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COMMISSION IMPLEMENTING REGULATION (EU) 2024/2415

of 12 September 2024

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed 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 9(4) thereof,

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' or 'the country concerned') 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. Provisional measures

- (4) In accordance with Article 19a of the basic Regulation, on 13 March 2024, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry ('pre-disclosure'). Interested parties were invited to comment on the accuracy of the calculations within three working days.
- (5) The exporting producers Nantong Jiangshan Agrochemical & Chemicals Co., Ltd., Shandong Yarong Chemical Co., Ltd., Zhejiang Wansheng Co., Ltd., the traders Impag AG and ProChema GmbH, and the users Purinova Sp. z o.o., Rytm-L Sp. z o.o., and Stepan Deutschland and Netherlands sent comments on the pre-disclosure. The comments regarding the accuracy of the calculations following pre-disclosure were summarised in recitals (513) to (521) of Commission Implementing Regulation (EU) 2024/1064 ⁽⁴⁾ ('the provisional Regulation'). The other comments submitted at pre-disclosure are summarised and responded to below.

⁽¹⁾ OJ L 176 30.6.2016, p. 21, ELI: <http://data.europa.eu/eli/reg/2016/1036/2020-08-11>

⁽²⁾ OJ C 282, 11.8.2023, p. 4.

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

⁽⁴⁾ 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 (OJ L, 2024/1064, 10.4.2024, ELI: http://data.europa.eu/eli/reg_impl/2024/1064/oj).

- (6) On 11 April 2024, the Commission imposed provisional anti-dumping duties on imports of certain alkyl phosphate esters originating in the People's Republic of China by the provisional Regulation.

1.3. Subsequent procedure

- (7) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the following parties filed comments on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation:

- the complainants;
- the Chinese sampled exporting producers Anhui RunYue and Shandong Yarong;
- the Chinese non-sampled exporting producer Zhejiang Wansheng;
- the China Petrochemical and Chemical Industry Federation ('CPCIF');
- the importers Quimidroga and Shekoy Chemicals Europe; and
- the users Kingspan, Polychem, Purinova, and Systemhouse.

- (8) Some additional comments from the complainants as well as from Quimidroga and Kingspan on the information provided by other interested parties in reaction to the disclosure of the provisional findings were submitted after the deadline for such comments. However, the Commission considered these comments for the definitive findings of the investigation.

- (9) The parties who so requested were granted an opportunity to be heard. Hearings took place with the importer Shekoy Chemicals Europe; the Chinese sampled exporting producer Shandong Yarong and the unrelated importer Quimidroga.

- (10) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

- (11) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of APE originating in the People's Republic of China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

- (12) Parties who so requested were also granted an opportunity to be heard. Hearings took place with Anhui RunYue and Quimidroga.

1.4. Sampling

- (13) No comments were received concerning sampling. Therefore, the conclusions in recitals (9) to (20) of the provisional Regulation, and the sample of the three largest cooperating exporting producers in terms of export quantity, were confirmed.

1.5. Individual examination

- (14) In recital (21) of the provisional Regulation the Commission noted that two exporting producers, Zhejiang Wansheng Co. ('Zhejiang Wansheng'), and Futong Chemical Co. ('Futong Chemical'), had requested individual examination by returning a questionnaire in due time.

- (15) In recitals (22) and (23) of the provisional Regulation the Commission stated that its decision regarding these requests would be made at this definitive stage.

- (16) In its comments following the provisional measures Zhejiang Wansheng again requested individual examination under Article 17(3) of the basic Regulation.
- (17) The company set out its reasons why it is different to the three sampled exporting producers based on its customers, its history of export to the Union, and its purchase of raw materials from outside China.
- (18) The company also made the claim that the Commission is entitled to accept its request for individual examination and not accept the claim of the other exporting producer, Futong Chemical.
- (19) The Commission decided to reject both requests for individual examination as this would have been unduly burdensome in this investigation and would prevent completion of the investigation in good time given that the sample contains already three Chinese exporting producers and represents the largest quantity of exports to the Union that could be investigated within the time available. Zhejiang Wansheng was a large group of companies, and adding it to the sample would effectively double the number of companies to be inspected.
- (20) Nothing in the comments from Zhejiang Wansheng would change this conclusion and as set out in recital (19) of the provisional Regulation, the company was not added to the sample as this would have been unduly burdensome.
- (21) The Commission received no comments from Futong Chemical following provisional disclosure.

1.6. Questionnaire replies and verification visits

- (22) Following provisional disclosure, a verification visit pursuant to Article 16 of the basic Regulation was carried out at the premises of the user Kingspan based in Girona, Spain.
- (23) After the publication of the provisional Regulation, two other users came forward and sent a questionnaire reply, Nestaan Holland BV and Purinova. Since these questionnaire replies came in more than 7 months after the deadline set out in section 5.5 of the Notice of initiation, the Commission did not have sufficient time to verify these replies.

2. PRODUCT CONCERNED AND LIKE PRODUCT

- (24) Recital (30) of the provisional Regulation set out the definition of the product concerned. The product under investigation is certain alkyl phosphate esters ('APE'), currently classified under CN code ex 2919 90 00 (TARIC codes 2919 90 00 50 and 2919 90 00 65) and CN code ex 3824 99 92 (TARIC code 3824 99 92 38).
- (25) 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.
- (26) APE covers two product types, tris (2-chloro-1-methylethyl) phosphate ('TCPP') and triethyl phosphate ('TEP'). APE is commonly used as a flame retardant in rigid and flexible foams.
- (27) With respect to the product scope, in response to the provisional disclosure, the exporting producer Shandong Yarong, the Chinese association CPCIF, empowered to represent six Chinese exporting producers of APE including the three sampled exporting producers, the two importers Quimidroga and Shekoy Europe, and the two users Kingspan and Purinova reiterated their request to exclude TEP from the product scope of the investigation, as set out in recitals (36) to (49) of the provisional Regulation. These parties repeated their claim that TCPP and TEP are different in the production process and physical, technical, and chemical characteristics and have different uses and are not interchangeable.

- (28) The complainants, on their part, acknowledged that TCPP and TEP are not identical, but that they are the only two product types that fit within the objective definition of the product under investigation, which was based on sharing of the same basic physical, chemical and technical characteristics, using similar raw materials that undergo a similar production process, having the same uses and the same distribution channels and competing in the same market.
- (29) Shandong Yarong, CPCIF, Quimidroga, Shekoy Europe, Kingspan, and Purinova argued that TCPP and TEP are different in molecular structure, chemical characteristics and thus do not share similar essential physical, technical, and chemical characteristics. CPCIF, Shandong Yarong, Quimidroga, and Purinova set out that the two product types are part of distinct groups of esters, since TCPP is a chlorinated/halogenated organophosphate, while TEP is a non-chlorinated/halogen-free organophosphate. The presence of chlorine affects the overall characteristics of the product, including its boiling point, viscosity, density, and environmental impact.
- (30) Shandong Yarong and Quimidroga considered the product definition was drafted in a formalistic way to include both TCPP and TEP, while aside the phosphorus content the chlorine content of TCPP is a constituent component as a flame retardant and should have been included in the product definition. Kingspan argued that the product definition was arbitrary and phrased in such a way to only cover TCPP and TEP, excluding other flame retardants and phosphates that could be used in polyurethane ('PUR') or polyisocyanurate ('PIR') foams for no objective reasons.
- (31) The complainants argued that the above claims disregard the reality and dynamics of the market and that no other flame retardants or phosphates would be able to substitute TCPP like TEP for its major uses. While acknowledging that using TEP instead of TCPP is not automatic in all cases, the complainants argued that PUR and PIR foam producers are already using TEP as a substitute to TCPP, as indicated to them by users such as BASF and Kingspan.
- (32) As set out in recitals (31), (32) and (44) of the provisional Regulation, the Commission acknowledged that TCPP and TEP are not identical product types because the molecule structure and certain chemical characteristics of TCPP and TEP differ, but that they both share similar essential physical, technical, and chemical characteristics. Therefore, they are considered to be like products within the meaning of Article 1(4) of the basic Regulation. Pursuant to the said provision a like product can be an identical product or a product having characteristics closely resembling those of the product under investigation. TCPP and TEP have closely resembling characteristics, since they are both 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), and they both can be used as flame retardants in rigid foams.
- (33) The Commission has a margin of discretion on defining the product scope and has found in this investigation that both product types can and are used as flame retardants. The fact that TCPP is a chlorinated organophosphate and TEP is a non-chlorinated organophosphate does not alter this finding. The similar use was confirmed during the on-spot verification visit of Kingspan, which uses both TCPP and TEP as a flame retardant in rigid foam applications and is a significant importer of APE originating in China. Even though it might be possible that TEP has other applications than being a flame retardant, the Commission found that the two product types are in direct competition with each other for an important part of their use, i.e. for making rigid foams flame-retardant. Moreover, the data on the basis of which findings with regard to dumping, injury and the causal link between the two in this investigation were reached covered both products.
- (34) Following definitive disclosure, Kingspan, Quimidroga, CPCIF, and Shandong Yarong reiterated claims regarding dissimilarity in molecular structure and differences in chemical and physical characteristics that were already addressed in recital (27) to (33).

- (35) Following definitive disclosure, Kingspan referred to an ongoing anti-dumping and anti-subsidy investigation regarding flame retardants in the United States of America ('USA') where the product scope comprises a third flame retardant, tris (1,3-dichloroisopropyl) phosphate ('TDCP'), in addition to TCPP and TEP. In the course of this USA investigation, ICL who is one of the complainants, admitted that the inclusion of TDCP had also been envisaged in the present investigation. Kingspan claimed that this illustrated the arbitrary nature of the product scope used in the present investigation. It is however reminded that the Commission is not bound by decisions taken in investigations conducted in other jurisdictions. Furthermore, as explained in recital (33), the Commission has a margin of discretion in defining the product scope and therefore the claim was rejected.
- (36) Following definitive disclosure, Kingspan and Quimidroga claimed that the reclassification of TCPP in Carcinogen Category 2 (products with suspicion of carcinogenicity) by Lanxess on its own initiative and the impending reclassification by the European Chemicals Agency ('ECHA') should have been mentioned in the disclosure as it constitutes a further reason why TEP is not like to TCPP. However, the fact that chlorinated TCPP and halogen-free TEP differ in various aspects including in particular the environmental impact has already been addressed in recitals (29) to (33). The differentiation in terms of carcinogenicity, if confirmed by ECHA, would not undermine the conclusion in recital (33) and therefore the claim was disregarded.
- (37) According to CPCIF and Shandong Yarong the production process of the two product types is different and the two products use different production lines. The production cannot be shifted between TCPP and TEP on the same production line and therefore the product types are not interchangeable. Shandong Yarong argued that the Commission concluded in the anti-dumping investigation concerning certain seamless pipes and tubes of iron or steel ⁽⁹⁾ that products which were not directly interchangeable could fall within the same product scope on the grounds that producers could shift their production between the different product types on the same production line, which is not the case for TCPP and TEP. Moreover, according to Quimidroga and Purinova the Commission failed to address the fact that TEP is not produced in the Union. To start producing TEP, the Union industry would have to set up the necessary equipment which would require large investments.
- (38) The Commission found that the two product types were produced by the same exporting producers and were sold to the same importers and users for the same end use. There was therefore a significant degree of demand-side interchangeability between the two. Being a chemical substance, a shift in production on the same product line is not a decisive element to be considered a similar product. Pursuant to Article 1(4) of the basic Regulation, the Commission concluded that the Union industry does not have to produce identical products to all the product types falling within the product scope imported from the country concerned. The fact that the Union industry would have to make significant investments if it decided to restart the production of TEP was therefore not found to be a decisive element to consider TEP a like product to TCPP.
- (39) Following definitive disclosure, Quimidroga claimed that the demand-side interchangeability referred to in recital (38) does not prove substitutability. The notion of demand-side interchangeability is based on the finding that exporting producers are producing and selling both product types to the same clients. The Commission however considered demand-side interchangeability as a mere indication that there might be substitutability of the product types for some end-use applications. In order to prove substitutability, the Commission examined data provided by users as explained in recital (49). Therefore, the claim was disregarded.
- (40) Following definitive disclosure, CPCIF and Shandong Yarong claimed that the fact that the Union industry cannot resume TEP production without significant investment indicates that TCPP and TEP are not interchangeable. Shandong Yarong further disputed the finding by the Commission in recital (38) that the possibility to shift production from TCPP to TEP (or vice versa) on the same production line was not a decisive element when assessing the similarity of the product types because APE is a chemical product. The Commission acknowledged

⁽⁹⁾ Commission Implementing Regulation (EU) 2017/804 of 11 May 2017 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes of iron (other than cast iron) or steel (other than stainless steel), of circular cross-section, of an external diameter exceeding 406,4 mm, originating in the People's Republic of China (OJ L 121, 12.5.2017, p. 3, ELI: http://data.europa.eu/eli/reg_impl/2017/804/oj), recital (27).

that there is a difference in the production process of TCPP and TEP however this does not change the fact that there is a significant level of substitutability between the two. The fact that the Union industry would need to make investments to produce another product type is therefore not a valid argument to conclude that product types are not similar, interchangeable, or substitutable. Therefore, the claim was rejected.

- (41) Quimidroga further argued that the flame-retardant efficiency set in recital (46) of the provisional Regulation only refers to the phosphorus content, while all flame-retardant components and elements should be considered requiring 2,47 times more TEP than TCPP to reach the same flame-retardant efficiency. However, adding this amount of TEP would cause a change in the viscosity of the end-product negatively affecting the quality and performance. Quimidroga, Kingspan, and Purinova indicated that different equipment and reformulation of the chemical components is needed to come to a similar end-product, entailing significant costs and delays.
- (42) The complainants indicated that the efficiency of flame retardants cannot be based on any calculation referring to the content of chemical elements like phosphorous and chlorine only, as the users of APE may formulate their products differently.
- (43) The Commission found that a reformulation of the chemical components was indeed necessary to switch between TCPP and TEP. However, it learned from the verified user that these costs were limited compared to the turnover of the products incorporating APE.
- (44) Following definitive disclosure, Kingspan claimed that the Commission's conclusion that TCPP and TEP are interchangeable is contradicted by the verification visit report and the exhibits where Kingspan provided evidence that substituting TEP for TCPP (or vice versa) required expensive reformulation and recertification plus significant capex investment to modify the production facilities. The existence of significant costs in order to switch between producing the two is not disputed or ignored by the Commission, but as explained in recital (49), these costs do not prevent TCPP to be substituted by TEP in rigid foams. Moreover, no interested party could demonstrate the absence of demand side substitutability.
- (45) Following definitive disclosure, Kingspan argued that the Commission, in recital (43), overlooked the recertification and capital expenditure (capex) costs associated with reformulation. The Commission clarifies that the combined expenses for reformulation and recertification are also minimal compared to the turnover of products incorporating APE. Even when adding capex, it was established that these expenses did not hinder the use of TEP instead of TCPP for rigid foams.
- (46) CPCIF, Shandong Yarong, Kingspan, Purinova, and Quimidroga claimed that while TCPP is predominantly used as a flame retardant in rigid and flexible polyurethane foam, TEP is used as a plasticiser in polymers, rubbers, and plastics and only to a limited extent as a flame retardant. Moreover, they do not have the same sales and distribution channels and are not in direct competition with each other. CPCIF argued that even though TEP could theoretically be used as a flame retardant in the production of PUR or PIR foams, this would not be economically viable due to the higher price of TEP. Shandong Yarong further stated that even when used as a flame retardant, TEP is usually blended with other types of flame retardants to achieve a final product and is therefore not alike TCPP. Shekoy Europe stated that TCPP and TEP are not interchangeable but only complementary in rigid foams such as PIR.
- (47) Quimidroga argued that the Commission did not address the fact that TEP and TCPP are not substitutable in all different applications of APE and that there are other substances that may be used as flame retardants in PUR and PIR foams.
- (48) However, Kingspan and Purinova confirmed the Commission's conclusion that TCPP and TEP can be used interchangeably for continuous lines, such as panels.
- (49) As set out in recital (33), different product types might have different end uses. However, none of the interested parties denied or brought evidence negating that both TCPP and TEP can be used in rigid foam applications. This was confirmed by the analysis of information provided by users, where the Commission found that it is possible to fully replace TCPP with TEP in the production of rigid foams and to use TCPP and TEP separately as a flame retardant in the production of competing products. It did not find that the two product types could only be used complementarily.

- (50) Therefore, the claims with regard to the request to exclude TEP from the product scope have to be rejected and the Commission confirmed its provisional conclusion regarding the product scope.
- (51) Following definitive disclosure, Quimidroga claimed that the Commission failed to provide data on the respective shares of TCP and TEP in rigid and flexible foams, suggesting this information was necessary for a thorough substitutability analysis. However, the current levels of TCP or TEP consumption are irrelevant when assessing the substitutability of these products. In other words, even if the use of TEP was non-existent in a particular application, it would not imply that substitution is impossible. Therefore, the claim was disregarded.
- (52) Following definitive disclosure, Quimidroga argued that the Commission's substitutability analysis focused exclusively on rigid foams, neglecting flexible foams. It is however important to note that rigid foams account for approximately two-thirds of the applications utilizing APE, as stated in recital (46) of the provisional Regulation and uncontested by any of the interested parties. Consequently, the Commission considers that substitutability has been adequately demonstrated, and thus, the claim was dismissed.
- (53) Following definitive disclosure, Quimidroga asserted that there was no evidence on record indicating that TEP is used as a stand-alone flame retardant in rigid foams. However, as explained in recital (49), the Commission determined that TEP could be used as the sole APE in rigid foams. Consequently, Quimidroga's claim was rejected.
- (54) Shandong Yarong referred to recital (49) and claimed that the fact that TCP and TEP can be used in rigid foam applications does not demonstrate that the two products share the same end users and/or are interchangeable since any substitution from TCP to TEP demands expensive reformulation, recertification and capital expenditure. However as explained in recital (45), these expenses did not hinder switching from TCP to TEP for rigid foams. Therefore, the claim was rejected.
- (55) Purinova requested the exclusion of TEP and TCP used in the production of PIR and PUR thermal insulation systems, due to the lack of production capacity of APE of the Union industry and the need for these thermal insulation systems to reach the Union's climate goals without providing further details or evidence to support these claims.
- (56) Since the majority of APE imports from China are used in the production of PIR and PUR thermal insulation systems, an exemption for these imports would not eliminate the effects of injurious dumping and will render the anti-dumping measures ineffective. Therefore, the claim was rejected.
- (57) In the absence of any other comments regarding the product scope and the like product, the conclusions reached in recitals (30) to (49) of the provisional Regulation were confirmed.

3. DUMPING

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

- (58) The Commission received no comments on the procedure for determining the normal value in this case under Article 2(6a) of the basic Regulation.
- (59) The Commission's provisional findings in recital (61) are therefore confirmed.

3.2. Normal value

- (60) The Commission received no comments on the statement in recital (63) of the provisional Regulation that set out the terms of Article 2(6a) of the basic Regulation.
- (61) The Commission's provisional findings in recital (64) are therefore confirmed.

3.3. Existence of significant distortions

- (62) The Commission received comments on the evidence on the existence of significant distortions from the related importer Shekoy Europe (related to the cooperating non-sampled Chinese exporting producer Jiangsu Yoke) and the Chinese sampled exporting producer Anhui RunYue.
- (63) Shekoy Europe firstly asserted that their owner Jiangsu Yoke was not state-owned, as was set out in recitals (82), (86) and (90) of the provisional Regulation. The Commission noted that these recitals set out the Commission's summary of information in the complaint rather than findings of the Commission itself. The Commission's analysis is set out in recitals (150) to (156) of the provisional Regulation and did not refer to Jiangsu Yoke's ownership structure.
- (64) The Commission's conclusions on the influence of the Chinese state in the APE sector in recitals (150) to (156) were therefore not reliant on the ownership of Jiangsu Yoke.
- (65) Shekoy Europe secondly stated that the membership of the Chinese Communist Party ('CCP') is too large to be an important factor in the Commission's analysis.
- (66) The Commission rejects this analysis. Given the leading role of the CCP as set out in the Constitution of the People's Republic of China, membership of 100 million people is indicative of the CCP's influence. The fact that 50 million of these are in management positions only confirms the existence of a strong grip of the CCP over the Chinese economy, which is the only relevant element to assess the existence of a distortion.
- (67) Nothing in the comments of Shekoy Europe called into question the Commission's findings as set out in recitals (157) to (166) of the provisional Regulation.
- (68) Shekoy Europe then commented that phosphorus exports from China were regulated for fertiliser production, and not for the production of APE.
- (69) The Commission acknowledged this analysis, noting that it does not contradict the findings as set out in recitals (167) to (178) of the provisional Regulation, which state that the Chinese government restricts the export of raw materials necessary for producing APE.
- (70) The Commission has the same response to the comments of Shekoy Europe regarding the production of ethanol, and that TEP is not the main reason why ethanol would be produced.
- (71) Shekoy Europe also disputed the analysis in the complaint that the production of TCPP or TEP would be part of the 'strategic emerging industries' mentioned in recital (106) of the provisional Regulation.
- (72) The Commission noted the evidence in the complaint, summarised in recital (107) of the provisional Regulation, that flame retardants are clearly eligible for the distortive government support described in recitals (167) to (178) of the provisional Regulation.
- (73) Finally, Shekoy Europe submitted analysis that the 14th Five Year Plan would remove much of the hukou system ⁽⁶⁾ in China, and also that there are no differences in wages between local and non-local workers.
- (74) The Commission rejected this analysis. The 14th Five Year Plan, Article XXVIII section 1 reforms the hukou system but maintains a framework for regulating internal labour migration. The Commission also found nothing in the PRC Labour Law that would support Shekoy Europe's analysis on wage levels.
- (75) Nothing in these comments therefore called into question the Commission's findings as set out in recitals (184) to (187) of the provisional Regulation.

⁽⁶⁾ The hukou system is referred to in the Provisional Regulation recital (120) as the 'household registration system'.

- (76) Anhui RunYue commented that the China report referenced in recital (69) of the provisional Regulation was written in 2017, and that the findings of this report were now out of date.
- (77) The Commission noted that Anhui RunYue made the same point in their comments to the First Note, and their point was rejected in recitals (222) to (224) of the provisional Regulation. Moreover, the Commission's conclusions in the provisional Regulation are in line with the updated country report concerning China that was published in April 2024 ⁽⁷⁾.
- (78) Anhui RunYue then made the assertion that the 14th Five Year Plan was not a binding document.
- (79) The Commission again rejected this assertion, which was rejected in recitals (226) and (227) of the provisional Regulation. The Commission agreed with Anhui that the Section of the 14th Five Year Plan quoted in recital (227) of the provisional Regulation is primarily addressed to the Chinese authorities responsible for the Plan's implementation. It is thanks to the explicit instructions in the Plan to all those authorities that economic operators, such as Anhui RunYue, benefit from the favourable policy environment and resource allocation.
- (80) Anhui RunYue then made the assertion that the Chinese Communist Party ('the CCP') does not control the Chinese market economy.
- (81) The Commission rejected this assertion. The leading role of the CCP was described in detail in recitals (133) to (149) of the provisional Regulation.
- (82) Anhui RunYue then quotes from the *Opinions of the Central Committee of the Communist Party of China and the State Council on Accelerating the Improvement of the Socialist Market Economy System in the New Era* published on 11 May 2020 ⁽⁸⁾ to support their assertion.
- (83) Anhui RunYue's quote from this one government policy document did not alter those conclusions in the provisional Regulation, given also that the quote is very selective. The Commission noted that point 1(2) of these Opinions explicitly refers to numerous concepts directly indicative of significant state-induced distortions, such as: 'adhere to and strengthen the party's overall leadership', or 'adhere to and improve the basic socialist economic systems such as the common development of the economy with public ownership as the mainstay, distribution according to work as the mainstay, the coexistence of multiple distribution methods, and the socialist market economic system, and organically combine the socialist system with Chinese characteristics with the market economy, so as to provide important institutional guarantees for promoting high-quality development and building a modern economic system.'
- (84) Anhui RunYue then asserted that China has indeed enacted bankruptcy laws, contradicting the Commission's findings in recitals (179) to (183) of the provisional Regulation.
- (85) Anhui RunYue has provided no evidence to show that these findings are incorrect, or that Anhui is exempt from the laws currently in force.
- (86) Finally, Anhui RunYue asserted that there is no evidence of distorted wages in China.
- (87) The Commission again rejected this assertion, which contradicts the Commission's findings in recitals (184) to (186) of the provisional Regulation. Anhui RunYue has provided no evidence to show that these findings are incorrect, or that Anhui is exempt from the labour laws currently in force.
- (88) The Commission's provisional findings in recitals (65) to (204) and (236) to (238) of the provisional Regulation as regards distortions in China are therefore confirmed.

⁽⁷⁾ Commission Staff Working Document, on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, 10 April 2024, SWD (2024) 91 final.

⁽⁸⁾ <https://www.rmzxb.com.cn/c/2020-05-18/2574667.shtml> accessed on 7 May 2024

3.4. Representative country

- (89) At provisional stage the Commission informed interested parties of its decision to use Brazil as the representative country and explained that decision in recitals (239) to (266) of the provisional Regulation.
- (90) Following the publication of the provisional Regulation, the Commission received comments from the trade association CPCIF and the related importer Shekoy Europe on the choice of representative country.
- (91) In CPCIF's view, the Commission did not satisfy the requirements set out in Article 2(6a) of the Regulation for the choice of representative country, since there was no other country in the world with a level of economic development similar to China that manufactured APE and therefore there was no suitable representative country. CPCIF therefore requested the Commission to reconsider the resulting anti-dumping duties resulting from the use of Brazil as representative country.
- (92) Shekoy Europe contested the use of Brazil as representative country because Brazil had a limited chemical industry, was strongly dependent on imports and had low quality infrastructure.
- (93) The Commission explained the approach used to select Brazil in recitals (239) to (266) of the provisional Regulation. When there is no production of the product under investigation in any country with similar level of economic development as China, the Commission's practice is to identify a product in the same general category and/or sector of the product under investigation and to look for a country producing it which also belongs to the same upper middle-income group as China, as published by the World Bank ⁽⁹⁾. The data for the determination of the normal value is sourced from this representative country.
- (94) The choice of Brazil as representative country was made based on these criteria and in compliance with Article 2(6a) of the basic Regulation, as Brazil was an upper-middle income country with production of plasticisers, a product considered by the Commission as being in the same general category as APE, and where relevant data were readily available.
- (95) There is no need to assess the maturity of the industrial sector or the quality of infrastructure because they are not selection criteria for the choice of the representative country.
- (96) Both CPCIF's and Shekoy Europe's comments were therefore dismissed as they did not change the choice of Brazil as representative country.
- (97) CPCIF reiterated its comments made at provisional stage that plasticisers were not a similar product to APE. The same comment was made by Shekoy Europe. Neither party provided a more suitable alternative similar product.
- (98) The Commission explained why it considered plasticisers a product in the same general category as APE in recitals (255) to (256) of the provisional Regulation. None of the comments made by CPCIF and Shekoy Europe invalidated these findings.
- (99) The Commission's provisional findings in recital (266) are therefore confirmed.
- (100) Following definitive disclosure, CPCIF reiterated the claim made at provisional stage that the Commission should not use Brazil as representative country. No new arguments nor suggestions for alternative representative countries were provided by CPCIF.
- (101) CPCIF also argued that the Commission was wrong in not considering the maturity of the industrial sector for the selection of the representative country since material differences existing in the economic situation of the industrial sector might have a huge impact on the appropriateness of the country in question.
- (102) The Commission rejected the claims for the reasons explained in recitals (94) and (95) of this Regulation.

⁽⁹⁾ <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519-world-bank-country-and-lending-groups>

3.4.1. *Raw materials*

- (103) In their comments on the provisional Regulation the Chinese exporting producer Anhui RunYue again requested the Commission to adjust the GTA data on raw material prices to remove ocean freight costs and insurance fees as the Chinese producers purchased raw materials from the local market at prices which did not include these costs.
- (104) As already explained in recital (288) of the provisional Regulation, the Commission established a purchase price of the inputs available on domestic market of the representative country.
- (105) As a result, the Commission consistently used the import CIF price and adds the applicable import duties and transport costs to ensure that the benchmark is at the level of delivery to the factory gate of a representative country producer.
- (106) As Anhui RunYue provided no new arguments to support this claim, the Commission dismissed it.
- (107) In its comments on the provisional disclosure, the Chinese exporting producer Shandong Yarong requested disclosure of the calculation of the benchmark for phosphorus oxychloride (POCl₃), even though this benchmark was only used to calculate the normal value for one of its sampled competitors, Anhui RunYue.
- (108) The Commission rejected Shandong Yarong's request as the information was confidential and the benchmark was not used to calculate their normal value.
- (109) Following definitive disclosure, Shandong Yarong reiterated its request for disclosure of the benchmark for POCl₃. As indicated above in recital (108), the revision of the benchmark did not affect Shandong Yarong's normal value and dumping margin and the disclosure contained confidential information. The claim was therefore again dismissed.
- (110) Shandong Yarong however requested information on whether the benchmark calculation for POCl₃ included SG&A and profit. The calculation was explained in recital (270) of the provisional Regulation.
- (111) According to Shandong Yarong, based on the limited information on the methodology provided in the provisional Regulation, it was not clear if SG&A costs and a profit were included in the calculation of the benchmark for POCl₃. The company argued that this benchmark should include SG&A and profit to avoid any discrimination between exporting producers.
- (112) The Commission agreed that the constructed benchmark price for POCl₃ should be a market value for the input, based on the costs of the raw materials plus processing costs, and the SG&A and profit for selling it to the customer. The benchmark price for POCl₃ only included the cost of the raw material used to produce this product and did not include any SG&A and profit. Consequently, the Commission considered that the calculated benchmark needed to be adjusted with the addition of SG&A and profit.
- (113) Given that the Commission had no access to the SG&A and profit of a company manufacturing and selling POCl₃ ⁽¹⁰⁾ in the representative country, or any other source of SG&A and profit, the SG&A and profit of Elekeiroz SA were used as the nearest available proxy and were added to the existing benchmark calculation.
- (114) Following definitive disclosure, Anhui RunYue contested the revision of the benchmark for POCl₃ made at definitive stage.
- (115) First, Anhui RunYue argued that the Commission had based such a material change to the calculation method on unfounded and unsubstantiated comments by Shandong Yarong, without providing sufficient explanation for the reasons behind this change.

⁽¹⁰⁾ Phosphorus oxychloride is traded worldwide in very limited quantities due to its hazardous nature (recital 270 of the provisional Regulation).

- (116) The Commission considered that Shandong Yarong's comment on the necessity to include SG&A and profit in the calculation of POCl₃ was well founded. It would indeed be rational that a seller of POCl₃ determined the sale price by adding SG&A and profit to the cost of manufacturing. On that basis, the Commission adjusted its initial calculation of the benchmark.
- (117) Second, Anhui RunYue maintained that the Commission should have disregarded Shandong Yarong's comments since they came after the deadline and did not meet the procedural requirements of the anti-dumping investigation. Anhui RunYue argued that Shandong Yarong should have provided comments after the publication of the Second Note on factors of productions and not on provisional disclosure.
- (118) The Commission noted that the purpose of the Second Note was to inform interested parties about the relevant sources that it intended to use for the determination of the normal value. The fact the Shandong Yarong did not comment on the Note did not affect its right to comment on the findings during other steps of the investigation and in particular on the actual calculation of the normal value explained in detail only at provisional stage. Moreover, as per Section 8 of the Notice of Initiation, Anhui RunYue had the possibility to comment on information submitted by other interested parties and provide counterarguments on the revision of the benchmark for POCl₃.
- (119) Therefore, the Commission did not consider that Shandong Yarong's comments had been untimely submitted nor that Anhui RunYue's right of defence was violated.
- (120) Third, Anhui RunYue contended that the adjustment in the calculation method of the benchmark for POCl₃ was economically unreasonable and the SG&A and profit used for this adjustment were also unreasonable. Anhui RunYue argued that in a fully competitive market there should be no significant differences in the cost of raw materials, in this case POCl₃, whether they were purchased or internally produced, and therefore the initial calculation method was reasonable.
- (121) Anhui RunYue argued that if the Commission assumed that Anhui RunYue's cost of POCl₃ was different from the other two sampled producers and intended to include SG&A and profit for POCl₃ purchase price, it was unreasonable to add SG&A and profit to the manufacturing cost of POCl₃ constructed with the consumption ratios of the other two sampled producers who produced POCl₃ for further production of APE. The Commission should use consumption ratios of chlorine and yellow phosphorus, as well as the SG&A and profit, from producers of POCl₃, instead of producers of APE and plasticisers.
- (122) The Commission argued that the cost for manufacturing POCl₃, whether intended for captive use or intended for sale, would indeed not be significantly different. However, if intended for sale, an amount of SG&A and profit must be added to the cost of manufacturing of POCl₃. It is only reasonable that a sale would generate such costs and profits.
- (123) Furthermore, Anhui RunYue's contention that the two other sampled producers' consumption ratios of yellow phosphorus and chlorine were different from those of producers of POCl₃ was unfounded. The consumption ratios of phosphorus and chlorine are derived from a chemical equation and there can be very little variance in the ratios of the two components of the equation. Moreover, the sampled producers themselves not only produced POCl₃ and its precursor PCl₃ for internal use but also for sale using the same production process and the same consumption ratios.
- (124) Finally, Anhui RunYue also considered the level of SG&A and profit used for this adjustment unreasonable, contending that there was no evidence that it was in line with that of a producer of POCl₃.
- (125) As explained in recital (113), given that the Commission had no access to the SG&A and profit of a company manufacturing and selling POCl₃ in Brazil, the Commission resorted to the data collected in the present investigation and representing a reasonably available proxy for SG&A and profit.
- (126) The claim was therefore dismissed.

- (127) Following definitive disclosure, Quimidroga commented as well on the benchmark for POCl₃ and submitted that the Commission double-counted SG&A and profit in adjusting it. According to Quimidroga, the import value of phosphorus and chlorine already contained SG&A and profit amounts.
- (128) The Commission argued that this situation is typical when analysing a product's value chain. The purchase price of raw materials includes the supplier's SG&A and profit, while the sales price of the final product, made from these raw materials, includes the manufacturing company's SG&A and profit. Therefore, recognizing the SG&A and profit of each entity in the value chain is necessary. Consequently, the claim was rejected.

3.4.2. *Labour*

- (129) In their comments on the provisional Regulation, both Anhui RunYue and CPCIF again disputed the use of the national consumer price index ('INPC') to update the 2021 labour costs published by the IBGE (Instituto Brasileiro de Geografia e Estatística) for the same reasons set out in recital (306) of the provisional Regulation. Anhui RunYue also disputed that the Commission had rejected its claim because the company had not substantiated it with evidence while it was the Commission's burden of proof to prove the link between the use of INPC and the IBGE data.
- (130) The Commission already explained in recital (307) of the provisional Regulation that the INPC aimed at the correction of the purchasing power of salaries by means of the measurement of price changes in the basket of the lowest-income salaried population and was therefore widely used in wage negotiations⁽¹¹⁾. The Commission considered therefore that INPC was an appropriate index for measuring increases in wages and updating the labour cost in Brazil.
- (131) As no further elements were provided in Anhui RunYue's comments, the claim was rejected.
- (132) CPCIF contested the Commission's use of IBGE data to calculate the benchmark for labour cost in Brazil since it considered that this set of data, based on surveys, was not as representative as that of ILO, which should have been used instead.
- (133) The same claim was already rejected in recital (298) of the provisional Regulation and no further information was provided by CPCIF to change this provisional conclusion.
- (134) The Commission also noted that ILO collects the data on the labour market from datasets (mostly labour force surveys) compiled by national statistical offices around the world⁽¹²⁾. For Brazil, ILO sources the statistical data, both for the monthly earnings and for worked hours, from the IBGE. Therefore, the Commission considered that primary data from the IBGE were as representative, if not more, as the data from ILO and thus an appropriate source to determine the benchmark for labour.
- (135) Shandong Yarong reiterated the comment, made at provisional stage, on the calculation of the benchmark, disputing the use of two different sources, IBGE statistics for the labour cost and ILO statistics for worked hours, to calculate the hourly labour cost in Brazil, and requesting instead either to use working hours in China or to rely only on ILO statistics.
- (136) Shandong Yarong contended that using data both from IBGE and ILO was not correct since it meant using a 'combination of non-related sources', that is to say sources not related to each other. The Commission disagreed with Shandong Yarong for the same reasons as in recital (134), namely because primary data were all sourced from IBGE data. The claim was therefore dismissed.
- (137) As regards the request to use Chinese working hours, this request was rejected, as the purpose of the calculation is to identify the cost of a labour hour in Brazil and the Commission is obliged to calculate it using Brazilian published data, not the hours worked in China.

⁽¹¹⁾ <https://www.bcb.gov.br/en/monetarypolicy/priceindex> (last viewed on 2 June 2024).

⁽¹²⁾ <https://ilostat ilo.org/about/data-collection-and-production/> (last viewed on 2 June 2024).

- (138) Once the Commission has calculated the benchmark, which is the cost of an hour's work in Brazil using Brazilian working hours, then this cost replaces the cost of an hour's work in China when constructing the normal value. The number of hours worked in China, the 'consumption ratio', is only then part of the calculation of normal value.
- (139) Following definitive disclosure, Shandong Yarong repeated the claim that the benchmark for labour should be constructed either by using the worked hours of Chinese exporting producers or by using the same source of data, namely ILO.
- (140) The Commission already explained in recital (134) that the primary source for both labour cost and worked hours was the statistical data collected by the IBGE. The Commission considered that this was in line with what Shandong Yarong believed to be a 'coherent approach from a methodological perspective, [namely] to use the same dataset for the calculation of the entire benchmark'. ⁽¹³⁾
- (141) On the contrary, the same could not be said about the calculation of the labour benchmark by using data from two countries with different labour laws and average working hours, as suggested by Shandong Yarong.
- (142) The methodology used by the Commission is moreover in line with its past practice in cases where Brazil was selected as a representative country. ⁽¹⁴⁾
- (143) Since no new factual elements were brought forward by Shandong Yarong, the claim was dismissed.
- (144) CPCIF also repeated its claim made at provisional stage that the Commission methodology led to inflated employers' costs without bringing forward any new arguments. The Commission rejected the claim for the same reasons explained in recitals (300) to (302) of the provisional Regulation.
- (145) The Commission's conclusions in recitals (275) to (313) of the provisional Regulation are therefore confirmed.

3.4.3. Electricity

- (146) No comments were received on the calculation of this benchmark. Therefore, the provisional findings and conclusions in recitals (314) to (318) of the provisional Regulation are confirmed.

3.4.4. Steam

- (147) In their comments to the provisional Regulation, CPCIF again requested that the Commission use the price of steam coal in the steam benchmark calculation, or at least use 50 % steam coal and 50 % natural gas.
- (148) The Commission's use of natural gas to calculate the steam benchmark in Brazil was explained in recitals (320) and (321) of the provisional Regulation, including the reason for using natural gas rather than steam coal.
- (149) The claim is therefore again rejected and the provisional conclusion confirmed.

3.4.5. SG&A and profit

- (150) Data for SG&A and profit to be used in the construction of normal value at the ex-works level of trade were taken from the 2022 accounts of the Brazilian producer Elekeiroz SA and the method set out in recitals (325) to (329) of the provisional Regulation was used.
- (151) No comments on this method were received and the provisional conclusion was therefore confirmed.

⁽¹³⁾ Shandong Yarong's comments on final disclosure, para 43.

⁽¹⁴⁾ OJ L 169, 4.7.2023, p. 1, ELI: http://data.europa.eu/eli/reg_impl/2023/1404/oj

3.4.6. Calculation of normal value

- (152) No comments on this calculation were received, as set out in recitals (330) to (333) of the provisional Regulation and the provisional conclusion was therefore confirmed.

3.5. Export price

- (153) No comments were received to the method for calculating the export price, as set out in recitals (334) to (336) of the provisional Regulation and the provisional conclusion was therefore confirmed.

3.6. Comparison

- (154) In their comments on provisional disclosure, the Chinese sampled exporting producer Shandong Yarong stated that the Commission had not made a fair comparison between the constructed normal value calculated under Article 2(6a) and the company's export price, as required by Article 2(10) of the basic Regulation.
- (155) Shandong Yarong noted that the SG&A used to construct the normal value, taken from the public accounts of 2022 of Elekeiroz SA, must include freight, packaging, and financial expenses.
- (156) The Commission had however removed these and other costs from the export price of Shandong Yarong, to adjust the export price to an 'ex-works' level.
- (157) Given that a more detailed breakdown of the SG&A of Elekeiroz is not published and is not readily available, which would allow the constructed normal value to be adjusted to the same level as the export price, Shandong Yarong requested that these costs remain in the export price, to ensure a fair comparison.
- (158) Shandong Yarong made reference to the judgement of the General Court in the case T-762/20 ⁽¹⁵⁾ *Sinopec* which is under appeal, ⁽¹⁶⁾ and which considered this point of adjustment of the export price under Article 2(10) of the basic Regulation where the normal value had been constructed under Article 2(6a) of the basic Regulation.
- (159) The Commission rejected this request since Shandong Yarong failed to show that the SG&A costs used by the Commission were not already reported at an ex-works level, as found in recitals (330) to (333) of the provisional Regulation, or that they would lead to an amount for SG&A costs that would not be 'reasonable' at that level of trade, within the meaning of Article 2(6a)(a) of the basic Regulation.
- (160) As noted in recitals (330) to (333) of the provisional Regulation, the Commission considered the amount for SG&A costs used in the construction of the normal value reasonable for the level of trade at which the normal value was constructed, namely ex-works. Aside of an unsubstantiated assertion regarding the content of the SG&A used by the Commission no interested party questioned this finding.
- (161) In any event, the Commission recalled that Article 2(10) of the basic Regulation obliges the Commission to compare the export price and the normal value at the same level of trade. The Commission chose to compare the two at the ex-works level of trade. To that end, the export price was netted back to that level of trade.
- (162) Regarding the normal value, it is far more likely that the SG&A costs used by the Commission in the construction related to an ex-works level of trade ⁽¹⁷⁾ than that an arbitrary and completely uninformed reduction to these costs would bring them to that level. Another alternative would be not to net the export price back to the ex-works level of trade. In that case it would be virtually impossible that the normal value and the export price would be compared at the same level of trade. The requirement of Article 2(10) would therefore clearly not be met.

⁽¹⁵⁾ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62020TJ0762>

⁽¹⁶⁾ Case C-319/24 P, Commission v Sinopec Chongqing SVW Chemical and others, pending.

⁽¹⁷⁾ The audited accounts of the company show that they were prepared in line with International Financial Reporting Standards (IFRS), and these standards do not mandate that freight, packaging and financial expenses should be booked in either COGS or in SG&A. The audited accounts also do not provide any evidence that the company incurred these costs. For example, the Commission has found no reference to the company incurring any ocean freight costs.

- (163) Considering these alternatives, it is clear that, in finding that the SG&A costs used in this case are 'reasonable' for the ex-works level of trade, and absent any clear indication to the contrary (see recital (159) above), the Commission acted in accordance with Articles 2(6a) and 2(10) of the basic Regulation.
- (164) Following definitive disclosure, Shandong Yarong resubmitted its claim, arguing that the Commission was reversing the burden of proof on Shandong Yarong, and reiterating the claim that the responsibility to ensure a fair comparison lies with the Commission.
- (165) Shandong Yarong claimed again without substantiating it that it is well known that the freight, packaging and financial expenses costs are normally booked in the SG&A expenses, further referring to the International Accounting Standard 1.99 of the IFRS, which states that expenses recognised in the profit and loss statement must be classified either by their nature or their function. Therefore, Shandong Yarong concluded that if freight, insurance, or packaging costs are incurred to deliver goods to a customer as part of a sale transaction, they should be classified as SG&A and expenses related to those sales. However, Shandong Yarong did not demonstrate that this was the case for Eleikeiroz.
- (166) In this respect, the Commission noted that Article 2(6a)(a) of the Basic Regulation requires that the constructed normal value must include an undistorted and reasonable amount for SG&A costs and profits. Therefore, the Commission must establish these amounts according to two criteria: they must be reasonable and undistorted. Beyond these criteria, the Commission has considerable discretion given the complex economic assessments involved.
- (167) For transparency and to closely calibrate the amounts to the sampled exporting producers, the Commission typically uses readily available data from companies similar to the exporting producers in the representative country. Using these data, the Commission identifies ratios between manufacturing costs, SG&A costs, and profits in those companies. These ratios are then applied to the undistorted manufacturing costs of the sampled exporting producers to determine reasonable and undistorted amounts for SG&A costs and profit.
- (168) Contrary to what Shandong Yarong suggests, the Commission does not use the SG&A costs and profit of a third company directly. Instead, the Commission uses that company's rate (a ratio) between its manufacturing costs and its SG&A costs and profits. These rates are then applied to the constructed manufacturing costs of the sampled exporting producers to establish undistorted and reasonable amounts for SG&A costs and profits.
- (169) Arguments suggesting that these amounts include a certain cost and not another are misguided. These amounts are based on a ratio taken from one company, applied to constructed benchmarks from readily available sources, multiplied by usage rates from another company. They are pure constructions that cannot be broken down into individual cost elements. They are not intended to perfectly reflect the SG&A costs in the domestic market of each exporting producer, as such a determination is impossible. Instead, they approximate amounts that are reasonable and undistorted, as mandated by Article 2(6a)(a) of the Basic Regulation.
- (170) If Shandong Yarong had provided the Commission with reliable and quantifiable information showing that the SG&A costs in the representative country included elements not normally present at the ex-works level of trade, the Commission would have adjusted for those elements. Shandong Yarong failed to provide such information. Alternatively, under the legal standard in the last subparagraph of Article 2(6a)(a), Shandong Yarong could have argued that the amounts established were either unreasonable or distorted. Apart from arguing that the established SG&A rate differed from its own (see recitals (181) and (182)), Shandong Yarong did not provide arguments that these amounts were unreasonable or distorted.
- (171) Finally, considering the requirements of Articles 2(6a)(a) and 2(10) of the Basic Regulation and the methodology described, the Commission had three options.

- (172) First, the Commission could and did treat the amounts for SG&A costs and profit established as explained in recitals (168) through (170) as undistorted and reasonable for the ex-works level of trade. Such assumption is reasonable. It is for instance possible that the company in the third country did not incur the transport costs at issue at all (it could have been selling on ex-works basis). The Commission tested this hypothesis with interested parties, inviting comments. However, as explained in recital (170), no comments effectively contradicting the hypothesis were submitted.
- (173) Second, as explained in recital (162), the Commission could have made an uninformed and arbitrary reduction to the SG&A costs established. Such a reduction, being unsubstantiated, would essentially amount to a distortion of the established value and violate the last subparagraph of Article 2(6a)(a) of the Basic Regulation.
- (174) Finally, as requested by Shandong Yarong, the Commission could have avoided netting the export price back to the ex-works level of trade before comparing it with the constructed normal value. It is virtually impossible for such a level of trade, determined by each transaction's terms of sale during the investigation period, to match the level of trade on which the used SG&A rate was based. Indeed, considering that exporting producers usually sell to the Union under various delivery terms, without netting the export price back, the export price would not be established at a unique level of trade but an amalgamation of several levels.
- (175) As explained in recital (162), following Shandong Yarong's request would violate Article 2(10) of the Basic Regulation. Shandong Yarong did not contest this finding in its comments on the definitive disclosure but reiterated its request.
- (176) For the reasons summarised above this claim was rejected.
- (177) Shandong Yarong claimed that the Commission imposed an 'unreasonable' burden on them. This burden consisted in the Commission asking Shandong Yarong to justify a methodology which the Commission itself selected. For Shandong Yarong this is a violation of the principle of sound administration and Article 2.4 of the WTO Anti-dumping Agreement ('ADA').
- (178) The Commission provided Shandong Yarong with all the available information regarding the SG&A costs used and invited Shandong Yarong to comment on this data. Shandong Yarong did not claim that the Commission failed to disclose the information which would be necessary to request an adjustment. Instead, Shandong Yarong criticised the Commission for not having a detailed breakdown of the SG&A costs used to establish the rate applied in constructing the normal value.
- (179) By disclosing all the data it possessed related to the requested adjustment, regardless of whether the data was sufficient for Shandong Yarong's intended purposes, the Commission fulfilled its procedural obligations.
- (180) As such, the Commission did not violate the principle of good administration or Article 2.4 ADA by imposing an unreasonable burden of proof. This claim is therefore rejected.
- (181) Shandong Yarong considered, without substantiating it, that 8,49 % of SG&A is not reasonable for the 'ex-works' level of trade. Shandong Yarong compared this percentage with its own SG&A which is lower.
- (182) The Commission observed that the mere fact that the SG&A used was higher than the one achieved by Shandong Yarong at 'ex-works' level does not render it unreasonable within the meaning of Article 2(6a)(a), last indent, of the basic Regulation. Indeed, the SG&A rate of Shandong Yarong is different from the rates of the other sampled exporting producers. This does not render one or the other unreasonable. In absence of any other justification why 8,49 % of SG&A would have been unreasonable for an ex-works level of trade, the Commission rejected the claim.
- (183) Therefore, these claims were rejected.

3.7. Calculation of the dumping margin

- (184) Shandong Yarong requested that the Commission calculate their dumping margin on a quarterly basis. The company based this on changes in the price of raw materials over the IP which the company stated is reflected in the sales price of APE.
- (185) This claim was rejected for the following reasons:
- (186) Firstly, the fluctuations in the price of raw materials in China are irrelevant to the calculation of normal value, as this is based on average import prices into Brazil over the 12 months of the IP.
- (187) Secondly, the company makes no claim that their consumption ratios of raw materials would change per quarter, which is the only data from the company used to calculate normal value.

3.8. Dumping margins

- (188) As described in recitals (110) to (113) above, the Commission accepted the claim related to the benchmark calculation for phosphorus oxychloride (POCl₃) and as a result revised the dumping margin for Anhui RunYue and therefore the average of the sampled exporting producers.
- (189) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Anhui RunYue Technology Co., Ltd.	53,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %
Other cooperating companies not sampled listed in Annex	61,3 %
All other companies	68,4 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (190) Purinova claimed that because TEP is not produced in the Union, there is no Union industry within the meaning of Article 4(1) of the basic Regulation and Chinese imports of TEP could not have caused any injury to the Union industry since there is no Union industry.
- (191) The Commission assessed in recitals (27) to (57) the product exclusion requests of TEP from the product scope and concluded that TEP is part of this scope. Even though the Union industry did not produce this product type, the Commission found that TEP is a like product to TCPP. Pursuant to Article 4(1) of the basic Regulation, the Union industry are the Union producers as a whole of the like products, which would thus include the producers of TCPP. Moreover, under Article 1(4) of the basic Regulation, a like product may also mean another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. For this reason, the claim was rejected.
- (192) In absence of any further comments with respect to the definition of the Union industry and Union production, the conclusions set out in recitals (353) to (354) of the provisional Regulation were confirmed.

4.2. Determination of the relevant Union market

- (193) In absence of any comments with respect to the determination of the relevant Union market, the conclusions set out in recitals (355) to (359) of the provisional Regulation were confirmed.

4.3. Union consumption

- (194) In the absence of any comments with respect to the Union consumption, the conclusions set out in recitals (360) to (368) of the provisional Regulation were confirmed.

4.4. Imports from the country concerned

- (195) Following provisional disclosure, CPCIF argued that the increase in volume of imports of APE from China between 2021 and IP reflected a clear trend of re-establishing the supply/demand balance and return to normal market conditions following the end of the Covid-19 crisis and there is no clear sign of massive Chinese imports to the Union.
- (196) The complainants argued that the volumes of imports from China remained massive throughout the entire period considered and that the relief to the Complainants during the Covid-19 period came because of a reduction of price pressure from Chinese imports, in part because of the high transportation costs between China and the EU at the time, while the Chinese market share remained large.
- (197) The Commission found that over the period considered, which started in 2019 and thus in the period before the Covid-19 crisis, the Chinese imports showed an increase of 5 %. As set out in recital (371) of the provisional Regulation, the drop in imports from China during 2020 and 2021 seem to be exceptional and related to temporary logistic constraints and to the slowdown of international trade flows. When disregarding these two years as extraordinary, the increasing trend of the Chinese dumped imports is even more explicit. Therefore, the Commission decided to dismiss the claim of CPCIF.
- (198) Quimidroga claimed that the Commission did not address the fact that the import volume between 2022 and the IP decreased by 9 % and no increase in imports was seen after the initiation of the investigation.
- (199) Table 3 of the provisional Regulation indeed showed that the imports decreased from 2022 to the investigation period. However, this should be seen in light of a decreasing trend in Union consumption, where despite this decrease in absolute Chinese import volume from 2022 to IP, the Chinese market share still increased by 3 percentage points to 80 %. Also, when assessing the full period considered, Chinese imports increased by 5 %. Therefore, the claim of Quimidroga was rejected.
- (200) CPCIF refuted that the imports of APE from China caused significant price suppression for the Union industry. CPCIF indicated that although the increased price level was on average around 33 % lower than the Union prices in the IP, Chinese imports reflected the market trend of cost and price increase and the abnormally higher price of the Union producers was mainly caused by other factors that were not representative of ordinary market conditions, such as the Union industry's high energy and labour cost following Covid-19 and the Russian military aggression to Ukraine.
- (201) CPCIF considered that the price undercutting of Chinese imports of APE did not have any suppressive or depressive effects on the Union prices, which continued to grow throughout the period considered. The prices from China did not influence in any way the prices set by Union producers, evidenced by the fact that in 2022 the Union industry could increase the price of APE above the level of the trend. The Union producers were able to maintain their prices well above their production costs except for the IP and thus the marginal price undercutting of the Chinese imports had no effect on the ability of the Union producers to increase their prices until 2022.
- (202) The complainants responded to these claims, stating that there is a large price difference between the Chinese import price and the Union industry's price, which should be considered a decisive injury factor.

- (203) At the outset, the Commission notes that undercutting and price suppression are two independent price effects listed in Article 3(3) of the basic Regulation as alternatives, which may or may not occur concurrently in a given case. As set out in recitals (398) and (440) to (441) of the provisional Regulation, the investigation found that the Union industry was unable to pass on the significant raw material cost increase. With a market share of 80 %, the Chinese imports were evidently able to set the market price of the product under investigation. While the Union industry's unit cost of production increased by 42 %, it was able to increase its prices by only 36 %. Therefore, the Union industry could not offset the cost increase it faced due to the price suppression caused by the Chinese imports. The fact that the average import price from China in 2020 and 2021 was not undercutting the Union industry's price and the Union industry could accumulate profits is mainly due to the exceptional Covid-19 crisis and the high freight costs during that period. However, from 2022 onwards, when the market returned to the before COVID situation, the Chinese imports started to undercut the Union industry's prices again and the Union industry's profitability turned into a loss. Therefore, the Chinese imports did have an effect on the ability of the Union producers to set their price and the claim was therefore rejected.
- (204) Shekoy Europe and Quimidroga argued that the data on Union consumption, import volumes from China, the market share these imports represent, and the import prices are biased because of the inclusion of TEP in the statistics while the Union industry only produces TCPP.
- (205) As set out in recitals (27) to (57), the Commission rejected the exclusion of TEP from the product scope. Therefore, the analysis on imports is done on an aggregated basis for all the product types falling under the product under investigation. Moreover, as stated in recital (377) of the provisional Regulation, the price of both product types followed the same trend.
- (206) Quimidroga argued that the undercutting calculation set out in recitals (378) and (379) of the provisional Regulation is solely based on Chinese imports of TCPP and sales of the Union industry of TCPP.
- (207) The Commission confirmed that as the Union industry did not produce TEP, the price comparison was based on the sales of TCPP only. A price comparison per product type was considered to be the most reasonable, considering the difference in prices between different product types. Therefore, the claim had to be rejected.
- (208) Absent any further comments with respect to the imports from the country concerned, the conclusions set out in recitals (369) to (379) of the provisional Regulation were confirmed.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (209) Quimidroga argued that the macroeconomic indicators in the provisional Regulation only related to the production of TCPP, drawing an asymmetric comparison with imports from China including both TCPP and TEP.
- (210) As stated in recital (191), the Commission concluded that TEP is part of the product scope and that even though the Union industry did not produce this product type, the Commission found that TEP is a like product to TCPP. Pursuant to Article 4(1) of the basic Regulation, the Union industry are the Union producers as a whole of the like products, which would thus include the producers of TCPP.

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

- (211) In the absence of any comments with respect to the production, production capacity and capacity utilisation, the conclusions set out in recitals (384) to (386) of the provisional Regulation were confirmed.

4.5.2.2. Sales volume and market share

- (212) In the absence of any comments with respect to the sales volume and market share, the conclusions set out in recitals (387) to (389) of the provisional Regulation were confirmed.

4.5.2.3. Growth

- (213) Quimidroga argued that it was not clear from recital (390) of the provisional Regulation if the decrease in Union consumption included TEP. Since TEP is included in the product concerned, all the findings on injury included all product types.
- (214) In the absence of any further comments with respect to the growth, the conclusions set out in recital (390) of the provisional Regulation were confirmed.

4.5.2.4. Employment and productivity

- (215) Quimidroga argued that the impact on employment was negligible.
- (216) As set out in recital (392) and (393) of the provisional Regulation, the number of employees producing the product concerned first increased but showed a decrease from 2021 on. Over the full period considered, a decrease is visible. The fact that the absolute figure in employment loss was limited, did not change the conclusions on the trend seen during the period considered.
- (217) Absent any further comments with respect to employment and productivity, the conclusions set out in recitals (391) to (393) of the provisional Regulation were confirmed.

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

- (218) Purinova argued that the Commission failed to take into account the termination of the anti-dumping investigation on imports of TCPP originating in China conducted in 2010⁽¹⁸⁾. That investigation was terminated as it did not reveal any circumstances that such termination would not be in the interest of the Union.
- (219) The investigation conducted in 2010 was terminated following the withdrawal of the complaint by the complainants and the Commission did not find any reason showing that the termination would not be in the Union interest. The current situation is different than the one in 2010: there has been no request for withdrawal and the investigation has established existence of dumping and of material injury and found that imposition of the measures would not be against the Union's interest.
- (220) Moreover, and in any event, the investigation period for that investigation was 1 July 2009 to 30 June 2010, which is 13 years before the investigation period of the current investigation. The economic interest and situation of the Union market players cannot be compared to the findings made by the Commission at that time, due to change of various economic factors determining dumping and injury during these years.
- (221) In the absence of any further comments with respect to the magnitude of the dumping margin, the conclusions set out in recitals (394) and (395) of the provisional Regulation were confirmed.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

- (222) Following provisional disclosure, Quimidroga claimed that the Commission should have made it clear that the analysis on prices in Table 8 and recital (397) of the provisional Regulation, which is based on TCPP, is compared to the import volumes of TCPP and TEP, which rendered the Commission's findings in recital (397) of the provisional Regulation misleading.

⁽¹⁸⁾ Commission Decision of 9 August 2011 terminating the anti-dumping proceeding concerning imports of tris(2-chloro-1-methyl-thyl) phosphate originating in the People's Republic of China, OJ L 205, 10.8.2011, p. 35.

- (223) At the outset, the Commission notes that the findings of dumping, injury and causation, summarised in the provisional Regulation, were based on the data for the product under investigation as a whole and not its subsets (product types). Nothing in that Regulation suggests otherwise. It should be noted that Table 8 and recital (397) of the provisional Regulation only assessed the trend of the Union industry sales prices on the Union market and the Union industry's unit cost of production and did not provide an analysis of the Chinese import sales. The findings made by the Commission in recital (397) of the provisional Regulation regarding the effect of the Chinese price trend during the period considered on the Union industry prices is not misleading. As set out in recital (377) of the provisional Regulation, even though the import prices of TCPP and TEP were not the same, the price of the two product types followed the same trend during the period considered, i.e. after an increase from 2019 to IP, they decreased sharply. Therefore, the claim has to be rejected.
- (224) Following definitive disclosure, Quimidroga argued that the Commission should have considered the price difference between TCPP and TEP as an important and relevant factor in the product scope and competition analysis and that the Commission should have performed a proper price effects analysis of the prices of TEP to ensure proper price comparability.
- (225) The Commission acknowledged in recital (377) of the provisional Regulation that the import price of TCPP was lower than the import price of TEP, but that the price of both product types followed the same trend, i.e. they showed an increase during the period considered. To perform a fair price comparison between the imported product and the product sold by the Union industry, the Commission made an undercutting and underselling calculation on the basis of the product control number ('PCN') in which these price differences were taken into account.
- (226) The fact that a price difference exists between the two product types has never been contested. As set out in recitals (39) and (46) of the provisional Regulation, the substitutability between the two product types because of their difference in price is largely mitigated by the fact that less TEP is needed to make the end-product as flame-retardant as when using TCPP. When considering that about 1,8 kg of TCPP is needed to replace 1 kg of TEP, a price difference of 60 % makes that the two product types are similarly priced to the end user in kg of downstream product and were found to be in direct competition with each other. With these coefficients, which have not been contested by the interested parties, the cost of TEP would even be lower than that of TCPP in the end-product.
- (227) Moreover, the use of PCNs is exactly to account for such price differences between different product types. While the injury and causality analysis are done on the basis of aggregated information on imports and production and sales, the dumping, undercutting, and underselling calculations warrant a recognition of a possible variation in prices within the subset of the product under investigation. Therefore, the claim was rejected.
- (228) In the absence of any further comments with respect to prices and factors affecting prices, the conclusions set out in recitals (396) to (398) of the provisional Regulation were confirmed.

4.5.3.2. Labour costs

- (229) In the absence of any comments with respect to the labour costs, the conclusions set out in recitals (399) and (400) of the provisional Regulation were confirmed.

4.5.3.3. Stocks

- (230) In the absence of any comments with respect to the stocks, the conclusions set out in recitals (401) and (402) of the provisional Regulation were confirmed.

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

- (231) Following provisional disclosure, CPCIF argued that the Union industry remained profitable throughout the period considered until 2022, depicting a strong industry. The loss of the Union industry during the IP was not caused by the Chinese imports but was the result of exceptional market circumstances due to the costs of energy and labour. Purinova claimed that the loss in profitability was a consequence of the natural action of market forces and economically erroneous decisions by the complainants, rather than due to the Chinese imports. It further argued that the Union industry did not adapt to the market conditions after the exceptional situation with extraordinarily high profit levels in 2021 and thus lost its competitiveness. Quimidroga also addressed this sharp decline in production volume stating that it failed to understand why the production volumes declined, while the Union industry was still profitable in 2022.
- (232) The complainants argued that the profitability levels were positively affected by long-term contracts covering a significant part of their sales that partially sheltered some of the Union producers from the injurious effects of dumped imports for some time.
- (233) The Commission found that the Union industry indeed reached an exceptionally high profit margin in 2021. However, this margin quickly eroded in 2022 and the IP, resulting in a loss (- 6 %). This coincided with an increase in Chinese imports of 32 percentage points from 2021 to IP at undercutting prices in 2022 and the IP. Due to these increased low-priced imports, the Union industry could not compete and dropped its production volume by 72 percentage points over the period 2021 to IP, more than halving its market share. This shows that there was a clear correlation between the increased volume of dumped imports from China and the decrease in sales and profits by the Union industry. Therefore, the claim of CPCIF and Purinova had to be rejected.
- (234) According to Shekoy Europe, Table 11 of the provisional Regulation showed very limited investments by the Union industry, despite the high profitability levels in 2021 and 2022. This showed that in spite of the disbalance between the Union demand and production, Union producers have not been investing in new capacity or processes.
- (235) The level of investments was indeed found to be limited during the period considered and were mainly related to maintenance and not to expand production. This was due to the presence of dumped Chinese imports on the market, which significantly affected the utilisation of the production capacity of the Union industry, which dropped by 39 percentage points over the period considered to 30 % in the IP. With the increasing market penetration of the Chinese imports, the Union industry was not able to fully utilise its existing production capacity, let alone to expand its capacity. Therefore, the claim of Shekoy Europe had to be rejected.
- (236) Quimidroga repeated its claim that the data on profitability, cash flow, investments, and return on investments only includes sales of TCPP and argued that the profitability figure in Table 11 of the provisional Regulation is calculated incorrectly when compared with Table 8 of that Regulation.
- (237) The Commission confirmed that the Union industry only produced TCPP and found that the Union TCPP industry was - 6 % loss making during the investigation period as shown in Table 11 of the provisional Regulation. This profitability is calculated on the basis of cost of goods sold and other costs whereas Table 8 of the provisional Regulation compares average sales prices with average unit cost of production. Consequently, the profitability shown in Table 11 cannot be directly deduced from Table 8. Therefore, the comment of Quimidroga had to be rejected.
- (238) Following definitive disclosure, Quimidroga reiterated its claim that the two tables should be reconcilable if any imports of TEP made by the Union industry were excluded.
- (239) As set out in recital (237) above, the calculation methodologies behind the two tables are different. The unit cost of production is calculated differently than the cost of goods sold and other costs. This is the reason why Quimidroga's claim is incorrect. None of the tables included imports of the product under investigation. Any imports of the product under investigation were accounted for in Table 3.

- (240) In the absence of any further comments with respect to profitability, cash flow, investments, return on investments and ability to raise capital, the conclusions set out in recitals (403) to (409) of the provisional Regulation were confirmed.

4.5.4. Conclusion on injury

- (241) Quimidroga claimed that the comparison on injury was made on an inconsistent and asymmetric basis, since imports included TEP and TCPP while the Union industry only produced TCPP.
- (242) The above claim is fundamentally based on the premise that TEP is not part of the product scope. As TEP is part of the product concerned, the assessment of injury was based on both imports of TEP and TCPP. Both product types competed with each other on the Union market, despite the fact that the Union industry only produced TCPP. Recital (377) of the provisional Regulation has clarified that the price of the two product types has been different, however that they did follow the same trend in the period considered. The difference in price between the two product types did not affect any of the other main injury indicators and therefore the Commission confirmed the conclusions set out in recitals (410) to (418).
- (243) Following definitive disclosure, Quimidroga maintained its claim, arguing that the Commission did not properly assess the non-production of TEP by the Union industry. The injury determination should only be valid for TCPP as the Union industry did not provide any reliable, verifiable, and objective data on how imports of TEP have caused material injury to the Union industry, especially since the Union industry stopped producing TEP 20 years ago.
- (244) Quimidroga further argued a contradiction between recitals (207) and (223), where on the one hand the dumping, undercutting, and underselling calculations were done per product type and on the other hand that the findings of dumping, injury, and causation were based upon the product under investigation as a whole. According to the company, the injury assessment, even if it is performed on an aggregated basis, necessitates data input in relation to each product type, especially because there are only two product types.
- (245) Since the Commission decided to not exclude TEP from the product scope, the injury determination, just like the dumping determination, was based on the product as a whole. The Commission found that the two product types were in direct competition with each other in a majority of the downstream uses and therefore, it was found that both product types caused material injury to the Union industry.
- (246) As set out in recitals (225) to (227), the dumping, undercutting, and underselling calculations are done on the basis of PCNs to take into account a possible variation in prices between product types within the subset of the product under investigation. On the other hand, the injury assessment analyses the effect of all the imports of the product under investigation from the country concerned, where a price differentiation between product types is not a determining factor when the different product types are found to be in direct competition with each other. Therefore, the claim was rejected.

5. CAUSATION

5.1. Assessment

- (247) In its provisional findings, the Commission distinguished and separated the potential effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Aside from the dumped imports, these factors were: imports from third countries; the export performance of the Union industry; the Union industry's investment costs; the consumption and claimed market rebalancing effect; the increased costs of raw materials and energy as well as inflation in the Union; and the lack of substitutability between TCPP and TEP. The effect of these other factors on the Union industry's injury was however found to be only limited, if any, and did not attenuate the causal link between the dumped imports and the material injury found.

5.2. Interested parties' comments after provisional measures.

- (248) Quimidroga claimed that the analysis on the causal link between the dumped Chinese imports and the material injury of the Union industry is critically flawed, because of the inclusion of TEP in the analysis.
- (249) Following pre-disclosure, Prochema claimed that TEP could not have caused injury because the complainants purchase TEP themselves from Union importers or directly from Chinese exporting producers, TEP was not placed on the European market at a price lower than its cost value, and the price of TEP was always significantly higher than that of TCP, even compared to the complainants' TCP prices offered on the European market. Therefore, TEP could not have been dumped or have caused injury to the Union market.
- (250) The above claims were not substantiated with evidence. Furthermore, they are based on the premise that TEP should not be part of the product scope.
- (251) As set out in recital (57) TEP is part of the product scope and its inclusion in the assessment is therefore justified. The investigation found that the Union industry sourced only limited volumes of TEP, less than 5 % of the Union consumption of APE, which could not have caused them injury. The Commission confirmed in recital (205) that the price of TEP was higher than the price of TCP, but as found in recital (46) of the provisional Regulation, a small amount of TEP is needed to replace TCP, which would partially compensate for the higher production cost and offset the price difference of TEP.
- (252) Following provisional disclosure, CFCIP reiterated its claim that if the Union industry did suffer any injury, this was the result of other factors than the imports from China, including but not limited to the return to 'normal' market conditions, increased costs of raw materials, higher energy prices, the existence of high inflation and labour cost. Additionally, Quimidroga argued that the annual report of two of the complainants referred to other factors influencing the company's performance, such as the economic situation in the Union, the geopolitical situation in various regions neighbouring Europe, weak demand, exchange rate fluctuations, and a duty suspension.
- (253) The Commission assessed all other known factors that could have caused injury within the meaning of Article 3(7) of the basic Regulation and as indicated in recital (247). The comments submitted by the interested parties following the provisional disclosure did not bring new substantial elements or evidence which would have invalidated the conclusion set in the provisional Regulation. Therefore, the Commission confirmed the conclusions set out in recitals 419 to 448.
- (254) After definitive disclosure Quimidroga and CFCIP repeated their claim. CFCIP argued that the Chinese imports only started to undercut the Union industry's prices from 2022 because of the exceptional market situation the Union industry found itself in, with high energy costs, a general economic downturn, and high inflation caused by the Russian aggression against Ukraine, while the Chinese producers were not affected by those factors.
- (255) In recitals (424) to (448) of the provisional Regulation, the Commission assessed other factors that could have caused injury to the Union industry, among which the increased costs of raw materials and energy and inflation in the Union. However, it did not find that any of these factors attenuated the causal link between the dumped Chinese imports and the injury suffered by the Union industry. CFCIP did not provide any further evidence to support its claim and the Commission rejected this claim.
- (256) Following the provisional disclosure Quimidroga claimed that the duty suspension for the CN codes under which the product concerned is imported into the Union might have aggravated the injurious situation of the Union industry, because the previously applicable common customs duty was suspended, and the product concerned come into the Union duty-free.
- (257) The Commission analysed this claim. It was found that the duty suspension could have only had a marginal effect on the injury of the Union producers, since the common customs duty on the product concerned was 6,5 %. In light of an average undercutting level of 34,6 % the duty suspension was found to not attenuate the causal link between the dumped Chinese imports and the material injury found. Therefore, this claim had to be rejected.

- (258) Following disclosure, CFCIP reiterated its claim that there is a lack of substitutability between TCPP and TEP. It repeated that these two product types are not alike and cannot be used interchangeably. Since the Union industry is only producing TCPP, imports of TEP could not have caused injury.
- (259) Since the CFCIP did not further substantiate this claim and did not provide evidence that could invalidate the findings made in recital (445) of the provisional Regulation, the Commission rejected the claim and confirmed its finding in recital (445).
- (260) Following definitive disclosure, CFCIP repeated this claim that the Union industry does not produce TEP, and TEP imported from China are not directly competing with TCPP sold by the Union industry on the same market. Moreover, TEP is 60 % more expensive than TCPP and could therefore not cause any injury to the Union industry producing and selling only TCPP.
- (261) As stated in recital (259), the Commission did not agree with this claim. The two product types were found to be substitutable and competing with each other in the most important end uses, which is the rigid foams. As explained in recital (46) of the provisional Regulation, a smaller amount of TEP is needed to replace TCPP to perform the same flame retardancy, which would partially compensate for the price of TEP. Therefore, the claim was rejected.

5.3. Conclusion on causation

- (262) The conclusions reached in recitals (419) to (448) of the provisional Regulation were confirmed.

6. LEVEL OF MEASURES

6.1. Injury margin

- (263) Following provisional disclosure, Quimidroga argued that the injury margin was wrongly calculated and was significantly inflated. To substantiate its claim Quimidroga provided an alternative injury margin calculation. However, the calculation that Quimidroga provided was based upon an incorrect CIF price. The injury margin calculation prepared by the Commission on the other hand used correct data. The calculation and the methodology used for this calculation was disclosed to all interested parties, including Quimidroga, and was not contested by any of the exporting producers. Therefore, the claim was rejected.
- (264) Following provisional disclosure, the exporting producer Anhui RunYue argued that the provisional Regulation did not provide evidence that any of the Union producers had committed to CO₂ emission reduction investments and therefore the adjustment made pursuant to Article 7(2d) of the basic Regulation was speculative and should be verified in the future. If such investment would not be taking place, the Commission should reduce the anti-dumping duties accordingly.
- (265) Furthermore, Anhui RunYue claimed that since China has launched its own carbon emission trading scheme in 2017, Chinese producers also have future costs related to carbon emissions that are reflected in their export price. For a fair comparison, the addition of future emission costs should be also made on the Chinese export price.
- (266) The Commission did not consider the adjustment for future environmental costs as speculative. The one complainant who claimed this adjustment has provided substantive evidence that showed the current costs of Emission Trading Scheme certificates. Based on publicly available data a calculation was made for the costs of these certificates for the next five years.
- (267) Anhui RunYue did not provide any information on its costs related to carbon emissions. Therefore, the Commission could not assess whether this company indeed incurred such costs and the claim had to be rejected.
- (268) The complainants reiterated their disagreement with the Commission's determination of the target profit, which was set at 6 % pursuant to Article 7(2c) of the basic Regulation.

- (269) The Commission found that although the complainants proposed a number of methodologies to set the target profit, as set out in recitals (455) to (463) of the provisional Regulation, based on the data available to the Commission, none of these methodologies would result in a level of profitability to be expected in the absence of dumped imports. The Union market was affected by the Chinese dumped imports already before the start of the period considered and has not been able to reach the minimum level of 6 %, set by Article 7(2c) of the basic Regulation. Additionally, they argued that one of the complainants was partially shielded from Chinese dumped imports during the last 10 years, due to a long-term contract it had with a large user.
- (270) However, the Commission considered that the profit of only one of the three complainants which was partially shielded from the distorting trade practice of the Chinese exporting producers could not be considered as representative of the Union industry's profit expected under normal conditions of competition. Therefore, the basic profit was set at 6 %.
- (271) Following definitive disclosure, Kingspan argued that the TCPP sold by the complainants is compared with TCPP and TEP imported from China which vitiates the injury and causation analysis. In the injury margin calculation, which compares the price of imports per type, i.e. TCPP or TEP, with the target price of the complainants' sales per type, i.e. TCPP, all imports of TEP are effectively ignored when calculating the injury margin. Kingspan claimed that the TEP market is separate from the TCPP market with significantly different prices and therefore the duty level for TEP is based on facts that are not related to the TEP market.
- (272) First, the duty level imposed is based upon the dumping margin, which compared Chinese export sales to the Union of both product types with a constructed normal value for both product types.
- (273) Second, as per normal practice, the injury margin calculation is done on a per PCN basis, that is comparing the different product types produced by both the exporting producers and the Union industry. Indeed, since the Union industry did not produce TEP, the injury margin calculation compared the sales of TCPP from the sampled Chinese exporting producers with the Union industry sales of TCPP. Therefore, contrary to the allegation from Kingspan, the Commission did not compare TEP imports with TCPP. This comparison resulted in a very substantial matching of around 85 % of the Chinese exports of the product concerned with the corresponding products on the Union side. If the argument submitted by Kingspan is that there should be a segmentation in the analysis, the Commission found no evidence on the file of such segmentation of the market between TEP and TCPP that would warrant a separate analysis of the two types of products. To the contrary, as explained in recital (445) of the provisional Regulation, TEP and TCPP share similar essential physical and chemical characteristics and are interchangeable for rigid foams applications which represent the majority of the total Union consumption. Therefore, this claim was rejected.
- (274) As provided by Article 9(4), third subparagraph, of the basic Regulation, and given that the Commission did not register imports during the period of pre-disclosure, it analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure described in recital (4) and therefore reflect the additional injury resulting from such increase in the determination of the injury margin.
- (275) Based on data from the Surveillance database⁽¹⁹⁾, import volumes from China during the four weeks period of pre-disclosure were 78 % higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

⁽¹⁹⁾ The Surveillance database is a statistical tool managed by the TAXUD General Directorate of the European Commission. It provides information on EU export and import transactions (if declared for entry for free circulation), at TARIC level on a daily basis.

- (276) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which is considered the relevant weighting factor based on the provisions of Article 9(4). It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period and the 52 weeks of the IP by the import volume in the IP extrapolated to 56 weeks. The resulting figure, 1.056, reflects the additional injury caused by the further increase of imports during the four weeks period of pre-disclosure. The provisional injury margins were thus multiplied by this factor.
- (277) In the absence of any further comments, recitals (449) to (470) of the provisional regulation is confirmed.
- (278) As described in recitals (274) to (276), the Commission revised the injury margins. Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

Company	Definitive injury margin
Anhui RunYue Technology Co., Ltd.	69,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	78,4 %
Shandong Yarong Chemical Co., Ltd.	79,0 %
Other cooperating companies not sampled listed in Annex	76,2 %
All other companies	79,0 %

6.2. Conclusion on the level of measures

- (279) Following the above assessment, definitive anti-dumping duties should be set as below in accordance with the lesser duty rule in Article 7(2) of the basic Regulation:

Company	Definitive anti-dumping duty
Anhui RunYue Technology Co., Ltd.	53,1 %
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4 %
Shandong Yarong Chemical Co., Ltd.	63,0 %
Other cooperating companies not sampled listed in Annex	61,3 %
All other companies	69,1 %

7. UNION INTEREST

7.1. Interest of the Union industry

- (280) CPCIF argued that there is no indication that the imposition of anti-dumping duties will have a positive effect on the Union industry.
- (281) The claim made by CPCIF was not substantiated and is therefore rejected.
- (282) Following definitive disclosure, CPCIF repeated its comment highlighting that the Union industry production is not sufficient to meet the entire Union demand for the product concerned and that it would be in the Union interest to keep imports from Chinese producers.

- (283) As set out in recital (499) of the provisional Regulation, imports from China remain a necessary source of imports. Anti-dumping measures are not intended to prohibit imports, but to reestablish fair conditions of trade and competition. To warrant the security of supply, production in the Union has to remain present. Therefore, the claim was rejected.
- (284) Following definitive disclosure, the complainants stated that anti-dumping measures rebalance the market conditions and disables market players from benefitting from an unfair trade practice at the expense of the Union industry, ensuring the security of supply to users.

7.2. Interest of unrelated importers, traders, and users

- (285) Following pre-disclosure, Impag AG claimed the lack of security of supply and the overall inability of the Union industry to meet Union domestic demand, forcing users to import at higher prices if anti-dumping duties were imposed. This was reiterated by Quimidroga after the provisional disclosure, adding that the Union industry did not supply TEP and did not show any evidence that it would restart TEP production. Anti-dumping measures would thus also affect the downstream users of TEP in its other applications. Purinova, CPCIF, and Systemhouse added that the production capacity of the Union industry stagnated and is not able to meet current and increasing future demand. Additionally, there is no production of TEP outside of China and, as said above, no indication that the Union industry would start producing TEP. Therefore, duties would be only felt by the downstream market.
- (286) The complainants argued that due to the pressure of Chinese dumped imports, they reduced their capacity utilisation rates to minimum levels although their installed capacity has not been reduced. This means that in the absence of Chinese dumped imports, the complainants would be able to quickly increase their production volumes again. On the other hand, they did acknowledge that the Union industry's production is not sufficient for meeting the entire Union demand for APE.
- (287) It is clear that, at least in the near future, the imports from China remain a necessary source for users of the product under investigation. As explained in recital (499) of the provisional Regulation, the pressure of dumped imports from China risks to force the Union industry to further scale down or to completely stop production in the Union, which would result in even less security of supply. Moreover, the purpose of the anti-dumping duty is not to stop imports of APE from China but to eliminate trade-distorting effects of an unfair trade practice, i.e. injurious dumping, and thereby to restore fair conditions of trade and competition. A precise dumping and undercutting calculations calibrated the measures to achieve just that purpose. Therefore, the claims of Quimidroga, Purinova, CPCIF, and Systemhouse were rejected.
- (288) Quimidroga reiterated its claims after definitive disclosure and submitted that the conditions to conclude that the definitive measures were not against the Union interest were not met, because the Commission did not address the question of how the Union industry will meet the TEP demand as it did not relaunch TEP production during 20 years and nothing showed that it will restart production.
- (289) As set out in recital (287), the Commission recognised that imports from China will remain a necessary source. However, that the Union industry is not in the position to be directly able to supply the full Union consumption does not alter the Commission's conclusions as set out above. Therefore, the claim was rejected.
- (290) Following provisional disclosure, Purinova stated that the Commission's provisional findings focussed solely on the interest of the Union industry without assessing the interests of other market participants, while anti-dumping measures would have a disproportionate impact on users and consumers. Also CPCIF argued that all importers and users that came forward unanimously opposed the imposition of anti-dumping measures, because they would be to the detriment of the downstream market and most users would not be able to absorb the cost of the measures.
- (291) Purinova reasoned that while the product under investigation only constituted a low share in the profits of the complainants, referring to recital (409) of the provisional Regulation, the revenue from goods produced using APE constituted a significant part of total income for traders and users. The user Systemhouse noted that the assessment of the interest on users was solely based on the comments provided by the cooperating users.

- (292) Purinova argued that the total cost of APE in the final cost of the end-product depends on the specificities and production techniques used for the end-product in question, but on average exceeds the percentage given in recital (489) of the provisional Regulation. Systemhouse indicated that its cost increase of end products would amount to 5 % - 10 %. According to Systemhouse, supported by Rytm-L Sp. z o.o., due to the provisional measures imposed, an increase in production costs of rigid foams is already being observed and in order to maintain the current profit margin on the end-products, the costs must be passed on to the end users of the final products. Systemhouse indicated that the provisional Regulation did not evaluate the increase in the cost of intermediate downstream products.
- (293) The complainants responded to this claim arguing that all users stated that the cost increase of the end-product depends on the specificities of the product in question and therefore unverified data provided by the users should not be considered for the Commission's conclusions.
- (294) For its assessment on the impact of anti-dumping measures on the different parties, the Commission based itself on the submissions by the parties which provided the company/business-specific information to assess such impact the most accurately. The Commission noted that all importers and users opposed the imposition of anti-dumping duties. To make a fair assessment, the Commission analysed the submission from all parties. The submissions of the cooperating users did not show that the impact of anti-dumping duties on importers and users would be significant. This was further confirmed by the verification visits held at a large importer and a large user. Therefore, the claim was dismissed.
- (295) Purinova and Impag AG argued that anti-dumping measures would decrease the competitiveness of PUR systems compared to other thermal insulation systems, despite its advantages in thermal insulation properties. According to CPCIF, Purinova, and Shekoy Europe, the Commission failed to substantiate its conclusion that the imposition of anti-dumping measures would allow the Union to meet its objectives for insulation and reduction of carbon emissions and claimed that anti-dumping measures would only slow down the Union's efforts to decarbonise Union building stock as users would likely use APE less or use other less carbon efficient products for construction projects in the Union.
- (296) In recital (503) of the provisional Regulation, the Commission concluded that the measures would not have any significant impact on the Union's objectives for insulation and reduction of carbon emissions. This is due to the relatively limited cost that APE represents in the production of insulation materials. The parties did not provide any evidence that this conclusion was wrong and therefore the claim was rejected.
- (297) Shekoy Europe and Quimidroga further claimed that the objectives of the common customs duty suspension on TCPP and TEP would be undermined by the imposition of anti-dumping measures.
- (298) The objective of imposing anti-dumping duties is to restore fair conditions of trade and competition. The existence of a tariff suspension on part of the product concerned cannot be considered a reason to not restore a level playing field in the Union market. The claim was therefore rejected.
- (299) According to Systemhouse, the Commission did not consider the fact that producers in third countries could produce the same end products as Union users at a cost without the anti-dumping duties. Therefore, the interests of the user industry, in particular the Union producers of the downstream polyol products, are undermined by the anti-dumping measures.
- (300) The Commission found that anti-dumping measures are supposed to restore fair conditions of trade and competition. The risk that the downstream products containing product under investigation might be substituted by other downstream products cannot be a reason not to restore a level playing field on the upstream Union market for APE by addressing the situation of injurious dumping, in particular when the adverse effect of anti-dumping duties on the users is considered to be relatively limited.

- (301) Following definitive disclosure, Kingspan argued that measures on TEP are against the Union interest, because imposing duties on TEP would negatively affect many users, especially in the applications in which substitution between TCPP and TEP are not possible, while the measures would not protect any Union producers and it would unduly obstruct the foam industry's transition to halogen-free products that contrary to TCPP are not associated with possible health risks. According to Kingspan, the finding in recital (294) disregards the time and costs associated with reformulation, recertification and capex investment that will be borne by users who may seek ways to reduce the use and corresponding costs of flame retardants.
- (302) In recital (502) of the provisional Regulation, the Commission acknowledged that the measures will likely increase the production costs of users but that on the medium/long term the improved supply security of the Union is likely to benefit also the users. No users of TEP in applications where substitutability by TCPP was not possible came forward in the investigation and therefore any negative effect on those users could not be assessed. However, the costs of the product concerned on the cooperating users was found to be relatively limited, due to the limited amount of the product concerned in the end-products.
- (303) By imposing a duty on TCPP and TEP, the Commission would not obstruct any possible transition from TCPP to halogen-free products, such as TEP. Since the investigation found injurious dumping of both TCPP and TEP, fair conditions of trade and competition should be restored. Moreover, any public health risks related to TCPP were found to be indecisive. According to the European Chemicals Agency, no classification for carcinogenicity has yet been proposed. Therefore, the claim was rejected.

7.3. Conclusion on Union interest

- (304) The conclusions reached in recital (504) of the provisional Regulation were confirmed.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Definitive measures

- (305) In view of the conclusions reached with regard to dumping, injury, causation, level of measures and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.
- (306) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Anhui RunYue Technology Co., Ltd.	53,1	69,1	53,1
Nantong Jiangshan Agrochemical & Chemicals Limited Liability Co.	68,4	78,4	68,4
Shandong Yarong Chemical Co., Ltd.	63,0	79,0	63,0
Other cooperating companies not sampled listed in Annex	61,3	76,2	61,3
All other companies	68,4	79,0	68,4

- (307) 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 in respect to these companies. These duty rates are thus exclusively applicable to imports of the product under investigation originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.
- (308) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽²⁰⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (309) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper 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'.
- (310) 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 should 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 rate of duty is justified, in compliance with customs law.
- (311) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (312) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.
- (313) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request provided that three conditions are met.
- (314) The new exporting producer would have to demonstrate that:
- (a) it did not export the product concerned to the Union during the IP;
 - (b) it is not related to an exporting producer that did so; and
 - (c) it has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

⁽²⁰⁾ European Commission, Directorate-General for Trade, Directorate G, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

8.2. Definitive collection of the provisional duties

(315) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of provisional anti-dumping duties imposed by the provisional Regulation, should be definitively collected up to the levels established under the present Regulation.

9. FINAL PROVISION

(316) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²¹⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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 classified under CN code ex 2919 90 00 (TARIC codes 2919 90 00 50 and 2919 90 00 65) and CN code ex 3824 99 92 (TARIC code 3824 99 92 38) and originating in the People's Republic of China.

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

Company	Definitive anti-dumping duty	TARIC additional code
Anhui RunYue Technology Co., Ltd.	53,1 %	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	61,3 %	
All other companies	68,4 %	8 999

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 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.

⁽²¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1, ELI: <http://data.europa.eu/eli/reg/2018/1046/oj>).

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2024/1064 imposing a provisional anti-dumping duty on imports of certain alkyl phosphate esters originating in the People's Republic of China shall be definitively collected.

Article 3

The Annex mentioned in Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) during the period of investigation (1 July 2022 to 30 June 2023);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and
- (c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 4

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

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

Done at Brussels, 12 September 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