ilostat.ilo.org/data/>

<sup>(75)</sup> <https://www.enel.com.co/en/people/energy-rates.html>

<sup>(76)</sup> [https://www1.eere.energy.gov/manufacturing/tech\\_assistance/pdfs/steam15\\_benchmark.pdf](https://www1.eere.energy.gov/manufacturing/tech_assistance/pdfs/steam15_benchmark.pdf)

Table 1

**Factors of production of citric acid**

Factor of Production	Commodity Code in Colombia	Undistorted value (CNY)	Unit of measurement	Source of information
<b>Raw materials</b>				
Corn	1005 90 11 1005 90 12 1005 90 20	2,25	kg	GTA
Calcite	2836 50 00	6,29	kg	GTA
Concentrated sulfuric acid	2807 00 10 (*)	1,74	kg	GTA
Liquid caustic soda	2815 12 00	2,67	kg	GTA
$\alpha$ -amylase/ Glucoamylase	3507 90 90 3507 90 19 3507 90 40 3507 90 13 3507 90 30 3507 90 60	89,40	kg	GTA
Activated carbon	3802 10 00	24,71	kg	GTA
Packing-Bag-Paper	4819 30 10 4819 30 90 4819 40 00	1,04	pieces	GTA
Packing-Bag-Paper Plastic	3923 21 00 3923 29 20 3923 29 90	0,53	pieces	GTA
<b>Labour</b>				
Labour cost per man-hour	NA	13,99	hour	ILO
<b>Energy</b>				
Electricity	NA	0,84	Kwh	Enel
Steam	NA	0,37	kg	NA
<b>By-product</b>				
Corn starch residue	2303 10 00	5,36	Kg	GTA
(*) Commodity code in Brazil.				

*Raw materials*

- (113) 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 the GTA to which import duties and transport costs 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 of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council <sup>(7)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded that it is not appropriate to use domestic prices and costs in the PRC due to the existence of

<sup>(7)</sup> 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.

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 into the representative country, the volume of imports from other third countries remained representative.

- (114) The Commission expressed the transport cost incurred by the applicant for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the applicant's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

#### *Labour*

- (115) The Commission used ILO statistics to determine the wages in Colombia <sup>(78)</sup>. These provide information on monthly wages of employees in the manufacturing sector and average weekly hours worked in Colombia for the investigation period (year 2022).
- (116) Two Union producers also argued that the labour costs in Colombia should be adjusted for other contributions such as 12 % for the employer contribution to the pension fund, 8,5 % for health insurance, 1-2 % for the solidarity pension fund and 4 – 9 % for payroll taxes. They argued further that the average labour cost for the category 'male' should be used, as nearly all employees in biochemical production are men. Moreover, these Union producers argued that the amount of labour costs used should be adjusted for productivity, providing a comparison of productivity between France and Colombia measured in value of output per hour.
- (117) In the calculation of the labour cost in Colombia the Commission added 12 % contribution to the pension fund and professional risk tax of 2,436 % for the third group risk based on the company activity to which Sucroal SA belongs to <sup>(79)</sup>. The 8,5 % for health care and 4-9 % payroll taxes apply only to salaries that are higher than the total of ten minimum monthly wages, while in the manufacturing sector monthly salaries do not exceed this threshold. Furthermore, the solidarity pension fund is paid only by the employee <sup>(80)</sup>. As regards using only the average labour costs for the 'male' category, the Union producers have not provided any evidence regarding the gender composition of personnel in the biochemical production sector. Finally, an adjustment for productivity is not appropriate for the purposes of establishing undistorted costs of labour as the benchmark for labour is calculated per number of man hours for producing 1 kg on citric acid and employee productivity does not affect the cost of labour. Therefore, the claims were rejected.

#### *Electricity*

- (118) For electricity, the Commission used the readily available price from Enel, <sup>(81)</sup> the major electricity supplier in Colombia. This source provides a single average price of electricity per month during 2022.
- (119) In their comments to the Note, the Union industry argued that the applicable electricity tariff of Enel Colombia would be the 'Nivel 2' tariff for industrial customers, corresponding to a voltage of 11,4 – 13,2 kV, rather than the 'Nivel 4' tariff selected by the Commission in the Note, which corresponds to a voltage of 115 kV.
- (120) As regards the applicable electricity tariff, the Commission confirmed that the applicant is supplied with electricity at a voltage of 110 kV, and therefore, the 'Nivel 4' tariff of Enel Colombia is the most appropriate tariff. Therefore, the claim was rejected.

<sup>(78)</sup> <https://ilostat.ilo.org/>

<sup>(79)</sup> <https://safetia.co/normatividad/decreto-768-de-2022/>

<sup>(80)</sup> <https://taxsummaries.pwc.com/colombia/individual/other-taxes>

<sup>(81)</sup> <https://www.enel.com.co/en/people/energy-rates.html>

### Steam

- (121) The price of steam for companies (industrial users) in Colombia was calculated using the methodology suggested by the U.S. Department for Energy <sup>(82)</sup>, which is based on the cost of gas required to produce it, and adding reasonable margins for other operating costs, SG&A and profit.
- (122) As regards the cost of gas in Colombia the Commission used the price of gas as published by Colombian gas suppliers such as Grupo Vanti <sup>(83)</sup> and EPM <sup>(84)</sup> during the review investigation period.

### Manufacturing overhead costs, SG&A, profits and depreciation

- (123) 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 overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (124) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (125) For establishing an undistorted and reasonable amount for SG&A and profit the Commission relied on the financial data of Sucroal SA in 2022, as extracted from the Orbis <sup>(85)</sup> database.

#### 3.2.2.4. Calculation of the normal value

- (126) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (127) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the applicant. These consumption ratios provided by the applicant were verified during the on-spot verification visit at the premises of the company. The Commission multiplied the consumption ratios by the undistorted costs per unit observed in the representative country Colombia.
- (128) Once the undistorted manufacturing cost established, the Commission added the manufacturing overheads, SG&A and profit as noted in recitals (123) to (125). Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial statements of Sucroal SA for the year 2022. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, calculated as a percentage of the direct costs of manufacturing,
  - SG&A and other costs, which accounted for 24,6 % of the Costs of Goods Sold ('COGS') of Sucroal SA, and
  - Profits, which amounted to 27,21 % of the COGS as achieved by Sucroal SA, were applied to the total undistorted costs of manufacturing.
- (129) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.2.3. Export price

- (130) The applicant exported to the Union directly to independent customers. Therefore, the export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

<sup>(82)</sup> [https://www1.eere.energy.gov/manufacturing/tech\\_assistance/pdfs/steam15\\_benchmark.pdf](https://www1.eere.energy.gov/manufacturing/tech_assistance/pdfs/steam15_benchmark.pdf)

<sup>(83)</sup> <https://www.grupovanti.com/>

<sup>(84)</sup> <http://cu.epm.com.co/>

<sup>(85)</sup> <http://orbis4.bvdinfo.com/>

#### 3.2.4. Comparison

- (131) The normal value and the export prices were compared on an ex-works basis.
- (132) For the purpose of ensuring a fair comparison between normal value and export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments for freight in the country concerns, handling, loading and ancillary expenses, ocean freight and ocean insurance, packing expenses, bank charges and credit costs were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

#### 3.2.5. Dumping margin

- (133) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all exports transactions to the Union.
- (134) On this basis, weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, is 31,5 %.

#### 3.2.6. Comments by interested parties

- (135) The Union producers N.V. Citrique Belge S.A. and Jungbunzlauer Austria AG argued that the influence of the Covid-19 pandemic, the high ocean freight cost during the review investigation period, and the scarce availability of the product on the market, render the price of the export sales in 2022 (the review investigation period) unreliable for assessing dumping and injury, and moreover for determining an anti-dumping duty for future sales of the company, as the pricing was not representative and not of a lasting nature. The Union producers noted that in 2022 the applicant's export volumes on the Union were very low, and referred in this regard to the Commission Implementing Regulation (EU) 2016/306 of 3 March 2016 <sup>(86)</sup> (*Tube and pipe fittings*), in which the Commission found that it could not rely on the exporting producer's export prices in that case, inter alia, because the exporting producer sold 'only negligible volumes of the product concerned' to the Union. The two Union producers also argued that the prices of the applicant's exports to third countries during the review investigation period were substantially lower than the prices of the exports to the Union, which in their view suggested that the latter were artificial and set for the purpose of the investigation. In support of their claims, the two Union producers provided reports from market analysts on the evolution of quantities and prices of exports from Chinese companies, including the applicant, to the Union.
- (136) The Commission recalled that dumping is the comparison between normal value and export price at ex works level. The difficult market conditions in 2022, such as product shortages, would not only affect the export price, but are likely to have a similar effect on the elements used in the normal value calculation, such as the cost of the factors of production in a representative country. While ocean freight during the review investigation period were at a relatively high level, it reflected the situation during the review investigation period and could therefore not be disregarded. Article 11(4) of the basic Regulation requires the Commission to establish an individual dumping margin where a new exporter shows that (i) it has not exported the product concerned to the Union during the original investigation period, (ii) it is not related to an exporting producer subjected to measures and (iii) it has actually exported to the Union following the original investigation period (or entered into an irrevocable contractual obligation to export a significant quantity to the Union). As concluded in section 3.1, the Commission found that the applicant complied with the basic Regulation requirements and, therefore, the determination of its individual margin was warranted.
- (137) The Commission also noted that the facts of the current investigation are not comparable to the facts established in the *Tube and pipe fittings* investigation cited by the Union producers. As stated in recital (29) of Commission Implementing Regulation (EU) 2016/306, the volume of exports to the Union was only one of the several elements considered in the assessment. While the Applicant's import quantities were somewhat small, they cannot be

<sup>(86)</sup> Commission Implementing Regulation (EU) 2016/306 of 3 March 2016 amending Implementing Regulation (EU) No 1283/2014 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the Republic of Korea and Malaysia following an interim review pursuant to Article 11(3) of Council Regulation (EC) No 1225/2009 (OJ L 58, 4.3.2016, p. 3).

qualified as 'negligible' and were found sufficient for a reliable dumping calculation as they were made to several customers and via several invoices. The Commission also notes that an injury analysis is out of the scope of the present investigation. On this basis of the above, all arguments of the two Union producers were rejected.

- (138) In their comments following final disclosure the Union producers N.V. Citrique Belge S.A. and Jungbunzlauer Austria AG disagreed with the Commission's statement in recital (136) that the difficult market conditions in 2022 would not only affect the export price, but were likely to have a similar effect on the elements used in the normal value calculation, such as the cost of the factors of production in a representative country. The Union producers submitted arguments of purely general nature concerning the disruptive effects of the China's 'zero Covid' policy on the Chinese market without, however, providing any further explanations or information and without any concrete impact or link to the product concerned. Therefore, this claim was rejected.
- (139) The two Union producers also claimed that their comments made prior to disclosure regarding the high ocean freight costs in 2022 were not properly addressed in the final disclosure. They asserted that their argument was not to disregard the ocean freight costs but rather in support to their claim that the calendar year of 2022 was exceptional and therefore not a suitable investigation period for the dumping assessment. The Union producers further argued that the Commission was not limited to the formal examination of the three conditions under Article 11(4) of the basic Regulation but that it had discretion to deviate from the 'usual' investigation period resulting from the date of the initiation of the review request. In this regard, they referred to the Judgement of the European Court of First Instance in Case T-164/94, *Ferchimex* <sup>(87)</sup> and argued that the Commission would not have exceeded its discretion if it deviated from the standard investigation period selection even if the chosen period had adverse economic effects for the applicant. As the economic consequences of the pandemic were exceptional circumstances, the Commission should have used its discretionary power to choose a different investigation period than 2022.
- (140) The Commission has indeed discretion in selecting the investigation period of an investigation. In this case, the Commission selected the investigation period in line with Article 6(1) of the basic Regulation and common practice, i.e. immediately prior to the initiation of the investigation. In addition, the Commission considered that the period selected that was based on a full calendar year facilitated the cooperation of the applicant and thus accuracy and adequacy of the findings. The fact that the ocean freight was higher than normal in 2022 or that other factors may have been affected by the pandemic did not invalidate the appropriateness of investigation period selected. Such factors, if relevant for the investigation, are assessed on a case-by-case basis. The claim was thus rejected.
- (141) The two Union producers further claimed that also in the *Tube and pipe fittings* investigation exports sales to the Union were made to three different customers and via fourteen sales invoices while the Commission still considered the sales volume as being negligible, while in the present investigation it does not.
- (142) The Commission noted that in the *Tube and pipe fittings* investigation the exporting producer could not demonstrate that the anti-dumping duty had been effectively paid, which casted doubt on whether the goods had been released for free circulation in the Union customs territory. Moreover, those sales were made to three customers for specific projects with their own specifications. In addition, the sales were made as a 'package' with other fittings and products that were not product concerned. In this context, the risk of cross-compensation was deemed substantial. The current investigation did not reveal such issues for the sales made by the applicant. While indeed the volume of sales of the applicant to the Union in the 2022 were low, their sales prices were considered a reliable basis for the calculation of the dumping margin. Therefore, the claim was rejected.

<sup>(87)</sup> See Judgement of the Court of First Instance of 28 September 1995 in Case T-164/94- *Ferchimex v Council*, available at: [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994TJ0164](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61994TJ0164)

- (143) The two Union producers also argued that the Commission did not address the argument that since the applicant's export prices to the Union were between 10 % to 30 % higher than the applicant's export price to India they should not be considered reliable. They referred to the judgment of the Court of Justice in Case C-374/12, *Valimar*, claiming that similar circumstances led the Court of Justice to conclude that the export prices of the exporting producer should be disregarded <sup>(88)</sup>.
- (144) The Commission found this claim to be factually wrong. The investigation revealed that the export prices to India were not 10 % to 30 % lower than the prices to the Union but significantly less, i.e. on average less than 5 % lower. Nevertheless, it is recalled that in the previous expiry review the Commission concluded that the Union market was attractive as compared to other third markets as the export prices to third countries by the four cooperating companies were 20 to 40 % lower than the export prices to the Union. The mere fact that export prices to another third country market are lower as compared to the export prices to the Union market is therefore not a reason to consider the applicant's export prices to the Union as unreliable. Therefore, the claim was rejected.
- (145) The two Union producers also argued that the applicant's export price to the Union was not reliable because of the minimum import price ('MIP') in place. In this regard it referred to the *silicon photovoltaic modules* <sup>(89)</sup> and *iron or steel ropes and cables* <sup>(90)</sup> where undertakings were in place and the producers' export prices to the Union were significantly higher than their export prices to other third countries and the Commission concluded that the export prices to the Union were significantly influenced by the undertaking and were therefore unreliable.
- (146) First of all, the investigation revealed that the applicant's export price to third countries was not systematically higher than the export price to the Union. To certain markets the export price was higher than to the Union. As concerns the MIP, in the referred cases the Commission concluded that the export price to the Union was significantly influenced by the undertaking as the export price to the Union was on average at the level of the MIP. In the current investigation it has been found that the applicant's export price to the Union was higher than the MIP at the time. Also, the average export price of all other exporters, including those not subject to the undertaking, was at a similar level as the applicant's export price. Therefore, the Commission was not able to conclude that the export price was influenced by the undertaking and the claim was rejected.
- (147) The two Union producers also claimed that the Commission did not address the claim regarding the discrepancies between the data reported by the applicant in the questionnaire response and publicly available export statistics.
- (148) As stated in recital (19) the Commission verified the questionnaire reply submitted by the applicant at its premises in China. The investigation did not reveal any information that would make the data submitted by the applicant unreliable. Therefore, the Commission is bound to use the verified information. On the other hand, the Commission cannot verify the accuracy of publicly available information and therefore any discrepancies between the verified information submitted by the applicant in the framework of the investigation and publicly available information is irrelevant in this case. Therefore, the claim was rejected.

<sup>(88)</sup> See Judgement of the Court of 18 September 2014 in Case C-374/12- *Valimar' OOD v Nachalnik na Mitnitsa Varna*, available at: <https://curia.europa.eu/juris/document/document.jsf?sessionid=F1C927CFBC168F9A051D8B6C07B39582?text=&docid=157850&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2738602>, para 47.

<sup>(89)</sup> Commission Implementing Regulation (EU) 2017/367 of 1 March 2017 imposing a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from 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 and terminating the partial interim review investigation pursuant to Article 11(3) of Regulation (EU) 2016/1036 (OJ L 56, 3.3.2017, p. 131).

<sup>(90)</sup> Council Regulation (EC) No 1279/2007 of 30 October 2007 imposing a definitive anti-dumping duty on certain iron or steel ropes and cables originating in the Russian Federation, and repealing the anti-dumping measures on imports of certain iron or steel ropes and cables originating in Thailand and Turkey (OJ L 285, 31.10.2007, p. 1).

#### 4. UNDERTAKINGS

- (149) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, the applicant jointly with the CCCMC submitted an offer for price undertakings.
- (150) According to Article 8 of the basic Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical, or for other reasons, including reasons of general policy. The Commission assessed the offer in view of these criteria and considered that undertaking offered cannot be accepted for the following reasons.
- (151) First, the applicant claimed that its undertaking offered was based on the indexed MIP that was in force for other exporting producers. It would thus meet requirement according to Article 8(1) of the basic Regulation.
- (152) However, the details on the MIP of the previously accepted undertakings is confidential information accessible only to the parties signing the undertakings and/or their legal representatives. The applicant was neither a party to these undertakings, nor was an interested party in the previous proceedings. Only the CCCMC was a party to the original undertaking agreements as a co-signatory with the respective exporting producers given its role and engagements in their monitoring.
- (153) Nevertheless, the Commission noted the following. Firstly, taking into consideration the company structure, the level of the cooperation and the quality of the information provided during the investigation, the Commission considered that the undertaking offered by the applicant would be practical to be monitored.
- (154) Secondly, the Commission examined whether the undertaking would not be acceptable for 'other reasons' in accordance with Article 8(3) of the basic Regulation. In this regard, the Commission noted that the methodology for the MIP, as well as its indexation mechanism, offered by the applicant was inconsistent with its specific situation resulting from this investigation (that is it should have been based on its normal value given that the level of duty of Seven Star is based on its dumping margin and not on the non-injurious price). Furthermore, this MIP would lead to an unjustified and significant discount for the citric acid exported by the applicant.
- (155) On the basis of the above, the Commission concluded that the undertaking offer could not be accepted.
- (156) The Commission sent letters to Seven Star and CCCMC, setting out in details the reasons for rejecting the undertaking offer. No comments were received.

#### 5. AMENDMENT OF MEASURES BEING REVIEWED

- (157) The dumping margin with regard to the applicant, established for the review investigation period, was 31,5 %. In the framework of the current investigation, the Commission did not re-calculate the non-injurious price level during the review investigation period as it is outside the scope of a review in accordance with Article 11(4) of the basic Regulation. Therefore, the non-injurious price level as established during the original investigation at the level of the injury for all other companies of 42,7 % is applicable. In application of the lesser duty rule set out in Article 9(4) of the basic Regulation the anti-dumping duty for Seven Star should consequently be set at the level of the dumping margin established, i.e. 31,5 %. Therefore, Implementing Regulation (EU) 2021/607 should be amended accordingly.

#### 6. REGISTRATION

- (158) In the light of these findings, the registration of imports imposed by Regulation (EU) 2023/185 should cease with retroactive levying of the anti-dumping duties since 30 January 2023.

#### 7. DURATION OF MEASURES

- (159) This review does not affect the date on which the measures imposed by Implementing Regulation (EU) 2021/607 will expire pursuant to Article 11(2) of the basic Regulation.



(160) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

*Article 1*

The following company/duty/code shall be added to the table under producers in the PRC in Article 1(2) of Implementing Regulation (EU) 2021/607:

Company	Anti-dumping duty	TARIC additional code
Seven Star Lemon Technology co., Ltd	31,5 %	A032

*Article 2*

The customs authorities are hereby directed to cease the registration of imports of the product concerned originating in the PRC produced by Seven Star Lemon Technology co., Ltd. and to retroactively levy the anti-dumping duty rate indicated in Article 1 as from 30 January 2023.

*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, 16 October 2023.

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