COMMISSION IMPLEMENTING REGULATION (EU) 2024/844

of 13 March 2024

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

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', 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. ('Tosoh'). The Commission found that 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. Raw material distortions

(3) 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 is explicitly mentioned in Article 7(2a), second subparagraph, as a distortion on raw materials.

(4) 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 pursuant to Article 7(2a) of the basic Regulation in order to examine the raw material distortions and to assess whether, if relevant, a duty lower than the margin of dumping would be sufficient to remove injury. The Notice amending the Notice of initiation was published on 13 September 2023 [3] ('amending Notice').

(5) Further to the amendment, the Commission invited the interested parties and, where relevant, sent questionnaires to them, requesting the 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. The Commission also sent to the Government of the People's Republic of China ('GOC') a questionnaire concerning raw material distortions within the meaning of Articles 7(2a) and 7(2b) of the basic Regulation.

[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).
[3] OJ C 323, 13.9.2023, p. 10.

(6) Two cooperating users (Duracell International Operations Sàrl ('Duracell') and VARTA Consumer Batteries GmbH & Co. KGaA ('Varta')) replied to the relevant parts of the questionnaire. The two Union producers (Tosoh and Autlan), sampled exporting producers (Guangxi Guiliu New Material Co., Ltd ('Guiliu'), Xiangtan Electrochemical Scientific Ltd ('Xiangtan') and Guangxi Daxin Huiyuan New Energy Technology Co., Ltd ('Daxin')), and the associations China Chamber of Commerce for Metals, Minerals and Chemicals Importers and Exporters ('CCCMC') and the Guanxi Manganese Industry Association ('GMIA') provided their comments. The Commission considered the information and comments submitted by interested parties and revised its provisional conclusions where appropriate, as explained in the relevant sections below.

1.3. **Registration**

(7) In the absence of any comments, recitals (3) to (4) of the provisional Regulation are confirmed.

1.4. **Provisional measures**

(8) In accordance with Article 19a of the basic Regulation, on 15 September 2023, the Commission provided parties with a summary of the proposed duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. Interested parties were invited to comment on the accuracy of the calculations within three working days. Comments from one of the sampled exporting producers and from the two Union producers were received on 20 September 2023.

(9) The exporting producer Daxin claimed that the dumping margin should be calculated by using export sale prices and normal value without VAT. Tosoh, a Union producer, raised a point concerning the calculation of the target profit. Autlan, the complainant, requested to review and confirm the accuracy of the Daxin's dumping margin calculation and requested the disclosure of the three exporters' data marked as sensitive in the disclosure. As the comments did not concern the accuracy of the calculations, the Commission concluded that it would examine them with all other submissions after the publication of the provisional measures.

(10) On 13 October 2023, the Commission imposed provisional anti-dumping duties on imports of EMD originating in China by Commission Implementing Regulation (EU) 2023/2120 ([4]) ('the provisional Regulation').

1.5. **Subsequent procedure**

(11) Following the disclosure of the essential facts and considerations, on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the three sampled exporting producers and the associations, CCCMC and GMIA, the two Union producers and one of the users, Duracell, filed written submissions making their views known on the provisional findings within the deadline provided by Article 2(1) of the provisional Regulation.

(12) Parties who so requested were also granted an opportunity to be heard. The following hearings took place: with Duracell on 23 June and 28 November 2023; with Autlan on 30 June 2023; with Varta on 4 July 2023; with Xiangtan on 25 October 2023; with CCCMC on 16 November 2023; and a jointly with Autlan and Tosoh on 15 November 2023.

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

(14) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of EMD originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Autlan, Tosoh, CCCMC and GMIA (jointly), Xiangtan, and Daxin submitted comments within the deadline.

([4]) 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 (OJ L, 2023/2120, 13.10.2023, ELI: http://data.europa.eu/eli/reg_impl/2023/2120/oj).

1.6. **Claims on initiation**

(15) In the absence of any comments, recitals (1) to (2) of the provisional Regulation are confirmed.

1.7. **Claims on raw material distortions under Article 7(2a)**

(16) CCCMC and GMIA objected to the stated 15 days deadline for all parties to submit comments on the assessment of the Union interest in the amending Notice ([5]), since the economic and supply chain issues raised by the new investigations were complex and required research and exchanges of information with the companies concerned. Both requested the Commission to again amend the Notice of initiation and grant interested parties at least 30 days to submit comments.

(17) The Commission noted that all parties requesting extension of deadlines and providing specific reasons for it were granted such extensions. It also highlighted that the Notice of initiation ([6]) of 16 February 2023 still gave parties a possibility to comment on the information provided by the other interested parties within 7 days from the deadline to comment, thus all parties could use this option, when necessary. In view of this, the Commission considered that the time allotted to interested parties to make comments and provide their views on this matter was appropriate.

(18) Guiliu claimed that a new allegation brought by the complainant seven months after the initiation of investigation (and not 'at initiation') derogated interested parties' right of defence. Guiliu further claimed that the Commission should follow its past practice ([7]), where the complainant's claim of applying Article 7(2a) of the basic Regulation was rejected, because the complaint had failed to provide evidence of the existence of any of the measures listed in the second subparagraph of Article 7(2a) of the basic Regulation at initiation, and no such evidence had been found to exist by the Commission at the stage of initiation either. In addition, Guiliu mentioned that the complainant impeded the investigation by filing the new allegations late in the proceeding.

(19) The Commission first observed that in the case referred to by Guiliu the request was made after definitive disclosure. In the case at hand the request containing sufficient evidence on the alleged raw material distortions was made in a timely manner, before the imposition of provisional measures, thereby allowing the Commission sufficient time to effectively investigate the matter in the course of the investigation. Furthermore, the Commission considered that the rights of defence of the parties were fully respected. Indeed, Section 5.5.1 of the Notice of Initiation, as modified by the amending Notice, informed all the economic operators concerned of their procedural rights and obligations and described the process that the Commission intended to follow to collect the information necessary for its findings and to reach its conclusions on the matter of alleged raw material distortions. Interested parties had the opportunity to comment on the evidence provided in the request submitted by complainant regarding the alleged existence of raw material distortions and on any other aspects regarding the investigation on the raw material distortions allegations. Guiliu's claims were therefore dismissed. Finally, in view of the foregoing, it is unclear how the investigation was allegedly impeded by the complaint. Guiliu failed to explain this. The Commission considered that the request in accordance with Article 7(2a) of the basic Regulation to include the examination of alleged raw material distortions was timely and did not prevent the Commission to conduct a proper examination on this matter.

(20) Duracell claimed that the Commission cannot introduce a new legal basis in the framework of ongoing investigation and to amend the methodological scope of such investigation, as there is nothing in the basic Regulation entitling it to consider supplemental evidence, which did not exist at the time of initiation. The party referred by analogy to the Court ruling in T-126/21, *Azot* v *Commission* ([8]), where the Court held that the condition relating to the sufficiency of the evidence contained in a request for a review made by or on behalf of Union producers, within the meaning of the

([5]) Notice amending the Notice of initiation of an anti-dumping proceeding concerning imports of certain manganese dioxides originating in the People's Republic of China published on 16 February 2023 (OJ C 323, 13.9.2023, p. 10).

([6]) 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).

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

([8]) Case T-126/21, *Azot* v *Commission*, EU:T:2023:376.

second subparagraph of Article 11(2) of the basic Regulation, is satisfied where such evidence is submitted within the time limit. In addition, Duracell claimed that the Commission rejected similar requests in its own practice and the same reasoning should be applied by analogy ([9]).

(21) The Commission initiated the investigation in accordance with Article 7(2a) of the basic Regulation to include the examination of alleged raw material distortions in accordance with the legal standard applicable to the request made by or on behalf of Union producers, on the basis of Article 5 of the basic Regulation. The complainant provided sufficient evidence pursuant to Article 5 of the existence of raw material distortions as defined in Article 7(2a) of the basic Regulation and therefore the Commission amended the original Notice of initiation so that, as required by the basic Regulation, the investigation covered also those raw material distortions. Therefore, the Commission did not breach any identified legal standards when initiating the investigation. Furthermore, concerning the reference to the Court ruling in T-126/21 mentioned by Duracell, the Commission observed that that ruling is not final as it was under appeal. In any case, the ruling relates to an expiry review pursuant to Article 11(2) of the basic Regulation, and the information necessary to initiate it. The ruling does not cover the use of Article 7(2a) of the basic Regulation, which concerns an element of an investigation rather than its *raison d'être*. Moreover, even following the reasoning in T-126/21, unlike Article 11(2), Article 5 does not contain any particular limitation as to when the Union producers can request the initiation of an investigation. Thus, the analogy raised by Duracell does not arise. Duracell's claims were therefore rejected.

1.8. **Sampling**

(22) In the absence of any comments, recital (8) to (15) of the provisional Regulation are confirmed.

1.9. **Individual examination**

(23) As envisaged in recital (16) of the provisional Regulation, the Commission considered the request to grant individual examination for one exporting producer in China. The request for individual examination was highly deficient. It follows that the requestor did not 'submit the necessary information within the time limits provided for in the [basic Regulation]' within the meaning of Article 17(3) of that Regulation. In any event, the information provided revealed that several additional companies would have to be investigated which 'would be unduly burdensome and taken into account the complexity of the case at hand would prevent completion of the investigation in good time' ([10]). Therefore, the request was rejected.

1.10. **Questionnaire replies and verification visits**

(24) In the absence of any comments, recitals (17) to (21) of the provisional Regulation are confirmed.

1.11. **Investigation period and period considered**

(25) In the absence of any comments, recital (22) of the provisional Regulation is confirmed.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

(26) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (23) to (36) of the provisional Regulation.

3. **DUMPING**

(27) Following provisional disclosure, CCCMC, the cooperating exporting producers and the cooperating Union producers commented on the provisional dumping findings.

([9]) Commission Implementing Regulation (EU) 2020/492 of 1 April 2020 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 108, 6.4.2020, p. 1).

([10]) Article 17(3) of the basic Regulation.

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

(28) In the absence of any comments, recitals (37) to (43) of the provisional Regulation are confirmed.

3.2. **Normal value**

3.2.1. *Existence of significant distortions*

(29) After provisional disclosure, Daxin, Xiangtan CCCMC, and GMIA submitted a number of comments concerning the existence of significant distortions.

(30) First, Daxin, CCCMC and GMIA, claimed that that the Report is no longer up to date, in particular given the substantial economic developments both in the EU and in China since its publication, including the provision of subsidies to EU industries to promote their adherence to new EU industrial policy objectives or intervention in corporate investment and decision-making. Moreover, Daxin, CCCMC and GMIA claimed that the Commission replaces investigations with reports and that by relying on the Report, the Commission continued arguing in a circular manner where exporters need to disprove allegations made in the Report. Daxin, CCCMC and GMIA therefore recalled that the burden of proof rests with the investigating authority.

(31) The argument concerning the Report being allegedly outdated was rejected. 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. Even though the Report was made publicly available in December 2017, the Report's findings remain largely valid and they were in any event complemented by additional evidence collected in the present investigation as laid out in Section 3.2.1 of the provisional Regulation. Moreover, any interested party had ample opportunity to rebut, supplement or comment on the Report and the evidence on which it is based, and no parties have submitted arguments or evidence rebutting the sources and information included in the Report. As to the arguments concerning EU industrial policies and subsidies, the Commission noted that pursuant to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, such as in the EU, do not bear any relevance whatsoever in the context of the determination of the normal value. Therefore, also this argument was rejected.

(32) Regarding the argument suggesting that issuing a country report replaced the actual investigation, the Commission recalled that, according to Article 2(6a)(e) of the basic Regulation, if the Commission deems the evidence submitted by the complainant on the significant distortions sufficient, it can initiate the investigation on this basis. However, the determination on the actual existence and impact of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation occurs at the time of the provisional and/or definitive disclosure as result of an investigation. In this investigation, the Report, including the evidence contained therein, is part of the evidence on file justifying the application of Article 2(6a) of the basic Regulation. The Commission recalled that Section 3.2.1 of the provisional Regulation contains the Commission's full assessment concerning the existence of significant distortions. The Commission has used substantial additional evidence specific to the investigation and the claims put forward by the parties not included in the Report. What counts for the application of the methodology under Article 2(6a) of the basic Regulation are the findings that the significant distortions are relevant in the case at hand, as is the case in this investigation ([11]). Therefore, this claim was rejected.

(33) Second, Daxin, CCCMC and GMIA argued that the Commission wrongly interpreted the nature of China's socialist market economy doctrine, failing also to conduct a comprehensive analysis concerning the structure of the Chinese economy, as well as the relationship between the free market and the Chinese Communist Party ('CCP') leadership. Daxin, CCCMC and GMIA backed their argument by claiming that the *May 2020 Opinion of the CCP Central Committee and the State Council on Accelerating the Improvement of the Socialist Market Economy System in the New Era* reiterated, inter alia, that the reform of the socialist market economy should show great respect for the general rule

([11]) See judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology* v *Commission*, T-326/21, EU:T:2023:34,7 para. 104.

of market economy, minimize governmental direct allocation of market resources as well as direct intervention in microeconomic activities, fully leverage the decisive role of the market in resource allocation and enhance government's role in effectively addressing the market failure.

(34) This argument had to be rejected. The concept of socialist market economy permeates the entire legislative and economic structure of the PRC and effectively confers on the CCP leadership in all material economic questions, including control of the financial system and capital resources, designating sectors of the economy as a function of their strategic importance, controlling personnel issues including all essential appointments, coordinating economic policies through a formal network of Party entities/committees across state authorities and the economy etc. Out-of-context quotes from selected policy documents cannot alter the conclusion that the Party/State fully dominates the country's economy, as is apparent not only from the evidence shown in Section 3.2.1 of the provisional Regulation, but also from the very policy documents which refer to respect for market forces while subordinating them to the strategic objectives of the CCP ([12]).

(35) Third, Daxin, CCCMC and GMIA contested the Commission's finding that the Chinese economy is subject to an overall administrative control by means of an industrial plannings system. The exporting producers submitted that the plans are just guidelines and have no binding effects on Chinese companies. In this context, Daxin, CCCMC and GMIA added that there were also development initiatives within the EU and Member States that are similar to China's five-year plans ('FYPs'), such as new intra-EU industrial alliances and huge State subsidy programmes.

(36) In response to the argument on the nature of the Chinese planning documents, the Commission pointed out that the Chinese economy is indeed covered by a complex web of FYPs, driving decisions by public authorities at all levels. Contrary to the argument put forward by the exporting producers, the Commission considers FYPs binding documents. This transpires from the applicable legislation referred to in Section 4.3 of the Report, as well from the planning documents themselves. The 14th national FYP, for example, contains a dedicated section on improving the planning implementation mechanism stating that: 'As regards the binding indicators, major engineering projects, and tasks in public services, environmental protection, safety, and other fields set out in this Plan, it is necessary to clarify the responsibilities parties and schedule requirements, to allocate public resources, guide and control social resources, and ensure completion as scheduled. As regards the expected indicators and tasks in the fields of industrial development and structural adjustment set out in this Plan, it is necessary to mainly rely on the role of market players to achieve them. Governments at all levels must create a favourable policy environment, institutional environment, and legal environment' ([13]).

(37) As to Daxin, CCCMC and GMIA's reference to similar support schemes allegedly existing in the EU and Member States, the Commission noted, as also already mentioned Section 3.2.1 of the provisional Regulation in recitals (47) and (121), that according to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country, with the cost structure and price formation mechanisms in other markets not being relevant in the context of this proceeding ([14]). Therefore, this claim was rejected.

(38) Fourth, Daxin, CCCMC and GMIA argued that not all the producers of EMD are state-owned enterprises ('SOEs') and that even if there are some companies owned or invested by the State, this does not prove government intervention in the operations of those companies. The exporting producers further added, referring to Article 11 of the Chinese Company Law, that connections between the CCP and the companies concerned do not necessarily serve as an indication for the government's control over the operations of a company.

([12]) See for instance Chapters 2-3, 8-9, 58-60 of the 14th national FYP.
([13]) See Chapter 65 of the 14th national FYP.
([14]) See judgment of 21 June 2023, *Guangdong Haomei New Materials and Guangdong King Metal Light Alloy Technology v Commission*, T-326/21, EU:T:2023:34,7 para. 107.

(39) The Commission recalled that pursuant to Article 2(6a)(b) of the basic Regulation, the fact that the market in question is 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 is one of the elements the impact of which is to be taken into account when assessing the existence of significant distortions. At the same time, even if there is no predominance of SOEs in a given sector, State ownership is only one of the indicators of significant distortions. Government intervention may well take other forms – in line with the indicators listed in Article 2(6a)(b) of the basic Regulation – which have been described in Section 3.2.1 of the provisional Regulation. While the relevance of Article 11 of the Chinese Company Law is not entirely clear in the present context, the Commission pointed out that even Article 1 of the said Company Law refers to the objective of safeguarding the social and economic order and promoting the development of the socialist market economy. Therefore, this argument was rejected.

(40) Fifth, Daxin, CCCMC and GMIA alleged that the Commission provided insufficient evidence to justify any findings of inadequate implementation of corporate, property and bankruptcy laws in China. In particular, the exporting producers claimed that China has conducted a regular supervision on the implementation of the Bankruptcy Law, including the trial of bankruptcy cases and suggestions on amendments, therefore not failing to properly apply and enforce law. Moreover, Daxin, CCCMC and GMIA claimed that no instances have been named that would prove biased access to capital and investment. Similarly, Daxin, CCCMC and GMIA disputed the Commission's conclusion with respect to significant distortions concerning wages. They further argued in this respect that the Commission failed to conduct a sector-specific analysis proving that workers in the EMD sector would be put at a vulnerable employment position and receive distorted wages.

(41) These arguments could not be accepted. As for the implementation of the bankruptcy laws, the Commission pointed out that even if China may have undertaken certain reforms of the insolvency proceedings, available information suggests persisting state intervention and other issues pointing to inadequate application of the bankruptcy laws. While the comparatively low number of insolvency cases is in itself indicative of the market forces not being allowed to eliminate the non-viable economic operators, the ongoing state intervention is particularly well exemplified by various interpretative actions of the Supreme People's Court which emphasise economic continuity and social stability as priorities which the lower-level courts should take into account in the context of bankruptcy proceedings.

(42) As to wage distortions, the Commission recalled that, as found in Section 3.2.1 of the provisional Regulation in recital (105), the wages in China are distorted inter alia by the restrictions of mobility due to the household registration system (hukou), as well as due to the lack of the presence of independent trade unions and lack of collective bargaining. There are no elements on file on whose basis it could be positively established that the domestic wage costs of EMD producers, such as Daxin as well as the producers represented by CCCMC or GMIA were not affected by those distortions and Daxin as well as the producers represented by CCCMC or GMIA did not adduce any evidence showing that the distortions referred to in Section 3.2.1 of the provisional Regulation would not affect its labour costs.

(43) Similar observations apply also with regard to the Chinese financial system. As found in Section 3.2.1 of the provisional Regulation in recital (108), Chinese banks are guided by public policies when granting access to finance, including with respect to risk assessment of borrowers. Since neither Daxin nor CCCMC/GMIA have not provided additional information demonstrating that the distortions described in Section 3.2.1 of the provisional Regulation would not affect access to capital for EMD producers, this argument had to be rejected.

(44) Sixth, Daxin, CCCMC and GMIA submitted that the Commission's investigation methodology and reasoning needs to meet the standards set by the principles and practices crystallised in the WTO. The exporting producers argued that Commission needs to bear greater burden of proof when relating the determination of distortive market, in particular when it comes to explaining how governmental powers or mandate translate into actual and demonstrable distortions of cost of production.

(45) The arguments raised by Daxin, CCCMC and GMIA was rejected. The Commission considers that the methodology pursuant to Article 2(6a) of the basic Regulation is fully consistent with the European Union's WTO obligations and the exporting producers did not substantiate which principles and practices have allegedly not been met by the Commission. In any event, Section 3.2.1 of the provisional Regulation contained a detailed explanation how various types of distortions – whether cross-cutting and therefore affecting the entire Chinese economy or present specifically in the EMD sector – affect the functioning of the market and therefore also the costs of production of the product under investigation.

(46) Consequently, the Commission rejected Daxin, CCCMC and GMIA's arguments.

(47) Xiangtan, first, submitted that the Commission still failed to provide any further elaboration concerning the exact legal basis to underpin its reasoning in relation to the compatibility of Article 2(6a) of the basic Regulation with the WTO agreements – including China's WTO Accession Protocol and the WTO Anti-dumping Agreement ('ADA') – as well as with the DSB rulings, in particular DS473. According to Xiangtan, the Commission's mere reiteration that Article 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law did not provide any additional clarity on the issue. Moreover, referring to DS473, Xiangtan submitted that the Commission was not entitled to discard its costs or prices on the basis of the alleged existence of significant distortions, given that the existence of such distortions is in any event not a sufficient basis for concluding that the producer's records do not reasonably reflect the costs of the raw material associated with the production and sale of the product concerned. Finally, Xiangtan claimed that the Commission has not sufficiently justified the application of Article 2(6a) of the basic Regulation in the present investigation.

(48) The Commission disagreed. Concerning Xiangtan's arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with WTO law, in particular the provisions of Article 2.2 and 2.2.1.1 ADA, as well as the findings in DS473, the Commission reiterated its view expressed in the First Note that Article 2(6a) of the basic Regulation is fully in line with the EU's obligations under the WTO law, in particular the provisions of the ADA. In addition, with respect to DS473, the Commission recalled that this case did not concern the application of Article 2(6a) of the basic Regulation, but of a specific provision of Article 2(5) of the basic Regulation. Concerning Xiangtan's argument on the burden of proof resting with the Commission, the claim is misplaced. The Commission recalled that WTO law as interpreted by the Appellate Body in DS473, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. 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 and, if established, it renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, Article 2(6a) of the basic Regulation provides for the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Moreover, 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. In the present investigation, the Commission demonstrated the existence of distortions in the EMD industry in Section 3.2.1 of the provisional Regulation whereas no domestic costs have been established to be undistorted based on accurate and appropriate evidence in the case of Xiangtan.

(49) Second, Xiangtan claimed that no significant distortion exists in the EMD sector in China given that: (i) even though Xiangtan is a 40 % State-owned company, the government's holding ownership does not necessarily result in the government intervening into the company's business operations; nor does the fact of the Chairman of the company and the secretary to the Board of Directors holding simultaneously positions within the CCP; (ii) the company is publicly listed on the stock exchange and thus subject to market-oriented modern corporate governance rules and stock exchange listing requirements; (iii) the Commission failed to demonstrate that the alleged cross-cutting interventions by Chinese government lead to significant distortions of the factors of production and, consequently, affect the cost and price of Xiangtan's operation.

(50) These arguments could not be accepted. First, as to government intervention, the Commission recalled that pursuant to Article 2(6a)(b) of the basic Regulation, the fact that the market in question is 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 is one of the elements the impact of which is to be taken into account when assessing the

existence of significant distortions. At the same time, even if there is no predominance of SOEs in a given sector, State ownership is only one of the indicators of significant distortions. Government interventions may well take other forms - in line with the indicators listed in Article 2(6a)(b) of the basic Regulation – which have been described in Section 3.2.1 of the provisional Regulation. Notably, according to Article 2(6a)(b) second indent, one element relevant for assessing the existence of significant distortions in a country is the State presence in firms allowing the State to interfere with respect to prices or costs. The involvement of party members in Xiangtan management structures is a clear indicator that the company is not independent from the State and is liable to be acting in accordance with CCP policy rather than market forces, irrespective of whether the State sets directly the prices of the goods sold or whether the links between the company and the CCP may impact its costs and prices more indirectly, such as through more favourable treatment and support from the authorities.

(51) Second, as to the alleged lack of significant distortions despite existing government interventions, Xiangtan's arguments could not be accepted. Xiangtan did not provide any information which would put in question the Commission's observations (see recitals (87) to (100) of the provisional Regulation) on the EMD being considered an encouraged industry and therefore subject to distortive government support. The same applies to the distortions concerning inputs necessary for the manufacturing of the product under investigation (see in particular recitals (83), (85) and (106) of the provisional Regulation). Third, as to Xiangtan's claim that it is a privately-owned company with modern corporate governance, the Commission has described in Section 3.2.1. of the provisional Regulation the substantial government interventions in the PRC resulting in a distortion of the effective allocation of resources in line with market principles. Those distortions affect the commercial operators irrespective of the ownership structure or managerial setup.

(52) In view of the above, Xiangtan's arguments were rejected.

3.2.2. *Representative country*

(53) In the provisional Regulation, the Commission selected Colombia as the representative country and used the financial data of the company Quimpac de Colombia for the constructed normal value in accordance with Article 2(6a)(a) of the basic Regulation. The details on the methodology used for the selection were set out in the First and Second Note made available to parties in the open file on 12 June 2023 and 4 July 2023 respectively ('First Note' and 'Second Note').

(54) Following the publication of the provisional Regulation, Xiangtan reiterated the claim that Colombia was not an appropriate representative country, based on the same arguments already presented in recitals (144) and (145) of the provisional Regulation.

(55) The Commission already addressed the comments in recitals (147) and (148) of the provisional Regulation. In addition, Xiangtan did not bring any new information or proposed any alternative representative country. The claim was therefore rejected.

(56) Daxin, CCCMC and GMIA reiterated again that the price of energy in Colombia was influenced by several factors and differed significantly 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. The claim was already addressed and dismissed in recitals (151) and (152) of the provisional Regulation.

3.2.3. *Sources to establish undistorted costs for factors of production*

Manganese ore

(57) Xiangtan claimed that the Commission should use the actual cost of both self-mined and imported manganese ore instead of applying the benchmark prices. Xiangtan backed this claim by the lower manganese content of the locally mined ores which allegedly causes that those local ores are not affected by the distortions. Regarding imported ores Xiangtan claimed that as the manganese concentration, the inspection reports and information of the origin were available, the benchmark should not have been applied.

(58) The Commission rejected both claims. Xiangtan did not explain in what way the distortions would not apply also for the domestic manganese ores of lower concentrations, which are used together with the imported ores of higher concentration in EMD production process.

(59) The reason why the Commission applied benchmarks for the imported ores was that none of the producers provided accurate and appropriate evidence demonstrating the absence of distortions. This was primarily because all the ore purchases were made through a Chinese intermediary, whether located in China or elsewhere.

(60) Xiangtan reiterated the claim that the methodology used for the calculation of the benchmark of manganese ore used by the Commission was not appropriate and suggested again using one of two alternative methodologies submitted in its comments to the Second FOP note. The Commission already addressed this claim in recitals (170) and (171) of the provisional Regulation. Xiangtan did not bring any new facts, reasoning or any viable alternative methodology how to reliably establish any price difference stemming from the different concentration of the manganese in the ore.

(61) Also Daxin, CCCMC and GMIA contested again that the benchmark adopted by the Commission referred to an ore with a significantly higher concentration of manganese as compared with the locally sourced manganese ore and that it should adjust the benchmark in order to reflect the costs of Chinese exporters.

(62) The Commission thoroughly analysed all sources provided by the interested parties including the data from the Chinese platforms Asian Metal and ferroalloynet.com This analysis revealed that no consistent price difference based on the manganese content could be determined. On the contrary, data from Fastmarkets.com showed that two ore concentrations of 37 % and 44 % showed inconsistent price differences, as in some months the tonne unit price for the higher concentration was even lower than for the lower concentration. The same applied for the Asian Metal data, which showed that the tonne unit price for an ore with 13 % concentration was higher in certain months than for an ore with 37 % concentration. These findings clearly demonstrated the absence of any consistent correlation between manganese content and pricing. Consequently, the provisional benchmark for manganese ore was confirmed and the claim was rejected.

(63) Following final disclosure, Xiangtan reiterated their two claims regarding the manganese ore. First, they claimed that actual cost of self-mined manganese ore should have been used instead of the benchmark price. Second, they reiterated that the Commission incorrectly calculated the manganese ore benchmark prices.

(64) Concerning the first claim, the Commission already explained in the provisional Regulation the reasons why it replaced the actual cost of the Chinese sourced manganese ore with the benchmarks. In the absence of any new fact this claim was therefore dismissed.

(65) In the second claim regarding the manganese ore benchmark, Xiangtan argued that there is a consistent pattern of metric tonne unit price difference between the higher and lower ore concentration benchmarks, without providing any details or evidence concerning what this allegedly consistent price difference would be, neither to how this price difference would be applicable to the other (lower) concentration manganese ores used by the Chinese producers. The Commission rejected this claim.

(66) Xiangtan further suggested, that the Commission's presentation of the fact that, in some cases the tonne unit price for the higher concentration ore was lower than that for the lower concentration ore was factually wrong. The Commission disagreed with this claim, as for example in almost full period of May 2020 the USD per metric tonne unit price of MB-MNO-0003 37 % CIF Tianjin was higher than that of MB-MNO-0001 44 % CIF Tianjin ([15]). As was already explained in recital (62), there is no consistent price difference between the price of the manganese ore and its manganese concentration. In any event, even in case a consistent difference would be found, the difference between the 37 % and 44 % concentrations could not be applied to the local Chinese ores with significantly lower concentrations and for which no benchmark was available. The Commission therefore confirmed the approach to

([15]) The terms of use of Fastmarkets.com database did not allow the Commission to show monthly or weekly data extracts to interested parties where this difference in prices was visible. Parties have also the opportunity to check the accuracy of the Commission's data by purchasing themselves access to this database.

the calculation of the manganese benchmark and rejected this claim. Xiangtan identified a clerical error in the formula used with regard to the calculation of the price for one of the manganese ores used. An incorrect manganese concentration of the ore was applied to the benchmark price. The Commission accepted this claim and corrected this error.

(67) Xiangtan claimed that the Commission's adjustment factor used with regard to the manganese valence 2+ content was wrongly applied. The Commission accepted the claim and corrected this adjustment.

(68) Xiangtan disputed the adjustment the Commission applied to one type of manganese powder. The Commission accepted this claim and corrected the amount of the adjustment.

Other raw materials and consumables

(69) Tosoh argued that the Commission should have used Malaysia rather than Türkiye as a source of import prices for the five factors of production other than manganese ore because the import prices into Türkiye of coal products were abnormally low during the investigation period, due to substantial imports from Russia. The Commission already addressed this claim in recital (143) of the provisional Regulation and selected Brazil to establish the undistorted cost for bituminous coal and anthracite coal.

(70) Autlan requested the Commission to use import price data of Malaysia to calculate undistorted benchmarks for the five inputs. The Commission noted that only for one out of five factors of production, the lignite coal, the average aggregate import volumes were higher than in Türkiye or Brazil, therefore the choice of Malaysia was not justifiable. The claim was rejected.

(71) Xiangtan contested the method used to determine the prices for two coal types. It urged the Commission to use the Colombian export statistics for bituminous coal. In developing its argument Xiangtan speculated, that the reason for low imports into Colombia might be the abundant supply in the country. It further urged the Commission to use the import statistics into Türkiye without excluding the imports from Russia on the grounds that the Commission insufficiently demonstrated that there were any distortions in Russia that would cause the abnormally low prices and also brought examples of some products which from some countries were imported at lower prices than from Russia.

(72) The Commission explained the approach taken in recitals (142) and (143) of the provisional Regulation. In establishing the benchmarks, the Commission does not rely on the export prices as they are by definition less reliable than the import statistics. This is generally accepted view, based on various reasons such as that customs authorities typically have more resources and methods to assess and control the import data compared to export data. Import documentation required is generally more thorough and goods at importation are subject to customs checks and verifications. Also, the export data are typically reported as FOB (compared to CIF on imports), which the Commission uses as representative level to use as a benchmark. Therefore this claim was rejected.

(73) Following final disclosure, Xiangtan repeated the claim made at provisional stage that the Commission should use Colombian export statistics to establish the benchmark price of bituminous coal. No new arguments were provided. The Commission already explained why it considered import prices more reliable than export prices in the previous recital and therefore rejected the claim.

(74) Regarding the distortions in Russia, the Commission noted that the evidence documenting that the Russian coal producers were selling at deep discounts following the Union sanctions on imports which came into force in August 2022 was well available on the open file and Xiangtan did not contest it. The Commission therefore rejected this claim and confirmed its method for determining the coal prices.

(75) Guiliu requested the Commission to modify the HS code for one of their factors of production, from HS Code 2701 12 (Bituminous coal) to HS Code 2702 10 (Lignite) and to modify the benchmark accordingly. Guiliu argued that, according to the Harmonised System nomenclature, HS Code 2701 12 referred to bituminous coal, need to have a calorific value equal to or greater than 5 833 kcal/kg, whereas the coal they used was below this limit. In support of their request, Guiliu provided testing results for batches of coal showing a calorific value below the limit indicated above. The classification under HS Code 2701 12 was provided by Guiliu in their questionnaire replies and was not questioned during the verification process. The Commission considered that the request was not acceptable as it only came after provisional measures, and the Commission was not in the position to verify the new evidence submitted in relation to the caloric value of the coal allegedly used by Guiliu.

(76) In the First and Second note and in the provisional Regulation, one of the factors of production, the iron pyrite, was indicated under HS Code 2601 11. After further investigation, the Commission ascertained that the iron pyrite used by the exporting producers was unroasted iron pyrite and should be classified under a different code, HS Code 2502 00. The Commission received confirmation from the exporting producers on the type of raw material used, whether roasted or unroasted iron pyrite, and on the classification code to be used. The Commission consequently modified the benchmark to establish the undistorted price for iron pyrite. As none of the countries used for other factors in this case (Colombia, Türkiye and Brazil) had representative quantities of pyrite imports (the total imports to those countries vary from 0 to 3 % of the pyrite consumption of the sampled Chinese exporting producers), the Commission searched for an alternative country on the list of countries with a level of economic development similar to China and concluded that Thailand was an appropriate alternative source of import prices for unroasted pyrite as the import quantities were significantly higher (representing 23 % of the total pyrite consumption of the sampled Chinese exporting producers).

(77) Following final disclosure, Xiangtan claimed that the Commission should rely on the Turkish export price for the unroasted pyrite to establish the benchmark, as Türkiye was the biggest exporting country for this raw material. The Commission rejected the claims for the reasons explained in recital (72) of this Regulation.

(78) Daxin argued that establishing the steam benchmark using the other sampled exporting producers would be inconsistent with previous practice and that the Commission should use the benchmark for water instead. The Commission considered that it would not be appropriate to use the benchmark for water, since other factors with significantly higher impact on the final price such as energy and labour costs were needed in the production of steam. The Commission calculated an average of the consumptions of the inputs used by the other sampled exporting producers producing steam in-house and applied benchmarks to the average consumption of each input to determine the price of steam. No alternative methodology for the calculation of the price of steam was presented by Daxin and the claim was therefore dismissed.

(79) Daxin contested as well that the decision by the Commission to use the grinding/milling cost of other sampled exporting producers to adjust the benchmark for manganese ore was not justified, as the cost was unreasonably high. Daxin provided no evidence in support of this claim nor proposed an alternative option. The claim was therefore dismissed.

Electricity

(80) Xiangtan contested the Commission's decision to change the source of data for the determination of the benchmark for electricity from ENEL S.A., originally proposed in the First and Second note, to EMCALI, the energy supplier in the Cali region, where the company Quimpac is located. First, they argued that, as Quimpac was not an EMD producer, their location was irrelevant. Second, they argued the tariffs of EMCALI did not include a tariff applicable for industrial use. The Commission rejected both arguments. Quimpac was selected as a benchmark company because it utilises the same electrolysis process as an EMD producer, making it a suitable representative for understanding the cost structure of an EMD producer in terms of energy supply. Regarding the energy tariffs applied, the prices published in EMCALI's price list accessible to all interested parties, are applicable to both commercial and industrial users. This approach is further supported by the use of very high voltage levels (category

3), which are beyond the scope of typical residential or general commercial activities and are indicative of substantial industrial electricity consumption. The Commission's decision to apply the highest available voltage level category is based on the rationale that it serves as an accurate representation of an industrial user who consumes large amounts of electricity in their production processes.

Manufacturing overhead costs, SG&A and profits

(81) Xiangtan contested the use Quimpac de Colombia's SG&A and profit in constructing the normal value on three grounds. First, it claimed that Quimpac's financial result did not offer a good proxy for the EMD production. Second, it alleged that the profit level was higher than what could normally be achieved by an EMD producer and proposed to use the profits of Union producers or Tosoh Japan. Third, it claimed that no detailed financial data was available for the company and therefore the items such as freight expenses, packing expenses, other costs or R&D expenses cannot be checked and therefore it cannot be ensured that there is no double counting when doing the price comparison.

(82) The Commission rejected the presented arguments for the following reasons. First, Xiangtan failed to show why the products produced by Quimpac (chlorine-soda products) would not render them as a good proxy for the EMD producers. Xiangtan does not contest that Quimpac uses comparable fixed assets (Electrolysis facility) and features high consumption of electricity. Second, the reasoning for the choice of Quimpac together with the description of the process was duly described in the provisional Regulation (Section 3.2.2.4). The Commission therefore cannot use the financial results of the Union industry and Japanese company neither to calculate the normal value, nor to benchmark it with the financial results of the selected companies. Third, despite the limitations of the data available for Quimpac, the Commission considers that in the absence of any more detailed financial statements, those data provide reasonably accurate representation of the company's SG&A and profit. Finally, Xiangtan failed to provide any alternative. The claims were therefore rejected.

3.2.4. *Other comments*

(83) Xiangtan, Daxin, CCCMC and GMIA argued that the dumping margin should be calculated by using the export sales price and the normal value without VAT. The investigation showed that, on the basis of the Chinese VAT export refund policy, exporting producers exporting EMD were not eligible for the VAT refund. This implied that producers of EMD incurred an additional cost when exporting. Therefore, the Commission made an adjustment to the normal value, pursuant to Article 2(10)(b) of the basic Regulation, to reflect the total cost incurred as a result of the adopted VAT scheme.

(84) Following final disclosure, Daxin reiterated the claim made at provisional stage that there was no need to make any VAT adjustment to the normal value since Daxin made export sales to the Union through domestic traders and therefore did not incur any additional cost when exporting. The Commission noted that, for the purpose of applying the provision of Article 2(10)(b), it was not relevant if Daxin exported directly to the Union or via a trader located in China. The adjustment to the normal value as per Article 2(10)(b) remained justified based on the non-applicability of VAT refund on export sales of EMD. The claim was therefore dismissed. Xiangtan disagreed with the methodology applied by the Commission to extrapolate the cost of consumables and manufacturing overheads as a percentage of the cost for raw materials and of direct cost respectively. The same comment was provided as regards the extrapolation of cost of transports as a percentage of the cost of raw materials. Xiangtan asserted that they were stand-alone cost items, in no way connected to the value of the inputs, and that the Commission should either identify proper benchmarks separately from other inputs or use the exporting producers' actual cost.

(85) The Commission noted that, once the existence of significant distortion was established in accordance with Article 2(6a)(b) of the basic Regulation, it would not be appropriate to use actual costs, unless these were established not to be distorted on the basis of accurate and appropriate evidence. This was not the case, as no such evidence was submitted. Since these were considered by the Commission as distorted, appropriate benchmarks had to be found. When appropriate benchmarks cannot be found for a cost, the Commission will establish them as a ratio to the cost group they relate to (be it cost of all raw materials or the manufacturing costs). Once the undistorted costs of raw materials or manufacturing costs are established, the Commission will apply the benchmark to estimate the undistorted cost in question, thereby preserving the exporting producer's cost structure. Xiangtan failed to provide a more reasonable alternative to this method.

(86) Xiangtan contested that the Commission used for the dumping margin calculation a COM PCN table based on yearly average, instead of the originally submitted COM PCN table based on monthly cost accounting records, without explaining the reason for its decision. In Xiangtan's view, this was not compliant with Article 2(5) of the basic Regulation, whereby costs should normally be calculated on the basis of records kept by the party under investigation. As the Commission employs a yearly average normal value in its investigations, it considered appropriate to use yearly generated costs, enabling direct verification against the company's annually audited financial statements, which enhances the reliability and transparency of the data used. Moreover the annual average value was calculated based on the records kept by Xiangtan and thus Article 2(5) was not violated. The Commission therefore dismissed this claim.

(87) Autlan requested the Commission to adopt in its final determination appropriate actions regarding an EMD producer owned by the South Manganese Group, the same group to which Daxin belonged to prevent potential company channelling. The Commission noted that only producers that exported during the investigation period are listed in the operative part of this regulation, if they made themselves known during the investigation. The company in question did not export to the Union during the investigation period and therefore cannot be listed in the regulation. Consequently, the request was rejected.

3.3. **Export price**

(88) Xiangtan disagreed with the method used by the Commission to correct the ocean freight cost used for constructing the CIF value. The Commission used the rates of five months when Xiangtan actually paid freight cost for CIF and DAP sales and quotes from other sampled exporters for the remaining seven months. Then, the Commission calculated a yearly average rate to construct the CIF value of sales where no ocean freight occurred. Xiangtan claimed that it was not appropriate to use the yearly average of ocean freight rates as this did not take into account the significant fluctuation of ocean freight in 2022 which had a substantial impact on the CIF value from month to month. The Commission accepted the claim and applied monthly ocean freight rates in constructing the CIF value.

(89) Xiangtan further claimed that the Commission calculated the ocean insurance based on a percentage on the invoice value whereas it should have calculated it based on the insurance cost actually paid by the company during the investigation period. The Commission accepted this claim and corrected the calculation accordingly.

(90) Following final disclosure, Xiangtan noted that the Commission, while accepting to calculate the ocean insurance premium based on the insurance cost actually paid by the company, applied a wrong formula in the calculation as it did not incorporate the typical 1.1 spread used by insurance companies for determining the ocean insurance fee. The Commission concluded that implementing this non-material correction would not affect either the injury or the dumping margin. As a result, this claim was rejected.

(91) After the publication of the provisional measures, Daxin submitted additional information regarding the export prices of the unrelated trader selling EMD to their Union customer and requested the Commission to use these export data to calculate the CIF Union border price.

(92) Autlan reacted to the submission of the questionnaire by Daxin's unrelated trader claiming that it was received several months after the deadline set out in Section 5.3 of the Notice of Initiation.

(93) Daxin rebutted that, according to the Notice of Initiation, interested parties could submit new factual information before the deadline to comment on the disclosure of the provisional findings and therefore it considered this new evidence acceptable.

(94) The Commission noted that the unrelated trader had not cooperated in the investigation and the Commission was therefore not in the position to verify any of its data within the time limit of the investigation. The claim was therefore dismissed.

(95) Following final disclosure, Daxin repeated their claim made at provisional stage that the Commission should use the export price of the unrelated trader to calculate the injury margin without presenting any additional argument. The claim was rejected for the reasons explained in recital (94) above.

3.4. **Comparison**

(96) Autlan argued that the Chinese exporting producers are using targeted dumping and requested the Commission to address this matter. The Commission analysed the situation and concluded that there is no evidence of the targeted dumping on the file. The change of prices over the investigation period was in line with the market development and the movements in the prices of raw materials and prices. The analysis of the sales of particular exporting producers to the different regions also did not show any significant price differences and therefore did not point out to any targeted dumping practice. The claim was therefore rejected.

3.5. **Dumping margins**

(97) Following claims from interested parties as described above, the Commission revised the dumping margins.

(98) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin (%)
Xiangtan	47,2
Guiliu	62,9
Daxin	18,3
Other cooperating companies	47,4
All other companies	100,9

4. **INJURY**

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

(99) In the absence of comments on the determination of the Union industry and Union production, the Commission confirmed its conclusions set out in recitals (204) to (206) of the provisional Regulation.

4.2. **Union consumption**

(100) In the absence of comments on the Union consumption, the Commission confirmed its conclusions set out in recitals (207) to (209) of the provisional Regulation.

4.3. **Imports from the country concerned**

(101) In the absence of comments on the imports from the country concerned, the Commission confirmed its conclusions set out in recitals (210) to (214) of the provisional Regulation.

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

(102) In the absence of comments on the price of the imports from the country concerned, price undercutting and price suppression, the Commission confirmed its conclusions set out in recitals (215) to (221) of the provisional Regulation.

4.4. **Economic situation of the Union industry**

4.4.1. *General remarks*

(103) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (222) to (225) of the provisional Regulation.

4.4.2. *Macroeconomic indicators*

4.4.2.1. Production, production capacity and capacity utilisation

(104) In the absence of comments on the production, production capacity and capacity utilisation, the Commission confirmed its conclusions set out in recitals (226) to (228) of the provisional Regulation.

4.4.2.2. Sales volume and market share

(105) In the absence of comments on the sales volume and market share, the Commission confirmed its conclusions set out in recitals (229) to (231) of the provisional Regulation.

4.4.2.3. Growth

(106) In the absence of comments on the growth, the Commission confirmed its conclusions set out in recital (232) of the provisional Regulation.

4.4.2.4. Employment and productivity

(107) In the absence of comments on the employment and productivity, the Commission confirmed its conclusions set out in recitals (233) to (235) of the provisional Regulation.

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

(108) In the absence of comments on the magnitude of the dumping margin and recovery from past dumping, the Commission confirmed its conclusions set out in recitals (236) to (237) of the provisional Regulation.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(109) In the absence of comments on the prices and factors affecting prices, the Commission confirmed its conclusions set out in recitals (238) to (241) of the provisional Regulation.

4.4.3.2. Labour costs

(110) In the absence of comments on the labour cost, the Commission confirmed its conclusions set out in recitals (242) to (243) of the provisional Regulation.

4.4.3.3. Inventories

(111) In the absence of comments on the inventories, the Commission confirmed its conclusions set out in recitals (244) to (245) of the provisional Regulation.

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

(112) In the absence of comments on the profitability, cash flow, investments, return on investments and ability to raise capital, the Commission confirmed its conclusions set out in recitals (246) to (251) of the provisional Regulation.

4.4.4. *Conclusion on injury*

(113) Following provisional disclosure, the sampled Chinese exporting producers as well as CCCMC and GMIA contested the concluded injury to the Union industry demonstrated by price suppression caused by the significant quantities of low-priced imports from China, especially during the second half of the period considered (2021–the investigation period) for the following reasons:

— the average Chinese price increased more than the Union industry's price in the investigation period,

— the price difference between the imports from China and Union industry's price was smaller in the investigation period than in 2019 ([16]), when the Union industry's profitability was healthy ([17]),

— the cost of production increases faced by the Union producers were caused by the energy crisis of 2021 and by the supply chain and production disruptions arising from the restrictive measures put in place by governments across Europe due to the COVID-19 pandemic (2020 to mid-2022), having impact on financial results of companies in most European industries.

(114) The investigation showed that the sales of the Union industry dropped by [7-8,5] million kg from 2019 to the investigation period. These lost sales volumes together with suppressed prices were detrimental for the capital intensive EMD industry, having high fixed costs. The difference between the average import price from China and Union industry's price, despite being higher in 2019, had much lower effect on profitability, since the Union industry sold [7-8,5] million kg more of EMD in 2019 compared to the investigation period.

(115) As provided in the provisional Regulation, decreased sales volumes at the suppressed prices resulted in deterioration of all of the Union industry's financial performance indicators. A minor profit level achieved by the Union industry in the investigation period was at the cost of negative cash flow and therefore was not sustainable.

(116) As further acknowledged in the provisional findings, the increase in the cost of production was due to the sharp increase in energy and certain raw material pricing in the second half of the period considered. However, the inability of the Union producers to increase their sales prices combined with significant loss of sales volumes in line with increasing cost was the result of the price suppression exerted by the peaking Chinese imports. Besides, the price pressure on the cost of the Union industry was most prominent in the second part of the period considered ([18]).

(117) Finally, COVID-19 restrictions did not affect the production levels of the Union industry, since the Union's production was increasing in 2020 and 2021 and the production plants did not experience any temporary closures. The financial results of the Union industry could not therefore have been affected by these restrictions. On this basis the claims were rejected.

([16]) Price difference of around [5 %-7 %] in the second part of the period considered and of around [8 %-12 %] in 2019.
([17]) Profitability was [2–3] % in the investigation period and [7-8] % in 2019.
([18]) The prices of Chinese imports were around [10 %–15 %] lower than the average cost of production of the Union industry in the IP, compared to around [1 %-2 %] difference in 2019.

(118) Daxin, CCCMC and GMIA claimed that recital (220) of the provisional Regulation, stating that, '*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*' was not supported by facts. These parties highlighted that the three sampled Chinese exporting producers accounted for nearly 99 % of the volume of total Chinese exports of EMD to the Union in the investigation period, including all cooperating exporters and other exporting producers. Therefore, nearly 99 % of the total exported EMD from China in the investigation period was not or was slightly undercutting prices of the Union producers.

(119) The Commission highlights the conclusion stated in the recital (202) of the provisional Regulation indicating that the exports of the cooperating exporting producers constituted around 65 % of the total Chinese exports to the Union during the investigation period. It is therefore noted that no undercutting found on a transaction-by-transaction basis for two out of the three sampled exporting producers represented less than half of the total Chinese imports. As stated in the recital (215) of the provisional Regulation, the prices of imports were estimated on the basis of Eurostat, dividing the total values of Chinese imports by the total volume of those imports. As a result, 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. The claims of the parties were therefore dismissed.

(120) Daxin, CCCMC and GMIA further claimed that the Commission did not adequately assess price differences between different grades of EMD, namely that the provisional injury analysis was based on alleged Union price suppression caused by lower-priced imports from China related mainly to Chinese exports of lower EMD grades, and thus normally lower priced.

(121) As provided in recital (221) of the provisional Regulation, price suppression was established on average import price of total Chinese imports, thus all EMD quality grades were taken into account. The argument of the parties was therefore dismissed.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(122) In the absence of comments on the effects of the dumped imports, the Commission confirmed its conclusions set out in recitals (257) to (263) of the provisional Regulation.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(123) In the absence of comments on the imports from third countries, the Commission confirmed its conclusions set out in recitals (264) to (266) of the provisional Regulation.

5.2.2. *Export performance of the Union industry*

(124) In the absence of comments on the export performance of the Union industry, the Commission confirmed its conclusions set out in recitals (267) to (269) of the provisional Regulation.

5.2.3. *Other factors*

(125) Following provisional disclosure, Daxin, CCCMC and GMIA claimed that the loss of sales and market share by the Union industry was caused by other factors, namely Union industry's inability to supply the Union users with the high-quality EMD ([19]) in sufficient volumes, especially in the second half of the period considered, and thus the users needed to resort to Chinese imports. Said parties asserted that one of the two Union producers (Autlan) did not

([19]) The production of high-performance batteries (around 1/2 of battery producer's business) needs a high drain performance EMD grade.

manufacture high-quality EMD and did not show intent in manufacturing it in the future. Therefore, a lack of certification was allegedly a reason why the Union industry either lost their sales of high-quality EMD and/or for capacity reasons could not fully benefit from the new and increasing demand for high-quality EMD.

(126) The two cooperating users (Duracell and Varta) supported the above claim, adding that Union industry was not able to satisfy the Union EMD demand, while the imports from other third countries were extremely limited and did not form a viable alternative. The downstream users had no other option but to rely on imports from China.

(127) The investigation confirmed that Union users (battery producers) required varied quality of EMD ([20]) in their dry cell battery production, according to parameters specific to each user. As established in recital (316) of the provisional Regulation, all grades of EMD follow the same production process, while, as established in recital (25) of the provisional Regulation, both carbon-zinc and alkaline EMD share the same basic physical, chemical and technical characteristics and are used for the same purposes (dry-cell battery production). The same is true for alkaline EMD, regardless of the quality claimed. In addition, none of the sampled Chinese or Union producers reported or demonstrated any difference between the consumption rates of the factors of production between what is claimed as different quality grades of EMD in the investigation period. The Commission therefore could not establish a universal dividing line between 'high' and 'standard' quality alkaline EMD, but this distinction is, rather, specific to each user. In its analysis, the Commission therefore refers to 'standard' and 'high-quality' EMD when either of the cooperating users considers the EMD it purchases to be either of high-quality or not.

(128) The investigation confirmed that the Union industry provided all three different qualities of EMD to the users during the period considered. The two cooperating users only used alkaline EMD in their production – both standard and high-quality. The share of EMD sourced by the cooperating users from the Union industry (overall) represented around [55–65] % of the total EMD they sourced in the investigation period, which included the high-quality alkaline grade EMD of around [25–35] % of their total purchases from the Union industry in the investigation period. Autlan provided two of the three major Union users with the standard quality EMD during the period considered ([21]) and had ongoing certification for supplying the third user. The second Union producer (Tosoh) supplied the three major Union users (including the two cooperating ones) with the standard quality EMD and two of them with the high-quality EMD during the same period. Tosoh had ongoing certification for supplying the third user with the high-quality EMD.

(129) The Union industry increased the level of high-quality alkaline grade EMD from 2019 by [0,8–1,8] million kg but lost their high-quality alkaline grade EMD volumes by [11 %-16 %] from 2021 to the investigation period to the benefit of imports from China, which confirms that neither the certification, nor the capacity reasons were hindering the Union industry to supply high-quality EMD. It is also noted that the Union industry reduced by half the level of its investments resulting in a drop of 45 % during the period considered, therefore any potential investments in increasing quality or capacity were impossible. If the definitive anti-dumping measures were imposed on EMD from China, it would allow the Union industry to invest in high-quality EMD, which is currently hindered by the dumped imports, loss of market share and low profitability. On this basis the claims were rejected.

(130) Following final disclosure, CCCMC and GMIA disagreed with the Commission, reiterating that the alleged injury was not caused by the imports of EMD from China, but rather by the Union industry's inability to supply or to supply in sufficient quantity the high-quality alkaline grade EMD and alleged that the Commission's assessment was incomplete, as detailed below.

([20]) Low quality (carbon-zinc grade), standard alkaline grade and high-quality alkaline grade EMD.

([21]) These two users represented around 70 % of the Union's consumption in the IP and one of them was cooperating in the investigation.

(131) CCCMC and GMIA alleged that the Commission did not properly distinguish which EMD manufacturers can produce high-quality EMD, referred to in their submission as 'high drain performance' EMD, claiming that it is the users who determine the quality grade, and not the producers. In that regard, the Commission reiterated its explanation from recital (127), explaining that the distinction was precisely made on the users' definition of EMD quality, and not on the producers' definition of it. Namely, the Commission considered as 'high-quality' EMD only that alkaline EMD which was qualified as high drain by either of the users. All other alkaline EMD was, for the sake of simplicity, considered and referred to as 'standard' quality.

(132) CCCMC and GMIA further requested identification of chemical, technical, physical and processability characteristics for high and standard quality EMD, as well as identification on which characteristics where critical for the battery production, noting that these characteristics were not the same and the market clearly distinguishes alkaline batteries labelled as premium (long lasting). The Commission clarified that, as noted in recital (127), carbon-zinc and different qualities of alkaline EMD 'shared' the same basic physical, chemical, and technical characteristics and were used for the same purposes (dry-cell battery production). This did not imply that the parameters of each physical, chemical, and technical characteristic were identical, but, as provided in the same recital, they were specific to each user. Specifics of these parameters were therefore confidential and company specific. This information therefore could not be disclosed. The Commission further noted that if some of the alkaline batteries in the market were labelled as premium (long lasting), this did not imply that only the high-quality EMD was used in their production, while the parties did not provide any evidence to the contrary.

(133) CCCMC and GMIA criticised the Commission for not acknowledging that Autlan consistently failed to meet users' certification for the high-quality EMD. The Commission referred to recital (127), where it was noted that Autlan provided two of the three major Union users with the standard quality EMD during the period considered ([22]) and had ongoing certification for supplying the third user. This, indeed, acknowledged that Autlan did not supply high-quality EMD in the period considered, whereas, as noted in the further recital (128), the Union industry (as a whole) provided all three different qualities of EMD to the users during the period considered.

(134) CCCMC and GMIA finally added that they received no adequate disclosure enabling them to check the data on high-quality alkaline grade EMD of the Union industry. The Commission noted that the data per product types produced and sold was confidential and company specific, since it contained individual volumes and values of the Union producers (or Chinese exporting producers). Therefore, this data could not be disclosed. The claims of the parties were therefore dismissed.

5.3. **Conclusion on causation**

(135) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the other factors examined at provisional stage as well as at definitive stage was capable of having any relevant impact on the injurious situation of the Union industry. Thus, none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (277) to (279) of the provisional Regulation.

6. **LEVEL OF MEASURES**

(136) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

([22]) These two users represented around 70 % of the Union's consumption in the IP and one of them was cooperating in the investigation.

(137) The complainant claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation. Thus, in order to carry out an assessment regarding the appropriate level of measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions under Article 7(2a) of the basic Regulation. Then it examined whether the dumping margin of the sampled exporting producers, whose main raw material was found to be subject to the distortion, would be higher than their underselling margin.

6.1. **Underselling margin calculation**

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

(139) Based on data from the Surveillance 3 database ([23]), import volumes from China during the four weeks period of pre-disclosure were 45 % lower than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.

(140) Therefore, the Commission did not adjust the underselling margin in this regard.

Target profit

(141) Following provisional disclosure, the Union producers contested the level of basic profit [6–8] % used for the non-injurious price calculation ([24]), claiming that:

— it was insufficient for a capital-intensive industry and did not allow for the continuous investments in the R&D,

— low-priced Chinese imports had an effect on the Union market throughout the hole period considered, since they were depressing prices and profitability of the Union producers throughout the whole period considered,

— Tosoh reiterated that 1997–2001 were unaffected by dumping practices and are indicative for the target profit that could be achieved by the Union industry,

— Tosoh claimed that in accordance with the Article 7(2c) of the basic Regulation profit margin of at least 6 % must be applied to each producer that is a part of the Union industry,

— Tosoh claimed that Tosoh Japan has demonstrated [11-20 %] profit level applicable to the EMD industry in anti-dumping investigation ongoing in Japan,

— Autlan claimed that the actual profitability of Tosoh did not reach the standard for this industry during the period 2018–2020 due to low capacity utilisation, while Tosoh did not confront its own production capacity, but claimed that its operations were negatively affected in 2020 by specific circumstances in the company.

([23]) Database established in line with Article 55 of Implementing Regulation (EU) 2015/2447. More information is available at: https://taxation-customs.ec.europa.eu/online-services/online-services-and-databases-customs/surveillance-system_en

([24]) 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).

(142) First, the Commission noted that the reiterated claims of the Union industry to use 15 % profit level applicable to the chemical industry, as well as profit levels achieved in 1997–2001 (before the imposition of anti-dumping duties on EMD imports from South Africa ([25])) were already dismissed in the provisional regulation and were not further challenged by any new evidence. Second, the Union producers did not demonstrate that the achievable profit levels by Tosoh Japan in Japanese market were achievable by the Union industry on the Union market. Third, the Commission considered that the circumstances disclosed by Tosoh in 2020 were business decisions and did not dispute the level of profit achieved that year.

(143) The Commission confirmed that in accordance with Article 7(2c) of the basic Regulation, it established the basic profit taking into account factors such as 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. The Commission considered that the profit achieved by the Union industry in 2019 was more appropriate than the one achieved in 2020, established in the provisional stage. In fact, in 2019 the price of Chinese imports was higher than in 2020 and its volumes were still significantly lower than in the IP and the Union industry made much higher investments than in subsequent years when both the level of investments and the level of profitability of the Union industry started to drop. The Commission therefore considers that the profit achieved by the Union industry in 2019 reflects the level of profitability to be expected under normal conditions of competition and thus used this level of a basic profit [7-9 %], for the non-injurious price calculation while the claims of the parties were dismissed.

(144) Following final disclosure, both Union producers challenged the Commission's conclusions on the basic profit used to calculate the underselling margin, claiming that it was inadequate for the EMD industry. Autlan and Tosoh claimed that the Commission had sufficient evidence to conclude that Tosoh was affected by exceptional circumstances during 2018–2020 and its profit should not have been used for the purpose of calculating the basic profit ([26]). Autlan further argued that the Commission could not have established a basic profit of [7–9] % for the Union industry if it had adequately taken into account the level of profitability needed to cover full costs and investments, research and development, pointing to its own financial indicators in that regard. Tosoh further added that the Commission should instead use 1997–2001 profitability, as it represents the last period unaffected by dumping practice, since from 2002 to 2019 dumped South-African imports of EMD depressed the profitability of the Union's EMD industry, which were then replaced by dumped Chinese imports. Autlan finally disagreed with the Commission's finding that the Union producers did not demonstrate that the profit levels achievable by Tosoh Japan in the Japanese market were achievable by the Union industry on the Union market.

(145) First, the Commission recalled that the basic profit level is established at the level of the Union industry as a whole, i.e. taking into account the profit levels of all Union producers, unless exceptional circumstances that affected their profit margin can be demonstrated for a particular producer. The Commission examined the evidence submitted by Tosoh and concluded that the circumstances disclosed by Tosoh affecting the company's operations in the period 2018–2020 were business decisions and resulted in the level of profit achieved in each year. The Commission therefore proceeded to establish a level of basic profit for the Union industry as a whole in accordance with Article 7(2c) of the basic Regulation. Since basic profit was established for the Union industry as a whole, Autlan's profit level was therefore adequately taken into account. Furthermore, as noted in the recitals (154) and (155), the investments, R&D and innovation expenses under normal conditions of competition as established at the provisional Regulation, recital (289) were added to the basic profit, leading to a target profit of [8–11] %.

([25]) 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).

([26]) Autlan referred to the findings of the Court of Justice in Judgment of 8 June 2023, *Severstal* v *Commission*, C-747/21 P (Joined Cases C-747/21 P, C-748/21 P), EU:C:2023:459, paras. 76 and 79, and the opinion of the Advocate General in that case, paras. 33, 56, and 57.

(146) As the case-law highlighted by Autlan in its comments stipulates, 'the Commission has a broad discretion as to the choice of the method for calculating the injury margin, provided that such discretion is exercised in accordance with the guarantees conferred by the EU legal order in administrative procedures and by ensuring that its choice leads to plausible results' ([27]). The Court of Justice further specifies that 'the Commission also enjoys discretion in determining [the target profit] margin' ([28]). It is precisely within that discretion that the Commission already concluded that the profit levels achieved in 1997–2001 could not be considered representative for the state of the Union industry today, more than 20 years later, and were thus not considered appropriate. This conclusion was not challenged by new evidence and the claims were therefore dismissed.

(147) Similarly, neither Autlan nor Tosoh presented any new arguments which would change the Commission's conclusion that the Union producers did not demonstrate that the profit levels achievable by Tosoh Japan in the Japanese market were also achievable by the Union industry, as a whole, on the Union market.

(148) Finally, the Commission disagreed with the assertion that the 1997-2001 period was the last unaffected by dumping practice, since anti-dumping measures against imports of EMD from South Africa were continuously in place between 2002 and 2019, restoring the level playing field in the Union market. Nonetheless, from the evidence submitted by the complainants, the Union industry still achieved the highest level of profitability in 2019.

(149) On the other hand, Daxin, CCCMC and GMIA claimed that the Commission should have used the year 2020 as the most appropriate year to establish basic profit, since several financial indicators were better in that year and noting specifically the absence of volume and price pressures from imports. The Commission already acknowledged these factors in recital (143). This does not, however, impinge on the fact that the Union industry achieved higher profitability in the year 2019 than in 2020, still before market conditions turned sharply to the negative. Since this was a level of profitability actually achieved, it was considered as a 'level of profitability to be expected under normal conditions of competition'.

(150) The Commission therefore maintained its conclusion that the profit level which the Union industry achieved in 2019 was the most appropriate level to be used as the target profit.

Investments, research and development ('R&D') and innovation expenses

(151) Xiangtan contested the calculation of the difference between investments, R&D and innovation expenses, since, according to the statements made at the group level ([29]) of Autlan, a record number of 93 investment projects were completed and the company met all financial commitments, operational and investment needs efficiently during the year. Xiangtan also added that Autlan acquired Cegasa Portable Energy and its Electrolytic Manganese Dioxide plant in February 2020, which became Autlan EMD and such large capital investment affected the group's ability to make investment in R&D. Likewise, Xiangtan claimed that Tosoh's financial statements ([30]) recorded a year-to-year increase of R&D expenses from as of 31 March 2021 to 31 March 2023. Therefore, Tosoh is also able to make investments in changing equipment and R&D.

(152) Autlan replied to the comment providing that the same annual report indicated that Autlan had four business units: Autlan Manganese, Autlan EMD, Autlan Energy and Autlan Metallorum. Thus, the 93 investment projects did not relate to the EMD business unit, but to Autlan Manganese business unit, as stated in the same report. Also, the EMD business unit represented 3,63 % of the total sales turnover of the group.

([27]) Judgment of 8 June 2023, *Severstal* v *Commission*, C-747/21 P (Joined Cases C-747/21 P, C-748/21 P), EU:C:2023:459, para. 76.
([28]) Judgment of 8 June 2023, *Severstal* v *Commission*, C-747/21 P (Joined Cases C-747/21 P, C-748/21 P), EU:C:2023:459, para. 78.
([29]) Autlan's 2022 annual report, https://www.autlan.com.mx/wp-content/uploads/2019/09/Informe_Anual_2022-ING.pdf
([30]) https://www.tosoh.com/investors/audited-financial-statements

(153) Indeed, as stated in recital (289) of the provisional Regulation, the Commission verified the investment plans, refused and postponed projects, purchase orders of the two Union producers that were eventually not carried out, demonstrating that these investments were genuinely planned. The information verified referred exclusively to Autlan EMD, S.L. located in Oñati (Guipuzcoa), Spain and Tosoh Hellas Single Member S.A. located in Sindos, Greece. The claim of the party was unfounded by any substantial evidence and therefore dismissed.

(154) The Commission thus remained with the difference between investments, R&D and innovation expenses under normal conditions of competition as established at the provisional Regulation, recital (289). Such difference, expressed as a percentage of turnover, was [1–2] %.

(155) This percentage was added to the basic profit of [7–9] % mentioned in recital (143), leading to a target profit of [8–11] %.

Future environmental costs

(156) Xiangtan, CCCMC and GMIA claimed that future environmental costs should not be added to the target price calculation for the following reasons:

— the Union producers received free Emissions Trading System ('ETS') allowances for the period considered. Therefore, the basic profit of [7–9] % already included the benefit of these allowances,

— China had its own carbon emissions trading mechanism, therefore Chinese future cost should have adequate comparison,

— the EU carbon border adjustment mechanism ('CBAM') would impose same costs on Chinese exporting producers; therefore those costs should offset ETS compliance costs for the Union industry.

(157) As provided in the note to file on the future environmental cost calculation ([31]), no direct future costs linked to the ETS that were related to the cost of purchase of the emission permits were established in this case. The only established indirect future costs linked to the ETS were related to the cost of purchase of the electricity. Therefore, the ETS allowances directly received by the Union producers did not contribute to the further calculation of the target price. As for the Chinese carbon cost, they were irrelevant since, for the calculation of the injury margin, the weighted average import price of the sampled cooperating exporting producers in the IP was compared to the weighted average non-injurious price of the Union industry. Finally, there was no evidence that CBAM would apply to EMD imports. On this basis the claims were rejected.

(158) Daxin, CCCMC and GMIA claimed that the Commission's note to the file ([32]) concerning indirect future compliance costs did not provide essential explanation and evidence for the adjustment (e.g. it did not specify whether the Union producers had free versus paid emission allowances in the investigation period, or if this situation will change in the coming period 2024–2028) and that it did not provide the relevant actual calculations (e.g. calculation of the electricity CO_2 factor). Interested parties therefore had no basis to check and verify the calculations/conclusions in Section 2.2 of the note to the file. All this information needs to be disclosed.

(159) The Commission noted that, as explained in the note to the file referred to above, the indirect future compliance costs linked to the ETS were related to the cost of purchase of the electricity, therefore they did not relate to free or paid emission allowances. The method of calculation of the indirect future compliance costs, including its three steps, was explained in the note to the file and the result at each step was provided within a range. The data of the Union producers was confidential and company specific, since it contained individual electricity consumption rates and cost. Therefore, this data could not be disclosed, and the claim of the parties was dismissed.

(160) Daxin, CCCMC and GMIA requested the Commission to justify its use of the Bloomberg figures for Allowances Projection Price in EUR/tCO_2 used for the future environmental cost calculation and suggested another source, Statista, without substantiating why Bloomberg data was less reliable.

([31]) The note to file on the future environmental cost calculation t23.004660 of 11/10/2023.
([32]) The note to file on the future environmental cost calculation t23.004660 of 11/10/2023.

(161) The Commission noted that the source suggested by the parties based average carbon price expectations on the report 'GHG Market Sentiment Survey' prepared for the International Emissions Trading Association ('IETA') by PwC. This report contained information derived from a variety of sources and PwC and IETA had not sought to establish the reliability of those sources or verified the information so provided, as indicated within the report ([33]). The source used by the Commission was based on Bloomberg (Bloomberg New Energy Finance) and included the average projections from several entities ([34]), that were verified and continually updated by Bloomberg service. For this reason, the average price from several sources was considered more reliable than from the source suggested by the parties. The Commission therefore maintained the source established and updated the calculation with the latest figures available.

(162) Tosoh claimed that the future cost of purchasing CO_2 emission allowances were not reflected in the provisional calculations, since Tosoh incurred investments during the period considered to reduce the future need of ETS allowances.

(163) The Commission confirmed that, as provided to Tosoh in its individual disclosure and the note to the file ([35]) on the future environmental cost calculations, the Commission examined the ETS costs incurred during the investigation period, as well as the amount of ETS allowance that will need to be purchased over the period 2024–2028 and reported by the two Union producers, when applicable. The Commission took into account, inter alia, the free ETS allowances received for the investigation period and the ETS allowances carried over from previous years and the expected need of ETS allowances. The Commission calculated the direct future costs linked to the ETS (allowances to be purchased multiplied by their price). After establishing projected ETS allowance prices, the Commission compared an average cost for the period 2024–2028 to the costs during the investigation period. Since no positive difference between the two values was found, no direct future costs were established. The Commission also noted that any investments incurred during the period considered to reduce the need of ETS allowances were taken into account when establishing the cost of production during the investigation period and this cost of production was used for establishing the target price. The claim of the party was therefore dismissed.

Product comparability

(164) Daxin requested an adjustment between product type A (alkaline) and product type C (carbon-zinc) for the purpose of the injury margin calculation, since type A required more electricity, steam, rinsing agent and labour. However, as indicated in recital (127) above, neither Daxin, nor any other sampled Chinese producer reported any difference between the consumption rates of the factors of production for these two product types. The adjustment therefore was not warranted.

(165) Following the final disclosure, Daxin claimed that the rejection of the adjustment between product types A and C was not justified and that the Chinese producers had no obligation to prove that the two product types were different. Daxin reiterated its claim that the injury margin should be evaluated and calculated based on the same type of products and therefore consider unfair to use product type A to compare product type C when calculating the injury margin.

(166) The Commission considered that as none of the cooperating sampled exporting producers provided any data concerning the differences in terms of production of the two types of products, the Commission could not apply such an adjustment. For that reason, and in the absence of evidence to the contrary, the Commission concluded that no adjustment was warranted.

(167) In view of the above changes to the underselling calculations and the changes to the dumping margins explained in Section 3.5 above, the table under recital (297) of the provisional Regulation is updated as follows:

([33]) https://www.ieta.org/resources/ghg-sentiment-survey/2023-survey/ (last visited on 31 January 2024).
([34]) Bloomberg NEF, Commerzbank AG, Banco Santander SA, Intesa Sanpaolo SpA, MUFG Bank.
([35]) The note to file on the future environmental cost calculation t23.004660 of 11.10.2023.

Country	Company	Dumping margin (%)	Underselling margin (%)
The People's Republic of China	Xiangtan	47,2	8,6
	Guiliu	62,9	0
	Daxin	18,3	17,1
	Other cooperating companies	47,4	10,1
	All other companies	100,9	35,0

6.2. **Examination of the margin adequate to remove injury to the Union industry in relation to the PRC**

(168) On the basis of the above, the Commission concluded that it was necessary to assess whether there are distortions with regard to the product under investigation within the meaning of Article 7(2a) of the basic Regulation, which would render a duty lower than the margin of dumping insufficient to remove the injury caused by dumped imports of the product under investigation.

(169) As explained in the amending notice, the complainant provided sufficient evidence that there are raw material distortions in China regarding the product under investigation. Therefore, in accordance with Article 7(2a) of the basic Regulation, the Commission examined the alleged distortions to assess whether a duty lower than the margin of dumping would be sufficient to remove injury.

(170) The investigation confirmed that there were no VAT refunds on exports of manganese ore in the country concerned. This was verified during the verification visits in China and cross-checked against the official government tax list. 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.

(171) The investigation also established that the manganese ore accounted for more than 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, both on the country level and for each individual sampled company.

(172) The analysis of domestically sourced ores showed that the prices of cooperating exporting producers were lower in comparison to the benchmark, with discounts between 10 % to 63 %.

(173) Therefore, the Commission concluded that manganese ore was subject to a significant distortion within the meaning of Article 7(2a) of the basic Regulation.

(174) Xiangtan, CCCMC and GMIA claimed that the distortion caused by the lack of the VAT refund on export of manganese ore was unfounded, as this situation had been in place since 2004 and therefore the markets would have been rebalanced in the last 20 years. The Commission considered that the effects of the distortion was not undermined by its duration. Since there was objective evidence that this distortion existed, this claim was rejected.

(175) Xiangtan further claimed that China was a net importer of manganese ore as its local ore was of a poor quality and therefore there was no international benchmark for it. Xiangtan further claimed that the low concentration ore mined in China was below 20 % manganese concentration and therefore did not fall under the same HS code 2602 00 as the manganese ore used for the benchmark. The Commission noted that Xiangtan did not present any evidence which would prove that there was no market for the lower concentration ore outside of China. As the

domestically mined ore, despite not falling under the same CN code, was used by Chinese EMD producers together with the imported higher concentration ores, the Commission considered that the impact of the distortion affected the Chinese market on all types of manganese ores and therefore Xiangtan's claim was rejected.

(176) Xiangtan, CCCMC, GMIA and Guiliu contended that the 17 % threshold stipulated in the basic Regulation was not met for manganese ore, arguing that different types of manganese ore should be evaluated separately. The Commission, however, dismissed this claim. It determined that due to the substantial variability in content, the primary factor is the manganese content in the ore. Thus, it concluded that all manganese ores should be treated as one unified raw material.

(177) Guiliu contended that since they imported the majority of their ores, using a weighted average price would be more appropriate for comparing prices with international prices. The Commission considered that Guiliu still benefited from a pricing distortion due to their domestically sourced ore which was obtained at prices below the benchmark, thus rendering the weighted average approach unsuitable. This claim was therefore dismissed.

(178) Autlan and Tosoh claimed that the raw material distortions affected not only the manganese ore but also the energy inputs used by the Chinese exporting producers and asked the Commission to extend the scope of its investigation. As explained in recital (170), the Commission established raw material distortions within the meaning of Article 7(2a) of the basic Regulation regarding manganese ore applicable to all sampled exporting producers. Therefore, it did not consider necessary to investigate further the existence of other raw material distortions. Consequently, this claim was dismissed.

6.2.1. *Union interest under Article 7(2b) of the basic Regulation*

(179) Having concluded that there is raw material distortion in China, as defined by Article 7(2a) of the basic Regulation, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of definitive duties in accordance with Article 7(2b) of the basic Regulation. The determination of the Union interest was based on an appreciation of all pertinent information to this investigation, including the spare capacities in China competition for raw materials and the effect on supply chains for Union companies in accordance with Article 7(2b) of the basic Regulation. In order to conduct this assessment, the Commission added specific questions in the questionnaires to all interested parties. The two Union producers and the two cooperating users provided response to those questions.

6.2.1.1. Spare capacities in the exporting country

(180) On the basis of information provided by Tosoh ([36]), spare EMD production capacity in China was estimated at around [190 000 000–205 000 000 kilograms] ([37]). By contrast, the Union market had a size of [36 000 000–38 000 000] kilograms. In relative terms, spare capacities in China are therefore of an enormous magnitude.

(181) The Commission therefore concluded that a significant spare capacity existed in China and that, if used, this spare capacity had the potentiality to increase the global supply of the product under investigation, depress prices and consequently undermine the effectiveness of the measure if not set at the level of dumping.

6.2.1.2. Competition for raw materials

(182) As regards competition for raw materials, the Commission established that there is no value added tax refunds on exports of manganese ore in the country concerned and the price of manganese ore in China was significantly lower than its price in representative international markets (see recitals (169) and (171)). As set out in recital (172) above, the Chinese raw material market of manganese ore was considered to be distorted.

([36]) Sourced from International Manganese Institute.
([37]) Total capacity of [470 000 000–490 000 000 kg] and production of [260 000 000–280 000 000 kg].

(183) As a result, value added tax refund withdrawal on exports of manganese ore in China restrain the export of manganese ore mined in China. By artificially increasing the level of raw materials supply, the GOC exerts a downward pressure on prices of domestic manganese ore. The Chinese EMD producers pay less for domestic manganese ore than what they would have otherwise had to pay if the export restriction had not been in place. This creates a comparative disadvantage for the Union industry compared to the exporting producers in China.

(184) In addition, based on the source provided by Autlan ([38]), China has the fourth largest mine production of manganese ore in the world after South Africa, Gabon, and Australia and can still rely on vast reserves of ore; two of the sampled EMD exporting producers in China own manganese ore mines, i.e. are vertically integrated ([39]), and use the domestic manganese ores to produce the product under investigation. At the same time, the Union producers of EMD depend on the supplies of the manganese ore from third markets. The Commission therefore concluded that, while manganese ore is available to the Union industry, it is available at a higher price than for its competitors in China. The Union industry is therefore at a disadvantageous position vis-à-vis Chinese exporting producers.

(185) Guiliu claimed that, according to the source provided ([40]), the Chinese manganese ore market comprises of over 80-95 % of imports hence the manganese ore market in China is not distorted. In addition, domestic production and mining of manganese ores in China are mainly low-level manganese ores, while the majority of consumption and demand are for high-grade manganese ores.

(186) As provided in the recital (183) above, EMD producers in China, including two of the sampled ones, use the domestic manganese ores to produce the product under investigation despite its claimed low-level manganese content. The exporting producers in China have an unfair advantage since they have access to artificially low domestic manganese ore prices due to the domestic regulations explained in recitals (170) to (173). The claim of the party was therefore dismissed.

6.2.1.3. Effect on supply chains for Union companies

(187) As explained in recital (306) of the provisional Regulation, the main use of EMD is for the production of carbon-zinc and alkaline dry cell batteries, representing above 90 % of its use. The main (but not the only) users are the three major battery producers in the Union. Two of these battery producers cooperated with the investigation, Varta and Duracell, representing [67–73] % of the Union consumption of EMD. As noted in the recital (179), both cooperating users provided their response to the questions on the Union interest under Article 7(2b) of the basic Regulation.

(188) Both cooperating users were against the higher measures, claiming that these would disproportionately affect their production of dry-cell consumer batteries, which was highly dependent on imports from the country concerned, especially for high-quality EMD, as described in recital (127) above, and did not have a viable alternative. Duracell claimed that the ability of users to switch suppliers and diversify their sourcing is an essential consideration in assessing whether the anti-dumping measures can be imposed on the higher dumping margin: (i) reiterating that the Union industry at present was unable to offer Union users a viable alternative; (ii) the supplies of EMD from third countries were very limited in their available quantities, were expensive, and were not yet certified with the two cooperating users. It is reminded that due to processability requirements for EMD use by Union users in their production of batteries, the EMD must pass through stringent testing and internal approval procedures, prior to obtaining certification for industrial use. The certification of a new EMD supply source was, therefore, a lengthy process without any guarantees of success.

([38]) Source: U.S. Geological Survey, Mineral Commodity Summaries, January 2022, https://pubs.usgs.gov/periodicals/mcs2022/mcs2022-manganese.pdf

([39]) Xiangtan Electrochemical Scientific Ltd and Guangxi Daxin Huiyuan New Energy Technology Co., Ltd (source: Annex 2, t23.004362, 28/09/2023).

([40]) https://baijiahao.baidu.com/s?id=1772377473207861712&wfr=spider&for=pc

(189) Both cooperating users claimed that the imposition of anti-dumping measures at the higher dumping margin would make Union users loss-making. They added that the Union battery manufacturing industry as a whole was already facing increasing pressure to remain profitable due to the increase of the costs of other raw materials used in the production of their products, such as increased energy costs, and had very limited ability to pass on the important cost increase to their final customers, as the battery market was highly price driven and the use of batteries from different brands was interchangeable, despite the brand recognition. The pressure on profitability due to increased production costs was further intensified by a simultaneous increase in competition on the EU and global battery markets, from non-EU, and most notably Chinese competitors. Finally, the extreme detrimental impacts on users caused by the non-application of the lesser duty rule were more serious than the potential negative impacts of lower anti-dumping duties on the whole Union industry. Besides, there was no indication that anti-dumping measures would incentivise the Union industry to make the necessary investments in quality improvement but would rather reinforce the existing duopoly of the Union EMD producers' allowing them to set prices without investing in innovation.

(190) First, the Commission made simulations on the profitability of both cooperating users on the basis of the definitive dumping and injury margins, assuming that sources and volumes of EMD purchases and turnover achieved on downstream products remain equal to those in the investigation period. Raw materials, electricity, and labour costs were adjusted, where available, to reflect the post-IP changes. The results of simulations established that the overall annual profit of one user in particular would be seriously affected in a negative way (the user would become loss-making) if duties were imposed on imports from China pursuant to Article 7(2a) of the basic Regulation. This user would not be able to absorb the cost of higher-level anti-dumping duty within its other activities at the group level. The overall annual profit of the other user would also be affected, but to a lesser extent. At the same time, even if it is expected that, due to the relief offered by higher measures, the Union industry would be in a position to sell more volumes to the users at competitive prices, should one of the users shut down its business in the Union, the Union EMD producers would in turn directly lose more than a third of their own sales volume. This would be to great detriment of the Union industry given the importance of volumes sold to these users which, as explained in recital (306) of the provisional Regulation, are their main customers.

(191) Second, the Commission made a dynamic simulation on the profitability of both cooperating users on the basis of the definitive dumping margins, assuming that the users increased their sales price of alkaline batteries by 3 % ([41]). The result of this simulation established that one user would still become loss-making. The overall annual profit of the other user would still be negatively affected but to a much lesser extent. Nonetheless, Duracell argued that the users were unable to fully pass-on cost increases to their final customers due to intense competition. Any previous price increase was supported by improvements in the performance of batteries. In addition, the users could never fully pass-on their sharply rising costs of the raw materials due to the rising imports of Chinese batteries of comparable quality. The imposition of anti-dumping measures at the higher dumping margin level would render the competition on prices between the Union and the Chinese producers of consumer batteries even more difficult, considering the disadvantage Union users would have against their Chinese competitors who source their EMD inputs from suppliers without any duties.

(192) Third, the Commission also made a dynamic simulation on the profitability of both cooperating users on the basis of the definitive dumping margins, assuming that the potentially loss-making user would shift all of its Chinese EMD supplies to its certified and sampled exporting producer that had a lower anti-dumping duty established. The result of this simulation established that this user would still become loss-making.

(193) Fourth, the Commission considered a hypothetical simulation where the users replaced all of their imports of EMD from China with imports from Colombia and Japan, at average import prices from these countries into the Union during the investigation period. In fact, Tosoh claimed that Japan, South Korea, and Russia were also important exporting countries and Autlan claimed that one of the users' overseas factory was already importing EMD from Columbia. As established in Sections 4.3.1 and 5.2.1 of the provisional Regulation, out of the abovementioned countries, only Colombia and Japan exported EMD into the EU and were for that reason the only countries considered in this simulation. Nonetheless, the Commission considered that this situation in which users switch to

([41]) Similar increase of battery prices was observed from 2021 to the IP in the Union.

importing EMD from any third countries would be very unlikely, since (i) there were no spare capacities in these third countries and they historically served their own or nearby markets; (ii) it has never been cost-effective for the Union users to import from third markets other than Colombia, while the statistics show that these imports have historically been very low; (iii) the two cooperating Union's users did not certify any EMD quality from these sources, making this at best a long-term solution, if at all plausible.

(194) Fifth, the Commission considered a hypothetical simulation where the Union's EMD producers increased their production capacities following the imposition of the anti-dumping measures. However, the immediate effect of the duty at the dumping margin level on one particular user would make this impossible, since the Union's EMD industry might lose more than one third of their sales, should this user become loss making and lose its business. Thus any increases in production capacities by the Union's EMD industry would not be feasible, should the duty be imposed at the dumping margin level.

(195) Finally, the users downstream industry (consumer batteries producers) had around 1 850 employees in the IP, which significantly outweighed the number of [130–142] employees in the Union's EMD industry. Therefore, should the anti-dumping duty be imposed on the level of the dumping margins, significant amount of jobs would be jeopardised by the potential negative financial results of the downstream users.

6.2.1.4. Other factors

(196) Tosoh claimed that if the anti-dumping measures were imposed on injury, given the nature of the Chinese economy and the ability of the Chinese government to direct and steer exports through particular market participants, there was a significant risk that exports could be channelled through the exporter with zero duty. By contrast, duties imposed would be much more uniform if the injury margin was disregarded, which would diminish the circumvention risk.

(197) The Commission noted that zero duty rate may hardly pose any risk of channelling exports, given a very small number of players in the market and the need of users to have certified material. In any case, as explained in recital (228) below, the Commission also envisaged special measures in order to ensure the proper application of individual duties. Thus, any shifts in the trade patterns could be easily identified and addressed by the relevant Commission services.

(198) Tosoh also noted that the Chinese imports of the product under investigation would receive a competitive advantage due to the different regulation of greenhouse gas emissions between China and the Union, since the product under investigation was not included in the Carbon Border Adjustment Mechanism ('CBAM') preliminary list. Conversely, imposing measures on the product under investigation would promote fair treatment and equal trading conditions.

(199) The Commission noted that that the aim of the anti-dumping measures was to restore fair trading between the Union and its trading partners, while the CBAM effects were not in the scope of the present investigation.

(200) The same Union producer further claimed that anti-dumping duties imposed at the level of the dumping margin would safeguard the very existence of the Union EMD industry, safeguard security of supply of EMD and, hence, dry cell battery production in the Union. The anti-dumping duty on imports from China of between 18 and 50 % would affect the cost of production of the Union's dry-cell battery manufacturers only by between less than 3 % and 7,5 %. Moreover, given the injury levels and the competitive pressure resulting from other sources of EMD supply, it would be wrong to assume that prices of EU-origin EMD would increase by anywhere near the full equivalent of the dumping duties imposed.

(201) Following the recalculated definitive anti-dumping duties (recital (98) above) and the analysis on the effect on supply chains for Union companies (recitals (190)-(195) above), the anti-dumping duties imposed at the higher dumping margin level would directly threaten Union's EMD industry by a potential loss of [35 %-40 %] of their sales volumes. The claim of the party was therefore dismissed.

6.2.1.5. Parties' comments following the final disclosure

(202) Following the final disclosure, Autlan and Tosoh contested the Commission analysis in Section 6.2.1.3. above.

(203) Tosoh pointed out that one of the three major users, Advanced Power Solutions NV ('APS'), did not cooperate in the investigation. Tosoh then cited Article 7(2b) of the basic Regulation, stipulating that *'[i]n the absence of cooperation the Commission may conclude that it is in accordance with the Union interest to apply paragraph 2a of this Article'*, claiming that the Commission should have inferred from this non-cooperation that imposing duties on the higher (dumping margin) level would not be against its interest, or at least should have analysed APS' publicly available financial reports in its analysis.

(204) The Commission notes that its conclusion in recital (214) regarding the likely disproportionally negative effect of the higher dumping level duty on supply chains for Union companies was based on information available on the two cooperating users representing [67–73] % of the Union consumption of EMD as well as the Union's EMD industry itself. The non-cooperating user's weight in the Union's consumption was less than one third and there was no substantiated information on the case file that would overturn the Commission's conclusion in the recital (214). The argument of the party was therefore dismissed.

(205) Tosoh and Autlan further argued that the Commission's profitability simulations were faulty because they take into account the effects of high post-IP cost increases in (some of the) costs of producing batteries, while not reflecting realistic price increases for batteries, especially in the light of consumer price increases in the Union. Tosoh also argued that the Commission did not provide concrete information on why it limited its 'dynamic' simulation to 3 % increases in 2022. Furthermore, Tosoh submitted that the Commission did not specify how the post-IP data would render the conclusion 'manifest [*sic*] unsound' nor whether the post-IP data used is 'manifest, undisputed, lasting, not open to manipulation and does not stem from deliberate actions by interested parties', citing Commission's conclusions in previous cases ([42]).

(206) The Commission noted in that regard that, to make the profitability simulations as relevant to the current market realities as possible, it indeed adjusted only the reported costs of raw material ([43]), electricity ([44]), and labour costs ([45]) of Union users, as such adjustments could be made either on the basis of the verified information submitted by the parties or publicly available data, precisely to ensure that the data used is reliable. The Commission furthermore noted that parties did not substantiate why the 3 % battery price increase included in the simulation in recital (191) was not realistic. As noted in recital (191), this increase took place also in the past and was based on the verified data of the cooperating users and was specific to the consumer batteries, contrary to the consumer price index that involves a market basket of various consumer goods and services. The claim of the parties was therefore dismissed.

(207) Both Autlan and Tosoh alleged that the conclusion of the Commission made in recital (194) means that the immediate effect of duties imposed on the dumping margin level would be stoppage of production of one of the users. The Commission clarified that this was not the correct interpretation of the conclusion presented in that recital. The immediate effect that such higher duties would have on the user is that they would lead to an increase in its cost of production, which, in turn, as recital (194) reads, 'might' result in the loss of this business.

([42]) Council Regulation (EC) No 215/2002 of 28 January 2002 imposing definitive anti-dumping duties on imports of ferro molybdenum originating in the People's Republic of China (OJ L 35, 6.2.2002, p. 1), recital 14, and Council Regulation (EC) No 437/2004 of 8 March 2004 imposing definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of large rainbow trout originating in Norway and the Faeroe Islands (OJ L 72, 11.3.2004, p. 23), recital 26 , respectively.

([43]) Manganese ore price change from the IP to 2023 based on data from Fastmarkets.com.

([44]) EU-27 Electricity prices for non-household use in first half of 2023 compared to the IP (source: Eurostat – https://ec.europa.eu/eurostat/databrowser/view/nrg_pc_205/default/table?lang=en, visited on 22 December 2023) .

([45]) Salaries for Duracell were adjusted by the salary indexation rate for 2023 mandated by Joint Industrial Committee (JIC 200) in Belgium. Varta's labour costs were adjusted based on evidence submitted by Varta on renegotiated salaries.

(208) Tosoh further took issue with the Commission's conclusion that the increase in users' manufacturing costs if duties were imposed at the level of the dumping margin could not be passed on to consumers, especially since the Commission noted in recital (311) of the provisional Regulation that there is a possibility of 'transferring part of this cost increase to the consumers.' The Commission noted in this regard that it was undertaking here a delicate balancing exercise to determine which level of cost increase could be passed onto consumers and, thus, which level of cost increase would be feasible for the cooperating users. As already established in recital (311) of the provisional Regulation, only a part of the cost increases caused by imposition of duties at the level of the lower, underselling, margins could be passed on to consumers. If duties would be imposed on the higher, dumping margin level, costs would increase even further, naturally making it even harder to pass such higher cost increase onto consumers. The claim of the party was therefore dismissed.

(209) Autlan further presented the claims made by Varta in its press release made on 14th November 2023, where Varta claims improvements in its business ([46]), as contradicting Commission's conclusions on negative profitability of users. The Commission noted in that regard that, while such statements do present a positive picture, they do not show quantifiable financial situation relevant for the assessment of the user's profitability. The Commission in its hypothetical scenarios, on the other hand, relied on verified granular data supplied by the cooperating users in the course of this investigation. The claim of the party was therefore dismissed as not substantiated.

(210) Autlan additionally argued that the root cause for the precarious situation of the Union users are the dumped imports of dry-cell consumer batteries from China, rather than the cost of procuring EMD. Tosoh, to the contrary, claimed that taking into account the imports of Chinese dry-cell consumer batteries as a factor in the analysis in recital (191) above amounted to raising the question of potential dumping practices in products (dry-cell consumer batteries) that are unrelated to the current investigation. The Commission noted that it was indeed not in the scope of this procedure to estimate the claimed dumping practices on dry-cell consumer batteries. Therefore the comment made by Autlan had to be rejected. At the same time, contrary to Tosoh's claim, the Commission was not raising a question about dumping practices concerning imports of dry-cell consumer batteries from China, but merely acknowledged the reality that those imports are present in the Union market as competition for batteries made by Union users. The claim of the party was therefore dismissed.

(211) Autlan claimed that the Commission did not sufficiently analyse effects on supply chains of the users arguing, in essence, that if the duties were imposed on the level of the underselling margin, the Union industry would not be sufficiently protected and would remain unable to recover from injurious dumping. This would, furthermore, be contrary to the Union interest in the light of Commission's Critical Raw Materials initiative ([47]), which lists battery grade manganese as one of the strategic raw materials. The Commission reminded that anti-dumping measures served the purpose of restoring fair trade and the assessment on which level of duties would be sufficient to remove injury to the Union industry, as stated in recital (282) and concluded in recitals (295) to (297) of the provisional Regulation. At the same time, as stated in recital (179), the analysis of what effect different duties would have on the Union as a whole is herewith undertaken in the context of the Union interest test pursuant to the Article 7(2b) of the basic Regulation, where the effect on the Union industry as well as the users of the product under investigation are taken into account. The claim of the party was therefore dismissed.

(212) Tosoh and Autlan went on to contest the hypothetical simulations presented by the Commission in recitals (192) and (193), claiming that the users would realistically diversify their supplies as much as possible, including increasing purchases from the Union industry. The Commission commented in that regard that under both of those simulations the Commission considered the most optimistic scenarios, whereby the totality of supplies affected by the highest dumping margins were replaced by the most cost-competitive alternatives (either within China in recital (192) or completely from other third markets in recital (193)). Those scenarios therefore already considered the best outcomes that the users could theoretically attain. The Commission further added in that regard that, through the

([46]) Available at: https://www.varta-ag.com/en/about-varta/news/details/varta-ag-achieves-best-quarter-of-the-current-financial-year-to-date (last visited on 31 January 2024).

([47]) See Proposal for a regulation of the European Parliament and of the Council establishing a framework for ensuring a secure and sustainable supply of critical raw materials and amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, Article 1, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0160 (last visited on 31 January 2024).

fivesimulations in recitals (190) to (194), the Commission assessed, based on the data it had available, the likelihood of different ways in which cooperating users could cope with higher costs of EMD currently sourced from their suppliers in China, and the likely effects those would have on their profitability. The analysis under these simulations should thus be considered as a whole, rather than looking at simulations individually. Since almost none of the simulations showed positive outcomes for the cooperating users, the Commission concluded that, on balance, the users would most likely be negatively affected by imposition of duties at the level of the dumping margins, and their manoeuvring room was limited. The claims of the parties were therefore dismissed.

(213) Finally, Tosoh argued that it was deprived of its process rights due to non-disclosure throughout the investigation, resulting in limitations in verifying the origins of the data and the methodologies employed in the Commission's assessment of the effect of dumping duties on the user industry. The Commission noted that the information submitted by the cooperating users, on which it based its conclusions after verifying it, was available on the case file throughout the investigation. This argument was therefore dismissed.

6.2.1.6. Conclusion on Union interest under Article 7(2b) of the basic Regulation

(214) On that basis, the Commission did carefully weigh all the elements and could not conclude that it is in the Union's interest to determine the amount of duties in accordance with Article 7(2a), namely it was not in the interest of the Union to set the level of the measures at the level of dumping in view of the disproportionally negative effect this is likely to have on supply chains for Union companies. The Commission therefore confirmed that the measures should be set in accordance with Article 7(2) of the basic Regulation, on the basis of underselling margins.

6.3. **Conclusion on the level of measures**

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

Country	Company	Definitive anti-dumping duty (%)
People's Republic of China	Xiangtan	8,6
	Guiliu	0
	Daxin	17,1
	Other cooperating companies	10,1
	All other companies	35,0

7. **UNION INTEREST**

7.1. **Interest of the Union industry**

(216) Following the provisional disclosure, CCCMC and GMIA claimed that the Union's EMD market prior to 2020 was non-competitive (duopoly), having only two producers whose capacities could historically supply the Union's demand and were profitable since they could pass all cost increases to their customers. Therefore, neither the excess prices of the Union producer, target profit/injury margin figures, nor the Union producer's price decline can be justified, once the effective competition was restored in the Union EMD market in the second half of the period considered via imports from China. If the duopoly was restored by the anti-dumping measures it would harm the competition on the Union's market and would have a negative effect for the downstream producers in the long term.

(217) As noted by the Commission in the recital (286) of the provisional Regulation, only a limited number of chemical producers in the world were involved in the EMD production process. The fact that there were only two Union producers that managed to achieve profit during the first half of the period considered did not constitute a non-competitive situation on the Union market, since the consumption in the Union market was supplied by the Union producers as well as all available importing countries having the production of EMD including China. Besides, the anti-dumping duties do not create the non-competitive situation on the Union market but ensure fair competition between the Union and the exporting producers of the country concerned. The claim of the party was therefore rejected.

(218) In the absence of any other comments, the Commission confirmed its conclusions set out in recitals (301) to (303) of the provisional Regulation.

7.2. **Interest of unrelated importers/traders**

(219) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (304) to (305) of the provisional Regulation.

7.3. **Interest of users**

(220) Following the provisional disclosure, Duracell claimed that the cost impact of anti-dumping measures on Union users was underestimated in the provisional findings, while the Union users' profitability was unsubstantiated by any evidence. Finally, both cooperating users affirmed that if the lesser duty rule was not applied, Union users would become unprofitable, risking the survival of their operations in the Union.

(221) As provided in the provisional findings, the analysis of the users' data was based on verified questionnaire replies provided by these users, taking into account the data on sources, volumes and prices before duties of purchases and turnover achieved on downstream products, including the profitability level achieved in 2021–2022. Indeed, the declining profitability trend of the users was noted in these years. However, the Commission estimated that if the definitive anti-dumping measures remained at the level of injury margin, the users would still maintain positive profitability even when taking into account the level of anti-dumping duties and assuming that the increased cost would not be passed on to their customers.

(222) In the absence of any other comments regarding the interest of users, the conclusions set out in recital (319) of the provisional Regulation were confirmed. Comments that concern the interest of users in the context of the effect on supply chains for Union companies within the meaning of Article 7(2b) of the basic Regulation were addressed under Section 6.2.1.3 of the present Regulation.

7.4. **Conclusion on Union interest**

(223) On the basis of the above, the conclusions set out in recital (320) of the provisional Regulation were confirmed.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

8.1. **Definitive measures**

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

(225) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
The People's Republic of China	Xiangtan	47,2	8,6	8,6
	Guiliu	62,9	0	0
	Daxin	18,3	17,1	17,1
	Other cooperating companies	47,4	10,1	10,1
	All other companies	100,9	35,0	35,0

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

(227) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([48]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

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

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

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

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

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

(232) Exporting producers that did not export the product concerned to the Union during the investigation period should be able to request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the IP; (ii) it is not related to an exporting producer that did so; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

(233) An exporter or producer that did not export the product concerned to the Union during the period that was used to set the level of the duty currently applicable to its exports may request the Commission to be made subject to the anti-dumping duty rate for cooperating companies not included in the sample. The Commission should grant such request, provided that three conditions are met. The new exporting producer would have to demonstrate that: (i) it did not export the product concerned to the Union during the period that was used to set the level of the duty applicable to its exports; (ii) it is not related to a company that did so and thus is subject to the anti-dumping duties; and (iii) has exported the product concerned thereafter or has entered into an irrevocable contractual obligation to do so in substantial quantities.

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

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

9. **FINAL PROVISION**

(235) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([49]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

([49]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Country	Company	Definitive anti-dumping duty	TARIC additional code
People's Republic of China	Xiangtan Electrochemical Scientific Ltd Jingxi Xiangtan electrochemical scientific ltd.	8,6%	899N
	Guangxi Guiliu New Material Co., Ltd Guangxi Xiatian Manganese Mine Co. LTD	0%	899O
	Guangxi Daxin Huiyuan New Energy Technology Co., Ltd	17,1%	899P
	Other cooperating companies listed in Annex	10,1%	
	All other companies	35,0%	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.*' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 131(2) of Commission Implementing Regulation (EU) 2015/2447 ([50]) the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2023/2120 imposing a provisional anti-dumping duty on imports of electrolytic manganese dioxides originating in the People's Republic of China shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

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

(a) it did not export the goods described in Article 1(1) during the period of investigation (1 January 2022 to 31 December 2022);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation, and which could have cooperated in the original investigation; and

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

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

Article 4

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

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

Done at Brussels, 13 March 2024.

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