

**COMMISSION IMPLEMENTING REGULATION (EU) 2023/935****of 11 May 2023****imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China and produced by Zhejiang Hailide New Material Co., Ltd.**

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 9(4) thereof,

Whereas:

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

- (1) Anti-dumping measures on imports of high tenacity yarns of polyesters ('HTYP') originating in the People's Republic of China ('China' or 'country concerned') ranging from 5,1 % to 9,8 % were originally imposed by Council Implementing Regulation (EU) No 1105/2010 <sup>(2)</sup> ('the original measures').
- (2) The original measures applied to all imports of HTYP originating in China, with the exception of imports of HTYP produced by the Chinese exporting producers Zhejiang Hailide New Material Co. Ltd. ('Hailide') and Hangzhou Huachun Chemical Fiber Co. Ltd. ('Huachun'). No duty rate was originally imposed (Regulation (EU) No 1105/2010) on these companies, as no dumping was found.
- (3) Following a first expiry review pursuant to Article 11(2) of (the 'basic Regulation'), the Commission, by Commission Implementing Regulation (EU) 2017/325 <sup>(3)</sup>, as last amended by Commission Implementing Regulation (EU) 2017/1159 <sup>(4)</sup> maintained the original measures.
- (4) A second expiry review of the measures in force pursuant to Article 11(2) of the basic Regulation and a partial interim review <sup>(5)</sup> pursuant to Article 11(3) of the basic Regulation, limited in scope to the examination of dumping <sup>(6)</sup> were initiated on 23 February 2022 and 30 June 2022 respectively.
- (5) In line with the WTO Appellate Body report in case Mexico – Definitive Anti-dumping Measures on Beef and Rice <sup>(7)</sup> ('the WTO Appellate Body report'), Hailide and Huachun were not examined in the subsequent reviews of the original measures as imposed by Regulation (EU) No 1105/2010 and are not subject to the measures in force.

**1.2. Initiation**

- (6) On 30 June 2022, the Commission initiated an anti-dumping investigation under Article 5 of the basic Regulation with regard to imports of HTYP manufactured and exported to the Union by Hailide. A Notice of Initiation was published in the *Official Journal of the European Union* <sup>(8)</sup> ('the Notice of Initiation').

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

<sup>(2)</sup> OJ L 315, 1.12.2010, p. 1.

<sup>(3)</sup> OJ L 49, 25.2.2017, p. 6.

<sup>(4)</sup> OJ L 167, 30.6.2017, p. 31.

<sup>(5)</sup> OJ C 87, 23.2.2022, p. 2.

<sup>(6)</sup> OJ C 248, 30.6.2022, p. 142.

<sup>(7)</sup> WT/DS295/AB/R, 29 November 2005.

<sup>(8)</sup> OJ C 248, 30.6.2022, p. 107.

- (7) The Commission initiated the investigation following a complaint lodged on 16 May 2022 by The European Man-made Fibres Association ('CIRFS' or 'the complainant') on behalf of the Union industry of HTYP 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.
- (8) The investigation is limited in scope to the exporting producer concerned (Hailide) and any related company thereto. Another exporting producer, Huachun, which also received no anti-dumping duty rate in the investigation that led to the imposition of the above anti-dumping measures, ceased to exist in 2021. Therefore, Huachun is not considered an exporting producer of the HTYP and a party concerned for the purposes of this investigation.

### 1.3. Interested parties

- (9) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, it specifically informed the exporting producer concerned and the authorities in China about the initiation of the investigation and invited them to participate.
- (10) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (11) A user association together with five users requested a hearing with the Commission services and were granted an opportunity to be heard.

### 1.4. Sampling of Union producers and of unrelated importers

- (12) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample based on production and sales volumes, taking into account their geographical location. This sample consisted of 3 Union producers. The sampled Union producers accounted for more than 50 % of the estimated total EU production and EU sales volume of the like product. In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No interested party submitted comments on the provisional sample, which was confirmed as the definitive sample. The sample is representative of the Union industry.
- (13) In order to enable the Commission to decide whether sampling would be necessary in respect of the unrelated importers in the Union, those parties were requested to make themselves known and to provide the Commission with the information requested in the respective Notice of Initiation. One unrelated importer came forward as an interested party, but did not provide the requested sampling information. Therefore, sampling was not necessary for the unrelated importers.

### 1.5. Questionnaire replies and verification visits

- (14) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of China ('GOC').
- (15) The Commission sent questionnaires to the sampled Union producers, users and to the exporting producer concerned. The same questionnaires had also been made available online on the day of initiation.
- (16) The Commission received questionnaire replies from Hailide and three sampled Union producers. Questionnaire replies were also received from two users of HTYP. However, these replies could not be taken into consideration in the context of this proceeding, as the users in question did not use the product concerned produced by Hailide.

- (17) In view of the outbreak of Covid-19 and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at the Hailide's premises in China.
- (18) The Commission instead cross-checked with Hailide remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the Covid-19 outbreak on anti-dumping and anti-subsidy investigations <sup>(9)</sup>.
- (19) Furthermore, verification visits were carried out at the premises of the following companies:
- (a) Related trader of the exporting producer concerned: Hailide Fibers Europe A/S, Denmark
  - (b) Union producers
    - Glanzstoff Longlaville, Longlaville, France
    - PHP Fibers GmbH, Obernburg, Germany
    - Brilen Tech S.A., Zaragoza, Spain

#### 1.6. Subsequent procedure

- (20) On 30 January 2023, in accordance with Article 19a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures. The Commission did not impose provisional anti-dumping measures in this investigation in order to align the timing of the definitive findings of this proceeding with the expiry review and the partial interim review referred to in recital (4) above.
- (21) On 20 February 2023, the Commission disclosed the essential facts and considerations on the basis of which it intended to impose the definitive anti-dumping duties. Furthermore, an additional disclosure was made on 20 March 2023. All parties were granted a period within which they could make comments on the disclosures.
- (22) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

#### 1.7. Investigation period and period considered

- (23) The investigation of dumping and injury covered the period from 1 January 2021 to 31 December 2021 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

## 2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product under investigation

- (24) The product subject to this investigation is high tenacity yarn of polyesters not put up for retail sale, including monofilament of less than 67 decitex, (excluding sewing thread and 'Z'-twisted multiple (folded) or cabled yarn, intended for the production of sewing thread, ready for dyeing and for receiving a finishing treatment, loosely wound on a plastic perforated tube), currently falling under CN Code ex 5402 20 00 (TARIC code 5402 20 00 10) ('the product under investigation'). The CN and TARIC codes are given for information only without prejudice to a subsequent change in the tariff classification.

<sup>(9)</sup> Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

- (25) HTYP are used in a number of diverse applications such as tyre reinforcement, broad fabrics, seatbelts, airbags, ropes, nets and a number of industrial applications.

## 2.2. Product concerned

- (26) Product concerned by this investigation is the product under investigation originating in China and produced by Hailide.

## 2.3. Like product

- (27) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
  - the product under investigation produced and sold on the Chinese domestic market; and
  - the product under investigation produced and sold in the Union by the Union industry.
- (28) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

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

- (29) The evidence available at the initiation of the investigation pointed to the existence of significant distortions in China within the meaning of Article 2(6a), point (b) of the basic Regulation. The Commission therefore considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.
- (30) In order to collect the necessary data for a possible application of Article 2(6a) of the basic Regulation the Commission invited Hailide to provide information regarding the inputs used for producing HTYP. Hailide submitted the relevant information.
- (31) In addition, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.
- (32) In point 6.3.2 of the Notice of Initiation the Commission informed interested parties that based on the information available at that stage possible appropriate representative countries pursuant to Article 2(6a)(a) of the basic Regulation was Türkiye.
- (33) The Commission also stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (34) On 19 July 2022, the Commission issued a First note on the sources for the determination of the normal value (the 'First Note') by which it informed interested parties on the relevant sources it intended to use for the determination of the normal value.
- (35) In that note, the Commission provided a preliminary list of all known factors of production ('FOP') such as raw materials, labour and energy, used in the production of HTYP. In addition, the Commission identified Türkiye, Brazil and Thailand as possible appropriate representative countries. The Commission gave all interested parties opportunity to comment. The Commission received comments from Hailide as well as from the complainant.

- (36) On 30 November 2022, and after having analysed the comments received, the Commission issued the Second note on the sources for the determination of the normal value (the ‘Second Note’) (the First Note and Second Note are collectively referred to as the ‘Notes’).
- (37) In the Second Note, the Commission updated the list of factors of production and informed interested parties of its intention to use Türkiye as the representative country under Article 2(6a)(a), first indent of the basic Regulation. It also informed interested parties that it would establish selling, general and administrative costs and profits based on publicly available financial statements of an HTYP producer in Türkiye. An additional note with revised exchange rates for a number of benchmarks as well as including a more detailed disclosure of benchmark for labour cost calculation was issued and placed on the open file on 16 December 2022.
- (38) The Commission invited interested parties to comment. Comments were received from Hailide as well as from the complainant and a group of users (IVGT, Delcotex, Gleistein, Guth&Wolf, Heytex and Jakob Eschbach).
- (39) After having analysed the comments and information received, the Commission concluded that Türkiye was an appropriate representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.3.2 below.

### 3.2. Application of Article 18 of the basic Regulation

- (40) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. No questionnaire reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China.

### 3.3. Normal value

- (41) According to Article 2(1) of the basic Regulation, “*the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country*”.
- (42) However, according to Article 2(6a)(a) of the basic Regulation, “*in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks*”, and “*shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits*” (“administrative, selling and general costs” is referred hereinafter as ‘SG&A’).
- (43) As further explained below, the Commission concluded in the present investigation that, based on the evidence available and given the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.3.1. Existence of significant distortions

##### 3.3.1.1. Introduction

- (44) Article 2(6a)(b) of the basic Regulation stipulates that ‘significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;

- state presence in firms allowing the state to interfere with respect to prices or costs;
  - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
  - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
  - wage costs being distorted;
  - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state’.
- (45) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country’s economic and administrative set-up provides the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (46) Article 2(6a)(c) of the basic Regulation provides that ‘[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector’.
- (47) Pursuant to this provision, the Commission has issued a country report concerning China (hereinafter ‘the Report’) <sup>(10)</sup>, showing the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage. The complaint also referred to other documents issued by Chinese authorities at the national <sup>(11)</sup> or provincial <sup>(12)</sup> level, complementing the Report.
- (48) More specifically, the complaint alleged that the factors of production, including the main raw materials and energy to produce HTYP are heavily distorted. The complaint referred to the Report and the distortions identified therein with respect to the chemical sector, including the monoethylene glycol (‘MEG’) and purified terephthalic acid (‘PTA’) industry. Further, the complaint referred to the 14<sup>th</sup> Five-Year Development Plan (‘FYP’) for Petroleum and Chemical Industry of the Zhejiang Province and its call for the development of petrochemical upstream and midstream industries. Moreover, the complaint pointed – with reference to the Report – to existing distortions with respect to energy costs. The complaint also observed that Chinese authorities support implementing preferential fiscal and financial policies for the chemical industry, not least in line with the mandate of the 14<sup>th</sup> national and provincial FYPs for the “*optimization and structural adjustment of the raw materials industries such as petrochemicals*” and for accelerated “*transformation and upgrading of enterprises in key industries such as chemicals*”. The complaint further noted the State interference with respect to the labour market, the land-use rights, as well as the fact that HTYP producers benefitted from export loans. Against this background, the complaint provided some specific examples, how Hailide may have benefitted from the distortions in terms of sourcing raw materials or receiving financial support by government authorities.

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

<sup>(11)</sup> E.g. Chemical Fiber Industry 13<sup>th</sup> Directive Opinion or Five-year plans for National Economic and Social Development.

<sup>(12)</sup> 14<sup>th</sup> Five-year plan for the Development of Petroleum and Chemical Industry in Zhejiang Province.

- (49) As indicated in recital (40), the GOC did not comment or provide evidence supporting or contradicting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (50) Comments were received from Hailide as well as from a group of users. The claims are addressed in section 3.3.1.1.1 below.
- (51) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

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

- (52) The Chinese economic system is based on the concept of a '*socialist market economy*'. That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the '*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*'. The State-owned economy is the '*leading force of the national economy*' and the State has the mandate '*to ensure its consolidation and growth*'<sup>(13)</sup>. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership<sup>(14)</sup>.
- (53) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '*[t]he socialist system is the basic system of the People's Republic of China*' a new second sentence was inserted which reads: '*[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China*.'<sup>(15)</sup> This illustrates the unquestioned and ever growing control of the CCP over the economic system of China. This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (54) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market<sup>(16)</sup>. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.

<sup>(13)</sup> Report – Chapter 2, p. 6-7.

<sup>(14)</sup> Report – Chapter 2, p. 10.

<sup>(15)</sup> Available at: Constitution of the People's Republic of China (npc.gov.cn), accessed on 15 November 2022.

<sup>(16)</sup> Report – Chapter 2, p. 20-21.

- (55) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also section 3.3.1.5 below) <sup>(17)</sup>.
- (56) Second, on the level of allocation of financial resources, the financial system of China is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also section 3.3.1.8 below) <sup>(18)</sup>. The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also these parts of the financial sector other than the banking sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP <sup>(19)</sup>.
- (57) Third, on the level of regulatory environment, the interventions by the State into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(20)</sup>. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry <sup>(21)</sup>.
- (58) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(22)</sup>.

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

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

<sup>(17)</sup> Report – Chapter 3, p. 41, 73-74.

<sup>(18)</sup> Report – Chapter 6, p. 120-121.

<sup>(19)</sup> Report – Chapter 6, p. 122 -135.

<sup>(20)</sup> Report – Chapter 7, p. 167-168.

<sup>(21)</sup> Report – Chapter 8, p. 169-170, 200-201.

<sup>(22)</sup> Report – Chapter 2, p. 15-16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108-9.



- (60) While in the HTYP sector, the degree of state ownership does not appear to be significant, the GOC maintains shareholding exceeding 5 % in Hailide <sup>(23)</sup>. In addition, given that CCP interventions into operational decision making have become the norm also in private companies <sup>(24)</sup>, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the State by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the State and Party structures have grown together in China.
- (61) This is apparent also at the level of the China Chemical Fiber Association ('CCFA') <sup>(25)</sup>, the sectoral industry association, of which Hailide is a member. According to Art. 2 of CCFA's Articles of Association, the organisation's purpose is, among others, to "implement the country's industrial policy". Article 3 confirms CCFA's subordination to the CCP by stipulating that "[t]he Association adheres to the overall leadership of the Communist Party of China, establishes organizations of the Communist Party of China, develops party activities, and provides the conditions necessary for the activities of the party organizations in accordance with the provisions of the Constitution of the Communist Party of China."
- (62) Consequently, even privately owned producers in the HTYP sector are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance as also set out in section 3.3.1.5 below.

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

- (63) Apart from exercising control over the economy by means of ownership of State-owned enterprises ('SOEs') and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, <sup>(26)</sup> CCP cells in enterprises, State-owned and private alike, represent another important channel through which the State can interfere with business decisions. According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(27)</sup>) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle <sup>(28)</sup>, including exercising pressure on private companies to put 'patriotism' first and to follow party discipline <sup>(29)</sup>. In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies <sup>(30)</sup>. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of HTYP and the suppliers of their inputs.
- (64) In addition, on 15 September 2020 a document titled *General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era* ('the Guidelines') <sup>(31)</sup> was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: "[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area"; and section III.6 states: "[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers." The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities <sup>(32)</sup>.

<sup>(23)</sup> See at: [https://aiqicha.baidu.com/company\\_detail\\_51522707507210](https://aiqicha.baidu.com/company_detail_51522707507210) (accessed on 18 November 2022).

<sup>(24)</sup> See for example Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law or the Guidelines on stepping up the United Front work in the private sector for the new era issued by the General Office of the CCP's Central Committee in 2020.

<sup>(25)</sup> See at: [cfa.com.cn](http://cfa.com.cn) (accessed on 21 November 2022).

<sup>(26)</sup> Report – Chapter 5, p. 100-1.

<sup>(27)</sup> Report – Chapter 2, p. 26

<sup>(28)</sup> See for example: Blanchette, J. – Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10-19.

<sup>(29)</sup> Report – Chapter 2, p. 31-2.

<sup>(30)</sup> Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 15 November 2022).

<sup>(31)</sup> Available at: [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (accessed on 15 November 2022)

<sup>(32)</sup> Financial Times (2020) – Chinese Communist Party asserts greater control over private enterprise, available at: <https://on.ft.com/3mYxP4j> (accessed on 15 November 2022).

- (65) The State's presence and intervention in the financial markets (see also section 3.3.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market <sup>(33)</sup>. Thus, the State presence in firms, in the HTYP and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

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

- (66) The direction of the Chinese economy is, to a significant degree, determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(34)</sup>.

- (67) The chemical fiber industry is regarded as a key industry by the GOC. This is evident from the 2022 Guiding Opinions on the High-quality Development of Chemical Fiber Industry ('the Guiding Opinions') issued by Ministry of Industry and Information Technology National Development and Reform Commission <sup>(35)</sup>, according to which "The chemical fiber industry is an essential pillar of the stable development and continuous innovation of the textile industry chain, an internationally competitive advantage industry, and an important part of the new material industry". Article I.2. of the Guiding Opinions explicitly articulates the GOC's intention to determine the geographical and corporate structure of the sector, as well as essential production parameters. <sup>(36)</sup> The Government intervention may take the form of production sites relocations ("implement the regional development strategy, under the premise of complying with industry, energy, environmental protection and other policies, encourage leading enterprises to build integrated bases for the whole industry chain of chemical fiber textile in Guangxi, Guizhou, Xinjiang and other central and western regions, and form efficient and collaborative supply chain systems with neighbouring countries and regions"), mergers aimed at creating industrial champions ("encourage enterprises to optimize the allocation of production factors through mergers and reorganization, and accelerate business process reengineering and technological upgrading. Support leading enterprises to gather high-quality resources such as technology, brands, channels and talents"), designation of companies as eligible for special support through dedicated Government programs ("promote the integration and development of large, medium and small enterprises, cultivate specialized and specific new "little giant" enterprises and single champion enterprises") etc. <sup>(37)</sup>

- (68) This central Government's strategy is confirmed in numerous planning documents focused on the chemical fiber industry issued at provincial and municipal level.

- (69) The Zhejiang, Jiangsu, Fujian and Shandong provinces, as well as the Chongqing municipality provide good examples.

<sup>(33)</sup> Report – Chapters 14.1 to 14.3.

<sup>(34)</sup> Report – Chapter 4, p. 41-42, 83.

<sup>(35)</sup> Available at: [https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art\\_a01b7532a39a41e891d2540da6981d72.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_a01b7532a39a41e891d2540da6981d72.html) (accessed on 17 November 2022)

<sup>(36)</sup> Optimize regional layout, strengthen international cooperation, promote digital transformation, eliminate backward production capacity and mergers and reorganizations in accordance with laws and regulations, cultivate leading enterprises, promote the integration and development of large and small enterprises, and consolidate and enhance industrial competitiveness.

<sup>(37)</sup> Ibid., Art. II.

- (70) The Jiangsu 14<sup>th</sup> Five year Plan on the high-end development of chemical industry <sup>(38)</sup> not only contains detailed provisions on development goals for a wide range of subsectors within the chemical sector <sup>(39)</sup> but it also mirrors the above-mentioned policies of the Guiding Opinions on the industrial structure:

*Through the consolidation of resources, accelerate the construction of a number of large enterprises and enterprise groups with leading roles, increase the level industry concentration, and form a number of world-class enterprises and "single champion" enterprises. <sup>(40)</sup>[...]*

*The layout of the chemical industry in the province abides by the requirements of the national and provincial industrial planning and layout plans, with chemical parks as important development carriers, they are also essential to lead the development of the chemical industry in each district and city. The industrial development orientation abides by the requirements of the relevant industry policies of the state and of Jiangsu province, establishes the development concept led by encouraged industries, and implements the upgrading of traditional chemical industries as well as the coordinated development of industries in new fields. <sup>(41)</sup>*

as well as the geographic distribution of production:

*The overall layout plan is based on the whole province, according to the characteristics of each city's industry development, highlighting the advantages of industry development, further improving the development level of characteristic industries, and expanding the industries that meet regional development needs taking into account each city's relevant industries and local market conditions, ensuring the differentiated development of the chemical industry in each city of the province, and forming a comprehensive industry system with each city having complementary advantages <sup>(42)</sup>.*

- (71) Similarly, the Special plan for the development of strategic emerging industries in the Fujian Province during the 14th FYP <sup>(43)</sup> contains a mandate for the provincial authorities to support the chemical fibers sector and guide its development:

*Accelerate the development of new textile fabrics, and increase the research and development of functional differentiated fibers, high-performance fiber blends, high-count and high-quality yarns and their fabrics, new heat-bonding composite fibers (ES fibers) for sanitary use, and high-performance metal fibers. <sup>(44)</sup> [...]*

*Support the construction of Fuzhou's new functional materials industry clusters (membrane materials, advanced textiles, high-performance metal materials, high-performance composite materials, etc.), Xiamen new functional materials industry clusters [...], Putian's new functional materials industry cluster (new chemical fibers and functional textile materials, etc.) and Xiamen biomedical industry cluster [...].*

- (72) The interference of Fujian's authorities with the development of the chemical fibers' sector is further apparent from the provincial 14<sup>th</sup> FYP on developing a high quality manufacturing industry which gives the following instruction to the stakeholders:

*Promote the construction of Baihong polyester industrial yarn project, and develop special chemical fiber materials used in the automotive sector, marine engineering, military equipment, medical health and other fields. Accelerate the research on cutting-edge fiber technology, focus on breakthroughs in key fiber technologies such as nano-, intelligent, and biomedical fibers, and strive to achieve breakthroughs in high-end fibers such as carbon fiber, aramid fiber, polyphenylene sulfide, and ultra-high molecular weight polyethylene. <sup>(45)</sup>*

<sup>(38)</sup> Available at: <https://huanbao.bjx.com.cn/news/20210906/1175114.shtml> (accessed on 17 November 2022).

<sup>(39)</sup> See Chapter V of the Plan.

<sup>(40)</sup> See Section 2.2.2. of the Plan.

<sup>(41)</sup> See Section 4.1.1. of the Plan.

<sup>(42)</sup> See Section 4.1.3. of the Plan.

<sup>(43)</sup> Available at: [www.qg.gov.cn/zwgk/zcfg/sjfgwj/202112/t20211207\\_2666343.htm](http://www.qg.gov.cn/zwgk/zcfg/sjfgwj/202112/t20211207_2666343.htm) (accessed on 18 November 2022).

<sup>(44)</sup> See Section III.2.5. of the Plan.

<sup>(45)</sup> See Section III.4.1 of the Plan Available at:

<https://huanbao.bjx.com.cn/news/20210707/1162695.shtml> (accessed on 22 November 2022).

- (73) Also Shandong's 14<sup>th</sup> FYP on developing the chemical industry <sup>(46)</sup> emphasizes the need to “[focus on the development of ethylene-based polyolefins and synthetic resins as end-use products, propylene-polypropylene, other engineering plastics as well as modified materials, synthetic and rubber materials made of butene and C4, end-products made with high performance polyurethane isocyanate and toluene, new materials, textile and engineering materials made of nylon, benzene and polyamide, PX-PTA-polyester and six other major industry chains” <sup>(47)</sup>, with similar language present also in Zhejiang's 14<sup>th</sup> FYP on developing new materials industry: <sup>(48)</sup> „In the field of advanced basic materials, implement a number of digital and green transformation projects and production expansion projects for high-end and scarce products; in the fields of key strategic materials such as advanced semiconductor materials, new display materials, biomedical materials, high-performance fibers and composite materials, implement a number of industrialization and application expansion projects” <sup>(49)</sup> or Chongqing's 14 FYP on high quality development of manufacturing industry: <sup>(50)</sup> „Use the raw material bases to encourage relevant enterprises to research, develop and manufacture high-performance PVA (polyvinyl alcohol) functional fibers, differentiated spandex, special polyester fibers, polyamide fibers, PU (polyurethane) microfibers and other products.” <sup>(51)</sup>
- (74) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector.
- (75) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production the main raw materials used in the manufacturing of HTYP. Such measures impede market forces from operating freely.

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

- (76) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(52)</sup>.
- (77) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China. <sup>(53)</sup> All land is owned by the State (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates <sup>(54)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(55)</sup>.

<sup>(46)</sup> Available at: <https://huanbao.bjx.com.cn/news/20211201/1191133.shtml> (accessed on 18 November 2022).

<sup>(47)</sup> See Section III.2.1 of the Plan.

<sup>(48)</sup> See the Plan, available at:

[https://www.zj.gov.cn/art/2021/6/24/art\\_1229540815\\_4671249.html](https://www.zj.gov.cn/art/2021/6/24/art_1229540815_4671249.html) (accessed on 22 November 2022)

<sup>(49)</sup> See Section IV.7 of the Plan.

<sup>(50)</sup> Available at: [https://www.cq.gov.cn/zw/gk/zfxxgkml/szfwj/qtgw/202108/t20210803\\_9538603.html](https://www.cq.gov.cn/zw/gk/zfxxgkml/szfwj/qtgw/202108/t20210803_9538603.html) (accessed on 22 November 2022)

<sup>(51)</sup> See Section III.1.4 of the Plan.

<sup>(52)</sup> Report – Chapter 6, p. 138-149.

<sup>(53)</sup> Report – Chapter 9, p. 216.

<sup>(54)</sup> Report – Chapter 9, p. 213-215.

<sup>(55)</sup> Report – Chapter 9, p. 209-211.

- (78) Much like other sectors in the Chinese economy, the producers of HTYP are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the chemical fibers sector. The present investigation revealed nothing that would call those findings into question.
- (79) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the chemical fibers sector, including with respect to the product under investigation.

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

- (80) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining <sup>(56)</sup>. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(57)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration. <sup>(58)</sup> Those findings lead to the distortion of wage costs in China.
- (81) No evidence was submitted to the effect that the chemical fibers sector, including the producers of HTYP, would not be subject to the Chinese labour law system described. The chemical fibers sector is thus affected by the distortions of wage costs both directly (when making the product under investigation or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

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

- (82) Access to capital for corporate actors in China is subject to various distortions.
- (83) Firstly, the Chinese financial system is characterised by the strong position of State-owned banks <sup>(59)</sup>, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) <sup>(60)</sup> and, again just like non-financial SOEs, the banks regularly implement public policies designed by the GOC. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State <sup>(61)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(62)</sup>.

<sup>(56)</sup> Report – Chapter 13, p. 332-337.

<sup>(57)</sup> Report – Chapter 13, p. 336.

<sup>(58)</sup> Report – Chapter 13, p. 337-341.

<sup>(59)</sup> Report – Chapter 6, p. 114-117.

<sup>(60)</sup> Report – Chapter 6, p. 119.

<sup>(61)</sup> Report – Chapter 6, p. 120.

<sup>(62)</sup> Report – Chapter 6, p. 121-122, 126-128, 133-135.

- (84) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.
- (85) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues<sup>(63)</sup>. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities '*serve the national development objectives and the real economy*', and in particular how they '*serve strategic and emerging industries*'.<sup>(64)</sup>
- (86) Specifically in the chemical fibers sector, the prioritisation of sectors on criteria related to industrial policies rather than creditworthiness of a given project is apparent from a number of policy documents, such as the Shandong Province's 14<sup>th</sup> FYP *on developing the chemical industry* which provides for the following with respect to chemical industry:<sup>(65)</sup>

*Increase financial support. Strengthen fiscal policy incentives, ensure the overall involvement of special funds, support chemical enterprises to accelerate technological transformation, intelligent transformation, industry transfer, relocation into parks, elimination of obsolete capacities, etc., and implement policies such as tax exemption for imported major technical equipment, value-added tax credits and refunds, additional deductions of research and development expenses, and insurance compensation for the first (set) of technical equipment. Actively guide all kinds of financial institutions and social capital to invest in the chemical industry, give play to the advantages of policy-based finance, development finance and commercial finance, and increase financial support to the key areas of chemical industry and technology.*<sup>(66)</sup>

- (87) Similarly, under the 14<sup>th</sup> FYP *on the high-end development of the chemical industry*<sup>(67)</sup> of the Jiangsu province, the local authorities are obliged to "[g]ive full play to the guiding role of government investment funds, flexibly expand funding channels and guide social capital investments."<sup>(68)</sup>
- (88) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings.<sup>(69)</sup>

<sup>(63)</sup> See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*, available at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 15 November 2022). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.'

<sup>(64)</sup> See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020. [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (last viewed on 12 April 2021).

<sup>(65)</sup> Available at: <https://huanbao.bjx.com.cn/news/20211201/1191133.shtml> (accessed on 18 November 2022).

<sup>(66)</sup> See Paragraph 3 of the Section Safeguard Measures of the Plan.

<sup>(67)</sup> Available at: <https://huanbao.bjx.com.cn/news/20210906/1175114-3.shtml> (accessed on 22 November 2022).

<sup>(68)</sup> See Section 8.7. of the Plan.

<sup>(69)</sup> See IMF Working Paper 'Resolving China's Corporate Debt Problem', by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203

- (89) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(70)</sup>. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (90) Secondly, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (91) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces, but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 <sup>(71)</sup>. Official media in China have recently reported that the CCP called for 'guiding the loan market interest rate downwards.' <sup>(72)</sup> Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (92) Overall credit growth in China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called 'zombie' companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (93) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the State in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

#### 3.3.1.9. Systemic nature of the distortions described

- (94) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.3.1.1 – 3.3.1.5 as well as in Part I of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.3.1.6-3.3.1.8 and in Part II of the Report.
- (95) The Commission recalls that in order to produce HTYP, a range of inputs is needed. When the producers of HTYP purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (96) As a consequence, not only the domestic sales prices of HTYP are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

<sup>(70)</sup> Report – Chapter 6, p. 121-122, 126-128, 133-135.

<sup>(71)</sup> See OECD (2019), OECD Economic Surveys: China 2019, OECD Publishing, Paris, p. 29, available at: [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en) (accessed on 15 November 2022).

<sup>(72)</sup> See: [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 22 November 2022).

### 3.3.1.10. Conclusion

- (97) The analysis set out in sections 3.3.1.2. to 3.3.1.9, which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the chemical fibers sector (including the product under investigation) showed that prices or costs of the product under investigation, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (98) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

### 3.3.1.11. Comments by interested parties

- (99) In the course of the investigation, comments were received from Hailide as well as from a group of users.
- (100) In their comments on the First Note on factors of production, Hailide, apart from stating that the application of Article 2(6a) of the basic Regulation would be WTO incompatible, alleged that the analysis in the complaint pertaining to the existence of significant distortions – in China in general as well as concerning Hailide specifically – was flawed for the following reasons: (i) the complaint's allegations are general in nature – for example when referring to energy or labour costs – and they concern China or its chemical sector, rather than the HTYP market; the allegations also rely exclusively on the Report, rather than being based on positive evidence; (ii) the complainant, in assessing whether significant distortions exist, relies on supporting evidence that is either irrelevant – typically outdated – or factually wrong – quoting past distortive obligations which no longer exist under Chinese law; (iii) the raw materials (purified terephthalic acid ('PTA') and monoethylene glycol ('MEG')) are two commodity goods traded globally and priced in a transparent manner and in line with international prices, for which reason the complainant's claims about their prices being distorted in China is flawed; (iv) the complainants failed to provide any positive and concrete evidence as regard the factors listed in Article 2(6a)(b) of the basic Regulation and therefore no valid conclusion can be drawn concerning the existence of significant distortions. A group of users made a similar claim in support of Hailide.
- (101) The arguments raised by Hailide could not be accepted. At the outset, the Commission emphasized its position that the provisions of Article 2(6a) of the basic Regulation are fully consistent with the European Union's WTO obligations. As to the arguments concerning the allegedly flawed significant distortions analysis in the complaint, the Commission recalled, first of all, that Article 2(6a)(e) of the basic Regulation lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. Consequently, far from drawing conclusions concerning the existence of significant distortions, the Commission merely deemed the evidence submitted by the complainant on the significant distortions sufficient to initiate the investigation. Moreover, the Commission pointed out that certain types of distortions present in China – such as distortion related to energy or labour – are cross-cutting, affecting the entire Chinese economy and therefore also prices and/or the raw materials and costs of production of the product under investigation.
- (102) Further, concerning the claim that allegations in the complaint rely exclusively on the Report and are at any rate based on outdated or inaccurate information, the Commission pointed out that while the complaint may be striving to demonstrate the unchanged nature of the significant distortions by referring to policy documents of the 12<sup>th</sup> or 13<sup>th</sup> planning cycle, the complaint also identified relevant documents for the 2021-2025 planning period, such as 14<sup>th</sup> Five-Year Plan for National Economic and Social Development of the People's Republic of China or the 14<sup>th</sup> Five-Year Development Plan for Petroleum and Chemical Industry of the Zhejiang Province. In addition, the Commission recalled that Article 2(6a)(d) of the basic Regulation explicitly provides the Union industry with the possibility to rely on the information contained in the Report when bringing a complaint or a review request. The Commission therefore considered that the evidence identified in the complaint and referred to in the Notice of



Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. As to the claim that raw materials PTA and MEG are traded internationally and their prices in China are therefore not being distorted, this argument has to be dismissed for the reasons set out above, in particular in recitals (95)-(97).

### 3.3.2. **Representative country**

#### 3.3.2.1. *General remarks*

- (103) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank <sup>(73)</sup>;
  - Production of the product under investigation in that country <sup>(74)</sup>;
  - Availability of relevant public data in the representative country.
  - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (104) As explained in recitals (34)-(37), the Commission issued and placed on the file two Notes on the sources for the determination of the normal value. The Notes described the facts and evidence underlying the relevant criteria and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Türkiye as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed. The Commission's assessment can be summarised as follows.

#### 3.3.2.2. *A level of economic development similar to China and production of the product under investigation*

- (105) In the investigation period, the World Bank classified countries with a similar level of economic development as China as 'upper-middle income' countries on a gross national income basis. In the First Note, a sizeable production of the product under investigation was found to exist only in five of these countries, namely in Belarus, Brazil, Mexico, Thailand and Türkiye.
- (106) However, in view of the fact that Belarus is not a WTO-member and not a market economy, the said country was not examined further as a potential representative country.
- (107) The Commission therefore further analysed Brazil, Mexico, Thailand and Türkiye as potential representative countries.

#### 3.3.2.3. *Availability of relevant public data in the representative country*

- (108) For the countries considered and mentioned above, the Commission further verified the availability of the public data, including the data on imports of factors of production as well as of financial data from the producers of the product under investigation in the potential representative countries.

<sup>(73)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

<sup>(74)</sup> If there is no production of the product under investigation in any country with a similar level of development, production of a product in the same general category and/or sector of the product under investigation may be considered.

- (109) The analysis of imports of the main factors of production showed that Türkiye imported overall more significant and representative undistorted volumes of the key inputs for production of the HTYP (namely PTA, MEG and Polyethylene terephthalate (‘PET’) chips) compared to Brazil, Mexico or Thailand.
- (110) The analysis further showed that Turkish imports were not materially affected by imports from China or any of the countries listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and of the Council <sup>(75)</sup>. Furthermore the HTYP production and production capacity is significant in Türkiye and no particular trade distortions on the factors of production nor on HTYP exist in the country. Moreover, detailed and sufficiently representative data on import prices of the material inputs are readily available in the Global Trade Atlas (‘GTA’) for Türkiye.
- (111) Regarding the producers in representative countries and availability of their data, the Commission identified a HTYP producer KORDSA TEKNİK TEKSTİL A.S. (‘Kordsa Türkiye’) for which consolidated 2021 financial results are available. On the other hand, the financial data for Brazilian (KORDSA BRASIL S.A.), Mexican (Monosuisse, Performance Fibers Mexico Operations and Akra Polyester SA DE CV) and Thai companies (THAI TORAY SYNTHETICS CO LTD and TEIJIN POLYESTER (THAILAND) CO LTD.) producing HTYP are not readily available for the full investigation period and are not fully compliant with the International Financial Reporting Standards (for the Thai producers).
- (112) It is observed that Kordsa Türkiye does not produce solely HTYP, but approximately 86 % of its 2021 revenues were in the segment covering HTYP <sup>(76)</sup>. The Commission noted in this respect that in the event that no financial information is readily available specifically and only in relation to the product under investigation (which is nearly always the case), the Commission seeks the closest readily available proxy, including consolidated information of producer(s) active among others in the business covering the product under investigation. In these circumstances, the consolidated SG&A and profit identified for Kordsa Türkiye are therefore deemed sufficiently representative to be applied for the purposes of the present investigation.
- (113) Given the public availability of Kordsa Türkiye’s full and comprehensive annual report for 2021 <sup>(77)</sup>, the Commission therefore resorted to the use of the information included therein.

#### 3.3.2.4. *Level of social and environmental protection*

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

#### 3.3.2.5. *Conclusion*

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

### 3.3.3. *Comments of the parties*

- (116) With respect to the choice of the representative country, a group of users suggested in response to the Second Note that Republic of Korea is the most appropriate representative country, given the level of economic development similar to China, production of the product under investigation, availability of relevant public data, and its adequate level of social and environmental protection.

<sup>(75)</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries, OJ L 123, 19.5.2015, p. 33.

<sup>(76)</sup> See [https://www.kordsa.com/en/images/pdf/Kordsa\\_Annual\\_Report\\_EN\\_2021.pdf](https://www.kordsa.com/en/images/pdf/Kordsa_Annual_Report_EN_2021.pdf), p. 160.

<sup>(77)</sup> See [https://www.kordsa.com/en/images/pdf/Kordsa\\_Annual\\_Report\\_EN\\_2021.pdf](https://www.kordsa.com/en/images/pdf/Kordsa_Annual_Report_EN_2021.pdf), p. 117.

- (117) It is recalled that for the purpose of identifying countries with a level of economic development similar to China, the Commission considers on the basis of the database of the World Bank <sup>(78)</sup> only 'upper-middle income' countries on a gross national income basis. However, Republic of Korea has been classified, in and prior to IP, as a 'high income' country by the World Bank and hence cannot be considered as a potential representative country.
- (118) Hailide claimed in its response to the Notes that the GTA data concerning the main raw materials for HTYP production is inaccurate, when compared to the statistics from the official data portal of the Turkish Statistical Institute. The Commission noted that the data reported in GTA system for Türkiye is based on the general trade view while the data that was gathered from the official Turkish statistics is based on a special trade view (which excludes goods that enter or exit a free trade zone or bonded warehouse). Hence the differences in figures are duly justified and cannot render the GTA data unreliable. Therefore, Hailide cannot validly claim that the GTA data are inaccurate and its argument has to be dismissed.
- (119) Hailide further submitted in response to the Second Note that the prices for raw materials in Türkiye, disclosed in Annex I (List of factors of production and their prices in Türkiye) are inconsistent with the prices disclosed for Türkiye in Annex II (Comparison of import statistics for potential representative countries). The Commission noted that the statistics in Annex II are only raw data for the purposes of comparison between different countries aggregated at the common HS6 level without including the applicable customs duties for individual importing countries. The data in Annex I on the other hand outlines values at the level of Turkish national tariff codes and includes the customs duties as well. Therefore, the price levels in Annex I and Annex II are not intended to be identical and the argument of the party has to be dismissed as unfounded. Further to the final disclosure, Hailide claimed that no calculation worksheet was provided in relation to the adjustment for import duties in Annex I, which led to an inadequate disclosure by the Commission. It was observed by the Commission that the data including prices of factors of production in Türkiye has been generated automatically from GTA at the level of Turkish national tariff codes (including all conventional and preferential customs duties based on the Market Access Map database – MacMap), it was duly disclosed and was used in this case by the Commission without further modification. It was noted that no additional calculation worksheet or the like was produced by the Commission for this purpose. Hence, Hailide's claim has to be dismissed.
- (120) Hailide claimed that Türkiye is not appropriate to be selected as a representative country. The company submits that, first, the currency depreciation and high inflation led to abnormal market conditions in Türkiye which inevitably impacted the local costs and which in turn made Türkiye manifestly unsuitable as a representative country. Hailide reiterated its claim in response to the final disclosure, adding that local prices and/or import prices affected by significant local currency depreciation into Türkiye cannot reflect undistorted prices or benchmarks. Second, according to Hailide, Kordsa Türkiye cannot be considered a producer of HTYP destined to the open market, as its limited polyester yarn production capacity is mainly, if not exclusively, used for captive use in its own downstream tire cord fabric production. In the same vein, a group of users claimed that Kordsa Türkiye uses HTYP mostly for its own production for materials used in tires. Hailide claimed that HTYP is only marginal and subordinate business in support of cord fabric and that the biggest majority, if not all, of the external revenues in the segment "Industrial yarn and cord fabric" relate to revenue from sales of industrial fabrics and nylon yarn, and not of HTYP. Hailide reiterated this argument in its response to the final disclosure. The parties concluded that the financial result of the company is thus not representative of a HTYP producer and hence there is no financial information readily available for HTYP operation in Türkiye. Third, Hailide maintained that Kordsa Türkiye produces only one specific type of HTYP (high value-added HMLS for automotive use), which makes it unsuitable for representative country purpose, as the operational result from one single product type is not representative of that concerning Chinese HTYP producers which produce a wide range of product types. In conclusion, Hailide submitted that the Commission should disregard the profit margin of Kordsa Türkiye and use a more reasonable profit margin representative of Chinese HTYP producers. Hailide maintained in its response to the final disclosure that the profit level of 15,3 % established by the Commission is excessively high for an HTYP producer and that a maximum of 6 % (equal to the target profit margin for sampled Union producers in the present case, established by applying Article 7(2c) of the basic Regulation) is thus a reasonable proxy for the undistorted and reasonable profit that an HTYP producer can normally achieve.

<sup>(78)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- (121) The Commission observed that the choice of the representative country was based on the three criteria: level of economic development, production of the product concerned and availability of relevant public data. A potential impact of a devaluing currency or inflation level is not among those criteria. In any event, the submitting party has not demonstrated how the depreciation of the Turkish Lira and high inflation would actually have affected the prices of inputs sourced in Türkiye, and if so what the real impact on the normal value that is calculated in CNY would be. Moreover, the parties did not provide any information indicating that (and to what extent) Turkish lira would be used in import transactions for raw materials forming a basis for establishing the undistorted cost benchmarks in this case. In addition, when establishing benchmarks on the basis of import prices for the calculation of normal value under Article 2(6a)(a) of the basic Regulation, the import values into the representative countries are ultimately converted into the currency of the exporting country, i.e. in this case CNY. Therefore, the Commission found that this claim was unsubstantiated and rejected it.
- (122) Regarding Kordsa Türkiye's product portfolio and source of revenues, the Commission noted that in the event when no financial information is readily available specifically and solely in relation to product concerned by investigation (in this case HTYP), which is rarely the case, the Commission seeks to identify the closest readily available proxy, including consolidated information of producer(s) active, among others in the business of the product concerned. In this case, as outlined in recital (112), approximately 86 % of Kordsa Türkiye's external revenues in 2021 were generated in the segment covering HTYP. Furthermore, contrary to what the parties submit, Kordsa Türkiye does indeed generate external revenue by producing and selling also polyester yarn <sup>(79)</sup>. In fact, Kordsa is "[o]ne of the leaders of the [...] HMLS polyester yarn market", with "*a portfolio of yarns that are suitable for use in such applications as cord fabrics, heavy-duty textiles, industrial fabrics, chafer fabrics, single-end cords and ropes*" <sup>(80)</sup>, hence for use also in industries other than the automotive industry. This makes the parties' argument on captive use of HTYP unfounded. Moreover, tire reinforcement is one of the main applications for HTYP and the Chinese HTYP producers, including Hailide also produce HMLS yarn and serve customers in the automotive industry. Hence it would be misleading to state that Kordsa Türkiye's HTYP business is unrepresentative of the business activities of the Chinese HTYP producers. Lastly, the parties did not propose as an alternative to Kordsa Türkiye any other suitable HTYP producer with readily available financial data specifically and solely for HTYP, let alone a HTYP producer with wider HTYP portfolio than that of Kordsa Türkiye.
- (123) In these circumstances, the consolidated SG&A and profit identified for Kordsa Türkiye are therefore deemed sufficiently representative and suitable to be applied for the purposes of the present investigation and the arguments of the parties have to be dismissed. It was further observed that, the target profit of 6 % proposed to be used by Hailide and the profit in the representative country refer to different concepts governed by different rules prescribed in different legal provisions. In particular, the target profit is the profit achieved by the Union industry for domestic sales in the Union under normal conditions of competition and it is used to calculate the injury margin under Article 9(4) of the basic Regulation. The profit in the representative country is used in the calculation of normal value by reference to the appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation. This profit must reflect the profit achieved by a company producing the product under investigation or a similar product, in a representative country. Since the concept of the target profit and of profit in a representative country are not comparable, the claim of Hailide was dismissed as irrelevant. Moreover, Hailide provided no evidence suggesting that the amount for profit included in the constructed normal value was not undistorted and reasonable within the meaning of Article 2(6a)(a).
- (124) Hailide took the view that the Commission should select Brazil as the suitable representative country instead of Türkiye, given that financial data are readily available for Kordsa group company in Brazil and because Brazil had hardly any imports from China concerning the key inputs for production of the HTYP (PTA, MEG, PET chips) compared to Türkiye in 2021 and therefore is less likely affected by the alleged distortions. Hailide reiterated this argument in its response to the final disclosure, adding that if Kordsa Türkiye's annual report for 2021 at company group consolidated level is acceptable as source for establishing the undistorted SG&A and profit in Türkiye, the same equally applies to Kordsa Brazil since the consolidated accounts also include the operational result of Kordsa Brazil.

<sup>(79)</sup> p. 133 of 2021 Annual Report.

<sup>(80)</sup> p. 61 of 2021 Annual Report available on [https://www.kordsa.com/en/images/pdf/Kordsa\\_Annual\\_Report\\_EN\\_2021.pdf](https://www.kordsa.com/en/images/pdf/Kordsa_Annual_Report_EN_2021.pdf)

- (125) First, financial data for Kordsa Brazil is only available for 2019, while the period under investigation in the present case, which is of primary relevance, covers the year 2021. In addition, as outlined above, readily available and profitable data exist in relation to Kordsa Türkiye for 2021. While the financial statement of Kordsa Türkiye for 2021 used for the purposes of this case consolidates also the data of its subsidiaries, including Kordsa Brazil, it is evident that the profit and SG&A figures in the consolidated statement are more representative of Kordsa Türkiye's operations rather than operations of Kordsa Brazil. This is because the revenue generated by the Europe-Middle East-Africa geographical segment (covering solely operations in Turkey) is almost three times higher than the revenues generated by Kordsa Brazil (representing the South American segment)<sup>(81)</sup>. In any event, Article 2(6a)(a) of the basic Regulation requires that the amount for administrative, selling and general costs and for profits included in the constructed normal value is undistorted and reasonable. Hailide adduced no evidence demonstrating that this is not the case. Second, while the proportion of undistorted import quantities on the total imports for PET chips, PTA and MEG into Türkiye was lower than that of the undistorted imports into Brazil, the total quantity of undistorted imports for each of these inputs into Türkiye was significantly higher than the total quantity of undistorted imports into Brazil. In fact, while Brazil may have sufficiently representative data on PET chips and MEG imports available, this does not apply to the PTA imports, which were insignificant compared to Türkiye and accounted only for around 7 % of the PTA imports into Türkiye. The argument submitted by Hailide therefore has to be rejected.
- (126) Regarding the SG&A of Kordsa Türkiye, which is to be applied in the present case to construct the normal value, Hailide submitted that to ensure fair comparison between the constructed normal value and the export price, the packaging expenses, which according to Hailide form part of the SG&A (based on the Note 21 to the Kordsa Türkiye financial statements) should be excluded.
- (127) First, the Commission took the profit and loss statement and operating items listed therein as a basis for calculating the SG&A costs for Kordsa Türkiye. Note 21 to the financial statements, referred to by Hailide lists '*Expenses by nature*', which evidently cover not only the operating expenses, but also the material costs, including packaging costs included in the cost of goods sold. Simple comparison of the total of operating expenses in the profit and loss statement and of the total of the expenses in Note 21 also shows that the latter amount is significantly higher. It would therefore be manifestly wrong to extrapolate from the mere reference to Note 21 in the profit and loss statement part listing operating items that all expenses outlined in Note 21 correspond to the operating expenses. In view of the above, the argument made by Hailide has to be rejected.
- (128) Furthermore, a group of users urged the Commission to use Chinese exporting producers' own SG&A and profit to calculate the normal value.
- (129) The Commission noted that once the existence of significant distortions for the exporting country is established in accordance with Article 2(6a)(b) of the basic Regulation, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country (in this instance Türkiye) for each exporting producer according to Article 2(6a)(a). The Commission underlines that this provision also specifically requires that the constructed normal value includes a reasonable amount for undistorted SG&A costs and profit in the appropriate representative country. Once the Commission establishes the existence of the significant distortions affecting the product under investigation in the exporting country, it is prevented from using the actual SG&A costs and profit of individual exporting producers as, as a result, they were found to be distorted. Hailide did not provide any evidence that its actual SG&A costs and profit were undistorted. Therefore, this claim is rejected.

#### 3.3.4. Sources used to establish undistorted costs

- (130) On the basis of the information submitted by interested parties and other relevant information available on the file, the Commission established, in the First Note, an initial list of factors of production such as materials, energy and labour, used for the production of the product under investigation.

<sup>(81)</sup> See Kordsa\_Annual\_Report\_EN\_2021.pdf, p. 158, Note 3 -Segment reporting, a) External revenue as well as the Directory on p. 205 of the annual report.

- (131) In accordance with Article 2(6a)(a) of the basic Regulation, the Commission also identified sources to be used for establishing undistorted prices and benchmarks. The main source that the Commission proposed to use included the Global Trade Atlas ('GTA'). Finally, the Commission identified the Harmonised System ('HS') codes of the FOPs which in the First Note were initially considered to be used for the GTA analysis on the basis of information provided by the interested parties.
- (132) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production ('FOP') mentioned in the First Note. Subsequently, in the Second Note, the Commission updated tariff classification information on and expanded the list by a number of FOPs based on the comments received from the interested parties.
- (133) In view of the above, the following FOPs and their sources were identified with regard to Türkiye, in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

**Factors of production of HTYP**

Factor of Production	Tariff line	Source of data the Commission intends to use Raw materials	Prices (CNY)
Purified terephthalic acid (PTA)	291736 00 0011	Global Trade Atlas (GTA) <sup>(82)</sup> Market Access Map, International Trade Centre (MacMap) <sup>(83)</sup>	4,91 CNY/Kg
Mono-ethylene glycol (MEG)	290531	Global Trade Atlas (GTA) Market Access Map, International Trade Centre (MacMap)	4,73 CNY/Kg
Poly(ethylene terephthalate) (PET) chips	390769	Global Trade Atlas (GTA) Market Access Map, International Trade Centre (MacMap)	7,14 CNY/Kg
Spinning Finish Oil	340311 340391	Global Trade Atlas (GTA) Market Access Map, International Trade Centre (MacMap)	17,41 CNY/Kg
Labour			
Labour	[N/A]	Turkish Statistical Institute <sup>(84)</sup>	37,83 CNY/Manhour
Energy			
Electricity	[N/A]	Turkish Statistical Institute	Consumption band (MWh) T > 150 000                      0,47 CNY/kWh

<sup>(82)</sup> <http://www.gtis.com/gta/secure/default.cfm>

<sup>(83)</sup> <http://www.macmap.org>

<sup>(84)</sup> <https://data.tuik.gov.tr/Bulten/DownloadIstatistikselTablo?p=ig4QGRdNcBVDQo/mmOOyD/8g3GlHdKhW0M0Mnhh4V/APyz9UrZvk0kK90vktK5jo>

Gas	[N/A]	Turkish Statistical Institute	Consumption band (m <sup>3</sup> ) 2 610 000 ≤ T < 26 100 000 1,63 CNY/m <sup>3</sup>
By-product/Waste			
Waste yarn	550510 30 0011 550510 30 0019	Global Trade Atlas (GTA) Market Access Map, International Trade Centre (MacMap)	3,15 CNY/Kg

### 3.3.5. Raw materials used in the production process

- (134) In order to establish the undistorted price of raw materials, the Commission used as a basis the weighted average import price (CIF) to the representative country, as reported in the GTA, from all third countries excluding China and countries that are not members of the WTO and listed in Annex I of Regulation (EU) 2015/755<sup>(85)</sup>. The Commission decided to exclude imports from China as it concluded that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation (see recital (97) above). In the absence of any evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected exports. The weighted average import price was adjusted for import duties, where applicable. After excluding imports from the PRC and countries which are not members of the WTO into the representative country, the volume of imports from other third countries remained representative.
- (135) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport costs. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (136) For a small number of FOPs, due to their insignificant share in the total raw material costs in the IP, regardless of the source used, the Commission treated those FOPs as consumables, as explained in recital (146).

#### 3.3.5.1. Labour

- (137) To establish the benchmark for labour costs the Commission used the most recent statistics published by the Turkish Statistical Institute<sup>(86)</sup>. This institute publishes detailed information on labour costs in different economic sectors in Türkiye. The Commission established the benchmark based on hourly labour costs for 2020 for the economic activity Manufacture of chemicals' NACE code 20 according to NACE Rev.2 classification. The values were further adjusted for inflation using the domestic consumer price index<sup>(87)</sup> to reflect the costs for the investigation period. Compared to the Second Note and following a claim raised by Hailide, the benchmark value for labour was modified to take account of the annual average inflation rate.

<sup>(85)</sup> Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

<sup>(86)</sup> The labour costs are available at <https://data.tuik.gov.tr/Bulten/DownloadIstatistikselTablo?p=tg4QGRdNcBVDQo/mmmOOyD/8g3GlHdKhWMOsMnhh4V/APyz9UrZvk0kK90vktK5jo>

<sup>(87)</sup> <https://data.tuik.gov.tr/Bulten/Index?p=Consumer-Price-Index-December-2021-45789>

### 3.3.5.2. Energy

- (138) To establish the benchmark price for electricity and gas, the Commission used prices for companies (industrial users) in Türkiye published by the Turkish Statistical Institute <sup>(88)</sup>. The benchmark was established based on the price for electricity and gas, published on 31 March 2022. The price referred to is the average for 2021. The Commission used the data on the industrial electricity and gas prices in the corresponding consumption bands, net of VAT.
- (139) Hailide argued that in addition to the VAT applied on electricity and gas prices identified for Türkiye, the electricity prices include additional taxes and fees (consumption tax, TRT and Energy Fund fees), which should be deducted by the Commission for the purposes of establishing benchmark cost of electricity. First, it was noted that there is no evidence on the file showing that (and to what extent, if any) companies in Türkiye would have recovered any of the said taxes and fees, hence meriting any deduction from the benchmark costs. Moreover, Hailide failed to substantiate its claim specifically with respect to the dataset published by the Turkish Statistical Institute and used for the purposes of this case.
- (140) CIRFS submitted in response to the final disclosure that the Commission should explain, why the 2021 price of gas in Türkiye selected for the purpose of the normal value calculation has significantly decreased, while according to the Turkish Statistical Institute, the average unit price of natural gas in Türkiye sharply increased in 2021 compared with 2020. As already outlined in the disclosed Second Note, the Commission sourced the data on gas prices directly from the database of the Turkish Statistical Institute, using average prices for 2021 for the respective consumption bands, while converting the figures from Turkish Lira to the RMB using the applicable official exchange rate in order to construct the normal value for the exporting producers.
- (141) Furthermore, CIRFS stated in response to the final disclosure that the Commission should explain with respect to gas the methodology used to select the most appropriate consumption band for each Chinese producer. It was noted in this respect that, as outlined in recital (138), the Commission attributed to Hailide the gas cost in the consumption band corresponding to its actual total gas consumption over the IP.

### 3.3.6. SG&A and profits

- (142) According to Article 2(6a)(a) of the basic Regulation, “*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*”. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (143) For establishing an undistorted and reasonable amount for SG&A and profits, the Commission used the SG&A (6,6 %) and profit (15,3 %) of the HTYP producer in Türkiye, Kordsa Türkiye, for which figures relating to 2021 financial data (i.e. for the period fully overlapping with the IP) were readily available.

### 3.3.7. Calculation of the normal value

- (144) Based on the undistorted prices and benchmarks described above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (145) First, the Commission established the undistorted costs of manufacturing for Hailide based on the factors of production purchased by the company and identified in Table 1. The Commission then applied the undistorted unit costs to the actual consumption of the individual factors of production of Hailide. The Commission reduced the costs of manufacturing by the undistorted revenues generated for by-product (in this case waste yarn) resold.

<sup>(88)</sup> <https://data.tuik.gov.tr/Kategori/GetKategori?p=cevre-ve-enerji-103&dil=2>  
<https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-II:-July-December,-2021-45566>  
<https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-I:-January-June,-2021-37459>



- (146) Second, to arrive at a total undistorted cost of manufacturing, the Commission added manufacturing overheads. Manufacturing overheads incurred by Hailide were increased by the costs of consumables referred to in recital (136) and subsequently expressed as a share of the costs of manufacturing actually incurred by Hailide. This percentage was applied to the undistorted costs of manufacturing.
- (147) Finally, the Commission added SG&A and profit, determined on the basis of the Turkish HTYP producer (see recital (143)). SG&A and profit, both expressed as a percentage of the cost of goods sold and applied to the undistorted total cost of manufacturing, amounted to 6,6 % and 15,3 % respectively.
- (148) On that basis, the Commission determined the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (149) Hailide claimed in response to the final disclosure that the Commission groundlessly linked the value of consumables and manufacturing overheads to that of other inputs. According to Hailide, the Commission shall identify the benchmark for the consumables and manufacturing overheads separately from other inputs or, otherwise accept the company's actual cost for consumables and manufacturing overheads. Similar claim was raised by Hailide with respect to the construction of the transport cost for the supply of raw materials.
- (150) As explained in recital (97) the investigation found that prices or costs of the product under investigation, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation. Hailide failed to demonstrate that the prices of its consumables, its manufacturing overheads or its transport cost are not distorted. It could not be positively established that these costs are not distorted and therefore, in view of third indent of the second paragraph of Article 2(6a)(a) they cannot be used in the construction of the normal value. The Commission was unable to find any reasonable benchmark for these costs, nor any reasonable benchmark for these costs were suggested by Hailide or any other interested party. When appropriate benchmarks cannot be found for a cost, the Commission may in principle establish them as a ratio to the cost group they relate to (be it cost of all raw materials or the manufacturing costs). Once the undistorted costs of raw materials or manufacturing costs are established, the Commission will apply the benchmark to estimate the undistorted cost in question, thereby preserving the exporting producer's cost structure. This means that if, for instance, consumables represent 1 % of all raw materials costs in the accounts of an exporting producer, following construction of the normal value they will still represent 1 % of the raw material costs.
- (151) As set out in recital (146), in order to arrive at undistorted cost of consumables and overheads, Hailide's share of cost of consumables as well as manufacturing overheads on the costs of manufacturing actually incurred was applied to the undistorted costs of manufacturing. As explained in recital (150), in the absence of a specific data concerning undistorted overhead in the available financial data of the producer(s) in the representative country, the Commission determined the undistorted overhead data for the exporting producer following this method. Furthermore, given that numerous factors of production typically accounting for an insignificant share on the total raw material costs were identified in this case, the Commission deemed it reasonable to include such inputs (again using Hailide's actual costs) among consumables and treat them accordingly. Moreover, regarding the transport costs, as outlined in recital (135) and in the absence of data in the file on the undistorted transport costs in the representative country, the Commission considered the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory. Hailide's claim was therefore rejected.

### 3.4. Export price

- (152) Hailide exported the product concerned directly to independent customers in the Union as well as through a related company located in Hong Kong. The export price for Hailide was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation. Regarding the sales via the related company in Hong Kong, please see recitals (162)-(163) below for further details.

- (153) Furthermore, Hailide also sold the product concerned to the Union through an additional related company in the Union acting as an importer. For these sales, the export price was constructed on the basis of the price at which the imported product was first resold to independent customers in the Union in accordance with Article 2(9) of the basic Regulation. The adjustments made related to all costs incurred between importation and resale, including the SG&A expenses of the related importer located in the Union, and a reasonable profit (established at 6,89 % in the recent polyvinyl alcohols ('PVA') investigation <sup>(89)</sup> for another chemical product and used in the present investigation given the similarity of the industry and the lack of cooperation from unrelated importers), in order to establish a reliable export price at the Union frontier level.
- (154) Hailide stated in response to the final disclosure that the application of the notional profit level of 6,89 % from recent investigation concerning PVA is groundless and overstated. Hailide submitted that PVA and HTYP do not share similar chemical or physical characteristics, they have different end use and end users and the markets for the two products are distinct. Therefore, according to Hailide, the profit in PVA sector is in no way representative of what a company can achieve in trading HTYP. Furthermore, Hailide argued that if the profit level that Union HTYP producers can obtain in the normal market conditions without dumped imports is less than 6 %, it would be odd that traders of this product can achieve higher profit in the same market.
- (155) Furthermore, CIRFS also considered that the notional profit used is not an appropriate benchmark for the HTYP case, arguing contrary to Hailide's position that such profit margin largely underestimates profit of importers in the HTYP sector. Instead, CIRFS suggested that there is a more recent case involving man-made fibres, which would better represent the profit margin of unrelated importers, namely the optical fibre cables ('OFC') case <sup>(90)</sup> which was between 15-25 %. Moreover, CIRFS submitted that the Commission should not encourage the non-cooperation from unrelated importers by underestimating the profit margin. Instead, the Commission should according to CIRFS adopt a proactive approach by accessing the financial reports of the known importers and relying on these reports as the best facts available.
- (156) First, as stated in recital (153), in the absence of cooperation from unrelated importers in the present case, the Commission resorted to the use of a notional profit from a recent investigation in the chemical industry, establishing that such profit was considered reasonable. Second, Hailide's comparison of a trader's profit with a profit that Union producers could obtain is unfounded given the fundamental differences in the activities of a manufacturing company as opposed to a trading company.
- (157) Further to the similarity of PVA and HTYP, while it is not disputed that PVA and HTYP have different chemical and physical characteristics, uses, users and markets it is an established fact that both products are part of a chemical industry. Moreover, Hailide failed to substantiate why the nominal profit used would not be representative of a profit achieved by a trader of HTYP. Therefore, the Commission concluded that the profit in PVA sector is representative of what a company can achieve in trading HTYP. On the other hand, the optical fibre cables as well as the main raw material used in their production (optical fibre) are used in telecommunication industries without even a remote link to chemical industry. Therefore, it would be inappropriate to apply in the present HTYP investigation profit margins for unrelated importers used in the OFC case.
- (158) Moreover, contrary to what CIRFS suggested, the Commission only resorted to use of a notional profit from PVA case after it encouraged unrelated importers to come forward and cooperate with the investigation (whether by specifically inviting the known importers to take part in a sampling exercise or by publishing on the website dedicated questionnaire intended for the unrelated importers willing to cooperate) and following the absence of any such cooperation. Hence, the Commission could not possibly encourage non-cooperation from unrelated importers by underestimating the profit margin ultimately used.

<sup>(89)</sup> Recital (352) of Commission Implementing Regulation (EU) 2020/1336, of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1).

<sup>(90)</sup> Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China, OJ L 410, 18 November 2021, p. 51, recital 367.

- (159) With respect to the identification and use of importers' publicly available financial data, as an established practice, the Commission uses for determining a reasonable profit (for instance under Article 2(9)) duly verified Union profitability data compiled and collected specifically for the purposes of its investigations. Such data, if available, is usually considered to be more reasonable. Therefore, the arguments raised by Hailide and CIRFS have to be dismissed.

### 3.5. Comparison

- (160) The Commission compared the normal value and the export price of Hailide on an ex-works basis.
- (161) In order to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments to the export price were made for transport, insurance, handling and loading, discounts, commission, credit costs, bank charges and other import charges.
- (162) Furthermore, Hailide exported part of its HTYP to the Union through a related trader located outside the Union, in Hong Kong, namely through HALEAD (H.K.) CO., LIMITED ('Halead').
- (163) Consequently, in order to ensure a fair comparison in accordance with the *chapeau* of Article 2(10) of the basic Regulation, an adjustment under Article 2(10)(i) in particular was made for sales through this related trading company of Hailide group. The adjustment consists of the deduction of SG&A of the trading company and of a notional 6,89 % profit identified for this case (see recital (153) above).
- (164) Hailide argued in its response to the final disclosure that the export price of Halead shall not be adjusted by deducting the SG&A of the trading company and a notional profit of 6,89 %. Hailide claimed that the related trader shall be treated as part of Hailide and that the role played by it has nothing similar to the functions of an agent working on a commission basis, outlining number of reasons in the sensitive version of its response to the final disclosure in support of the claim.
- (165) In this respect, the Commission noted that, pursuant to Article 2(10) of the basic Regulation, a fair comparison must be made between the export price and the normal value. That provision states that, where the normal value and the export price are not on such a comparable basis, due allowance, in the form of adjustments, is to be made, on the merits, for differences in factors which are claimed, and demonstrated, to affect prices and price comparability. Among the factors for which adjustment can be made, Article 2(10)(i) of the basic Regulation provides in particular that an adjustment is to be made for differences in commissions paid in respect of the sales under consideration. That provision states that the term 'commissions' is to be understood to include the mark-up received by a trader of the product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis. However, an adjustment under Article 2(10)(i) of the basic Regulation cannot be made where the producer established in a third State and its related distributor responsible for exports to the European Union form a single economic entity ('SEE').
- (166) In the analysis of whether there is a single economic entity between a producer and its related distributor, it is crucial to consider the economic reality of the relationship between that producer and that distributor. In view of the requirement of a conclusion reflecting the economic reality of the relationship between that producer and that distributor, the Commission is required to take account of all factors relevant to the determination as to whether or not that distributor carries out the functions of an integrated sales department within that producer or, in turn performs other type of functions. In accordance with the need to have regard to all relevant factors and the general discretion afforded to the Commission to assess complex economic situations, the Commission must carry out its assessment on a case-by-case basis and in a holistic manner.
- (167) In terms of the burden of proof, where the Commission has adduced consistent indicia to establish that a trader affiliated to a producer carries out functions comparable to those of an agent working on a commission basis, it will be for that trader or that producer to adduce evidence that an adjustment under Article 2(10)(i) of the basic Regulation is not justified.

- (168) The Commission found that Halead should be considered to be acting as an agent working on a commission basis rather than the internal sales department of Hailide. In its assessment the Commission took into consideration the relationship between the two companies in view of the ownership structure of the group as well as provisions of the contracts regulating the relationship of the two companies. The Commission analysed sales activities of both Hailide and Halead with particular attention to the existence of an internal sales department in Hailide. The Commission adduced consistent indicia to establish that Halead carried out functions comparable to those of an agent working on a commission basis. Hailide, on the other hand, failed to adduce evidence that an adjustment under Article 2(10)(i) of the basic Regulation is not justified. The claim was therefore rejected. Detailed analysis, due to its confidential nature, was provided to Hailide upon publication of this Regulation.
- (169) In view of the above, and considering that a transfer of funds occurs between two related entities, the Commission was justified in examining whether the actual value of the mark-up differs from what an unrelated trader would obtain. Based on the nominal profit identified in this case, as explained in recital (153), the Commission did not consider the mark-up to sufficiently reflect a commission that would have been due in an arm's length transaction. As mentioned in recital (163), the Commission therefore considered that an adjustment should be based on the SG&A of the trader and a nominal profit identified in this case.
- (170) In its response to the final disclosure, Hailide requested an adjustment to constructed normal value to ensure fair comparison with the export price under Article 2(10) of the basic Regulation. According to Hailide, elements such as freight and insurance that could have been included in the SG&A used in the construction of the normal value should be removed from, as the same were deducted from the export price thereby creating asymmetry between the two.
- (171) The Commission noted that Hailide failed to demonstrate that freight and insurance have been included in the SG&A used for the construction of the normal value. It follows that the requested adjustment was neither substantiated nor quantified and thus the request was rejected.

### **3.6. Dumping margin**

- (172) The Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned to calculate the dumping margin, in accordance with Article 2(11) and (12) of the basic Regulation.
- (173) In response to the final disclosure, Hailide raised a number of specific claims regarding the export sales via Hailide's related importer in the Union. These claims related to adjustments for allowances attributable to the related importer, a clerical error in exchange rate used for conversion of CIF amounts, as well as deductible SG&A percentage and were accepted as valid. Moreover, the Commission noted and corrected a clerical error in the exchange rate used for conversion of allowances amount with respect to the sales of the related importer. As a result, Hailide's dumping margin was recalculated and the revised calculations were subject to an additional disclosure.
- (174) The definitive dumping margin thus established, expressed as a percentage of the CIF Union frontier price, duty unpaid, is 6,9 % for Hailide.
- (175) The Commission considered that the provisions of Article 7(2) were applicable to set the level of the definitive duty.

## **4. INJURY**

### **4.1. Definition of the Union industry and Union production**

- (176) The like product was manufactured by six producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(177) The total Union production during the investigation period was established at around 117 000 tonnes. A part of the production, 22 322 tonnes, is subject to captive consumption. The Commission established the figure on the basis of all the available information concerning the Union industry, such as figures provided by the Union producers. As indicated in recital (12), three Union producers were selected in the sample representing more than 50 % of the total Union production of the like product.

#### 4.2. Union consumption

(178) The Commission established the Union consumption on the basis of the sales volume of the Union industry on the Union market, plus the volume of imports of HTYP from all third countries. Since imports of HTYP from China were subject to measures during the period considered, the Commission used the statistics collected pursuant to Article 14(6)<sup>(91)</sup> of the basic Regulation ('Article 14(6) database') to establish the volume and average prices of imports from this country during the period considered, as it contained sufficiently detailed information at the level of the 10-digit TARIC codes and TARIC additional codes per company.

(179) Union consumption developed as follows:

Table 2

#### Union consumption (tonnes)

	2018	2019	2020	Investigation Period
Total Union consumption	244 112	228 168	208 516	253 039
<i>Index</i>	100	93	85	104
Captive market	16 046	13 911	16 563	22 322
<i>Index</i>	100	87	103	139
Free market	228 065	214 256	191 953	230 717
<i>Index</i>	100	94	84	101

Source: Verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers, Eurostat and Article 14(6) database

(180) The Union free market consumption within the period considered first decreased by 6 percentage points from 2018 until 2019, followed by a steep decrease of 10 percentage points due to Covid-19 in 2020. However, consumption then recovered and in the IP was 1 percentage point higher than in 2018.

#### 4.3. Imports from Hailide China

(181) The Commission established the volume of imports as well as the market share of the imports on the basis of the Article 14(6) database which provides data per 10-digit TARIC Code and per exporting producer (TARIC additional code).

<sup>(91)</sup> The 14(6) database contains data on imports of products subject to anti-dumping or anti-subsidy measures or investigations, both from the countries and exporting producers concerned by the proceeding and from other third countries and other exporting producers, at the level of the 10-digit TARIC codes and TARIC additional codes.

(182) Imports into the Union from the country concerned developed as follows for Hailide:

Table 3

**Import volume (tonnes) and market share**

	2018	2019	2020	Investigation Period
Volume of imports into the Union from Hailide China (tonnes)	[50 000 – 55 000]	[51 000 – 56 000]	[43 000 – 48 000]	[43 000 – 48 000]
<i>Index</i>	100	102	86	86
Market share	[20 % – 25 %]	[23 % – 28 %]	[21 % – 26 %]	[18 % – 23 %]
<i>Index</i>	100	109	102	85

Source: Article 14(6) database.

(183) Hailide's exports from China to the Union decreased by 14 % over the period considered. Also, Hailide's market share decreased over the period considered. Nevertheless, in the IP Hailide still maintained a high market share of [18 % – 23 %] of the Union market.

**4.4. Prices of the imports from Hailide**

(184) The Commission established the prices of imports on the basis of the import statistics of the Article 14(6) database. Price undercutting of the imports was established on the basis of the comparison of the figures in the Article 14(6) database with the verified prices of the sampled Union producers.

(185) The weighted average price of imports into the Union from Hailide developed as follows:

Table 4

**Import prices (EUR/tonne)**

	2018	2019	2020	Investigation Period
Hailide	[1 700 – 1 800]	[1 600 – 1 700]	[1 300 – 1 400]	[1 500 – 1 600]
<i>Index</i>	100	96	77	91

Source: Article 14(6) database.

(186) The import price of Hailide was volatile, decreasing by 23 % to a price of [1 300 – 1 400] EUR/ton in 2020 and then increasing by 14 percentage points in the IP. Despite the price recovery in the IP to [1 500 – 1 600] EUR/ton, this still shows an overall decrease of 9 % throughout the period considered. The increase in the IP was caused by increased transport costs and the post-Covid-19 recovery resulting in a high demand in the IP.

(187) The Commission determined the price undercutting during the IP by comparing:

- (a) the weighted average sales prices per product type of the three sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (b) the corresponding weighted average prices per product type of the imports from Hailide to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs.

- (c) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period.
- (d) It showed a weighted average undercutting margin of [17 % – 20 %] done by Hailide on the Union market. In addition, as further described in recital (203), the Union industry was unable to raise its prices above the level of its Cost of Production because of the price pressure from Hailide, whose prices remained below the Union industry's cost of production during the entire period concerned.

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

##### 4.5.1. General remarks

- (188) In accordance with Article 3(5) of the basic Regulation, the assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (189) As mentioned in recital (12), sampling was used for the assessment of the economic situation of the Union industry.
- (190) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of the verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (191) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (192) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.5.2. Macroeconomic indicators

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

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

Table 5

#### Production, production capacity and capacity utilisation

	2018	2019	2020	Investigation Period
Production volume (tonnes)	104 834	100 373	90 470	116 803
<i>Index</i>	100	96	86	111
Production capacity (tonnes)	128 826	133 544	134 426	133 517
<i>Index</i>	100	104	104	104
Capacity utilisation	81 %	75 %	67 %	87 %
<i>Index</i>	100	92	83	108

Production volume on the free market (tonnes)	88 788	86 462	73 907	94 481
<i>Index</i>	100	97	83	106

*Source:* Verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (194) The production volume first decreased by 14 % from 2018 to 2020 and then increased by 25 percentage points in the IP showing an overall increase of 11 % over the period considered. The production volume on the free market first decreased by 17 % from 2018 to 2020 and then increased by 23 percentage points in the IP, showing an overall increase of 6 % over the period considered. The capacity utilisation decreased from 2018 to 2020 by 17 %, but increased overall 8 % over the period considered.

#### 4.5.2.2. Sales volume and market share

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

*Table 6*

#### Sales volume and market share (tonnes)

	2018	2019	2020	Investigation Period
Sales volume on the Union market (tonnes)	70 753	64 150	59 880	67 335
<i>Index</i>	100	91	85	95
Market share	31 %	30 %	31 %	29 %

*Source:* Verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (196) Total sales volume of the Union industry on the Union market decreased by 5 % during the period considered. The Union industry's market share decreased by 2 percentage points during the period considered. The market share shows a declining trend over the period considered, interrupted by an intervening upward trend in 2020, which can be explained by the Covid-19 pandemic and the container shortage in 2020, which made shippings from East Asian countries more difficult.

#### 4.5.2.3. Growth

- (197) During the period considered, the free market consumption increased by 1 %, the sales volume of the Union industry decreased by 5 %, which translated into a loss in market share of 2 percentage points over the period considered.

#### 4.5.2.4. Employment and productivity

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

*Table 7*

#### Employment and productivity

	2018	2019	2020	Investigation Period
Number of employees	1 024	1 014	993	1 034



<i>Index</i>	100	99	97	101
Productivity (tonnes/employee)	102	99	91	113
<i>Index</i>	100	97	89	110

*Source:* Verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

- (199) Due to the recovery of the demand in the IP, the employment of the Union industry increased by 1 % during the period considered, despite showing a negative trend from 2018 to 2020. Similarly, the productivity also decreased from 2018 to 2020 and turned positive for the period considered only due to the IP.

#### 4.5.2.5. Magnitude of the dumping margin

- (200) Hailide's dumping margin was above the de minimis level. The impact of the magnitude of the actual margin of dumping on the Union industry was substantial, given the volume and prices of Hailide's imports from China. As mentioned above, Hailide's prices undercut the Union industry prices by [17 % – 20 %]. Furthermore, Hailide's import price as displayed in Table 4 was at least 23 % lower than the average import price from South Korea, at least 12 % lower than the import price from Taiwan and at least 42 % lower than the average import price from other third countries.

#### 4.5.3. Microeconomic indicators

##### 4.5.3.1. Prices and factors affecting prices

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

Table 8

#### Sales prices and cost of production in the Union (EUR/tonne)

	2018	2019	2020	Investigation Period
Average unit sales price in the Union (EUR/tonne)	2 042	1 974	1 713	1 957
<i>Index</i>	100	97	84	96
Unit cost of production (EUR/tonne)	2 371	2 357	2 039	2 246
<i>Index</i>	100	99	86	95

*Source:* Verified questionnaire replies of the sampled Union producers.

- (202) The Union industry's average unit sales price to unrelated customers in the Union decreased from 2018 to 2020 by 16 % and only partially recovered 12 percentage points in the IP reaching 1 957 EUR/tonne. The decline of the sales price is mostly linked to the pricing pressure from Chinese imports. In addition, in 2019 and 2020, the global economic slowdown has been affecting the prices of raw materials and, as a consequence, of industrial polyester yarn.

- (203) The cost of production developed in a similar trend, partially due to decreasing raw material prices during the global economic slowdown in 2019 and 2020 and partially due to rationalisations like reducing staff during these years. In 2019 and 2020 the Unit cost decreased by 1 percentage point and 13 percentage points respectively. However, the prices decreased at a higher rate of 16 percentage points over these two years. This shows that the Union industry could not benefit from these cost decreases. In the IP, unit costs increased by 9 percentage points whereas the sales price increased by 12 percentage points. However, compared to the beginning of the period considered the prices decreased almost at the same percentage as the unit costs, showing that the prices were suppressed. The Union industry was not able to benefit from the cost decrease, it could not raise prices, and could not even maintain prices at their original level.

#### 4.5.3.2. Labour costs

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

Table 9

#### Average labour costs per employee

	2018	2019	2020	Investigation Period
Average labour costs per employee (EUR)	48 153	49 499	46 821	51 680
<i>Index</i>	100	103	97	107

Source: Verified questionnaire replies of the sampled Union producers.

- (205) The average labour costs per employee increased by 7 % over the period considered. This trend was only interrupted in 2020, partially due to rationalisations and partially due to Covid-19 pandemic specific measures like short-time work.

#### 4.5.3.3. Inventories

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

Table 10

#### Inventories

	2018	2019	2020	Investigation Period
Closing stocks (tonnes)	7 721	8 052	6 510	6 991
<i>Index</i>	100	104	84	91
Closing stocks as a percentage of production	14	16	13	12

Source: Verified questionnaire replies of the sampled Union producers.

- (207) The level of closing stocks of the sampled Union producers decreased by 9 % over the period considered. In the IP, the level of stocks represented around 12 % of their production.

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

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

Table 11

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

	2018	2019	2020	Investigation Period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 10	- 15	- 17	- 8
<i>Index</i>	- 100	- 153	- 174	- 86
Cash flow (EUR)	- 8 902 195	- 4 318 803	- 2 067 021	- 5 374 726
<i>Index</i>	- 100	- 49	- 23	- 60
Investments (EUR)	12 926 148	7 405 795	2 087 298	4 495 812
<i>Index</i>	100	57	16	35
Return on investments	- 4 %	- 6 %	- 6 %	- 4 %
<i>Index</i>	- 100	- 158	- 154	- 101

Source: Verified questionnaire replies of the sampled Union producers.

- (209) 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. The profitability of the Union industry was negative throughout the period considered. It started at -10 % in 2018 and extended the loss until 2020 at -17 %. In the IP, it could slightly improve to -8 % due to high demand.
- (210) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow was negative throughout the period considered. While it gradually improved from 2018 to 2020, it dropped again in the IP. While it showed a 40 % improvement over the period considered it continued to be negative. Consequently, the improvement in cash flow does not indicate a stabilizing of the financial situation of the Union industry as it still remains negative.
- (211) Investments decreased by 65 % over the period considered. Investments related to compliance improvements in relation to health, safety and environmental requirements, increase in the capacity and effectiveness of the production plants. While in 2018, investments in a capacity increase were possible, in the following years this was no longer possible.
- (212) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product followed similar trend as the profitability. It dropped from 2018 to 2020 and then in the IP returned to a level closer to 2018. It stayed negative throughout the entire period considered. Consequently, the return on investment indicates a negative financial situation of the Union industry over the entire period considered.

4.5.4. **Conclusion on injury**

- (213) The investigation showed that the overall situation of the Union industry on a macro level did not improve over the period considered as would be expected in a situation of increasing demand in the IP. Despite being protected as regards other exporters, exports of Hailide at low prices still were made under conditions which did not allow the

Union industry to recover from injurious dumping. The volume of imports from Hailide were substantial throughout the period considered ([43 000 – 56 000]) resulting in an equally substantial market share ([18 %-28 %]), making Hailide the single biggest exporting producer on the Union market. Prices of Hailide were consistently below costs of production of the Union industry throughout the period considered and were found to undercut the Union industry's prices by [17 % – 20 %] in the IP. Faced with such volume and price pressure, the Union industry's prices were consistently below its cost of production making losses throughout the entire period considered. Even the fact of an increased demand in the IP did not lead to higher sales on the EU market than in the beginning of the period considered. Despite investments into a capacity increase, the Union was not able to even maintain its market share.

- (214) The investigation has also shown that the situation of the industry on a micro level was not reaching a sustainable level and the industry incurred losses in the IP despite the fact that in the IP the demand had recovered from the economic downfall of the previous two years. The economic situation of the Union industry was thus injurious.
- (215) On the basis of the above, the Commission concluded that the Union industry was suffering material injury within the meaning of Article 3(5) of the basic Regulation during the investigation period.

## 5. CAUSATION

- (216) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from Hailide caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from Hailide was not attributed to the dumped imports.

### 5.1. Effects of the dumped imports

- (217) During the entire period considered, Hailide's exports represented a substantial share of the imports to the EU. Even though, Hailide's market share decreased during the period considered by 3 percentage points, Hailide's exports during the IP still represented [18 % – 23 %] of the Union market share. The price level of Hailide's exports decreased by 9 % over the period considered: during the IP at [1 500 – 1 600] EUR/tonne it undercut the Union industries' price by at least 17 %. As displayed in Table 8, the Union producers were able to decrease the unit cost of production by 5 % over the period considered. However, due to the pressure from Hailide's low prices they were not able to increase their pricing level or even to maintain it to improve their profitability. Hailide thereby depressed the price level for the Union industry, contributing to a situation of continued losses over the period considered for the Union industry. There was a clear coincidence in time between the price pressure of Hailide's imports representing an important market share of [18 % -23 %] and the injury of the Union industry. Therefore, due to the significant volume and price pressure exercised by Hailide's exports there was a genuine and substantial relationship of cause and effect between the imports of HTYP from Hailide and the injury suffered by the Union industry.

### 5.2. Effects of other factors

#### 5.2.1. Imports from Hangzhou Huachun Chemical Fiber

- (218) Hangzhou Huachun Chemical Fiber ceased to exist in 2021. Its exports have decreased by 99 % during the period considered and were below 1 % of the Union market share in the IP. Furthermore, the export price was significantly above of the Union industry price. Therefore, these exports did not contribute to the injury.

### 5.2.2. Imports from the other exporting producers subject to duties

(219) The imports from the other exporting producers subject to duties developed as follows:

Table 12

#### Import volume (tonnes) and market share

	2018	2019	2020	Investigation Period
Volume of imports from exporters currently subject to duties (tonnes)	[58 000 - 63 000]	[59 000 - 64 000]	[58 000 - 63 000]	[69 000 - 74 000]
<i>Index</i>	100	101	99	117
Market share	[25 % - 30 %]	[27 % - 32 %]	[30 % - 35 %]	[29 % - 34 %]
<i>Index</i>	100	107	118	115

Source: Article 14(6) database.

(220) Their import prices developed as follows:

Table 13

#### Import prices without duties (EUR/tonne)

	2018	2019	2020	Investigation Period
China (exporters currently subject to duties)	1 655	1 531	1 195	1 440
<i>Index</i>	100	92	72	87

(221) By increasing their export volume to the European Union during the period considered by 17 % at prices below the Union industry's prices, the producers subject to current duties have contributed to the injury of the Union Industry. The exporters currently subject to duties sold at 1 440 EUR/tonne in the investigation period, and showed an overall price decrease of 13 % throughout the period considered. These exporters were able to further extend their market share over the period concerned by 4 percentage points. The Commission therefore concluded that these exporters contributed to the injurious situation of the Union industry.

(222) However, these imports did not attenuate the link found between the dumped imports from Hailide and the material injury suffered by the Union industry such that this link can no longer be characterized as a genuine and substantial relationship of cause and effect. Hailide's exports represented a market share of [18 % - 23 %] on the Union market during the IP, and its prices followed closely the prices of the other Chinese exporting producers, with anti-dumping duties added. This high market share, (which represents more than two thirds of the market share of the Union industry and as much as the market share of the total of all third countries excluding China) coupled with low prices has such an important weight on the market, that it exercised a significant independent price pressure on the Union industry.

(223) Accordingly, the effects of exports from other producers than Hailide, even if they contributed to the injury, did not materially diminish the relative importance of the Hailide's dumped imports in bringing about the injury.

5.2.3. *Imports from third countries*

- (224) The imports into the Union of HTYP from third countries other than China were mainly from South Korea, Vietnam and Taiwan.
- (225) The (aggregated) volume of imports into the Union as well as the market share and price trends for imports of HTYP from other third countries developed as follows:

Table 14

**Imports from third countries**

Country		2018	2019	2020	Investigation Period
South Korea	Volume (tonnes)	15 150	13 025	9 259	15 167
	<i>Index</i>	100	86	61	100
	Market share	7 %	6 %	5 %	7 %
	Average price (EUR/tonne)	2 024	2 051	1 803	2 077
	<i>Index</i>	100	101	89	103
Vietnam	Volume (tonnes)	500	129	776	12 231
	<i>Index</i>	100	26	155	2 444
	Market share	0 %	0 %	0 %	5 %
	Average price (EUR/tonne)	2 340	4 136	2 276	1 537
	<i>Index</i>	100	177	97	66
Taiwan	Volume (tonnes)	6 776	4 485	3 795	7 375
	<i>Index</i>	100	66	56	109
	Market share	3 %	2 %	2 %	3 %
	Average price (EUR/tonne)	1 874	1 858	1 636	1 816
	<i>Index</i>	100	99	87	97
Other third countries	Volume (tonnes)	19 759	15 261	11 917	11 364
	<i>Index</i>	100	77	60	58
	Market share	9 %	7 %	6 %	5 %
	Average price (EUR/tonne)	2 586	2 780	2 683	2 740
	<i>Index</i>	100	108	104	106
Total of all third countries except the country concerned	Volume (tonnes)	42 185	32 900	25 747	46 137
	<i>Index</i>	100	78	61	109
	Market share	18 %	15 %	13 %	20 %
	Average price (EUR/tonne)	2 267	2 371	2 200	2 055
	<i>Index</i>	100	105	97	91

Source: Eurostat.

- (226) In the IP, 46 137 tonnes of HTYP were imported from third countries excluding China – this volume represents 20 % of the Union market. In total, their market share decreased from 2018 to 2020 from 18 % to 13 % and then increased to 20 % in the IP. This follows the trend of EU consumption, but in a more pronounced way. The average import price from third countries excluding China increased in 2019 by 5 %, then decreased 8 percentage points in 2020 and further decreased 6 percentage points in the IP. These imports mainly stem from South Korea (7 % of the Union Market), Vietnam (5 % of the Union market) and Taiwan (3 % of the Union market). Due to the fact that all these countries are located in East Asia, they were affected by the shipping container shortage and the resulting high shipping costs, which explains that in 2020 the market share of these third countries decreased.
- (227) Imports from all third countries together have increased their market share on the Union Market by 2 percentage points. However, the average price of all third country imports in the IP, but also in all previous years of the period considered was substantially above the average EU sales price. Therefore, all third countries together have not contributed to the injury of the Union Industry. The Commission therefore analysed if imports from a specific third country have contributed to the injury of the Union industry.
- (228) Imports from South Korea followed the trend of the EU consumption in a more accentuated way, decreasing from 2018 to 2020 and in the IP recovering closely above the level of 2018. The market share gradually decreased from 2018 to 2020 from 7 % to 5 % and then recovered to 7 % in the IP. The price level of South Korean imports gradually increased over the period concerned, with the exception of 2020, which shows a price decrease that can be linked to the low demand in that year.
- (229) The price level of imports from South Korea during the IP as well as in the two preceding years was higher than the Union industry's sales price. Due to the higher price level, the Commission concluded that imports from South Korea have not contributed to the injury.
- (230) Imports from Vietnam were at a very low level from 2018 until 2020 representing a market share clearly below 1 % in that period, they increased in the IP to a quantity representing 5 % of the Union market share. This coincided with a price decrease from levels above the Union Industry's average sales price to a price of 1 537 EUR/tonne in the IP, which is not only substantially lower than the Union Industry's sales price, but also close to the price of Hailide's exports from China of [1 500 – 1 600] EUR/tonne.
- (231) However, Hailide's exports to the EU in the IP were substantially higher. They amounted to [43 000 – 48 000] tonnes, whereas imports from Vietnam only amounted to 12 231 tonnes, thereby only representing a fraction of Hailide's exports to the EU.
- (232) Therefore, the Commission concluded that while imports from Vietnam may have contributed to the injury of the Union industry, they do not attenuate the causal link as the volume of imports from Vietnam represent only a small fraction of Hailide's exports to the Union and do not have a comparable weight to put pressure on Union industry.
- (233) Imports from Taiwan represented a market share of 3 % in the beginning of the period considered as well as in the IP. While the import price of 1 816 EUR/tonne in the IP was slightly lower than the Union Industry's sales price, it was substantially higher than the price of Hailide's exports from China of [1 400-1 600] EUR/tonne.
- (234) Therefore, the Commission concluded that while imports from Taiwan may have contributed to the injury of the Union Industry, they do not attenuate the causal link as the volume of imports from Taiwan represent only a fraction of Hailide's imports from China, their price was substantially above Hailide's sales price for imports from China and do not have a comparable weight to put pressure on Union industry.
- (235) Imports from Taiwan and Vietnam, when considered together with the imports from the Chinese exporters currently subject to duties, did not attenuate the link found between the dumped imports from Hailide and the injury suffered by the Union industry such that this link cannot be characterized as a genuine and substantial relationship of cause and effect. Hailide's exports represented a market share of [18 % – 23 %] on the Union market during the IP and were sold, on average, substantially below the costs of production of the Union industry. Considering this magnitude and the resulting price pressure imports from Taiwan, Vietnam and other Chinese exporting producers did not materially diminish the relative importance of the dumped imports from Hailide in bringing about the injury.

#### 5.2.4. *Export performance of the Union industry*

(236) The volume of exports of the sampled Union producers developed over the period considered as follows:

Table 15

#### Export performance of the sampled Union producers

	2018	2019	2020	Review Investigation Period
Export volume (tonnes)	21 674	19 603	18 729	21 299
<i>Index</i>	100	90	86	98
Average price (EUR/tonnes)	2 208	2 161	1 767	2 272
<i>Index</i>	100	98	80	103

Source: Verified data provided by the Union industry and verified questionnaire replies of the sampled Union producers.

(237) While export volumes over the period considered followed a similar trend than the sales on the Union market, in the IP, the volumes were only 2 % below the 2018 figures and recovered stronger than sales on the Union market, which were still 5 % below the 2018 volumes.

(238) The average price for exports in every year was clearly above the sales price on the EU market, in the IP it was more than 10 % higher. The average price for exports followed a trend similar to the prices on the EU market. However, while in 2020 the export price fell stronger, in the IP it recovered quicker than the prices on the EU market, reaching a level 3 % higher than the 2018 average price, whereas the sales price on the EU market in the IP was still 4 % below the 2018 price.

(239) The comparison shows that the Union producers are strongly committed to the Union market, while being able to reach higher prices for export sales.

(240) Therefore, the Commission concluded that the export performance of the Union industry has not contributed to the injury, but to the contrary contributed to limiting the loss.

#### 5.2.5. *Captive consumption*

(241) The captive consumption of the Union industry has substantially increased in the IP. Over the period considered it increased by 39 %. However, the decision to increase the captive consumption in order to sell downstream products at a higher manufacturing level, is not a cause of the injury of the Union industry, but rather a direct consequence of the dumped imports, since the Union producers were not able to reach a fair market price on the free market for HTYP due to the pricing pressure from the dumped imports. Therefore, the Commission concluded that this is not a factor contributing to the injury.

#### 5.2.6. *High energy prices and inflation*

(242) As a reaction to a submission of the applicant on post-IP developments, several users together with a user association claimed that rising energy costs and inflation crisis breaks the causal link between imports of Chinese HTYP and the injury experienced by the Union industry. The rising energy costs and inflation, as submitted by the applicant, have however occurred post-IP. The users have not detailed that any such development occurred during the IP. Therefore, the Commission rejected this argument.

#### 5.3. *Conclusion on causation*

(243) There was a clear coincidence in time between the substantial imports from Hailide from China and the deterioration of the situation of the Union industry.



- (244) The Commission has also investigated other factors of injury and has not found any other factor which would attenuate the causal link between Hailide's exports from China and the material injury suffered by the Union industry to the extent that there was no longer any genuine and substantial relationship between imports from Hailide and the injury found.
- (245) On the basis of the above, the Commission concluded that Hailide's dumped exports from China materially contributed to the injury of the Union industry and that no other factors, considered individually or collectively, attenuated the causal link between the dumped exports of Hailide and the injury suffered by the Union industry.

## 6. LEVEL OF MEASURES

- (246) Based on the conclusions reached by the Commission on dumping, injury, causation and Union interest (examined under point 7 below), definitive measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (247) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

### 6.1. Injury margin

- (248) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and was able to obtain a reasonable profit ('target profit') by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.
- (249) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the level of profitability before the increase of imports from the country concerned and the level of profitability to be expected under normal conditions of competition. The Commission analysed the profits achieved by the sampled Union producers before the increase of imports from China. However, this was lower than the minimum 6 % required by Article 7(2c) of the basic Regulation. Thus, this profit margin was replaced by 6 % as required under Article 7(2c) of the basic Regulation.
- (250) No claims were made that the Union industry's level of investments, research and development (R & D) and innovation during the period considered would have been higher under normal conditions of competition.
- (251) One sampled EU producer (Glanzstoff) could demonstrate the existence of future compliance costs within the meaning of Article 7(2d) of the basic Regulation. Amounts of 6,6€/tonne were added to the target price of the respective producer to reflect additional environmental costs during the period of application of the measures. This represents less than 1 % of the average production cost per tonne of Glanzstoff.
- (252) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by applying the target profit margin of 6 % to the cost of production of the sampled Union producers during the investigation period.
- (253) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average export price of Hailide on a type-by-type basis, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the free Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The resulting average underselling margin at final disclosure was 39 %.

(254) In response to the final disclosure, Hailide raised number of specific claims regarding the export sales via Hailide's related importer in the Union, as highlighted in detail in section 2.6 above. Moreover, the Commission noted and corrected a clerical error in the rounding of the figures for the injury margin. As a result, Hailide's injury margin as well as the undercutting were recalculated. The Commission found that the recalculation did not have any material impact on the undercutting. The revised calculations were subject to an additional disclosure.

(255) Therefore, the final injury elimination level is as follows:

Country	Company	Definitive injury margin (%)
China	Zhejiang Hailide New Material Co., Ltd.	38,7

## 7. UNION INTEREST

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

### 7.1. Interest of the Union industry

(257) The investigation has shown that the Union industry is suffering material injury because of the effects of dumped imports from Hailide from China that undercut Union industry's prices, which are also adding to the price pressure exercised by the Chinese exporters already subject to duties. The Union industry was indeed not able to fully benefit from the imposition of anti-dumping duties against China.

(258) The Union industry will benefit from the extension of the existing measures to Hailide, which would likely prevent a further surge of imports from China at very low prices. Without measures, Hailide will continue to dump HTYP on the Union market preventing the Union industry from selling HTYP at an adequate price and thus causing further material injury to the Union industry.

### 7.2. Interest of unrelated importers

(259) No unrelated importers cooperated in the current investigation.

(260) The Commission concluded that there were no compelling reasons from the position of unrelated importers against the imposition of measures against Hailide.

### 7.3. Interest of users

(261) There are several main groups of different HTYP users: tire producers who account for around 50 % of the HTYP demand in the Union and technical fabrics, tapes, webbings, straps, ropes and belt producers, who account for around 50 % of the HTYP demand in the Union. Technical fabrics, webbings, straps, ropes and belts are used in automotive, lifting, transport securing and all kinds of machine applications.

(262) Upon initiation, 64 known users and user associations in the Union were contacted and invited to cooperate. Following the initiation of the investigation, five users came forward together with a user's association. The users that came forward belong to the segment of technical fabrics, tapes, webbings, straps, ropes and belt producers. The participating users represent 10 % of the Union consumption of HTYP. No user of the tire producer segment came forward.

- (263) No user of HTYP produced by Hailide replied to the questionnaire. However, a user's association together with five users of HTYP produced by Hailide provided submissions on the financial impact of the extension of the duties to Hailide, and the need for supply stability.
- (264) Following the final disclosure, ten users, a user's association as well as one integrated producer, which also produces woven products, commented on the final disclosure and opposed the Commission's intention to impose anti-dumping duties on HTYP from Hailide.
- (265) Several users together with the user's association claimed that the analysis of the Commission is based on incomplete facts, since the Commission ignored the submissions from the user companies, who are SMEs, despite their offer for their data to be verified on the spot or via a remote verification.
- (266) The Commission disagreed with this claim. In fact, as can be seen in the following sections, the Commission took into account the submissions of all users when analysing the Union interest, even though some specific data were submitted within a hearing presentation 64 days following the deadline, supplemented with more data 7 months following the deadline and too late to be the object of a verification. The Commission had already informed the parties of the passing of the deadline when they requested permission for a late submission of questionnaires two months following the deadline.

### 7.3.1. *Financial impact*

- (267) The user's association together with five users of HTYP produced by Hailide submitted the position that the level of existing duties against other Chinese exporters, from 5,1 % to 9,8 %, struck the right balance between the interests of EU producers of HTYP and user industries. Therefore, a continuation of the measures at the original levels could be absorbed by the user industry. While Hailide in the past was not subject to duties, a duty of 6,9 % on imports of Hailide is within the range of duties previously imposed against the other Chinese exporters. The Commission therefore concluded that there is no compelling reason from a financial aspect against the imposition of a duty against Hailide of 6,9 %.
- (268) Following the final disclosure, ten users, the user's association as well as the integrated producer argued that an additional cost increase coming from the duties on their main raw material will further erode their competitive position as EU based manufacturers. They provided multiple examples of offers from Chinese manufacturers of downstream products made with HTYP to European clients, whose prices were very close or even below the price of HTYP after addition of the proposed duties. They argued that the biggest problem of anti-dumping duties on HTYP from Hailide is that they do not extend to downstream products like fabrics, belts, lashing straps, round slings and webbing slings.
- (269) Following the final disclosure, the applicants also argued that the main concern of the users are related to the unfair competition they are facing from China in downstream markets. This concern would be further exacerbated if anti-dumping duties on HTYP imports from Hailide are imposed. On the other hand, users repeatedly indicated that they did not oppose a prolongation of the original anti-dumping measures, whose range was from 5,1 % to 9,8 %.
- (270) In order to address the issue of unfair competition on downstream products, five users together with a user's association requested the Commission to extend the duties to HTYP contained in imported webbings ropes and fire hoses. They referred to the Commission's Regulation on steel wind towers from China <sup>(92)</sup>, in which the anti-dumping duty applied not only to wind towers, but also to wind turbines, which incorporate steel wind towers.

<sup>(92)</sup> Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China. OJ L 450, 16.12.2021, p. 59 ('the steel wind towers case').

- (271) First, the Commission acknowledges that the competition from Chinese exporters of downstream products limits the users' possibility to increase prices and pass on the additional costs of increased duties. However, a potential unfair competition on the level of the users cannot by itself constitute a compelling reason for not addressing the injurious dumping found on the upstream market. While the users have demonstrated that the increased duties on HTYP cause a competitive disadvantage against Chinese manufacturers of the same downstream product, they have also indicated that a protection against these imports of downstream products could be reached by anti-dumping duties on these products. They have not demonstrated that it is not feasible for the user industry to file a complaint to initiate an investigation against potentially dumped imports of HTYP based fabrics or other secondary products.
- (272) In addition, the anti-dumping duties imposed on HTYP from Hailide at 6,9 % are at the lower end of the duties that were already imposed on the other Chinese exporting producers. The users have argued several times that the original level of the duties struck a balance between the different interests. In addition, the users have the option to source supply from other third countries like South Korea, Taiwan and Vietnam, which are increasing their production capacity.
- (273) Concerning the proposal to extend the measures to the HTYP incorporated in the downstream products, the Commission noted that, contrary to the steel wind towers case, the products to which the duties would be extended were not included in the product scope of the investigation. Indeed, the definition of the product concerned in the steel wind towers case already included the towers imported as part of a wind turbine: "*The product concerned is certain utility scale wind towers of steel, [...], currently falling under CN codes ex 7308 20 00 (TARIC code 7308 20 00 11), and ex 7308 90 98 (TARIC code 7308 90 98 11) and, when imported as part of a wind turbine, currently falling under CN codes ex 8502 31 00, ...*" The Commission cannot in principle impose duties on a product that was not within the scope of the investigation. In this case particularly, the Commission considered that the multitude of possible transformations covered within the suggested CN codes would expand the application of the duties beyond the scope of the investigation.
- (274) Therefore, the Commission found that the request of the users would have expanded the scope of the investigation beyond the application. The request was thus rejected.
- (275) Consequently, the Commission confirmed its initial position.

### 7.3.2. Supply stability

- (276) The users have also pointed out a lack of capacity of the Union producers. The EU consumption of HTYP was 230 000 tonnes in the IP, 73 % higher than the production capacity of the Union industry, which amounts only to 134 000 tonnes. This demonstrates the overall need for imports.
- (277) Furthermore, following the IP, in 2022 several Union producers have temporarily reduced or fully stopped their production as a reaction to the difficult situation caused by the dumped imports and also the temporary increase in energy prices in Europe. However, this situation occurred post-IP, and it was only a temporary measure. There is no indication at this stage that the temporary capacity reduction will be prolonged in the long-term, all the more so that the energy costs have in the meantime already significantly decreased.
- (278) All cooperating users have argued that for their segment, only one Union producer provides the quality of HTYP used within their products, whereas other Union producers are to a large extent focused on supplying the tire industry or are integrated competitors. The users have further argued that other third countries either produce expensive specialised grades, like South Korea, or do not offer sufficient capacity or quality, with the exception of Vietnam.
- (279) Exports from Vietnam during the IP had a 5 % Union market share. However, Vietnamese imports only amounted to 12 000 tonnes and cover only a fraction of the needed imports to satisfy the demand on the Union market. The Commission therefore noted that imports from China are generally needed to ensure the supply stability on the Union Market.

- (280) The Commission concluded in the previous section that the duty against Hailide of 6,9 % is within the level of duties that could be absorbed by the users. Consequently, this level of duty will not have a prohibitive effect to continue to source from China, especially in view of the fact that the users still have the choice of an exporting producer at the lower end of the duties. Consequently, the supply stability will not be endangered by the imposition of duties on Hailide.
- (281) Therefore, the Commission concluded that the interest of the users for supply stability does not lead to a compelling reason against the imposition of measures.

### 7.3.3. Risk of transferring production capacities outside the EU

- (282) Several users and the integrated producer emphasized the importance of the HTYP weaving and coating industry for the job market and the fact that the increased duties on HTYP may lead to a transfer of production capacities outside of the EU. The integrated producer argued that the workforce in the EU involved in the production of downstream products made out of HTYP consists of around 100 000 skilled workers.
- (283) The Commission recognized that the HTYP weaving and coating industry is an important employer for the EU job market. However, as stated in recitals (272) and (274), the duty of 6,9 % imposed on imports of Hailide is within the level of duties that could be absorbed by the users. The Commission therefore concluded that the argument of a potential transfer of production capacities does not constitute a compelling reason against the duties on HTYP from Hailide. In addition, no concrete evidence was submitted to support these claims.

### 7.4. Conclusion on Union interest

- (284) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the imposition of duties on Chinese exports of HTYP from Hailide.
- (285) Following the above comments of users, the user's association and one integrated producer, the Commission confirmed its assessment.

## 8. DEFINITIVE ANTI-DUMPING MEASURES

- (286) Definitive anti-dumping measures should be imposed on imports into the Union of HTYP originating in China in accordance with the lesser duty rule in Article 9(4) of the basic Regulation. The amount of the duty should be set at the level of the lower of the dumping and the injury margins.
- (287) 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
Zhejiang Hailide New Material Co., Ltd.	6,9 %	38,7 %	6,9 %

- (288) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of this investigation. Therefore, it reflected the situation found during this investigation with respect to this company. This duty rate is exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entity. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to that specifically mentioned, shall be subject to the duty rates listed under Article 1 of Commission Implementing Regulation (EU) 2023/934 of 11 May 2023 imposing a definitive anti-dumping duty on imports of high tenacity yarns of polyesters originating in the People's Republic of China following an expiry review pursuant to Article 11(2) and a partial interim review pursuant to Article 11(3) of Regulation (EU) 2016/1036 of the European Parliament and of the Council <sup>(93)</sup>.

<sup>(93)</sup> See page 1 of this Official Journal.

- (289) To minimise the risks of circumvention, the company with individual anti-dumping duty must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(4) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies' under Article 1 of Implementing Regulation (EU) 2023/934.
- (290) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rate 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(4) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the declaration and ensure that the application of the individual duty rate is justified and in compliance with customs law.
- (291) The company may request the application of the individual anti-dumping duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(94)</sup>. 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*.

#### 9. FINAL PROVISION

- (292) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(95)</sup>, 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.
- (293) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to impose the definitive anti-dumping duty on imports of HTYP originating in China and produced by Zhejiang Hailide New Material Co., Ltd. They were also granted a period to make representations subsequent to the disclosures. The comments submitted by interested parties were duly considered, and, where appropriate, the findings have been modified accordingly.
- (294) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion on the measures provided for in this Regulation,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of high tenacity yarn of polyesters not put up for retail sale, including monofilament of less than 67 decitex, (excluding sewing thread and 'Z'-twisted multiple (folded) or cabled yarn, intended for the production of sewing thread, ready for dyeing and for receiving a finishing treatment, loosely wound on a plastic perforated tube) originating in the People's Republic of China and produced by Zhejiang Hailide New Material Co., Ltd., currently falling under CN Code ex 5402 20 00 (TARIC code 5402 20 00 10).

<sup>(94)</sup> European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

<sup>(95)</sup> 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).

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 company listed below, shall be as follows:

Company	Definitive anti-dumping duty (%)	TARIC additional code
Zhejiang Hailide New Material Co., Ltd.	6,9	A976

3. TARIC additional code A989 ('Hangzhou Huachun Chemical Fiber Co., Ltd') is hereby closed.

4. The application of the individual duty rate specified for the company mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product under investigation) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. 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 under Article 1 of Implementing Regulation (EU) 2023/934 shall apply.

5. 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, 11 May 2023.

For the Commission  
The President  
Ursula VON DER LEYEN