



2024/2211

6.9.2024

**COMMISSION IMPLEMENTING REGULATION (EU) 2024/2211**

**of 5 September 2024**

**imposing a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

**1. PROCEDURE**

**1.1. Previous investigations and measures in force**

- (1) By Implementing Regulation (EU) No 325/2012 <sup>(2)</sup>, the Council imposed anti-dumping duties on imports of oxalic acid, originating in India and the People's Republic of China ('PRC') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) Following the judgment of the General Court of 20 May 2015 <sup>(3)</sup>, the measures were annulled in so far as they concerned the Chinese exporting producer Yuanping Changyuan Chemicals Co. Ltd ('Yuanping'). Following the implementation of that judgment, the European Commission ('the Commission') re-imposed anti-dumping measures on imports of the product concerned by Yuanping with effect from 30 November 2016 <sup>(4)</sup>.
- (3) By Implementing Regulation (EU) 2018/931 <sup>(5)</sup>, the Commission extended for another five years the definitive anti-dumping measures on imports of oxalic acid originating in India and the People's Republic of China following an expiry review (the 'previous expiry review').
- (4) The anti-dumping duties currently in force are between 22,8 % to 43,6 % and 14,6 % and 52,2 % on imports from India and the People's Republic of China ('countries concerned') respectively.

**1.2. Request for an expiry review**

- (5) Following the publication of a notice of impending expiry of the anti-dumping measures in force <sup>(6)</sup>, the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.

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

<sup>(2)</sup> Council Implementing Regulation (EU) No 325/2012 of 12 April 2012 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of oxalic acid originating in India and the People's Republic of China (OJ L 106, 18.4.2012, p. 1).

<sup>(3)</sup> Judgment of 20 May 2015, *Yuanping Changyuan Chemicals v Council*, T-310/12, ECLI:EU:T:2015:295.

<sup>(4)</sup> Commission Implementing Regulation (EU) 2016/2081 of 28 November 2016 re-imposing a definitive anti-dumping duty on imports of oxalic acid originating in the People's Republic of China and produced by Yuanping Changyuan Chemicals Co. Ltd (OJ L 321, 29.11.2016, p. 48).

<sup>(5)</sup> Commission Implementing Regulation (EU) 2018/931 of 28 June 2018 imposing a definitive anti-dumping duty on imports of oxalic acid originating in India and the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 165, 2.7.2018, p. 13).

<sup>(6)</sup> OJ C 379, 3.10.2022, p. 11.

- (6) The request for review was submitted on 30 March 2023 by Oxaquim SA ('Oxaquim' or 'the applicant'), with the support of WeylChem Lamotte S.A.S., which together constitute the Union industry of oxalic acid in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation of dumping and continuation and/or recurrence of injury to the Union industry.

### 1.3. Initiation of an expiry review

- (7) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 30 June 2023, the Commission initiated an expiry review with regard to imports into the Union of oxalic acid originating in the countries concerned on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(7)</sup> ('the Notice of Initiation').

### 1.4. Review investigation period and period considered

- (8) The investigation of continuation or recurrence of dumping covered the period from 1 April 2022 to 31 March 2023 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2020 to the end of the RIP ('the period considered').

### 1.5. Interested parties

- (9) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, the known producers in India and the PRC and the authorities of India and the PRC, known unrelated importers and users about the initiation of the expiry review and invited them to participate.
- (10) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No interested party requested a hearing.

### 1.6. Sampling

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

#### Sampling of Union producers

- (12) Oxalic acid was manufactured by only two producers in the Union during the period considered. Thus, no sampling of Union producers was necessary.

#### Sampling of importers

- (13) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known unrelated importers to provide the information specified in the Notice of Initiation. No unrelated importer came forward.

#### Sampling of exporting producers in India and PRC

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in India and the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of India and the Mission of PRC to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

<sup>(7)</sup> OJ C 230, 30.6.2023, p. 12.

- (15) One exporting producer in India provided the requested information and agreed to be included in the sample. In view of that, the Commission decided that sampling was not necessary. One additional exporting producer in India came forward afterwards, therefore, as sampling was deemed not necessary, the Commission invited also the second exporting producer to fill in the questionnaire.
- (16) No company from the PRC came forward. The Commission informed the Chinese authorities by means of a Note Verbale on 25 October 2023 that it had not received any cooperation from exporting producers in the PRC. It therefore intended to base its findings for the exporting producers in the PRC on the facts available in accordance with Article 18 of the basic Regulation. No comments were received.

#### 1.7. Replies to the questionnaires

- (17) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the PRC ('GOC').
- (18) The Commission sent questionnaires to the two known Union producers, to all known unrelated importers and to two exporting producers in India. The same questionnaires had also been made available online <sup>(8)</sup> on the day of initiation.
- (19) Questionnaire replies were received from two Union producers, one user and two exporting producers in India. One Union producer, WeylChem Lamotte S.A.S. ('WeylChem'), submitted an incomplete questionnaire reply. The Commission sent a deficiency letter requesting additional information. WeylChem informed the Commission that it was unable to reply to the deficiency letter and host a verification visit.

#### 1.8. Verification

- (20) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

— Oxaquim SA, El Catllar, Spain

Users

— Jervois Finland Oy, Kokkola, Finland

Exporting producers in India:

— Star Oxochem Pvt Ltd, Jhagadia, India;

— Punjab Chemicals and Crop Protection Ltd, Bhankharpur, India.

#### 1.9. Disclosure

- (21) On 5 June 2024, the Commission disclosed the essential facts and considerations on the basis of which it intended to propose the extension of anti-dumping measures on imports of oxalic acid originating in India and the People's Republic of China.
- (22) Comments were received from the applicant, Oxaquim, and from the Indian exporting producer, Star Oxochem Pvt Ltd.
- (23) Following a claim concerning an adjustment, an additional disclosure was made to Star Oxochem Pvt Ltd on 19 June 2024. The company provided no further comments.

<sup>(8)</sup> <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2668>

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

### 2.1. Product under review

- (24) The product under review is the same as in the original investigation and previous expiry review, namely oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling under CN code ex 2917 11 00 (TARIC code 2917 11 00 91) ('the product under review').
- (25) Oxalic acid is used in a wide range of applications, for example as a bleaching agent in the textile and wood industries, reducing agent in the production of pharmaceutical products and as a material used in the extraction and purification of rare earth metals and elements.
- (26) In the original investigation, it was found that there are two types of oxalic acid: unrefined oxalic acid and refined oxalic acid. Refined oxalic acid, which was produced in the PRC but not in India, is manufactured through a purification process of unrefined oxalic acid, the purpose of which is to remove iron, chlorides, metal traces and other impurities. In the absence of cooperation from the PRC it was assumed for the current review investigation that exporting producers in the PRC manufactured and exported refined oxalic acid as in the original investigation.

### 2.2. Product concerned

- (27) The product concerned by this investigation is the product under review originating in India and the PRC.

### 2.3. Like product

- (28) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
  - the product under review produced and sold on the domestic market of India and the PRC;
  - the product under review produced and sold by the exporting producers to the rest of the world; and
  - the product under review produced and sold in the Union by the Union industry.
- (29) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

## 3. DUMPING

### 3.1. Preliminary remarks

- (30) During the review investigation period, imports of oxalic acid from PRC and India continued albeit at lower volumes than in the investigation period of the original investigation (from 1 January to 31 December 2010) and at similar level as in the previous expiry review period (from 1 April 2016 to 31 March 2017). According to Eurostat, imports of oxalic acid from PRC and India accounted for about 17 % of the Union market in the review investigation period compared to 16 % during the previous expiry review. In absolute terms imports decreased from 7 969 tonnes during the original investigation period to 1 658 tonnes in the last expiry review and further to 1 565 tonnes in the current RIP.

### 3.2. India

- (31) There are four known producers of oxalic acid in India, of which two provided a reply to the questionnaire. On the basis of the information at its disposal <sup>(9)</sup>, the Commission estimated total production in India at around 40 000 tonnes. Total exports from India are estimated at around 5 700 metric tonnes, based on data provided in review request, cross checked with data available in Global Trade Atlas (GTA).
- (32) The imports from India to the Union in the RIP amounted to around 400 tonnes, based on Eurostat data.
- (33) Imports from India are also subject to the 6,5 % CCT duty <sup>(10)</sup>.

#### 3.2.1. Dumping in the review investigation period

##### 3.2.1.1. Normal value

- (34) The Commission first examined whether the total volume of domestic sales for each of the two cooperating Indian companies was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the review investigation period. On this basis, the total sales of the two cooperating exporting producers of the like product on the domestic market were found representative.
- (35) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union.
- (36) The Commission then examined whether the domestic sales by each cooperating exporting producer for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the review investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the sales of the two cooperating exporting producers were representative.
- (37) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the review investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (38) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
  - (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
  - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (39) In respect of the two cooperating Indian companies in this investigation, it was established that both fulfilled the criteria above. Therefore, the normal value was based on the weighted average of the prices of all domestic sales of that product type during the review investigation period.

<sup>(9)</sup> Estimation based on the information provided by the two exporting producers cooperating in the investigation, on the website of one of the exporting producers that did not cooperate in the investigation, and on the previous expiry review investigation.

<sup>(10)</sup> Common Customs Tariff. The conventional rate of duty for 2917 11 00 Oxalic acid, its salts and esters is 6,5 %. See Commission Implementing Regulation (EU) 2016/1821 of 6 October 2016 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 294, 28.10.2016, p. 1) and Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 282, 31.10.2017, p. 1).

### 3.2.1.2. Export price

- (40) The two exporting producers exported the product under review directly to independent customers in the Union. Therefore, the export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

### 3.2.1.3. Comparison

- (41) The Commission compared the normal value and the export price of the two exporting producers on an ex-works basis as established above.
- (42) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading and ancillary costs, packing, discounts, credit costs, bank charges and commissions paid by the cooperating exporting producer. Each of the two Indian cooperating exporting producers received the detailed calculations of the adjustments made in the specific disclosure.
- (43) Following final disclosure, Star Oxochem Pvt Ltd, claimed that one adjustment for a transport allowance should not have been deducted from the export price.
- (44) The Commission assessed the claim and revised the dumping calculation, which was disclosed to the exporter in question. No further comments were received.
- (45) In the context of Article 2(10)(b) of the basic Regulation, one cooperating producer indicated that they had benefitted from the Indian Merchandise Exports from India Scheme ('MEIS') <sup>(11)</sup>. The MEIS is a scheme of the government of India that provides an incentive in the form of a duty credit scrip to exporters to compensate for losses on the payment of duties. The incentive is paid as a percentage of the realized free on board ('FOB') value (in free foreign exchange) for specific goods going to specific markets. This export incentive is not a permissible adjustment for price comparison. It does not qualify as a duty drawback scheme for which an adjustment under Article 2(10)(b) of the basic Regulation could be considered, because Article 2(10)(b) only allows for adjustments to the normal value and not to the export price. In addition, the value of the scrip is not calculated in relation to the amount of import duties that would be incorporated in exports of downstream products, but, instead, is determined as a percentage of the FOB value of the exported merchandise. Additionally, irrespective of the calculation of the value of the incentive, the operation of the system does not lead to a situation where import charges borne by materials physically incorporated in the domestic sales of the like product are refunded or not collected upon exportation of the same production to the Union. For all the above reasons, no adjustment to the normal value or export price could be accepted. In any event, regardless of this or any other adjustment being made, there would be dumping above de minimis.

### 3.2.1.4. Dumping calculations

- (46) For the two cooperating exporting producers, the Commission compared the weighted average normal value of the like product with the weighted average export price of the corresponding type of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.
- (47) On this basis, since the cooperating exporting producers account for the bulk of the Indian exports during the RIP, the weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was [5 %-10 %] countrywide. It was therefore concluded that dumping continued during the review investigation period.

<sup>(11)</sup> The MEIS scheme was introduced in 2015 to replace former schemes: <https://www.dgft.gov.in/CP/?opt=meis>

### 3.3. China

- (48) As mentioned in recital (17), none of the exporters/producers from PRC cooperated in the investigation. Therefore, the Commission informed the authorities of PRC that the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (49) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular publicly available information such as official company websites, available statistics, in particular Global Trade Atlas ('GTA') databases, information in the request for review, and information obtained from cooperating parties in the course of the review investigation (namely, the applicant and the sampled Union producers).

#### 3.3.1. Dumping in the review investigation period

##### 3.3.1.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of (product under review) originating in the PRC

- (50) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (51) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. 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.
- (52) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, it might need to select an 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 countries in accordance with the criteria set out in first indent of Article 2(6a) of the basic Regulation.
- (53) On 1 March 2024, the Commission informed interested parties by a note on the relevant sources ('the Note') 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 oxalic acid. In the absence of cooperation from the Chinese exporting producers, the Commission identified the main factors of production based on the information contained in the request and provided by one Union producer. In addition, the Commission informed interested parties that it had selected a representative country, namely Colombia, as an appropriate representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG & A') and profits based on available information for the company Sucoal SA, a producer of the product in the same sector as oxalic acid, namely citric acid in Colombia.
- (54) The Commission received comments only from one Union producer. These comments were addressed in recital (214).

### 3.3.1.2. Normal value

- (55) 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'.
- (56) 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').
- (57) 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.

#### 3.3.1.2.1. Existence of significant distortions

- (58) 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'.
- (59) 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.
- (60) 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.
- (61) 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'.



- (62) Pursuant to this provision, the Commission issued a country report concerning China ('the Report') <sup>(12)</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. The request for an expiry review also contained some relevant evidence complementing the Report.
- (63) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (64) In order to show the significant distortions with regard to prices and costs in the PRC, the applicant relied on the evidence contained in the Report, as well as on Commission findings in several recent investigations concerning the chemical sector in the PRC.
- (65) The applicant first addressed specific interference in the costs of the raw materials and other inputs used to manufacture oxalic acid. Indeed, the production of oxalic acid is carried out starting with five different raw materials, namely: carbohydrates (mainly sugar and starch derived from corn starch); nitric acid; sulfuric acid; oxygen; and hydrogen peroxide.
- (66) The applicant submitted that significant distortions are found in each relevant sector as follows.

Carbohydrates (sugar, corn and corn starch)

- (67) The applicant indicated that China holds large amounts of corn stockpiles allowing the government to artificially lower or raise the prices of this commodity by purchasing or selling large amounts of corn on the market. Even though China started tackling the problem of excessive corn reserves in 2016, it still holds very large stockpiles, which have a distortive effect on prices <sup>(13)</sup>.
- (68) Furthermore, the applicant claimed that the government is controlling the various aspects of the entire corn value chain, including subsidies on the production of corn <sup>(14)</sup> and supervision of the processing <sup>(15)</sup>. There are also investment control measures in place in the PRC <sup>(16)</sup>.
- (69) The applicant also indicated that China's 14th Five-Year Plan for National Economic and Social Development ('14th FYP') follows the previous 13th FYP in setting out the goals to be achieved in the Chinese agricultural sector, including the production and regulation of sugar and corn. These plans were adopted at the central government level but are implemented at local level by provincial governments and authorities.

<sup>(12)</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>(13)</sup> Commission Implementing Regulation (EU) 2021/607 of 14th April 2021 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China as extended to imports of citric acid consigned from Malaysia, whether declared as originating in Malaysia or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 129, 15.4.2021, p. 73) ('Expiry Review, Citric Acid from the PRC'), recital (101).

<sup>(14)</sup> Information on subsidies is available on the Chinese Ministry of Agriculture website: [http://www.moa.gov.cn/gk/zcfg/qnhnzc/201904/t20190416\\_6179338.htm](http://www.moa.gov.cn/gk/zcfg/qnhnzc/201904/t20190416_6179338.htm)

<sup>(15)</sup> National Development and Reform Commission Notice 2017/627 repealing the 'NDRC Notice on Matters Concerning the Management of Corn Deep Processing Projects', available at: [https://www.ndrc.gov.cn/fggz/cyfz/zcyfz/201704/t20170417\\_1149901.html](https://www.ndrc.gov.cn/fggz/cyfz/zcyfz/201704/t20170417_1149901.html)

<sup>(16)</sup> Expiry Review, Citric Acid from the PRC, recital (101).

- (70) The 14th FYP continues central and localised economic planning in the Chinese agricultural sector covering 2021 to 2025 with the goal of continuing to 'deepen the structural reform of the agricultural supply side, strengthen quality guidance, and promote the revitalization of rural industries' <sup>(17)</sup>.
- (71) In order to achieve this 'deep agricultural restructuring', the 14th FYP sets out several objectives in its agricultural sector, among which the goals to optimize the layout of agricultural production, build a superior agricultural product production industry belt, improve the agricultural support and protection systems, improve the benefit compensation mechanism for major grain-producing areas, build a new agricultural subsidy policy system, and improve the minimum grain purchase price policy. Such objectives are further implemented at central level by, for instance, the Development Plan for Digital Agriculture and Rural Areas (2019-2025); a white paper on food security in China <sup>(18)</sup>; and the 2020-2025 National Plan for Rural Industrial Development <sup>(19)</sup>.
- (72) The Chinese central government regularly calls for interventionist measures and practices to regulate the output, supply and demand of corn in the country. In April 2022, Chinese Vice Premier Hu Chunhua, and member of the Political Bureau of the Communist Party of China Central Committee, called for 'solid efforts' by agricultural producers to boost corn production to stabilize the output and supply of the crop <sup>(20)</sup>. Specifically, he stated that corn is not only an important staple grain but also a 'vital raw material for many industrial products', oxalic acid being one such product.
- (73) The central state-owned enterprises ('SOEs') and their subsidiaries under the supervision of the State-owned Assets Supervision and Administration Commission ('SASAC') operating in the agriculture sector and related sectors are, among others: the China Agriculture Development Group; COFCO Corporation; the China Grain Storage Group; China Salt Industry Group; Sinochem; China National Chemical Group; and the China National Seed Group <sup>(21)</sup>.
- (74) China also prohibits foreign entities from being controlling shareholders in enterprises engaged in the cultivation of corn <sup>(22)</sup>. The export of corn is also subject to export quota licences which are managed by the Chinese National Development and Reform Commission ('NDRC') and Ministry of Commerce ('MOFCOM') and are allocated only to state trading enterprises <sup>(23)</sup>.
- (75) The production of corn in China is therefore characterized by interventionist measures taken at national, regional and provincial levels under detailed plans that distort the forces of supply and demand at the basic level of production. There is also a significant presence of Chinese SOEs in the sector. The applicant stressed out that similar interventionist measures and political actions distort the prices of corn to industrial processors at the level of starch and subsequently oxalic acid.

<sup>(17)</sup> 14th Five-Year Plan, Article XXIII, 'Boost the Quality, Benefits and Competitiveness of Agriculture', p. 54.

<sup>(18)</sup> WTO, Trade Policy Review China, Report by the Secretariat ('WTO TPR China'), WT/TPR/S/415 (15.9.2021), Para 4.10, p. 124, available via the following link: [https://www.wto.org/english/tratop\\_e/tptr\\_e/s415\\_e.pdf](https://www.wto.org/english/tratop_e/tptr_e/s415_e.pdf)

<sup>(19)</sup> WTO TPR China, Para 4.12, p. 125.

<sup>(20)</sup> Xinhua News Agency Report, 'Chinese vice premier underlines stable corn, rice production', 2 April 2022, accessible via: <https://english.news.cn/20220402/6654f6332c0b49488ab133489bb84cc6/c.html>

<sup>(21)</sup> WTO TPR China, Para 4.6, p. 123.

<sup>(22)</sup> WTO TPR China, Para 4.9, p. 123.

<sup>(23)</sup> WTO TPR China, supra note 60, 4.20, p. 127. The quota is allocated by the NDRC and MOFCOM and the licence is issued by MOFCOM.

## Basic intermediate chemicals

- (76) As mentioned above, the production of oxalic acid requires the use of several basic intermediate chemicals including nitric acid, sulfuric acid, oxygen and hydrogen peroxide. The applicant argued that the involvement of Chinese SOEs in its chemical sector is present throughout the production chain, starting with the basic raw materials and ending with oxalic acid production, creating significant distortions in prices and production volumes from basic intermediate chemicals. Both public and privately owned enterprises in the chemical sector are also subject to policy supervision and guidance. As a result, the applicant pointed out that the Chinese government is able to exercise considerable control over basic intermediate chemicals and so the final pricing of oxalic acid made in China resulting in distortions that are carried over into export markets including that of the Union.
- (77) The applicant pointed out that this control is achieved through Chinese government agencies such as SASAC, which is the official representative owner of state-owned assets as well as the supervisory organ of non-financial central SOEs which, as of March 2019, comprise 96 enterprises and their subsidiaries <sup>(24)</sup>.
- (78) For example, the applicant reported that Chinese SOE giant, Sinopec, through its subsidiary Nanjing Chemical Industrial Corporation is a 'national production base' of inorganic chemical, organic chemical, and fine chemical, including sulphuric acid and nitric acid. Through its subsidiary, Hunan Jianchang Petrochemical Co. Ltd., it is also one of the country's largest suppliers of hydrogen peroxide.
- (79) Sinopec has underlined its adherence to the party principles in numerous instances <sup>(25)</sup>. The Sinopec Group, fully controlled by the Chinese central government, admits that its production activities are substantially influenced by the central government's control over the Chinese economy <sup>(26)</sup>.
- (80) The applicant also observed that distortions in the prices and supply of chemical intermediates are caused also by the massive over-capacities in the Chinese chemical sector, which was confirmed by the China Report <sup>(27)</sup>.
- (81) Other forms of planning at local level include, for example, Hebei's 13th FYP on the development of the petrochemical industry, a province that is known for its production of chemical intermediates. The plan, in accordance with the national industrial policy and in accordance with the requirements of Hebei's list of industry restrictions and eliminations, strictly implements the sector entry conditions, controls any new production capacity project regarding sulphuric acid, among others <sup>(28)</sup>.

## Energy – Electricity

- (82) The applicant explained that the production of oxalic acid requires a considerable amount of energy, in the form of electrical power, to drive the production process and chemical reactions.

<sup>(24)</sup> US Department of Commerce/International Trade Administration Memorandum ('ITA NME Memorandum') dated 26 October 2017, entitled *China's Status as a Non-Market Economy* (A-570-053), p. 149, <https://enforcement.trade.gov/download/prc-nme-status/prc-nme-review-final-103017.pdf>

<sup>(25)</sup> Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1) ('Initial Investigation PVA from China'), recital (139).

<sup>(26)</sup> [http://spc.sinopec.com/spc/en/investor/com\\_notice/Documents/20220429/doc\\_20220429\\_563439419677.pdf](http://spc.sinopec.com/spc/en/investor/com_notice/Documents/20220429/doc_20220429_563439419677.pdf)

<sup>(27)</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), p. 406.

<sup>(28)</sup> Commission Implementing Regulation (EU) 2022/116 of 27 January 2022 imposing a definitive anti-dumping duty on imports of acesulfame potassium 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 19, 28.1.2022, p. 22) ('Expiry Review, Acesulfame Potassium from the PRC'), recital (98).

- (83) As indicated in the China Report <sup>(29)</sup>, the electricity market in China is also characterised by strong involvement of SOEs in various stages of the supply chain. Around 50 % of the generating capacity is state-owned, whereas the entire transmission grid is owned by two SOEs. The strong state presence extends to the entire energy sector and out of over one hundred centrally owned SOEs currently being overseen by SASAC, 21 are in the energy sector.
- (84) The applicant also referred to several aspects of Chinese government policies which also serve to distort electricity prices <sup>(30)</sup>. The first is that SERC, China's independent electricity regulator, does not set electricity prices. Rather, prices are set by the NDRC, the government authority that also has authority over industrial policies. The second is that while electricity is one of the main inputs in the manufacture of oxalic acid, the prices of electricity are not market-based in the PRC and are also affected by significant distortions (through central price-setting, price differentiation and in direct power purchase practices) <sup>(31)</sup>.

#### Energy – Gas

- (85) The applicant argued that the production, supply, distribution and pricing of natural gas in China are highly regulated and controlled by the Chinese state leading to distortions through several mechanisms. This creates significant distortions in the functioning of the Chinese domestic market for the supply of energy in this form as well downstream substances manufactured with the benefit of these distortions <sup>(32)</sup>.
- (86) As part of the general 13th FYP, the Chinese government adopted a specific sectoral plan for Chinese Natural Gas Development <sup>(33)</sup>. As mentioned in the China Report, the prices for domestic natural gas are regulated by the NDRC, which publishes the prices applicable to each province in Notices, and then the local price bureaus publish a corresponding notice at the local level implementing the prices decided by the central NDRC.
- (87) As indicated in the China Report, China's natural gas industry is also heavily dominated by SOEs <sup>(34)</sup>.

#### Energy prices – Generally

- (88) In summary, the applicant indicated that the energy prices in China are not market-based and prices are still largely controlled by the state or adopted by provincial and local governments to provide preferential energy prices to local chemical producers enabling them to benefit from lower production costs. China's formal price controls for natural gas, refined oil, electricity and transportation services result in some of the most significant distortions in China's economy. These goods and services constitute factors in the market that influence costs of production and the final prices of industrial goods, particularly in resource-intensive industries where significant amounts of raw materials are required, such as the production of oxalic acid <sup>(35)</sup>.

<sup>(29)</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), p. 219.

<sup>(30)</sup> ITA NME Memorandum, p. 164.

<sup>(31)</sup> Commission Implementing Regulation (EU) 2022/1924 of 10 October 2022 imposing a definitive anti-dumping duty on imports of sodium cyclamate originating in the People's Republic of China and Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 264, 11.10.2022, p. 12) ('Expiry Review, Sodium Cyclamate from the PRC'), recital (63).

<sup>(32)</sup> Initial Investigation PVA from China, recital (150).

<sup>(33)</sup> Government of China, 13th Five-Year Plan for Natural Gas Development, available at: <https://policy.asiapacificenergy.org/node/3044>

<sup>(34)</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), p. 219, footnote 757.

<sup>(35)</sup> ITA NME Memorandum, p. 163.

## Production of oxalic acid

- (89) After analyzing the above-mentioned sectors, the applicant further addressed the production of oxalic acid in China by recalling the following elements resulting in significant distortions.
- (90) First, the chemical sector, including the oxalic acid subsector, is being served to a significant extent by enterprises that operate under the ownership, control or policy supervision or guidance of state authorities.
- (91) The GOC and the Chinese Communist Party (‘CCP’) maintain structures that ensure their continued influence over enterprises, and in particular SOEs. The sheer scale of the production capacity of the main Chinese oxalic acid producers suggests some aspects of GOC and CCP control over their operations. Shandong Fengyuan Chemical Co., Ltd, for example, describes itself as ‘one of the leading enterprises in the oxalic acid industry in Asia, [with] a capacity of 105 000 mts of industrial oxalic acid and 15 000 mts of refined oxalic acid and oxalate’ <sup>(36)</sup>. Alone, this Chinese company has almost five times the annual production capacity of the Union industry. Given the size of the capital investment requested to set up this enormous operation, the applicant found it likely for the company to have links to the central or local GOC and CCP.
- (92) Shandong Fengyuan Chemical Co., Ltd.’s website also reports that the company is recognized as a national high-tech enterprise and enterprise technology centre of Shandong Province. In September 2011, the Shandong Province Science and Technology Department of the provincial government recognised the company’s R & D centre as being ‘Shandong’s oxalic acid engineering technology research centre’. The company has also been awarded the honorary titles of ‘the 14th new leading enterprise of China’s economy’, ‘Shandong Province Fumin Xinglu meritorious enterprise’, and ‘Shandong Province national unity and progress demonstration enterprise’ again illustrating the links between the company and the provincial government.
- (93) Similarly, the applicant reported that Tongliao Jinmei Chemical Company, located in the Inner Mongolian region, has an estimated annual production capacity of 100 000 tonnes for oxalic acid, the scale of the investment and capital required to build such a large plant pointing to the existence of similar possible links, influences and control to the central or local GOC and CCP.
- (94) Second, the state presence in oxalic acid companies also allows the authorities to interfere with prices and/or costs. Indeed, rules on setting up CCP organisations in each company apply also to producers of oxalic acid and the suppliers of their inputs <sup>(37)</sup>.
- (95) Tongliao Jinmei is located in Inner Mongolia, a region which has in the past been discovered to impose governmental links through the party organisation even on ostensibly private companies. In a recent investigation, the Commission uncovered that an alleged private company in that region was required to establish a party branch inside the company. Later, the local committee formally ‘approved’ the establishment of the Party Committee of the company and related subsidiaries were also required to set up a second-level party committee with related branches <sup>(38)</sup>.
- (96) Specifically in the oxalic acid sector, even if the level of state ownership is relatively low, a substantial degree of policy supervision by the GOC persists. For example, Shandong Fengyuan Chemical Co., Ltd’s website reported in March 2023 that: ‘Accompanied by staff of Zaozhuang science and technology bureau, financial office, economic information committee, People’s Bank, etc. the Deputy mayor of Zaozhuang, Huo Gaoyuan inspected the development of industrial economy of Taierzhuang District. Our company was also visited. Accompanied by chairman of the board Zhao Guanghui, the leaders visited the plant and listened to the report on situation, the process of the IPO and the plan of our company’s development. While [Chairman] Huo praised the economic achievements and broad prospects of our company, he also made much higher demands on production safety, personnel training and technological innovation of our company’.

<sup>(36)</sup> <http://www.fengyuanhuaxue.com/en/>

<sup>(37)</sup> Expiry Review, Sodium Cyclamate from the PRC, recital (47), footnote 20.

<sup>(38)</sup> Initial Investigation, PVA from the PRC, recital (140).

- (97) Third, the GOC pursues public policies or measures discriminating in favour of domestic suppliers or otherwise influencing free market forces.
- (98) The oxalic acid industry is considered by the Chinese government to be a strategically important one because it is increasingly used in China for the development of substances used in extracting or smelting rare earth elements <sup>(39)</sup>. Demand for rare metal elements is surging across end-use industries such as automotive and electronics.
- (99) According to its website, Shandong Fengyuan Chemical Co., Ltd is also recognized as a national high-tech enterprise and enterprise technology centre of Shandong Province <sup>(40)</sup>. It seems that this status qualifies the company for China's High and New Technology Enterprise (HNTE) programme that offers qualified company locations a 15 % (versus the standard 25 %) corporate tax rate regardless of the company's investment type. HNTE status is granted by provincial tax authorities for company facilities located within those provinces, in this instance apparently Shandong Province <sup>(41)</sup>.
- (100) Recognitions of these kinds often also point towards eligibility to receive substantial amounts of central and provincial financial support in the form of subsidies <sup>(42)</sup>.
- (101) Other distortions arise from the benefits conferred under central and local government programmes for industrial or chemical parks and increasingly so-called Hi-Tech Industrial Development Areas. According to the companies' websites, Shandong Fengyuan is located in the Shandong Taierzhuang Economic Development Zone, in the Shandong province; Qingzhou Peng Bo Chemicals Co., Ltd is located in the Economic Development Zone Qingzhou City, in the Shandong province; and Shijiazhuang Taihe Chemicals Co. Ltd. is located in the Douyu Industrial District Shijiazhuang, in the Shijiazhuang province.
- (102) Chemical producers located in these kinds of industrial parks are also normally eligible for governmental support, as all companies located in this park are subject to the Notice on Standardized Management of Chemical Industry Concentration Areas, in order to Strengthen the Province's Chemical Industry Parks <sup>(43)</sup>.
- (103) Fourth, much like in any other sector in the Chinese economy, the chemical sector is subject to the distortions resulting from the discriminatory application or inadequate enforcement of Chinese bankruptcy, corporate and property rules. Indeed, the Commission's consideration in the China Report concerning Chinese bankruptcy and property laws appear to be fully applicable also in the oxalic acid sector <sup>(44)</sup>.
- (104) Fifth, wage costs are distorted in the chemical sector as well, both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system) <sup>(45)</sup>.
- (105) Sixth, oxalic acid producers have access to finance granted by institutions which implement public policy objectives or otherwise are not acting independently from the state. The financial system of the PRC is dominated by the State-owned commercial banks.

<sup>(39)</sup> See <https://www.futuremarketinsights.com/reports/oxalic-acid-market>

<sup>(40)</sup> See <https://www.fengyuanhuaxue.com/portal/about#honor>

<sup>(41)</sup> See <https://www.uschina.org/sites/default/files/2013%20HNTE%20Backgrounder.pdf>

<sup>(42)</sup> Commission Implementing Regulation (EU) 2022/2001 of 21 October 2022 imposing a definitive anti-dumping duty on imports of aspartame 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 274, 24.10.2022, p. 24) ('Expiry Review, Aspartame from the PRC'), recital (100).

<sup>(43)</sup> Expiry Review, Aspartame from the PRC, recital (100).

<sup>(44)</sup> Expiry Review, Acesulfame Potassium from the PRC, recital (103).

<sup>(45)</sup> Expiry Review, Sodium Cyclamate from the PRC, recital (69) and Expiry Review, Aspartame from the PRC, recital (105).

- (106) The GOC has also recently clarified that even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. One of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies. The China Banking and Insurance Regulatory Commission (CBIRC) issued on 28 August 2020, a Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022) <sup>(46)</sup>. 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'.
- (107) The applicant submitted that the above-mentioned distortions are systemic. Therefore, the involvement of Chinese SOEs throughout the production chain creates significant distortions in prices and production volumes.
- (108) In order to produce oxalic acid, a broad range of inputs is needed including sugar/corn/starch, intermediate chemicals and large amounts of energy and water. Since there are restrictions imposed, for example, on the import of corn, the distortions in the form of price suppression for basic intermediate chemicals and, obviously the need to procure energy and water locally, Chinese oxalic acid manufacturers source all their inputs in China. When the producers of oxalic acid purchase/contract upstream raw materials to produce the inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to systemic distortions.
- (109) As a consequence, not only are the domestic sales prices of oxalic acid not appropriate for use, 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. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for inputs to inputs, for example the conversion of corn to starch for subsequent use as feedstock to produce oxalic acid. For instance, suppliers of those 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.
- (110) In conclusion, the applicant argued that significant distortions pursuant to Article 2(6a) of the basic Regulation are present in the oxalic acid sector.
- (111) 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>(47)</sup>, which relies on publicly available sources, and which was released in the investigation file on 14 May 2024.
- (112) 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.

<sup>(46)</sup> CBIRC, *Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022)*, issued on 28th August 2020, available via the following link: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928>

<sup>(47)</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).

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

- (113) 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>(48)</sup>.
- (114) 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>(49)</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.
- (115) 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>(50)</sup>.
- (116) 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.
- (117) 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.
- (118) 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>(51)</sup>. This illustrates the unquestioned and ever growing control of the CCP over the economic system of China.
- (119) This leadership and control is inherent to the Chinese system and goes well beyond the situation customary in other countries where the governments exercise general macroeconomic control within the boundaries of which free market forces are at play.
- (120) 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>(52)</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.
- (121) 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.
- (122) 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.
- (123) 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.).

<sup>(48)</sup> Updated Report – Chapter 2, p. 7.

<sup>(49)</sup> Updated Report – Chapter 2, p. 7-8.

<sup>(50)</sup> Updated Report – Chapter 2, p. 10, 18.

<sup>(51)</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 13 May 2024).

<sup>(52)</sup> Updated Report – Chapter 2, p. 29-30.



- (124) The economic operators, private and state-owned alike, must effectively adjust their business activities according to the realities imposed by the planning system. This is not only because of the binding nature of the plans, but also because the relevant Chinese authorities at all levels of government adhere to the system of plans and use their vested powers accordingly, thereby inducing the economic operators to comply with the priorities set out in the plans (see also recitals (155) to (170) below) <sup>(53)</sup>.
- (125) 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>(54)</sup>.
- (126) 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>(55)</sup>.
- (127) 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>(56)</sup>.
- (128) 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>(57)</sup>.
- (129) 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>(58)</sup>.

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

- (130) In China, enterprises operating under the ownership, control and/or policy supervision or guidance by the state represent an essential part of the economy.
- (131) The GOC and the CCP maintain structures that ensure their continued influence over enterprises, and in particular 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>(59)</sup>.

<sup>(53)</sup> Updated Report – Chapter 4, p. 57, 92.

<sup>(54)</sup> Updated Report – Chapter 6, p. 149-150.

<sup>(55)</sup> Updated Report – Chapter 6, p. 153-171.

<sup>(56)</sup> Updated Report – Chapter 7, p. 204-205.

<sup>(57)</sup> Updated Report – Chapter 8, p. 207-208, 242-243.

<sup>(58)</sup> Updated Report – Chapter 2, p. 19-24, Chapter 4, p. 69, p. 99-100, Chapter 5, p. 130-131.

<sup>(59)</sup> Updated Report – Chapter 5, p. 120-131.

- (132) However, CCP interventions into operational decision making have become the norm not only in SOEs, but also in private companies<sup>(60)</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.
- (133) The sector of the product concerned is served both by SOEs and private companies.
- (134) Specifically in the oxalic acid sector, a certain degree of ownership by the GOC is evident. The investigation showed that one of the main exporters of oxalic acid, Shandong Hualu Hengsheng Chemical Co., Ltd., shows a significant degree of public ownership<sup>(61)</sup>.
- (135) Similarly, Tongliao Jinmei Chemical Co., Ltd., is part of Danhua Chemical Technology Group, a SOE which is in turn effectively controlled by Danyang Municipal SASAC<sup>(62)</sup>. The company cooperates with local government, as shown in an article on capacity increase and cooperation with Tongliao Municipality. Indeed: 'Tongliao Economic and Technological Development Zone aims at the development trend and market prospects of degradable industry, gives full play to regional comparative advantages, extends the coal chemical industry and corn processing industry chain, and is making every effort to cultivate and introduce new degradable materials. [...] [i]n the process of promoting the construction of the degradable new materials industrial park, Tongliao Economic and Technological Development Zone plans to invest a total of 10 billion yuan and have a planned land area of 4 670 acres. Among them, Tongliao Jinmei Chemical Co., Ltd., invested and constructed by the Chinese Academy of Sciences, Shanghai Jinmei Holdings, and Danhua Technology, covers an area of 1 000 acres, with a total investment of 4,04 billion yuan, and has complete supporting facilities, equipment and industry processes in order to extend the production capacity of ethylene glycol and oxalic acid to polyglycolic acid, and is committed to building the largest production base for coal-based polyglycolic acid degradable materials in China. [...] In the future, Tongliao Economic and Technological Development Zone will rely on Jinmei Chemical Group's product resource advantages and technology first-mover advantages to comprehensively expand and strengthen the degradable new materials industry chain'<sup>(63)</sup>.
- (136) Shandong Fengyuan Chemical Stock Co., Ltd, on the other hand, is mainly private, with less of 1 % of state shareholding<sup>(64)</sup>, but does cultivate close links to the state and the local government. As confirmation, an article published on the company's website affirms: 'At the meeting, the Zaozhuang Municipal Party Committee and Municipal Government focused on commending enterprises and outstanding entrepreneurs with outstanding contributions in Zaozhuang City in 2022. Zhao Guanghui, chairman of Fengyuan Co., Ltd., won the title of "Outstanding Entrepreneur of Zaozhuang City in 2022", recorded second-class merit, and received a medal Certificate. [...] Fengyuan, under the correct leadership of the Zaozhuang Municipal Party Committee and Municipal Government, adhered to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era and actively implemented a new development concept, focussing on the goal of "promoting the economy first, and concentrate on strengthening industry", [...] overcome difficulties, pioneer and innovate, achieve steady growth of enterprises, and help promote the city's "industrial power and industrial prosperity. [...] Fengyuan will be guided by the spirit of the 'Mobilization Conference for the City's efforts to deepen industry development towards strong and vivid industries, setting goals and shouldering responsibilities, accurately mapping out benchmarks, striving for the leading position, seizing strategic opportunities for industrial development, and making efficient overall plans for projects construction, production, while R & D and operation will accelerate the significant increase in output, revenues and tax payments, making substantial contributions to the city's "strengthening industry, revitalizing industry and transforming to break through""<sup>(65)</sup>.

<sup>(60)</sup> Article 33 of the CCP Constitution, Article 19 of the Chinese Company Law. See updated Report – Chapter 3, p. 47-50.

<sup>(61)</sup> See the company's 2023 Annual Report, p. 58, available at: [https://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2024-03-30/600426\\_20240330\\_6FMX.pdf](https://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2024-03-30/600426_20240330_6FMX.pdf) (accessed on 13 May 2024).

<sup>(62)</sup> See the Danhua Technology's 2023 Annual Report, p. 21 and 48, available at: [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ\\_STOCK/2023/2023-4/2023-04-21/9019783.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-21/9019783.PDF) (accessed on 13 May 2024).

<sup>(63)</sup> See [https://www.sohu.com/a/434414645\\_100011043](https://www.sohu.com/a/434414645_100011043) (accessed on 13 May 2024).

<sup>(64)</sup> See the company's 2023 Annual Report, p. 94, available at: [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ\\_STOCK/2024/2024-4/2024-04-27/10123345.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2024/2024-4/2024-04-27/10123345.PDF) (accessed on 13 May 2024).

<sup>(65)</sup> See <https://www.fengyuanhuaxue.com/portal/news/detail.html?id=8&type=1> (accessed on 13 May 2024).

- (137) The GOC exerts guidance on enterprises also by setting specific objectives. For instance, in 2022 the Ministry of Finance and the Ministry of Agriculture and rural affairs announced the 2022 key policies, and the following goals involve enterprises: '[i]ntegrated development of agricultural industry. Coordinate the layout and construction of a number of national modern agricultural industrial parks, advantageous and characteristic industrial clusters, and agricultural industrial strong municipalities. Focusing on ensuring national food security and effective supply of important agricultural products, focusing on rice, wheat, corn, [...] sugar, dairy industry, seed industry, facility vegetables, etc. Agricultural products, taking into account other characteristic agricultural products, build a modern rural industrial system based on strong industrial towns, industrial parks as the engine, and industrial clusters as the backbone, provincial, county and township layouts, and coordinated promotion of points, lines, and areas, so as to improve the quality and efficiency of industrial development as a whole' <sup>(66)</sup>.
- (138) Moreover, in the petrochemical and chemical sector, the authorities encourage the creation of clusters, not least to take advantage of the interdependencies of various chemical manufacturing processes. Indeed, the 14th FYP on Developing Raw Materials Industry requires that '[m]easures shall be taken to make leading enterprises bigger and stronger. Led by the market and supported by the government, we shall [...] help such enterprises accelerate trans-regional and cross-ownership mergers and reorganization, so as to make the industry more concentrated and facilitate international operations. In sectors including petrochemicals and chemicals [...] we shall foster a number of pioneering enterprises that could lead the ecosystem of the industrial chain with core competitiveness [...]' <sup>(67)</sup>.
- (139) Government control and policy supervision can be also observed at the level of the relevant industry associations <sup>(68)</sup>.
- (140) For instance, China Biotech Fermentation Industry Association <sup>(69)</sup> ('CBFIA') has a subsidiary association focusing on organic acids, which comprehends the product concerned. CBFIA states in Article 3 of its Articles of Association that the organisation '[e]stablishes an organization of the Communist Party of China, carries out Party activities, and provides the necessary conditions for the activities of the Party organization. [...] accepts the business 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>(70)</sup>. Article 36 further states that the person in charge of the Association have to meet conditions such as '[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the party's line, principles and policies, and have good political quality' <sup>(71)</sup>.
- (141) Similarly, China Chemical Environmental Protection Association ('CCEPA') <sup>(72)</sup>, according to Article 2 of its Articles of Association, pursues the goal to 'publicize and implement national industrial policies, serve the industry wholeheartedly, and promote industrial production'. In addition, Article 3 states that CCEPA '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 – just like in the case of CBFIA – 'accepts the business 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>(73)</sup>. CCEPA counts among its members Shandong Hualu Hengsheng Chemical Co., Ltd. <sup>(74)</sup>.

<sup>(66)</sup> See [http://www.moa.gov.cn/gk/cwggk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwggk_1/nybt/202206/t20220610_6402146.htm), paragraph 20 (accessed on 13 May 2024).

<sup>(67)</sup> Updated Report – Chapter 13, p. 466.

<sup>(68)</sup> Updated Report – Chapter 2, p. 24-27.

<sup>(69)</sup> See further: <http://www.cfia.org.cn/> (accessed 22 May 2024).

<sup>(70)</sup> Charter of the China Biofermentation Industry Association. Available at: <http://www.cfia.org.cn/site/term/5.html> (accessed 22 May 2024).

<sup>(71)</sup> Ibid.

<sup>(72)</sup> See further: <http://www.cciepa.org.cn/> (accessed 22 May 2024).

<sup>(73)</sup> See <http://www.cciepa.org.cn/page.htm?id=1002> (accessed on 13 May 2024).

<sup>(74)</sup> See above, footnote 60.

- (142) Consequently, even 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.

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

- (143) Apart from exercising control over the economy by means of ownership of SOEs and other tools, the GOC is in position to interfere with prices and costs through state presence in firms. While the right to appoint and to remove key management personnel in SOEs by the relevant state authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights <sup>(75)</sup>, CCP cells in enterprises, state-owned and private alike, represent an important channel through which the state can interfere with business decisions.
- (144) 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>(76)</sup>) and the company shall provide the necessary conditions for the activities of the Party organisation.
- (145) 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>(77)</sup>, including exercising pressure on private companies to put 'patriotism' first and to follow Party discipline <sup>(78)</sup>.
- (146) 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>(79)</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.
- (147) 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>(80)</sup> was released, which further expanded the role of the Party committees in private enterprises.
- (148) 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>(81)</sup>.
- (149) The investigation confirmed that overlaps between managerial positions and CCP membership/Party functions exist also in the sector of the product concerned.

<sup>(75)</sup> Updated Report – Chapter 5, p. 124-125.

<sup>(76)</sup> Updated Report – Chapter 3, p. 40.

<sup>(77)</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>(78)</sup> Updated Report – Chapter 3, p. 41.

<sup>(79)</sup> Available at: <https://www.reuters.com/article/us-china-congress-companies-idUSKCN1B40JU> (accessed on 13 May 2024).

<sup>(80)</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 13 May 2024).

<sup>(81)</sup> Financial Times (2020) – Chinese Communist Party asserts greater control over private enterprise: <https://on.ft.com/3mYxP4j> (accessed on 13 May 2024).

- (150) For instance, the Articles of Association of Shandong Fengyuan Chemical Stock Co., Ltd require, at Article 1.13, that 'In accordance with the provisions of the Constitution of the Communist Party of China, the company establishes Communist Party organizations and carries out party activities. The company provides necessary conditions for the activities of party organizations' <sup>(82)</sup>. Notably, the company is also influenced by local governmental authorities, as shown in recital (136).
- (151) Similarly, Article 12 of the Articles of Association of Danhua Chemical Technology Group states that: 'The company shall establish Communist Party organizations and carry out Party activities in accordance with the provisions of the Constitution of the Communist Party of China. The company's party organization formulates specific work implementation rules based on the requirements of the superior party organization, sets the direction, manages the overall situation, and promotes implementation. When the company decides on major matters, it should listen to the opinions of the party organization in advance. The company provides necessary conditions for the activities of party organization' <sup>(83)</sup>.
- (152) Moreover, the Director of the Danhua Chemical Technology Group is at the same time Deputy Secretary of the Party Committee of Tongliao Jinmei Chemical Co., Ltd and a member of the Party Committee and Deputy Secretary of the Discipline Inspection Commission of Jiangsu Danhua Group Co., Ltd.
- (153) The Chairman of Hualu Hengsheng Chemical Co., Ltd. is also Secretary of the Party Committee and CCP interference into the business decisions is apparent in the company's website, which describes the role of the Party within the Group as follows: 'The Party branch of the production department is one of the most important grassroots branches of Hualu Hengsheng. It provides strong support for the company's long-term safe and stable production, lays a solid foundation for lean and efficient operations, and makes outstanding contributions to record economic benefits' <sup>(84)</sup>.
- (154) 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>(85)</sup>. Thus, the state presence in firms, in the oxalic acid and other sectors (such as the financial and input sectors) allows the GOC to interfere with respect to prices and costs.

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

- (155) 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.
- (156) 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>(86)</sup>.
- (157) The Chinese authorities have enacted a number of policies guiding the functioning of the sector of the product concerned.

<sup>(82)</sup> See [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ\\_STOCK/2023/2023-10/2023-10-28/9608338.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-10/2023-10-28/9608338.PDF) (accessed on 13 May 2024).

<sup>(83)</sup> See [http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ\\_STOCK/2023/2023-11/2023-11-16/9644604.PDF](http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-11/2023-11-16/9644604.PDF) (accessed on 13 May 2024).

<sup>(84)</sup> See <http://www.hualuholdings.com/news/800.html> (accessed on 13 May 2024).

<sup>(85)</sup> Updated Report – Chapter 14, Sections 14.1 to 14.3.

<sup>(86)</sup> Updated Report – Chapter 4, p. 56-57, 99-100.

- (158) The 2022 key policies of the Ministry of Finance and the Ministry of Agriculture and rural affairs mentioned above (see recital (137)) contain also the following provisions influencing the functioning of the sector: '[t]he state will continue to implement policies such as subsidies for corn and soybean producers, subsidies for rice, and incentives for large grain-producing counties, so as to consolidate the effectiveness of supply-side structural reform in agriculture and ensure national food security' or '[r]ewards for major seed production counties. Expand the scope of support for major seed production counties of rice, wheat, corn [...], and promote the transformation and upgrading of the seed industry' <sup>(87)</sup>.
- (159) The 14th FYP on promoting the modernization of agriculture and rural areas <sup>(88)</sup> aims to '[i]mprove grain production support policies. Stabilize grain farmers' subsidies, improve the minimum purchase price policy for rice and wheat, and the subsidy policy for corn and soybean producers. Improve the compensation mechanism for the interests of major grain-producing areas and improve the support policy system for major grain-producing counties' <sup>(89)</sup>. It further enhances 'Agricultural science and technology innovation capacity building. Focusing on areas such as biological breeding, biological safety, resources and environment, intelligent agricultural machinery, deep processing of agricultural products, and creation of green inputs, a new batch of major agricultural science and technology facilities and equipment, key laboratories and agricultural scientific observation and experimental stations will be built' <sup>(90)</sup>.
- (160) Not only, in December 2018 the Ministry of Agriculture, unitedly with 15 administrations, published a Notice of several policy measures to support the high quality development of Agricultural products' deep processing: 'Optimizing the industrial structure Coordinate and promote the coordinated development of intensive processing, primary processing, and comprehensive utilization processing of agricultural products, organically connect with upstream and downstream industries such as special raw material production, warehousing logistics (including cold chain logistics), and market consumption, and integrate with nutrition and health, leisure tourism, education and culture, and health preservation. It is organically combined and deeply integrated with rural industries such as e-commerce. Regularly monitor and analyze the production capacity layout of intensive processing and comprehensive utilization of bulk agricultural products, guide the transformation of excess production capacity, and accelerate the construction of short production capacity, and optimize the layout of the industrial chain. Increase the added value of corn processing, especially corn processing products in Northeast China, and accelerate the development of comprehensive processing and utilization of straw and corn cob' <sup>(91)</sup>.
- (161) Relevant policies are not found solely in the agricultural sector, but in the chemical sector as well.
- (162) The Guiding Opinion on Promoting the High-quality Development of the Petrochemical and Chemical Industry During the 14th Five Years Plan Period ('the Guiding Opinion'), emphasizes the need to '[...] accelerate the transformation and upgrading of traditional industries, and vigorously develop new chemical materials and fine chemicals. Accelerate the digital transformation of the industry [...] and promote China's progress from a large petrochemical and chemical country to a strong petrochemical and chemical country' <sup>(92)</sup>.

<sup>(87)</sup> [http://www.moa.gov.cn/gk/cwggk\\_1/nybt/202206/t20220610\\_6402146.htm](http://www.moa.gov.cn/gk/cwggk_1/nybt/202206/t20220610_6402146.htm), paragraphs 6 and 15 (accessed on 13 May 2024).

<sup>(88)</sup> See [https://www.gov.cn/zhengce/content/2022-02/11/content\\_5673082.htm](https://www.gov.cn/zhengce/content/2022-02/11/content_5673082.htm) (accessed on 13 May 2024).

<sup>(89)</sup> Ibid., Section II.1.

<sup>(90)</sup> Ibid., Section IV, Box 3.

<sup>(91)</sup> See Notice of 15 departments including the Ministry of Agriculture and Rural Affairs on several policies and measures to promote the high-quality development of intensive processing of agricultural products ([moa.gov.cn](http://www.moa.gov.cn)) (accessed on 13 May 2024).

<sup>(92)</sup> See [https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art\\_4ef438217a4548cb98c2d7f4f091d72e.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html) – First section, General Requirements (accessed on 13 May 2024).

- (163) The above-mentioned objectives are further specified in the subsequent sections of the Guiding Opinion. For instance, the issuing authorities intend to '[s]upport enterprises to take the lead in forming collaborative innovation organizations such as industrial technology innovation alliances and upstream and downstream cooperation mechanisms and support the rational layout of local governments to build regional innovation centers and pilot bases', to '[c]onquer core technologies and enhance the momentum of innovation and development, [...] accelerate breakthroughs in key technologies [...]' <sup>(93)</sup>. Moreover, the chemical sector needs to '[focus] on strategic emerging industries such as new generation information technology, biotechnology, new energy, and high-end equipment, we shall increase the specifications of material varieties [...] and accelerate the development of high-end polyolefins, electronic chemicals, industrial special gases, high-performance rubber and plastic materials, high-performance fibres, bio-based materials, special lubricants and greases and other products' <sup>(94)</sup>.
- (164) It incites economic actors to 'Actively develop biochemical industry, encourage the development of enzymes needed for biomass utilization and biorefining based on biological resources' <sup>(95)</sup>.
- (165) On the provincial level, policy objectives and corresponding support tools become more specific and targeted.
- (166) According to the Hebei 14th FYP on strategic and emerging industries <sup>(96)</sup> the government authorities are set to shape the sector's industrial layout as follows: 'Accelerate the pace of innovation and development of the bio-industry [...] Vigorously develop the industries of bio-fermentation, bio-based products, and characteristic biological products, and promote the integrated application of biotechnology in the fields of medicine, chemical industry, materials, food deep processing, and new energy. Consolidate and improve the advantages of amino acids, starch sugars, enzyme preparations, vitamins and other products, and develop new biological materials such as bio-based fibers, bio-based chemicals, bio-based plastics, and bio-based rubber' <sup>(97)</sup>.
- (167) In Heilongjiang, and especially Qinggang County, 'since 2021, the Qinggang County Party Committee and County Government has regarded the corn processing industry as "Project No. 1" and has made every effort to build a pillar industry chain of corn in the county, focusing on corn starch as raw material, and the industrial deep processing chain will be directed to sugars, acids and alcohols. The direction of biomedicine is extended and expanded' <sup>(98)</sup>.
- (168) Furthermore, in 2024 Shandong issued a major policy to promote, upgrade and develop the corn industry <sup>(99)</sup>, providing important tax support for research and development.
- (169) Therefore, through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector, as well as the upstream inputs.
- (170) 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.

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

- (171) 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.

<sup>(93)</sup> Ibid. – Second section, Improve the level of innovation and development.

<sup>(94)</sup> Ibid.

<sup>(95)</sup> Ibid., Section 11.

<sup>(96)</sup> See <http://lvsefazhan.cn/index.php/guozijianguan/408.html> (accessed on 13 May 2024).

<sup>(97)</sup> Ibid., Section IV.3.

<sup>(98)</sup> See [http://www.moa.gov.cn/xw/qg/202206/t20220614\\_6402372.htm](http://www.moa.gov.cn/xw/qg/202206/t20220614_6402372.htm) (accessed on 13 May 2024).

<sup>(99)</sup> See [https://www.sohu.com/a/756699103\\_121769698](https://www.sohu.com/a/756699103_121769698) (accessed on 13 May 2024).

- (172) 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>(100)</sup>.
- (173) 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>(101)</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>(102)</sup>. Moreover, authorities often pursue specific political goals including the implementation of the economic plans when allocating land <sup>(103)</sup>.
- (174) 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.
- (175) 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.

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

- (176) A system of market-based wages cannot fully develop in China as workers and employers are impeded in their rights to collective organisation. China has not ratified a number of essential conventions of the International Labour Organisation ('ILO'), in particular those on freedom of association and on collective bargaining <sup>(104)</sup>.
- (177) 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>(105)</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.
- (178) 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>(106)</sup>. Those findings lead to the distortion of wage costs in China.
- (179) No evidence was submitted to the effect that the oxalic acid 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).

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

- (180) Access to capital for corporate actors in China is subject to various distortions.

<sup>(100)</sup> Updated Report – Chapter 6, p. 171-179.

<sup>(101)</sup> Updated Report – Chapter 9, p. 260-261.

<sup>(102)</sup> Updated Report – Chapter 9, p. 257-260.

<sup>(103)</sup> Updated Report – Chapter 9, p. 252-254.

<sup>(104)</sup> Updated Report – Chapter 13, p. 360-361, 364-370.

<sup>(105)</sup> Updated Report – Chapter 13, p. 366.

<sup>(106)</sup> Updated Report – Chapter 13, p. 370-373.



- (181) First, the Chinese financial system is characterised by the strong position of state-owned banks <sup>(107)</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>(108)</sup> and they regularly implement public policies designed by the GOC.
- (182) The Guiding Opinion also reveals the range of support tools and policies used to pursue the industrial policy objectives: '[i]mprove supporting policies. Strengthen the coordination between fiscal, financial, regional, investment, import and export, energy, ecological environment, price and other policies and industrial policies. Involve national industry-finance cooperation platforms and promote bank-enterprise connections and industry-finance cooperation. [...]' <sup>(109)</sup>.
- (183) 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>(110)</sup>.
- (184) 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.
- (185) 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>(111)</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>(112)</sup>.
- (186) 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>(113)</sup>. This is compounded by additional existing rules, which direct finances into sectors designated by the government as encouraged or otherwise important <sup>(114)</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.
- (187) 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.

<sup>(107)</sup> Updated Report – Chapter 6, p. 137-140.

<sup>(108)</sup> Updated Report – Chapter 6, p. 146-149.

<sup>(109)</sup> See [https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art\\_4ef438217a4548cb98c2d7f4f091d72e.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/yj/art/2022/art_4ef438217a4548cb98c2d7f4f091d72e.html) – Eighth section, Strengthen organizational safeguards (accessed on 13 May 2024).

<sup>(110)</sup> Updated Report – Chapter 6, p. 149.

<sup>(111)</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 13 May 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>(112)</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 13 May 2024).

<sup>(113)</sup> Updated Report – Chapter 6, p. 157-158.

<sup>(114)</sup> Updated Report – Chapter 6, p. 150-152, 156-160, 165-171.

- (188) 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>(115)</sup> and, in 2020, official media in China have reported that the CCP called for 'guiding the loan market interest rate downwards' <sup>(116)</sup>. Artificially low interest rates result in under-pricing, and consequently, the excessive utilization of capital.
- (189) 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.
- (190) 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.
- (191) 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.

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

- (192) 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.
- (193) 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. The Commission pointed out that the regulatory setup underpinning those distortions is generally applicable, oxalic acid 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.
- (194) 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.
- (195) 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.
- (196) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

<sup>(115)</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 13 May 2024).

<sup>(116)</sup> See [http://www.gov.cn/xinwen/2020-04/20/content\\_5504241.htm](http://www.gov.cn/xinwen/2020-04/20/content_5504241.htm) (accessed on 13 May 2024).

## 3.3.1.2.10. Conclusion

- (197) The analysis set out in this section, which includes an examination of all the available evidence relating to China's intervention in its economy in general as well as in the sector of the product concerned showed that prices and costs of the product concerned, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein.
- (198) On that basis, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Therefore, the Commission calculated these values using appropriate undistorted prices and benchmarks derived from other sources.

## 3.3.1.2.11. Representative country

## 3.3.1.2.11.1. General remarks

- (199) 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 PRC. For this purpose, the Commission used countries with a gross national income per capita similar to PRC on the basis of the database of the World Bank <sup>(117)</sup>;
  - Production of the product under review in that country <sup>(118)</sup>;
  - Availability of relevant public data in the representative country;
  - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.
- (200) In the Note, the Commission explained that there was no production of product under review in any upper-middle income country other than the PRC. The Commission therefore indicated it would use citric acid, a similar product to oxalic acid, to establish an appropriate representative country for the application of Article 2(6a) of the basic Regulation.
- (201) Oxalic acid and citric acid share similar chemical characteristics. Indeed, they are composed of the same organic elements and, while oxalic acid contains two carboxyl groups, citric acid has three. Moreover, for a large range of end-uses, the two products are somewhat interchangeable. Both are used as cleaning and anti-bacterial agents, in the production of pharmaceutical and antibiotics, for metal purification in metal production and as ingredients in agricultural fertilisers. The Commission established that there was production of citric acid in Colombia, which is classified as an upper-middle income country.
- (202) As provided in the Note, the Commission found readily available financial information for Sucroal SA, covering the financial year 2022. Moreover, benchmarks for the main factors of production, energy, gas, water, and labour could be established on the basis of information found for Colombia.
- (203) Interested parties were invited to comment on the appropriateness of Colombia as a representative country.
- (204) No interested party made any comments regarding the selection of Colombia as a representative country.

<sup>(117)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

<sup>(118)</sup> If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

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

3.3.1.2.11.2. Conclusion

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

3.3.1.2.12. Sources used to establish undistorted costs

(207) In the Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers. The Commission also stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA and the international benchmark as provided by the applicant in the request to establish the undistorted cost of most of the two factors of production, notably oxygen and nitric acid. In addition, the Commission stated that it would use the information from ILO <sup>(119)</sup> for establishing undistorted costs of labour, and from publicly available tariffs for electricity <sup>(120)</sup>, water <sup>(121)</sup> and gas <sup>(122)</sup> suppliers in Colombia.

(208) The Commission also informed the interested parties that two factors of production, due to their low impact on the cost of production, were considered as consumables, which accounted for less than 2 % of the cost of production of oxalic acid.

3.3.1.2.13. Undistorted costs and benchmarks

Factors of production

(209) Considering all the information based on the request and subsequent information submitted by the applicant, 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 oxalic acid

Factor of Production	Commodity Code in Colombia	Undistorted value	Unit of measurement	Source of information
RAW MATERIALS				
Sugar	1701 99 10	5,06 CNY/kg	KG	GTA <sup>(1)</sup>
Oxygen	2804 40	1,44 CNY/kg	KG	IndexBox <sup>(2)</sup>
Nitric acid	2808 00 10	2,83 CNY/kg	KG	ChemAnalyst <sup>(2)</sup>
Potassium hydroxide	2815 20 00 (*)	10,83 CNY/kg	KG	GTA

<sup>(119)</sup> <https://ilostat.ilo.org/data/>  
<sup>(120)</sup> <https://www.enel.com.co>  
<sup>(121)</sup> <https://www.acueducto.com.co>  
<sup>(122)</sup> <https://www.gdo.com.co>

CONSUMABLES				
Other raw material	N/A	< 2 %	% of COP	
LABOUR				
Labour cost	N/A	13,76 CNY/man-hour	Men-hour	ILO
ENERGY				
Electricity	N/A	1,07 CNY/kWh	kWh	Colombian supplier - ENEL
Gas	N/A	3,95 CNY/m <sup>3</sup>	M <sup>3</sup>	Colombian supplier - GDO
Water	N/A	6,59 CNY/m <sup>3</sup>	M <sup>3</sup>	Colombian supplier - ACUEDUCTO
BY PRODUCTS/WASTE				
Nitric acid	2808 00 10	1,30 CNY/kg	KG	ChemAnalyst <sup>(2)</sup>

<sup>(1)</sup> <http://www.gtis.com/gta/secure/default.cfm>  
<sup>(2)</sup> Annex 21J of the request.  
<sup>(\*)</sup> Commodity code in Türkiye.

#### Raw materials

- (210) In order to establish the undistorted price of 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 to which import duties 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>(123)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded 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. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative.
- (211) For one factor of production (namely potassium hydroxide), the Commission established that the in the imports of this raw material into Colombia originating in PRC constituted a significant share. Therefore, the benchmark price based on these imports could not be considered an appropriate and the Commission resorted to the import prices in Türkiye. The Commission notes that despite the fact that Türkiye – the representative country proposed by the applicant – could not be considered an appropriate representative country in this case due to the issues concerning the availability of recent financial information and the main raw material mentioned above, it was still considered reliable as a source for potassium hydroxide benchmark as it has a similar level of economic development to the PRC and it has production of citric acid for which production process is similar to the product concerned.

<sup>(123)</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). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

- (212) Due to low volumes of import of oxygen into Colombia, the price was considered as not representative. Also in Türkiye, import volumes of oxygen were low and were considered also unrepresentative. Thus, the Commission resorted to the world average price of imports of oxygen in 2022 as reported in the statistics report available in the request <sup>(124)</sup>.
- (213) Furthermore, import volumes of nitric acid in Colombia were low. Türkiye could not be considered an appropriate source for this benchmark since a high share of imports of nitric acid into Türkiye originated in the PRC. Thus, the Commission resorted to the international price for nitric acid in 2022 available in the request <sup>(125)</sup>. In the Note, the Commission informed interested parties that, in the production process of the Union industry, nitric acid is both a factor of production and a by-product of the production process of oxalic acid, therefore the same international benchmark was applied to nitric acid as a by-product.
- (214) In the comments to the Note, one Union producer expressed reservations regarding the price of the by-product. It claimed that nitric acid used as raw material and is the one obtained as a by-product should not have the same price. The by-product is obtained in the diluted form and therefore its price is lower than the raw material. Therefore, the Commission adjusted the price of nitric acid applicable to the by-product by the ratio of price of diluted nitric acid sold as a by-product to the price of the nitric acid used as a raw material, according to the data provided by the Union producer. The price of the diluted nitric acid constitutes 46 % of the price of nitric acid used as a raw material. Thus, the benchmark for by-product has been adjusted to the level of 1,30 CNY/kg.
- (215) Having regard no cooperation of the exporting producers, based on the information provided by the Union producers, for two factors of production, namely sulphuric acid and hydrogen peroxide, the actual costs incurred by these producers represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in recital (208).
- (216) Normally, domestic transport prices should also be added to these import prices. However, considering the finding in recital (231) as well as the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period or could reoccur, rather than finding its exact magnitude, the Commission decided that adjustments for domestic transport were unnecessary. Such adjustments would only result in increasing the normal value and hence of the dumping margin.

#### Labour

- (217) The Commission used ILO statistics to determine the wages in Colombia <sup>(126)</sup>. These provide information on monthly wages of employees in the manufacturing sector and average weekly hours worked in Colombia for the investigation period.
- (218) In the calculation of the labour cost in Colombia, the Commission added 12 % contribution to the pension fund and professional risk tax of 2,436 % for the third group risk based on the company activity to which Sucroal SA belongs to <sup>(127)</sup>.

#### Electricity

- (219) For electricity, the Commission used the readily available price from Enel <sup>(128)</sup>, the major electricity supplier in Colombia. This source provides a single average price of electricity per month during the review investigation period.

<sup>(124)</sup> Annex 21J of the request.

<sup>(125)</sup> Annex 21J of the request.

<sup>(126)</sup> <https://ilostat.ilo.org/>

<sup>(127)</sup> <https://safetia.co/normatividad/decreto-768-de-2022/>

<sup>(128)</sup> <https://www.enel.com.co/en/people/energy-rates.html>

## Water

- (220) The Commission used applicable prices in Colombia as charged by the company that is responsible for water supply, sewage collection and treatment in Bogota, namely ACUEDUCTO <sup>(129)</sup> to determine the prices of water. The applicable unit cost is estimated to amount to 6,59 CNY/m<sup>3</sup>.

## Natural gas

- (221) For natural gas, the Commission used the readily available price as published by Gases de Occidente <sup>(130)</sup>, the supplier of gas in the region where Sucroal SA is located. The applicable unit cost is estimated to amount to 3,95 CNY/m<sup>3</sup> (i.e. the average of the unit cost in the review investigation period).

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

- (222) 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.
- (223) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the Union producer, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the model produced.
- (224) For establishing an undistorted and reasonable amount for SG & A and profit the Commission relied on the financial data of Sucroal SA in 2022, as extracted from the Orbis <sup>(131)</sup> database.

## 3.3.1.2.14. Calculation of the normal value

- (225) 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.
- (226) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of oxalic acid and the verified information provided by the applicant.
- (227) Once the undistorted manufacturing cost established, the Commission added the manufacturing overheads, SG & A and profit. Manufacturing overheads were determined based on data provided by the applicant. SG & A and profit were determined based on the financial statements of Sucroal SA for the year 2022 as extracted from the Orbis <sup>(132)</sup> database (see Section 3.3.1.2.11). The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 20 % of the direct costs of manufacturing,
  - SG & A and other costs, which accounted for 24,60 % of the Costs of Goods Sold ('COGS') of Sucroal SA, and
  - Profits, which amounted to 27,21 % of the COGS as achieved by Sucroal SA, were applied to the total undistorted costs of manufacturing.

<sup>(129)</sup> <https://www.acueducto.com.co>

<sup>(130)</sup> <https://www.gdo.com.co>

<sup>(131)</sup> <http://orbis4.bvdinfo.com/>

<sup>(132)</sup> <http://orbis4.bvdinfo.com/>

- (228) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

#### 3.3.1.3. Export price

- (229) In the absence of cooperation by exporting producers from PRC, the export price was determined based on CIF Eurostat data corrected to ex-works level. Thus, the CIF price was reduced by domestic transport cost, handling and ocean freight based on the evidence provided in the request.

#### 3.3.1.4. Comparison

- (230) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price on an ex-works basis as established above.

#### 3.3.1.5. Dumping calculations

- (231) On this basis, the dumping margin was found to be significant for the country (59 %). It was therefore concluded that dumping continued during the review investigation period.

### 4. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

#### 4.1. India

- (232) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation or recurrence of dumping, should the measures be repealed. The following additional elements were analysed: (i) the production capacity and spare capacity in India, (ii) the relation between export prices to third countries and the price level in the Union and (iii) the attractiveness of the Union market.

##### 4.1.1. *Production capacity and spare capacity in India*

- (233) In the previous expiry review the total capacity of Indian oxalic acid producers was estimated at around 40 000 tonnes/year. Furthermore, the Commission found no evidence that any known Indian oxalic acid producer closed down any of their production capacities in the meantime. Based on verified data of the cooperating exporting producers, the Indian producers had capacity utilisation of around 78 %. Therefore, the Commission estimated the spare capacity in India to be around 8 500 tonnes, which correspond to at [86 %-105 %] of the total Union free market consumption during the RIP.

##### 4.1.2. *Relation between export prices to third countries and the price level in the Union*

- (234) The two cooperating Indian companies had significant exports sales to the rest of the world in the RIP.
- (235) The verified data of the two cooperating Indian producers, cross-checked with data provided in the review request and data available in GTA, indicate that the average Indian export price to the Union is 11 % higher than the average export price to the rest of the world. Thus, on the basis of export prices to third countries, the dumping margin would be higher than on the basis of export prices to the Union.

##### 4.1.3. *Attractiveness of the Union market*

- (236) Although the Union is a relatively small market for oxalic acid, it remains attractive to Indian exporting producers. Indeed, as indicated in the recitals above, the Union average price is higher than the rest of the world. The attractiveness is further confirmed by the fact that despite the relatively high level of anti-dumping duties in force, Indian exporting producers continue to export to the Union market.

##### 4.1.4. *Conclusion*

- (237) The investigation showed that Indian imports continued to enter the Union market at dumped prices during the RIP.



- (238) Given the available spare capacity in India, the Indian producers level of prices generally on third markets and the attractiveness of the Union market in terms of prices, it is highly likely that in the absence of measures at least some of the available capacity in India would be used to produce oxalic acid for export to the Union and/or that some exports to third markets would be re-directed to the Union considering the higher prices at the Union market.
- (239) Further to the above, the Commission found that the spare capacity in India alone can cover for almost all Union consumption during the RIP and that the Union market is very attractive to Indian exporting producers in view of its prices.
- (240) Thus, the Commission concluded that should the measures be allowed to lapse it is likely that Indian companies would export to the Union in larger quantities than currently and at dumped prices. Thus, should the measures lapse, it is likely that dumping will continue or, in any event, recur.

#### 4.2. China

- (241) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation or recurrence of dumping, should the measures be repealed. The following additional elements were analysed: (i) the production capacity and spare capacity in China, (ii) the relation between export prices to third countries and the price level in the Union, (iii) the attractiveness of the Union market, and (iv) possible absorption capacity of third country markets.
- (242) In the absence of cooperation of the Chinese exporting producers, this analysis was made on the basis of best facts available, namely on the basis of the information contained in the review request and publicly available information.

##### 4.2.1. Production capacity and spare capacity in China

- (243) China is by far the world's largest oxalic acid producing country, with an estimated production of 416 500 tonnes in 2022, according to the request <sup>(133)</sup>.
- (244) In the previous expiry review, Chinese producers were found to have a combined annual capacity of approximately [150 000-200 000] tonnes <sup>(134)</sup>. In the current case, the applicant submitted in the request that this figure was an under-estimation and that, according to a study it commissioned, the total production capacity for oxalic acid in China in 2018 was around 450 000 tonnes per year, and rose to 595 000 tonnes per year in 2022, representing almost half of world consumption, estimated at 1 215 000 tonnes in 2022, according to public sources <sup>(135)</sup>.
- (245) The applicant also reported that, as part of the overall increase in production capacity, the main Chinese producers also expanded or introduced new capacity, demonstrating an ability to expand production capacity extremely rapidly <sup>(136)</sup>.
- (246) Based on the request, internal market consumption of oxalic acid in China amounted to about 250 000 tonnes in 2022 and Chinese total exports to about 167 000 tonnes in 2022 <sup>(137)</sup>. There are no imports into China originating in the Union or in India, thus the Chinese domestic market is supplied exclusively by Chinese producers. Consequently, Chinese producers' spare capacity is estimated at about 180 000 tonnes, which amounts to about 30 % of their total capacity in 2022 <sup>(138)</sup>, and [18-22] times the Union free market consumption.

<sup>(133)</sup> This estimate was based on the production capacity and spare capacity reported in a study commissioned by the applicant.

<sup>(134)</sup> Recital (60) of Implementing Regulation (EU) 2018/931.

<sup>(135)</sup> <https://www.chemanalyst.com/industry-report/oxalic-acid-market-2969>

<sup>(136)</sup> Information on the expansion of capacity was included in the study commissioned by the applicant.

<sup>(137)</sup> The source for total exports was the IHS database, whereas domestic consumption was estimated on the basis of the production capacity reported in the study commissioned by the applicant and of the export data from IHS.

<sup>(138)</sup> Spare capacity was estimated on the basis of the study commissioned by the applicant.

- (247) Since three quarters of the review investigation period fell in 2022, the Commission considered the above data applicable also to the first quarter of 2023. Indeed, according to the study presented in the request, there are ongoing plan to increase capacity on the part of Chinese producers, and thus 2022 data would correspond to a conservative estimate, as in the first quarter of 2023 additional capacity may have come online.
- (248) Based on the above, the Commission concluded that the Chinese exporting producers have significant spare capacities, which would likely be used for exporting oxalic acid at dumped prices to the Union if the measures were allowed to lapse.

#### 4.2.2. *Relation between export prices to third countries and the price level in the Union*

- (249) In order to analyse the likely behaviour of Chinese exporting producers in the absence of the measures, the Commission examined the price level with regard to Chinese exports sales to the rest of the world. In the absence of cooperation, the Commission used Eurostat and GTA statistics.
- (250) In the review investigation period, the average sales price of the Union industry ([1 478-1 817] EUR/tonne) was higher than the average export price from China to third countries (excluding the EU, 868 EUR/tonne).
- (251) Moreover, also the Chinese import price to the Union during the review investigation period (1 262 EUR/tonne) was higher than the average export price from China to its top 10 export markets (889 EUR/tonne). Thus, on the basis of export prices to third countries, the dumping margin would be higher than on the basis of export prices to the Union.
- (252) Without anti-dumping duties, Chinese exporters could easily export to the Union at prices higher than those to other third country markets, making an increase of export volumes at dumped prices highly likely if the measures were allowed to expire. Chinese exporting producers would be attracted by the higher market prices in the Union, leading to the continuation of dumping.

#### 4.2.3. *Attractiveness of the Union market*

- (253) Although the Union is a relatively small market for oxalic acid, it remains attractive to Chinese exporting producers in terms of prices. In addition to the anti-dumping duty, Chinese imports into the Union are subject to a normal *ad valorem* import duty of 6,5 %. but despite this they are still present in the Union market, as reported in recital 267.

#### 4.2.4. *Possible absorption capacity of third country markets*

- (254) As indicated above, Chinese exporting producers are able to supply third-country markets at extremely low prices. According to the applicant, now these markets are thus likely saturated and so unable to absorb any additional volumes of Chinese exports, as indicated by the rapid switch from traditional country markets identified in the previous expiry review to new countries where China has made strategic investments in rare earth metal purification projects such as Myanmar, Peru and Ivory Coast. However, in the applicant's view, demand in those countries can only grow as fast as Chinese investment allows, which is unlikely to be as fast as the build-up of new capacity in China <sup>(139)</sup>.
- (255) Moreover, according to the request, growth in demand abroad for Chinese oxalic acid is unlikely to increase. On the contrary, it is more likely to rapidly decline if China will continue imposing export restrictions on rare earth metals and minerals – the purification of which constitutes one of the uses of oxalic acid – in the context of trade tensions <sup>(140)</sup>.
- (256) Therefore, on the basis of the request, the Commission concluded that the possible absorption of Chinese spare capacity by third countries is limited.

<sup>(139)</sup> Request, para. 219.

<sup>(140)</sup> Request, para. 221. See, by way of example, the export restrictions on gallium and germanium imposed as of 1 August 2023 and the export controls on graphite in place as of 1 December 2023.

#### 4.2.5. Conclusion

- (257) Considering the significant spare capacity in China and taking into account the evidence on the attractiveness of the Union market, the Commission concluded that, should the measures lapse, it is likely that the Chinese exporting producers would activate the spare capacity and also redirect exports from third countries towards the Union market at dumped prices and in significant volumes. Thus, the Commission concluded that there was a strong likelihood that the expiry of the anti-dumping measures on imports from China would result in the continuation of dumping, or in any event, recurrence of dumping.

### 5. INJURY

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

- (258) The like product was manufactured by two producers in the Union during the period considered, namely Oxaquim and WeylChem. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation. Taking into account that the data used in the injury analysis was sourced from only two Union producers, the figures established on the basis of this data presented below are given in ranges in order to protect confidentiality of the Union producers.
- (259) The total Union production during the review investigation period was established at between 16 000 and 20 000 tonnes. The Commission established the Union production on the basis of the verified questionnaire reply from Oxaquim and the questionnaire reply submitted by WeylChem. As explained in recital (19), the Commission could not verify the questionnaire reply from WeylChem. Nevertheless, the Commission cross-checked data provided in that questionnaire reply of WeylChem with the corresponding data available in the request for review and gained reasonable assurance that it could be used to establish injury indicators relevant for the whole Union industry, namely Union production, Union consumption and macroeconomic indicators. The other injury indicators were established on the basis of the verified questionnaire reply of Oxaquim.
- (260) The two Union producers represented 100 % of the total Union production of the like product.

#### 5.2. Union consumption

- (261) The Commission established the Union consumption on the basis of questionnaire replies from the Union producers and Eurostat import data.
- (262) Union consumption developed as follows:

Table 2

#### Union consumption (tonnes)

	2020	2021	2022	Review investigation period
Total Union consumption	[8 371-10 295]	[10 190-12 533]	[9 986-12 282]	[9 454-11 627]
<i>Index</i>	100	122	119	113
Captive market consumption	[1 072-1 318]	[1 474-1 812]	[1 409-1 732]	[1 382-1 699]
<i>Index</i>	100	137	131	129
Free market consumption	[7 299-8 977]	[8 717-10 721]	[8 578-10 550]	[8 072-9 928]
<i>Index</i>	100	119	118	111

Source: Eurostat, Union producers.

- (263) Union free market consumption increased by 11 % over the period considered. In 2020, Union consumption was low due to the economic slowdown caused by the Covid-19 pandemic. In 2021 and 2022, it returned to the pre-pandemic level, while during the review investigation period it decreased due to lower sales volume of the Union industry caused by temporary problems with the supply of one of the main raw materials used to produce oxalic acid, which temporarily disrupted the production process.
- (264) Oxalic acid was used internally by one of the Union producers to manufacture other products. Captive consumption increased by 29 % over the period considered, following a similar trend as the free market consumption.

### 5.3. Imports from the countries concerned

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

- (265) The Commission established the volume of imports on the basis of Eurostat import data. The market share of the imports was established on the basis of this data as a percentage of Union free market consumption.
- (266) Imports into the Union from the countries concerned developed as follows:

Table 3

#### Import volume and market share

	2020	2021	2022	Review investigation period
Volume of imports from the countries concerned (tonnes)	984	672	1 388	1 565
<i>Index</i>	100	68	141	159
Market share (%)	11,7	6,7	14,1	16,9
<i>Index</i>	100	57	120	144
Volume of imports from the PRC (tonnes)	771	362	1 067	1 149
<i>Index</i>	100	47	138	149
Market share (%)	9,2	3,6	10,8	12,4
<i>Index</i>	100	39	118	135
Volume of imports from India (tonnes)	213	310	321	416
<i>Index</i>	100	146	150	195
Market share (%)	2,5	3,1	3,3	4,5
<i>Index</i>	100	122	128	176

Source: Eurostat.

- (267) Volume of imports from the countries concerned increased from 984 tonnes in 2020 to 1 565 tonnes in the review investigation period, i.e. by 59 %.
- (268) Volume of imports from the PRC increased from 771 tonnes in 2020 to 1 149 tonnes in the review investigation period, i.e. by 49 %.

- (269) Volume of imports from India increased from 213 tonnes in 2020 to 416 tonnes in the review investigation period, i.e. by 95 %.
- (270) During the same period, the Union free market consumption increased by only 11 %. As a result, the exporting producers from the countries concerned increased their market share from 9,2 % to 12,4 % for the PRC, from 2,5 % to 4,5 % for India and from 11,7 % to 16,9 % from both countries concerned over the period considered.

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

- (271) The Commission established the prices of imports on the basis of Eurostat import data. Price undercutting of the imports was established on the basis of verified questionnaire replies for Indian producers and on the basis of Eurostat import data for the PRC as there was no cooperation from that country.
- (272) The weighted average price of imports into the Union from the countries concerned developed as follows:

Table 4

#### **Import prices (EUR/tonne)**

	2020	2021	2022	Review investigation period
India and PRC	775	830	1 271	1 238
<i>Index</i>	100	107	164	160
PRC	740	769	1 288	1 262
<i>Index</i>	100	104	174	171
India	903	901	1 217	1 170
<i>Index</i>	100	100	135	130

Source: Eurostat.

- (273) The average prices of imports from the countries concerned on the Union market increased by 60 % over the period considered.
- (274) The average price of imports from India increased by 30 % and the average price of imports from the PRC increased by 71 % over the period considered.
- (275) For India the Commission determined the price undercutting during the review investigation period by comparing:
- the weighted average sales prices per product type of the cooperating Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level; and
  - the corresponding weighted average prices per product type of imports from the cooperating Indian producers to the first independent customer on the Union market established on a cost, insurance and freight (CIF) basis.
- (276) For China, the Commission determined the price undercutting during the review investigation period by comparing the average sales price of the cooperating Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level with the average price of imports from the PRC on a CIF basis. Due to the non-cooperation from the PRC, the import price from China was established based on Eurostat data which are provided at CIF Union frontier level.
- (277) The CIF prices were then adjusted for the post-importation costs, in particular conventional customs duty, customs administration costs and anti-dumping duty.

- (278) The result of the comparison was expressed as a percentage of the cooperating Union producer's turnover during the review investigation period. It showed a weighted average undercutting margin of [5-25] % by imports from India and undercutting margin of [4-10] % by imports from the PRC on the Union market. The cumulated undercutting margin by imports from the countries concerned was [6-12] %.

#### 5.4. Imports from third countries other than India and the PRC

- (279) The imports of oxalic acid from third countries other than India and the PRC were mainly from Taiwan.
- (280) The total volume of imports into the Union as well as the market share and price trends for imports of the product under review from other third countries developed as follows:

Table 5

#### Imports from third countries

Country		2020	2021	2022	Review Investigation period
Taiwan	Volume (tonnes)	1 54	144	190	140
	Index	100	93	124	91
	Market share (%)	1,8	1,4	1,9	1,5
	Average price (EUR/tonnes)	2 655	2 522	3 515	3 436
	Index	100	95	132	129
Other third countries	Volume (tonnes)	15	56	103	112
	Index	100	388	708	771
	Market share (%)	0,2	0,6	1,0	1,2
	Average price (EUR/tonnes)	12 356	8 847	8 258	9 434
	Index	100	72	67	76
Total of all third countries except the countries concerned	Volume (tonnes)	169	200	293	252
	Index	100	119	174	150
	Market share (%)	2,0	2,0	2,9	2,7
	Average price (EUR/tonnes)	3 491	4 299	5 177	6 099
	Index	100	123	148	175

Source: Eurostat.

- (281) Imports from Taiwan decreased during the period considered by 9 %. Taiwan's market share decreased by 0,3 percentage points.

- (282) Imports from third countries except the countries concerned increased by 50 % over the period considered. Its share in the Union market increased from 2 % in 2020 to 2,7 % during the same period.
- (283) The average price of imports from third countries except the countries concerned increased by 75 % during the period considered and was much higher than the average price of Union industry.

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

##### 5.5.1. General remarks

- (284) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

##### 5.5.2. Macroeconomic indicators

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

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

Table 6

#### Production, production capacity and capacity utilisation

	2020	2021	2022	Review investigation period
Production volume (tonnes)	[17 701-21 770]	[19 712-24 243]	[17 018-20 930]	[16 353-20 113]
Index	100	111	96	92
Production capacity (tonnes)	[23 490-28 890]	[23 490-28 890]	[23 490-28 890]	[23 490-28 890]
Index	100	100	100	100
Capacity utilisation (%)	75,4	83,9	72,4	69,6
Index	100	111	96	92

Source: Union producers.

- (286) Production volume in 2021 increased by 11 % compared to 2020. In 2020, production volume was below the normal level due to temporary closure of plant caused by the Covid-related restrictions. Thus, the increase in 2021 was a mere return of production volume to the normal, pre-Covid level. In 2022 and during the review investigation period, production volume decreased due to temporary problems with supply of one of the main raw materials, which disrupted the production process, as mentioned in recital (263), and due to lower demand for European oxalic acid, caused by increased and relatively cheaper imports from the PRC and India. Overall, production volume decreased by 8 % during the period considered.
- (287) As production capacity did not change over the period considered, capacity utilisation fluctuated in line with changes in production volume.

##### 5.5.2.2. Sales volume and market share

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

Table 7

**Sales volume and market share**

	2020	2021	2022	Review investigation period
Total sales volume on the Union market (tonnes)	[6 296-7 743]	[7 958-9 787]	[7 115-8 751]	[6 492-7 984]
<i>Index</i>	100	126	113	103
Market share (%)	86,3	91,3	83,0	80,4
<i>Index</i>	100	106	96	93

Source: Eurostat, Union producers.

(289) Sales volume developed in line with production volume and there were no significant stock movements (except in 2021). Thus, sales volume increased in 2021, thanks to a post-Covid recovery, and then decreased due to production disruptions caused by temporary problems with supply of one of the main raw materials, as mentioned in recital 286. Overall, during the whole period considered, sales volume increased by 3 %.

(290) As during the same period Union consumption increased at a higher rate than the Union producers' sales volume, namely at 11 %, the market share of Union producers decreased from 86,3 % in 2020 to 80,4 % in the review investigation period.

#### 5.5.2.3. Growth

(291) While the Union consumption increased by 11 % over the period considered, the sales volume of the Union industry increased by only 3 % during the same period. As a result, Union industry's share in the EU market decreased by almost six percentage points.

#### 5.5.2.4. Employment and productivity

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

Table 8

**Employment and productivity**

	2020	2021	2022	Review investigation period
Number of employees	[41-51]	[40-50]	[40-50]	[41-50]
<i>Index</i>	100	97	98	99
Productivity (unit/employee)	[372-457]	[425-523]	[366-450]	[348-428]
<i>Index</i>	100	114	98	94

Source: Union producers.

(293) Employment remained stable during the period considered.

(294) Productivity was established as production volume divided by employment. Since employment remained stable over the period considered the trend of productivity was determined by the development of production volume. Therefore, the trend of profitability followed the trend of production volume explained in recital (286).



#### 5.5.2.5. Magnitude of the dumping margin and recovery from past dumping

- (295) During the review investigation period, the individual dumping margins found for the cooperating exporting producers in India and for the PRC were still substantial (see recitals (47) and (231) above).
- (296) However, despite the fact there was still dumping for India and for the PRC, the analysis of the injury indicators shows that the measures in place had a positive impact on the Union industry.

#### 5.5.3. Microeconomic indicators

##### 5.5.3.1. Prices and factors affecting prices

- (297) The weighted average unit sales prices of the cooperating Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 9

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

	2020	2021	2022	Review investigation period
Average unit sales price in the Union on the total market	[787-967]	[819-1 007]	[1 418-1 744]	[1 478-1 817]
<i>Index</i>	100	104	180	188
Unit cost of production	[752-924]	[842-1 036]	[1 464-1 800]	[1 454-1 788]
<i>Index</i>	100	112	195	193

Source: Oxaquim.

- (298) The average unit sales price in the Union increased by 88 % during the period considered. This was due to the increase of the unit cost of production by 93 % during the same period.
- (299) The unit cost of production increased due to the increase of cost of main raw materials (sugar and nitric acid) as well as of energy and transport costs.

##### 5.5.3.2. Labour costs

- (300) The average labour costs of the verified Union producer developed over the period considered as follows:

Table 10

#### Average labour costs per employee

	2020	2021	2022	Review investigation period
Average labour costs per employee (EUR)	[35 624-43 813]	[37 647-46 301]	[39 951-49 135]	[41 496-51 036]
<i>Index</i>	100	106	112	116

Source: Oxaquim.

- (301) Between 2020 and the review investigation period, the average labour costs per employee increased by 16 % due to the inflation.

#### 5.5.3.3. Inventories

- (302) Stock levels of the cooperating Union producer developed over the period considered as follows:

Table 11

#### Inventories

	2020	2021	2022	Review investigation period
Closing stocks (tonnes)	[239-295]	[203-250]	[137-168]	[224-275]
Index	100	85	57	93
Closing stocks as a percentage of production	2,2	1,6	1,1	1,9
Index	100	72	51	83

Source: Oxaquim.

- (303) Given the nature of the product concerned, stocks are very small. Since the product concerned deteriorates quickly, the producers produce goods for almost immediate shipment. Therefore, this indicator is not very meaningful in order to describe the Union industry condition.

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

- (304) Profitability, cash flow, investments and return on investments of the verified Union producer developed over the period considered as follows:

Table 12

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

	2020	2021	2022	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[10,1-12,4]	[4,4-5,5]	[2,6-3,2]	[5,7-7,0]
Index	100	44	26	56
Cash flow (EUR)	[637 139-783 607]	[635 883-782 063]	[1 849 358-2 274 498]	[1 570 392-1 931 401]
Index	100	100	290	246
Investments (EUR)	[1 009 137-1 241 123]	[801 282-985 484]	[733 134-901 671]	[742 004- 912 579]
Index	100	79	73	74
Return on investments (%)	[3,2-3,9]	[1,8-2,2]	[2,0-2,5]	[4,2-5,2]
Index	100	56	64	133

Source: Oxaquim.

- (305) The Commission established the profitability of the cooperating Union producer by expressing the pre-tax profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of these sales. Profitability fluctuated in line with the development of the unit sales price and unit cost of production described in recitals 298 and 299. Between 2020 and 2022, the unit sales price increased slower than the unit cost of production and as a result profitability decreased. During the review investigation period the unit sales price continued to grow, whereas the unit cost of production stabilised, and therefore the profitability improved. Overall, the cooperating Union producer remained profitable during the whole period considered.
- (306) The net cash flow is the ability of the Union producers to self-finance their activities. The cash flow was stable in 2020 and 2021 and increased thereafter so that during the review investigation period it was 146 % higher than in 2020. This was due to the increase of depreciation from 2022 onwards. In 2020 and 2021, the Union producer recognised a lower depreciation amount than would have been normally applicable due to lower utilisation of fixed assets resulting from the Covid-related restrictions. In the following periods, the company booked the full depreciation amount.
- (307) Investments decreased by 26 % over the period considered. However, since the absolute value of investments was low, this trend is not meaningful for the assessment of the financial performance of the Union producer.
- (308) The return on investments is the pre-tax profit of the sales to unrelated customers in the Union in percentage of the net book value of assets related to the production of the product under review. Despite decreasing profit, return on investments increased by 33 % over the period considered as net book value of assets went down.

#### 5.6. Conclusion on injury

- (309) Imports from the countries concerned increased by 59 % over the period considered, due to which Indian and Chinese producers increased their market share from 11,7 % in 2020 to 16,9 % in the review investigation period. Their prices undercut the Union industry prices by [4-25] %.
- (310) Certain injury indicators, like production volume and market share, showed a negative trend. Production volume decreased by 8 % due to temporary problems with the supply of one of the raw materials. Market share decreased by almost six percentage points but remained at over 80 %.
- (311) The trend of other injury indicators was positive. Union industry sales volume increased by 3 % and employment remained stable over the period considered. Additionally, during the same period average sales price in the Union increased by 88 %. This was slightly below the increase of the unit cost of production, but sufficient to maintain profitability over the whole period considered, though profitability was below the target profit (8 %) in the RIP. Cash flow improved significantly, increasing by 146 % between 2020 and the review investigation period. Return on investments also improved.
- (312) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.
- (313) In their comments on the final disclosure, Oxaquim submitted that data ranges provided in some tables in the Regulation, in particular the tables related to the economic performance of the Union industry, were too narrow and suggested using indexation instead of ranges arguing that indexes would show the trend without giving the magnitude order for each value.
- (314) The Commission considered that it was necessary to present not only the trend but also the magnitude of the injury indicators to ensure proper understanding by interested parties of the injury assessment. To this end, the Commission had to use both indexes and ranges. The Commission defined the ranges in such a way that they enable interested parties to understand its reasoning, while at the same time they are wide enough to protect confidential business information. Therefore, the claim was rejected.

## 6. LIKELIHOOD OF RECURRENCE OF INJURY

- (315) The Commission concluded in recital (312) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury originally caused by the dumped imports from India and the PRC if the measures against were allowed to lapse.
- (316) In this regard, the Commission examined (i) the production capacity and spare capacity in India and the PRC, (ii) relation between export prices to third countries and the price level in the Union, (iii) likely price levels of imports from India and the PRC in the absence of anti-dumping measures and their impact on the Union industry, (iv) the attractiveness of the Union market and (v) the impact of Indian and Chinese imports on the situation of the Union industry should measures be allowed to lapse.

### 6.1. Production capacity and spare capacity in India and the PRC

- (317) As explained in recital (244), the total production capacity of oxalic acid in China was 595 000 tonnes in 2022. After deduction of domestic demand and total exports, the Chinese producers' free capacity available for the Union market is estimated at about 180 000 tonnes, which is [18-22] times more than the total Union free market consumption (see recital (246)).
- (318) As regards India, the free capacity available for the Union market is estimated at 8 500 tonnes as stated in recital (233), that is to say [86-105] % of the total Union free market consumption.
- (319) Therefore, it can be concluded that there is substantial spare capacity both in China and India, which can be used to increase exports to the Union market should the measures in force be allowed to expire.

### 6.2. Relation between export prices to third countries and the price level in the Union

- (320) As explained in recitals (250) and (251), the average export price from China to third countries (868 EUR/tonne) was much lower than its average export price to the Union (1 262 EUR/tonne) and the average sales price of the Union industry ([1 478-1 817] EUR/tonne) during the review investigation period.
- (321) As regards India, during the review investigation period, the average export price to the Union was 11 % higher than to the rest of the world as stated in recital (235).
- (322) Thus, the Commission concluded that the Chinese and Indian exporting producers would have an economic incentive to shift exports from third countries to the Union should the measures lapse. In such case they would be able to export to the Union at prices higher than those to other third country markets but still below the Union industry's price level.

### 6.3. Likely price levels of imports from India and the PRC in the absence of anti-dumping measures and their impact on the Union industry

- (323) Regarding import price levels, the investigation showed that despite the anti-dumping measures in force, there was still an undercutting of Union industry's prices during the review investigation period. Should the measures in force be repealed and assuming that import prices from the countries concerned and the price of the Union industry would remain the same as during the review investigation period, the undercutting margin would increase to [15 %-40 %]. In such case, in order to remain competitive, the Union industry would have to lower its sales prices below the profitability level.

#### 6.4. Attractiveness of the Union market

- (324) Taking into account the price analysis in recitals (320) to (323) the Chinese and Indian exporting producers would have a high incentive to divert their exports to the Union where they would achieve higher prices, while still being able to significantly undercut the Union industry sales price. In addition, they would be able to use their spare capacities to increase export quantities to the Union market.
- (325) The attractiveness of the Union market is further confirmed by the fact that despite the relatively high level of anti-dumping duties in force which come in addition to the conventional import duty of 6,5 %, the Chinese and Indian exporting producers continued to export to the Union and even increased their market share.
- (326) It is therefore concluded that the exporting producers in India and the PRC have the potential and incentive to substantially increase the volume of their exports to the Union at dumped prices significantly undercutting the prices of the Union industry, should measures be allowed to lapse.

#### 6.5. Impact on the Union industry

- (327) The Union industry, under the scenario that it would keep the current price level, will not be able to maintain its sales volume and market share against the dumped imports from China and India. It is highly likely that, should the measures be allowed to lapse, the Chinese and Indian producers' market share would increase rapidly. This would be at the expense of the Union industry whose prices are higher. Losing sales volume would further decrease capacity utilisation rate and, consequently, increase in the average unit cost of production. This would reduce profitability, which given its currently low level, would turn the Union industry unprofitable.
- (328) If the Union industry decided to lower its prices in an attempt to keep its sales volume and market share, its financial situation would also quickly deteriorate. The price decrease would have to be significant to match the prices of the Indian and Chinese exporters as, should the measures be allowed to lapse, they would undercut the Union industry prices by [15 %-40 %] (without the anti-dumping duties). Such a significant price decrease would make the Union industry heavily loss-making taking into account that its profit margin is at a single-digit level.
- (329) Under both scenarios, the expiry of the measures would have a negative impact on the Union industry, worsening its already fragile financial situation and ultimately threatening its viability.

#### 6.6. Conclusion

- (330) On this basis, it is concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from India and the PRC at injurious prices and material injury would be likely to recur.

#### 6.7. Union Interest

- (331) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

#### 6.8. Interest of the Union industry

- (332) The investigation revealed that although the Union industry did not suffer material injury, it experienced certain negative consequences of imports from India and the PRC, such as loss of market share, and its financial situation was fragile considering decreasing profitability. Should the measures against India and the PRC be repealed it is likely that the injury would recur as the Union industry would be exposed to significant volumes of imports exerting significant price pressure. As a consequence, the economic situation of the Union industry would likely deteriorate significantly for the reasons described in recitals 327 and 328. On the contrary, maintaining the measures would bring more certainty to the market, allowing the Union industry to strengthen its economic situation and improve prospects of a long-term viability.

- (333) On this basis the Commission concluded that the continuation of the anti-dumping measures in force would be in the interest of the Union industry.

**6.9. Interest of unrelated importers**

- (334) All known unrelated importers were contacted at the initiation of the investigation. The Commission did not receive cooperation from any unrelated importers during the investigation.
- (335) On this basis, there were no indications that the maintenance of the measures would have a significant negative impact on the importers outweighing the positive impact of the measures on the Union industry.

**6.10. Interest of users**

- (336) Jervois Finland Oy ('Jervois'), the sole user cooperating in the investigation, opposed the continuation of the anti-dumping measures.
- (337) Jervois used oxalic acid as a raw material to produce one of its products. Oxalic acid accounted for around [5-9] % of total cost of production of this product which in turn generated around [9-13] % of total company's turnover. Therefore, the impact of the cost of oxalic acid on the overall financial performance of Jervois was very limited.
- (338) In addition, Jervois used oxalic acid imported from the countries concerned to manufacture products which it sold outside the EU. Therefore, it was eligible to import under the inward processing system and hence not pay the anti-dumping duty. In such case, the measures in force would not have any direct effect on the financial situation of Jervois.
- (339) In view of the above and taking into account that the Commission did not receive comments from other users, maintaining the anti-dumping measures would not have a negative impact on Union users outweighing the positive impact of the measures on the Union industry.
- (340) In their comments on the final disclosure, Oxaquim claimed that the Commission's statement in recital (339) of the Regulation that it did not receive any other comments from the Union users, except from Jervois Finland Oy, was not correct. According to Oxaquim several Union users made representations in support of the continuation of the anti-dumping measures. Oxaquim requested the Commission to mention the number of such Union users and their support for the continuation of the measures.
- (341) The Commission noted that it received comments from two distributors of oxalic acid. They expressed support for the extension of the anti-dumping measures on imports of oxalic acid from China and India. In addition, the Commission received sensitive comments from three other parties: one distributor, one user and one trader and user. The Commission requested these parties to submit non-sensitive version on their comments, but the parties failed to do so. Therefore, the Commission could not disclose their position in the Regulation.

**6.11. Conclusion on Union interest**

- (342) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of oxalic acid originating in India and the PRC.

## 7. ANTI-DUMPING MEASURES

- (343) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on oxalic acid from India and the PRC should be maintained.
- (344) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (345) 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.
- (346) 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.
- (347) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the countries concerned and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (348) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(141)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (349) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure.
- (350) In their comments to the final disclosure, Oxaquim claimed that oxalic acid made by certain Chinese producers was being imported into the Union market via the company Yuanping, taking advantage of this company's lower individual duty rate. Oxaquim requested the Commission to consider withdrawing Yuanping's individual duty rate on the basis that this company is no longer a genuine oxalic acid producer.

<sup>(141)</sup> European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

- (351) The Commission noted that, in the context of an expiry review, measures cannot be terminated for an individual company only. Therefore, this comment was rejected.
- (352) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(142)</sup> when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (353) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of oxalic acid, whether in dihydrate (CUS number 0028635-1 and CAS number 6153-56-6) or anhydrous form (CUS number 0021238-4 and CAS number 144-62-7) and whether or not in aqueous solution, currently falling under CN code ex 2917 11 00 (TARIC code 2917 11 00 91) and originating in India and the People's Republic of China.

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

Country of origin	Company	Anti-dumping duty	TARIC additional code
India	Punjab Chemicals and Crop Protection Limited	22,8 %	B230
	Star Oxochem Pvt Ltd	31,5 %	B270
	All other imports originating in India	43,6 %	B999
People's Republic of China	Shandong Fengyuan Chemicals Stock Co., Ltd; Shandong Fengyuan Uranus Advanced Material Co., Ltd	37,7 %	B231
	Yuanping Changyuan Chemicals Co., Ltd	14,6 %	B232
	All other imports originating in the People's Republic of China	52,2 %	B999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: '*I, the undersigned, certify that the (volume) of (product under review) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.*' Until such invoice is presented, the duty applicable to all other companies shall apply.

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

<sup>(142)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).



*Article 2*

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

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

Done at Brussels, 5 September 2024.

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

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