



2024/2163

16.8.2024

**COMMISSION IMPLEMENTING REGULATION (EU) 2024/2163**

**of 14 August 2024**

**imposing a provisional anti-dumping duty on imports of biodiesel originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

After consulting the Member States,

Whereas:

**1. PROCEDURE**

**1.1. Initiation**

- (1) On 20 December 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of biodiesel originating in the People's Republic of China ('the country concerned', 'PRC' or 'China') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(2)</sup> ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 7 November 2023 by the European Biodiesel Board ('the complainant' or 'EBB'). The complaint was made on behalf of the Union industry of biodiesel 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.
- (3) Imports of biodiesel are currently subject to anti-dumping measures when originating in the United States of America ('USA') <sup>(3)</sup> and to countervailing measures when originating in Argentina <sup>(4)</sup>, Indonesia <sup>(5)</sup>, or the USA <sup>(6)</sup>.
- (4) On 29 April 2024, the complainant requested registration of imports pursuant to Article 14(5) of the basic Regulation. The Commission did not register imports as the conditions for retroactive application described under Article 10(4) of the basic Regulation were deemed not to be met.

**1.2. Interested parties**

- (5) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers and the authorities of the PRC, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21, ELI: <http://data.europa.eu/eli/reg/2016/1036/2020-08-11>.

<sup>(2)</sup> OJ C, C/2023/1574, 20.12.2023, ELI: <http://data.europa.eu/eli/C/2023/1574/oj>.

<sup>(3)</sup> OJ L 277, 2.8.2021, p. 34, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/1266/oj](http://data.europa.eu/eli/reg_impl/2021/1266/oj).

<sup>(4)</sup> OJ L 40, 12.2.2019, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/244/oj](http://data.europa.eu/eli/reg_impl/2019/244/oj). Ongoing expiry review was initiated in February 2024 (OJ C, C/2024/1355, 9.2.2024, ELI: <http://data.europa.eu/eli/C/2024/1355/oj>).

<sup>(5)</sup> OJ L 317, 9.12.2019, p. 42, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/2092/oj](http://data.europa.eu/eli/reg_impl/2019/2092/oj).

<sup>(6)</sup> OJ L 277, 2.8.2021, p. 62, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/1267/oj](http://data.europa.eu/eli/reg_impl/2021/1267/oj).

- (6) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No party requested a hearing with the Hearing Officer. The Commission held hearings with the complainant (along with associations known to be concerned), the sampled exporting producer EcoCeres, and the related importer of Zhuoyue – Excellence New Energy BV.

### 1.3. Sampling

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

#### 1.3.1. Sampling of Union producers

- (8) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected a sample of three Union producers on the basis of the largest volume of production and sales of the like product in the Union between 1 October 2022 and 30 September 2023 reported at initiation stage. Account was also taken of the product mix. The three sampled Union producers accounted for approximately 12 % of the estimated total volume of production of the like product in the Union and 23 % of the EU production and sales of the producers that replied to the inquiry. The Commission invited interested parties to comment on the provisional sample. The complainant and the Chinese exporting producer EcoCeres provided comments.
- (9) EcoCeres requested the inclusion of the Union producer Neste in the sample. It claimed that the inclusion of Neste was warranted to ensure the overall representativity of the sample as it would be the largest Union producer, accounting for 15 % of the estimated total volume of biodiesel production in the Union, and without which the sample would not be representative in terms of the production or sales volume. It also found Neste's inclusion in the sample warranted as it would be a large producer of the product types hydrotreated vegetable oil ('HVO'), the main product type sold by EcoCeres on the Union market.
- (10) The Commission analysed EcoCeres' claim. First, the Commission noted that the sample took account of the size of individual legal entities. In this respect, in view of clarifications with regard to Neste's production volume provided by the complainant, the statement of EcoCeres regarding Neste's respective production volumes in its different plants appeared to be overstated. Second, the information available on file showed that, in the investigation period, the Union production consisted predominantly of fatty acid methyl esters ('FAME'); whereas production volumes of HVO<sup>(7)</sup> were clearly lower. Third, the provisional sample already took account of this product mix to the extent that it included Raffineria di Gela S.p.A., part of the Eni group, which manufactures HVO. EcoCeres' claim to add Neste to the sample was therefore rejected.
- (11) In light of the feedstocks mix of Chinese producers (waste-based), EBB claimed that the sampled Union producer Saipol, which manufactures biodiesel from rapeseed oil, should be replaced by a producer manufacturing biodiesel from advanced feedstocks located in Germany. EBB argued that the Chinese biodiesel industry does not use rapeseed oil to manufacture biodiesel, as they mainly use used cooking oil ('UCO') which is domestically available. Accordingly, should Saipol be confirmed in the definitive sample of Union producers, almost half of the sample's Union sales could not be directly compared with Chinese imports of waste-based biodiesel. EBB argued that Verbio SE would be an appropriate sampled EU producer for the present investigation because it is located in Germany and Verbio's plants use advanced feedstocks while also using rapeseed oil to manufacture biodiesel.

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(7) TotalEnergies Raffinage Chimie reported [190 000-300 000] tonnes of HVO production (standing reply t23.006839). Eni group reported [300 000-600 000] tonnes of HVO production (standing reply t23.006819). EcoCeres stated that Neste had a HVO capacity of 1,4 million tonnes in Rotterdam (t24.000069). Total EU industry production volume of biodiesel, as reported in the complaint (page 35), was around 12 million tonnes.

- (12) Following this claim, the Commission clarified that the criteria for selecting a sample of Union producers were the sales or production volume of the companies considered, as well as the product mix. The parties sampled on that basis were considered representative for the Union industry as a whole. Consequently, despite EBB's comments, the Commission found no grounds to exclude Saipol from the sample of Union producers. Indeed, Saipol was amongst the largest biodiesel producers<sup>(8)</sup> in the Union, as noted by the complainant itself. Moreover, Saipol was deemed representative of the Union industry as it manufactured biodiesel starting from rapeseed oil, the dominant feedstock in the Union for producing biodiesel.
- (13) Furthermore, the inclusion of a Verbio plant in the sample would be unjustified because, as pointed out by EBB itself, the production volume of Masol Iberia Biodiesel S.L.U., one of the three companies proposed for the sample, was significantly higher. In addition, Masol Iberia Biodiesel S.L.U. would ensure that a comparison could be made between Union industry and exporting producers' sales of biodiesel made from advanced feedstocks. Therefore, the request to include Verbio SE was rejected.
- (14) However, in view of the main feedstock use as reported by the sampled Chinese parties, the Commission considered it appropriate to enlarge the volume of UCO-based biodiesel in the sample of Union producers as that would improve the representativeness of the Union industry product mix vis-à-vis Chinese imports and facilitate the comparison between Union prices and Chinese import prices of biodiesel. The Commission therefore decided to add Chevron Renewable Energy Group, a biodiesel producer based in Germany using UCO as feedstock, to the sample.
- (15) The four sampled Union producers accounted for approximately 15 % of the estimated total volume of production of the like product in the Union and 28 % of the EU production and sales of the producers that replied to the inquiry.
- (16) The Commission invited the four sampled Union producers to reply to the questionnaire. It also invited interested parties to comment on the revised sample. EcoCeres provided comments.
- (17) EcoCeres stated that the sample decision was taken based on an erroneous factual basis. In particular, it claimed that Neste's Rotterdam's plant had a larger production capacity than the one of Saipol and that the Commission had underestimated the HVO production in the EU<sup>(9)</sup>. EcoCeres therefore requested the inclusion of at least one Neste entity/plant in the sample, instead of or in addition to Raffineria di Gela.
- (18) The allegation that Neste's Rotterdam's plant had a HVO production capacity which was higher than Saipol's biodiesel production does not prove that during the investigation period the relevant legal entity had actually a level of production or EU sales close to such production capacity. At the same time, as explained in recital (8) above, production and sales volumes rather than production capacity are determinant elements for a company to be included (or not) in the sample. As to the alleged underestimation of HVO production in the Union, the Commission noted that the party submitted contradictory information. The 5 million tonnes HVO production in the Union in 2022 alleged by EcoCeres were contradicted by another of its submissions<sup>(10)</sup> in which the capacity (i.e. a figure normally higher than actual production) in 2023 of stand-alone HVO production facilities in the Union was reported to amount to 3 million tonnes. In light of the above and in order not to unduly overrepresent HVO in the sample, EcoCeres' request concerning the inclusion of at least one Neste entity/plant in the sample was rejected.

<sup>(8)</sup> Saipol reported [700 000-1 000 000] tonnes of biodiesel products (standing reply t23.006964).

<sup>(9)</sup> EcoCeres noted that a chart by the CME Group showed more than 5 million HVO production in the EU in 2022 already, as shown in <https://www.cmegroup.com/articles/whitepapers/biofuel-feedstocks-in-the-european-union.html>.

<sup>(10)</sup> Source: Argus Media Group's "Renewable diesel refinery database" dated December 2023 and attached to t24.000069 (sensitive annex I).

### 1.3.2. *Sampling of importers*

- (19) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (20) Two unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary.

### 1.3.3. *Sampling of exporting producers in the PRC*

- (21) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (22) Sixty-three (63) exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers/groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers and the authorities of the country concerned were consulted on the selection of the sample.
- (23) The Commission received comments on the sample from one interested party. The exporting producer Henan Junheng Industrial Group Biotechnology Company., Ltd. ('Henan Junheng') argued that the Commission should increase the number of companies manufacturing hydrogenated vegetable oil ('HVO') in the sample to reflect the differences in costs and export prices resulting from different production processes of FAME and HVO.
- (24) The Commission recalled that the initial sample covered a substantial share of the imports (approximately 55 %). In addition, the producer of HVO included in the sample represented around one third of the sampled export volume. Therefore, the Commission considered that the sample sufficiently represented the Chinese exporting producers manufacturing both distinct subcategories of biodiesel. Consequently, the Commission rejected the claim and confirmed the initial sample of exporting producers.

### 1.4. **Individual examination**

- (25) One exporting producer in the PRC requested individual examination under Article 17(3) of the basic Regulation. The examination of this request during the provisional stage of the investigation would have been unduly burdensome, in particular considering the complicated structure of the sampled exporting producers/groups of exporting producers (in total five production entities and several relevant related companies, such as suppliers or traders) and the corresponding duration of the on-spot verifications. In addition, the exporting producer requesting the individual examination sold biodiesel to the Union directly and via a related trader, i.e. individual examination of this company would require an investigation of at least two entities. The Commission will decide whether to grant individual examination at the definitive stage of the investigation.

### 1.5. **Questionnaire replies and verification visits**

- (26) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (27) The Commission sent questionnaires to sampled Union producers, two importers/traders, the complainant, and the exporting producers in the PRC. Except for the complainant's one, the same questionnaires were made available online <sup>(11)</sup> on the day of initiation.

<sup>(11)</sup> <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2698>.

- (28) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

**Union producers**

- Chevron, Amsterdam, the Netherlands,
- Masol Iberia Biofuel, S.L.U., El Grao (Castellón) and Barcelona, Spain,
- Raffineria di Gela, Gela and Rome, Italy,
- Saipol, Paris, France;

**Complainant**

- European Biodiesel Board (EBB), Brussels, Belgium

**Exporting producers and their related companies in the PRC**

- EcoCeres Group ('EcoCeres'):
  - ECO Biochemical Technology (Zhangjiagang) Co. Ltd., Zhangjiagang, Jiangsu Province, PRC (exporting producer)
  - EcoCeres Limited, Hong Kong (related trader)
- Jiaao Group ('Jiaao'):
  - Zhejiang EastRiver Energy S&T Co., Ltd., Tongxiang, Zhejiang Province, PRC (exporting producer)
  - Zhejiang Jiaao Enproenergy Co., Ltd., Tongxiang, Zhejiang Province, PRC (exporting producer)
  - Jiaao International Trading (SINGAPORE) PTE. Ltd., Singapore (related trader, verified in the headquarters in Tongxiang, Zhejiang Province, PRC)
  - Zhejiang Jiasui Import & Export Co Ltd, Tongxiang, Zhejiang Province, PRC (related trader)
  - Zhejiang Jiaao Enprotech Stock Co., Ltd., Tongxiang, Zhejiang Province, PRC (parent company)
- Zhuoyue Group ('Zhuoyue'):
  - Longyan Zhuoyue New Energy Co., Ltd., Longyan, Fujian Province, PRC (exporting producer)
  - Xiamen Zhuoyue Biomass Energy Co., Ltd., Xiamen, Fujian Province, PRC (exporting producer)
  - Fujian Zhishang Biomass Materials Co., Ltd., Longyan, Fujian Province, PRC (related user)
  - Xiamen Zhuoyue Biomass Energy Co., Ltd. – Tongan branch, Xiamen, Fujian Province, PRC (related supplier)
  - Excellence New Energy B.V., Rotterdam, the Netherlands (related importer)

**1.6. Investigation period and period considered**

- (29) The investigation of dumping and injury covered the period from 1 October 2022 to 30 September 2023 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period ('the period considered').

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

### 2.1. Product under investigation

- (30) The product under investigation is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or as included in a blend, currently falling under CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 22, 1516 20 98 23, 1516 20 98 29, 1516 20 98 31, 1516 20 98 32 and 1516 20 98 39), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 22, 1518 00 91 23, 1518 00 91 29, 1518 00 91 31, 1518 00 91 32 and 1518 00 91 39), ex 1518 00 95 (TARIC code 1518 00 95 10, 1518 00 95 11 and 1518 00 95 19), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 22, 1518 00 99 23, 1518 00 99 29, 1518 00 99 31, 1518 00 99 32 and 1518 00 99 39), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 22, 2710 19 43 23, 2710 19 43 29, 2710 19 43 31, 2710 19 43 32 and 2710 19 43 39), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 22, 2710 19 46 23, 2710 19 46 29, 2710 19 46 31, 2710 19 46 32 and 2710 19 46 39), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 22, 2710 19 47 23, 2710 19 47 29, 2710 19 47 31, 2710 19 47 32 and 2710 19 47 39), 2710 20 11, 2710 20 16, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 11, 3824 99 92 13, 3824 99 92 14, 3824 99 92 15, 3824 99 92 16, and 3824 99 92 19), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 12, 3826 00 90 13, 3826 00 90 19, 3826 00 90 31, 3826 00 90 32 and 3826 00 90 39) excluding sustainable aviation fuel meeting the requirements of ASTM D7566-22 Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons, currently falling under CN codes ex 2710 19 43 (TARIC additional code 89FT), ex 2710 19 46 (TARIC additional code 89FT), ex 2710 19 47 (TARIC additional code 89FT), ex 2710 20 11 (TARIC additional code 89FT) and ex 2710 20 16 (TARIC additional code 89FT), and originating in the People's Republic of China ('the product under investigation').
- (31) The product under investigation can be produced through different processes, such the transesterification of oils and fats, a Fischer-Tropsch synthesis or the hydrotreatment of renewable feedstocks. It is a renewable fuel produced from a wide range of raw materials, including vegetable oils such as rapeseed oil, soybean oil or palm oil, used cooking oils ('UCO'), animal fats or biomass.
- (32) Biodiesel is typically used in the transport sector, such as the road, rail, aviation and maritime sectors, mainly blended with fossil diesel but also in its pure form.

### 2.2. Product concerned

- (33) The product concerned is the product under investigation originating in the PRC ('the product concerned').

### 2.3. Like product

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

## 2.4. Claims regarding product scope

### 2.4.1. Exclusion request based on feedstocks

- (36) The China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters (“CCCMC”), empowered to represent 27 exporting producers<sup>(13)</sup> in this investigation, submitted that biodiesel produced from feedstocks listed in Annex IX of the Renewable Energy Directive II (“RED II”)<sup>(13)</sup> should be excluded from the scope of the present investigation on the grounds that in a recent investigation concerning fatty acid originating in Indonesia “the Commission found that fatty acids with DoS of at least 97 % produced from waste and certified by a voluntary scheme recognized by the Commission pursuant to Article 30(4) of the RED II or a national certification scheme established pursuant to Article 30(6) of the RED II, while sharing the same characteristics with other fatty acids, have different uses and are not in competition with the like product”<sup>(14)</sup>. The Commission noted that, unlike in the fatty acid case quoted, in the present investigation all the product types are typically subject to RED II, in view of the fact that customers request biodiesel produced using feedstocks listed in Annex IX part A and B of the RED II. They also are, as further explained below in this section, in direct competition. The Commission rejected CCCMC’s claim.

### 2.4.2. SAF

- (37) Within the product scope of this proceeding, three main product groups can be distinguished: FAME, HVO and Sustainable Aviation Fuel (“SAF”).
- (38) EcoCeres requested SAF to be excluded from the scope of the investigation since it was never investigated before in trade defence investigations concerning biodiesel, it had different physical and technical characteristics, was destined for different end-use and subject to a different production process. It also pointed at the fact that it was not interchangeable with the other product groups FAME and HVO. EcoCeres added that the imposition of duties on SAF, allegedly in short supply in the Union and in the global market, would be unreasonable and against strong policy initiatives put forward by the Commission itself.
- (39) As a first introductory remark, the Commission clarified that not all SAF is biodiesel and that several definitions and terminology may apply depending on the context and the regulatory environment. Article 3 of the ReFuelEU Avion Regulation<sup>(15)</sup> defines SAF as aviation fuels that are either: (a) synthetic aviation fuels; (b) aviation biofuels; or (c) recycled carbon aviation fuels. The present section concerns only fuels in section (b), i.e. relevant aviation biofuels.

<sup>(13)</sup> Anhui Tianyi Environmental Protection Tech Co. Ltd; Beijing Haixin Energy Technology Co. Ltd.; Changzhou City Jintan District Weige Biological Tehnology Co. Ltd.; Chongqing Yubang New Energy Technology Co., Ltd; Dezhou Rongguang Biotechnology Co. Ltd.; Guangzhou Leo-King Environmental Technology Co. Ltd.; Hebei Huide Renewable Resources Co. Ltd.; Hebei Jingu Plasticizer Co. Ltd.; Hebei Jinrui Lvyuan Biological Technology Co. Ltd.; Hebei Nanhong New Energy Technology Pte.Ltd.; Henan Junheng Industrial Group Biotechnology Company Ltd; Hubei Tianji Bioenergy Co. Ltd.; Huizhou Huilong Jinyi Oil and Fat Energy Co. Ltd.; Jiukiang Oasis Energy Technology Co. Ltd.; Longyan Zhuoyue New Energy Co., Ltd.; Maoming Hongyu Energy Technology Co., Ltd.; Ningbo Jieshen Green Fuel Co. Ltd; Shandong Ding-Yu Biotech Energy Co. Ltd.; Shandong Huidong New Energy Co. Ltd.; Shandong Zhonghai Fine Chemical Industry Co. Ltd; Shangdong Fenghui New Energy Co. Ltd.; Sichuan Lampan New Energy Technology Co. Ltd.; Tanghe Jinhai Biological Technology Co. Ltd; Tangshan Jinlihai Biodiesel Co. Ltd.; Wenzhou Zhongke New Energy Technology Co. Ltd.; Yangzhou Jianyuan Biotechnology Co. Ltd; Zhejiang Jiaao Enprotech Stock Co. Ltd.

<sup>(13)</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), OJ L 328 21.12.2018, p. 82. ELI: <http://data.europa.eu/eli/dir/2018/2001/oj>.

<sup>(14)</sup> Commission Implementing Regulation (EU) 2023/111 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia, recitals (101)-(102) (OJ L 18 of 19.1.2023, p.1, ELI: [http://data.europa.eu/eli/reg\\_impl/2023/111/oj](http://data.europa.eu/eli/reg_impl/2023/111/oj)).

<sup>(15)</sup> Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (ReFuelEU Aviation) (recast) (OJ L 2405, 31.10.2023, p. 1, ELI: <http://data.europa.eu/eli/reg/2023/2405/oj>).

- (40) The investigation showed limited variances in the production process and the basic physical, chemical and technical characteristics of SAF versus HVO. However, at present, HVO and FAME cannot be used for aviation engines. Thus, the Commission found SAF to have different use and concluded it cannot be deemed to be interchangeable or in competition with HVO/FAME.
- (41) Based on these considerations, the Commission decided to provisionally accept the exclusion of SAF from the scope of the present investigation.

#### 2.4.3. HVO exclusion request

- (42) CCCMC requested HVO to be excluded from the scope of the investigation on the grounds that FAME and HVO are fundamentally different products in terms of consumer preferences and standards, physical and chemical properties, end-uses, production processes and interchangeability.
- (43) EcoCeres requested HVO to be excluded from the scope of the investigation and be considered as different products from FAME biodiesel on the grounds that HVO was never a focus of EU trade defence investigations into biodiesel and have, as compared to FAME, allegedly different market perception, different legal treatment in the EU as compared to other authorities like the United Kingdom and the United States of America with different customs classification and different product standards; different physical and chemical characteristics; different end uses; different production process; and different environmental impact.
- (44) Firstly, the Commission noted that in defining the product scope, the Commission may take account of a number of factors, such as, inter alia, the physical, technical and chemical characteristics of the products, their use, interchangeability, consumer perception, distribution channels, manufacturing process, costs of production and quality. Accordingly, the differences in production process and product standards alone are not decisive for the determination as to whether product types constitute a single product.
- (45) Secondly, as to the claim that HVO was never a focus of EU trade defence investigations into biodiesel, this seems in contradiction with EcoCeres' own statements<sup>(16)</sup>. Indeed, the Commission noted that in past and ongoing EU investigations on biodiesel, the product scope encompassed gasoils obtained from synthesis and/or hydrotreatment of non-fossil origin. In an investigation concluded in 2021, it already received and addressed an HVO product exclusion request, which was rejected on several grounds.<sup>(17)</sup>
- (46) The below recitals address the other arguments summarised in recitals (42) and (43).

##### 2.4.3.1. Basic physical and chemical characteristics

- (47) As to the alleged different basic physical and chemical characteristics, in previous investigations the Commission acknowledged the existence of some differences in physical characteristics between FAME and HVO in previous investigations, but such differences were not of the kind to justify a product exclusion<sup>(18)</sup>.
- (48) The parties noted that the physical and chemical characteristics of HVO are closer to conventional diesel than those of FAME and that the typical cold filter plugging point (CFPP) level and other characteristics (such as density or viscosity) of HVO and FAME differ.

<sup>(16)</sup> See point 6.2 of EcoCeres' submission t24.000061, in which EcoCeres recognises that HVO is technically covered by the product definition in past investigations.

<sup>(17)</sup> Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesels originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 2.8.2021, p. 34, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/1266/oj](http://data.europa.eu/eli/reg_impl/2021/1266/oj)).

<sup>(18)</sup> Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 2.8.2011, p. 34, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/1266/oj](http://data.europa.eu/eli/reg_impl/2021/1266/oj)).



- (49) However, this does not render HVO a different product for the purpose of this investigation. Both HVO and FAME have several product types with distinct CFPP, density and viscosity levels. Indeed, there are FAME product types with the same CFPP level as certain HVO product types <sup>(19)</sup>. CCCMC pointed at the good storage stability of HVO as compared to FAME, but that does not render HVO a different product either.
- (50) EcoCeres stated that the feedstocks for FAME are food and crop-based and differ from the feedstocks used to produce second generation biodiesel, which makes the latter a fundamentally different product.
- (51) The Commission disagreed and noted that the current usage of feedstocks is the result of legislative choices that are evolving over time. Furthermore, some FAME types are made out of “waste”, such as UCOME, whereas nothing in the abstract precludes from using non-waste feedstocks to produce HVO.

#### 2.4.3.2. Use

- (52) As to any alleged different end-uses, in a recent investigation concerning the same product scope the Commission already rejected a HVO product exclusion request as it had found that the product end-use of HVO and FAME is the same. <sup>(20)</sup> In the current investigation, the Commission found that HVO produced in China is in competition with any biodiesel produced in the Union. HVO can be used throughout the Union throughout the year, either pure or mixed with other biodiesels before use, in the same way as for instance RME, a type of FAME made from rapeseed oil which is widely produced in the Union. HVO is therefore interchangeable with biodiesel made in the Union.
- (53) CCCMC submitted that only HVO is used pure. However, both FAME and HVO are used in a pure form in engines, which runs counter to that statement <sup>(21)</sup>. Also, both FAME and HVO can be blended with fossil diesel (and other biodiesel types) with a view to reach the optimum fuel for the specific transport mode and/or period of the year.
- (54) The investigation revealed that FAME and HVO from any origin are generic products (in physical properties/specifications) that are comparable from an importer and trader perspective. <sup>(22)</sup>
- (55) Finally, with regard to end-use, CCCMC also alleged that automotive manufacturers commonly prefer HVO over FAME. However, this claim was unsubstantiated and nothing on the file could confirm it.

#### 2.4.3.3. Market perception

- (56) As to the alleged different market perception of HVO as compared to FAME, the Commission found that FAME and HVO belong to a same general category, i.e. a sustainable substitute of fossil diesel fuel used mainly in the transport sector. The market perceives FAME and HVO as sustainable alternative fuels for diesel engines in transport sector. EcoCeres submitted that the websites of the complainant and several producers called HVO “renewable diesel”. The Commission noted that the information on such websites had descriptive purposes and distinguished between different product types, but it did not support the conclusion that HVO was a different product for the purpose of this investigation.

<sup>(19)</sup> For an example of FAME with -20° CFPP, see the product range offered in <https://www.muenzer.at/en/biodiesel.html>.

<sup>(20)</sup> Recital (38) of Commission Implementing Regulation (EU) 2021/1266 of 29 July 2021 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 2.8.2011, p. 34, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/1266/oj](http://data.europa.eu/eli/reg_impl/2021/1266/oj))

<sup>(21)</sup> For an example, see <https://oleo100.com/actualites/article/b100-exclusif/>. See also page 18 of EcoCeres' submission t24.000061 quoting a leading engine manufacturer.

<sup>(22)</sup> t24.001865.

#### 2.4.4. Conclusion on the exclusion claims

- (57) In light of all the above, the Commission provisionally excluded SAF from the scope of the investigation and dismissed all other claims regarding the product scope. All types of Union-made biodiesel covered by this investigation were found to be in direct competition with China-made biodiesel. Moreover, despite possible differences in terms of raw material used for the production, or variances in the production process, they all have the same or very similar basic physical, chemical and technical characteristics and are used for the same purposes. The possible variations in the product under investigation do not alter its basic definition, its characteristics or the perception that various parties have of it. In particular, from the perspective of the end-user of diesel fuel, it makes no difference if the blend available contains biodiesel made from one particular feedstock or via a specific production process. All types of biodiesel and biodiesel blends covered by this investigation are part of a legislative package concerning energy efficiency and renewable energy and alternative fuels. The Union biodiesel industry produces all biodiesel types covered by this investigation.

### 3. DUMPING

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

- (58) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (59) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing biodiesel. Forty-two (42) exporting producers submitted the relevant information.
- (60) In order to obtain information, it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2. of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the Official Journal of the European Union.
- (61) No questionnaire reply was received from the GOC. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (62) The GOC, CCCMC, and Zhuoyue made submission on the application of Article 2(6a) of the basic Regulation. These comments are addressed in section 3.2.1.8.
- (63) In point 5.3.2. of the Notice of Initiation the Commission also specified that, in view of the evidence available, Brazil was a possible appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (64) On 7 March 2024, the Commission informed by a note to the file ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of biodiesel. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Brazil, Colombia, Malaysia, and Thailand. The Commission also addressed the information concerning the selection of a representative country submitted by EcoCeres at the initiation of the investigation under point 5.3.2. of the Notice of Initiation.

- (65) The Commission received comments on the First Note from the complainant and all three sampled exporting producers.
- (66) On 7 June 2024, the Commission issued a second note ('the Second Note'), where it addressed the comments on the First Note detailed in sections 3.2.2.2 to 3.2.2.4 below and as appropriate, took them into consideration in further analysis and the selection of the representative country.
- (67) In the Second Note, the Commission informed the interested parties on the relevant sources it intended to use for the determination of the normal value, with Malaysia as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profit based on financial information of seven biodiesel producers in the representative country.
- (68) The Commission received comments on the Second Note from EBB, Jiao, and Zhuoyue. The comments are addressed in sections 3.2.2.2 to 3.2.2.4 below.

### 3.2. Normal value

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

#### 3.2.1. Existence of significant distortions

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

- (73) As the list in Article 2(6a)(b) of the basic Regulation is non-cumulative, not all the elements need to be given for a finding of significant distortions. Moreover, the same factual circumstances may be used to demonstrate the existence of one or more of the elements of the list.
- (74) However, any conclusion on significant distortions within the meaning of Article 2(6a)(a) of the basic Regulation must be made on the basis of all the evidence at hand. The overall assessment on the existence of distortions may also take into account the general context and situation in the exporting country, in particular where the fundamental elements of the exporting country's economic and administrative set-up provide the government with substantial powers to intervene in the economy in such a way that prices and costs are not the result of the free development of market forces.
- (75) Article 2(6a)(c) of the basic Regulation provides that “[w]here the Commission has well-founded indications of the possible existence of significant distortions as referred to in point (b) in a certain country or a certain sector in that country, and where appropriate for the effective application of this Regulation, the Commission shall produce, make public and regularly update a report describing the market circumstances referred to in point (b) in that country or sector”.
- (76) Pursuant to this provision, the Commission issued a country report concerning China (‘the Report’) <sup>(23)</sup>, which contains evidence of the existence of substantial government intervention at many levels of the economy, including specific distortions in many key factors of production (such as land, energy, capital, raw materials and labour) as well as selected sectors (such as the chemical sector). Interested parties were invited to rebut, comment or supplement the evidence contained in the investigation file at the time of initiation. The Report concerning China was placed in the investigation file at the initiation stage.
- (77) The complainant referred to the evidence contained in the Report, as well as to Commission findings in recent investigations <sup>(24)</sup>, to stress the relevance of the below-mentioned distortions in the context of EU anti-dumping proceedings.
- (78) The complainant also complemented the Report with additional relevant evidence, such as reports by authorities in other jurisdictions. For instance, the complainant pointed out that in 2023, the US Department of Agriculture showed that “policy-driven directives made by the PRC also allowed the country's biofuels sector to be partially isolated from the global market and less responsive to market forces” <sup>(25)</sup>.

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<sup>(23)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

<sup>(24)</sup> Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China (OJ L 216, 18.6.2021, p. 142, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/983/oj](http://data.europa.eu/eli/reg_impl/2021/983/oj)), recital (93), (99), (140); Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 410, 18.11.2021, p. 51, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/2011/oj](http://data.europa.eu/eli/reg_impl/2021/2011/oj)), recitals (93), (106), (126), (129), (138)-(139); Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/1693/oj](http://data.europa.eu/eli/reg_impl/2019/1693/oj)), recitals (82), (86), (93), (100), (108)-(109); Commission Implementing Regulation (EU) 2019/1198 of 12 July 2019 imposing a definitive anti-dumping duty on imports of ceramic tableware and kitchenware originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) No 2016/1036 (OJ L 189, 15.7.2019, p. 8, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/1198/oj](http://data.europa.eu/eli/reg_impl/2019/1198/oj)), recitals (70)-(75), (80), (114); Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/687/oj](http://data.europa.eu/eli/reg_impl/2019/687/oj)), recitals (65), (68), (89); Council Implementing Regulation (EU) No 215/2013 of 11 March 2013 imposing a countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China (OJ L 73, 15.3.2013, ELI: [http://data.europa.eu/eli/reg\\_impl/2013/215/oj](http://data.europa.eu/eli/reg_impl/2013/215/oj)), recital (142).

<sup>(25)</sup> USDA Foreign Agricultural Service, Global Agricultural Information Network (GAIN) Report – Biofuels Annual, China, 1 September 2023, p. 2.

- (79) Furthermore, the complainant recalled the following elements resulting in significant distortions.
- (80) First, the biodiesel sector is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities. For instance, one of the major biodiesel producers in China, Beijing Haixin Energy Technology Co., Ltd, is controlled by SOEs, namely Beijing Haixinzhi Low Carbon Technology Development and Beijing Haidian District State-owned Assets Investment Management Co., Ltd, who own 35,22 % of the company's shares <sup>(26)</sup>. In 2022, the company's production of biodiesel *"entered the stage of mass production, and the production, sales and safety stock amount increased significantly year-on-year"* <sup>(27)</sup>.
- (81) The GOC supervises and guides also privately owned biodiesel producers, as apparent from the following elements:
- The Strategic Action Plan for Energy Development (2014-2020) aimed to *"actively develop transportation fuel substitution"* and to *"focus on the development of new generation of non-grain fuel ethanol and biodiesel"*.
  - The 14th Five-Year-Plan ('FYP') for Renewable Energy Development (2021-2025) promoting the use of advanced technology and equipment in biodiesel and jet fuel.
  - In 2021, the Chinese National Energy Administration ('NEA') published on its website a statement indicating that *"the State actively supports the development of the biodiesel industry"* and that the *"Renewable Energy Law clearly stipulates that petroleum sales enterprises should incorporate bio-liquid fuels that meet national standards into their fuel sales system"*. The goals are *"to guide pilot cities to promote biodiesel, strengthen the construction and supervision of 'gutter oil' collection, storage and transportation systems, prevent 'gutter oil' from flowing back to the table and polluting the environment, stabilize the supply of raw materials for biodiesel enterprises, and promote the industry"* <sup>(28)</sup>.
- (82) National goals are indeed pursued by the private industry: for instance, Longyan Zhuoyue New Energy Co., Ltd. ('Zhuoyue'), another major Chinese biodiesel producer, claims on its website to have *"successfully undertaken several important programs, including National Key New Product Plan, National Torch Plan, National Tenth Five-Year Science and Technology Research Plan, National Eleventh Five-Year Science and Technology Supporting Program, National Twelfth Five-Year Science and Technology Research Program"*.
- (83) Second, state presence in biodiesel firms also allows the authorities to interfere with prices and/or costs. Indeed, the complainant found overlaps between managerial positions and Chinese Communist Party ('CCP') membership / Party functions in companies involved in the biodiesel production: for instance, the General Manager of Sanju Environmental Protection is a member of the CCP, while several members of the Board of Directors of Haixin Energy Technology, along with its General Manager and Director, are affiliated and adhere to the CCP. The General Manager and Chairman of Zhejiang Jiaao Enprotech Stock Co. Ltd. is a member of the Chinese People's Political Consultative Conference.
- (84) Third, the GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces, especially at provincial level. For instance, Shanghai has put in place measures to promote production and use of biodiesel made from waste kitchen oil and fats:

<sup>(26)</sup> Beijing Haixin Energy Technology Co., Ltd, Annual Report (2022).

<sup>(27)</sup> Ibid., p. 34.

<sup>(28)</sup> Statement of the Chinese National Energy Administration, 16 August 2021.

- The Shanghai Municipal Development and Reform Commission published in 2021 the Shanghai Administrative Measures for Supporting the Promotion and Application of Biodiesel Made from Waste Kitchen Grease ('Shanghai Measures'), whose Article 1 states "From the collection, transportation, disposal and promotion and application of waste kitchen oil and grease in gas stations, this city follows the principle of 'closed-loop management, market-oriented operation, and supported application' to form a closed-loop management of the entire industry chain of resource utilization of waste kitchen oil and grease in this city". According to Article 3, "[e]nterprises that generate waste kitchen grease in this city should set up special waste kitchen grease collection containers (catering service enterprises should install oil-water separators as required) and deliver the collected waste kitchen grease to the enterprises for transportation. The collection and transportation enterprise shall collect and transport the waste kitchen oil and grease produced by the enterprises within its jurisdiction in accordance with the service scope determined by the bidding, process it into raw oil with an oil content of not less than 95 %, and then hand it over to the disposal enterprise. The disposal enterprise shall, in accordance with the requirements of the disposal service agreement, produce biodiesel for diesel fuel blending (BD100 biodiesel) that meets product standards from the raw oil delivered by the collection and transportation enterprise".
  - In its 2021 Policy Interpretation of the Shanghai Administrative Measures for Supporting the Promotion and Application of Biodiesel Made from Waste Kitchen Grease ('the Policy Interpretation'), the Shanghai Municipal Development and Reform Commission specified that such measures were needed because "the promotion and application work has also encountered some difficulties: First, the price of raw oil collection remains high, and the production cost of biodiesel is high. Second, the promotion and application of B5 biodiesel has encountered a bottleneck period and mainly relies on oil price concessions. Third, the recognition of biodiesel is not high".
  - Not only, the Policy Interpretation clarified that biodiesel benefits from a preferential price. While "the price of raw oil remains market-based (the Municipal Greening and City Appearance Bureau coordinates the purchase price based on market prices), BD100 biodiesel is purchased at the wholesale price of 0# diesel, and B5 biodiesel is promoted at a discount and 80 % is subsidized by municipal fiscal funds. The preferential part (if the preferential amount cannot be provided, a quantitative subsidy of 0,15 CNY/litre will be provided) and the emergency subsidy mechanism (when the wholesale price of diesel oil is lower than 6 000 CNY/tonne, municipal financial funds will provide emergency subsidies for those lower than 6 000 CNY/tonne). Part of it is given to the disposal enterprise". The Policy Interpretation confirmed that such subsidy programme was implemented for a 2-year period, i.e. covering the investigation period.
- (85) The complainant further observed that distortions in prices and costs are also present in the energy sector: the main source of energy in China is coal, and, consequently, it is likely that the energy used to manufacture biodiesel in China is also derived from coal. As described in the Report, the prices of coal, and of electricity as well, are controlled by the State <sup>(29)</sup>.
- (86) The complainant has also found that the sector of the product concerned benefits from numerous tax policies. Indeed, China has introduced a VAT refund policy which allows biodiesel producers to enjoy a 70 % VAT rebate if biodiesel is made from used animal and vegetable oils. For example, in 2023, Zhejiang Dongjiang Energy Technology Co. received, for the period from December 2022 to March 2023, approximately 12 million CNY (1,54 million EUR) as a result of the tax rebate. The company reported that "the above-mentioned amount exceeds 10 % of the audited net profit of the company in the latest fiscal year" <sup>(30)</sup>.
- (87) Moreover, Chinese biodiesel producers benefit from a 90 % discount on taxable income from relevant products.
- (88) Fourth, much like in any other sector in the Chinese economy, the biodiesel sector is subject to the distortions resulting from the discriminatory application or inadequate enforcement of Chinese bankruptcy, corporate and property rules. The complainant referred to the Report <sup>(31)</sup> and to recent Commission investigations, observing, moreover, that in the bankruptcy sector the GOC intervenes in the reorganization of listed companies, preventing the adequate implementation of bankruptcy laws <sup>(32)</sup>.

<sup>(29)</sup> China Report – para. 10.1.1. and 10.2.1.1.

<sup>(30)</sup> See at: [https://www.sohu.com/a/681644605\\_120988533](https://www.sohu.com/a/681644605_120988533) (accessed on 25 June 2024).

<sup>(31)</sup> Report – p. 203, 216.

<sup>(32)</sup> Zhao Huimiao, Lame-duck bankruptcy institutions under government intervention in reorganisation of listed companies in China, Part 1 (2016), p. 1.

- (89) Fifth, wage costs are distorted in the sector of the product concerned, as shown by the Commission in previous trade defence investigations <sup>(33)</sup>. Indeed, a system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organization.
- (90) Sixth, biodiesel producers have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state. Indeed, in previous trade defence investigations, the Commission highlighted the strong position of state-owned banks which grant access to finance based on the State's economic and social policy and not based on market considerations. Moreover, as a general rule, banks are connected to the Chinese state via personal relations, the top executives being ultimately appointed by the CCP <sup>(34)</sup>.
- (91) In conclusion, the complainant argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the biodiesel sector.
- (92) The Commission examined whether it was appropriate or not to use domestic prices and costs in China, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file. The evidence on the file included the evidence contained in the Report as well as in its updated version ('updated Report') <sup>(35)</sup>, which relies on publicly available sources.
- (93) That analysis covered the examination of the substantial government interventions in China's economy in general, but also the specific market situation in the relevant sector including the product concerned. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in China.

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

- (94) The Chinese economic system is based on the concept of a "socialist market economy". That concept is enshrined in the Chinese Constitution and determines the economic governance of China. The core principle is the "*socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people*" <sup>(36)</sup>.
- (95) The state-owned economy is the "*leading force in the national economy*" and the state has the mandate to ensure its "*consolidation and growth*" <sup>(37)</sup>. Consequently, the overall setup of the Chinese economy not only allows for substantial government interventions into the economy, but such interventions are expressly mandated. The notion of supremacy of public ownership over the private one permeates the entire legal system and is emphasized as a general principle in all central pieces of legislation.
- (96) The Chinese property law is a prime example: it refers to the primary stage of socialism and entrusts the state with upholding the basic economic system under which the public ownership plays a dominant role. Other forms of ownership are tolerated, with the law permitting them to develop side by side with the state ownership <sup>(38)</sup>.

<sup>(33)</sup> For instance, Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-Dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 410, 18.11.2021, p. 51, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/2011/oj](http://data.europa.eu/eli/reg_impl/2021/2011/oj)), recital (126).

<sup>(34)</sup> Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 410, 18.11.2021, p. 51, ELI: [http://data.europa.eu/eli/reg\\_impl/2021/2011/oj](http://data.europa.eu/eli/reg_impl/2021/2011/oj)), recital (129); Commission Implementing Regulation (EU) 2019/1693 of 9 October 2019 imposing a provisional anti-dumping duty on imports of steel road wheels originating in the People's Republic of China (OJ L 259, 10.10.2019, p. 15, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/1693/oj](http://data.europa.eu/eli/reg_impl/2019/1693/oj)), recital (100).

<sup>(35)</sup> Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final.

<sup>(36)</sup> Updated Report – Chapter 2, p. 7

<sup>(37)</sup> Updated Report – Chapter 2, p. 7-8.

<sup>(38)</sup> Updated Report – Chapter 2, p. 10, 18.

- (97) In addition, under Chinese law, the socialist market economy is developed under the leadership of the CCP. The structures of the Chinese state and of the CCP are intertwined at every level (legal, institutional, personal), forming a superstructure in which the roles of CCP and the state are indistinguishable.
- (98) Following an amendment of the Chinese Constitution in March 2018, the leading role of the CCP was given an even greater prominence by being reaffirmed in the text of Article 1 of the Constitution.
- (99) Following the already existing first sentence of the provision: “[t]he socialist system is the basic system of the People’s Republic of China” a new second sentence was inserted which reads: “[t]he defining feature of socialism with Chinese characteristics is the leadership of the Communist Party of China.”<sup>(39)</sup> This illustrates the unquestioned and evergrowing control of the CCP over the economic system of China.
- (100) This leadership and control are inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (101) The Chinese state engages in an interventionist economic policy in pursuance of goals, which coincide with the political agenda set by the CCP rather than reflecting the prevailing economic conditions in a free market<sup>(40)</sup>. The interventionist economic tools deployed by the Chinese authorities are manifold, including the system of industrial planning, the financial system, as well as the level of the regulatory environment.
- (102) First, on the level of overall administrative control, the direction of the Chinese economy is governed by a complex system of industrial planning which affects all economic activities within the country. The totality of these plans covers a comprehensive and complex matrix of sectors and crosscutting policies and is present on all levels of government.
- (103) Plans at provincial level are detailed while national plans set broader targets. Plans also specify the means in order to support the relevant industries/sectors as well as the timeframes in which the objectives need to be achieved. Some plans still contain explicit output targets.
- (104) Under the plans, individual industrial sectors and/or projects are being singled out as (positive or negative) priorities in line with the government priorities and specific development goals are attributed to them (industrial upgrade, international expansion etc.).
- (105) The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans, but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans<sup>(41)</sup>.
- (106) Second, on the level of allocation of financial resources, the financial system of China is dominated by the state-owned commercial and policy banks. Those banks, when setting up and implementing their lending policy need to align themselves with the government’s industrial policy objectives rather than primarily assessing the economic merits of a given project<sup>(42)</sup>.
- (107) The same applies to the other components of the Chinese financial system, such as the stock markets, bond markets, private equity markets etc. Also, these parts of the financial sector are institutionally and operationally set up in a manner not geared towards maximizing the efficient functioning of the financial markets but towards ensuring control and allowing intervention by the state and the CCP<sup>(43)</sup>.

<sup>(39)</sup> Available at: [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm) (accessed on 25 June 2024).

<sup>(40)</sup> Updated Report – Chapter 2, p. 29-30.

<sup>(41)</sup> Updated Report – Chapter 4, p. 57, 92.

<sup>(42)</sup> Updated Report – Chapter 6, p. 149-150.

<sup>(43)</sup> Updated Report – Chapter 6, p. 153 -171.



- (108) Third, on the level of regulatory environment, the interventions by the state into the economy take a number of forms. For instance, the public procurement rules are regularly used in pursuit of policy goals other than economic efficiency, thereby undermining market-based principles in the area. The applicable legislation specifically provides that public procurement shall be conducted in order to facilitate the achievement of goals designed by state policies. However, the nature of these goals remains undefined, thereby leaving broad margin of appreciation to the decision-making bodies <sup>(44)</sup>.
- (109) Similarly, in the area of investment, the GOC maintains significant control and influence over destination and magnitude of both state and private investment. Investment screening as well as various incentives, restrictions, and prohibitions related to investment are used by authorities as an important tool for supporting industrial policy goals, such as maintaining state control over key sectors or bolstering domestic industry <sup>(45)</sup>.
- (110) In sum, the Chinese economic model is based on certain basic axioms, which provide for and encourage manifold government interventions. Such substantial government interventions are at odds with the free play of market forces, resulting in distorting the effective allocation of resources in line with market principles <sup>(46)</sup>.

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

- (111) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (112) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular State-owned enterprises ('SOEs'). The state (and in many aspects also the CCP) not only actively formulates and oversees the implementation of general economic policies by individual SOEs, but it also claims its rights to participate in operational decision making in SOEs. This is typically done through the rotation of cadres between government authorities and SOEs, through the presence of party members on SOEs executive bodies and of party cells in companies, as well as through the shaping of the corporate structure of the SOE sector. In exchange, SOEs enjoy a particular status within the Chinese economy, which entails a number of economic benefits, in particular shielding from competition and preferential access to relevant inputs, including finance <sup>(47)</sup>.
- (113) However, CCP interventions into operational decision making have become the norm not only in SOEs, but also in private companies <sup>(48)</sup>, with CCP claiming leadership over virtually every aspect of the country's economy. Indeed, the state's influence by means of CCP structures within companies effectively results in economic operators being under the government's control and policy supervision, given how far the state and Party structures have grown together in China.

<sup>(44)</sup> Updated Report – Chapter 7, p. 204-205.

<sup>(45)</sup> Updated Report – Chapter 8, p. 207-208, 242-243.

<sup>(46)</sup> Updated Report – Chapter 2, p. 19-24, Chapter 4, p. 69, p. 99-100, Chapter 5, p. 130-131.

<sup>(47)</sup> Updated Report – Chapter 5, p. 120-131.

<sup>(48)</sup> Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See updated Report – Chapter 3, p. 47-50.

- (114) The sector of the product concerned is served both by SOEs and private companies. For instance, China Petrochemical Corp ('Sinopec') is wholly state-owned<sup>(49)</sup>, while Zhuoyue<sup>(50)</sup> and Zhejiang Jiaao Enprotech Stock Co., Ltd. ('Jiaao')<sup>(51)</sup> are private. Not only, one of the main producers of the product concerned, Beijing Haixin Energy Technology, formerly known as Beijing Sanju Environmental Protection and New Materials ('Haixin')<sup>(52)</sup>, shows a significant degree of public ownership, namely 35,22%<sup>(53)</sup>.
- (115) The GOC exerts guidance on enterprises also by setting specific objectives for the sector. For instance, NEA issued in 2023 a Notice on organizing and carrying out pilot demonstrations for the promotion and application of biodiesel ('the Notice')<sup>(54)</sup>, which directly addresses the sector of the product concerned, by aiming to "[e]xpand the application scenarios of domestic biodiesel, explore and establish a replicable and expandable policy system and development path, gradually form a demonstration effect and scale effect, and accumulate experience for the continued expansion of the promotion and application of green liquid fuels such as biodiesel"<sup>(55)</sup>. The Notice further indicates how the above-mentioned objectives should be achieved: "[b]ased on the current development status of the biodiesel industry as well as on the production and consumption, governments at all levels, enterprises and other entities applying for pilot demonstrations can choose one or more of the following methods to carry out pilot demonstrations for the promotion and application of biodiesel taking local conditions into account. At the same time, local governments are also encouraged to creatively carry out pilot demonstrations in other ways. [...] (I) Organization and reporting. The Development and Reform Commissions and Energy Bureaus of relevant provinces (autonomous regions and municipalities directly under the Central Government), the Development and Reform Commissions and Energy Bureaus of independently planned cities, the Beijing Municipal Urban Management Commission, and relevant energy companies should attach importance to the promotion and application of biodiesel, and actively organize the cities, counties (districts) and relevant companies in the administrative region to carry out the application for pilot demonstrations for the promotion and application of biodiesel. [...] (III) Guidance for creation. Our bureau will provide overall guidance for the creation of pilot demonstration areas and projects related to the promotion and application of biodiesel. The provincial leading competent department should work with relevant departments of the local government to strengthen the guidance and support for the pilot demonstration creation work of the promotion and application of biodiesel in its jurisdiction, and coordinate to solve related problems. [...] (V) Policy support. Our bureau will give priority to supporting eligible pilot demonstration projects in the medium- and long-term loan projects for the manufacturing industry, and actively promote the establishment of biodiesel carbon emission reduction methodology, promote the inclusion of biodiesel in the national certified voluntary emission reduction (CCER) mechanism, and accelerate the green value development of biodiesel"<sup>(56)</sup>.
- (116) Similarly, in 2023 the National Development and Reform Commission ('NDRC') issued the Guiding Opinion on promoting green innovation and high-quality development of the refining industry, which actively promotes the "[development of] biomass liquid fuels such as biodiesel and biojet fuel using waste grease as the main raw material"<sup>(57)</sup>.

<sup>(49)</sup> Sinopec is a SOE under SASAC. See <https://www.fitchratings.com/research/corporate-finance/china-petroleum-chemical-corporation-sinopec-08-12-2020#:~:text=Sinopec%20Group%20is%20wholly%20owned%20by%20the%20China,policy%20role%20in%20implementing%20China's%20retail%20fuel-price%20mechanism> (accessed on 25 June 2024).

<sup>(50)</sup> The company is part of the Zhuoneng Group. See <http://www.zyxy.com/> (accessed on 25 June 2024). See the company's 2022 Annual Report, p. 65, available at <https://q.stock.sohu.com/newpdf/202352616191.pdf> (accessed on 25 June 2024). The company has five wholly owned subsidiaries, namely Xiamen Excellence Biomass Energy Co., Ltd., Fujian Zhishang Biomass Materials Development Co., Ltd., Longyan Excellence Bio-based Materials Co., Ltd., Longyan Excellence Synthetic Resin Co., Ltd. and Longyan Zhishang New Materials Co., Ltd. (see p. 32 of the 2022 Annual Report).

<sup>(51)</sup> The company is part of the Jiaao Group. See <http://jiaaoenprotech.com/> (accessed on 25 June 2024). For the list of shareholders, see the company's 2023 Annual Report, p. 58, available at [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH\\_STOCK/2024/2024-4/2024-04-27/10102811.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2024/2024-4/2024-04-27/10102811.PDF) (accessed on 25 June 2024).

<sup>(52)</sup> See at: [www.hxnk.com](http://www.hxnk.com) (accessed on 25 June 2024).

<sup>(53)</sup> See the company's 2022 Annual Report, p. 105, available at <https://static.cninfo.com.cn/finalpage/2023-04-07/1216342322.PDF> (accessed on 25 June 2024).

<sup>(54)</sup> See [https://zfxgk.nea.gov.cn/2023-11/13/c\\_1310751363.htm](https://zfxgk.nea.gov.cn/2023-11/13/c_1310751363.htm) (accessed on 23 July 2024).

<sup>(55)</sup> Ibid., II. Main objectives.

<sup>(56)</sup> Ibid., III. Pilot demonstration content.

<sup>(57)</sup> See [https://www.ndrc.gov.cn/xxgk/zcfb/tz/202310/t20231025\\_1361500.html](https://www.ndrc.gov.cn/xxgk/zcfb/tz/202310/t20231025_1361500.html) (accessed on 25 June 2024).

- (117) Government control and policy supervision can be also observed at the level of the relevant industry associations <sup>(58)</sup>.
- (118) For instance, China Petroleum and Chemical Industry Federation ('CPCIF') <sup>(59)</sup> states in Art. 3 of its Articles of Association that the organisation “establishes an organization of the Communist Party of China, carries out Party activities, and provides the necessary conditions for the activities of the Party organization” and “accepts the professional guidance, supervision and management by the entities in charge of registration and management, by entities in charge of Party building, as well as by the relevant administrative departments in charge of industry management” <sup>(60)</sup>.
- (119) CPCIF has established a Biochemistry Industry and Biomass Energy Committee, whose goal is to:
- “(1) Study the overall development strategy and planning of the biochemical and biomass energy industry, and provide support and suggestions for the government to formulate industrial policies and development plans;
- (2) Coordinate and integrate industry resources, assist relevant governmental departments in promoting the implementation of major technical projects of biochemical and biomass energy, and promote the transformation of scientific and technological achievements” <sup>(61)</sup>.
- (120) Sinopec is among the members of CPCIF <sup>(62)</sup>.
- (121) The Biomass Energy Industry Branch ('BEIB') <sup>(63)</sup> of the China Association for the Promotion of Industry Development, according to Art. 4 of its Management Measures, pursues the objective of “organize the biomass energy industry to implement the national new energy and biomass energy development strategies, plans and policies in accordance with the national energy, environmental protection and modern agricultural development requirements, strengthen the self-management of the biomass energy industry, improve the level of industry development” <sup>(64)</sup>.
- (122) Consequently, privately owned producers in the sector of the product concerned are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the sector are subject to policy supervision and guidance.
- 3.2.1.3. Significant distortions according to Article 2(6a)(b), second indent of the basic Regulation: state presence in firms allowing the state to interfere with respect to prices or costs
- (123) The GOC is in position to interfere with prices and costs through state presence in firms. Indeed, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions.
- (124) According to China's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution <sup>(65)</sup>) and the company shall provide the necessary conditions for the activities of the Party organisation.
- (125) In the past, this requirement appeared not to have always been followed or strictly enforced. However, since at least 2016 the CCP has been reinforcing its claims to control business decisions in companies as a matter of political principle <sup>(66)</sup>, including exercising pressure on private companies to put “patriotism” first and to follow Party discipline <sup>(67)</sup>.

<sup>(58)</sup> Updated Report – Chapter 2, p. 24-27.

<sup>(59)</sup> See <http://www.cpcif.org.cn/> (accessed on 25 June 2024).

<sup>(60)</sup> See <http://www.cpcif.org.cn/detail/40288043661e27fb01661e386a3f0001?e=1> (accessed on 25 June 2024).

<sup>(61)</sup> See <http://www.cpcif.org.cn/detail/4d477309-96db-4b64-ac0c-e87f00027bb2> (accessed on 25 June 2024).

<sup>(62)</sup> See <http://www.cpcif.org.cn/list/40288043661dc14701661ddbe0980010> (accessed on 25 June 2024).

<sup>(63)</sup> See <https://www.beipa.org.cn/hyqy> (accessed on 25 June 2024).

<sup>(64)</sup> See <https://www.beipa.org.cn/glbj> (accessed on 25 June 2024).

<sup>(65)</sup> Updated Report – Chapter 3, p. 40.

<sup>(66)</sup> See for example: Blanchette, J. - Xi's Gamble: *The Race to Consolidate Power and Stave off Disaster*; Foreign Affairs, vol. 100, no. 4, July/August 2021, pp. 10-19.

<sup>(67)</sup> Updated Report – Chapter 3, p. 41.

- (126) Already in 2017, it was reported that party cells existed in 70% of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies <sup>(68)</sup>. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product concerned and the suppliers of their inputs.
- (127) In addition, on 15 September 2020 a document titled General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era ('the Guidelines') <sup>(69)</sup> was released, which further expanded the role of the Party committees in private enterprises.
- (128) Section II.4 of the Guidelines states: "[w]e must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area"; and section III.6 states: "[w]e must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers". The Guidelines thus emphasise and seek to increase the role of the CCP in companies and other private sector entities <sup>(70)</sup>.
- (129) The investigation confirmed that overlaps between managerial positions and CCP membership/Party functions exist also in the biodiesel sector. To provide an example, several directors of Haixin, as well as the general manager and the executive deputy general manager are members of the CCP <sup>(71)</sup>.
- (130) Similarly, the current director and Deputy General Manager of Jiaao is a Representative at the 14<sup>th</sup> People's Congress of Jiaying City, Zhejiang Province <sup>(72)</sup>. Moreover, information from 2023 shows how the company's Party branch was directly interfering with the operational decision-making: "[t]he branch representatives attended 100 % of the company's shareholders' meetings, board of directors, and board of supervisors in 2023, and participated in 100 % of major decision-making. The branch provided guarantees for the scientific decision-making of the company's management" <sup>(73)</sup>.
- (131) Moreover, numerous senior managers of Sinopec are CCP members, including several directors and the Chairman of the company. For instance, Sinopec's Chairman is also the Secretary of the Party Organization. <sup>(74)</sup> Party structures within the group are involved in numerous aspects of day-to-day business operations, for instance when it comes to strengthening corporate governance: "[a]ll proposals submitted to the board of directors for review, such as the transformation and upgrading of refining and chemical enterprises and the carbon peak action plan, have been passed and implemented in an orderly and effective manner, realizing the unity of the Party group's leadership role and the board of directors and management team's performance of their duties in accordance with the law and the charter" <sup>(75)</sup>.
- (132) The state's presence and intervention in the financial markets as well as in the provision of raw materials and inputs further have an additional distorting effect on the market <sup>(76)</sup>. Thus, the state presence in firms, in the biodiesel and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

<sup>(68)</sup> Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 25 June 2024).

<sup>(69)</sup> General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era: [www.gov.cn/zhengce/2020-09/15/content\\_5543685.htm](http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm) (accessed on 25 June 2024).

<sup>(70)</sup> Financial Times (2020) - Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 25 June 2024).

<sup>(71)</sup> See the company's 2022 annual report, available at <https://static.cninfo.com.cn/finalpage/2023-04-07/1216342322.PDF> (accessed on 25 June 2024).

<sup>(72)</sup> See [https://vip.stock.finance.sina.com.cn/corp/view/vCI\\_CorpManagerInfo.php?stockid=603822&Pcode=30407218&Name=%CD%F5%D1%DE%CC%CE](https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=603822&Pcode=30407218&Name=%CD%F5%D1%DE%CC%CE) (accessed on 25 June 2024).

<sup>(73)</sup> See the company's 2023 annual report, p. 10, available at [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSES\\_H\\_STOCK/2024/2024-4/2024-04-27/10102811.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSES_H_STOCK/2024/2024-4/2024-04-27/10102811.PDF) (accessed on 25 June 2024).

<sup>(74)</sup> See the company's 2023 annual report, p. 34 and followings, available at <http://www.sinopec.com/listco/Resource/Pdf/2024032406.pdf> (accessed on 25 June 2024).

<sup>(75)</sup> See <http://www.sinopecgroup.com/group/gywm/ddjs.shtml> (accessed on 25 June 2024).

<sup>(76)</sup> Updated Report – Chapter 14, Sections 14.1 to 14.3.

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

- (133) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central, provincial, and local governments must focus on. Relevant plans exist at all levels of government and cover virtually all economic sectors. The objectives set by the planning instruments are of a binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government.
- (134) Overall, the system of planning in China results in resources being driven to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces <sup>(77)</sup>.
- (135) The Chinese authorities have enacted several policies guiding the functioning of the sector of the product concerned.
- (136) For instance, the 14<sup>th</sup> FYP on the development of bioeconomy <sup>(78)</sup> sets the following objectives “[t]argeted selection, promotion and application of new oil and energy forest varieties with high yield, high resistance and fast growth, construction of bioenergy bases according to local conditions, strengthening thermochemical technology innovation, and promoting the application of high-efficiency and low-cost bioenergy. Carry out cellulosic ethanol, biodiesel, and bionatural gas industry demonstration sites in urban and rural areas where organic waste is concentrated [...]. Carry out biodiesel promotion pilot projects in areas where conditions permit and promote the demonstration and application of bio-aviation fuel” <sup>(79)</sup>.
- (137) Furthermore, according to the 14<sup>th</sup> FYP on renewable energy <sup>(80)</sup>, the GOC “[w]ill support the research, development and expansion of advanced technological equipment in bio-diesel and bio-kerosene production sectors” <sup>(81)</sup> and “[w]ill continue to promote the commercial applications of clean liquid fuels such as ethanol and bio-diesel, and based on scientific research on power generation and safety performance, we will expand the use of petrol and diesel in heavy vehicles, aeroplanes and ships” <sup>(82)</sup>.
- (138) The 14<sup>th</sup> FYP on science and technology innovation in energy <sup>(83)</sup> aims to “[f]orm a technical system for the efficient synthesis/conversion of biomass as raw materials to produce transportation fuels/low-carbon energy products. [Demonstration and Testing] Develop and demonstrate a series of technologies such as efficient conversion of various types of biomass raw materials into ethanol, thermal conversion to produce fuel oil, and continuous thermochemical conversion of oils to produce biodiesel” <sup>(84)</sup> and to “[c]arry out bio-liquid fuel project demonstrations such as bio-fuel ethanol, bio-diesel, bio-fuel [...]” <sup>(85)</sup>.
- (139) The Guidance Catalogue for the Industry Structural Adjustment (‘Guidance Catalogue’) directly addresses the sector of the product concerned by listing it as an encouraged industry, while vegetable oil-to-biofuel projects that are not in compliance with national plans and industrial policies are listed as a restricted one <sup>(86)</sup>.

<sup>(77)</sup> Updated Report – Chapter 4, p. 56-57, 99-100.

<sup>(78)</sup> See <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202205/P020220510324220702505.pdf> (accessed on 25 June 2024).

<sup>(79)</sup> Ibid., p. 16-17.

<sup>(80)</sup> See <https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202206/P020220602315308557623.pdf> (accessed on 25 June 2024).

<sup>(81)</sup> Ibid., Section III.4.

<sup>(82)</sup> Ibid., Section IV.4.

<sup>(83)</sup> See [http://zfxgk.nea.gov.cn/1310540453\\_16488637054861n.pdf](http://zfxgk.nea.gov.cn/1310540453_16488637054861n.pdf) (accessed on 25 June 2024).

<sup>(84)</sup> Ibid., Section III Key tasks.

<sup>(85)</sup> Ibid., Table 1, p. 16.

<sup>(86)</sup> See the 2019 Guidance Catalogue, p. 9 and p. 72 for encouraged sectors, p. 81 for restricted ones (in force until 31 January 2024), available at [https://www.gov.cn/xinwen/2019-11/06/content\\_5449193.htm](https://www.gov.cn/xinwen/2019-11/06/content_5449193.htm) (accessed on 25 June 2024). See the 2024 Guidance Catalogue, p. 19 and p. 42 for encouraged sectors and p. 85 for restricted ones (in force as of 1 February 2024) available at [https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/t20231229\\_1362999.html](https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/t20231229_1362999.html) (accessed on 25 June 2024).

- (140) The product concerned also benefits from tax support. First, biodiesel raw materials are included in the 2022 edition of the Catalogue of comprehensive use products and services benefitting from preferential VAT rates, with a tax refund rate of 70 %<sup>(87)</sup>. Second, the product concerned is also exempted from consumption tax<sup>(88)</sup> when it meets the following conditions: “(1) The proportion of waste animal oil and vegetable oil in production raw materials shall not be less than 70 %. (2) The pure biodiesel produced complies with the national “Diesel Engine Fuel Blended Biodiesel (BD100)” standard”<sup>(89)</sup>. Third, the enterprises benefit from a 90 % discount on the taxable income originating from biodiesel if the resources specified in the Catalogue of Enterprise Income Tax Incentives for Comprehensive Utilization of Resources (‘Income Tax Incentives Catalogue’) are used as the main raw materials<sup>(90)</sup>. In particular, the Income Tax Incentives Catalogue regulates biodiesel and industrial-grade mixed oil made from waste biomass oil and waste lubricating oil, requiring that “1. More than 90 % of the raw materials of the product come from the listed resources. 2. The product complies with national and industrial standards”<sup>(91)</sup>.
- (141) On the province level, according to the Jiangsu 14<sup>th</sup> FYP on the high-end development of chemical industry<sup>(92)</sup> the government authorities are set to shape the sector’s industrial layout as follows: “[p]romote the substitution of non-fossil energy and focus on promoting the large-scale application of biofuels, waste-derived fuels and other energy sources in key areas”<sup>(93)</sup>.
- (142) The biodiesel sector is heavily supported also by the Shanghai Municipality. The 2021 Shanghai Measures directly addresses the sector of the product concerned (see also recital (84)(91)). For instance, it sets a price formation mechanism: “B5 biodiesel preparation and sales enterprises purchase BD100 biodiesel from disposal enterprises according to the O# diesel wholesale price announced by the city’s price department (the O# diesel wholesale price is the highest published retail price minus 300 CNY/tonne, the same below) [...] When the wholesale price of O# diesel is lower than 6 000 yuan/ton, municipal fiscal funds will subsidize the portion lower than 6 000 CNY/tonne to the disposal enterprise. During the implementation of emergency subsidies, disposal companies should purchase raw oil at a price of no less than 3 600 CNY/tonne”<sup>(94)</sup>. Furthermore, it regulates a Financial Support Policy: “[t]he municipal finance arranges funds to subsidize B5 biodiesel blending and sales enterprises based on 80 % of the actual discount compared with O# diesel for B5 biodiesel sold at B5 biodiesel gas stations, floating gas stations and internal gas stations. [...] Every time a B5 biodiesel blending and sales enterprise determines or adjusts the retail price of gasoline and diesel at gas stations, it must clearly stipulate the price of B5 biodiesel or the preferential margin compared with O# diesel, and send a copy of the document to the relevant competent authorities. All gas stations should take the initiative to disclose the sales prices of O# diesel and B5 biodiesel and accept social supervision. [...] Financial subsidies are subject to total volume control, and the total application volume of subsidized B5 biodiesel shall not exceed 600 000 tonnes. If the volume generated, collected, transported, disposed, prepared and sold in this city indeed exceeds 600 000 tonnes, it must be jointly reviewed and reported to the Municipal Greening and City Appearance Bureau, Municipal Economic and Information Technology Commission, Municipal Market Supervision Bureau, Municipal Development and Reform Commission, and Municipal Finance Bureau. Adjustments will be made after the city government agrees”<sup>(95)</sup>. The subsidy funds involved in the above-mentioned measures are allocated from Shanghai’s special funds for energy conservation and emission reduction<sup>(96)</sup>.

<sup>(87)</sup> See <https://www.chinatax.gov.cn/chinatax/n359/c5171843/content.html> (accessed on 25 June 2024).

<sup>(88)</sup> See [https://www.nea.gov.cn/2021-08/31/c\\_1310158873.htm](https://www.nea.gov.cn/2021-08/31/c_1310158873.htm) (accessed on 25 June 2024).

<sup>(89)</sup> See the Circular of the Ministry of Finance and the State Administration of Taxation on the exemption of consumption tax on the production of pure biodiesel from waste animal and vegetable oils, available at [https://guangdong.chinatax.gov.cn/gdsw/zjfg/2011-02/23/content\\_6fd5be578a1d42a8b9d5929caf78ed85.shtml](https://guangdong.chinatax.gov.cn/gdsw/zjfg/2011-02/23/content_6fd5be578a1d42a8b9d5929caf78ed85.shtml) (accessed on 25 June 2024). For more clarification, see also the Notice of the Ministry of Finance and the State Administration of Taxation on clarifying the scope of application of consumption tax exemption for the production of pure biodiesel from waste animal and vegetable oils, available at [http://www.mof.gov.cn/gkml/caizhengwengao/2011caizhengwengao/wg201109/201112/t20111229\\_620030.htm](http://www.mof.gov.cn/gkml/caizhengwengao/2011caizhengwengao/wg201109/201112/t20111229_620030.htm) (accessed on 25 June 2024).

<sup>(90)</sup> See 国家税务总局上海市税务局 (accessed on 25 June 2024).

<sup>(91)</sup> See [https://www.gov.cn/zhengce/zhengceku/2021-12/29/content\\_5665116.htm](https://www.gov.cn/zhengce/zhengceku/2021-12/29/content_5665116.htm), Annex 2, line 3.6 (accessed on 25 June 2024).

<sup>(92)</sup> See <http://www.jsjnw.org/news/210918-2614.html> (accessed on 25 June 2024).

<sup>(93)</sup> *Ibid.*, p. 16.

<sup>(94)</sup> See [https://fgw.sh.gov.cn/fgw\\_gfxwj/20211123/8acf7d3bee904b8587cefd3fa37d3655.html](https://fgw.sh.gov.cn/fgw_gfxwj/20211123/8acf7d3bee904b8587cefd3fa37d3655.html), Art. 4 (accessed on 25 June 2024).

<sup>(95)</sup> *Ibid.*, Art. 5.

<sup>(96)</sup> *Ibid.*, Art. 6.

- (143) The allocation of special funds for the promotion and application of biodiesel from waste kitchen oil in 2021, has benefitted, for instance, Sinopec Sales Co., Ltd. Shanghai Petroleum Branch – Biodiesel, that received a financial support of 129 million CNY <sup>(97)</sup>. In 2022, it received 152 million CNY <sup>(98)</sup>.
- (144) Through these and other means, the GOC therefore directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (145) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives concerning the sector. Such measures impede market forces from operating freely.
- 3.2.1.5. Significant distortions according to Article 2(6a)(b), fourth indent of the basic Regulation: the lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws
- (146) According to the information on file, the Chinese bankruptcy system delivers inadequately on its own main objectives such as to fairly settle claims and debts and to safeguard the lawful rights and interests of creditors and debtors. This appears to be rooted in the fact that while the Chinese bankruptcy law formally rests on principles that are similar to those applied in corresponding laws in countries other than China, the Chinese system is characterised by systematic under-enforcement.
- (147) The number of bankruptcies remains notoriously low in relation to the size of the country's economy, not least because the insolvency proceedings suffer from a number of shortcomings, which effectively function as a disincentive for bankruptcy filings. Moreover, the role of the state in the insolvency proceedings remains strong and active, often having direct influence on the outcome of the proceedings <sup>(99)</sup>.
- (148) In addition, the shortcomings of the system of property rights are particularly obvious in relation to ownership of land and land-use rights in China. <sup>(100)</sup> All land is owned by the state (collectively owned rural land and State-owned urban land) and its allocation remains solely dependent on the state. There are legal provisions that aim at allocating land use rights in a transparent manner and at market prices, for instance by introducing bidding procedures. However, these provisions are regularly not respected, with certain buyers obtaining their land for free or below market rates <sup>(101)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(102)</sup>.
- (149) Much like other sectors in the Chinese economy, the producers of the product concerned are subject to the ordinary rules on Chinese bankruptcy, corporate, and property laws. That has the effect that these companies, too, are subject to the top-down distortions arising from the discriminatory application or inadequate enforcement of bankruptcy and property laws. Those considerations, on the basis of the evidence available, appear to be fully applicable also in the sector of the product concerned. The present investigation revealed nothing that would call those findings into question.
- (150) In light of the above, the Commission concluded that there was discriminatory application or inadequate enforcement of bankruptcy and property laws in the sector of the product concerned.

<sup>(97)</sup> See <https://www.shanghai.gov.cn/nw44506/index.html> (accessed on 25 June 2024) and <https://www.shanghai.gov.cn/cmsres/90/90d8a506044d4aa59245417d64bb5a6f/55bca2cbfc2a0da25f04af8ba85b25dd.pdf> (accessed on 25 June 2024).

<sup>(98)</sup> See <https://www.shanghai.gov.cn/cmsres/9b/9bcc5befac8441f380ad31c0dc3eefe4/6b5bb8f7075a3d770ef729307ddd0906.pdf> (accessed on 25 June 2024).

<sup>(99)</sup> Updated Report – Chapter 6, p. 171-179.

<sup>(100)</sup> Updated Report – Chapter 9, p. 260-261.

<sup>(101)</sup> Updated Report – Chapter 9, p. 257-260.

<sup>(102)</sup> Updated Report – Chapter 9, p. 252-254.

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

- (151) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation, in particular those on freedom of association and on collective bargaining <sup>(103)</sup>.
- (152) Under national law, only one trade union organisation is active. However, this organisation lacks independence from the state authorities and its engagement in collective bargaining and protection of workers' rights remains rudimentary <sup>(104)</sup>. Moreover, the mobility of the Chinese workforce is restricted by the household registration system, which limits access to the full range of social security and other benefits to local residents of a given administrative area.
- (153) This typically results in workers who are not in possession of the local residence registration finding themselves in a vulnerable employment position and receiving lower income than the holders of the residence registration <sup>(105)</sup>. Those findings lead to the distortion of wage costs in China.
- (154) No evidence was submitted to the effect that the biodiesel sector would not be subject to the Chinese labour law system described. The sector is thus affected by the distortions of wage costs both directly (when making the product concerned or the main raw material for its production) as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in China).

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

- (155) Access to capital for corporate actors in China is subject to various distortions.
- (156) First, the Chinese financial system is characterised by the strong position of state-owned banks <sup>(106)</sup>, which, when granting access to finance, take into consideration criteria other than the economic viability of a project. Similar to non-financial SOEs, the banks remain connected to the state not only through ownership but also via personal relations (the top executives of large state-owned financial institutions are ultimately appointed by the CCP) <sup>(107)</sup> and they regularly implement public policies designed by the GOC.
- (157) In doing so, the banks comply with an explicit legal obligation to conduct their business in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the state <sup>(108)</sup>. While it is acknowledged that various legal provisions refer to the need to respect normal banking behaviour and prudential rules such as the need to examine the creditworthiness of the borrower, the overwhelming evidence, including findings made in trade defence investigations, suggests that these provisions play only a secondary role in the application of the various legal instruments.

<sup>(103)</sup> Updated Report – Chapter 13, p. 360-361, 364-370.

<sup>(104)</sup> Updated Report – Chapter 13, p. 366.

<sup>(105)</sup> Updated Report – Chapter 13, p. 370-373.

<sup>(106)</sup> Updated Report – Chapter 6, p. 137-140.

<sup>(107)</sup> Updated Report – Chapter 6, p. 146-149.

<sup>(108)</sup> Updated Report – Chapter 6, p. 149.



- (158) For example, the GOC has clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the state's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues<sup>(109)</sup>. Also, the performance evaluation criteria of commercial banks have now to, notably, take into account how entities “*serve the national development objectives and the real economy*”, and in particular how they “*serve strategic and emerging industries*”.<sup>(110)</sup>
- (159) Furthermore, bond and credit ratings are often distorted for a variety of reasons including the fact that the risk assessment is influenced by the firm's strategic importance to the GOC and the strength of any implicit guarantee by the government<sup>(111)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important<sup>(112)</sup>. This results in a bias in favour of lending to SOEs, large well-connected private firms and firms in key industrial sectors, which implies that the availability and cost of capital is not equal for all players on the market.
- (160) Second, borrowing costs have been kept artificially low to stimulate investment growth. This has led to the excessive use of capital investment with ever lower returns on investment. This is illustrated by the growth in corporate leverage in the state sector despite a sharp fall in profitability, which suggests that the mechanisms at work in the banking system do not follow normal commercial responses.
- (161) Thirdly, although nominal interest rate liberalization was achieved in October 2015, price signals are still not the result of free market forces but are influenced by government-induced distortions. The share of lending at or below the benchmark rate still represented at least one-third of all lending as of the end of 2018<sup>(113)</sup> and, in 2020, official media in China have reported that the CCP called for “*guiding the loan market interest rate downwards*”<sup>(114)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (162) Overall credit growth in the China indicates a worsening efficiency of capital allocation without any signs of credit tightening that would be expected in an undistorted market environment. As a result, non-performing loans have increased rapidly, with the GOC a number of times opting to either avoid defaults, thus creating so called “zombie” companies, or to transfer the ownership of the debt (e.g. via mergers or debt-to-equity swaps), without necessarily removing the overall debt problem or addressing its root causes.
- (163) In essence, despite the steps that have been taken to liberalize the market, the corporate credit system in China is affected by significant distortions resulting from the continuing pervasive role of the state in the capital markets. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

<sup>(109)</sup> See official policy document of the China Banking and Insurance Regulatory Commission of 28 August 2020: *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (accessed on 25 June 2024). The Plan instructs to “*further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector*”. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: “*we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management*”.

<sup>(110)</sup> See CBIRC's *Notice on the Commercial banks performance evaluation method*, issued on 15 December 2020: [http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104\\_3638904.htm](http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm) (accessed on 25 June 2024).

<sup>(111)</sup> Updated Report – Chapter 6, p. 157-158.

<sup>(112)</sup> Updated Report – Chapter 6, p. 150-152, 156-160, 165-171.

<sup>(113)</sup> OECD (2019), *OECD Economic Surveys: China 2019*, OECD Publishing, Paris, p. 29, available at: [https://doi.org/10.1787/eco\\_surveys-chn-2019-en](https://doi.org/10.1787/eco_surveys-chn-2019-en) (accessed on 25 June 2024).

<sup>(114)</sup> [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 25 June 2024).

- (164) In the sector of the product concerned, for instance, the 2023 NEA Notice mentioned in recital (115)(122), mandates that “[a]ccording to the actual situation, each region will increase the guarantee of land and sea use and other factors for pilot demonstration creation projects, optimize the project approval process, and study and provide financial support to create good conditions for the construction of pilot demonstration areas and projects”<sup>(115)</sup>.
- (165) No evidence was submitted in the present investigation demonstrating that the sector of the product concerned is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

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

- (166) The Commission noted that the distortions described in the updated Report are characteristic for the Chinese economy. The evidence available shows that the facts and features of the Chinese system as described above as well as in Part I of the updated Report apply throughout the country and across the sectors of the economy. The same holds true for the description of the factors of production as set out above and in Part II of the updated Report.
- (167) The Commission recalls that in order to produce the product concerned, certain inputs are needed. When the producers of the product concerned purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors. These distortions were described in detail above, in particular in sections 3.2.1 to 3.2.1.7. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, biodiesel producers being subject to those rules as any other economic operator in China. The distortions have therefore a direct bearing on the cost structure of the product concerned.
- (168) As a consequence, not only the domestic sales prices of the product concerned are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the updated Report.
- (169) Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout China. This means, for instance, that an input that in itself was produced in China by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.

#### 3.2.1.9. Comments submitted by interested parties on the finding of significant distortions

- (170) CCCMC, in the observations submitted on 26 January 2024, expressed its general position that the methodology prescribed by Article 2(6a) of the basic Regulation for establishing the normal value is incompatible with the WTO agreements and jurisprudence, in particular Articles 2.1 and 2.2 of the WTO Anti-dumping Agreement (‘ADA’), which provide the standard methodologies in order to establish the normal value. In this regard, CCCMC submitted the following claims.
- (171) First, Section 15 of China’s Protocol of Accession to the WTO allowed WTO members to derogate from the above-mentioned standard methodology in determining normal value and price comparability only until 11 December 2016, when such derogation expired. Since then, EU was expected to adhere to the standard methodologies provided for under Article 2.1 and 2.2 ADA to establish the normal value of the Chinese exporting producers, therefore using the actual prices and costs of the Chinese exporting producers.

<sup>(115)</sup> See [https://zfxgk.nea.gov.cn/2023-11/13/c\\_1310751363.htm](https://zfxgk.nea.gov.cn/2023-11/13/c_1310751363.htm), V, Policy Support (accessed on 25 June 2024).

- (172) Second, the methodology provided for in the ADA to establish the normal value does not allow the use of information other than information pertaining to the exporting country, which implies that the investigating authority cannot calculate normal value based on undistorted prices or benchmarks in an appropriate representative country (other than the exporting country) on the grounds of the existence of significant distortions, the notion of which does not exist in the ADA. To support its claim, CCCMC cited the Appellate Body report in DS473 EU – Biodiesel (Argentina) dispute.
- (173) These arguments could not be accepted. The Commission considered that the provision of Article 2(6a) is fully consistent with the European Union's WTO obligations and the jurisprudence cited by CCCMC. Indeed, the existence of significant distortions 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 envisages 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. The Appellate Body report in DS473 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. In any event, WTO law as interpreted by the Appellate Body in DS437, allows the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated.
- (174) As regards to commitments under section 15 of China's Protocol of Accession to the WTO, the Commission pointed out that in anti-dumping proceedings concerning products from China, the parts of section 15 of the Protocol that have not expired continue to apply when determining normal value.
- (175) Since the Commission has concluded in section 3.2.1 that it is appropriate to apply Article 2(6a) of the basic Regulation in this investigation and the provision is fully consistent with WTO rules, these claims were rejected.
- (176) CCCMC, in its observations, further claimed that the complainant did not find sufficient evidence of significant distortions affecting prices and costs in China. In this regard CCCMC submitted a number of arguments.
- (177) First, in order to demonstrate the existence of significant distortions and the governmental supervision, guidance and intervention in the biodiesel sector, the complainant relied on documents which are either outdated – such as the Report – or too general and non-binding – such as the Strategic Action Plan for Energy Development (2014-2020), which has now expired, and the 14<sup>th</sup> FYP (2021-2025) for Renewable Energy Development.
- (178) Second, the complainant also relied on several past Commission investigations, which either have no temporal correlation with the present case or concern different products, industries and sectors. CCCMC recalled that, as held by the Appellate Body in DS379 US – AD and CVD (China): “[M]erely incorporating by reference findings from one determination into another determination will normally not suffice as a reasoned and adequate explanation. Nonetheless, where there is close temporal and substantive overlap between the two investigations, such cross reference may, exceptionally, suffice”<sup>(116)</sup>. Thus, considering the lack of temporal and substantive correlation between such past investigations and the present case, a simple reference to the Commission findings in such investigations does not serve as sufficient evidence of substantial distortions in the Chinese biodiesel industry.
- (179) Third, in order to demonstrate substantial government intervention affecting domestic prices and costs, the complainant adduced that many enterprises in China are state-owned. However, state-ownership does not constitute sufficient evidence of “meaningful control”, “entrustment”, “direction” by the Government or “state interference” with respect to prices or costs in a given industry.

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<sup>(116)</sup> Appellate Body Report, para. 354.

- (180) Fourth, in any case, the complainant did not provide evidence to prove that government intervention is the cause of “significant distortions” affecting the Chinese biodiesel producers’ prices and/or costs. In the absence of any such evidence, it cannot be assumed that the prices and costs of the Chinese biodiesel producers are not the result of free market forces.
- (181) The Commission could not accept CCCMC’s arguments concerning (the alleged lack of) evidence of significant distortions in China for the following reasons.
- (182) First, even if certain Chinese policy documents, such as the FYPs of the 13<sup>th</sup> planning cycle referred to in the Report, have expired in the meantime, the types and extent of distortions described in the Report remain in place in China. This is because the core legislation – including the Chinese Constitution, the CCP Constitution, as well as numerous secondary laws - maintains the elements which result in distortions in the sense of Article 2(6a) of the basic Regulation and which the Report describes in detail. The complainant was therefore right to rely on the Report as a source of information pointing to the existence of significant distortions. The Commission recalled in this context the specific standard of evidence at initiation pursuant to Article 5(9) of the basic Regulation (see recital (186) for more details). In any event, far from relying solely on the evidence in the Report, the complainant referred to a number of additional distortive elements in the biodiesel sector in China, as described in recitals (80) - (90) above.
- (183) Moreover, the Commission disagreed that the 14<sup>th</sup> FYP for Renewable Energy Development, as well as other FYPs, merely represent a non-binding guideline. To the contrary, the Commission recalled that the Chinese system of planning sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. As described in detail in the updated Report, the objectives set by the planning instruments are in fact of binding nature, with the planning system resulting in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces.
- (184) Second, the Commission recalled that indeed in DS379, the Appellate Body’s ruling explicitly set out that cross referencing from one determination into another is allowed, where there is close temporal and substantive overlap between the two investigations. Such substantive overlap clearly exists between the present investigation and the investigations referred to by the complainant, given in particular that those investigations analysed policies and rules which are of general application throughout the Chinese economy, across all sectors, and therefore influence also the sector of the product concerned, such as the GOC and CCP influence over companies and/or the fact that the system of planning in the PRC results in resources being allocated in line with industrial policies’ objectives. Furthermore, the finding of the Appellate Body recalled by CCCMC concerned final determination rather than sufficiency of evidence at an initiation.
- (185) Third, in relation to state-ownership, the Commission explained in the updated Report the all-encompassing influence that the GOC and the CCP maintain over SOEs, as well as the relevant legal and organisational feature which provide the Chinese authorities influence over the market conduct also in the case of privately owned companies (see, in particular, section 3.2.1.2). Furthermore, the Commission recalled that, pursuant to Article 2(6a)(b) of the basic Regulation, the Commission does not assess whether state ownership amounts to “meaningful control”, “entrustment”, “direction” or “state interference” by the Government with respect to prices or costs in a given industry. Instead, the Commission determines whether 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. This in turn is one of the elements the impact of which is to be taken into account when assessing the existence of significant distortions.

- (186) Fourth, as confirmed by the General Court in *Viraj Profiles* quantity and quality of the evidence necessary to meet the criteria of the sufficiency of the evidence for the purpose of initiating an investigation is different from that which is necessary for the purpose of a preliminary or final determination of the existence of dumping, injury or of a causal link.<sup>(117)</sup> The complaint met the standards set in Article 5(9) of the basic Regulation, in combination with Article 2(6a)(d). Indeed, as indicated in the Notice of Initiation, the Commission considered at the initiation stage that there was sufficient evidence pursuant to Article 5(9) of the basic Regulation tending to show that, due to significant distortions affecting prices and costs, the use of domestic prices and costs in the PRC would be inappropriate, thus warranting the initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. The Commission therefore proceeded to prove such distortions in sections 3.2.1.1 to 3.2.1.8.
- (187) Therefore, the Commission rejected CCCMC's claims.
- (188) Zhuoyue, in their observations submitted on 15 March 2024, expressed their general position that Article 2(6a) of the basic Regulation is not compatible with WTO law.
- (189) Since this claim is similar to the ones CCCMC sustained, the Commission rejected it for the reasons described above (see recitals (173) and (174)).
- (190) Zhuoyue argued as well that the complainant failed to demonstrate the existence of significant distortions and that there are no significant distortions in China's biodiesel industry. The Commission noted that the claims raised by Zhuoyue with respect to the complainant's alleged failure to show distortions are essentially identical to the ones CCCMC sustained and therefore are to be rejected for the reasons described above (see recitals (182)(184) and (186)). Nevertheless, Zhuoyue submitted the following additional claims.
- (191) First, the EU has adopted EU-wide market measures that substantially correspond to similar Chinese measures, including providing subsidies to EU industries to promote their adherence to new EU industrial policy objectives (which themselves reflect Chinese government industrial policy objectives) and intervention in corporate investment and decision-making.
- (192) Second, Zhuoyue is a privately owned enterprise, without any governmental background, so its operations are not subject to any intervention or influence by the GOC. The complainant cited several national programs that the company has undertaken (see recital (82)), but such programs focused on technology research and development and are meant to encourage and promote innovation and development of technologies in certain industries. They do not have any influence on the cost or price of products of Chinese producers or free market force.
- (193) Third, the complainant's allegations on government intervention due to the nature of state-owned enterprises and connections between the CCP and Chinese biodiesel producers are baseless. Indeed, according to Art. 6 of Law of the People's Republic of China on State-owned Assets in Enterprises ('SOE law'), "[t]he State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises". This provision is mandatory and therefore, no matter whether a producer is state-owned or not, the operation of such producer is independent from the government.
- (194) In response to Zhuoyue's arguments, the Commission noted, first, that EU policies have no relevance in the context of an assessment carried out pursuant to Article 2(6a) of the basic Regulation.

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<sup>(117)</sup> Judgement of 11 July 2017, *Viraj Profiles v Council*, T-67/14, EU:T:2017:481, para. 98.

- (195) Second, as to Zhuoyue's claim that it is a privately-owned company, the Commission described in sections 3.2.1.1 to 3.2.1.8 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. In addition, regarding the claim that national programmes focus on research and development, the Commission pointed out that while research and development costs do influence costs and prices of the final products, the complainant referred to these programmes as elements pointing to the control or policy supervision or guidance of the authorities over the economic operators in the biodiesel sector in China.
- (196) Finally, the Commission noted that Zhuoyue's reading of the SOE Law is plainly selective. While the company emphasized the formal division between the administrative and shareholder roles of the State according to Article 6 of the SOE Law, it chose to omit a reference to Article 1. Article 1 defines the overall purpose of the law as, *inter alia*, supporting the leading role of the State-owned economic sector in the national economy, and promoting the development of the socialist market economy. Zhuoyue also failed to refer to Article 7, which mandates the state to encourage greater investment of state capital in key industries and areas important for the national economy; as well as to Article 36 according to which SOEs, when making investments, shall comply with the national industrial policies. Such provisions in fact create a legal environment in which a separation between government and enterprises is all but impossible.
- (197) Therefore, the Commission rejected Zhuoyue's claims.
- (198) On 31 January 2024, the GOC submitted its own observations, expressing the general position that Article 2(6a) of the basic Regulation is not compatible with WTO law. Since these claims are analogous to the ones raised by CCCMC and Zhuoyue to the Commission rejected the for the reasons described above (see recitals (173), (174), (182) and (194)).
- (199) In addition to the claims concerning WTO compatibility of the Article 2(6a) of the basic Regulation, the GOC submitted that the investigation conducted by the Commission based on Article 2(6a) of the basic Regulation in this case had double standards. According to the GOC, the Commission refused to accept the cost data of Chinese exporters on grounds that there were significant market distortions in the Chinese market, but it accepted the representative country's data and used it to replace the Chinese producers' data without any evaluation of whether there may be market distortions affecting these replacing data. This, according to the GOC, is a proof of 'double standards'. The GOC pointed out that under the EU law, the Commission is obliged to use undistorted prices to construct the normal value. Therefore, the Commission should, in the GOC's view, take the initiative to investigate and prove the existence or non-existence of distortions in the representative countries, rather than passively waiting for the parties involved in the case to submit evidence.
- (200) The Commission was not persuaded by this argument. Indeed, in accordance with Article 2(6a)(a) of the basic Regulation, the Commission proceeds to construct the normal value on the basis of data other than domestic prices and costs (unless such costs are positively established not to be distorted) in the exporting country only where it establishes that such data is appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, far from waiting passively, the Commission does its own analysis and invites interested parties to comment on the proposed sources for the determination of the normal value in the early stages of the investigation, namely via the notes on the undistorted sources it intends to use released early on in the proceeding. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of all comments received by parties, as well as Commission's own research.

- (201) Finally, the GOC argued that the Report is misrepresentative, one-sided, and out of touch with reality. The Report allegedly treated the legitimate competitive advantages of Chinese companies and the normal institutional differences between China and EU as the basis for the determination of significant market distortion. Furthermore, the GOC claimed that the fact that the Commission accepted the market distortion allegations claimed by the Union industry based on the Report, provided unfair advantages to the Union industry, which equalled to making judgments before trial. Proving evidence for the industry's complaint equals to taking the side of the industry, therefore not conforming to the fundamental legal spirit of fairness and justice.
- (202) The Commission could not accept these arguments. The Report, as well as the updated Report, are comprehensive documents based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, reports by international organisations, academic studies and articles by scholars, and other reliable independent sources. It was placed on the investigation file so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The GOC did not provide any such rebuttal and only submitted unsubstantiated generic comments. The same argumentation is valid for the Updated Report as well.
- (203) The GOC suggested as well that issuing a country report replaced the actual investigation, but the Commission recalled that according to Article 2(6a)(e) of the basic Regulation, if the Commission deems sufficient the evidence submitted by the complainant on the significant distortions, 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. The existence and potential impact of the significant distortions are not confirmed at initiation stage as claimed by the GOC, but only after an in-depth investigation, hence this argument as well is rejected.
- (204) In conclusion, no comprehensive material evidence or arguments refuting the existence of significant distortions in the biodiesel sector have been adduced by the GOC, CCCMC or the exporting producers in the present investigation.

### 3.2.2. *Representative country*

#### 3.2.2.1. *General remarks*

- (205) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank <sup>(118)</sup>;
  - Production of the product under investigation in that country;
  - existence of relevant readily available data in the representative country;
  - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (206) As explained in recitals (64) to (68), the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Malaysia as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

<sup>(118)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

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

- (207) In the First Note, the Commission identified 49 countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as ‘upper-middle income’ countries on a gross national income basis where production of the product under investigation was known to take place. Out of those 49 countries, the Commission identified six countries with the largest production of biodiesel in 2022 and 2023 using the projections by OECD and FAO<sup>(119)</sup>. Those countries were (in the order of their production volume): Brazil, Argentina, Thailand, Malaysia, Colombia, and Peru. Brazil was also identified as an appropriate representative country by EBB in the complaint.
- (208) In their comments on the First Note, EBB, EcoCeres, and Jiaao commented on the production of the product under investigation. EBB submitted that Brazil as the largest biodiesel producer amongst the countries at the level of development similar to the PRC was the most suitable representative country. Contrary to that, EcoCeres and Jiaao argued that Brazil was not suitable as only a few producers manufactured biodiesel from the same feedstocks as the Chinese producers, the main feedstocks being UCO, brown grease (‘BG’), and palm oil mill effluent (‘POME’). According to EcoCeres, there was also insufficient production of biodiesel from those feedstocks in Colombia and Thailand.
- (209) In addition, EBB, EcoCeres, and Jiaao commented on the high level of government regulation along the biodiesel value chain in the four potential representative countries (Brazil, Colombia, Malaysia, and Thailand) identified in the First Note (see recital (246)).
- (210) With regard to the comments on the level of government regulation along the biodiesel value chain in the potential representative countries, the Commission, in the Second Note, pointed out that the biodiesel market and its value chain are regulated through governments’ measures worldwide as the industry significantly contributes to the countries meeting their international commitments to the reduction of greenhouse gas emissions.
- (211) In its comments on the Second Note, EBB reiterated that the biodiesel market and its value chain are subject to government regulations in Malaysia. In particular, according to EBB, the price of biodiesel is set by the Government of Malaysia (‘GOM’) through a pricing formula providing for a fixed SG&A and profit. In addition, exports of crude palm oil are subject an export tax, which according to EBB influences the production cost of Malaysian biodiesel producers. Finally, EBB pointed out that as of February 2024, the Malaysian state Sabah also made exports of POME subject to an export tax.
- (212) With regard to Malaysia, the Commission noted that the automatic pricing mechanism applies to fuel sold by retailers at petrol stations, i.e. to petrol blended with biodiesel. The price of such fuel is set using a pricing formula, which takes into account a benchmark price of crude oil, various costs of the oil company and the retailer, as well as their profit.<sup>(120)</sup> <sup>(121)</sup> <sup>(122)</sup> Where the fixed price is below a desirable market price, i.e. does not cover the retailer’s cost and profit, GOM may offset the difference via a subsidy paid to the retailer<sup>(123)</sup>.

<sup>(119)</sup> OECD-FAO Agricultural Outlook 2022-2031. Available at <https://data-explorer.oecd.org/> (last viewed 10 January 2024). The data used by OECD and FAO to develop the projections are those available as of January 2021.

<sup>(120)</sup> APM: How Fuel Prices Are Calculated in Malaysia. Available at <https://paultan.org/2009/02/15/how-fuel-prices-are-calculated-in-malaysia/> (last viewed 4 July 2024).

<sup>(121)</sup> How is Petrol Pricing Calculated? Available at <https://mypf.my/lifestyle/petrol/> (last viewed 4 July 2024).

<sup>(122)</sup> A Citizens’ Guide to Energy Subsidies in Malaysia (p. 7-10). Available at [https://www.iisd.org/gsi/sites/default/files/ffs\\_malaysia\\_cz-guide.pdf](https://www.iisd.org/gsi/sites/default/files/ffs_malaysia_cz-guide.pdf) (last viewed 4 July 2024).

<sup>(123)</sup> Idem, p. 10.



- (213) Furthermore, when selecting companies to be used as the source of SG&A and profit, the Commission focused on those that produced biodiesel from UCO, POME and BG. Although some of the selected companies may partially use crude palm oil as one of their feedstocks, the Commission considered that their financial results would only be affected marginally. Finally, the export tax imposed by Sabah is not relevant for the present investigation as it was introduced only after the investigation period.
- (214) Consequently, the Commission considered that the government regulations applicable to the biodiesel market and its value chain in Malaysia were not of such nature that would render the country not suitable as a representative country.
- (215) With regard to Brazil, in its comments on the Second Note, EBB pointed out that the system of public auctions was replaced by over-the-counter trading with biodiesel as of 2022. EBB further confirmed that imports of biodiesel are extremely limited as they are subject to import licences, which are issued only in exceptional cases. EBB nevertheless claimed that these measures did not influence the prices and costs on the Brazilian market as sufficient competition is warranted by the number of certified biodiesel producers operating in the industry.
- (216) The Commission took note of this additional information. As Malaysia was confirmed as an appropriate representative country, the Commission did not find it necessary to analyse the regulation of biodiesel market and its value chain in Brazil in detail.

### 3.2.2.3. Existence of relevant readily available data in the representative country

#### 3.2.2.3.1. Factors of production

- (217) In the First Note, the Commission focused on the most important factors of production representing more than 80% of the Chinese cost of production, i.e. the feedstocks falling under HS codes 1518 00 (UCO) and 3823 19 (POME, BG and most other feedstocks, such as food waste or soap stock). The Commission analysed whether the six potential representative countries had in place export restrictions distorting the domestic price, whether they imported such quantities from China that could potentially distort the average import price, and finally whether the goods falling under the two key HS codes were imported in representative quantities. The analysis was conducted not only at the level of the HS codes but also at the level of more detailed goods codes depending on the customs nomenclature of the individual countries.
- (218) The Commission found that in Argentina, all goods falling under the two key HS codes were subject to an export tax. In addition, certain goods falling under HS code 1518 00 were subject to export licensing in Malaysia.
- (219) The Commission further found that significant quantities of coal imported to Argentina (HS 2701 11), of goods classified under three goods codes falling under HS code 1518 00 in Malaysia, and five goods falling under HS code 1518 00 in Thailand originated in the PRC.
- (220) After excluding imports that were either subject to export restrictions or likely affected by the significant quantities imported from the PRC, Malaysia was the country with by far the largest quantities of goods imported under the two key HS codes (200 thousand tonnes under HS code 1518 00 and 790 thousand tonnes under HS code 3823 19 as compared to 17 thousand tonnes under HS code 1518 00 in Thailand and 18 thousand tonnes under HS code 3823 19 in Brazil, the two countries with second largest import volumes).
- (221) In its comments on the representative country and factors of production submitted at initiation, EcoCeres pointed out that HS code 1518 00 covered a wide variety of goods. Therefore, any customs nomenclature that did not allow to distinguish between edible and inedible fats and oils was entirely unsuitable to identify an appropriate goods code. In this respect, the company suggested that the Commission should use “undistorted international prices, costs, or benchmarks” to establish the undistorted cost of UCO and submitted price information collected and published by Argus Biofuels <sup>(124)</sup>.

<sup>(124)</sup>For more information, see <https://www.argusmedia.com/en/bioenergy/argus-biofuels>.

- (222) In the First Note, the Commission found it indeed necessary to select an appropriate source of undistorted cost of UCO. The Commission noted that only the customs nomenclatures of Malaysia and Thailand allowed to differentiate between edible and inedible fats and oils. The Commission decided to further analyse the quality of all potential sources of undistorted cost of UCO, including the international benchmarks provided by EcoCeres.
- (223) In their comments on the First Note, EcoCeres, Jiaao and Zhuoyue argued that Malaysia was the only potential representative country with representative import volumes under HS codes 1518 00 and 3823 19, which covered the most important feedstocks used by the sampled exporting producers (see recital (208)). In addition, EcoCeres and Zhuoyue reiterated that the respective HS codes covered a broad variety of different products and that only the customs nomenclature of Malaysia and Thailand allowed for a differentiation of edible and inedible fats and oils under HS code 1518 00. EcoCeres reiterated that international benchmarks could be used to establish the undistorted costs of UCO and POME.
- (224) On the other hand, in its comments on the First Note, EBB highlighted that the import volumes under the two key HS codes to Brazil were the second largest (amongst the four remaining potential representative countries, see recital (246)) after Malaysia and argued that the price of Brazilian imports under HS code 1518 00 reflected the price of non-edible fats and oils on the domestic market.
- (225) EBB further submitted that since some of the goods under HS code 1518 00 were subject to export licensing in Malaysia, this export restriction distorted also the import (and domestic) prices of all goods falling under the respective HS code. EcoCeres disagreed and argued that should the export licensing applicable to some of the goods suppress the prices of all goods under HS code 1518 00, the foreign suppliers would have redirected their sales to other markets with more attractive prices.
- (226) With regard to the availability of relevant data, Zhuoyue noted that there were no imports of biopitch in Brazil and Colombia.
- (227) In the Second Note, the Commission found it crucial to identify goods codes that are as close as possible to the actual feedstocks used by the Chinese producers. In this respect, the Commission concluded that the customs nomenclature of Brazil and Colombia did not allow to identify imports that would reflect the domestic prices of UCO. In addition, following the on-spot verifications, it was confirmed that the import volumes under the two key HS codes in Brazil, Colombia and Thailand were not representative, in particular in relation to the consumption volumes of the Chinese biodiesel producers.
- (228) Considering the fact that HS code 1518 00 covers a wide range of products, including such that are not used as feedstocks for biodiesel production, the Commission found it unlikely that the export licensing applicable to several goods codes would suppress the import (and domestic) prices of all goods imported under HS code 1518 00.
- (229) The Commission, however, rejected the use of international benchmarks for UCO and POME at this stage of the investigation as the benchmarks did not specify the origin of the respective feedstock. Therefore, it could not be ascertained that the data for UCO was not distorted by feedstock of Chinese origin. Similarly, it was found that the prices of POME originating in Indonesia were distorted by the application of an export tax (see recital (237)) and it could not be excluded that Indonesia POME was covered by the respective benchmark.
- (230) Concerning the imports of biopitch, the Commission noted that although it was not an important input in terms of its share on total cost of production, the selection of a representative country with imports of biopitch was an advantage.
- (231) In their comments on the Second Note, EBB and Jiaao submitted comments concerning the undistorted cost of UCO. EBB pointed out that certain volumes of UCO imported to Malaysia originated in Indonesia. The prices of those imports were, however, distorted by the export tax levied on export of UCO from Indonesia <sup>(125)</sup>.

<sup>(125)</sup> GAIN Biofuels Annual – Indonesia, p.11. Available at [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual\\_Jakarta\\_Indonesia\\_ID2023-0018.pdf](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual_Jakarta_Indonesia_ID2023-0018.pdf) (last viewed 4 July 2024).

- (232) The Commission examined the claims and found that indeed exports of UCO from Indonesia were subject to an export tax. On that basis, the Commission decided to exclude imports of UCO into Malaysia originating in Indonesia from the determination of the undistorted cost.
- (233) Referring to its comments on the government regulations of the biodiesel market and its value chain in Malaysia (see recital (211)), EBB reiterated that the imports under HS codes 1518 00 (for UCO) and 3823 19 (for POME) to Brazil were not unreliable despite their limited volume. The party suggested two alternatives:
- Should the Commission insist on the import quantity rendering the import prices unreliable, the Commission should use the imports under the two key HS codes into the US.
  - Should the Commission select Malaysia as the representative country, the Commission should not exclude goods codes covering 'edible fats and oils' from the import data used to determine the undistorted cost of UCO. In this respect, EBB submitted sample contracts as evidence that 'edible oils' refer to such oils that were formerly edible and come from households.
- (234) As concluded in recital (258), the Commission considered Malaysia as an appropriate representative country at the provisional stage. Therefore, the use of imports into the US as an alternative source of benchmarks for UCO and POME was rejected. With regard to the classification of UCO under edible or inedible oils, at this stage of the investigation, the Commission is not able to conclude on whether the classification used in the contracts is compatible with the Malaysian customs nomenclature, in particular as the party failed to provide a meaningful non-confidential summary of its arguments.
- (235) In its comments on the Second Note, Jiaao argued that the Commission should exclude certain goods codes, such as covering inedible oils from linseed, olives and ground nuts, from the scope of codes used to determine the undistorted cost of UCO. The party claimed that the Commission verified that such types of oils were not used by the company in their biodiesel production. Furthermore, Jiaao submitted that imports of UCO originating in Japan should be excluded from the determination of the benchmark as Japan has a limited domestic supply of UCO <sup>(126)</sup>.
- (236) Although Japan has indeed a limited domestic availability of UCO, in 2022 it exported most of the collected volumes <sup>(127)</sup>. For comparison, in 2022 the exported volumes significantly exceeded the volumes imported into Malaysia from Japan in the investigation period. Consequently, the Commission rejected both claims.
- (237) In its comments on the Second Note, EBB submitted that the Malaysian imports of POME under HS code 3823 19 were distorted by significant quantities of imports from Indonesia. As Indonesia levies an export tax on exports of POME <sup>(128)</sup>, the prices of those imports were distorted.
- (238) Following this claim, the Commission decided at this stage to exclude imports of goods falling under the relevant goods codes for POME and palm oil fatty acids, as imports under the same goods codes are used for both inputs as the source of undistorted cost, originating in Indonesia from consideration.

<sup>(126)</sup> GAIN Biofuels Annual – Japan, p. 2. Available at [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual\\_Tokyo\\_Japan\\_JA2023-0125.pdf](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual_Tokyo_Japan_JA2023-0125.pdf) (last viewed 4 July 2024).

<sup>(127)</sup> Idem, p. 15.

<sup>(128)</sup> GAIN Biofuels Annual – Indonesia, p.11. Available at [https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual\\_Jakarta\\_Indonesia\\_ID2023-0018.pdf](https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Biofuels%20Annual_Jakarta_Indonesia_ID2023-0018.pdf) (last viewed 4 July 2024).

- (239) In its comments on the Second Note, Zhuoyue claimed that the Commission should not use goods code 3823 19 90 as one of the codes for BG, food waste, soap stock and spent bleaching earth oil ("SBEO"). According to the party, that code does not cover refined acid oils while the above-mentioned feedstocks all represent such oils. The company supported its arguments by the fact that the unit import price under this code was higher than the unit import price of UCO, which is counterintuitive as UCO is the more valuable feedstock taking into account its characteristics, such as content of free fatty acids, composition, metal content.
- (240) The Commission consulted the customs nomenclature of Malaysia available via the Commission's website Access2Markets <sup>(129)</sup> and provisionally concluded that all goods under HS code 3823 19, except for those related to palm oil derivatives, should be reasonably included in the determination of the benchmark for feedstocks with higher levels of free fatty acids, such as BG, food waste, soap stock and SBEO. Therefore, the Commission rejected the claim.
- (241) In its comments on the Second Note, Zhuoyue maintained that the Commission should not replace the Chinese cost with an undistorted benchmark as there was no evidence of significant distortions in the biodiesel market in the PRC. The party further maintained that even if the labour cost is replaced with a benchmark, the Commission should identify a more suitable method of adjusting the Malaysian labour cost, which was only available for 2016, to a level appropriate for the IP. Zhuoyue argued that there was no correlation between the level of wages and the inflation rate expressed through the Producer Price Index ('PPI').
- (242) With regard to the alleged undistorted biodiesel market in the PRC, the Commission refers to its findings in sections 3.2.1 to 3.2.1.8 and specifically concerning the labour market in section 3.2.1.6. Since the labour cost represented a negligible share on the exporting producers' cost of production (maximum 1,5 %), the Commission considered that using the PPI to update the labour cost in Malaysia did not significantly influence the undistorted normal value. Therefore, the Commission rejected the claim.
- (243) In its comments on the Second Note, Zhuoyue furthermore pointed out that the Commission changed the HS code to be used for biopitch from 1522 00 to 1520 00.
- (244) The Commission found that the change was due to a clerical error and corrected that error before establishing the undistorted cost of biopitch.

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<sup>(129)</sup> Access2Markets. Available at <https://trade.ec.europa.eu/access-to-markets> (last viewed 4 July 2024).

## 3.2.2.3.2. Financial information

- (245) In the First Note, the Commission found that exports of biodiesel originating in Argentina are subject to anti-dumping and anti-subsidy measures imposed by Peru <sup>(130)</sup> <sup>(131)</sup>, the Union <sup>(132)</sup>, and the United States <sup>(133)</sup> <sup>(134)</sup> ('US'). As such, the financial results of Argentinian producers could be potentially distorted by subsidisation and dumping practices. In addition, the financial data of biodiesel producers in Peru could be potentially affected by injury suffered from dumped and/or subsidised imports of biodiesel originating in Argentina and the US <sup>(135)</sup>.
- (246) Following the findings of export restrictions in Argentina (see recital (218)) and potential distortion of financial information based on the existence of trade defence measures concerning Argentina and Peru, the Commission further analysed the availability and quality of financial information only for the remaining four potential representative countries: Brazil, Colombia, Malaysia, and Thailand.
- (247) In the First Note, the Commission identified three producers of biodiesel with suitable readily available financial information in Brazil, one of them based on the information in the complaint. For all three companies, the financial information partially overlapped with the investigation period, contained details in the form of Notes to the financial statements, and was compliant either with the International Financial Reporting Standards ('IFRS') or the local Generally Accepted Accounting Principles. In Colombia, readily available financial information was available for five companies. The financial information did not contain any further details in the form of the Notes to the financial statements. For Malaysia and Thailand, readily available financial information from the Orbis database was available for one company per country. In addition, the financial information of the Thai company was partially not compliant with the IFRS.
- (248) In its comments on the First Note, EBB pointed out that Brazil was the only potential representative country where full set of financial statements was available for a biodiesel producer. EcoCeres, however, submitted a full set of financial statements of thirteen producers of biodiesel from a local Malaysian registry in its comments on the First Note. EcoCeres also noted that one of the biodiesel producers identified by the Commission in Colombia was a subsidiary of another identified company. The parent entity was in addition a large integrated oil company and, according to EcoCeres, should not be considered. Finally, EcoCeres and Zhuoyue argued that Thailand should not be considered a suitable representative country since the only readily available financial statements identified by the Commission were partially not compliant with IFRS.

<sup>(130)</sup> National Institute for the Defence of Competition and Protection of Intellectual Property, Antidumping and Countervailing Duties Commission, Resolution N° 265-2021/CDB-INDECOPI, issued on 3 November 2021. Available at <https://cdn.www.gob.pe/uploads/document/file/2358456/Resoluci%C3%B3n%20N%C2%B0%20265-2021-CDB-INDECOPI.pdf> (last viewed 6 March 2024).

<sup>(131)</sup> National Institute for the Defence of Competition and Protection of Intellectual Property, Antidumping and Countervailing Duties Commission, Resolution N° 266-2021/CDB-INDECOPI, issued on 3 November 2021. Available at <https://cdn.www.gob.pe/uploads/document/file/2358480/Resoluci%C3%B3n%20N%C2%B0%20266-2021-CDB-INDECOPI.pdf> (last viewed 6 March 2024).

<sup>(132)</sup> COMMISSION IMPLEMENTING REGULATION (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 12.2.2019, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/244/oj](http://data.europa.eu/eli/reg_impl/2019/244/oj)).

<sup>(133)</sup> International Trade Administration, "Biodiesel From Argentina and Indonesia: Continuation of Antidumping Duty Orders and Countervailing Duty Orders". Published on 15 June 2023. Available at <https://www.federalregister.gov/documents/2023/06/15/2023-12827/biodiesel-from-argentina-and-indonesia-continuation-of-antidumping-duty-orders-and-countervailing> (last viewed 6 March 2024).

<sup>(134)</sup> International Trade Administration, "Biodiesel From Argentina and Indonesia: Continuation of Antidumping Duty Orders and Countervailing Duty Orders". Published on 15 June 2023. Available at <https://www.federalregister.gov/documents/2023/06/15/2023-12827/biodiesel-from-argentina-and-indonesia-continuation-of-antidumping-duty-orders-and-countervailing>

<sup>(135)</sup> National Institute for the Defence of Competition and Protection of Intellectual Property, Antidumping and Countervailing Duties Commission, Resolution N° 97-2020/CDB-INDECOPI, issued on 18 December 2020. Available at <https://busquedas.elperuano.pe/dispositivo/NL/1914236-1> (last viewed 3 July 2024).

- (249) In the Second Note, the Commission strived to calibrate the selection of suitable biodiesel producers with readily available financial information. Therefore, it decided to consider in this case the feedstocks used by the producers in the potential representative countries. The Commission found two companies producing biodiesel from UCO, BG or POME in Brazil, two such companies in Colombia, ten in Malaysia, and eight in Thailand.
- (250) Following the conclusion that the imports of the main inputs to Colombia and Thailand were not representative in terms of quantity (see recital (227)), the Commission analysed the availability and quality of financial information in Brazil and Malaysia.
- (251) Although the financial statements of the two Brazilian companies (see recital (249)) were available, they did not contain segment reporting at all, or the segment reporting was not sufficient to single out the financial information concerning the production of biodiesel. Of the ten Malaysian companies, seven were identified by EcoCeres and three by the Commission. The Commission found the financial statements of seven of those companies suitable to establish the SG&A and profit. For the other three, the financial information was not available at all, or the segment reporting did not allow to determine financial information specific to the production of biodiesel.
- (252) In its comments on the Second Note, EBB provided a list of approximately 45 biodiesel producers in Brazil, out of which approximately 20 produced biodiesel from UCO or palm oil fatty acid ('PFAD'). EBB submitted that the Commission should use the financial information of the company BE8. Should the Commission find its financial statements not suitable, EBB contended that the Commission was entitled to use the financial information of a company producing a product in the same general category as biodiesel. In this respect, EBB suggested the ethanol producer SF, which was recently certified as meeting international requirements as a supplier of ethanol for the production of SAF (via the alcohol-to-jet pathway).
- (253) For three of the 20 producers of biodiesel from UCO or PFAD identified by EBB, the financial statements had been available from previous stages of the selection of the representative country. For two of them, including BE8, the Commission had already concluded that the financial statements were not a suitable source of undistorted SG&A and profit as explained in recital (251). The only remaining company would be Caramuru Alimentos S.A. ('Caramuru'), which was proposed by EBB in the complaint.
- (254) Considering the conclusions on the availability of information on factors of production as presented in recital (227) and the availability of suitable financial information for a number of Malaysian biodiesel producers, the Commission concluded that the availability of financial information for Caramuru was not relevant. There was also no need to search for and analyse financial information of a company producing a product in the same general category as biodiesel.
- (255) Finally, in its comments on the Second Note, Zhuoyue argued that the financial information of one of the Malaysian biodiesel producers, Vance Bioenergy Sdn Bhd. ('Vance'), was not a suitable source of undistorted SG&A and profit as the company produced also other products. In addition, the company claimed that the weight of the financial information of another company, FIMA BIODIESEL SDN BHD ('FIMA'), in the basket should be adjusted as the financial information was only available for the first quarter of 2023, instead of full year 2022 as for the other six companies.
- (256) The Commission rejected the claims. First, the other products manufactured by Vance were by-products of biodiesel and therefore could not be considered a completely unrelated category of products. Second, the financial statements for FIMA were also available for a full year, but the company used as financial year the period from 1 April to 31 March.

#### 3.2.2.4. Level of social and environmental protection

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

## 3.2.2.5. Conclusion

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

## 3.2.3. Sources used to establish undistorted costs.

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

(260) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use the Global Trade Atlas <sup>(136)</sup> ('GTA') database to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use information published by the Malaysian Institute of Labour Market Information and Analysis ('ILMIA') <sup>(137)</sup> for establishing undistorted costs of labour, by Tenaga Nasional Berhad ('TNB') <sup>(138)</sup> for electricity, by the Energy Commission (Suruhanjaya Tenaga) <sup>(139)</sup> for natural gas and steam, and by the National Water Services Commission ('SPAN') <sup>(140)</sup> for water.

## 3.2.4. Undistorted costs and benchmarks

## 3.2.4.1. Factors of production

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

Table 1

**Factors of production of biodiesel**

Factor of Production / Category	Factor of Production / Description	Goods codes of Malaysian customs nomenclature	Source of data	Unit value (CNY)	Unit of measurement
Feedstock	Brown grease, food waste, soap stock, SBEO, fatty acids	3823 19 11, 3823 19 19, 3823 19 90	GTA	7,54	kg
Feedstock	POME, palm oil fatty acids	3823 19 20, 3823 19 30	GTA	7,73	kg
Feedstock	UCO, industrial mixed oil, swill oil, transesterified oil	1518 00 20, 1518 00 33, 1518 00 34, 1518 00 35, 1518 00 39, 1518 00 60, 1518 00 90	GTA	7,83	kg

<sup>(136)</sup> Global Trade Atlas by S&P. Available at <https://connect.ihsmarkit.com/gta/home/>.

<sup>(137)</sup> ILMIA. Available at <https://www.ilmia.gov.my/index.php/en/labour-cost>.

<sup>(138)</sup> TNB. Available at <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1>.

<sup>(139)</sup> Energy Commission. Available at <https://www.st.gov.my/eng/web/consumer/details/2/10>.

<sup>(140)</sup> SPAN. Available at <https://www.span.gov.my/document/upload/n8sVd7sPHPq3A68TTVeLYLvjU1sC3Ta.pdf>.

Factor of Production / Category	Factor of Production / Description	Goods codes of Malaysian customs nomenclature	Source of data	Unit value (CNY)	Unit of measurement
Other input	Activated white clay	3802 90 10, 3802 90 20, 3802 90 90	GTA	2,25	kg
Other input	Coagulant Reducer	3811 90 10, 3811 90 90	GTA	25,01	kg
Other input	Glycerol	1520 00 10, 1520 00 90	GTA	2,30	kg
Other input	Hydrogen	Not applicable	Malaysian domestic prices adjusted	3,52	m <sup>3</sup>
Other input	Methanol	2905 11	GTA	2,45	kg
Other input	Potassium hydroxide	2815 20	GTA	5,11	kg
Other input	Sodium methanol	2905 19	GTA	9,01	kg
By-product	Fatty acids	3823 19 11, 3823 19 19, 3823 19 90	GTA	7,54	kg
By-product	Glycerol, crude glycerine	1520 00 10, 1520 00 90	GTA	2,30	kg
By-product	Heavy biodiesel	3826 00 29	GTA	5,19	kg
Energy	Biopitch	1522 00 10, 1522 00 90	GTA	2,07	kg
Energy	Coal	2701 11	GTA	1,59	kg
Energy	Electricity	Not applicable	Malaysian domestic prices	0,51-0,71	kWh
Energy	Fuel oil	2710 19 45, 2710 19 46, 2710 19 72, 2710 19 79	GTA	4,63	kg
Energy	Natural gas	Not applicable	Malaysian domestic prices	1,96-2,00	m <sup>3</sup>
Energy	Steam	Not applicable	Malaysian domestic prices	168,47	tonne



Factor of Production / Category	Factor of Production / Description	Goods codes of Malaysian customs nomenclature	Source of data	Unit value (CNY)	Unit of measurement
Energy	Water	Not applicable	Malaysian domestic prices	3,64	tonne
Labour	Labour	Not applicable	Malaysian domestic labour cost adjusted	75,91	hour

(262) The Commission included a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. To establish this amount, the Commission used the manufacturing overhead cost incurred by the sampled exporting producers duly adjusted to an undistorted level. The methodology is duly explained in recitals (277) and (278).

#### 3.2.4.1.1. Inputs and raw materials

(263) In order to establish the undistorted price of inputs and raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA database to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council<sup>(141)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded in section 3.2.1 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. The remaining volumes were considered by the Commission to be representative. Furthermore, with regard to undistorted cost of POME, palm oil fatty acids, UCO, industrial mixed oil, swill oil, and transesterified oil, the Commission also excluded imports originating in Indonesia. As described in recitals (232) and (238), the Commission found that the prices of the above-mentioned feedstocks were distorted by the application of export tax by Indonesia.

(264) To determine the applicable import duties per goods code and country of origin, the Commission consulted the Market Access Map.<sup>(142)</sup> The import duties were added to the CIF value recorded in the Malaysian import statistics as available in the GTA database.

(265) The Commission expressed the transport cost incurred by the sampled exporting producers for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

<sup>(141)</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33, ELI: <http://data.europa.eu/eli/reg/2015/755/oj>). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

<sup>(142)</sup> Market Access Map by the International Trade Centre. Available at <https://www.macmap.org/en/query/customs-duties> (last viewed 5 July 2024).

(266) In its comments on the First Note, EcoCeres argued that the import statistics were not a reliable source of benchmark for hydrogen for the following reasons:

- The import quantity in Malaysia was not representative.
- Hydrogen used by EcoCeres was produced by a production method different from the those predominantly used worldwide.
- The internationally traded hydrogen as well as the existing international price indexes allegedly concerned hydrogen of fuel grade. Hydrogen of fuel grade has a higher purity grade, and consequently a higher price, than the one used by the company.

(267) The company suggested that the Commission should use the pricing mechanism included in the company's hydrogen supply contract. Alternatively, the company referred to a domestic price of hydrogen made available by the Malaysian government in November 2023<sup>(143)</sup> and thus likely based on prices applicable during the investigation period.

(268) The Commission found that the import quantity of hydrogen to Malaysia was indeed very low (slightly less than 155 m<sup>3</sup>). Therefore, at this stage, the Commission used the domestic price published by the Malaysian government<sup>(144)</sup> as the source of undistorted cost of hydrogen. As the price refers to hydrogen used as energy source, the Commission adjusted the price for the difference between the price of hydrogen for energy and for industrial use based on the statistics collected by the Clean Hydrogen Partnership<sup>(145)</sup>.

#### 3.2.4.1.2. Consumables

(269) For a number of factors of production, the actual costs incurred by certain sampled exporting producers represented a negligible share of total raw material costs in the investigation period. As the value of these factors of production had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables. The actual verified value of consumables was expressed as a share of the actual verified cost of raw materials of the sampled exporting producers. This percentage was used to establish the undistorted value of consumables as described in recital (287).

#### 3.2.4.1.3. Labour

(270) The statistical data on the labour cost in Malaysia is published by the Malaysian Institute of Labour Market Information and Analysis ('ILMIA')<sup>(146)</sup>. The Commission used the information on total labour cost of technicians and associate professionals in 2016. The 2016 average monthly value was duly adjusted for inflation using the domestic producer price index as published by the World Bank<sup>(147)</sup>. To establish the hourly labour cost, the Commission applied the information collected by the ILO Department of Statistics ('ILOSTAT') on average weekly hours actually worked per employed person<sup>(148)</sup>.

<sup>(143)</sup> Malaysian Investment Development Authority. Cheaper green hydrogen energy in the pipeline. Available at <https://www.mida.gov.my/mida-news/cheaper-green-hydrogen-energy-in-the-pipeline/> (last viewed 15 May 2024).

<sup>(144)</sup> Idem.

<sup>(145)</sup> See <https://h2v.eu/analysis/statistics/financing/hydrogen-cost-and-sales-prices> (last viewed 15 May 2024).

<sup>(146)</sup> See <https://www.ilmia.gov.my/index.php/en/labour-cost> (last viewed 13 May 2024).

<sup>(147)</sup> See <https://www.worldbank.org/en/research/brief/inflation-database> (last viewed 13 May 2024).

<sup>(148)</sup> See <https://rshiny.ilo.org/dataexplorer8/> (last viewed 13 May 2024).

## 3.2.4.1.4. Electricity

- (271) The price of electricity for companies (industrial users) in Malaysia is published by TNB <sup>(149)</sup>. The Commission used the data of the industrial electricity prices in the corresponding consumption band in kWh covering the investigation period. Where available, the peak and off-peak tariffs were taken into account.
- (272) The undistorted cost of electricity used for each sampled exporting producer varies depending on the consumption band under which it falls.

## 3.2.4.1.5. Natural gas and steam

- (273) The price of natural gas for companies (industrial users) in Malaysia is published by the Energy Commission (Suruhanjaya Tenaga) <sup>(150)</sup>. The Commission used the data for non-residential gas prices in the corresponding consumption band, which were reported in mmBtu, covering the investigation period.
- (274) The undistorted cost of natural gas used for each sampled exporting producer varies depending on the consumption band under which it falls.
- (275) The Commission determined the undistorted cost of steam based on the undistorted cost of natural gas and following the methodology published by the U.S. Department of Energy <sup>(151)</sup>. Since the methodology calculates only the fuel cost of steam, the Commission adjusted the fuel cost for the SG&A and profit of the Malaysian gas supplying company, Gas Malaysia Energy & Services Sdn. Bhd. ('GMES') <sup>(152)</sup>.

## 3.2.4.1.6. Water

- (276) The water tariffs were announced by the National Water Services Commission ('SPAN') in Malaysia. The Commission used tariffs applicable for non-domestic users in various regions of Malaysia <sup>(153)</sup>.

## 3.2.4.2. Manufacturing overhead costs, SG&amp;A, profits and depreciation

- (277) According to Article 2(6a)(a) of the basic Regulation, "*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*". In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (278) The manufacturing overheads incurred by each sampled exporting producer were expressed as a share of the costs of manufacturing actually incurred by the exporting producer. This percentage was used to determine the undistorted value of manufacturing overheads.
- (279) As discussed in the Second Note, for establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial information for the financial year ending on 31 December 2022 and for the financial year ending on 31 March 2023 from financial statements filed by the following seven companies in the local Malaysian registry:
- FIMA BIODIESEL SDN BHD,
  - Nexsol (Malaysia) Sdn Bhd,
  - PGEO Bioproducts Sdn. Bhd.,
  - Sime Darby Oils Biodiesel Sdn Bhd,

<sup>(149)</sup> See <https://www.tnb.com.my/commercial-industrial/pricing-tariffs1> (last viewed 13 May 2024).

<sup>(150)</sup> See <https://www.st.gov.my/eng/web/consumer/details/2/10> (last viewed 13 May 2024).

<sup>(151)</sup> Benchmark the Fuel Cost of Steam Generation. Available at <https://www.energy.gov/eere/amo/articles/benchmark-fuel-cost-steam-generation> (last viewed 13 May 2024).

<sup>(152)</sup> GMES. Annual report 2023. Available at [www.gasmalaysia.com/wp-content/uploads/2024/04/Annual-Report-2023.pdf](http://www.gasmalaysia.com/wp-content/uploads/2024/04/Annual-Report-2023.pdf) (last viewed 13 May 2024).

<sup>(153)</sup> See <https://www.span.gov.my/document/upload/n8sVd7sPHPq3A68TTVeLYLvjiU1sC3Ta.pdf> (last viewed 13 May 2024).

- SOP Green Energy Sdn Bhd,
- Supervitamins Sdn.Bhd.,
- Vance Bioenergy Sdn Bhd.

- (280) Where the financial statements contained the necessary information, the Commission deducted from the SG&A transport related cost to allow for a calculation of the normal value at ex-works level.
- (281) In addition, the Commission disregarded certain cost that was not related to selling or general administration of the company, such as fair value changes, unrealised foreign exchange differences.
- (282) The Commission, however, further considered that the basket of companies was only limited to producers using the transesterification production process. To reflect potential differences in SG&A and profits amongst the various production processes (see recital (31)), the Commission decided at this stage to include three additional Malaysian producers in the same sector, i.e. organic chemicals<sup>(154)</sup>, to the basket. Their financial information was available in the Orbis database for the financial year ending on 31 December 2022. The companies were profitable, and the financial information contained all necessary elements (costs of goods sold, various other operating and/or financial cost, profit).
- (283) The following companies were added to the seven biodiesel producers listed in recital (279):
- IOI ACIDCHEM SDN. BHD.
  - PETRONAS CHEMICALS FERTILISER SABAH SDN. BHD.
  - EASTMAN INTERLAYERS (M) SDN. BHD.
- (284) The undistorted SG&A and profit were determined as a percentage of the costs of goods sold at the level of 5,4 % and 12,7 % respectively. Those levels were considered by the Commission to be reasonable, within the meaning of the last subparagraph of Article 2(6a)(a) of the basic Regulation, for the ex-works level of trade.

### 3.2.5. Calculation

- (285) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (286) First, the Commission established the undistorted cost of manufacturing. The Commission multiplied the verified actual consumption quantity of the individual factors of production of the sampled exporting producers by the undistorted unit costs of those factors of production observed in the representative country, as described in section 3.2.4.
- (287) The portion of the undistorted cost of manufacturing reflecting the undistorted value of consumables was established by multiplying the undistorted value of raw materials determined as described in recital (286) by the percentage of consumables determined as described in recital (269).
- (288) Second, the Commission established the undistorted value of manufacturing overheads by multiplying the undistorted value of cost of manufacturing by the percentage of manufacturing overheads determined as described in recital (278).
- (289) By adding the undistorted value of the manufacturing overheads to the undistorted value of the cost of manufacturing, the Commission established the undistorted cost of production.

<sup>(154)</sup> Code 2014 – Manufacture of other organic basic chemicals of the industry classification NACE Rev. 2.

- (290) Finally, the Commission established the undistorted amounts for SG&A and for profit by multiplying the undistorted value of cost of production by the rates of S&GA and of profit determined as explained in recitals (279) to (284). The undistorted amounts for SG&A and for profit, which were considered by the Commission to be reasonable for the ex-works level of trade, were added to the undistorted cost of production.
- (291) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.2.6. *Export price*

- (292) The sampled exporting producers exported to the Union either directly to independent customers or through related companies acting as an importer.
- (293) For the exporting producers that exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (294) For the exporting producer that exported the product concerned to the Union through a related company acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing. Considering the lack of information on profit from cooperating independent importers, the Commission relied on the profit at the level of 5 % considered reasonable in a previous investigation concerning imports of biodiesel originating in Argentina and Indonesia <sup>(155)</sup>.

#### 3.2.7. *Comparison*

- (295) Article 2(10) of the basic Regulation requires the Commission to make a fair comparison between the normal value and the export price at the same level of trade and to make allowances for differences in factors which affect prices and price comparability. In the case at hand the Commission chose to compare the normal value and the export price of the sampled exporting producers at the ex-works level of trade. As further explained below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the ex-works level of trade; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.

##### 3.2.7.1. *Adjustments made to the normal value*

- (296) As explained in recital (291), the normal value was established at the ex-works level of trade by using costs of production together with amounts for SG&A and for profit, which were considered to be reasonable for that level of trade. Therefore, no adjustments were necessary to net the normal value back to the ex-works level.
- (297) The Commission found no reasons for making any allowances to the normal value, nor were such allowances claimed by any of the sampled exporting producers.

##### 3.2.7.2. *Adjustments made to the export price*

- (298) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of: customs duty, other import charges, freight, insurance, handling loading and ancillary expenses.
- (299) Allowances were made for the following factors affecting prices and price comparability: credit cost, bank charges and commissions.

<sup>(155)</sup> Recital (49) Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia (OJ L 141, 28.5.2013, p. 6, ELI: <http://data.europa.eu/eli/reg/2013/490/oj>).

3.2.8. *Dumping margins*

- (300) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (301) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers.
- (302) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the country concerned to the Union in the IP, that were established on the basis of Eurostat (the Comext database).
- (303) The level of cooperation in this case is high because the exports reported by the cooperating exporting producers exceeded the total imports during the IP. This apparent discrepancy can be ascribed to the specific nature of the biodiesel supply chain. The Chinese producers rarely supply the Union customers directly. The exports are carried out via traders (often located in third countries), i.e. in some cases, the producers were only able to estimate the Union as the destination based on the trader's request for a sustainability certificate; alternatively, biodiesel originally aimed for the Union market could have been redirected to a non-EU country. Considering the high level of cooperation, the Commission considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.
- (304) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
EcoCeres Group:	
— ECO Biochemical Technology (Zhangjiagang) Co. Ltd.	12,8 %
— EcoCeres Limited	
Jiaao Group:	
— Zhejiang EastRiver Energy S&T Co., Ltd.	
— Zhejiang Jiaao Enproenergy Co., Ltd.	36,4 %
— Jiaao International Trading (SINGAPORE) PTE. Ltd.	
Zhuoyue Group:	
— Longyan Zhuoyue New Energy Co. Ltd.	25,4 %
— Xiamen Zhuoyue Biomass Energy Co., Ltd.	
Other cooperating companies	23,7 %
All other companies	36,4 %

#### 4. INJURY

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

- (305) During the investigation period, the like product was manufactured by 43 producers in the Union that were members of the EBB plus an estimated 20 other non-EBB members. All these producers constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (306) In a submission dated 11 January 2024 <sup>(156)</sup>, EcoCeres put into question the completeness of the open file as to standing forms. It also asked for the reasons for discrepancies between the data in the complaint as to actual complainants and supporters and the data in the Commission's note for the file on standing and wondered about the specific position of the Union producer Neste. The Commission confirmed that: a) all the open versions of the standing forms received were put in the open file in due time; b) that the relevant thresholds to trigger a complaint as set out in the basic Regulation were met; and c) that the open file reflected the individual positions of companies when they expressed it. Furthermore, the Commission noted that the companies participating in the standing exercise were not the same companies that contributed with data for the purpose of establishing the complaint, which resulted in some discrepancies between figures in the complaint versus figures in the Commission's note for the file on standing.
- (307) At initiation stage, total Union production during the investigation period was established at around 12 million tonnes. The Commission established the figure on the basis of data from the complainant, from individual companies and relevant associations. For CCCMC, this figure was in conflict with the USDA's GAIN Report of 14 August 2023 that the complainant's relied upon. EcoCeres also pointed at a misrepresentation of HVO volumes.
- (308) The complainant revised upwards total Union production in its response to the macro questionnaire. The complainant's revised figure was based on an external market intelligence provider called Stratas. The Commission did not receive any comments from interested parties with regard to the total Union production data as reported in the macro questionnaire reply. At provisional stage, total Union production during the investigation period was therefore established at 14 775 455 tonnes, which is the figure reported by the complainant, minus an estimate for SAF made by the Commission, as explained in section 4.5.2.1.
- (309) Further to what was indicated in recital (15), in light of the revised Union production figure in the recital above, the four sampled Union producers represented 12 % of the total Union production of the like product.

##### 4.2. General remark

- (310) Should HVO not be excluded from the scope of this investigation, CCCMC submitted that HVO and FAME should be examined separately in the Commission's injury analysis, as was done in the *Solar Modules and Cells* investigation <sup>(157)</sup>.
- (311) EcoCeres submitted that, should the Commission decide to keep HVO and SAF in the scope of the investigation, the Commission should carry out a segmented injury analysis of FAME, HVO and SAF, to account for the differences between these three products. According to the party, FAME, HVO and SAF are entirely different in terms of physical and chemical characteristics, production processes, end uses, and environmental impact and are deemed different products in the market, as well as by authorities and agencies worldwide. Unlike FAME, HVO and SAF would not be "biodiesel" and imports of one product type would not be capable of causing injury to producers of the other product types. EcoCeres stated that FAME is cheaper than HVO and SAF and thus does not compete with them.

<sup>(156)</sup> t24.000702.

<sup>(157)</sup> Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposing a definitive countervailing duty on imports of crystalline silicon photovoltaic modules and key components (i.e., cells) originating in or consigned from the People's Republic of China (OJ L 325, 5.12.2013, p. 66, ELI: [http://data.europa.eu/eli/reg\\_impl/2013/1239/oj](http://data.europa.eu/eli/reg_impl/2013/1239/oj)).

- (312) The Commission noted that a segmented injury analysis may be needed when: a) the products in question are not “sufficiently interchangeable”; b) “there is a particular situation characterised by a high concentration of domestic sales and dumped imports in separate segments and by price differences which are very significant between those segments”; and c) imports are “overwhelmingly concentrated in one of the market segments”.<sup>(158)</sup> Given that SAF has been at this stage excluded from the product scope, the analysis below covers FAME and HVO.
- (313) First, the Commission found the product types in question sufficiently interchangeable as explained under the section 2.4 above. There is no market segmentation in this case, even if there might be price differences between FAME and HVO. Second, the spread of the prices for both FAME and HVO can vary significantly depending on the biodiesel market circumstances, namely the regulatory environment, the supply volumes and the feedstocks situation.
- (314) In its submission dated 6 February 2024<sup>(159)</sup>, EcoCeres quoted HVO prices over 1 100 USD/tonne higher than the price of FAME. The spread between HVO and FAME was however significantly lower (i.e. around 258 USD/tonne) early 2024<sup>(160)</sup>.
- (315) However, a similar significant spread exists amongst FAME product types themselves. For instance, on 20 September 2023 market intelligence quoted a price of 1 455 USD/tonne for FAME from UCO (FOB Amsterdam-Rotterdam-Antwerp (ports) “ARA”), a price of 1 190 USD/tonne for FAME 0 (FOB ARA) and a price of 1 382 USD/tonne for FAME from rapeseed oil (FOB ARA)<sup>(161)</sup>. The same source referred to a spread between West-EU prices of FAME 0 (FOB ARA) versus FAME from UCO (FOB ARA) amounting to around 400 USD/tonne on several instances during the IP<sup>(162)</sup>. Consequently, the statement that the price difference between HVO and FAME is significant is taken out of context and misleading.
- (316) Finally, Chinese sales into the Union mirror Chinese capacities and EU demand, both mainly FAME historically but growing for HVO.<sup>(163)</sup> In this respect, the investigation showed that FAME represented around two thirds of the sampled export volumes, whereas the HVO biodiesel represented around one third<sup>(164)</sup>. Thus, even if there were two distinct segments for FAME and HVO, *quod non*, imports are not overwhelmingly concentrated in any of the product types sold in the market.
- (317) Thus, there is no reason why a segmented injury analysis would be warranted in this case. The Commission therefore dismissed the requests for a segmented injury analysis of FAME and HVO.

### 4.3. Union consumption

- (318) The Commission established the Union consumption on the basis of the sales volumes in the Union by the Union industry as submitted by the complainant and verified at the premises of EBB and Comext for import data.
- (319) Union consumption developed as follows:

<sup>(158)</sup> Case C-478/21 P, CCCME and Others v Commission, para. 167-169.

<sup>(159)</sup> t24.001457.

<sup>(160)</sup> <https://www.argusmedia.com/en/news-and-insights/latest-market-news/2544395-dutch-hvo-buying-rises-on-lower-costs>

<sup>(161)</sup> <https://vespertool.com/news/biodiesel-market-update-ucome-and-fame-0-prices-decline-while-rme-prices-rise/>

<sup>(162)</sup> <https://vespertool.com/news/biodiesel-prices-are-now-at-their-lowest-levels-since-june-2023/>

<sup>(163)</sup> Source: point 25 of the complaint and GAIN Biofuels Annual – China, 19 October 2023 (available at <https://fas.usda.gov/data/china-biofuels-annual-9> and <https://fas.usda.gov/data/european-union-biofuels-annual-3>)

<sup>(164)</sup> See note to the file t24.000784.



Table 2

**Union consumption (tonnes)**

	2020	2021	2022	IP
Total Union consumption	17 204 712	17 625 434	18 120 258	18 436 765
<i>Index (2020 = 100)</i>	100	102	105	107

Source: EBB, Comext, GTA

(320) Union consumption developed positively over the period considered, in line with the increasing mandates for biodiesel usage and blending in the Union.

#### 4.4. Imports from the country concerned

##### 4.4.1. Volume and market share of the imports from the country concerned

(321) In a submission dated 26 January 2024 <sup>(165)</sup>, the CCCMC requested the Commission to make publicly available the monitoring import data concerning the entire investigation period and disregard the complainant's assessment of the evolution of biodiesel imports from China presented in the complaint on the grounds that it was based on mere assumptions and speculation. The Commission noted that it used data from Comext for establishing import volumes, as detailed below.

(322) The Commission established the volume of imports on the basis of import statistics from Comext and GTA. The market share of the imports was established on the basis of the Union biodiesel consumption in table 2, data on sales by Union producers as submitted by the complainant, Comext and GTA. As noted in recital (57), SAF was excluded from the scope of this investigation and therefore the respective volumes were excluded on the basis of the Commission's information thereof obtained during the investigation.

(323) Imports into the Union from the country concerned developed as follows:

Table 3

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

	2020	2021	2022	IP
Volume of imports from the country concerned (tonnes)	926 695	494 931	973 288	1 480 855
<i>Index (2020 = 100)</i>	100	53	105	160
Market share	5,4 %	2,8 %	5,4 %	8,0 %
<i>Index (2020 = 100)</i>	100	52	100	149

Source: EBB, Comext

(324) Imports from China fluctuated but overall increased sharply over the period considered (+ 60 % overall). Their market share went up by 49 %, from 5,4 % in 2020 to 8 % in the investigation period.

(325) Those data contradict CCCMC's statement, based on complaint data, that the surge in Chinese imports did not constitute a "substantial" increase in terms relative to production and consumption.

<sup>(165)</sup>t24.001022

4.4.2. *Prices of the imports from the country concerned and price undercutting*

(326) The Commission established the prices of imports on the basis of Comext. Price undercutting of the imports was established on the basis of verified questionnaire replies.

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

Table 4

**Import prices (EUR/tonne)**

	2020	2021	2022	IP
China	995	1 258	1 574	1 526
<i>Index (2020 = 100)</i>	100	126	158	153

Source: Comext

(328) The price of imports from China increased to a significant extent during the period considered (+53 % overall).

(329) CCCMC submitted that the fact that Chinese import prices were higher than the sales prices of the Union industry during most of the period considered undermined the allegations in the complaint. The Commission noted that the difference between the two sets of prices, which are EUR/tonne averages of Chinese and Union industry EU sales, derives from the different product mix. Chinese imports are of biodiesel product types using feedstocks which can under the RED directives be counted twice towards EU renewable energy targets and thus attract typically higher prices on the market than crop and feed-based FAME. A major share of the sales by Union producers however was crop and feed-based FAME without such a double-counting premium.

(330) CCCMC asked the Commission not to focus its undercutting analysis on a single year when carrying out its price effects analysis, while questioning the undercutting calculations in the complaint. The Commission dismissed the claim, which was not substantiated, and established price undercutting for the investigation period.

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

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

(332) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. It showed a weighted average undercutting margin of between 5,3 % and 13,8 % by the imports from the country concerned on the Union market. Undercutting was found for 100 % of the imported volumes of the sampled companies.

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

##### 4.5.1. General remarks

- (333) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (334) As mentioned in recitals (8)-(18), sampling was used for the determination of possible injury suffered by the Union industry.
- (335) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the macro questionnaire response submitted by the complainant. The data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (336) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (337) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.5.2. Macroeconomic indicators

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

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

Table 5

#### Production, production capacity and capacity utilisation

	2020	2021	2022	IP
Production volume (tonnes)	14 768 456	15 301 256	15 211 729	14 775 455
Index (2020 = 100)	100	104	103	100
Production capacity (tonnes)	21 360 776	21 406 110	21 686 443	21 574 276
Index (2020 = 100)	100	100	102	101
Capacity utilisation	69 %	71 %	70 %	68 %
Index (2020 = 100)	100	103	101	99

Source: EBB/Stratas for 2020-2023, complainant <sup>(166)</sup> <sup>(167)</sup>

- (339) Production, production capacity and capacity utilisation were at relatively similar levels in the investigation period as compared to 2020. However, the production volumes declined significantly in the investigation period as compared to 2022.

<sup>(166)</sup> Estimates by the complainant for the IP (based on 'Stratas' data for 2022 and 2023)

<sup>(167)</sup> As noted in recital (57), SAF was excluded from the product scope and SAF volumes excluded. Thus, from EBB's macro response, the Commission deducted the estimated production of SAF (i.e. 75 000 tonnes in 2022 and 150 000 tonnes in the IP) and the estimated capacity for SAF.

## 4.5.2.2. Sales volume and market share

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

Table 6

**Sales volume and market share**

	2020	2021	2022	IP
Sales volume on the Union market (tonnes)	12 775 581	13 178 121	12 236 045	11 951 917
Index (2020 = 100)	100	103	96	94
Market share	74,3 %	74,8 %	67,5 %	64,8 %
Index (2020 = 100)	100	101	91	87

Source: EBB

(341) Over the period considered, the Union industry's market share dropped significantly by almost 10 percentage points to reach a market share of 64,8 % in the investigation period. From 2022, when Chinese import volumes started to increase exponentially, the Union industry's sales volumes and corresponding market share started to fall rapidly.

## 4.5.2.3. Growth

(342) The Union industry experienced no growth in terms of production during the period considered despite the positive development of the consumption of biodiesel in that period. In fact, the sales volume and market share of the Union industry actually decreased during the reference period.

## 4.5.2.4. Employment and productivity

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

Table 7

**Employment and productivity**

	2020	2021	2022	IP
Number of employees	5 307	5 801	6 066	5 897
Index (2020 = 100)	100	109	114	111
Productivity (tonnes/employee)	2 783	2 638	2 520	2 531
Index (2020 = 100)	100	95	91	91

Source: EBB

(344) The Commission noted that not all Union producers reported employment data to EBB with the same approach and that some estimates were needed for non-reporting companies, creating some shortcomings in the data available to the Commission regarding employment. In any event, the estimated number of employees presented in table 7 was considered to be reasonably accurate and adequate for the purposes of this investigation.

(345) CCCMC argued that an increase of employment is a clear sign of a healthy industry. It also argued that the declining productivity is due to increased employment coupled with a decrease of demand (and resulting production and sales). The Commission noted, however, that the increase in employment mostly took place in 2021, when the Union industry could take advantage of the drop in Chinese imports and increase its sales volumes. In the investigation period, when Chinese imports soared, employment fell significantly. Consequently, the claim was rejected.

#### 4.5.2.5. Magnitude of the dumping margin and recovery from past dumping/countervailable practices

(346) The dumping margins of all the sampled exporting producers were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was not negligible, given the volume and prices of imports from the country concerned and the nature of the product, i.e. a commodity product.

(347) The product under investigation has already been subject to several anti-dumping and anti-subsidy investigations. Existing anti-dumping and anti-subsidy measures against the USA (extended to consignments from Canada, with some exemptions<sup>(168)</sup>) were renewed during the period considered. There is no indication that those measures have not been effective.

(348) In 2020 the Union industry clearly showed signs of recovery following the imposition in 2019 of definitive countervailing measures against imports of biodiesel originating in Argentina<sup>(169)</sup> and in Indonesia<sup>(170)</sup>. As to the rest of the period considered, recovery was on-going as shown amongst other factors, by low profitability levels (as demonstrated below), but came to a stop in 2022 when Chinese imports started to soar.

#### 4.5.3. Microeconomic indicators

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

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

Table 8

#### Sales prices in the Union

	2020	2021	2022	IP
Average unit sales price in the Union on the total market (EUR/tonne)	799	1 068	1 518	1 355
<i>Index (2020 = 100)</i>	100	134	190	169
Unit cost of production (EUR/ tonne)	784	1 057	1 492	1 353
<i>Index (2020 = 100)</i>	100	135	190	172

Source: Questionnaire replies of sampled union producers

<sup>(168)</sup> Commission Implementing Regulation (EU) 2022/731 of 12 May 2022 amending Implementing Regulation (EU) 2021/1266 imposing a definitive anti-dumping duty on imports of biodiesel originating in the United States of America and Implementing Regulation (EU) 2021/1267 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America (OJ L 136, 13.5.2022, p. 3, ELI: [http://data.europa.eu/eli/reg\\_impl/2022/731/oj](http://data.europa.eu/eli/reg_impl/2022/731/oj)).

<sup>(169)</sup> Commission Implementing Regulation (EU) No 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 11.2.2019, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/244/oj](http://data.europa.eu/eli/reg_impl/2019/244/oj)).

<sup>(170)</sup> Commission Implementing Regulation (EU) 2019/2092 of 28 November 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Indonesia (OJ L 317, 9.12.2019, pages 42–95, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/2092/oj](http://data.europa.eu/eli/reg_impl/2019/2092/oj)).

- (350) From 2020 to 2022, sales prices followed trends in costs, going both up by 90% up to 2022. In the investigation period, the Union industry could not reflect the costs increase in its sales prices and was forced to sell almost at cost.
- (351) A major share of the sales by Union producers was crop and feed-based FAME without a double-counting premium. At the end of the period considered the gap between the unit cost of production and the unit sales price dropped and became barely 2 EUR.

#### 4.5.3.2. Labour costs

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

Table 9

#### Average labour costs per employee

	2020	2021	2022	IP
Average labour costs per employee (EUR)	78 088	83 914	85 898	89 613
Index (2020 = 100)	100	107	110	115

Source: Questionnaire replies of sampled union producers

- (353) On average, labour cost of the sampled Union producers increased by 15% over the period considered. As labour cost represent less than 3% of the cost of manufacturing of biodiesel, the increase in labour costs - which is not at odds with the average overall 12% labour cost increase in the Union in the period 2020-2023 according to Eurostat <sup>(171)</sup> - has a negligible impact on the state of the Union industry.

#### 4.5.3.3. Inventories

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

Table 10

#### Inventories

	2020	2021	2022	IP
Closing stocks (tonnes)	170 541	140 162	184 957	230 610
Index (2020 = 100)	100	82	108	135
Closing stocks as a percentage of production	1,2 %	0,9 %	1,2 %	1,6 %
Index (2020 = 100)	100	75	100	133

Source: Questionnaire replies of sampled union producers

<sup>(171)</sup> Eurostat, Labour costs annual data – Nace Rev.2 (<https://ec.europa.eu/eurostat/databrowser/bookmark/995c4de3-9520-4cc1-9dc2-3c78325a2fc8?lang=en>).

(355) The CCCMC submitted that this factor is not relevant in the context of the present investigation on the grounds that the Commission had previously stated that the level of stocks is a less meaningful indicator for this type of industry <sup>(172)</sup>. The Commission confirmed that the industry endeavoured to keep stocks low but this is not always the case when Chinese imports arrived at very low prices. It also noted that, given that the product under investigation is sold in bulk, a single delivery can comprise a significant volume of more than 10 000 tonnes which can have a significant impact on the stock level, depending on the precise transaction date.

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

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

Table 11

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

	2020	2021	2022	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	2 %	1 %	1,8 %	0,1 %
<i>Index (2020 = 100)</i>	100	50	90	5
Cash flow (EUR)	90 293 613	- 26 971 004	- 70 149 695	- 41 725 753
<i>Index (2020 = 100)</i>	100	- 30	- 78	- 46
Investments (EUR)	92 568 706	43 686 329	62 751 636	105 304 643
<i>Index (2020 = 100)</i>	100	47	68	114
Return on investments	8,4 %	5,8 %	10,5 %	1,3 %
<i>Index (2020 = 100)</i>	100	69	126	15

Source: Questionnaire replies of sampled union producers

(357) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the Union industry was at very low levels during the period considered and it dropped to break-even in the investigation period. The largest drop in profitability was between 2022 and the investigation period, when Chinese imports increased by 45 % and the profit of the Union industry dropped by 1,7 percentage points to almost break-even as compared to 2022.

(358) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow deteriorated strongly during the period considered and was highly negative as from 2021.

<sup>(172)</sup> Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 11.2.2019, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/244/oj](http://data.europa.eu/eli/reg_impl/2019/244/oj)), recital (394).

- (359) The investments in the sampled companies fluctuated during the period considered. In general, investments are approved years before their implementation. Investments in the last part of the period considered were projects foreseen since long and concerned only two companies.
- (360) The return on investments is the profit in percentage of the net book value of investments. It developed negatively, in line with profitability, and was very low during the whole period considered and at a mere 1,3 % in the investigation period due in particular to the very low level of profitability.

#### 4.5.4. *Conclusion on injury*

- (361) The above assessment of economic macro- and micro-indicators shows that the Union industry was suffering material injury in the investigation period, as it lost significant market share and its sales prices increase was insufficient to pass on the strong increase in its costs of production, resulting in the decline of its profitability, which negatively affected return on investments and cash flow. The fact that a few indicators (production capacity, number of employees) did not deteriorate does not undermine the finding of injury.
- (362) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

### 5. CAUSATION

- (363) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: imports from third countries, the export performance of the Union industry and the increases in cost of production.

#### 5.1. **Effects of the dumped imports**

- (364) The import volumes from the PRC increased by 60 %, as shown in Table 3, whereas consumption grew by around 7 % (Table 2). This resulted in a market share increase of imports from the PRC by 2,6 percentage points from 5,4 % to 8 %, whereas the market share of the Union industry went down by almost 10 percentage points to reach 64,8 % in the investigation period.
- (365) Prices of Chinese imports undercut Union industry prices in the investigation period by 5,3 % to 13,8 %. Such low prices resulted in price suppression on the Union market, as a result of which the Union industry was not able to make healthy profits. In the investigation period, sales prices of the Union industry were only marginally above its cost of production.
- (366) The Union industry, which was just starting to recover from past injurious subsidisation of biodiesel from Argentina and Indonesia, immediately felt the negative impact of the increasing volume of biodiesel imports from the PRC at low prices. Those imports had a clearly negative impact on the Union industry's financial situation.
- (367) On the basis of the above, the Commission concluded that the imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

#### 5.2. **Effects of other factors**

##### 5.2.1. *Imports from third countries*

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



Table 12

**Imports from third countries**

Country		2020	2021	2022	IP
Argentina	Volume (tonnes)	874 199	1 292 775	997 210	490 644
	<i>Index (2020 = 100)</i>	100	148	114	56
	Market share	5,1 %	7,3 %	5,5 %	2,7 %
	Average price (EUR/tonne)	732	1 076	1 419	1 425
	<i>Index (2020 = 100)</i>	100	147	194	195
United Kingdom	Volume (tonnes)	608 155	990 082	1 032 790	1 100 392
	<i>Index (2020 = 100)</i>	100	163	170	181
	Market share	3,5 %	5,6 %	5,7 %	6,0 %
	Average price (EUR/tonne)	1 027	1 361	1 615	1 297
	<i>Index (2020 = 100)</i>	100	132	157	126
Singapore	Volume (tonnes)	468 998	279 098	689 578	868 513
	<i>Index (2020 = 100)</i>	100	60	147	185
	Market share	2,7 %	1,6 %	3,8 %	4,7 %
	Average price (EUR/tonne)	1 202	1 922	1 388	1 495
	<i>Index (2020 = 100)</i>	100	160	116	124
Other third countries	Volume (tonnes)	1 551 084	1 390 427	2 191 348	2 544 445
	<i>Index (2020 = 100)</i>	100	90	141	164
	Market share	9,0 %	7,9 %	12,1 %	13,8 %
	Average price (EUR/tonne)	858	1 169	1 736	1 468
	<i>Index (2020 = 100)</i>	100	136	202	171

Total of all third countries except the country concerned	Volume (tonnes)	3 502 436	3 952 382	4 910 926	5 003 994
	Index (2020 = 100)	100	113	140	143
	Market share	20,4 %	22,4 %	27,0 %	27,1 %
	Average price (EUR/tonne)	817	1 165	1 473	1 299
	Index (2020 = 100)	100	143	180	59

Source: Comext (volume <sup>(173)</sup> & average price <sup>(174)</sup>) except for 2020 United Kingdom for which, absent of conclusive data in Comext, estimations of volumes and prices were made on the basis of GTA prices

- (369) During the investigation period, the average import price from all other imports was lower than the import price from China. However, prices of imports are not directly comparable.
- (370) Notably, Chinese biodiesel uses a different feedstock than other import sources and Chinese imports are of a type of biodiesel which attracts a double-counting premium under the RED Directives as explained above, and consequently a higher price on the EU market. Therefore, even though the prices of imports from countries other than China are sometimes lower than those from China, this does not entail they have the same negative impact on the Union industry.
- (371) CCCMC highlighted that the Union biodiesel industry lost market share to third country imports. Indeed, in particular the United Kingdom and Singapore also increased their sales volumes and market share during the period considered. However, no conclusion can be drawn on the injurious effects of such imports. First, imports from the UK remained rather stable since 2021, increasing only by 0,4 percentage points in the investigation period in comparison with 2021. Market share of imports from Singapore increased by two percentage points, which is lower than the market share increase of Chinese imports but still significant. However, the Commission found that Chinese imports are of biodiesel product types which attract a (double-counting) premium and therefore, even if made at higher average import prices than the Union industry's average biodiesel sales price, they can be injurious and undercut. No such conclusion could be drawn with regard to imports from other countries, absent of information on feedstocks of such imports and the relevant sales channels.
- (372) In light of the above, the Commission provisionally concluded that imports from other third countries may have contributed to the injury suffered by the Union industry but at most to a limited extent, therefore, they did not attenuate the causal link between the injury suffered by the Union industry and the Chinese dumped imports.

#### 5.2.2. Export performance of the Union industry

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

<sup>(173)</sup> Comext data for pure biodiesel and its blends.

<sup>(174)</sup> Comext data for pure biodiesel only. Data for code 2710 19 43 29 for Singapore. Data for code 3826 00 10 for Argentina, UK and other third countries. Data for codes 2710 19 43 29 and 3826 00 10 for other countries excluding China (for the UK share included in other countries excluding China, only code 3826 00 10 was considered).

Table 13

**Export performance of the (sampled) Union producers**

	2020	2021	2022	IP
Export volume (tonnes)	1 651 575	907 836	841 622	1 388 748
<i>Index (2020 = 100)</i>	100	55	51	84
Average price (EUR/tonne)	923	1 274	1 718	1 556
<i>Index (2020 = 100)</i>	100	138	186	169

Source: EBB (export volume and price based on CN code 3826 00), Eurostat data

- (374) The Union industry's export sales volumes amounted to 11 % of the Union production in 2020, 6 % of the Union production in 2021 and in 2022, and 9 % of the Union production in the investigation period. Overall, they therefore represented a relatively small part of the Union industry's turnover and had, compared to the Union sales, a limited effect on the performance of the industry as a whole.
- (375) The sampled parties' export sales were overall low and strongly fluctuating in an inconsistent manner, whilst the sampled producers manufactured different product types. Therefore, the Commission could not establish representative average export sales prices from the sample. Instead, it established export prices of the Union industry on the same basis as the complainant had done for volumes using GTA, that is, by taking export sales under CN code 3826 00 only. On that basis, export sales prices of the Union industry during the period considered developed slightly more positive than its sales prices on the Union market and with higher price levels.
- (376) CCCMC pointed at a poor export performance by the Union industry as source of injury, namely as regards its capacity utilisation. The Commission noted however that the Union industry boosted its export sales in the investigation period which limited the drop in capacity utilisation, as it was confronted with a continuing significant loss of market share on the Union market. Export sales representing around 10% of Union industry sales throughout the period considered, the Commission concluded, on that basis, that the export performance of Union producers could have contributed to the injury to a limited extent at most, if at all. CCCMC claim was rejected.

### 5.2.3. *Increases in costs/cost of production*

- (377) CCCMC submitted that the increase of cost of production was a potential cause of injury to the Union industry. As reported in Table 8 above, the cost of production increased by 72% over the period considered which is more than the increase in sales prices, by 69%, over the same period. To that argument, the Commission noted, first, that at the starting year of the period considered, 2020, the Union industry was already at very low profits as it was just starting to recover from the injury caused by the imports from Argentina and Indonesia, on which countervailing duties were imposed in 2019. The Commission further noted that in a level playing field, the industry is able to reflect (raw material) cost increases fully in their sales prices. However, in this case, the Union producers were unable to fully translate the increase in cost of production in their sales prices, in particular in the investigation period, let alone to increase their sales prices to more sustainable levels, due to the price pressure exerted by the dumped Chinese imports. Therefore, the increase in overall production costs cannot be considered a cause of injury to the industry.

### 5.3. Conclusion on causation

- (378) The above analysis shows that there was a major increase in the volume and market share of the imports originating in China during the second half of the period considered. The low prices of dumped Chinese imports prevented the Union industry from increasing its prices to sustainable levels necessary to achieve reasonable profit margins, resulting in a situation close to break-even in the investigation period. The Union industry also lost significant market share. The Commission established thus a causal link between the dumped imports from China and the injury suffered by the Union industry.
- (379) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. Imports from third countries gained significant market share, but the Commission could not establish price injury caused by these imports. The export sales by the Union industry were relatively stable throughout the period considered and above Union sales prices. In view of their low share in total sales, the small decline in export sales volumes over the period considered only contributed to the injury to a limited extent at most. Other possible causes of injury were also analysed but found to have contributed to the injury to a limited extent at most, if at all.
- (380) On the basis of the above, the Commission concluded at this stage that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is clear, in particular as regards sales volume in the Union market, market share, profitability, cash flow and return on investments.

## 6. LEVEL OF MEASURES

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

### 6.1. Injury margin

- (382) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.
- (383) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (384) The Commission could not establish a profit margin on the basis of the years prior to the increase of imports from China, as the Union industry suffered from an influx of dumped/subsidised imports from other origins for years, as noted in section 4.5.2.5, and therefore no period of years or any year could qualify as a period/year with a normal competitive situation in the Union market. Consequently, the Commission resorted to the profit established for this kind of industry in previous investigations. The basic profit was established at 11%. <sup>(175)</sup>
- (385) Sampled Union producers made no substantiated claim that its level of investments, research and development (R&D) and innovation during the period considered would have been higher under normal conditions of competition.

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<sup>(175)</sup>The 11% target profit was established in 2013 (Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia, OJ L315, 19.11.2013, p.22, ELI: [http://data.europa.eu/eli/reg\\_impl/2013/1194/oj](http://data.europa.eu/eli/reg_impl/2013/1194/oj)). This target profit was also deemed reasonable in the Commission Implementing Regulation (EU) 2019/244 of 11 February 2019 imposing a definitive countervailing duty on imports of biodiesel originating in Argentina (OJ L 40, 11.2.2019, p. 1, ELI: [http://data.europa.eu/eli/reg\\_impl/2019/244/oj](http://data.europa.eu/eli/reg_impl/2019/244/oj)).

- (386) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available, which was supported by the companies' reporting tools and forecasts, the Commission established an additional cost of between [1-8] and [15-20] EUR/tonne, depending on the producer. This difference was added to the non-injurious price mentioned in recital (387).
- (387) On this basis, the Commission calculated a non-injurious price of 2 209 EUR/tonne in average for the like product of the Union industry by applying the above-mentioned target profit margin to the cost of production of the sampled Union producers during the investigation period and then adding the adjustments under Article 7(2d) on a type-by-type basis.
- (388) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers in China, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (389) The injury elimination level for 'other cooperating companies' and for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recitals (302)-(303)).

Company	Dumping margin (%)	Injury margin (%)
EcoCeres Group:		
— ECO Biochemical Technology (Zhangjiagang) Co. Ltd.	12,8	16,4
— EcoCeres Limited		
Jiaao Group:		
— Zhejiang EastRiver Energy S&T Co., Ltd.	36,4	37,1
— Zhejiang Jiaao Enproenergy Co., Ltd.		
— Jiaao International Trading (SINGAPORE) PTE. Ltd.		
Zhuoyue Group:		
— Longyan Zhuoyue New Energy Co. Ltd.	25,4	44,3
— Xiamen Zhuoyue Biomass Energy Co., Ltd.		
Other cooperating companies	23,7	32,6
All other imports originating in the People's Republic of China	36,4	44,3

## 6.2. Conclusion on the level of measures

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

Company	Provisional anti-dumping duty (%)
EcoCeres Group:	
— ECO Biochemical Technology (Zhangjiagang) Co. Ltd.	12,8
— EcoCeres Limited	
Jiaao Group:	
— Zhejiang EastRiver Energy S&T Co., Ltd.	36,4
— Zhejiang Jiaao Enproenergy Co., Ltd.	
— Jiaao International Trading (SINGAPORE) PTE. Ltd.	
Zhuoyue Group:	
— Longyan Zhuoyue New Energy Co. Ltd.	25,4
— Xiamen Zhuoyue Biomass Energy Co., Ltd.	
Other cooperating companies	23,7
All other imports originating in the People's Republic of China	36,4

## 7. UNION INTEREST

(391) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, traders and users.

## 8. INTEREST OF THE UNION INDUSTRY

(392) The Union industry is composed of more than 60 producers across the Union and provides direct employment to close to 6 000 people. No producer opposed the investigation.

(393) The Commission determined that, if measures were not imposed, the Union industry, which operated at break-even in the investigation period, would become loss-making and face insolvencies, due to the unfair competition from Chinese biodiesel producers which would further compromise the Union industry's viability. On the contrary, the imposition of measures would enable the Union industry to re-start its recovery process and eventually achieve sustainable profitability levels.

(394) The Commission therefore concluded that the imposition of the measures would be in the interest of the Union industry.

### 8.1. Interest of unrelated importers, traders and distributors

(395) Few traders and distributors registered as interested parties in the proceeding. They made no representations.

(396) Companies involved in fossil diesel production and distribution also involved in the mandatory blending of fossil diesel with biodiesel were invited to complete questionnaires upon initiation. Two of them replied to the questionnaire. One opposed the imposition of measures, while the other remained neutral. For the two respondents, biodiesel was a very small part of their overall business activity. In light of this and the fact that none of them provided most of the information at the required level of detail, i.e. limited to those activities involving (Chinese) biodiesel, the Commission concluded that there was no indication that measures would have a material impact on them. If a duty increased the price of biodiesel, it is expected that any increase would be passed on automatically to their customers.

- (397) Moreover, alternative sources of supplies are available. This is evidenced by the significant market share of imports from third countries.
- (398) The Commission therefore concluded that the imposition of the measures would not entail a significant detriment to the interest of importers, traders and distributors. These economic operators are part of the supply chain and are expected to pass on costs increase derived from the measures, if any, to users and consumers.

## 8.2. Interest of users, consumers and suppliers

- (399) There are no indications that the existing measures on biodiesel from other origins already in force have negatively affected the Union users of biodiesel. There is no evidence that any of the existing measures had an adverse impact on their profitability.
- (400) The new anti-dumping measures are likely to increase prices of biodiesel for users and consumers, but to a very limited extent. It is noted that final fuel prices rather follow the price of fossil crude oil <sup>(176)</sup> and that around 40% the price of diesel in petrol stations in the EU is taxes <sup>(177)</sup>, which can be modulated depending on the various interests or needs. Also, incentives for using biodiesel may apply. <sup>(178)</sup> Bearing in mind these facts and the small percentage of biodiesel (no more than 10%) that is generally mixed into the fossil diesel, no evidence was found that the imposition of measures would be clearly against the interests of either users or consumers.

## 8.3. Other factors

- (401) Some parties claimed that restricting imports of Chinese biodiesels, especially those produced from feedstocks listed in Annex IX of the RED II, would be counterproductive and hamper achieving the EU's green energy goals and the renewable energy targets for transport for 2030. The Commission dismissed the claims because, further to the justified need to restore a level playing in the Union, Union producers have enough capacity to satisfy the current demand and even spare capacity to satisfy future needs. Closures of Union biodiesel manufacturers would increase dependency on biodiesel from third countries imported from geographically distant locations, which is counterproductive in terms of reducing the Union's carbon footprint.
- (402) In addition, the Commission considered that imposition of measures will boost sustainability and GHG <sup>(179)</sup> emission reduction efforts in the supply chain and will have a positive effect on the supplier industry in the Union as revenue and capacity utilisation will increase. It should be noted that, during a hearing held in May 2024, FEDIOL (the European federation representing the interests of the European vegetable oil and protein meal industry) stated that market conditions in the upstream agricultural sector in the Union were dramatic. A fall in prices of rapeseed oil (which main use is biodiesel) from around 625€/tonne (end of 2022) to around 410€/tonne (mid-2023, at planting decision time) deterred production in 2024 and lowered farmers' revenue. This had a discouraging effect on EU sustainability- objectives and GHG emission reduction efforts.

<sup>(176)</sup> <https://www.bmwk.de/Redaktion/EN/Artikel/Energy/petroleum-fuel-prices.html>

<sup>(177)</sup> In its *Weekly Oil Bulletin*, the Commission provides an overview per EU member state of the average prices for diesel and petrol (Euro Super-95) and the tax share of the final price. See [https://energy.ec.europa.eu/data-and-analysis/weekly-oil-bulletin\\_en](https://energy.ec.europa.eu/data-and-analysis/weekly-oil-bulletin_en)

<sup>(178)</sup> More details by the association FuelsEurope can found in the chart available here: [https://www.fuelseurope.eu/uploads/files/modules/documents/file/1688474562\\_PHVWHHTy6LUHcLLbjzKRaj44vRiRLrTghMB8aXzf.pdf#:~:text=No%20tax%20incentive%3A%20Biofuels%20do%20not%20bene%EF%AC%81t%20from,a%20percentage%20of%20fossil%20fuel%20content%20above%2070%25.](https://www.fuelseurope.eu/uploads/files/modules/documents/file/1688474562_PHVWHHTy6LUHcLLbjzKRaj44vRiRLrTghMB8aXzf.pdf#:~:text=No%20tax%20incentive%3A%20Biofuels%20do%20not%20bene%EF%AC%81t%20from,a%20percentage%20of%20fossil%20fuel%20content%20above%2070%25.)

<sup>(179)</sup> GHG = Greenhouse gas.

- (403) In CCCMC's view, given the current turmoil in worldwide economies, increasing raw materials costs for users of biodiesel by restricting supplies from China would have a negative effect on inflation and inflationary expectations. As section 8.2 concludes that measures are not likely to result in significant raw material costs increases for users, CCCMC's claim is dismissed.

#### 8.4. Conclusion on Union interest

- (404) On the basis of the above, the Commission concluded that there were no compelling reasons that it was clearly not in the Union interest to impose measures on imports of biodiesel originating in the PRC at this stage of the investigation.
- (405) The biodiesel market is the result of legal mandates at supra-national and national level. Consequently, relevant economic operators are bound to comply with the mandates in question for the benefit of helping the Union meet its greenhouse gas reduction targets.

### 9. PROVISIONAL ANTI-DUMPING MEASURES

- (406) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (407) Provisional anti-dumping measures should be imposed on imports of biodiesel originating in China, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (408) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty (%)
EcoCeres Group:	
— ECO Biochemical Technology (Zhangjiagang) Co. Ltd.	12,8
— EcoCeres Limited	
Jiaao Group:	
— Zhejiang EastRiver Energy S&T Co., Ltd.	36,4
— Zhejiang Jiaao Enproenergy Co., Ltd.	
— Jiaao International Trading (SINGAPORE) PTE. Ltd.	
Zhuoyue Group:	
— Longyan Zhuoyue New Energy Co. Ltd.	25,4
— Xiamen Zhuoyue Biomass Energy Co., Ltd.	
Other cooperating companies	23,7
All other imports originating in the People's Republic of China	36,4



- (409) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other imports originating in the People's Republic of China'. They should not be subject to any of the individual anti-dumping duty rates.
- (410) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'All other imports originating in the People's Republic of China'.
- (411) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (412) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

## 10. INFORMATION AT PROVISIONAL STAGE

- (413) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.

## 11. FINAL PROVISIONS

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or as included in a blend, currently falling under CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 22, 1516 20 98 23, 1516 20 98 29, 1516 20 98 31, 1516 20 98 32 and 1516 20 98 39), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 22, 1518 00 91 23, 1518 00 91 29, 1518 00 91 31, 1518 00 91 32 and 1518 00 91 39), ex 1518 00 95 (TARIC code 1518 00 95 10, 1518 00 95 11 and 1518 00 95 19), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 22, 1518 00 99 23, 1518 00 99 29, 1518 00 99 31, 1518 00 99 32 and 1518 00 99 39), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 22, 2710 19 43 23, 2710 19 43 29, 2710 19 43 31, 2710 19 43 32 and 2710 19 43 39), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 22, 2710 19 46 23, 2710 19 46 29, 2710 19 46 31, 2710 19 46 32 and 2710 19 46 39), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 22, 2710 19 47 23, 2710 19 47 29, 2710 19 47 31, 2710 19 47 32 and 2710 19 47 39), 2710 20 11, 2710 20 16, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 11, 3824 99 92 13, 3824 99 92 14, 3824 99 92 15, 3824 99 92 16, and 3824 99 92 19), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 12, 3826 00 90 13, 3826 00 90 19, 3826 00 90 31, 3826 00 90 32 and 3826 00 90 39), excluding sustainable aviation fuel meeting the requirements of ASTM D7566-22 Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons, currently falling under CN codes ex 2710 19 43 (TARIC additional code 89FT), ex 2710 19 46 (TARIC additional code 89FT), ex 2710 19 47 (TARIC additional code 89FT), ex 2710 20 11 (TARIC additional code 89FT) and ex 2710 20 16 (TARIC additional code 89FT), and originating in the People's Republic of China.

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

Company	Provisional anti-dumping duty (%)	TARIC additional code
EcoCeres Group:		
— ECO Biochemical Technology (Zhangjiagang) Co. Ltd.	12,8	89ED
— EcoCeres Limited		
Jiaao Group:		
— Zhejiang EastRiver Energy S&T Co., Ltd.	36,4	89EE
— Zhejiang Jiaao Enproenergy Co., Ltd.		
— Jiaao International Trading (SINGAPORE) PTE. Ltd.		
Zhuoyue Group:		
— Longyan Zhuoyue New Energy Co. Ltd.	25,4	89EF
— Xiamen Zhuoyue Biomass Energy Co., Ltd.		
Other cooperating companies listed in the Annex	23,7	
All other imports originating in the People's Republic of China	36,4	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of biodiesel 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. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer may examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

#### Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 14 August 2024.

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

## ANNEX

**Cooperating exporting producers not sampled**

Name	TARIC additional code
Anhui Tianyi Environmental Protection Tech. Co., Ltd.	89EG
Baoshun (Henan) New Carbon Material Co., Ltd.	89EH
Bemay (Hubei) New Energy Company Ltd.	89FU
Changzhou City Jintan District Weige Biological Technology Co., Ltd.	89EI
Chongqing CH Bio Energy Co., Ltd.	89EJ
Chongqing Yubang New Energy Technology Co., Ltd.	89EK
Dezhou Rongguang Biotechnology Co., Ltd.	89EL
Guangxi Guiping Guangran Energy Technology Co. Ltd.	89EM
Guangzhou Hongtai New Energy Technology Co., Ltd.	89EN
Guangzhou Leo-king Environmental Technology Co., Ltd.	89EO
Hainan Huanyu New Energy Co., Ltd.	89EP
Hebei Hui De Renewable Resources Co., Ltd.	89EQ
Hebei Jingu Plasticizer Co., Ltd.	89ER
Hebei Jingu Recycling Resources Development Co. Ltd.	89ES
Hebei Longhai Bioenergy Co., Ltd.	89ET
Hebei Nanhong New Energy Technology Pte, Ltd.	89EU
HENAN JUNHENG INDUSTRIAL GROUP BIOTECHNOLOGY COMPANY., LTD.	89EV
Hubei Tianji Bioenergy Co., Ltd.	89EW
Huizhou City Huilong Jinyi Oil Energy Co.,LTD	89EX
Huizhou Excellent and Innovation Bioenergy Technology Co., Ltd.	89EY
Hunan Xinhui Bioenergy Co., Ltd.	89EZ
Jiangxi Zunchuang New Energy Co., Ltd.	89FA
Jiujiang Oasis Energy Technology Co., Ltd.	89FB
Kunming Decheng Renewable Resources Technology Co. Ltd.	89FC
Linyi Huibang New Energy Co., Limited	89FD
Long Chang City Yuanju Oil and Greas Co. Ltd.	89FE
Maoming Hongyu Energy Technology Co., Ltd.	89FF
Ningbo Jiesen Green Fuel Co., Ltd.	89FG
Shandong Baoshun Chemical Technology Co., Ltd.	89FH
Shandong Ding-Yu Biotech Energy Co., Ltd.	89FI
SHANDONG HUIDONG NEW ENERGY CO., LTD.	89FJ
Shandong Sanju Bioenergy Co., Ltd.	89FK
Shanghai Zhongqi Environment Technology Inc.	89FL
Shenzhen Leoking Biotechnology Co., Ltd	89FM
Sichuan Huisheng New Technology Co Ltd.	89FN

Name	TARIC additional code
Sichuan Lampan New Energy Technology Co., Ltd.	89FO
Tanghe Jinhai Biological Technology Co., Ltd.	89FP
Tangshan Jinlihai Biodiesel Co., Ltd.	89FQ
Wenzhou Zhongke New Energy Technology Co., Ltd.	89FR
YANGZHOU JIANYUAN BIOTECHNOLOGY CO., LTD.	89FS