

**COMMISSION IMPLEMENTING REGULATION (EU) 2017/1171****of 30 June 2017****imposing a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

**A. PROCEDURE****1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Implementing Regulation (EU) No 457/2011 <sup>(2)</sup>, a definitive anti-dumping duty on imports of melamine originating in the People's Republic of China ('the PRC' or 'China' or 'country concerned').
- (2) The measures took the form of a fixed duty of 415 EUR/tonne on all imports from the PRC with the exception of three cooperating Chinese exporting producers that were granted a minimum import price ('MIP') of 1 153 EUR/tonne.

**2. Request for an expiry review**

- (3) Following the publication of the notice of impending expiry <sup>(3)</sup> of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of the measures in force pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 <sup>(4)</sup>.
- (4) Three Union producers lodged this request: Borealis Agrolinz Melamine GmbH, OCI Nitrogen BV and Grupa Azoty Zakłady Azotow Pulawy SA ('the applicants'). They represented more than 50 % of the total Union production of melamine in 2015.
- (5) The request was based on the grounds that the expiry of the measures in force would in all likelihood result in the recurrence of dumping and in the recurrence of injury to the Union industry.

**3. Initiation of an expiry review**

- (6) Having determined that sufficient evidence existed, the Commission announced on 11 May 2016, by a notice published in the *Official Journal of the European Union* <sup>(5)</sup> ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

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

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

<sup>(3)</sup> Notice of the impending expiry of certain anti-dumping measures (OJ C 280, 25.8.2015, p. 6).

<sup>(4)</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation was repealed and replaced by the basic Regulation.

<sup>(5)</sup> Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of melamine originating in the People's Republic of China (OJ C 167, 11.5.2016, p. 7).

#### 4. Investigation

##### 4.1. Review investigation period and period considered

- (7) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 April 2015 to 31 March 2016 (the 'review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the 'period considered').

##### 4.2. Parties concerned by the investigation

- (8) The Commission advised the applicants, other known Union producers, exporting producers in the PRC, known importers and traders and their associations, users known to be concerned and the representatives of the exporting country of the initiation of the expiry review.
- (9) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (10) The Commission services granted one interested party, namely China Council for the Promotion of International Trade ('CCPIT') a hearing at the initial stage of the procedure. Another hearing occurred with the Hearing Officer with the same interested party after definitive disclosure on 4 May 2017.

##### 4.3. Sampling

- (11) In the Notice of Initiation, the Commission stated that it, in accordance with Article 17 of the basic Regulation, intended to sample interested parties in case a significant number of them came forward.

###### — Sampling of exporting producers in the PRC

- (12) In order to decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the mission of the PRC to the Union to identify and/or contact other Chinese exporting producers, if any, that could be interested in participating in the investigation.
- (13) No exporting producers in the PRC came forward with a response to the sampling form or decided to cooperate in the expiry review. Therefore, there was no sampling of Chinese exporting producers in this procedure.

###### — Sampling of Union producers

- (14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. Three Union producers, that were also the applicants, provided a reply to the standing forms while the two other Union producers did not cooperate in the investigation. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production of melamine. The provisional sample consisted of the three cooperating Union producers. The sampled Union producers accounted for over 80 % of total estimated Union production in 2015. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the provisional sample was thus confirmed. The sample was considered representative of the Union industry.

###### — Sampling of unrelated importers

- (15) To decide whether sampling was necessary and, if so, to select a sample, all known (in total 15) importers/distributors were invited to fill in the sampling form attached to the Notice of Initiation.
- (16) Only one importer replied to the sampling form and therefore sampling was not considered necessary.

#### 4.4. Questionnaires and verification visits

- (17) The Commission sought and verified all the information deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping, the likelihood of continuation or recurrence of injury and Union interest.
- (18) The Commission sent questionnaires to the two producers in the analogue country the three sampled Union producers, one unrelated importer and to 69 known users in the Union.
- (19) Complete questionnaire replies were received from the two potential analogue country producers, the three sampled Union producers, one unrelated importer and four users.
- (20) The Commission carried out verifications at the premises of the following companies:
- (a) Union producers:
- Grupa Azoty Zakłady Azotowe Pulawy SA, Poland,
  - OCI Nitrogen BV, the Netherlands,
  - Borealis Agrolinz Melamine GmbH, Austria.
- (b) Importers:
- Globe Chemicals GmbH, Germany.
- (c) Users:
- Melamin d.d. Kocevje, Slovenia,
  - Tinde d.o.o, Slovenia,
  - ChemCom BV, the Netherlands.
- (d) Producer in the market economy analogue country:
- Nissan Chemical Industries Ltd, Japan.

### B. PRODUCT CONCERNED AND LIKE PRODUCT

#### 1. Product concerned

- (21) The product concerned is melamine, currently falling within CN code 2933 61 00 originating in the PRC.
- (22) Melamine is a white crystalline powder produced predominantly from urea and is used mainly in laminates, wood adhesives, moulding compounds and paper/textile treatments.

#### 2. Like product

- (23) The product concerned and melamine produced and sold on the domestic market of Japan, the analogue country, as well as melamine produced and sold in the Union by the Union industry were found to have the same basic physical, chemical and technical characteristics and uses.
- (24) The Commission therefore concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

### C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

- (25) In accordance with Article 11(2) of the basic Regulation, the Commission first examined whether the expiry of the measures in force would be likely to lead to a continuation or recurrence of dumping from the PRC.

## 1. Cooperation from the PRC

- (26) Upon the initiation of the review procedure all known Chinese exporting producers (71 companies or groups of companies) were invited to come forward and to provide replies to the sampling form attached to the Notice of Initiation. However, no Chinese company reacted to the initiation of the review procedure or decided to cooperate at any further stage of the procedure.
- (27) The only reaction from China was a submission by the CCPIT, followed later by a hearing.
- (28) The status of the CCPIT as an interested party was contested by the applicants. The applicants in their submission claimed that CCPIT is neither an exporter of the product concerned nor an association of such exporters and thus their comments should be disregarded in their entirety.
- (29) The CCPIT (also known as China Chamber of International Commerce (CCOIC)) comprises amongst others enterprises and organisations representing the economic and trade sectors in China. It can be thus also treated as an association of exporters, including exporters of the product concerned. After definitive disclosure CCPIT has confirmed the presence of 9 melamine producers among the Chamber's members. Furthermore, according to its Articles of Association, the responsibilities of CCPIT include organising, assisting or acting on behalf of Chinese enterprises and individuals in third countries procedures such as anti-dumping. Taking into account the above, the Commission treated CCPIT as an interested party as in previous anti-dumping proceedings <sup>(1)</sup>.

## 2. Dumping during the review investigation period

### (a) Analogue country

- (30) According to Article 2(7)(a) of the basic Regulation, normal value has to be determined on the basis of the prices paid or payable on the domestic market or the constructed value in an appropriate market economy third country (the 'analogue country').
- (31) In the original investigation, the Commission chose Indonesia as an analogue country. However, in 2011, the production facility of the cooperating Indonesian producer was closed. As the company in question was the only producer of melamine in Indonesia, this country could not be further taken into account as a potential analogue country.
- (32) In their request, the applicants proposed using the USA as an analogue country. Consequently, the applicants used constructed normal value from the US market for the preliminary calculation of the dumping margin in their request. However, taking into account that there is only one domestic producer of melamine in the USA, currently protected by a very high level of anti-dumping and countervailing measures, the Commission decided to look for an alternative analogue country despite the fact that the US producer was willing to cooperate and replied to the questionnaire.
- (33) The Notice of Initiation envisaged also the use of other countries producing melamine as a potential analogue country, namely India, Iran, Japan, Qatar, Russia and Trinidad & Tobago. Following the initiation of the current review procedure the Commission contacted eight companies located in those countries. Only one company, the Japanese Nissan Chemical Industries Ltd, agreed to cooperate as an analogue country producer and replied to the questionnaire which was subsequently verified on spot.
- (34) Following definitive disclosure CCPIT claimed that no contact record with the second Japanese exporting producer of the product concerned could be found in the open file and therefore CCPIT was not able to verify whether the Japanese company in question indeed had refused to cooperate in the procedure.

<sup>(1)</sup> The CCPIT was treated as interested party most recently in expiry reviews concerning silicon metal (Commission Implementing Regulation (EU) 2016/1077 (OJ L 179, 5.7.2016, p. 1)) and high tenacity yarn of polyester (Commission Implementing Regulation (EU) 2017/325 (OJ L 49, 25.2.2017, p. 6)).

- (35) In this regard, the Commission explained that all potential analogue countries' producers were contacted by the Commission at least twice (15 July and 16 September 2016) and a blank copy of the questionnaire was sent to each of them. The correspondence was not however shown in the open file, nor were the addressees of the emails in question revealed to each other <sup>(1)</sup> as these producers are competitors. It is confirmed that no reply was received from the second Japanese producer of the product concerned.
- (36) The Commission considered Japan as a proper analogue country taking into account the size of its domestic market and the level of the competition thereon. There are two domestic producers in Japan and a substantial share of the market is also held by imports (estimated at 12 %). Both Japanese producers are also engaged in exports so they must be able to compete internationally with their costs and prices. The country is not protected by high custom duties. They amount to 3,1 % for WTO members but 0 % under the GSP regime which applies also to the PRC — the main exporter to the Japanese market. Also no trade defence measures currently apply.
- (37) In view of the above, the Commission concluded that Japan is an appropriate analogue country under Article 2(7)(a) of the basic Regulation.
- (38) The CCPIT contested the methodology of analogue country for establishment of the normal value as such, arguing that section 15 of the Protocol of Accession of China to the WTO had lapsed after 11 December 2016. Thus normal value for the Chinese exporting producers should be calculated on the basis of their own domestic prices and/or costs.
- (39) The Commission rejected this claim. As the Notice of Initiation was published on 11 May 2016, the applicable legal framework is 'Regulation (EU) 2016/1036 of the European Parliament and the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union'. Therefore, normal value will be determined on the basis of data from an analogue country. The Chinese exporting producers were given a chance to submit MET (Market Economy Treatment) claim forms, but none of them submitted such a claim form.
- (40) Following definitive disclosure, the applicants argued that the USA should have been used as analogue country. They acknowledged that the findings by the Commission in recital (36) above may indeed render the price applied by the US producer on the US domestic market unsuitable to serve as the basis of the normal value calculations. However, these characteristics of the US market should not prevent the use of the USA as an analogue country for the purposes of the constructed normal value methodology. In any event, the applicants did not contest the choice of Japan as an analogue country.
- (41) The Commission considered that the distortions described in recital (36) above rendered the USA not appropriate analogue country in all circumstances, including when the normal value needs to be constructed. Therefore, this claim was rejected. In addition, the Commission took note of the fact that the applicants did not contest the choice of Japan as an analogue country.
- (b) Normal value
- (42) The information received from one cooperating producer in the analogue country was used as a basis for the determination of the normal value.
- (43) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating analogue country producer during the review investigation period was representative. To this end, its total domestic sales volumes were compared to the total volume of the product concerned exported by Chinese exporting producers to the Union. On that basis, the Commission found that the like product was sold in representative quantities on the Japanese domestic market. Since the product concerned was considered homogenous, the representativity test was not required per product type. The Commission subsequently examined for the analogue country producer whether the product sold domestically could be considered as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.
- (44) Since the volume sold at a net sales price equal to or above the calculated cost of production (costs of manufacturing plus SG&A costs), represented less than 80 % of the total domestic sales volume, normal value was established based on the prices of the profitable domestic transactions adjusted to ex-works. The level of this adjustment was in the range of 2 %-7 %.

<sup>(1)</sup> The blind copy or 'Bcc' function was used in addressing potential analogue country producers.

- (45) As the Japanese producer was using a different production method compared to the standard method used by the Chinese and Union producers (based on naphtha rather than natural gas as a basic raw material for production of urea which is later used for the production of melamine), the costs of manufacturing, used for the ordinary course of trade test in the calculation of the normal value, were adjusted downward to reflect this difference in production method. It was based on the actual difference in the costs of manufacturing between the respective basic raw materials, naphtha and natural gas. The adjustment could be precisely calculated for the cooperating analogue country producer since in the post RIP the company in question changed its production method to the standard one that is based on natural gas. The calculation took into account also the changes in market prices of both basic raw materials after the RIP. The exact level of adjustment and its calculation could not be revealed as it was based on cost data of only one company which are therefore confidential. However, the approximate level of the adjustment was disclosed in ranges to the interested parties.

(c) Export price

- (46) In the absence of cooperation from Chinese exporters, an average export price for the RIP was extracted from Eurostat import statistics. The export price was adjusted from CIF to ex-works for applicable factors listed in Article 2(10) of the basic Regulation on the basis of data submitted in the review request or collected in the original investigation. The total level of adjustment amounted to 11 %.

(d) Comparison

- (47) The normal value and the average Chinese export price as determined above were compared on an ex-works basis.
- (48) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation as explained in recitals (44) and (46) above. In the case of domestic prices an adjustment was made for the inland freight. In the case of the export prices an adjustment was made for inland freight, handling and ocean freight.
- (49) China applies a policy of partially reimbursing VAT upon export and in this case 8 % VAT was not reimbursed. To ensure that the normal value was expressed at the same level of taxation as the export price, the normal value was adjusted upward by that part of the VAT charged on exports of melamine that was not refunded to the Chinese exporting producers<sup>(1)</sup>.

(e) Dumping margin

- (50) The product concerned, in this review as well as in the original investigation, is considered homogenous. Therefore no calculation of dumping margin per product type was required. The Chinese average export price to the Union was significantly lower than the normal value established in the analogue country. The investigation showed that the Chinese exporters continued to dump their products in the Union market with a margin as high as 21,0 % during the RIP.
- (51) Following definitive disclosure CCPIT claimed that the nature and exact level of certain adjustments made in the calculation of the normal value and export price were not disclosed to the interested parties.
- (52) In this regard it is recalled that no Chinese exporting producer cooperated in this procedure. Therefore no Chinese interested party received a detailed calculation of its export price. With regard to normal value adjustments it is recalled that they were based on the data of only one company of the analogue country and therefore could be disclosed only in ranges, instead of the exact figures for confidentiality reasons because the data is very sensitive for the company in question. Furthermore, a detailed explanation as to the nature of the adjustments (apart from recital (48) above) and sources of data used was given to the interested party in question during the hearing. The claim of not adequate disclosure of calculations is therefore rejected.

<sup>(1)</sup> That method was accepted by the General Court in its judgment of 16 December 2011, Case T-423/09, *Dashiqiao v Council*, ECLI:EU:T:2011:764, paras 34 to 50.

(f) Conclusion on dumping in the review investigation period

- (53) The Commission found that Chinese exporting producers continued to export melamine to the Union at dumped prices during the RIP (though in lower volumes than in the original investigation).
- (54) However the majority <sup>(1)</sup> of Chinese imports to the Union took place under the MIP system and therefore the current export price does not necessarily reflect what would be the actual price level in case the anti-dumping measures in force were allowed to lapse. In addition, the import volume of the product concerned from the PRC into the Union was relatively low during the RIP (at around 2 % market share). The Commission therefore also examined the likelihood of continuation of dumping in case the measures were allowed to lapse.

### 3. Evidence of likelihood of continuation of dumping

- (55) The Commission analysed whether there was a likelihood of continuation of dumping should the measures be allowed to lapse. When doing so, it looked into the Chinese production capacity and spare capacity, the behaviour of Chinese exporters on other markets, and the attractiveness of the Union market.
- (56) In the absence of cooperation of the Chinese exporting producers, the analysis concerning the likelihood of continuation of dumping was made in accordance with Article 18 of the basic Regulation, namely on the basis of the information contained in the review request and publicly available information.

(a) Production and spare capacity in the PRC

- (57) According to the statistics presented by the applicants in the request, the Chinese production capacity amounted to 1,9 million tonnes already in 2013 <sup>(2)</sup>. In the same year production in China was close to 1,1 million tonnes while the Chinese domestic market represented around 852 000 tonnes.
- (58) Given the level of production in the PRC, the Chinese spare capacity was significant, i.e. around 800 000 tonnes. According to the data of 2013, the actual production of China was covering its domestic demand almost fully (import was insignificant at 700 tonnes) and allowed also for 205 000 tonnes of exports.
- (59) In the RIP Chinese total exports increased to 240 000 tonnes <sup>(3)</sup>. This figure, as well as the huge spare capacity mentioned above have to be seen also against the background of total consumption on the Union market which was estimated in the RIP at a level of 393 000 tonnes.
- (60) By activating its spare capacity, Chinese production could theoretically supply more than two times the total Union consumption even taking into account their domestic demand and exports to third countries.
- (61) CCPIT claimed that the estimation of the Chinese spare capacity should take into account the expected growth of the Chinese domestic market. Indeed, the growth of the Chinese internal market was also examined by the report referred to in recital (57). According to that estimation, the domestic consumption in China should grow by 5,9 % yearly and reach 1,1 million tonnes in 2018. However, even taking into account this growth of domestic demand and total export volumes of some 250 000 or even 300 000 tonnes, the spare capacity in the PRC would still be higher than the total consumption of the Union market. This scenario is based on the conservative assumption that Chinese total capacity of the production did not and will not increase between 2013 and 2018.
- (62) The Commission therefore concluded that the PRC has significant spare capacities of melamine production exceeding the total Union consumption.
- (63) Following definitive disclosure CCPIT claimed that the Commission's conclusions on Chinese spare capacity are based on flawed analysis as the figures of two different periods were used, namely the actual capacity of production from 2013 and actual total Chinese export and estimated consumption of the RIP. Furthermore, CCPIT indicates that the Commission focused in its analysis on the high total Chinese export of the product

<sup>(1)</sup> Source: the data reported to the Commission by the Member States in accordance with Article 14(6) of the basic Regulation ('Article 14(6) database').

<sup>(2)</sup> Source of data: Chemical Economic Handbook Report — Annex 9 of the expiry review request. 2013 is the last year covered by the report in terms of actual data.

<sup>(3)</sup> Source: Chinese export database.

concerned in the RIP ignoring the fact that export destined for the Union market was relatively small. Finally, CCPIT presented an alternative method for the calculation of Chinese capacity utilisation and spare capacity projected for the year 2018, based on figures submitted in Annex 24 of the expiry review request rather than figures submitted in Annex 9 thereof, used by the Commission.

- (64) In response to the above it should be firstly stressed that the assumption of zero increase in the total production capacity in China between the year 2013 and the RIP was a very conservative approach in the analysis. Should the Commission use also an estimation of this figure for the RIP, using the methodology based on Annex 9 of the expiry review request, the figure for production capacity of China would be 230 000 tonnes higher.
- (65) Secondly, in the analysis and estimation of Chinese spare capacity the total volume of Chinese domestic consumption and the total volume of Chinese exports are relevant, not the volume of exports to particular markets, in this case to the Union.
- (66) Thirdly, even if the alternative method of calculation of Chinese spare capacity for 2018, as proposed by CCPIT, was used, the spare capacity would be reduced by some 200 000 tonnes. However, this would not change the conclusion of recital (61) that the spare capacity in the PRC would still be higher than the total consumption in the Union market. Furthermore, the alternative method of calculation proposed by CCPIT is based on the assumption that in a view of the projected increase of domestic consumption the Chinese producers would still keep relatively low levels of capacity utilisation, namely 48,3 %. The claims of the interested party in question with regard to the analysis of the spare capacity in the PRC were therefore rejected.

(b) Behaviour of the Chinese exporters on the markets of third countries

- (67) In order to determine whether Chinese exporting producers still continue their low-priced export practices, the Commission examined the price level with regard to Chinese exports sales to its three most important export markets, namely Turkey, Malaysia and South Korea. Exports to these markets represented approximately 36 % of Chinese exports of the product under investigation during the RIP. Additionally, the Commission also examined the price level with regard to Chinese export sales to the analogue country Japan.
- (68) The export price to third countries markets was established on the basis of data available from the PRC export statistics, namely on the basis of the quantities and values (adjusted from FOB basis to ex-works) of exports from the PRC.
- (69) The average Chinese export prices to the selected countries were significantly lower than the minimum import price to the Union established in the original investigation as well as the level of the domestic prices found on the Japanese market in the current expiry review.
- (70) Furthermore, recent findings of the US authorities which resulted in the imposition of the anti-dumping measures against imports of the product concerned from China also confirm continued unfair trade practices by Chinese exporting producers.
- (71) Thus the Commission concluded that during the review investigation period the behaviour of the Chinese exporting producers, in terms of price undercutting and possibly dumping practices, did not change.

(c) Attractiveness of the Union market

- (72) The Union market is the second biggest market for melamine in the world with an estimated demand of almost half the demand of the Chinese domestic market. Before the introduction of the measures, the Union was a traditional market for China: Chinese imports in the original investigation reached 30 000 tonnes per year on average, i.e. more than three times their current level of exports to the Union. The average price on the Union market (1 149 EUR/tonne) is also in general higher than the average Chinese export price (855 EUR/tonne) on its main export markets. Even after the imposition of the measures, the exporting producers continued exporting to the Union and kept their business relations with Union users.



- (73) It is therefore likely that the Chinese producers will channel part of their vast spare capacities to the Union market if the measures were allowed to lapse and the Chinese would be able to export below the MIP currently in force.
- (74) In addition, the recent anti-dumping and countervailing duties imposed by the USA <sup>(1)</sup> on Chinese melamine resulted in a practical closure of a sizeable and high-priced market for the PRC. In the years 2013 and 2014, the PRC was selling 10 841 and 12 764 tonnes of melamine respectively to the USA, which then dropped to 786 tonnes in 2015 and 213 tonnes in 2016 freeing up significant quantities (in the range of 12 000 tonnes) for other destinations.
- (75) Therefore, further significant volumes of low-priced melamine would be available for redirection to the Union already in the short term in case the measures were allowed to lapse.
- (76) Following definitive disclosure CCPIT contested the above findings on attractiveness of the Union market. The interested party in question firstly disagreed that the Union market had been a traditional market for PRC exports of the melamine before the imposition of the measures. CCPIT highlighted in this regard that the Chinese export to the Union decreased drastically already in the period 2007-2010, prior to the imposition of the measures. Secondly, the interested party in question disputed the Commission's conclusion that the recent imposition of the trade defence measures against China by the USA would result in redirection of the trade volumes from the USA to the Union. As a support for this argument the CCPIT referred to the situation on the Indian market which, although protected for years by measures, still remains the main export market for Chinese producers.
- (77) In response to the above, the Commission emphasised that the decrease of Chinese export volumes to the Union from 2007 to 2010 coincided with the drastic decrease of the Union consumption in this period due to the economic crisis. The Union market of melamine shrunk in this period by more than 30 %. Furthermore, in the beginning of 2010 the anti-dumping procedure was already initiated which would also normally already at an early stage have had some impact on the trade volumes originating in the country concerned. Secondly, with regard to the Indian market the Commission observed that the measures imposed by India are on much lower level than those imposed by the USA <sup>(2)</sup>. Furthermore, the effect of the US measures on Chinese export volumes is already clearly visible as indicated in recital (74) above. In light of the above, the claims of CCPIT concerning the attractiveness of the Union market were rejected.

(d) Conclusion on dumping and likelihood of continuation of dumping

- (78) The investigation showed that the Chinese exporting producers were selling at dumped prices to the Union market. They have also continued their low priced, and allegedly dumped, exports to the third countries' markets. The Commission also established a significant spare capacity in China capable of satisfying the total consumption in the Union and in China, even in the case of an increase in the Chinese domestic consumption in the future. Finally, the Union market remains attractive for the Chinese exporting producers given its size and high prices. This finding is further strengthened by the actual closure by protective measures of one of the important Chinese export markets — the USA.
- (79) On that basis, the Commission established that it is very likely that significant volumes of Chinese melamine would continue to be exported to the Union at dumped prices in case the measures were allowed to lapse.

#### D. UNION INDUSTRY

- (80) The like product was manufactured by five Union producers during the review investigation period <sup>(3)</sup>. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. The three applicants <sup>(4)</sup> who also constituted the sampled Union producers <sup>(5)</sup> are the three biggest producers accounting for over 80 % of the estimated Union production of the like product during the review investigation period. The two other producers with limited production did not object to the initiation of the investigation.

<sup>(1)</sup> In force as of June 2015 (AD measures) and as of August 2015 (CVD) as provisional measures, and as of 28 December 2015 both confirmed as definitive measures.

<sup>(2)</sup> 38 % and 363 % respectively.

<sup>(3)</sup> Borealis Agrolinz Melamine GmbH, OCI Nitrogen BV, Grupa Azoty Zakłady Azotowe Pulawy SA, BASF SE and S.C. Azomures SA.

<sup>(4)</sup> As indicated in recital (4).

<sup>(5)</sup> As described in recital (14).

- (81) One interested party argued that the Commission when examining standing under Article 4(1) of the basic Regulation only considered imports from the PRC that were re-sold and not all imports. Therefore certain Union producers might have been erroneously considered as part of the Union industry. Moreover, the interested party further complained that the origin of imports was not revealed by one of the Union producers in its questionnaire reply.
- (82) Only one of the Union producers providing a reply to the standing form, imported melamine from the PRC and only for a limited time (in 2012 and in 2013) and in negligible quantities (less than 0,2 % of its Union sales to independent customers). Therefore this claim was rejected. With regard to the second point, the Union producer did not mention the country of origin of its purchases (not necessarily imports) in its questionnaire reply in order not to reveal the identity of its supplier. In any case, as it was already mentioned above, the import volumes from the PRC were negligible. Consequently, the Commission considered that this Union producer forms part of the Union industry, as defined by Article 4(1) of the basic Regulation.
- (83) In the absence of any further comments, the composition of the Union industry was hereby confirmed.

#### E. SITUATION ON THE UNION MARKET

##### 1. Union consumption

- (84) Union consumption was established by adding imports from the PRC and third countries based on Eurostat to the sales of the Union industry on the Union market. Sales of the Union industry on the Union market were obtained from the review request as adjusted on the basis of data provided in the replies of the sampled Union producers for the RIP.
- (85) During the period considered the Union consumption developed as follows

Table 1

##### Union consumption

	2012	2013	2014	2015	RIP
Volume (tonnes)	349 464	356 552	365 684	381 141	392 776
Index (2012 = 100)	100	102	105	109	112

Source: Review request, Eurostat, verified questionnaire replies

- (86) Union consumption continuously increased over the period considered, an overall increase by 12 %, i.e. from almost 350 000 tonnes in 2012 to almost 393 000 tonnes during the RIP. This increase in consumption reflects the overall economic revival following the global financial and economic crisis. In that respect, 2012 was still a difficult year, as the construction sector, the biggest sector driving melamine consumption, experienced a relatively slow recovery <sup>(1)</sup>. This had implications not only on the consumption but also on the sales prices and some other injury indicators as will be seen below.

<sup>(1)</sup> As reported by Eurostat: 'The downturn in activity for construction within the EU-28 lasted longer than for industry. Despite occasional short-lived periods of growth, the index of production for construction fell from a peak in February 2008 to a low in March 2013, a decline that lasted in total five years and one month and left the construction output 26,1 % lower than it had been. Construction output expanded by a total of 7,6 % during the next 13 months and between then (April 2014) and the most recent period for which data is available (April 2016) output remained relatively stable.' [http://ec.europa.eu/eurostat/statistics-explained/index.php?title=industry\\_and\\_construction\\_statistics\\_-\\_short-term\\_indicators&oldid\\_325746](http://ec.europa.eu/eurostat/statistics-explained/index.php?title=industry_and_construction_statistics_-_short-term_indicators&oldid_325746), accessed on 23.3.2017.

## 2. Import from the PRC to the Union

(a) Volume, price and market share of imports from the PRC

Table 2

### Volume and market share of imports from the PRC

	2012	2013	2014	2015	RIP
Volume of imports (tonnes)	1 313	8 762	6 586	8 984	7 938
Index (2012 = 100)	100	667	502	684	605
Market share (%)	0,4	2,5	1,8	2,4	2,0

Source: Eurostat

- (87) Following the imposition of the anti-dumping duties, imports of melamine from the PRC dropped considerably <sup>(1)</sup>. Nevertheless, Chinese imports are still present on the Union market.
- (88) Import volumes from the PRC increased from just over 1 300 tonnes to almost 8 000 tonnes during the period considered. There was a notable increase from 2012 to 2013 (mainly due to the poor performance in 2012) following which the volumes remained relatively stable throughout the period considered covering a market share of around 2 %.

(b) Price of PRC imports and price undercutting

Table 3

### Average price of imports from the PRC

	2012	2013	2014	2015	RIP
Average CIF Union frontier price (EUR/tonne)	1 203	1 157	1 150	1 124	1 113
Index (2012 = 100)	100	96	96	93	93

Source: Eurostat

- (89) The average import prices from the PRC remained relatively stable during the period considered, with an overall decrease of 7 % reaching 1 113 EUR/tonne in the review investigation period <sup>(2)</sup>. The observed price levels (and their stability) are most likely due to the measures in force, in particular the MIP. The share of the imports under the MIP scheme increased steadily during the period considered and covered the majority of all Chinese imports in the review investigation period <sup>(3)</sup>.
- (90) When using the average import price, as reported in Eurostat, the Chinese imports did not undercut the prices of the Union industry. Given that the majority of the imports from the PRC entered via the MIP scheme, the reported price level does not necessarily reflect the 'real' prices on which Chinese exporting producers would be selling melamine in the Union market absent the measures. This is supported by the data from the Chinese export database which reveals that practically all Chinese imports to the rest of the world are priced well below the MIP.

<sup>(1)</sup> During the original investigation imports from the PRC averaged around 30 000 tonnes annually with the exception of the IP (2009) which was already marked by the effects of the economic crisis.

<sup>(2)</sup> Eurostat.

<sup>(3)</sup> Article 14(6) database.

### 3. Import from other third countries

(91) Melamine is imported into the Union from several third countries as can be seen in the table below:

Table 4

#### Imports from other third countries and their market share

Import volume (tonnes)	2012	2013	2014	2015	RIP
Qatar	24 142	21 116	29 195	23 516	29 929
Russia	461	10 830	15 573	15 902	15 951
United States of America	10 870	15 031	15 037	15 496	11 636
Trinidad and Tobago	26 283	3 925	3 940	8 308	9 368
Japan	282	241	1 637	4 349	8 292
Other countries <sup>(1)</sup>	4 360	17 105	7 761	17 447	21 894
Total	66 397	68 247	73 142	85 018	97 070
<i>Index (2012 = 100)</i>	100	103	110	128	146
Market share (%)	19,0	19,1	20,0	22,3	24,7
Average price (EUR/tonne) CIF Union frontier	835	1 095	974	1 003	1 006

Source: Eurostat

- (92) During the period considered, imports from third countries into the Union continuously increased from around 66 000 tons in 2012 to around 97 000 tons in the RIP, i.e. by 46 %. Similarly their market share has increased from 19 % in 2012 to almost 25 % in the RIP. The main importing third countries include Qatar, Russia, United States of America, Trinidad and Tobago and Japan with a growing share of 'other countries' not specified in Eurostat.
- (93) Despite this significant market share, imports from third countries did not have an injurious effect on the Union industry as it can be seen from the development of the injury indicators as explained below. The reason is that even though their average price level was somewhat below the MIP (in the range of 1 000 EUR/tonne throughout the period considered) <sup>(2)</sup> it was never as low as the Chinese prices observed during the original investigation or the current Chinese export prices to the rest of the world (around 855 EUR/tonne adjusted to CIF Union frontier). Even more importantly, all these sources have rather limited production capacity (mostly in the range of 50 000 tonnes to 60 000 tonnes annually) <sup>(3)</sup> which means that they do not have the same destabilising impact on the supply/demand balance of the melamine market as the PRC was able to exert in the original investigation.
- (94) CCPIT claimed that the Union industry is uncompetitive and struggles to compete with third countries exports. The party argued that to the extent the Union industry might be suffering injury this injury is caused by the exports from third countries other than the PRC.

<sup>(1)</sup> This category mainly includes so-called 'other countries' which cover 'countries and territories not specified for commercial or military reasons in the framework of trade with third countries'. It also includes some minor import quantities from a number of third countries such as Malaysia, Indonesia, Thailand, Mexico, Turkey, etc.

<sup>(2)</sup> With the exception of 2012 when the prices of the Union industry were also lower, see recital (109).

<sup>(3)</sup> Source: Chemical Economics Handbook — Melamine by IHS Chemical (Annex 9 of the review request).

- (95) The findings and conclusions on injury contradict this claim as it is described in detail in Section 5 below. The measures created fair market conditions under which the Union industry competed with other countries imports including those of the PRC (together representing over 25 % of the Union consumption in the RIP) and at the same time managed to recover from the past injury suffered. This demonstrates that the Union industry is able to withstand competition when the latter is at fair terms.

#### 4. Economic situation of the Union industry

##### 4.1. General remarks

- (96) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.
- (97) As mentioned in recital (14), sampling was used for the determination of possible injury suffered by the Union industry.
- (98) For the injury determination the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated macroeconomic indicators relating to the whole Union industry on the basis of data provided and verified in the questionnaire replies of the sampled Union producers and information in the review request adjusted on the basis of the developments of the sampled Union producers for the RIP. The Commission evaluated microeconomic indicators relating only to the sampled companies on the basis of data contained in the questionnaire replies of the sampled Union producers. Both sets of data were found representative of the economic situation of the Union industry.
- (99) The macroeconomic indicators are: production, production capacity, capacity utilisation, employment, productivity, sales volume, market share and Union consumption.
- (100) The microeconomic indicators are: average sales prices, stocks, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.2. Production, production capacity and capacity utilisation

- (101) Data on production relating to the Union industry for the period considered was established based on the verified questionnaire replies of the sampled Union producers and the estimated data related to the non-sampled producers as provided in the review request by the applicants as well as Eurostat.
- (102) The total Union production remained relatively stable with a peak in 2014 and an overall modest increase of 3 % during the entire period considered. The Union production was estimated at 374 540 tonnes in the RIP.
- (103) The total Union production capacity and capacity utilisation developed over the period considered as follows:

Table 5

#### Production, production capacity and capacity utilisation

	2012	2013	2014	2015	RIP
Production volume (tonnes)	365 245	383 215	391 761	377 539	374 540
<i>Index (2012 = 100)</i>	100	105	107	103	103
Production capacity (tonnes)	479 120	479 120	479 120	479 120	479 120
<i>Index (2012 = 100)</i>	100	100	100	100	100
Capacity utilisation rate (%)	76	80	82	79	78

Source: Review request, verified questionnaire replies

- (104) The production volume remained relatively stable during the period considered. Following the revival of consumption, production increased in 2013 and in 2014. The decrease in 2015 and the RIP (the two periods overlap by nine months) was due to a number of different factors such as production halts for compulsory multiannual maintenance, fire incidents or economic decisions.
- (105) The production capacity remained constant throughout the period considered with almost 480 000 tonnes. Given the constant production capacity the capacity utilisation rates followed closely the trend of production. Throughout the period considered capacity utilisation remained in the range of 76 % to 82 %.

#### 4.3. Sales volume and market share

- (106) The sales figures in the table below refer to the sales by the Union industry on the Union market to independent customers:

Table 6

#### Sales volume and market share

	2012	2013	2014	2015	RIP
Sales volume (tonnes)	269 154	265 738	270 175	271 581	275 365
Index (2012 = 100)	100	99	100	101	102
Market share (%)	81	78	78	75	73

Source: Review request, Eurostat, verified questionnaire replies

- (107) Sales volume increased over the period considered by 2 %. This growth rate is below the growth of the Union consumption during the same period (12 %) as shown in Table 1 above. As a consequence, the market share of the Union industry declined by 8 percentage points despite the increase in sales volume. During the RIP the Union industry held around 73 % of the Union market.
- (108) The lost market share of the Union industry was shared more or less equally by the third countries suppliers with Russia, Japan and Qatar gaining, Trinidad and Tobago losing, and the United States of America keeping relatively stable sales volumes. The PRC also benefited from the increase in Union consumption albeit to a lesser extent as indicated in recital (88).

#### 4.4. Sales prices and factors affecting prices

- (109) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 7

#### Average sales prices

	2012	2013	2014	2015	RIP
Average unit selling price in the Union (EUR/tonne)	1 013	1 245	1 135	1 139	1 149
Index (2012 = 100)	100	123	112	112	113

Source: verified questionnaire replies

- (110) The Union industry's average unit sales price to unrelated customers in the Union increased by 13 % over the period considered. There was a relatively big jump in melamine prices in 2013 compared to the depressed price level in 2012 (+ 23 %) due to the increase in demand following the revival of the construction sector. The prices lowered in 2014 to a level around the MIP and remained stable since then.
- (111) Sales prices are usually negotiated quarterly and depend principally on the melamine demand/supply ratio on the market (and the perception thereof). Raw material prices do not directly influence the melamine prices i.e. melamine prices are not linked/indexed to the main raw material as it is the case for some other products.

#### 4.5. Employment and productivity

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

Table 8

#### Employment and productivity

	2012	2013	2014	2015	RIP
Number of employees	555	595	598	611	613
<i>Index (2012 = 100)</i>	100	107	108	110	110
Productivity (tonne/employee)	658	644	655	618	611
<i>Index (2012 = 100)</i>	100	98	99	94	93

Source: verified questionnaire replies

- (113) Employment of the Union industry increased by 10 % during the period considered. Productivity expressed by production volume per employee decreased by 7 % during the period considered.

#### 4.6. Labour costs

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

Table 9

#### Labour costs

	2012	2013	2014	2015	RIP
Average labour costs per employee (EUR)	61 982	65 247	66 600	67 715	68 676
<i>Index (2012 = 100)</i>	100	105	107	109	111

Source: verified questionnaire replies

- (115) Between 2012 and the RIP, the average labour costs per employee of the sampled Union producers increased by 11 %. The main reason for this increase was annual inflation.

## 4.7. Inventories

(116) Stock levels of the Union industry developed over the period considered as follows:

Table 10

**Inventories**

	2012	2013	2014	2015	RIP
Closing stocks (tonnes)	23 194	26 792	26 470	14 924	12 995
<i>Index (2012 = 100)</i>	100	116	114	64	56
Closing stocks as percentage of production (%)	6,9	8,2	8,0	4,8	4,2
<i>Index (2012 = 100)</i>	100	119	117	70	61

Source: verified questionnaire replies

(117) Closing stocks both absolute volumes and as a percentage of production decreased sharply (– 44 % and – 39 % respectively) at the end of the RIP. The main reason is that in 2015 the Union industry experienced temporary production shortages as mentioned in recital (104) above which meant that stock levels were used in in order to fulfil all supply obligations.

## 4.8. Cost of production

(118) The unit cost of production developed as follows during the period considered:

Table 11

**Unit cost of production**

	2012	2013	2014	2015	RIP
Cost of production (EUR/tonne)	1 114	1 144	1 052	1 070	1 036
<i>Index (2012 = 100)</i>	100	103	94	96	93

Source: verified questionnaire replies

(119) Over the period considered the Union industry's unit cost of production of melamine decreased by 7 %.

(120) The main major raw material for melamine is urea, which is either bought or produced in-house by the Union producers from ammonia. Ammonia in turn is principally made from natural gas. On average, urea/ammonia represent around 40 % of the total cost of production for the Union industry. During the period considered ammonia and urea prices followed a downward trend in general and decreased by 23,5 % and 25,5 % respectively between 2012 and the RIP.



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

Table 12

**Profitability, cash flow, investments and return on investment**

	2012	2013	2014	2015	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 13,6	7,2	6,9	9,3	15,4
Year/year (%)	—	20,8	- 0,3	2,4	6,1
Cash flow (EUR)	2 939 133	41 847 614	36 840 085	47 933 386	63 738 058
Index (2012 = 100)	100	1 424	1 253	1 631	2 169
Investments (EUR)	6 463 713	13 675 164	11 533 893	13 638 599	12 234 128
Index (2012 = 100)	100	212	178	211	189
Return on investments	- 28,1	16,2	14,9	20,8	34,1
Year/year (%)	—	44,3	- 1,3	5,9	13,3

Source: verified questionnaire replies

- (121) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered, the Union industry's profitability increased steadily as a combined effect of the increase in sales prices (recital (110)) and the decrease in raw material cost (recital (120)).
- (122) Profit fluctuations are rather volatile in this industry as it can be seen from the figures observed during the period considered. The profits moved from unsustainably low levels to a very high peak during the four-year period under relatively stable sales and production volumes. The reason is that the sales price of melamine is strongly influenced by supply and demand balances and the market's perception thereof, while the costs are heavily dependent on the energy prices. This can lead to a situation where in a growing market the sales prices increase even when raw material prices decrease or stagnate, thereby boosting profits, while also the opposite scenario can easily occur when under depressed market conditions producers are forced to lower their prices (or keep them constant) despite increase in their production costs.
- (123) The net cash flow is the Union industry's ability to self-finance their activities. The cash flow recovered markedly from 2012 to 2013 (together with many other injury indicators) and then followed the growing trend of the profits.
- (124) The investments increased by 89 % over the period considered. There was a significant jump (+ 112 %) from the depressed levels of 2012 to 2013 (when most investment activities were halted due to the overall difficult financial situation) following which the amount of investment remained stable. The levels observed in the period 2013 to the RIP can be considered as standard investment rates covering the continuous maintenance and necessary replacement of machine parts, but without any major re-construction or capacity increase activity.
- (125) The return on investments is the profit in percentage of the net book value of fixed assets. As the other financial indicators, the return on investments related to the production and sale of the like product also developed positively reflecting the general upward trend.

## 5. Conclusion on injury

- (126) In a context of an increasing consumption, the Union industry was able to recover from the past dumping and showed a healthy economic situation during the RIP. The measures in force provided for a level playing field on the melamine market which contributed not only to the recovery of the Union industry but also enabled stakeholders to better plan their activities. Furthermore, the measures did not foreclose Chinese producers from the Union market, who continued to be present. Imports from a number of other third countries continued as well but without creating unreasonable price fluctuations and/or false expectations on the market of abundant quantities of low priced melamine.
- (127) Consequently, in the period considered almost all injury indicators showed a positive trend. The Union industry increased both its sales and production volumes. Given that Union consumption increased with a higher rate, the market share of the Union industry declined but remained however at a sufficiently high level. The Union industry also increased its sales prices, in line with the general growth in demand rooted in the recovery of the construction sector. Given that raw material prices have declined in the same period, the Union industry's profitability recovered markedly. This also meant that all financial indicators developed favourably.
- (128) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.

## F. LIKELIHOOD OF RECURRENCE OF INJURY

- (129) In accordance with Article 11(2) of the basic Regulation the Commission then assessed whether there is a likelihood of recurrence of injury in case the measures in force against the PRC were allowed to lapse. The following elements were analysed: production and spare capacities in the PRC, existence of anti-dumping or countervailing measures on melamine in other third countries, attractiveness of the Union market, the export behaviour of Chinese exporting producers in other third markets and finally assessment of the likely impact of continuing Chinese dumping on the performance of the Union industry.

### 1. Production and spare capacity in the PRC

- (130) The PRC is the biggest producer of melamine in the world and accounts for around 69 % of world's overall production capacity <sup>(1)</sup> by the end of 2013. The analysis made in recitals (57) to (61) showed that available spare capacities in China in the review investigation period were very high in comparison to the Chinese domestic market as well as global demand. The Chinese spare capacity was estimated to be at least 500 000 tonnes annually exceeding the total Union consumption in the RIP. In this respect it is important to note that the Union market is the second biggest market in the world (after the PRC) for melamine.
- (131) In addition, as already mentioned in recital (74), the recent anti-dumping and countervailing duties imposed by the United States of America on melamine of Chinese origin has freed up further significant quantities (in the range of 12 000 tonnes) for other destinations.

### 2. Attractiveness of the Union market and export behaviour of Chinese exporting producers on other third markets

- (132) The size of the Union market — being the second biggest in the world — is clearly an important factor contributing to its attractiveness. Also the fact that imports from the PRC have continued despite the measures shows that Chinese exporting producers find the Union market attractive and are keen to continue selling on the Union market and keep their business relations.
- (133) A further important factor demonstrating the attractiveness of the Union market is the higher price level as compared to other markets. As already mentioned in recital (72) above, the PRC export prices on most of its other destinations are significantly below the prices of the Union industry on the Union market. Based on the Chinese export database, during the review investigation period over 99 % of Chinese exports to third countries (i.e. 224 000 tonnes, a volume equivalent to 57 % of the Union market) were sold on average price 922 EUR/tonne as adjusted <sup>(2)</sup>. This price is well below the Union industry's average price (1 149 EUR/tonne) in the same period.

<sup>(1)</sup> HIS Chemical: Chemical Economics Handbook melamine, Annex 9 of the review request.

<sup>(2)</sup> The Chinese export database provides prices on FOB level which were adjusted upward by the average transportation costs to the Union as well post importation costs to obtain an estimated Union landed price.

- (134) The Union market hence constitutes an attractive market for Chinese exports both in terms of size and price levels.

### 3. Impact of Chinese dumping on the Union industry

- (135) Given the high spare capacities and the attractiveness of the Union market as summarised above, it is likely that significant volumes of low-priced melamine would be available for sale/redirection to the Union already in the short term in case the measures were allowed to lapse.
- (136) To assess the likely impact of such low-priced Chinese imports on the Union industry the Commission analysed the situation at other, nearby markets. In this sense, Turkey was considered as a good example as it is a big market with a strong demand <sup>(1)</sup> and is in the vicinity of the European Union. In addition, Turkey were the biggest export destination of the PRC with almost 32 000 tonnes in the review investigation period. The Chinese import prices to Turkey were reported on FOB basis in the Chinese export database. These prices were first adjusted to CIF Union border with the average transportation and insurance costs and then further increased by post-importation costs (regular duty of 6,5 % and customs clearance costs) to obtain an estimated Union landed price.
- (137) As a result, the adjusted average Chinese import price to Turkey was 919 EUR/tonne in the RIP. Taking this adjusted export price to Turkey as an example, these prices undercut the Union industry prices by 20 % during the RIP.
- (138) Similar result was obtained (i.e. 19,6 % undercutting) when the Chinese average price to the rest of the world was used <sup>(2)</sup>.
- (139) Given that melamine is a homogenous commodity product, the price is the most important factor for customers when choosing between suppliers. For this reason (and also for supply security considerations) most customers source their melamine from at least two or three alternative suppliers and vary the exact order quantities among them according to the price offered. Under these circumstances, it is likely that the entry of low-priced Chinese imports to the Union market would immediately drive down the prices if the measures were allowed to lapse. The Union industry would need to decrease its prices to meet the Chinese competition, similar to what happened in the original investigation where prices of the Union industry were as low as 900 EUR/tonne.
- (140) Based on the verified data of the Union producers for the review investigation period, a price decrease to the level of the Turkish prices would result in a drastic decrease in their profitability. In fact it would render the Union industry outright lossmaking by (- 5,5 %). Practically the same result was obtained when using the average price level of all Chinese imports to third countries, i.e. - 5 %. This analysis demonstrates that the Union industry cannot maintain sustainable profit levels should dumped Chinese melamine enter the Union at prices similar to those currently charged in other third markets.
- (141) In addition to the price effect, also the likely volumes would have a negative effect on the Union industry. Assuming a rather moderate sales and production volume decrease of 30 000 tonnes (around 11 % drop in the sales volume) <sup>(3)</sup> as a result of an increase in Chinese imports, the unit cost of production of the Union industry would increase by 3,6 % from 1 037 EUR/tonne to 1 073 EUR/tonne further deteriorating its situation.
- (142) Given that 25 % of the Union consumption was covered by imports from other countries than the PRC, it cannot be excluded that the dumped Chinese melamine would replace some of these import volumes. At the same time, the average sales price of third countries imports to the Union is below the average sales price of the Union industry meaning that if low priced Chinese melamine would reappear on the Union market, it would first gain market share at the expense of the Union industry, before taking over the market share of the exports from third countries producers to the Union.

<sup>(1)</sup> According to IHS Chemicals: Chemical Economics Handbook, Melamine: the Turkish demand has been continuously increasing since 2010 and is estimated to reach around 56 000 tonnes in 2018. 'Turkey accounts for over 80 % of Middle Eastern consumption of melamine.' Annex 9 of the review request.

<sup>(2)</sup> 923 EUR/tonne estimated landed Union price from 810 EUR/tonne FOB China.

<sup>(3)</sup> The estimation of 30 000 tonnes corresponding to 11 % drop in Union sales and 8 % drop in production volume compared to RIP figures is a rather modest estimate given the estimated volume of spare capacities (at least 500 000 tonnes) and the volumes freed up from the US market (12 000 tonnes). In the original investigation the PRC imported on average 30 000 tonnes annually to the Union.

- (143) In any case, even if the volume effect were to be lower in reality than in the simulation described in recital (141) above, experience from the original investigation shows that also smaller quantities entering the Union at low and dumped price levels could cause injury to the Union industry <sup>(1)</sup>. It is the very low price levels of the Chinese imports together with the prospect of very large quantities that would distort the Union market causing the injury to the Union industry to recur should the measures be allowed to lapse.
- (144) Following definitive disclosure CCPIT argued that the extension of the measures is not justified. It referred to the same claims regarding Chinese spare capacity and the attractiveness of the Union market already mentioned in recitals (63) and (76) above. Given that those claims would invalidate the findings on continuation of dumping, the conclusion on the likely recurrence of injury is not valid either. In addition, CCPIT also questioned the appropriateness of the Commission's references to Chinese export prices to Turkey and the rest of the world to assess the price impact of Chinese dumping on the Union industry given that EU regulations and institutions have no jurisdiction over practices in third countries.
- (145) In response to this claim, the Commission stressed that looking at Chinese prices to Turkey and the rest of world does not violate the principle of jurisdiction. As explained in detail in recitals (136) to (138), the Commission merely analysed the available export statistics to ascertain the price level on which the Chinese exporting producers were selling melamine to Turkey and the rest of the world during the review investigation period. The prices charged by the Chinese producers to Turkey and the rest of the world are the best indication of prices that the exporting producers are likely to charge on the Union market in case measures were allowed to lapse. Therefore, this claim was rejected.
- (146) The arguments regarding available Chinese spare capacity, attractiveness of the Union market and likelihood on continuation of dumping have been refuted in detail in recitals (64) to (66) and (77) above and the Commission has maintained its conclusion on all these points. Consequently, the conclusions regarding recurrence of injury remain unaltered as well.
- (147) CCPIT further claimed that there is no causal link between imports of Chinese melamine and the situation of the Union industry. The interested party based its claim on the lack of strong correlation between Chinese import volumes and prices, on the one hand, and the Union industry's profitability, on the other hand. According to CCPIT, other factors such as prices of raw materials and the competitiveness of the Union industry vis-à-vis imports from third countries other than the PRC have a direct causal effect on the situation of the Union industry.
- (148) It is recalled that in contrast to investigations under Article 5 of the basic Regulation, Article 11(2) of the basic Regulation does not require the performance of a causation analysis in expiry reviews. Furthermore, in this particular case, the import volumes of melamine from the PRC were negligible during the entire period considered as they were ranging between 0,4 % to 2,5 % of the Union market. Under these circumstances, and even if the fluctuations in raw material prices and third country imports may have an impact on the situation of the Union industry, the possible lack of correlation between the volumes and prices of Chinese melamine imports and the profitability of the Union industry when measures are in place cannot serve as a basis to draw conclusion concerning what is likely to happen on the Union market if measures were allowed to lapse.
- (149) On the basis of the above, and in the absence of any further comments, the Commission found that the repeal of the measures would result in recurrence of injury to the Union industry.

## G. UNION INTEREST

### 1. Preliminary remarks

- (150) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing measures against the PRC would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

<sup>(1)</sup> In the original investigation in the investigation period the PRC imported 17 434 tonnes of melamine to the Union (only 9 500 tonnes increase compared to the volumes in the current review investigation period) on average prices of 896 EUR/tonne resulting in -18 % profit margin for the Union industry at the time.

## 2. Interest of the Union industry

- (151) The Commission established that during the period considered the Union industry gradually recovered from the injury caused by the dumped imports from the PRC. Should the measures against China be repealed, it is, however, likely that the injury would quickly recur as the Union industry would be exposed to significant price pressure from the dumped imports of potentially big volumes from the PRC. As a consequence, the economic situation of the Union industry would deteriorate as described in recitals (140) and (141) above. On the other hand, maintaining the measures would allow the Union industry to maintain its positive economic trends while operating on a fair and competitive Union market.
- (152) Following definitive disclosure, CCPIT contested that the measures would be in the Union industry's interest given that the Union industry has already fully recovered. Furthermore CCPIT disputed the need for the measures given that in their view neither dumping nor injury would likely recur if the measures were to lapse.
- (153) These arguments regarding likelihood of continuation and/or recurrence of dumping and injury have been already addressed in detail in the chapters above. In the absence of any new arguments in this regard, the findings explained in recital (151) above were maintained.
- (154) On this basis, the Commission concluded that the continuation of the anti-dumping measures in force would be in the interest of the Union industry.

## 3. Interest of importers

- (155) Eleven known importers/distributors and four trade associations were contacted at the initiation stage. One importer in Germany replied to the sampling form and provided a questionnaire reply.
- (156) This trader imported some limited quantities of melamine from the PRC during the review investigation period, mainly for re-sale outside the Union. In addition, the trader bought melamine from other external suppliers as well as from the Union industry. During the review investigation period, the melamine business constituted over half its total turnover and resulted in a profit margin between 2 to 4 % <sup>(1)</sup>.
- (157) While it cannot be presumed to be the case for (all) other importers, this sole cooperating trader was not against the measures. This trader was of the view that the measures stabilised the market and provided for supply security and predictability, which are in the interest of all market players in the long term. The trader considered that in case measures would lapse, it could easily switch to Chinese suppliers but this would negatively impact its existing business relations both outside and within the Union and create severe disruptions and fluctuations on the melamine market.
- (158) In the absence of any other information, the investigation did not reveal that the continuation of the measures would have any significant negative impact for importers in the Union.
- (159) Following definitive disclosure CCPIT questioned the Commission's conclusion concerning the interest of importers arguing that it was based on the opinion of one importer, which cannot be considered representative.
- (160) The Commission reiterated, as it is stated in recital (157) above, that it did not presume that the views of the cooperating importer represented the views of all importers. Nevertheless, the information provided by the sole cooperating importer was verified and as such was duly taken into account. CCPIT, on the other hand, did not provide any evidence or substantiated information indicating that the maintenance of the measures would have a significant negative impact on the importers.
- (161) Therefore, based on the available information and in the absence of any information/evidence to the contrary, the Commission concluded that the maintenance of measures has no significant negative impact for the importers in the Union.

<sup>(1)</sup> For confidentiality reasons, the exact figure could not be disclosed.

#### 4. Interest of users

- (162) Questionnaires were sent to 68 known users. Four users, representing 3 % of the Union consumption and 0,6 % of imports from the PRC, provided a complete questionnaire reply.
- (163) The views of the fully cooperating users were somewhat mixed. Two users were against the continuation of measures claiming that the anti-dumping duty hinders them from buying melamine from the PRC. One user took a neutral position as melamine has a very low impact in its costs structure. The fourth user was in favour of the measures. This user feared that if measures were repealed the Chinese would again flood the Union market with cheap melamine. As a result, in the short term, its costs would be reduced, but soon after, the Union industry could be destroyed. The user would thus become dependent on Chinese supply.
- (164) The investigation showed that the users were generally coping well with the market conditions prevailing under the anti-dumping measures. During the review investigation period the average profit margin of the cooperating users was 5,6 % meaning that the users were able to achieve satisfactory profit levels even with the duties in force. In addition, the Union market is an open market with numerous suppliers competing on it. Therefore, in addition to the Union producers and the PRC, the users can have a number of alternative supply sources without being threatened by potential supply shortages.
- (165) Following definitive disclosure CCPIT claimed that the prolongation of the measures is unjust as it resulted in increasing melamine prices amid decreasing raw material costs and therefore sacrificed the profitability of the users and the overall competition on the Union market for the profitability of the Union industry. In its submission the interested party referred to a study by the Copenhagen Institute <sup>(1)</sup> and various WTO cases to which the EU had been a party, e.g. the EC — Salmon case.
- (166) Concerning the remark on the price increase, the Commission referred to recital (110) above. As explained, the price increase during the period considered happened from a very depressed, unsustainable price level in 2012. Following the increase in 2013 the price level in fact decreased and remained stable since 2014. In any case, CCPIT failed to provide any concrete information demonstrating that the economic situation of users of melamine has deteriorated due to the measures to such an extent that would allow the conclusion that maintaining the measures is against the interest of the Union as a whole. In this sense neither the economic study nor the WTO case mentioned by the interested party refers specifically to the melamine industry.
- (167) Based on the above and in the absence of any further comment the Commission concluded that it had not been demonstrated that maintaining the measures in force would have any significant negative impact on the situation of the users that could outweigh the positive impact the measures have on the Union industry.

#### 5. Conclusion on Union interest

- (168) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the measures on imports of melamine originating in the PRC.
- (169) Following definitive disclosure, although the applicants agreed with the conclusions reached by the Commission with regards to Union interest, they argued that, given the low cooperation and the support for the measures for the majority of the cooperating interested parties, the Commission did not have to make a comprehensive determination of the Union interest. They also argued that the fact that during the review investigation period the average profit margin of the cooperating users was 5,6 % is irrelevant.
- (170) The Commission disagreed with these claims. For the purpose of the Union interest test, the Commission is bound to carry out a comprehensive analysis of all facts and considerations at its disposal and to make an appreciation of all the various interests involved, including those of the Union industry, importers and users. The Commission also has to duly substantiate the conclusions it reached on the interest of the Union as a whole. Therefore, these claims were rejected.

<sup>(1)</sup> National Agency for Enterprise and Construction, 'Economic Assessment of the Community interest in EU Anti-dumping Cases', August 2005, available at: <http://www.copenhageneconomics.com/Website/Publications/Antidumping.aspx?M=News&PID=2028&NewsID=328>

## H. DISCLOSURE

(171) All parties were informed of the essential facts and considerations on the basis of which the Commission intended to maintain the existing measures against the PRC. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.

**Definitive measures**

(172) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of melamine originating in the PRC, imposed by Regulation (EC) No 457/2011, should be maintained.

(173) CCPIT claimed in its post-hearing submission that extension of the anti-dumping measures in its current form would be illegal as in the original investigation two of the Chinese exporting producers did not pass individual treatment ('IT') examination which is considered illegal after a ruling of the WTO Appellate Body <sup>(1)</sup>. According to CCPIT these two companies should thus have their individual anti-dumping margins calculated, which would affect also the level of the country-wide residual duty.

(174) In an expiry review the level of the anti-dumping measures may not be changed. Furthermore, the companies in question did not cooperate in the proceeding and did not provide any data which would allow calculation of their individual dumping margins. The Commission therefore rejected this claim. The companies in question have however the possibility to request an interim review of their dumping margin calculations on the basis of Article 11(3) of the basic Regulation.

(175) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of melamine currently falling within CN code 2933 61 00 and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the product described in paragraph 1 and produced by the companies below shall be as follows:

Company	Minimum import price (EUR/tonne net product weight)	Duty (EUR/tonne net product weight)	TARIC additional code
Sichuan Golden-Elephant Sincerity Chemical Co.,	1 153	—	A986
Holitech Technology Co. Ltd	1 153	—	A987
Henan Junhua Development Company Ltd	1 153	—	A988
All other companies	—	415	A999

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

<sup>(1)</sup> WT/DS397/AB/RW, Report of the Appellate Body from 18 January 2016, European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China — Recourse to Article 21.5 of the DSU by China.

The application of the minimum import price specified for the companies mentioned in this paragraph shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex. If no such invoice is presented, the duty applicable to all other companies shall apply.

3. For the individually named producers and in cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131 of Commission Implementing Regulation (EU) 2015/2447 <sup>(1)</sup>, the minimum import price set out above shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable. The duty payable will then be equal to the difference between the reduced minimum import price and the reduced net, free-at-Union-frontier price, before customs clearance.

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

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

#### Article 2

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

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

Done at Brussels, 30 June 2017.

For the Commission  
The President  
Jean-Claude JUNCKER

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<sup>(1)</sup> Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).



## ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(2):

1. The name and function of the official of the entity issuing the commercial invoice.
2. The following declaration:

'I, the undersigned, certify that the (volume) of melamine sold for export to the European Union covered by this invoice was manufactured by (company name and registered seat) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.

Date and signature'

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