



2024/1064

10.4.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/1064

of 9 April 2024

imposing a provisional anti-dumping duty on imports of certain alkyl phosphate esters originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 11 August 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain alkyl phosphate esters originating in the People's Republic of China ('China') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 30 June 2023 by ICL Europe U.A., Lanxess Deutschland GmbH and PCC Rokita S.A. ('the complainants'). The complaint was made by the Union industry of certain alkyl phosphate esters ('APE') in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.
- (3) On 21 December 2023, the Commission initiated a separate anti-subsidy investigation regarding imports of APE originating in China by publishing a Notice of Initiation in the *Official Journal of the European Union* ⁽³⁾.

1.2. Registration of imports

- (4) Under Article 14(5a) of the basic Regulation, the Commission shall register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met.
- (5) The Commission did not register imports during the period of pre-disclosure as there was no increase in import quantities after the initiation of the investigation and therefore the conditions in Article 10(4) were not met.
- (6) The Union industry requested the registration of imports under Article 14(5) in the complaint and its submission of 11 December 2023. The request was denied on the basis that import quantities decreased following the initiation of the investigation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 282, 11.8.2023, p. 4.

⁽³⁾ OJ C, C/2023/1567, 21.12.2023, <http://data.europa.eu/eli/C/2023/1567/oj>.

1.3. Interested parties

- (7) In the Notice of Initiation, the Commission invited interested parties to contact it to participate in the investigation. In addition, the Commission specifically informed the complainants, the known exporting producers and the Chinese authorities, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (8) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. Sampling

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

1.4.1. Sampling of Union producers

- (10) In the Notice of Initiation, the Commission provided for the possibility to select a sample of Union producers. Given that the three producers acting as complainants were understood to represent all the Union industry, the Commission provisionally decided that a sample was not necessary.
- (11) The Commission invited interested parties to comment on the provisional decision to investigate all three known Union producers. No comments were received and the decision to investigate all three known Union producers was confirmed.

1.4.2. Sampling of importers

- (12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (13) Two unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary and asked the cooperating importers to submit replies to the questionnaire.

1.4.3. Sampling of exporting producers

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (15) 14 exporting producers in China provided the requested information and agreed to be included in the sample.
- (16) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers based on the largest representative volume of exports to the Union which could reasonably be investigated within the time available.
- (17) In accordance with Article 17(2) of the basic Regulation, all known exporting producers and the Chinese authorities were consulted on the selection of the sample.

- (18) One exporting producer not sampled, Zhejiang Wansheng Co., Ltd, responded to the consultation and requested to be included in the sample, extending the sample to four exporting producers.
- (19) The request was not accepted, as this would be unduly burdensome on the grounds that Zhejiang Wansheng was a large group of companies, and adding Zhejiang Wansheng to the sample would effectively double the number of companies to be inspected.
- (20) The initial sample was therefore confirmed and the reasons for not changing the sample placed on the open file ⁽⁴⁾.

1.5. Individual examination

- (21) Two Chinese exporting producers, Zhejiang Wansheng Co., Ltd (which also requested to be sampled) and Futong Chemical Co., Ltd. requested individual examination under Article 17(3) of the basic Regulation.
- (22) The examination of these requests during the provisional stage of the investigation would have been unduly burdensome given the need to investigate the three already sampled exporting producers.
- (23) A final decision on accepting both, or neither, of these requests for an individual examination will be made at the definitive stage of the investigation.

1.6. Questionnaire replies and verification visits

- (24) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (25) The complainants also provided in the complaint sufficient evidence of raw material distortions in China regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covered those raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation. For this reason, the Commission sent an additional questionnaire to the GOC.
- (26) The Commission sent questionnaires to the Union producers, importers and exporting producers. The same questionnaires were made available online ⁽⁵⁾ on the day of initiation.
- (27) Questionnaire replies were received from three Union producers, one importer, eight users, and five Chinese exporting producers. No questionnaire replies were received from the GOC.
- (28) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- ICL Europe U.A., Amsterdam, The Netherlands
- Lanxess Deutschland GmbH, Cologne, Germany
- PCC Rokita S.A., Brzeg Dolny, Poland

Importers

- Quimidroga S.A., Barcelona, Spain

⁽⁴⁾ t23.003562 dated 30 August 2023.

⁽⁵⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2676>.

Exporting producers in China

- Anhui RunYue Technology Co., Ltd, Huaibei, China ('Anhui RunYue')
- Shandong Yarong Chemical Co., Ltd, Taian City, Shandong, China ('Shandong Yarong')
- Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co., Nantong, China ('Nantong Jiangshan').

1.7. Investigation period and period considered

- (29) The investigation of dumping and injury covered the period from 1 July 2022 to 30 June 2023 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2019 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (30) The product under investigation is certain alkyl phosphate esters ('APE'), currently classified under CN code ex 2919 90 00 (TARIC codes 2919900050 and 2919900065) and CN code ex 3824 99 92 (TARIC code 3824999238) ('the product under investigation').
- (31) APE is defined as certain alkyl phosphate esters based exclusively on side chains with a length of two or three carbon atoms (also includes chlorinated alkyl chains) and with a phosphorus content of at least 9 % (per weight) and a viscosity between 1 and 100 mPa·s (at 20-25 °C) falling under Chemical Abstracts Service ('CAS') numbers 13674-84-5, 1244733-77-4 and 78-40-0.
- (32) APE covers two product types, tris (2-chloro-1-methylethyl) phosphate ('TCPP') and triethyl phosphate ('TEP'). They are commonly used as flame retardants in rigid and flexible foams.

2.2. Product concerned

- (33) The product concerned is the product under investigation originating in the People's Republic of China.

2.3. Like product

- (34) The investigation showed that the following products have the same basic physical chemical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union,
 - the product under investigation produced and sold on the Chinese domestic market, and
 - the product under investigation produced and sold in the Union by the Union industry.
- (35) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.4. Claims regarding product scope

- (36) The China Petrochemical and Chemical Industry Federation ('CPCIF'), two importers of the product concerned, Prochema and Quimidroga, and one user, Kingspan, submitted claims regarding the product scope, requesting the exclusion of TEP from the product scope.

- (37) In its comments to initiation CPCIF claimed that TCPP and TEP have different uses and are not interchangeable. It pointed out the differences in their respective production processes, in their distribution channels and in their technical and chemical characteristics.
- (38) It claimed that TCPP is predominantly used as flame retardant in rigid and flexible polyurethane foam, while TEP is used as plasticiser in polymers, rubbers, and plastics and only in a secondary limited manner as a flame retardant.
- (39) According to CPCIF, TEP is 60 % more expensive to produce than TCPP and therefore substituting TCPP with TEP would not be economically viable. CPCIF also brought forward that TCPP and TEP are classified under different chapters in the combined nomenclature.
- (40) Two importers of the product concerned, Prochema and Quimidroga, and one user, Kingspan, submitted similar comments.
- (41) They brought forward the technical and chemical characteristics and contested the view that TCPP and TEP would be interchangeable due to differences in their technical characteristics and flame-retardant behaviour.
- (42) Kingspan also argued that China is the only producer of TEP worldwide and where substitution between TEP and TCPP is technically possible, it would still need a considerable amount of reformulation, recertification and significant capital expenditure.
- (43) Kingspan and Quimidroga further claimed that the inclusion of TEP in the product scope is arbitrary, since there are a number of other products that have equally similar physical, chemical and technical characteristics as TEP and TCPP, such as cresyl diphenyl phosphate ('CDP'), tris(2-ethylhexyl) phosphate ('TEHP') and Tributyl phosphate.
- (44) The Commission analysed these claims. First, even if the production process, the molecule structure and certain chemical characteristics of TCPP and TEP differ, they both share similar essential physical, technical and chemical characteristics defined in recitals 31 to 32 above.
- (45) The other products named by Kingspan and Quimidroga (CDP, TEHP and Tributyl phosphate) do not fall under the product scope of alkyl phosphate esters as defined in the complaint and in recitals 31 to 32. In fact, these products are not alkyl phosphate esters and do not have the same effectiveness as flame retardants. Also, no evidence was brought forward that CDP, TEHP and Tributyl phosphate could effectively be used in the same applications as a substitute of TCPP or TEP.
- (46) Second, it was not contested by any of the parties that TCPP and TEP are substitutable for rigid foam applications which represent around two thirds of the total Union consumption of TCPP and TEP. TEP has a higher phosphorus content than TCPP and is therefore of a higher flame-retardant nature. According to a submission by Kingspan a smaller amount of TEP is needed to replace TCPP (about 1,8 kg of TCPP is needed to replace 1 kg of TEP), which would partially compensate for the higher production cost of TEP.
- (47) Even if replacement of TCPP by TEP in new product types or compositions would need reformulation and recertification process, there was no evidence brought forward that this process would need significant or extraordinary capital expenditure. Furthermore, such recertifications costs are typically one-off costs and not recurrent ones.
- (48) Third, the differences in production process, distribution channels and classification in the combined nomenclature do not negate the fact that both TCPP and TEP fall within the product definition as set out in recitals 30 to 32 and share similar essential physical and technical characteristics and the same main uses.
- (49) On the basis of the above, the Commission concluded at this stage that TEP should not be excluded from the product scope.

3. DUMPING

3.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (50) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation regarding China, the Commission considered it appropriate to initiate the investigation for the Chinese exporting producers having regard to Article 2(6a) of the basic Regulation.
- (51) Consequently, to collect the necessary data for the possible application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide information regarding the inputs used for producing APE. 10 exporting producers submitted the relevant information.
- (52) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In the Notice of Initiation the Commission also invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.
- (53) No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation from the GOC was received within the deadline.
- (54) Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China.
- (55) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.
- (56) On 25 October 2023 the Commission informed interested parties on the relevant sources it intended to use for the determination of the normal value by publishing a Note ('the First Note'). 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 APE. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Brazil and Türkiye as possible appropriate representative countries.
- (57) The Commission received comments on the First Note from two Chinese exporting producers (Shandong Yarong and Anhui RunYue) and the Chinese association CPCIF.
- (58) On 19 January 2024, the Commission informed interested parties by a second note ('the Second Note') about the relevant sources it intended to use for the determination of the normal value, and about the selection at this stage of the investigation of Brazil as the representative country.
- (59) It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on the 2022 financial data available for the Brazilian company Elekeiroz, a producer of a product in the same general category as the product under investigation.
- (60) The Commission received comments on the Second Note from Shandong Yarong and Anhui RunYue and the Chinese association CPCIF. All comments received are addressed in detail in Section 3.2.
- (61) The Commission therefore concluded that normal value should be constructed using the method set out in Article 2(6a) of the basic Regulation, and that costs and prices in China should be rejected.

3.2. Normal value

- (62) 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’.
- (63) However, according to Article 2(6a)(a) of the basic Regulation, if ‘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 [SG&A] and for profits’.
- (64) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.

3.2.1. Existence of significant distortions

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

- (68) 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'.
- (69) Pursuant to this provision, the Commission issued a country report concerning China ('the Report' ⁽⁶⁾) containing evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage. The complaint also contained some relevant evidence complementing the Report.
- (70) More specifically, the complaint indicated that domestic prices and costs of certain alkyl phosphate esters in China cannot be accepted since they are at odds with the notion of free play of market forces but rather result from the complex and all-encompassing state intervention.
- (71) The complaint pointed out that distortions in the Chinese industry of certain alkyl phosphate esters stem in the first place from the very organisation of China which is based on the concept of the socialist market economy.
- (72) The socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP' or 'the Party') which directs all aspects of the state, including the economy and the judicial system. The CCP's power to intervene applies at all levels, including business decisions of individual enterprises, both State-Owned Enterprises ('SOE') and privately owned companies.
- (73) Consequently, although the Chinese economy consists to a large extent of non-state actors, the CCP and the state maintain a predominant role in the economic governance of the country. The main channels of the GOC intervention in the Chinese economy consist of the administrative, financial, and regulatory control of the state.
- (74) As to the allocation of financial resources in China, five large commercial banks, that are majority state-owned, operate large branch networks on a nationwide basis and account for nearly half of total bank assets. In addition to state ownership of these banks, the CCP appoints executives in state-owned banks and other state-owned financial institutions.
- (75) As to the regulatory channel, the state maintains a significant control and influence, in particular within the areas of public procurement and investment, which are used to pursue public and industrial policy objectives rather than economic efficiency. Much like other sectors, the sector of certain alkyl phosphate esters is subject to state intervention and the resulting distortions.
- (76) As a result of manifold subsidies and state interventions, the Chinese market for certain alkyl phosphate esters is disconnected from the normal market behaviour and as such, the domestic prices and costs of the Chinese industry of certain alkyl phosphate esters cannot be used.
- (77) Moreover, the complaint pointed out the following elements below resulting in significant distortions.
- (78) The APE sector is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities. As referred in the Report, the GOC ensures a strong influence over both SOE and private companies, especially in industries considered strategic, which is the case of certain alkyl phosphate esters.

⁽⁶⁾ 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.

- (79) Overall, the GOC and the CCP exercise control over SOE, shaping their corporate structure, as well as the overall competitive landscape in order to achieve strategic economic goals. The CCP appoints key SOE executives, and SOE obtain preferential access to important inputs (such as land and capital) and other competitive advantages.
- (80) Moreover, the GOC established the State-owned Assets Supervision and Administration Commission of the State Council ('SASAC'). Its basic functions include guiding the reform of SOEs, taking daily charge of supervisory panels assigned to large SOE. The GOC continues to have full authority over how SOE use allocations of state capital and which projects SOE pursue.
- (81) With respect to the sector of certain alkyl phosphate esters, a substantial degree of ownership by the GOC persists. First, available information indicates that a large number of key producers of certain alkyl phosphate esters in China are SOE.
- (82) Zhejiang Wansheng Co., Ltd., Jiangsu Yoke Technology Co., Ltd., Yangzhou Chenhua New Material Co., Ltd., Shouguang Weidong Chemical Co., Ltd., and Shandong Tianyi Chemical Co. Ltd. are the main state-owned flame-retardant manufacturers in China.
- (83) The complaint pointed out Zhejiang Wansheng Co. Ltd., Yangzhou Chenhua New Material Co. Ltd., and Jiangsu Yoke Technology Co. Ltd., produced and exported TCP to the EU in 2022. Moreover, Zhejiang Wansheng Co. Ltd. and Jiangsu Yoke Technology Co. Ltd. also produce TEP.
- (84) Another example of SOEs which produce TCP is CMEC Wuxi Machinery Engineering Co. Ltd., which is a wholly owned subsidiary of China Machinery Engineering Corporation ('CMEC') that is in turn owned by the SOE Sinomach.
- (85) Besides, instead of reducing the number of SOEs in the industry of certain alkyl phosphate esters, recent initiatives aiming at pressuring private companies to invest in, or merge with, SOEs, rather prove that the GOC and the CCP opted for further concentration of the market.
- (86) For instance, Jiangsu Yoke Technology Co., Ltd., producing both TCP and TEP, includes among its shareholders, on top of private shareholders, National Industry Integrated Circuit Industry Investment Fund Co., Ltd. and Wuxi Equity Investment Centre of Agricultural Bank II. These two entities are directly controlled by the GOC.
- (87) In a similar vein, privately owned companies remain also under close control of the GOC. Privately owned producers of certain alkyl phosphate esters underline their close alignment with the goals of the GOC and remain under direct influence of the GOC.
- (88) For example, the largest stake (45 %) of Futong Chemical Co., Ltd., is held by Hubei Xingfa Chemicals Group Co., Ltd. The major shareholder (19,5 %) of Hubei Xingfa Chemicals Group Co., Ltd., is the Xingshan County SASAC. Along with the production of TCP, Hubei Xingfa Chemicals Group Co., Ltd. produces TEP as well.
- (89) Moreover, the CEO of Hubei Xingfa Chemicals Group Co., Ltd., was a delegate at the 20th National Congress of the CCP, which in turn portrays a strong bond between the GOC and the enterprise. He is also a member of the CCP.

- (90) Additionally, a member of the senior management personnel of Jiangsu Yoke Technology Co., Ltd., obtained the Wuxi Outstanding Communist Party Member award. He also serves as the vice chairman of the China Petroleum and Chemical Industry Federation's Flame Retardant Materials Professional Committee, an entity within the China Petroleum and Chemical Industry Federation, which in turn adheres to the CCP leadership ⁽⁷⁾. It is possible to list a number of examples of personal connections between the management of TCPP and TEP producers and the CCP including the presence of CCP members among the higher management of TCPP producers, including in Hubei Xingfa Chemical Group Co. Ltd., and Jiangsu Yoke Technology Co. Ltd.
- (91) Furthermore, with regard to raw materials used in the production of TCPP, China has aggressively developed its own propylene oxide production base. Among Chinese producers of propylene oxide, Sinochem is a SOE.
- (92) Also, the majority owner of Hangjin Technology Co., Ltd. is the Wuhan SASAC. Ningbo ZRCC Lyondell Chemical Co., Ltd. is a joint venture that receives investments from Sinopec. The majority shareholder in Wanhua Chemical Group Co., Ltd. is the Yantai SASAC. Wudi Xinyue Chemical Group Co., Ltd. is a subsidiary of the Lubei Enterprise Group, which is a SOE.
- (93) With regard to phosphorus oxychloride, a key raw material used both in the production of TEP as well as TCPP, Sinochem is one of the Chinese producers.
- (94) With respect to ethanol, another key raw material in the production of TEP, Chinese producers also have major state-presence: SDIC Biological Jilin Co., Ltd. is a part of China's state Development and Investment Corporation, a large state-owned investment holding, while 40 % of shares in Henan Tianguan Fuel Ethanol Co., Ltd. is controlled by Sinopec.
- (95) Moreover, the influence of the GOC over the economy extends beyond ownership since the non-public sectors are also considered a component of the socialist market economy.
- (96) Therefore, even privately-owned producers of certain alkyl phosphate esters are incentivised to align their activities with state policies laid out in the relevant plans, since conforming to the plans is more likely to result in favourable treatment by the government authorities, usually in terms of financial treatment or market access.
- (97) In conclusion, China's market of certain alkyl phosphate esters is served to a significant extent by enterprises subject to the ownership, control or policy supervision or guidance by the GOC.
- (98) The state presence in APE firms allows the state authorities to interfere with prices and/or costs. The GOC preserves its influence in SOEs through the appointment and removal of key management personnel, which is the main responsibility of SASAC. Both SOEs and private companies also host internal Party committees capable of exercising government and Party influence over the companies' corporate governance and business decisions.
- (99) CCP cells are in a position to gain significant influence even over privately owned firms, where they set the economic agenda, control all aspects of its implementation and exercise a growing pressure to have a final say over the business decisions. This means that business decisions, including those relating to costs and prices, are significantly influenced by the state's public policies and thus not subject to free market forces.

⁽⁷⁾ See Article 3 of the Federation's Articles of Association, available at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1>; see further concerning the Flame Retardant Materials Committee <http://www.cpcif.org.cn/detail/25e06677-2011-4e78-a5c9-008dd32dd365> (accessed on 8 March 2024).

- (100) This applies also to the industry of certain alkyl phosphate esters. For instance, several Hubei Xingfa Chemical Group Co. Ltd.'s senior managers are connected to the CCP. Such members include directors, including the Executive Deputy General Manager, and others. This confirms the importance of the CCP's influence inside the TCPP and TEP producing companies, even privately owned.
- (101) The GOC is also able to influence the costs and prices of TCPP and TEP through its presence and intervention in upstream raw materials and input sectors. For instance, senior managers of Sinochem Pharmaceutical Co., Ltd., a producer of propylene oxide and phosphorus oxychloride, are CCP members.
- (102) The President of Sinochem, and the Chairman of the Supervisory Board, are CCP members. Similar links to the Party can be found in Wanhua Chemical Group Co., Ltd.: for example, the Group's director served in several governmental positions for over 30 years, prior to joining the Group. Since 2018, he has also been the Party Committee secretary while serving as Chairman of the Board.
- (103) In this regard, through its intervention in the raw material prices, the Chinese state allows the industry of certain alkyl phosphate esters to enjoy abnormal costs, as the GOC is in a position to effectively control operational decision making in both SOEs and privately owned companies through the state's presence.
- (104) The GOC further interferes with respect to prices and costs of the energy. The Chinese electricity market is characterised by the presence of SOEs at various stages of the supply chain, since around 50 % of the generation capacity is state owned while the entire transmission grid is owned by two SOEs. The state's presence in the energy market and its influence in price setting therefore allows the GOC to significantly lower electricity costs to the benefit of TCPP and TEP producers.
- (105) The GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces. The development of the economy is determined by an elaborate planning system which sets out priorities and prescribes the goals that the central and local governments must focus on and strive to implement. The planning mechanism guides the allocation of resources, which is geared towards sectors designated as strategic or politically important, rather than being allocated according to market forces.
- (106) The central 14th Five-Year Plan ('FYP') lays out the strategic visions of the GOC for the transformation and upgrading of traditional industries and the development axis for strategic emerging industries, including the industries of chemicals, building materials, new materials, and chemical fibres. The 2019 version of Guidance Catalogue for the Industrial Structure Adjustment ⁽⁸⁾ provides for the support to the production of flame-retardant materials.
- (107) Consequently, TCPP and TEP products are subject to preferential treatment, especially in terms of access to financing. By thus incentivising the development and application of technologies for higher-performance and high-quality products, state authorities guide the restructuring of the certain alkyl phosphate ester industry into a globally competing industry. The whole structure of the sector is therefore imposed by the planning system and implementing decisions, rather than freely developing in line with the market forces.
- (108) Overall, with respect to flame retardants, the state interventions occur on two axes: (i) support for the development of the industry; and (ii) active control and regulation of the industry and its raw materials.
- (109) In regard to TCPP, the GOC provides numerous subsidies and financial support for the flame-retardant industry by way of public finance, taxation, credit, import and export, as well as land.

⁽⁸⁾ https://www.gov.cn/xinwen/2019-11/06/content_5449193.htm (last accessed on 23 February 2024).

- (110) For example, the Opinions on the Implementation of the 14th FYP on the Development of the Building Materials Industry notes that the GOC intends to '[i]mprove the intelligent level of production and operation' of building materials and '[b]roaden financing channels, give full play to the guiding role of national financial funds, coordinate the support of financial institutions'.
- (111) The GOC not only regulates the TCPP industry, but also its inputs. For instance, yellow phosphorus is an upstream raw material used in the production of phosphorus oxychloride, which is used as input to produce TCPP and TEP. In addition, there is an export restriction in place on export of yellow phosphorus taking the form of export licensing. According to the Export License Management Goods Catalogue (2023 version), the export of phosphate rock is subject to an export license issued by the Ministry of Commerce. The production and sales of this key input for certain alkyl phosphate esters are therefore actively controlled and regulated in China.
- (112) With respect to inputs of TEP, the GOC aims to vigorously support the production and commercialisation of such products. For instance, the GOC plans to develop the ethanol industry. The 14th FYP on Renewable Energy Development notes that the GOC continues to 'promote the commercialization of fuel ethanol [...]'. It also notes that it plans to 'actively develop cellulose and other non-food fuel ethanol'.
- (113) The industry, including TCPP and TEP, is supported as well as actively regulated by GOC through various policy instruments in a way that is discriminating in favour of domestic suppliers and influencing free market forces.
- (114) The lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws also exists in the APE sector in China. The Chinese bankruptcy system delivers inadequately on its main objectives such as to fairly settle claims and debts, and to protect the rights of creditors and debtors.
- (115) The system is characterised by the state's active role state in bankruptcies through, among others, the far-reaching discretion of state-dependent courts, the close relation between insolvency administrators and local governments, or the state guidance on insolvencies. Most importantly, the under-enforcement of bankruptcy laws impacts the Chinese financial and borrowing market, amounting to implicit state guarantees to some companies, which in turn distorts the costs of credits and access to finance.
- (116) Regarding property laws, the deficiencies of the system are particularly clear with regard to land ownership and land-use rights. All land is owned by the state and its allocation therefore depends exclusively on the state, which may follow political goals rather than free market principles.
- (117) The 13th FYP Plan on Land Resources controls the allocation and prices of land use and provides for preferential land supply to emerging strategic industries and modern service businesses. Since low prices for land allocation characterise the Chinese manufacturing sector overall, they also apply to the TCPP and the TEP industries.
- (118) Much like any other sector in the Chinese economy, certain alkyl phosphate esters' producers are subject to the Chinese bankruptcy, corporate and property rules, and are therefore also subject to the distortions resulting from the discriminatory application or inadequate enforcement of these law.
- (119) Wage costs are distorted in APE sector as well. A system of market-based wages cannot fully develop in China because workers and employers are impeded in their rights to collective organisation. In fact, only one trade union is legally recognised – the ACFTU – which lacks independence from the state since it is subject to the leadership of the CCP and does not adequately engage in collective bargaining and protection of workers' rights.

- (120) Moreover, senior positions in the trade union are typically occupied by senior Party figures in SOEs, hampering their ability to efficiently represent workers' interests. Furthermore, the mobility of the Chinese workforce is affected by the household registration system, which provides that only local residents of a given administrative area are granted access to the full range of social security and public welfare benefits.
- (121) These workers, who are not in possession of the local residence registration, find themselves in a vulnerable employment position and thus receive a lower income. The industry of certain alkyl phosphate esters is also subject to Chinese labour laws and thus to these distortions in wage costs.
- (122) Wage cost distortions are further enhanced by labour subsidies, in particular, to TCPP and TEP producers. Several companies reported such subsidies including training subsidies, employee trainee subsidies, enterprise job stabilisation subsidies, introducing talent funds, and skills upgrading subsidies ⁽⁹⁾.
- (123) APE companies have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state. Relevant distortions include a strong government presence in the financial institutions, as well as artificially low borrowing costs to stimulate investment growth.
- (124) First, the Chinese financial system, dominated by the banking sector, is characterised by the strong position of three categories of state-owned or controlled banks: large commercial banks, joint-stock commercial banks and state policy banks. It is controlled not only through ownership, but also by the GOC's power to appoint the top management positions, with strong decision-making powers.
- (125) Moreover, the Chinese legal framework provides for an explicit legal obligation of financial institutions 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.
- (126) Additionally, there are binding legislative provisions for all economic institutions on promotion and support of encouraged industries, with the flame-retardant industry explicitly listed as an encouraged industry.
- (127) As a result, when granting access to finance, other criteria than economic viability are taken into account, as banks implement public policies designed by the government.
- (128) The bond market is dominated by government-related actors and the non-governmental bond market is to a large extent dominated by SOEs. Access to the market is tightly regulated by governmental institutions, and the major players on the market (users, holders, underwriters of bonds) are mainly state-owned entities.
- (129) Bond and credit ratings are thus heavily distorted for various reasons, such as the influence of the firm's strategic importance on the risk assessment and the strength of any implicit guarantee by the government. The APE industry has benefited from the distortions on the bond market since high ratings had been granted to Chinese TCPP and TEP producers.
- (130) The existence of significant distortions in the Chinese financial system has already been established by the Commission in recent anti-dumping investigations and is further confirmed by the US Department of Commerce. Moreover, there is strong evidence demonstrating that Chinese producers of certain alkyl phosphate esters directly benefitted from preferential loans both from state-owned and private banks (several producers of the product concerned have reported receiving short-term and long-term loans from Chinese banks on non-market terms).

⁽⁹⁾ Zhejiang Wansheng Co. Ltd., 2021 Annual Report, page 362; Yangzhou Chenhua New Material Co., Ltd., 2021 Annual Report, pages 477-478; Hubei Xingfa Chemical Group Co. Ltd., 2021 Annual Report, pages 493 and 494.

- (131) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation (see recital 65). The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources.
- (132) That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

3.2.2. *Significant distortions affecting the domestic prices and costs in China*

- (133) 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'.
- (134) The state-owned economy is the 'leading force of the national economy' and the state has the mandate 'to ensure its consolidation and growth' ⁽¹⁰⁾. 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 emphasised as a general principle in all central pieces of legislation.
- (135) The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the state with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the state ownership ⁽¹¹⁾.
- (136) In addition, under Chinese law, the socialist market economy is developed under the leadership of the 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.
- (137) 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.
- (138) 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' ⁽¹²⁾. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China.
- (139) This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (140) 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 ⁽¹³⁾. 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.

⁽¹⁰⁾ Report – Chapter 2, p. 6-7.

⁽¹¹⁾ Report – Chapter 2, p. 10.

⁽¹²⁾ Available at: http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm (accessed on 22 January 2024).

⁽¹³⁾ Report – Chapter 2, p. 20-21.

- (141) 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.
- (142) 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.
- (143) 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.).
- (144) 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 ⁽¹⁴⁾.
- (145) Second, on the level of allocation of financial resources, the financial system of China is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project ⁽¹⁵⁾.
- (146) The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets, etc. Also, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximising the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the state and the CCP ⁽¹⁶⁾.
- (147) Third, on the level of regulatory environment, the interventions by the state into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies ⁽¹⁷⁾.
- (148) 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 ⁽¹⁸⁾.

⁽¹⁴⁾ Report – Chapter 3, p. 41, 73-74.

⁽¹⁵⁾ Report – Chapter 6, p. 120-121.

⁽¹⁶⁾ Report – Chapter 6, p. 122-135.

⁽¹⁷⁾ Report – Chapter 7, p. 167-168.

⁽¹⁸⁾ Report – Chapter 8, p. 169-170, 200-201.

- (149) 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 ⁽¹⁹⁾.
- 3.2.2.1. 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
- (150) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy. In the sector of the product concerned, the degree of state ownership remains significant, with a number of APE producers being fully or partially state-owned, such as: Shandong Yarong Chemical Co., Ltd. (previously known as Taian Yarong Biotechnology Co., Ltd. ⁽²⁰⁾); Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co. ⁽²¹⁾; Wengfu (Group) Co., Ltd. ⁽²²⁾; Zhejiang Wansheng Co., Ltd. ⁽²³⁾
- (151) Given that CCP interventions into operational decision making have become the norm also in private companies ⁽²⁴⁾, 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 China.
- (152) Similar level of control and policy supervision can be observed at the level of the relevant industry associations, such as the China Petrochemical and Chemical Industry Federation ('CPCIF') the sectoral industry association.
- (153) According to Article 3 of CPCIF's Articles of Association, the organisation 'accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management' ⁽²⁵⁾.
- (154) Also the China Chemical Enterprise Management Association ('CCEMA') which characterises itself as organisation comprising 'more than 200 member units of the association are backbone enterprises in the chemical industry' ⁽²⁶⁾ states in Article 2 of its Articles of Association that it 'abides by the Constitution, laws, regulations and national policies, practices the core values of socialism, promotes the spirit of patriotism, abides by social morality, and consciously strengthens the construction of integrity and self-discipline'.
- (155) Moreover, according to Article 3 of the Articles of Association, CCEMA 'establishes an organization of the Communist Party of China, carries out party activities, and provides necessary conditions for the activities of the party organization' and it – just like in the case of CPCIF – '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 the relevant administrative departments in charge of industry management' ⁽²⁷⁾.

⁽¹⁹⁾ Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-109.

⁽²⁰⁾ <http://www.tayrsw.com/index.php?c=category&id=7> (accessed on 22 January 2024).

⁽²¹⁾ <http://www.jsac.com.cn/> (accessed on 22 January 2024).

⁽²²⁾ <http://www.wengfu.com/%e9%9b%86%e5%9b%a2%e7%ae%80%e4%bb%8b-1> (accessed on 22 January 2024).

⁽²³⁾ <http://www.ws-chem.com/en/index.aspx> (accessed on 22 January 2024).

⁽²⁴⁾ Article 33 of the CCP Constitution, Article 19 of the Chinese Company Law or General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era (see below for full reference).

⁽²⁵⁾ <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (accessed on 29 January 2024).

⁽²⁶⁾ <http://www.ccema.org.cn/wzsy> (accessed on 29 January 2024).

⁽²⁷⁾ <http://www.ccema.org.cn/xhzc> (accessed on 29 January 2024).

- (156) Consequently, even privately owned producers in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.
- 3.2.2.2. 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
- (157) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through state presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant state authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽²⁸⁾, CCP cells in enterprises, state-owned and private alike, represent another important channel through which the state can interfere with business decisions.
- (158) According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽²⁹⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced.
- (159) However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle ⁽³⁰⁾, including exercising pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³¹⁾.
- (160) In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³²⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product concerned and the suppliers of their inputs.
- (161) In addition, on 15 September 2020 a document titled *General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era* (the Guidelines) ⁽³³⁾ was released, which further expanded the role of the party committees in private enterprises.
- (162) Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers'. The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities ⁽³⁴⁾.

⁽²⁸⁾ Report – Chapter 5, p. 100-101.

⁽²⁹⁾ Report – Chapter 2, p. 26.

⁽³⁰⁾ See for example: Blanchette, J. – Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*, Foreign Affairs, Vol. 100, No 4, July/August 2021, p. 10-19.

⁽³¹⁾ Report – Chapter 2, p. 31-32.

⁽³²⁾ Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 29 January 2024).

⁽³³⁾ *General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era*: www.gov.cn/zhengce/2020-09/15/content_5543685.htm (accessed on 29 January 2024).

⁽³⁴⁾ Financial Times (2020) – Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 29 January 2024).

- (163) The investigation confirmed that overlaps between managerial positions and CCP membership / Party functions exist also in the APE sector. To provide an example, in the company Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co. ⁽³⁵⁾ members of the company's management simultaneously hold CCP positions ⁽³⁶⁾.
- (164) The CCP interference into the business decisions is apparent also on the group level, as transpires from the available corporate filings. The 2022 annual report of the Sinopec Group points out that '[t]he company continuously improves the quality of party building work, boosting the spirit of the employees, strengthening discipline inspection and supervision work, helping the board of directors to effectively implement various decisions and arrangements, and promoting the high-quality development of the company' ⁽³⁷⁾.
- (165) Sinopec's website describes the role of the Party within the Group as follows: '[s]trengthen the leadership of the Party in the process of improving corporate governance, [...] promote the Party organization to decide upon the list of major issues regarding Party building and other aspects, and allow the Party organization to pre-research and discuss the list of major business and management issues simultaneously covered by the internal control management, to be embedded in the [...] list of decision-making matters, to develop a headquarter decision-making and information system fostering the establishment of a list of decision competences, the inclusion of this list in the decision making process and the informatization of this process. Take the pre-research and discussion of major business management issues as an important aspect of the Party group's full performance of leadership duties [...]' ⁽³⁸⁾.
- (166) The state's presence and intervention in the financial markets as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽³⁹⁾. Thus, the state presence in firms, in the APE and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.
- 3.2.2.3. 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
- (167) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government.
- (168) 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 ⁽⁴⁰⁾.
- (169) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.

⁽³⁵⁾ <http://www.jsac.com.cn/> (accessed on 29 January 2024).

⁽³⁶⁾ http://jscc.sinopec.com/jscc/about_us/teammanagement/ (accessed on 29 January 2024).

⁽³⁷⁾ <http://www.sinopec.com/listco/Resource/Pdf/2023032507.pdf>, p. 26 (accessed on 29 January 2024).

⁽³⁸⁾ <http://www.sinopecgroup.com/group/gwym/ddjs.shtml> http://jscc.sinopec.com/jscc/about_us/teammanagement/ (accessed on 29 January 2024).

⁽³⁹⁾ Report – Chapters 14.1 to 14.3.

⁽⁴⁰⁾ Report – Chapter 4, p. 41-42, 83.

- (170) To start with, the 14th FYP on Raw Materials ⁽⁴¹⁾ directly addresses the sector of the product concerned by stating that '[p]roduction capacity increase in urea, ammonium phosphate, calcium carbide, caustic soda and yellow phosphorus sectors will be strictly controlled. New projects shall follow the principle of replacing the same amount of existing production capacity or replacing more production capacity' ⁽⁴²⁾.
- (171) Moreover, the 2019 and 2024 Guiding Catalogues for Industry Structural Adjustment ⁽⁴³⁾ list flame retardants as an encouraged industry.
- (172) Furthermore, the 2023 MIIT Work plan for the steady growth of the chemical and petrochemical industry ⁽⁴⁴⁾ provides that one of its main objectives is to '[s]upport the national demonstration bases for the new industrialisation model in the petrochemical and chemical industry to improve the quality of development and promote the Ningbo Green Petrochemical Cluster and other national advanced manufacturing clusters in the petrochemical and chemical industry to move towards world-class clusters. Build an industrial base for efficient and high-value utilization of phosphorus resources, accelerate the structural adjustment of traditional industries such as phosphate fertilizer and yellow phosphorus, and enhance the supply capacity of phosphorus chemical products required for new energy, food, and health' ⁽⁴⁵⁾.
- (173) Moreover, the 2022 NDRC Guiding Opinion on the high-quality development of the chemical fibre industry ⁽⁴⁶⁾ aims to promote the high-end development of new fibre materials '[d]evelop new functional polyester, high-quality chemical monomers and super-simulators, flame retardants, as well as antibacterial and antiviral, conductive, phase changing and energy storing, temperature controlling, photochromic, liquid coloring, absorbing and separating, biomedical and other types of functional fibers. [...] Research and development of key materials and auxiliaries. Research and develop key materials, auxiliary materials, and additives such as flame retardants, modifiers, masterbatch, catalysts, and oils used for functional fibers' ⁽⁴⁷⁾.
- (174) On the province level, the Shandong 14th FYP on the development of chemical industry ⁽⁴⁸⁾ call on the local authorities to 'give full play to the production capacity advantages of caustic soda co-production of chlorine and hydrogen, accelerate the vertical extension and horizontal coupling expansion of the salt chemical industry, and improve the deep processing of chlor-alkali, soda ash and bromine, [...] guide the traditional chlor-alkali downstream industry to extend towards fine chemicals, and ensure the layout of sub-chloride Chlorine downstream deep processing projects' ⁽⁴⁹⁾. Section III.2.3 of the Plan plans for the following government action: 'Promote the replacement of chlor-alkali production capacity reduction and strictly control production capacity. [...] Encourage the comprehensive utilization of waste hydrochloric acid to produce chlorine and hydrogen' ⁽⁵⁰⁾.
- (175) Similarly, according to the Jiangsu 14th FYP on the high-end development of chemical industry ⁽⁵¹⁾: '[b]ased on the industrial foundation and advantages, the benefits of industrial concentration, land utilization rate and factor input and output shall be significantly improved, through adjustment and optimization [...] and the extension of the industry chain towards high end products will achieve high-quality development of the province's chlor-alkali industry' ⁽⁵²⁾.

⁽⁴¹⁾ 14th FYP on raw materials. Available at : https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (accessed on 29 January 2024).

⁽⁴²⁾ Ibid., Section IV.1.

⁽⁴³⁾ https://www.gov.cn/xinwen/2019-11/06/content_5449193.htm (accessed on 29 January 2024) and https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/t20231229_1362999.html (accessed on 29 January 2024).

⁽⁴⁴⁾ https://www.gov.cn/zhengce/zhengceku/202308/content_6900274.htm (accessed on 29 January 2024).

⁽⁴⁵⁾ Ibid.

⁽⁴⁶⁾ https://jxt.zj.gov.cn/art/2022/12/6/art_1229560971_2450348.html (accessed on 29 January 2024).

⁽⁴⁷⁾ Ibid. Column 1 Efficient and flexible fibre preparation and quality improvement.

⁽⁴⁸⁾ <https://huanbao.bjx.com.cn/news/20211201/1191133.shtml> (accessed on 29 January 2024).

⁽⁴⁹⁾ Ibid., Section III.1.3.

⁽⁵⁰⁾ Ibid., Section III.2.3.

⁽⁵¹⁾ http://gxt.jiangsu.gov.cn/art/2021/9/3/art_6197_10099378.html (accessed on 29 January 2024).

⁽⁵²⁾ Ibid., Section 5.2.6.1.

- (176) Furthermore, the government authorities are set to shape the sector's industrial layout as follows: '[i]n accordance with the national industrial policy requirements of strictly controlling the new production capacity in industries with overcapacities, and implementing equivalent or reduced replacement for advanced technological transformation and upgrading projects that meet the policy requirements, the total amount of production capacity of products such as caustic soda shall be controlled, and the overall scale shall remain at the current level. Through mergers and reorganizations, through elimination of obsolete equipment, through capacity replacement and horizontal alliances, implement government-guided and corporate voluntary operations based on investment attraction, and market orientation for capacity replacement index transactions, and guide production capacity, resources and markets towards powerful companies and integrate them. In the chlor-alkali industry, form leading backbone enterprises, optimize the industrial structure and resource allocation, and increase the concentration level' ⁽⁵³⁾.
- (177) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (178) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.
- 3.2.2.4. 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
- (179) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement.
- (180) The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the state in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵⁴⁾.
- (181) 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 ⁽⁵⁵⁾. All land is owned by the state (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the state. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁵⁶⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁵⁷⁾.

⁽⁵³⁾ Ibid., Section 5.2.6.1.1.

⁽⁵⁴⁾ Report – Chapter 6, p. 138-149.

⁽⁵⁵⁾ Report – Chapter 9, p. 216.

⁽⁵⁶⁾ Report – Chapter 9, p. 213-215.

⁽⁵⁷⁾ Report – Chapter 9, p. 209-211.

(182) Much like other sectors in the Chinese economy, the producers of the product concerned are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the APE sector. The present investigation revealed nothing that would call those findings into question.

(183) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

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

(184) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation, in particular those on freedom of association and on collective bargaining ⁽⁵⁸⁾.

(185) Under national law, only one trade union organisation is active. However, this organisation lacks independence from the state authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁵⁹⁾. 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.

(186) 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 ⁽⁶⁰⁾. Those findings lead to the distortion of wage costs in China.

(187) No evidence was submitted to the effect that the APE sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

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

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

(189) Firstly, the Chinese financial system is characterised by the strong position of state-owned banks ⁽⁶¹⁾, 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) ⁽⁶²⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the GOC.

⁽⁵⁸⁾ Report – Chapter 13, p. 332-337.

⁽⁵⁹⁾ Report – Chapter 13, p. 336.

⁽⁶⁰⁾ Report – Chapter 13, p. 337-341.

⁽⁶¹⁾ Report – Chapter 6, p. 114-117.

⁽⁶²⁾ Report – Chapter 6, p. 119.

- (190) 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 ⁽⁶³⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶⁴⁾.
- (191) 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.
- (192) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the state's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues ⁽⁶⁵⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries' ⁽⁶⁶⁾.
- (193) 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 ⁽⁶⁷⁾.
- (194) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶⁸⁾. 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.
- (195) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.

⁽⁶³⁾ Report – Chapter 6, p. 120.

⁽⁶⁴⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

⁽⁶⁵⁾ See official policy document of the China Banking and Insurance Regulatory Commission of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 29 January 2024). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management'.

⁽⁶⁶⁾ See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020: http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (accessed on 29 January 2024).

⁽⁶⁷⁾ 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.

⁽⁶⁸⁾ Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (196) Thirdly, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ⁽⁶⁹⁾. Official media in China have recently reported that the CCP called for 'guiding the loan market interest rate downwards' ⁽⁷⁰⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (197) Overall credit growth in the 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, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (198) In essence, despite the steps that have been taken to liberalise 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. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (199) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.3. *Systemic nature of the distortions described*

- (200) 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 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above and in Part II of the Report.
- (201) The Commission recalls that in order to produce the product concerned, certain inputs are needed. When the producers of the product concerned purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors. These distortions were described in detail above, in particular in recitals 167 to 199. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, APE producers being subject to those rules as any other economic operator in China. The distortions have therefore a direct bearing on the cost structure of the product concerned.
- (202) As a consequence, not only the domestic sales prices of the product concerned are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report.

⁽⁶⁹⁾ OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris, p. 29, available at: https://doi.org/10.1787/eco_surveys-chn-2019-en (accessed on 29 January 2024).

⁽⁷⁰⁾ http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm (accessed on 29 January 2024).

(203) 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 an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

(204) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.4. *Arguments from the interested parties*

(205) On 6 November 2023, CPCIF submitted a set of comments in reply to the First Note, including with respect to application of Article 2(6a) of the basic Regulation.

(206) First, CPCIF took the position that Article 2(6a) of the basic Regulation is inapplicable due to its incompatibility with the WTO agreements and the ruling of the WTO Dispute Settlement Body ('DSB'). As to incompatibility with WTO agreements, CPCIF argued that since some provisions of China's WTO Accession Protocol relevant for dumping calculation expired on 11 December 2016, the EU must respect its corresponding obligations under WTO law. As to incompatibility with DSB rulings, CPCIF submitted that in line with the Appellate Body's findings in DS 473, for the purpose of calculating the costs in order to obtain the normal value of the product concerned when the domestic price in the exporting country cannot be used, the investigating authorities are not allowed to evaluate the costs reported in the records kept by the exporter/producer pursuant to a benchmark unrelated to the costs of production in the country of origin.

(207) As to CPCIF arguments on compatibility with WTO law, the Commission recalled that in anti-dumping proceedings concerning products from China, the parts of Section 15 of China's Accession Protocol to the WTO that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs.

(208) As to CPCIF's reference to DS 473, the Commission recalled that the Report of Appellate Body in DS 473 did not concern the implementation of Article 2(6a) of the basic Regulation, but of a particular stipulation within Article 2(5) of the basic Regulation. Nevertheless, WTO law, as interpreted by the Appellate Body in DS 473, permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Therefore, CPCIF's arguments could not be accepted.

(209) Second, CPCIF submitted that the alleged distortions are not well evidenced and, even if they were to exist, did not affect all aspects of the production costs of alkyl phosphate esters, thus not the entirety of the costs of Chinese exporting producers need to be established on a different basis.

(210) In particular, CPCIF argued that:

- (a) the allegations in the complaint are general in nature and concern China's economy structure, rather than the APE market. They largely rely on the Report, which is dated 20 December 2017. The evidential value and the relevance of the alleged cross-cutting factors existing in China's economy that are deemed distortive according to the Report is questionable. In particular, the Report does not reveal any links to the Chinese APE industry;

- (b) the complainants did not provide adequate evidence indicating that the alkyl phosphate market is served 'to a significant extent' by companies which are under State control, nor did they specify what is the total number of Chinese TCP/TEP producers and the market share of the three or four companies allegedly controlled by the GOC. In this respect, CPCIF pointed out that many of the Chinese producers are publicly listed companies and privately owned. CPCIF emphasised that the fact that some of these publicly listed companies are partially owned by public trust funds or that the privately owned companies have personal connections with CCP cannot automatically lead to the conclusion of existence of distortions in the market;
 - (c) there is not sufficient evidence to support the complainants' allegations that the Chinese industry of alkyl phosphate esters enjoyed abnormal costs as a result of discriminatory State intervention in the upstream industry.
- (211) Concerning CPCIF's arguments on sufficiency of evidence to demonstrate the existence of significant distortions and the extent to which they affect production cost, the Commission recalled at the outset that according to Article 2(6a)(e) of the basic Regulation, if the Commission deems the evidence submitted by the complainants on the significant distortions sufficient, it can initiate the investigation on this basis.
- (212) In order to assess the existence and potential impact of the significant distortions, the Commission has, in line with Article 2(6a)(e) of the basic Regulation, collected the data necessary to determine the existence and impact of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation.
- (213) The data collected by the Commission and the resulting conclusions, whether on presence of state-owned companies in the sector of the product concerned, the links to the CCP or the existence of policies affecting the cost structure, are presented in detail in this Regulation. Therefore, CPCIF's arguments on the evidence in the complaint presenting allegation of questionable evidential value or on the Commission's conclusions being made automatically are misplaced.
- (214) On 22 November 2023, the exporting producer Anhui RunYue submitted a set of comments in reaction to the First Note, including on the application of Article 2(6a) of the basic Regulation.
- (215) First, Anhui RunYue argued that Article 2(6a) of the basic Regulation is not compatible with WTO law and DSB case law. Anhui RunYue argued that Article 2.2 of the WTO Anti-dumping Agreement ('ADA') does not recognise the concept of significant distortions, and even if the concept was to fall within the ambit of Article 2.2 ADA, the EU's calculation of the constructed normal value needs to be in conformity with Article 2.2.1.1 ADA and with the Appellate Body's interpretation thereof, as provided in DS 473.
- (216) With reference to the situations in which Article 2.2 ADA permits the construction of normal value, Anhui RunYue argued that an investigation according to Article 2(6a) of the basic Regulation would need to fall under the definition of either sales not in the 'ordinary course of trade' or a 'particular market situation'. Since the basic Regulation instead allows for the construction of normal value once it is established that it is not appropriate to use domestic prices and costs due to significant distortions, Anhui RunYue pointed out that the EU legislation introduces a concept that does not exist in the ADA.
- (217) Moreover, Anhui RunYue claimed that the use of data on factors of production in a representative third country results in a situation where the constructed normal value can in no way reflect the price and cost level in the exporting country and, consequently, is another inconsistency with WTO law.
- (218) Second, Anhui RunYue submitted that there is no sufficient evidence to prove the existence of significant distortion in the sector of the product under investigation.

(219) According to Anhui RunYue this is for the following reasons:

- (a) the complaint relies on the Report which is now quite dated, given the substantial developments which both the Chinese and EU economies have witnessed since its publication. Anhui RunYue therefore requested the Commission to provide updated and valid evidence concerning significant distortions before taking final decision concerning the market of the product concerned. In addition, Anhui RunYue pointed out that the EU has adopted EU-wide market measures which are similar to the Chinese measures criticised in the Report, including providing huge subsidies to EU industries to promote their adherence to new EU industrial policy objectives;
- (b) the 14th FYP to which the complaint refers is, according to Anhui RunYue not a binding regulation, it only represents a guideline suggested by the government to indicate the development directions and blueprint for the country and for certain industries. In addition, Anhui RunYue pointed out that the complainants omitted to mention certain aims or goals stated in the 14th FYP which appear to contradict the existence of significant distortions, such as the goal to 'give full play to the decisive role of the market in resource allocation' or the goal to 'create a market-oriented, legalized, and internationalized business environment, adhere to high-quality introduction and high-level globalization, promote efficient global allocation of factor resources, and strengthen upstream and downstream coordination of the industrial chain and coupled development between related industries'. Moreover, according to Anhui RunYue, since the EU's industrial policies also aim to promote essential sectors, the complainants' claim regarding Chinese principles and policy is hypocritical;
- (c) allegations regarding government intervention by reference to the nature of SOEs and/or to connections between the Party and companies manufacturing the product concerned are baseless, because not all the producers are SOEs and the connection with CCP is not an indication of the government's control over the operation of company. Anhui RunYue Ltd. referred in this context to Article 6 of the Chinese Law on State-owned Assets in Enterprises, as well as to Article 11 of the Chinese Company Law.

(220) Anhui RunYue's arguments could not be accepted. First, concerning the claim that the concept of significant distortions pursuant to Article 2(6a) of the basic Regulation does not correspond to any similar concept under Article 2.2 ADA, the Commission considers Article 2(6a) of the basic Regulation to be fully compliant with the relevant rules of the ADA, including the possibilities to construct normal value provided in Article 2.2 ADA.

(221) As to Anhui RunYue's reference to DS473 and the argument that the constructed normal value does not reflect the price and cost level in the exporting country, it was already addressed above in recital 208.

(222) Second, with regard to the claim on the outdated character of the evidence in the Report and on the need for the Commission to provide updated and valid evidence concerning significant distortions before taking final decision, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Chinese authorities, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources.

(223) The Commission further noted that legislation and policy documents referred to in the Report, including legislation applicable to the product concerned, remain largely in force or have been continued in subsequent legislative and policy documents.

- (224) Such more recent developments are documented in the Commission's findings, which further supplemented the information pointing to the existence of significant distortions contained in the Request and the Report (see recitals 69 and 132). As for Anhui RunYue's remarks regarding policies within the EU that are allegedly similar to China's FYPs, the Commission noted that according to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country.
- (225) The cost structure and price formation mechanisms in other markets, such as in the EU, do not bear any relevance whatsoever in the context of this proceeding.
- (226) Furthermore, as to the nature of the 14th FYP, the Commission pointed out, that the Chinese economy is covered by a complex web of FYPs, driving decisions by public authorities at all levels.
- (227) As to Anhui RunYue's argument concerning the nature of the Chinese policy documents, the Commission considers FYPs binding documents, not least since the 14th FYP dedicates, for example, a whole section to 'improving the planning implementation mechanism' ⁽⁷¹⁾ stating that: 'As regards the binding indicators, major engineering projects, and tasks in public services, environmental protection, safety, and other fields set out in this Plan, it is necessary to clarify the responsibilities parties and schedule requirements, to allocate public resources, guide and control social resources, and ensure completion as scheduled. As regards the expected indicators and tasks in the fields of industrial development and structural adjustment set out in this Plan, it is necessary to mainly rely on the role of market players to achieve them. Governments at all levels must create a favourable policy environment, institutional environment, and legal environment'.
- (228) As to the allegedly hypocritical position of the complainants, the Commission noted that pursuant to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country.
- (229) The industrial policies aiming to promote essential sectors in other markets, such as in the EU, are not relevant in the context of the present investigation.
- (230) In addition, concerning the argument that the allegations related to government intervention are baseless as not all the producers are SOEs and the connection with CCP is not an indication of the government's control, the Commission disagreed.
- (231) State ownership, as well as state control and policy supervision or guidance are largely present in the APE sector. Moreover, presence of CCP structures in companies of the APE sector and the fact that the companies facilitate party building activities and involvement thereof into their decision-making is a clear indicator that the said companies are not independent from the state and are liable to be acting in accordance with CCP policies rather than market forces.
- (232) The references by Anhui RunYue to Chinese legislation are misplaced here.
- (233) First, the reading of the Chinese Law on State-owned Assets in Enterprises by Anhui RunYue is selective. While the company emphasised the formal division between the administrative and shareholder roles of the State according to Article 6 of the Law, it chose to omit a reference to Article 1 which defines the overall purpose of the Law as, inter alia, 'supporting the leading role of the State-owned economic sector in the national economy and promoting the development of the socialist market economy'.

⁽⁷¹⁾ See the 14th FYP, Article LXV.

- (234) Anhui RunYue also failed to refer to Article 7 which mandates the State to encourage greater investment of State capital in key industries and areas important for the national economy, as well as to Article 36 according to which SOEs, when making investments, shall comply with the national industrial policies. When it comes to Article 11 of the Chinese Company Law, the Commission failed to see why the CCP would not be in a position to intervene in the operation of an enterprise, just because it was not involved in the preparation of the enterprise's articles of association.
- (235) In this respect, the Commission pointed in particular out that according to its Article 1, the Chinese Company Law was adopted, *inter alia*, to promote the development of the socialist market economy.

3.2.5. Conclusion

- (236) The analysis set out in this section, which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the sector of the product concerned showed that prices and costs of the product concerned, 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.
- (237) On that basis, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (238) 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.

3.2.6. Representative country

General remarks

- (239) 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 China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ⁽⁷²⁾,
 - production of the product under investigation in that country, and
 - availability of relevant public data in the representative country.
- (240) The Commission issued two notes for the file on the sources for the determination of the normal value: the First Note ⁽⁷³⁾ and the Second Note ⁽⁷⁴⁾ (FOP Notes).
- (241) These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources.

⁽⁷²⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

⁽⁷³⁾ 25 October 2023, t23.005004.

⁽⁷⁴⁾ 19 January 2024, t24.000844.

- (242) In the Second Note, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

A level of economic development similar to China

- (243) The product under investigation is only produced in China, the European Union, the United States of America, and Japan. None of these is a country with a level of economic development similar to China in accordance with the criteria set out in Article 2(6a).
- (244) The Commission therefore broadened its analysis in order to find a product in the same general category and/or sector of the product under investigation and on this basis to select a representative country.

A product in the same general category and/or sector

- (245) In both the First and Second Note, the Commission explained its method for finding a product in the same general category or sector that was produced in an upper middle-income country.
- (246) The Commission explained in the First Note that alkyl phosphate esters are organophosphate flame retardants ('OPFR') and therefore the analysis to find a representative country would start with finding production of OPFR, a product in the same general category as APE, as both TCPP and TEP are OPFRs.
- (247) The First Note stated that production of OPFR was found in both the Russian Federation and Türkiye. The Russian Federation was not further considered as a possible representative country due to lack of reliable import data.
- (248) As explained below, no readily available financial data for producers of OPFR in Türkiye could be found.
- (249) The Commission then explained in the First Note that plasticisers could be considered as a sufficiently similar product to alkyl phosphate esters for the following reasons:
- APE, OPFR and plasticisers belong to the same family of chemicals, namely esters,
 - APE, OPFR and plasticisers are all added to polymers to modify their rheology or other properties,
 - the basic production process of all three is the same,
 - APE, OPFR and plasticisers only use liquid raw materials, and the end product is in liquid form. They require similar infrastructure and processes for production, as well as handling and storage of the raw materials and end product.
- (250) Production of plasticisers was found in Brazil, and publicly available financial data was also found for a profitable producer. The Commission found no evidence of the production of plasticisers in another upper-middle income country.
- (251) The Commission invited comments on the reasoning used to find a representative country in the First Note.
- (252) No interested party was able to identify another chemical that could be considered as a product in the same general category as APE.

- (253) CPCIF did not agree that plasticisers were in fact sufficiently similar products and agreed with the Commission that OPFR should be used as a more similar product. However, CPCIF agreed that there was no readily available data related to OPFR from Türkiye or any other upper-middle income country.
- (254) CPCIF stated that plasticisers were just one chemical in a larger family and that many other esters or chemicals meet the same criteria set out in the First Note.
- (255) The Commission summarised and responded to these comments in the Second Note and concluded that plasticisers are the more similar product to APE, and OPFR in general, than other esters which do not share those properties with APE.
- (256) The Second Note came to this conclusion for the following reasons:
- the similarity of chemical and physical characteristics between APE and plasticisers,
 - the effect that both have on the materials they are added to, and
 - that plasticising properties are common in the chemicals of the alkyl phosphate group.
- (257) The Commission therefore intends to consider Brazil as representative country based on their production of plasticisers.

Availability of relevant public data in the representative country

- (258) The Commission noted that although Türkiye could be considered as a representative country, based on the production of OPFR, both the First and Second Notes set out problems with both publicly available import data and readily available financial data.
- (259) Import data from Türkiye was not considered reliable because of the small quantities of imports of the main raw materials, in particular negligible quantities of propylene oxide and phosphorus.
- (260) The Commission and interested parties were also unable to find any readily available financial data from companies in Türkiye producing a similar product, neither OPFR or plasticisers.
- (261) As explained above Brazil could be used as an appropriate representative country, based on the production of plasticisers and given the fact that the imports of the main factors of production were not materially affected by imports from China or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council ⁽⁷³⁾.
- (262) The Commission was also able to find one company in Brazil producing plasticisers with publicly available financial data showing an undistorted and reasonable amount of SG&A and profit under Article 2(6a)(a) of the basic Regulation.
- (263) The Commission therefore informed the interested parties in the Second Note that it intended to use Brazil as an appropriate representative country in accordance with Article 2(6a)(a), first indent of the basic Regulation to source undistorted prices or benchmarks for the calculation of normal value.
- (264) Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of Elekeiroz SA as a company in the representative country. No comments were received on this point.

⁽⁷³⁾ 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) as amended by Commission Delegated Regulation (EU) 2017/749 of 24 February 2017 (OJ L 113, 29.4.2017, p. 11). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

Level of social and environmental protection

- (265) Having established that Brazil was the only available appropriate representative country, based on all 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.

Conclusion

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

3.2.7. Sources used to establish undistorted costs and benchmarks

- (267) In the First Note, the Commission listed the factors of production such as raw materials, energy and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.
- (268) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use the Global Trade Atlas ('GTA') to establish the undistorted cost of most of the factors of production, notably propylene oxide, ethanol, phosphorus, and chlorine.
- (269) The Commission also noted that one of the sampled exporting producers purchased phosphorus oxychloride (a semi-finished product used both in the production of TCPP and TEP) rather than manufacturing it from chlorine and phosphorus.
- (270) As phosphorus oxychloride was traded worldwide in very limited quantities due to its hazardous nature, the Commission announced in the Second Note that it would determine its benchmark by:
- using the verified consumption ratios of each factor of production (chlorine, phosphorus, labour, and energy) used by the Chinese exporters who manufacture phosphorus oxychloride from chlorine and phosphorus,
 - and calculating the price of phosphorus oxychloride by replacing the cost of these factors of production with the undistorted prices from Brazil.
- (271) In addition, the Commission stated that it would use the statistics provided by the Instituto Brasileiro de Geografia e Estatística ('IBGE') ⁽⁷⁶⁾ for establishing undistorted costs of labour in Brazil and the prices published by the Ministério de Minas e Energia ⁽⁷⁷⁾ for electricity and steam (based on natural gas).
- (272) In the Second Note, the Commission also informed the interested parties that due to the negligible weight of some of the raw materials in the total cost of production, these negligible items, representing less than 0,6 % of the total cost of production reported by the sampled exporting producers, were grouped under 'consumables'.
- (273) The Commission also stated that it would calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks from the appropriate representative country.

⁽⁷⁶⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=resultados> (last viewed on 13 February 2024), ref. t24.001909.

⁽⁷⁷⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles> (last viewed on 16 February 2024).

3.2.7.1. Factors of production

- (274) Considering all the information submitted by the interested parties and collected 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:

Table 1

Factors of production

Factor of production	Commodity code ⁽⁷⁸⁾	Undistorted value	Source of the data
Raw materials			
Propylene Oxide	2910 20 00	15 373 CNY/t	GTA
Ethanol	2207 10 10	6 012 CNY/t ⁽⁷⁹⁾	GTA
Phosphorus	2804 70 10	31 772 CNY/t	GTA
Chlorine	2801 10 00	1 086 CNY/t	GTA
Labour			
Labour	N/A	68,64 CNY/h	Instituto Brasileiro de Geografia e Estatística
Energy			
Electricity	N/A	0,84 CNY/kWh	Ministério de Minas e Energia
Natural gas	N/A	18,14 US/MMBtu	Ministério de Minas e Energia
Steam	N/A	351,34 CNY/t	Ministério de Minas e Energia (Calculation based on the cost of gas)

3.2.7.2. Raw materials

- (275) To establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in GTA to which import duties and transport costs were added, as explained in recitals 280 and 281.
- (276) The import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755.
- (277) The Commission decided to exclude imports from China into Brazil as it concluded in recital 61 that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation.
- (278) 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 China into the representative country, the volume of imports from other third countries remained representative.

⁽⁷⁸⁾ Nomenclatura Comum do Mercosul (NCM).

⁽⁷⁹⁾ GTA imports are reported in litres. The conversion into tonnes (t) was based on the density of alcohol being 789 kg/m³ at 20 degrees centigrade and standard atmospheric pressure.

- (279) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in recital 272.
- (280) In order to establish the undistorted price of raw materials, as provided by Article 2(6a)(a), first indent of the basic Regulation, the Commission applied the relevant import duties of the representative country.
- (281) The Commission expressed the transport cost incurred by the cooperating exporting producer 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.
- (282) The Commission considered that, in the context of this investigation, the ratio between the exporting producers' 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 in the representative country.
- (283) In response to the Second Note, Shandong Yarong requested the Commission to make an adjustment to the import price of propylene oxide into Brazil, on the grounds that the packaging costs of imports into Brazil may not be the same as those on the Chinese domestic market.
- (284) Given the lack of evidence for this request, and the lack of any information that would allow the Commission to make such an adjustment, this claim was rejected.
- (285) In its comments to both the First and Second Note, Anhui RunYue claimed that GTA import prices for the raw materials were established at CIF level and therefore contained ocean freight costs and insurance fees while Chinese producers purchased raw materials from the local market at prices which did not include any ocean freight costs and insurance fees.
- (286) Therefore, in the company's view, ocean freight costs and insurance fees should be deducted from the GTA process for Brazil to ensure fair comparison.
- (287) The Commission noted that it used consistently in its previous anti-dumping investigations CIF prices available in the trade statistics to establish a purchase price of the inputs available on the domestic market of the representative country.
- (288) The Commission considered that this price was in direct competition with the domestic prices in the representative country and therefore could be used as an appropriate benchmark for the purpose of the investigation. On this basis, the claim was rejected.

- (289) Anhui RunYue, the only exporting producer buying phosphorus oxychloride, also requested the Commission to disclose more information on the method for calculating the benchmark for this factor of production. The Commission disclosed this benchmark calculation to Anhui RunYue at the time of pre-disclosure.

3.2.7.3. Labour

- (290) The Commission used the statistics published by the Instituto Brasileiro de Geografia e Estatística ('IBGE')⁽⁸⁰⁾ to establish the benchmark for labour in Brazil. The IBGE statistics provided detailed information on wages, related social charges, and number of employees in the manufacturing sector for 2021. This data was provided on an annual basis.
- (291) The Commission used data for labour costs (limited to staff linked to production) for the economic activity 'Manufacture of chemicals and chemical products' according to the NACE Rev.2 classification⁽⁸¹⁾.
- (292) Values were indexed to the investigation period using the National Consumer price index (Índice Nacional de Preços ao Consumidor, 'INPC') published by the IBGE⁽⁸²⁾.
- (293) Information on worked hours in Brazil was not available in the IBGE statistics, and so to calculate the benchmark the Commission used information on hours per week worked in Brazil as provided by the ILO⁽⁸³⁾.
- (294) Consequently, the Commission calculated the labour cost per hour in Brazil by dividing the annual labour cost as per IBGE statistics by the annual hours worked.
- (295) As set out below in recital 331 in the calculation of normal value, the labour cost per hour in Brazil was then multiplied by the number of worked hours as reported by the cooperating Chinese exporting producers.
- (296) Following the Second Note, CPCIF, Anhui RunYue, and Shandong Yarong commented on the source used to establish undistorted costs for labour.
- (297) CPCIF argued that the statistical method (enterprise survey) and the type of data (survey data) used by IBGE made the quality of the statistics dependant on the willingness of the companies to respond to the survey, which, in the absence of details about the companies in the survey, rendered the representativeness of the data for the relevant industry sector questionable.
- (298) The Commission noted that IBGE was an entity run by the federal administration, under the Ministry of Economy and the main provider of data and information about the country. It therefore considered that the data collected, and the methods used by the entity were sufficiently reliable and serving as a primary source of statistical data in Brazil. The availability of the details about the companies participating in a particular survey were not considered necessary to confirm the reliability of such institution, the statistical methods used, and the data collected by it. The claim was therefore rejected.
- (299) CPCIF also submitted that the labour cost calculated by the Commission was inflated by a number of factors, namely a too high percentage of social charges, the inclusion of non-mandatory costs and double counting of other costs. Moreover, it contested that the count of employees was done at year end, and this excluded the personnel laid off over the year, whereas its severance pay was included, leading to the salary per employee to be inflated.

⁽⁸⁰⁾ <https://www.ibge.gov.br/estatisticas/economicas/industria/9042-pesquisa-industrial-anual.html?=&t=destaques> (last viewed on 13 February 2024), ref. t24.001909.

⁽⁸¹⁾ <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF> NACE Rev. 2 is the classification of economic activities corresponding to ISIC Rev. 4 (International Standard Industrial Classification of All Economic Activities) at European level.

⁽⁸²⁾ <https://www.ibge.gov.br/en/statistics/economic/prices-and-costs/17136-national-consumer-price-index.html?edicao=36055&t=downloads> (last viewed on 15 February 2024), ref. t24.001978.

⁽⁸³⁾ <https://ilostat.ilo.org/topics/working-time/> (last viewed on 15 February 2024).

- (300) First, the Commission applied to the wages of the staff linked to production a percentage of social charges and other labour benefits calculated as a ratio of the total charges over the total wages. In CPCIF's view, the Commission should adjust this percentage since the costs of the staff not linked to production was expected to weigh more, due to expected higher remuneration level. However, CPCIF did not corroborate this with any evidence nor suggested any possible method to make the adjustment.
- (301) Second, IBGE included in its statistics detailed labour costs, including not only statutory social adjustments but also non-mandatory costs charged to employers; as these were integral parts of the labour costs, and pertinent for the calculation of the average labour cost, there was no reason to exclude them. In addition, CPCIF did not provide any convincing evidence that some costs were double counted in the statistics.
- (302) Finally, the Commission noted that the number of staff linked to production remained stable in 2021, showing a very limited increase of 2 %; therefore, it considered that the year-end count was a reliable proxy for the average number of employees in production over the year.
- (303) The claims were therefore rejected.
- (304) Anhui RunYue claimed that labour costs were influenced by several factors and varied significantly between various upper-middle income countries. Therefore, it requested that the Commission consider that their labour costs were not distorted and should not be replaced.
- (305) The Commission noted that once the existence of significant distortions affecting the product under investigation was established in accordance with Article 2(6a)(b) of the basic Regulation, it was prevented from using the actual costs of individual exporting producers, unless they were positively established not to be distorted on the basis of accurate and appropriate evidence. This was not the case and, as a result, the relevant costs were found distorted and the claim was rejected.
- (306) Both CPCIF and Anhui RunYue requested the Commission to not use the consumer price index (INCP) to adjust the IBGE data. CPCIF submitted that it was not appropriate to use this index when the purchasing power of employees was reduced because of high inflation and suggested using the average wage per quarter in Brazil published by IBGE. In Anhui RunYue's view, there was no exact positive correlation between the national consumer price index and the wage level as they were influenced by different factors. However, neither CPCIF nor Anhui RunYue substantiated their claim with evidence.
- (307) The Commission also noted that the INCP was widely used in Brazil in wage negotiations, as it measured the price change for those who were in the salary bracket up to 5 minimum wages ⁽⁸⁴⁾. Therefore, the Commission considered that it was an appropriate index to measure wage inflation. The claim was dismissed.
- (308) Shandong Yarong criticised the Commission for using two different sources to determine the labour cost per hour in Brazil, namely IBGE as the source of wages and social charges, and ILO data for the number of hours worked in Brazil per month.
- (309) Shandong Yarong contended that the Commission should use only ILO data, rather than combining two different sources, or, alternatively, use the actual worked hours of the Chinese exporting producers.
- (310) Given that the IBGE does not publish their calculations on the number of hours worked in Brazil per month, the Commission was unable to take both costs and worked hours from the same source, and such restrictions were unnecessary. Shandong Yarong also did not give any reason why either data source would not be reliable.

⁽⁸⁴⁾ <https://www.bcb.gov.br/controleinflacao/indicepreco> and <https://www.bcb.gov.br/conteudo/home-en/FAQs/FAQ%202-Price%20Indices.pdf> (last viewed on 18 February 2024), ref. t24.001914.

- (311) Moreover, the Commission observed that ILO did not provide the same level of detail of IBGE as it aggregated data for the whole manufacturing sector, regardless of the size and the sub-group of activity of the companies, and therefore it considered IBGE a more reliable source of data to establish an undistorted labour cost.
- (312) In addition, the Commission considered that it would be methodologically flawed to determine the benchmark for labour cost in one country, in this case Brazil, using the number of hours worked in a different country; labour cost statistics should reflect the volume of labour input, i.e. the number of hours actually worked, and the corresponding costs for the employer for this volume of labour input.
- (313) The claims were therefore dismissed.

3.2.7.4. Electricity

- (314) The price of electricity for industrial users in Brazil is published by the Ministry of Mines and Energy (Ministério de Minas e Energia). The Commission used the average prices published in the 'Brazilian monthly energy bulletin' for the investigation period.
- (315) CPCIF claimed that the bulletin was not an adequate source since, according to the same Brazilian Ministry of Mines and Energy, it allowed only for 'a reasonable estimate of the monthly and accumulated behaviour of total energy demand in Brazil'. CPCIF requested the Commission to use data from a different publication ⁽⁸⁵⁾ of the Ministry of Mines and Energy that had been used in previous cases.
- (316) The Commission rejected this claim. The Ministry of Mines and Energy collected the data for all its publications on electricity from the same source, the Agência Nacional de Energia Elétrica (ANEEL) ⁽⁸⁶⁾ and therefore the monthly bulletin had the same level of reliability of other publications.
- (317) CPCIF also suggested that the Ministry of Mines and Energy Monthly Bulletin prices could include taxes and VAT and that, if this was the case, this should be removed.
- (318) The Commission researched this issue and concluded that there was no VAT levied on energy in Brazil. However, the rates published in the monthly bulletin included the 'Imposto sobre Circulação de Mercadorias e Serviços' ('ICMS'), a tax levied by the Brazilian states on the circulation of goods and the provision of interstate and inter-municipal transportation and communications services. This tax could be claimed back by the industrial users and was therefore not effectively paid. As ICMS was collected by most states at the rate of 17 % to 18 % during the investigation period, the Commission recalculated the electricity benchmark, deducting an average of 17,5 % from the rates published.

3.2.7.5. Steam

- (319) In the Second Note, the Commission indicated that it intended to calculate the price of steam in Brazil using the methodology suggested by the U.S. Department for Energy ⁽⁸⁷⁾. This methodology provides a cost for steam based on the heat input required to produce it. To this end, the Commission used natural gas as heat input and used the price of gas for industrial users in Brazil as published by the Ministry of Mines and Energy of Brazil ⁽⁸⁸⁾ covering the investigation period.
- (320) CPCIF suggested that, since Brazil had vast reserves of coal, steam would be more likely made from the combustion of steam coal, rather than natural gas, and that the Commission's methodology should reflect this suggestion.

⁽⁸⁵⁾ <https://antigo.mme.gov.br/web/guest/secretarias/energia-eletrica/publicacoes/informativo-tarifario-de-energia-eletrica> (last viewed on 16 February 2024).

⁽⁸⁶⁾ <https://www.gov.br/aneel/pt-br> (last viewed on 18 February 2024).

⁽⁸⁷⁾ Benchmark the Fuel Cost of Steam Generation, Energy Tips: STEAM, Steam Tip Sheet #15 (Fact Sheet), Advanced Manufacturing Office (AMO), Energy Efficiency & Renewable Energy (EERE) (last viewed on 16 February 2024), ref. t24.001912. The methodology refers to the cost of saturated steam for typical values of operating pressure and feedwater temperature. In the application of the methodology, an average of these typical values was used.

⁽⁸⁸⁾ <https://www.gov.br/mme/pt-br/assuntos/secretarias/sntep/publicacoes/boletins-mensais-de-energia/2023-1/ingles> (last viewed on 16 February 2024).

- (321) CPCIF did not provide any evidence that steam coal was a more appropriate input to generate steam in Brazil and more specifically in the chemical sector. On the contrary, the Brazilian Energy Balance ⁽⁸⁹⁾ published by the Empresa de Pesquisa Energética ('EPE'), the research office of the Ministry of Mines and Energy, showed that natural gas had a much higher share than steam coal in the energy mix used in the chemical sector, with natural gas representing 31 % of the energy consumption against 2,2 % of the steam coal. The claim was therefore dismissed.
- (322) As for electricity, CPCIF claimed that the Commission should use the price of gas net of taxes, as the price published in the bulletin included taxes. The Commission considered that the claim was founded and that ICMS was levied also on gas, but then could be claimed back by the industrial users and was not effectively paid. Therefore, the Commission recalculated the price for gas deducting the 17,5 % related to ICMS.

3.2.7.6. Manufacturing overhead costs, SG&A and profits

- (323) 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 above.
- (324) 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. The percentage was applied to the undistorted costs of manufacturing.
- (325) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial data for 2022 for Elekeiroz SA as published on their website ⁽⁹⁰⁾.
- (326) CPCIF noted that these accounts for 2022 split the company results into organic and inorganic chemical sales. CPCIF contended that the use of the financial data related to the organic business segment would better reflect the SG&A and profit of a producer of APE.
- (327) As APE is an organic compound, the Commission considered CPCIF's claim founded and therefore took into account only the data related to the organic business segment when calculating SG&A and profit.
- (328) Shandong Yarong requested the Commission to limit the profit of the company Elekeiroz SA to the target profit of the Union industry as set out in the complaint.
- (329) Given that this suggestion would in fact make the use of the accounts of Elekeiroz redundant and would not reflect the profits made by this company, this claim to reduce the profit was rejected.

3.2.8. Calculation

- (330) Based on 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.
- (331) 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 cooperating exporting producer. These consumption rates provided by the sampled exporting producers were verified during the verification. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country.

⁽⁸⁹⁾ <https://www.epe.gov.br/sites-pt/publicacoes-dados-abertos/publicacoes/PublicacoesArquivos/publicacao-748/topico-687/BEN2023.pdf> Table 3.7.5.b, p. 90 (last viewed on 21 February 2024), ref. t24.001911.

⁽⁹⁰⁾ <https://www.elekeiroz.com.br/wp-content/uploads/2023/04/Balanco-Publicacao-2022.pdf> (last viewed on 13 February 2024), ref. t24.001982.

(332) Once the undistorted manufacturing cost was established, the Commission applied the manufacturing overheads, as described in recital 324.

(333) The Commission then added SG&A of 8,49 % and profit of 8,39 % of Elekeiroz SA, as explained in recital 325, both expressed as a percentage of the costs of goods sold ('COGS').

3.3. Export price

(334) The sampled exporting producers exported to the Union either directly to independent customers or through related companies.

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

(336) For one sampled exporting producer, a small quantity of exports to the Union were made via a related trader in a third country. In this case the export price was the price at which the product was first resold to an independent buyer in the Union.

3.4. Comparison

(337) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis. Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability.

(338) In accordance with Article 2(10) of the basic Regulation, adjustments were made for transport, insurance, handling, loading costs, customs duty, credit costs, bank charges and commissions.

(339) For the exporting producer Nantong Jiangshan, an adjustment under Article 2(10)(i) was made for sales through a related trading company based in Singapore to ensure price comparability.

(340) The Commission established that the related company based in Singapore carried out functions comparable to those of an agent working on a commission basis. This finding was based on the following 'consistent indicia' ⁽⁹¹⁾:

(341) The trader, which is established in a different country, performed essential sales-related functions such as finding customers, conducting sales negotiations, signing contracts, arranging shipments and preparing documents for customs clearance according to the customer's requirements. Those functions were performed in relation to all export sales to the Union in which the trader was involved. Those sales constituted a minor portion of all export sales to the Union by Nantong Jiangshan during the investigation period.

(342) Finally, the contract between Nantong Jiangshan and the related trader contains clauses that confirm the independence of the trader in its economic activities and the 'lack of solidarity' between the trader and Nantong Jiangshan.

(343) The functions of this trader were those of an agent working on a commission basis and therefore an adjustment under Article 2(10)(i) was justified. The adjustment consisted of the deduction of the SG&A of the trading company and a notional amount of profit, which would normally be taken from cooperating unrelated importers.

⁽⁹¹⁾ An indication, sign, token. Chiefly in plural.

- (344) Since the profit of the cooperating unrelated importer ⁽⁹²⁾ could not be disclosed, the Commission decided to resort to the profit margin used in a most recent investigation concerning a chemical product, namely a profit margin of 6,89 % of an unrelated importer established in the polyvinyl alcohols ('PVA') investigation ⁽⁹³⁾. Such a profit margin was considered appropriate in view of the information available.

3.5. Dumping margins

- (345) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

- (346) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Anhui RunYue Technology Co., Ltd.	45,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %

- (347) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.

- (348) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 59,1 %.

- (349) For all other exporting producers in China, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers.

- (350) The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat statistics.

- (351) The level of cooperation in this case is high because the exports of the cooperating exporting producers constituted more than 80 % of the total imports during the investigation period. On this basis, the Commission considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.

⁽⁹²⁾ Two unrelated importers provided a sampling reply, but only one provided a questionnaire reply.

⁽⁹³⁾ Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2020/1336/oj).

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

Company	Provisional dumping margin
Anhui RunYue Technology Co., Ltd.	45,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %
Other cooperating companies not sampled in Annex	59,1 %
All other companies	68,4 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (353) The like product was manufactured by three producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (354) The total Union production during the investigation period was established at around 18 274 tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as the replies to the anti-dumping questionnaires by all three Union producers. As indicated in recital 10, the three investigated Union producers represented the total Union production of the like product.

4.2. Determination of the relevant Union market

- (355) To establish whether the Union industry suffered injury and to determine consumption and the various economic indicators related to the situation of the Union industry, the Commission examined whether and to what extent the subsequent use of the Union industry's production of the like product had to be taken into account in the analysis.
- (356) The Commission found that a small part of the total Union producers' production was destined for the captive market. Only one of the Union producers had sold or used the product captively and due to the business confidential nature of this data, the exact volumes cannot be disclosed in this Regulation. The captive market was stable and below 2 % of total Union consumption.
- (357) The Commission examined certain economic indicators relating to the Union industry on the basis of data of sales on the free market. These indicators are: sales volume and sales prices on the Union market; market share; growth; export volume and prices; profitability; return on investment; and cash flow.
- (358) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use and captive sales of the Union industry. These are: production; capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital. They depend on the whole activity, whether the production is captive or sold on the free market.
- (359) Given that only a small part of the Union producers' production was destined for the captive market, the investigation found no meaningful difference between the economic indicators whether examined referring to the whole activity or on the basis of data for the free market.

4.3. Union consumption

- (360) The imports of the product concerned fall into different TARIC codes and one of the codes include also other products than the product concerned. Therefore, it was necessary to establish the imports on the basis of Eurostat

statistics in combination with specific data on the product concerned from a market intelligence provider (ThinkReal ⁽⁹⁴⁾). As the market intelligence is only available upon subscription, the Commission received an agreement to disclose this data only in ranges and/or indexed.

- (361) Before 2020, TCCP was classified under TARIC code 2919900090 which covers a broader range of products than TCPP. Since 2020, TCPP is classified under code 3824999238 and this code does not include other products. However, imports of TCPP continued to be reported under the basket code 2919900090. In order to establish the volume of imports of TCPP, the Commission used the market intelligence data of ThinkReal which contains Chinese export volumes of only TCPP. The Commission used Eurostat data combined with ThinkReal to establish the price of TCPP during the period considered. As regards TEP imports, the Commission relied on Eurostat statistics reported under TARIC code 2919900050 since this code covers only the product concerned.
- (362) The Commission informed the interested parties of the above methodology which it intended to use to establish the imports by publishing a note on 15 November 2023 ⁽⁹⁵⁾. In that note, the Commission described the methodology in detail and invited comments from interested parties on the methodology and the established import volumes and values. The CPCIF, one importer of the product concerned, Prochema, and one user, Kingspan, submitted comments to this note.
- (363) Kingspan stated that, to the best of its knowledge, there is no production of TEP outside of China and that the volumes of imports of TEP from third countries are most likely of Chinese origin.
- (364) Prochema brought forward information on Chinese exports collected by its Chinese partners. Prochema also reiterated its earlier arguments against imposition of measures which are addressed further in Chapter 7.2 of this Regulation.
- (365) None of the comments mentioned in recitals 362 to 364 above addressed or contested the methodology described in the Commission's note on import statistics nor the import volumes and values established therein.
- (366) Therefore, at this stage, the Commission applies the methodology described in the note of 15 November 2023.
- (367) The Commission established the Union consumption on the basis of (a) the free market sales ⁽⁹⁶⁾ on the Union market of all known producers in the Union; and (b) the import into the Union from all third countries as reported by Eurostat in combination with data from the market intelligence provider as set out in recital 360, thereby also considering the data submitted by the cooperating exporting producers in the country concerned. On this basis the Union consumption developed as follows during the period considered:

Table 2

Union consumption (in tonnes)

	2019	2020	2021	2022	Investigation period
Total Union consumption (free market)	90 000 – 99 000	78 000 – 86 000	78 000 – 84 000	76 000 – 87 000	71 000 – 81 000
Index	100	91	86	89	79

Source: Union producers, Eurostat and ThinkReal.

⁽⁹⁴⁾ <http://www.think-real.com/> data available upon subscription.

⁽⁹⁵⁾ The Note can be found in the file for interested parties under save number t23.005616.

⁽⁹⁶⁾ There is a small captive market which represents below 2 % of the total Union consumption. Given its negligible size, no separate analysis of the captive market was done (see recitals 356 to 359 above).

- (368) The total Union consumption of the product under investigation first decreased between 2019 and 2021. This decrease coincided with a slowdown of economic activity due to lockdowns and reduced international trade flows during the COVID-19 crisis. The consumption increased slightly in 2022 but it did not reach the level of 2019 and it further decreased in the investigation period in connection with the slowdown of activity in the construction sector. Overall, during the period considered, the consumption of the product concerned decreased by 21 %.

4.4. Imports from the country concerned

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

- (369) The Commission established the volume of imports on the basis of Eurostat and ThinkReal data. The market share of the Chinese imports was established by comparing import volumes with the Union free market consumption as reported in Table 2 above.

- (370) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (in tonnes) and market share

	2019	2020	2021	2022	Investigation period
Volume of imports from the country concerned in tonnes	53 000 – 62 000	40 000 – 48 000	41 000 – 47 000	57 000 – 68 000	56 000 – 66 000
Index	100	83	73	114	105
Market share on the free market	60 %	55 %	51 %	77 %	80 %

Source: Eurostat and ThinkReal.

- (371) The volume of imports from China represented 60 % of the Union consumption in 2019. During 2020 and 2021, the volume of imports from China decreased in connection with logistic constraints and the slowdown of international trade flows resulting from the COVID-19 crisis.
- (372) After 2021, following the easing of the logistic constraints, the import volume from China increased rapidly. The most significant increase was registered between 2021 and 2022, with a year-on-year increase of 56 %. The Chinese import volume remained on a high level also in the investigation period, despite the decrease of the Union consumption.
- (373) As a result, the market share of Chinese imports increased from 60 % to 80 % over the period considered, representing an increase of 32 % between 2019 and the investigation period.

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

- (374) The Commission established the prices of imports on the basis of Eurostat and ThinkReal data. Price undercutting of the imports was established on the basis of data of the cooperating exporting producers in the country concerned and domestic sales data provided by the Union industry for the period of investigation.

- (375) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import prices (EUR/ tonne)

	2019	2020	2021	2022	Investigation period
China	1 463	1 506	2 531	2 122	1 621
Index	100	103	173	145	111

Source: Eurostat and ThinkReal.

- (376) Average import prices from China first increased considerably. This increase coincided with the reduced volume of imports in connection with logistic constraints resulting from the COVID-19 crisis. This trend reversed after 2021. In parallel to the increase of volume, the price of imports of the product concerned from China considerably dropped in comparison to 2021. With exception of 2020 and 2021, the import prices remained below the sampled Union producers' sales prices and cost of production during the period considered, as shown in Table 8.
- (377) The import price of TCPP was lower than the import price of TEP throughout the period considered. The price of both product types followed the same trend: a considerable increase in 2021 and 2022 and a decrease in the IP. The import price of TEP increased overall by 28 % during the period considered while the import price of TCPP increased by 5 %.
- (378) The Commission determined the price undercutting during the investigation period by comparing the weighted average sales prices per product type of the Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and the corresponding weighted average prices per product type of the imports from the cooperating Chinese producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.
- (379) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the Union producers' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between 32,0 % and 35,5 % by the imports from the cooperating producers in the country concerned on the Union market.

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

4.5.1. *General remarks*

- (380) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (381) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data provided by the Union producers, crosschecked with the data in the complaint. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the Union producers. As the three investigated Union producers represented the totality of the Union industry, both macroeconomic and microeconomic data related to all Union producers and were found to be representative of the economic situation of the Union industry.

(382) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

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

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2019	2020	2021	2022	Investigation period
Production volume in tonnes	41 519	44 574	48 301	21 643	18 274
Index	100	107	116	52	44
Production capacity in tonnes	60 200	60 600	60 600	60 600	60 600
Index	100	101	101	101	101
Capacity utilisation	69 %	74 %	80 %	36 %	30 %

Source: Union producers.

(385) During the period considered, the Union industry production volume decreased by 56 %. This decrease in production affected all Union producers. The evolution of the production volumes showed an opposite picture to the Chinese import volumes, initially the Union industry was able to increase its production from 2019 to 2021 when the Chinese imports contracted due to logistic constraints resulting from the COVID-19 crisis. After 2021 the Chinese imports increased again and the Union production volumes dropped by 64 % from 2021 to 2022, even when the Union consumption increased. In the investigation period, when the Union consumption contracted, the Union industry's production volumes decreased further.

(386) The production capacity stayed practically the same over the period considered with only a minor increase from 2020 due to small investments in de-bottlenecking. Due to the decrease of production volumes, the capacity utilisation rate decreased from 69 % in 2019 to only 30 % in the investigation period. The decrease of the capacity utilisation followed the same trend as the decrease of production volume and the period considered noted an overall decrease of 56 % in capacity utilisation.

4.5.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2019	2020	2021	2022	Investigation period
Total sales volume on the Union free market in tonnes	31 000 – 38 000	30 000 – 37 000	31 000 – 38 000	18 000 – 22 000	14 000 – 17 000
Index	100	97	100	50	42
Market share of free market sales	39 %	42 %	46 %	22 %	20 %
Index	100	106	116	55	51

Source: Union producers, Eurostat and ThinkReal.

(388) The Union industry sales volume decreased by 58 % over the period considered. This decrease of Union industry sales volume was far greater than the 21 % decrease of Union consumption during the same time period.

(389) As a consequence, this translated in a decrease of market share of the Union industry on the free market from 39 % in 2019 to 20 % during the investigation period.

4.5.2.3. Growth

(390) The Union free market consumption decreased during the period considered around 21 % following the slowdown of construction activity. At the same time the sales volume of the Union industry on the Union free market decreased by 58 %. The Union industry thus lost a significant part of its market share, contrary to the market share of the imports from the country concerned which increased significantly during the same period.

4.5.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2019	2020	2021	2022	Investigation period
Number of employees (Full time equivalent – FTE)	67	71	74	62	58
Index	100	107	110	93	86
Productivity (tonnes/FTE)	623	627	657	348	317
Index	100	101	106	56	51

Source: Union producers.

- (392) The level of the Union industry employment first increased following the increase of sales and production. Following the drop in production and sales after 2021, also the employment decreased reversing the trend from 2019 to 2021. Over the entire period considered, the employment decreased due to the reduction in production by the Union producers. This resulted in a reduction of workforce by 14 %, without taking into consideration any indirect employment.
- (393) Between 2019 to 2021, the productivity also increased. The productivity however dropped drastically after 2021 in line with the decrease of production volumes. Due to the specific characteristics of chemical processing industry, where a certain number of employees is needed to keep the production processes running regardless of the level of production volumes, the employment could not be fully adapted to the declining production levels. This resulted in a decrease of productivity by 49 % over the entire period considered.

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

- (394) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (395) This is the first anti-dumping investigation regarding the product concerned. A part of the product concerned (TCPP) has been investigated in 2010 but the investigation was terminated without measures. Therefore, no data were available to assess the effects of possible past dumping.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

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

Table 8

Sales prices in the Union

	2019	2020	2021	2022	Investigation period
Average unit sales price in the Union on the free market (EUR/tonne)	1 569	1 490	2 170	2 651	2 136
Index	100	95	138	169	136
Unit cost of production (EUR/tonne)	1 552	1 409	1 570	2 207	2 207
Index	100	91	101	142	142

Source: Union producers.

- (397) Sales prices of the Union industry on the Union free market first decreased from 2019 to 2020 and then increased following the decrease of Chinese imports and the price pressure from these imports on the Union market. In the investigation period the prices decreased again, following the increase of import volumes and decrease of import prices from the country concerned. The average unit sales price in the Union registered an overall increase of 36 % during the period considered.

- (398) The unit cost of production of the Union industry increased by 42 % over the period considered. The increase in cost was driven mainly by higher costs for the principal raw materials, yellow phosphorus and propylene oxide, which represent over 50 % of the total cost of production. Over the same period sales prices increased by 36 %, but this was not sufficient to offset the increase in the raw material prices due to the price suppression caused by the Chinese imports.

4.5.3.2. Labour costs

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

Table 9

Average labour costs per employee

	2019	2020	2021	2022	Investigation period
Average labour costs per employee (EUR)	71 458	66 226	71 898	73 530	74 735
Index	100	93	101	103	105

Source: Union producers.

- (400) The average labour costs per employee decreased by 7 % in 2020 and then increased by 8 % in 2021, 2 % in 2022 and further by 2 % in the IP, for an overall increase of 5 % during the period considered.

4.5.3.3. Stock

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

Table 10

Stock

	2019	2020	2021	2022	Investigation period
Closing stock (tonnes)	2 263	1 176	2 504	1 797	1 513
Index	100	52	111	79	67
Closing stock as a percentage of production	5 %	3 %	5 %	8 %	8 %

Source: Union producers.

- (402) The stock levels were rather moderate during the period considered and represented less than 10 % of the production volumes. Overall, the closing stock levels decreased by 33 % during the period considered in line with the decrease of the production volume. The investigation did not observe any abnormal stock levels during the period considered, but rather normal fluctuations especially when compared with the production levels. This reflects the Union producers' ability to react flexibly on changing demand.

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

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

Table 11

Profitability, cash flow, investments and return on investments

	2019	2020	2021	2022	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	3 %	6,4 %	29 %	15 %	- 6 %
Index	100	245	1 097	584	- 249
Cash flow (EUR)	2 634 215	8 557 172	28 639 276	10 202 562	- 489 877
Index	100	325	1 087	387	- 19
Investments (EUR)	385 245	133 959	251 651	507 477	279 101
Index	100	35	65	132	72
Return on investments	9 %	36 %	212 %	71 %	- 12 %

Source: Union producers.

- (404) The Commission established the profitability of the Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (405) Over the period considered the profitability first improved from 3 % in 2019 to 29 % in 2021 when the Chinese imports contracted, and the price levels increased due to logistic constraints resulting from the COVID-19 crisis. After 2021 the Chinese import volumes increased significantly and the import prices plummeted. At the same time, the unit cost of production of the Union industry increased. Due to the price pressure exerted by the Chinese imports the Union producers were unable to increase prices in response to cost increases. As a result, the profitability of the Union industry fell from 29 % in 2021 to - 6 % during the investigation period.
- (406) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow during the period considered followed the trend in profitability, which in turn was affected by increased production costs and negative development of sales quantities and Union industry's inability to match prices with increased production cost.
- (407) The investments of the Union industry first decreased from 2019 to 2020 and then, in line with the increased production volumes and performance, increased from 2020 to 2022. Along with the deteriorating results, the investments decreased during the investigation period. Overall, the investments registered a decrease of 28 % during the period considered.
- (408) The return on investments is the profit in percentage of the net book value of investments. It developed along a trend similar to that on profitability, first improving from 2019 to 2021, then declining rapidly and becoming negative during the investigation period.

- (409) The Union producers were part of relatively large groups producing a variety of chemical products. The product under investigation did not represent a major part of these groups' total revenue. Therefore, in the short term, the ability to raise capital on group level was not significantly affected by the declining profits related to the product under investigation during the period considered.

4.5.4. *Conclusion on injury*

- (410) All main injury indicators showed a negative trend during the period considered. The production volume of the Union industry decreased by 56 % and its sales volume on the free market decreased by 58 %. This decrease significantly surpassed the 21 % decrease in consumption during the period considered, and translated into a decrease of market share on the free market from 39 % in 2019 to 20 % during the investigation period, i.e. a decrease by 19 percentage points.
- (411) Imports from China increased by 5 % between 2019 and the investigation period and, while the Union market consumption contracted by 21 %, the Chinese imports gained considerably in market share. Imports from the country concerned substantially increased their market share from 60 % to 80 % between 2019 and the investigation period.
- (412) In addition, Chinese import prices only increased by 11 % throughout the period considered when the Union cost of production increased by 42 % due to increased cost of raw materials.
- (413) The Chinese import prices were also below Union industry prices, except in 2020 and 2021 when the imports were suppressed due to the logistic constraints during the COVID-19 crisis.
- (414) During the investigation period, the import prices of the cooperating exporting producers undercut Union industry prices by 34,6 % on average.
- (415) Moreover, and regardless of any undercutting, the Commission further noted, on the basis of the trends contained in Tables 3, 4, 6 and 8, that the dumped imports suppressed the prices of the Union industry. Indeed, the Union industry was unable to raise its prices to match the increase of cost of production, in particular during the IP, where the dumped imports increased their market share and the Union industry incurred in losses.
- (416) The COVID-19 crisis caused a temporary decrease in the volume of Chinese imports in 2020 and 2021 and during this period the indicators for Union industry showed a positive development. These positive trends however quickly reversed after 2021 when the import volumes from China surged and import prices plummeted. Even if the Union industry's sales prices increased over the period considered, this increase was lower than the increase of its cost of production. Due to the price pressure from the Chinese imports the Union industry was unable to increase its prices to reflect its increased production cost. As a result, the Union industry became loss-making in the investigation period.
- (417) In summary, the Union industry's sales volumes dropped dramatically, by almost 60 % over the period considered, which is far more than the decrease of consumption on the Union market and thus the Union industry lost half of its market share. Imports from China were substantial throughout the period considered with a temporary drop in 2020 and 2021, at prices which were lower than the Union industry prices except temporarily in 2020 and 2021. Under the pressure of the Chinese imports and price suppression the Union industry sales levels fell more than 50 % in a short time between 2021 and the investigation period. During the investigation period, the Union industry was selling at prices which no longer covered its costs and consequently became loss making.
- (418) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (419) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from other countries, the export performance of the Union industry, self-inflicted injury by high investment cost, exceptional market conditions during and after the COVID-19 pandemic and the decrease of Union consumption, imports by the Union industry, increased costs of raw materials and energy in the Union and inflation and lack of substitutability.

5.1. Effects of the dumped imports

- (420) The volume of imports from the country concerned increased (as shown in Table 3) by 5 % from 2019 to the investigation period and, consequently, its market share increased by 20 percentage points, i.e. from 60 % to 80 %. This increase exceeded substantially the evolution of consumption in the Union market over the same period, which decreased by 21 %. At the same time, the Union industry lost 58 % of sales volume and 19 % of market share. Furthermore, the prices of imports from the country concerned, even if increased temporarily between 2020 and 2022 before falling sharply after 2022, undercut the Union industry prices by between 32,0 % and 35,5 % and by 34,6 % on average.
- (421) The pressure exerted by the dumped imports also caused significant price suppression as evidenced by the fact that the Union industry was unable to raise prices at the same rate as its costs. Indeed, as shown in Table 8, over the period considered, the Union industry's costs of production increased by 42 % whereas the Union industry's sales prices increased by 36 %. This insufficient price increase resulted in significant loss of sales volumes and market share. Consequently, due to the inability to increase prices and the loss of sales volumes, the profitability of the Union industry was sharply declining after the exceptional year 2021 and reached – 6 % losses during the investigation period.
- (422) The analysis of the injury indicators in recitals 353 to 418 shows that the economic situation of the Union industry worsened especially towards the end of the period considered and this coincided with a significant increase of dumped imports from the country concerned, which were found to undercut the Union industry prices during the investigation period and, in any event, caused significant price suppression, as the Union industry was not able to increase its prices in line with the increase of cost of production, in particular during the IP.
- (423) In view of the above considerations, the Commission provisionally established that the material injury suffered by the Union industry was caused by the dumped imports from China within the meaning of Article 3(6) of the basic Regulation. Such injury had both volume and price effects.

5.2. Effects of other factors

- (424) In its comments on initiation CPCIF claimed that any injury to the Union industry during the period considered would not be caused by the Chinese exports but by other factors such as imports from third countries, imports by the Union industry, a decrease in exports of the Union industry, the Union industry's exceptionally high investments costs, market rebalancing effects, increased costs of raw materials in the Union, a surge of energy prices in the Union, inflation in the Union and a lack of substitutability.
- (425) The Commission analysed if and how far those factors contributed to the injury.

5.2.1. Imports from third countries

- (426) Imports from other third countries were at most of 2 861 tonnes during the period considered and of only 185 tonnes in the IP.
- (427) Therefore, imports from other third countries could not be the source of injury.

5.2.2. Export performance of the Union industry

- (428) In its comments to initiation CPCIF claimed that the Union industry displayed a weak performance in the export market in the investigation period and that poor export performance of the Union industry is the main cause of the injury suffered by the Union industry.
- (429) The volume of exports of the Union producers developed over the period considered as follows:

Table 12

Export performance of the sampled Union producers

	2019	2020	2021	2022	Investigation period
Export volume (tonnes)	3 789	8 787	9 049	3 196	2 332
Index	100	232	239	84	62
Average price (unit of measurement)	1 689	1 699	2 351	3 043	2 359
Index	100	101	139	180	140

Source: Union producers.

- (430) During the period considered the export volumes represented less than 20 % of the total sales volumes of the Union industry. The average price of those exports first increased by 80 % in between 2019 and 2022. That level then decreased in the investigation period, remaining however 40 % higher than the 2019 level. The average price of those exports was higher than that of the Union industry in the Union market and remained also higher than the cost of production throughout the period considered.
- (431) The export sales prices therefore provided a positive profit margin over the whole period considered. In addition, given that the export sales volumes represented less than 20 % of the total sales volume of the Union producers, the Commission concluded that the export performance did not contribute to the material injury suffered by the Union industry.
- (432) The Commission therefore rejected the argument of CPCIF that the export performance of the Union industry has contributed to the injury.

5.2.3. Union industry's investment costs

- (433) In its comments to initiation CPCIF claimed that Union producers undertook large investments in 2022 and suggested that these investments could have had a significant weight in the total cost of production, thereby causing injury.

- (434) The investigation found that albeit the investments, in relative terms, doubled from 2021 to 2022 their level in absolute terms remained modest (representing less than 1 % of the Union industry's sales value) during the whole period considered. Neither the investments nor the increase in depreciation resulting therefrom did have a substantial impact on the injury indicators such as cost of production, profitability or cash flow.
- (435) The Commission therefore rejected the argument that the investments of the Union industry have contributed to the injury.

5.2.4. *Consumption and market rebalancing effect*

- (436) In its comments to initiation CPCIF claimed that the injury was due to market conditions. It claimed that the surge in terms of profitability and market share experienced by the Union industry during 2021 was due to the special economic conditions and market situation caused by COVID-19 and that with the return of the market to normal conditions, the prices of the product concerned from China dropped, remaining however above the price level of 2019. As such, a decrease in terms of profitability of the complainants was to be expected, as a result of normal market dynamics.
- (437) The Commission disagreed with this analysis. While the situation caused by COVID-19 indeed contributed to the increase of the Union industry's market share and profitability during 2020 and 2021, the subsequent decrease cannot be described as return of the market to normal conditions. As explained in the recitals 360 to 373 the Chinese imports increased during the period considered while the Union consumption decreased. This, as explained in recitals 387 to 389 resulted in a decrease of Union industry's market share from 39 % to 20 %. The decrease of profitability during the period considered was not the result of the changes in absolute price levels but rather due to the mismatch between the Union industry's sales prices and cost of production. As explained in the recitals 396 to 398 the increase of sales prices during the period considered by 36 % was not sufficient to offset the increase in the raw material prices due to the significant price pressure operated by the Chinese imports.
- (438) The Commission therefore rejected the argument that the injury was due to normal market conditions.

5.2.5. *Increased costs of raw materials and energy in the Union and inflation in the Union*

- (439) In its comments to initiation CPCIF claimed that the injury was due to an increased cost of raw materials and energy in the Union, and inflation in general. It claimed that in particular the prices of the main raw materials, namely phosphorus oxychloride and propylene oxide experienced a substantial increase in the Union while the prices in China did not experience such increases. Similarly, the CPCIF claimed that the decrease of the Union industry's profitability coincided with an increase of electricity and gas prices and the acceleration of inflation rates in the Union.
- (440) The investigation found that phosphorus oxychloride and propylene oxide indeed represent a significant share of the cost of production of the product under investigation whereas the share of other factors of production is less pronounced. As explained in recitals 396 to 398 average unit sales price in the Union registered an overall increase of 36 % during the period considered while the unit cost of production of the Union industry increased by 42 % over the period considered. As the main factor of profitability for Union producers is the ability to pass on the cost increases on the selling price, the disparity between cost and selling prices indeed caused the deterioration of the profitability of the Union producers.

- (441) As explained in recital 440 the inability of the Union industry to pass on the cost increases was due to the low prices of the dumped imports from the country concerned, undercutting the Union industry prices and, in any event, causing significant price suppression. As shown in Table 8, from 2022 to the investigation period, the Union industry's cost of production remained stable, but at the same time the Union industry was forced to reduce its selling prices by 20 % under the pressure of dumped Chinese exports, causing the profitability to drop from 15 % profits to – 6 % losses.
- (442) Finally, the investigation found that the share of the other factors of production was not significant and therefore also the impact of inflation on these factors of production could not cause the deterioration of the profitability of the Union industry.
- (443) The Commission therefore rejected the argument that the injury was caused by increased cost of raw materials and energy in the Union or inflation.

5.2.6. *Lack of substitutability*

- (444) In its comments to initiation CPCIF claimed that TCPP and TEP are not substitutable and therefore the imports of TEP from China could not have caused material injury to the Union industry which only produced and sold TCPP.
- (445) As explained in recital 48, TEP and TCPP share the similar essential physical and chemical characteristics and are substitutable for rigid foams applications which represent the majority of the total Union consumption. As the two product types are in direct competition with each other on the Union market, the injury was not only caused by the imports of TCPP but also those of TEP.
- (446) The Commission therefore rejected this argument.

5.3. **Conclusion on causation**

- (447) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of all other factors on the Union industry's negative developments in terms of loss of market share, falling profitability, return on investment and cash flow was only limited.
- (448) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury consists mainly of a loss of market share, price undercutting and suppression and falling profitability, return on investment and cash flow.

6. LEVEL OF MEASURES

- (449) The complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation in the complaint.
- (450) Thus, in order to conduct the assessment on the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation.
- (451) Then it examined whether the dumping margin of sampled exporting producers would be higher than their injury margin.

6.1. **Injury margin**

- (452) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.

- (453) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (454) The market share of Chinese imports was 60 % in the first year of the period considered and remained high during the entire period. Under these circumstances a profitability before the increase of Chinese imports could not be established in the period considered.
- (455) The complainant claimed that normal conditions of competition prevailed during year 2021 and that the Commission should use this year to establish the basic profit. However, the profitability of 29 % achieved in 2021 is explained by lockdowns in China and the reduced international trade flows during the COVID-19 crisis. The Commission therefore concluded that the level of profitability achieved in this year was not representative of normal conditions of competition.
- (456) In 2020 and 2022, the Union industry also achieved a 6 % or higher profitability as shown in recital 403. However, these years were also affected, at least partially, by the COVID-19 crisis turbulences and do not qualify as years with normal conditions of competition.
- (457) In search of a period where normal conditions of competition would prevail, the Commission intended to examine the profitability achieved during the last ten years. Only one complainant provided that information. It was therefore impossible to establish a profitability that would be representative of the Union industry as a whole during the 10-year period. In addition, Chinese imports were significant (at least 47 000 tonnes) during the entire 10-year period so that not a single year in this period could be considered anterior to the increase of Chinese imports.
- (458) In order to assess the normal basic profit, the complainants proposed an alternative methodology consisting in measuring the profitability achieved by products purportedly similar to the product concerned but not subject to dumped Chinese imports.
- (459) One complainant presented the profit margin achieved by the business unit encompassing the product concerned, other phosphorus derivatives and certain plasticisers.
- (460) A second complainant presented the profit margin achieved for all phosphorus derivatives excluding the product concerned.
- (461) A third complainant presented the profit margin achieved by a distinct phosphorus-based flame retardant.
- (462) The complainants however failed to demonstrate that the allegedly similar products were subject to the same competitive environment, market size, customer structure and other factors having an impact on profitability.
- (463) Therefore, the profitability achieved for these related products could not be considered equivalent to a normal basic profit for the product concerned and the Commission discarded the alternative methodology.
- (464) Since there is no evidence that a profitability higher than 6 % could be achieved under normal conditions of competition, the Commission set the basic profit to 6 %.

- (465) No complainant provided evidence that its level of investments, research and development (R&D) and innovation during the period considered would have been higher under normal conditions of competition.
- (466) On this basis, the non-injurious price falls within the range ⁽⁹⁷⁾ of 2 325 to 2 355 EUR/t, resulting from applying the abovementioned profit margin of 6 % to the cost of production of the Union producers during the investigation period.
- (467) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2).
- (468) One complainant provided a certified carbon footprint of the product concerned and evidence of the level of direct and indirect CO₂ emissions that trigger the purchase of Emission Trading System (ETS) certificates. On the basis of that evidence and the forecasted increasing prices of ETS certificates according to Bloomberg, the Commission calculated that compliance would add an average cost of 3,3 EUR/t in each of the next five years. This difference was added to the non-injurious price mentioned in recital 466.
- (469) On this basis, the Commission calculated a non-injurious price falling within the range of 2 330 to 2 360 EUR/t for the like product of the Union industry.
- (470) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in China, as established for the price undercutting calculations, with the weighted average non-injurious constructed price of the like product sold by the Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (471) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies:

Company	Dumping margin	Injury margin
Anhui RunYue Technology Co., Ltd.	45,1 %	65,4 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %	74,2 %
Shandong Yarong Chemical Co., Ltd.	63,0 %	74,8 %
Other cooperating companies not sampled in Annex	59,1 %	72,2 %
All other companies	68,4 %	74,8 %

6.2. Examination of the margin adequate to remove the injury to the Union industry

- (472) As explained in the Notice of Initiation, the complainant provided the Commission sufficient evidence that there are raw material distortions in the country concerned regarding the product under investigation. Therefore, in accordance with Article 7(2a) of the basic Regulation, this investigation examined the alleged distortions to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury.

⁽⁹⁷⁾ Ranges are provided to protect the confidentiality of the post-importation costs provided by the single cooperating importing producer.

- (473) However, as the margins adequate to remove injury are higher than the dumping margins, the Commission considered that at this stage it was not necessary to address this aspect.
- (474) Following the above assessment, the Commission concluded that it is appropriate to determine the amount of provisional duties in accordance with Article 7(2) of the basic Regulation.

6.3. Conclusion on the level of measures

- (475) Following the above assessment, provisional anti-dumping duties should be set as below in accordance with Article 7(2) of the basic Regulation:

Company	Provisional anti-dumping duty
Anhui RunYue Technology Co., Ltd.	45,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %
Other cooperating companies not sampled in Annex	59,1 %
All other companies	68,4 %

7. UNION INTEREST

- (476) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it is not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation.
- (477) The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

7.1. Interest of the Union industry

- (478) All producers of the product under investigation in the Union cooperated in the investigation and expressed their support to the imposition of the measures.
- (479) The investigation has shown that the Union industry is suffering material injury caused by the dumped imports from the country concerned. These imports significantly undercut the Union industry's prices, in any event, exercised significant price suppression as shown by the underselling margins found, and caused significant loss of market share and profits towards the end of the period considered, and during the investigation period, as elaborated in recitals 380 to 448 above.
- (480) The imposition of measures would likely prevent a further surge of imports from China at very low prices. Without measures, Chinese producers will continue to dump the product concerned on the Union market preventing the Union industry from selling at an adequate price and from generating a sufficient profit and thus causing further material injury to the Union industry.
- (481) It was therefore concluded that imposing measures against China would be in the interest of the Union industry.

7.2. Interest of unrelated importers and traders

- (482) Two unrelated importers submitted the sampling form. However only one of them provided a questionnaire reply. Additionally, one importer provided a partial questionnaire reply without narrative comments, and one importer and one trader submitted comments.
- (483) The cooperating importer who provided a questionnaire reply represented between 25 % and 30 % of imports from China. It opposed the imposition of measures claiming that it would be against the interests of users of the product concerned in the Union. It also considered that even if the importers and traders could lose some market share in benefit of the Union producers, they would still keep part of the market share since the Union industry has not enough capacity to cover the Union demand.
- (484) For the cooperating importer who provided a questionnaire reply, the weight represented by the product concerned compared to its total turnover was between 2 % and 5 %. The jobs allocated to the product concerned were estimated at around 15 employees.
- (485) Overall, the cooperating importer was profitable. Taking into account the limited weight of the product concerned of his total turnover, and the fact that the importers would in any event keep some of the market share, the Commission considered that the imposition of measures would not have a considerable negative effect on importers.
- (486) The importer who only submitted comments also opposed the imposition of measures claiming that it would be against the interests of users of the product concerned in the Union.
- (487) Therefore, from the information available, it is clear that the imposition of measures would have only a limited impact on importers, and such impact would be clearly outweighed by the benefits that the measures could bring to the Union industry.

7.3. Interest of users

- (488) Several users came forward in the investigation, and ten of them provided at least a partial reply to the questionnaire. One of the companies that came forward had used only a negligible amount of the product under investigation for laboratory testing purposes and did not provide any further comments or submissions. Three other users, although they sent a questionnaire reply, did not provide any narrative comments. The users which provided a questionnaire reply purchased around 25 % of the total imports of the product from China in the investigation period.
- (489) Although some of the responses were deficient, the Commission was able to estimate the impact of the measures on the users. The product under investigation represented less than 5 % of the cost of production of final products incorporating it, such as polyurethane and polyisocyanurate insulation materials. The Commission therefore concluded that the cost of the measures was of limited importance in the final price of the downstream products and could be absorbed or at least passed on to consumers.
- (490) Six users who provided narrative comments were against the measures. None of the users was in favour.
- (491) Kingspan argued that the Union production capacity is insufficient to meet the Union demand and that for both TCPP and TEP there are no other sources of supply than China. Therefore, according to Kingspan, any measures would only increase the cost of insulation and fire safety.
- (492) Arkema argued that substitution of the product concerned is not a viable solution and that Union industry has regularly been unable to supply the product under investigation in sufficient quantities. Arkema also brought forward that the price of the product under investigation produced in the Union is higher than imported one.

- (493) Recticel brought forward that the substitution of the product concerned is not viable and that Union demand is higher than the capacity of the Union industry.
- (494) Stepan (both Stepan Deutschland GmbH and Stepan Netherlands B.V) brought forward that measures on the product concerned would drive up the price of the downstream products and erode the competitiveness of polyurethane and polyisocyanurate foam against other insulation technologies and they would also have negative impact on the Union's objectives for insulation and reducing the carbon emissions.
- (495) Additionally, Stepan argued that Union industry has declined to enter into long term contracts that would have protected them from market price fluctuations.
- (496) Polinvent argued that there are no alternative products available on the market at the moment. Substitution of the product concerned would be time consuming and not economically viable. It argued that imposition of the measures would lead to shortage of supply and would increase the cost of wholesalers, manufacturers and end users.
- (497) The Commission considered the arguments brought forward by the users.
- (498) As regards the claim that substitution of the product concerned could be impractical or economically not viable in certain applications, it should be recalled the objective of any anti-dumping duties is not to prohibit imports, but to restore fair conditions of trade and competition. Therefore, the question whether the product under investigation could be substituted with other products is irrelevant.
- (499) The imports from China remain a necessary source for users of the product concerned. However, under the pressure of dumped imports from China there is a risk of further scaling down or stopping of the production in the Union. This would have an adverse effect on the users' supply security, especially because the global production is already very much concentrated in China. On the other hand, if fair competition could be re-established by imposing anti-dumping measures, the Union could have more favourable conditions to increase its production capacity and the supply security risk could be mitigated.
- (500) With reference to the claim that the Union industry refused to enter into long term contracts that would have protected users from price fluctuation, the investigation did not find evidence of any of the market operators, including Chinese exporters or importers, would have been offering contracts where selling prices would have been fixed for a long term. This is also a rational choice in a situation where the prices of main raw materials fluctuate on the market.
- (501) Based on the replies by the users, it was found that, while the impact on the cost of intermediate downstream products could be higher, the product under investigation represented less than 5 % of the final products' cost. Therefore, the impact of any anti-dumping duties on customers would be limited.
- (502) The Commission concluded that the measures will likely increase the production costs of the users. However, on medium/long term the improved supply security of the Union is likely to benefit also the users. Taking into account that the intended amount of duties will not have a prohibitive effect on the imports and only represents less than 5 % of the final products' cost, the Commission concluded that the impact on the users will be limited and does not outweigh the positive effect on the Union industry.
- (503) Also, as the product under investigation represented less than 5 % of cost of the insulation materials, the Commission concluded that the measures would not have any significant adverse impact on the Union's objectives for insulation and reducing the carbon emissions.

7.4. Conclusion on Union interest

- (504) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of APE originating in China at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (505) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (506) Provisional anti-dumping measures should be imposed on imports of certain alkyl phosphate esters originating in the People's Republic of China in accordance with Article 7(2) of the basic Regulation. The Commission concluded that the appropriate level to remove injury should be the dumping margin.
- (507) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty
Anhui RunYue Technology Co., Ltd.	45,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %
Other cooperating companies not sampled listed in Annex	59,1 %
All other companies	68,4 %

- (508) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities.
- (509) Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (510) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (511) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

9. INFORMATION AT PROVISIONAL STAGE

- (512) In accordance with Article 19(a) of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (513) The exporting producer Nantong Jiangshan responded to the predisclosure and made four comments. First they notified the Commission about a change in the English spelling of their company's name from what they previously used in their correspondence. The English name of the company was therefore updated in the Regulation.
- (514) Secondly they commented on the calculation of the normal value using the benchmarks from Brazilian import statistics, which are disclosed at the frontier level. However the Commission uses these import prices adjusted to account for transport costs to the factory and therefore would not use the benchmarks directly to calculate normal value.
- (515) Thirdly they commented on whether the SG&A added to the cost of manufacturing would result in the normal value including freight costs which had been removed from the export price. The Commission considered that the normal value does not include freight costs and therefore the normal value and export price were being compared at the same ex-works level.
- (516) Finally they noted that their dumping margin was higher than another sampled Chinese exporting producer, which does not fall under the scope of comments to be addressed at predisclosure.
- (517) No change to the dumping margin was necessary following analysis of their comments to the predisclosure.
- (518) The exporting producer Shandong Yarong asked the Commission to check their conversion of the price of ethyl alcohol per litre to the price per tonne.
- (519) The Commission confirms that it calculated the price per tonne as follows:
- ethyl alcohol has a density less than 1, and therefore one cubic metre of ethyl alcohol weighs less than 1 tonne,
 - the price per cubic metre is therefore lower than the price per tonne, which is calculated by taking the price per cubic metre and dividing it by the density ⁽⁹⁸⁾.
- (520) No change to the dumping margin was necessary following analysis of their comments to the predisclosure.
- (521) The non-sampled Chinese exporting producer Zhejiang Wansheng requested a clerical change to their English name in the Annex to this Regulation and the change was made.
- (522) Several users responded to the predisclosure expressing their opposition against the imposition of measures and submitting comments on Union interest and on the product definition.
- (523) Since none of the comments raised any concerns regarding the accuracy of the calculations, the Commission will address these comments in the definitive stage.

⁽⁹⁸⁾ <https://www.aqua-calc.com/calculate/weight-to-volume> (accessed on 18 March 2024).

10. FINAL PROVISION

- (524) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (525) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of certain alkyl phosphate esters based exclusively on side chains with a length of two or three carbon atoms (also includes chlorinated alkyl chains) and with a phosphorus content of at least 9 % (per weight) and a viscosity between 1 and 100 mPa·s (at 20-25 °C) falling under Chemical Abstracts Service ('CAS') numbers 13674-84-5, 1244733-77-4 and 78-40-0; currently falling under CN code ex 2919 90 00 (TARIC codes 2919900050 and 2919900065) and CN code ex 3824 99 92 (TARIC code 3824999238) and originating in the People's Republic of China.

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

Company	Provisional anti-dumping duty	TARIC additional code
Anhui RunYue Technology Co., Ltd.	45,1 %	89AL
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %	89AM
Shandong Yarong Chemical Co., Ltd.	63,0 %	89AN
Other cooperating companies not sampled listed in Annex	59,1 %	
All other companies	68,4 %	8999

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

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. Interested parties shall submit their written comments on this Regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer may examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 9 April 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled:

Name	TARIC additional code
Fujian Wynca Technology Co., Ltd.	89AP
Futong Chemical Co., Ltd.	89AQ
Hebei Zhenxing Chemical and Rubber Co., Ltd.	89AR
Jiangsu Yoke Technology Co., Ltd.	89AS
Jilin Yonglin Chemical Co., Ltd.	89AT
Ningguo Long Day Chemical Co., Ltd	89AU
Shanghai Iroyal Chemical Co., Ltd.	89AV
Xinji Hongzheng Chemical Industry Co., Ltd.	89AW
Xuancheng City Trooyawn Refined Chemical Industry Co., Ltd.	89AX
Yangzhou Chenhua New Material Co., Ltd.	89AY
Zhejiang Wansheng Co., Ltd.	89AO