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[1] Text with EEA relevance.

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([1]) Text with EEA relevance.

II

*(Non-legislative acts)*

# REGULATIONS

## COMMISSION DELEGATED REGULATION (EU) 2021/1972

**of 11 August 2021**

**supplementing Regulation (EU) 2021/1139 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 by laying down the criteria for the calculation of the additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the outermost regions**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/1139 of 7 July 2021 of the European Parliament and of the Council establishing the European Maritime, Fisheries and Aquaculture Fund and amending Regulation (EU) 2017/1004 ([1]), and in particular Article 36(6) thereof,

Whereas:

(1) Under Article 24 of Regulation (EU) 2021/1139, the European Maritime, Fisheries and Aquaculture Fund ('EMFAF') may support the compensation of additional costs incurred by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions referred to in Article 349 of the Treaty.

(2) According to Article 35 of Regulation (EU) 2021/1139, for each outermost region, the Member State concerned should describe the methodology for the calculation of the compensation of the additional costs in the action plan referred to in that Article.

(3) Pursuant to Article 36(6) of Regulation (EU) 2021/1139, the Commission is empowered to adopt delegated acts laying down the criteria for the calculation of the additional costs resulting from the specific handicaps of the regions concerned.

(4) In order to provide for a harmonised and equal treatment of all regions concerned and to avoid overcompensation of additional costs, it is necessary to lay down the criteria for the calculation of the additional costs resulting from the specific handicaps of the Union's outermost regions. The common criteria to be used should ensure that a homogeneous method of calculation of the additional costs is applied to all regions concerned.

([1]) OJ L 247, 13.7.2021, p. 1.

(5) Reference costs for products or categories of products incurred by operators in the continental part of the Member State or of the Union territory, on the basis of which additional costs are determined, should be estimated with particular care to avoid overcompensation.

(6) There are products or categories of products, for which no comparison criteria or measuring units in the continental part of the Member State territory concerned exist. In such cases, the reference for calculating the additional cost should be set in comparison with the costs for equivalent products or categories of products incurred by operators from the continental part of the territory of the Union.

(7) In view of the different marketing conditions in the outermost regions, the fluctuations in captures and stocks and in market demands, it should be left to the Member States concerned to determine the fishery and aquaculture products or categories of products eligible for compensation, their respective maximum quantities and the levels of the compensation amounts within the overall allocation per Member State.

(8) Member States should set the compensation amounts at a level, which allows appropriate offsetting of additional costs arising from the specific handicaps of the outermost regions and avoids overcompensation. To that end, the compensation amount should also take into account other types of public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 37 of Regulation (EU) 2021/1139, having an impact on the level of additional costs.

(9) In order to provide for a harmonised presentation of additional costs, it is necessary to express additional costs on the basis of tons of live weight, determined in accordance with Council Regulation (EC) No 1224/2009 ([2]) and Commission Implementing Regulation (EU) No 404/2011 ([3]), which establishes product presentation codes for processed fish and European Union conversion factors for fresh and fresh salted fish to convert stored or processed fish weight into fish live weight for the purpose of monitoring catches.

(10) In order to allow for the prompt application of the measures provided for in this Regulation, given that expenditure is already eligible for the EMFAF since 1 January 2021 in line with Article 63(2) of Regulation (EU) 2021/1060 of the European Parliament and of the Council ([4]), this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

*Article 1*

This Regulation lays down the criteria for calculating the additional costs incurred during the eligibility period defined in Article 63(2) of Regulation (EU) 2021/1060 by operators in the fishing, farming, processing and marketing of certain fishery and aquaculture products from the Union's outermost regions, referred to in Article 349, first paragraph, of the Treaty on the Functioning of the European Union, due to the specific handicaps of those outermost regions.

([2]) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the fisheries common policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

([3]) Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 112, 30.4.2011, p. 1).

([4]) Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

*Article 2*

(1) Additional costs referred to in Article 1 shall be calculated separately for each of the following activities:

(a) fishing;

(b) farming;

(c) processing;

(d) marketing.

(2) Within each activity referred to in paragraph 1, additional costs shall be calculated by items of expenditure for each product or category of products identified by the Member State as eligible for compensation.

(3) Additional costs shall be determined for any given item of expenditure as the difference between the costs incurred by operators in the outermost regions concerned, reduced by any type of public intervention affecting the level of additional costs, and the comparable costs incurred by continental operators of the Member State concerned.

(4) For items of expenditure specific to products or categories of products for which there are no comparison criteria or measuring units in the continental part of the Member State territory, the additional costs shall be determined in comparison with the comparable costs for equivalent products or categories of products incurred by operators from the continental part of the territory of the Union.

(5) The calculation of additional costs shall take into account any public intervention, including any State aid notified under Article 108(3) of the Treaty and Article 37 of Regulation (EU) 2021/1139.

*Article 3*

(1) The calculation of additional costs shall be based only on costs resulting from the specific handicaps of the outermost regions.

(2) The calculation of additional costs shall be based on an annual average of recorded prices.

(3) Additional costs shall be expressed in euros per ton of live weight and where necessary, all cost components of the total additional cost shall be converted into euros per ton of live weight. To this end, the conversion factors established in Annexes XIII and XIV to Implementing Regulation (EU) No 404/2011 shall be used.

*Article 4*

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

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

Done at Brussels, 11 August 2021.

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

# COMMISSION REGULATION (EU) 2021/1973

## of 12 November 2021

## correcting the German language version of Regulation (EU) No 142/2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) ([1]), and in particular the first and third subparagraph of Article 41(3) and point (a) of the first subparagraph of Article 42(2) thereof,

Whereas:

(1) The German language version of Commission Regulation (EU) No 142/2011 ([2]) contains an error in point (1)(b)(i) of Annex XII as regards the requirements for the import and transit of intermediate products destined for the production of medical devices, in vitro diagnostic medical devices and laboratory reagents.

(2) The German language version of Regulation (EU) No 142/2011 should therefore be corrected accordingly. The other language versions are not affected.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

*(does not concern the English language)*

*Article 2*

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

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

Done at Brussels, 12 November 2021.

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

([1]) OJ L 300, 14.11.2009, p. 1.

([2]) Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/1974

## of 12 November 2021

## authorising the placing on the market of dried fruits of *Synsepalum dulcificum* as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council, and amending Commission Implementing Regulation (EU) 2017/2470

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ([1]), and in particular Article 12 thereof,

Whereas:

(1) Regulation (EU) 2015/2283 provides that only novel foods authorised and included in the Union list may be placed on the market within the Union.

(2) Pursuant to Article 8 of Regulation (EU) 2015/2283, Commission Implementing Regulation (EU) 2017/2470 ([2]) establishing a Union list of authorised novel foods was adopted.

(3) On 14 November 2018, the company Medicinal Gardens S.L. ('the applicant') submitted an application to the Commission in accordance with Article 10(1) of Regulation (EU) 2015/2283 to place dried fruits of *Synsepalum dulcificum* on the Union market as a novel food. The application requested for dried fruits of *Synsepalum dulcificum* to be used in food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council ([3]) at the maximum intake level of 0,9 g/day, the target population being the general adult population with the exception of pregnant and lactating women.

(4) The applicant also made a request to the Commission for the protection of proprietary scientific data for a number of studies submitted in support of the application, namely compositional studies ([4]), acute oral toxicity study in rats ([5]), bacterial reverse mutation tests ([6]), *in vivo* mammalian erythrocyte micronucleus test ([7]), *in vitro* mammalian cell micronucleus test ([8]), 90-day repeated dose oral toxicity study with a 14-day recovery period ([9]), and a sensory study ([10]).

(5) In accordance with Article 10(3) of Regulation (EU) 2015/2283, the Commission consulted the European Food Safety Authority ('the Authority') on 25 March 2019, asking it to provide a scientific opinion by carrying out a safety assessment for dried fruits of *Synsepalum dulcificum* as a novel food.

([1]) OJ L 327, 11.12.2015, p. 1.
([2]) Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).
([3]) Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).
([4]) Medicinal Gardens S.L., 2017-20 (unpublished)
([5]) Medicinal Gardens S.L. Study No. IF-81517 (unpublished, 2018c)
([6]) Medicinal Gardens S.L. Study No. IF-74616 (unpublished, 2018a) and Study No 20229053 (unpublished, 2020a)
([7]) Medicinal Gardens S.L. Study No. IF-74516 (unpublished, 2018b)
([8]) Medicinal Gardens S.L. Study code: 20/020-013C (unpublished, 2020b)
([9]) Medicinal Gardens S.L. Study No 73416 (unpublished, 2018d)
([10]) Medicinal Gardens S.L. Sensory study with healthy young adults (unpublished, 2018)

(6) On 27 April 2021, the Authority adopted a scientific opinion on the safety of dried fruits of *Synsepalum dulcificum* as a novel food ([11]), in accordance with Article 11 of Regulation (EU) 2015/2283.

(7) In its opinion, the Authority did not establish the safety of dried fruits of *Synsepalum dulcificum* used in food supplements intended for adults at the maximum intake level of 0,9 g/day as proposed by the applicant because the intake would exceed the level which is considered safe (10 mg/kg bw per day). However, the Authority concluded that dried fruits of *Synsepalum dulcificum* is safe for adults when added to food supplements at a maximum daily dose of 0,7 g/day which corresponds to the safe level of intake for an adult person with a default body weight of 70 kg. Therefore, the opinion of the Authority gives sufficient grounds to establish that dried fruits of *Synsepalum dulcificum* at a maximum daily dose of 0,7 g/day complies with Article 7, points (a) and (b) and Article 12(1) of Regulation (EU) 2015/2283.

(8) The Authority in its opinion, using a weight of evidence approach on the basis of *in silico* protein sequence homology analyses between miraculin and the peanut proteins, and the results of a preliminary *in vitro* enzyme-linked immunosorbent assay ('ELISA') screening experiment, identified a potential for cross-reactivity between dried fruits of *Synsepalum dulcificum* and peanuts. However, additional *in vivo* experimental or epidemiological evidence normally needed to confirm or exclude the likelihood that the identified potential cross-reactivity may manifest itself in real life, is lacking. Taking the lack of such evidence together with the available *in vitro* data showing that miraculin will be rapidly and completely broken down after ingestion, the Commission considers that at present the potential of dried fruits of *Synsepalum dulcificum* to cause cross-reactivity to peanuts is unlikely to manifest itself in real life and consequently no specific labelling requirement should be included in the Union list of authorised novel foods in this regard.

(9) In its opinion, the Authority noted that its conclusion on the safety of the novel food was based on the compositional studies, the acute oral toxicity study in rats, the two bacterial reverse mutation tests, the *in vivo* mammalian erythrocyte micronucleus test, the *in vitro* mammalian cell micronucleus test, and the 90-day repeated dose oral toxicity study with a 14-day recovery period. It also noted that it could not have reached that conclusion without the data from the unpublished reports of the studies contained in the applicant's file.

(10) The Commission requested the applicant to further clarify the justification provided with regard to their proprietary scientific claim over those studies and to clarify their claim to an exclusive right of reference to those studies, as referred to in Article 26(2)(b) of Regulation (EU) 2015/2283.

(11) The applicant declared that they held proprietary and exclusive right of reference to the compositional studies, the acute oral toxicity study in rats, the two bacterial reverse mutation tests, the *in vivo* mammalian erythrocyte micronucleus test, the *in vitro* mammalian cell micronucleus test, and the 90-day repeated dose oral toxicity study with a 14-day recovery period at the time they submitted the application and that therefore third parties cannot lawfully access, use or refer to those studies.

(12) The Commission assessed all the information provided by the applicant and considered that the applicant has sufficiently substantiated the fulfilment of the requirements laid down in Article 26(2) of Regulation (EU) 2015/2283. Therefore, the specific studies on the compositional studies, the acute oral toxicity study in rats, the two bacterial reverse mutation tests, the *in vivo* mammalian erythrocyte micronucleus test, the *in vitro* mammalian cell micronucleus test, and the 90-day repeated dose oral toxicity study with a 14-day recovery period, contained in the applicant's file, on which the Authority based its conclusion on the safety of the novel food and without which it could not have assessed the novel food, should not be used for the benefit of any subsequent applicant for a period of 5 years from the date of entry into force of this Regulation. Accordingly, only the applicant should be authorised to place dried fruits of *Synsepalum dulcificum* on the market within the Union during that period.

([11]) Safety of dried fruits of *Synsepalum dulcificum* as a novel food pursuant to Regulation (EU) 2015/2283; EFSA Journal 2021;19(6):6600

(13) However, restricting the authorisation of dried fruits of *Synsepalum dulcificum* and the reference to the studies contained in the applicant's file for the sole use of the applicant does not prevent other applicants from applying for an authorisation to place on the market the same novel food, provided that their application is based on legally obtained information supporting such an authorisation.

(14) The Annex to Implementing Regulation (EU) 2017/2470 should therefore be amended accordingly.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Dried fruits of *Synsepalum dulcificum*, as specified in the Annex to this Regulation, shall be included in the Union list of authorised novel foods established in Implementing Regulation (EU) 2017/2470.

2. For a period of 5 years from 5 December 2021, only the initial applicant,

Company: Medicinal Gardens S.L.;

Address: Marqués de Urquijo 47, 1° D, Office 1, Madrid, 28008, Spain,

is authorised to place on the market within the Union the novel food referred to in paragraph 1, unless a subsequent applicant obtains authorisation for the novel food without reference to the data protected pursuant to Article 2 of this Regulation or with the agreement of Medicinal Gardens S.L.

3. The entry in the Union list referred to in paragraph 1 shall include the conditions of use and labelling requirements laid down in the Annex to this Regulation.

*Article 2*

The studies contained in the application file on the basis of which the novel food referred to in Article 1 have been assessed by the Authority, claimed by the applicant as proprietary and without which the novel food could not have been authorised, shall not be used for the benefit of a subsequent applicant for a period of 5 years from 5 December 2021 without the agreement of Medicinal Gardens S.L.

*Article 3*

The Annex to Implementing Regulation (EU) 2017/2470 is amended in accordance with the Annex to this Regulation.

*Article 4*

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

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

Done at Brussels, 12 November 2021.

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

*ANNEX*

The Annex to Implementing Regulation (EU) 2017/2470 is amended as follows:

(1) in Table 1 (Authorised novel foods), the following entry is inserted:

| Authorised novel food | Conditions under which the novel food may be used | | Additional specific labelling requirements | Other requirements | Data protection |
|---|---|---|---|---|---|
| '**Synsepalum dulcificum dried fruits** | Specified food category | Maximum levels | 1. The designation of the novel food on the labelling of food supplements containing it shall be 'dried *Synsepalum dulcificum* fruits' | | Authorised on 5 December 2021. This inclusion is based on proprietary scientific evidence and scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283.<br>Applicant: Medicinal Gardens S.L. Marqués de Urquijo 47, 1° D, Office 1, Madrid, 28008, Spain.<br>During the period of data protection, the novel food is authorised for placing on the market within the Union only by Medicinal Gardens S.L. unless a subsequent applicant obtains authorisation for that novel food without reference to the proprietary scientific evidence or scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283 or with the agreement of Medicinal Gardens S.L.<br>End date of the data protection: 5 December 2026.' |
| | Food Supplements as defined in Directive 2002/46/EC for adult population excluding pregnant and lactating women | 0,7 g/day | 2. The labelling of food supplements containing *Synsepalum dulcificum* dried fruits shall bear a statement that this food supplement should be consumed by adults only excluding pregnant and lactating women. | | |

(2) in Table 2 (Specifications), the following entry is inserted:

| Authorised Novel Food | Specification |
|---|---|
| '***Synsepalum dulcificum* dried fruits** | **Description/Definition:**<br>The novel food is lyophilised pulp and skin of pitted fruits of *Synsepalum dulcificum* (Schumach. & Thonn.) Daniell that belongs to the Sapotaceae family. The resulting dried cake is milled into a powder.<br>**Characteristics/Composition:**<br>Moisture (g/100 g): < 6<br>Ash (g/100 g): 3,5-8,5<br>Total carbohydrates (g/100 g): 70-87 |

| | |
|---|---|
| | Sugars (g/100 g): 50-75<br>Fibre (g/100 g): 1-6,5<br>Total protein (g/100 g): 3,5-6,0<br>Miraculin (*) (g/100 g): 1,5-2,5<br>Total fat (g/100 g): 0,50-3,50<br>**Microbiological criteria:**<br>Total aerobic colony count: < $10^4$ CFU (**)/g<br>*Bacillus cereus* (presumptive): < 100 CFU/g<br>Sulfite-reducing *Clostridia*: ≤ 30 CFU/g<br>Total Enterobacteriaceae: < 100 CFU/g<br>Yeasts and moulds: < 500 CFU/g<br>**Pesticides:**<br>Pesticide levels in accordance with Code number 0820990 ('others' in the group of fruit spices) set out in Regulation (EC) No 396/2005 ([1]) |

(*) Miraculin is part of the total protein content.

(**) CFU: colony forming units.

([1]) Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).'

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/1975

## of 12 November 2021

## authorising the placing on the market of frozen, dried and powder forms of *Locusta migratoria* as a novel food under Regulation (EU) 2015/2283 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) 2017/2470

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ([1]), and in particular Article 12 thereof,

Whereas:

(1) Regulation (EU) 2015/2283 provides that only novel foods authorised and included in the Union list may be placed on the market within the Union.

(2) Pursuant to Article 8 of Regulation (EU) 2015/2283, Commission Implementing Regulation (EU) 2017/2470 ([2]) establishing a Union list of authorised novel foods was adopted.

(3) On 28 December 2018, the company Fair Insects BV ('the applicant') submitted an application to the Commission in accordance with Article 10(1) of Regulation (EU) 2015/2283 to place frozen, dried and powder (ground) forms of *Locusta migratoria* (migratory locust) on the Union market as a novel food. The applicant requested for frozen, dried and powder forms of *Locusta migratoria* to be used in the form of snack, and as a food ingredient in a number of food products for the general population.

(4) The applicant also made a request to the Commission for the protection of proprietary scientific data for a number of data submitted in support of the application, namely a description of the production process ([3]), analytical data on the composition ([4]), analytical data on contaminants ([5]), stability and microbiological status, data on the novel food sales ([6]), an intake assessment ([7]), protein digestibility and the Digestible Indispensable Amino Acid Score ([8]), the solubility and sterility tests on dried *Locusta migratoria* conducted prior to the genotoxicity studies which indicated that no genotoxicity testing was possible ([9]), and a cytotoxicity study ([10]).

(5) In accordance with Article 10(3) of Regulation (EU) 2015/2283, the Commission consulted the European Food Safety Authority ('the Authority') on 9 July 2019, asking it to provide a scientific opinion by carrying out an assessment of the safety of frozen, dried and powder forms of *Locusta migratoria* as a novel food.

([1]) OJ L 327, 11.12.2015, p. 1.
([2]) Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).
([3]) Fair Insects BV. 2019 (unpublished).
([4]) Fair Insects BV. 2019 (unpublished).
([5]) Fair Insects BV. 2019 (unpublished).
([6]) Fair Insects BV. 2018 (unpublished).
([7]) Fair Insects BV. 2019 (unpublished).
([8]) Fair Insects BV. Digestibility of protein from *Locusta migratoria* during transit through the dynamic *in vitro* gastrointestinal model. Study report V21246/01 (unpublished, 2018).
([9]) Fair Insects BV. Solubility and sterility test on dried *Locusta migratoria* prior to the genotoxicity studies (unpublished, 2018).
([10]) Fair Insects BV. Cellular toxicity of aqueous extracts from *Locusta migratoria* (unpublished, 2018).

(6) On 25 May 2021, the Authority adopted a scientific opinion on the safety of frozen, dried and powder forms of *Locusta migratoria* as a novel food ([11]), in accordance with Article 11 of Regulation (EU) 2015/2283.

(7) In its opinion, the Authority concluded that frozen, dried and powder forms of *Locusta migratoria* are safe under the proposed uses and use levels. Therefore, the opinion of the Authority gives sufficient grounds to establish that frozen, dried and powder forms of *Locusta migratoria* under the assessed conditions of use comply with Article 12(1) of Regulation (EU) 2015/2283.

(8) In that opinion, the Authority also concluded on the basis of limited published evidence on food allergies related to insects in general, which equivocally linked the consumption of *Locusta migratoria* to a number of anaphylaxis events, and on the basis of evidence demonstrating that *Locusta migratoria* contains a number of potentially allergenic proteins, that the consumption of this novel food may trigger sensitisation to *Locusta migratoria* proteins. The Authority also recommended carrying out further research on the allergenicity of *Locusta migratoria*.

(9) In order to address the Authority's recommendation, the Commission is currently exploring the ways to carry out the necessary research on the allergenicity of *Locusta migratoria*. Until the data generated by the research is assessed by the Authority, and considering that, to date, only few allergic cases caused by *Locusta migratoria* ([12]) have been reported according to data available to the insect industry, and that the evidence on the allergenicity potential associated with the consumption of *Locusta migratoria* is equivocal, the Commission considers that no specific labelling requirements concerning the potential of *Locusta migratoria* to cause primary sensitization should be included in the Union list of authorised novel foods.

(10) The Authority in its opinion also considered that the consumption of frozen, dried and powder forms of *Locusta migratoria* may cause allergic reactions in persons that are allergic to crustaceans, molluscs and mites. Furthermore, the Authority noted that additional allergens may end up in the novel food, if these allergens are present in the substrate fed to insects. Therefore, it is appropriate that frozen, dried and powder forms of *Locusta migratoria* made available to the consumer as such and foods containing them are appropriately labelled following the requirements in accordance with Article 9 of Regulation (EU) 2015/2283.

(11) In its opinion, the Authority noted that its conclusion on the safety of the novel food was based on a number of data submitted in support of the application, namely a description of the production process, analytical data on the composition, analytical data on contaminants, stability and microbiological status, data on the novel food sales, an intake assessment, protein digestibility and Digestible Indispensable Amino Acid Score, the solubility and sterility tests on dried *Locusta migratoria* conducted prior to the genotoxicity studies which indicated that no genotoxicity testing was possible, and a cytotoxicity study. It also noted that it could not have reached that conclusion without the data from the unpublished reports of those studies contained in the applicant's file.

(12) The Commission requested the applicant to further clarify the justification provided with regard to their proprietary claim over those studies and to clarify their claim to an exclusive right of reference to those data, as referred to in Article 26(2)(b) of Regulation (EU) 2015/2283.

(13) The applicant declared that they held proprietary and exclusive right of reference to description of the production process, analytical data on the composition, analytical data on contaminants, stability and microbiological status, data on the novel food sales, intake assessment, data on protein digestibility and the Digestible Indispensable Amino Acid Score, the solubility and sterility tests on dried *Locusta migratoria* conducted prior to the genotoxicity studies which indicated that no genotoxicity testing was possible, and cytotoxicity study, at the time they submitted the application and that therefore third parties cannot lawfully access, use or refer to those studies.

([11]) Safety of frozen and dried formulations from migratory locust (*Locusta migratoria*) as a novel food pursuant to Regulation (EU) 2015/2283; EFSA Journal 2021;19(7):6667.

([12]) *Locusta migratoria* is marketed in a number of Member States under the transitional measures laid down in Article 35(2) of Regulation (EU) 2015/2283. According to the applicant, dried and frozen locusts have been sold in the Dutch market since 2016.

(14) The Commission assessed all the information provided by the applicant and considered that the applicant has sufficiently substantiated the fulfilment of the requirements laid down in Article 26(2) of Regulation (EU) 2015/2283. Therefore, the specific studies on description of the production process, analytical data on the composition, analytical data on contaminants, stability and microbiological status, data on the novel food sales, intake assessment, protein digestibility and Digestible Indispensable Amino Acid Score, the solubility and sterility tests on dried *Locusta migratoria* conducted prior to the genotoxicity studies which indicated that no genotoxicity testing was possible, and cytotoxicity study, contained in the applicant's file, on which the Authority based its conclusion on the safety of the novel food and without which it could not have assessed the novel food, should not be used for the benefit of any subsequent applicant for a period of five years from the date of entry into force of this Regulation. Accordingly, only the applicant should be authorised to place frozen, dried and powder forms of *Locusta migratoria* on the market within the Union during that period.

(15) However, restricting the authorisation of frozen, dried and powder forms of *Locusta migratoria* and the reference to the studies contained in the applicant's file for the sole use of the applicant does not prevent other applicants from applying for an authorisation to place on the market the same novel food, provided that their application is based on legally obtained information supporting such an authorisation.

(16) The Annex to Implementing Regulation (EU) 2017/2470 should therefore be amended accordingly.

(17) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. Frozen, dried and powder forms of *Locusta migratoria*, as specified in the Annex to this Regulation, shall be included in the Union list of authorised novel foods established in Implementing Regulation (EU) 2017/2470.

2. For a period of five years from 5 December 2021, only the initial applicant,

Company: Fair Insects BV;

Address: Industriestraat 3, 5107 NC Dongen, the Netherlands,

is authorised to place on the market within the Union the novel food referred to in paragraph 1, unless a subsequent applicant obtains authorisation for the novel food without reference to the data protected pursuant to Article 2 or with the agreement of Fair Insects BV.

3. The entry in the Union list referred to in paragraph 1 shall include the conditions of use and labelling requirements laid down in the Annex to this Regulation.

*Article 2*

The data contained in the application file on the basis of which the novel food referred to in Article 1 have been assessed by the Authority, claimed by the applicant as proprietary and without which the novel food could not have been authorised, shall not be used for the benefit of a subsequent applicant for a period of five years from 5 December 2021 without the agreement of Fair Insects BV.

*Article 3*

The Annex to Implementing Regulation (EU) 2017/2470 is amended in accordance with the Annex to this Regulation.

*Article 4*

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

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

Done at Brussels, 12 November 2021.

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

*ANNEX*

The Annex to Implementing Regulation (EU) 2017/2470 is amended as follows:

(1) in Table 1 (Authorised novel foods), the following entry is inserted:

| Authorised novel food | Conditions under which the novel food may be used | | | Additional specific labelling requirements | Other requirements | Data protection |
|---|---|---|---|---|---|---|
| | **Specified food category** | **Maximum levels (g/100 g) (marketed as such or reconstituted according to the instructions)** | | | | |
| | | **Frozen** | **Dried or Powder** | | | |
| 'Frozen, dried and powder forms of *Locusta migratoria* (migratory locust) | Frozen, dried and powder forms of *Locusta migratoria* | | | 1. The designation of the novel food on the labelling of the foodstuffs containing it shall be 'frozen *Locusta migratoria* (migratory locust)', 'dried/powder *Locusta migratoria* (migratory locust)', 'Whole *Locusta migratoria* (migratory locust) powder' depending on the form used.<br>2. The labelling of the foodstuffs containing frozen dried or powder forms of *Locusta migratoria* (migratory locust) shall bear a statement that this ingredient may cause allergic reactions to consumers with known allergies to crustaceans, molluscs and products thereof, and to mites.<br>This statement shall appear in close proximity to the list of ingredients. | | Authorised on 5.12.2021.<br>This inclusion is based on proprietary scientific evidence and scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283.<br>Applicant: Fair Insects BV, Industriestraat 3, 5107 NC Dongen, the Netherlands.<br>During the period of data protection, the novel food is authorised for placing on the market within the Union only by Fair Insects BV, unless a subsequent applicant obtains authorisation for that novel food without reference to the proprietary scientific evidence or scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283, or with the agreement of Fair Insects BV.<br>End date of the data protection: 5.12.2026.' |
| | Processed potato products; legumes-based dishes and pasta-based products | 15 | 5 | | | |
| | Meat analogues | 80 | 50 | | | |
| | Soups and concentrated soups | 15 | 5 | | | |
| | Canned/jarred legumes and vegetables | 20 | 15 | | | |
| | Salads | 15 | 5 | | | |
| | Beer-like beverages, Alcoholic drink mixes | 2 | 2 | | | |
| | Chocolate confectionery | 30 | 10 | | | |
| | Nuts, oilseeds and chickpeas | | 20 | | | |
| | Frozen fermented milk-based products | 15 | 5 | | | |
| | Sausages | 30 | 10 | | | |

(2) in Table 2 (Specifications), the following entry is inserted:

<table>
<tr><th>Authorised Novel Food</th><th>Specifications</th></tr>
<tr><td>‘Frozen, dried and powder forms of Locusta migratoria (migratory locust)</td><td>
Description/Definition:<br>
The novel food consists of the frozen, dried and powder forms of migratory locust. The term ‘migratory locust’ refers to the adult of Locusta migratoria, an insect species that belongs to the Acrididae family (subfamily Locustinae).<br>
The novel food is intended to be marketed in three different forms, namely: (i) thermally processed and frozen L. migratoria (LM frozen); (ii) thermally processed and freeze-dried L. migratoria (LM dried), and (iii) thermally processed freeze-dried and ground whole L. migratoria (whole LM powder). The LM dried may be marketed as such or in powder.<br>
For LM frozen and LM dried, legs and wings must be removed to reduce the risk of intestinal constipation that could be possibly caused by ingestion of the large spines on the insect tibia. The whole LM powder is obtained via mechanical grinding of the insect with legs and wings, and sieving to reduce particle size below 1 mm.<br>
A minimum 24 hours fasting period is required before killing the insects by freezing, to allow the adults to discard their bowel content.
<table>
<tr><th>Parameters</th><th>LM frozen</th><th>LM dried</th><th>Whole LM powder</th></tr>
<tr><td colspan="4">Characteristics/Composition</td></tr>
<tr><td>Ash (% w/w)</td><td>0,6-1,0</td><td>2,0-3,1</td><td>1,8-1,9</td></tr>
<tr><td>Moisture (% w/w)</td><td>67-73</td><td>≤ 5</td><td>≤ 5</td></tr>
<tr><td>Crude protein (N × 6,25) (% w/w)</td><td>11-21</td><td>43-53</td><td>50 – 60</td></tr>
<tr><td>Fat (% w/w)</td><td>7-13</td><td>31-41</td><td>31-41</td></tr>
<tr><td>Saturated fatty acids (% fat)</td><td>35-43</td><td>35-43</td><td>35-43</td></tr>
<tr><td>Digestible carbohydrates (% w/w)</td><td>0,1-2,0</td><td>0,1-2,0</td><td>1,0-3,5</td></tr>
<tr><td>(*)Dietary fibre (% w/w)</td><td>1,5-3,5</td><td>5,5-9,0</td><td>5,5-9,0</td></tr>
<tr><td>Chitin (% w/w)</td><td>1,7-2,4</td><td>6,4-10,4</td><td>10,5-13,9</td></tr>
<tr><td>Peroxide value (Meq $O_2$/kg fat)</td><td>≤ 5</td><td>≤ 5</td><td>≤ 5</td></tr>
<tr><td colspan="4">Contaminants</td></tr>
<tr><td>Lead (mg/kg)</td><td>≤ 0,07</td><td>≤ 0,07</td><td>≤ 0,07</td></tr>
<tr><td>Cadmium (mg/kg)</td><td>≤ 0,05</td><td>≤ 0,05</td><td>≤ 0,05</td></tr>
</table>
</td></tr>
</table>

| | | | | | |
|---|---|---|---|---|---|
| | Aflatoxins (Sum of B1, B2, G1, G2) (µg/kg) | ≤ 4 | ≤ 4 | ≤ 4 | |
| | Aflatoxin B1 (µg/kg) | ≤ 2 | ≤ 2 | ≤ 2 | |
| | Deoxynivalenol (µg/kg) | ≤ 200 | ≤ 200 | ≤ 200 | |
| | Ochratoxin A (µg/kg) | ≤ 1 | ≤ 1 | ≤ 1 | |
| | Sum of dioxins and dioxins-like PCBs UB ( (**)$WHO_{2005}$ PCDD/F-PCB-TEQ) (pg/g fat) | ≤ 1,2 | ≤ 1,2 | ≤ 1,2 | |
| | **Microbiological criteria** | | | | |
| | Total aerobic colony count ( (***)CFU/g) | ≤ $10^5$ | ≤ $10^5$ | ≤ $10^5$ | |
| | Enterobacteriaceae (presumptive) (CFU/g) | ≤ 100 | ≤ 100 | ≤ 100 | |
| | *Escherichia coli* (CFU/g) | ≤ 50 | ≤ 50 | ≤ 50 | |
| | *Listeria monocytogenes* | Not detected in 25g | Not detected in 25g | Not detected in 25g | |
| | *Salmonella* spp. | Not detected in 25g | Not detected in 25g | Not detected in 25g | |
| | *Bacillus cereus* (presumptive) (CFU/g) | ≤ 100 | ≤ 100 | ≤ 100 | |
| | Coagulase positive *Staphylococci* (CFU/g | ≤ 100 | ≤ 100 | ≤ 100 | |
| | *Sulfite-reducing Anaerobes* (CFU/g) | ≤ 30 | ≤ 30 | ≤ 30 | |
| | Yeasts and moulds (CFU/g) | ≤ 100 | ≤ 100 | ≤ 100 | |

(*) Dietary fibre may not include chitin due to different analytical methods.
(**) Upper bound sum of polychlorinated dibenzo-para-dioxins (PCDDs)-polychlorinated dibenzofurans (PCDFs) and dioxin-like polychlorinated biphenyls (PCBs) expressed as World Health Organization toxic equivalent (using WHO-TEFs of 2005)).
(***) CFU: colony forming units'.

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/1976

## of 12 November 2021

## imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mono ethylene glycol originating in the United States of America and the Kingdom of Saudi Arabia

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) (the 'basic Regulation') and in particular Article 9(4) thereof,

Whereas:

### 1. PROCEDURE

#### 1.1. Initiation

(1) On 14 October 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of mono ethylene glycol ('MEG') originating in the United States of America ('US') and the Kingdom of Saudi Arabia ('KSA') ('the countries concerned') on the basis of Article 5 of the basic Regulation.

(2) The Commission initiated the investigation following a complaint lodged on 31 August 2020 (the 'complaint') by the Defence Committee of European MEG Producers (the 'complainant') on behalf of producers representing more than 25 % of the total Union production of MEG. The complaint contained evidence of dumping and of resulting material injury.

#### 1.2. Provisional measures

(3) In accordance with Article 19a of the basic Regulation, on 14 May 2021, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within 3 working days. Comments were received from MEGlobal Americas Inc. ('MEGlobal Americas'), Saudi Basic Industries Corporation ('SABIC'), Arteco NV ('Arteco'), and the Committee of PET Manufacturers in Europe ('CPME').

(4) On 11 June 2021, the Commission imposed provisional anti-dumping duties on imports of MEG originating in the US and the KSA by Commission Implementing Regulation (EU) 2021/939 ([2]) ('the provisional Regulation').

#### 1.3. Subsequent procedure

(5) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainant, MEGlobal Americas, Lotte Chemical Louisiana LCC ('LCLA'), the Government of the Kingdom of Saudi Arabia ('GKSA'), SABIC, ExxonMobil Petroleum & Chemical BV ('EMPC'), Helm AG ('Helm'), Oxyde Belgium BV ('Oxyde'), Tricon International Ltd and its affiliated companies ('Tricon'), Arteco, CPME and RETAL Industries Limited ('RETAL') filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

([1]) OJ L 176, 30.6.2016, p. 21, as subsequently modified.

([2]) Commission Implementing Regulation (EU) 2021/939 of 10 June 2021 imposing a provisional anti-dumping duty on imports of mono ethylene glycol originating in the United States of America and the Kingdom of Saudi Arabia (OJ L 205, 11.6.2021, p. 4).

(6) The parties who so requested were granted an opportunity to be heard. Hearings took place with LCLA, MEGlobal Americas, SABIC, and CPME. Additionally, further to the request of MEGlobal Americas and SABIC, two hearings with the Hearing Officer in trade proceedings were held. The Hearing Officer found that the rights of defence of interested parties were respected in this proceeding.

(7) When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions where appropriate.

(8) The Commission continued seeking and cross-checking all information it deemed necessary for its definitive findings. Two additional remote cross-checks ('RCCs') were held with Arteco and Indorama Ventures Europe BV ('Indorama'). The Commission also intended to hold RCCs with Helm and Oxyde but neither company was available.

### 1.4. **General comments**

(9) SABIC and MEGlobal Americas argued that the Commission disclosed late the RCC reports and therefore their rights of defence were impaired.

(10) The Commission disclosed the RCC reports on 14 May 2021 together with the summary of the proposed duties, details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry as stated in recital (3). The purpose of the RCC reports is to provide parties with a factual report of the RCC. The reports do not draw any conclusions as to how the Commission will ultimately treat the facts obtained during the RCC. There is no statutory deadline for the disclosure of the RCC reports. No comments were received from the parties regarding the information provided in the RCC reports. Therefore, the Commission does not consider that the rights of defence of the parties were impaired and the Hearing Officer in trade proceedings shared the Commissions' views in this regard.

(11) Tricon claimed that although it had cooperated during the investigation, its name was not quoted in the provisional Regulation, in particular in recitals (8) and (66), and, therefore, the Commission acted in breach of Tricon's right to sound administration.

(12) At the time of imposition of provisional measures the Commission did not have enough information on the importation activities of Tricon in the Union as the questionnaire reply had been submitted on behalf of three entities declared as located in the US and not in the Union. The Commission received that information from Tricon only after the imposition of provisional measures.

(13) In light of that additional information, recitals (8) and (66) of the provisional Regulation which list the parties with whom the Commission held hearings before the imposition of provisional measures and the parties that submitted a questionnaire reply respectively should be read as including Tricon as well. Furthermore, the comments submitted by Tricon before the imposition of provisional measures raised the same matters as the comments submitted by other interested parties, such as Arteco, Helm and Oxyde, and consequently their substance was taken into account by the Commission in the provisional Regulation.

(14) In their comments following final disclosure, MEGlobal Americas reiterated its claim in recital (9) regarding the disclosure of RCC reports. It was claimed that it was not correct that no comments were received from the parties regarding the information provided in the RCC reports. It was argued that MEGlobal Americas discussed the substantive contents of the RCC reports in the comments to provisional Regulation and that the late disclosure provided limited time for the parties to review it. It was further argued that the Commission was subject to heightened due process requirements based on the adaptation of its procedures to the COVID-19 pandemic, which were not addressed by the Commission in its final findings. MEGlobal Americas referred in this regard to the last sentence in the Commission Notice on the consequences of the COVID-19 outbreak, which stated that the Commission will take particular care that due process and transparency requirements were observed.

(15) As explained in recital (10), the purpose of the RCC reports is to provide parties with a factual report of the RCC and in particular what information could be verified and which one could not. The reports do not draw any conclusions as to how the Commission will ultimately treat the facts obtained during the RCC. MEGlobal Americas never identified any factual mistakes in the RCC reports and never requested any additional time to provide comments on these reports. It simply referred to the findings specified in the RCC report in its comments to the provisional Regulation. The Commission notes that MEGlobal Americas does not specify what exactly the Commission did not address in its final findings regarding due process requirements. Therefore, the claim was rejected.

1.5. **Comments on initiation**

(16) After the imposition of provisional measures, GKSA reiterated its comments made before the imposition of measures regarding the initiation of the investigation. It claimed that the complaint did not satisfy the requirements of Article 5.2 of the Anti-dumping Agreement ('ADA') as (1) it lacked sufficient evidence of dumping during the period considered, (2) it assessed the effects of imports from the US and the KSA cumulatively without proper justification, (3) it failed to assess the existence of material injury objectively as the investigation period overlapped with the previous calendar year, and (4) the complainant had not provided evidence of a causal link. Furthermore, the GKSA considered that the Commission failed to address these comments in the provisional Regulation as it only made general observations. The GKSA referred to the Panel Report in *Guatemala – Cement II* ([3]) in this regard arguing that statements of conclusions unsubstantiated by facts did not constitute the evidence required by Article 5.2 of ADA and inaccurate information also did not qualify as evidence and the investigation should, therefore, not have been initiated. Furthermore, the GKSA claimed that by initiating this investigation based on the absence of evidence in the complaint, the Commission acted inconsistently with Article 5.3 of the ADA and it referred in this regard to the Panel Report in *US – Softwood Lumber V* ([4]). It was argued that the Commission should have questioned the accuracy and adequacy of the claims made by the complainant, in particular when unsupported by information, and the information submitted in support of the claims of the complainant, when manifestly incorrect. The GKSA added that as the investigation was not initiated in accordance with the provisions of Article 5 of the ADA, the first condition for the imposition of an anti-dumping duty under Article 7.1(i) of the ADA was not satisfied and no anti-dumping duty should thus had been imposed on imports of MEG originating in the KSA.

(17) The Commission considers that the initiation of the investigation was warranted and fully complied with the ADA. In particular, for the dumping calculation, the evidence provided by the complainant on costs was considered sufficiently adequate and accurate to establish normal value, in view of the legal standard applicable at initiation. Indeed, as the GKSA recalls, the Panel Report in *US – Softwood Lumber V* clarified that: 'the application shall contain such information which is reasonably available to the applicant to substantiate its claim of, inter alia, alleged dumping, meaning that the application need not contain all information reasonably available to the applicant, but only information to support a prima facie case'. In this case, the complainant presented the information that was reasonably available to it concerning the production process of the product concerned. That information was quantitatively and qualitatively sufficient to support the calculation of normal value and of the margin of dumping. The fact that the complainant did not provide precise information concerning the full production chain of the product concerned in the KSA does not mean that the evidence had to be considered insufficient, as the GKSA suggested. Requiring the complainant to provide additional and more precise information that is not reasonably available to the complainant would shift the burden of carrying out the actual investigation from the investigating authority to the complainant. Indeed, the Panel in *US – Softwood Lumber V* emphasised that the required evidence needed only be submitted '*to the extent* reasonably available to the applicant' and that this language 'was intended to avoid putting an undue burden on the applicant to submit information which is not reasonably available to it' ([5]). Furthermore, the Commission observes that while the GKSA suggests that the information submitted by the complainant amounted to statements of conclusions unsubstantiated by facts, it does not indicate with precision which statements in the complaint it is referring to but only makes a general remark. Therefore, the Commission reiterates that the complainant submitted sufficient evidence of the existence of dumping to justify the initiation of the investigation.

([3]) Panel Report, Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico, WT/DS156/R, para. 8.53.

([4]) Panel Report, United States – Final Dumping Determination on Softwood Lumber from Canada (US – Softwood Lumber V), WT/DS264/R, para. 7.87.

([5]) See WTO Panel Report, US – Softwood Lumber V, WT/DS264/R, paras. 7.54-7.55 (original emphasis), and WTO Panel Report, *Guatemala – Definitive Anti-Dumping Measures on Grey Portland Cement from Mexico ('Guatemala – Cement II')*, WT/DS156/R, 24 October 2001, para. 8.35, and judgment of 20 June 2001, *Eurocalliages*, T-188/99, ECLI:EU:T:2001:166, para. 52.

(18) In their comments following final disclosure, the GKSA reiterated again its comments made before the imposition of provisional measures regarding the initiation of the investigation. It argued again that the complaint did not satisfy the requirements of Article 5.2 of the ADA due to the four points mentioned in recital (16). Furthermore, it was argued that the complaint did not contain information that was reasonably available to the complainant and it did not provide sufficient evidence of dumping. More precisely, the GKSA claimed that the complaint did not contain information on domestic prices of MEG that would have been reasonably available to the complainant. Furthermore, the GKSA argued that the complainant calculated the normal value based on data collected from two Union producers, which artificially inflated the normal value.

(19) The Commission disagreed with those claims. The complainant explained that the domestic market in the KSA for MEG was very small compared to the volume of exports and the information publicly available was limited. In this sense, the price information would not have been representative. Therefore, the complainant constructed the normal value for the KSA on the basis of the cost of production plus a reasonable amount for selling, general and administrative costs and for profits. The complaint also explained that the production process of MEG is similar in all countries and that there were no significant differences between the production processes in the Union and in the KSA. Furthermore, the complainant obtained from the Union producers data regarding the consumption volume of inputs required to produce MEG such as raw materials, energy, labour etc. Moreover, the complainant obtained data in the KSA for each input for which data was publicly available and for certain production factors for which no public data was available the data was estimated on a reasonable basis. Section B.2.1.2 of the complaint explains the source of data for each input. The normal value was, thus, constructed based on prices of inputs in the KSA, on the basis of information reasonably available to the complainant and sufficiently indicating existence of dumping. Therefore, these claims were rejected.

### 1.6. **Sampling**

(20) MEGlobal Americas claimed that its inclusion into the sample of US exporting producers was not warranted as it only had a limited number of shipments to the Union during the investigation period and that these shipments were made because of the inability of one of the **complainants** to supply MEG to MEGlobal Europe GmbH ('MEGlobal Europe').

(21) The Commission notes that MEGlobal Americas did not comment, let alone object, to the sampling decision during the period intended for comments following its notification, as prescribed in Section 5.3.1.1(a) of the Notice of initiation. The Commission stresses that the sampling exercise was conducted in full compliance with Article 17(1) of the basic Regulation and the investigation was limited to a reasonable number of parties based on the largest representative volume of exports to the Union during the investigation period, which could reasonably be investigated within the time available, the volume of domestic sales of each exporting producer, and the ability of the exporting producers to cooperate by providing the data for the investigation period. LCLA and MEGlobal Americas were the largest two exporters to the Union during the investigation period that expressed a willingness to be sampled. Furthermore, the reason why parties export is not relevant for the sampling decision. Therefore, the claim was rejected.

(22) The complainant highlighted that in the sampling form, Sasol Chemicals North America LLC ('Sasol') did not report any exports to the Union during the investigation period, while Helm was known to be the long-term distributor of MEG produced by Sasol worldwide including in the Union. Furthermore, it was noted that Helm filed a questionnaire reply reporting sales in the Union of the product concerned originating in the US. Therefore, the complainant considered that there might have been export sales from Sasol intended for consumption in the Union and therefore, requested the Commission to verify whether the MEG produced by Sasol in the US was exported to the Union via traders such as Helm, and consequently to assess if the weighted average dumping margin of the sample applied to Sasol was justified.

(23) In the sampling form, Sasol declared that it exported to the Union only via Helm. Helm confirmed this statement and provided the volume of these sales. The Commission decided not to sample Sasol as these volumes were lower than the volumes of exports of LCLA and MEGlobal Americas. Therefore, as a cooperating exporting producer that was not included in the sample, the anti-dumping duty applied to Sasol is the weighted average of the sample.

(24) In their comments following final disclosure, MEGlobal Americas reiterated their claim stated in recital (20). It further argued that the estimated volume of exports of MEG produced by Sasol in the US and exported to the Union in the IP was higher than that of MEGlobal Americas. It was argued that MEG produced by Sasol was almost exclusively imported by Helm AG. Therefore, MEGlobal Americas argued that the decision to sample MEGlobal Americas was not based on accurate data.

(25) The Commission disagreed with this claim. In addition to the reasons explained in recitals (21) and (23) in this regard, the Commission noted that the data provided by MEGlobal Americas did not indicate the source of supply for Helm AG while Helm AG imported MEG from US from several producers, not only Sasol. Therefore, the claim was rejected.

(26) In the absence of any other comments concerning the sampling of the US exporting producers, the provisional findings in recitals (61) and (62) of the provisional Regulation were confirmed.

(27) In the absence of comments concerning sampling of exporting producers in the KSA, the Commission confirmed its conclusions set out in recitals (63) and (64) of the provisional Regulation.

### 1.7. **Investigation period and period considered**

(28) In its comments to the provisional Regulation, CPME reiterated its claim that the investigation period ('IP') chosen by the Commission did not include the period immediately prior to the initiation of the investigation i.e. the period July – September 2020 and, therefore, it violated the basic Regulation. The claim was rejected for the reasons described in recital (70) of the provisional Regulation.

(29) CPME further claimed that including that period would demonstrate the absence of material injury but provided no evidence in this regard. Therefore, the claim was rejected.

(30) In the absence of any other comments concerning the investigation period and the period considered, the Commission confirmed its conclusions set out in recital (68) of the provisional Regulation.

### 1.8. **Disclosure**

(31) On 13 September 2021, the Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of MEG originating in the KSA and the US ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. The Commission received comments from the complainant, GKSA, SABIC, MEGlobal Americas, LCLA, EMPC, Helm, Oxyde, Tricon, Arteco and CPME. On the basis of these comments, the Commission modified some of the considerations on the basis of which it intended to impose a definitive anti-dumping duty and informed all interested parties thereof ('additional final disclosure') on 4 October 2021.

(32) Following final disclosure and additional final disclosure, interested parties were granted an opportunity to be heard according to the provisions stipulated under point 5.7 of the Notice of initiation. Hearings took place with SABIC, MEGlobal Americas and LCLA.

## 2. **PRODUCT CONCERNED AND LIKE PRODUCT**

### 2.1. **Claims regarding the product scope**

(33) SABIC reiterated its claim that off-spec MEG was a second choice product which had a lower price compared to prime MEG and the market for off-spec MEG was much smaller than for prime MEG. For the reasons explained in recital (79) of the provisional Regulation, the claim was rejected.

(34) In their comments following final disclosure, SABIC reiterated their claim that the Commission should exclude off-spec MEG from the scope of the investigation for the reasons stated in recital (33). SABIC stated that these claims were not addressed by the Commission.

(35) The Commission disagreed with this claim. In recital (79) of the provisional Regulation, the Commission clearly explained the reasons why the claim was rejected.

(36) In the absence of any other comments concerning the product scope, the provisional findings in recitals (71) to (79) of the provisional Regulation were confirmed.

## 3. **DUMPING**

### 3.1. **Kingdom of Saudi Arabia**

#### 3.1.1. *General*

(37) EMPC submitted that in recital (80) of the provisional Regulation, the Commission referred to SABIC as the sole company group with six production entities in the KSA. EMPC stressed that Yanpet was a 50/50 joint venture between ExxonMobil affiliate (Mobil Yanbu Petrochemical Company Inc.) and SABIC and neither EMPC nor any other ExxonMobil affiliates ('ExxonMobil') were part of the SABIC company group. Moreover, it was stated that whereas Yanpet ran the production, all commercial and pricing decisions for the production volumes of MEG of ExxonMobil were made exclusively by ExxonMobil and all commercial and pricing decisions for **production** volumes of MEG of SABIC were made exclusively by SABIC. It was further added that EMPC and SABIC were competitors and that according to recitals (80) to (86) of the provisional Regulation, the country-wide dumping margin for KSA was calculated based on a normal value of the profitable domestic sales of SABIC. Therefore, the provisional Regulation imposed an anti-dumping duty on volumes sold by ExxonMobil based on a normal value determined by taking into account SABIC's domestic sales and an export price partly based on SABIC's export sales. Hence, EMPC is subject to an anti-dumping duty calculated on the basis of data from an unrelated competitor even though there is no risk of circumvention between SABIC and EMPC.

(38) The Commission considers that EMPC is related to SABIC by virtue of Article 127(1)(g) of Commission Implementing Regulation (EU) 2015/2447 ([6]) as together they control a third person directly or indirectly. It is uncontested that Yanpet is a joint venture company whose shares are equally split between SABIC and ExxonMobil. EMPC and SABIC are equally represented in the board of directors of Yanpet, as each of them nominated directors of Yanpet. This is a strong indication that SABIC and ExxonMobil control it jointly and directly. Concerning the claim that SABIC and ExxonMobil act independently and that there is no risk of circumvention, the Commission observes that EMPC did not substantiate this claim except by mere assertions. The claim is, therefore, rejected and the Commission considers SABIC and ExxonMobil as related parties for the purpose of this investigation.

(39) In addition, EMPC considered that the Commission breached its rights of defence as EMPC did not have insight into the calculation of the normal value and of the export price of SABIC.

(40) As Yanpet is a 50/50 joint venture with SABIC, it received the same individual anti-dumping duty as the SABIC group. As explained in the specific disclosure, the Commission cannot disclose to EMPC business confidential information belonging to SABIC (such as SABIC's sales on the domestic market), in line with the general practice on protecting business secrets.

(41) In their comments following final disclosure, EMPC reiterated their claims stated in recital (37). In addition, EMPC wrongly claimed that in recital (38) the Commission stated that the EMPC's description of the Yanpet joint venture was based on mere assertions. In fact the Commission stated that EMPC's claim regarding the lack of risk of circumvention was based on mere assertions. Furthermore, EMPC claimed that pursuant to the EMPC-Yanpet Marketing Agreement, EMPC and SABIC market and sell the MEG produced by Yanpet entirely independently.

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

(42) The Commission disagreed with this statement. As explained in recital (38) Yanpet is a joint venture controlled jointly and directly by SABIC and ExxonMobil. Furthermore, some provisions of the EMPC-Yanpet Marketing Agreement suggest that there is a high risk of circumvention in case SABIC and EMPC receive different individual duties. Detailed explanations were provided to EMPC in the specific disclosure, as it included confidential information.

(43) Furthermore, EMPC reiterated their comments in recital (39) without putting forward any new elements.

(44) For the reasons explained in recital (40) this claim was rejected.

3.1.2. *Normal value*

(45) The Commission received comments from SABIC, the GKSA and EMPC.

(46) SABIC, the GKSA and EMPC contested the adjustment made to the value of propane as described in recitals (87) to (94) of the provisional Regulation. SABIC referred to the Commission's findings in the SABIC and Saudi Aramco merger clearance (Case M.9410 – SAUDI ARAMCO/SABIC) ([7]).

(47) The Commission reassessed its provisional findings. The Commission noted that the decision concerning the merger clearance of the concentration between Saudi Aramco and SABIC acknowledged the absence of a relationship between the two companies prior to the date of acquisition of 70 % of the shares in SABIC according to the provisions of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) ([8]). In the absence of any other information that the sales of raw materials would otherwise not be at arm's length, the Commission therefore revised the determination of the normal value for SABIC in this regard by using the reported cost of propane. It follows that the normal value was based on the weighted average of the prices of all domestic sales during the IP as the sales volume, sold at a net sales price equal to or above the calculated cost of production, represented more than the 80 % of the total sales volume.

(48) Furthermore, SABIC submitted that, as the Commission examined both domestic sales and exports to the Union at the company group level as described in recital (80) of the provisional Regulation, it should have considered the cost of all related producers when determining whether the domestic sales were profitable. It argued that the Commission could not compare the domestic and export sales of all the producers as if they constitute one single entity, while at the same time assessing profitability on a producer-specific basis.

(49) The Commission disagrees with this claim. It would not be appropriate to assess the profitability of the domestic sales against the cost of production of companies that do not sell domestically and the investigation has established that not all producing entities sell MEG in the domestic market.

(50) In their comments following final disclosure, EMPC asked the Commission to confirm that it (i) used all actual production costs, including the actual costs of feedstock used to produce ethylene as reported by the exporting producers in the KSA and (ii) did not make cost adjustments to the cost of any feedstock.

(51) The Commission confirmed that in the calculation of the normal value the reported production costs including the reported costs of feedstock used to produce ethylene were used. Indeed, the Commission did not adjust the cost of any of the feedstock.

(52) In their comments following final disclosure, SABIC reiterated their claim stated in recital (48) without putting forward any new elements.

([7]) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020M9410&qid=1624532083284&from=EN

([8]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

(53) For the reasons explained in recital (49), this claim was rejected.

(54) In their comments following final disclosure, the complainant disagreed with the Commission's decision to use the price of propane reported by SABIC as stated in recital (47). The complainant first claimed that the applicable law in anti-dumping investigations was the basic Regulation and not the EC Merger Regulation, which had different criteria and different functions. Therefore, as different legal criteria apply, the transfer of findings from one legal framework to another was illogical and illegal. Second, it was stated that as the price was fixed by the GKSA, the normal considerations in relation to the concept of an 'arms-length' price did not apply. Third, it was claimed that accepting the fixed price of propane of SABIC, which was not 'normal' and did not reasonably reflect the true costs, was in breach of Article 2(5) of the basic Regulation. Fourth, it was further argued that in investigations against Russia, the Commission adjusted the price of gas, which was also set by the government and therefore applying different criteria to the KSA from those applied to Russia in trade defence investigations was discriminatory. Fifth, it was claimed that the Case M.9410 did not make any findings in relation to propane. Sixth, it was stated that the merger Decision acknowledged the existence of a vertical integration concerning upstream and downstream supply in the ethylene glycols value chain but that the merger Decision did not address the nature of the vertical link, i.e. whether the supply of upstream products between Saudi Aramco and SABIC was at arm's length. It was stated that the Commission only investigated whether this vertical link was likely to give rise to potential market foreclosures. Finally, the complainant argued that Saudi Aramco and SABIC were related companies and their transactions were not in the ordinary course of trade.

(55) The Commission disagreed and confirmed its findings that using use the price of propane reported by SABIC was appropriate in this case. In particular, the merger Decision did address the nature of the vertical link between the two companies and pricing decisions related to the two companies' operations during the IP. For example, the Decision states that '*any material coordination of the activities of SABIC with those of Saudi Aramco would be challenging and would be carried out without detailed knowledge of SABIC's pricing, customers or overall strategy*' (recital (12)) and that '*the Parties' commercial interactions are limited and at arm's length*', the parties have '*submitted evidence to show that, at least in the vertically affected markets where Saudi Aramco or SABIC acts as a supplier of one another*' (recital (14)). Therefore, the Commission confirmed its assessment as indicated in recital (47) of this Regulation.

(56) In the absence to any other comments concerning the determination of the normal value, the Commissions confirmed its conclusions set out in recitals (81) to (93) of the provisional Regulation, corrected as indicated in recital (47) of this Regulation.

3.1.3. *Export price*

(57) The Commission received comments from SABIC and EMPC concerning the determination of the export price.

(58) SABIC noted that the Commission's analysis was deficient as it considered the export price unreliable solely on the basis of the existence of a relationship between companies. SABIC referred to the *US-OCTG (Korea)* Panel report ([9]). According to SABIC, the Panel found that while Article 2.3 of ADA, which mirrors Article 2(9) of the basic Regulation, did not impose a requirement to make a determination as to the reliability of the export price, Article 2.3 of ADA did not allow investigating authorities to construct the export price whenever there was an association. SABIC provided additional information, including explanations regarding their internal price setting between related entities, in their confidential submission.

(59) The Commission found that the explanations provided by SABIC regarding the internal price setting between related entities did not justify deviating from the application of Article 2(9). This assessment has been disclosed to SABIC in its specific disclosure as it includes business confidential information. Based on its assessment, the Commission concluded that in the case at hand the export price was unreliable because of the association between the exporter, trader and importer. Therefore, the claim was rejected.

([9]) Panel Report, United States – Anti-Dumping Measures on Certain Oil Country Tubular Goods from Korea (US-OCTG (Korea)), WT/DS488/R, para. 7.147.

(60) Furthermore, SABIC claimed that the export price should not be constructed under Article 2(9) of the basic Regulation and no adjustments should be made for transactions between related parties, in particular for selling, general and administrative ('SG&A') expenses and profit, given that the Commission assessed dumping at the 'company group level' and that the Saudi exporting producers were integrated. Thus, SABIC claimed that the export price must be based on the actual export prices, after deduction of all verified selling expenses.

(61) The Commission noted that the dumping margin was indeed calculated at the company group level, in the sense that all related entities received the same individual dumping margin and all the relevant export transactions and domestic sales were taken into account for the calculation of the dumping margin. This is independent from the fact that the export prices needed to be adjusted under Article 2(9) of the basic Regulation in the case at hand, as the export price was unreliable due to an association between the exporter and the importer. Therefore, the claim was rejected.

(62) SABIC and EMPC contested the use by the Commission of the profit margin of 6,89 % established in the anti-dumping investigation concerning PVA originating in China ([10]) due to confidentiality reasons regarding the data of the cooperating importers. SABIC requested the Commission to use the information related to the profitability of SABIC Petrochemicals B.V ('SPC') and SABIC Italia ('SI'), which had been verified. SABIC and EMPC claimed that the profit ratio used by the Commission was not reasonable within the meaning of Article 2(9) of the basic Regulation as it related to a different product, imports from a different country and a different time period. SABIC also stated that the profit margin used by the Commission did not reflect the actual functions and risks of SPC and SI.

(63) The Commission does not consider the profit margin of the related importer and/or related trader reasonable as it is affected by the association with the companies from which they purchase MEG. Pursuant to Article 2(9) of the basic Regulation, it is considered appropriate to use a reasonable profit margin independent of the actual profit resulting from the transfer price in order to avoid any distorting effects that may arise from the transfer price. Furthermore, following the imposition of provisional measures, the Commission intended to organise RCCs with two cooperating importers but they were not available, as stated in recital (8). Therefore, in the absence of any alternative data on file which could be used, the Commission decided to use the profit margin used at the provisional stage as described in recital (97) of the provisional Regulation.

(64) SABIC also claimed that the deduction of a profit margin of an unrelated importer from the sales made via the related importer (SPC) as well as from the sales invoiced by the trader in the Union (SI), resulted in a duplication.

(65) The Commission noted that the two profit margins were taken into account for different purposes and were deducted separately. For export sales through a related importer in the Union, the export price was constructed pursuant to Article 2(9) of the basic Regulation on the basis of the price at which the imported products were first resold to an independent buyer or to SI. In these cases an adjustment for the profit accruing was made so as to establish a reliable export price. In contrast, the commission for the related trader in the Union who performed the function of a trader acting on a commission basis was deducted pursuant to Article 2(10)(i) of the basic Regulation, as further discussed in recital (79). Therefore, the claim was rejected.

(66) In the questionnaire reply SPC allocated all SGA expenses based on turnover. After the provisional disclosure, SABIC stated that because SPC was both a producer and distributor and the majority of its workforce and activities concerned the production of chemicals and polymers, the SG&A expenses should be reallocated to products manufactured by SPC, on the one hand, and traded MEG products, on the other hand. It was further stated that this allocation methodology more accurately reflected the distribution of expenses.

([10]) 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).

(67) During the RCC, SABIC did not claim that its allocation of SG&A expenses was not accurate. Given that the RCC had taken place on the basis of the initially submitted allocation method, the Commission was not in a position to cross-check the newly submitted table and the several new allocation keys used in this regard. Therefore, the claim is rejected.

(68) In their comments following final disclosure, SABIC reiterated their claim stated in recital (58) arguing that the export price paid to the producers was not affected by the relationship between related companies and the producers were paid the actual prices paid by the unrelated customers in the Union after the deduction of all the selling expenses incurred. This claim was also reiterated by the GKSA. In the confidential version of its submission, SABIC submitted in this regard the marketing agreement between SABIC and one of the related producers.

(69) The Commission noted that this agreement did not cover the sales to the Union. Nevertheless, even if the conditions of this agreement were applicable to SABIC's sales on the Union market, it did not change Commission's assessment in recital (59). More detail regarding the Commission's assessment was provided to SABIC in its specific disclosure as it includes business confidential information.

(70) In their comments following final disclosure, SABIC, EMPC and the GKSA reiterated their claim stated in recital (62) regarding the use by the Commission of the profit margin of 6,89 %. SABIC stated that it was not correct that there were no alternative data on the file as SABIC submitted two independent sets of data that the Commission could have used to determine the profit margin of unrelated importers.

(71) It is noted that the first set of data was a report made by Deloitte which was submitted by SABIC only in the confidential version of their submission. Furthermore, the report calculated the average profitability margin of 17 companies that were identified as comparable to SABIC companies during the period 2016 to 2018. Only five of these companies were located in the Union. Out of these five companies in the Union, only one of them was an importer, the others were involved in distribution and sales of chemicals. Furthermore, according to this report, the average profitability margin of the importer located in the Union during the period 2016 to 2018 was higher than the profitability margin of 6,89 % used by the Commission. Furthermore, the second set of data was actually the financial information of four companies that SABIC claimed were distributors. No information was provided regarding the criteria used by SABIC in selecting these companies. Therefore, the Commission considered that the profit margin used at the provisional stage as described in recital (97) of the provisional Regulation is the most reasonable source of data available on file.

(72) In their comments following final disclosure, SABIC reiterated their claim stated in recital (66) that the Commission should use the revised SG&A of SPC. This claim was also reiterated by the GKSA. SABIC claimed that because SPC was both a producer and a distributor and the majority of its workforce and activities concerned the production of chemicals and polymers, it was more appropriate to allocate the SG&A expenses to products manufactured by SPC and MEG and other trading products based on the number of personnel employed in the different activities. Furthermore, SABIC claimed that the Commission did not need to cross-check the new allocation methodology as only one allocation key was used and that the Commission cross-checked the SG&A data and the employment data during the RCC.

(73) When the allocation of all SG&A expenses is made based on turnover, the Commission does not need to cross-check in detail the expenses reported for the sales of the product concerned on the Union market as the same percentage of SG&A expenses is allocated to the sale of all products on all markets. However, when a different methodology is used, there is a risk that the SG&A expenses of the product concerned sold on the Union market are misallocated. In this case, the Commission is cross-checking the reported SG&A expenses in detail. This is the case of the revised SG&A expenses submitted by SABIC. Following the new methodology, SABIC revised several SG&A expenses such as advertising expenses, trade promotion costs, other costs (such as claims, bad-debts, etc.), financial and income expenses. However, these type of expenses are more related to the value of sales of the products than to the number of employees involved in the selling activity of MEG. Therefore, the claim was rejected.

(74) In their comments following final disclosure, SABIC claimed that the deduction of a theoretical commission for sales made through SI amounts to double-counting. First, it argued that the Commission violated Article 2(9) because it constructed the export price on the basis of the price at which the imported products were first resold to SI, the related trader. Second, they argue that SI is not a trader but a distributor and therefore the adjustment under Article 2(10)(i) is not warranted. Finally, it argued that the Commission practice is to only adjust once even when there are many related parties.

(75) The Commission disagreed. It is undisputed that, for the sales channel at stake, SABIC sells the product concerned to independent customers in the Union via related companies that act as importers and receive a commission for their activities. Therefore, the Commission had to, first, establish a reliable export price on the basis of Article 2(9) of the basic Regulation and, second, adjust the export price for the commission paid by SABIC on the basis of Article 2(10)(i) of the basic Regulation. As regards the construction of the export price based on Article 2(9), the Commission deducted from the resale price to the first independent customer the SG&A of SPC and a reasonable amount for profit normally achieved by an independent importer. To deal with the commission paid by SABIC for those sales to the Union, the Commission deducted the SG&A of SI and a reasonable amount for profit. Whether SI is labelled as distributor or trader does not detract from the fact that SI receives a commission from SABIC for the sales in question and, therefore, an adjustment under Article 2(10)(i) is warranted. Without prejudice to the above, the Commission notes that, based on the information provided by SABIC, SPC also receives a commission from SABIC for the sales it effects in the Union. The Commission considered that an additional adjustment for that commission would be unreasonable, in particular in view of the fact that the SG&A and a reasonable profit was already deducted as regards SPC in the construction of the export price under Article 2(9). An additional adjustment under Article 2(10)(i) to cater for the commission paid by SABIC may, therefore, lead to double-counting and was therefore not performed. The Commission considers that the construction and adjustment performed under Article 2(9) and 2(10)(i) respectively lead to a price that would have been achieved if the sales had been made between independent companies. The claim is therefore rejected.

(76) In the absence of any other comments in respect of the determination of the export price, the Commission confirmed its conclusions set out in recitals (95) to (97) of the provisional Regulation.

3.1.4. *Comparison*

(77) The Commission received comments about the comparison of the export price and the normal value from SABIC.

(78) It was claimed that the deduction of both the commissions paid to cover the SG&A expenses and profit of SPC and SI, and the allowances for the SG&A expenses and profit of these companies resulted in a duplication.

(79) At provisional stage, the Commission deducted under Article 2(10)(i) of the basic Regulation SG&A expenses and a reasonable profit from the sales price of SI. SI was found to be carrying out the functions of an agent working on a commission basis. SI was buying and reselling the product concerned to unrelated customers in the Union, and SI received a commission on these sales from the exporting producer. In addition, the Commission deducted under Article 2(9) of the basic Regulation, the SG&A and a reasonable profit from the sales prices of SPC. However, both SI and SPC had included among the allowances in their sales listing, the commissions paid by the exporting producer to both of these companies. Therefore, there was indeed a duplication. Although the Commission considered the actual commissions paid were not reasonable, and were affected by the relationship between SI and SPC and the exporting producer, the Commission agreed that those commissions should not be deducted in addition to the adjustments already made. The amount of these commissions, reported as income by the related sales companies, was therefore not deducted as allowances from the sales prices of SI and SPC.

(80) SABIC further claimed that including the off-spec MEG under the same PCN as prime MEG was bound to distort the dumping calculation.

(81) The Commission asked SABIC at the beginning of the investigation to report the off-spec MEG that does not fulfil the criteria for fibre grade MEG (type A) as non-fibre grade MEG (type B) in the questionnaire reply. However, SABIC reported all the sales in the Union during the investigation period as fibre grade MEG. Therefore, the claim was rejected.

(82) In their comments following final disclosure, SABIC reiterated their claim that there was a double counting between the marketing fee, the SG&A expenses and the profits of SPC and SI. This claim was also reiterated by the GKSA.

(83) The Commission disagreed with this claim. As explained in recital (79), the Commission corrected the respective double counting. Detailed explanations were provided to SABIC in the specific disclosure as they included confidential information.

(84) In their comments following final disclosure, SABIC reiterated their claim in recital (80) without providing any new information in this regard.

(85) For the reasons explained in recital (81) this claim was rejected.

(86) In the absence of any other comments in respect of comparison, the Commission confirmed its conclusions set out in recitals (102) and (103) of the provisional Regulation, adjusted as explained in recital (79) of this Regulation.

3.1.5. *Dumping margin*

(87) The Commission identified a clerical error in the calculation file as a consequence of which several sales transactions of SI were inadvertently not included in the calculation. This was corrected accordingly.

(88) As described in recitals (47), (79) and (87) following claims which were accepted by the Commission, certain elements of the normal value and export price were revised.

(89) Accordingly, the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

| Company | Definitive dumping margin (%) |
|---|---|
| Saudi Kayan Petrochemical Company (Saudi Kayan) | 7,7 |
| Yanbu National Petrochemical Company (Yansab) | 7,7 |
| Eastern Petrochemical Company (Sharq) | 7,7 |
| Saudi Yanbu Petrochemical Company (Yanpet) | 7,7 |
| Arabian Petrochemical Company (Petrokemya) | 7,7 |
| Jubail United Petrochemical Company (United) | 7,7 |
| All other companies | 7,7 |

3.2. **United States of America**

3.2.1. *Normal value*

(90) The Commission received comments from MEGlobal Americas and LCLA.

(91) MEGlobal Americas claimed that the normal value must be based on all domestic sales of MEG (product type A and B), even though MEGlobal Americas sold only one product type of MEG to the Union during the investigation period.

(92) The Commission noted that the calculation to establish the normal value has to take into account the product control number in order to compare identical types of MEG. As the company did not export product type B, the domestic sales of product type B were not taken into account in the normal value calculation of the product type A. Therefore, the claim was rejected.

(93) MEGlobal Americas also claimed that the Commission did not consider the effects of the COVID-19 pandemic on domestic prices. MEGlobal Americas argued that the Commission inflated the market value of MEG by ignoring sales that were made during a time of high market price volatility caused by the COVID-19 pandemic. It was argued that part of the domestic sales that were found to be not in the ordinary course of trade were made during May and June 2020 when average sales prices of MEG fell because of the mandatory lockdowns enforced in different regions of the world, including the US. According to MEGlobal Americas, finding these sales not to be in the ordinary course of trade breached Article 2(4) of the basic Regulation and Article 2.2.1 of the ADA which dictate that sales may only be disregarded as outside the ordinary course of trade if the sales were made 'within an extended period'. MEGlobal Americas argued that this condition was not met as the unprofitable sales only occurred during 2 months, a period of time shorter than the 6 months stipulated in Article 2(4) of the basic Regulation and asked the Commission to include these sales in the determination of the normal value.

(94) The Commission observed that the comment of MEGlobal Americas rests upon an incorrect interpretation of Article 2(4) of the basic Regulation. Indeed, this Article establishes the conditions to be met in order to disregard unprofitable sales in determining the normal value and it allows the Commission to disregard unprofitable sales when they are made 'within an extended period in substantial quantities'. Article 2(4) of the basic Regulation further clarifies that the extended period of time shall normally be 1 year and in no case be less than 6 months. The term 'within' indicates that the Commission has to investigate the unprofitable sales in the context of an investigation period of normally 1 year and in no case shorter than 6 months. Contrary to the claim of the company, Article 2(4) of the basic Regulation does not read 'during an extended period of time' or 'for an extended period of time' and it therefore does not require the Commission to disregard only those unprofitable sales that were made for normally 1 year or at least 6 months. In the case at hand, the Commission has investigated the sales in the framework of an extended period of 1 year (that is, the investigation period) and has thus complied with Article 2(4) of the basic Regulation. Therefore, the claim was rejected.

(95) The Commission also received comments from LCLA claiming that the Commission must deduct the income from sales of the by-products from LCLA's cost of production of MEG. According to LCLA, it is the Commission practice to deduct income from by-products from the cost of production of the product concerned and referred, in this regard, to the anti-dumping proceeding on imports of oxalic acid originating in China ([11]). Therefore, LCLA requested the Commission to deduct the revenues from sales of the by-products from the cost of production of MEG.

(96) After the imposition of provisional measures, the Commission has investigated further whether LCLA submitted complete information to demonstrate that all the revenues from the sales of by-products could and should be deducted from the cost of manufacturing of MEG. While the Commission acknowledges that the company booked the revenues from the sales of the by-products in its audited financial accounts under revenues from other services, the Commission cannot overlook the fact that the company has failed to disclose the volumes of the by-products that were produced and sold during the investigation period. LCLA started production of MEG 2 months before the investigation period and therefore generated by-products during that period as well. Only the volume of the by-products generated during the investigation period should be deducted from the cost of production of MEG during the investigation period, and the relevant information is missing in the file. Furthermore, the company has provided no details regarding the accounting rules of the inventories of by-products. While LCLA claimed that it was not able to isolate the manufacturing cost of by-products exclusively, the Commission notes that these by-products are generated at a certain moment in the manufacturing process of MEG and therefore an allocation per volume of product generated would be possible, as was possible for other MEG producers. Furthermore, the Commission cannot accept simple assertions that such allocation is not possible, without the company making any efforts to provide a reasonable allocation methodology, while other companies did. The Commission further noted that there was an issue with the cost and corresponding price of the by-products. Given the confidentiality of this claim, further details of the Commission's assessment have been disclosed to LCLA in its specific disclosure as it includes business confidential information. The claim was, therefore, rejected.

([11]) Commission Implementing Regulation (EU) 2018/931 of 28 June 2018 imposing a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 165, 2.7.2018, p. 13).

(97) In their comments following final disclosure, MEGlobal Americas reiterated their claim in recital (91). MEGlobal Americans claimed that the distinction between product control numbers A and B was not pertinent for MEG produced and sold by MEGlobal Americas as type B was not produced on purpose.

(98) MEGlobal Americas reported sales of product type A and B on the domestic market and of product type A on the export market. The fact that MEGlobal Americas did not produce type B on purpose is irrelevant. As explained in recital (92) the calculation to establish the normal value takes into account the product control number in order to compare types of MEG that are as similar as possible. Therefore, the claim was rejected.

(99) MEGlobal Americas also reiterated their claim stated in recital (93) without providing any new relevant information in this regard.

(100) For the reasons explained in recital (94) this claim was rejected.

(101) In their comments following final disclosure, LCLA submitted the missing information described in recital (96). The information submitted regarding the volume of by-products generated during the investigation period was in line with the information submitted by other parties and it was considered to be reliable. The Commission therefore adjusted downward the cost of production of MEG with the volume of the by-products generated during the investigation period multiplied by the unit selling price of the by-products sold during the investigation period that was cross-checked during the remote cross-check. Furthermore, the total value of sales of by-products was consistent with the audited accounts. The decrease of the cost of production increased the volume of profitable sales on the domestic market during the ordinary course of trade test but they were still less than 80 % of all domestic sales. Therefore, the normal value was calculated as a weighted average of the profitable sales only.

(102) In the absence of any other comments concerning the determination of normal value for the US exporting producers, the Commission confirmed its conclusions set out in recitals (108) to (115) of the provisional Regulation.

3.2.2. *Export price*

(103) The Commission received comments from MEGlobal Americas and LCLA.

(104) MEGlobal Americas argued that the prices of MEG charged between the related companies were reliable as they were based on data from a third party and they were market-based and must therefore be used in the determination of the dumping margin.

(105) The prices charged by MEGlobal Americas to the related company MEGlobal International FZE ('MEGlobal International') and by the latter to the related company MEGlobal Europe are not reliable as they are affected by the association of these companies in line with Article 2(9) of the basic Regulation. Further details of the Commission's assessment have been disclosed to MEGlobal Americas in its specific disclosure as it includes business confidential information. Therefore, the claim was rejected.

(106) MEGlobal Americas also claimed that the Commission was not required to construct the export price for the sale of MEGlobal Europe to the related processor Equipolymers GmbH ('Equipolymers') and it should have examined the reliability of these sales. It referred in this regard to the methodology used in the anti-dumping proceeding concerning imports of polyethylene terephthalate from India ([12]) where the Commission found that the prices charged to a related company were in line with the prices charged to unrelated customers for the same product types during the review investigation period and it concluded that the prices charged to the related company were reliable and could be used for calculating the export price. MEGlobal Americas further claimed that had the Commission requested information on sales between MEGlobal Europe and Equipolymers, it would have found that these prices were similar to those made to unrelated customers. In addition, it was claimed that the Commission did not base its findings on actual information regarding transactions between MEGlobal Europe and Equipolymers. Moreover, it was claimed that the construction of the export price on the basis of the cost of production of PET was

([12]) Council Regulation (EC) No 1292/2007 of 30 October 2007 imposing a definitive anti-dumping duty on imports of polyethylene terephthalate (PET) film originating in India following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and terminating a partial interim review of such imports pursuant to Article 11(3) of Regulation (EC) No 384/96, recital (22) (OJ L 288, 6.11.2007, p. 1).

not reasonable as PET production is complex and the price of an input, such as MEG, cannot be deducted from the cost of other inputs. It further claimed that the methodology used by the Commission was not consistent with applicable accounting rules and principles, given that the cost of production would depend on the grade of PET produced. Finally, MEGlobal Americas also raised an additional point regarding Equipolymers in the confidential version of its submission. The Commission's assessment of this part of the claim have been disclosed to MEGlobal Americas in its specific disclosure as it includes business confidential information.

(107) The Commission noted that this case is different from the precedent quoted by the MEGlobal Americas. As a matter of fact, the Commission found during the current investigation that the price of MEGlobal Europe to unrelated customers was not in line with the price of MEGlobal Europe to related customers. In addition, the Commission did ask for information from Equipolymers that it considered relevant for the investigation. Indeed, Equipolymers submitted a reply to Annex I for companies related to an exporting producer, and nothing impeded Equipolymers from submitting additional information in the course of the investigation that it considered necessary to substantiate the claims it sought to make. Furthermore, during the investigation, MEGlobal Americas asked the Commission not to use the prices between MEGlobal Europe and Equipolymers as a basis for the determination of the export prices as they were related prices, which is in contradiction with MEGlobal Europe's claim that the sales between MEGlobal Europe and Equipolymers are made at prices similar to those made to unrelated customers. Moreover, as the Commission established the export price starting from the total cost of production of PET during the investigation period as described in recital (121) of the provisional Regulation and isolated the total cost of MEG in the total cost of production of PET, the sales transaction listing of the purchases of MEG by Equipolymers from MEGlobal Europe was not relevant for this calculation. Regarding the claim that the PET production was complex and the price of an input, such as MEG, could not be isolated from the cost of other inputs, the Commission considered that it is factually wrong as in fact Equipolymers submitted the cost of MEG as well as other inputs used in the manufacturing of PET. Concerning the claim that the methodology used by the Commission was not consistent with applicable accounting rules and principles, given that the cost of production would depend on the grade of PET produced, it is unclear what the link is between the applicable accounting rules and principles and the grade of PET produced. Therefore, pursuant to Article 2(9) the Commission had to construct the export price on any reasonable basis.

(108) Similarly to SABIC, MEGlobal Americas also claimed that the profit margin used for the construction of the export price was not reasonable and the Commission should have relied on the profit ratio provided by MEGlobal Europe. It further stated that the Commission did not establish an adequate link between the alleged confidentiality of data relating to unrelated imports, as it reported that the level of cooperation of unrelated importers/traders was high, and the use of a profit margin relating to a different chemical product, imported from a different country and for a different period. It was further claimed that Article 2(9) of the basic Regulation does not allow the Commission to construct the export price based on data relating to a different proceeding.

(109) For the reasons explained in recital (63), the Commission does not consider the profit margin of a related importer reasonable as it is affected by the association with the companies from which it purchased MEG. Therefore, pursuant to Article 2(9) of the basic Regulation, it is considered appropriate to use a reasonable profit margin independent of the actual profit resulting from the transfer price in order to avoid any distorting effects that may arise from the transfer price. The level of cooperation described in recital (283) of the provisional Regulation refers to the size of the volume of imports of the two cooperating unrelated importers as compared to the total imports during the investigation period and has nothing to do with the confidentiality reasons regarding the data of these two companies, which is why the Commission resorted to the profit margin used in a previous proceeding, as explained in recital (97) of the provisional Regulation. This fact remains unchanged at this stage, following the Commissions' unsuccessful attempt to organise RCCs with both companies as explained in recital (8). Finally, Article 2(9) of the basic Regulation allows the Commission to construct the export price on any reasonable basis, and therefore does not prohibit the use data from a previous proceeding. Furthermore, the Commission notes that MEGlobal Americas stated that the selling price between MEGlobal Americas and MEGlobal International was based on a certain formula which included an allegedly at arm's length profit which was much higher than the profit of unrelated importers used by the Commission as stated in recital (62) and (108). Therefore, in the absence of any alternative data on file, the Commission decided to use the profit margin used at the provisional stage as described in recital (97) of the provisional Regulation.

(110) Finally, MEGlobal Americas argued that MEGlobal Europe must be considered as the export department of MEGlobal Americas, as it functioned entirely as part of MEGlobal's worldwide operations, including that of MEGlobal Americas, and therefore, the Commission acted in breach of Article 2(9) of the basic Regulation, when it considered costs other than the actual selling expenses when constructing the export price.

(111) The Commission notes that this claim was not raised before the imposition of provisional measures. However, the Commission examined this claim and noted that MEGlobal Europe is located in Switzerland and that a large proportion of its purchases of MEG were supplied from a different company located in the Union and not from MEGlobal Americas. Furthermore, this claim plainly contradicts what MEGlobal Americas declared in its submissions where not only it stated that MEGlobal Americas only made several shipments to the Union during the investigation period, but it also characterised the shipments from MEGlobal Americas to MEGlobal Europe as 'exceptional'. The investigation and the statements of the company clearly show that MEGlobal Europe acts as a distribution and supply centre whose main purpose is to source MEG for its downstream activities and not to market and export the MEG produced by MEGlobal Americas. MEGlobal Europe cannot therefore be considered as the export department of MEGlobal Americas. Therefore, the claim is rejected.

(112) LCLA asked the Commission to treat LCLA and Mitsubishi Corp as unrelated parties. LCLA acknowledged that the Commission would conduct further investigation into this association and compensatory arrangements between them, as stated in recital (101) ([13]) of the provisional Regulation but reiterated that the allegation from the complainant concerning a relationship between LCLA and Mitsubishi Corp is unsubstantiated as no association or compensatory arrangement exists between the two.

(113) The Commission further investigated the existence of the alleged compensatory arrangements between LCLA and Mitsubishi Corp. While the investigation indicated that there was an agreement under which LCLA applied a specific pricing policy for certain sales transactions with Mitsubishi Corp on the domestic market, the investigation did not reveal at this stage such a practice on the Union market. Further details of the Commission's assessment have been disclosed to LCLA in its specific disclosure as it includes business confidential information.

(114) In their comments following final disclosure, MEGlobal Americas reiterated their claims in recitals (104), (106), (108) and (110). It mainly disagreed with the Commission's conclusions described in recitals (105), (107), (109) and (111) respectively.

(115) In their comments following final disclosure, the complainant reiterated their claim that the Commission should investigate further the possible compensatory arrangements between LCLA and Mitsubishi Corp without providing any relevant new evidence in this regard, and in particular evidence showing how those alleged compensatory agreements would affect prices.

(116) For the reasons explained in recital (113), this claim was rejected.

(117) In the absence of any other comments concerning the determination of export price for the US exporting producers, the Commission confirmed its conclusions in recitals (116) to (122) of the provisional Regulation.

3.2.3. *Comparison*

(118) The Commission found that at provisional stage, it did not take into account certain costs related to the construction of the export price for MEGlobal Americas for the sales via a related trader in Dubai. Therefore, an adjustment under Article 2(10)(i) was made for sales through this related trading company. It was found based on the information provided in the questionnaire reply and during the RCC that the functions of the trader in Dubai were similar to those of an agent working on a commission basis. Further details of the Commission's assessment have been disclosed to MEGlobal Americas in its specific disclosure as it includes business confidential information. The company bore the responsibility of the selling process and received a mark-up for its services. The adjustment is based on the SG&A of the trading company and a profit margin of 6,89 % as described in recital (97) of the

([13]) Recitals (98) to (101) of the provisional Regulation regarding the determination of the export price for LCLA were mistakenly placed in Section 3.1.3 (Kingdom of Saudi Arabia export price) when they relate to the determination of the export price for the United States of America (Section 3.2.3).

provisional Regulation. This profit margin was considered reasonable in the absence of any other information as explained in recital (109).

3.2.4. *Dumping margins*

(119) As described in recital (101) following the submission of the missing information, the normal value for one exporting producer was revised.

(120) Accordingly, the definitive dumping margins, expressed as a percentage of the CIF Union frontier, duty unpaid, are as follows:

| Company | Definitive dumping margin (%) |
|---|---|
| Lotte Chemical Louisiana LLC | 3,0 |
| MEGlobal Americas Inc. | 46,7 |

## 4. **INJURY**

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

(121) After the disclosure of the provisional findings, SABIC reiterated its comment in recitals (135) and (139) of the provisional Regulation that entities related to Union producers have been importing MEG from the KSA and argued that the fact that related companies continued to import MEG from the KSA after the initiation of the investigation was a sign that the Union producers did not intend to meet users' needs.

(122) SABIC's claim is purely speculative and is not backed by any supporting evidence. As described in recital (136) of the provisional Regulation, these related companies imported very marginal volumes of MEG from the KSA during the investigation period and therefore no meaningful conclusion could be drawn in this regard. Furthermore, as stated in recital (139) of the provisional Regulation, this specific Union producer did not cooperate and anyway it was a very small producer. Therefore, the claim was rejected.

(123) SABIC also claimed that in the provisional Regulation the Commission stated that the data for non-cooperating Union producers was calculated based on market intelligence and these data should be shared with the interested parties.

(124) As described in recital (133) of the provisional Regulation, the data for the non-cooperating Union producers was estimated by the complainant based on market intelligence. The Commission would like to clarify that part of the market intelligence data comes from data estimated by Wood Mackenzie Chemicals Global Supply Demand Analytic Service ('Wood Mackenzie') which is copyrighted but was in any event made available to interested parties as part of the open file, after the necessary permission was obtained. Indeed, on 29 April the complainant received the agreement from Wood Mackenzie to disclose the total MEG production and MEG total consumption on EU-28 ([14]) basis during the period 2017 to 2020, which was placed in the non-confidential file of the investigation ([15]). The small difference between the production volume reported in Table 4 of the provisional Regulation and the production volume estimated by Wood Mackenzie came from the fact that the production volume of the sampled Union producers was based on real data and not estimation. Nevertheless, the two sets of data show the same decreasing trend. The data for consumption estimated by Wood Mackenzie is slightly higher than the respective data reported in Table 1 of the provisional Regulation, as the data of Wood Mackenzie is based on EU-28 while Table 1 is based on data for EU-27.

(125) In their comments following final disclosure, SABIC reiterated their claim stated in recital (121) without providing any new elements in this regard.

([14]) There is no production of MEG in UK.
([15]) t21.003640.

(126) For the reasons explained in recital (122) this claim was rejected.

(127) In the absence of any other comments with respect to the definition of the Union industry and the Union production, the Commission confirmed its conclusions set out in recitals (132) to (140) of the provisional Regulation.

### 4.2. **Determination of the relevant Union market**

(128) SABIC referred to the swap agreement described in recital (145) of the provisional Regulation and asked the Commission to provide more information on this issue alleging that if the agreement was not concluded based on market conditions, it must have had an impact on the performance of the concerned Union producer.

(129) The details of the swap agreement include business confidential information that the Commission cannot disclose. In any event, SABIC has not specified what additional information the Commission should disclose in this regard. As explained in recital (145) of the provisional Regulation, the Commission assessed whether the trend of the profitability or the finding that the Union industry suffered material injury would have been different if the sales under the swap agreement were included in the assessment of the microeconomic indicators and concluded that such inclusion would have no impact on the findings. Therefore, the claim was rejected.

(130) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (141) to (147) of the provisional Regulation.

### 4.3. **Union consumption**

(131) SABIC claimed that the analysis of the Union consumption was deficient as the Commission did not explain why the consumption decreased during the period considered.

(132) As described in recital (150) of the provisional Regulation, the free market consumption in the Union was fairly stable, decreasing by barely 1 % over the period considered. The captive market is made of the captive sales described in recital (180) of the provisional Regulation which were mainly sales to the coolant business. As explained in recital (238) of the provisional Regulation, the sales of MEG to the coolant business decreased in the investigation period due to the COVID-19 pandemic. The claim was therefore rejected.

(133) In their comments following final disclosure, SABIC reiterated their claim in recital (131). It further argued that the explanations provided in recital (132) were not supported by the data reported in the provisional Regulation as the volume of captive market sales started declining in 2018 and the most significant decline in absolute terms took place in 2019, prior to the start of the COVID-19 pandemic. It further argued that although the captive market was smaller than that of the free market it was not insignificant and therefore the decline in the sales on the captive market had an impact on the performance of Union producers. In addition, SABIC argued that the similar trends in the decline of captive and free market sales over the period considered raised questions as the Commission confirmed that the decline in sales of the captive market was not caused by imports from the KSA and the US.

(134) The Commission disagreed with these claims. As stated in recital (226) of the provisional Regulation, the captive sales represented only 12,6 % of the Union industry production. Therefore, as stated in recital (227) of the provisional Regulation, given the limited size of the captive market, its development did not contribute in any significant manner to, nor can it explain, the deterioration of the Union industry. There was no indication how a market segment that represents only 12,6 % in the production volume could have a higher impact than the market segment that represents 87,4 % of the production volume. Therefore, in this case it was the sales on the free market and not the captive market that had a major impact on the situation of the Union industry.

(135) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (148) to (150) of the provisional Regulation.

### 4.4. **Imports from the countries concerned**

#### 4.4.1. *Cumulative assessment of the effects of imports from the countries concerned*

(136) SABIC and the GKSA reiterated their claim that the effects of the imports from the KSA should not be cumulated with the imports from the US as (1) the imports from the KSA were not dumped on the Union market and (2) that the trends of the imports volume and prices originating in the KSA and the US were different, which demonstrates that the imports from KSA did not compete with the imports from the US, also in view of the fact that the Commission found that the MEG was a commodity and that competition was largely based on price. The GKSA referred in this regard to the Panel Report in *EC – Tube or Pipe Fittings* ([16]) in which according to the GKSA the panel stated that a broadly parallel evolution and a broadly similar volume and price trend might well indicate that imports may appropriately be cumulated.

(137) As explained in recital (152) of the provisional Regulation, Article 3(4) of the basic Regulation stipulates two conditions for the cumulative assessment of the effects of imports from more than one country. The fist condition is that the dumping margin of the imports from each country is more than *de minimis* and that the volume of imports from each country is not negligible. The investigation established that both the imports from the KSA and the US were dumped on the Union market as stated in recitals (89) and (120) and that the volume of imports were clearly not negligible as described in Table 2 of the provisional Regulation and confirmed at definitive stage. Regarding the Panel's reference to the volume and price trends in *EC – Tube or Pipe Fittings*, the Panel actually found that such a trend was an indication for cumulation and not a condition for cumulation. The second condition is that a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Union product. As described in detail in recital (154) of the provisional Regulation, the conditions of competition between the dumped imports from the US and the KSA and between the dumped imports from the countries concerned and the like product were similar and, therefore, this condition was met as well. In particular, the imported products compete fiercely with each other and with the MEG produced in the Union because MEG is a very price sensitive homogeneous commodity, which is sold to similar categories of customers and used in similar applications. The products are also perfectly interchangeable. SABIC or the GKSA did not explain how MEG originating in the KSA would not be like MEG from other sources or the Union. The fact that the trend of the volume of imports from the two countries was not identical does not imply that they are not sold under similar conditions of competition. In fact, the difference in volume trends indicates just the opposite in this case; the market share of the KSA begins to decline exactly when that of US imports takes off, and this happens when US import prices go below KSA import prices. This is the normal effect of competition for a very price sensitive homogeneous commodity like MEG. Therefore, the claim was rejected.

(138) In their comments following final disclosure, the GKSA and SABIC reiterated again its comments regarding cumulation presented in recital (136) without providing any new evidence.

(139) For the reasons explained in recital (137) this claim was rejected.

(140) In the absence of any other comments with respect to this section, the conclusions set out in recitals (151) to (158) of the provisional Regulation were confirmed.

#### 4.4.2. *Volume and market share of the imports from the countries concerned*

(141) In their comments following final disclosure, the GKSA claimed that the analysis of import volume was not based on an objective examination of positive evidence as required under Article 3.1 of ADA nor was there a reasoned and adequate explanation in support of the finding that there was a significant increase in MEG imports from the KSA or from the KSA and the US on a cumulative basis within the meaning of Article 3.2 of ADA. In particular, it was claimed that the volume of MEG imports from the KSA decreased significantly between 2018 and the IP and the cumulated volume of MEG imports from the KSA and the US also decreased in the IP as compared to 2019.

([16]) Panel Report, European Communities – Anti Dumping Duties on Malleable Cast Iron Tube or Pipe Fittings from Brazil, WT/DS219/R, para. 7.242.

(142) The Commission disagreed with these claims. Firstly, as explained in recital (156) of the provisional Regulation, the imports from the US and the KSA were examined cumulatively for the purpose of the injury determination as all the criteria set out in Article 3(4) of the basic Regulation were met. Furthermore, as explained in recital (161) of the provisional Regulation, the imports from the countries concerned increased by 38 % during the period considered. Furthermore, Table 2 of provisional Regulation shows that the imports from the countries concerned increased year by year between 2017 and 2019. The fact that the imports in the IP decreased as compared to 2019 does not change the fact that during the period considered the imports from the countries concerned increased overall by 38 %.

(143) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (159) to (161) of the provisional Regulation.

4.4.3. *Prices of the imports from the countries concerned and price undercutting*

(144) SABIC and MEGlobal Americas claimed that the Commission should not have used a 'constructed CIF value' for the undercutting and injury margin calculations, but the actual CIF value reported by them.

(145) The Commission rejected this claim. As the export price for SABIC and MEGlobal Americas was adjusted pursuant to Article 2(9) of the basic Regulation, the Commission established the 'constructed CIF value' as the invoice value to the first independent customer, less allowances to the CIF point, less the SG&A and profit margin deducted from the export price under Article 2(9) of the basic Regulation for the traders/importers located in the Union. As Article 2(9) of the basic Regulation refers to the export price, the Commission applies by analogy the provisions of this Article for calculating the constructed CIF price to compare it with the Union price.

(146) In addition, at provisional stage the Commission incorrectly deducted the SG&A and profit margin for the traders/importers located outside the Union when establishing the constructed CIF for MEGlobal Americas. This was corrected accordingly. The findings of no undercutting by the imports from US at provisional stage were not changed by this revision.

(147) SABIC also claimed that it did not understand why the Commission was unable to provide them with their own actual prices in the undercutting and injury margin calculations but only in ranges.

(148) The export volume and prices used in the calculation of the undercutting and injury margins of SABIC included as well the sales made through the related joint ventures ExxonMobil and SPDC/Mitsubishi. For reasons of confidentiality and in accordance with Article 19 of the basic Regulation, the Commission had to disclose the total volume and prices in ranges as it would have been possible for SABIC to reconstruct confidential sales data of the joint ventures.

(149) SABIC and MEGlobal Americas also stated that they disagreed with the Commission's conclusion in recital (168) of the provisional Regulation as, according to them, prices of MEG were set by Union producers and users and not exporters and that the European Contract Price ('ECP') was determined upon negotiations between Union producers and their customers. SABIC and MEGlobal Americas also stated that the Commission's conclusions in recital (243) of provisional Regulation that the US and Saudi exporters, even if they linked their selling price on the Union market to the ECP, depressed the selling price of MEG by increasing the discount offered to the buyers, did not apply to their sales of MEG and that price changes were only the consequence of the fluctuation of the ECP.

(150) SABIC and MEGlobal Americas seem to imply that the MEG market in the Union is somehow split between Union producers and exporters and there is no competition between them. SABIC and MEGlobal Americas fail to recognise that even if only the Union producers participate in the surveys with the consultancy firms and provide them with the necessary information regarding their selling contracts for setting up the ECP, when the Union producers negotiate the price on the Union market with their customers, the competition with the exporters has a bearing on the price negotiations. The Union producers compete with the exporters, importers and traders as users can buy MEG from any of them. The pressure exercised by the exporters from the countries concerned on the

Union market caused the Union producers to decrease their selling prices in order to keep at least part of their market share as stated in recital (188) to (190) and (213) of the provisional Regulation. As all types of sellers are linking their selling price to the ECP, the price pressure is made through the discount as explained in detail in recital (213). Therefore, the claim was rejected.

(151) In their comments following final disclosure, the GKSA stated that the Commission did not provide an adequate explanation for the use of 'constructed CIF value' for the undercutting and injury margin calculations other than that it applied by analogy Article 2(9) of the basic Regulation. The GKSA, SABIC and MEGlobal Americas stated that Article 2(9) of the basic Regulation concerned the determination of the export price for the determination of the dumping margin and not for the injury margin and asked the Commission to base its assessment of the price effects of the imports originating in the KSA on the actual prices of these imports.

(152) As regards the calculation of undercutting, the Commission considered the point at which imports entered into competition with the products of the Union producers in the Union market, and therefore looked at the purchasing price of the first unrelated party because that party had the choice to source either from the Union industry or from overseas suppliers. In case of export prices to related importers, the methodology as set in Article 2(9) of the basic Regulation was used. The application by analogy of Article 2(9) of the basic Regulation allows the establishment of a price that is fully comparable to the price that is used when examining sales made to unrelated customers and also comparable to the sales price of the Union industry. Therefore, a deduction of SG&A and profit from the resale price to unrelated customers made by the related importer was warranted.

(153) Such a deduction was also needed to allow for an accurate calculation of underselling. The target price of the Union industry was based on its cost of production plus the target profit, without taking into consideration whether products were then sold in the Union to related or unrelated customers and, accordingly did not include any SG&A and profit of related selling entities in the Union either.

(154) The claims were therefore rejected.

(155) In their comments following final disclosure, SABIC reiterated their claim that it followed the ECP and did not set it, that SABIC was a price follower and not price-setter on the Union market as the prices were set by Union producers and users.

(156) As explained in recital (150), the Union producers compete with the exporters, importers and traders as users can buy MEG from any of them. Therefore, when the Union producers negotiate the price on the Union market with their customers, the competition with the exporters has a bearing on the price negotiations. Furthermore, it is recalled that ECP is only one element of the final price and that the competition between parties is based on the discounts applied to the ECP. The claim was therefore rejected.

(157) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (162) to (168) of the provisional Regulation.

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

#### 4.5.1. *General remarks*

(158) SABIC, MEGlobal Americas and GKSA claimed that the assessment of injury and causal link based on a comparison of data for different periods 2017, 2018, 2019 and July 2019–June 2020 (investigation period) did not provide an accurate and unbiased picture of the situation as the year 2019 and the investigation period largely overlapped. GKSA referred in this regard to Appellate Body Report *in Mexico – Anti-Dumping Measures on Rice* ([17]), which found that a comparison of two very similar data sets cannot provide for an 'accurate and unbiased picture' as it did not allow for the establishment of trends determined in an objective manner. Furthermore, it was argued that the

([17]) Appellate Body Report, Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice, WT/DS295/AB/R, para. 183.

comparison was distorted by the seasonal and cyclical nature of MEG sales. Finally, it was claimed that the Commission should have performed a yearly analysis instead of primarily basing its assessment of injury on a comparison of the investigation period and 2017 as the trends have not been linear over the period considered.

(159) The fact that part of the investigation period partially overlapped with 6 months of the last full calendar/financial year did not distort the injury and causal link assessment as this assessment was carried out during the whole period considered as established in recital (68) of the provisional Regulation. Furthermore, the alleged seasonal and cyclical nature of MEG sales is minimised by the fact that the assessment is carried out over full calendar years and the IP includes 12 months as well. Finally, the injury assessment was not mainly based on a comparison of the investigation period and 2017. The Commission took into account the evolution of all macro and microeconomic indicators during the whole period considered. Therefore, the claim was rejected.

(160) SABIC and MEGlobal Americas also argued that the fact that the Commission did not specify in the provisional Regulation that it had verified the data submitted by the complainant for the macroeconomic indicators raised questions regarding the accuracy of this information.

(161) The Commission disagreed with this claim. In the provisional Regulation, the Commission inadvertently omitted to specify that the macro questionnaire reply submitted by the complainant was crossed-checked through an RCC process. Nevertheless, in the non-confidential file of the investigation, SABIC and MEGlobal Americas had access to the non-confidential version of the RCC report that specified that the Commission cross-checked the macro-questionnaire and to the related deficiency letter replies submitted by the complainant. Furthermore, in the provisional Regulation, the Commission identified the verified questionnaire reply of the complainant as source of each table that included macroeconomic indicators.

(162) SABIC and MEGlobal Americas also claimed that the Commission used two different subsets of data to assess macroeconomic and microeconomic indicators and this fact could have led to subjective findings and conclusions and fell short of the high standards imposed by Article 3(2) of the basic Regulation. MEGlobal Americas requested the Commission to base its findings on data either related to the sampled producers or to all Union producers.

(163) When the Union industry is made up of a large number of producers, the Commission needs to sample the Union producers in line with Article 17 of the basic Regulation. However, despite using sampling, the Commission has the obligation to assess the whole Union industry and therefore the macroeconomic indicators are assessed at the level of the whole Union industry. To collect data for the macroeconomic indicators the Commission sent a questionnaire to the complainant which provided the required information. As explained in recital (161), the Commission cross-checked this information in the same manner as it cross-checked the information submitted by the producers. Therefore, the claim was rejected.

(164) In their comments following final disclosure, the GKSA and SABIC reiterated their claim stated in recital (158) without adding any new elements in this regard.

(165) Therefore, the Commission maintains its conclusions stated in recital (159).

(166) Furthermore, the GKSA argued that the Commission did not provide any reasoned and adequate explanation for why the factors that were showing positive trends did not affect the overall conclusion regarding the state of the Union industry. Furthermore, it was claimed that several specific findings regarding the situation of the Union industry cast doubts over the accuracy and objectivity of the analysis.

(167) The Commissions noted that the GKSA did not specify to which factors that showed positive trends or specific findings regarding the situation of the Union industry it was referring. Therefore, the claim was rejected as being unsubstantiated.

(168) Furthermore, the GKSA claimed that the Commission did not provide an adequate explanation why the use of two subsets of data to assess macroeconomic and microeconomic indicators would not compromise the objectiveness of the assessment and the findings.

(169) The Commission noted that the GKSA did not specify why the explanations provided in this regard in recital (163) were not adequate. Therefore, the claim was rejected.

(170) Furthermore, the GKSA and SABIC argued that the Commission did not provide a satisfactory explanation regarding the reliability of the information on the Union producers as a whole other than simply noting that it cross-checked the information.

(171) The Commission disagreed with this claim. As explained in recital (163), the Commission cross-checked this information in the same manner as it cross-checked the information submitted by other parties. This means that the Commission organised a remote-cross check with the complainant as it did with other parties and cross-checked, among other things, the source of the information provided and the calculation methodology used. Therefore, the claim was rejected.

(172) In the absence of any other comments with respect to this section, Commission confirmed its conclusions set out in recitals (169) to (173) of the provisional Regulation.

4.5.2. *Macroeconomic indicators*

(173) SABIC claimed that the Commission was wrong to compare the volume of imports with trends in the Union production in recital (175) of the provisional Regulation, as there was no strict correlation between trends in the volume of imports and production.

(174) The Commission disagrees with this claim. Recital (175) of the provisional regulation states facts. SABIC is not challenging these findings. The claim is therefore dismissed.

(175) SABIC claimed that the Commission did not take into account in the analysis of the growth of the Union industry the increase in sales of other ethylene downstream products.

(176) The scope of this investigation is MEG and not other ethylene downstream products. The alleged growth of other ethylene downstream products have no bearing on the injury assessment of the MEG Union producers. The Commission assessed the impact of the alleged growth of other ethylene downstream products as a cause of material injury to the MEG Union producers in its assessment of causality in recitals (228) to (231) of the provisional Regulation. Therefore, the claim was rejected.

(177) SABIC claimed that the Commission did not explain the higher price on captive sales.

(178) The price of captive sales was higher than the price of free market sales in 2019 and the investigation period. This was due to the Union industry applying lower discounts to the ECP of MEG to its related companies than to unrelated customers.

(179) In the absence of any other comments with respect to the macroeconomic indicators, the Commission confirmed its conclusions set out in recitals (174) to (186) of the provisional Regulation.

4.5.3. *Microeconomic indicators*

(180) SABIC claimed that the Commission failed to take into account that the investments were limited in 2018, when the Union producers were the most profitable, as compared to the investigation period.

(181) As explained in recital (199) the purpose of the investments made by the Union industry was to replace obsolete fixed assets. The fact that the investments in 2018 were low when the Union industry was most profitable only indicates that the Union industry did not need to replace more obsolete fixed assets.

(182) In the absence of any other comments with respect to the microeconomic indicators, the Commission confirmed its conclusions set out in recitals (187) to (201) of the provisional Regulation.

4.5.4. *Conclusion on injury*

(183) SABIC, MEGlobal Americas and CPME argued that the Commission should take into account post-IP data as the ECP of MEG increased post-IP which allegedly led to significant improvements in the profitability of the Union producers and the investigation period was affected by the COVID-19 pandemic and low prices worldwide.

(184) Regarding the injury analysis, the Commission recalls that, as provided in Article 6(1) of the basic Regulation, information relating to a period subsequent to the investigation period shall, normally, not be taken into account. Moreover, there is no information on file confirming that any alleged price increase would lead to improvements in the economic situation of the Union producers or that any post-IP development would be sustainable in time, and not just a temporary development in view of the evolution of the market in the context of the COVID-19 pandemic. Therefore, the claim was rejected.

(185) SABIC claimed that a number of Union MEG producers have integrated ethylene production facilities and therefore the profit margin should not only be considered for MEG, as the Union producers may decide to make all or most of their profits at the ethylene stage and, therefore, the profitability over the integrated value chain must be considered to objectively assess the profitability of integrated Union producers.

(186) This investigation covers MEG and not ethylene. Therefore, the Commissions needs to assess the profitability of MEG and not ethylene. Nevertheless, when assessing the cost of production of MEG, for the Union producers that supplied MEG within a group, the Commission assessed whether the cost of ethylene in the cost of production of MEG was booked in the accounting records at reasonable prices in order not to decrease the profitability of MEG by artificially increasing the cost of ethylene. The investigation revealed that the Union producers accounted the cost of ethylene in the cost of production of MEG at the cost of production of ethylene plus a small margin. Therefore, there was no transfer of profits from MEG to ethylene. The claim was therefore rejected.

(187) In their comments following final disclosure, SABIC reiterated their claim that the prices post-IP increased. It further argued that the increase in prices was not a temporary development and that it submitted evidence in this regard. The evidence mentioned by SABIC was submitted only on a confidential basis. It showed forecasted ECP of MEG up to December 2022. The source of this information is Wood Mackenzie. CPME also reiterated their claim that, post-IP, the ECP for MEG increased. It submitted a chart showing the ECP for MEG between January 2014 and October 2021. It also submitted a chart showing the spread between ECP for MEG and ECP for ethylene. It argued that because of the trend of the ECP for MEG and ethylene the Union industry recovered from the material injury suffered during the investigation period.

(188) As explained in recital (184), as provided in Article 6(1) of the basic Regulation, information relating to a period subsequent to the investigation period shall, normally, not be taken into account. The post-IP information submitted by the parties has no impact on the conclusion that the Union industry suffered material injury during the investigation period.

(189) In their comments following final disclosure, MEGlobal Americas claimed that based on the Commission's findings, the selling price of MEG produced by a certain Union producer was significantly lower than the selling price of an importer, which was in turn lower than the selling price of MEGlobal International. This confirmed that the Union producer was selling its MEG at prices significantly below those of imports of MEG produced by MEGlobal Americas and therefore this Union producer was responsible for the injury it was claiming to be suffering. Furthermore, MEGlobal Americas asked the Commission to confirm that it followed the same approach as the one followed for the construction of the export price for sales to Equipolymers for sale of MEG produced by a particular Union producer when assessing the injury margin and the assessment of material injury.

(190) The Commission noted that MEGlobal Americas misunderstood the analysis provided in the specific disclosure referred to in recital (106). The price MEGlobal Americas referred to in recital (189) was not the selling price of the respective Union producer, but the purchase price of MEGlobal Europe from its related company which received MEG from the Union producer based on a swap agreement as explained in recital (145) of the provisional Regulation. Therefore, these claims were rejected as being unfounded.

(191) In the absence of any other comments with respect to the conclusion on injury, the Commission confirmed its conclusions set out in recitals (202) to (208) of the provisional Regulation.

## 5. CAUSALITY

### 5.1. Effects of the dumped imports

(192) MEGlobal Americas claimed that there is no correlation between the performance of the Union industry and the imports from the US and the KSA as the volume of imports of MEG from the US and the KSA increased by 19,4 % between 2017 and 2018, while the sales volume of the Union producers on the Union market dropped by only 0,12 % of the same period. Furthermore, it was argued that while the imports from the US and the KSA increased linearly between 2017 and 2019, the performance of the Union producers was non-linear. In particular, the price level of the Union producers on the Union market increased by 5 percentage points between 2017 and 2018 before experiencing a decrease during 2019, while the unit production cost remained stable between 2017 and 2019 irrespective of the increase in imports from the US and the KSA.

(193) The Commission disagreed with this claim. The increase of 19,4 % in market share of the countries concerned between 2017 and 2018 was due to an increase in volumes at prices that were not causing material injury to the Union industry. The imports from the US and the KSA did not increase linearly between 2017 and 2019. A linear increase means a growth by a constant amount every year. Between 2017 and 2018 the imports from the countries concerned increased by 93 499 tonnes while between 2018 and 2019 it increased by 128 383 tonnes (37 % more than between 2017 and 2018). In addition, the market share of the imports from the countries concerned increased by 4,6 percentage points between 2017 and 2018 and by 7,7 percentage points between 2018 and 2019. Furthermore, between 2018 and 2019 the market share of the imports from the US increased from 4,6 % to 12,9 %. As explained in recital (212) of the provisional regulation, MEG is a homogenous commodity sold in a very transparent market. Furthermore, the US exporting producers are export-oriented with an increasing production capacity as explained in recital (247) of the provisional Regulation. In these conditions, in order to increase their market share on the Union market, the US exporting producers had to sell MEG on the Union market at a lower price than the Union industry and the Saudi exporting producers. The latter had to follow the price behaviour of the US companies in order to protect their market share on the Union market. The Union producers also had to reduce their prices in order to protect their market share. However, the price pressure was so high that the Union industry lost 7,3 percentage points in market share on the free market. This decrease in selling price, although the unit cost of production was also decreasing between 2018 and 2019, translated into losses between 8,3 % and 10,2 % in 2019 for the Union industry. Furthermore, the unit production cost of the Union industry was not stable between 2017 and 2019 as MEGlobal Americas claims, but oscillated. It first increased by 3 % between 2017 and 2018 and then decreased by 2 % between 2018 and 2019. Therefore, it was in 2019 that the Union industry was driven to set its prices well below costs in order to keep its market share due to the price pressure exerted by the imports from the countries concerned at lower prices. There is thus a clear correlation between the dumped imports and the injury suffered by the Union industry.

(194) In the absence of any other comments with respect to the effect of the dumped imports, the Commission confirmed its conclusions set out in recitals (210) to (213) of the provisional Regulation.

### 5.2. Effects of other factors

(195) MEGlobal Americas argued that the Commission failed to address the effects of factors other than the imports from the US and the KSA that could have contributed to the deterioration of the performance of the Union industry.

(196) The Commission refers to recitals (210) to (253) of the provisional Regulation, which analyse in detail the effects of 13 such factors. Therefore, the claim was rejected.

(197) SABIC claimed that the Commission did not consider the contraction of demand as another cause of injury even though it was expressly listed in Article 3(7) of the basic Regulation.

(198) In the provisional Regulation, the Commission assessed 13 factors other than the dumped imports that could have had an impact on the material injury suffered by the Union industry. Article 3(7) of the basic Regulation mentions contraction in demand. The Commission did not specifically mention consumption among these factors because the consumption on the free market was fairly stable during the period considered. Therefore, the claim was rejected.

(199) SABIC, Arteco, Oxyde, Helm and Tricon claimed that the Commission did not consider the accident of one of the Union producers described in recital (176) of the provisional Regulation as a cause of injury.

(200) As showed in Table 4 of the provisional Regulation, the total production capacity of the Union industry decreased in the investigation period by merely 3 % as compared to 2019. This accident occurred in January 2020, thus in the second half of the investigation period. As explained in the provisional Regulation, the investigation revealed that the situation of the Union industry started to deteriorate significantly already in 2019, so before the accident. This company is also a small producer and therefore, its reduced production volume in 2020 following the accident had a minor impact on the decreasing trend of the production volume of the Union industry in the investigation period.

(201) MEGlobal Americas claimed that the Commission has not carried out a complete non-attribution analysis as it did not assess as other factors of injury: (1) the fact that the cost of production of the Union industry were high; and (2) the cartel among purchasers of ethylene ([18]).

(202) The Commission notes that the two factors highlighted by the MEGlobal Americas contradict each other. On one hand, MEGlobal Americas claimed that the costs of production of the Union industry were high and, on the other hand, that they were low because of the cartel among purchasers of ethylene, and then that both cause injury to the Union industry. Nevertheless, the Commission would like to provide the following clarifications. Firstly, recital (235) of the provisional Regulation assesses whether the higher cost of production of the Union industry was a factor of injury other than the dumped imports. Secondly, the cartel among the purchasers of ethylene had an effect until March 2017. The purpose of the cartel was to keep the price of ethylene lower than the market price. The company has not explained how or provided any evidence on the impact of the cartel on the economic situation of the MEG producers. Therefore, the claim was rejected.

(203) Arteco, Oxyde, Helm and Tricon claimed that the decrease in captive sales, which were not caused by imports, even if low, had an impact on the injury situation of the Union industry.

(204) The Commission disagreed with this claim. The captive sales were mainly sales to the coolant sector. The demand for MEG from the coolant sector decreased due to COVID-19 pandemic as explained in recital (238) of the provisional Regulation. Furthermore, in recital (227) of the provisional Regulation, the Commission concluded that the decrease in captive sales did not contribute in any significant manner nor explain the deterioration of the economic situation of the Union industry.

(205) Arteco, Oxyde, Helm and Tricon also claimed that the imports from Russia and Kuwait below the import price from US and the KSA should not be disregarded as being only marginal as the Commission stated in recital (219) of the provisional Regulation.

(206) It is noted that during the period considered the market share of the imports from the US ranged between 3,8 % and 18 % while the imports from the KSA ranged from 26,1 % to 31,3 %, and on a cumulated basis ranged between 31,6 % and 44,1 %. The market share of the imports from Russia ranged between 0,6 % and 1,3 %, while the market share of the imports from Kuwait ranged between 0 % and 1,0 %. Therefore, even if in certain years during the period considered the import prices from Russia and Kuwait were below the import price from the US and the KSA, in view of their significantly lower market share compared to the imports from the US and KSA, the imports from Russia and the Kuwait could only have had a marginal impact, if any, on the material injury suffered by the Union industry. Therefore, the claim was dismissed.

([18]) Summary of Commission decision, Case AT.40410 – Ethylene, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021AT40410(02)&from=EN

(207) MEGlobal Americas, Arteco, Oxyde, Helm, Tricon and CPME also claimed that although the Commission found that a number of factors such as imports from third countries, the COVID-19 pandemic, the decrease in captive sales, and the accident of one of the Union producers, had caused injury to the Union producers, the Commission failed to ensure that the effects of these causes were not attributed to imports from the US and the KSA pursuant to Article 3(7) of the basic Regulation. It was further argued that this implied that the injury margin determination should not take into account injurious effects caused by factors other than those imports.

(208) The Commission disagreed with this claim. First, in the provisional Regulation in recitals (219), (240) and (227) as well as recital (200) of the current Regulation, the Commission concluded that these factors did not attenuate the causal link between the dumped imports from the countries concerned and the material injury suffered by the Union industry. The main factor was in fact the import from the US and the KSA. Second, the injury margin determination must be done according to the provisions of Article 7(2c) and (2d) of the basic Regulation. Therefore, the Commission established the target price and level of profitability by taking into account the factors listed.

(209) Arteco, Oxyde, Helm and Tricon claimed that the Commission should have considered, as a whole, the commodity and integrated nature of MEG due to several factors that are interlinked and justify the alleged injury situation of the Union industry.

(210) Firstly, it was claimed that the MEG prices were based on formula prices which follow prices in Asia which collapsed over the period considered and, therefore, imports from any individual country were unable to influence the Union market and cause injury, as prices were determined in line with conditions in Asia, not in Europe. This claim was also raised by CPME. Arteco, Oxyde, Helm and Tricon further claimed that the discounts offered by the US and KSA producers have no impact on MEG prices in the Union. They also argued that as the US imports were not undercutting the Union prices, this meant that the discounts offered by the US producers were not above the discounts offered by the Union producers.

(211) Secondly, it was claimed that higher costs of Union producers than the US and KSA producers reduced the ability of the Union producers' to make profits when the MEG prices decreased globally.

(212) Thirdly, it was claimed that due to the declining spread between MEG and ethylene prices, the Union producers chose to divert their production towards more profitable ethylene oxide ('EO') derivatives. This claim was also reiterated by CPME. Furthermore, LCLA wrongly claimed that the Commission acknowledged in recital (229) of the provisional Regulation that the Union industry reduced its production of MEG to produce EO derivatives as they were sold for higher prices than MEG. LCLA also claimed that the Commission should have determined how much production of MEG declined as a result of the Union industry's decision to focus on EO derivatives and assessed whether this figure correlated with the increase in production volume of EO. Arteco, Oxyde, Helm, Tricon and CPME also claimed that there was no evidence in the file that the Union producers have access to enough EO to manufacture both MEG and other EO derivatives. It was further argued that producers have limited suppliers for the ethylene that they need to allocate to the manufacture of different products and that bottlenecks were further exacerbated by the volumes of ethylene and EO sold on the free market, which were thus no longer available for the processing of downstream products such as MEG. It was further stated that in 2019 and 2020 the Union MEG producers used their EO production capacity mostly and increasingly for the production of EO derivatives other than MEG. Arteco, Oxyde, Helm and Tricon claimed that the planned capacity increases for the production of EO did not demonstrate that the Union producers were committed to manufacturing MEG. In fact it illustrated that the overall ethylene and EO supply chain was not affected by injury, but by a deliberate choice to focus on the production and sales of EO and its derivatives other than MEG.

(213) At the outset, the Commission notes that the interested parties are contradicting themselves in their argument concerning the prices of MEG on the Union market. On one hand SABIC and MEGlobal Americas stated that the prices on the Union market were set up by the Union producers as described in recital (149). On the other hand, Arteco, Oxyde, Helm and Tricon claimed that the prices on the Union market were determined in line with the conditions in Asia and not in Europe. As a general rule, the market prices are set up based on the supply and demand on that market. Due to arbitration, the prices on different markets such as European or Asian markets align themselves to a certain extent. The selling price on the Union market for MEG is set up based on ECP minus a discount. As the discounts can range from 13 % to 20 %, which are significant for a homogenous commodity like

MEG, they play a significant role in the final price of MEG on the Union market. Therefore, the level of ECP tells only part of the story of the price levels on the Union market and the discounts applied by the sellers to the ECP of MEG is the key element in the price pressure exercised by the exporters on the Union market. The discounts are influenced by the competition on the Union market and are not linked to the level of ECP or the prices in Asia. While the level of ECP is public, the discounts used by the sellers are confidential. The investigation revealed that the discounts differ from one seller to the other and that the sellers apply different discounts to different customers. Furthermore, for certain exporters the levels of discount have increased in 2020 as compared to 2019. In addition, the fact that the US imports are not undercutting the Union producers does not mean that the discounts offered by the US producers were not above the discounts offered by the Union producers as the parties claim. The prices of the Union industry are loss-making prices as they were dragged down by the import prices from the countries concerned, which in turn were caused by higher discounts.

(214) The Commission stated in the provisional Regulation that the prices of ethylene in the Union are higher than in the KSA or US because of different raw materials used to manufacture ethylene. However, the price difference for ethylene is not the key element in the deterioration of the financial situation of the Union industry. While the decrease in the ECP of MEG reduced part of the profitability of the Union industry, the price pressure exercised by the exporting producers at dumped prices, and who increased their discounts on the Union market, forced the Union industry to increase their discounts as well, leading to price suppression as found in recital (203) of the provisional Regulation. While indeed the ECP for MEG decreased more than the ethylene price and there was a reduction in the margin between ECP for MEG and ethylene, which explains part of the loss in profitability of the Union industry, in a transparent market such as the MEG market, on which all players are linking the selling price to the EPC, the competition takes place at the level of the discounts applied to the ECP. While the level of the ECP affects all parties, even if the ECP of MEG increases, as long as the exporters from the countries concerned continue to sell on the Union market at dumped prices with higher discounts than the Union industry, the Union producers will continue to lose market share unless they set their prices, through the discount, at the same level as the injurious prices with which they compete, which are below their cost of production.

(215) The parties have not submitted any evidence, apart from allegations and speculations, that in order for the Union industry to increase the production of EO derivatives, it needed to decrease the production of MEG. Indeed, it is not excluded that some of the MEG Union producers increased their production of EO derivatives and, therefore, the consumption of EO to manufacture EO derivatives increased, but this does not mean that this increase was possible only if the MEG production was decreased in parallel. The claim that the Union MEG producers had limited supply of ethylene was unsubstantiated. Some of the Union producers are manufacturing ethylene, they also sell ethylene to other unrelated parties and the sampled MEG Union producers are also connected to a pipeline system ([19]) for transporting ethylene between Antwerp and Rotterdam, the two largest port and industrial complexes in Europe. Furthermore, the MEG producers are selling EO only in very small volumes as EO is a flammable gas and, therefore, transporting it is dangerous. As explained in the provisional Regulation, the Union industry remains committed to produce MEG in the Union. Despite significant losses of between 8,3 % and 10,2 % in 2019 and between 10,8 % and 13,2 % in the IP, the Union industry still used 65,6 % and 63,8 % of its MEG production capacity in 2019 and the IP respectively when it could have stopped production and focus on other EO derivatives as the parties claimed. Furthermore, the Commission has never acknowledged that the Union industry reduced its production of MEG to produce EO derivatives as they were sold for higher prices than MEG in recital (229) or any other recital in the provisional Regulation, as LCLA stated. In fact, the Commission stated in recital (229) of the provisional Regulation that the Union industry was forced to reduce the production of MEG as its selling price was significantly below the cost of production due to the price pressure exercised by the imports from the countries concerned. The investigation has not revealed any shortages for the main raw material, ethylene, on the side of the Union industry and LCLA has not submitted any evidence that, in order for the Union industry to increase the production of ethylene oxide derivatives, it had to decrease the production of MEG. Therefore, whether the Union industry increased the production of ethylene oxide derivatives has no bearing on this investigation as there is no evidence to show that the only way for the Union industry to achieve such increase was to decrease the volume of MEG. Furthermore, the fact that the Union producers are increasing the production capacities for other products, does not mean that they do not intend to manufacture MEG anymore. The current investigation does not cover the

([19]) https://argkg.com/pipeline-network/

whole ethylene and ethylene oxide supply chain, but only MEG. Therefore, the Commission is not in a position to comment on Arteco's claim whether the overall ethylene and ethylene oxide supply chain is affected by injury. In any event, the investigation clearly established that the Union industry reduced the production of MEG as of 2019 because of the deteriorating conditions on the MEG market caused by the surge of imports from the countries concerned at low prices.

(216) Arteco, Oxyde, Helm also argued that post-IP imports from other countries such as Kuwait, China, Japan, Singapore and Taiwan at low prices increased and therefore the imposition of anti-dumping measures risked displacing the imports from the US and the KSA without any benefit for the Union producers.

(217) The Commission disagreed with this claim. The information submitted by Arteco shows that the import prices from China, Singapore and Taiwan are higher than the import prices from the US and the KSA post-IP. Furthermore, there is no evidence in the file indicating that these imports are made at dumped prices and are causing injury to the Union industry.

(218) Arteco, Oxyde, Helm and Tricon claimed that based on market consultants, China remained the top recipient of US MEG and therefore the Commission was only speculating when stating in recital (247) of the provisional Regulation that the Chinese MEG industry was also increasing production capacity with the aim of becoming self-sufficient and therefore the US producers were likely to continue their interest in the Union market. Arteco further claimed that Turkey had in fact became an important destination for the US exporters.

(219) The Commission notes first that it is the claim addressed in recital (247) of the provisional Regulation that was pure speculation, though in the submissions it was presented as a certainty. The Commission's reply however was indeed more cautious as it said 'it was likely' (meaning there is no certainty) and offered some evidence to support this likelihood. The document submitted by Arteco regarding Turkey also states that in 2020 the Chinese MEG capacity increased by nearly 30 % while in 2021 it was expected to rise by more than 40 %. Furthermore, by 2023, the Chinese MEG capacity was expected to be more than twice the level of 2020. This clearly shows that as stated in recital (247) of the provisional Regulation, the Chinese MEG producers are increasing their production capacity, which means that they will become less dependent on imports. The fact that the US exporting producers have increased their exports to Turkey shows that the US exporting producers are continuously in search of other markets to replace the demand of imports from China. It is recalled that as stated in recital (247) of the provisional Regulation, the US companies are export-oriented with increasing capacities. The new US companies that started production in the last years are large companies with highly significant production capacities between 700 thousand and 1 million tonnes per year ([20]), while the total production capacity of the Union industry is 1,4 million tonnes. Therefore, the claim was rejected.

(220) Arteco, Oxyde and Helm claimed that the increase in PET imports must be taken into account as a factor that attenuated the causal link between the dumped imports and the injury suffered by the Union industry.

(221) As described in Table 13 of the provisional Regulation, the imports of PET in the Union increased between 2017 and 2019 and then it decreased in the IP. The MEG consumption on the free market followed the same trend. Over the period considered the PET imports increased by 13 %, however the free market consumption of MEG barely decreased by 1 %. The situation of the Union industry did not deteriorate because the demand of MEG decreased, but because of the surge of dumped imports at low prices. Therefore, the claim was rejected.

([20]) https://www.icis.com/explore/resources/news/2021/07/26/10666951/exxonmobil-sabic-jv-mechanically-completes-pe-eg-units-at-us-site https://www.spglobal.com/platts/en/market-insights/latest-news/petrochemicals/030421-factbox-meglobal-restarts-texas-meg-unit-tpc-expects-longer-restart-timeline http://www.mrcplast.com/news-news_open-358207.html

(222) Arteco, Oxyde and Helm claimed that as the production of MEG generates by-products such as diethylene glycol ('DEG') and triethylene glycol ('TEG'), these by-products must be taken into account to determine the overall profitability of the MEG production. Furthermore, Arteco claimed that the fact that the prices for these by-products decreased in parallel to MEG was further evidence that that the prices of these products followed global trends and were not the result of injurious dumping.

(223) The product concerned is MEG and, therefore, the Commission assessed profitability with respect to MEG only. As this investigation covers MEG only, the Commission did not assess the price trend of the by-products. Furthermore, as explained in recital (213), when assessing the price of MEG, it is not sufficient to look only at the trend of ECP. The discount applied to the ECP plays a significant role in the price pressure exercised by the exporters on the Union market and the level of discount is not linked to any global trend. Therefore, the claim was rejected.

(224) CPME also claimed that the Commission has not properly examined the effects of the self-inflicted injury that the imports from the KSA by companies related to the Union producers as well as that one Union producer contacted SABIC to import MEG have caused to the Union industry.

(225) The Commission disagreed with this claim. As described in recital (136) of the provisional Regulation, the related companies to the Union producers imported very marginal volumes of MEG from the KSA during the investigation period. In addition, as described in recital (251) of provisional regulation, no agreement has been reached between SABIC and the Union producer. As the respective MEG Union producer has not purchased any MEG from SABIC during the period considered, there cannot be any self-inflicted injury. A mere discussion cannot cause injury.

(226) CPME claimed that the Commission underestimated the impact of the COVID-19 pandemic on the situation of the Union industry by stating that the situation of the Union industry deteriorated before the COVID-19 pandemic. CPME claimed that the poor performance of the Union industry in 2019 could be explained by the significant drop in prices at the global level. Furthermore, CPME also claimed that the MEG Union producers' profit margins decreased due to a decrease in the Union PET producers' demand of MEG. LCLA also claimed that the Commission wrongfully dismissed the effect of the COVID-19 pandemic for three reasons. Firstly, because the Commission did not assess the injurious effect of COVID-19 on the Union industry before considering that it was not major. LCLA referred in this regard to the WTO Appellate Body Report in *US – Hot-Rolled Steel* ([21]) which stated that the assessment of the injurious effect of other factors required a satisfactory explanation of the nature and extent of the injurious effect of the other factors. Secondly, LCLA claimed that the appropriate period to assess the impact of COVID-19 pandemic was the comparison between 2019 and the investigation period and not 2017 and the investigation period as such an endpoint-to-endpoint comparison would not be informative concerning the situation of the Union industry immediately preceding the outbreak of the COVID-19 pandemic, or the effects that followed. In that case there was a positive link between the decline in consumption driven by COVID-19 and the decline in the economic situation of the Union industry during the investigation period. Thirdly, LCLA claimed that absent COVID-19 pandemic, the Union industry might have been able to improve its economic situation. Therefore, LCLA argued that the Commission wrongfully concluded that COVID-19 pandemic was not a major cause of the material injury suffered by the Union industry.

(227) The Commission disagreed with these claims. As described in recital (238) of the provisional Regulation, the investigation revealed that the situation of the Union industry started to deteriorate significantly already in 2019, well before the COVID-19 pandemic started in the Union in early 2020. In 2019 the Union industry was already lossmaking. This happened in an environment when the consumption was increasing – between 2017 and 2019 – and in parallel with an increase of the market share of the imports from the countries concerned from 31,6 % to 43,6 % coupled with a 25 % decrease in their import prices during the same period. Indeed, the increase in market share is based on low prices. As MEG is a homogenous commodity, the easiest way for the exporting producers to gain market share on the Union market was to sell at lower prices than the Union industry. The Union industry reduced its production volume not because of lack of demand but because it could not sell at such lower prices following the price pressure from the imports from the US and the KSA. Furthermore, as extensively explained, the discount applied to the ECP of MEG by the seller is the element that created the price pressure on the Union market.

([21]) WTO Appellate Body Report, US – Hot-Rolled Steel, paras. 223 and 226.

LCLA simply speculates without any basis when it claims that absent the COVID-19 pandemic, the Union industry might have been able to improve its economic situation. Finally, it is recalled that the investigation period covered the period from 1 July 2019 to 30 June 2020. Therefore, the effects of the COVID-19 pandemic, which hit the Union in the second quarter of 2020, affected around 3 months of the investigation period. On the basis of the above, it is not excluded that the COVID-19 pandemic had a certain impact on the situation of the Union industry at the end of the investigation period, it was clearly not the major cause of material injury suffered by the Union industry or able to attenuate the causal link.

(228) In their comments following final disclosure, SABIC and Tricon stated that they disagreed with the Commission's analysis on causation in recitals (192) to (227) and recitals (214) to (256) of the provisional Regulation. SABIC reiterated their claim that there was no correlation between the performance of the Union industry and the imports from the KSA and the US as well as no correlation between the volume of imports and the negative effects on domestic prices without providing any new arguments in this regard. Tricon also reiterated some of the arguments already assessed by the Commission above. However, no new pertinent arguments were brought forward in this regard.

(229) In the absence of any other comments with respect to the conclusions in this section, the Commission confirmed its conclusions set out in recitals (214) to (256) of the provisional Regulation.

## 6. **LEVEL OF MEASURES**

### 6.1. **Examination of the margin adequate to remove the injury to the Union industry**

(230) MEGlobal Americas, SABIC, LCLA claimed that profit margin used by the Commission in the calculation of the non-injurious price was too high for a commodity product and therefore the Commission should use the 6 % minimum profit ratio set forth in Article 7(2c) of the basic Regulation. Furthermore, it was claimed that the Commission failed to examine the impact of the ethylene purchasers' cartel on the profitability of the Union industry. LCLA claimed that the profits in 2017–18 did not represent the level of profitability to be expected under normal conditions of competition as MEG prices were abnormally high during those years due to a worldwide shortage of MEG, in particular in China, while the cost of production was at normal levels thus resulting in high profits.

(231) The profit margin used for the calculation of the non-injurious price was the average of the profit margin of the sampled Union producers registered in 2017 and 2018 before the surge of the dumped imports in line with Article 7(2c) of the basic Regulation. Neither of the sampled MEG Union producers were part of the ethylene purchasers' cartel ([22]). Furthermore, the infringement took place between 26 December 2011 and 29 March 2017 and therefore it covered only 3 months in the 2 years used for the profit margin. Furthermore, as specified in the Decision regarding the cartel, the product concerned by the Decision was ethylene purchased on the merchant market and it did not cover ethylene produced for captive purposes, that is to say, produced and used by the producers for their own consumption. The sampled Union producers buy ethylene mainly from their related companies. While LCLA claimed that the profit margins in 2017 and 2018 were not at the level of profitability to be expected under normal conditions of competition, it also did not specify what was the normal profitability for this product under normal conditions of competition. Finally, Article 7(2c) is clear that the Commission must use a target profit of 6 % only when the target profit determined after taking into account the factors mentioned in that Article is lower than 6 %, which is not the case in this investigation. Therefore, the claim was rejected.

(232) EMPC claimed that the approach used by the Commission for the adjustment of the non-injurious price for future compliance costs with the EU Emission Trading System ('ETS') and the EU Industrial Emission Directive ('IED') was inconsistent with the objectives of the current ETS and IED. It was claimed that the approach behind the current carbon leakage protection measures under the ETS was that for each carbon leakage exposed sector, companies are compared to the benchmark set by the 10 % best performing companies. Companies would pay more ETS costs to the extent that they perform worse compared to the benchmark. Alternatively they could reduce their GHG emission intensity, which could ultimately bring them into the group of 10 % best performers. Regarding IED

([22]) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021AT40410(02)&from=EN

associated cost, EMPC claimed that it was unclear how these were calculated or assigned. Therefore, according to EMPC, by taking into account not only the complainant's actual but also future ETS and IED costs, the Commission was de facto introducing a carbon border adjustment mechanism for the complainant which was not available for other industries.

(233) According to Article 7(2d) of the basic Regulation, future costs resulting from, inter alia, multilateral environmental agreements, and protocols thereunder, to which the Union is a party and which the Union industry will incur during the period of the application of the measure pursuant to Article 11(2), shall be taken into account. Whether such costs are inconsistent with the alleged objectives of the ETS and IED or amount to a carbon border adjustment mechanism for the complainants which was not available for other industries is irrelevant. The Commission is therefore legally obliged to take all these costs into account regardless of their label on the basis of this provision of the basic Regulation, as long as the conditions of its application are met. In recital (265) of the provisional Regulation, the Commission explained how the costs of compliance with EU ETC were calculated.

(234) The Commission confirmed, however, that the adjustment was calculated solely on the basis of the additional ETS and IED costs that will apply on average during the life of the measures as required by Article 7(2d) of the basic Regulation. The evidence supplied and checked by the Commission services in this respect meets the conditions of Article 7(2d) of the basic Regulation. Therefore, the claim was rejected.

(235) LCLA asked the commission to use the declared CIF and not constructed CIF as a denominator in the calculation of the underselling margin.

(236) This claim is based on a misunderstanding by LCLA as the Commission indeed used the declared CIF as a denominator in the calculation of the underselling margin.

(237) As provided by Article 9(4), third subparagraph, of the basic Regulation, given that the Commission did not register imports during the period of pre-disclosure, the Commission analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure, as described in recital (3), to determine whether to reflect the additional injury resulting from such increase in the determination of the injury margin.

(238) In their comments following final disclosure, EMPC reiterated, without providing any new elements, their claim stated in recital (232) that the adjustment of the non-injurious price for future compliance costs with the ETS and the IED unduly introduced a de facto carbon border adjustment mechanism that was available only to the Union MEG producers.

(239) In the absence of any new elements in support of EMPC's claim, the Commission maintained its conclusions in recital (232).

(240) In their comments following final disclosure, SABIC reiterated their claim, without providing any new elements, that the profit used to determine the target price was too high for a commodity and was based on a period during which an ethylene purchase cartel was in operation. It also added that the target profit was higher than the profit ratios reported in the complaint.

(241) In the absence of any new elements in support of SABIC's claim, the Commission maintained its conclusions in recital (232). With regard to the profit margins in the complaint, these were not verified, while the profit margins used in the determination of the target profit were verified during the remote cross-check.

*United States of America*

(242) Based on data from the Surveillance 2 database, import volumes from the US during the four weeks period of pre-disclosure were 39 % higher than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

(243) To reflect the additional injury caused by the increase of imports, the Commission decided to adjust the injury elimination level based on the rise in import volume, which is considered the relevant weighting factor based on the provisions of Article 9(4). It therefore calculated a multiplying factor established by dividing the sum of the volume of imports during the four weeks of the pre-disclosure period of 28 852 tonnes and the 52 weeks of the IP by the import volume in the IP extrapolated to 56 weeks. The resulting figure, 1,0278, reflects the additional injury caused by the further increase of imports. The provisional injury margins were thus multiplied by this factor. Therefore, the final injury elimination level for the cooperating exporting producers and all other companies is as follows:

| Country | Company | Definitive injury margin (%) |
|---|---|---|
| US | Lotte Chemical Louisiana LLC | 39,6 |
| US | MEGlobal Americas Inc. | 78,9 |
| US | Other cooperating companies | 46,7 |
| US | All other companies | 109,4 |

*Kingdom of Saudi Arabia*

(244) Based on data from the Surveillance 2 database, import volumes from the KSA during the four weeks period of pre-disclosure were 15,3 % lower than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

(245) Therefore, the Commission did not adjust the injury elimination level in this regard.

(246) However, the Commission identified a minor clerical error in the underlying data for the calculation of the injury margin. It follows that the revised injury margin for SABIC is 61,5 %.

## 7. **UNION INTEREST**

### 7.1. **Interest of the Union industry**

(247) Oxyde and Helm claimed that there was no realistic risk that MEG producers would cease their MEG production activities in the Union as they could easily switch between manufacturing MEG or other products depending on market conditions. Furthermore, Arteco claimed that there was no evidence that the Union industry would cease production of MEG if the anti-dumping measures were not imposed apart from the Union industry's allegation. In addition, Arteco claimed that the Union market was already characterised by the inability or unwillingness of Union MEG producers to cover the demand and submitted evidence from a MEG Union producer who declined to supply MEG to Arteco due to shortage of production volume.

(248) The Commission disagrees with these claims. The Union producers have already lost 10,7 percentage points in market share on the free market between 2017 and the investigation period mainly in favour of the imports from the countries concerned, which increased market share by 12,5 percentage points during the same period. Even if the level of the ECP increases post-IP, the Union industry will continue to lose market share in favour of the exporters from the countries concerned if they continue to sell on the Union market at injurious prices. The production volume of the Union industry has already decreased by 19 % during the period considered. The evidence submitted by Arteco indicates that if the level playing field is not restored on the Union market, this will likely impact production volumes of MEG in the Union and users will be dependent on imports. Therefore, the claim was rejected.

(249) Oxyde, Helm and Tricon claimed that the three sampled Union producers were part of large groups of companies and the financial situation of these large groups was not compromised in particular on account of MEG.

(250) Even if the sampled Union producers are part of large groups, the non-imposition of measures would impact them and other Union producers negatively and this impact would go beyond profitability, as explained in recital (247) of the provisional Regulation. This claim was therefore rejected.

(251) CPME and LCLA also claimed that the basic Regulation does not prevent the Commission from relying on post-IP data in the assessment of the existence of the Union interest.

(252) CPME and LCLA did not provide evidence of any post-IP data that the Commission could take into consideration in the Union interest analysis. Therefore, the claim was rejected.

(253) In the absence of any other comments, the Commission confirmed its conclusions set out in recitals (272) to (277) of the provisional Regulation.

### 7.2. **Interest of unrelated importers/traders, users and suppliers**

#### 7.2.1. *General*

(254) CPME and LCLA claimed that the Commission did not take into account the fact that the Union industry lacks sufficient capacity to meet Union demand. CPME claimed that the increase in capacity of the Union industry for EO does not mean that the production capacity for MEG will increase. Furthermore, CPME claimed that the excess production capacity in other geographical markets was irrelevant in an anti-dumping case, but what matters was that the Union MEG industry did not have sufficient capacity to cover the whole demand and that, as a result, imports were essential. CPME and LCLA also claimed that countries other than the US and the KSA were not suitable source of supply due to geographical, logistical and economic reasons. CPME also requested the Commission to make the analysis carried out by the specialised consultants described in recital (281) of the provisional Regulation available to interested parties. CPME also stated that the anti-dumping duties on MEG imports from the US and the KSA would cause a serious shortage of supply of MEG on the Union market since they would de facto block all imports.

(255) It is clear from the data in Tables 1 and 4 that the production capacity is lower than the consumption. Furthermore, the Commission clearly acknowledged this fact in recital (225) of the provisional Regulation. Indeed, the planned increases in the production capacity of EO do not mean that the production capacity of MEG will increase, but it shows that the MEG producers will have access to more EO in case they need it for the production of MEG once the level playing field is restored on the market. Furthermore, the complainant submitted evidence that the Union producer PKN announced plans to increase the production of glycols in the Union ([23]). In addition, it is correct that the Union market needs imports, and indeed measures are not intended to prevent imports but to ensure that they are not made at injurious dumped prices. This information was summarised in a Note for the file ([24]) that was added to the investigation file. This information was collected by the Commission during the RCC from the sampled Union producers. It is based on a paid subscription to Wood Mackenzie. As stated in recital (216), Arteco, Oxyde, and Helm highlighted that the imports from other countries have increased post-IP which demonstrates the availability of alternative sources of supply. Therefore, the claims were rejected.

(256) In their comments following final disclosure, CPME reiterated their claim that countries other than the countries concerned were not suitable sources of supply due to geographical, logistical and economic reasons. CPME also claimed that the Commission disregarded the evidence provided by CPME in this regard.

(257) The Commission disagreed with this claim. CPME has provided only simple statements not backed by any supporting evidence in relation to the spare capacity of Singapore, South Korea and Taiwan and why MEG exports from these countries would not be suitable. Just because in the past the Union did not import MEG from these countries, it does not mean that it cannot do it in the future. In addition, other parties such as Arteco, Oxyde, Helm submitted evidence that post-IP imports from other countries such as Kuwait, China, Japan, Singapore and Taiwan increased as stated in recital (216). This clearly shows that there are other sources of supply available. Furthermore,

([23]) Orlen, 'PKN ORLEN takes next step in its Petrochemical Development Programme', https://www.orlen.pl/EN/PressOffice/Pages/PKN-ORLEN-takes-next-step-in-its-Petrochemical-Development-Programme.aspx

([24]) t21.006272.

as explained in recital (255) the measures are not intended to prevent imports but to ensure that they are not made at injurious dumped prices. Furthermore, the level of the measures of the imports from the KSA and most of the imports from the US is between 3,0 % and 10,3 %, which is not prohibitive. Therefore, the claim was rejected.

7.2.2. *Interest of the unrelated importers/traders*

(258) As explained in recitals (11) to (13), Tricon also cooperated in the investigation as an importer/trader. This company is located in the US.

(259) As in the case of another importer described in recital (284) of the provisional Regulation, the Union MEG activity does not represent a significant part of its turnover. Tricon is selling MEG also to third countries and therefore the imposition of duties will have a marginal impact of its business.

(260) Tricon claimed that the Commission statement in the provisional Regulation that other sources of supply are available does not reflect market reality.

(261) The Commission disagrees with this claim. As highlighted by Arteco, Oxyde, and Helm in recital (216), the imports in the Union from several countries such as Kuwait, China, Japan, Singapore and Taiwan increased post-IP. This demonstrates that indeed there are other sources of supply available.

(262) In the absence of any other comments and also taking into consideration recitals (258) to (261) the Commission confirmed its conclusions set out in recitals (283) to (286) of the provisional Regulation.

7.2.3. *Interest of users*

(263) Arteco claimed that in order to assess the impact of the anti-dumping measures on the users, in particular coolants manufacturers, the Commissions needed to assess the following factors: (1) the highly competitive nature of the coolant market; (2) the willingness and ability of customers to change coolant suppliers for a minimal price difference; (3) significant research and development (R&D) costs for coolant manufacturers that supply the OEMs (original equipment manufacturers); and (4) the number of non-EU coolant manufacturers who would benefit from the imposition of the anti-dumping measures on MEG. Arteco also argued that the employment created by coolant manufacturers exceeded that of the MEG Union producers. Therefore, according to Arteco, the imposition of measures could not be considered as being in the Union interest as it would cause more harm to the overall economy that the relief brought to the MEG domestic industry.

(264) Arteco is contradicting itself. On one hand, it claims that the coolant market is highly competitive and, on the other hand, it refers in the confidential version of its claim to only one company as being its single biggest competitor and says that the coolant market for OEM is oligopolistic. Furthermore, if on the coolant OEM market mainly two coolant manufacturers compete with each other, it is highly unlikely that the car manufacturers, who are a much larger number than the coolant manufacturers, will be able to change the coolant suppliers for a minimal price difference also in view of the significant R&D costs on the side of coolant manufacturers. Furthermore, while it is not excluded that the imports of coolants are going to increase in the future, in view of the fact that each car manufacturer has its own coolant formula and the significant damage to the car engine in case of an inappropriate coolant, it is highly unlikely that the car manufacturers are going to easily switch their coolant supplier after the imposition of measures.

(265) Arteco also claimed that the imposition of measures will only benefit one manufacturer of coolants that was vertically integrated and therefore had access to cheaper MEG.

(266) The Commission disagreed with this statement. As explained in recital (132), the captive sales of MEG by the Union industry are indeed mainly to the coolants sector. The respective producer is integrated at the level of the group and MEG and the coolants are manufactured in different independent entities. As described in Table 7 of the provisional Regulation, the average selling price of MEG on the captive market was on average at the same level as the average selling price of MEG on the free market during the period considered.

(267) Arteco, Oxyde, Helm and Tricon claimed that there were no guarantees that the MEG producers were going to continue to manufacture MEG even if the market conditions were improved, as the Union industry would focus on the production of products which attain the best margin, as determined by global conditions and there were no guarantees that this would be MEG, which meant that the users would be left at the mercy of a few globally operating companies.

(268) The Commission noted that this claim contradicts the claim in recital (247). Furthermore, it is unclear why these interested parties consider that only the Union MEG producers would focus on more profitable EO derivatives but the US and KSA exporters would not. Without the imposition of anti-dumping measures, the production of MEG in the Union will be significantly reduced as the MEG Union industry is going to continue to lose market share even if the market conditions improve. In that case, the users will have access to even less sources of supply, as Arteco, Oxyde, Helm and Tricon themselves acknowledged, and will be dependent on imports. The imposition of definitive measures will ensure that there will still be production of MEG in the Union.

(269) RETAL, a multinational manufacturer of plastic products, stated that its related company UAB NEO GROUP ('NEO GROUP'), a manufacturer of PET resins in the Union, had been adversely affected by the imposition of provisional measures. RETAL stated that it shared the position and arguments against the imposition of measures expressed by CPME.

(270) RETAL has not submitted any evidence in support of its claim that the activity of its related company had been adversely affected by the imposition of provisional measures. Therefore, the claim was rejected as being unsubstantiated. Moreover, the investigation revealed that NEO GROUP has several sources of supply i.e. Union industry, imports from one of the countries concerned as well as other third countries. Furthermore, during the investigation period NEO GROUP was profitable.

(271) CPME claimed that the imposition of measures on imports of MEG from the countries concerned would have a significant impact on the PET producers as the profitability of the PET producers ranged between 1 % and 3 %. Furthermore, it was claimed that PET producers already faced fierce competition from other countries such as the UK, Egypt and Turkey whose imports of MEG were not subject to anti-dumping or import duties and therefore were able to offer PET on the Union market at competitive prices. Furthermore, CPME claimed that the lack of resources to innovate may also have negative consequences in terms of the implementation of the green policies aimed to increase recycled PET in the Union. CPME further claimed that the anti-dumping duties on MEG would reduce the production of PET in the Union, with serious detrimental effects in terms of employment and investments in several Member States. CPME also stated that in view of the fact that the employment in the PET industry (more than 2 000 workers) was higher than in the MEG industry (less than 100), the Commission did not seem to have carried out a balancing of interests.

(272) The Commission disagreed with these claims. The PET industry has been protected by anti-dumping and anti-subsidy measures for many years. Currently, there are anti-subsidy measures on imports of PET from India. In the last expiry review carried out by the Commission in 2018/2019 ([25]), the PET Union industry enjoyed a significant market share of 71,1 % during the period 1 April 2017 to 31 March 2018. As described in recital (292), while the imposition of measures on MEG might make the situation more difficult for the PET producers that are already loss making, there are no guarantees that the situation of these companies will not be affected even if the Commission decides not to impose measures on imports of MEG from the countries concerned. This is due to the fact that without the imposition of measures, the Union industry will most likely stop production of MEG for the free market and, therefore, the PET producers will be dependent on the imports from the countries concerned. Furthermore, the PET industry is indeed a larger industry than the MEG industry, however, not all PET producers will be affected by the imposition of measures and therefore those producers can continue to implement the green policies aimed that increasing recycled PET in the Union. Furthermore, the level of measures range between 7,7 % and 14,9 %, a level which is not prohibitive.

([25]) Commission Implementing Regulation (EU) No 2019/1286 of 30 July 2019 imposing a definitive countervailing duty on imports of certain polyethylene terephthalate (PET) originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and the Council (OJ L 202, 31.7.2019, p. 81).

(273) LCLA claimed that the Commission did not provide any indication of the effect of anti-dumping measures on the PET industry in terms of production costs or profitability and it should explain why the impact of anti-dumping measures on the PET industry would not be disproportionate.

(274) The Commission disagreed with this claim. In recital (291) of the provisional Regulation, the Commission explained the impact of the anti-dumping measures on the cost of production of PET as well as profitability. Furthermore, in recitals (292) to (294) of the provisional Regulation the Commission explained the economic situation of the cooperating PET producers and the effect on their economic situation if measures are imposed, which varied depending on the producer. The Commission highlighted that the situation of the worst performers was determined by other factors, not only the price of MEG, and therefore their activity and the hundreds of jobs it supports were not ultimately determined by the measures. Furthermore, as stated in recital (272), there are no guarantees that the situation of these companies will not deteriorate even if measures are not imposed.

(275) In the absence of any other comments regarding the interest of users, the Commission confirmed its conclusions set out in recitals (287) to (298) of the provisional Regulation.

7.2.4. *Interest of suppliers*

(276) In the absence of any comments regarding the interest of suppliers, the Commission confirmed its conclusions set out in recitals (299) and (300) of the provisional Regulation.

7.3. **Conclusion on Union interest**

(277) Arteco, Oxyde and Helm claimed that in a context of difficult economic struggles linked to the COVID-19 pandemic, imposing anti-dumping measures is not in the Union interest.

(278) The parties did not provide evidence or any data to support this claim. Therefore, the claim was rejected.

(279) In their comments following final disclosure, SABIC stated that it disagreed with the Commission's conclusions in recitals (247) to (278) and recital (311) of the provisional Regulation without providing any new information in this regard.

(280) In their comments following final disclosure, Arteco, Helm, and Oxyde claimed that the Commission, by imposing definitive measures, did not act in the Union interest. Tricon also disagreed with the Commission's assessment of Union interest. However, no new arguments substantiated by evidence were brought forward in this regard.

(281) In their comments following final disclosure, CPME claimed that the changes in market conditions post-IP should be considered by the Commission for the purpose of the Union interest assessment. CPME considered that the increase in the ECP for MEG post-IP are of a structural and lasting nature. It further argued that it was the IP which was characterised by exceptional conditions linked to the evolution of the global market in 2019 as well as the outbreak of the COVID-19 pandemic, which indicates that the adoption of the definitive anti-dumping duties was not justified. Furthermore, CPME stated that in case the Commission concluded that the post-IP market developments were of a temporary nature, *quod non*, the current circumstances such as the exceptional rise of market prices in the Union, associated with the insufficient production capacity of the Union industry and the difficulties in sourcing MEG from countries other than the countries concerned, called for the suspension of the definitive measures in accordance with Article 14(4) of the basic Regulation.

(282) The Commission considered all claims on the impact of the COVID-19 pandemic, the capacity of the Union industry and the availability of other sources of supply in the relevant recitals of this Regulation and the provisional Regulation, as they were not all made in the context of Union interest.

(283) Regarding post-IP data and the injury suffered by the Union industry, CPME's claim is explained in recital (188) of this Regulation. The Commission analysed this information also in the context of Union interest. According to the information submitted, the ECP of MEG, as well as the spread between the ECP of MEG and the ECP of ethylene (the MEG-ethylene ECP spread), have increased considerably post-IP.

(284) The price of MEG is determined by the ECP and the discount. CPME has not provided any evidence on the evolution of the discount, or the final prices of MEG. CPME has not provided any evidence that such increase in the ECP of MEG and the MEG-ethylene ECP spread has led to improvements in the economic situation of the Union producers. There is consequently no evidence that such developments have led to a 'staggering increase in terms of both market prices and profits for the Union industry', as CPME claims. CPME has not provided any evidence that any post-IP development would be sustainable in time as indicated in recital (187). The claim is rejected as unsubstantiated.

(285) Moreover, the Commission found that the suspension request under Article 14(4) was generic and unsubstantiated. The Commission may examine whether a suspension would be warranted if market conditions have temporarily changed to an extent that injury would be unlikely to resume.

(286) On the basis of the above and in the absence of any other comments, the Commission confirmed its conclusion set out in recital (311) of the provisional Regulation.

## 8. **DEFINITIVE ANTI-DUMPING MEASURES**

(287) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

(288) 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:

| Country | Company | Dumping margin (%) | Injury margin (%) | Definitive anti-dumping duty (%) |
|---|---|---|---|---|
| Kingdom of Saudi Arabia | Saudi Kayan petrochemical company (Saudi Kayan) | 7,7 | 61,5 | 7,7 |
| | Yanbu National Petrochemical Company (Yansab) | 7,7 | 61,5 | 7,7 |
| | Eastern Petrochemical Company (Sharq) | 7,7 | 61,5 | 7,7 |
| | Saudi Yanbu Petrochemical Company (Yanpet) | 7,7 | 61,5 | 7,7 |
| | Arabian Petrochemical Company (Petrokemya) | 7,7 | 61,5 | 7,7 |
| | Jubail United Petrochemical Company (United) | 7,7 | 61,5 | 7,7 |
| | All other companies | 7,7 | 61,5 | 7,7 |

| | | | | |
|---|---|---|---|---|
| United States of America | Lotte Chemical Louisiana LLC | 3,0 | 39,6 | 3,0 |
| | MEGlobal Americas Inc. | 46,7 | 78,9 | 46,7 |
| | Other cooperating companies | 10,3 | 46,9 | 10,3 |
| | All other companies | 60,1 | 109,4 | 60,1 |

(289) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation in respect to these companies. These duty rates are thus exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, cannot benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.

(290) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([26]). 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*.

(291) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the proper application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(292) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States should carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the rate of duty is justified, in compliance with customs law.

(293) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume, in particular after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances, an anti-circumvention investigation may be initiated, provided that the conditions for doing so are met. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(294) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

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

### 8.1. **Undertakings**

(295) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, one exporting producer, LCLA, submitted an offer for price undertaking.

(296) According to Article 8 of the basic Regulation, the price undertaking offer must be adequate to eliminate the injurious effect of dumping and its acceptance must not be considered impractical. The Commission assessed the offer in view of these criteria and considered that its acceptance would be impractical for the following reasons.

(297) The Commission identified a number of risks. Firstly, the pricing method put forward by LCLA consisted in a fixed minimum import price ('MIP') calculated based on the normal value during the investigation period. Given the high degree of fluctuation of MEG prices, this approach would not be adequate to ensure measures are properly reflected in such a MIP over time and to eliminate the injurious effect of dumping. This situation compromises the enforcement of the undertaking. Given the foregoing, the undertaking cannot be accepted. Furthermore, the Commission considers that there do not appear to be practicable ways to index such prices, in view of the way that MEG prices are set, of the nature of the raw materials involved, and of lack of reliable, readily available sources of relevant information at hand.

(298) Furthermore, the Commission identified tangible cross-compensation risks and obstacles to practicable monitoring related to the sales activity of LCLA. Moreover, the monitoring was considered impractical also due to the purchase activities of LCLA. Finally, LCLA did not commit to sell the product concerned to the Union via direct sales only while it had several related companies in the Union. Indirect sales channels increase the risk of cross-compensation and add to the complexity of monitoring. In addition, no clause has been provided to adjust the MIP in case of related sales, undermining the ability of the MIP to eliminate the injurious effect of dumping.

(299) On the basis of the above, the Commission concluded that the undertaking offer could not be accepted.

(300) The Commission sent a letter to the applicant, setting out the reasons for rejection of the undertaking offer. No comments were received.

### 8.2. **Definitive collection of the provisional duties**

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

## 9. **FINAL PROVISION**

(302) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ([27]), 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.

(303) 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,

([27]) 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).

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is imposed on imports of mono ethylene glycol (current EC-number 203-473-3), currently falling under CN code ex 2905 31 00 (TARIC code 2905 31 00 10), originating in the United States of America and in the Kingdom of Saudi Arabia.

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

| Country | Company | Definitive anti-dumping duty | TARIC additional code |
|---|---|---|---|
| Kingdom of Saudi Arabia | Saudi Kayan petrochemical company (Saudi Kayan) | 7,7 % | C674 |
| Kingdom of Saudi Arabia | Yanbu National Petrochemical Company (Yansab) | 7,7 % | C675 |
| Kingdom of Saudi Arabia | Eastern Petrochemical Company (Sharq) | 7,7 % | C676 |
| Kingdom of Saudi Arabia | Saudi Yanbu Petrochemical Company (Yanpet) | 7,7 % | C677 |
| Kingdom of Saudi Arabia | Arabian Petrochemical Company (Petrokemya) | 7,7 % | C678 |
| Kingdom of Saudi Arabia | Jubail United Petrochemical Company (United) | 7,7 % | C679 |
| Kingdom of Saudi Arabia | All other companies | 7,7 % | C999 |
| United States of America | Lotte Chemical Louisiana LLC | 3,0 % | C684 |
| United States of America | MEGlobal Americas Inc. | 46,7 % | C680 |
| United States of America | Other cooperating companies listed in Annex I | 10,3 % | |
| United States of America | All other companies | 60,1 % | C999 |

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product concerned) 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 shall apply.

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

*Article 2*

The amounts secured by way of the provisional anti-dumping duty under Commission Implementing Regulation (EU) 2021/939 of 10 June 2021 imposing a provisional anti-dumping duty on imports of mono ethylene glycol originating in the United States of America and the Kingdom of Saudi Arabia shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

*Article 3*

Article 1(2) may be amended to add new exporting producers from the United States of America and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) during the period of investigation (1 July 2019 to 30 June 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

*Article 4*

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

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

Done at Brussels, 12 November 2021.

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

*ANNEX*

United States cooperating exporting producers not sampled

| Country | Name | TARIC additional code |
|---|---|---|
| United States of America | Indorama Ventures Oxides LLC | C681 |
| United States of America | Equistar Chemicals, LP | C682 |
| United States of America | Sasol Chemicals North America LLC | C683 |

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/1977

## of 12 November 2021

## amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ([1]), and in particular Article 230(1) thereof,

Whereas:

(1) Regulation (EU) 2016/429 requires that consignments of animals, germinal products and products of animal origin come from a third country or territory, or zone or compartment thereof, listed in accordance with Article 230(1) of that Regulation in order to enter the Union.

(2) Commission Delegated Regulation (EU) 2020/692 ([2]) specifies the animal health requirements with which consignments of certain species and categories of animals, germinal products and products of animal origin from third countries or territories, or zones thereof, or compartments thereof, in the case of aquaculture animals must comply in order to enter the Union.

(3) Commission Implementing Regulation (EU) 2021/404 ([3]) establishes the lists of third countries, or territories, or zones or compartments thereof, from which the entry into the Union of the species and categories of animals, germinal products and products of animal origin falling within the scope of Delegated Regulation (EU) 2020/692 is permitted.

(4) More particularly, Annexes V and XIV to Implementing Regulation (EU) 2021/404 set out the lists of third countries, or territories, or zones thereof authorised for the entry into the Union, respectively, of consignments of poultry, germinal products of poultry, and of fresh meat from poultry and game birds.

(5) On 5 November 2021, the United Kingdom notified the Commission of outbreaks of highly pathogenic avian influenza in poultry. Those outbreaks are located near Wrexham County Borough in Wales and near Arbroath, Angus in Scotland and were confirmed respectively on 2 and 4 November 2021 by laboratory analysis (RT-PCR).

(6) On 9 November 2021, the United Kingdom notified the Commission of an outbreak of highly pathogenic avian influenza in poultry. The outbreak is located near Alcester, Bidford, Warwickshire in England and was confirmed on 8 November 2021 by laboratory analysis (RT-PCR).

([1]) OJ L 84, 31.3.2016, p. 1.

([2]) Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin (OJ L 174, 3.6.2020, p. 379).

([3]) Commission Implementing Regulation (EU) 2021/404 of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council (OJ L 114, 31.3.2021, p. 1).

(7) The veterinary authorities of the United Kingdom established a 10 km control zone around the affected establishments and implemented a stamping-out policy in order to control the presence of highly pathogenic avian influenza and limit the spread of that disease.

(8) The United Kingdom has submitted information to the Commission on the epidemiological situation on its territory and the measures it has taken to prevent the further spread of highly pathogenic avian influenza. That information has been evaluated by the Commission. On the basis of that evaluation, entry into the Union of consigments of poultry, germinal products of poultry and fresh meat from poultry and game birds from the area under restrictions established by the veterinary authorities of the United Kingdom due to the recent outbreaks of highly pathogenic avian influenza. should no longer be authorised.

(9) Annexes V and XIV to Implementing Regulation (EU) 2021/404 should be therefore amended accordingly.

(10) Taking into account the current epidemiological situation in the United Kingdom as regards highly pathogenic avian influenza, the amendments to Implementing Regulation (EU) 2021/404 should take effect as a matter of urgency.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended in accordance with the Annex to this Regulation.

*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, 12 November 2021.

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

*ANNEX*

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended as follows:

1. Annex V is amended as follows:

(a) in Part 1, in the entry for the United Kingdom, the following zones GB-2.17, GB-2.18 and GB-2.19 are added after the zone GB-2.16:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ‘**GB** United Kingdom | GB-2.17 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 2.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 2.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 2.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 2.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 2.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 2.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 2.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 2.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 2.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 2.11.2021 | |
| | GB-2.18 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 4.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 4.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 4.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 4.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 4.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 4.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 4.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 4.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 4.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 4.11.2021 | |
| | GB-2.19 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 8.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 8.11.2021 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 8.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 8.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 8.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 8.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 8.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 8.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 8.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 8.11.2021’ | |

(b) in Part 2, in the entry for the United Kingdom, the following descriptions of the zones GB-2.17, GB-2.18 and 2.19 are added after the description of the zone GB-2.16:

| | | |
|---|---|---|
| ‘United Kingdom | GB-2.17 | Near Wrexham, Wales:<br>The area covering that part of Wrexham, Wales and Shropshire, England contained within a circle of a radius of 10 km, centred on WGS84 dec, coordinates N52.94 and W3.07 |
| | GB-2.18 | Near Arbroath, Angus, Scotland:<br>The area contained within a circle of a radius of 10 km, centred on WGS84 dec, coordinates N56.65 and W2.61 |
| | GB-2.19 | Near Alcester, Bidford, Warwickshire, England:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N52.15 and W1.86’ |

2. in Annex XIV, in Part 1, in the entry for the United Kingdom, the following zones GB-2.17, GB-2.18 and GB-2.19 are added after the zone GB-2.16:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ‘**GB**<br>United Kingdom | GB-2.17 | Fresh meat of poultry other than ratites | POU | N, P1 | | 2.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 2.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 2.11.2021 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | GB-2.18 | Fresh meat of poultry other than ratites | POU | N, P1 | | 4.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 4.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 4.11.2021 | |
| | GB-2.19 | Fresh meat of poultry other than ratites | POU | N, P1 | | 8.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 8.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 8.11.2021’ | |

# DIRECTIVES

## COMMISSION DELEGATED DIRECTIVE (EU) 2021/1978

**of 11 August 2021**

**amending, for the purposes of adapting to scientific and technical progress, Annex IV to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for the use of bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP) in spare parts recovered from and used for the repair or refurbishment of medical devices**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ([1]), and in particular Article 5(1), point (a), thereof,

Whereas:

(1) Directive 2011/65/EU requires Member States to ensure that electrical and electronic equipment placed on the market does not contain the hazardous substances listed in Annex II to that Directive. That restriction does not apply to certain exempted applications listed in Annex IV to that Directive.

(2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in its Annex I.

(3) By Commission Delegated Directive (EU) 2015/863 ([2]), bis(2-ethylhexyl) phthalate (DEHP), benzyl butyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP) were added to the list of restricted substances referred to in Annex II to Directive 2011/65/EU.

(4) Delegated Directive (EU) 2015/863 provides that the restriction of DEHP, BBP, DBP and DIBP is not to apply to spare parts for the repair, the reuse, the updating of functionalities or upgrading of capacity of medical devices, including *in vitro* medical devices, placed on the market before 22 July 2021.

(5) On 17 July 2018, the Commission received an application made in accordance with Article 5(3) of Directive 2011/65/EU for an exemption to be listed in Annex IV to that Directive, for the use of DEHP, BBP, DBP and DIBP in spare parts recovered from and used for the repair or refurbishment of medical devices, including *in vitro* diagnostic medical devices ('the requested exemption').

(6) The evaluation of the exemption application concluded that the total negative environmental and health impacts of substituting refurbished parts containing DEHP, BBP, DBP and DIBP with new substance-free refurbished parts are likely to outweigh the total environmental and health benefits. The evaluation included stakeholder consultations required by Article 5(6) of the Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.

(7) In order to ensure a high level of protection for the environment, health and consumer safety, reuse should take place in auditable closed-loop business-to-business return systems and reuse of spare parts should be notified to the customer.

([1]) OJ L 174, 1.7.2011, p. 88.

([2]) Commission Delegated Directive (EU) 2015/863 of 31 March 2015 amending Annex II to Directive 2011/65/EU of the European Parliament and of the Council as regards the list of restricted substances (OJ L 137, 4.6.2015, p. 10).

(8) The requested exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([3]) and thus does not weaken the environmental and health protection afforded by it.

(9) It is therefore appropriate to grant the requested exemption by including the applications covered by it in Annex IV to Directive 2011/65/EU.

(10) The requested exemption should be granted for a duration of 7 years starting from the date of application of this Directive in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU. In view of the results of the ongoing efforts to find a reliable substitution, the duration of the exemption is unlikely to have adverse impacts on innovation.

(11) Directive 2011/65/EU should therefore be amended accordingly.

(12) In the interest of legal certainty and in order to protect the legitimate expectations of operators supplying the medical devices concerned that the requested exemption applies by the date of entry into force of the prohibition for the use of the restricted substance in question, and in the absence of any legitimate interest in creating a disruption to the supply of those medical devices as a result of the entry into force of that prohibition, this Directive should enter into force as a matter of urgency and should apply with retroactive effect from 21 July 2021,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex IV to Directive 2011/65/EU is amended as set out in the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by 30 April 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate the text of those provisions to the Commission forthwith.

They shall apply those provisions from 21 July 2021.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

([3]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Done at Brussels, 11 August 2021.

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

*ANNEX*

In Annex IV to Directive 2011/65/EU, the following entry 47 is added:

'47 Bis(2-ethylhexyl) phthalate (DEHP), butyl benzyl phthalate (BBP), dibutyl phthalate (DBP) and diisobutyl phthalate (DIBP) in spare parts recovered from and used for the repair or refurbishment of medical devices, including *in vitro* diagnostic medical devices, and their accessories, provided that the reuse takes place in auditable closed-loop business-to-business return systems and that each reuse of parts is notified to the customer.

Expires on 21 July 2028.'

# COMMISSION DELEGATED DIRECTIVE (EU) 2021/1979

## of 11 August 2021

## amending, for the purposes of adapting to scientific and technical progress, Annex IV to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for the use of bis(2-ethylhexyl) phthalate (DEHP) in plastic components in magnetic resonance imaging (MRI) detector coils

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ([1]), and in particular Article 5(1), point (a), thereof,

Whereas:

(1) Directive 2011/65/EU requires Member States to ensure that electrical and electronic equipment placed on the market does not contain the hazardous substances listed in Annex II to the Directive. That restriction does not apply to certain exempted applications listed in Annex IV to the Directive.

(2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in its Annex I.

(3) Bis(2-ethylhexyl) phthalate (DEHP) is a restricted substance listed in Annex II to Directive 2011/65/EU, as amended by Commission Delegated Directive (EU) 2015/863 ([2]). DEHP is not to be used, from 22 July 2021, in medical devices, including *in vitro* medical devices above a maximum concentration value of 0,1% tolerated by weight in homogeneous materials.

(4) On 12 September 2018 and 2 October 2019, the Commission received applications made in accordance with Article 5(3) of Directive 2011/65/EU for an exemption to be listed in Annex IV to that Directive, for the use of DEHP in plastic components in magnetic resonance imaging (MRI) detector coils ('the requested exemption').

(5) Two technical and scientific assessment studies were carried out to evaluate the exemption applications. The first study ([3]) covered the first application received. Due to the similarity of the second application to the first, the second study ([4]) evaluated both applications together. The evaluation of the applications, which took into account the availability of technically practicable and reliable substitutes and the socioeconomic impact of substitution, concluded that no suitable alternatives to DEHP are sufficiently available on the market and that not granting the

([1]) OJ L 174, 1.7.2011, p. 88.

([2]) Commission Delegated Directive (EU) 2015/863 of 31 March 2015 amending Annex II to Directive 2011/65/EU of the European Parliament and of the Council as regards the list of restricted substances (OJ L 137, 4.6.2015, p. 10).

([3]) For the final report of the study (Pack 17), see: https://op.europa.eu/en/publication-detail/-/publication/df0ab036-8b52-11ea-812f-01aa75ed71a1/language-en/format-PDF/source-146143357.

([4]) For the final report of the study (Pack 20), see: https://op.europa.eu/en/publication-detail/-/publication/185e9d5b-d5fc-11ea-adf7-01aa75ed71a1/language-en/format-PDF/source-146144567.

exemption is likely to result in total negative environmental, health and consumer safety impacts caused by substitution, which outweigh the benefits thereof. The evaluation included stakeholder consultations as required by Article 5(7) of Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.

(6) The requested exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([5]) and thus does not weaken the environmental and health protection afforded by it.

(7) It is, therefore, appropriate to grant the requested exemption by including the applications covered by it in Annex IV to Directive 2011/65/EU.

(8) To ensure that compatible plastic components for MRI coil detectors for health services are widely available on the Union market and to allow time for the development of suitable and widely available alternatives, the requested exemption should be granted until 1 January 2024, in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU. In view of the results of the ongoing efforts to find a reliable substitution, the duration of the exemption is unlikely to have adverse impacts on innovation.

(9) Directive 2011/65/EU should therefore be amended accordingly.

(10) In the interest of legal certainty and in order to protect the legitimate expectations of operators supplying the medical devices concerned that the requested exemption applies by the date of entry into force of the prohibition for the use of the restricted substance in question, and in the absence of any legitimate interest in creating a disruption to the supply of those medical devices as a result of the entry into force of that prohibition, this Directive should enter into force as a matter of urgency and should apply with retroactive effect from 21 July 2021,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex IV to Directive 2011/65/EU is amended as set out in the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by 30 April 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate the text of those provisions to the Commission forthwith.

They shall apply those provisions from 21 July 2021.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the field covered by this Directive.

*Article 3*

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

([5]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

*Article 4*

This Directive is addressed to the Member States.

Done at Brussels, 11 August 2021.

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

*ANNEX*

In Annex IV to Directive 2011/65/EU, the following entry 46 is added:

'46 Bis(2-ethylhexyl) phthalate (DEHP) in plastic components in MRI detector coils.
Expires on 1 January 2024.'

# COMMISSION DELEGATED DIRECTIVE (EU) 2021/1980

## of 11 August 2021

## amending, for the purposes of adapting to scientific and technical progress, Annex IV to Directive 2011/65/EU of the European Parliament and of the Council as regards an exemption for the use of bis(2-ethylhexyl) phthalate (DEHP) in ion-selective electrodes for analysing human body fluids and/or dialysate fluids

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ([1]), and in particular Article 5(1), point (a), thereof,

Whereas:

(1) Directive 2011/65/EU requires Member States to ensure that electrical and electronic equipment placed on the market does not contain the hazardous substances listed in Annex II to the Directive. That restriction does not apply to certain exempted applications listed in Annex IV to the Directive.

(2) The categories of electrical and electronic equipment to which Directive 2011/65/EU applies are listed in its Annex I.

(3) Pursuant to Commission Delegated Directive (EU) 2015/863 ([2]), bis(2-ethylhexyl) phthalate (DEHP) is a restricted substance listed in Annex II to Directive 2011/65/EU and its use is to be prohibited, from 22 July 2021, in medical devices, including *in vitro* medical devices above a maximum concentration value of 0,1% tolerated by weight in homogeneous materials.

(4) On 17 July 2018, the Commission received an application made in accordance with Article 5(3) of Directive 2011/65/EU for an exemption to be listed in Annex IV to that Directive, for the use of DEHP in ion selective electrodes for analysing human body fluids and/or in dialysate fluids ('the requested exemption').

(5) DEHP is used as a membrane solvent of ion selective electrodes applied in point of care analysers which help to measure the concentration of ionic substances in human body fluids and/or in dialysate fluids.

(6) A technical and scientific assessment study was carried out to evaluate the exemption application ([3]). The evaluation of the application concluded that alternatives to DEHP are currently not sufficiently reliable and that the substitution of DEHP in specific applications would result in negative environmental and health impacts that outweigh its benefits. The evaluation included stakeholder consultations in accordance with Article 5(7) of Directive 2011/65/EU. The comments received during those consultations were made publicly available on a dedicated website.

([1]) OJ L 174, 1.7.2011, p. 88.

([2]) Commission Delegated Directive (EU) 2015/863 of 31 March 2015 amending Annex II to Directive 2011/65/EU of the European Parliament and of the Council as regards the list of restricted substances (OJ L 137, 4.6.2015, p. 10).

([3]) Study to assess three exemption requests relating to Annex IV to Directive 2011/65/EU (Pack 17).

(7) The requested exemption is consistent with Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([4]) and thus does not weaken the environmental and health protection afforded by it.

(8) It is therefore appropriate to grant the requested exemption by including the applications covered by it in Annex IV to Directive 2011/65/EU.

(9) To provide efficient technical equipment for health services and to allow time for the development of suitable alternatives, the requested exemption should be granted for a duration of 7 years starting from the date of application of this Directive in accordance with Article 5(2), first subparagraph, of Directive 2011/65/EU. In view of the results of the ongoing efforts to find a reliable substitution, the duration of the exemption is unlikely to have adverse impacts on innovation.

(10) Directive 2011/65/EU should therefore be amended accordingly.

(11) In the interest of legal certainty and in order to protect the legitimate expectations of operators supplying the medical devices concerned that the requested exemption applies by the date of entry into force of the prohibition for the use of the restricted substance in question, and in the absence of any legitimate interest in creating a disruption to the supply of those medical devices as a result of the entry into force of that prohibition, this Directive should enter into force as a matter of urgency and should apply with retroactive effect from 21 July 2021,

HAS ADOPTED THIS DIRECTIVE:

*Article 1*

Annex IV to Directive 2011/65/EU is amended as set out in the Annex to this Directive.

*Article 2*

1. Member States shall adopt and publish, by 30 April 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate the text of those provisions to the Commission forthwith.

They shall apply those provisions from 21 July 2021.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law that they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

([4]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

Done at Brussels, 11 August 2021.

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

*ANNEX*

In Annex IV to Directive 2011/65/EU, the following entry 45 is added:

'45 Bis(2-ethylhexyl) phthalate (DEHP) in ion-selective electrodes applied in point of care analysis of ionic substances present in human body fluids and/or in dialysate fluids

Expires on 21 July 2028.'

# DECISIONS

## COUNCIL DECISION (EU) 2021/1981

**of 9 November 2021**

**on the position to be taken on behalf of the European Union in the World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos 0, 14, 16, 22, 24, 37, 45, 48, 49, 55, 58, 67, 79, 83, 86, 90, 94, 95, 100, 101, 110, 116, 118, 125, 128, 129, 133, 134, 135, 137, 145, 149, 150, 151, 152, 153, 157, 158 and 159, as regards the proposals for amendments to Consolidated Resolutions R.E.3 and R. E.5, as regards the proposals for amendments to Mutual Resolutions M.R.1 and M.R.2, and as regards the proposals for authorisations to amend UN GTR on pedestrian safety, and to develop UN GTRs on Global Real Driving Emissions and on brake particulate emissions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Council Decision 97/836/EC ([1]), the Union acceded to the Agreement of the United Nations Economic Commission for Europe (UNECE) concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of those prescriptions (the 'Revised 1958 Agreement'). The Revised 1958 Agreement entered into force on 24 March 1998.

(2) By Council Decision 2000/125/EC ([2]), the Union acceded to the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts, which can be fitted and/or be used on wheeled vehicles (the 'Parallel Agreement'). The Parallel Agreement entered into force on 15 February 2000.

(3) Regulation (EU) 2018/858 of the European Parliament and of the Council ([3]) lays down administrative provisions and technical requirements for the type-approval and placing on the market of all new vehicles, systems, components and separate technical units. That Regulation incorporates regulations adopted under the Revised 1958 Agreement ('UN Regulations') in the EU type-approval system, either as requirements for type-approval or as alternatives to Union legislation.

(4) Pursuant to Article 1 of the Revised 1958 Agreement and Article 6 of the Parallel Agreement, the UNECE World Forum for Harmonisation of Vehicle Regulations (UNECE WP.29) may adopt proposals for modifications to UN Regulations, UN Global Technical Regulations (UN GTRs) and UN Resolutions as well as proposals for new UN Regulations, UN GTRs and UN Resolutions concerning the approval of vehicles. Moreover, pursuant to those provisions, UNECE WP.29 may adopt proposals for authorisations to develop amendments to UN GTRs or to develop new UN GTRs and may adopt proposals for the extension of mandates for UN GTRs.

([1]) Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement') (OJ L 346, 17.12.1997, p. 78).

([2]) Council Decision 2000/125/EC of 31 January 2000 concerning the conclusion of the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement') (OJ L 35, 10.2.2000, p. 12).

([3]) Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ L 151, 14.6.2018, p. 1).

(5) UNECE WP.29, during the 185th session of the World Forum to be held between 23 and 25 November 2021, may adopt the proposals for modifications to UN Regulations Nos 0, 14, 16, 22, 24, 37, 45, 48, 49, 55, 58, 67, 79, 83, 86, 90, 94, 95, 100, 101, 110, 116, 118, 125, 128, 129, 133, 134, 135, 137, 145, 149, 150, 151, 152, 153, 157, 158 and 159.

(6) It is appropriate to establish the position to be taken on the Union's behalf in UNECE WP.29, as regards the adoption of those proposals, as the UN Regulations will be binding on the Union and, together with the UN Resolutions, capable of decisively influencing the content of Union law in the field of vehicle type-approval.

(7) In the light of experience and technical developments, the requirements relating to certain elements or features covered by UN Regulations Nos 0, 14, 16, 22, 24, 37, 45, 48, 49, 55, 58, 67, 79, 83, 86, 90, 94, 95, 100, 101, 110, 116, 118, 125, 128, 129, 133, 134, 135, 137, 145, 149, 150, 151, 152, 153, 157, 158 and 159 need to be amended, corrected or supplemented. Regarding the Proposal for a new 08 series of amendments to UN Regulation No 48 (Installation of lighting and light-signalling devices), the one-year period in the proposed transitional provisions appears insufficient and it is thus appropriate to also support the change of the date of the transitional provisions from 1 September 2023 to 1 September 2024 as proposed in document WP.29-185-05.

(8) In addition, certain provisions in UN Resolutions R.E.3, R.E.5, M.R.1 and M.R.2 need to be amended,

HAS ADOPTED THIS DECISION:

*Article 1*

The position to be taken on the Union's behalf in the 185th session of the UNECE World Forum for Harmonisation of Vehicle Regulations to be held between 23 and 25 November 2021 shall be to vote in favour of the proposals for modifications to UN Regulations Nos 0, 14, 16, 22, 24, 37, 45, 48, 49, 55, 58, 67, 79, 83, 86, 90, 94, 95, 100, 101, 110, 116, 118, 125, 128, 129, 133, 134, 135, 137, 145, 149, 150, 151, 152, 153, 157, 158 and 159, of the proposals for amendments to Consolidated Resolutions R.E.3 and R.E.5, of the proposals for amendments to Mutual Resolutions M.R.1 and M.R.2, and of the proposals for authorisations to amend UN GTR on pedestrian safety, and to develop UN GTRs on Global Real Driving Emissions and on brake particulate emissions. ([4])

*Article 2*

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 9 November 2021.

*For the Council*
*The President*
A. ŠIRCELJ

([4]) See document ST 13161/21 on http://register.consilium.europa.eu

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