



2023/2120

13.10.2023

COMMISSION IMPLEMENTING REGULATION (EU) 2023/2120

of 12 October 2023

imposing a provisional anti-dumping duty on imports of electrolytic manganese dioxides originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

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

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 16 February 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of electrolytic manganese dioxides ('EMD') originating in the People's Republic of China ('China', 'the PRC', or 'the country concerned') on the basis of Article 5 of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 3 January 2023 by Autlan EMD SL ('the complainant') or ('Autlan'). The complaint was supported by Tosoh Hellas Single Member S.A. The complaint was made by the Union industry of EMD in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) of that Regulation are not met. One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period. As can be seen in Table 1 below, the imports of EMD originating in the PRC showed a decrease of 66 % in the average monthly volume of imports during the six months following the initiation of the case, as compared to the average monthly imports during the investigation period. Furthermore, to account for any potential seasonality in imports, the Commission compared the average monthly volume of imports during the six months following the initiation of the case with the same six months in the investigation period. This analysis showed a decrease in the average monthly volume of imports of 68 %.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain manganese dioxides originating in the People's Republic of China (OJ C 57, 16.2.2023, p. 11).

Table 1

Imports from China in the investigation period and after initiation (kg)

	Investigation period monthly average	March–August 2022 monthly average	March–August 2023 monthly average
Imports from China to the EU	1 048 558	1 082 617	351 404

Source: Eurostat, Surveillance database.

- (4) Given that the evidence on the file showed that the requirement under point (d) of Article 10(4) was not met, the Commission did not make imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation.

1.3. Raw material distortions

- (5) On 7 September 2023, the complainant made a request in accordance with Article 7(2a) of the basic Regulation to include the examination of alleged raw material distortions in the country concerned regarding the product under investigation to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury. The complainant provided sufficient evidence that there are no value added tax ('VAT') refunds on exports of manganese ore in the country concerned. VAT refund reduction or withdrawal are listed in Article 7(2a), second subparagraph of the basic Regulation, as one of the relevant raw material distortions. Evidence on file also shows that manganese ore accounts for well over the threshold of 17 % of the cost of production of the product under investigation in the country concerned as required by Article 7(2a), fifth subparagraph of the basic Regulation. The comparison of the price of manganese ore in the PRC with the undistorted price of manganese ore sold in representative international markets, published by Fast Markets ⁽³⁾ shows that Chinese prices are below those of representative international markets ⁽⁴⁾ within the meaning of Article 7(2a), second subparagraph of the basic Regulation. To examine the raw material distortions and to assess whether a duty lower than the margin of dumping would be sufficient to remove injury at the definitive stage, the Commission amended the Notice of Initiation of 16 February 2023 on the basis of Article 7(2a) and Article 7(2b) of the basic Regulation. The amended Notice of initiation was published on 13 September 2023 ⁽⁵⁾ ('amended Notice of Initiation'). Further to this amendment, the Commission invited the interested parties to provide information about spare capacities in the country concerned, competition for raw materials and the effect on supply chains for companies in the Union in a free format or by completing relevant parts of the questionnaires on raw material distortions. The Commission also sent to the GOC a questionnaire concerning raw material distortions within the meaning of Articles 7(2a) and 7(2b) of the basic Regulation. The determination on the raw materials distortions will be made at definitive stage. Therefore, the provisional findings contained in this Regulation are without prejudice to the conclusions of the investigation on the raw material distortions, which will be reflected in the definitive stage of the proceeding.

1.4. Interested parties

- (6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the People's Republic of China, known importers, traders and users, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (7) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Hearings with two users and one Union producer were held.

⁽³⁾ <https://www.fastmarkets.com/newgen/battery-materials/manganese>.

⁽⁴⁾ For the majority of the months during the period from 1 July 2021 to 30 June 2022 prices of the Chinese manganese ore are significantly lower than prices in the representative international markets (July–November 2021 (– 3,8 %), February–March 2022 (– 3,6 %)).

⁽⁵⁾ OJ C 323, 13.9.2023, p. 10.

1.5. Sampling

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

Sampling of Union producers

- (9) Given the limited number of Union producers of electrolytic manganese dioxides, the Commission announced in the Notice of Initiation that it would make questionnaires available to the only two known Union producers. These two Union producers provided a questionnaire reply and no other Union producers made themselves known following the publication of the Notice of Initiation. Thus, the Commission did not have to resort to sampling.

Sampling of importers

- (10) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (11) No unrelated importers provided the requested information.

Sampling of exporting producers

- (12) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all known exporting producers in China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (13) Seven exporting producers in the country concerned that exported EMD to the Union during the investigation period, provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of two exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample.
- (14) Following the complainant's comments arguing that the sample was not sufficiently representative for Germany, Belgium and Poland, where the product under investigation was predominantly sold, the Commission amended the proposed sample by including a third exporting producer. No further comments were received as regards the amended sample.
- (15) The sample of exporting producers or groups of exporting producers was the following:
- Xiangtan Electrochemical Scientific Ltd, Xiangtan, China ('Xiangtan'), including:
 - Jingxi Xiangtan Electrochemical Scientific Ltd;
 - Guangxi Guiliu New Material Co., Ltd, Luorong Town, Liuzhou, China ('Guiliu'), including:
 - Guangxi Xiatian Manganese Mine Co. Ltd;
 - Guangxi Daxin Huiyuan New Energy Technology Co., Ltd, Xialei Town, Chongzuo, China ('Daxin').

1.6. Individual examination

- (16) One exporting producer in China requested individual examination under Article 17(3) of the basic Regulation. At this stage of the investigation, the Commission has not taken any decision about the request for individual examination. The Commission will decide whether to grant individual examination at the definitive stage of the investigation.

1.7. Questionnaire replies and verification visits

- (17) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC, within the meaning of Article 2(6a)(b) of the basic Regulation, to the Government of the People's Republic of China ('GOC').
- (18) As announced in the amended Notice of Initiation, the investigation covered also raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to China. For that reason, the Commission invited the interested parties to provide information about spare capacities in the country concerned, competition for raw materials and the effect on supply chains for companies in the Union in a free format or by completing relevant parts of the questionnaires on raw material distortions. The Commission also sent to the GOC a questionnaire concerning raw material distortions within the meaning of Articles 7(2a) and 7(2b) of the basic Regulation.
- (19) The Commission sent questionnaires to the Union producers, sampled exporting producers in China, traders and users. The same questionnaires were made available online ⁽⁹⁾ on the day of initiation.
- (20) The Commission received replies from the sampled exporting producers and one unrelated trader in China, and only a partial reply from two other unrelated traders in China. Replies were also received from two Union producers and two users.
- (21) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Tosoh Hellas Single Member S.A. ('Tosoh'), Sindos, Greece;
- Autlan EMD, S.L. ('Autlan'), Oñati (Guipuzcoa), Spain.

Users

- VARTA Consumer Batteries GmbH & Co. KGaA ('Varta'), Ellwangen (Jagst), Germany;
- Duracell International Operations Sàrl ('Duracell'), Aarschot, Belgium.

Exporting producers in China

- Xiangtan Electrochemical Scientific Ltd, Xiangtan, China;
- Jingxi Xiangtan Electrochemical Scientific Ltd, Jingxi City, Guangxi, China;
- Guangxi Guiliu New Material Co., Ltd, Luorong Town, Liuzhou, China;
- Guangxi Daxin Huiyuan New Energy Technology Co., Ltd, Xialei Town, Chongzuo, China.

Unrelated traders in China

- Forea Industries Co., Ltd ('Forea').

1.8. Investigation period and period considered

- (22) The investigation of dumping and injury covered the period from 1 January 2022 to 31 December 2022 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2019 to the end of the investigation period ('the period considered').

⁽⁹⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2656>.

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (23) The product subject to this investigation is electrolytic manganese dioxides manufactured through an electrolytic process, which have not been heat-treated after the electrolytic process ('the product under investigation', 'EMD').
- (24) The product under investigation comprises two main types: carbon-zinc grade EMD and alkaline grade EMD. Both types are produced through an electrolytic process, with an adaptation of certain parameters in the process to obtain either carbon-zinc grade EMD or alkaline grade EMD. They both normally have a high purity of manganese and are generally used as intermediate products in the production of dry cell consumer batteries. The product under investigation may also be used in limited quantities in the other industries such as chemical, pharmaceutical and ceramics ⁽⁷⁾.
- (25) The investigation has shown that, despite some differences in terms of certain specific physical and chemical characteristics such as density, mean particle size, Brunauer-Emmet-Teller (BET) surface area and alkaline potential, both types of the product under investigation share the same basic physical, chemical and technical characteristics and are used for the same purposes. They are therefore considered to constitute a single product for the purpose of this proceeding.

2.2. Product concerned

- (26) The product concerned is product under investigation originating in China, currently falling under CN code ex 2820 10 00 (TARIC code 2820 10 00 10) ('the product concerned').

2.3. Like product

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

2.4. Claims regarding product scope

- (29) An exporter, Guizhou Manganese Mineral Group ('GMMG'), claimed that the types of EMD products covered by this investigation have a wide range of uses, involving multiple industries and not only the production of dry cell consumer batteries. The imposition of antidumping measures on not heat-treated electrolytic manganese dioxide is likely to have a wide-reaching impact on multiple industries, as it would block the diverse and high-quality demand for EMD from the Union's disposable battery and new energy power battery industries as well as other industries such as chemical, pharmaceutical and ceramics. GMMG claimed that the Union producers may not be able to meet the requirements of other industries (like chemical, pharmaceutical and ceramics) in terms of quantity and quality.
- (30) These other types of EMD users ⁽⁸⁾ did not come forward and did not express such concerns in the framework of this investigation. Besides, the investigation found that the Union producers supply these other types of users too. GMMG's argument was therefore rejected.

⁽⁷⁾ In water treatment, ceramic dyeing, feed additives, medicine, biochemical products, welding materials and other chemical uses.

⁽⁸⁾ Button battery, zinc air battery producers, pigments, water purification, pharmaceuticals. These users represent around 1 % of the Union's consumption in the investigation period.

- (31) GMMG also claimed that the Union producers are not able to supply EMD for a number of specific battery technologies (e.g. batteries for electric vehicles), where EMD is used ⁽⁹⁾. However, these technologies are currently not utilised in a large-scale production and are not used in the Union's electric vehicle battery industry. Therefore, there is no indication that the Union producers would not supply to these industries using those technologies, should there be a demand. The argument of the party was therefore rejected.
- (32) GMMG further claimed that the special electrolytic manganese dioxide required by the button battery producers, needs to be processed by special processes involving physical and chemical treatment, while the Union producer in Spain allegedly cannot produce such product according to the current production technology.
- (33) The investigation found that Autlan (the Union producer in Spain) has not yet received any request to supply EMD for the production of button batteries. Hence, without any specific technical specifications there are no indications whether it can supply EMD for the such end-product. On the other hand, the Union producer in Greece supplied button battery producers during the period considered. The argument of the party was therefore rejected.

2.5. Request to extend the product scope of the investigation

- (34) Five months after the initiation of the investigation, Autlan, requested to apply the anti-dumping measures imposed on EMD originating in China, if any, to EMD of Chinese origin contained in manganese dioxide alkaline and non-alkaline dry cell batteries imported into the Union from China. Those dry cell batteries fall under CN codes 8506 10 11, 8506 10 18, 8506 10 91 and 8506 10 98. Autlan provided an estimated development of imports of EMD contained in manganese dioxide alkaline dry cell batteries ⁽¹⁰⁾, demonstrating that imports of such batteries, as well as their EMD content, have increased sharply since 2019. The party claimed that EMD contained in manganese dioxide alkaline and non-alkaline dry cell batteries formed part of the product under investigation in the complaint referred in recital (2).
- (35) The Commission rejected the request. In the complaint, the product allegedly being dumped was defined as 'electrolytic manganese dioxides (i.e. manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process originating in the People's Republic of China, usually declared for importation into the European Union within Combined Nomenclature (CN) code ex 2820 10 00'. Manganese dioxide alkaline and non-alkaline dry cell batteries are the downstream products of the product under investigation. Though imports of dry cell batteries were mentioned in the complaint, the product definition did not mention them, nor did it request to cover EMD included in batteries. Indeed, all the evidence in the complaint refers only to EMD, and never to EMD contained in batteries ⁽¹¹⁾. Further, the complaint clearly identifies dry cell battery producers, as the user industry. There was therefore no evidence provided in the complaint that the EMD contained in manganese dioxide alkaline and non-alkaline dry cell batteries, falling under CN codes 8506 10 11, 8506 10 18, 8506 10 91 and 8506 10 98 were dumped or that they caused injury to the Union industry.
- (36) Consequently, the Notice of Initiation defined 'the product subject to this investigation is electrolytic manganese dioxides (namely manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process' and 'the product allegedly being dumped is the product under investigation, originating in the People's Republic of China, currently classified under CN code ex 2820 10 00 (TARIC code 2820 10 00 10). The CN and TARIC codes are given for information only, without prejudice to a subsequent change in the tariff classification.

⁽⁹⁾ Such as cathode material in lithium manganese iron phosphate, lithium manganate, nickel cobalt manganese base precursor, etc.

⁽¹⁰⁾ Without providing information on imports of EMD contained in manganese dioxide non-alkaline dry cell batteries.

⁽¹¹⁾ For example, the import data used for evidence of injury, or to determine the export price, only take into consideration imports under (CN) code ex 2820 10 00. Also, the normal value and injury indicators relate exclusively to the producers of EMD in the representative country or the Union.

The scope of this investigation is subject to the definition of the product under investigation'. It follows, that the procedure for the determination of dumping and injury, as well as the assessment of Union interest did not include collection and analysis of the information on the EMD contained in manganese dioxide alkaline and non-alkaline dry cell batteries.

3. DUMPING

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

- (37) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to China, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.

- (38) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide information regarding the inputs used for producing EMD. Seven exporting producers submitted the relevant information.

- (39) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. No reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.

- (40) In point 5.3.2 of the Notice of Initiation the Commission also specified that, in view of the evidence available, a possible appropriate representative country was Colombia, pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.

- (41) On 12 June 2023, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour, energy and water used in the production of EMD. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Colombia as a possible appropriate representative country, being the only country with EMD production with a similar level of economic development as China. The Commission also identified publicly available financial data of the sole producer of EMD in the country, Quimica Internacional Quintal S.A ('Quintal'), and of another company using the similar production process (companies that use electrolytic processes in their production process), Quimpac de Colombia S.A ('Quimpac'). The Commission received comments on the First Note from all sampled exporting producers, Autlan, VARTA and China Chamber of Commerce for Metals, Minerals and Chemicals Importers ('CCCMI') and Exporters and the Guanxi Manganese Industry Association ('GMIA').

- (42) On 4 July, and after having analysed all comments and information received on the First Note, the Commission issued a second note ('the Second Note') on the relevant sources it intended to use for the determination of the normal value. In the Second Note, the Commission updated the list of factors of production and the relevant sources and informed interested parties that it intended to use Colombia as the representative country.
- (43) As Quintal reported low profit level in 2022 and high selling, general and administrative ('SG&A') costs, the Commission considered its financial data not reasonable within the meaning of Article 2(6a)(a). Therefore, the Commission informed interested parties that it would establish SG&A costs and profits based on the 2022 financial data available for Quimpac. The Commission invited interested parties to comment. All comments received are addressed in detail in Section 3.2.

3.2. Normal value

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

3.2.1. Existence of significant distortions

3.2.1.1. Introduction

- (47) Article 2(6a)(b) of the basic Regulation stipulates that 'significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces as they are affected by substantial government intervention. In assessing the existence of significant distortions regard shall be had, inter alia, to the potential impact of one or more of the following elements:
- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
 - state presence in firms allowing the state to interfere with respect to prices or costs;
 - public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces;
 - the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws;
 - wage costs being distorted;
 - access to finance granted by institutions which implement public policy objectives or otherwise not acting independently of the state'.

- (48) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given regard to for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list. However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provide the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (49) Article 2(6a)(c) of the basic Regulation provides that '[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector'.
- (50) Pursuant to this provision, the Commission has issued a country report concerning the PRC ('the Report') ⁽¹²⁾, including evidence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as in specific sectors (such as steel and chemicals). Interested parties were invited to rebut, comment, or supplement the evidence contained in the investigation file at the time of initiation. The Report was placed in the investigation file at the initiation stage.
- (51) The complaint contained information regarding the industry manufacturing the product concerned and referred to the Report regarding the structural distortions in the Chinese market. The complaint also contained some relevant evidence complementing the Report. The complaint established that the product concerned is classified under CN 28 which covers chemical products, a sector characterised by substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles.
- (52) Moreover, the complaint explained that the industry manufacturing the product concerned is capital and resource intensive, and that energy products represent, in normal conditions, a significant portion of the cost of production. Therefore, the specific distortions contained in the Report related to key factors of production (such energy and labour) are very relevant for the investigation.
- (53) As indicated in recital (39), the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (54) Comments in this regard were received from CCCMC, jointly with GMIA. Comments were also received from cooperating exporting producers, Xiangtan Electrochemical Scientific Ltd (Xiangtan) and Guangxi Daxin Huiyuan New Energy Technology Co., Ltd (Daxin).
- (55) First, CCCMC/GMIA submitted that Article 2(6a) of the Basic Regulation is not consistent with WTO law, in particular they submitted that Article 2.2 of the WTO Antidumping Agreement ('ADA') does not recognise the concept of significant distortions.
- (56) Second, CCCMC/GMIA maintained that there are no significant distortions in the Chinese EMD sector and that there is insufficient evidence to conclude that significant distortions exist in the EMD sector in China. They alleged that the main evidence provided by the complainant derives from the Commission's China Report, which was published in December 2017. CCCMC/GMIA considered that the Report is outdated and that both the European and the Chinese economies have in the meantime experienced important policy and structural changes.

⁽¹²⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (hereafter 'Report').

- (57) Another issue raised by CCCMC/GMIA pertains to the use of third-country data in determining the normal value. According to the WTO ADA, if a country's investigating authority intends to utilise data from a third country, it must explain and demonstrate how this data has been adapted to accurately reflect prices or cost levels in the origin exporting country. CCCMC/GMIA considers that the absence of such explanation raises concerns about the reliability and validity of using unrelated data in assessing fair market conditions in China's EMD sector.
- (58) Daxin provided similar comments as the comments received from CCCMC/GMIA. In particular, Daxin also argued that Article 2(6a) of the basic Regulation is not consistent with WTO law. In support of its claim the exporting producer provided the same arguments as CCCMC/GMIA, notably that Article 2.2 of the WTO ADA does not recognise the concept of significant distortions, and that there is no provision in the ADA allowing data from a third country which cannot reflect the prices or cost level of the exporting country to be used for determining the normal value.
- (59) Daxin also disputed that there are significant distortions in the Chinese EMD sector and commented that there is insufficient evidence to prove those distortions, considering that the main evidence provided by the complainant is the Commission's China Report which is outdated.
- (60) The other cooperating exporting producer, Xiangtan, explained in its comments that the complainant failed to discharge its burden of proof in demonstrating that the costs of Chinese EMD industry in general, and Xiangtan in particular, are distorted. Xiangtan claimed that the Commission's Report contains no specific or detailed discussion of the EMD sector. Xiangtan considered that the complainant, in assessing whether significant distortions exist, rely on supporting evidence that is either irrelevant or factually wrong. Moreover, Xiangtan explained that the complaint claimed that Chinese electricity price is distorted, however, much of the electricity consumed by Xiangtan is produced by itself, and thus could not be substantially affected by the allegedly 'distorted' electricity market in China.
- (61) First, concerning the claims that the provisions of Article 2(6a) of the basic Regulation are not consistent with the Union's WTO obligations and the use of third country data in determining the normal value, the Commission considered that the provisions of the basic Regulation are fully consistent with WTO obligations. As explicitly clarified by the WTO Appellate Body in DS473, WTO law permits the use of data from a third country, duly adjusted, when such adjustment is necessary and substantiated. Furthermore, the Commission noted that, once it is determined that due to the existence of significant distortions in the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation.
- (62) Moreover, the Commission examined whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so based on the evidence available on the file, including the evidence contained in the Report, which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under investigation. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, including the developments subsequent to the publication of the Report. Therefore, these claims were rejected.
- (63) With regard to the claim concerning the outdated character of the evidence contained in the Report, the Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the Chinese authorities, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. As it was made publicly available already in December 2017, any interested party had ample opportunity to rebut,

supplement or comment on it and the evidence on which it is based, and no parties have submitted arguments or evidence rebutting the sources included in the Report. As to alleged similarities of the current EU industrial policies with policies in China, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in China in accordance with Article 2(6a) of the basic Regulation. These claims are therefore dismissed.

- (64) Concerning the claim that the applicant did not provide sufficient evidence to substantiate its claims regarding significant distortions in the PRC, as specified at Point 3 of the Notice of Initiation, the Commission considered that the complaint did provide sufficient evidence of significant distortions as required by Article 2(6a)(e) of the basic Regulation to initiate the investigation on this basis. There are no further evidence requirements of the type alleged by this party in Article 2(6a) of the basic Regulation. Indeed, while the determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation only occurs at the time of the disclosure, Article 2(6a)(e) of the basic Regulation lays down an obligation to collect the data necessary for the application of this methodology when the investigation has been initiated on this basis. In this case, the Commission deemed the evidence submitted in the request sufficient to initiate the investigation on this basis. Therefore, the Commission took the steps necessary to enable it to apply the methodology under Article 2(6a) of the basic Regulation in case the existence of significant distortions would be confirmed during the investigation. Moreover, the Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC. The Commission rejected this claim.
- (65) Regarding Xiangtan's claim that no specific or detailed discussion of the EMD sector is contained in the Report and that regarding electricity, the majority of the electricity consumed by Xiangtan is produced by itself, and thus could not be substantially affected by the allegedly distorted electricity market, the Commission noted that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is established on a country-wide level. If the existence of significant distortions is established, then the provisions of Article 2(6a) of the basic Regulation apply to all exporting producers in the PRC and concern all costs relating to their factors of production. In any event, the same provision of the basic Regulation provides for the use of domestic costs which are positively established not to be affected by significant distortions. However, no domestic costs have been established to be undistorted based on accurate and appropriate evidence. In particular, the exporting producers did not submit accurate and appropriate evidence on undistorted prices and costs. Whether a producer has the capacity to generate electricity without sourcing such electricity from other sources does not positively establish that this factor of production is not affected by the distortions affecting the country as whole. This claim is therefore rejected.

3.2.1.2. Significant distortions affecting the domestic prices and costs in the PRC

- (66) The Chinese economic system is based on the concept of a 'socialist market economy'. That concept is enshrined in the Chinese Constitution and determines the economic governance of the PRC. The core principle is the 'socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people'. The State-owned economy is the 'leading force of the national economy' and the State has the mandate 'to ensure its consolidation and growth' ⁽¹³⁾. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasised as a general principle in all central pieces of legislation. The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the State with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the State ownership ⁽¹⁴⁾.

⁽¹³⁾ Report – Chapter 2, p. 6–7.

⁽¹⁴⁾ Report – Chapter 2, p. 10.

- (67) In addition, under Chinese law, the socialist market economy is developed under the leadership of the Chinese Communist Party ('CCP'). The structures of the Chinese State and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the State are indistinguishable. Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution. Following the already existing first sentence of the provision: '[t]he socialist system is the fundamental system of the People's Republic of China' a new second sentence was inserted which reads: 'The leadership of the Communist Party of China is the defining feature of socialism with Chinese characteristics' ⁽¹⁵⁾. This illustrates the unquestioned and ever-growing control of the CCP over the economic system of the PRC. This leadership and control are inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (68) The Chinese State engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market ⁽¹⁶⁾. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (69) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government. Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets while this was a regular feature in previous planning cycles. Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion, etc.). The economic operators, private and State-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also Section 3.2.1.5 below) ⁽¹⁷⁾.
- (70) Second, on the level of allocation of financial resources, the financial system of the PRC is dominated by the State-owned commercial banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government's industrial policy objectives rather than primarily assessing the economic merits of a given project (see also Section 3.2.1.8 below). The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. These other parts of the financial sector are also institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the State and the CCP ⁽¹⁸⁾.
- (71) Third, on the level of regulatory environment, the interventions by the State into the economy take several forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted to facilitate the achievement of goals designed by State policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the

⁽¹⁵⁾ Available at: <http://www.npc.gov.cn/englishnpc/constitution2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml> (last viewed 22 August 2023).

⁽¹⁶⁾ Report – Chapter 2, p. 20–21.

⁽¹⁷⁾ Report – Chapter 3, p. 41, 73–74.

⁽¹⁸⁾ Report – Chapter 6, p. 122–135.

decision-making bodies ⁽¹⁹⁾. Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both State and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining State control over key sectors or bolstering domestic industry ⁽²⁰⁾.

- (72) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles ⁽²¹⁾.

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

- (73) In the PRC, enterprises operating under the ownership, control and/or policy supervision or guidance by the State represent an essential part of the economy.
- (74) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises ('SOEs'). The State (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision-making in SOEs. This is typically done through rotation of management between government authorities and SOEs, through presence of party members on SOEs executive bodies and of party cells in companies (see also Section 3.2.1.4), as well as through shaping the corporate structure of the SOE sector ⁽²²⁾. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance ⁽²³⁾. The elements that point to the existence of government control over enterprises in the EMD sector is further developed in Section 3.2.1.4 below.
- (75) Specifically in the EMD sector, a substantial degree of ownership by the GOC exists. Moreover, an analysis of the main Chinese EMD exporting producers to the Union shows considerable state interference.
- (76) In the case of Xiangtan Electrochemical Technology Co., Ltd., is a holding company under the State-owned Assets Supervision and Administration Commission of Xiangtan City ⁽²⁴⁾. The two biggest shareholders are state-owned accounting for a total of 40 % state-owned shareholding. The chairman of the company is a CCP member and the company's Party Committee Secretary ⁽²⁵⁾. The deputy general manager, secretary to the Board of Directors, is a CCP member and member of the company's Party Committee ⁽²⁶⁾.
- (77) Guangxi Guilin Chemical Co., Ltd., is a private company held by natural persons. However, the chairman and general manager is also a CCP member and CCP Committee Secretary ⁽²⁷⁾. And another member of the Board of Directors of the company is also a CCP member and Deputy secretary of the CCP Committee.

⁽¹⁹⁾ Report – Chapter 7, p. 167–168.

⁽²⁰⁾ Report – Chapter 8, p. 169–170, 200–201.

⁽²¹⁾ Report – Chapter 2, p. 15–16, Report – Chapter 4, p. 50, p. 84, Report – Chapter 5, p. 108–9.

⁽²²⁾ Report – Chapter 3, p. 22–24 and Chapter 5, p. 97–108.

⁽²³⁾ Report – Chapter 5, p. 104–9.

⁽²⁴⁾ Annual Report 2022, page 76–77. Information about shareholders (last viewed 22 August 2023).

⁽²⁵⁾ <http://www.chinaemd.com/about/1172116.html> (last viewed 22 August 2023).

⁽²⁶⁾ http://www.chinaemd.com/news_1/2.html (last viewed 22 August 2023).

⁽²⁷⁾ <https://www.gongsi.com.cn/detail/753dfdb1-b132-3109-a33d-c17b877265651> (last viewed 22 August 2023).

- (78) South Manganese Group Ltd is a 100 % held by South Manganese investment Group ⁽²⁸⁾. The Group used to be called CITIC Dameng Holdings ⁽²⁹⁾. Concerning the shareholders of South Manganese investment Group, 22 % is held by the City of Nanning and 4,9 % is held by CITIC Group ⁽³⁰⁾, a state-owned financial conglomerate. The Chairman of the board of South Manganese Group, is a Party Committee Secretary ⁽³¹⁾.
- (79) Guizhou Red Star Development Dalong Manganese Industry Co., Ltd., is held at 94 % by Guizhou Red Star Development. The actual controller of Guizhou Red Star development is Qingdao SASAC, so it is an SOE ⁽³²⁾. The company's controlling shareholder is Qingdao Hongxing Chemical Group Co., Ltd., and the actual controller is the State-owned Assets Supervision and Administration Commission of the Qingdao Municipal People's Government. The chairman of the Group is also Party Committee Secretary ⁽³³⁾.
- (80) In addition, given that CCP interventions into operational decision-making have become the norm also in private companies ⁽³⁴⁾, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the state by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the state and Party structures have grown together in the PRC.
- (81) This is apparent also at the level of the China Petrochemical and Chemical Industry Federation (CPCIF) the sectoral industry association. According to Article 3 of CPCIF's Articles of Association, the organisation 'accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management' ⁽³⁵⁾.
- (82) Consequently, even privately owned producers in the sector of the product under investigation are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance as also set out in Section 3.2.1.5 below.

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

- (83) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through State presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights ⁽³⁶⁾, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution ⁽³⁷⁾) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been

⁽²⁸⁾ <http://www.southmn.com/en/subsidiaries.php> (last viewed 22 August 2023).

⁽²⁹⁾ <https://www.marketscreener.com/quote/stock/SOUTH-MANGANESE-INVESTMEN-6880445/company/> (last viewed 22 August 2023).

⁽³⁰⁾ <https://www.marketscreener.com/quote/stock/SOUTH-MANGANESE-INVESTMEN-6880445/company/> (last viewed 22 August 2023).

⁽³¹⁾ <http://dangxiao.southmn.com/content/?2166.html> last viewed 22 August 2023).

⁽³²⁾ See Guizhou Red Star 2022 annual report. Page 108: http://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2023-04-21/600367_20230421_6QES.pdf (last viewed 22 August 2023).

⁽³³⁾ <https://mp.weixin.qq.com/s/ySOAhaU-6KSka0uHWRs9oA> (last viewed 22 August 2023).

⁽³⁴⁾ See for example Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law or General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era (see below for full reference) (last viewed 22 August 2023).

⁽³⁵⁾ See at: <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (last viewed 22 August 2023).

⁽³⁶⁾ Report – Chapter 5, p. 100–1.

⁽³⁷⁾ Report – Chapter 2, p. 26.

followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline ⁽³⁸⁾. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies ⁽³⁹⁾. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of EMD and the suppliers of their inputs.

- (84) In addition, on 15 September 2020 a document titled 'General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era' (the Guidelines) ⁽⁴⁰⁾ was released, which further expanded the role of the party committees in private enterprises. Section II.4 of the Guidelines state: '[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area'; and Section III.6 states: '[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers'. The Guidelines thus emphasise and seeks to increase the role of the CCP in companies and other private sector entities ⁽⁴¹⁾.
- (85) The State's presence and intervention in the financial markets (see also Section 3.2.1.8 below) as well as in the provision of raw materials and inputs further have an additional distorting effect on the market ⁽⁴²⁾. Thus, the State presence in firms, including SOEs, in the chemical and other sectors (such as the financial and input sectors) allow the GOC to interfere with respect to prices and costs.

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

- (86) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces ⁽⁴³⁾.
- (87) The EMD industry is regarded as a key industry by the GOC. This is confirmed in the '14th Five-Year Plan ("FYP") raw material industry development plan' ⁽⁴⁴⁾, as Section V.3 specifically mentioned electrolytic manganese: 'Improve the level of comprehensive utilization of resources, support the highly efficient use of resources, continuously improve the management of key techniques and processes, improve primary resource utilization efficiency, and reduce resource and energy consumption over the whole process. Comprehensively promote the utilization of raw materials and industrial solid waste, focusing on [...], **electrolytic manganese slag** [...]. Encourage implementation across the country'.

⁽³⁸⁾ Report – Chapter 2, p. 31–2.

⁽³⁹⁾ Available at <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (last viewed 22 August 2023).

⁽⁴⁰⁾ Available at www.gov.cn/zhengce/2020-09/15/content_5543685.htm (last viewed on 22 August 2023).

⁽⁴¹⁾ Financial Times (2020) 'Chinese Communist Party asserts greater control over private enterprise', available at: <https://on.ft.com/3mYxP4j> (last viewed 22 August 2023).

⁽⁴²⁾ Report – Chapters 14.1 to 14.3.

⁽⁴³⁾ Report – Chapter 4, p. 41–42, 83.

⁽⁴⁴⁾ '14th Five-Year Plan ("FYP") raw material industry development plan' available at https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html (last viewed 22 August 2023).

- (88) EMD is also specifically mentioned in the 2019 version of the 'Guiding Catalogue for industry structural adjustment' ⁽⁴⁵⁾. In the catalogue, there are three categories of industries: 'encouraged', 'restricted' and 'to be eliminated'. EMD is mentioned in the 'restricted category'. At the same time, in the same Guiding Catalogue, a specific EMD production equipment called 'reverberatory furnace' used to reduce manganese dioxide, is mentioned in the 'to be eliminated' category.
- (89) Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector. The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, inter alia: Section VIII.1 Implementation measures of the 14th FYP on developing the raw materials industry established the following: 'All localities need to strengthen compliance with this Plan and integrate the Plan's main contents and major projects into in their key local tasks. Petrochemical and chemical, steel and other key sectors shall formulate specific implementation opinions focussing on the objectives and tasks of this Plan and taking into account the actual conditions prevailing in the aforesaid sectors'.
- (90) In addition, the Guiding Opinion to promote the high-quality development of the petrochemical and chemical industries during 14th FYP ⁽⁴⁶⁾ quantifies further parameters of the sector's planned development: 'By 2025, the petrochemical and chemical industry will basically form a high-quality development pattern with strong indigenous innovation capabilities, a reasonable structural layout, a green, safe, low-carbon development. It will also greatly improve capabilities to ensure high-end product, significantly enhance core competitiveness, and take resolute steps towards high-level self-reliance and self-improvement' ⁽⁴⁷⁾ and several targets for the chemical sector: '[t]he production concentration level of bulk chemicals production will be further increased, and the capacity utilization rate will reach more than 80 % [...] about 70 chemical industry parks with competitive advantages will be established' ⁽⁴⁸⁾. It also emphasises the need to: 'strengthen the coordination of fiscal, financial, regional, investment, import and export, energy, ecological environment, price and other policies with industrial policies' as well as to '[g]ive full play to the role of the national industry-finance joint cooperation platform, and promote bank-enterprise connections and industry-finance cooperation' ⁽⁴⁹⁾.
- (91) There are also provincial policies supporting the manganese industry. Guizhou, Guangxi, Hunan and other places are the main production areas of electrolytic manganese dioxide in China, of which Guangxi accounts for nearly 80 % of the country's total output ⁽⁵⁰⁾.
- (92) The Guangxi province published in 2017, the '*Guangxi Metallurgical Industry Second Entrepreneurship Implementation Plan (2017-2025)*' ⁽⁵¹⁾. In Section I of the plan it is mentioned that 'By 2025, the production capacity of ferroalloy in Guangxi will be controlled at about 6 million tons; the production capacity of electrolytic manganese metal will be controlled at about 600 000 tons; the production capacity of electrolytic manganese dioxide will be 270 000 tons; the production capacity of manganese sulfate will be about 100 000 tons; Manganese-based lithium-ion power battery 400 million Ampere hours'. Section II.4.2 mentions that one of the objectives is to 'Strengthen cooperation with iron and steel, stainless steel and foundry, and strive to improve the local ability to digest electrolytic manganese metal, electrolytic manganese dioxide and manganese sulfate and other products'.

⁽⁴⁵⁾ 2019 version of the Guiding Catalogue for industry structural adjustment, page 83 and page 106, available at: <http://www.gov.cn> (last viewed 22 August 2023).

⁽⁴⁶⁾ Guiding Opinion to Promote the High-Quality Development of the Petrochemical and Chemical Industries during 14th FYP. Available at: http://www.gov.cn/zhengce/zhengceku/2022-04/08/content_5683972.htm#msdyntrid=WRmyf07ph0z74SHm-XoOLKjRWl09BdZ4lGdYp9fi9xU (last viewed on 22 August 2023).

⁽⁴⁷⁾ *Ibid.*, Section I.3.

⁽⁴⁸⁾ *Ibid.*

⁽⁴⁹⁾ *Ibid.*, Section VIII.

⁽⁵⁰⁾ Source: SOHU news website available at https://www.sohu.com/a/676687101_385826 (last viewed on 22 August 2023).

⁽⁵¹⁾ Guangxi Metallurgical Industry Second Entrepreneurship Implementation Plan (2017-2025) [2017] No 157 available at: <https://h5.drcnet.com.cn/docview.aspx?version=mineral&docid=4997334&leafid=23025&chnid=5819> (last viewed 22 August 2023).

- (93) Moreover, in 2018 Guangxi published a 'Development plan for manganese industry clusters and industry chain' ⁽⁵²⁾ which was compiled and issued as a directional plan to guide the future development of the manganese industry in the region. In the same year it was published a 'Policy Interpretation of the Guangxi Manganese Industry Cluster and Industrial Chain Development Plan' ⁽⁵³⁾.
- (94) The development goals of the plan are 'to optimise the structure and layout of the manganese industry, realise the coordinated development of mining, dressing, smelting, and deep processing, form industrial clusters for manganese ore mining and manganese ore processing, increase the protection of the ecological environment, pay attention to safe production and resource recycling, and vigorously promote energy conservation and emission reduction. Strive to control the production capacity of electrolytic manganese metal in our province at about 600 000 tons by 2020; the production capacity of electrolytic manganese dioxide at 270 000 tons, and the production capacity of manganese sulfate at about 100 000 tons'.
- (95) The implementation measures of the plan put forward six aspects including 'strengthening organization and coordination, establishing and improving the manganese industry standard system, promoting the research and development, promotion and application of manganese products and processing technology, strengthening the construction of advantageous enterprises and talent teams, strengthening fiscal and tax financial support, and vigorously attracting investment'.
- (96) Moreover, Section III.4 of the above-mentioned plan, advocates for 'Actively attract strong enterprises and build alliance of the strong ones, cultivate backbone enterprises, and encourage key enterprises in the region towards integration and reorganization. With leading enterprises such as CITIC Dameng Mining Co., Ltd., Guangxi Ferroalloy Co., Ltd., and Baise Mining Group Co., Ltd, the Manganese Qinzhou 1,5 million tons/year manganese-based new materials ecological cycle industrial park, Baikuang Group Jingxi manganese ore dressing and smelting-metal manganese deep processing-manganese slag comprehensive utilization base and other large-scale projects foster the integration of advantageous resources, fully combine the advantages of state-owned and private capital, so as to improve the operating efficiency of leading enterprises, optimise the industry and product structure, reduce competition in the same industry, and build leading enterprises into internationally renowned high-quality enterprises with strong market competitiveness'.
- (97) Furthermore, under Section IV Implementation measures, the plan refers to 'Strengthen fiscal, tax and financial support. Strengthen government, bank, and enterprise information communication, effectively play the incentive and guiding role of financial funds, actively attract social capital, and support the development of the manganese industry. Give full play to the guiding role of industrial equity investment funds, coordinate, and support the development of the manganese industry. All administration departments shall use available funds to guide the development of manganese manufacturing innovation centers, application demonstration platforms, research and development institutions, and application demonstration projects. Further implement a series of policies that supported the innovation and development of enterprises in recent years, and effectively benefitted enterprises'.
- (98) In addition, the intervention of public authorities in the development of the EMD industry in the Guangxi Province, is further demonstrated by the 'Recommendations published by the Secretary of the Party Leadership Group and Director of Baise Industry and Information Technology Bureau' ⁽⁵⁴⁾. The recommendations mentioned that the country has listed manganese ore as a strategic mineral resource. Moreover, the recommendations mentioned that 'In recent years, the party committee and government of the autonomous region have attached great importance to

⁽⁵²⁾ Guangxi province's 2018 'Development plan for manganese industry clusters and industry chain' available at: <http://gxt.gxzf.gov.cn/xxgk/fgzc/gfxwj/t4240632.shtm> (last viewed 22 August 2023).

⁽⁵³⁾ Source: 'Policy Interpretation of Guangxi Manganese Industry Cluster and Industrial Chain Development Plan', Department of Raw Materials Industry, 30 October 2018.

⁽⁵⁴⁾ Guangxi Province CCP's recommendations available at: <http://www.gxzx.gov.cn/html/wylz/weiyuanfengcai/492.html> (last viewed 22 August 2023).

the optimization and upgrading of the industrial chain, vigorously implemented the second venture of the metallurgical industry, and the production capacity of manganese ore has continued to grow. In 2020, the output of electrolytic manganese dioxide in the region will be 260 500 tons, accounting for about 75 % of the national output; the output of electrolytic manganese metal will be 270 100 tons, accounting for about 18 % of the national output, ranking among the top in the country’.

- (99) Guangxi Province is not the only one with active promotion of the manganese industry. Guizhou province introduced also measures to develop manganese and manganese processing industry. The Guizhou Province 14 FYP on economic and social development plan ⁽⁵⁵⁾ include among its objectives to cooperate with other provinces in the promotion of the manganese industry: ‘Strengthen exchanges and cooperation with Hunan, Hubei, Jiangxi and other provinces in the middle reaches of the Yangtze River in the fields of energy, tourism, equipment manufacturing, new materials, education, etc., and jointly build industrial bases such as new manganese deep processing’.
- (100) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of EMD. Such measures impede market forces from operating freely.

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

- (101) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than the PRC, the Chinese system is characterised by systematic under-enforcement. The number of bankruptcies remains notoriously low in relation to the size of the country’s economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the State in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings ⁽⁵⁶⁾.
- (102) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in the PRC ⁽⁵⁷⁾. All land is owned by the Chinese State (collectively owned rural land and State-owned urban land). Its allocation remains solely dependent on the State. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates ⁽⁵⁸⁾. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land ⁽⁵⁹⁾.
- (103) Much like other sectors in the Chinese economy, the producers of EMD are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations appear to be fully applicable also in the EMD sector. The present investigation revealed nothing that would call those findings into question.

⁽⁵⁵⁾ Guizhou Province 14 FYP on economic and social development and 2035 perspectives, available at: https://www.ndrc.gov.cn/fggz/fzzlgh/dffzgh/202105/t20210508_1279407.html (last viewed on 22 August 2023).

⁽⁵⁶⁾ Report – Chapter 6, p. 138–149.

⁽⁵⁷⁾ Report – Chapter 9, p. 216.

⁽⁵⁸⁾ Report – Chapter 9, p. 213–215.

⁽⁵⁹⁾ Report – Chapter 9, p. 209–211.

- (104) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the EMD sector, including with respect to the product concerned.

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

- (105) A system of market-based wages cannot fully develop in the PRC as workers and employers are impeded in their rights to collective organisation. The PRC has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining ⁽⁶⁰⁾. Under national law, only one trade union organisation is active. However, this organisation lacks independence from the State authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary ⁽⁶¹⁾. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area. This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration ⁽⁶²⁾. Those findings lead to the distortion of wage costs in the PRC.
- (106) No evidence was submitted to the effect that the EMD sector would not be subject to the Chinese labour law system described. EMD sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

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

- (107) Access to capital for corporate actors in the PRC is subject to various distortions.
- (108) First, the Chinese financial system is characterised by the strong position of State-owned banks ⁽⁶³⁾, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similarly to non-financial SOEs, the banks remain connected to the State not only through ownership but also via personal relations (the top executives of large State-owned financial institutions are ultimately appointed by the CCP) ⁽⁶⁴⁾ and, again just like non-financial SOEs, the banks regularly implement public policies designed by the government. In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State ⁽⁶⁵⁾. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁶⁶⁾.
- (109) While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

⁽⁶⁰⁾ Report – Chapter 13, p. 332–337.

⁽⁶¹⁾ Report – Chapter 13, p. 336.

⁽⁶²⁾ Report – Chapter 13, p. 337–341.

⁽⁶³⁾ Report – Chapter 6, p. 114–117.

⁽⁶⁴⁾ Report – Chapter 6, p. 119.

⁽⁶⁵⁾ Report – Chapter 6, p. 120.

⁽⁶⁶⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

- (110) For example, the GOC has very recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies ⁽⁶⁷⁾. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities 'serve the national development objectives and the real economy', and in particular how they 'serve strategic and emerging industries' ⁽⁶⁸⁾.
- (111) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government. Estimates strongly suggest that Chinese credit ratings systematically correspond to lower international ratings ⁽⁶⁹⁾.
- (112) This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important ⁽⁷⁰⁾. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (113) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the State sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (114) Third, although nominal interest rate liberalisation was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018 ⁽⁷¹⁾. Official media in the PRC have recently reported that the CCP called for 'guiding the loan market interest rate downwards' ⁽⁷²⁾. Artificially low interest rates result in under-pricing, and consequently, the excessive utilisation of capital.
- (115) Overall credit growth in the PRC indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly in recent years. Faced with a situation of increasing debt-at-risk, the GOC has opted to avoid defaults. Consequently, bad debt issues have been handled by rolling over debt, thus creating so-called 'zombie' companies, or by transferring the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.

⁽⁶⁷⁾ See official policy document of the China Banking and Insurance Regulatory Commission (CBIRC) of 28 August 2020: 'Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)', <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 22 August 2023). The Plan instructs to 'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'. Moreover, the Plan's Section II aims at promoting the organic integration of the Party's leadership into corporate governance: 'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management'.

⁽⁶⁸⁾ See CBIRC's Notice on the Commercial banks performance evaluation method, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm (last viewed on 22 August 2023).

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

⁽⁷⁰⁾ Report – Chapter 6, p. 121–122, 126–128, 133–135.

⁽⁷¹⁾ See OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris, p. 29. Available at: OECD Economic Surveys: China 2019 | OECD Economic Surveys: China | OECD iLibrary (oecd-ilibrary.org).

⁽⁷²⁾ See: <https://m.jiemian.com/article/4179811.html> (last viewed on 22 August 2022).

- (116) In essence, despite the steps that have been taken to liberalise the market, the corporate credit system in the PRC is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets.
- (117) No evidence was submitted to the effect that the EMD sector, would be exempted from the above-described government intervention in the financial system. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

3.2.1.9. Systemic nature of the distortions described

- (118) The Commission noted that the distortions described in the Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above in Sections 3.2.1.2–3.2.1.8 as well as in Part A of the Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above in Sections 3.2.1.6–3.2.1.8 above and in Part B of the Report.
- (119) The Commission recalls that in order to produce EMD, a broad range of inputs is needed. When the producers of EMD purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (120) As a consequence, not only the domestic sales prices of EMD are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy, and raw materials are present throughout the PRC. This means, for instance, that an input that was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

3.2.1.10. Conclusion

- (121) The analysis set out in Sections 3.2.1.2 to 3.2.1.9, which includes an examination of all the available evidence relating to the PRC's intervention in its economy in general as well as in the EMD sector in particular, showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case.
- (122) Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.2. Representative country

3.2.2.1. General remarks

(123) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:

- a level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽⁷³⁾;
- production of the product under investigation in that country;
- availability of relevant public data in the representative country.

Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.

(124) The First and the Second Note discussed above described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. The Commission also informed interested parties of its intention to consider Colombia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

3.2.2.2. A level of economic development similar to China and production of the product under investigation

(125) In the First Note, the Commission explained that Colombia was the only country with a similar level of economic development as China according to the World Bank (i.e. it is classified by the World Bank as an 'upper-middle income' country on a gross national income basis) where production of the product under investigation was known to take place.

(126) Following the First Note Guiliu claimed that Mexico should be used as a representative country as it produces manganese ore (the main raw material for EMD production) and, apart from the manganese ore import data, it has sufficient import quantities of other raw materials. Guiliu suggested to use Colombia for the manganese ores import prices and Autlan EMD for the SG&A and profit.

(127) The production of the product under investigation is one of the criteria the Commission uses when constructing the normal value in line with Article 2(6a)(a) of the basic Regulation. Unlike Colombia, which has production of the product under investigation, Mexico does not have any and it can therefore not be considered an appropriate representative country. This claim was therefore rejected.

(128) Varta considered the selection of Colombia as a representative country as questionable, due to the allegedly incorrect comparison with electricity costs in China and suggested that the type of electricity generation and the costs of electricity distributions need to be considered.

(129) Varta did not demonstrate to what extent the benchmark price of electricity of Colombia would not be representative of the undistorted price in China, nor provided any concrete alternatives. Its claim was therefore rejected.

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

- (130) To the Commission's knowledge, there are no other countries at the level of economic development similar to that of China where EMD is produced, and no interested parties brought any new information on this matter, therefore in the Second Note Colombia was confirmed as an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation.

3.2.2.3. Availability of relevant public data in the representative country

- (131) In the First Note the Commission indicated that for the country identified as the country where the product under investigation is being produced, i.e. Colombia, the availability of public data needed to be further verified in particular with regard to the public financial data for the investigation period from producers of the product under investigation or in a similar production segment.
- (132) Guiliu, in its comments to the First Note, claimed that import quantities for certain factors of production ('FOPs') into Colombia are insufficient and that the prices of those FOPs should be based on worldwide imports instead.
- (133) The Commission assessed the total imports into Colombia of the following factors of production, which the exporting producers reported as being used in their production processes: sulphuric acid, lignite, bituminous and anthracite coal types and pyrite. The Commission noted that the import quantities for each of those FOPs were indeed very low (less than 0,02 % of imports to all countries at the level of economic development similar to China) and that the corresponding import prices were abnormal if compared to the average import prices into the same pool of countries (the differences with the same pool of countries were 102 %, 1 115 %, 1 233 % and 2 608 % for the four out of the five abovementioned products). For the fifth product, bituminous coal, the price difference was lower (29 %) but the import quantities in the investigation period were extremely low at 3,8 thousand tonnes, representing less than 0,00006 % of imports to all countries at the level of economic development similar to China.
- (134) Since the quantities of imports of the five aforementioned inputs were low and the resulting prices unreasonable, indicating that the import data was influenced by imports of specialised or unconventional product types declared under the relevant customs code, which are not used in the EMD production process.
- (135) No comments on this approach were received from the interested parties.
- (136) For those inputs the Commission searched for an alternative country in the list of countries with a level of economic development similar to China and where imports for all these five factors of production were representative. Among all the countries, Türkiye was found to have the highest aggregate volumes of imports of representative quantities and prices for all five FOPs in comparison with the other countries where imports of these factors of production were present. Therefore, the Commission concluded that Türkiye was an appropriate alternative source of import prices for the above five factors of production.
- (137) In the Second Note, the Commission also noted that it did not have at its disposal data showing a reasonable amount of profits and SG&A for the investigation period within the meaning of Article 2(6a)(a) of the basic Regulation for the Colombian EMD producer Quintal. This presented a challenge in the process of searching for a source of undistorted and reasonable SGA and profit data. EMD industry is very peculiar with a notably limited number of producers and users outside of China or the Union. Neither the Commission nor any interested party could identify another EMD producer in the countries with a level of economic development similar to China. Moreover, EMD is predominantly utilised in the production of dry cell batteries and consequently efforts to locate a producer of products in the same general category of products capable of providing a reasonable number for SG&A yielded no viable results.

- (138) In this specific situation, the Commission was compelled to find a viable alternative and with the production process being a key determinant of the overall financial performance data, it found a company Quimpac de Colombia S.A., which use the same electrolysis process in its production. The rationale is that the cost structure of an electrolysis plant with the specialised fixed assets and relatively high electricity consumption offers a reasonable source of the required data. Furthermore, Quimpac's customer base, being also big scale industrial users reasonably mirrors the SG&A of the EMD producer, given that both entities sell to a limited number of customers in high volumes.
- (139) Given the public availability of Quimpac de Colombia's full and comprehensive annual report for 2022, the Commission resorted to the use of the information included therein.
- (140) In light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Colombia as an appropriate representative country and the Quimpac de Colombia S.A., in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (141) Interested parties were invited to comment on the appropriateness of Colombia as a representative country and of Quimpac de Colombia as producer in a similar production segment in the representative country.

3.2.2.4. Comments of the parties

- (142) Following the Second Note, Autlan argued that Türkiye was not a valid alternative source of import prices for the five FOPs identified in recital (133) because import prices of coal products into Türkiye were abnormal during the investigation period when compared to the average prices of other countries with a similar level of economic development. According to Autlan, the GTA data disclosed by the Commission in the Second Note showed that Russia was the largest exporter to Türkiye of the two main types of coal used in the production of EMD and its prices considerably lower than the average import prices of the corresponding products from other third countries.
- (143) The Commission analysed this claim in detail and compared the import prices of coal into Türkiye from Russia with import prices from other countries and found that import prices from Russia were abnormal when compared to the average prices of imports from other countries. As the imports from Russia represented the majority of all imports of anthracite and bituminous coal into Türkiye and could have an impact on the prices of imports from other countries, the Commission decided to use Brazil, representing the second highest aggregate volumes of imports of representative quantities and prices, net of Russian imports, to establish the undistorted costs of the bituminous coal and anthracite coal.
- (144) Xiangtan argued that the Commission wrongly disregarded the other possible countries principally based on the argument that the other proposed countries do not have any EMD production. In its view, Article 2(6a)(a) of the basic Regulation does not contain a pre-requisite condition that there must exist production of the product under investigation in the representative country.
- (145) Furthermore, it claimed that the methodology applied by the Commission in the selection of an appropriate representative country is manifestly contradictory. It discarded other possible countries due to the absence of EMD production in these countries while, having found the financial data of the sole EMD producer identified in the country inappropriate, decided to use instead that of another Colombian company in a totally different business sector unrelated to EMD operation and decided to use another third country and an international benchmark as an alternative source of import prices for some factors of production.
- (146) In addition, Xiangtan argued that the SG&A and profit of Quimpac are not representative of an EMD producer and suggested to use the data of a Japanese EMD producer, Tosoh Corporation Japan.

- (147) As regards the provision of Article 2(6a)(a), of the basic Regulation the Commission notes that production of the product concerned in the representative country is an essential requisite to select a representative country. Indeed, the existence of such production ensures that the costs of production and sales in a representative country are corresponding the undistorted costs and sales of the production of the product concerned in accordance with Article 2(6a)(a), first indent.
- (148) Regarding Quimpac, the Commission noted that in the event when no financial information is readily available specifically and solely in relation to product concerned by investigation (in this case EMD), the Commission seeks to identify the closest readily available proxy. The process is described in detail in recital (138).
- (149) As regards the suggestion to use, with appropriate adjustments the data from Tosoh Corporation Japan, the Commission underlined that the choice of the representative country should be based on the three criteria of which, the first, is the level of economic development. Tosoh Corporation Japan is located in a country with higher level of economic development and it could not therefore be considered representative. Therefore, this claim was dismissed.
- (150) CCCMC & GMIA and Daxin claimed that the price of energy in Colombia and the labour cost are influenced by several factors and are significantly different even between different countries with a similar level of economic development as China. As an alternative, CCCMC & GMIA and Daxin claimed that the Commission should use the Chinese exporters' own data on labour cost and energy.
- (151) This claim had to be rejected. The Commission observed that the choice of the representative country was based on the three criteria: level of economic development, production of the product concerned and availability of relevant public data. All these criteria were considered by the Commission as sufficiently representative to arrive at the undistorted cost of production in China and neither CCCMC & GMIA nor Daxin provided evidence that the selected benchmarks for labour and energy were either distorted or not corresponding.
- (152) Moreover, the Commission noted that once the existence of significant distortions affecting the product under investigation in the exporting country is established in accordance with Article 2(6a)(b) of the basic Regulation, it is prevented from using the actual costs of individual exporting producers, unless they were positively established not to be distorted on the basis of accurate and appropriate evidence. This was not the case and, as a result, the relevant costs were found to be distorted.

3.2.2.5. Level of social and environmental protection

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

3.2.2.6. Conclusion

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

3.2.3. Sources used to establish undistorted costs

- (155) In the First Note, the Commission listed the factors of production such as materials, energy, water and labour used in the production of the product under investigation by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

(156) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use:

(a) publicly available data on manganese ore prices for 2022, provided by Fastmarkets, one of the main international cross-commodity price reporting agencies, to establish the undistorted cost of the main factor of production of EMD;

(b) Global Trade Atlas ('GTA') to establish the undistorted cost of the other raw materials.

(157) In addition, the Commission stated that it would use the ILO statistics for labour cost in Colombia ⁽⁷⁴⁾, the industrial electricity price charged by the company ENEL S.A. for energy ⁽⁷⁵⁾ and the water tariff charged by the Acueducto de Bogota ⁽⁷⁶⁾ for water.

(158) In the Second Note, the Commission also informed the interested parties that due to the large number of factors of production of the sampled exporting producers that provided complete information and the negligible weight of some of the raw materials in the total cost of production, these negligible items, representing less than 5 % of the total cost of production reported by the sampled exporting producers, were grouped under 'consumables'. Further, the Commission informed that it will calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.

3.2.4. Undistorted costs and benchmarks

(159) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 2

Factors of production

Factor of Production	Commodity Code	Undistorted value	Source of the data
Raw materials			
Manganese ore ⁽¹⁾	2602 00	36,63 RMB/DMTU (dry metric tonne unit, expressed as value per % of manganese content)	Fastmarkets.com
Pyrite	2601 11	802 RMB/tonne	GTA imports for Türkiye
Anthracite coal	2701 11	1 923 RMB/tonne	GTA imports for Brazil
Bituminous coal	2701 12	2 225 RMB/tonne	GTA imports for Brazil
Lignite coal Brown coal	2702 10	1 005 RMB/tonne	GTA imports for Türkiye
Sulfuric acid ⁽²⁾	2807 00 00 00 19	812 RMB/tonne	GTA imports for Türkiye

⁽⁷⁴⁾ <https://ilostat.ilo.org/resources/concepts-and-definitions/description-wages-and-working-time-statistics/> (last viewed on 5 August 2023).

⁽⁷⁵⁾ <https://www.enel.com.co/en/people/energy-rates.html> (last viewed on 5 August 2023).

⁽⁷⁶⁾ Tarifas 2022 (acueducto.com.co).

Consumables			
Labour			
Labour wages in manufacturing sector	N/A	29,51 RMB/h	Colombian Statistical Office/ILO
Energy			
Electricity	N/A	0,92 RMB/KWh	EMPRESAS MUNICIPALES DE CALI EICE E.S.P
Water	N/A	6,05 RMB/tonne	Acueducto de Bogota

(¹) Applies to both manganese dioxides and manganese carbonate.

(²) From the import statistics for Türkiye provided as annex to the Second Note, the other acid imported under code 2807 00 00 00 11 Saf Sulfirik Asit (Kodeks Evsafında Veya Daha Saf) was considered to be food grade acid and was therefore excluded from the price calculation.

3.2.4.1. Manganese ore

- (160) Following the First Note Xiangtan claimed that manganese ore import prices into Colombia should not be used as a representative price for the input of the Chinese exporting producers. The manganese ores used in China have much lower concentration of manganese in the ore (between 11 %–20 %) and could not be replaced with an ore of much higher manganese content imported into Colombia from Brazil, with an average manganese content of 37 %.
- (161) The Commission duly considered this argument and looked for an alternative international benchmark that would more closely reflect the grade and quality of the manganese ore used in the production of the product under investigation. On this basis, in the absence of an alternative representative country and of an international benchmark for manganese ore with a lower concentration of manganese, the Commission considered that the most suitable available international benchmark is the 2022 data provided by **Fastmarkets.com** for manganese ore with 37 % Manganese content. To take into account the difference in manganese content, the price for the ores used by the Chinese exporting producers was calculated by multiplying the benchmark price by the concentration of manganese ore used by the Chinese producers. This was applied for both manganese dioxides and manganese carbonate.
- (162) Therefore, for manganese ore the Commission used the publicly available for 2022 data provided by Fastmarkets.com for index MB-MNO-0004 delivered to Tianjin port.

3.2.4.2. Other raw materials and consumables

- (163) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, for sulphuric acid, lignite, and pyrite the Commission used as a basis the weighted average import price to Türkiye as reported in GTA while for bituminous coal and anthracite coal the Commission used the weighted average import price to Brazil as reported in GTA. To these prices import duties and transport costs were added, as explained in recital (174). An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding China and countries which are not members of the WTO, listed in Annex I to Regulation (EU) 2015/755 of the European Parliament and the Council (⁷⁷). The Commission decided to

(⁷⁷) Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

exclude imports from China into Brazil and Türkiye as it concluded in recital (122) that it is not appropriate to use domestic prices and costs in China due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected the export prices. Moreover, as explained in recital (143), imports from Russia of bituminous coal and anthracite coal, were also excluded.

- (164) For a number of factors of production, the actual costs incurred by the cooperating exporting producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in the recital (158) and added them to the undistorted cost of manufacturing.
- (165) The Commission expressed the transport cost incurred by the cooperating exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (166) CCCMC & GMIA submitted, in response to the Second Note, that the Commission did not clarify the criteria for identifying the main FOPs mentioned in recital (133) and the FOPs treated as consumables, and that different Chinese exporting producers use different materials and therefore these FOPs should be tailored to any Chinese exporter separately.
- (167) This claim is unfounded. The Commission identified the main FOPs mentioned in recital (133) and the ones to be treated as consumables based on the actual list of FOPs and consumption quantities data reported by each of the sampled exporting producers.
- (168) CCCMC & GMIA and Daxin argued that the benchmark selected by the Commission for manganese ore has still a significantly higher concentration of manganese as compared with the manganese ore locally sourced by the Chinese exporting producers. In their view, this different concentration results in a different unit price and therefore, the benchmark selected by the Commission cannot be used to replace the price of the Chinese manganese ore.
- (169) Xiangtan also argued that the Commission ignored the correlation between the price reflected by the price index for manganese ore and the concentration of manganese in the ore that the price index represents. In Xiangtan's view the price index varies following the concentration of manganese in the ore. Therefore, it would be wrong to establish the benchmark price of manganese ore with manganese content other than 37 % by directly multiplying the benchmark index by the concentration of manganese ore, as explained in recital (161).
- (170) Xiangtan further suggested two alternative methodologies to establish the manganese ore benchmark that, in its view, would take better into account the different manganese contents. In the first methodology Xiangtan proposed to divide the benchmark index established by the Commission by a conversion factor based on the company's manganese ore concentration and the manganese content of the ore of the benchmark (37 %). In the second methodology, Xiangtan proposed to use a coefficient to reflect the accurate market value of corresponding manganese content of the ores used by the Chinese producers. This coefficient express the value per unit manganese for the types of manganese ores (based on concentration of manganese) published by the industrial intelligence agency Asian Metal. The benchmark should be obtained by multiplying the average coefficient and the actual content of the manganese ore used by the company.

- (171) The Commission considered the argument of the manganese content in the ore and developed the methodology explained in recital (161) to tailor the benchmark price to the actual manganese content of the ore used by each of the sampled exporting producers. In the absence of any other available international undistorted price or benchmark for manganese ore with a concentration lower than 37 % the Commission considered that the proposed methodology fairly reflects the undistorted costs for the different concentration of manganese ore. This methodology when applied is also in line with the first methodology proposed by Xiangtan. The Commission did not examine the second methodology proposed by Xiangtan in detail, as Xiangtan did not explain why the second methodology would be more reasonable than the first methodology which was duly disclosed to the interested parties.
- (172) Therefore, the claims on the selection of the appropriate benchmark for manganese ore were dismissed.
- (173) CCCMC & GMIA and Daxin claimed that, for the FOPs established as explained in recital (136) the import price from GTA is at CIF level. Therefore, it contains ocean freight costs and insurance fees while Chinese producers purchase raw materials and other inputs from the local market at prices that do not include any ocean freight costs and insurance fees. Therefore, in their view, ocean freight costs and insurance fees should be deducted from the GTA prices for Türkiye to reach fair comparison.
- (174) In its investigations the Commission strives to establish a purchase price of the inputs available on domestic market of the representative country. As a result, the Commission uses consistently the CIF price available in the trade statistics. In addition, as explained in recital (163), the Commission adds the applicable import duties and transport costs, in order to ensure that it uses as a benchmark as delivered to the factory gate of a representative country producer. This price is in direct competition with the domestic prices in the representative country and therefore can be used as a benchmark for the purposes of the investigations. On this basis, the claim was rejected.

3.2.5. Labour

- (175) In the Second Note, the Commission indicated that it would use ILO statistics ⁽⁷⁸⁾ on average monthly wages and average weekly hours worked in 2022 in the manufacturing sector to determine the wages in Colombia. It announced that it intended to consider thirteen months of salary and then add the contributions to social security and pension schemes. It would then calculate the annual hours actually worked by multiplying the weekly hours actually worked with the number of weeks in a year, and then deducting the days not worked.
- (176) Following the Second Note, the Commission received the following comments:
- (a) Xiangtan argued that the 13th month salary and some categories of contributions to social security and pension schemes do not apply to the whole workforce. Also, the worked hours provided by ILO already excluded annual public holidays and non-working days.
 - (b) Autlan EMD argued that the Commission should distinguish between 'personnel employed in the manufacturing of the product under investigation' and 'personnel employed in sales and administration' and calculate a separate benchmark for the labour cost for each category of employees.
- (177) The Commission researched an alternative source which could provide more accurate data to establish the benchmark for labour cost in Colombia. The Colombian Statistical Office ('DANE') ⁽⁷⁹⁾ published a survey on the manufacturing industry, which provided detailed information on the total annual wages and related charges and the number of employees for the year 2021. The Commission considered this source as the most appropriate source to determine the average labour cost for employee, as it was a primary data source from the Colombian national statistical office. Values were indexed to 2022 using the manufacturing industry real wages index ⁽⁸⁰⁾.

⁽⁷⁸⁾ <https://ilostat ilo.org/topics/wages/>.

⁽⁷⁹⁾ DANE - Encuesta Anual Manufacturera -EAM-.

⁽⁸⁰⁾ <https://www.banrep.gov.co/en/wage-index>.

- (178) Since information on worked hours was not available in the survey, the Commission used the data on weekly worked hours as provided by the ILO. Following Xiangtan's comment, the Commission reviewed the definition of worked hours provided by the ILO and concluded that public holidays and non-working days were already deducted on an annual basis; therefore, there was no need to further deduct non-working days.
- (179) As regards Autlan's claim, the Commission clarified that the labour costs for the personnel employed in sales and administration was included in the undistorted cost for SG&A, calculated as explained below in Section 3.2.8. Therefore, the distinction suggested would have no tangible effect on the benchmark. The claim was therefore dismissed.

3.2.6. Electricity

- (180) In the First and Second Notes, the Commission indicated that it intended to use the data of the industrial electricity prices applicable in Colombia as charged by one of the largest electricity suppliers in Colombia, the company ENEL S.A. Interested parties commented that:
- (a) the company ENEL S.A. did not serve the area of Cali, where the company 'Quimpac' was established; the supplier EMPRESAS MUNICIPALES DE CALI EICE E.S.P. (EMCALI) was suggested as a more suitable source;
 - (b) the Commission used the simple tariff in establishing the benchmark for electricity instead of time option tariffs, differentiating peak and off-peak time tariffs. It would be more appropriate to use the latter as this is normally used by companies operating in high energy consumption sectors like EMD;
 - (c) the Commission should ensure that the benchmark price for electricity was net of VAT.
- (181) After having analysed the comments, the Commission concluded that it would use the data on the industrial electricity prices applicable in the city of Cali, where 'Quimpac' is established, as published by EMCALI⁽⁸¹⁾. EMCALI offers several energy tariffs: a single tariff, a peak/off-peak tariff and a triple tariff. The differences between the tariffs are very low (around 1 % price difference both between the peak and off peak tariffs and the peak/off peak average compared to the single tariff. The Commission therefore used a conservative approach and selected the single tariff for the electricity, which was the lowest. The Commission also ascertained that the electricity tariff was exempt from VAT according to Article 476(4) of the Colombian tax statute⁽⁸²⁾.
- (182) Varta in its submission claimed the type of electricity generation in the respective country, the cost of electricity distribution should be considered to obtain reasonable conclusions.
- (183) The Commission notes that the distribution costs are included in the electricity price and will be therefore taken into account. Its claim is therefore dismissed.

3.2.7. Water

- (184) In the Second Note, the Commission indicated that it would use the water tariff for industrial use as published by the 'Acueducto de Bogota', responsible for water supply, sewage collection and treatment in the capital since no publicly available data were available for the city of Cali. As for electricity, water provision is exempt from VAT according to Article 476(4) of the Colombia tax statute.

⁽⁸¹⁾ Publi-tarifas – Enero 2022 Formato Web(95).xls [Solo lectura] [Modo de compatibilidad] (emcali.com.co) (last viewed on 5 August 2023).

⁽⁸²⁾ Impuesto a las Ventas (dian.gov.co) (last viewed on 5 August 2023).

3.2.8. *Manufacturing overhead costs, SG&A and profits*

- (185) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (186) The manufacturing overheads incurred by the cooperating exporting producers were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.
- (187) For establishing an undistorted and reasonable amount for SG&A, profit, the Commission relied on the financial data for 2022 for Quimpac as extracted from the official publicly available database of the Colombian government, Sistema Integrado de Informacion Societaria ('SIIS') ⁽⁸³⁾.

3.2.9. *Calculation of the normal value*

- (188) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (189) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producers. These consumption rates provided by the sampled exporting producers were verified during the verification visits. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country.
- (190) Once the undistorted manufacturing cost were established, the Commission applied the manufacturing overheads, as noted in recital (186).
- (191) To the costs of production established as described in the previous recital, the Commission applied SG&A of 20,33 % and profit of 24,72 % of Quimpac de Colombia S.A. as explained in recital (187), both expressed as a percentage of the Costs of Goods Sold ('COGS').
- (192) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.3. **Export price**

- (193) None of the sampled exporting producers sold via related importers in the Union.
- (194) Consequently, for all sampled exporting producers, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.4. **Comparison**

- (195) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (196) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading costs, customs duty, credit costs and bank charges.

⁽⁸³⁾ SIIS – / (supersociedades.gov.co) (last viewed on 1 September 2023).

3.5. Dumping margins

- (197) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (198) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Xiangtan	46,1 %
Guiliu	54,2 %
Daxin	18,3 %

- (199) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (200) On this basis, the provisional dumping margin of the cooperating exporting producers outside the sample is 44,5 %.
- (201) For all other exporting producers in the country concerned, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the investigation period, that were established on the basis of Eurostat statistics.
- (202) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted around 65 % of the total exports to the Union during the investigation period. On this basis, the Commission considered it appropriate to establish the dumping margin for all other companies at the level of the ten transactions with the highest margin of the sampled exporting producers in view of the fact that those represented around 14 % of the total volume exported to the Union by the company in question, which was considered sufficiently representative. Therefore, the country-wide dumping margin applicable to all other non-cooperating exporting producers was set at the level of 101,7 %
- (203) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Xiangtan	46,1 %
Guiliu	54,2 %
Daxin	18,3 %
Other cooperating companies	44,5 %
All other companies	102,2 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (204) According to the information available to the Commission, the like product was manufactured by two producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (205) Given the limited number of the parties operating on the Union market, the Commission could not disclose the data regarding the two Union producers and the market shares as it is market sensitive and confidential under Article 19 of the basic Regulation. The disclosure of this information could allow parties to calculate back company-specific confidential data. The Commission therefore provided this information in ranges and indexes, which gave sufficient meaningful information to all interested parties to understand the Commission's analysis and conclusions and provide comments in this regard. The data was also provided in the form of meaningful trends so that all interested parties could defend their interests. The Commission could not disclose the method for creating the ranges as this would allow the parties to retrieve the exact numbers from the ranges.
- (206) The total Union production during the investigation period was established at around [25,0–27,0] million kilograms. The Commission established the figure on the basis of the verified questionnaire replies of the two Union producers. As indicated in recital (204), the two Union producers represented 100 % of the total Union production of the like product.

4.2. Union consumption

- (207) The Commission established the Union consumption on the basis of the Union industry's sales volume on the Union market sourced from the verified questionnaire replies of the two Union producers and the imports into the Union of the product concerned from third countries based on Eurostat statistics.
- (208) Union consumption developed as follows:

Table 3

Union consumption (kg)

	2019	2020	2021	Investigation period
Total Union consumption	[38 000 000– 40 000 000]	[37 000 000– 39 000 000]	[39 000 000– 41 000 000]	[36 000 000– 38 000 000]
<i>Index</i>	100	96	102	94

Source: verified questionnaire replies of the two Union producers, Eurostat.

- (209) On this basis, the Union consumption fluctuated by decreasing in 2020 (– 4 % compared to 2019), then increasing in 2021 (+ 2 % compared to 2019) and finally decreasing again in the investigation period (– 6 % compared to 2019). The increase in 2021 was mainly due to the COVID-19 pandemic and the intensified consumption of the dry-cell batteries.

4.3. Imports from the country concerned

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

- (210) The Commission established the volume of imports on the basis of Eurostat statistics. However, because the CN code ⁽⁸⁴⁾ comprised of a wider range of products other than EMD, the Commission had to estimate the volumes of imports that constituted EMD. This was done by including only the imports from countries where there was EMD production, since EMD was imported mostly from these countries historically ⁽⁸⁵⁾:
- imports under the full CN code from China, Japan and Colombia were included, since these imports corresponded to historical flows reported under the 10-digit TARIC code;
 - imports under the CN code for the USA and India were corrected downwards based on the ratio of historical import flows reported under TARIC code in the CN code in the period 2015–2018 ⁽⁸⁶⁾.
- (211) The estimated import volumes were cross-checked, where possible, with sales reported by cooperating exporting producers, purchases reported by cooperating users, Union producers, other export statistics provided by the applicant and were in line.
- (212) The market share of imports was established on the basis of the import volume and total Union consumption.
- (213) Imports into the Union from the country concerned developed as follows:

Table 4

Import volume (kg) and market share

	2019	2020	2021	Investigation period
Volume of imports from the country concerned (kg)	6 640 500	5 437 300	10 260 000	12 582 700
<i>Index</i>	100	82	155	189
Market share	[12–19] %	[10–17] %	[20–30] %	[30–40] %
<i>Index</i>	100	85	152	201

Source: Eurostat.

- (214) Import volumes of EMD from China decreased by 18 % from 2019 to 2020 due to COVID-19 restrictive measures, however they started to increase significantly in 2021 (+ 55 % compared to 2019) and the investigation period (+ 89 % compared to 2019). In absolute value, imports of EMD from China were substantial in the investigation period (12,6 million kg). Chinese imports expanded their market share overall during the period considered by [15–19] percentage points, passing from [12–19] % in 2019 to [30–40] % during the investigation period.

4.3.2. Prices of the imports from the country concerned, price undercutting and price suppression

- (215) The Commission established the prices of imports on the basis of Eurostat dividing the total values of Chinese imports by the total volume of those imports. Price undercutting of the imports was established on the basis of verified questionnaire replies of the sampled exporting producers in China.

⁽⁸⁴⁾ CN code ex 2820 10 00.

⁽⁸⁵⁾ As reported under TARIC code 2820 10 00 10 available till 2018, the last full calendar year.

⁽⁸⁶⁾ The Commission took only the period 2015–2018 into account, because those were the last four full calendar years for which TARIC data was available. Commission decided not to consider earlier years because this would risk skewing the ratio due to changes in trade flows.

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

Table 5

Import prices (EUR/kg)

	2019	2020	2021	Investigation period
The People's Republic of China	1,61	1,54	1,53	2,37
<i>Index</i>	100	96	95	147

Source: Eurostat.

(217) Over the period considered, Chinese average import prices rose by 47 %, mainly due to the increase in freight cost.

(218) The Commission determined the price undercutting during the investigation period by comparing:

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

(219) The price comparison was made on a type-by-type basis for transactions at the same level of trade. The result of the comparison was expressed as a percentage of the two Union producers' theoretical turnover during the investigation period. Two of the sampled exporting producers were found not to undercut, with their average prices on the Union market above the Union industry's prices, while for the third exporting producer undercutting was found, although below *de minimis*.

(220) However, despite no undercutting found on a transaction-by-transaction basis for two out of the three sampled exporting producers, the average price of total Chinese imports into the Union market was around [5 %-9 %] lower than the Union industry's average price, throughout the period considered. This difference was around [8 %-12 %] in 2019, then [2 %-6 %] in 2021 and then more prominent in the second part of this period (2021 and the investigation period), at around [5 %-7 %], which coincided with the massive increase in the Chinese import volumes (above 50 % increase) and their gaining of the Union market shares ([15-19] percentage points in the investigation period).

(221) Furthermore, the Commission established the existence of price suppression. The average import price of total Chinese imports was also lower than the Union industry's cost of production throughout the whole period considered. The price pressure on the cost of the Union industry was also most prominent in the second part of the period considered, where prices of Chinese imports were around [10 %-15 %] lower than the average COP of the Union industry. As shown in Table 8, the Union industry was selling below the cost of production in the second part of the period considered. Due to the significant price pressure caused by the low-priced dumped imports, the Union industry was prevented from increasing its sales prices to achieve a sustainable profit level and positive financial situation, thus, resulting in very low profits in 2021 and the investigation period, together with severely decreasing cash flow in 2021, which switched to negative in the investigation period. This is reflected in the underselling established for two of the sampled exporting producers as well as for all the other non-sampled companies as described in recitals (296) and (297) below.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (222) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (223) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic and microeconomic indicators on the basis of data contained in the verified questionnaire replies of the two Union producers. The set of data was found to be representative of the economic situation of the Union industry.
- (224) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (225) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2019	2020	2021	Investigation period
Production volume (kg)	[29 000 000–31 000 000]	[29 000 000–31 000 000]	[30 000 000–32 000 000]	[25 000 000–27 000 000]
<i>Index</i>	100	101	103	87
Production capacity (kg)	[34 000 000–36 000 000]	[34 000 000–36 000 000]	[34 000 000–36 000 000]	[34 000 000–36 000 000]
<i>Index</i>	100	100	100	100
Capacity utilisation	[85–90] %	[86–91] %	[90–95] %	[75–80] %
<i>Index</i>	100	101	103	87

Source: verified questionnaire replies of the two Union producers.

- (227) The Union industry's production started to increase in 2020 and jumped in 2021. However, it dropped in the investigation period by around [3–6] million kg in one year due to the loss in sales (which started in 2021). Overall, the production decreased by - 13 % over the period considered.
- (228) Production capacity of the Union industry was stable over the period considered, thus production capacity utilisation decreased to [75–80] % in the investigation period, in line with a decrease in production.

4.4.2.2. Sales volume and market share

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

Table 7

Sales volume and market share

	2019	2020	2021	Investigation period
Sales volume on the Union market (kg)	[29 000 000–31 000 000]	[29 000 000–31 000 000]	[27 000 000–29 000 000]	[22 000 000–24 000 000]
<i>Index</i>	100	100	91	73
Market share	[75–82] %	[77–85] %	[65–75] %	[55–65] %
<i>Index</i>	100	104	89	78

Source: verified questionnaire replies of the two Union producers.

(230) The sales volume of the Union industry remained stable from 2019 to 2020. However, they started to decrease in 2021 (– 9 % from 2020 to 2021), despite the peak in consumption in that year. The fall continued in the investigation period. Overall, the sales decreased by – 27 % over the period considered.

(231) Decrease in sales was reflected in the loss of market shares, a decrease from [75–82] % in 2019 to [55–65] % in the investigation period. Overall, a loss of [15–19] percentage points of market share to the favour of the Chinese imports over the period considered.

4.4.2.3. Growth

(232) Despite the increase in consumption in 2021, the Union industry not only lost sales volumes in the Union, but also the market share.

4.4.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2019	2020	2021	Investigation period
Number of employees	[120–135]	[120–135]	[130–140]	[130–142]
<i>Index</i>	100	100	104	108
Productivity (kg/employee)	[225 000–250 000]	[225 000–250 000]	[225 000–250 000]	[175 000–200 000]
<i>Index</i>	100	101	99	80

Source: verified questionnaire replies of the two Union producers.

(234) Employment increased by + 8 % over the period considered. The increase was due to the temporary hiring following the absenteeism, new hires for support for maintenance, R & D functions and environmental operations.

- (235) Productivity developed in line with the changes in production and employment, i.e. it decreased by – 20 % over the period considered.

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

- (236) All dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.
- (237) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

Table 9

Sales prices in the Union

	2019	2020	2021	Investigation period
Average unit sales price in the Union on the total market (EUR/kg)	[1,70–1,90]	[1,50–1,70]	[1,50–1,70]	[2,40–2,60]
<i>Index</i>	100	90	92	142
Unit cost of production (EUR/kg)	[1,50–1,70]	[1,40–1,60]	[1,70–1,80]	[2,50–2,70]
<i>Index</i>	100	96	109	164

Source: verified questionnaire replies of the two Union producers.

- (239) The average price of the Union producers decreased in 2020 (to [1,50–1,70] EUR/kg) and stayed at [1,50–1,70] EUR/kg in 2021. It then increased to [2,40–2,60] EUR/kg in the investigation period, following the increase in the cost of production. Overall, the average price increased by + 42 % over the period considered.
- (240) Average cost of production started to increase in 2021 (by + 9 % compared to 2019) and peaked in the investigation period, due to the sharp increase in energy ⁽⁸⁷⁾ and certain raw material pricing ⁽⁸⁸⁾. Overall, the average cost of production increased by + 64 % over the period considered.
- (241) The increase in the average price was less pronounced than the increase in the cost of production over the period considered. The inability of the Union producers to increase their prices in line with increasing cost is the result of the price suppression by the Chinese exporters, which peaked in the last two years of this period. As mentioned in recital (220), and unlike in 2019–2020, where the price pressure exercised by dumped imports was less acute, as of 2021, the Union industry was not able to increase prices in step with increasing cost of production because of the

⁽⁸⁷⁾ Energy cost representing on average [25–30] % of cost of production over the period considered.

⁽⁸⁸⁾ Raw material cost representing on average [30–38] % of cost of production over the period considered.

price pressure exerted by the increasing volumes of dumped Chinese imports on the Union market. Consequently, due to the existence of price suppression, the Union industry was selling below the cost of production since 2021. Due to the significant price pressure caused by the low-priced dumped imports, the Union industry was prevented from increasing its sales prices to achieve its target profit, resulting in decreasing profitability. This situation severely impacted the Union industry's financial performance, as analysed later, in Part 4.4.3.4

4.4.3.2. Labour costs

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

Table 10

Average labour costs per employee

	2019	2020	2021	Investigation period
Average labour costs per employee (EUR)	[45 000–50 000]	[45 000–50 000]	[45 000–50 000]	[50 000–55 000]
<i>Index</i>	100	101	98	107

Source: verified questionnaire replies of the two Union producers.

(243) Average labour cost per employee increased by + 7 % over the period considered.

4.4.3.3. Inventories

(244) Inventory levels of the two Union producers developed over the period considered as follows:

Table 11

Inventories

	2019	2020	2021	Investigation period
Closing stocks (kg)	[7 000 000–7 500 000]	[6 500 000–7 000 000]	[6 000 000–6 500 000]	[8 500 000–9 000 000]
<i>Index</i>	100	93	82	119
Closing stocks as a percentage of production	[25–30] %	[20–25] %	[15–20] %	[30–35] %
<i>Index</i>	100	92	79	137

Source: verified questionnaire replies of the two Union producers.

(245) The level of inventory decreased to [6,5–7,0] million kg in 2020 and to [6,0–6,5] million kg in 2021 following the increasing consumption on the Union market, however they jumped to [8,5–9,0] million kg in the investigation period, following the loss of sales and represented around [30–35] % of the production volume in that period.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2019	2020	2021	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[7–8] %	[6–7] %	[1–2] %	[2–3] %
<i>Index</i>	100	84	18	34
Cash flow (EUR)	[– 2 000 000– (– 2 500 000)]	[5 000 000– 5 500 000]	[1 500 000– 2 000 000]	[– 6 000 000 – (– 6 500 000)]
<i>Index</i>	– 100	223	82	– 278
Investments (EUR)	[4 000 000 – 4 500 000]	[2 000 000 – 2 500 000]	[1 500 000 – 2 000 000]	[2 000 000 – 2 500 000]
<i>Index</i>	100	58	44	55
Return on investments	[6–7] %	[7–8] %	[0–1] %	[3–4] %
<i>Index</i>	100	118	1	47

Source: verified questionnaire replies of the two Union producers.

- (247) The Commission established the profitability of the two Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The imbalance of the increasing cost and suppressed prices translated into the erosion in profitability over the period considered, passing from [7–8] % in 2019 to [1–2] % in 2021 and [2–3] % in the investigation period, i.e. below the target profit of [7–10] %.
- (248) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed as follows: it picked up from negative to around [5,0–5,5] million positive cash flow in 2020, however it then fell to around [1,5–2,0] million in 2021, turning to a negative again in the investigation period, mainly due to the deteriorated profit.
- (249) Due to the poor net cash flow situation, over the same period, the Union industry nearly halved the level of its investments resulting in a drop of 45 %.
- (250) The return on investments is the profit in percentage of the net book value of investments. The Union industry's return on investments passed from [6–7] % in 2019 to [3–4] % in the investigation period.
- (251) The ability of the Union industry to raise capital had been severely affected by the erosion of the profitability as well as of the cash flow incurred over the period considered.

4.4.4. Conclusion on injury

- (252) Imports from China increased considerably, both in absolute terms and in terms of market share. Indeed, over the period concerned the imports increased by 89 % in absolute terms and doubled in relation to the Union's consumption, reaching a market share of [30–40] % in the investigation period.

- (253) Moreover, in the investigation period, the sales prices of the Community industry were suppressed by those of the dumped imports of the product concerned. Due to the significant price pressure caused by the low-priced dumped imports, the Union industry was prevented from increasing its sales prices to achieve its target profit, resulting in decreasing profitability during the second half of the period considered.
- (254) More specifically, while over the period considered the Union consumption peaked in 2021, the Union industry was not able to benefit from the increasing demand: the sales volume of the Union industry decreased by 8 % and the market share decreased by 11 % over that year from 2019. Even more dramatic deterioration of these indicators happened in the investigation period (27 % decrease in the sales volume and 22 % decrease in market shares). Such development was a result of the massive increase in Chinese imports at even more suppressed prices than during the first half of the period considered (please see recital (241)). In addition, the Union industry was even less capable to maintain its sales volumes at even more suppressed prices since, at the time, it experienced a significant increase in its cost of production (which increased by 9 % in 2021 and by 64 % in the investigation period from 2019).
- (255) As a result, already decreased sales volumes at the suppressed prices resulted in an erosion of the profitability, return on investments and cash flow. Thus, deteriorated financial performance indicators, together with decreased production, increased closing stocks (to around [30–40] % of the Union's production) and lagging investments to maintain this production, made the Union industry inviable.
- (256) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (257) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from other third countries, export performance of the Union producers and other factors, like productivity, COVID-19 pandemic and Russia's war on Ukraine.

5.1. Effects of the dumped imports

- (258) As established in recital (214), the imports increased significantly during the second half of the period considered, by 89 % in terms of volume and doubled in their market share. The unit selling price of the imports from China was below the unit selling price of the Union industry by around [5 %–9 %] over the period considered.
- (259) The effects of dumped imports are clearly illustrated by the decision of several major users representing [67 %–73 %] of total Union consumption, to switch their purchases from the Union industry to the Chinese product. The share of EMD sourced from the Union producers decreased from around [65–75] % to around [55–65] %, for the benefit of EMD sourced from China from 2021 to the investigation period.
- (260) As a consequence of the significant increase of the dumped imports from China and the price suppression exerted by the Chinese imports during the second half of the period considered, the Union industry was unable to increase their sales prices enough to fully cover the strongly increased production costs. Therefore, the low-priced imports from China thus caused price suppression.

- (261) As a result, the Union industry's financial performance indicators deteriorated. The gain in market share of the Chinese imports was at the expense of the Union industry, which lost sales volume and market share in the second half of the period considered.
- (262) It is therefore provisionally concluded that the pressure exerted by the dumped imports, which dramatically increased their volume and market share during the second half of the period considered, which were made at dumped prices and which were constantly below the Union industry's cost of production, played a determining role in the fall of the Union industry's sales, increased stocks and, consequently, in deterioration of its profitability, cash flow and return on investment.
- (263) In view of the above considerations, the Commission provisionally established that the material injury suffered by the Union industry was caused by the dumped imports from China within the meaning of Article 3(6) of the basic Regulation. Such injury had both volume and price effects.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (264) The volume of imports from other third countries developed over the period considered as follows:

Table 13

Imports from third countries

Country		2019	2020	2021	Investigation period
Colombia	Volume (kg)	1 901 200	1 625 000	1 750 000	1 550 000
	<i>Index</i>	100	85	92	82
	Market share	[3–7] %	[3–6] %	[3–6] %	[3–5] %
	Average price	2,00	1,89	1,83	2,26
	<i>Index</i>	100	94	91	113
Other third countries (USA, Japan and India)	Volume (kg)	34 993	33 320	39 310	416 768
	<i>Index</i>	100	95	113	1 193
	Market share	[0–0,5] %	[0–0,5] %	[0–0,5] %	[1–1,5] %
	Average price	2,41	2,42	2,26	2,57
	<i>Index</i>	100	100	94	106
Total of all third countries except the country concerned	Volume (kg)	1 936 133	1 658 320	1 789 310	1 966 768
	<i>Index</i>	100	86	93	102

	Market share	[4–8] %	[4–8] %	[4–8] %	[4–8] %
	Average price	2,01	1,90	1,84	2,33
	Index	100	94	91	116

Source: Eurostat.

- (265) During the investigation period, import volumes of EMD from the other third countries (Colombia, USA, Japan and India) remained at the same level as at the beginning of the period considered, at [1,5–2,5] million kg, representing [4–8] % of the Union market share.
- (266) It is worth noting that, out of the four countries above, Colombia was the only other major importing country ⁽⁸⁹⁾. Colombia has decreased its import volumes and market share by [0,3–0,9] percentage points in the investigation period. Therefore, even if it imported at a lower price level than the Chinese and Union industry's price levels, their decreasing import volumes and low market share had diminishing effect on the prices of the remaining players on the Union market. Thus, the loss of market share of the Union industry clearly benefited only the Chinese exporting producers.

5.2.2. Export performance of the Union industry

- (267) The volume of exports of the two Union producers developed over the period considered as follows:

Table 14

Export performance of the Union producers

	2019	2020	2021	Investigation period
Export volume (kg)	0	[500 000–1 000 000]	[4 000 000–4 500 000]	[1 000 000–1 500 000]
Index	—	100	720	192
Average price (EUR/kg)	—	[1,70–1,90]	[1,50–1,70]	[2,20–2,40]
Index	—	100	89	123

Source: verified questionnaire replies of the two Union producers.

- (268) The Union industry tried to absorb some of the lost sales volumes on the Union market by means of increased exports. In 2021 export sales jumped to [4,0–4,5] million kg (representing [10–15] % of the Union production), then decreased to [1,0–1,5] million kg in the investigation period (representing [2,5–7,5] % of the Union production). Nonetheless, export sales prices in 2021 and the investigation period were lower than prices in the Union.

⁽⁸⁹⁾ USA, Japan and India combined comprise less than 0,5 % of total imports throughout the period 2019–2020, and only increased to just above 1 % of total imports in the investigation period, due to one shipment of test quantities coming from Japan (this shipment was accounted for during verification visits to Union producers).

- (269) Interested parties claimed that the lower price of the Union industry's exports was partially causing the alleged injury. However, only the profitability of the sales in the Union was considered as the injury indicator and not the profitability of the export sales of the Union industry. Also, export sales represented only a small part of the Union production ([2,5–7,5] % in the investigation period). Thus, the export performance of the Union producers could not have caused the material injury suffered.

5.2.3. *Other factors*

- (270) The deterioration of the Union producers' productivity also coincided with the abrupt increase in Chinese imports in 2021 and the investigation period, while with the productivity levels of 2019–2020 the Union producers were able to achieve satisfactory profits.
- (271) Interested parties argued that factors other than the imports of Chinese EMD had injurious effects to the Union industry, such as COVID-19 restrictions (2020 to mid-2022) affecting raw material supply chains and production levels, huge energy price increases affecting the cost of production resulting from the Union-wide energy crisis (2021 to 2022). They also claimed that the Union producers could not meet the increased demand due to the lack in capacity and/or inadequate product quality. Thus, the EMD demand had to be supplied from outside sources.
- (272) Stable sales quantities of the Union industry in 2020 was showing that these named factors were not affecting the Union industry's ability to maintain its sales and increase its market share in that year (while the product quality claims are discussed under the Union interest Part 7.3). Furthermore, sales quantities of the Union industry plummeted in the investigation period, despite the end of the COVID-19 restrictions, due to the increased import volumes at injurious prices from China. Regarding costs, the Union producers could sell at profitable prices in 2019, before the surge in imports from China took place. However, as determined in recitals (241), (247)–(251) above, due to price suppression exercised by the imports from China in the second half of the period considered, the Union industry could no longer sufficiently increase its prices in order to cater in for the increased cost of production. Capital intensive EMD industry, having high fixed costs, was not able to sustain its viability at the time when it was massively losing its sales in 2021–2022 for the benefit of Chinese imports. The claims of the parties were therefore dismissed.
- (273) As concerns alleged lack in capacity, as can be seen from Table 5 above, Union industry still had [5–10] % spare capacities in 2021, and even [20–25] % in 2022, all while losing sales volumes in both of those years (see Table 6 above), while imports from China were, at the same time, gaining market share (see Table 3 above). The Commission therefore dismissed those claims as unfounded.
- (274) The parties also claimed that the decrease in sales of the Union producer in Spain was caused by the acquisition of one Union user, where the new owner was not willing to use the original suppliers, but rather supply from China. However, the investigation confirmed that the user mentioned remained a client of the Union producer in Spain throughout the whole period considered. The acquisition of the user by the new owner did not break the ties to its original supplier. The claim of the parties was therefore dismissed.
- (275) One user claimed that the investigation period, covering full year 2022, was a non-regular year, when the demand for alkaline dry cell batteries dramatically increased because of COVID-19 pandemic and Russia's war on Ukraine. Thus, the EMD demand had to be supplied from external sources. The demand should be back to its normal level in 2023 and the share of supplies from the Union industry should recover.
- (276) As explained in recital (209), there was an increase in demand in 2021 and a decrease in the investigation period. However, the sales of the Union industry started to drop significantly in 2021 despite the peak in demand, where the Union industry lost [2,5–3,5] million kg in volume in a year from 2020, while Chinese imports gained 4,8 million kg over the same period. The users could have maintained their share of supplies from the Union industry, as its production level increased over the same period. The users have however switched to the Chinese imports, due to the lower price, which has decreased over the same period. Chinese imports could expand their market share during the period considered by [15–19] percentage points, thus taking over this share from the Union industry. The claim of the party was therefore dismissed.

5.3. Conclusion on causation

- (277) The above analysis shows that there was a dramatic increase in the volume and market share of the imports originating in China during the second half of the period considered. In terms of prices, the Chinese imports continuously suppressed those of the Union industry sales prices on the Union market and prevented the Union industry to increase its prices to sustainable levels necessary to achieve reasonable profit margins.
- (278) Possible other factors were also examined, but none of them could attenuate the causal link between the dumped imports and the material injury suffered by the Union industry. The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.
- (279) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is clear in particular in the evolution of production, capacity utilisation, sales volume in the Union market, market share, stock levels, productivity, profitability, cash flow, investments and return on investments.

6. LEVEL OF MEASURES

- (280) As mentioned in recital (5), the Commission amended the Notice of initiation of 16 February 2023 to examine the alleged raw material distortions. The Commission will conclude its analysis on raw material distortions within the meaning of Articles 7(2a) and 7(2b) of the basic Regulation at the definitive stage of the present proceedings.
- (281) Thus, to determine the level of the provisional measures, at this stage the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry. This analysis and provisional conclusions are without prejudice to the assessment and findings on the existence of raw material distortions and the consequent impact on the level of measures that will be carried out for the definitive stage of the investigation.

6.1. Injury margin

- (282) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (283) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (284) As a first step, the Commission established a basic profit covering full costs under normal conditions of competition. The Commission took the profits achieved by the two Union producers before the increase of imports from China during the period considered, namely the actual profit earned in 2020, when the dumped imports had the lowest impact. In 2020, the Chinese imports represented the smallest of the market share ([10–20] %) during the period considered, while the other financial indicators of the Union industry were most positive in that year (the highest cash flow and the highest return on investments achieved). Such profit margin was established at [6–8] %.

- (285) One of the Union producers indicated a 15 % profit achievable in the absence of dumped imports. This estimate was based on the profitability of the company achieved in 1997–2001 (before the imposition of anti-dumping duties on EDM imports from South Africa ⁽⁹⁰⁾) and the average profitability of the chemical industry in 2017–2022 provided by CSI Market data ⁽⁹¹⁾.
- (286) The Commission considered that the average profitability of the chemical industry is not appropriate since CSI market data contains industry figures at an aggregated level, i.e. industry sector which was much wider than the product under investigation, while only a limited number of chemicals producers in the world were involved in the EMD production process. It also considered at this stage that the profits achieved by the EMD producer in the Union in 1997–2001 was not appropriate, since the company did not demonstrate that these profits are still representative for the industry, more than 20 years later. In any case, the profits in question did not represent an average profit of the Union industry as a whole.
- (287) The other Union producer provided its profit achieved in 2016–2018, before the period considered, however, when combining the profits of the two Union producers, the levels achieved in 2016–2018 were lower than during the period considered.
- (288) The Commission therefore remained with its initial estimation of a basic profit at [6–8] %.
- (289) Each of the two Union producers provided evidence that its level of investments, research and development ('R&D') and innovation during the period considered would have been higher under normal conditions of competition. The Commission verified this information, based on investment plans, refused and postponed projects, purchase orders that were eventually not carried out, demonstrating that these investments were genuinely planned. Indeed, the claims of both Union producers were found to be warranted. To reflect this in the target profit, the Commission calculated the difference between investments, R & D and innovation ('IRI') expenses under normal conditions of competition as provided by the Union industry and verified by the Commission with actual IRI expenses over the period considered. Such difference, expressed as a percentage of turnover, was [1–2] %.
- (290) This percentage was added to the basic profit of [6–8] % mentioned in the recital (284), leading to a target profit of [7–10] %.
- (291) On this basis, the non-injurious price was found to be [2,60–2,80] EUR/kg, resulting from applying the above-mentioned profit margin of [7–10] % to the cost of production during the investigation period of the two Union producers.
- (292) In accordance with Article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available, the Commission established an additional cost of [0,02–0,09] EUR/kg. This cost was added to the non-injurious price mentioned in recital (291).
- (293) On this basis, the Commission calculated a non-injurious price of [2,70–2,90] EUR/kg for the like product of the Union industry by applying the above-mentioned target profit margin (see recital (290)) to the cost of production of the two Union producers during the investigation period and then adding the adjustments under Article 7(2d) on a type-by-type basis.

⁽⁹⁰⁾ Council Regulation (EC) No 221/2008 of 10 March 2008 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain manganese dioxides originating in South Africa (OJ L 69, 13.3.2008, p. 1).

⁽⁹¹⁾ https://csmarket.com/Industry/industry_Profitability_Ratios.php?ind=101.

- (294) The Commission then determined the underselling margin level based on a comparison of:
- (a) the weighted average import price of the sampled cooperating exporting producers in the country concerned to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs; with
 - (b) the weighted average non-injurious price of the like product sold by the two Union producers on the Union market during the investigation period.
- (295) The result of the comparison was expressed as a percentage of the weighted average import CIF value. It showed a weighted average underselling margin of between 0 % and 15,8 %.
- (296) The volume of non-underselling imports from the Guiliu group amounted to around [10–15] % of the imports from China, around [17–25] % of sampled imports and around [3–7] % of the Union's market share in the investigation period. To establish whether the findings with regard to this group could be extended to all non-sampled imports, the Commission compared the prices of the Guiliu Group to prices from the other two sampled exporting producers, non-sampled cooperating exporting producers and the average price of all Chinese imports (excluding Guiliu group) from Eurostat. The Guiliu group's average export price was [19–25] % higher than the average export price of the other Chinese exporters that submitted sampling replies. The total export volume of those companies accounted for 51 % of all imports from China into the Union. The group's CIF export price was [11–17] % higher than the average CIF price of all imports from China and [6–10] % higher than those of the other two sampled exporting producers. Therefore, the Commission considered that it could not extend the findings of absence of underselling regarding the Guiliu group to the non-sampled exporting producers.
- (297) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies.

Country	Company	Dumping margin	Injury margin
The People's Republic of China	Xiangtan	46,1 %	8,8 %
	Guiliu	54,2 %	0 %
	Daxin	18,3 %	15,8 %
	Other cooperating companies	44,5 %	10,0 %
	All other companies	102,2 %	34,6 %

6.2. Conclusion on the level of the provisional measures

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

Country	Company	Provisional anti-dumping duty
People's Republic of China	Xiangtan	8,8 %
	Guiliu	0 %
	Daxin	15,8 %
	Other cooperating companies	10,0 %
	All other companies	34,6 %

7. UNION INTEREST

- (299) Having decided to apply at this stage Article 7(2) of the basic Regulation, the Commission examined whether it could conclude that it was not in the Union interest to adopt provisional measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (300) As explained in recital (5) above and as announced in the amended Notice of Initiation, the investigation also examines the Union's interest under Article 7(2b) of the basic Regulation. Therefore, the provisional findings contained in this Regulation including those on Union interest, are without prejudice to the conclusions of the investigation on the raw material distortions as well as on the Union interest under Article 7(2b) of the basic Regulation, which will be reflected in the definitive stage of the proceeding.

7.1. Interest of the Union industry

- (301) It is recalled that the Union industry consists of two EMD producers, whose sales and profitability deteriorated significantly during the second half of the period considered, with a consequent negative impact on its market share, inventory level, investments, return on investment and cash flow.
- (302) If measures are not imposed it is likely that, as a result of the price pressure from the dumped imports, the weak profitability and other financial indicators will force the Union industry to cease production of EMD. However, following the imposition of anti-dumping measures, it is expected that the sales volumes and prices of the Union industry on the Union market will rise, thus improving profitability and other financial indicators of this industry and preventing closure.
- (303) It is therefore clear that anti-dumping measures would be in the interests of the Union industry.

7.2. Interest of unrelated importers/traders

- (304) As noted in recital (11), no unrelated importers provided the requested information. The Commission therefore concluded that it is unlikely that the importers would be affected by the measures.
- (305) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is not likely to have a negative effect on the situation of importers in the Union.

7.3. Interest of users

- (306) The main use of EMD is for the production of carbon-zinc and alkaline dry cell batteries, representing above 90 % of its use and divided among the three major (but not the only) battery producers in the Union. As mentioned above, questionnaires were sent to all known users in the Union. Replies were received from two alkaline dry cell battery producers, Varta and Duracell, representing [67–73] % of the Union consumption of EMD. The two replies were verified at the premises of the users.
- (307) Both cooperating users claimed that the imposition of anti-dumping measures on imports from China would increase their costs, which might not be passed on to their customers, since the competition for alkaline dry cell batteries is highly price-driven. Even if their branded products are connected to a strong brands recognition, the increased prices for their products often carry the risk of customers to turn to cheaper products. They added that the Union users are already experiencing an increased competition on the Union market caused by rising imports of finished battery products of comparable quality from the competitors outside the Union (mostly China) and the increasing raw material and energy costs. Thus, the measures would further decrease already shrinking profitability of the Union users.

- (308) The anti-dumping measures on imports from China would also reduce competition for EMD on the Union market (as well as in the third countries' export markets), since the availability of the EMD will be limited to the two Union producers (measures would solidify the duopoly with the subsequent risk of price increases), while the Union producers of EMD cannot satisfy the demand of these users in sufficient volumes, especially for the high-quality ⁽⁹²⁾ EMD. Besides, no sufficient investments have been taken by the Union industry in the last years to increase its capacity. They added that the supplies of EMD from the other third countries are limited, serving their own or nearby markets and could not substitute for the potential loss or reduction of supplies from China.
- (309) The investigation found that both users were profitable in the investigation period, they had maintained the same level of their overall sales volume of dry-cell consumer batteries from 2021 to the investigation period and even increased it by [1 %-4 %] in the Union, possibly thanks to the strong public image of their brands. However, the share of EMD sourced from the Union producers has decreased from around [65-75] % to [55-65] % from 2021 to the investigation period, for the benefit of EMD sourced from China.
- (310) Based on the information received, the cost of EMD for producing the dry-cell consumer batteries represented around [15-19] % of the manufacturing cost in the investigation period. The cost of EMD increased by [45-55] % for these users from 2021 to the investigation period and they could transfer some of this increase to the consumers, since the sales prices of batteries in the Union increased by more than 3 % and outside the Union by more than 10 % from 2021 to the investigation period.
- (311) It was estimated that the imposition of the provisional measures at the proposed level would increase the manufacturing cost of the battery for these users by maximum 1 %. Considering the level of increase in manufacturing costs in the previous years and the possibility of transferring part of this cost increase to the consumers, the effect of the proposed anti-dumping duty would be limited for these users, as they would still remain profitable even when taking into account the provisional anti-dumping duties.
- (312) In terms of the high quality EMD supply from the Union producers, it is noted that the quality requirements of the EMD for the dry cell battery production are set by the battery producers. Overall, both cooperating users have only a limited number of EMD suppliers (in the Union and China) corresponding to their quality requirements for any grade of EMD. The investigation confirmed that the high quality EMD was supplied by one of the Union producers to one of the cooperating users and the quality testing process was ongoing with the second cooperating user since 2022. The second Union producer re-started the quality testing process with both cooperating users in 2022-2023. Based on these facts it can be concluded that the Union industry is willing and capable to supply the high quality EMD for the Union market, depending on the demand and the requirements of the users.
- (313) In addition, considering the limited number of the EMD suppliers overall, it must be noted that the disappearance of the Union industry of EMD would probably have a negative effect on the two cooperating users' situation and competition on the Union market, since the Union users would be completely dependent on third country manufacturers, while the share of EMD sourced from the Union producers still represented a significant part, that is in total of around [55-65] % in the investigation period (and which includes the high quality EMD of around [25-35] %).
- (314) Furthermore, restoring a level playing field in the Union market of the EMD industry is in line with the objectives of the Critical Raw Materials initiative of the Union ⁽⁹³⁾, aiming to secure a sustainable supply of critical raw materials. Manganese is listed among these critical materials, while both, the EMD and the dry-cell battery producers, have their share in the manganese downstream value chain.

⁽⁹²⁾ The production of high-performance batteries (around 1/2 of their business) needs a high drain performance EMD grade.

⁽⁹³⁾ https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials_en (last visited on 8 September 2023).

- (315) No other type of users cooperated with the investigation expressing their concerns. However, Guizhou Manganese Mineral Group also claimed that the Union producers are not able to supply for the use of the new battery technologies (e.g. batteries for electric vehicles), where EMD is used ⁽⁹⁴⁾. However, these technologies are not yet developed to a point where EMD is utilised in a large scale production. It is also not yet used by the battery industry in the Union supplying electric vehicles. Therefore, the claim was rejected.
- (316) In addition, Guizhou Manganese Mineral Group also claimed that the two Union producers supply mainly carbon-zinc and alkaline grade EMD, and that it is difficult for them to compete and match the supply of different quality and quantity requirements of the user in the industries other than production of the dry cell batteries. The investigation confirmed that all grades of EMD have the same production process ⁽⁹⁵⁾. It also confirmed that there was production ⁽⁹⁶⁾ of the different EMD grades (other than carbon-zinc and alkaline) for the other industries than production of the alkaline dry cell batteries in the Union during the period considered. These other industries did not have quality specifications for EMD, meaning that they had a wide range of acceptable quality, which the Union industry could supply, when requested.
- (317) Autlan claimed that the Union producers' production, sales and profitability, among other factors, depend not only on the pressure exerted by the imports of EMD from China, but also the situation of the users in the Union affected by the imports of manganese dioxide alkaline and non-alkaline dry cell batteries from China.
- (318) The Commission noted that the party did not provide information on the effect of the increased imports of such batteries to the downstream users during the period considered, like actual loss of their sales, production, profitability and other indicators that could be linked to the increase of these Chinese imports of manganese dioxide alkaline and non-alkaline dry cell batteries, other than presumption of lost sales by the downstream users to Chinese imports and the decrease in these battery price from October 2022 to April 2023 (a period not related to the investigation period). On the contrary, as explained in recital (309), the cooperating dry cell battery producers in the Union had maintained the same level of their overall sales volume from 2021 to the investigation period and even increased it by [1 %–4 %] in the Union. The increase in Chinese imports of manganese dioxide alkaline and non-alkaline dry cell batteries did not seem to have an effect on the downstream Union battery producers during the investigation period and therefore the Union EMD producers could not be affected by users' situation in this period. The claim of the party was therefore rejected.
- (319) In the light of the above, it is provisionally concluded that the imposition of any anti-dumping measures are unlikely to affect seriously the situation of the user industry.

7.4. Conclusion on Union interest

- (320) On the basis of the above, the Commission provisionally concluded that there were no compelling reasons that it was clearly not in the Union interest to impose provisional measures on imports of EMD originating in the People's Republic of China at this stage of the investigation.
- (321) As explained in recital (300) above this provisional conclusion is without prejudice to the conclusions of the investigation on the raw material distortions, in particular the investigation concerning Union's interest under Article 7(2b) of the basic Regulation.

⁽⁹⁴⁾ As cathode material in lithium manganese iron phosphate, lithium manganate, nickel cobalt manganese base precursor, etc.

⁽⁹⁵⁾ Production process includes three main phases: **dissolving** phase (removing impurities like Cr, Ni, Co, Mo and other), **electrolysis** (where different grades of carbon-zinc or alkaline EMD can be produced) and **post-treatment** phase (where impurities from electrolysis are removed and optimum powder characteristics of EMD are defined).

⁽⁹⁶⁾ Below 1 % of the total Union production during the period considered.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (322) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (323) Provisional anti-dumping measures should be imposed on imports of electrolytic manganese dioxides originating in the People's Republic of China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (324) The Commission will conclude its analyses on the raw material distortion in accordance with Article 7(2a) and 7(2b) of the basic Regulation at the definitive stage as mentioned in recital (280).
- (325) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Provisional anti-dumping duty
People's Republic of China	Xiangtan	8,8 %
	Guiliu	0 %
	Daxin	15,8 %
	Other cooperating companies	10,0 %
	All other companies	34,6 %

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

- (329) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume 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 and provided the conditions are met an anti-circumvention investigation may be initiated. 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.

9. INFORMATION AT PROVISIONAL STAGE

- (330) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (331) Daxin submitted a comment regarding the treatment of the Chinese export VAT. Tosoh raised a point concerning the calculation of the target profit. Autlan requested to review and confirm the accuracy of the Daxin's dumping margin calculation and requested the disclosure of exporter's data marked as sensitive in the disclosure. Since none of the comments have raised any concerns regarding the accuracy of the disclosed calculations, the Commission will address these comments in the definitive stage.

10. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of electrolytic manganese dioxides (namely manganese dioxides produced through an electrolytic process) not heat-treated after the electrolytic process, currently falling under CN code ex 2820 10 00 (TARIC code 2820 10 00 10) and originating in the People's Republic of China.

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

Country	Company	Provisional anti-dumping duty	TARIC additional code
People's Republic of China	Xiangtan Electrochemical Scientific Ltd	8,8 %	899N
	Jingxi Xiangtan electrochemical scientific ltd.		
	Guangxi Guiliu New Material Co., Ltd	0 %	899O
	Guangxi Xiatian Manganese Mine Co. LTD		
	Guangxi Daxin Huiyuan New Energy Technology Co., Ltd	15,8 %	899P

	Other cooperating companies listed in Annex	10,0 %	
	All other companies	34,6 %	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 his/her 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. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

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

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 12 October 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	Guizhou Redstar Developing Dalong Manganese Industry Co., Ltd.	899Q
	Guizhou Manganese Mineral Group Co., Ltd.	899R
	Prince Minerals China Ltd	899S
	Hunan Qingchong New Materials Co., Ltd.	899T